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Background

LRC 89—Report on the Action *per quod Servitium Amisit*

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The action *per quod servitium amisit* permits a plaintiff to recover damages for loss of services from a person who injures the plaintiff's servant. This is an exception to the general rule that the law does not compensate for damages done to "relational interests"—that is, losses suffered as a consequence of an injury done to another person. The action has its roots in medieval England. At that time, the master-servant relationship was the basis of all domestic relationships. It included not just hired help, but also embraced the relationship of a husband to his wife and a father to his children. The rationale for the action *per quod servitium amisit* was to protect the master's proprietary right in the services of the servant.

The assumptions underlying the action *per quod servitium amisit* are alien to contemporary British Columbia society. It is something of a surprise that the action has survived into the twentieth century. Shortly before the start of this project, the action was criticized in two court cases. This report surveys the current law with respect to the action *per quod servitium amisit* and reviews the options for reform of the law.

After a brief introductory chapter, the report proceeds in chapter two to analyze the current operation of the action in British Columbia. The chapter surveys three manifestations of the action *per quod servitium amisit*: (1) the husband's action for injury to his wife; (2) the parent's action for injury to his or her child; and (3) the employer's action for injury to his employee. The report concludes that the action has little or no utility for the first and second manifestation, as its guiding assumptions are thoroughly out of step with modern conceptions of the husband-wife and parent-child relationships. But the action could still have some vitality in the third case.

Chapter three of the report sets out the case for reform. It considered the question of whether the action is desirable to retain by discussing two issues: (1) what interests does the action *per quod servitium amisit* protect? and (2) is the action *per quod servitium amisit* needed to protect those interests? After analyzing these issues, the report concludes that, even in the commercial context, the action only performs a very limited function and recommends that the action be abolished by legislation.

Further Developments

See *Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 4 (now *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 63).