

Wrongful Death Legislation Across Canada: Verified Findings

A Report by the BC Wrongful Death Law Reform Society

This report presents findings from the Society's ongoing research into wrongful death legislation across Canada, verified against primary sources — current consolidated statutes, reported case law, and government documents. It identifies gaps and errors in the BC Ministry of Attorney General's own comparative research (MAG-2023-32966) and confirms new precedent supporting the Society's proposed Wrongful Death Accountability Act.

The Wrongful Death Accountability Act: Six Core Tenets

The BC Wrongful Death Law Reform Society has proposed the *Wrongful Death Accountability Act (WDAA)* to replace British Columbia's *Family Compensation Act* — a law that dates in substance to 1846 and that the Society, along with families across the province, considers no longer fit to reflect the value of a human life. The proposed Act is built on six core tenets, drawn from the strongest existing provisions found across Canadian provinces and territories:

- 1. Recovery of reasonable expenses.** All reasonable expenses necessarily incurred by a survivor for medical, nursing, and hospital services, burial and memorial services, and travel and accommodation, arising from the wrong.
- 2. Recovery of lost pecuniary support.** The present value of future income, benefits, or other pecuniary support a survivor would have received from the decedent — including lost financial support, lost household services, lost child or spousal support obligations, lost contributions to future education, and other reasonable pecuniary losses.
- 3. Non-pecuniary damages for loss of relationship.** Reasonable damages for a survivor's loss of the decedent's love, guidance, care, companionship, and affection, proportional to the relationship — with a presumption of a close relationship for spouses, parents, children, siblings, grandparents, and grandchildren.
- 4. Punitive damages to the estate.** In cases of egregious misconduct, punitive damages may be awarded, payable for the benefit of the decedent's estate — a financial penalty for malicious or reckless conduct causing death.
- 5. Survivability of the decedent's own claim.** Where a cause of action survives, damages for the decedent's own financial loss, and for conscious pain, suffering, and disability between the wrong and death, remain recoverable — so that a wrongdoer cannot benefit from delaying litigation until the victim dies of the injury or unrelated causes.
- 6. No statutory caps on compensation.** Compensation should be left to the discretion of the courts, guided by case law, rather than fixed by statutory caps that become entitlement ceilings and require ongoing legislative revision to keep pace with inflation.

1. Top Finding: Ontario Confirms Tenet #5 Alongside Quebec

Ontario and Quebec permit survivability of pain and suffering damages. Trustee Act, RSO 1990, c T.23, s.38: the estate of a deceased person may bring an action for all torts or injuries to the person the deceased could have brought, including pre-death pain, suffering, and medical expenses.

The Ministry's own comparison table appears to not address survivability of conscious pain and suffering as a category for any jurisdiction it covers. Verification against the current Trustee Act closes that gap for Ontario and confirms it as a primary Canadian jurisdiction supporting Tenet #5. Ontario reaches this result through a different, well-established legal mechanism than Quebec — general survival-of-actions under the Trustee Act, rather than a purpose-built bereavement statute — which strengthens the underlying point: multiple legislative approaches across Canada already converge on the principle the Society is asking BC to adopt.

Two Canadian provinces — Ontario and Quebec — already reject the rule that a wrongdoer benefits if an injured victim dies before trial. The Ministry's own comparative research has appeared to overlook this.

2. Quebec: The Ministry's Table Omits It Entirely, and the Full Picture Requires Two Tracks

Quebec is the only Canadian jurisdiction missing from the Ministry's comparison table — no data is provided for any category. A complete and accurate account of Quebec's law requires distinguishing between two separate legal regimes, depending on the cause of death:

- Non-vehicle deaths (medical malpractice, violence, workplace incidents, etc.): governed by the general Civil Code (arts. 1457, 1607 C.C.Q.). Heirs inherit the deceased's own cause of action for pain, suffering, and diminished quality of life (*Augustus v Gosset*, [1996] 3 SCR 268; *de Montigny v Brossard* (Succession), 2010 SCC 51). There is no time cutoff.
- Motor vehicle deaths: governed instead by the no-fault Automobile Insurance Act, CQLR c A-25. Ordinary lawsuits are barred entirely. Families receive only the SAAQ's fixed schedule of compensation, which does include a 24-hour minimum survival for the pain-and-suffering-type indemnity (ss.74–75).

Both statements are independently true and neither alone gives an accurate account of Quebec law. Presenting Quebec's position with both tracks — rather than a single rule — is a sharper illustration of how fragmented Canadian wrongful death law is across the provinces, which supports the broader case for reform.

3. No Statutory Caps Outside the Western Provinces

Tenet #6 of the proposed Act — leaving compensation to judicial discretion rather than fixed statutory caps — is already the norm in most of Canada. Only three provinces, all in Western Canada, impose fixed statutory caps on non-pecuniary companionship damages: Alberta, Saskatchewan, and Manitoba. Every other province leaves the amount to judicial discretion guided by case law — Ontario, Quebec, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island have no fixed formula, and New Brunswick's damages, while informed by a consistent case-law range, are not set by statutory formula either. Yukon is the one exception among the territories, having moved to a fixed statutory scheme by a 2014 amendment. The pattern supports the Society's position: statutory caps are the regional exception in Canadian wrongful death law, not the rule.

4. Other Verified Findings, Citation-Ready

- Alberta — punitive damages: available since *Steinkrauss v Afridi*, 2013 ABCA 417, as clarified by 2014 ABCA 14. The Ministry's table states punitive damages are unavailable in Alberta — this is incorrect.
- Alberta — the Ministry's table cites bereavement damages of \$75,000/\$75,000/\$45,000, which are the pre-2013 amounts. Current figures (Fatal Accidents Act s.8, amounts effective for deaths on or after May 1, 2013): \$82,000 spouse/adult interdependent partner, \$82,000 parent(s) divided equally, \$49,000 per child.
- Manitoba — the Ministry's table does not reflect Manitoba's two-tier companionship-damages structure. Fatal Accidents Act s.3.1 sets \$30,000 for spouse/common-law partner/support recipient/parent/child, and \$10,000 for other eligible family members (siblings, grandparents, etc.), both inflation-indexed since 2002.
- New Brunswick — the s.17 punitive-damages-to-the-estate model is confirmed and is a strong direct precedent for the Society's own Tenet #4 language.
- Yukon — the Ministry's table does not reflect a 2014 wrongful death legislative modernization (in force April 24, 2014) that introduced fixed bereavement damages: \$75,000 spouse, \$37,500 per parent (or \$75,000 for one parent), \$45,000 per child.
- Saskatchewan — the Ministry's table states punitive damages are unavailable. The law is genuinely unsettled rather than settled: two trial-level decisions contain inconclusive dicta arguably supporting punitive damages. The Ministry's flat “No” overstates the certainty of the law; this should be framed as an open question, not presented as a reversal.

5. Full Jurisdiction-by-Jurisdiction Summary

Jurisdiction	Significance	Key finding
Ontario	TOP FINDING — strengthens Tenet #5	Trustee Act s.38: the estate may recover the deceased's pre-death pain, suffering, and medical expenses. Only “loss of expectation of life” and damages “for the death” are barred. The Ministry's comparison table does not address this category for any jurisdiction. Ontario is confirmed as a second jurisdiction, alongside Quebec, supporting Tenet #5.
Quebec	HIGH — two regimes, not one	Omitted from the Ministry's table entirely. Two distinct regimes apply: the no-fault Automobile Insurance Act (SAAQ) bars ordinary lawsuits for car-accident deaths and applies a 24-hour cutoff to its fixed indemnity; the general Civil Code (arts. 1457, 1607; <i>Augustus v Gosset</i>) applies to non-vehicle deaths and has no time cutoff.
Alberta	HIGH — two findings	Punitive damages confirmed available (<i>Steinkrauss v Afridi</i> , 2013 ABCA 417, clarified 2014 ABCA 14) — the Ministry's table says “No.” Ministry's bereavement figures (\$75k/\$75k/\$45k) are pre-2013 and outdated; current figures (since May 2013) are \$82,000 spouse, \$82,000 parents, \$49,000/child.
Manitoba	MEDIUM	Ministry's table does not reflect the two-tier structure: FAA s.3.1 sets \$30,000 for spouse/common-law partner/support recipient/parent/child, and only \$10,000 for other family members (siblings, grandparents), both inflation-indexed since 2002.
Yukon	HIGH — confirmatory	Ministry's table does not reflect a 2014 wrongful death law legislative modernization (in force Apr 24, 2014) that introduced fixed bereavement damages: \$75,000 spouse, \$37,500/parent (\$75,000 if one parent), \$45,000/child — also the one territory to impose a fixed cap, alongside AB, SK, and MB (see Section 3).
Saskatchewan	MEDIUM — confirmatory	Ministry's table states punitive damages are unavailable. The law is genuinely unsettled — two trial-level decisions contain inconclusive dicta only — which the Ministry's flat “No” overstates as settled.
New Brunswick	Confirmed, no gaps found	FAA s.10 companionship damages limited to parents of a deceased minor/dependent child only. Punitive damages under s.17 confirmed exactly as the Society's research describes — a strong direct precedent for Tenet #4.
Nova Scotia	Confirmed, no gaps found	Claimants: spouse/children/grandchildren/parents/grandparents only, no siblings. No damages cap. Punitive damages rejected by courts (<i>Rowe v Brown</i> , 2008 NSSC 13).
Newfoundland & Labrador	Confirmed, no gaps found	Claimants limited to spouse/partner/parent/child, no siblings. No fixed damages formula.
PEI	Confirmed, no gaps found	Broad “dependant” definition confirmed (divorced spouses, 3+ year dependants). Punitive damages status genuinely unresolved.
NWT	Confirmed, no gaps found	FAA RSNWT 1988 c F-3: claimants limited to spouse/parent/child (parent/child statutorily include grandparents/grandchildren). No bereavement/companionship provision exists in the Act at all.
BC	Confirmed, no gaps found	Family Compensation Act, RSBC 1996 c 126, ss.2-3: spouse/parent/child only, no bereavement/companionship damages, no siblings.

Conclusion

Canadian wrongful death law already recognizes, in various forms and across various provinces, every principle embodied in the Society's drafted *Wrongful Death Accountability Act*: recovery of survivors' expenses and lost support (nearly universal); non-pecuniary damages for loss of relationship (a majority of provinces); punitive damages payable to the estate; survivability of the decedent's own claim, including pain and suffering (Ontario and Quebec); and judicial discretion rather than statutory caps (the norm outside the three western provinces). The Ministry of Attorney General's own comparative research has both overlooked confirming jurisdictions and omitted others entirely. The Society urges the Ministry to correct its research accordingly, and to proceed with modernizing the *Family Compensation Act* on the basis of a complete and accurate picture of the law across Canada.