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Backgrounder

LRC 57—Report on the Crown as Creditor: Priorities and Privileges

Date: October 1982

The word “Crown” is a term of art; for the purposes of this report, it is synonymous with the provincial government. This report examines the special priorities and privileges in creditor–debtor matters that the law affords the government by virtue of its status as the government. It focuses on two aspects of the Crown’s rights as creditor: first, its ancient prerogative right to have its debts paid first by the debtor, in priority to all other creditors; second, the much more recent proliferation of statutory liens for Crown debts.

The report contains ten chapters. The first four chapters contain background material. Chapter one is a brief introduction to the report and the working papers that preceded it. Chapter two examines the meaning of the Crown in law. Chapter three sets out the origins of Crown priority at common law, noting that the right of the Crown to have its debts paid in priority to those of other creditors has its roots in the ancient concept of the royal prerogative. This is the residue of governmental authority left in the hands of the sovereign (which, in the case of this province, is the Executive Council). Chapter four notes a number of statutes that affect the operation of the Crown priority.

Chapters five to seven examine the phenomenon of granting statutory priority to the Crown for debts owed to it. Chapter five provides an overview of various techniques of affording the Crown priority by statute, including the use of statutory liens and trusts. Chapter six explores the basis of statutory Crown claims. These claims range from unpaid taxes to resource rents. They also encompass certain claims on behalf of others, such as unpaid employees. Chapter seven delves into the application of Crown priority in disputes involving the types of claims discussed in chapter six.

Chapter eight evaluates Crown priority, reviewing the arguments in favour of and against a general right in the Crown to priority. In favour of Crown priority, it was noted that the Crown is generally not able to choose its debtors (especially in taxation matters) and that it is necessary to preserve the financial stability of the government. Against Crown priority, it was noted that Crown priority causes hardships for other creditors, inhibits some creditors from pursuing their claims, can lead to confusion about the apparent liquidity of the debtor, can cause uncertainty, and is legally anachronistic. After weighing the arguments, the

commission recommended that the prerogative right of the Crown as a creditor to priority over other creditors of the same debtor be abolished.

Chapter nine discusses reform of statutory Crown liens. The chapter contains a thorough review of the Crown liens in existence at the time of the report and makes recommendations that aims to (1) make it clear when a lien attaches and to what interest it attaches to and (2) provide for notice to third parties of the lien's existence.

Chapter ten is a brief conclusion for the report. The report also contains several appendices, setting out the legislation establishing liens affected and not affected by the report's recommendations and extracts from earlier reports.

Further Developments

The report's recommendations have not been implemented by legislation.