



# COALITION AGAINST NO-FAULT IN BC

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## **RE: Fighting the Attorney General's Civil Liability Review**

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### **PLANTING THE SEED - A CHRONOLOGY OF EVENTS**

**On November 16, 2001**, Attorney General Geoff Plant made a speech to the Continuing Legal Education Society of BC. As the basis of his speech, he asked: Is it time to impose limits on the expansion of liability?

His question contained a conclusion, i.e. liability has expanded. The speech also revealed that the Attorney General, Minister Plant, viewed expansion as unreasonable. In his view, far too many lawsuits are being launched. He also noted that our laws are expanding. With that in mind, it should stand to reason that liability and lawsuits would increase at the same time.

Nevertheless, Minister Plant had already drawn key conclusions at least five months prior to his consultation's formal launch (on April 17, 2002).

In this speech, the Attorney General said: "In many ways, the difficulties facing governments are similar to those experienced by other supposed deep-pocket defendants who have been asked to bear an unreasonable share of the liability burden."

He made a sweeping claim that deep-pocket defendants, be they government or industry, are forced to shoulder "an unreasonable share" of responsibility when it comes to wrongful acts. He said this even though such acts create victims out of innocent people.

This is clear evidence that, prior to his review of civil liability in BC, Minister Plant was convinced that our current laws were unreasonable.

If you can break down the specialized language in his speeches, it's possible to see what is at stake. In short: our rights, our opportunities to access the courts and our ability to secure fair compensation for losses suffered due to the harmful actions of others.

The Attorney General's closing sentence in his November speech is worth noting. He concluded: "We all stand to benefit from a civil justice system that operates efficiently, effectively and above all fairly." Not many people would oppose these goals. However, a closer look reveals that Minister Plant's version of fairness involves favouritism to government and industry. A system cannot claim to be fair if it denies court access to the innocent and protects wrongdoers from being held responsible.

**On February 8, 2002** - Two months before launching the Civil Liability Review (CLR), Minister Plant made another speech to the Continuing Legal Education Society. Four days later, the society's website set out that new legislation will likely include changes to the law of joint and several liability and to the Limitation Act.

It is noteworthy that those two areas of law are the ones that emerged from the CLR, more than a year later, as the two most likely to see changes.

Though the Attorney General has referred to the six items as law-reform projects and proposals, he also claimed "the government does not have a pre-determined view on these questions."

**On April 17, 2002**, Minister Plant issued the consultation paper and questionnaire that makes up the CLR. The initial deadline for submissions was extended to October 1, 2002.

According to the government's summary of responses, 36 groups submitted a completed questionnaire, 24 provided a detailed submission and 18 provided comments. Almost all respondents expressed a view about the Limitation Act and joint and several liability. A total of 37 individuals responded, too.

The responses were also telling by virtue of who did not take part. Virtually the entire legal community refused to participate. The legal community recognized that the government was committed to law reform, even though large and important questions were unanswered.

## **LEGAL WARNING**

Some of the people within the legal community sounded their own warnings. They urged the people of their profession to get involved in this issue and oppose the government's plans because the matter is one of great importance for today's citizens and future generations. Concern was also expressed about the danger of allowing under-funded and over-worked community groups to fight this alone.

The three largest bodies of legal professionals in the province refused to take part in the Attorney General's review. The Law Society, Trial Lawyers Association of BC and local branch of the Canadian Bar Association agreed that the review process was poorly put

together. At the beginning, they asked the government to provide more time and more information in order to ensure a meaningful consultation process. The government refused the bulk of requests. This left the legal groups with a choice of either participating in a seriously flawed process or declining to take part altogether. In the end, the Attorney General's deadline (October 1, 2002) passed and none of these groups took part.

**In February 2003**, the AG's Ministry published its summary of responses. It was not surprising to many people that the summary identified two main areas of reform: joint and several liability and The Limitation Act.

**On April 30, 2003**, this issue was debated in the legislature between Okanagan Vernon MLA Tom Christensen and Attorney General Plant. Both men are lawyers by trade.

Christensen expressed deep concern that the legal community had not taken part in the review process.

**Christensen said:**

- "The reality is they're the folks who have to deal with this stuff on a day-to-day basis. They're in a position to see the impact of what potential changes might be on their clients, whether they be plaintiffs or defendants, and that if we don't have them engaged in the conversation, that's to the detriment of the process, certainly."
- "One of the complaints seemed to be that we need to do much more."
- "There should have been a lot more background information thrown out to the public before we asked for a response."

**Plant Responded:** "It's now time for government to decide what, if anything, to do about these issues — whether to make changes in the law or not," said Plant. "We will move forward in the months to come towards making that decision."