

LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 82—Report on the Domicile of a Minor

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This report examines the domicile of a minor in the light of the proposed *Charter of Rights Amendments Act, 1985*. Domicile essentially refers to a person's fixed, permanent and principal home for legal purposes. The impact of the Act on this issue is uncertain and in need of clarification.

The reason for the uncertainty arises indirectly as a result one of the equality provisions in the Act, which provides that a married women acquires a legal domicile separate and distinct from that of her husband. Previously a married woman acquired and retained the domicile of her husband and this subsisted even when the parties had separated and were living in different jurisdictions.

The common law position regarding a minor is that they acquire the domicile their father. The Act contains no direct reference on the issue, but there is some debate as to whether it impacts indirectly in the light of the changes proposed regarding the domicile of a woman. The report discusses the opposing views that have been put forward in this regard. One school of thought is that the common-law position remains untouched by the Act and that the province retains the common-law position. If so, this would be anomalous in view of other provisions in the Act aimed at attaining equality of the sexes.

The other view is that the child's domicile of dependency is intimately linked to its mother's domicile of dependency, and with the proposed abolition of the latter under the Act, the rules for determining the domicile of a minor have now changed. The difficulty with this view is that the nature of the changes in the Act are uncertain and there are no rules which might be applied to determine the domicile of a minor.

The report also highlights the fact that the provisions concerning the status of a child born out of wedlock are uncertain in the Act. The Act eliminates the legal concept of illegitimacy and it is difficult to state what impact this will have on the law of domicile. There is a risk that the changes will have inadvertently created a domicile of dependency of a child on a father of whom the child has no knowledge and with whom the child has no contact.

Legislation has been introduced in Ontario setting out guidelines to be applied in determining the domicile of a minor. The report sets out the guidelines and recommends that similar provisions be introduced in British Columbia.

Further Developments

The report's recommendations have been implemented in full and contained in the *Infants Act*, R.S.B.C. 1996, c. 223, s. 28.