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Backgrounder

BCLI Report no. 1—The Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings

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When a family property dispute ends up before the court, the division of property can be an expensive and time-consuming process. The difficulties associated with a trial create hardships for all parties involved, whether directly or indirectly. These difficulties are compounded when issues of jurisdiction and choice of law arise in the proceedings.

Each province and territory has its own unique family relations legislation. Each set of statutes contains provisions for the division of family property, and although all embody the underlying notion of sharing, there are substantial practical and philosophical differences between them. With the increasing mobility of the population, however, more and more families have lived or held assets in other provinces, territories, and countries. In such situations, two questions arise when a court is called to divide the assets of the marriage: Does the court have jurisdiction to hear the case? If it does, which law should it choose to apply?

The legal problems generally arising out of such situations are called conflicts of law. The rules available to guide judges through these situations are unsatisfactory, especially in British Columbia. Having evolved primarily as tools for the resolution of commercial disputes, they are ill suited to dealing with the special nature of family property.

Each province has taken a different approach to dealing with such situations in family property proceedings. Most provinces have enacted special provisions in their family law acts that set out, in greater or lesser detail, rules for deciding when a court should hear a case, and which laws to apply. British Columbia, along with Saskatchewan, has no statutory provisions, relying instead upon the common law, which is the existing body of judge-made law that has evolved throughout the centuries. No province has succeeded in developing a set of rules that deals satisfactorily with all of the many issues arising in such conflicts, and the lack of a consistent approach across the provinces exacerbates a bad situation.

The Uniform Law Conference of Canada has addressed these problems. In 1997, it promulgated uniform legislation aimed at resolving the most pressing issues. This legislation, submitted to each of the provinces for adoption, is titled the *Uniform Jurisdiction and Choice*

of Law Rules in Domestic Property Proceedings Act (the Uniform Act). It is attached as an Appendix to this report, with the annotations of the ULCC.

This report reviews the current jurisprudence surrounding conflict of law problems in family property, and discusses the need for law reform in this area. It provides background to and a general overview of the contents of the ULCC's Uniform Act.