

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 35—Report on Offences Against the Person Act, 1828, Section 28

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Often when a person has committed a wrongful act or omission there will be an overlap between the criminal law and the law of torts in the sense that the person may be subject to both civil liability to a party who has suffered loss arising out of the act or omission and to a prosecution under the criminal law. The two heads of liability are independent and as such prior civil proceedings will generally not bar a later criminal prosecution based on the same facts nor will a prior criminal prosecution bar a later civil action.

One exception to the rule that a prior criminal prosecution does not bar a later civil action was found in section 28 of the *Offences Against the Person Act, 1828*. This was an English statute that had been held to be in force in British Columbia which in essence provided that a person who had been prosecuted for a petty assault would, if certain conditions were met, be immune from civil proceedings based on the assault.

This brief report examined whether the archaic provision in section 28 should continue to be part of the law in British Columbia. The report is divided into four chapters. Chapter one provides a short introduction to the topic. Chapters two and three go on to examine the legislative history of the rule and its revival in British Columbia.

Chapter four sets out the conclusion of the Law Reform Commission. A recommendation is made to repeal section 28 on the basis that its continued existence could not be justified. The commission saw no basis in logic or fairness for singling out minor assaults as an area in which criminal prosecution should bar civil proceedings.

Further Developments

See *Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (now *Law and Equity Act*, R.S.B.C 1996, c. 253, s. 3).