

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 51—Report on Benefits Conferred Under a Mistake of Law

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A longstanding common law rule holds that benefits conferred on a person under a mistake of law are not recoverable. In contrast, benefits conferred under a mistake of fact are presumptively recoverable. The focus of this report is on whether this discrepancy has created injustices that should be remedied by legislation.

The common law rule on benefits conferred under a mistake of law goes back to an English decision that was handed down in the early nineteenth century. The rationale expressed in the decision was that everyone must be presumed to know the law or it would open up a flood of claims. This rule has prevailed in Canada, but it has not been exclusively applied. A number of exceptions to it have appeared in discrete cases. More importantly, this rule is out of touch with more recent developments in the law of restitution. Since the 1950s, the Supreme Court of Canada has affirmed that the basis of an action to recover a benefit conferred under a mistake is unjust enrichment. The continued existence of a distinct rule relating to benefits conferred under a mistake of law stands out as an arbitrary and anachronistic exception to the general principle.

The scope of this report is limited. It does not tackle general questions about the law of restitution or the law relating to mistake. Its only subject is the narrow question of whether there is any justification for treating mistake of law differently than mistake of fact. It pursues this question in six chapters.

Chapter one looks generally at the restitutionary basis of recovery. It surveys the restitution's historical development in the courts of England. Then, the chapter examines the leading Supreme Court of Canada decisions, concluding with a discussion of how unjust enrichment became the unifying principle in the Canadian law of restitution.

Chapter two contains a detailed review of recent Canadian court cases involving money paid under a mistake of law. Chapter three examines the less-common situation of benefits other than money being conferred under a mistake of law. Chapter four looks at exceptions to the general rule.

Chapter five sets out the reasons for reform of the law and considers the options for reform. The commission cites three reasons for reform. First, the current law cannot be supported on policy grounds. Second, the general rule is not in accord with the modern law of restitution. And third, the current law is uncertain and inconsistently applied. The chapter notes that reforms have been pursued in jurisdictions outside British Columbia. The chapter concludes by recommending that a new provision be enacted in the *Law and Equity Act*, which would have the effect of abrogating the common law position on benefits conferred under a mistake of law and directing courts to apply the law of restitution in these cases.

Further Developments

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