[Français](http://www.ontario.ca/fr/lois/loi/90a02)

Absconding Debtors Act

R.S.O. 1990, CHAPTER A.2

**Consolidation Period:** From September 1, 2021 to the [e-Laws currency date](http://www.e-laws.gov.on.ca/navigation?file=currencyDates&lang=en).

Last amendment: [2021, c. 4, Sched. 3, s. 17](http://www.ontario.ca/laws/statute/S21004" \l "sched3s17).

Legislative History: [2006, c. 19, Sched. C, s. 1 (1)](http://www.ontario.ca/laws/statute/S06019" \l "schedcs1s1); [2010, c. 16, Sched. 4, s. 22](http://www.ontario.ca/laws/statute/S10016" \l "sched4s22s1); [2017, c. 20, Sched. 11, s. 1, 2](http://www.ontario.ca/laws/statute/S17020" \l "sched11s1s1); [2020, c. 11, Sched. 5, s. 12](http://www.ontario.ca/laws/statute/S20011" \l "sched5s12); [2021, c. 4, Sched. 3, s. 17](http://www.ontario.ca/laws/statute/S21004" \l "sched3s17).

Definition

**1** In this Act,

“property” includes credits and effects. R.S.O. 1990, c. A.2, s. 1.

Who to be regarded as absconding debtors

**2** (1)  A person resident in Ontario who departs from Ontario with intent to defraud the person’s creditors or any of them, or to avoid being arrested or served with process, being then possessed of any real or personal property therein not exempt by law from seizure under execution shall be deemed an absconding debtor, and the property may be seized and taken by an order of attachment for the satisfying of the person’s debts. R.S.O. 1990, c. A.2, s. 2 (1).

When order may be made

(2)  The order shall be made only in a pending action. R.S.O. 1990, c. A.2, s. 2 (2).

Affidavit and order of attachment

**3** Upon affidavit made by a plaintiff or the plaintiff’s agent that the defendant is indebted to the plaintiff in a sum exceeding $100, stating the cause of action, and that the deponent has good reason to believe and does believe that the defendant has departed from Ontario and has gone to some place, stating it, to which the defendant is believed to have fled, or that the deponent is unable to obtain any information as to the place to which the defendant has gone, with intent to defraud creditors or any of them, or to avoid being arrested or served with process, and was, at the time of departure, possessed to the defendant’s own use and benefit of real or personal property in Ontario not exempt by law from seizure under execution, and upon the further affidavit of two other persons that they are well acquainted with the defendant and have good reason to believe and do believe that the defendant has departed from Ontario with intent to defraud creditors or any of them, or to avoid being arrested or served with process, a judge of the Superior Court of Justice may make an order for the attachment of the property of the defendant. R.S.O. 1990, c. A.2, s. 3; 2006, c. 19, Sched. C, s. 1 (1).

**Section Amendments with date in force (d/m/y)**

[2006, c. 19, Sched. C, s. 1 (1)](http://www.ontario.ca/laws/statute/S06019" \l "schedcs1s1) **-** 22/06/2006

Service of order

**4** A copy of the order shall be served upon the defendant. R.S.O. 1990, c. A.2, s. 4.

Term of validity

**5** The order shall remain in force for six months. R.S.O. 1990, c. A.2, s. 5.

Certified copies of order

**6** The plaintiff may at any time while the order is in force obtain from the proper officer one or more certified copies of the order that may be delivered to any sheriff, other than the sheriff to whom the original order was delivered, who may thereunder attach the property of the defendant in his or her area. R.S.O. 1990, c. A.2, s. 6.

Liability of property to attachment

**7** All the property of an absconding debtor liable to seizure under execution may be attached in the same manner as it might be seized under execution, and the sheriff to whom the order of attachment is directed shall forthwith take into his or her charge all such property, according to the exigency of the order, and shall be allowed all necessary disbursements for keeping the property, and the sheriff shall immediately engage the assistance of two substantial freeholders of his or her area, and with their aid shall make a just and true inventory of all the personal property, evidence of title or debts, books of account, vouchers and papers that he or she has attached, and shall return the inventory signed by himself or herself and the freeholders, together with the order. R.S.O. 1990, c. A.2, s. 7.

Sale of livestock and perishable goods

**8** (1)  Where horses, cattle, sheep or pigs, or perishable property, or property that by its nature cannot be safely kept or conveniently taken care of, are taken under an order of attachment, the sheriff who attaches them shall have them appraised, on oath, by two competent persons, and, if the plaintiff desires it and deposits with the sheriff a bond to the defendant executed by two freeholders, approved as sufficient by the sheriff, in double the appraised value of the property, conditioned for the payment of the appraised value to the defendant, the defendant’s executors or administrators, together with all costs and damages incurred by the seizure and sale thereof, in case judgment is not obtained by the plaintiff against the defendant, then the sheriff shall proceed to sell all or any of the property at public auction to the highest bidder, giving not less than six days notice of the sale, unless any of the property is of such a nature as not to allow of that delay, in which case the sheriff may sell it forthwith, and the sheriff shall hold the proceeds for the same purposes as he or she would hold property seized under the order of attachment. R.S.O. 1990, c. A.2, s. 8 (1).

Restoration

(2)  If the plaintiff, after notice to the plaintiff or to the plaintiff’s solicitor of the seizure of any property mentioned in subsection (1), does not deposit the bond, then, after four days after the notice, the sheriff is relieved from all liability to the plaintiff in respect of the seized property, and the sheriff shall forthwith restore it to the person from whose possession it was taken. R.S.O. 1990, c. A.2, s. 8 (2).

Proceedings if sheriff finds property in the hands of a bailiff or clerk of the Small Claims Court

**9** (1)  Where the sheriff finds any property, or the proceeds of any property that has been sold as perishable, belonging to the defendant in the custody of a bailiff or clerk of the Small Claims Court under a warrant of attachment issued, or finds money paid into court under a notice of garnishment issued by the Small Claims Court, the sheriff shall demand and is entitled to receive the property or money from the bailiff or clerk, who, on demand and notice of the order of attachment, shall forthwith deliver it to the sheriff, under the penalty of forfeiting double its value, to be recovered by the sheriff, with costs of suit, and to be accounted for by the sheriff after deducting his or her own costs, as part of the property of the defendant, but the creditor who has sued out the warrant of attachment or taken the garnishment proceedings in the Small Claims Court may proceed to judgment, and on obtaining judgment, and serving a certificate of the amount of the judgment, and of the costs, under the hand of the clerk and the seal of the Small Claims Court, is entitled to share in the distribution, if any, by the sheriff under the Creditors’ Relief Act, 2010. R.S.O. 1990, c. A.2, s. 9 (1); 2010, c. 16, Sched. 4, s. 22 (1).

Costs of bailiff

(2)  The costs and disbursements of the bailiff are a first charge upon the property and proceeds and shall be paid by the sheriff upon demand after being assessed by the clerk of the Small Claims Court. R.S.O. 1990, c. A.2, s. 9 (2).

**Section Amendments with date in force (d/m/y)**

[2010, c. 16, Sched. 4, s. 22 (1)](http://www.ontario.ca/laws/statute/S10016" \l "sched4s22s1) - 25/10/2010

Sheriff’s costs, how paid

**10** The costs of the sheriff for seizing and taking charge of property under an order of attachment, including the sums paid to persons for assisting in taking an inventory and for appraising, shall be paid in the first instance by the plaintiff, and when paid shall be assessed to the plaintiff as disbursements in the action. R.S.O. 1990, c. A.2, s. 10.

Cost of inventory

**11** A sheriff who has made an inventory and appraisement on the first order of attachment shall not be required to make nor shall he or she be allowed for a new inventory and appraisement upon a subsequent order coming into his or her hands. R.S.O. 1990, c. A.2, s. 11.

Restoration of goods to debtor on giving security

**12** (1)  Where the defendant or any person on the defendant’s behalf executes and files in the office from which the order of attachment, or the first order if there is more than one, was issued, a bond to the sheriff with at least two sufficient sureties approved by the proper officer in that office or by the judge of the Superior Court of Justice or associate judge, binding the obligors jointly and severally in double the appraised value of the property attached, conditioned that the defendant (naming the defendant) will whenever required by order of a judge of the court pay into court the appraised value of the property or so much thereof as will be sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property, or will produce and deliver to the sheriff the property attached, a judge of the court may direct that the property be restored to the debtor. R.S.O. 1990, c. A.2, s. 12 (1); 2006, c. 19, Sched. C, s. 1 (1); 2020, c. 11, Sched. 5, s. 12; 2021, c. 4, Sched. 3, s. 17.

Proceedings on default

(2)  If within one month after the property has been attached the bond is not executed and filed, a judge of the court may direct the sheriff to sell any of the goods and chattels that have been attached, except chattels real, upon such terms as the judge considers just. R.S.O. 1990, c. A.2, s. 12 (2).

**Section Amendments with date in force (d/m/y)**

[2006, c. 19, Sched. C, s. 1 (1)](http://www.ontario.ca/laws/statute/S06019" \l "schedcs1s1) - 22/06/2006

[2020, c. 11, Sched. 5, s. 12](http://www.ontario.ca/laws/statute/S20011" \l "sched5s12) - 08/01/2021

[2021, c. 4, Sched. 3, s. 17](http://www.ontario.ca/laws/statute/S21004" \l "sched3s17) - 01/09/2021

Costs of first attachment

**13** The costs of the first order of attachment and of the execution thereof have priority over all execution debts and other costs. R.S.O. 1990, c. A.2, s. 13.

Liability of persons paying debts to absconding debtor after notice of attachment

**14** (1)  Where notice in writing of the order of attachment has been duly served by the sheriff, or by or on behalf of the plaintiff, upon a person owing a debt or demand to, or who has the custody or possession of property of, the defendant, and the person after such notice pays the debt or demand or delivers the property to the defendant or to any one for the defendant, the person shall be deemed to have done so fraudulently, and, if the other property seized by the sheriff is insufficient to satisfy the claims of all creditors who are or become entitled to be paid out of the property or the proceeds thereof, the person is liable to the sheriff for the amount of the debt or demand so paid or for the property so delivered or the value thereof. R.S.O. 1990, c. A.2, s. 14 (1).

Duty of sheriff

(2)  The sheriff is not bound to sue until a bond is given by one or more of the plaintiffs or claimants with two sufficient sureties, who may be another of the plaintiffs or claimants, payable to the sheriff by his or her name of office in double the amount of the debt or of the value of the property sued for, conditioned to indemnify the sheriff from all costs, loss and expense that he or she may incur in the prosecution of the action or to which he or she may become liable in consequence thereof. R.S.O. 1990, c. A.2, s. 14 (2).

Stay of proceedings taken by absconding debtor

(3)  If, after the notice mentioned in subsection (1), a person indebted to the defendant, or having the custody or possession of any of the defendant’s property, is sued for the debt, demand or property by the defendant, or by the person to whom he, she or it has assigned the debt, demand or property since the date of the order of attachment, the person may, on affidavit, apply to a judge of the court to stay proceedings in the action until it is known whether the other property seized by the sheriff is sufficient to satisfy the claims mentioned in subsection (1), and the judge may direct an issue to try any disputed question of fact or make such other order as he or she considers just. R.S.O. 1990, c. A.2, s. 14 (3).

Sale of debts by sheriff

**15** If the other property of the defendant proves insufficient to satisfy the executions against the defendant, and there remain debts due to the defendant and the attempt to collect those debts would be less beneficial to the defendant’s creditors than their sale, the sheriff may, by leave of a judge of the court, sell the debts by public auction after such advertisement as the judge directs and, pending that advertisement, the sheriff shall keep a list of the debts to be sold open for inspection at the sheriff’s office, and shall give free access to all documents and vouchers explanatory of the debts; but every debt amounting to more than $100 shall be sold separately, unless the judge otherwise directs. R.S.O. 1990, c. A.2, s. 15; 2010, c. 16, Sched. 4, s. 22 (2).

**Section Amendments with date in force (d/m/y)**

[2010, c. 16, Sched. 4, s. 22 (2)](http://www.ontario.ca/laws/statute/S10016" \l "sched4s22s2) - 25/10/2010

Right of purchaser to sue

**16** (1)  The person who purchases a debt from the sheriff may sue for it in the person’s name, and a bill of sale in the Form to this Act executed by the sheriff is admissible in evidence as proof, in the absence of evidence to the contrary, of the purchase and of the sheriff’s authority to sell, without proof of the handwriting of the sheriff, or of the execution or order, or of the sale. R.S.O. 1990, c. A.2, s. 16 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 16 (1) of the Act is amended by striking out “and a bill of sale in the Form to this Act” and substituting “and a bill of sale in the form prescribed by regulation under subsection (3)”. (See: 2017, c. 20, Sched. 11, s. 1 (1))

What defence may be set up

(2)  In an action by the purchaser, the defendant may set up any defence that would have availed the defendant against the absconding debtor at the date of the order of attachment. R.S.O. 1990, c. A.2, s. 16 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 16 of the Act is amended by adding the following subsection: (See: 2017, c. 20, Sched. 11, s. 1 (2))

Regulations, bill of sale form

(3)  The Minister responsible for the administration of this Act may make regulations prescribing the form of a bill of sale for the purposes of subsection (1). 2017, c. 20, Sched, 11, s. 1 (2).

**Section Amendments with date in force (d/m/y)**

[2017, c. 20, Sched. 11, s. 1 (1, 2)](http://www.ontario.ca/laws/statute/S17020" \l "sched11s1s1) - not in force

**17** Repealed: 2010, c. 16, Sched. 4, s. 22 (3).

**Section Amendments with date in force (d/m/y)**

[2010, c. 16, Sched. 4, s. 22 (3)](http://www.ontario.ca/laws/statute/S10016" \l "sched4s22s3) - 25/10/2010

Sheriff’s duty and end of responsibility

**18** Where an order of attachment has been made but no execution at the suit of a creditor against the property of the debtor is placed in the sheriff’s hands for execution within three months thereafter or within such further time as a judge of the court directs, all the property of the absconding debtor or unappropriated money, the proceeds of any part of that property remaining in the sheriff’s hands, together with all books of account, evidences of title, or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to the absconding debtor or to the absconding debtor’s authorized agent, or to the person in whose custody they were found, or, if taken or received under section 9, to the bailiff or clerk from whom they were taken or received, upon being repaid the amount, if any, that the sheriff may have paid under subsection 9 (2), and thereupon the responsibility of the sheriff in respect thereto determines, or, if a bond has been given under section 12, the bond shall be delivered up to be cancelled. R.S.O. 1990, c. A.2, s. 18.

FORM  
Bill of Sale of a Debt



R.S.O. 1990, c. A.2, Form.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Form to the Act is repealed. (See: 2017, c. 20, Sched. 11, s. 2)

**Section Amendments with date in force (d/m/y)**

[2017, c. 20, Sched. 11, s. 2](http://www.ontario.ca/laws/statute/S17020" \l "sched11s2) - not in force

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