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Backgrounder

LRC 125—Report on the Insurance Act: Section 26 (1)

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A person who suffers loss caused by an insured person is able to claim directly against the insurer if the insured is unwilling or unavailable to claim against the policy. It is rare that this would be required, but this ability drawn from section 26 (1) [now section 24 (1)] of the *Insurance Act* is crucial in some situations.

A problem with this framework is that the right drawn from section 26 (1) is limited to claims arising from personal injury or property damage, and thus does not apply to claims such as pure economic loss. Recent cases have highlighted this limitation. An example of this was when a widow was unable to claim loss of support from her deceased husband directly from an insurance company. The parallel section of the *Insurance (Motor Vehicle) Act* covers all losses, so this aspect of the *Insurance Act* appears unjustified and arbitrary.

This minor report recommends modifying section 26 (1) of the *Insurance Act* to cover all types of loss, and includes draft legislation. The revised section 26 (1) widens the scope to extend to any insurable loss with respect to which there is a judgment against the insured.

Further Developments

1. Recommendations implemented: *Insurance Amendment Act, 1994*, S.B.C. 1994, c. 2, s. 1 (at time of implementation it was located in: *Insurance Act*, R.S.B.C. 1979, c. 200, s. 26).
2. Act revised: *Insurance Act*, R.S.B.C. 1996, c. 226, [section renumbered to s. 24].
3. Subsection 24 (3) repealed: 2003, c. 94, s. 52; brought into force June 1, 2007 by B.C. Reg. 166/2006, *B.C. Gaz., Part II*, August 4, 2006.