

# WRONGFUL DEATH ACCOUNTABILITY ACT

## Proposed Legislation – 2015

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

### Definitions

1 In this Act:

“**beneficiary**” includes

- (a) The surviving spouse of the decedent, whether legal or common-law, and including same-sex relationships;
- (b) The parents of a decedent, including stepparents;
- (c) The children of a decedent, including stepchildren and adopted children;
- (d) The siblings of a decedent, including half-siblings and step-siblings;
- (e) Grandparents of a decedent;
- (f) Grandchildren of a decedent;
- (g) Any person divorced or separated from the decedent who was dependent upon the decedent for maintenance or support at the time of the decedent’s death, or who was entitled to maintenance or support under any contract or judgment of any court in this province or elsewhere;
- (h) Any other person who for a period of at least three years immediately prior to the death of the decedent was dependent upon the deceased for maintenance or support.

“**wrong**” is an intentional or negligent act or omission which is alleged to have been committed by a wrongdoer.

**“wrongdoer”** includes

- (a) Any person, partnership, corporation or other legal entity who is alleged to have committed a wrong; and
- (b) Any person, partnership, corporation or other legal entity responsible at law for a wrong committed by a party referred to in paragraph (a).

but does not include

- (c) An employer or worker in respect of a wrong to which the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 would otherwise apply

**“wrongful death”** means any death which is caused by or accelerated by a wrong, or materially contributed to a wrong.

### **Actions for Wrongful Death – Scope**

- 2 Upon the occurrence of a wrongful death, any wrongdoer which would have been liable in damages to the person and/or their beneficiaries if death had not resulted remains liable to the person’s estate and beneficiaries for damages arising from the death as provided for in this *Act*.

### **Action to be Prosecuted on Behalf of Decedent’s Estate**

- 3 An action for wrongful death arising under this *Act* may only be initiated in the name of the decedent’s estate upon direction of the decedent’s executor or administrator.

### **Types of Damages Recoverable by Decedent’s Estate**

- 4 In any action arising under this *Act*, damages shall be awarded to the decedent’s estate for:
  - (a) All reasonable charges necessarily incurred for medical services, nursing services, hospital services, burial services and memorial services rendered for the decedent as a result of the wrong;
  - (b) All reasonable losses arising from the decedent’s loss of income during the period between the wrong and the decedent’s death;

- (c) All reasonable losses arising from the decedent's conscious pain, suffering and disability during the period between the wrong and the decedent's death;
- (d) All reasonable losses for pecuniary harms caused to the decedent's estate on account of death, including but not limited to the net future earnings expectancy that the decedent could have sustained had the wrong not occurred; and
- (e) The punitive, exemplary and/or aggravated damages, if any, which the decedent would have been entitled to recover from the wrongdoer had the decedent lived.

### **Claims of Decedent's Estate and Beneficiaries to be Consolidated – Notice**

- 5** (1) In addition to the claims brought by the decedent's estate identified in section 4 of this Act, all beneficiaries of the decedent asserting claims for damages arising as a result of the decedent's death shall be permitted to join the estate's action for wrongful death.
- (2) Within 30 days of commencing an action under this Act, the decedent's executor or administrator shall cause to be served a copy of originating process in the wrongful death action upon all beneficiaries known or reasonably ascertainable to the executor or administrator at the time of commencing the action.

### **Time Period for Beneficiaries to Join Estate's Action – Effect of Failure to Join**

- 6** (1) Any beneficiary shall be permitted to join the estate's action as an interested party to the litigation, and to assert claims arising from the death of the decedent in the beneficiary's own name as otherwise provided for by section 7 of this Act, provided that either:
- (a) Joinder is made within 90 days of receipt of notice of the estate's action as provided in section 5(2); or
  - (b) The court finds that joinder will not result in unreasonable prejudice or delay to the parties involved.
- (2) Any beneficiary receiving notice of the estate's wrongful death action as provided in section 5(2) who fails to petition the court to join the estate's action shall forfeit their rights to priority payment of claims outside of the decedent's estate as provided for in this Act.

(3) Nothing in subsection (2) shall be construed to bar any claim for damages sustained by a beneficiary that could be independently asserted by or against the decedent's estate, notwithstanding the failure of the beneficiary to comply with the provisions of this section.

### **Types of Damages Recoverable by Decedent's Beneficiaries**

- 7 In their capacity as named parties to an action brought under this Act, beneficiaries of a decedent may be awarded damages arising from the decedent's death for:
- (a) All reasonable expenses necessarily incurred by any named beneficiary for medical services, nursing services, hospital services, burial services and memorial services rendered for the decedent as a result of the wrong;
  - (b) The present value of future income, benefits or other pecuniary support owing to or anticipated to have been received by a named beneficiary from a decedent, including but not limited to:
    - (i) The loss of financial support reasonably expected to have been provided had the decedent lived;
    - (ii) The loss of household services reasonably expected to have been provided had the decedent lived;
    - (iii) The loss of child support, spousal support, alimony or any other financial obligations owing from the decedent to the beneficiary, whether embodied in an order of court or otherwise; and/or
    - (iv) The loss of reasonable contributions to the future educational expenses of any beneficiary;
  - (c) All other reasonable pecuniary losses incurred by the beneficiary arising from the death of the decedent; and
  - (d) Reasonable non-pecuniary losses arising from the beneficiary's loss of the decedent's love, guidance, care, companionship and affection, proportional to the relationship that existed between the beneficiary and the decedent prior to the decedent's death.

### **Double Counting of Estate and Beneficiary Damages to be Avoided**

- 8** In assessing damages under this Act, the trier of fact shall identify in its final judgment each independent item of damages awarded to a decedent's estate or beneficiaries with sufficient particularity:
- (a) To allow for proper distribution of amounts awarded to either the decedent's estate or the named beneficiaries, as appropriate; and
  - (b) To ensure that duplicative awards to both the decedent's estate and named beneficiaries under the same head of damages are avoided.

### **Beneficiaries' Share of Damage Award to be Paid upon Entry of Judgment**

- 9** Damages awarded pursuant to an action under this Act to any and all named beneficiaries of the decedent shall be awarded in the name of the beneficiary, and are payable to the beneficiary upon entry of final judgment in the action.

### **Estate's Share of Damage Award to be Paid into Registry of Court**

- 10** Damages awarded pursuant to an action under this Act to the decedent's estate shall be awarded in the name of the estate, and are payable into the registry of court upon entry of final judgment, for disposition and disbursement further to sections 11 and 12 of this Act.

### **Priority Disposition of Estate's Share of Damage Award to Creditors of Decedent's Estate – Procedure**

- 11** (1) The executor or administrator of a decedent's estate shall identify a decedent's wrongful death action as an asset of the estate, as consistent with any declaration required by section 111 of the *Estate Administration Act*.
- (2) Following payment of any litigation costs, disbursements and/or legal fees owing but unrecovered from the defendant wrongdoer in the underlying wrongful death action, the remainder of the award given to the decedent's estate shall be made available to the decedent's executor or administrator for satisfaction of outstanding claims against the decedent's estate.
- (3) Upon approval of a petition to the court pursuant to section 39 of the *Trustee Act*, the court shall instruct the registrar to release funds held in the Registry of Court pursuant to section 10 of this *Act* for the purpose of

satisfying creditor claims approved for payment from the assets of the decedent's estate.

(4) All creditor claims against a decedent's estate that are reviewed and approved for payment by an executor or administrator shall first be paid from the residual proceeds of the decedent's estate's wrongful death action until such proceeds are exhausted.

### **Residual Disposition of Estate's Share of Damage Award – Procedure**

**12** Upon affirmation to the court by the decedent's executor or administrator that all outstanding creditor claims asserted against the decedent's estate have been satisfied, any residual portion of the estate's wrongful death award remaining shall be distributed as follows:

- (a) One half of the residual sum to be paid to a charitable or social purpose in the name of the deceased as approved by the court; and
- (b) One half of the residual sum to be released to the decedent's executor or administrator for disposition to the beneficiaries of the decedent's estate.

### **Application of *Health Care Costs Recovery Act* to Wrongful Death Claims**

**13** (1) The provisions of the *Health Care Costs Recovery Act*, R.S.B.C. 2008, c. 27, apply to all claims initiated by a decedent's estate pursuant to this *Act*.

(2) Any sums collected pursuant to the *Health Care Costs Recovery Act*, either by the government in its own name or through the claims of the decedent's estate or beneficiaries, shall be remitted to the government upon entry of final judgment in any action brought under this *Act*, consistent with the approach for payment of beneficiary claims identified in subsection 9 above.