NR12 Updating BC's Wrongful Death Law – BC Government Response

As noted in the UBCM resolution, the Honourable David Eby, BC's Attorney General, has stated that the provincial government will address concerns with the *Family Compensation Act* and the lack of compensation for individuals who are not employed within the current term of government.

At this time, we can confirm that staff have been assigned to the project and are looking at addressing both compensation and accountability as issues when there are allegations of wrongful death.

2017/18 ESTIMATES NOTE — Family Compensation Act

Suggested Response:

- Government is aware that the *Family Compensation Act* (FCA) does not allow for bereavement damages (non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- The costs of reforms to include bereavement damages will be significant, as government and ICBC are always defendants in FCA claims.
- Government is not looking at reforms to the FCA at the present time.

Background:

Features of the FCA

- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is B.C.'s wrongful death legislation.
- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a low amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.[1]

Other Canadian Jurisdictions

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada.
  - Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.

[1] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

- o Legislation in Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants.
- o Legislation in B.C., Northwest Territories and Nunavut do not include bereavement damages.

Stakeholder History

- The Ministry published a green paper in June 2007 on reforming the FCA. The responses to the green paper yielded uncompromising and opposing policy positions from stakeholders on the scope of reforms. Plaintiff organizations advocated for far-reaching reforms, while defendants, including ICBC and government stakeholders, voiced concerns with the financial impacts of reforms.
- Changes to the FCA have been called for since the 1980s. There are a number of organized and vocal stakeholders who are lobbying for reforms to the FCA who have been critical of government's inaction since the 2007 green paper. These groups include the Trial Lawyers Association of BC (TLABC), the Coalition Against No-Fault Insurance (CANF), the BC Coalition of People with Disabilities, the Wrongful Death Law Reform Society of BC (also known as "In Their Name," and is affiliated with TLABC and CANF. "In Their Name" is a campaign led by families and friends who could not access a remedy under the FCA following the death of a loved one who was wrongfully killed), and the Canadian Bar Association, BC Branch (CBABC).
- The TLABC has proposed a variety of reforms over the years. Most recently the proposal has been to adopt a far-reaching approach based on a compilation of different US state laws, with a focus on the loss to the deceased's estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on the deceased for financial or non-economic losses (such as ex-spouses or anyone reliant on the deceased for support). It also includes punitive damages.
- In its 2012 and 2017 *Agenda for Justice* platform documents, the CBABC has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the Act. Previously plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps due to the fact that they were not far-reaching enough.

Contact: s. 19	Phone: s. 19	Mobile: s. 19

ISSUE NOTE

Issue:

- Reforms to the *Family Compensation Act*

Background:

1. At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The *Family Compensation Act* (*FCA*) is B.C.'s fatal accident legislation.

2. The key features of the *FCA* include:

Eligible claimants:

- The *FCA* permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.

Pecuniary damages:

- The *FCA* allows for damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the *FCA* does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a low amount is awarded to each child to address the loss of guidance, care and companionship of the parent.[1]

3. Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages (non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person), however, B.C. has not.

4. Changes to the *FCA* have been called for since the mid-1980s. Recently, the most vocal advocates for change have been the Trial Lawyers Association of B.C. (TLABC), and the

[1] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

Coalition Against No-Fault Insurance (CANF). The TLABC has issued several proposals for how it would like to see the law changed. Those changes are more extensive than any other jurisdiction in Canada.

5. In its 2012 and 2017 *Agenda for Justice* platform documents, the Canadian Bar Association, B.C. Branch has advocated for reforms to the *FCA* to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases. The concept of statutory caps is strongly opposed by the TLABC and CANF.

6. It is the contrast between the damages available when a person survives an accident caused by the wrongful act of another and those available when the victim is killed that forms the basis of the criticism of B.C.'s existing legislation. Actions by survivors can include claims for pecuniary and non-pecuniary damages, while actions by family members of a victim wrongfully killed can only claim for pecuniary damages.

7. The other criticism of the *FCA* is that because it only provides eligible claimants with pecuniary damages to compensate them for the loss of financial support (that they would have received from the deceased, had he or she survived), for many families who do not experience a loss of financial support there is little merit in pursuing a claim under the existing legislation.

8. The Ministry published a Green Paper in June 2007 on reforming the *FCA*. The responses to the Green Paper yielded uncompromising and opposing policy positions from stakeholders on the scope of reforms. Plaintiff organizations (such as TLABC and CANF) advocated for far-reaching reforms, while defendants, including ICBC, and government stakeholders, voiced concerns with the financial impacts of reforms.

s. 13

Decision required:

- **30 day issue:** Direction is required on whether to proceed with reforms to the *FCA* and on the scope of reforms.

Confidential

2023/24 ESTIMATES NOTE

Last updated: March 22, 2023

FAMILY COMPENSATION ACT

KEY MESSAGES:

- Grieving families need better support when there is a wrongful death.
- That's why we're working to update the *Family Compensation Act* to give families an opportunity to address the injustice they have faced.
- Our government has received a great deal of feedback on the existing *Family Compensation Act* (FCA).
- We have heard that the current legislation should be reformed to expand access to justice and benefits for families grieving the loss of a loved one due to the wrongful act of another.
- As the government and private insurers are usually the defendants in wrongful death cases, we must also ensure any increase in compensation for families is fair to rate payers and taxpayers.
- Grieving families need better support when there is a wrongful death, and that is why we are working to update the *Family Compensation Act* to give families an opportunity to address the injustice they have faced. My ministry continues to advance work on this important file.

FINANCES:

s. 12

BACKGROUND:

- The *Family Compensation Act* (FCA) permits spouses, parents, and children to sue a party that caused the death of a family member.
- The FCA only allows for pecuniary damages to be awarded to compensate financial loss suffered due to the death of a family member. Awards include lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- A recently filed *Charter* challenge contends that the classes of family members entitled to bring claims under the FCA are underinclusive, as they exclude claims by Indigenous siblings who have suffered a financial loss. It is further contended that this exclusion is inconsistent with the Province's obligations under the *Declaration on the Rights of Indigenous Peoples Act.*

- A key criticism of the FCA is that for families who do not experience a loss of financial support (for example if a dependent child or elderly parent dies) it is not financially worthwhile to pursue a claim under the existing legislation.

s. 12, s. 13

- Several advocacy groups, including "In Their Name" and the BC Wrongful Death Law Reform Society, continue to petition government to address the FCA's lack of non-pecuniary damages. They argue the FCA denies families the ability to get justice and deter negligence by others.
- While the FCA does not explicitly allow for bereavement damages, courts may award some non-pecuniary damages to minor children of deceased parents, to compensate for the loss of guidance, care, and companionship of the parent.
    - The conventional amount is $35,000, which is the rough upper limit awarded to minor children for the loss of a parent. The amount is adjusted based on factors like age and the level of involvement of the parent in the child's life.

s. 12

Contact: s. 19	Legal Counsel, Justice Services Branch	Mobile: s. 19

Ministry of Attorney General and Minister Responsible for Housing

2022/23 Estimates Debates Note

Last updated Date: May 9, 2022

FAMILY COMPENSATION ACT

KEY MESSAGES:

- Our government has received a great deal of feedback on the existing *Family Compensation Act* (FCA).
- We have heard that the current legislation should be reformed to expand access to justice and benefits for families who grieve the loss of a loved one due to the wrongful act of another.
- As the government and private insurers are usually the defendants in wrongful death cases, we must also ensure any increase in compensation available for families is fair to rate payers and taxpayers.
- Government is committed to reviewing the FCA and the wrongful death compensation framework in British Columbia during this term of government.

FINANCES:

s. 12

BACKGROUND:

- *In Their Name*, an advocacy group of families who have lost loved ones due to wrongful death have petitioned government to address FCA's lack of non-pecuniary damages which they find discriminatory and denies them the ability to "right the wrong and ensure that the same preventable actions which resulted in the wrongful death would not happen to another."

- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and stepparents) and children (including stepchildren and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- A key criticism of the FCA is that because it only provides eligible claimants with pecuniary damages to compensate them for the loss of financial support (that they would have received from the deceased, had they survived), for many families who do not experience a loss of financial support (for example if a minor child or elderly parent dies) it is not financially worthwhile to pursue a claim under the existing legislation.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a small amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.
    - The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

ICBC's Enhanced Care:

- If a fatality occurs due to a motor vehicle accident in B.C., eligible family members work with an ICBC claims adjustor who is legally obligated to assist claimants. Eligible family members receive the following entitlements:
    - $66,987 minimum to Spouse (up to $500,000 based on the decedent's income and age)
    - $31,187 to $60,000 – Lump Sum Payment to dependents

- Additional $29,306 if dependents have a disability
- $14,918 to each non-dependent child or parent (if there is no spouse or dependents)

Other Canadian Jurisdictions:

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada.
  - Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.

Contact: s. 19 Branch	Senior Policy Analyst, Justice Services	Mobile: s. 19 Tel:

MINISTRY OF ATTORNEY GENERAL
MINISTRY ISSUES NOTE

SUBJECT: Reform of *Family Compensation Act*/wrongful death law in BC

SUMMARY OF ISSUE:

- The existing *Family Compensation Act* is outdated and it is difficult for families to access compensation for the death of a loved one in the tort system. Further, the existing tort system largely prevents families of non-earning deceased people (children, seniors, stay at home parents) from being compensated for their loss.
- s. 13

BACKGROUND:

- In his previous role as Attorney General, Premier Eby committed publicly on multiple occasions to reviewing the Family Compensation Act during this term of government.
- Government receives regular correspondence from individuals who have encountered the limitations of the tort system in relation to the death of a family member.
- s. 12, s. 13
-
-
- s. 12

NEXT STEPS:

CONFIDENTIAL

- s. 14

ADM RESPONSIBLE:

s. 19	Assistant Deputy Minister	Justice Services Branch	s. 19

For Review: AG Media Request: B.C.'s Wrongful Death Law (Due Apr 6, 12pm)

- We understand the grief and the anger of families who have lost a loved one, and the importance of **accessing** justice and compensation when this loss is due to negligence.
- Our government has received a great deal of feedback on the existing *Family Compensation Act*, also known as "wrongful death legislation."
- We have heard that the current legislation is in need of reform to better support families in these difficult circumstances**.**
- **We understand that families want access to due process when their loved one is killed due to negligence and that this is not always possible under the existing law, which allows for economic damages but does not allow for damages for grief or suffering.**
- **Our government is looking at the entire legislative framework to ensure it's working for BC families, while considering the impacts on taxpayers as government is often the defendant in FCA cases.**
- The process of updating an Act takes time – it is necessary to undertake policy work; engage with impacted groups; develop an approach; draft legislation and finally obtain approval to introduce legislation into the legislature.
- Ministry staff are working through this process, and we are committed to completing the work during this term of government.

Deleted: at the beginning of this process

Ministry of Attorney General and Minister Responsible for Housing

2022/23 Estimates Debates Note

Last updated Date: March 10, 2022

FAMILY COMPENSATION ACT

KEY MESSAGES:

- Our government has received a great deal of feedback on the existing *Family Compensation Act* (FCA).
- We have heard that the current legislation should be reformed to expand access to justice and benefits for families who grieve the loss of a loved one due to the wrongful act of another.
- As the government and private insurers are the defendants in wrongful death cases, we must also ensure any increase in benefits available for families is fair to rate payers and taxpayers.
- Government is committed to reviewing the FCA and the wrongful death compensation framework in British Columbia during this term of government.

FINANCES:

s. 12

BACKGROUND:

- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.

Contact: s. 19	Tel: s. 19	Mobile: s. 19

- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- A key criticism of the FCA is that because it only provides eligible claimants with pecuniary damages to compensate them for the loss of financial support (that they would have received from the deceased, had they survived), for many families who do not experience a loss of financial support (for example if a minor child or elderly parent dies) there is little merit in pursuing a claim under the existing legislation.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a small amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.
    - The conventional amount is $35,000, which is the “rough upper limit” awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child’s life.

Other Canadian Jurisdictions

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada.
    - Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.

- **CROSS REFERENCE:** N/A

Contact: s. 19	Tel: s. 19	Mobile: s. 19

Family Compensation Act Law

Your email dated ~~October 23, 2019~~, addressed to the Honourable Selina Robinson, MLA for Coquitlam-Maillardville, requesting changes to British Columbia's wrongful death law, was referred to me. As the Minister responsible for the *Family Compensation Act*, I am pleased to respond.

I appreciate your call for change. I understand there is interest and diverging views on the *Family Compensation Act* as it currently exists, and my ministry welcomes feedback on possible reforms.

Thank you for writing.

Provide background from Ministry (Approved by JSB, ADM s. 19

- **Firstly, we want to express our condolences to the father in your story, for the loss of his son.**
- **Our government has received a great deal of feedback on the existing *Family Compensation Act*, also known as "wrongful death legislation."**
- **We understand there is interest in, and diverging views on, the Family Compensation Act as it currently exists.**
- **While the Ministry has done some work on the existing legislation, no final decisions have been made about reforming the Family Compensation Act.**
- **As always, the Ministry of the Attorney General welcomes feedback on possible reforms and encourages British Columbians to get in touch with the Ministry.**
- **ICBC will be providing further background on this issue in regards to your other questions.**

Request
From reporter: I am doing a story about a father who lost his son in a car accident, and how the Family Compensation Act Law in BC limits the amount of compensation a family can receive when they lose a family member, especially a dependent (child, senior, disabled.)

Would you be available to speak out about this Family Compensation Act on the phone, and explain **what can be compensated** when a family wrongfully loses a loved one.

I would like to know **what is compensated for a dependant versus an independent**.
What the act **specifically covers**. Does it cover anything more than financial loss?
As well if the **government is considering making changes** to this legislation.

Please give me an email or call back.
You can call the newsroom at 250-782-6397 and ask for Laura. Thank you

Recommended Response: Provide background

Background:

- At common law, compensation is not available for the death of a person. What this means is that courts will not award compensation to surviving family members for the death of a person unless a statute specifically allows for this.
    - Legislation across Canada permits family members of a person wrongfully killed to bring a lawsuit against the party who caused the death.
    - In BC this statute is called the *Family Compensation Act*. It is also known as "wrongful death legislation."
- Who can start an action: The Act permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- What can be compensated: The Act allows for out-of-pocket or financial losses to be compensated by allowing the court to award pecuniary damages to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the Act does not explicitly allow for bereavement damages (or damages for a person's grief or bereavement), in cases involving minor children with a deceased parent, courts have filled the gap by awarding a low amount of pecuniary damages (approximately $35,000) to each child to address the loss of guidance, care and companionship of the parent.
- What can not be compensated: Currently in BC the Act does not allow a surviving family member to claim compensation for their grief, or sadness, as a result of the death of a loved one. This is known as bereavement damages.
- Dependency: When the deceased family member was an income earner, and as a result of their death the surviving family members have lost a financial benefit, the family members can claim their financial losses as a result of the death. This is usually the situation when a working parent dies, and the claim is made by the children. But when the deceased person did not provide a financial benefit to the family, such as a non-working parent, child or senior citizen, the surviving family members cannot claim any financial losses other than funeral expenses or medical and hospital expenses incurred on behalf of the victim.

Other Canadian Jurisdictions

- Most Canadian provinces and territories have amended their wrongful death legislation to also include bereavement damages, meaning damages for grief and sadness as a result of the death of a family member. Only B.C., the Northwest Territories and Nunavut have not amended their legislation to include bereavement damages.
- There are a variety of models used across Canada.
    - Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants. This means that the dollar amount that a family member can recover is listed out in the statute.

- Legislation in Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants. This means that the court decides how much a family member will be awarded for their bereavement damages.

s. 13

From: Richter, Connie JAG:EX(Connie.Richter@gov.bc.ca)
To: Brandie.Youell@gov.bc.ca, Youell, Brandie JAG:EX
To: Marlene.Dayman@gov.bc.ca, Dayman, Marlene JAG:EX
Subject: FW: 429265 - DBN - Family Compensation Act
Sent: 08/31/2017 10:19:11
Attachments: 429265 - DBN - Family Compensation Act.pdf

Good morning, Brandie.
The Minister has advised the following:
"No decision yet. I don't expect to be moving on this in the near future."
Could you pls. let s. 19 [redacted] know?
I'll note same in the CLIFF log and complete our process.
Thank you, C

From: Richter, Connie JAG:EX
Sent: Monday, August 21, 2017 9:12 AM
To: Howard, Stephen PREM:EX; Nanninga, Tanera JAG:EX; Hughes, Candice JAG:EX
Cc: Harris, Megan A GCPE:EX; Nelson, Tiffany GCPE:EX; AG LSB ADAG Executive Support Staff; Dayman, Marlene JAG:EX
Subject: 429265 - DBN - Family Compensation Act

Good morning,
The attached decision BN is for the Minister's review and signature by August 25th please.
Please advise if a briefing is required.
Thank you, C

Cliff: 429265
Date Prepared: August 10, 2017
Date Decision Required: August 25, 2017

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
BRIEFING NOTE

PURPOSE: For DECISION by David Eby, QC, Attorney General

ISSUE: *Family Compensation Act* reforms and financial analysis

DECISION REQUIRED/ RECOMMENDATION:

s. 13

SUMMARY:

- The *Family Compensation Act* ("FCA") does not allow for bereavement damages (non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have amended their wrongful death legislation to include bereavement damages, however a variety of models are used across Canada.
- The costs of reforms to include bereavement damages will be significant, as government and ICBC are always defendants in FCA claims.
- The Attorney General has requested a copy of a previous report with a financial analysis of the costs of including bereavement damages in the FCA. The report was prepared as confidential advice to Cabinet under the previous government and cannot be shared.
- Updating the report using 2017 data will provide an accurate picture of the fiscal implications of reforms.

BACKGROUND:

Features of the FCA

- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is B.C.'s wrongful death legislation.
- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a low amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.[1]

Other Canadian Jurisdictions

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada. Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants. Legislation in Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants. Legislation in B.C., Northwest Territories and Nunavut do not include bereavement damages. See Appendix 1 for a cross-Canada comparison of bereavement damages in legislation.

Stakeholder History

- The Ministry published a green paper in June 2007 on reforming the FCA. The responses to the green paper yielded uncompromising and opposing policy positions from stakeholders on the scope of reforms. Plaintiff organizations advocated for far-reaching reforms, while defendants, including ICBC and government stakeholders, voiced concerns with the financial impacts of reforms.
- Changes to the FCA have been called for since the 1980s. There are a number of organized and vocal stakeholders who are lobbying for reforms to the FCA who have been critical of government's inaction since the 2007 green paper. These groups

[1] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

include the Trial Lawyers Association of BC (TLABC), the Coalition Against No-Fault Insurance (CANF), the BC Coalition of People with Disabilities, the Wrongful Death Law Reform Society of BC (also known as "In Their Name," and is affiliated with TLABC and CANF. "In Their Name" is a campaign led by families and friends who could not access a remedy under the FCA following the death of a loved one who was wrongfully killed), and the Canadian Bar Association, BC Branch (CBABC).

- The TLABC has proposed a variety of reforms over the years. Most recently the proposal has been to adopt a far-reaching approach based on a compilation of different US state laws, with a focus on the loss to the deceased's estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on the deceased for financial or non-economic losses (such as ex-spouses or anyone reliant on the deceased for support). It also includes punitive damages.
- In its 2012 and 2017 *Agenda for Justice* platform documents, the CBABC has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the Act. Previously plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps due to the fact that they were not far-reaching enough.

DISCUSSION:

s. 13

Financial Analysis

s. 12, s. 13, s. 14

s. 13

OTHER MINISTRIES IMPACTED/CONSULTED:
Ministry of Finance (Risk Management Branch)

Cliff: 429265
Date Prepared: August 10, 2017
Date Decision Required: August 25, 2017

s. 13

James Harvey
A/Deputy Attorney General

August 19, '17

s. 13

David Eby, QC
Attorney General

Prepared by:
s. 19
Legal Counsel
Justice Services Branch
s. 19

Approved by:
s. 19
A/Executive Director
Justice Services Branch
s. 19

s. 19
Assistant Deputy Minister

Date: August 16, 2017

Attachment(s)
Appendix 1 – Cross-Canada Comparison of Bereavement Damages in Wrongful Death Legislation

Appendix 1 – Cross-Canada Comparison of Bereavement Damages in Wrongful Death Legislation (updated May 2017)

	Bereavement Damages Compensation Structure	Eligible Claimants: Relationship to Deceased Person[i]						
	Not allowed, statutory cap, or court awarded?	**Spouse**	**Parent**	**Child**	**Grandparent**	**Grandchild**	**Sibling**	**Other family members**
BC	Not allowed[ii]	n/a	n/a	n/a	n/a	n/a	n/a	n/a
AB	Statutory cap	$82,000[iii]	$82,000 (split equally if two parents)	$49,000 each	n/a	n/a	n/a	n/a
SK	Statutory cap	$60,000	$30,000 each	$30,000 each	n/a	n/a	n/a	n/a
MB	Statutory cap	$39,317[iv]	$39,317 each	Under 18: $39,317 18 or older: $13,106	$13,106	$13,106	$13,106	$13,106 to each: step-son; step-daughter; person to whom the deceased stood *in loco parentis*; step-mother; step-father; person who stood *in loco parentis* to the deceased;
ON	Court awarded[v]	$52,500 (avg. each)	$58,750 (avg. each)	$32,917 (avg. each)	No recent case law	$3,000 (avg. each)	$20,000 (avg. each)	No recent case law
QB	Court awarded[vi]	$61,500 (avg. each)	$43,925 (avg. each)	$37,635 (avg. each)	$6,000 (avg. each)	No recent case law	$18,580 (avg. each)	Ex-spouse: $8,166 (avg. each) Sibling-in-law: $8,000 (avg. each)
NB	Court awarded[vii]	n/a	$25,000[viii]	n/a	n/a	n/a	n/a	n/a
NS	Court awarded[ix]	$65,000 (avg. each)	No recent case law	$20,750 (avg. each)	No recent case law	$4,000 (avg. each)	No recent case law	No recent case law
PEI	Court awarded[x]	No recent case law	No recent case law	No recent case law	No recent case law	No recent case law	No recent case law	Other "dependants"[xi]
NFLD	Court awarded[xii]	No recent case law	No recent case law	No recent case law	n/a[xiii]	n/a	n/a	n/a
YK	Statutory cap	$75,000	$75,000 (split equally if two parents)	$45,000 each	n/a[xiv]	n/a	n/a	n/a

	Bereavement Damages Compensation Structure	Eligible Claimants: Relationship to Deceased Person[i]						
	Not allowed, statutory cap, or court awarded?	Spouse	Parent	Child	Grandparent	Grandchild	Sibling	Other family members
NWT	Not allowed[xv]	n/a	n/a	n/a	n/a	n/a	n/a	n/a
NU	Not allowed[xvi]	n/a	n/a	n/a	n/a	n/a	n/a	n/a

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[i] The statutory definition of eligible claimants varies across jurisdictions. The jurisdictions with a broader range of eligible claimants could potentially have higher cost implications than those with a more restrictive range of eligible claimants.

[ii] In cases with minor children, courts have awarded low amounts to each child for the loss of guidance, care and companionship of the (deceased) parent. The conventional amount is $35,000, however, it is calculated based on the child's age and involvement of the parent.

[iii] These amounts are effective May 1, 2013. Alberta's legislation requires government to review the statutory levels of damages every five years.

[iv] All amounts for Manitoba have been adjusted from 2002 to 2017 dollar amounts from the *Fatal Accidents Act*, CCSM c F50, per s. 3.1(5) of that Act.

[v] Section 61 of the *Family Law Act*, RSO 1990, c F.3 sets out that spouses, children, grandchildren, parents, grandparents, brothers, and sisters of the deceased person are able to sue in tort for "an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred." Unless otherwise noted, the amounts in this table, <u>for all provinces with court awarded damages</u>, are averages from case law from 2001 – 2017.

[vi] The area of law relating to compensation for the accidental death of a loved one, or *solatium doloris*, falls under the general head of "moral" damages covered by art. 1457 of the *Québec Civil Code*. That section, which deals with liability for non-contractual damages, or delict, does not specify quanta.

[vii] Section 8 of the *Fatal Accidents Act*, SNB 2012, c 104 sets out that damages must be proportional to the pecuniary loss resulting from the death.

[viii] Section 10(1) of the *Fatal Accidents Act*, SNB 2012, c 104 limits "loss of companionship" compensation to parents only.

[ix] Under sections 5(1) and 5(2)(d) of the *Fatal Injuries Act*, RSNS 1989, c 163, a spouse, common-law partner, parent, or child of a deceased person covered under the Act can be compensated for "loss of guidance, care, and companionship", but no amounts are specified.

[x] Under sections 6(1) and 6(3)(c) of the *Fatal Accidents Act*, RSPEI 1988, c F-5, individuals defined as "dependants" under the Act may recover for "loss of guidance, care and companionship", but no amounts are specified.

[xi] Under s. 1(f)(vii) of the *Fatal Accidents Act*, RSPEI 1988, c F-5, the definition of "dependant" includes "any other person who for a period of at least three years immediately prior to the death of the deceased was dependent upon the deceased for maintenance and support"

[xii] Section 6(2) of the *Fatal Accidents Act*, RSNL 1990, c F-6 allows for damages for "the loss of care, guidance and companionship" of the deceased, but does not specify amounts.

[xiii] Section 4 of the *Fatal Accidents Act*, RSNL 1990, c F-6 limits relief to benefit spouses, partners, parents, and children.

[xiv] Section 3 of the *Fatal Accidents Act*, RSY 2002, c 86 limits relief to benefit spouses, parents, and children.

[xv] The *Fatal Accidents Act*, RSNWT 1988, c F-3 does not allow for compensation for bereavement, the loss of care, guidance and companionship of the deceased.

[xvi] The *Fatal Accidents Act*, RSNWT (Nu) 1988, c F-3 does not allow for compensation for bereavement, the loss of care, guidance and companionship of the deceased.

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General

ISSUE:
Amending the *Family Compensation Act* to provide minimum compensation bereavement damages, in addition to existing pecuniary damages.

RECOMMENDATION:
Commission a report analyzing the costs of reforms to government and the Insurance Corporation of B.C. ("ICBC"s. 13
s. 13

SUMMARY:
- The *Family Compensation Act* ("FCA") does not allow for bereavement damages (typically defined as non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have amended their wrongful death legislation to include bereavement damages; however, a variety of models (with varying financial implications) are used.
- In December of 2020 the Minister provided statements to the Squamish Chief and Global News, and did interviews with CBC Vancouver and CTV Vancouver, stating he believed there is a need for reform in this area, and that it is a priority for the Ministry.
- The costs of reforms to include bereavement damages will be significant, as government and/or ICBC are almost always defendants in FCA claims.
- Contracting with an outside actuary to prepare a report using 2021 data will provide an accurate picture of the fiscal implications of reforms.

BACKGROUND:
- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is B.C.'s wrongful death legislation.
- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.

- However, the FCA only allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member. This includes lost financial support, funeral expenses, and medical expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases where a minor child has lost a parent, damages are awarded to address the loss of guidance, care and companionship of the parent.[1]
- Most Canadian provinces have amended their wrongful death legislation to allow the court to award bereavement damages. There are a variety of models:
  - Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.
  - Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants.

<u>History</u>

- Changes to the FCA have been called for since the 1980s.
- The Ministry published a green paper on reforming the FCA in June 2007. The responses to the green paper yielded uncompromising and opposing policy positions from stakeholders. Plaintiff organizations are strongly in favour, advocating for far-reaching reforms. In contrast, defendant groups s. 12, s. 13 s. 12, s. 13
- There are a number of organized and vocal stakeholders who have been lobbying for reforms to the FCA since the 2007 green paper. These groups include the:
  - Trial Lawyers Association of BC (“TLABC”),
  - Coalition Against No-Fault Insurance (“CANF”),
  - BC Coalition of People with Disabilities,
  - Wrongful Death Law Reform Society of BC (also known as “In Their Name”)
    - This group is led by families who could not obtain compensation following the death of a loved one; with support from the Canadian Bar Association, BC Branch. It is also affiliated with TLABC and CANF.
- The TLABC has proposed a variety of reforms over the years. Most recently the TLABC’s preferred option is based on a compilation of different US state laws, with a focus on the loss to the deceased’s estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on the deceased for financial or non-economic losses (including as ex-spouses). The proposal also includes punitive damages.

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[1] The conventional amount is $35,000, which is the “rough upper limit” awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child’s life.

- In its 2012 and 2017 *Agenda for Justice* platform documents, the Canadian Bar Association, BC Branch has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the FCA. Plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps, claiming these changes are not far-reaching enough.

DISCUSSION:

- Wrongful deaths most often arise from motor vehicle accidents and medical-surgical complications, which include ICBC and government as defendants and insurers. The Risk Management Branch of the Ministry of Finance is responsible for defending all FCA actions on behalf of provincially funded schools, post-secondary institutions, public hospitals, medical sector workers and health authorities. Legal Services Branch defends FCA non-health care related claims which are usually motor vehicle accidents involving fatalities in which government is a defendant. ICBC is responsible for defending all FCA actions involving motor vehicle accident fatalities where one of the parties is insured by ICBC.
- s. 13
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- In other jurisdictions, bereavement damages typically cover non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person. s. 13
s. 13

Financial Analysis

s. 13, s. 14, s. 17

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- An analysis would be only the first step in any project to reform the FCA. Once an analysis was complete the analysis, with a summary and assessment from ministry staff, would be provided to the Minister to determine whether the Ministry of Attorney General wishes to put forward amendments to the FCA. If a decision were made to pursue amendments to the FCA, a Treasury Board submission will be required and approval is needed before drafting could begin.

INDIGENOUS PEOPLES CONSIDERATIONS:

s. 13

s. 13

s. 13

s. 13

s. 13

OTHER MINISTRIES IMPACTED:

- ICBC – will need to consult after financial analysis of options is complete
- Risk Management Branch of the Ministry of Finance – need to consult
- Legal Services Branch – respecting FCA defence costs – need to consult
- s. 13

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

RECOMMENDED OPTION APPROVED **DATE:**

David Eby, QC
Attorney General

Prepared by:
s. 19

Legal Counsel
Justice Services Branch
s. 19

Approved by:
s. 19

Executive Director
Justice Services Branch
s. 19

Ministry of Attorney General and Minister Responsible for Housing

2022/23 Estimates Debates Note

Last updated Date: March 10, 2022

FAMILY COMPENSATION ACT

KEY MESSAGES:

- Our government has received a great deal of feedback on the existing *Family Compensation Act*.
- We have heard that the current legislation should be reformed to expand access to justice and benefits for families who grieve the loss of a loved one due to the wrongful act of another.
- As the government and private insurers are the defendants in wrongful death cases we must also ensure any increase in benefits available for families is fair to rate payers and taxpayers.
- Government is committed to reviewing the *Family Compensation Act* and the wrongful death compensation framework in British Columbia during this term of government.

FINANCES:

s. 12

BACKGROUND:

- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and

Contact: s. 19	Tel: s. 19	Mobile: s. 19

children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.

- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- A key criticism of the FCA is that because it only provides eligible claimants with pecuniary damages to compensate them for the loss of financial support (that they would have received from the deceased, had they survived), for many families who do not experience a loss of financial support (for example if a minor child or elderly parent dies) there is little merit in pursuing a claim under the existing legislation.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a small amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.
    - The conventional amount is $35,000, which is the “rough upper limit” awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child’s life.

Other Canadian Jurisdictions

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada.
    - Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.

Contact s. 19	Tel: s. 19	Mobile: s. 19

APPENDIX - SUMMARY OF CANADIAN JURISDICTIONS

PROVINCE	BC	AB	MB	SK	ON	NB	NS	NL	PEI	NWT	YK
LEGISLATION	*Family Compensation Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Family Law Act*	*Fatal Accidents Act*	*Fatal Injuries Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*
~ Non-Fatal Injuries	No	No	No	No	Yes	No	No	No	No	No	No
ELIGIBLE CLAIMANTS											
~ Spouse	married; common law (cohabitated for a period of at least 2 years ending no earlier than 1 year prior to death)	spouse or adult independent partner	spouse; common law partner (Registered common-law partner; cohabited for 3+ years preceding death; or cohabited for 1+ year preceding death if have a child)	married; common law (cohabited for 2+ years immediately preceding death or 1+ year if together are the parents of a child)	married; common law (cohabited for 3+ years immediately preceding death or 1+ year if together are the natural or adoptive parents of a child)	married; common law (cohabitants to whom deceased owed, or would have owed, an obligation of support; former spouses owed such an obligation)	married; common law (cohabited in conjugal relationship for 1+ years immediately preceding death)	married; common law (cohabited in conjugal relationship for 2+ years, or 1+ years if they are together the biological or adoptive parents of a child)	married; common law	married ; common law (cohabited for 2+ years or if relationship is of some permanence and together are natural or adoptive parents of a child); polygamous spouses if celebrated in a jurisdiction where legal	married; common law
~ Support Recipients	No	No	Yes (dependency not relevant; requires valid agreement or order)	No	No	Yes (dependency not relevant)	No	No	Yes: dependent divorced spouses; any other person dependent on deceased for support for 3+ years prior to death	No	No
~ Child	children; step-children; and persons to whom the deceased stood in the role of a parent	children; grandchildren; step-children; illegitimate children	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent	children; grandchildren; step-children; adopted children; persons to whom the deceased stood in the place of a parent	children; grandchildren	children; grandchildren; step-children; adoptive children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children	children; grandchildren; step-children; adoptive children; persons to whom the deceased stood in the place of a parent	children; conceived but unborn children; grandchildren; adopted children; persons to whom the deceased stood in the place of a parent;	children; grandchildren; step-children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent
~ Parent	parents; grandparents; step-parents that have lived with the child's parent for 2+ years and contributed to the child's support for 1+ year	parents; grandparents; step-parents	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; persons who stood in the place of a parent to the deceased	parents; grandparents	parents; grandparents; step-parents; adoptive parents; persons who stood in the place of a parent	parents; grandparents; step-parents	parents; grandparents; step-parents; adoptive parents; persons whom stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; adoptive grandparents; persons in loco parentis; spouses of parents	parents; grandparents; step-parents; adoptive parents; persons who stand in the place of a parent to the deceased	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased
~ Sibling	No	Yes (pecuniary only)	Yes (pecuniary and non-pecuniary)	No	Yes- pecuniary and non-pecuniary	Yes	No	No	No	No	No
~ Other	No	No	No	No	No	No	No	No	any other person dependent upon deceased for 3 years prior to death	No, but note "spouse" claimants	No
DAMAGES											
Lost financial support (pecuniary damages)	Yes (monetary losses such as wages, pensions, benefits, housekeeping and childminding)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
~ Loss of guidance care and companionship (non-pecuniary)	No (but courts award as pecuniary damages a minor amount to children for household services of deceased parent)	Only for spouse, child or parent. 75,000 to spouse, 75,000 to parents (divided equally), 45,000 to each child. Subject to review every 5 years and amounts can be changed by regulation.	30,000 to each spouse (including a support recipient ex spouse), parent, child under 18. 10,000 to family members who are children over 18, step relationships, or siblings.	60,000 to spouse (excludes separated spouse), 30,000 to each parent, 30,000 to each child.	Yes, but no specific formula provided	Yes, where deceased was a child (minor or dependent), the parents can claim.	Yes, but no specific formula provided	Yes, but no specific formula provided	Yes, but no specific formula provided	No	No
~ Funeral Costs	Yes	Yes	Yes. Adjusted for inflation.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
~ Deceased's Medical/Care Costs	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No
~ Travel costs to visit deceased before death	No	Yes	No	No	Yes	No	Yes	No	No	No	No

~ Loss of earnings of the claimant	No	No	No	Yes	Yes, if claimant provided nursing, housekeeping, or other services	No	Yes, if claimant provided nursing, housekeeping, or other services	No	No	No	No
~ Grief counselling	No	Yes	No	Yes	No	No	No	No	No	No	No
~ Punitive Damages	No	No	No	No	No	Yes: if awarded, for the benefit of the estate of the deceased.	No	No	No	No	No
~ Other	No	No	No	any other out of pocket expense reasonably incurred	No	No	any other out of pocket expense reasonably incurred	No	$500 for administration of estate if brought by the personal representative	No	No

APPENDIX - SUMMARY OF CANADIAN JURISDICTIONS with TLABC PROPOSAL

PROVINCE	BC	AB	MB	SK	ON	NB	NS	NL	PEI	NWT	YK	Trial Lawyers Association of BC
LEGISLATION	*Family Compensation Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Family Law Act*	*Fatal Accidents Act*	*Fatal Injuries Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Wrongful Death Accountability Act*(proposed)
~ Non-Fatal Injuries	No	No	No	No	Yes	No	No	No	No	No	No	No
ELIGIBLE CLAIMANTS												**Defined as Beneficiaries:**
~ Spouse	married; common law (cohabitated for a period of at least 2 years ending no earlier than 1 year prior to death)	spouse or adult independent partner	spouse; common law partner (Registered common-law partner; cohabited for 3+ years preceding death; or cohabited for 1+ year preceding death if have a child)	married; common law (cohabited for 2+ years immediately preceding death or 1+ year if together are the parents of a child)	married; common law (cohabited for 3+ years immediately preceding death or 1+ year if together are the natural or adoptive parents of a child)	married; common law (cohabitants to whom deceased owed, or would have owed, an obligation of support; former spouses owed such an obligation)	married; common law (cohabited in conjugal relationship for 1+ years immediately preceding death)	married; common law (cohabited in conjugal relationship for 2+ years, or 1+ years if they are together the biological or adoptive parents of a child)	married; common law	married ; common law (cohabited for 2+ years or if relationship is of some permanence and together are natural or adoptive parents of a child); polygamous spouses if celebrated in a jurisdiction where legal	married; common law	yes (includes legal, common law and same sex relationships)
~ Support Recipients	No	No	Yes (dependency not relevant; requires valid agreement or order)	No	No	Yes (dependency not relevant)	No	No	Yes: dependent divorced spouses; any other person dependent on deceased for support for 3+ years prior to death	No	No	divorced/separated spouse dependent upon deceased for maintenance or support at time of death, or entitled to court ordered support; any person dependent on deceased for maintenance or support for at least 3 years prior to death
~ Child	children; step-children; and persons to whom the deceased stood in the role of a parent	children; grandchildren; step-children; illegitimate children	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent	children; grandchildren; step-children; adopted children; persons to whom the deceased stood in the place of a parent	children; grandchildren	children; grandchildren; step-children; adoptive children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children	children; grandchildren; step-children; adoptive children; persons to whom the deceased stood in the place of a parent	children; conceived but unborn children; grandchildren; adopted children; persons to whom the deceased stood in the place of a parent;	children; grandchildren; step-children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent	children, step-children, adopted children
~ Parent	parents; grandparents; step-parents that have lived with the child's parent for 2+ years and contributed to the child's support for 1+ year	parents; grandparents; step-parents	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; persons who stood in the place of a parent to the deceased	parents; grandparents	parents; grandparents; step-parents; adoptive parents; persons who stood in the place of a parent	parents; grandparents; step-parents	parents; grandparents; step-parents; adoptive parents; persons whom stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; adoptive grandparents; persons in loco parentis; spouses of parents	parents; grandparents; step-parents; adoptive parents; persons who stand in the place of a parent to the deceased	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased	parents; grandparents; step-parents
~ Sibling	No	Yes (pecuniary only)	Yes (pecuniary and non-pecuniary)	No	Yes- pecuniary and non-pecuniary	Yes	No	No	No	No	No	siblings, half-siblings, step-siblings
~ Other	No	No	No	No	No	No	No	No	any other person dependent upon deceased for 3 years prior to death	No, but note "spouse" claimants	No	grandchildren
DAMAGES												**Separated into two categories: Recoverable by Estate & Recoverable by Beneficiaries**

APPENDIX - SUMMARY OF CANADIAN JURISDICTIONS with TLABC PROPOSAL

PROVINCE	BC	AB	MB	SK	ON	NB	NS	NL	PEI	NWT	YK	Trial Lawyers Association of BC
LEGISLATION	*Family Compensation Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Family Law Act*	*Fatal Accidents Act*	*Fatal Injuries Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	***Wrongful Death Accountability Act***(proposed)
Lost financial support (pecuniary damages)	Yes (monetary losses such as wages, pensions, benefits, housekeeping and childminding)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	yes (includes damages for loss of anticipated future earnings recoverable by the estate and damages for loss of future income, benefits, household services or other pecuniary support and loss of reasonable contributions to future educational expenses recoverable by beneficiaries)
~ Loss of guidance care and companionship (non-pecuniary)	No (but courts award as pecuniary damages a minor amount to children for household services of deceased parent)	Only for spouse, child or parent. 75,000 to spouse, 75,000 to parents (divided equally), 45,000 to each child. Subject to review every 5 years and amounts can be changed by regulation.	30,000 to each spouse (including a support recipient ex spouse), parent, child under 18. 10,000 to family members who are children over 18, step relationships, or siblings.	60,000 to spouse (excludes separated spouse), 30,000 to each parent, 30,000 to each child.	Yes, but no specific formula provided	Yes, where deceased was a child (minor or dependent), the parents can claim.	Yes, but no specific formula provided	Yes, but no specific formula provided	Yes, but no specific formula provided	No	No	reasonable non-pecuniary losses arising from beneficiary's loss of the deceased's love, guidance, care, companionship and affection, proportional to the relationship that existed prior to deceased's death
~ Funeral Costs	Yes	Yes	Yes. Adjusted for inflation.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	yes (recoverable by the estate and by beneficiaries)
~ Deceased's Medical/Care Costs	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No	yes (includes damages for medical services, nursing services, hospital services recoverable by the estate and damages recoverable by beneficiaries)
Deceased's loss of income between wrong and death	No	No	No	No	No	No	No	No	No	No	No	yes (recoverable by the estate)
Deceased's pain and suffering between wrong and death (non-pecuniary)	No	No	No	No	No	No	No	No	No	No	No	yes (recoverable by the estate)
~ Travel costs to visit deceased before death	No	Yes	No	No	Yes	No	Yes	No	No	No	No	yes (as worded would be included in "other" category)
~ Loss of earnings of the claimant (or value of care-giving services)	No	No	No	Yes	Yes, if claimant provided nursing, housekeeping, or other services	No	Yes, if claimant provided nursing, housekeeping, or other services	No	No	No	No	yes (as worded would be included in "other" category)
~ Grief counselling	No	Yes	No	Yes	No	No	No	No	No	No	No	yes (as worded would be included in "other" category)
~ Punitive Damages	No	No	No	No	No	Yes: if awarded, for the benefit of the estate of the deceased.	No	No	No	No	No	Yes (punitive, exemplary and/or aggravated damages) (recoverable by the estate)
~ Other	No	No	No	any other out of pocket expense reasonably incurred	No	No	any other out of pocket expense reasonably incurred	No	$500 for administration of estate if brought by the personal representative	No	No	all reasonable pecuniary losses caused to the estate; other reasonable pecuniary losses incurred by beneficiaries

APPENDIX A

PROVINCE	BC	AB	MA	SK	ON	NB	NS	NL	PEI	NWT	YK
LEGISLATION	*Family Compensation Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Family Law Act*	*Fatal Accidents Act*	*Fatal Injuries Act*	*Fatal Accident Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*
~ Updated since 2007?	No	No	Yes, ss. 3 (benefit entitlement) and 3.1 (bereavement dmgs) amended in 2008	Yes, s. 4.1 (bereavement damages) amended in 2007	No	Yes, ss. 1 (definitions) and 3 (eligible claimants and dmgs) amended in 2008	No	Yes, ss. 2 (definitions) and 4 (eligible claimants) amended in 2008-9	Yes, s. 1 (definitions) amended in 2008	No	No
~ Non-Fatal Injuries	No	No	No	No	Yes	No	No	No	No	No	No
ELIGIBLE CLAIMANTS											
~ Spouse	married; common law (cohabitated for at least 3 years prior to death)	spouse or adult independent partner	spouse; common law partner (Registered common-law partner; cohabited for 3+ years immediately preceding death; or cohabited for 1+ year immediately preceding death if together are the parents of a child)	married; common law (cohabited for 2+ years immediately preceding death or 1+ year if together are the parents of a child)	married; common law (cohabited for 3+ years immediately preceding death or 1+ year if together are the natural or adoptive parents of a child)	married; common law (cohabitants to whom deceased owed, or would have owed, an obligation of support; former spouses owed such an obligation)	married; common law (cohabited in conjugal relationship for 1+ years immediately preceding death)	married; common law (cohabited in conjugal relationship for 2+ years, or 1+ years if they are together the biological or adoptive parents of a child)	married; common law	married (including if marriage is void but was on good faith); common law (cohabited for 2+ years or if relationship is of some permanence and together are natural or adoptive parents of a child); polygamous spouses if celebrated in a jurisdiction where legal	married; common law
~ Support Recipients	No	No	Yes (dependency not relevant; requires valid agreement or order)	No	No	Yes (dependency not relevant)	No	No	Yes: dependent divorced spouses; any other person dependent on deceased for support for 3+ years prior to death	No	No
~ Child	children; step-children; and persons to whom the deceased stood in the role of a parent	children; grandchildren; step-children; illegitimate children	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent	children; grandchildren; step-children; adopted children; persons to whom the deceased stood in the place of a parent	children; grandchildren	children; grandchildren; step-children; adoptive children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children	children; grandchildren; step-children; adoptive children; persons to whom the deceased stood in the place of a parent	children; conceived but unborn children; grandchildren; adopted children; persons to whom the deceased stood in the place of a parent;	children; grandchildren; step-children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent
~ Parent	parents; grandparents; step-parents that have lived with the child's parent for 2+ years and contributed to the child's support for 1+ year	parents; grandparents; step-parents	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; persons who stood in the place of a parent to the deceased	parents; grandparents	parents; grandparents; step-parents; adoptive parents; persons who stood in the place of a parent	parents; grandparents; step-parents	parents; grandparents; step-parents; adoptive parents; persons whom stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; adoptive grandparents; persons who stood in the place of a parent; spouses of parents	parents; grandparents; step-parents; adoptive parents; persons who stand in the place of a parent to the deceased	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased
~ Sibling	No	Yes	Yes	No	Yes	Yes	No	No	No	No	No
~ Other	No	No	No	No	No	No	No	No	spouses of children/grandchildren	No, but note "spouse" claimants	No
DAMAGES	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss	proportionate to the pecuniary loss
~ Bereavement Damages	No	Yes	Yes	Yes	Yes, but no specific formula provided	Yes, but only if deceased was claimant's minor or dependant child	Yes, but no specific formula provided	No	Yes, but no specific formula provided	No	No
~ Funeral Costs	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
~ Deceased's Medical/Care Costs	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No
~ Travel costs to visit deceased before death	No	Yes	No	No	Yes	No	Yes	No	No	No	No
~ Loss of earnings of the claimant	No	No	No	Yes	Yes, if claimant provided nursing, housekeeping, or other services	No	Yes, if claimant provided nursing, housekeeping, or other services	No	No	No	No
~ Grief counselling	No	Yes	No	Yes	No	No	No	No	No	No	No
~ Punitive Damages	No	No	No	No	No	No	No	No	No	No	No
~ Other	No	No	No	any other out of pocket expense reasonably incurred	No	No	any other out of pocket expense reasonably incurred	No	$500 for administration of estate if brought by the personal representative	No	No

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE:
Amending the *Family Compensation Act* to provide minimum compensation bereavement damages, in addition to existing pecuniary damages.

RECOMMENDATION:
Commission a report analyzing the costs of reforms to government and the Insurance Corporation of B.C. ("ICBC") s. 13
s. 13

SUMMARY:
- The *Family Compensation Act* ("FCA") does not allow for bereavement damages (typically defined as non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have amended their wrongful death legislation to include bereavement damages; however, a variety of models (with varying financial implications) are used.
- In December of 2020 the Minister provided statements to the Squamish Chief and Global News, and did interviews with CBC Vancouver and CTV Vancouver, stating he believed there is a need for reform in this area, and that it is a priority for the Ministry in this mandate.
- The costs of reforms to include bereavement damages will be significant, as government and/or ICBC are almost always defendants in FCA claims.
- Contracting with an outside actuary to prepare a report using 2021 data will provide an accurate picture of the fiscal implications of reforms.

BACKGROUND:
- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is B.C.'s wrongful death legislation.
- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.

- However, the FCA only allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member. This includes lost financial support, funeral expenses, and medical expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases where a minor child has lost a parent, damages are awarded to address the loss of guidance, care and companionship of the parent.[1]
- Most Canadian provinces have amended their wrongful death legislation to allow the court to award bereavement damages. There are a variety of models:
  - Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.
  - Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants.

History

- Changes to the FCA have been called for since the 1980s.
- The Ministry published a green paper on reforming the FCA in June 2007. The responses to the green paper yielded uncompromising and opposing policy positions from stakeholders. Plaintiff organizations are strongly in favour, advocating for far-reaching reforms. In contrast, defendant groups s. 12, s. 13
- There are a number of organized and vocal stakeholders who have been lobbying for reforms to the FCA since the 2007 green paper. These groups include the:
  - Trial Lawyers Association of BC ("TLABC"),
  - Coalition Against No-Fault Insurance ("CANF"),
  - BC Coalition of People with Disabilities,
  - Wrongful Death Law Reform Society of BC (also known as "In Their Name")
    - This group is led by families who could not obtain compensation following the death of a loved one; with support from the Canadian Bar Association, BC Branch. It is also affiliated with TLABC and CANF.
- The TLABC has proposed a variety of reforms over the years. Most recently the TLABC's preferred option is based on a compilation of different US state laws, with a focus on the loss to the deceased's estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on

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the deceased for financial or non-economic losses (including as ex-spouses). The proposal also includes punitive damages.

- In its 2012 and 2017 *Agenda for Justice* platform documents, the Canadian Bar Association, BC Branch has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the FCA. Plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps, claiming these changes are not far-reaching enough.

DISCUSSION:

- Wrongful deaths most often arise from motor vehicle accidents and medical-surgical complications, which include ICBC and government as defendants and insurers. The Risk Management Branch of the Ministry of Finance is responsible for defending all FCA actions on behalf of provincially funded schools, post-secondary institutions, public hospitals, medical sector workers and health authorities. Legal Services Branch defends FCA non-health care related claims which are usually motor vehicle accidents involving fatalities in which government is a defendant. ICBC is responsible for defending all FCA actions involving motor vehicle accident fatalities where one of the parties is insured by ICBC.
- s. 13
-
- In other jurisdictions, bereavement damages typically cover non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person. s. 13
s. 13

Financial Analysis

- The cost of adding bereavement damages to the FCA is likely in the hundreds of millions of dollars (estimated between $100-$300 million).
- A current Financial Analysis will be required to provide an accurate picture of the fiscal implications of any reforms and can clarify the costs of the different options for adding bereavement damages in the FCA. It is estimated that the cost for a contractor to prepare an analysis of the costs to government and ICBC is in the range of $10,000-$30,000. In addition, it will be necessary for ICBC to provide information and likely participate somewhat in the analysis. It is not known if ICBC will make a budget request for its staff to participate in the analysis.
- An analysis would be only the first step in any project to reform the FCA. Once complete, the analysis – with a summary and assessment from ministry staff – would be provided to the Minister to determine whether the Ministry of Attorney General wishes to put forward amendments to the FCA. If a decision were made to pursue amendments to the FCA, a Treasury Board submission will be required, and approval is needed before drafting could begin.

INDIGENOUS PEOPLES CONSIDERATIONS:

s. 13

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OTHER MINISTRIES IMPACTED:

- ICBC – will need to consult after financial analysis of options is complete
- Risk Management Branch of the Ministry of Finance – need to consult
- Legal Services Branch – respecting FCA defence costs – need to consult

s. 13

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

RECOMMENDED OPTION APPROVED **DATE:**

David Eby, QC
Attorney General

Prepared by:
s. 19

Legal Counsel
Justice Services Branch
s. 19

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Executive Director
Justice Services Branch
s. 19

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Assistant Deputy Minister
Justice Services Branch
s. 19

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE:
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RECOMMENDATION:
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- The costs of reforms to include bereavement damages will be significant, as government and/or ICBC are almost always defendants in FCA claims.
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BACKGROUND:
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s. 13

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- s. 13

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

RECOMMENDED OPTION APPROVED **DATE:**

David Eby, QC
Attorney General

Prepared by:
s. 19

Legal Counsel
Justice Services Branch
s. 19

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Assistant Deputy Minister
Justice Services Branch
s. 19

Approved by:
s. 19

Executive Director
Justice Services Branch
s. 19

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE:
Amending the *Family Compensation Act* to provide minimum compensation bereavement damages, in addition to existing pecuniary damages.

RECOMMENDATION:
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DISCUSSION:

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- s. 13
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s. 13

Financial Analysis

s. 13, s. 14, s. 17

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INDIGENOUS PEOPLES CONSIDERATIONS:

s. 13

s. 13

s. 13

s. 13

s. 13

OTHER MINISTRIES IMPACTED:

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- Risk Management Branch of the Ministry of Finance – need to consult
- Legal Services Branch – respecting FCA defence costs – need to consult
- s. 13

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

RECOMMENDED OPTION APPROVED **DATE:**

David Eby, QC
Attorney General

Prepared by:
s. 19

Legal Counsel
Justice Services Branch
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Assistant Deputy Minister
Justice Services Branch
s. 19

Approved by:
s. 19

Executive Director
Justice Services Branch
s. 19

Ministry of Attorney General and Minister Responsible for Housing

2021/22 Estimates Debates Note

Last updated Date: March 31, 2021

FAMILY COMPENSATION ACT

KEY MESSAGES:

- The government is committed to reviewing the *Family Compensation Act* (FCA) and the wrongful death compensation framework in British Columbia during this term of government.
- Wrongful deaths occur in many different settings. The enactment of the Enhanced Care no-fault system that will come into effect on May 1 will provide significant compensation for families who have lost a loved one to a collision-related wrongful death. Vehicle accidents are the most common form of wrongful death which is why this area was addressed first.
    - [CONFIDENTIAL NOTE TO THE MINISTER: Vocal victims' rights groups such as the Wrongful Death Law Reform Society feel strongly that Enhanced Care is insufficient to address vehicle-related wrongful death and consider Death Benefits sums as an inappropriate approach to compensation
- Wrongful deaths are not limited to vehicle collisions, however, and there is more work to do to address other categories of wrongful death, such as medical malpractice.
- Each category of behaviour that results in wrongful death has its own policy considerations and cost implications. The ministry is reviewing each category to understand how our legislation can appropriately acknowledge and

Contact: s. 19	Tel: s. 19	Mobile: s. 19 s. 19

compensate for non-pecuniary losses and further deter the actions that result in wrongful deaths.

FINANCES:

s. 12, s. 13, s. 17

BACKGROUND:

- Requests for bereavement damages have been made since the 1980's
- The last time government consulted on reforming the FCA was June 2007. The responses to the consultation yielded uncompromising and opposing policy positions from stakeholders.

Contact: s. 19	Tel: s. 19	Mobile: s. 19 s. 19

Cliff:
Date Prepared:
Date Decision Required:

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE: Structure and scope of legislative amendments to address non-pecuniary loss arising out of wrongful death

RECOMMENDATION:

s. 13

SUMMARY:

- BC's wrongful death legislation, the *Family Compensation Act* (FCA), does not provide for bereavement damages (typically defined as non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have wrongful death legislation that provides for bereavement damages. A variety of bereavement compensation models are employed across the country:
    - Court-ordered bereavement damages (non-capped);
    - Statutorily-capped bereavement damages;
    - Available compensation for punitive damages in addition to bereavement damages.
- The Attorney General has stated the FCA will be reviewed during this mandate.
- Wrongful deaths arise from a variety of causes, each with distinct policy and financial considerations. The most common causes of wrongful death in BC are vehicle deaths and likely medical malpractice, though reliable statistics are not available.
- The *Declaration on the Rights of Indigenous Peoples Act* (the "Declaration Act") requires that "the government must take all measures necessary to ensure the laws of British Columbia are consistent with" the UN Declaration on the Rights of Indigenous Peoples. As such, Indigenous-specific forms of non-pecuniary loss should be considered in the Ministry's review of the FCA.
- The ICBC Enhanced Care legislation that will take effect in May 2021 will provide statutorily-capped, non-pecuniary compensation for families who have lost loved ones in vehicle

accidents. Enhanced Care does not provide for punitive damages and does not contemplate Indigenous-specific forms of non-pecuniary loss.

BACKGROUND:

Wrongful Death in British Columbia

Wrongful deaths arise from a variety of causes, each with distinct policy and financial considerations. Reliable and specific statistics regarding wrongful death are not readily available. Based on the limited data available, the most common causes of wrongful death and their approximate frequencies in BC and Canada are as follows:

Category	# deaths BC	# deaths Canada	Notes
Vehicle accidents	250-300 annually[1]	1800-1900 annually[2]	
Medical malpractice	No reliable data available.	Available data ranges from ~150[3] to 24,000[4] (acute care setting only)	Medical malpractice statistics are not readily publicly available. The data that is available is likely skewed by differences in reporting protocols related to deaths caused by medical surgical complications.
Assault (homicide)	90[5]	600-700[6]	
Product liability/unsafe products/ noxious substances	No reliable data available for product liability. Noxious substances: 689[7] - 1726+[8]	No reliable data available.	Ie. playground equipment, toys, vehicles, and pharmaceutical products, tainted street drugs. Noxious substances statistics are for "accidental poisonings" and do not differentiate between deaths with a "wrongful" element and those that were accidental.
Workplace accidents	~150-200[9]	Statistics not available	

[1] https://www2.gov.bc.ca/assets/gov/driving-and-transportation/driving/roadsafetybc/data/motor_vehicle_related_crashes_injuries_and_fatalities_in_british_columbia_2010-2019.pdf
[2] https://tc.canada.ca/en/canadian-motor-vehicle-traffic-collision-statistics-2017
[3] Statistics Canada. Table 13-10-0156-01 Deaths, by cause, Chapter XX: External causes of morbidity and mortality (V01 to Y89)
[4] National figure from a 2004 study adjusted for BC population.
[5] https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/statistics/crime-statistics-in-bc.pdf
[6] https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006801
[7] Poisoning - BC Injury Research and Prevention Unit (2014-2017 average accidental poisoning deaths).
[8] https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf page 3
[9] https://www.worksafebc.com/en/about-us/shared-data/facts-and-figures/statistical-reports

Aviation/ boating accidents	~17/year (boating)[15]; ~20/year (aviation)[11]	166 (boating)[12]; 40-50 (aviation)[13]	Alcohol involved in 43% of boating deaths Boating death figure is from 74 annual accidental drownings, 22% of which are boating accidents
Unsafe properties	No reliable data available.	No reliable data available.	
Law enforcement	98 deaths since 2000	461 since 2000	https://www.cbc.ca/news/canada/british-columbia/police-related-deaths-canada-bc-vancouver-boyd-edey-database-1.4603820 BC has highest per-capita rate of police-involved fatalities in Canada

Existing Wrongful Death Compensation Frameworks in BC

i) Family Compensation Act

- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is BC's wrongful death legislation.
- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- However, the FCA only allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member. This includes lost financial support, funeral expenses, and medical expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases where a minor child has lost a parent, damages are awarded to address the loss of guidance, care and companionship of the parent.[14]
- Most Canadian provinces have amended their wrongful death legislation to allow the court to award bereavement damages. There are a variety of models:

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15 https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/accidental-drowings.pdf
11 https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/aviation.pdf
12 https://boating.ncf.ca/stats.html#:~:text=There%20were%2010%2C511%20water%2Drelated,over%2075%25%20of%20boating%20deaths.
13 https://www.tsb.gc.ca/eng/stats/aviation/2016/ssea-ssao-2016.html
14 The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

- Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.
- Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model (non-capped), also with a range of family members who qualify as eligible claimants.
- Alberta, Saskatchewan and New Brunswick allow punitive damages.

ii) Enhanced Care

Enhanced Care came into force in May 2021. This model includes statutory death, grief counselling and funeral benefits for the families of individuals killed in motor vehicle accidents.

The Enhanced Care model has been criticized by advocacy groups as callous, unresponsive to families' desires for accountability, and lacking a critical punitive element that could serve to deter negligence which may cause wrongful deaths in the future.

Enhanced Care does not address forms of loss that are specific to Indigenous peoples, such as cultural loss.

iii) Workers Compensation Act, Part 4, Division 5

Part 4 of the *Workers Compensation Act* ("WCA") provides for compensation for death arising out of and in the course of a worker's employment, provided the worker is employed in an industry within the scop of the compensation provisions[15].

Benefits that may be provided to families that have lost a family member to a wrongful death in the workplace may be entitled to the following benefits:

- Monthly pension benefit for the surviving spouse, based on the worker's earnings. This benefit continues for the spouse's lifetime
- Monthly benefit for a dependent child up to the age of 19. Benefits may continue to age 25 if the child regularly attends post-secondary school
- Funeral benefits
- Grief and vocational counselling for the surviving spouse
- Grief counselling for the dependent children

Compensation available to families for the death of a worker under the WCA is based on the worker's wages. The WCA does not provides for compensation for non-pecuniary loss.

Calls for reform

15

- There are a number of organized and vocal stakeholders who have been lobbying for reforms to the FCA since the 2007 green paper. These groups include the:
    - Trial Lawyers Association of BC ("TLABC"),
    - Coalition Against No-Fault Insurance ("CANF"),
    - BC Coalition of People with Disabilities,
    - Wrongful Death Law Reform Society of BC (also known as "In Their Name")
        - This group is led by families who could not obtain compensation following the death of a loved one; with support from the Canadian Bar Association, BC Branch. It is also affiliated with TLABC and CANF.
- The TLABC has proposed a variety of reforms over the years. Most recently the TLABC's preferred option is based on a compilation of different US state laws, with a focus on the loss to the deceased's estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on the deceased for financial or non-economic losses (including as ex-spouses). The proposal also includes punitive damages.
- In its 2012 and 2017 *Agenda for Justice* platform documents, the Canadian Bar Association, BC Branch has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the FCA. Plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps, claiming these changes are not far-reaching enough.

DISCUSSION:

- Each category of wrongful death has specific policy consideration associated with bereavement damage options.
    - **Motor vehicle**: Bereavement damages for wrongful deaths arising from motor vehicle deaths have been addressed through the Enhanced Care program.
      s. 13
    - **Medical malpractice:** The Risk Management Branch of the Ministry of Finance is responsible for defending all FCA actions on behalf of provincially funded schools, post-secondary institutions, public hospitals, medical sector workers and health authorities. s. 13
      s. 13
    - **Workplace accidents:** Compensation for workplace-related accidents is provided by WorkSafeBC and is paid through employer contributions. s. 13

s. 13

- **Product liability/noxious substances:** BC does not currently have legislation that is specific to deaths that arise from product liability, other than the FCA. In most cases, a bereavement compensation framework for wrongful deaths arising from product liability would likely be primarily funded by the producer of the product, and not the government. s. 13

- **All other types of wrongful death:** The remaining categories of wrongful death (aviation/nautical accidents, law enforcement deaths, unsafe properties, homicide, etc.) are comparatively infrequent and, in the case of law enforcement deaths and homicides, have significant legal and practical complications associated with claims. s. 13

- Considerations which apply to all types of wrongful death are as follows: s. 13

Financial Analysis

- A current Financial Analysis will be required to provide an accurate picture of the fiscal implications of any reforms and can clarify the costs of the different categories and options for adding bereavement damages in the FCA. It is estimated that the cost for a contractor to prepare an analysis of the costs to government is in the range of $10,000-$30,000.
- An analysis would be only the first step in any project to reform the wrongful death framework in BC. Once complete, the analysis – with a summary and assessment from ministry staff – would be provided to the Minister to determine whether the Ministry of Attorney General wishes to put forward amendments to the FCA or other legislation related

to wrongful deaths. If a decision were made to pursue amendments, a Treasury Board submission will be required, and approval is needed before drafting could begin.

INDIGENOUS PEOPLES CONSIDERATIONS:

s. 13

OPTIONS:

s. 13

OTHER MINISTRIES IMPACTED:

- Ministry of Finance is impacted, to the extent that adding bereavement damages will increase government expenses where government is a defendant in an action or otherwise funds bereavement compensation.
- Ministry of Health is impacted by potential impacts to medical malpractice contributions.
- Ministry of Public Safety is impacted by any changes that relate to ICBC and Enhanced Care.

s. 13

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

RECOMMENDED OPTION APPROVED **DATE:**

David Eby, QC
Attorney General

Prepared by:
s. 19
Legal Counsel
Justice Services Branch
s. 19

Approved by:
s. 19
Executive Director
Justice Services Branch
s. 19

s. 19
A/Assistant Deputy Minister
Justice Services Branch
s. 19

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE: Structure and scope of legislative amendments to address non-pecuniary loss arising out of wrongful death

RECOMMENDATION:

s. 13

SUMMARY:

- BC's wrongful death legislation, the *Family Compensation Act* (FCA), does not provide for bereavement damages (typically defined as non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have wrongful death legislation that provides for bereavement damages. A variety of bereavement compensation models are employed across the country:
    - o Court-ordered bereavement damages (non-capped);
    - o Statutorily-capped bereavement damages;
    - o Available compensation for punitive damages in addition to bereavement damages.
- The Attorney General has stated the FCA will be reviewed during this mandate.
- Wrongful deaths arise from a variety of causes, each with distinct policy and financial considerations. The most common causes of wrongful death in BC are vehicle deaths and likely medical malpractice, though reliable statistics are not available.
- The *Declaration on the Rights of Indigenous Peoples Act* (the "Declaration Act") requires that "the government must take all measures necessary to ensure the laws of British Columbia are consistent with" the UN Declaration on the Rights of Indigenous Peoples. As such, Indigenous-specific forms of non-pecuniary loss should be considered in the Ministry's review of the FCA.
- The ICBC Enhanced Care legislation that took effect in May 2021 provides automobile insurance benefits, including statutorily-capped, compensation for certain people who have lost loved ones in vehicle accidents, specifically:

- o Death benefits for spouses, children and parents (similar to life insurance),
- o Grief counselling (including grief counselling provided by a person recognized by an Indigenous nation to provide counselling services or religious or spiritual instruction or guidance to members of the Indigenous nation, and
- o Funeral expenses.

- Consistent with all other no-fault automobile insurance schemes in Canada, Enhanced Care does not provide for compensation for non-pecuniary losses in relation to deceased insureds, including Indigenous-specific forms of non-pecuniary loss.

BACKGROUND:

Wrongful Death in British Columbia

Wrongful deaths arise from a variety of causes, each with distinct policy and financial considerations. Reliable and specific statistics regarding wrongful death are not readily available. Based on the limited data available, the most common causes of wrongful death and their approximate frequencies in BC and Canada are as follows:

Category	# deaths BC	# deaths Canada	Notes
Vehicle accidents	250-300 annually[1]	1800-1900 annually[2]	
Medical malpractice	No reliable data available.	Available data ranges from ~150[3] to 24,000[4] (acute care setting only)	Medical malpractice statistics are not readily publicly available. The data that is available is likely skewed by differences in reporting protocols related to deaths caused by medical surgical complications.
Assault (homicide)	90[5]	600-700[6]	
Product liability/unsafe products/ noxious substances	No reliable data available for product liability. Noxious substances: 689[7] - 1726+[8]	No reliable data available.	Ie. playground equipment, toys, vehicles, and pharmaceutical products, tainted street drugs. Noxious substances statistics are for "accidental poisonings" and do not differentiate between deaths with a "wrongful" element and those that were accidental.

[1] https://www2.gov.bc.ca/assets/gov/driving-and-transportation/driving/roadsafetybc/data/motor_vehicle_related_crashes_injuries_and_fatalities_in_british_columbia_2010-2019.pdf
[2] https://tc.canada.ca/en/canadian-motor-vehicle-traffic-collision-statistics-2017
[3] Statistics Canada. Table 13-10-0156-01 Deaths, by cause, Chapter XX: External causes of morbidity and mortality (V01 to Y89)
[4] National figure from a 2004 study adjusted for BC population.
[5] https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/statistics/crime-statistics-in-bc.pdf
[6] https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510006801
[7] Poisoning - BC Injury Research and Prevention Unit (2014-2017 average accidental poisoning deaths).

Workplace accidents	~150-200[9]	Statistics not available	
Aviation/ boating accidents	~17/year (boating)[10]; ~20/year (aviation)[11]	166 (boating)[12]; 40-50 (aviation)[13]	Alcohol involved in 43% of boating deaths Boating death figure is from 74 annual accidental drownings, 22% of which are boating accidents
Unsafe properties	No reliable data available.	No reliable data available.	
Law enforcement	98 deaths since 2000	461 since 2000	https://www.cbc.ca/news/canada/british-columbia/police-related-deaths-canada-bc-vancouver-boyd-edey-database-1.4603820 BC has highest per-capita rate of police-involved fatalities in Canada

Existing Wrongful Death Compensation Frameworks in BC

i) Family Compensation Act

- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is BC's wrongful death legislation.
- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- However, the FCA only allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member. This includes lost financial support, funeral expenses, and medical expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases where a minor child has lost a parent, damages are awarded to address the loss of guidance, care and companionship of the parent.[14]
- Most Canadian provinces have amended their wrongful death legislation to allow the court to award bereavement damages. There are a variety of models:

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[8] https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf page 3
[9] https://www.worksafebc.com/en/about-us/shared-data/facts-and-figures/statistical-reports
[10] https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/accidental-drowings.pdf
[11] https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/aviation.pdf
[12] https://boating.ncf.ca/stats.html#:~:text=There%20were%2010%2C511%20water%2Drelated,over%2075%25%20of%20boating%20deaths.
[13] https://www.tsb.gc.ca/eng/stats/aviation/2016/ssea-ssao-2016.html

- o Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.
- o Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model (non-capped), also with a range of family members who qualify as eligible claimants.
- o Alberta, Saskatchewan and New Brunswick allow punitive damages.

- It should be noted, however, that in Manitoba, where a death is the result of a vehicle accident, staff understands that their no-fault automobile insurance scheme eliminates the ability to commence an action for bereavement damages under its wrongful death legislation.
- In Saskatchewan, where a death is the result of a vehicle accident, staff understands that their hybrid no-fault-choice automobile insurance scheme allows actions for bereavement damages against criminal motorists and certain other at-fault third parties. However, Saskatchewan's scheme has many important differences from BC's scheme (including preserving the ability for anyone who sustains bodily injury in a vehicle accident to sue the wrongdoer for excess economic losses).

ii) Enhanced Care

Enhanced Care came into force in May 2021. This model includes statutory lump sum death benefits and reimbursement for grief counselling and funeral expenses for the families of individuals killed in vehicle accidents.

Staff understands that the purpose of the Enhanced Care death benefits is to compensate spouses, certain dependants and others for the loss of financial support the deceased insured would likely have provided to them. Some portion of the death benefits may also be considered compensation for loss of the guidance, care and companionship. The maximum spousal death benefit is $500,000 in 2021 and it is indexed to CPI.

The Enhanced Care model has been criticized by some advocacy groups (in particular, the Trial Lawyers Association of BC) as callous, unresponsive to families' desires for accountability, and lacking a critical punitive element that could serve to deter negligence which may cause wrongful deaths in the future. However, no evidence was provided to support the latter claims and, overall, Enhanced Care has received widespread public support, including from health care practitioner and disability advocate organizations who were heavily consulted throughout its design.

Like all other no-fault automobile insurance schemes in Canada, Enhanced Care does not provide compensation for losses in relation to deceased insureds, including non-pecuniary losses that are specific to Indigenous peoples, such as cultural loss.

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[14] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

In general, non-pecuniary losses are one of the three types of costs that have to be removed from the no-fault insurance system in order to fund the associated enhanced no-fault accident benefits.

Any proposal to add new benefits, or to expand the scope of exceptions to the lawsuit ban in section 116 of the *Insurance (Vehicle) Act*, would have to be carefully considered.

iii) Workers Compensation Act, Part 4, Division 5

Part 4 of the *Workers Compensation Act* ("WCA") provides for compensation for death arising out of and in the course of a worker's employment, provided the worker is employed in an industry within the scop of the compensation provisions[15].

Benefits that may be provided to families that have lost a family member to a wrongful death in the workplace may be entitled to the following benefits:

- Monthly pension benefit for the surviving spouse, based on the worker's earnings. This benefit continues for the spouse's lifetime
- Monthly benefit for a dependent child up to the age of 19. Benefits may continue to age 25 if the child regularly attends post-secondary school
- Funeral benefits
- Grief and vocational counselling for the surviving spouse
- Grief counselling for the dependent children

Compensation available to families for the death of a worker under the WCA is based on the worker's wages. The WCA does not provides for compensation for non-pecuniary loss.

<u>Calls for reform</u>

- There are a number of organized and vocal stakeholders who have been lobbying for reforms to the FCA since the 2007 green paper. These groups include the:
    - Trial Lawyers Association of BC ("TLABC"),
    - Coalition Against No-Fault Insurance ("CANF"),
    - BC Coalition of People with Disabilities,
    - Wrongful Death Law Reform Society of BC (also known as "In Their Name")
        - This group is led by families who could not obtain compensation following the death of a loved one; with support from the Canadian Bar Association, BC Branch. It is also affiliated with TLABC and CANF.
- The TLABC has proposed a variety of reforms over the years. Most recently the TLABC's preferred option is based on a compilation of different US state laws, with a focus on the loss to the deceased's estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on the deceased for financial or

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non-economic losses (including as ex-spouses). The proposal also includes punitive damages.

- In its 2012 and 2017 *Agenda for Justice* platform documents, the Canadian Bar Association, BC Branch has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the FCA. Plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps, claiming these changes are not far-reaching enough.

DISCUSSION:

- Each category of wrongful death has specific policy consideration associated with bereavement damage options.
    - **Motor vehicle**: Some bereavement and other pecuinary damages for wrongful deaths arising from vehicle deaths have been addressed through the Enhanced Care program. s. 13
    - **Medical malpractice:** The Risk Management Branch of the Ministry of Finance is responsible for defending all FCA actions on behalf of provincially funded schools, post-secondary institutions, public hospitals, medical sector workers and health authorities. s. 13
    - **Workplace accidents:** Compensation for workplace-related accidents is provided by WorkSafeBC and is paid through employer contributions. s. 13
    - **Product liability/noxious substances:** BC does not currently have legislation that is specific to deaths that arise from product liability, other than the FCA. In most cases, a bereavement compensation framework for wrongful deaths arising from product liability would likely be primarily funded by the producer of the product, and not the government. s. 13
    - **All other types of wrongful death:** The remaining categories of wrongful death (aviation/nautical accidents, law enforcement deaths, unsafe properties, homicide,

etc.) are comparatively infrequent and, in the case of law enforcement deaths and homicides, have significant legal and practical complications associated with claims.
s. 13

- Considerations which apply to all types of wrongful death are as follows:
  s. 13

Financial Analysis

- A current Financial Analysis will be required to provide an accurate picture of the fiscal implications of any reforms and can clarify the costs of the different categories and options for adding bereavement damages in the FCA. It is estimated that the cost for a contractor to prepare an analysis of the costs to government is in the range of $10,000-$30,000.
- An analysis would be only the first step in any project to reform the wrongful death framework in BC. Once complete, the analysis – with a summary and assessment from ministry staff – would be provided to the Minister to determine whether the Ministry of Attorney General wishes to put forward amendments to the FCA or other legislation related to wrongful deaths. If a decision were made to pursue amendments, a Treasury Board submission will be required, and approval is needed before drafting could begin.

INDIGENOUS PEOPLES CONSIDERATIONS:
s. 13

s. 13

OPTIONS:

s. 13

s. 13

OTHER MINISTRIES IMPACTED:

- TBC

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

RECOMMENDED OPTION APPROVED **DATE:**

David Eby, QC
Attorney General

Prepared by:
s. 19
Legal Counsel
Justice Services Branch
s. 19

s. 19
Assistant Deputy Minister
Justice Services Branch
s. 19

Approved by:
s. 19
Executive Director
Justice Services Branch
s. 19

PROVINCE	BC	AB	MB	SK	ON	NB	NS	NL	PEI	NWT	YK
LEGISLATION	*Family Compensation Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Family Law Act*	*Fatal Accidents Act*	*Fatal Injuries Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*	*Fatal Accidents Act*
~ Non-Fatal Injuries	No	No	No	No	Yes	No	No	No	No	No	No
ELIGIBLE CLAIMANTS											
~ Spouse	married; common law (cohabitated for a period of at least 2 years ending no earlier than 1 year prior to death)	spouse or adult independent partner	spouse; common law partner (Registered common-law partner; cohabited for 3+ years preceding death; or cohabited for 1+ year preceding death if have a child)	married; common law (cohabited for 2+ years immediately preceding death or 1+ year if together are the parents of a child)	married; common law (cohabited for 3+ years immediately preceding death or 1+ year if together are the natural or adoptive parents of a child)	married; common law (cohabitants to whom deceased owed, or would have owed, an obligation of support; former spouses owed such an obligation)	married; common law (cohabited in conjugal relationship for 1+ years immediately preceding death)	married; common law (cohabited in conjugal relationship for 2+ years, or 1+ years if they are together the biological or adoptive parents of a child)	married; common law	married ; common law (cohabited for 2+ years or if relationship is of some permanence and together are natural or adoptive parents of a child); polygamous spouses if celebrated in a jurisdiction where legal	married; common law
~ Support Recipients	No	No	Yes (dependency not relevant; requires valid agreement or order)	No	No	Yes (dependency not relevant)	No	No	Yes: dependent divorced spouses; any other person dependent on deceased for support for 3+ years prior to death	No	No
~ Child	children; step-children; and persons to whom the deceased stood in the role of a parent	children; grandchildren; step-children; illegitimate children	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent	children; grandchildren; step-children; adopted children; persons to whom the deceased stood in the place of a parent	children; grandchildren	children; grandchildren; step-children; adoptive children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children	children; grandchildren; step-children; adoptive children; persons to whom the deceased stood in the place of a parent	children; conceived but unborn children; grandchildren; adopted children; persons to whom the deceased stood in the place of a parent;	children; grandchildren; step-children; person to whom the deceased stood in the place of a parent	children; grandchildren; step-children; persons to whom the deceased stood in the place of a parent
~ Parent	parents; grandparents; step-parents that have lived with the child's parent for 2+ years and contributed to the child's support for 1+ year	parents; grandparents; step-parents	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; persons who stood in the place of a parent to the deceased	parents; grandparents	parents; grandparents; step-parents; adoptive parents; persons who stood in the place of a parent	parents; grandparents; step-parents	parents; grandparents; step-parents; adoptive parents; persons whom stood in the place of a parent to the deceased	parents; grandparents; adoptive parents; adoptive grandparents; persons in loco parentis; spouses of parents	parents; grandparents; step-parents; adoptive parents; persons who stand in the place of a parent to the deceased	parents; grandparents; step-parents; persons who stood in the place of a parent to the deceased
~ Sibling	No	Yes (pecuniary only)	Yes (pecuniary and non-pecuniary)	No	Yes- pecuniary and non-pecuniary	Yes	No	No	No	No	No
~ Other	No	No	No	No	No	No	No	No	any other person dependent upon deceased for 3 years prior to death	No, but note "spouse" claimants	No
DAMAGES											
~ Loss of guidance care and companionship (non-pecuniary)	No	Only for spouse, child or parent. 75,000 to spouse, 75,000 to parents (divided equally), 45,000 to each child. Subject to review every 5 years and amounts can be changed by regulation.	30,000 to each spouse (including a support recipient ex spouse), parent, child under 18. 10,000 to "family members who are children over 18 step relationships, or siblings.	60,000 to spouse (excludes separated spouse), 30,000 to each parent, 30,000 to each child.	Yes, but no specific formula provided	Yes, but only if deceased was claimant's minor or dependant child	Yes, but no specific formula provided	No	Yes, but no specific formula provided	No	No
~ Funeral Costs	Yes	Yes	Adjusted for inflation.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
~ Deceased's Medical/Care Costs	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No
~ Travel costs to visit deceased before death	No	Yes	No	No	Yes	No	Yes	No	No	No	No
~ Loss of earnings of the claimant	No	No	No	Yes	Yes, if claimant provided nursing, housekeeping, or other services	No	Yes, if claimant provided nursing, housekeeping, or other services	No	No	No	No
~ Grief counselling	No	Yes	No	Yes	No	No	No	No	No	No	No
~ Punitive Damages	No	No	No	No	No	No	No	No	No	No	No
~ Other	No	No	No	any other out of pocket expense reasonably incurred	No	No	any other out of pocket expense reasonably incurred	No	$500 for administration of estate if brought by the personal representative	No	No

Ministry of Attorney General and Minister Responsible for Housing

2022/23 Estimates Debates Note

Last updated Date: March 10, 2022

FAMILY COMPENSATION ACT

s. 13

KEY MESSAGES:

- Our government has received a great deal of feedback on the existing *Family Compensation Act* (FCA).
- We have heard that the current legislation should be reformed to expand access to justice and benefits for families who grieve the loss of a loved one due to the wrongful act of another.
- As the government and private insurers are the defendants in wrongful death cases, we must also ensure any increase in benefits available for families is fair to rate payers and taxpayers.
- Government is committed to reviewing the FCA and the wrongful death compensation framework in British Columbia during this term of government.

FINANCES:

s. 12

BACKGROUND:

- *In Their Name*, an advocacy group of families who have lost loved ones due to wrongful death have petitioned government to address FCA's lack of non-pecuniary damages which they find discriminatory and denies them the ability to "right the wrong and ensure that the same preventable actions which resulted in the wrongful death would not happen to another."

Contact: s. 19	Tel: s. 19	Mobile: s. 19

- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- A key criticism of the FCA is that because it only provides eligible claimants with pecuniary damages to compensate them for the loss of financial support (that they would have received from the deceased, had they survived), for many families who do not experience a loss of financial support (for example if a minor child or elderly parent dies) there is little merit in pursuing a claim under the existing legislation.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a small amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.
  - The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

ICBC's Enhanced Care

- If a fatality occurs due to a motor vehicle accident in BC, eligible family members work with an ICBC claims adjustor who is legally obligated to assist claimants. Eligible family members receive the following entitlements:
  - $66,987 minimum to Spouse (up to $500,000 based on the decedent's income and age)

Contact s. 19	Tel: s. 19	Mobile: s. 19

- $31,187 to $60,000 – Lump Sum Payment to dependents
- Additional $29,306 if dependents have a disability
- $14,918 to each non-dependent child or parent (if there is no spouse or dependents)

Other Canadian Jurisdictions

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada.
  - Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants.

- **CROSS REFERENCE:** N/A

Contact: s. 19	Tel: s. 19	Mobile: s. 19

FAMILY COMPENSATION ACT

Stakeholder Expectations/Reforms

MANDATE: Access to Justice

TOP MESSAGES:

- I understand that the loss of a loved one is incredibly difficult and emotional for families and extend my deepest sympathy to those who have experienced this.
- Our government has received a great deal of feedback on the existing legislation that governs cases of wrongful death in our province.
- Stakeholders with strongly held, diverse views on all sides of the debate continue to lobby government for reforms to the act. Each side of the discussion raises important concerns.
- While the Ministry has done some work on the existing legislation, no final decisions have been made about reforming the Act.

Stakeholder Expectations/Reforms

BACKGROUND:

BC's Family Compensation Act is outdated in comparison to wrongful death legislation in other provinces.

All Canadian jurisdictions except BC, North West Territories and Nunavut have modernized their wrongful death legislation to include bereavement damages, meaning damages for grief and loss of guidance, care and companionship of the deceased person which are awarded to eligible family members. The most recent change, in April 2014, was Yukon, which amended its legislation to include bereavement damages.

The contrast between damages available when a person survives an accident caused by the wrongful act of another and those available when a victim is killed forms the basis of the criticism of B. C.'s existing legislation. Actions by plaintiffs surviving an accident can include claims for pecuniary damages, such as out-of-pocket expenses, and non-pecuniary damages, such as damages for pain and suffering, while actions by family members of a victim wrongfully killed can only claim for limited pecuniary damages, such as lost financial support, funeral expenses, and medical expenses incurred on behalf of the deceased.

In June 2007, the Ministry issued a Green Paper entitled Reforming British Columbia's Family Compensation Act. It yielded rigid, polarized feedback from stakeholders. The Trial Lawyers Association of BC (TLABC), Coalition Against No-Fault Insurance (CANF) and victims' groups opposed the changes, believing that they did not go far enough to allow greatly increased damage awards for plaintiffs. Insurers and government, who are defendants of wrongful death claims, opposed far-reaching reforms due to concerns with increased costs and insurance rates. The TLABC and CANF continue to advocate for far-reaching reforms that are more extensive than any other jurisdiction in Canada.

In its 2013 platform document to government, and again in its October 2014 submission to government, the Canadian Bar Association, BC Branch, has advocated for reforms to the Act to include bereavement damages with statutory caps which is similar to Alberta's legislation. The concept of statutory caps is strongly opposed by the TLABC and CANF.

An independent consultant has estimated the financial implications to government and ICBC of reforming the Act. The implications included bereavement damages with statutory caps and damages to compensate eligible family members who cared for and visited the deceased between the time of the injury and death, as well as grief counselling, similar to Alberta's legislation. The consultant's final report has not yet been released as it is advice to Cabinet and there has been no direction by Cabinet to release it.

s. 13

Changes to the Act will also likely result in an increase in the number of claims being advanced, by allowing family members of the deceased to claim bereavement damages.

In 2011, MLA Ralph Sultan introduced a private member's bill based on Alberta's legislation. It did not proceed past first reading.

Media interest in the topic:

On Mar. 29, 2015, 75-year old Maryann Kristensen was hit by a van in Surrey as she rode her scooter near the intersection of 96th Avenue and King George Boulevard.

On Apr. 5th, media outlets including Global BC and CTV broadcast stories critical of government for not providing the ability to seek damages to cover funeral costs under the Family Compensation Act. The stories quoted Ms. Kristensen's son who claimed that under the act, there is no recourse for "innocent families who are suffering innocent tragedies at no fault of the victim."

Family friends have set up a crowdfunding campaign with a goal of raising $6000 for funeral expenses.

On April 28, 2014, an article by Ian Mulgrew stated that a fatal hang-gliding case involving Lenami Godinez Avila highlights B.C.'s insufficient civil wrongful-death laws. Lawyer Don Renaud is representing Avila's family and filed action in BC Supreme Court.

On Oct. 23, 2014, the minister was asked by a lawyer on Voice of BC why B.C. doesn't have a wrongful death act.

Program Area	Deputy	GCPE
s. 19 – Feb. 12/16	A/ADM s. 19 – Feb. xx/16	C. Bianco – Feb. 11/16 T. Nelson – Feb. xx/16 J. Kuzminski – Feb. xx/16

2020/21 ESTIMATES NOTE

Family Compensation Act – Status Update

KEY MESSAGES:

- While the Ministry has done some work on the existing legislation no final decisions have been made about reforming the Act.
- Previous consultations on a Green Paper in 2007 revealed uncompromising and opposing policy positions from many stakeholders on the scope of reforms to the Act.
- Stakeholders continue to lobby government for reforms to the Act; however, there is no consensus amongst stakeholders on the scope of reforms.

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FINANCES:

- No budget has been allocated to this item.

BACKGROUND:

- British Columbia's Family Compensation Act is outdated in comparison to wrongful death legislation in other provinces.
- All Canadian jurisdictions except British Columbia, Northwest Territories and Nunavut have modernized their wrongful death legislation to include bereavement damages, meaning damages for grief and loss of guidance, care and companionship of the deceased person which are awarded to eligible family members. Most recently in April 2014, Yukon amended its legislation to include bereavement damages.
- It is the contrast between the damages available when a person survives an accident caused by the wrongful act of another and those available when a

Contact: s. 19	Tel: s. 19	Mobile: s. 19 s. 19

victim is killed that forms the basis of the criticism of British Columbia's existing legislation. Actions by plaintiffs surviving an accident can include claims for pecuniary damages, such as out-of-pocket expenses, and non-pecuniary damages, such as damages for pain and suffering, while actions by family members of a victim wrongfully killed can only claim for limited pecuniary damages, such as lost financial support, funeral expenses, and medical expenses incurred on behalf of the deceased.

- In June 2007, the Ministry issued a Green Paper entitled Reforming *British Columbia's Family Compensation Act*. It yielded rigid, polarized feedback from stakeholders. The Trial Lawyers Association of British Columbia (TLABC), Coalition Against No-Fault Insurance (CANF), and victims' groups opposed the changes, believing that they did not go far enough to allow greatly increased damage awards for plaintiffs. Insurers and government, who are defendants of wrongful death claims, opposed far-reaching reforms due to concerns with increased costs and insurance rates. The TLABC and CANF continue to advocate for far-reaching reforms to the Act.
- In its 2013 platform document to government, and again in its October 2014 submission to government, the Canadian Bar Association, BC Branch, has advocated for reforms to the Act to include bereavement damages with statutory caps which is similar to Alberta's legislation. The concept of statutory caps is strongly opposed by the TLABC and CANF.
- More recently, over the last several years the TLABC and CANF joined together to form the BC Wrongful Death Law Reform Society (Society). The Society continues to lobby government for far-reaching reforms to the Act. These changes are more extensive than any other jurisdiction in Canada.

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Contact: s. 19	Tel: s. 19	Mobile: s. 19 s. 19

Team

- **Note ## –** Note title
- Note numbers will be added after the binder is complete

Contact: s. 19	Tel: s. 19	Mobile: s. 19 s. 19

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
BRIEFING NOTE

PURPOSE: For DECISION for the Honourable David Eby, Q.C., Attorney General

ISSUE: *Family Compensation Act* reforms and financial analysis

DECISION REQUIRED/ RECOMMENDATION:

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SUMMARY:

- The *Family Compensation Act* ("FCA") does not allow for bereavement damages (non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have amended their wrongful death legislation to include bereavement damages, however a variety of models are used across Canada.
- The costs of reforms to include bereavement damages will be significant, as government and ICBC are always defendants in FCA claims.
- The Attorney General has requested a copy of a previous report with a financial analysis of the costs of including bereavement damages in the FCA. The report was prepared as confidential advice to Cabinet under the previous government and cannot be shared.
- Updating the report using 2017 data will provide an accurate picture of the fiscal implications of reforms.

BACKGROUND:

<u>Features of the FCA</u>

- At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The FCA is B.C.'s wrongful death legislation.

- The FCA permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.
- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the FCA does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a low amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.[1]

Other Canadian Jurisdictions

- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada. Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants. Legislation in Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants. Legislation in B.C., Northwest Territories and Nunavut do not include bereavement damages. See Appendix 1 for a cross-Canada comparison of bereavement damages in legislation.

Stakeholder History

- The Ministry published a green paper in June 2007 on reforming the FCA. The responses to the green paper yielded uncompromising and opposing policy positions from stakeholders on the scope of reforms. Plaintiff organizations advocated for far-reaching reforms, while defendants, including ICBC and government stakeholders, voiced concerns with the financial impacts of reforms.
- Changes to the FCA have been called for since the 1980s. There are a number of organized and vocal stakeholders who are lobbying for reforms to the FCA who have been critical of government's inaction since the 2007 green paper. These groups include the Trial Lawyers Association of BC (TLABC), the Coalition Against No-Fault Insurance (CANF), the BC Coalition of People with Disabilities, the Wrongful Death Law Reform Society of BC (also known as "In Their Name," and is affiliated with TLABC and CANF. "In Their Name" is a campaign led by families and friends who could not access a remedy under the FCA following the death of a loved one who was wrongfully killed), and the Canadian Bar Association, BC Branch (CBABC).

[1] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

- The TLABC has proposed a variety of reforms over the years. Most recently the proposal has been to adopt a far-reaching approach based on a compilation of different US state laws, with a focus on the loss to the deceased's estate. This model includes a very broad class of eligible claimants, including anyone who can establish they were dependent on the deceased for financial or non-economic losses (such as ex-spouses or anyone reliant on the deceased for support). It also includes punitive damages.
- In its 2012 and 2017 *Agenda for Justice* platform documents, the CBABC has advocated for reforms to the FCA to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases.
- While these stakeholders each have different perspectives, the common thread in their positions is that bereavement damages should be made available under the Act. Previously plaintiff organizations such as TLABC and CANF strongly opposed models of reforms with statutory caps due to the fact that they were not far-reaching enough.

DISCUSSION:

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Financial Analysis

s. 12, s. 13, s. 14

s. 13

OTHER MINISTRIES IMPACTED/CONSULTED:
Ministry of Finance (Risk Management Branch)

Prepared by:	**Approved by:**
s. 19	s. 19
Legal Counsel Justice Services Branch	A/Executive Director Justice Services Branch
s. 19	s. 19
s. 19	Date:
Assistant Deputy Minister	

s. 13

s. 19

Deputy Attorney General

s. 13

David Eby, QC
Attorney General

Attachment(s)
Appendix 1 –Cross-Canada Comparison of Bereavement Damages in Wrongful Death Legislation

Appendix 1 – Cross-Canada Comparison of Bereavement Damages in Wrongful Death Legislation (updated May 2017)

	Bereavement Damages Compensation Structure	Eligible Claimants: Relationship to Deceased Person						
	Not allowed, statutory cap, or court awarded?	**Spouse**	**Parent**	**Child**	**Grandparent**	**Grandchild**	**Sibling**	**Other family members**
BC	Not allowed[ii]	n/a	n/a	n/a	n/a	n/a	n/a	n/a
AB	Statutory cap	$82,000[iii]	$82,000 (split equally if two parents)	$49,000 each	n/a	n/a	n/a	n/a
SK	Statutory cap	$60,000	$30,000 each	$30,000 each	n/a	n/a	n/a	n/a
MB	Statutory cap	$39,317[iv]	$39,317 each	Under 18: $39,317 18 or older: $13,106	$13,106	$13,106	$13,106	$13,106 to each: step-son; step-daughter; person to whom the deceased stood *in loco parentis*; step-mother; step-father; person who stood *in loco parentis* to the deceased;
ON	Court awarded[v]	$52,500 (avg. each)	$58,750 (avg. each)	$32,917 (avg. each)	No recent case law	$3,000 (avg. each)	$20,000 (avg. each)	No recent case law
QB	Court awarded[vi]	$61,500 (avg. each)	$43,925 (avg. each)	$37,635 (avg. each)	$6,000 (avg. each)	No recent case law	$18,580 (avg. each)	Ex-spouse: $8,166 (avg. each) Sibling-in-law: $8,000 (avg. each)
NB	Court awarded[vii]	n/a	$25,000[viii]	n/a	n/a	n/a	n/a	n/a
NS	Court awarded[ix]	$65,000 (avg. each)	No recent case law	$20,750 (avg. each)	No recent case law	$4,000 (avg. each)	No recent case law	No recent case law
PEI	Court awarded[x]	No recent case law	No recent case law	No recent case law	No recent case law	No recent case law	No recent case law	Other "dependants"[xi]
NFLD	Court awarded[xii]	No recent case law	No recent case law	No recent case law	n/a[xiii]	n/a	n/a	n/a
YK	Statutory cap	$75,000	$75,000 (split equally if two parents)	$45,000 each	n/a[xiv]	n/a	n/a	n/a

	Bereavement Damages Compensation Structure	Eligible Claimants: Relationship to Deceased Person						
	Not allowed, statutory cap, or court awarded?	Spouse	Parent	Child	Grandparent	Grandchild	Sibling	Other family members
NWT	Not allowed[xv]	n/a	n/a	n/a	n/a	n/a	n/a	n/a
NU	Not allowed[xvi]	n/a	n/a	n/a	n/a	n/a	n/a	n/a

[ii] In cases with minor children, courts have awarded low amounts to each child for the loss of guidance, care and companionship of the (deceased) parent. The conventional amount is $35,000, however, it is calculated based on the child's age and involvement of the parent.

[iii] These amounts are effective May 1, 2013. Alberta's legislation requires government to review the statutory levels of damages every five years.

[iv] All amounts for Manitoba have been adjusted from 2002 to 2017 dollar amounts from the *Fatal Accidents Act*, CCSM c F50, per s. 3.1(5) of that Act.

[v] Section 61 of the *Family Law Act*, RSO 1990, c F.3 sets out that spouses, children, grandchildren, parents, grandparents, brothers, and sisters of the deceased person are able to sue in tort for "an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred." Unless otherwise noted, the amounts in this table, for all provinces with court awarded damages, are averages from case law from 2001 – 2017.

[vi] The area of law relating to compensation for the accidental death of a loved one, or *solatium doloris*, falls under the general head of "moral" damages covered by art. 1457 of the *Québec Civil Code*. That section, which deals with liability for non-contractual damages, or delict, does not specify quanta.

[vii] Section 8 of the *Fatal Accidents Act*, SNB 2012, c 104 sets out that damages must be proportional to the pecuniary loss resulting from the death.

[viii] Section 10(1) of the *Fatal Accidents Act*, SNB 2012, c 104 limits "loss of companionship" compensation to parents only.

[ix] Under sections 5(1) and 5(2)(d) of the *Fatal Injuries Act*, RSNS 1989, c 163, a spouse, common-law partner, parent, or child of a deceased person covered under the Act can be compensated for "loss of guidance, care, and companionship", but no amounts are specified.

[x] Under sections 6(1) and 6(3)(c) of the *Fatal Accidents Act*, RSPEI 1988, c F-5, individuals defined as "dependants" under the Act may recover for "loss of guidance, care and companionship", but no amounts are specified.

[xi] Under s. 1(f)(vii) of the *Fatal Accidents Act*, RSPEI 1988, c F-5, the definition of "dependant" includes "any other person who for a period of at least three years immediately prior to the death of the deceased was dependent upon the deceased for maintenance and support"

[xii] Section 6(2) of the *Fatal Accidents Act*, RSNL 1990, c F-6 allows for damages for "the loss of care, guidance and companionship" of the deceased, but does not specify amounts.

[xiii] Section 4 of the *Fatal Accidents Act*, RSNL 1990, c F-6 limits relief to benefit spouses, partners, parents, and children.

[xiv] Section 3 of the *Fatal Accidents Act*, RSY 2002, c 86 limits relief to benefit spouses, parents, and children.

[xv] The *Fatal Accidents Act*, RSNWT 1988, c F-3 does not allow for compensation for bereavement, the loss of care, guidance and companionship of the deceased.

[xvi] The *Fatal Accidents Act*, RSNWT (Nu) 1988, c F-3 does not allow for compensation for bereavement, the loss of care, guidance and companionship of the deceased.

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
BRIEFING NOTE

PURPOSE: For INFORMATION for David Eby, Q.C., Attorney General

ISSUE: *Family Compensation Act* materials with financial analysis

SUMMARY:

- The *Family Compensation Act* ("FCA") does not allow for bereavement damages (non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person).
- Most Canadian provinces have amended their wrongful death legislation to include bereavement damages, however a variety of models are used across Canada.
- The costs of reforms to include bereavement damages will be significant, as government and the Insurance Corporation of B.C. ("ICBC") are always defendants in FCA claims.
- The Attorney General has requested a copy of a previous report with a financial analysis of the costs of reforms to the FCA. The report was prepared as confidential advice to Cabinet under the previous government and cannot be shared.

BACKGROUND:

- The FCA allows for pecuniary damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the FCA does not allow for bereavement damages, in cases involving minor children with a deceased parent, a low amount of pecuniary damages are awarded to each child to address the loss of guidance, care and companionship of the parent.[1]
- Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages. There are a variety of models used across Canada. Legislation in Alberta, Saskatchewan, Manitoba and the Yukon use statutory caps for bereavement damages, with a range of amounts awarded and a range of family members who qualify as eligible claimants. Legislation in Ontario, Quebec, New Brunswick, Nova Scotia, PEI, and Newfoundland and Labrador use a court award model, also with a range of family members who qualify as eligible claimants. Legislation in B.C., Northwest Territories and Nunavut do not include bereavement damages. See Appendix 2 for a cross-Canada comparison of bereavement damages in legislation.
- s. 13

[1] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

s. 13

s. 12, s. 13, s. 14

OTHER MINISTRIES IMPACTED/CONSULTED:
N/A

Prepared by:	**Approved by:**
s. 19	s. 19
Legal Counsel Justice Services Branch s. 19	A/ Executive Director Justice Services Branch s. 19
s. 19 Assistant Deputy Minister	Date:

Richard J.M. Fyfe, QC
Deputy Attorney General

Attachment(s)
Appendix 1 – Transition Issue Note – *Family Compensation Act*
Appendix 2 –Cross-Canada Comparison of Bereavement Damages in Wrongful Death Legislation

ISSUE NOTE

Issue:

- Reforms to the *Family Compensation Act*

Background:

1. At common law, compensation is not available for the death of a person. Legislation in most common law jurisdictions overcomes this limitation by permitting family members of a person wrongfully killed to bring an action for damages against the party who caused the death. The *Family Compensation Act* (*FCA*) is B.C.'s fatal accident legislation.

2. The key features of the *FCA* include:

Eligible claimants:

- The *FCA* permits spouses (including people in a marriage-like relationship for at least two years), parents (including grandparents and step-parents) and children (including step-children and persons to whom the deceased stood in the role of a parent) to bring an action for damages against the party who caused the death.

Pecuniary damages:

- The *FCA* allows for damages to be awarded to address financial loss suffered as a result of the death of a family member, including lost financial support, funeral expenses, and medical and hospital expenses incurred on behalf of the victim.
- While the *FCA* does not explicitly allow for bereavement damages, in cases involving minor children with a deceased parent, a low amount is awarded to each child to address the loss of guidance, care and companionship of the parent.[2]

3. Most Canadian provinces have amended their wrongful death legislation to also include bereavement damages (non-pecuniary damages for grief and loss of guidance, care and companionship of the deceased person), however, B.C. has not.

4. Changes to the *FCA* have been called for since the mid-1980s. Recently, the most vocal advocates for change have been the Trial Lawyers Association of B.C. (TLABC), and the

[2] The conventional amount is $35,000, which is the "rough upper limit" awarded to minor children for the loss of a parent. The amount is adjusted based on factors of age and other considerations such as the involvement of the parent in the child's life.

Coalition Against No-Fault Insurance (CANF). The TLABC has issued several proposals for how it would like to see the law changed. Those changes are more extensive than any other jurisdiction in Canada.

5. In its 2012 and 2017 *Agenda for Justice* platform documents, the Canadian Bar Association, B.C. Branch has advocated for reforms to the *FCA* to include bereavement damages with statutory caps (similar to Alberta's legislation), as well as punitive damages in appropriate cases. The concept of statutory caps is strongly opposed by the TLABC and CANF.

6. It is the contrast between the damages available when a person survives an accident caused by the wrongful act of another and those available when the victim is killed that forms the basis of the criticism of B.C.'s existing legislation. Actions by survivors can include claims for pecuniary and non-pecuniary damages, while actions by family members of a victim wrongfully killed can only claim for pecuniary damages.

7. The other criticism of the *FCA* is that because it only provides eligible claimants with pecuniary damages to compensate them for the loss of financial support (that they would have received from the deceased, had he or she survived), for many families who do not experience a loss of financial support there is little merit in pursuing a claim under the existing legislation.

8. The Ministry published a Green Paper in June 2007 on reforming the *FCA*. The responses to the Green Paper yielded uncompromising and opposing policy positions from stakeholders on the scope of reforms. Plaintiff organizations (such as TLABC and CANF) advocated for far-reaching reforms, while defendants, including ICBC, and government stakeholders, voiced concerns with the financial impacts of reforms.

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Decision required:

- **30 day issue:** Direction is required on whether to proceed with reforms to the *FCA* and on the scope of reforms.

Appendix 1 – Cross-Canada Comparison of Bereavement Damages in Wrongful Death Legislation

	Compensation structure	Eligible Claimants: Relationship to Deceased Person						
	Not allowed, statutory cap, or court awarded?	Spouse	Parent	Child	Grandparent	Grandchild	Sibling	Other family members
BC	Not allowed[ii]	n/a	n/a	n/a	n/a	n/a	n/a	n/a
AB	Statutory cap	$82,000[iii]	$82,000 (split equally if two parents)	$49,000 each	n/a	n/a	n/a	n/a
SK	Statutory cap	$60,000	$30,000 each	$30,000 each	n/a	n/a	n/a	n/a
MB	Statutory cap	$39,317[iv]	$39,317 each	Under 18: $39,317 18 or older: $13,106	$13,106	$13,106	$13,106	$13,106 to each: step-son; step-daughter; person to whom the deceased stood *in loco parentis*; step-mother; step-father; person who stood *in loco parentis* to the deceased;
ON	Court awarded[v]	$52,500 (avg. each)	$58,750 (avg. each)	$32,917 (avg. each)	No recent case law	$3,000 (avg. each)	$20,000 (avg. each)	No recent case law
QB	Court awarded[vi]	$61,500 (avg. each)	$43,925 (avg. each)	$37,635 (avg. each)	$6,000 (avg. each)	No recent case law	$18,580 (avg. each)	Ex-spouse: $8,166 (avg. each) Sibling-in-law: $8,000 (avg. each)
NB	Court awarded[vii]	n/a	$25,000[viii]	n/a	n/a	n/a	n/a	n/a
NS	Court awarded[ix]	$65,000 (avg. each)	No recent case law	$20,750 (avg. each)	No recent case law	$4,000 (avg. each)	No recent case law	No recent case law
PEI	Court awarded[x]	No recent case law	No recent case law	No recent case law	No recent case law	No recent case law	No recent case law	Other "dependants"[xi]
NFLD	Court awarded[xii]	No recent case law	No recent case law	No recent case law	n/a[xiii]	n/a	n/a	n/a

	Compensation structure	Eligible Claimants: Relationship to Deceased Person						
	Not allowed, statutory cap, or court awarded?	**Spouse**	**Parent**	**Child**	**Grandparent**	**Grandchild**	**Sibling**	**Other family members**
YK	Statutory cap	$75,000	$75,000 (split equally if two parents)	$45,000 each	n/a[xiv]	n/a	n/a	n/a
NWT	Not allowed[xv]	n/a	n/a	n/a	n/a	n/a	n/a	n/a
NU	Not allowed[xvi]	n/a	n/a	n/a	n/a	n/a	n/a	n/a

[ii] While not clearly enumerated in the FCA, in all cases with minor children, courts have awarded low amounts to each child for the loss of guidance, care and companionship of the (deceased) parent. The conventional amount is $35,000, however, it is calculated based on the child's age and involvement of the parent (i.e. older children and children with less than "ideal" parents may receive $5,000 to $10,000).

[iii] These amounts are effective May 1, 2013. (They were previously set at $75,000, $75,000 and $45,000 respectively.) Alberta's legislation requires government to review the statutory levels of damages every five years.

[iv] All amounts for Manitoba have been adjusted to 2017 dollar amounts from the 2002 dollar amounts specified in the *Fatal Accidents Act*, CCSM c F50, per s. 3.1(5) of that Act. The Bank of Canada online Inflation Calculator was used for these calculations: http://www.bankofcanada.ca/rates/related/inflation-calculator/

[v] Section 61 of the *Family Law Act*, RSO 1990, c F.3 sets out that spouses, children, grandchildren, parents, grandparents, brothers, and sisters of the deceased person are able to sue in tort for "an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred." However, the Act does not specify amounts. Unless otherwise noted, the amounts in this table, for all provinces with court awarded damages, are averages from case law from 2001 – 2017.

[vi] The area of law relating to compensation for the accidental death of a loved one, or *solatium doloris*, falls under the general head of "moral" damages covered by art. 1457 of the *Québec Civil Code*. That section, which deals with liability for non-contractual damages, or delict, does not specify quanta.

[vii] Section 8 of the *Fatal Accidents Act*, SNB 2012, c 104 sets out that damages must be proportional to the pecuniary loss resulting from the death, but does not set out amounts.

[viii] Section 10(1) of the *Fatal Accidents Act*, SNB 2012, c 104 limits "loss of companionship" compensation to parents only, and in cases resulting from the death of the claimant's child to situations where the child was under 19, or was over 19 and was still dependant on the parent making the claim. No updated case law was found when this chart was updated in May of 2017, so this amount as drawn from page 8 of sessional paper 440/2012 of the 1st session of the 28th Legislature of Alberta, entitled "Review of Damages Amounts Under Section 9 of the *Fatal Accidents Act*."

[ix] Under sections 5(1) and 5(2)(d) of the *Fatal Injuries Act*, RSNS 1989, c 163, a spouse, common-law partner, parent, or child of a deceased person covered under the Act can be compensated for "loss of guidance, care, and companionship", but no amounts are specified.

[x] Under sections 6(1) and 6(3)(c) of the *Fatal Accidents Act*, RSPEI 1988, c F-5, individuals defined as "dependants" under the Act may recover for "loss of guidance, care and companionship", but no amounts are specified.

[xi] Under s. 1(f)(vii) of the *Fatal Accidents Act*, RSPEI 1988, c F-5, the definition of "dependant" includes "any other person who for a period of at least three years immediately prior to the death of the deceased was dependent upon the deceased for maintenance and support"
[xii] Section 6(2) of the *Fatal Accidents Act*, RSNL 1990, c F-6 allows for damages for "the loss of care, guidance and companionship" of the deceased, but does not specify amounts.
[xiii] Section 4 of the *Fatal Accidents Act*, RSNL 1990, c F-6 limits relief to benefit spouses, partners, parents, and children.
[xiv] Section 3 of the *Fatal Accidents Act*, RSY 2002, c 86 limits relief to benefit spouses, parents, and children.
[xv] The *Fatal Accidents Act*, RSNWT 1988, c F-3 does not allow for compensation for bereavement, the loss of care, guidance and companionship of the deceased, or any similar damages.
[xvi] The *Fatal Accidents Act*, RSNWT (Nu) 1988, c F-3 does not allow for compensation for bereavement, the loss of care, guidance and companionship of the deceased, or any similar damages.

Template approval: Family Compensation Act (Wrongful Death/Fatal Accident compensation)
Branch: Justice Services Branch
Cliff log: 559066

Dear Mr./Ms. [LAST NAME]:

Thank you for your email of [DATE] in which you request changes to British Columbia's *Family Compensation Act*. Please accept my heartfelt condolences on the passing of [expression of condolence if appropriate in context].

I appreciate you sharing your story and issuing this call for change during such an extremely difficult time. I have been advised that the Ministry of Attorney General is not currently reviewing the *Family Compensation Act*; however, your letter will be kept on file for reference in the event that this legislation is reviewed, or in any other discussions that pertain to this area of law.

Thank you again for writing.

Yours truly,

[4-5 spaces]

[Member of Legislative Assembly]

official AG messaging on the Family Compensation Act/ wrongful death if there is any future correspondence

Nothing is more painful than losing a loved one. Grieving families need better support when a family member is wrongfully killed, that's why we're working to update the Family Compensation Act to give families an opportunity to address the injustice they have faced.

I understand Premier Eby met with the BC Wrongful Death Law Reform Society during his time as Attorney General, and I would welcome the opportunity to meet with the Society again in the course of our stakeholder engagement process. My ministry will continue to advance work on this important file.

Dear

Thank you for your email dated xxx, 2023, regarding suggested changes to the Family Compensation Act.

We acknowledge your request for changes to the Family Compensation Act. Further to your request, and in accordance with the former Attorney General's statements to the media beginning in December 2020, ministry staff have been asked to begin assessing options to reform or replace the Family Compensation Act.

I understand that change likely cannot come soon enough for you, and I am hopeful that this response will provide some reassurance that work is underway. I appreciate your special interest in this matter.

Yours truly,

JSB

(Name),
Email:

Dear(Name),

Thank you for your phone call on s. 22
s. 22 , and to discuss the *Family Compensation Act*. Please accept our sincere condolences on the death of your daughter.

We received further information from you, including a one page summary of events, and WorkSafe BC and medical records, on
s. 22

It is not within the mandate of the Ministry of Attorney General to become involved in matters related to WorkSafeBC and the BC hospitals, however, the Province does provide resources that may be of assistance, as described below.

If you have not already done so, you may wish to reach out to the Workers' Advisers Office, which is a branch of the Ministry of Labour, operating independently of WorkSafeBC, providing workers, their dependants and other stakeholders with free advice, assistance, representation, training and mentoring with respect to workers' compensation issues. Contact information for the Workers' Advisers Office can be found through the following website:

www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/personal-injury-and-workplace-safety

If you have not already done so, you may wish to bring your concerns about the treatment provided in the hospital to the attention of the hospital administration. If you are unable to resolve this matter with the hospital administration, you may wish to contact the applicable health authority to share your concerns. Each health authority has a Patient Care Quality Office that works with patients to address care quality concerns. Contact information for health authorities can be found through the following website:

www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/partners/health-authorities/regional-health-authorities

We also note your request to discuss the *Family Compensation Act*. In accordance with the Attorney General's statements to the media beginning in December 2020, ministry staff have been requested to begin assessing options to reform or replace the *Family Compensation Act*. While we understand that change likely cannot come soon enough for you, we are hopeful that this response will provide some reassurance that work is underway.

We have referred a copy of your records to the Honourable Adrian Dix, Minister of Health. Minister Dix is responsible for liaison with hospitals and the self-governing bodies for the health care professions.

Sincerely,

Justice Services Branch
Ministry of Attorney General

pc The Honourable Adrian Dix
Ministry of Health (HLTH.Health@gov.bc.ca)

CLIFF number:

s. 22

Thank you for your letter of s. 22 , where you share the circumstances of your s. 22 death at s. 22 Hospital and your concerns about the care that she received. I have heard your request meaningful change to the *Family Compensation Act*.

Further to your request and the requests of others, and in accordance with my statements to the media beginning in December, I have directed Ministry staff to begin assessing options to add bereavement damages to the *Family Compensation Act*.

I am advised that there is no uniform approach to bereavement damages in Canada. Staff have further advised that it will be necessary to conduct internal and external consultations and engage an actuary to assess the financial impact of the different options used in other Provinces and jurisdictions. For these reasons, at this time, I do not have estimate for when we will be in a position to bring amendments to the *Family Compensation Act* before the legislative assembly.

While I understand that change likely cannot come soon enough for you, I am hopeful that this response will provide some reassurance that work is underway, and that change is in progress. I am sorry for your loss and thank you again for bringing this issue to my attention.

Yours truly,

David Eby, QC
Attorney General and
Minister Responsible for Housing

Family Compensation Act – as of November 2021

Dear [Name]

Thank you for your letter of [date], where you [topic]. I have heard your request for change to the *Family Compensation Act*.

Further to your request and the requests of others, and in accordance with my statements to the media beginning in December 2020, I have asked ministry staff to begin assessing options to reform or replace the *Family Compensation Act*.

While I understand that change likely cannot come soon enough for you, I am hopeful that this response will provide some reassurance that work is underway. I am sorry for your loss and thank you again for bringing this issue to my attention.

Yours truly,

[signature block]

CLIFF number: