

# IN THEIR NAME & IN THEIR HONOUR:

## Decade-Long Quest Continues for Families Seeking Justice




Don Renaud &  
Margaret Birrell

BY BENTLEY DOYLE  
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Representatives from several families first got together a little more than a decade ago to formalize a collective effort aimed at meaningful legislative change when it comes to wrongful death. Though the circumstances were unique to each family, as well as incredibly painful and highly personal, there was a common bond for all: BC's absence of proper law impacted them severely, and they understood back then what is still needed right now – a properly conceived wrongful death act that families in British Columbia can rely upon.

The families assembled and organized under the name the Wrongful Death Law Reform Group (WDLRG). Officials from our Trial Lawyers Association of BC began calling for a major overhaul (and essentially a total reboot) of BC's laws with regard to wrongful death many years prior to the WDLRG being formed, but the roots with the family-based group took hold as a growing phenomenon of the past 10 years. It was the summer of 2005. That is when TLABC member Don Renaud decided it was time to bring together members of families who had suffered the ultimate loss, the death of a loved one through wrongful circumstances. Don, a past-president of TLABC, had amassed too much experience, over too many years, at having to deliver frustrating news to families who contacted him with hope of obtaining justice after reckless and negligent actions led

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to occurrences of wrongful death in BC. He wanted, for them, to open the door to justice. They wanted to pursue justice in honour of their loved ones, and in their names. And in the name of justice, each certainly had a case. Or so they thought. Don had to deliver the cold and sobering reality time and time again: BC's *Family Compensation Act* (FCA) is an affront to justice; it fails most families, despite its name.

As each family would soon learn, families seeking justice in honour of their deceased loved ones were in essence prohibited from pursuing justice, unless their dead family members were breadwinners. The widely discriminating legislation does not address the injustice brought on by the wrongful death of children, seniors and people with disabilities. Basically, the loss of a breadwinner brings forward a situation the law allows to be quantified. It's simpler that way. It's not right. It's not a remedy. It's just the way it is for most families in BC hit with the devastating impacts of wrongful death. The lives of people who, generally speaking, do not have a regular income are worthless under BC's law. Making matters more appalling is the fact the law isn't even BC's, rather it is an ancient hand-me-down from Britain. Though this fact is well-known in government circles, no elected body throughout the history of BC has set its sights on righting this wrong. There's been merely a mild modicum of talk, a slapdash of near-sighted consultation or two. All this time, *Lord Campbell's Act* (the basis of BC's FCA), has been the impediment to justice, and has consequently failed family after family in their very own province.

Before the group of family members assembled for a meeting, Don asked long-time disabilities advocate Margaret Birrell to get involved. Their initial plan for a little meeting ended up being a catalyst for the formation of a group that still exists today. The 2015 version of the group includes the original members from 2005 and many who have gotten involved since. Sadly, wrongful deaths continue to occur. Despicably, the laws of BC still fail families miserably. However, it is a tribute to the courage and determination of all

involved that their collective call for new law continues to be made. The currently governing BC Liberals are well aware of the WDLRG's existence and persistence, as is the Official Opposition, the NDP. The families and TLABC have worked together through the years, largely at the direction of both Don and Margaret. Key figures from the start, these two stalwarts continue to work with the families. Together, they carry on with the effort to see that justice is done, justice by way of new legislation becoming a reality in BC.

### FAMILY MATTERS

The goal of obtaining new, fair and effective legislation in BC strikes at the heart of justice itself. And family is at the heart of the matter. For most of us, family is at the heart of everything we do in life. Losing a loved one – a child, a sibling, a spouse – in tragic circumstances is a devastating, life-altering experience or rather a series of devastating experiences, especially when deep personal grief is complicated by the knowledge that a loved one's death was the result of another person acting recklessly, negligently and harmfully.

Whether a death is caused by dangerous driving, medical malpractice or other irresponsible actions, it is painful and aggravating to find out that preventable circumstances were either the cause, or contributed greatly to, the death of a person. This causes a family's grief to be compounded and makes suffering subject to prolonged outrage.

Families thrust into a world of hurt after a wrongful death in this province are then forced to endure roadblocks if they want to embark on a journey toward justice. Adding insult to injury has never been more apparent when family members find out that legislation in BC fails to address most forms of loss – from the emotional and beyond – despite the fact they can be the directly corresponding results brought on by the death of their child, parent, grandparent, sibling or spouse.

The law in place at present accounts for direct financial losses resulting from a wrongful death, but it fails to acknowledge the multi-layered effects a wrongful death has on the family members left

behind. The law dictates that children, seniors and people with disabilities – for example – are three classes of people whose lives are not even close to fully valued, let alone properly respected, by the Province of British Columbia. The law also makes another unjustified and unfair distinction between wrongful acts that lead to injury and wrongful acts that lead to death: The injured and their families can seek justice and compensation (e.g. for the cost of future care), but many families of people who were killed are not permitted to seek justice despite the profound losses they are hit with by way of a wrongful death.

The representatives from families who put their names forward as part of the WDLRG, as well the many who support their efforts, continue to call for an entirely new piece of legislation to be created in BC. A new act is necessary in order to enable families to even attempt to obtain justice in the name of their loved ones. By implementing a proper wrongful death act, BC would be a leader among Canadian jurisdictions.

### JUSTICE DELAYED

As it stands, BC's legislation is based on an 1846 Act from Britain, a law which does not recognize forms of loss other than those causing a direct financial impact. This leaves families without the legal means to seek justice when the wrongful death of a loved one leads to a loss of guidance, care and companionship or for the damage caused by stress, anguish and grief. Moreover, in cases where wrongful actions lead to injuries that eventually cause death, the law does not provide for the pain and suffering that occurs from the period between the date of injury and the eventual death. This is indefensible not merely unfair, particularly because the law causes more harm for people who are at an extremely vulnerable point in their lives. They need support, not additional sadness and frustration.

The families have reason on their side. It should be enough, but it has not led to the necessary changes during the WDLRG's first 10 years of existence. Still, there is hope that the widespread need for accountability and justice will eventually

“Adding insult to injury has never been more apparent when family members find out that legislation in BC fails to address most forms of loss”



TOP ROW LEFT TO RIGHT:  
Heidi, Gary, Dallas

BOTTOM ROW LEFT TO RIGHT:  
Lindsey with mom Christine,  
Laura, & Theresa with  
daughter Beatrice

prevail. The legislation blocking the doors to justice has barred a countless number of families from seeking justice, let alone obtaining it. The barrier will be removed if and when the BC Government opts to address this injustice.

It has been nearly 170 years since *Lord Campbell's Act* of 1846 was created as a way to reform unjust laws and, ironically, enable people to obtain justice after the wrongful actions of others led to the deaths of their loved ones. However, intentions and unforeseen consequences aside, the law limited access to justice in a drastic way – despite it being an attempt to right the wrongs created by far earlier decisions (*Higgins v. Butcher* in 1607, *Baker v. Bolton* in 1808). It was an inadequate act that became the model for wrongful death legislation in many parts of the world. In other parts of North America, the legislation is named the *Fatal Accidents Act* or similar references. In British Columbia, it remains the *Family Compensation Act*.

Throughout history, various pieces of legislation referred to damages and the entitlement of dependents, but the nature and extent of damages were not specified. Damages in wrongful death cases have been restricted to the loss of financial benefits for those left behind. These pecuniary losses involve a benefit

or advantage that can be measured in dollars, such as financial support, services or contributions. Under these forms of legislation, both the nature and extent of allowable damages are so limited that they make access to the courts impractical and nearly impossible for most people. Some jurisdictions in Canada amended the laws set out by *Lord Campbell's Act*, but there is not a province or territory in Canada that enables citizens to seek fair compensation for all people impacted by the wrongful death of a loved one. Though BC has not made any significant amendments to its legislation, despite the fact it pre-dates our province's existence, the changes need to be made. Life in today's society is vastly different and far more complex than it was in the mid-1800s, and legislation should be updated to reflect our modern-day realities.

#### KIND & COMPASSIONATE PEOPLE

With praise for their tenacity and with a well full of wishes for good luck, our hearts go out to Don and Margaret, for the massive contributions they have made to the cause of justice. As well, we extend our highest regards and deepest appreciation to the following family representatives for their efforts throughout the years and for allowing the details of their personal

tragedies to become the key aspects of awareness being published in resources related to the campaign for a wrongful death act in BC.

Fighting for justice for many years now, we thank...

- Beatrice Pereira (in honour of her mom, Theresa)
- Catherine Adamson (in honour of her daughter, Heidi)
- Rose & Robert White (in honour of their daughter, Laura)
- Rita McDonnell (in honour of her dad, Gary)
- Wendy Craven (in honour of her son, Dallas)
- Christine Harris (in honour of her son, Lindsey)

We are so proud to know all of the above. And we're proud of all family representatives for continuing to volunteer their time to the pursuit of justice, an effort that they know will not benefit them directly, but will – once new legislation is in place – be a highly important mechanism of justice for families in BC, if and when they need it. **V**