

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

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## Backgrounder

### LRC 20—Report on Costs of Successful Unassisted Lay Litigants

Date: April 1975

This report is part of a larger project on civil procedure, that is, the set of rules that govern non-criminal proceedings in the courts. The report focuses on a specific question relating to costs. Under British Columbia's system of civil procedure, the winner in a civil case is ordinarily entitled to an award of costs against the loser. This general rule is subject to a number of exceptions. One of those exceptions is the subject of this report. It holds that a litigant who has conducted a civil case without being represented by a lawyer is only entitled to out-of-pocket expenses, and not costs for any time spent in preparing the case.

The report begins by looking at the origins of the rule against awarding costs to successful unassisted lay litigants. The rule has been articulated in two English cases, one decided in the late nineteenth-century, the other in 1970. Although the conclusion is not free from doubt, it is generally conceded that these cases state the law applicable in British Columbia. Next, the report reviews the system of litigation costs in place in British Columbia. It notes the two elements of "solicitor and client costs" awarded to a successful litigant who is represented by a lawyer. First, there are *disbursements*, which are funds actually paid out by the lawyer to others, such as fees to witnesses, consultants, and court registries. Second, there are fees for services such as consulting with the client, interviewing witnesses, preparing documents, and conduct of the case in court. A successful litigant, who was represented by a lawyer, is entitled to reimbursement for both of these elements from the unsuccessful litigant. The amount of this reimbursement is governed by a *tariff* that is set out as an appendix to the *Supreme Court Rules*. This tariff provides, in most cases, for something less than a full indemnity of the actual costs incurred by the litigant.

The report then moves on to contrast the situation of represented litigants with that of unrepresented litigants. Then, the report considers argument for and against retaining the existing rule. The current rule is said to encourage efficiency in resolving disputes and conducting trials. But it could also be said to turn on a discriminatory view of the capacities of non-lawyers to represent themselves in litigation. The report concludes by setting out the options for reform and by presenting the commission's recommendation that legislation be enacted to allow successful unassisted lay litigants to obtain costs.

### **Further Developments**

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