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Backgrounder

LRC 139—Report on Pecuniary Loss and the Family Compensation Act

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When a person is injured others may also suffer financially and emotionally, although the legal recourse available to them is limited. Generally the law only entitles an injured person to compensation, but when the injury results in a fatality the deceased's dependents may bring an action to recover for the loss of financial support. Non-pecuniary damages, which compensate for the emotional injuries of losing a loved one, are only allowed in specific circumstances. This report examines the compensation of families and third parties in relation to victims of fatal and non-fatal injuries and related potential legislative amendments.

The current law and the legal roots of the right to claim compensatory damages for fatal accidents are examined. The current British Columbian statute, the *Family Compensation Act*, is largely derived from 150-year-old British legislation and thus may not reflect modern social and legal policy. Under it only dependent children, parents, or spouses may make a claim, although the definitions of those three categories have been interpreted relatively broadly in this context. There are only a few non-pecuniary losses that may be claimed by a family member, such as compensation for a nervous shock after the death. Children may also receive compensation for the loss of guidance, care, and companionship from their dead parent.

Third parties may be able to recover financial losses in relation to two common law categories. The first is for lost support and lost services, but this is only recoverable if the injured person dies. The other types of claims relate to compensation for general expenses assumed by a third party on behalf of the victim either under the *Family Compensation Act*, or as a personal representative under the *Estate Administration Act*. The report recommends that pecuniary losses be recoverable for third parties in fatal accident cases, and addresses procedural issues that might arise with such changes.

The report makes a number of other specific recommendations. Actual expenses reasonably incurred for the benefit of the injured or killed, a reasonable allowance for travel, and reasonable allowance for loss of income or value of services when a third party cares for a injured or dying person should be recoverable. There should be no limits on who would be entitled to make a claim, as long as the claims themselves are reasonable. Claimants under

the *Family Compensation Act* or members of the deceased's domestic household should be entitled to compensation for grief counseling if it is reasonably necessary to assist the bereaved. Compensation should not be based on a no-fault model. In addition, children should be able to recover for loss of care, guidance, and companionship in cases where a parent's injury is comparable to the loss that would have occurred had the parent's injuries been fatal.

The report recommends allowing any person who depended on the deceased for financial support be given standing to make a claim under the Act, with compensation determined on a case-by-case basis by the judiciary.

Further Developments

None.