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Backgrounder

LRC 68—Report on Intentional Interference with Domestic Relations

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The introduction to this report provides the reader with a brief summary of the historical origins of the present law in British Columbia covering intentional interference by third parties with domestic relations. The law is derived from feudal concepts of “master and servant.” A man’s wife and children were regarded as his servants and as his property. From his wife, he had a right of *servitium* and *consortium*. From his children he had a right of *servitium*. *Servitium* means service, while *consortium* refers to the right of a spouse to have the company, assistance, affection, and fellowship of another. The action available to a master who had been wrongfully deprived of his servant’s services was a convenient one adopted by the courts for use by a husband or father who had been wrongfully deprived of the services of his wife or children. The action, called *per quod servitium amisist*, permitted a husband to recover damages for loss of the services of his wife or his children. From this common law source a number of actions were developed providing remedies against those who intentionally interfere with domestic relations.

Chapter two of the report describes the various types of action available:

1. Damages for Adultery—Proof of adultery is not in itself sufficient to justify an award without establishing that the defendant was either guilty of enticement, or of hindering the reconciliation of the spouses. It appears that damages may only be recovered for the loss of marital honour, injured feelings, and hurt to family life.
2. Alienation of Affections—This is a tort that involves willful and malicious interference with the marriage relation by a third party (there is some overlap with adultery here). Actions for alienation of affections are permitted in many American states, but there is some doubt as to whether this conduct continues to give rise to a separate cause of action in Canada.
3. Enticement and Harboring of a Spouse—In an action for enticement, it needs to be shown that the defendant knew the party was married and intended to interfere with the marital relationship. It must also be shown that, as a result of the defendant’s conduct, the plaintiff lost the consortium of his or her spouse. The gist of the tort of harbouring is the loss of the spouse’s consortium and servitium.

4. Enticement, Harbours, and Seduction of a Child—An action by a parent against a person who entices away or harbours his child is based not on an express recognition of society's interest in maintaining the integrity of the family but rather on the property interest a parent has, as master of his child, in the services of that child. The report notes that this type of action is uncommon. A parent has a right of action against a person who seduces his child, provided he can establish that the child rendered him services. The parent must also prove that he has suffered a loss of his child's services as a result of the seduction. The report notes that the jurisprudence is unclear as to whether an action may be brought where the loss of services does not result from pregnancy or childbirth. The essence of the action for seduction is the recovery of pecuniary loss, consisting of the value of lost services and out-of-pocket expenses.

The report then moves on to look at the issue of reform. It is noted that the actions providing remedies for intentional interference with family relations are archaic in concept, rely on a number of fictions respecting the internal relationships in a family, and apply in circumstances in which it is doubtful whether any remedy should lie. Each action is examined with particular reference to its continued effectiveness and to how it has been treated in other jurisdictions. The trend in other jurisdictions, with minor exceptions, has been the abolition of these actions.

The conclusion reached in the report is that the actions are anachronistic, ineffective, open to abuse, and should, with a few minor exceptions, be abolished.

Further Developments

See *Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 36–37 (now *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 123).