

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 58—Report on Interpretation of Wills

Date: November 1982

The Supreme Court of British Columbia has jurisdiction both to grant probate of a will and to interpret its terms. Even though the same court exercises both jurisdictions, for historical reasons they have remained separate proceedings. Probate is concerned with the validity of the will. If the testator has complied with the formal requirements for making a will (such as, for example, ensuring that the testator's signature was witnessed by two witnesses, who both sign the will in the presence of the testator and each other), then a grant of probate will usually be issued without a formal court hearing.

Once a will is admitted to probate, doubts may still arise concerning the meaning of words used by the testator. Over several hundred years the law has developed a bewildering array of rules concerning the interpretation (or *construction*) of words used in a will. Many of these rules are archaic and obscure, and their application can sometimes frustrate the courts' attempts to determine the testator's intentions. This report considers reforms that will enable courts more easily to ascertain and give effect to testators' intentions.

This report contains five chapters. Chapter one is a general introduction. It sets out the background to the report and notes connections with other Law Reform Commission work on the law of wills and estates. Then, there was a discussion in general terms of the issues that commonly arise in interpreting a will. The chapter concluded by noting the responses to the working paper that had preceded the report.

Chapter two examines one of the fundamental principles of interpretation of legal documents: the idea that courts should interpret the words used in the document objectively, that is, without reference to what the maker of the document intended the words to mean. The chapter explores what this principle means for the admission of evidence in court cases involving the interpretation of wills. It also considers whether this objective approach to interpretation is appropriate for wills. The chapter concludes by recommending reforms to provide for the admission of relevant extrinsic evidence.

Chapter three examines the rules of construction in detail. The focus is on the utility of these traditional interpretive rules, which raise initial presumptions concerning the mean-

ing of words used in wills, in the face of the reforms recommended in chapter two. The report recommends that legislation be enacted to ensure that the older rules of construction are not applied in a manner inconsistent with the general approach to interpretation of wills recommended in the report.

Chapter four considers the power of a court to rectify a will. Legal documents may sometimes omit or include a word or words in error. In interpreting the document, a court has scope to “rectify” it—that is, to read it so that it embodies the terms actually intended by the parties. Unlike other legal documents, wills generally must be taken as they are. Courts have only an extremely limited scope to rectify them. This chapter examines the reasons underlying this position. It concludes that legislation should be enacted to give the courts a power to rectify wills.

Chapter five is a brief conclusion to the report and a summary of its recommendations.

Further Developments

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