

1980 BILL 5

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 5

THE DISTRESS OF LEASED CHATTELS ACT

MR. HIEBERT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

THE DISTRESS OF LEASED CHATTELS ACT

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Bill 5
Mr. Hiebert

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THE DISTRESS OF LEASED CHATTELS ACT

(Assented to , 1980)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 In this Act,

- (a) "Court" means the Court of Queen's Bench;
- (b) "lessee" means a lessee of chattels;
- (c) "lessor" means a lessor of chattels;
- (d) "prescribed" means prescribed by regulation.

2 A lessor may instruct the sheriff to seize chattels that the lessor has leased to a lessee under a written lease if

- (a) the lease entitles the lessor to take possession of the leased chattels upon default by the lessee and there has been a default by the lessee, or
- (b) the lessor is entitled to possession of the leased chattels by virtue of the expiration or termination of the lease.

3 A sheriff shall not proceed to seize chattels under instructions from a lessor unless the lessor delivers to the sheriff

- (a) a distress warrant, in the prescribed number and form, executed by the lessor or his agent,
- (b) a notice of seizure in the prescribed number and form,
- (c) a notice of objection in the prescribed number and form,
- (d) a sufficiently stamped envelope addressed to the sheriff, and

Explanatory Notes

1 Definitions.

2 Right to seize chattels.

3 Documents required by sheriff.

(e) a copy of the executed written lease.

4 A sheriff is not under a duty to execute a distress warrant unless, in his opinion, he has been furnished with reasonably sufficient security to indemnify him in respect of his fees, charges and expenses and any claims for damages occurring in respect of the distress or anything done in relation to it.

5(1) A sheriff is not under a duty to seize chattels that are in the possession of a person, other than the lessee, who claims an interest in them or right to them unless the lessor

(a) delivers to the sheriff in writing

(i) instructions to seize the property, and

(ii) a description of the property to be seized that in the opinion of the sheriff will enable him to identify it,

and

(b) furnishes the sheriff with a good and sufficient bond of indemnity to the satisfaction of the sheriff.

(2) A bond taken by the sheriff pursuant to this section is assignable to a person, other than the lessee, who claims an interest in the property and it shall be a condition of the bond that the person executing the bond is liable for the damages, costs and expenses

(a) that the sheriff or a person claiming an interest in the property might be put to by reason of the seizure and any subsequent proceedings including interpleader proceedings, if any, and

(b) that are not recovered from any other person who ought to pay for the damages, costs and expenses, as the case may be.

(3) If a difference arises as to the bond to be furnished pursuant to this section, the sheriff shall, on the request of the lessor, refer the matter to the Court for determination.

6 To effect a seizure of chattels the sheriff shall

(a) serve on the lessee, or if more than one lessee, upon each of them, or on an adult member of the household in which the chattels are situated, or an adult person who appears to have possession of or control over the chattels,

(b) attach to the chattels to be seized or a portion of them, or

4 Security to be provided to the sheriff.

5 Seizure of property not in possession of the lessee.

6 Effecting seizure.

(c) post up in some conspicuous place on the premises on which the chattels or some portion of them are situated at the time of seizure,

a notice of seizure, a notice of objection and a sufficiently stamped envelope addressed to the sheriff.

7 The sheriff shall ensure that the names and addresses of the lessor and lessee are inserted in the notice of objection before a seizure is made.

8 A seizure made pursuant to this Act is deemed to be a continuing seizure up until

(a) the time the sheriff by notice in writing releases the seizure,

(b) an objection has been adjudicated on by the Court, if a notice of objection is filed, or

(c) the sheriff delivers the chattels under section 12 to the lessor.

9 The sheriff at any time after making a seizure may appoint the lessee or another person as his agent to hold the seized chattels on behalf of the sheriff upon the lessee or that other person entering into a written undertaking with the sheriff

(a) to hold the chattels seized as bailee for the sheriff, and

(b) to deliver up possession of the chattels to the sheriff on demand.

10 For the purpose of effecting a seizure of chattels, the sheriff may, if it is not possible to otherwise make the seizure or to obtain possession of chattels previously seized, as the case may be, either by himself or with the assistance of any persons he requests, break open the door and enter

(a) a building other than a private dwelling, or

(b) on the order of the Court, a private dwelling,

in which the chattels that are liable to the seizure are situated.

11 (1) If a lessee objects to the seizure of the chattels that he is leasing, he shall within 14 days of a notice of objection being served, attached or posted under section 6 sign the notice of objection and deliver it to the sheriff.

7 Notice of objection to be partially completed before seizure.

8 Seizure deemed to be a continuing seizure.

9 Sheriff's bailee.

10 Entry into buildings to effect seizure.

11 Objection to seizure.

(2) Notwithstanding subsection (1), if a lessee signs and delivers a notice of objection to the sheriff subsequent to the expiration of the 14-day period but prior to the seized chattels being delivered to the lessor, that notice of objection shall be treated in the same manner as if it had been signed and delivered to the sheriff within the 14-day period.

12(1) Subject to subsection (2), if no notice of objection is delivered to the sheriff under section 11(1) within the 14-day period, the chattels seized may be delivered to the lessor.

(2) A sheriff shall not deliver chattels to a lessor under subsection (1) if he receives a notice of objection delivered to him under section 11(2).

13(1) If the sheriff receives a notice of objection under section 11, he shall immediately notify the lessor and thereupon the lessor may apply by notice of motion to the Court for an order of replevin for the delivery of the chattels to him.

(2) An application made under this section shall not be heard unless the lessee is given at least 7 days' clear notice of the application or any other notice that the Court may direct.

(3) An application may be dealt with in a summary manner and may be adjourned from time to time.

(4) On the hearing of the application the evidence may be taken either orally or by affidavit as the Court directs, and the Court may on those terms and conditions that it considers appropriate, if any,

(a) refuse the application;

(b) make an order declaring the lessor to be entitled to possession of the chattels and that possession of the chattels be given to the lessor;

(c) order the release of all or part of the chattels seized;

(d) order that the chattels be returned to the possession of the lessee.

(5) If, on the hearing of an application under this section, it appears there is a dispute as to

(a) the right to make the seizure, or

(b) the ownership of the chattels seized,

the Court may proceed to hear and determine the dispute in a summary manner on notice to the persons that it may direct

12 Disposal of seized chattels.

13 Order of replevin.

and on either oral or affidavit evidence or both, as the Court considers appropriate.

(6) If, on the hearing of an application under this section, it appears to the Court the matter cannot be disposed of summarily, it may direct the trial of an issue.

(7) If an issue is directed to be tried, the Court may direct that pleadings be delivered and the rules of court relating to an action apply to the proceedings.

14(1) If a claim is made by a person other than the lessor or lessee to or in respect of any chattels seized by a sheriff, the sheriff shall proceed as if

(a) the claim were made to or in respect of goods taken in execution under process of the Court, and

(b) the person directing the distraint or seizure were an execution creditor.

(2) The rules of court applicable to interpleader by a sheriff apply to a proceeding by the sheriff under this section.

(3) The right of the sheriff to interpleader relief under the rules of court is not affected by the fact that the sheriff has been furnished with a security that he is permitted to require pursuant to this Act.

15(1) If the sheriff has doubts as to the exercise by him of a power, duty or authority conferred or imposed on him by this Act, he may on his own motion apply to the Court for directions.

(2) At any time after a distress, the lessor or lessee may on his own motion apply to the Court for directions with respect to the exercise or intended exercise by the sheriff of any of the powers, duties or authorities conferred on the sheriff by this Act.

(3) On an application made under this section, the Court may, on notice to the parties as it considers proper, and after hearing any evidence that it considers necessary, make an order giving those directions consistent with this Act that it considers proper and convenient.

(4) No action or proceeding lies against the sheriff for anything done pursuant to or in conformity with the directions given to him by an order given under subsection (3).

16(1) A sheriff may, at any time after a seizure has been in effect for 3 months, serve on the lessor a notice in writing

14 Claim to chattels under seizure.

15 Application for directions to sheriff.

16 Release of seizure.

informing the lessor that, on the expiration of 60 days from the date of service of the notice, he intends to release the seizure unless before that time application is made to the Court for an order continuing the seizure.

(2) If no application is made pursuant to subsection (1), the sheriff may release the seizure.

(3) An application made pursuant to subsection (1) may be made ex parte or on notice as a judge may direct, but in every case the applicant shall serve the sheriff with notice of the application.

(4) The Court on hearing the application may make an order providing for the release or continuation of the seizure on those terms that it considers proper.

17 When chattels have been removed from a judicial district while under seizure, the sheriff of the judicial district in which they were seized may either

(a) enter the judicial district in which the chattels are situated and obtain possession of the chattels, or

(b) instruct the sheriff of the judicial district in which the chattels are situated to obtain possession of the chattels on his behalf and deliver them to him.

18(1) A person

(a) who is under a duty to deliver to a sheriff chattels that have been seized by the sheriff, and

(b) who defaults in delivering the chattels to the sheriff within a reasonable time after being required to do so by the sheriff,

is liable to attachment upon application to the Court and may be proceeded against for a civil contempt of the Court.

(2) An application under subsection (1) shall be made on notice of motion by the person on whose behalf the chattels were seized by the sheriff.

19 Unless otherwise ordered by the Court, no seizure or distress shall be made, taken, levied, executed or carried into effect except by a sheriff or another person authorized in writing to do so by a sheriff.

20 A person

17 Seized chattels removed to another judicial district.

18 Civil contempt for non-delivery of seized chattels.

19 Persons who may carry out a seizure.

20 Penalty for an unauthorized seizure.

(a) who, in contravention of this Act, makes a seizure or levies a distress or does any act for the purpose of carrying a seizure or levy into effect, or

(b) who by means of threats of seizure obtains, takes or receives chattels when he is not authorized to make a seizure or levy a distress in respect of those chattels at that time and place,

is guilty of an offence punishable and liable on summary conviction to a fine of not more than \$500.

21(1) Any notice required to be served on a person pursuant to this Act may, unless this Act contains express provisions to the contrary, be served by sending it by registered mail in a prepaid envelope addressed to that person at his latest known post office address.

(2) The notice shall be deemed to have been served on proof being made by affidavit stating

(a) that the notice was sent by registered mail in a prepaid envelope addressed to the person to be served at his latest known post office address,

(b) the date and place of mailing of the registered letter, and

(c) the date at which the registered letter would, in the ordinary course of mail, reach its destination.

(3) The date at which the registered letter would, in the ordinary course of mail, reach its destination shall be deemed to be the date of service of the notice.

22 All fees, costs and charges payable to the sheriff are payable in advance by the person at whose instance the service is to be rendered, but in cases where the amounts are not capable of ascertainment in advance, then the amount estimated by the sheriff shall be deposited with him, to be accounted for when the correct amount is ascertained.

23 The Lieutenant Governor in Council may make regulations

(a) governing forms to be used under this Act;

(b) prescribing the fees, costs and charges payable to the sheriff in relation to any service provided by him under this Act.

21 Service by mail.

22 Pre-payment of sheriff's fees.

23 Regulations.

24 A remedy given to a lessor by this Act does not derogate from any other remedy at law that a lessor may have.

25 This Act comes into force on a date or dates to be fixed by Proclamation.

24 Effect on present law.