

CBA Mid-Winter Meeting 2018 Law Reform Commission Update

Introduction

The Law Reform Commission has had two very productive years since its last update and presentation at the 2016 mid-winter meeting. Since that time, the Commission has submitted two final reports to the Ministry of Justice, updated its Handbook on Professional Discipline Procedure, presented two progress reports on the Uniform Commercial Tenancies Act to the Uniform Law Commission of Canada, and drafted a proposed *Land Charges Act*.

In 2018, the Commission will publish a consultation paper and begin consultations on assisted human reproduction and Saskatchewan's parentage laws, publish a series of consultation papers and begin consultations on its proposal for a *Land Charges Act*, and present a draft Uniform Commercial Tenancies Act to the Uniform Law Conference of Canada for approval.

The Commission has welcomed two new Commissioners since the 2016 mid-winter meeting: The Honourable Sanjeev Anand and Darcy McGovern, Q.C., were appointed to fill vacancies created by the departures of Justice Donald Layh and Susan Amrud, Q.C. Greg Swanson, Professor Ron Cuming, and Dr. Barbara von Tigerstrom continue to serve as Commissioners. Michael Milani, Q.C. continues to serve as Chair of the Commission. In addition, Leah Howie began her role as the Director of the Commission in March of 2016.

Completed Projects

Final Report on Reform of *The Intestate Succession Act, 1996*

The Final Report on Reform of *The Intestate Succession Act, 1996* was submitted to the Minister of Justice in April 2017, following public consultation. The Report recommends several changes to Saskatchewan's intestacy legislation. The Commission's recommendations are based on current estate planning practices, and reflect the desire to have the intestate estate distribution system be relatively simple, understandable, certain and efficient. The recommendations are as follows:

1. Increase the spousal preferential share from \$100,000 to \$200,000, or one-half of the estate, whichever is greater. The spouse will continue to receive one-half of the remainder if the intestate had one child, or one-third of the remainder if the intestate had more than one child.
2. Provide that if all the intestate's children are shared children with the spouse, the spouse will receive the entirety of the estate. In blended families (where the intestate has children born out of a relationship other than with his/her spouse), the

spouse will receive the preferential share and the amounts the shared children would be entitled to.

3. Prescribe the amount of the preferential share in regulations.
4. Remove section 20 and set out a clear separation provision for married spouses. Married spouses should be considered separated if they have not been living together for at least two years because of a breakdown of the marital relationship.
5. Remove the doctrine of advancement in section 15.
6. Adopt the parentelic model of distribution of an intestate's estate, with no limit on the degrees of kinship that can inherit.
7. Specify that the laws of Saskatchewan apply to immovable property in Saskatchewan.
8. Codify the common law principle preventing an individual from benefitting from his or her crime by prescribing that an individual responsible for the death of an intestate is prohibited from inheriting.
9. Consider amending *The Dependants' Relief Act, 1996* to allow stepchildren and informally adopted children to bring an application as a dependant.
10. Consider amending *The Family Property Act* to allow amounts received under *The Intestate Succession Act, 1996* to be considered by the court when making a distribution of family property.

Final Report on Reform of *The Homesteads Act, 1989*

The Final Report on Reform of *The Homesteads Act, 1989* was submitted to the Minister of Justice in April 2017, following public consultation. The Report considers two issues: (1) whether an attorney acting under a power of attorney should be able to consent to a disposition of the homestead, and (2) whether mines and minerals should be included in the homestead. In the Final Report, the Commission recommends allowing an attorney to consent to a disposition of the homestead in place of a non-owning spouse, subject to the condition that where the attorney is the spouse of the non-owning spouse, the attorney only be able to consent to a disposition of the homestead where the non-owning spouse lacks capacity. The Commission also recommends amending the legislation to specifically exclude mines and minerals from the definition of a homestead.

Handbook on Professional Discipline Procedure

The Commission completed an update to its Handbook on Professional Discipline Procedure in 2017. The Handbook was initially published in 2006 as a guide to procedure in disciplinary investigations and hearings conducted by professional associations in Saskatchewan following the "standard model". The Handbook was distributed to those professional associations in Saskatchewan following the "standard model" of discipline

procedure, and it is also available on the Commission's website as well as the Publications Saskatchewan website.

Ongoing Projects

Commercial Tenancies

The Commission's commercial tenancies project is a joint project with the Uniform Law Conference of Canada (ULCC). A working group chaired by the Commission's Director of Research, with representation from several provinces, meets monthly by conference call. The working group's task is to modernize and harmonize commercial tenancies law in Canada with a view to creating a comprehensive framework of statute law that will make it easier to do business in Canada, resulting in direct benefits to Canadians and the economy as a whole. The project is a multi-year undertaking involving extensive consultation with the working group. The final result is expected to be a Uniform Commercial Tenancies Act, to be recommended for adoption in the common law jurisdictions of Canada. The working group is intending to present a draft Uniform Commercial Tenancies Act to the ULCC for approval at its August 2018 meeting in Quebec City.

Real Property Security Law

During the 2016-2017 fiscal year, the Commission undertook work on the second phase of this project, which was a study respecting real property secured financing law. The objective of the study was to create a comprehensive statement of mortgage law and other types of real property security law in Saskatchewan including both the relevant statutory provisions and applicable rules of equity. This phase of the project was completed in late 2016 with the publication by Commissioner Professor Ron Cuming of a monograph entitled "Overview of Saskatchewan Real Property Security Law" that is now available for purchase from Publications Saskatchewan.

Professor Cuming has also completed the third phase of the project: a report to the Commission entitled "Tentative Proposals for a Saskatchewan Land Charges Act" containing a proposed Land Charges Act and extensive commentaries. The proposed Act is designed to modernize, consolidate and codify most features of current real property security law, and it:

- is based entirely on the concept of a "charge," including terminology that displaces terminology of current mortgage law. Its conceptual structure parallels that of *The Personal Property Security Act, 1992*;
- addresses all aspects of current mortgage law found in *The Land Titles Act, 2000* (other than registration), *The Limitation of Civil Rights Act*, *The Land Contracts (Actions) Act*, *The Agreement for Sale Cancellation Act*, *The Distress Act*, *The Queen's*

Bench Act and *The Queen's Bench Rules of Court*. It deals with equitable principles including unpaid sellers' liens, marshalling, apportionment, consolidation, merger and novation;

- retains in refined form “cultural” features of existing Saskatchewan mortgage law;
- addresses reinstatement and due-on-sale clauses;
- provides for non-judicial sales of commercial land by chargees;
- provides for pre-enforcement opportunity of discharge in place of order *nisi* as a feature of enforcement;
- provides a procedure for consensual “foreclosure” similar to that of section 61 of *The Personal Property Security Act, 1992*.

The Commission will begin extensive consultations on its proposals for a *Land Charges Act* in early 2018. Consultation papers requesting public comment will be released mid way through 2018, and the Commission anticipates that its Final Report will be submitted to the Minister of Justice in 2019. Please contact Leah Howie, Director of the Commission, at director@lawreformcommission.sk.ca, if you would like to participate in consultation activities or be added to the mailing list for this project.

Upcoming Projects

Assisted Human Reproduction & Parentage

Several provinces and countries have reformed their parentage laws to account for the rising use of various types of assisted human reproduction procedures. Procedures such as gamete donation and surrogacy can lead to potentially complex parentage results. Apart from adding a definition of “other parent” in *The Vital Statistics Act, 2009*, Saskatchewan has not yet undertaken a comprehensive reform of either *The Vital Statistics Act, 2009* and *The Children's Law Act, 1997* to explicitly address the multitude of legal issues that can arise from the use of assisted human reproduction and determinations of parentage.

In 2016 the Commission received two submissions urging the Commission to consider a project on this topic, and in 2017 the Commission decided to proceed. The Commission expects to publish its consultation paper in the spring of 2018. The consultation paper will explore several issues surrounding assisted human reproduction and parentage laws in Saskatchewan, including the following:

- Should *The Children's Law Act, 1997* (the Act) provide that gamete donors are not to be presumed as parents?

- Should the Act allow known donors who want to be parents to be recognized as parents?
 - Alternatively, should the Act provide an intermediate status for known donors in order to ensure that donors who play a role in the child's life are not subsequently treated as parents by the courts?
- Should the Act distinguish between artificial insemination and sperm donation via sexual intercourse in relation to the status of gamete donors?
- What presumptions of parentage should apply to a surrogacy?
 - Should these presumptions apply to a surrogacy where neither intended parent has a genetic link to the fetus?
- Should relinquishing or transferring parental status be possible prior to birth?
- Should relinquishing or transferring parental status be an administrative or judicial procedure?
 - What conditions or requirements should be imposed on this procedure?
- Should there be different requirements and procedures for genetic/traditional surrogates (where the surrogate is also the egg donor) versus a gestational surrogate?
- Should the Act provide for more than two parents? If so, what conditions should be imposed?
- Should agreements to have more than two parents be enforceable?
- Should the Act provide that surrogacy contracts are not enforceable?

Please contact Leah Howie, Director of the Commission, at director@lawreformcommission.sk.ca, if you would like to participate in consultation activities or be added to the mailing list for this project.

Conclusion

The Commission continues to benefit from the contributions of Saskatchewan members of the Canadian Bar Association in fulfilling its mandate to review and propose reform of provincial laws.

The Commission is always open to receiving proposals for potential law reform projects from members of the Bar. If you have an idea for a new project that falls under the Commission's legislated duty to "keep under review all the law of the province, including statute law, common law, and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law", please get in touch with Leah Howie at director@lawreformcommission.sk.ca.

Electronic copies of all Commission publications are available on the Commission's website, at [**lawreformcommission.sk.ca**](http://lawreformcommission.sk.ca).