

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 64—Report on Breach of Promise of Marriage

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For the contemporary reader, an action for breach of promise to marry may appear a strange concept, given the fact that today marriage itself has become a relationship freely terminable by either side. In order to understand its origins, therefore, the report begins by tracing the history of the action from the Ecclesiastical Courts of the United Kingdom to the anomalous position it presently occupies in the law of British Columbia.

The various elements that make up an action for breach of promise of marriage are then described. The promise need not be in writing and it may be express or implied from the circumstances. A promise can even be conditional upon a certain event such as obtaining parental consent. There are a number of defences open to a defendant. One that has frequently been invoked is that the female plaintiff is not chaste. Mental or physical disability would also be a defence.

Damages for breach can be separated into two categories: pecuniary and non-pecuniary. The pecuniary heading includes damages for financial loss incurred in reliance on the promise. The plaintiff may, for example, have moved, given up a job or changed their plans resulting in expense. Non-pecuniary damages include those items of damage to the plaintiff that cannot be readily calculated in monetary terms such as wounded pride and injury to the plaintiff's feelings and affections.

The report then goes on to discuss the case for reform, noting that the action has been severely and exhaustively criticized by law reform agencies, writers and courts. The principal argument in favour of the action is that it provides a remedy in some situations that are not covered by other remedies and where it would be unjust to deny compensation. It has been claimed that the action provides a means of recouping expenses and for distributing property. It has also been argued that abolition of the action might force people to take the law into their own hands as it would deprive them of a legal avenue.

There are numerous arguments in favour of abolishing the action. It has often been claimed that the action provides an excellent opportunity for blackmail with innocent parties forced to settle out of court rather than risk damaging publicity. The action may also inhibit peo-

ple from withdrawing from unsuitable engagements. Forcing a party who foresees future unhappiness to choose between the unhappy marriage or a lawsuit for damages places him or her in an invidious position as incompatibility and the likely unhappiness of the couple are no defences to the action. Other criticisms noted are that the action is inconsistent with modern divorce law, it is anachronistic and discriminatory, and that there are alternative remedies available.

Chapter four discusses the various options for reform, examining three alternatives:

1. Revising the common law action by prohibiting recovery on one or more of the heads of damage.
2. Abolishing the action for breach of promise of marriage.
3. Abolishing the action and prohibiting the use of alternative remedies for the same purpose.

The conclusion reached is that the action for breach of promise to marry should be abolished. In the light of this conclusion the report then looks at how various other jurisdictions that have abolished the action for breach of promise to marry, have developed alternatives, determining property rights and allocating expenses incurred in contemplation of marriage. The commission concludes that ultimately the current alternative remedies available in British Columbia deal adequately with the problems that arise concerning property acquired by, or gifts exchanged between a man and a woman because of their engagement. Legislation abolishing the action for breach of promise should not therefore affect an action for the recovery of any gifts given in contemplation of marriage.

Further Developments

See *Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 1, 36 [now *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 123] (abolishing action for breach of promise of marriage).