

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 16—Report on Costs of Accused on Acquittal

Date: June 1974

This report is concerned with whether a person who has been acquitted of a charge under a provincial statute creating an offence should be entitled to be reimbursed for costs expended in mounting a defence to the charge. Provincial offences are not true crimes (the prosecution of which are governed by the federal *Criminal Code*), but the institutions and procedures that have been adopted to administer them largely parallel those of the *Criminal Code*. Among these are the guiding principle that an individual is innocent of a crime unless found beyond a reasonable doubt to be guilty. Yet an acquittal won in court may be a hollow victory if the cost of the proceedings financially destroys the accused. This report considers a proposal to award court costs to an accused person who is acquitted of a charge of committing a provincial offence, as a corollary to the law's traditional concern with protecting the innocent.

The report begins with two chapters containing background information. First, it examines the position of the common law on awarding costs to an acquitted person. In essence, the common law viewed this question as being an exception to its basic rule that that losing party in a court case must pay the winning party's costs. In the absence of a contrary rule set out in a statute, the Crown in a criminal case was not liable either to pay or receive costs. Second, the report examines the current law in British Columbia, which has been shaped by a statute called the *Summary Convictions Act*. The report notes a number of flaws in the scheme set out in this legislation, which leaves the entire issue in a state of uncertainty.

After briefly discussing the results of a survey of judges concerning the existing legal position in British Columbia, the report goes on to consider options for reform based on legislation in force in other jurisdictions. The report contains a detailed examination of the systems in place in the United Kingdom, New Zealand, New South Wales, and the United States.

Next, the report considers to major policy considerations concerning the awarding of costs in criminal cases. The first is the compensatory aspect, whereby the law attempts to compensate the successful party for costs incurred in litigation. The second is the punitive and

deterrent aspect of costs. The concern here is with deterring frivolous actions. But neither rationale can be used to justify the current scheme in British Columbia.

The report concludes by presenting the commission's conclusions. The commission recommended the enactment of a distinct statute governing costs in criminal proceedings. The act would make costs generally available to an acquitted accused person, after entitlement to an award of costs is established. The award would be a matter within the discretion of a judge, but the report lists a number of factors for exercising that discretion.

Further Developments

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