

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 46—Report on Civil Litigation in the Public Interest

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Except in special cases (as at the date of this report), private individuals do not have the right to sustain proceedings in the courts to protect the general public from a violation of its rights. A longstanding rule of law requires the attorney general to be a party to such civil proceedings. This rule was based on a view of the attorney general as the guardian of the public interest. There are two ways for the attorney general to be involved in civil proceedings in the public interest. The attorney general could commence proceedings in his or her own name. This is done rarely. It is more common, in these cases, for proceedings to be brought on the relation of some other person (who is referred to as a *relator*). The key to relator actions is the attorney general's consent. It is a condition to the action proceeding. This places control over civil litigation in the public interest in the attorney general's hands, because such consent is given at the attorney general's absolute discretion.

This report grapples with a number of issues that arise from this system. There may be situations in which public rights are not vindicated in court because the attorney general refuses to consent to a proceeding. This raises questions whether the attorney general's consent should be a prerequisite to proceedings in the public interest and whether the attorney general should necessarily be a party to all such proceedings. It is also debatable whether the attorney general's consent is the best mechanism to control such proceedings to ensure that only those that are not frivolous or vexatious are sustained in the courts.

The report contains seven chapters. After a brief introduction in chapter one, the next four chapters set out the legal background. Chapter two examines the nature of relator actions, focussing on their complex, semi-private qualities. Chapter three discusses the attorney general's *fiat* (the formal name for the consent given by the attorney general to proceedings in the public interest). The chapter reviews a number of recent cases that have expressed some unease over the absolute nature of the discretion that the attorney general has to give or withhold this consent. Chapter four looks at the standing of the attorney general to seek redress in the courts whenever a public right is infringed or threatened with infringement, reviewing the four situations in which the attorney general has standing to commence proceedings. Finally, chapter five considers individual standing. This is

the right of a private individual to sue in respect of an infringement of public rights, and it is strictly controlled under traditional legal rules.

The remaining two chapters of the report deal with reform of the law. Chapter six looks at the case for reforms that would liberalize proceedings in the public interest by individuals. Chapter seven presents the commission's recommendations for reform, including draft legislation in the form of an amendment to the *Law and Equity Act*.

Further Developments

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