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Backgrounder

LRC 1—Report on Abolition of Prescription

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In British Columbia, at the time this report was written, it was possible to acquire certain rights in land based on the passage of time. Such rights were acquired by adverse possession. In addition it also used to be possible to acquire such rights based upon adverse use or enjoyment of land (not amounting to possession). This report addressed the later method of acquiring rights in land, known as "prescriptive rights" or "prescriptive easements." It was an area of the law that was often regarded as obscure, archaic, difficult to understand, and as having very little practical application in British Columbia. The commission noted at the outset of the report that a canvass of the Registrars of Title and some thirty experienced conveyancers, throughout the Province had revealed not a single instance of a successfully claimed prescriptive right.

The report is divided into five relatively short chapters. For those readers wishing to acquire some background knowledge to the main text there is also a detailed summary of how the law of prescription works in Appendix A.

After a brief introduction, chapter two begins by explaining the difference between adverse possession and prescriptive rights. It then moves on to highlight the origins of prescriptive rights from English law and explains the two ways in which they could be acquired in British Columbia: by virtue of the *Prescription Act*,[1] and through a doctrine known as the lost modern grant, which was effectively a variety of prescription at common law. This doctrine essentially created a presumption that from long use or enjoyment of land an actual grant of the right had been made when the enjoyment began, but that the deed making the grant had been lost. Common-law prescriptive rights could not be regarded as having arisen in British Columbia as to establish such a right, one had to show enjoyment to have continued from time immemorial, *i.e.*, the first year of the reign of Richard I (1189).

Chapter three looks at how both statute and case law in British Columbia severely restricted the operation of prescription within the province. Several statutory provisions are

1. R.S.B.C. 1960, c. 296.

referred to but the main focus of the chapter is on the *Land Registry Act*.[2] It highlights how prescriptive rights are inconsistent with the land title system in British Columbia where title to land is not only registered for all to see, but also guaranteed by the government. The report discusses a number of specific provisions in the act that would appear to limit a claim based upon prescriptive rights. Case law is also highlighted that suggests that a prescriptive right could not arise with respect to land that had become the subject of a certificate of indefeasible title under the provisions of the *Land Registry Act.* It was generally accepted in practice therefore that prescription could only operate with respect to lands for which no certificate of indefeasible title had been issued.

Chapter five contains a very brief discussion of the relevance of prescription in British Columbia, noting that the law in this area had developed in England centuries gone by in a system of land ownership that was based on possession and not registration, as in the province. The research undertaken by the commission showed clearly that the law of prescription had little, if any utility in British Columbia.

In chapter six, the commission set out their conclusions. The principal recommendation made is to abolish the law of prescription. Additional recommendations are made to address some of the transitional issues that would arise if prescription were abolished.

Further Developments

See *Land Registry (Amendment) Act, 1971,* S.B.C. 1971, c. 30, s. 8 (now *Land Title Act,* R.S.B.C. 1996, c. 250, s. 24).

2. R.S.B.C. 1960, c. 208 (now *Land Title Act*, R.S.B.C. 1996, c. 250).