

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 30—Report on the Rule in *Hollington v. Hewthorn*

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A rule of evidence holds that evidence that a party to a lawsuit who has previously been convicted of a criminal offence arising out of the same facts as are at issue in the civil proceedings is not admissible in the civil proceedings. This rule is known as the rule in *Hollington v. Hewthorn*, after the 1942 decision of the English Court of Appeal in which it was given its definitive statement. This report looks at ways in which the rule in *Hollington v. Hewthorn* can be reformed to better meet the needs of contemporary civil litigation.

The report begins with a thorough review of the present law, in British Columbia and elsewhere in Canada. This discussion is informed by examining the origins of the rule in English law, starting with a close reading of *Hollington v. Hewthorn* itself. There is further discussion of other leading cases from the United Kingdom and analysis of the reception and development of this English law in British Columbia and in the other provinces of Canada.

The report then turns to consider the options for reform. It provides a thorough review of reforms and proposals for reform in overseas jurisdictions, such as the United Kingdom, New Zealand, and various Australian states. Then, it examines Canadian proposals, from law reform agencies in Alberta and Ontario, and from the Uniform Law Conference of Canada.

The report concludes with the commission's recommendations for reform. The main recommendation is to repeal the rule by enacting legislation to that effect. The commission concluded that repeal is necessary because the rule can give rise to illogical and anomalous results. But this recommendation is subject to several qualifications. These qualifications are quite detailed, touching on issues such as notice, the presence of a jury, and the nature of the civil proceedings (including the cause of action) at issue in a given case.

Further Developments

See *Evidence Amendment Act, 1977*, S.B.C. 1977, c. 70 (now *Evidence Act*, R.S.B.C. 1996, c. 124, s. 71).