

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Background

LRC 75—Report on Review of Civil Jury Awards

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In a civil action involving a jury, the jury is the trier of fact. It considers and weighs the evidence and gives a verdict consisting of its conclusions about the facts in dispute. The role of the judge is to conduct the trial, direct the jury on matters of law and review evidence. In many cases the role of the trial judge sitting with a jury consists of entering judgment in accordance with the jury's findings.

There are circumstances where a trial judge or the Court of Appeal may intervene to take a case away from a jury or to direct a new trial. These circumstances are fairly limited but the procedures that surround them and the results that flow often result in unnecessary expense to the parties. The aim of this report is to examine the case for reform of the jurisdiction of a trial judge or of an appellate court to review a jury verdict.

The report begins with an introduction to the role of the jury in civil actions. The general rule is that a civil trial will take place before a judge alone but a party to litigation has a right to have the matter tried by a jury, subject to certain exceptions. The *Supreme Court Rules* set out a number of areas where a trial must be heard without a jury, including administration of the estate of a deceased person, the dissolution of a partnership and the custody or guardianship of an infant. A court may also refuse a jury trial where matters are too intricate or complex to be submitted to a jury.

The report then moves on to examine the jurisdiction of a trial judge to review a jury's verdict. In summary, a trial judge may remove a case from the jury if there is no evidence to go before it, or if the evidence adduced at trial is insufficient to find in favour of one party or the other. If there is some evidence it must go to the jury. If the judge disagrees with the jury's verdict, he may redirect the jury and if the verdict the jury then returns is still unsatisfactory, he may direct a new trial on the basis of a mistrial or if the verdict is perverse.

The jurisdiction of the Court of Appeal to review a trial judgment varies depending on whether the appeal is from a judge alone or from a judge sitting with a jury. Its ability to review a jury verdict is significantly more restricted than its jurisdiction to review a verdict of a judge alone. In general, a Court of Appeal may direct a verdict if the judge might have

done so at trial. If there is some evidence to go to a jury, then the court may reject a jury verdict only if it was one that reasonable men could not have come to. At common law, the Court of Appeal could only order a new trial in those circumstances. Under legislation, they may now, in some cases, enter a verdict.

The conclusion drawn from the examination of the current rules is that when juries arrive at unreasonable verdicts, the powers of a trial judge or of an appellate court to correct or reject those verdicts are limited. With this in mind, the report discusses a number of options for reform of the jurisdiction of a trial judge or of an appellate court to review a jury verdict. The issues looked at include the question of whether there should be any power to review a jury verdict without the consent of the parties, the circumstances triggering the review of a jury's verdict, the jurisdiction of the trial judge and the Court of Appeal to vary quantum, and the test to be applied in this regard, and the question of whether juries should be given guidance on the issue of quantum through information on damage awards in similar cases.

The report concludes by setting out several recommendations for reform, which are aimed at improving procedural aspects of jury use as opposed to touching the jurisdiction of the jury. The overarching aim of the recommendations is to develop a speedy appeal process that would avoid the need for litigants to meet the substantial costs involved in a formal appeal. The only significant proposal is to permit the appeal of a jury award immediately, saving considerably on both time and cost.

Further Developments

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