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Backgrounder

LRC 91—Report on Obsolete Remedies Against Estate Property: Estate Administration Act, Part 9

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At the time of this project, Part 9 of the *Estate Administration Act* set out what purported to be rules of law in relation to the administration of estates. These provisions were mainly drawn from an English statute of 1830. They retained the language and flavour of that time. Part 9 referred to a number of legal concepts that have little contemporary relevance. This report has concluded that these provisions were aimed at correcting a problem that ceased to exist over 60 years ago and their continued retention is unnecessary and unjustified.

Legislation governs many aspects of the administration of a deceased's estate. Three statutes of particular significance are the *Estate Administration Act*, the *Trustee Act*, and the *Law and Equity Act*.

Part 9 of the *Estate Administration Act* was entitled "Rules of Law Relating to the Administration of Estates." The sections in Part 9 were derived from English legislative reforms introduced between 1677 and 1869. They deal generally with the rights of creditors against recipients of a deceased's land. For the most part, they are incomprehensible to the modern reader because they address aspects of the law of succession and administration that have long been obsolete in British Columbia.

Part 9 of the *Estate Administration Act* provides the deceased's creditors with direct rights against the recipients of the deceased's real property. These remedies were built upon a legal foundation that was dismantled in the 1920s. Real property now passes through the hands of the deceased's personal representative and is available for the payment of debts in the same manner as is personal property. As Part 9 of the *Estate Administration Act* consists almost entirely of provisions that became obsolete more than sixty years ago, the report recommends that these provisions should no longer be retained.

The report recommends that Part 9 of the *Estate Administration Act* be repealed. It further recommends that (then) sections 83 and 84 of the *Trustee Act* be repealed and that references to section 128 of the *Estate Administration Act* be deleted from section 85 of the *Trus-*

tee Act. Finally, the report argues that (then) section 11 of the *Law and Equity Act* be repealed.

Further Developments

Since the publication of this report, Part 9 of the *Estate Administration Act* has been repealed.

Sections 83 and 84 of the *Trustee Act* have not been repealed, although reference to section 128 of the *Estate Administration Act* from section 85 of the *Trustee Act* has been deleted.

Section 11 of the *Law and Equity Act* has not been repealed.