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Backgrounder

LRC 70—Report on Statutory Succession Rights

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Two British Columbia statutes have a profound effect on the devolution and distribution of property on death. The *Estate Administration Act* governs succession when the deceased has failed to make a will validly disposing of all their property. The *Wills Variation Act* empowers the courts to vary testamentary dispositions in order to provide adequately for the deceased's spouse and children. Both of these statutes have been criticized as being outdated and for failing to address contemporary social needs. This report reviews both statutes as well as other legislation affecting succession rights.

The first part of the report is devoted to the provisions in the *Estate Administration Act*. The Act contains a "statutory will" that governs the distribution process where a person dies without making a will or where a will fails for some other reason. The main provisions of the statutory distribution are laid out in the report. In very general terms, if an estate is small, most of it will go to the surviving spouse and if the estate is large, the deceased's children will also share in it. If the deceased is not survived by spouse or children, the order of next of kin is prescribed: the deceased's parents or the survivor of them; brothers and sisters; nieces and nephews; next of kin of equal degree of consanguinity to the deceased.

A more detailed examination of the next-of-kin provisions is then undertaken, including consideration of how separated spouses, former spouses, common-law spouses, illegitimate children and adopted children are treated. The rules covering related issues such as advancement of money during the lifetime of the deceased and partial intestacy are also looked at.

Having provided a general overview of the provisions in the *Estate Administration Act* covering intestate distribution, the report proceeds to focus on a variety of issues where reform might be appropriate and makes a number of recommendations. It looks at whether the *Wills Variation Act* should apply to intestacies so that where the provisions of the fixed statutory scheme are inadequate to provide for proper maintenance and support of a testator's spouse or children, an application can be made to the court for variation. Consideration is given as to whether the surviving spouse's share on intestacy should be revised to reflect a fairer and more equitable distribution. The options explored are to give the entire

estate to the surviving spouse or to revise the existing legislation to either increase the amount of the preferred share that the spouse is entitled to or, alter the share of the residue. At the date of the report, illegitimate children are deemed under the Act to be legitimate children of their mother only with the result that illegitimate children cannot inherit from their father. This raises the broader question of whether an illegitimate child should enjoy the same rights of succession enjoyed by legitimate children. Tracing next of kin can be a laborious, time consuming, and expensive exercise where an administrator has to search many generations. The introduction of a cut off point is suggested. The entitlement of a spouse to a life interest in the matrimonial home has been criticized for causing administrative and valuation problems, and also difficulties in the allocation of estate assets. The report therefore considers whether a life interest is necessary or whether perhaps the surviving spouse should receive a more generous share of the estate instead.

The second part of the report is devoted to dependant's relief and the *Wills Variation Act*. The Act was introduced to address the situation where a testator leaves inadequate provision in their will for the surviving spouse and children. It permits an application to the court to vary the will in order to secure adequate provision for the family. This section of the report begins with an overview of the *Wills Variation Act*, focusing on some of the key elements. In particular, the criteria applied by the court when considering an application for relief are examined, looking at the relevance of the conduct of an applicant and the extent to which a court will take into account whether a testator owed a "moral obligation" to the applicant. The overview also covers the type of order available to the court, whether interim or class orders can be made, variation of orders, and which assets are subject to an order. In considering which assets are subject to the Act, the report looks at pension benefits, insurance proceeds and lifetime gifts. The overview concludes with a summary of various procedural issues including commencement of an application, costs, and the right of appeal.

The report then moves on to consider a number of reform issues relating to the *Wills Variation Act*. These include extending the class of people eligible to apply, providing statutory guidance on the relevance of conduct, extending the limitation period over the six month period from the grant of probate, introducing measures to prevent a testator from avoiding the Act through lifetime gifts or trusts, and various changes to the orders available under the Act.

The final part of the report discusses the relationship between the *Estate Administration Act*, the *Wills Variation Act*, and other legislation, principally the *Family Relations Act* and the *Wills Act*. The *Family Relations Act* governs the disposition of marital property on marriage break-up. It vests in the spouses a *prima facie* one-half interest in family assets, and gives courts wide discretionary powers to divide assets fairly between the spouses. The report highlights several conflicts in the legislation between succession and matrimonial property rights. A number of recommendations are made with the goal of defining when a spouse's rights in property of a deceased person should be governed by legislation respecting succession or by legislation respecting rights to family property.

Further Developments

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