

LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 34—Report on Tort Liability of Public Bodies

Date: June 1977

This report arose out of an earlier study by the Law Reform Commission of British Columbia on the broader topic of civil rights and liabilities. The commission had noted that municipalities and other public bodies enjoyed certain immunities from liability in tort similar to those enjoyed by the government and decided to examine these immunities and, in particular, to consider whether they could still be justified. The report is principally concerned with three common-law defences to actions founded in tort, namely:

1. The exemption of highway authorities from liability for non-feasance. In British Columbia, the right of a citizen to recover damages arising out of the failure of a highway authority to maintain a road in a state of repair depends not upon any rational principles of compensation or loss distribution, but on their ability to demonstrate that the case falls outside the scope of a common law rule, often called as the “non-feasance rule,” that highway authorities are not liable, either in nuisance or negligence, for mere failure to maintain and repair roads under their control. They may only be held liable if it can be shown that they performed positive acts that created a danger or increased the risk of accidents occurring. Such acts are distinguished as cases of “misfeasance.”
2. The defence of statutory authority. This defence can be raised where a public body commits a wrong as an inevitable consequence of carrying out a statutory directive. In the absence of a provision for compensation, the defence bars any form of legal redress by a person who has suffered loss by reason of that wrong.
3. The special immunity of public bodies from the rule in *Rylands v. Fletcher*. This common-law rule provides that if a private individual permits dangerous substances to escape from his land he can be held liable for any damages caused by such an escape. It appears, however, that in many instances a public body can escape liability under this rule.

The report is divided into five chapters. The first chapter provides a brief introduction and overview of the project. Chapter two then moves on to tackle the “non-feasance rule” that applies to highway authorities. The chapter begins by setting out the origins of the com-

mon-law rule with reference to both English and British Columbia case law. It then looks at several limitations to the rule, followed by an analysis of the impact of legislative intervention. The latter part of the chapter looks at the desirability of reform and makes a number of recommendations.

In chapter 3, the commission looks at the defence of statutory authority. The chapter sets out the scope of the defence, explaining the difference between absolute and conditional statutory authority, and then makes a number of recommendations for reform.

The rule in *Rylands v. Fletcher* is the subject of chapter 4. The chapter begins by providing an overview of the origins and scope of the rule including a brief summary of the defences that have developed to the rule, namely default of the plaintiff, act of third parties, act of god, statutory authority, and consent or mutual benefit. It is the last of these defences, consent or mutual benefit, which has been used by public bodies to develop an exceptional defence to the rule in *Rylands v. Fletcher* which exists in addition to their established defence of statutory authority. The report examines the jurisprudence relating to this defence and concludes that the common law is in disarray as to whether or not there exists in public bodies any special immunity from the rule. The commission believed that the position should be clarified and makes a recommendation for reform.

Further Developments

This report's recommendations have not been implemented by legislation. There has been considerable change to the common-law position since this report was written, as a result of a series of court decisions.