

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 21—Report on the Termination of Agencies

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The focus of this report is on the *Powers of Attorney Act*. British Columbia has long had legislation dealing with this subject and, by the time this report was written, that legislation was beginning to show its wear. One of the main difficulties posed by the act is that it nowhere defines what a power of attorney is for its purposes. The report also identifies a number of other deficiencies with the act, including the weakness of its drafting and confusion over the implementation of its policies.

The report contains seven chapters, including its brief introduction and conclusion. The heart of the report is its five substantive chapters. The first of these begins by analyzing the scope of the *Powers of Attorney Act*. The act does not define “power of attorney,” and it turns out to be quite difficult to separate powers of attorney from other types of agency arrangements. Traditionally, the creation of an agency arrangement is considered to be a power of attorney if it is also (1) under seal, (2) reduced to writing and signed by the principal, and (3) entitled “power of attorney.” The report shows that these elements no longer carry much relevance in contemporary society. A seal is not necessary to create a power of attorney, unless the attorney is required to execute a document under seal. The circumstances in which the current law requires a document to be under seal are extremely limited. There is uncertainty over whether the common law required powers of attorney to be in writing, but, at any rate, the vast majority of people want them to be in writing for practical reasons. Similarly, little of practical significance seems to flow from labelling (or not labelling) a document a “power of attorney.” The committee concludes from this discussion that the reformed legislation should apply to agencies generally.

The next chapter considers developments in the law of the United States relating to agencies. It notes that a number of American states have enacted legislation codifying the principles of agency law. Although it would not be advisable to adopt American legislation wholesale in British Columbia, American legislative developments do provide some general support for the reforms that the commission recommends in this report.

The focus of the final three chapters is the commission’s recommendations for reform. The commission’s general recommendation is to repeal the *Powers of Attorney Act* and to re-

place it with a new statute that is applicable to all agency relationships. The report also contains numerous recommendations dealing with protection of the parties to the agency relationship (that is, the principal and the agent) and protection of third parties. The report concludes with a series of recommendations on miscellaneous matters, such as powers of attorney made by corporations, grants of probate to attorneys, and consequential amendments to other legislation.

Further Developments

See (1) *Miscellaneous Statutes Amendment Act (No. 1)*, 1987, S.B.C. 1987, c. 42, s. 91 (now *Power of Attorney Act*, R.S.B.C. 1996, c. 370, ss. 1–4); (2) *Miscellaneous Statutes Amendment Act (No. 2)*, 1987, S.B.C. 1987, c. 43, s. 104 (now *Trustee Act*, R.S.B.C. 1996, c. 464, s. 14