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Backgrounder

LRC 99—Report on the Land (Settled Estate) Act

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The *Land (Settled Estate) Act* is a lengthy, complex, and intricately drafted piece of nineteenth-century legislation. It was enacted in British Columbia to deal with the regime of “settled” land. In general terms, settled land arrangements have historically been used where a property owner wished to ensure that future generations of the owner’s family were provided for. Two methods in particular, were relied upon. First, property could be transferred to a person in a trust, to hold the land for defined purposes and for the benefit of particular persons. Second, limited lifetime interests in land could be conveyed to a series of people.

One of the prime functions of the Act is to provide a person who received less than full ownership of land under a settlement with the power to permit the settled land to be sold, leased, or charged. Under the common law these powers were not available unless expressly provided for under the terms of the settlement, which often caused problems.

The popularity of settlements in British Columbia has faded away in modern times but even where they are used and problems arise, they appear to be adequately dealt with by more recent legislation. The report examines therefore whether or not the Act retains any useful function or whether it should be repealed.

The report briefly describes the four most common ways in which land is settled under the Act. These are trusts, lifetime interests in land, settlement by statutory provision, and land owned by an infant. It then looks at how the Act functions in relation to each of these arrangements in terms of the powers available.

Consideration is then given in the report to the various common law developments and the more recent legislative enactments that have by and large overtaken the provisions in the Act. Particular focus is given to the *Trust Variation Act*, which permits a court to approve “any arrangement” by varying or revoking a trust or enlarging the powers of a trustee. Reference is also made to the *Infants Act* covering transactions where an infant has a legal interest in land. For the most part both these legislative enactments adequately deal with the problems addressed by the *Land (Settled Estate) Act*. The only area where the Act does re-

tain its useful relates to land held by life tenants, as there is no other means to confer on the life tenant powers to deal with the land that were not included in the original settlement.

The report concludes that the *Land (Settled Estate) Act* has little contemporary utility. It is noted that there has been very little judicial consideration of the Act and it has also been used very sparingly in uncontested matters. It is therefore recommended that the Act be repealed. It is suggested that there should be an amendment to the *Trust Variation Act* dealing with a person having a life interest so that an application maybe made under that Act in any circumstance where the settlor neglects to confer on the life tenant adequate administrative powers to deal with the land.

Further Developments

Recommendations implemented in *Trust and Settlement Variation Act* R.S.B.C 1996, c. 215.