

2021 Wrongful Death Legislation Package

1 message

Michael-James Pennie <[REDACTED]>

Sat, Jan 30, 2021 at 6:55 PM

To: "Minister, AG AG:EX" <AG.Minister@gov.bc.ca>

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Dear Minister Eby,

Further to our meeting on October 9, 2019 and further to my last submission on March 9, 2020 in which I provided our Society's recommended legislation, **I am providing a *newly updated* submission for your review.**

The PDF package contains:

#1 An introduction letter addressed to you

#2 BC Wrongful Death Facts & Arguments

#3 How ICBC No-Fault Fails British Columbians in Cases Wrongful Death and Continues to Allow Wrongdoers to Escape Accountability

#4 The Wrongful Death Accountability Act Briefing Note

As mentioned in the attached letter, I request an immediate meeting with you prior to the commencement of the Spring 2021 legislative session to review what our Society, our membership, and the public are demanding of your office.

I remain hopeful and optimistic that we can cooperatively work together to bring forth a first-class piece of legislation into this province and set an example for the rest of Canada.

Please confirm suggested dates and times of availability and I will adapt my schedule to accommodate.

Thank you in advance for your consideration.

Sincerely,

Michael-James Pennie

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Michael-James Pennie

President - BC Wrongful Death Law Reform Society

intheirname.ca

The BC Wrongful Death
Law Reform Society

Focused on solving the biggest human rights crisis in British Columbia



BC Wrongful Death Package Prepared for Minister Eby January 30 2021.pdf

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January 30, 2021

RE: Modernizing BC's Colonial-Era Discriminatory Wrongful Death Laws

Dear Minister Eby,

I'm writing to you today with an important update to our Society's legislative demands of your office.

I've attached two new documents and one updated document to this correspondence.

The first document is titled **'BC Wrongful Death Facts & Arguments'**. It lists logical, economic, and moral reasons as to why this modernization must happen. I realize that the government doesn't necessarily always deal in matters of logic, economics, and morality, but I do know there are some people in your office who may appreciate the facts and arguments presented. I believe that you are one of these people.

The second document is titled **'How ICBC No-Fault Fails British Columbians in Cases Wrongful Death and Continues to Allow Wrongdoers to Escape Accountability'**. The name is self-explanatory and provides an illustrative example of how wrongdoers will continue to not be held accountable in cases of wrongful death involving motor vehicle accidents. We use an example of one of our member family stories to illustrate this with scenarios under the ICBC pre-No-Fault model, under the province of Ontario's legislative framework (which despite having No-Fault provisions, still allows for At-Fault wrongful death claims), and finally how the scenario would unfold under the newly implemented ICBC No-Fault model.

The third document is the **'Wrongful Death Accountability Act Briefing Note'**. This is a document that summarizes the drafted *Wrongful Death Accountability Act*. I originally submitted this document to you on March 9th, 2020, although **this is a newly updated version** that considers other existing legislative definitions in BC and new legislative aspects from Yukon's *Fatal Accidents Act*, which was modernized in 2014. This is legislation that is ready to be tabled and passed in the Spring 2021 legislative session.

These amended aspects include:

1. Incorporation of the definition of "spouse" from the *BC Family Law Act*.
2. Incorporation of the definition of "wrongdoer" from the *BC Health Care Costs Recovery Act*.

3. Incorporation of Section 6 of the Yukon *Fatal Accidents Act* to allow for beneficiaries to bring forth an action if the executor or administrator of the estate fails to do so within six months.
4. Incorporation of Section 7 of the Yukon *Fatal Accidents Act* to ensure the wrongdoer doesn't get the benefit of the other coverages that the victim may have had.

Further to the amendments noted above, **Appendix A** outlines the tenets of what a first-class piece of legislation must include. As we've reviewed all the legislation from every other province and the Yukon, we have cherry-picked the best legislative aspects. The other provinces don't necessarily do that great of a job in their legislation, although BC is presently by far the worst of a bad bunch. These required tenets close all the loopholes and ensure that we have fair and just legislation which will not allow wrongdoers to escape accountability.

Appendix B contains the drafted legislation itself to replace the condescendingly named *Family Compensation Act*, which many in the legal profession have often quipped should be more aptly named the *Family Non-Compensation Act*. Our demand is that we scrap the *Family Compensation Act* in its entirety and replace it with the *Wrongful Death Accountability Act* as drafted. This would be in accordance with also amending the *Wills, Estates, and Succession Act* so as not to exclude 'non-pecuniary' damages in wrongful death claims.

I'd like you to understand where these demands are coming from. Our Society is 100% volunteer based. In addition to volunteering our time, we've relied upon the financial contributions of our volunteer board members, and individual donations from the public, which as of recently have expanded at a geometric rate. This is a testament to the public interest and grass roots nature of our movement and this urgent human rights issue. The citizens of this province demand access to justice and they demand accountability. Our Society is a platform that synthesizes and facilitates the channelling of these voices to your office.

While the legal community concurs with our drafted legislation, they have largely stepped aside to ensure that the public drives this issue forward. Aside from a TLABC start-up funding grant that we received in 2015, we have received no financial contributions from any legal organizations since. Frankly, our movement is proving to be more powerful than any legal lobbying arm could hope to be in this province.

The Attorney General who might ever table and pass such a first-class piece of legislation would set a precedent not only in Canada, but internationally, with the respect of human rights, dignity, and legislated protections for the individual. This Attorney General would be creating a legacy in this province that would impact generations in the future, and promote safer standards and protocols to protect human life and prevent wrongful death in the first place.

As you know, the current legislative framework has not seen any meaningful, or significant updates since adoption from the UK's Lord Campbell's Act in 1846. Let's not play a pathetic game of "catchup" by photocopying another province's exact legislation, or by setting out

prescribed meat charts of capped “benefits”, which condescendingly treat British Columbians like livestock. Let’s instead set an example for the rest of Canada and the world for recognition of the distinct value of an individual’s human life as directed by case law, while ensuring the full measure of justice and accountability to wrongdoers brought under an all-encompassing legislative framework. That is the opportunity that you can bring forth in this first quarter of our 21st century.

I respectfully request an immediate meeting with you prior to the Spring 2021 legislative session to discuss this drafted legislation and how we can strategically move this forward as cooperative partners. Please reply with proposed dates and times for this meeting to take place and I will adapt my schedule accordingly.

I look forward to discussing this opportunity with you.

Sincerely,



Michael-James Pennie
President – The BC Wrongful Death Law Reform Society

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The BC Wrongful Death
Law Reform Society

Attachments:

1. BC Wrongful Death Facts & Arguments (*updated January 30, 2021*)
2. How ICBC No-Fault Fails British Columbians in Cases Wrongful Death and Continues to Allow Wrongdoers to Escape Accountability (*updated January 30, 2021*)
3. Wrongful Death Accountability Act Briefing Note (*updated January 30, 2021*)

(Updated January 30, 2021)

1. Our Society was founded and is operated by families who have lost a loved one to wrongful death in BC and were denied access to justice. We've been working on this issue for over two decades. We rely upon our 100% volunteer team, significant financial contributions from our own board members, and individual donations from members of the public.
2. In BC, only people who meet the discriminatory criteria of having both an income and dependents have worth under the law. Everyone else is 'free to kill' with no financial accountability. This has especially affected children, seniors, the disabled, and vulnerable ethnic populations, such as our First Nations.
3. BC is the last province in Canada, including the Yukon, yet to modernize these colonial-era laws that have had no significant or meaningful updates in this province since adoption from the UK's Lord Campbell's Act in 1846. Most of the provinces have modernized long ago, but even they do not do nearly as good a job as many developed countries around the world in regards to protecting and dignifying human life under their respective legislation.
4. When a human life is considered "worthless" under the law, you cannot sue a wrongdoer when they have negligently, or intentionally, caused or contributed to a loss of life. There are simply no damages to collect that would otherwise finance the pursuit of truth and justice through a litigation process.
5. The ability for surviving family members of a victim of wrongful death to get their day in court is a fundamental aspect of a democracy. Nothing gets the truth out like the court procedural process on the public record. The government self-investigation offices, bureaus, boards, tribunals, and commissions at best are incomplete and flawed and are at worst investigation theatre by design. When a human life has worth under the law, and an incident of wrongful act causing death has been recognized as having merit, a lawyer is able to take the case on a contingency basis. This allows access to justice regardless of the family's socio-economic status. Presently, legal professionals do not have the legislative framework to help these families and fight to enforce these critical human rights.
6. Newton's third law states: For every action, there is an equal (in size) and opposite (in direction) reaction. The same is true for the impact on a family when their loved one has been wrongfully killed. Beyond the grief, when truth and accountability are denied, there is a burning sense of injustice. The pursuit of truth and justice is inextricably linked to the grieving process. When that process is denied, you deny the victim dignity and the surviving family members their humanity. The trauma and injustice by the wrongful act has a rippling effect. Under the present law, these damages are referred to as "non-pecuniary" or "non-economic", and they are excluded from the current *Family Compensation Act*. The fact is, these damages are *immeasurably* economic in their impact on surviving family members. Time off work, loss of income, loss of opportunity cost for business owners and the self-employed, potential layoffs, career changes, strain on marriages and other relationships—the impact is unquantifiable. This is why other jurisdictions have a "non-pecuniary" class of

damages arising from the survivor's loss of the decedent's love, guidance, care, companionship, and affection, proportional to the relationship that existed between the survivor and the decedent prior to the decedent's death. This is the equal foundation that would allow us to distinctly value every human life, which is otherwise missing in the province of BC. The financial impact must be redistributed from the wrongdoer to the victim and, in instances of wrongful death, the surviving family members. This financial penalty is a deterrent mechanism that is sadly lacking in our province.

7. Human rights in this province simply DO NOT exist when human life is worth nothing. Any claim of protecting human rights by the government under this current legislative framework is at best an illusion and at worst a fraud. The smallest minority in the world is the individual. A government that does not enshrine legislative protections for the rights of the individual cannot claim to be a defender of other larger minority groups. The only reason the population consents to government existing is for said government to protect the life, liberty, and property of the individual in a geographical area. The BC provincial government is failing the public in one of its primary core functions.
8. The BC NDP have released a statement that there are "diverging views" with respect to the value of human life in this province. We understand that many of these archaic and perverse diverging views come from ICBC and the Healthcare Protection Program/Risk Management Branch/Ministry of Finance. However, we would point out that insurance is supposed to be for the benefit of victims. It is not supposed to be a government make-work program. It is also the duty of the insurer to prevent injury and wrongful death in the first place, by weeding out bad apples, and preventing human factors that contribute to negligence and wrongful acts.
9. In BC, our public insurers are not only politically obstructing access to justice for surviving family members of the wrongfully killed, but they continue to remain in doing a very poor job at promoting safety standards and protocols. When it's free to kill, there is no financial incentive for root cause prevention. This is basic economics that every other provincial jurisdiction in Canada and most developed nations around the world have already figured out.
10. If we do not modernize these laws to allow for access to justice for families, and incentivize safer systems through financial accountability and root cause prevention, this province is doomed to be recognized as an international failed jurisdiction for human rights, safety, and standards of care. The question shouldn't be, how much might it cost the government to modernize these colonial era laws, but how much will it cost the government to NOT modernize?
11. BC taxpayers subsidize physicians' Canadian Medical Protective Association insurance fees to the tune of at least 50%, yet we are not afforded the same legislative protections and access to justice as all of the other provinces are. How is this fair to the public?
12. The citizens of BC have been paying the highest in automotive insurance in the country to a crown corporate monopoly that has nearly double the workforce as any private insurer of the same customer base size. Yet we are not afforded the same legislated protections and access

to justice and damages when our loved ones are wrongfully killed on the roads in this province. How is this fair to the public?

13. Our corresponding 'Wrongful Death Accountability Act Briefing Note' contains our Society's drafted legislation. This legislation has cherry-picked the best aspects from each of the provinces across Canada. It is legislation that favours the victim and not the wrongdoer, as our current primitive legislation does now. It closes all of the loopholes for wrongdoers to escape accountability. It is legislation that could allow us to set an example in Canada for human rights, rather than merely playing a pathetic game of catchup. It will finally ensure that the government provides legislative protections, value, and dignity for its citizens under the law. It will incentivize our insurers to promote higher standards and stricter protocols for safety across both the public and private sectors. It will actually provide financial deterrence to prevent wrongful deaths in the first place. It will save lives. There is a 'cost-containment' aspect when lives are saved that our public insurers and bureaucrats must distinctly recognize.
14. This legislation is ready to go and can be tabled in the next legislative session. We can get this critical human rights work done right now, instead of waiting yet another 4 more years, as your government has done in their past term, and previous governments have failed to undertake in their respective terms.

Call to Action:

1. MLA/Minister, what are you personally going to do to make sure that BC is a province where human life is protected and dignified under the law, instead of cast aside as worthless?
2. MLA/Minister, what are you going to do to save lives in this province, so your constituents who've fallen through the cracks won't be needlessly killed?
3. MLA/Minister, what are you going to do to ensure our institutions, roadways, and other systems in BC are adequately incentivized through a framework of legislated protections to make our province safer and prevent wrongful deaths in the first place?

How ICBC No-Fault Fails British Columbians in Cases Wrongful Death and Continues to Allow Wrongdoers to Escape Accountability

(Updated January 30, 2021)

ICBC has stated the following with respect to how wrongful deaths are dealt with under the new legislation and regulations:

"The final benefit amounts under Enhanced Care, launching May 1, 2021, still need to be confirmed in regulations. Government has issued an intentions paper which includes a section that lays out the death benefits under the current system and the benefits that are proposed for Enhanced Care as follows:

Death Benefits		
■ Spouse (calculated on deceased's age and annual income)	\$60,000 - \$500,000	\$30,000
■ Dependant (based on age of surviving dependant)	\$30,000 - \$60,000	\$6,000 each
■ Dependant with disabilities (based on age of surviving dependant and in addition to the dependant benefit noted above)	\$28,000	N/A
■ Non-dependant child or parent (if no spouse/dependants)	\$14,000	N/A
Funeral expenses	\$7,500	\$7,500
Grief counselling – NEW	\$3,500	N/A

"The new grief counselling benefit under Enhanced Care will help pay counselling expenses for grieving family members and loved ones.

"The Enhanced Care legislation (Bill 11, s. 159) also states that subject to regulations, 'if a deceased has no spouse and no dependant on the day the deceased dies, each child and parent of the deceased is entitled to a lump sum death benefit in the prescribed amount.'

"This means if there is no spouse or dependent children, but there are adult children or parents, they will receive the death benefits set out in regulation."

Here are the problems that our Society has identified with this No-Fault legislation specifically in conjunction with the current *Family Compensation Act* legislative framework:

First off, referring to "No-Fault" as "Enhanced Care Coverage" is essentially Orwellian doublespeak, and is an insult to the intelligence of the average person. This is a pure No-Fault system that provides complete legal immunity to ICBC and places the individual entirely subordinate to the administrative bureaucracy of this crown corporation.

Secondly, when someone is injured or killed by a negligent or reckless individual/entity, they should be entitled to sue for "damages". Under No-Fault, you can no longer sue. The "damages" are now called "benefits". "Damages" are set by the courts by case law. "Benefits" are set out in a prescribed meat chart by bureaucrats as if British Columbians are livestock.

Allow us to illustrate this using the Chelsea James scenario - <https://intheirname.ca/our-stories/chelsea/>

Synopsis

Chelsea was on a party bus with a faulty door that had previously failed inspection numerous times. Somehow it recently passed inspection despite its history of failing. The door had no safety latches, would open randomly while the vehicle was in motion, and all previous repairs to the door were done incorrectly and with the wrong parts. The passengers the night of her death warned the driver about the faulty door before they left and the driver ignored the issue. The driver when approaching the destination took a hard-left turn. Chelsea fell down the stairwell while the vehicle was in motion, the faulty door opened, and she fell through the door and was run over by the bus. She died instantly.

Under the pre-No-Fault ICBC model:

Chelsea's family was entitled to \$7,500 in funeral expenses. That was it. No access to justice, or accountability to the negligent wrongdoers.

If we take this same situation and apply a variation of another province's legal framework, say Ontario, this is how it would have played out:

While Ontario has provisions of No-Fault under their insurance system, the James family could have still brought forth an "At-Fault" wrongful death claim and sued the driver (ICBC), the company (private liability insurance), the CVSE inspector who passed it (private liability insurance), and the CVSE / provincial government (self-insured). The top case law verdict in Ontario for loss of companionship damages was previously set at \$125,000 per surviving immediate family member claimant. For illustration purposes, a median amount would have been \$140,000 loss of companionship damages for both parents and, say, \$50,000 for Chelsea's brother, and her two living grandparents at a combined \$70,000. The total loss of companionship damages available would have been potentially in the ballpark of \$260,000. For reference, the Supreme Court of Canada has established the top verdict for loss of companionship damages at \$500,000.

Regarding punitive and exemplary damages, the Supreme Court of Canada has upheld this at the \$1M mark. Let's just say that Chelsea's case went before a jury trial, and they assessed a financial penalty of another \$100,000 based on the egregious conduct of the driver having been told about the faulty door before they all left, the company knowing about the faulty door, and the CVSE approved inspector passing it, when it had previously failed. Accordingly, the total damages could potentially be \$360,000 + funeral costs + trial costs.

This would have been likely spread across the insurance of all negligent parties involved. This would have set a precedent to ensure people and entities don't conduct this type of gross negligence in the future. This would save lives and accordingly it would save costs over the long term.

How ICBC No-Fault Fails British Columbians in Cases Wrongful Death and Continues to Allow Wrongdoers to Escape Accountability

Under the new ICBC No-Fault model this is how it would play out:

There would be no ability to sue anyone to obtain any accountability. ICBC would pull out their No-Fault meat chart and pay a "benefit" of \$28,000 to Chelsea's parents, \$14,000 to Chelsea's brother, \$7,500 for the funeral, and \$3,500 for "grief counselling" to help the family "get over it". Total amount of "benefits": \$53,000. Zero access to justice for the family, or accountability for wrongdoers. Zero financial deterrence for the wrongdoers and others in the industry to not make the same negligent and reckless mistakes in the future.

Why does ICBC continue to lobby the government to limit access to justice and the rights of victims, and their surviving family members?

It is known that ICBC was intimately involved in blocking the 2011 Private Member's Bill brought forward by MLA Ralph Sultan to modernize BC's wrongful death laws. ICBC had closed door meetings with the Liberal Cabinet and provided reports and figures that have been withheld from public scrutiny. We suspect similar discussions have been actively taking place with the current NDP government.

Contrary to popular belief, ICBC doesn't have merely an accounting problem, despite what Ernst & Young may have suggested in their previous reports. The fact is that ICBC has nearly double the workforce as any private insurer of the same customer base size. The crown corporation conducts numerous bureaucratic administrative functions that should otherwise be undertaken by the provincial government. ICBC could never compete in a private free market system, as it is not structured in its workforce operations; it has limited focus on root cause prevention; it is not innovative in its insurance products, services, and delivery; and it has a very poor customer service record.

ICBC is threatened by the modernization of the province's wrongful death laws, as it further exposes the mismanagement of this crown corporate bureaucracy by both its executive and government, when compared to other jurisdictions across Canada and internationally. The provincial government is threatened as it would expose the administrative functions conducted by ICBC that it should otherwise be responsible for. The Healthcare Protection Program / Risk Management Branch / Ministry of Finance is threatened, as they perform in a culture of coverup with limited root cause prevention analysis.

In the alternative, many independent non-profit public advocacy groups, such as the Canadian Taxpayers Federation, The BC Libertarian Party, and several other independent business trade associations have proposed to convert ICBC to a member-owned co-op and return driver licensing and road safety to the provincial government. ICBC, as a member-owned co-op, would be required to compete in the free market with other private insurers to allow for innovation and competitive rates in a market system.

A market insurance system would free up our legislators to work in the interests of the public in focusing on protecting human life by enshrining legislative protections into law, within the scope of driver licensing and road safety. This would allow insurers to adapt accordingly, thus incentivizing safer standards and protocols to prevent wrongful death in the first place, while keeping rates competitive. These fresh ideas have been greatly resonating with the public and continue to rapidly flourish.

(Updated January 30, 2021)

Modernizing and Reforming British Columbia’s Wrongful Death Law

Introduction

There is a cultural norm in Canada that every single person is equal under the law of the land. In fact, this view is enshrined in the *Charter of Rights and Freedoms*: “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits by law as can be demonstrably justified in a free and democratic society.” This is a promised principle in the highest legal document of the land. Despite this, British Columbia’s outdated wrongful death laws leave many worthless under the law.

Recommended Changes

The *BC Wrongful Death Law Reform Society* has prepared draft legislation that the Society encourages the current government to review and introduce in this term of its mandate.

The *Wrongful Death Accountability Act* would be a major advancement over the current system, ensuring access to justice, accountability, and compensation in British Columbia for the surviving family members of those wrongfully killed. This drafted legislation broadens the law to surviving victims who are routinely excluded, such as seniors, people with disabilities, minors, and anyone who does not meet the discriminatory criteria of having both an income and dependents.

The attached appendices outline the key aspects of the legislative reform as well as the drafted legislation itself.

Facts

British Columbia’s legal framework around wrongful death has not significantly changed since the adoption of Lord Campbell’s Act in 1846, including the current *Family Compensation Act*. Under the current law, only the financial dependents of familial income earners may bring a meaningful claim for damages against the wrongdoer who caused the death. This is deeply contrary to Canadian values because it leaves surviving family members believing that the love, companionship, and non-pecuniary contributions of their loved ones, although victims of

wrongful death, have no worth under the law. According to the *BC Wrongful Death Law Reform Society*, is that it is “cheaper for a defendant to kill someone than to merely injure them.”

Currently, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Quebec, Prince Edward Island, Newfoundland, and the Yukon allow for non-economic (non-pecuniary) damages relating to loss of love, guidance, care, companionship, and affection in which to provide a foundational value of human life. Alberta, Saskatchewan, and New Brunswick go a step further in allowing for punitive damages as a further penalty available for wrongdoers in cases of egregious circumstances.

The *BC Wrongful Death Law Reform Society* has selected the best aspects of wrongful death legislation from across Canada and composed these aspects into the drafted *Wrongful Death Accountability Act* that will set a precedent as the leading province in Canada for legislated protection of human life, value, and dignity under the law.

Why Does It Matter?

Imagine that you have just lost your child, parent, or your sibling as a result of a motor vehicle crash or avoidable medical error in a hospital. Much more than mere grief, there will be a burning sense of injustice. Then picture going to a legal professional expecting the law will provide a way to right the wrong. But the lawyer tells you that the law in BC provides no practical recourse. You don’t believe the lawyer so you go to another and then another. You get the same reply and begin to feel doubly wronged.

Stories

Catherine Adamson lost her 17-year-old daughter Heidi Klompas in 1997 as a result of a series of preventable medical errors following having been run over by a drunk driver. Catherine said, “Heidi and her friends, along with at least a hundred other teenagers from a variety of high schools, congregated in south Langley. And then, one of the friends from high school ended up driving his car at quite a speed through the crowd of teenagers. He struck about 17 or 18 teens, killed Ashley Reber instantly, and Heidi and a number of her friends were lying on the road with a variety of broken bones.”

Adamson said that “a sense of justice is proof that someone did something wrong causing a death—and somebody either admitting and apologizing for it or a judge saying you are guilty of, you know, negligence causing death. And we had nothing of that sort. I had correspondence back and forth with the College of Physicians and Surgeons and they just denied there was any wrongdoing, even though the coroner’s report and the Children’s Commission report clearly showed that doctors had made errors, there was no admittance of guilt and there was certainly no apology.”

Nineteen years following the death of Heidi, Catherine was shocked to meet another mother, Lorie Kean, whose 16-year-old daughter, Lindsey Kean, was killed under very similar circumstances. Lindsey was struck by a motorist as she was crossing the street. She survived her injuries, but did not have her broken leg reset in a timely fashion, which lead to Fat Embolism Syndrome. She became comatose and died a few weeks later as a result. This is one of the exact same preventable medical errors that lead to the death of Heidi Klompas.

The *BC Wrongful Death Law Reform Society* is actively curating stories on its website involving wrongful death where the surviving families were denied access to justice and accountability - <https://intheirname.ca/stories/>

Arguably, without financial penalty for negligence and wrongdoing, a critical deterrent mechanism is missing in the province of British Columbia, that would otherwise make our province much safer.

Family Compensation Act Amendment

In June of 2007, the Ministry of Attorney General Justice Services Branch released a green paper outlining the need for reform of the *Family Compensation Act*. This paper outlined the necessary reforms identified at that time under the previous provincial government. The Civil and Family Law Policy Office wrote this paper and said that the act is “legislation intended to minimize the economic impact on the lives of people who are financially dependent on a family member that has been wrongfully killed.” While this is certainly the case, leading advocates for a wrongful death act would argue that the act should change the eligible claimants to include those under

legal age, seniors, and people with disabilities. This paper rightfully points out that the average person cannot look at the Act to determine what to expect.

Amounts Specified by the <i>Family Compensation Act</i>	
Pros	Cons
<ul style="list-style-type: none"> • Symbolic function of recognition of loss • Allows for greater degree of certainty • Efficient and administratively simpler • Avoids putting emotional pain on trial, which may support the healing process 	<ul style="list-style-type: none"> • If amount is too low, it may be perceived as insulting • Fails to take individual circumstances into account • Amount must be indexed, or periodic reviews must be done, to avoid a decrease in amount over time

**Source: Ministry of Attorney General Justice Services Branch, Civil and Family Law Policy Office, Reforming British Columbia’s Family Compensation Act, June 2007*

In Conclusion

Many have argued that the existing *Family Compensation Act* not only is a century out of touch with the modern standards of valuing human life but also insults the dignity of the individual. This is why the *BC Wrongful Death Law Reform Society* is advocating to entirely replace the condescendingly named *Family Compensation Act* with the *Wrongful Death Accountability Act*, titled in the spirit of the intention of families to hold wrongdoers accountable and ideally ensure the same wrongful actions do not happen to another. A new Wrongful Death Act will provide British Columbians with clearly worded legislation that makes available more adequate compensation and sets out the rights of citizens. Its passage would improve access to justice in the province. According to the Society, this drafted legislation “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, this change ensures that everyone in society is valued under the law in the case of a wrongful death.

Appendix A – The Key Components of What a New Wrongful Death Act Must Include

1. All reasonable expenses necessarily incurred by any named survivor for medical services, nursing services, hospital services, burial & memorial services, as well as travel & accommodation expenses rendered for the decedent as a result of the wrong;
2. The present value of future income, benefits, or other pecuniary support owing to or anticipated to have been received by a named survivor from a decedent, including but not limited to:
 - a. The loss of financial support reasonably expected to have been provided had the decedent lived;
 - b. The loss of household services reasonably expected to have been provided had the decedent lived;
 - c. The loss of child support, spousal support, alimony, or any other financial obligations owing from the decedent to the survivor, whether embodied in an order of court or otherwise; and/or
 - d. The loss of reasonable contributions to the future educational expenses of any survivor;
 - e. All other reasonable pecuniary losses incurred by the survivor arising from the death of the decedent;
3. Reasonable non-pecuniary losses arising from the survivor’s loss of the decedent’s love, guidance, care, companionship, and affection, proportional to the relationship that existed between the survivor and the decedent prior to the decedent’s death. A close relationship is presumed for spouse, parents, children, and siblings. *(This is the class of damages that enshrines a foundation of human value equally under the law, based on the surviving family members who were wrongfully deprived of their loved one’s life.)*
4. Punitive damages may be awarded in appropriate cases of egregious misconduct, but if the damages are awarded, they are for the benefit of the estate of the decedent. *(This is a financial penalty for when a wrongdoer maliciously or recklessly kills another person and insults the courts’ general sense of decency.)*
5. If a cause of action survives, damages that resulted in actual financial loss to the decedent or the decedent’s estate are recoverable. All reasonable losses arising from the decedent’s conscious pain, suffering, and disability during the period between the wrong and the decedent’s death, including damages for loss of expectation of life, pain and suffering, physical disfigurement, or loss of amenities. *(This is so that when, for example, a senior*

is a victim of a wrongful act, and initially survives the event, that there is no perverse incentive for the wrongdoer to delay or prolong litigation, waiting for the senior to perhaps die of related, or other causes, which would otherwise result in expungement of non-pecuniary damages from the claim. The death of a claimant should not be a windfall for wrongdoers.)

6. There should be no caps on compensation and it should be left to the discretion of the courts based on case law. *(The BC Wrongful Death Law Reform Society believes caps on compensation become entitlement windfalls, rather than discretionary recognition of the distinct value of the individual life wrongfully taken. Further, when caps are implemented, then the legislation must continually be revisited to account for inflation, adding a further unnecessary legislative burden. This can be handled at the discretion of the courts, just as inflation has increased the rough upper limit on non-pecuniary damages set by the Supreme Court of Canada several decades ago.)*

Appendix B – BC Wrongful Death Law Reform Society’s drafted legislation as written in 2015 (updated in 2021).

WRONGFUL DEATH ACCOUNTABILITY ACT
Proposed Legislation – 2015 (updated 2021)

Contents

- 1 Definitions*
- 2 Actions for Wrongful Death – Scope*
- 3 Action to be prosecuted on Behalf of Decedent’s Estate – Time Limits*
- 4 Types of Damages Recoverable by Decedent’s Estate*
- 5 Claims of Decedent’s Estate and Beneficiaries to be Consolidated – Notice*
- 6 Time Period for Beneficiaries to Join Estate’s Action – Effect of Failure to Join*
- 7 Types of Damages Recoverable by Decedent’s Beneficiaries*
- 8 Double Counting of Estate and Beneficiary Damages to be Avoided*
- 9 Wrongdoer Doesn’t Obtain Benefit of Other Decedent Coverages*
- 10 Beneficiaries’ Share of Damage Award to be Paid upon Entry of Judgment*
- 11 Estate’s Share of Damage Award to be Paid into Registry Pending Disposition of Estate*
- 12 Priority Disposition of Estate’s Share of Damage Award to Creditors of Decedent’s Estate – Procedure*
- 13 Residual Disposition of Estate’s Share of Damage Award – Procedure*
- 14 Application of Health Care Costs Recovery Act to Wrongful Death Claims*

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 decedent for maintenance or support.

“spouse” for the purposes of this Act

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and has done so for a continuous period of at least 2 years

“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 whose negligent or wrongful act or omission causes or contributes to a death, and
- (b) Any person, partnership, corporation, or other legal entity responsible at law for the acts or omissions of a person referred to in paragraph (a)

“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 If there is no executor or administrator of the estate of the decedent or, there being an executor or administrator, no action is brought by them, within six months after the death of the decedent, an action may be brought by and in the name or names of any one or more of the persons for whose benefit the action would have been brought if it had been brought by the 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.

Wrongdoer Doesn’t Obtain Benefit of Other Decedent Coverages

9 In assessing damages in an action brought under this Act there shall not be taken into account,

(a) any sum paid or payable on the death of the decedent under any contract of insurance or assurance, whether made before or after the coming into force of this Act;

(b) any premium that would have been payable in future under any contract of insurance or assurance if the decedent had survived;

(c) any benefit or right to benefits, resulting from the death of the decedent under the Workers’ Compensation Act, the Social Assistance Act, or the Children’s Act, or under any other Act that is enacted by any legislature, parliament or other legislative authority and that is of similar import or effect;

(d) any pension, annuity, or other periodical allowance accruing payable because of the death of the decedent; and

(e) any amount that may be recovered under any statutory provision creating a special right to bring an action for the benefit of persons for whose benefit an action may be brought under this Act.

Beneficiaries’ Share of Damage Award to be Paid upon Entry of Judgment

10 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

11 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 12 and 13 of this Act.

Priority Disposition of Estate’s Share of Damage Award to Creditors of Decedent’s Estate – Procedure

12 (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

13 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) 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

14 (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 10 above.