

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 77—Report on Settlement Offers

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The British Columbia *Supreme Court Rules* provide a number of procedures designed to encourage early settlement of disputes. Two of these procedures are the offer to settle and the payment into court. While both procedures work reasonably well, the aim of this report is to examine whether they can be improved and expanded upon to further encourage pre-trial settlements in the light of the increasing pressure on the court system.

Under the current rules only a plaintiff may make a formal offer to settle. If the defendant refuses the offer and, at trial, the plaintiff is awarded an amount equal to or greater than that for which the plaintiff offered to settle, the court may award the plaintiff up to double costs for preparation, trial, and proceedings after trial. The defendant's payment into court is the corollary procedure to a plaintiff's offer to settle and possesses many similarities to it. Payment into court is not an admission of liability. The basic rule is that if the plaintiff rejects the payment, proceeds against the defendant, and only recovers an amount equal to or less than the amount paid into court, the plaintiff is only entitled to costs incurred up to delivery of the notice. The defendant is entitled to costs reasonably incurred after delivery of the notice.

The report looks at the operation of offers to settle and payments into court under the current law and highlights some of the problems, uncertainties and inconsistencies that exist. Both offers to settle and payments into court are, for example, limited to claims appropriate to a money offer. Consequently, neither option is available in claims for injunctions, specific performance or equitable proprietary rights as it would be difficult, for example, to determine whether the success at trial was equal to or greater than what had been offered. This limitation may be responsible for forcing disputes to trial that could otherwise be settled. Other issues discussed include prejudgment interest and whether this may or may not be included in the judgment to determine entitlement to increased costs, payments on account, contributory negligence and interest on funds paid into court.

The latter part of the report sets out and discusses a number of recommendations aimed at revising and refining the law with the goal of broadening the scope of procedures available to encourage settlements. On the issue of claims generally, the recommendations include

allowing defendants to make offers to settle rather than just payments into court, and permitting settlement of claims for non-monetary relief. It is suggested that the best method for comparing success at trial for an offer to settle a non-monetary claim should, as a general rule, be based on the reasonableness of the offer. As regards, entitlement to costs, recommendations are made relating to prejudgment interest, interest on funds paid into court, and the calculation of costs generally. Finally, proposals are put forward, which the report concludes should encourage earlier settlements. Chief among these are the ability to offer a settlement at any stage and the option of being able to offer a settlement on the question of liability with cost penalties attached.

Further Developments

See *Supreme Court Rules*, r. 37 (25)–(29) (repealed).