

The Statute of Frauds Still Exists!



By Brian Madigan LL.B.

With its origins in England in 1677, you might think that such a statute would have outlived its usefulness. And, in part, that's true.

The *Statute of Frauds and Perjuries* was enacted initially to prevent or curtail fraudulent transactions.

By the middle of the 17th Century, the common laws courts were rather overworked with all the petitions to consider, that had been placed before them. One problem developed, and that was the professional witness. This witness would be someone with status in the community and their testimony would usually be accorded more weight than the average person.

Commercial activities were increasing at an exponential rate. There were lots of court cases, lots of witnesses and a lot of very good liars. In fact, witnesses might be offered a stake in the outcome of a case if their evidence were “truly favoured by the court”.

So, many cases simply came down to “one man’s word against another”. Really, this wasn’t entirely fair. From an historical perspective, there were landlords reclaiming vast ownership of properties, rather unfairly with a substantial coincidence in terms of similar facts and testimony.

Consequently, Charles II delegated the drafting of the Act to a loyal friend Sir Leo Jenkins who created the solution to the problem. Parliament enacted the *Statute of Frauds and Perjuries* in 1677. It was designed to prevent fraud. It did this, by insisting that certain **contracts had to be in writing**. These would be contracts that involved matters of considerable importance. Did John sell his farm to Peter? Yes, if Peter can produce a deed or a contract, and no, if the only evidence offered is the testimony of William who apparently overheard the two talking about the farm at a local pub.

Real estate transactions were required to be reduced to writing. Verbal deals are just discussions. They will not be enforced!

Ontario still has a **Statute of Frauds** and it says:

Writing required to create certain estates or interests

1. (1) Every estate or interest of freehold and every uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be made or created by a writing signed by the parties making or creating the same, or their agents thereunto lawfully authorized in writing, and, if not so made or created, has the force and effect of an estate at will only, and shall not be deemed or taken to have any other or greater force or effect.

The list of very important matters that required a contract in writing included the following:

- (1) contracts involving the sale of an interest in land;
- 2) contracts, the performance of which, extend beyond one year;
- (3) contracts in which someone assumes responsibility for someone else's debt; that is, promises to be a surety;
- (4) promises, the consideration for which, is marriage;
- (5) contracts for the sale of goods worth more than 10 pounds sterling
- (6) Certain promises by executors and administrators, specifically, a promise of an executor to administer the debt of a decedent.

In addition, and as a supporting or enforcement mechanism a rule of evidence referred to as the “**parol evidence rule**” was adopted.

Basically, it said that you could not introduce evidence that contradicts or supplements a written agreement. However, you can introduce evidence to explain the meaning of the agreement.

So, today, all agreements concerning land must be in writing. Oral agreements are not enforceable. If the vendor makes some claims about the property, get them in writing, or they're not part of the agreement. And, if you have a story to tell, keep it to yourself if it is intended to contradict the written terms of the agreement.

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