

5. UBCM Resolution: Updating BC's Wrongful Death Law

Submitted by: Councillor Fry

WHEREAS

1. Natasha Forry was a healthy, vibrant, Vancouver born and raised 29-year-old. On October 12th, 2020, Ms. Forry died of a treatable staph infection despite four visits over ten days and multiple misdiagnoses at her local hospital.¹ Because Ms. Forry leaves behind no financial dependents, her family is denied an opportunity of legal remedy or accountability for her wrongful death;
2. Tragically, hundreds of British Columbians will experience the loss of a loved one each year, and in the event of a wrongful death many will discover they cannot access legal representation or recourse;
3. Wrongful deaths and harms are disproportionately experienced by Indigenous and racialized people. The *National Inquiry into Missing and Murdered Indigenous Women and Girls* and *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care*² recognize systemic inequities for Indigenous peoples in the care system, and variously recommend fully investigating deaths of Indigenous youth in care; and an obligation to support families, recognizing cultural and spiritual losses, and access to justice;
4. Wrongful Death Law in BC is legislated by the *Family Compensation Act*, with accompanying provisions in the *Wills, Estates and Succession Act*, for determining the "worth" of a deceased family member. Currently, access to the courts requires that the deceased was a breadwinner, meaning that typically the wrongful death of a child, an elderly person, or someone with a significant disability cannot go to trial, and precludes opportunities for independent investigation, recourse, or accountability that could avail justice, system change, economic or non-economic damages;
5. The *Family Compensation Act* is antiquated legislation that's had no significant or meaningful updates since its adoption from the UK's "*Lord Campbell's Act*" in 1846, and British Columbia is the last remaining province in Canada yet to modernize its wrongful death legislation to provide a modern standard of human value, dignity, and protection under the law.³ BC's *Family Compensation Act* discriminates against children, the elderly and many people with disabilities when killed by the recklessness and harm of another;
6. The Canadian Bar Association of BC has recommended the *Family Compensation Act* be amended to provide for bereavement damages in the event of a death of a family member caused by the wrongdoing of another person or entity, with the reasoning: "The current failure of the law to recognize such losses is offensive and inexplicable to BC families who experience such tragedies, fails to reflect modern-day accepted norms as to basic fairness in a

tort system, and is out of line with the law in most jurisdictions in Canada”;⁴

7. The BC Wrongful Death Law Reform Society has recommended the replacement of the *Family Compensation Act*, to allow for non-pecuniary damages relating to the loss of love, guidance, care, companionship, and affection, as well as conscious pain and suffering that the decedent endured before death, and in egregious circumstances, punitive damages.⁵

THEREFORE BE IT RESOLVED

- A. THAT the following resolution be submitted to LMGA for submission as a 2021 UBCM Resolution, and titled: “Updating BC’s Wrongful Death Law”

WHEREAS Tragically, hundreds of British Columbians will experience the loss of a loved one each year, and in the event of a wrongful death, many will discover they cannot access legal representation or recourse because Wrongful Death Law in BC is legislated by the *Family Compensation Act* and provisions in the *Wills, Estates and Succession Act* in determining the “worth” of a deceased family member. Currently, access to the courts requires that the deceased was a breadwinner, and otherwise precludes opportunities for independent investigation, recourse, or accountability that could avail justice, system change, economic or non-economic damages.

AND WHEREAS the *Family Compensation Act* is antiquated legislation that’s had no significant or meaningful updates since the 1800s, and British Columbia is the last remaining province in Canada to modernize its wrongful death legislation to provide a fair standard of human value, dignity, and protection under the law. BC’s *Family Compensation Act* discriminates against children, the elderly and many people with disabilities when killed by the recklessness and harm of another.

THEREFORE BE IT RESOLVED THAT the UBCM request the Government of British Columbia and Attorney General modernize and reform wrongful death law in British Columbia to ensure access to justice, accountability, and compensation in British Columbia for the surviving family members of those wrongfully killed.

- B. FURTHER THAT Whereas clauses 1 through 7 and footnotes be submitted as background.

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1. Mother demands justice for daughter who died of infection despite 4 hospital visits in 10 days (Lovegreen, CBC, Dec 2020)
<https://www.cbc.ca/news/canada/british-columbia/bc-wrongful-death-laws-staph-infection-ann-natasha-forry-1.5849227>

2. In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care (Turpel-Lafond, Nov 2020)
<https://engage.gov.bc.ca/app/uploads/sites/613/2020/11/In-Plain-Sight-Full-Report.pdf>
3. BC Wrongful Death Law Reform Society: Comparing other provinces
<https://intheirname.ca/comparing-other-provinces/>
4. CBABC Briefing Note: Family Compensation Act (2014)
https://www.cbabc.org/CBAMediaLibrary/cba_bc/pdf/Advocacy/FamilyCompensationAct/CBABC_Briefing_Note_Family_Compensation_Act.pdf
5. BC Wrongful Death Law Reform Society: Wrongful Death Accountability Act Proposal
<https://intheirname.ca/proposed-legislation/>