

Wrongful Death Accountability Act - Explanatory File

The *Wrongful Death Accountability Act* (WDAA) embodies an integrated series of statutory reforms designed to ensure that the twin goals of fair compensation and meaningful deterrence are satisfied in every situation where a person is killed by the negligent conduct of another. From the adoption of *Lord Campbell's Act* in 1846 through to the *Family Compensation Act* of the modern day, British Columbia's legal framework for assessing remedies arising from a wrongful death has preserved a perverse distinction – the fact that it often is cheaper for a defendant to kill someone than to merely injure them. Not only is such a distinction profoundly at odds with contemporary societal values, it leaves many surviving family members of wrongful death victims feeling as though their loved ones are worthless in the eyes of the law. The British Columbia Wrongful Death Law Reform Society (BCWDLRS) and supporting organizations contend that the time for meaningful, comprehensive reform to our province's regime for fatal accident compensation is long overdue. The WDAA offers a roadmap for implementing reforms which balance accountability, compassion and public cost while ensuring that British Columbia's most vulnerable families – those who have lost a member through the wrongful conduct of others – receive adequate recognition and protection under the law.

The WDAA is designed to replace both the current *Family Compensation Act* scheme and remedies available under the *Wills, Estates and Succession Act* with a single, consolidated action for wrongful death. Claims for wrongful death will be prosecuted in the name of the deceased person, through their estate's personal representative. In addition for claims arising for losses suffered by the deceased person, the consolidated action will also resolve claims accruing to a broadly defined class of statutory beneficiaries – persons capable of establishing that they sustained compensable economic or non-economic losses arising from the decedent's death.

The categories of allowable damages under the WDAA are more expansive than those presently available under the *Family Compensation Act* scheme. The most notable change from the present system of fatality compensation is that the WDAA allows for the decedent's estate to seek damages for loss of anticipated earnings to the estate that the decedent would have contributed but for the death. By structuring the remedy to focus on *loss to the estate* rather than *loss to beneficiaries*, the WDAA resolves the 'cheaper to kill than injure' paradox that has bedeviled provincial law and frustrated surviving family members for 169 years. The act balances the deterrent effects of full compensation to the decedent's estate with the societal cost of such an approach by distributing the wrongful death award in a manner which minimizes the 'windfall effect' to the estate – by redirecting a portion of any such windfall to a charitable or philanthropic cause in the name of the deceased.

Upon entry of judgment, the sums awarded by a court in connection with a wrongful death action under the WDAA will be distributed in three phases:

- First, claims identified as losses sustained by "beneficiaries" shall be paid in full.
- Next, the decedent's estate will have access to the remaining proceeds of the action, to ensure that the estate's creditors and other liabilities are fully paid.
- Finally, any residual sums remaining from the wrongful death award after beneficiaries and estate liabilities have been fully satisfied will be divided equally, with a one-half share passing to heirs via the decedent's estate, and the other half-share awarded to a charitable cause in the decedent's name, as directed by the personal representative of the deceased's estate.

While the residual distribution of a share of the wrongful death award to charitable purposes may appear to be a novel approach, such split-recovery statutes have been used in several United States jurisdictions for years. They reflect a recognition that sums awarded by a court to achieve objectives of deterrence and punishment, such as punitive damages, need not flow directly into the hands of a plaintiff for the award to possess its desired effect. To the extent that such awards may be viewed as an inappropriate windfall, split-recovery approaches seek to redirect the windfall to other socially beneficial purposes while preserving the incentive to ensure that the award is made in appropriate cases.

The WDAA represents a significant advance over the present system of fatality compensation in British Columbia. It expands the classes of beneficiaries under the law to include surviving victims who may currently be overlooked by the *Family Compensation Act*, such as ex-spouses or siblings reliant upon a decedent for support. It protects creditors by helping ensure that a decedent's estate has access to adequate damages from which the debts of the wrongful death victim can be settled. Most importantly, it maximizes the deterrent effect of allowing reasonable tort damages to a decedent's estate while ensuring that a sizeable share of those damages are given not as a windfall to individual plaintiffs, but are instead redirected to serve a socially beneficial purpose in the decedent's memory.

For far too long, British Columbia's legal system has shielded negligent parties from the full public and private costs associated with wrongful death. The WDAA offers a common sense approach which demands accountability from wrongdoers while providing compensation and compassion to the surviving families of fatal negligence victims. The WDAA is an act whose time has come.

Accountability Compassion Today

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