

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 27—Report on Extra-Judicial Use of Sworn Statements

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It is common to encounter situations in which the law imposes an obligation to provide agencies of government and other individuals with information, and in so doing to comply with certain formalities. One of these formalities is the requirement to provide the information on one's oath or affirmation. This report refers to such documents as sworn statements. A sworn statement is an affidavit, affirmation, statutory declaration, solemn declaration, or other such document requiring an oath or affirmation as a means of attesting to the truth of the statement's contents. Sworn statements are frequently used in court proceedings, but the focus of this report is only on the use of sworn statements for out-of-court transactions. The report examines where sworn statements are used, the consequences of noncompliance with their formal requirements, the case for reforming the law, and the commission's recommendations for reform.

After its brief introduction, the report contains four substantive chapters. Chapter one examines the state of the law, as of the date of the report (1976). The chapter begins by noting that a computer search of the provincial statutes revealed that there were over one thousand requirements to give a sworn statement. About one-half of these requirements related to out-of-court transactions. The chapter goes on to classify these statutory requirements into 11 categories. Then, it discusses the purposes of requiring formalities of verification, which are threefold: first, to provide some assurance of the honesty and accuracy of the statement; second, to introduce an element of solemnity and dignity in ceremonial proceedings; and third, to interpose a disinterested person in certain transactions. Finally, the chapter examines the consequences of noncompliance with the formalities associated with giving a sworn statement. These consequences range from criminal liability to procedural defects, such as an inability to register certain documents

Chapter two considers the implications of the current system of reliance on sworn statements in many out-of-court situations. It finds that this system has a number of disadvantages. Locating and attending at the offices of a commissioner for taking affidavits adds delay, inconvenience, and expense to affected transactions. The requirement to give a sworn statement is often applied inconsistently. Penalties under the *Criminal Code* for breach of

the formalities are often disproportionate to the nature of the breach. Finally, noncompliance with the formalities can bring about seemingly unnecessary procedural complications.

Chapter three sets out the commission's recommendations for reform. The main recommendation is to repeal statutory requirements to give a sworn statement in those situations in which the sworn statement is only required to reinforce the veracity of an out-of-court statement. As the underlying requirement to provide information would continue in these cases, the commission recommends that a new provincial offence be created, which would be applicable to the falsifying of the statement at issue.

Chapter four of the report is a brief conclusion and a summary of the commission's recommendations.

Further Developments

The British Columbia Law Institute revisited this subject in its *Report on Unnecessary Requirements for Sworn Statements* (BCLI Rep. No. 42) (Vancouver: The Institute, 2006).