

LAW REFORM COMMISSION OF BRITISH COLUMBIA

ANNUAL REPORT 1984/85

LRC 80

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

ARTHUR L. CLOSE — *Chairman*

RONALD I. CHEFFINS, Q.C. — *Vice-Chairman*

MARY V. NEWBURY — *Commissioner*

Thomas G. Anderson is Counsel to the Commission.

Frederick W. Hansford is Staff Lawyer.

Sharon St. Michael is Secretary to the Commission.

The Commission offices are located on the
5th Floor, Toronto Dominion Tower, Pacific Centre,
700 West Georgia Street
P.O. Box 10135
Vancouver, B.C. V7Y 1C6

British Columbia Cataloguing in Publication Data

Law Reform Commission of British Columbia.
Annual report. — 1981—

Continues: Law Reform Commission of British
Columbia. Annual report of the Law Reform
Commission of British Columbia. ISSN 0381-2510
Report year ends Mar. 31, 1983/84—
Report for 1983/84 covers Jan. 1, 1983—
Mar. 31, 1984.
ISSN 0381-2510 = Annual report of the Law
Reform Commission of British Columbia.

1. Law Reform Commission of British Columbia.
2. Law reform - British Columbia - Periodicals.
KEB 168.A72L38 354.7110088

Appendix C

MINOR REPORT

(LRC 79)

March 22, 1985

The Hon. Brian R.D. Smith, Esq., Q.C.
Attorney General of the
Province of British Columbia
Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Mr. Attorney:

Re: Minor Report (No. 79):
A Short Form General Power of Attorney

A problem of immediate concern has been drawn to our attention respecting a widely used form of general power of attorney. The efficacy of the words used to create the power has been called into question. In the result, the status of all powers of attorney created in this form, both in British Columbia and in Ontario, and acts done under them, has been rendered somewhat uncertain. The background to this problem is described below.

In 1975 the Law Reform Commission submitted its *Report on Powers of Attorney and Mental Incapacity* (LRC 22). The principal recommendation made was that the law should permit an "enduring power of attorney" which would not terminate on a subsequent legal incapacity relating to the mental condition of the principal. This recommendation was implemented, in substance, through the enactment of section 7 of the *Power of Attorney Act*, R.S.B.C. 1979, c. 334.

A minor recommendation made in that Report was that the Act should provide a "standard form" of general power of attorney which would eliminate much of the incomprehensible verbiage contained in most standard form Powers of Attorney sold through legal stationers. A suggested statutory form was set out as Appendix C to the Report. That recommendation was not implemented.

Notwithstanding that the recommendation for a statutory form was not implemented, it appears that a number of practitioners have adopted, in part, the language of the Commission's suggested general power of attorney in preparing these documents for their clients. The Commission has recently received correspondence from a practitioner who has drawn to our attention the fact that a power of attorney in this form has recently been rejected by the registry officials of the Victoria Land Title Office, although similarly worded documents have been routinely accepted by the registry officials in the Kamloops, Nelson and New Westminster offices. The basis of the rejection was stated to be that the operative words used were insufficient to create a general power of attorney. Those operative words, drawn directly from the Commission's suggested form, authorize the attorney:

“to do on my behalf anything that I can lawfully do by attorney.”

This language is not the Commission's own invention. It is, in fact, derived from an earlier version of legislation ultimately enacted in Ontario in 1979 which provides for a statutory form of general Power of Attorney. The operative language in the Ontario form is “to do on my behalf anything that I can lawfully do by an attorney.” This language is virtually identical to that suggested by the Commission.

We offer no view as to whether, on a strictly technical basis, the rejection of this formulation by the Victoria Land Title Office was soundly based. The result, however, is unfortunate.

First, this determination casts a shadow over all powers of attorney previously prepared in this form and which have been relied upon by principals, attorneys, and third parties. It raises the spectre that an unknown number of transactions might be vitiated if the sufficiency of the language were to be tested in a court and result in an adverse ruling.

Second, since the statutory form used in Ontario employs language virtually identical to that which has been rejected, powers of attorney prepared in Ontario, in conformity with the Ontario legislation, will not be acceptable for all purposes in British Columbia. Such a departure from comity can only be justified if there is some overriding rule of local public policy which requires it. We know of none.

It is our conclusion that measures should be taken to amend the *Power of Attorney Act* in a way which removes any doubt as to the validity of powers of attorney in this form. The Ontario legislation provides a suitable model. We recommend that:

1. A provision similar to the following be added to the *Power of Attorney Act*:
 - (1) A general power of attorney that is substantially in Form 1 is sufficient authority for the donee of the power or, where there is more than one donee, for the donees acting jointly or acting jointly and severally, as the case may be, to do on behalf of the donor anything that the donor can lawfully do by an attorney, subject to such conditions and restrictions, if any, as are contained therein.
 - (2) Subsection (1) applies to a power of attorney made before this section comes into force.
2. The form referred to in recommendation 1 should be as follows:

Form 1
Form of Power of Attorney

THIS GENERAL POWER OF ATTORNEY is given on.....
(Date)

19.....by.....of.....
(Donor)

I appointof.....([or]
(Attorney)

.....of.....and.....
(Attorney) (Attorney)

of.....jointly [or] jointly and severally) to be my attorney(s) in accordance with the *Power of Attorney Act* and to do on my behalf anything that I can lawfully do by an attorney.

[Here paragraphs may be inserted setting out conditions and restrictions on the power of attorney, limitations on its duration and a provision for its continuation for the purposes of section 7 of the *Power of Attorney Act*.]

WITNESSED BY:

..... }

(Signature of Witness)
(Donor)

..... }
(Name of Witness)

..... }
(Address)

Implementation of this recommendation would have several beneficial effects. It would remove the uncertainty which currently tinges the status of powers of attorney that have been created in the Province in the recommended form. It would validate similar powers of attorney emanating from Ontario. It would eliminate an undesirable inconsistency of practice among the Land Title Offices. Finally, it would encourage the use of simplified drafting in a type of document that is currently notorious for obscure and excessive language.

This letter is to be taken as a minor Report (No.79) of the Law Reform Commission recommending a change in the law as herein set out. This recommendation was approved by the Commission at a meeting on March 21, 1985.

Yours sincerely,
Arthur L. Close
Chairman

ALC/ss