

**IN THE MATTER OF AN INQUIRY PURSUANT TO SECTION 56 OF THE FREEDOM
OF INFORMATION AND PROTECTION OF PRIVACY ACT, RSBC 1996, c. 165**

between

MICHAEL-JAMES PENNIE

(Applicant)

and

THE MINISTRY OF HEALTH

(the “Ministry”)

APPLICANT’S RESPONSE SUBMISSION

July 21, 2026

A. Overview

1. This is the Applicant’s response submission in the above-noted inquiry, delivered pursuant to the Notice of Written Inquiry dated June 1, 2026. The issues before the Commissioner’s delegate are limited to whether the Ministry of Health (the “Ministry”) was authorized or required to withhold information under sections 12, 13, and 14 of the Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165 (“FOIPPA”).
2. The Applicant does not concede any of the factual assertions in the Ministry’s Initial Submission or in the affidavits of N. Barnes, A. McCartney, or M. McKamey filed in support of it, and addresses them below only to the extent necessary to respond to the Ministry’s position on the three sections at issue.

3. The Applicant submits that the Ministry has not discharged its burden under section 57(1) of FOIPPA to prove that sections 12, 13, and 14 apply to the withheld information, for the reasons set out below.

B. Context: The Ministry's Account of Compliance Does Not Match the OIPC's Own Fact-Finding

The Applicant raises the following as context bearing on the weight the Commissioner's delegate should give to the Ministry's evidence and characterizations — not as a freestanding issue for decision, since the only issues properly before this inquiry are the application of sections 12, 13, and 14.

4. The Ministry's Initial Submission states, at paragraph 3, that "On February 27, 2025, the Ministry responded to the applicant's access request. It produced a records package of 241 pages and withheld information pursuant to sections 12, 13, 14, 16, and 17 of the FOIPPA."
5. This is inconsistent with the OIPC Investigator's Fact Report of September 22, 2025, prepared by Investigator Srdjan Biljetina and provided to all parties with the Notice of Inquiry, which describes the same event differently, at paragraph 3: "On February 27, 2025, the public body responded to the applicant's access request and denied to produce the records under sections 12, 13, 14, 16, and 17 of the FIPPA."
6. A "response" that "produces a records package" of severed but readable material is a materially different thing from a response that "denies to produce the records." The Applicant's own recollection accords with the Investigator's Fact Report, not the Ministry's Initial Submission: the Applicant received no records, redacted or otherwise, in response to the November 23, 2023 access request until June 9, 2026, when the Ministry of Attorney General, on behalf of the Ministry of Health, provided an initial severed records package. A corrected version of that package, reflecting a minor revision to the severing of one page, was provided on June 12, 2026 and is the version attached to this submission as Appendix 1.
7. This discrepancy matters for two reasons. First, it goes to the reliability of the Ministry's account of its own conduct on this file generally, which is relevant to how much weight

should be placed on the Ministry's characterization of the withheld records elsewhere in its submission and supporting affidavits. Second, the Investigator's Fact Report itself notes, at paragraph 5, that "during the Investigation process, the public body did not provide the OIPC with redline records" — which is difficult to reconcile with a claim that a complete, properly severed package already existed as of February 2025.

8. The Applicant does not ask the Commissioner's delegate to make a separate finding or order concerning this timeline, as that issue was not listed in the Notice of Inquiry and the Applicant did not seek the OIPC's permission to add it under the procedure described at page 3 of the OIPC's Instructions for Written Inquiries. The Applicant raises it solely as relevant background to the sections 12, 13, and 14 analysis that follows, and reserves the right to pursue the underlying compliance and delay issue, if warranted, through a separate complaint.
9. The pattern of inaccurate characterization identified above is not limited to the compliance timeline. The Applicant's organization, The BC Wrongful Death Law Reform Society (the "Society"), separately requested and reviewed the internal records that the Ministry of Health, the Ministry of Attorney General, the Ministry of Finance, and the Premier's Office hold concerning the Society and its proposed Wrongful Death Accountability Act. That review, attached to this submission as Appendix 2, identifies a number of inaccurate statements about the Society across those records, including within the Ministry's own HTH-2023-33193 file that is the subject of this inquiry.
10. Most directly relevant to this Ministry's file, Appendix 2 documents that an external engagement plan disclosed under HTH-2023-33193 names a detailed list of stakeholder organizations for consultation on wrongful-death-related reform, sector by sector, while omitting the Society specifically — despite the Society being the organized, named advocacy body representing affected families on this issue, and being named individually elsewhere in the government's own records (Appendix 3, Part B.1). As with the compliance-timeline discrepancy above, the Applicant does not ask the Commissioner's delegate to make a separate finding regarding these characterizations, which are not listed as issues in the Notice of Inquiry. They are raised solely as further context bearing on the reliability of the Ministry's account of the Society and its records generally, and the

weight that should be given to the Ministry's evidence and characterizations in the sections 12, 13, and 14 analysis that follows.

C. Section 12 — Cabinet Confidence

11. The Applicant does not dispute that Cabinet confidentiality serves an important constitutional function, nor that some information properly falls within section 12(1). The Applicant's position is narrower: the Ministry has not shown that all of the withheld material meets the test, and it has not properly applied the mandatory carve-outs in section 12(2).
12. Section 12(2)(a) provides that section 12(1) does not apply to information in a record that has been in existence for 15 or more years, and section 12(2)(b) provides that it does not apply to background explanations or analyses of problems submitted to Cabinet for its consideration in making a decision, if the decision has been made public. The Ministry's own submission acknowledges, at paragraph 111, that "there has been no public announcement of Cabinet's decision."
13. More fundamentally, the case law the Ministry itself cites (Initial Submission, paragraphs 84–86) confirms that "background explanations" — factual and analytical material assembled to inform Cabinet, as distinct from the substance of Cabinet's deliberations or the options and recommendations before it — is presumptively outside the scope of section 12(1) once severed from the deliberative content. Comparative statutory research of the kind at issue here (i.e., a survey of how other Canadian provinces and territories treat wrongful death compensation) is precisely the sort of background, factual material this carve-out is meant to capture. The Applicant submits that any withheld comparative-law research, tables, or summaries of other provinces' legislation must be assessed against this carve-out on a line-by-line basis, and cannot simply be withheld wholesale because it appears in the same record as genuine Cabinet advice.
14. The Applicant asks the Commissioner's delegate to review the withheld material in camera with this distinction in mind, and to order disclosure of any portion that consists of background factual or comparative-law material rather than the substance of Cabinet's deliberations, options, or decision.

D. Section 13 — Advice or Recommendations

15. Section 13(2)(a) of FOIPPA provides that section 13(1) does not apply to information that consists of factual material. The Applicant submits that this exclusion is directly engaged here.
16. The Applicant's organization, The BC Wrongful Death Law Reform Society, has independently verified the current state of wrongful death legislation in every Canadian province and territory against the primary sources — the consolidated statutes and reported case law currently in force — and has identified a number of specific errors and omissions in the government's own comparative research underlying its position on the Family Compensation Act. A copy of the Society's findings, titled "Wrongful Death Legislation Across Canada: Verified Findings," is attached to this submission as Appendix 3. The Applicant is the President of the Society and prepared this submission on the Society's behalf; the Society's report is tendered as documentary evidence supporting its research and analysis.
17. These findings include, among others: Quebec is omitted entirely from the government's comparative table; Ontario is not recorded as a jurisdiction permitting survivability of pain-and-suffering damages, despite section 38 of the Trustee Act, RSO 1990, c T.23 providing for exactly that; Alberta is recorded as not permitting punitive damages, when it has since *Steinkrauss v Afridi*, 2013 ABCA 417; the bereavement figures recorded for Alberta reflect amounts that were superseded in 2013; and Yukon's wrongful death legislative modernization in 2014 to allow for non-pecuniary damages was omitted.
18. The records disclosed to the Applicant on June 12, 2026 illustrate the same pattern the Society's research identifies elsewhere. Pages 89 through 112 of the Records consist of a presentation titled "Reforming BC's Family Compensation Act," withheld almost in its entirety under sections 12 and 13. One of the few fragments left legible, at page 90, states that the FCA is "out-of-step with other jurisdictions across Canada" and that certain claimants "are eligible in other jurisdictions such as Manitoba, Ontario and Quebec" — a comparative statement of what other provinces' statutes currently provide. The slides immediately following, including sections titled "Model Overview," "Terminology," and

“General Principles,” are withheld in full under the same sections. The Applicant submits this is precisely the kind of severing the Commissioner’s delegate should scrutinize: a single sentence of comparative-law fact was left visible while the surrounding factual detail on the same topic was not, with no apparent line drawn between fact and advice.

19. This matters to the section 13 analysis in two respects. First, to the extent any of this comparative-law research appears in withheld records, it is factual material — a statement of what the law in another jurisdiction currently is — and not “advice or recommendations” within the meaning of section 13(1), regardless of the policy conclusions drawn from it elsewhere in the same document. Under section 13(2)(a), it does not lose that character merely because it was compiled for the purpose of informing a policy recommendation, and it must be severed and disclosed. Second, and independently, the demonstrated inaccuracy of the government’s underlying comparative research is directly relevant to the public interest in disclosure of the material informing this policy file, and to the weight the Commissioner’s delegate should give to any characterization of the current legislative landscape found elsewhere in the Ministry’s evidence.
20. The Applicant asks the Commissioner’s delegate to order the Ministry to sever and disclose all factual and comparative-law material from the withheld records in accordance with section 13(2)(a), and, if there is any doubt as to whether particular material is factual or evaluative, to review it in camera to resolve that question rather than accepting the Ministry’s characterization at face value.

E. Section 14 — Solicitor-Client Privilege

21. Solicitor-client privilege is not a blanket exception for any record touching on legal matters; it protects the confidential communication of legal advice between a lawyer and client, and its scope must be construed as narrowly as is consistent with its underlying purpose.
22. The Ministry’s Initial Submission describes the withheld section 14 material, at paragraph 160, as “a summary of Legal Services Branch’s legal advice.” A summary that a client or subsequent official prepares of legal advice received is privileged only to the

extent that disclosing it would reveal the substance of that advice; the bare fact that legal advice was sought or received, without more, is not itself privileged.

23. The Applicant asks the Commissioner's delegate to review the section 14 material in camera to confirm that what has been withheld is genuinely confined to the substance of legal advice, and to order disclosure of any portion that is merely administrative or that does not reveal the advice itself.

F. Conclusion and Order Sought

24. For the reasons above, the Applicant submits that the Ministry has not discharged its burden of proving that all of the withheld information falls within sections 12, 13, and 14 of FOIPPA, and asks the Commissioner's delegate to order that:

- (a) all background, factual, and comparative-law material be severed and disclosed from records withheld under section 12, in accordance with section 12(2);
- (b) all factual material, including comparative-law and statistical research, be severed and disclosed from records withheld under section 13, in accordance with section 13(2)(a);
- (c) any material withheld under section 14 that does not reveal the substance of legal advice be disclosed; and
- (d) the Commissioner's delegate review the remaining withheld records in camera before accepting the Ministry's severing as reasonable.

All of which is respectfully submitted.

Date: July 21, 2026



Michael-James Pennie (Applicant)

APPENDIX 1

From: Dube, Jonathan HLTH:EX(Jonathan.Dube@gov.bc.ca)
To: Mark.Armitage@gov.bc.ca, Armitage, Mark W HLTH:EX
To: Paul.Craven@gov.bc.ca, Craven, Paul AG:EXNatalie.Barnes@gov.bc.ca, Barnes, Natalie AG:EXRoss.Alexander@gov.bc.ca, Alexander, Ross AG:EX
Subject: CONFIDENTIAL
Sent: 05/19/2022 17:42:50
Attachments: 627358 - Family Compensation Act Reforms & s. 12, s. 13
Reforming the Family Compensation Act - MoH Meeting - May 19 2022.pptx

Hello,

As discussed, AG is looking at options for *Family Compensation Act* reforms and would like to work with HLTH on assessment of impacts. AG will reach out to you to further discuss this initiative and explore where we can support this work. As also discussed, this work is confidential and we should not engage HAs or other organizations outside of the Ministry unless and until appropriate mechanisms are agreed to and put in place to maintain confidentiality (e.g. NDAs). I am also happy to attend initial meetings as needed. Thank you.

Regards,

Jonathan Dubé

Associate Deputy Minister

Ministry of Health

Health System Operations

Tel: 778-698-1513 | Mobile: 778-676-5791 | Pronouns: he, him, his

E-mail: Jonathan.Dube@gov.bc.ca

Grateful to live, learn, and work within the traditional territories of the Ləkʷəŋən and W̱SÁNEĆ peoples.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.



April 22, 2022

Dear Colleagues:

Re: Family Compensation Act Reforms s. 12, s. 13

My Branch has been asked by the Attorney General to put together a Cabinet submission s. 12, s. 13 to reform the Family Compensation Act.

s. 12, s. 13

We would appreciate being directed to an appropriate staff person(s) to provide information and assistance to our staff, noting at this point the direction and the possibility of a legislative project is highly confidential.

A bit of additional background. s. 12
s. 12

s. 12, s. 13

.../2

s. 12, s. 13

Happy to provide further details, and thanks in advance.

Yours truly,

A handwritten signature in black ink that reads "Paul Craven". The signature is written in a cursive style with a long, sweeping underline.

Paul Craven
A/Assistant Deputy Minister
Justice Services Branch
Ministry of Attorney General

Cliff 627358



BRITISH
COLUMBIA

Ministry of
Attorney General

Justice Services Branch



Reforming the Family Compensation Act

<https://intranet.gov.bc.ca/justice/jsb>

CONFIDENTIAL

01/27/2025

1



Ministry of
Attorney General

Justice Services Branch

Purpose

- ▶ The Family Compensation Act (FCA) allows surviving family members to claim only for financial losses suffered as a result of a wrongful death (where a third party has liability). Wrongful deaths of children, seniors and other non-earners are in most cases not compensable under the current FCA.
- ▶ AG primarily hearing about concerns regarding medical malpractice, now that Motor Vehicle deaths are handled under ICBC's Enhanced Care

s. 12, s. 13



Background

- ▶ The AG has committed to reforming the Family Compensation Act (FCA) this term.
 - ▶ Key criticisms: BC's FCA is unfair, unpredictable, outdated and out of line with other PTs. The court system is slow, costly and retraumatizes families.
- ▶ Key stakeholders have opposing viewpoints regarding reforms:
 - ▶ A number of organized and vocal stakeholders are actively lobbying for reforms to the FCA to broaden the scope of damage awards, including In Their Name, Trial Lawyers Association of B.C. (TLABQ), and the Canadian Bar Association (B.C. Branch).
 - ▶ Increasing awards will increase costs for tax payers and rate payers as usually government and private insurers are defendants in FCA claims

s. 12, s. 13



BRITISH
COLUMBIA

Ministry of
Attorney General

Justice Services Branch

Ministries Impacted

- ▶ Ministry of Health
s. 12, s. 13

- ▶ Ministry of Finance
s. 12, s. 13

- ▶ Ministry of Attorney General
s. 12, s. 13



Ministry of
Attorney General

Justice Services Branch

Next Steps

- ▶ Identify appropriate staff for information gathering phase
- ▶ Joint Decision Note to Ministers
s. 12, s. 13
- ▶ Joint Cabinet Submission/RFL s. 12, s. 13

From: Mulligan, Renee AG:EX(Renee.Mulligan@gov.bc.ca)
To: Jonathan.Dube@gov.bc.ca, Dube, Jonathan HLTH:EX
To: Natalie.Barnes@gov.bc.ca, Barnes, Natalie AG:EX
Subject: final FCA cab sub
Sent: 10/17/2022 11:03:55
Attachments: AG_RFD_FamilyCompensationAct_LPC62_CCSI - Signed.pdf

Hi Jonathan,
Here's the signed FCA cab sub, for your records.
Nice to see you again today!

All the best,
Renée

Renée Mulligan
Legal Counsel
Policy and Legislation Division
Justice Services Branch
Ministry of Attorney General
Phone: (778) 405-1711
Pronouns: she/her/hers

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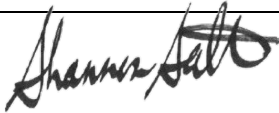
Ministry of Attorney General

Cabinet Submission Approval Form

Cabinet Submission – Family Compensation Act and Wrongful Death Reforms

CLIFF #: 632717

Contact: Renee Mulligan, (778) 405-1711

Signatures		Date
Anita Nadziejko, Director		2022-10-04
Natalie Barnes, Executive Director		2022-10-04
Paul Craven, Assistant Deputy Minister		2022-10-04
Legislation Coordinator	Rhonda Mead	2022-10-05
Deputy Attorney General		2022-10-05
Comments: October 4, 2022: Executive Director October 4, 2022: ADM October 4, 2022: Leg Coordinators October 6: DAG October 11: AG approval due		

Ministry of Attorney General
Family Compensation Act s. 12, s. 13) Reform
Speaking Points

ISSUE SUMMARY

s. 12

s. 12, s. 13

s. 12, s. 13

BACKGROUND

s. 12

s. 12, s. 13



Cabinet Submission— s. 12, s. 13

Minister: Honourable Murray Rankin, KC, Attorney General and Minister Responsible for Housing

Ministry: Attorney General

Date: 4/10/2022

Title: Family Compensation Act and Wrongful Death Reforms

EXECUTIVE SUMMARY

Issue:

s. 12

s. 12, s. 13

s. 12



s. 12, s. 13

Implications & Considerations:

- The former Attorney General publicly committed to reforming the FCA during this term of government.

s. 12



s. 12

s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

s. 12



s. 12, s. 13

s. 12, s. 13

Recommended Option:

s. 12, s. 13



s. 12, s. 13

MAIN BODY OF SUBMISSION

Background and Context:

s. 12



s. 12

s. 12, s. 13



s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

For

additional information about wrongful death statistics in British Columbia, see Appendix A.

s. 12, s. 13



s. 12, s. 13

s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

s. 12



s. 12, s. 13

Policy considerations:

s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

Indigenous Peoples:

s. 12, s. 13, s. 14

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13, s. 16

Options:

s. 12, s. 13



s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

Treasury Board Staff Comments:

s. 12, s. 13

Impacts and outcomes:

s. 12, s. 13



Business and Economic Implications:

s. 12

Legal issues and advice:

s. 12, s. 13, s. 14

Legislation:

s. 12, s. 13

Internal Consultation:

s. 12

s. 12

s. 12, s. 13

s. 12, s. 13

s. 12

Public & Stakeholder Consultation:

s. 12, s. 13



s. 12, s. 13

Communications & Public Engagement:

s. 12, s. 13

Signatures:

Contact: Renée Mulligan
Legal Counsel
Policy and Legislation Division
Justice Services Branch
(778) 405-1711

Shannon Salter
Deputy Attorney General and Deputy
Minister Responsible for Housing

October 5, 2022
Date Signed

Honourable Murray Rankin, KC
Attorney General and
Minister Responsible for Housing

October 11, 2022
Date Signed



s. 12



s. 12

¹⁵ Source: Vital Statistics Agency, Ministry of Health



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

s. 12, s. 13



s. 12

From: Guerrero, Thomas HLTH:EX(Thomas.Guerrero@gov.bc.ca)
To: Jonathan.Dube@gov.bc.ca, Dube, Jonathan HLTH:EX
Subject: FW: s. 12, s. 13
Sent: 01/26/2023 16:14:45
Attachments: s. 12, s. 13

2023-01-26.docx

From: Amit, Dotan AG:EX <Dotan.Amit@gov.bc.ca>
Sent: January 26, 2023 3:43 PM
To: Guerrero, Thomas HLTH:EX <Thomas.Guerrero@gov.bc.ca>; Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>
Cc: Mulligan, Renee AG:EX <Renee.Mulligan@gov.bc.ca>
Subject: s. 12, s. 13

Good afternoon everyone,

Further to the discussions we've had in the last few weeks, I've attached a s. 12, s. 13

The draft is for your early review, and we'll set up a meeting in the coming weeks to discuss the submission and the proposed project in general.

In the meantime, please forward any feedback to me and I'll make sure it all gets consolidated.

Warm regards,

-Dotan

Dotan Amit (he/him)
Senior Policy Analyst
Justice Services Branch, Policy and Legislation Division
Ministry of Attorney General
(778) 698-5197
Sent from the territories of the Songhees and Esquimalt nations



s. 12, s. 13

Minister: Honourable Niki Sharma, KC

Ministry: Attorney General

Date: DD/MM/YYYY

Title: s. 12, s. 13

EXECUTIVE SUMMARY

Issue:

s. 12, s. 13

Key implications and considerations:

s. 12, s. 13



s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

- The former Attorney General has publicly committed to asking Ministry of Attorney General staff to begin assessing options to reform or replace the *Family Compensation Act* (FCA) during the government's current mandate.¹

Recommended option:

s. 12, s. 13

MAIN BODY OF SUBMISSION

Background and context:

s. 12

¹ [Proceedings In the Douglas Fir Room Committee ff Supply Estimates: Ministry Of Attorney General. Monday, June 7, 2021. Afternoon Sitting. Discussion begins at location marked 2:40pm.](#)



s. 12

s. 12, s. 13



s. 12, s. 13

The former Attorney General has publicly committed to asking Ministry of Attorney General staff to begin assessing options to reform or replace the *Family Compensation Act* (FCA) during the government's current mandate.

s. 12, s. 13

Ministry capacity limits

s. 12, s. 13



s. 12, s. 13

Policy considerations:

s. 12, s. 13



s. 12, s. 13

Consultation and Engagement

s. 12, s. 13



s. 12, s. 13

Indigenous peoples:

s. 12, s. 13

Options:

Option 1: s. 12, s. 13



s. 12, s. 13

Pros

s. 12, s. 13

Cons

s. 12, s. 13

Option 2: s. 12, s. 13

Pros

s. 12, s. 13



s. 12, s. 13

Cons

s. 12, s. 13

Option 3:

Pros

s. 12, s. 13

Cons

s. 12, s. 13

Fiscal impacts

s. 12, s. 13

Table 1: Estimated Operating Costs (\$M)	Option 1	Option 2
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	2023/24 FY	2024/25 FY	2023/24 FY	2024/25 FY
Existing Base Budget for Program Area*	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Existing Operating Contingencies (Approved and/or Approved-in-principle)	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Incremental Request (compared to base budget)	\$xx	\$xx	\$xx	\$xx
Revised Operating Budget if Proposal Approved	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Incremental Costs for Other Ministry	[HLTH and FIN to provide]	[HLTH and FIN to provide]	[HLTH and FIN to provide]	[HLTH and FIN to provide]

Table 2: FTEs (#)	Option 1		Option 2	
	2023/24 FY	2024/25 FY	2023/24 FY	2024/25 FY
Existing Base FTEs for Program Area	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Incremental FTE Request	s. 12, s. 13			
Revised FTEs if Proposal Approved	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]

Table 3: Estimated CRF Capital Costs (if applicable)	Option 1	Option 2	Option 1	Option 2
	2023/24 FY	2024/25 FY	2023/24 FY	2024/25 FY
Existing Base Capital Budget for Program Area	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Incremental Capital Request	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Revised Capital Budget if Proposal Approved	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]
Incremental Operating Cost if Proposal Approved (including ongoing maintenance and amortization)	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]	[CMSB to provide]

Table 3: Salaries, Operating, Capital, and Consultation Costs			
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Salaries and Benefits	FY 22 Annual Salary	FY23 Annual Salary	Benefits 25.4%	FY23/24	FY24/25	Notes / assumptions
s. 12, s. 13						
Operating, Capital, and Consultation Costs						
s. 12, s. 13						
Total Consultation Costs				s. 12, s. 13		
Total Operating Costs						
Total Costs						

Impacts and outcomes:

s. 12, s. 13

in alignment with the former Attorney

General's public commitment.

s. 12, s. 13



s. 12, s. 13

Business and economic implications:

s. 12

Legal issues and advice:

s. 12, s. 13

Legislation:

s. 12, s. 13

Internal consultations:

s. 12, s. 13

External consultations:

s. 12

Communications and public engagement:

s. 12, s. 13



s. 12, s. 13

Contact:	First Name Last Name	Barbara Carmichael, KC
Signatures:	Title	Deputy Minister
	(XXX) XXX-XXXX	
		Date Signed
		Honourable Niki Sharma, KC
		Attorney General
		Date Signed

From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: Agenda and Materials - Wrongful Death Reform - Cross Ministry Working Group
Sent: 01/15/2025 13:57:39
Discussion Paper - s. 12, s. 13 Wrongful Deaths June 29.docx,
Attachments: Public Engagement Plan (003).docx, s. 12, s. 13

From: Tucker, Melanie AG:EX <Melanie.Tucker@gov.bc.ca>
Sent: Friday, July 8, 2022 2:32 PM
To: Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>; Andersen, Maureen P AG:EX <Maureen.Andersen@gov.bc.ca>; Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Lorensen, Tanner AG:EX <Tanner.Lorensen@gov.bc.ca>; Malik, Ashish AG:EX <Ashish.Malik@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>
Cc: Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Nadziejko, Anita T AG:EX <Anita.Nadziejko@gov.bc.ca>; Salter, Jaclyn AG:EX <Jaclyn.Salter@gov.bc.ca>
Subject: Agenda and Materials - Wrongful Death Reform - Cross Ministry Working Group

Good afternoon,

I wanted to provide some documents in advance of our meeting on Monday. See agenda below.

Please find attached a presentation with information about the s. 12, s. 13 . As well as the Discussion Paper (sent previously) and Public Engagement Plan. Please send me any written comments on these by next week so I can incorporate comments into the Cab submission.

Many thanks. Have a wonderful weekend!

Melanie Tucker

3:00	Introductions – new members	All
3:15	Project Update Update from July 7 th AG Briefing s. 12, s. 13 Cabinet Submission Options	Melanie/Tanner
3:20	Discussion of: s. 12, s. 13	Melanie/Tanner

Reforming BC's Family Compensation Act

s. 12, s. 13

Purpose

To solicit feedback from impacted government ministries on proposed reforms to BC's wrongful death law. s. 12, s. 13

Policy Rationale

The death of a loved one is an incredibly difficult event, which can permanently alter the direction of a person's life. People are expected to make reasonable provision (e.g., buying property insurance, buying life insurance or saving for retirement, etc.) but wrongful deaths by definition are unexpected events which cannot be anticipated and which can have a profound impact on families. It is therefore appropriate that there are mechanisms to enable family members to receive the supports they require to adjust to the new and unsought reality and to begin to rebuild their lives.

Overview of Current 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 Family Compensation Act (FCA) is BC's wrongful death legislation. A wrongful death under the FCA is one where damages would have been available had the person survived the injury caused by the wrongful act or negligence of another.

However, the FCA only allows for pecuniary or financial damages to be awarded to address financial loss suffered as a result of the wrongful death of a family member.

This includes lost financial support, funeral expenses, and medical expenses incurred on behalf of the victim. It does not allow for non-financial losses so if the decedent was a non-income earner like a child, or a low-income earner it is often not financially worthwhile to litigate, and families receive nothing in compensation for the death.

Most Canadian provinces have amended their wrongful death legislation to allow the court to award bereavement damages.

KEY CONCERNS

The FCA is often criticized for being:

- **Out-dated**, bare-boned legislation, largely the same as the original statute upon which it was built, Lord Campbell's Act (1846).
- **Out-of-step with other jurisdictions** across Canada, which have introduced amendments to broaden eligible claimants and to add non-financial damages (with the exception of the Yukon and NWT).
- **Unpredictable** as courts have struggled with interpreting the FCA, and have attempted to fill in the gaps left by the legislation – setting standards for damage awards, and considering alternative family arrangements on an ad hoc basis. This has resulted in a large body of case law. As a result, the average person cannot look at the present legislation and determine with any degree of certainty what to expect.
- **Fundamentally unfair** in that it only creates a right of compensation for income earners who have dependents. In cases where pecuniary damages are awarded, the families of high-income earners receive higher settlement awards under the current tort system. Conversely, the families of low-income earners receive lower dollar value settlements. As many defendants are entitled to government indemnity or have errors and omissions insurance, this means taxpayers and insurance policy holders are funding large settlements to wealthy families who could arguably have greater means and financial stability to recover than lower income families, who receive lower settlement awards or no award if it is not financially worthwhile to litigate.
- **Exclusionary** because not everyone who may be financially dependent on the deceased is covered by the FCA. Claimants are limited to "spouse, parent or child of the person whose death has been caused." For example, siblings are not currently included as eligible claimants in BC although they are eligible in

other jurisdictions such as Manitoba, Ontario and Quebec. Persons who receive support payments or any other person dependent on the deceased for financial support are also not currently included as claimants.

Model Overview

s. 12, s. 13

Terminology

s. 12, s. 13

GENERAL PRINCIPLES

s. 12, s. 13

s. 12, s. 13

Key Elements

After a wrongful death, families want accountability from the wrongdoer, information about how their loved died for the purposes of closure, change to the system so the same thing doesn't happen to another family, and compensation for their loss.

s. 12, s. 13

s. 12, s. 13

Current FCA	
Children	
This includes people for whom the deceased stood in the role of parent as well as stepchildren, adopted children, grandchildren and illegitimate children.	
Parents	
This includes grandparents and stepparents.	
Spouses	
This includes marriage-like relationships including same-sex couples.	

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

Process

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

Indigenous Considerations

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.

s. 12, s. 13

Cost and Funding

s. 12, s. 13

Risks and Challenges

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

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s. 12, s. 13

DRAFT

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

DRAFT

Public Engagement Plan Wrongful Death Legislative Reform

A two-part engagement strategy is being proposed to support the first phase of the legislative reform project for the Family Compensation Act. The first is described in this document. A second phase will commence in the fall of 2022 and into 2023 once cabinet direction has been received.

Part 1 - Summer/Fall 2022 (Cabinet Submission)

Part 2 - Winter - Summer 2023 (Request for Legislation and Bill Drafting)

1. Public Survey Engagement (open to the public)

Summer 2022

Description

A 15-minute online survey open to the public, but especially geared towards requesting feedback from Indigenous peoples and communities, people with lived experience and organizations working within this area.

Why is this important:

- To understand the public's priorities and preferences as they relate to the province's legal framework for wrongful death.
- To ground truth input we've received through correspondence and research.
- To develop public support to counter-balance to anticipated criticisms from within the legal community who's livelihoods may be negatively affected.

Planned Activities

- Public facing survey to ask for high level information on:
 - o Demographic Information (gender, age, family status)

- o Ranking/importance of key design features

Resources needed

- Technology support – either EngageBC or an out-of-the box product such as “Survey Monkey”
- GCPE/GDX to support to post/share and promote the survey

Part 2 - Winter- Summer 2023

2. Virtual Engagement Sessions with key Indigenous Partners (by invitation only)

Winter/Spring 2023

Description

Virtual engagement sessions with Indigenous Peoples and partners to brief on the project, request feedback on proposed approach and high-level input on priorities.

*Note: Legal opinion on the provinces potential obligations in this area is in progress. May need to add engagement with all 204 First Nations if the province has an obligation to consult.

Purpose:

- To assist in meeting government’s obligations to Indigenous Peoples and partners early in the project
- To share proactively about the project early and at the beginning phases of the work
- To solicit feedback on engagement approach in order to ensure the work will meet the unique needs of Indigenous Peoples

Why is this important:

- Opportunity to provide an overview of current legislative framework, issues and challenges
- Open-ended opportunity for sharing of lived experience and priorities/preferences for reform in this area.
- Results will inform shaping early design elements

Planned Activities

- Series of hour-long virtual sessions via TEAMS

Resources needed

- No new resources needed unless advice from Indigenous leadership strongly recommends engagement funding is required such as was provided for the anti-racism legislative reform project.
- Will need to communicate available support resources available recognizing the sensitive and potentially triggering subject matter

3. Virtual Engagement Sessions for stakeholder organizations and people with lived experience (by invitation only)

Winter/Spring 2023

Description of Activities

Hour long virtual meetings via TEAMS requesting feedback from key partners on challenges, priorities and design elements of the wrongful death legislative framework. Ideally these would be small group sessions with a neutral facilitator.

Purpose:

- To socialize some of the anticipated reform elements with key stakeholder groups and families with lived experience.
- Opportunity for families to share their stories with government staff who are directly involved in the legislative reform project.
- Results will inform shaping early design elements

Planned Activities

- Series of hour-long virtual sessions via TEAMS
- Will need to communicate support resources available recognizing the sensitive and potentially triggering subject matter

Resources needed

- No new resources needed

Group 1 - Community and Social Sector Organization Session

Group 2 - Individuals with Lived Experience Session

Group 3 - Insurance and Legal Community Engagement Sessions

Appendices

1. Online Survey Questionnaire
2. Stakeholder Lists

ONLINE FEEDBACK SURVEY

Introductory Summary Information

The Family Compensation Act (FCA) is BC's wrongful death legislation. It allows eligible family members to sue for financial damages when the death of their loved one is caused by the wrongful act, neglect or default of another. A lawsuit can only be started under the FCA if the deceased person, had they not died, could have sued the wrongdoer for damages resulting from the injury. In addition, damages are awarded to address financial loss suffered as a result of the death of a family member. The goal is to put the claimant back in the same position financially as they would have been had their family member not died. The FCA does not address emotional loss or damage, such as pain and suffering and loss of enjoyment of life. In some cases where the deceased was not providing financial support, such as in the case of minor children, family members cannot seek compensation because it is not financially viable to do so. Other criticisms are that eligible claimants which currently only includes spouse, parent or child should be expanded, and that there should be alignment between non-fatal and fatal injury compensation.

Government is interested in learning about the public's priorities and preferences to redesign BC's wrongful death legislative framework.

Demographic Information

1. What is your age range?
Under 18/19-45/45-65/65+ / prefer not to answer
2. What is your family status?
Married/Common law/ Single/ Widowed/ prefer not to answer
3. Are you currently residing in BC?
Yes/No
4. Have you personally experienced the wrongful death of a family member?
Yes/No/prefer not to answer

Key Preferences and Priorities for Wrongful Death Reform

5. What are the most important issues to address when reforming the Family Compensation Act?

Please rank your top issues (up to a max of three).

- Compensation levels are unpredictable under the current FCA
- Court awarded compensation levels are too low
- Time to settlement is too long
- The court process is too expensive
- The court process is too complex
- The law is unfair because it is not financially worthwhile for some families to claim damages under the current FCA
- Lack of accountability for the wrongdoer
- Lack of fairness as compensation is based on income
- Other:

Please state whether you agree or disagree with the following.

Scale:

Strongly Agree

Agree

Neither agree or disagree

Disagree

Strongly Disagree

Unsure/Don't know/Prefer not to answer

6. Reforms should expand the list of eligible family claimants.

7. The amount of compensation that surviving family members can claim should be increased.

s. 12, s. 13

Community and Social Sector Stakeholder List

- Disability Community
 - BC Coalition of People with Disabilities
 - Vancouver Island Head Injury Society
- Community Organizations
 - Mothers Against Drunk Driving (MADD)
 - Parents Coalition of BC
 - Parent and Child Advocacy Coalition
- Counsellors
 - BC Assn. of Specialized Victim Assistance & Counselling Programs
 - BC Council for Families
 - BC Art Therapy Assn.
 - BC Assn. of Clinical Counsellors
 - BC Assn. for Marriage and Family Therapy
- Funeral Directors
 - The Funeral Services Assn. of BC
 - Cemetery and Crematorium Assn. of BC
- Psychologists
 - BC Psychological Assn.
 - College of Psychologists of BC

Insurance and Legal Community

- Coalition Against No-Fault in BC
- ICBC
- Trial Lawyers Association of BC
- Canadian Medical Protection Association (CMPA)
- Law Society of BC

ⁱ *Family Compensation Act*, R.S.B.C. 1996, c. 126.

From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: s. 12
Sent: 01/15/2025 13:59:50
Attachments: AG_RFD_FamilyCompensationAct_LPC62_CCSI - Signed.pdf

From: Mulligan, Renee AG:EX <Renee.Mulligan@gov.bc.ca>
Sent: Monday, December 5, 2022 1:30 PM
To: Thiessen-Wale, Katherine HLTH:EX <Katherine.ThiessenWale@gov.bc.ca>; Guerrero, Thomas HLTH:EX <Thomas.Guerrero@gov.bc.ca>; Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>
Cc: Amit, Dotan AG:EX <Dotan.Amit@gov.bc.ca>
Subject: s. 12

Thanks again for taking the time to speak with us today. Here's the s. 12
As I mentioned, s. 12

Thanks,
Renee

Renée Mulligan
Legal Counsel
Policy and Legislation Division
Justice Services Branch
Ministry of Attorney General
Phone: (778) 405-1711
Pronouns: she/her/hers

Upcoming leave: December 9, 2022 – January 6, 2023

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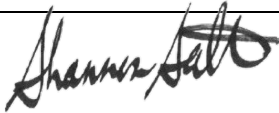
Ministry of Attorney General

Cabinet Submission Approval Form

Cabinet Submission – Family Compensation Act and Wrongful Death Reforms

CLIFF #: 632717

Contact: Renee Mulligan, (778) 405-1711

Signatures		Date
Anita Nadziejko, Director		2022-10-04
Natalie Barnes, Executive Director		2022-10-04
Paul Craven, Assistant Deputy Minister		2022-10-04
Legislation Coordinator	Rhonda Mead	2022-10-05
Deputy Attorney General		2022-10-05
Comments: October 4, 2022: Executive Director October 4, 2022: ADM October 4, 2022: Leg Coordinators October 6: DAG October 11: AG approval due		

Ministry of Attorney General
Family Compensation Act **s. 12, s. 13** **Reform**
Speaking Points

ISSUE SUMMARY

s. 12

s. 12, s. 13

s. 12, s. 13

BACKGROUND

s. 12

s. 12, s. 13



Cabinet Submission— s. 12, s. 13

Minister: Honourable Murray Rankin, KC, Attorney General and Minister Responsible for Housing

Ministry: Attorney General

Date: 4/10/2022

Title: Family Compensation Act and Wrongful Death Reforms

EXECUTIVE SUMMARY

Issue:

s. 12

s. 12, s. 13

s. 12



s. 12, s. 13

Implications & Considerations:

- The former Attorney General publicly committed to reforming the FCA during this term of government.

s. 12



s. 12

s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

s. 12



s. 12, s. 13

s. 12, s. 13

Recommended Option:

s. 12, s. 13



s. 12, s. 13

MAIN BODY OF SUBMISSION

Background and Context:

s. 12



s. 12

s. 12, s. 13



s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

. For

additional information about wrongful death statistics in British Columbia, see Appendix A.

s. 12, s. 13



s. 12, s. 13

s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

s. 12



s. 12, s. 13

Policy considerations:

s. 12, s. 13

s. 12

s. 12

s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

Indigenous Peoples:

s. 12, s. 13, s. 14

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13, s. 16

Options:

s. 12, s. 13



s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

Treasury Board Staff Comments:

s. 12, s. 13

Impacts and outcomes:

s. 12, s. 13



Business and Economic Implications:

s. 12

Legal issues and advice:

s. 12, s. 13, s. 14

Legislation:

s. 12, s. 13

Internal Consultation:

s. 12

s. 12

s. 12, s. 13

s. 12, s. 13

s. 12

Public & Stakeholder Consultation:

s. 12, s. 13



s. 12, s. 13

Communications & Public Engagement:

s. 12, s. 13

Signatures:

Contact: Renée Mulligan
Legal Counsel
Policy and Legislation Division
Justice Services Branch
(778) 405-1711

Shannon Salter
Deputy Attorney General and Deputy
Minister Responsible for Housing

October 5, 2022
Date Signed

Honourable Murray Rankin, KC
Attorney General and
Minister Responsible for Housing

October 11, 2022
Date Signed



s. 12



s. 12

¹⁵ Source: Vital Statistics Agency, Ministry of Health



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

s. 12, s. 13



s. 12

From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: Update on FCA cabinet submission
Sent: 01/15/2025 14:01:17

From: Mulligan, Renee AG:EX <Renee.Mulligan@gov.bc.ca>
Sent: Thursday, December 1, 2022 9:14 AM
To: Thiessen-Wale, Katherine HLTH:EX <Katherine.ThiessenWale@gov.bc.ca>; Guerrero, Thomas HLTH:EX <Thomas.Guerrero@gov.bc.ca>; Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>
Cc: Amit, Dotan AG:EX <Dotan.Amit@gov.bc.ca>
Subject: Update on FCA cabinet submission

Hi everyone,

I have taken over the work being led by Melanie Tucker, as she has moved to another office. I wanted to reach out and provide you with an update on the work that has occurred and the next steps on reforms to the *Family Compensation Act*. If I have missed someone, or if you are on this email chain and no longer need to be included, please feel free to forward this to the appropriate person or let me know and I can do it.

Work has been underway to prepare a cabinet submission to request direction [s. 12, s. 13](#)

You may recall that previously there were meetings to discuss this project, [s. 12, s. 13](#)

I'll be sending out a meeting invite for next week to discuss this with you in more detail.

Thanks very much,
Renée

Renée Mulligan
Legal Counsel
Policy and Legislation Division
Justice Services Branch
Ministry of Attorney General
Phone: (778) 405-1711
Pronouns: she/her/hers

Upcoming leave: December 9, 2022 – January 6, 2023

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From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: CONFIDENTIAL - Family Compensation Act Review
Sent: 01/15/2025 14:02:19
Attachments: 627358 - Family Compensation Act Reforms & s. 12, s. 13
Reforming the Family Compensation Act - MoH Meeting - May 19 2022.pptx

From: Armitage, Mark W HLTH:EX <Mark.Armitage@gov.bc.ca>
Sent: Sunday, June 5, 2022 7:52 AM
To: Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>
Cc: Brown, Kevin HLTH:EX <Kevin.Brown@gov.bc.ca>
Subject: CONFIDENTIAL - Family Compensation Act Review

Ryan and Zac,

The AG is looking at options for Family Compensation Act reforms and would like to work with HLTH on assessment of impacts – see attachments.

I met with the AG last week and provided your names. The AG will reach out to you to further discuss this initiative and explore how physician and nurse liability insurance works and is funded.

Please note, this work is confidential. We should not engage HAs or other organizations outside of the Ministry unless and until appropriate mechanisms are agreed to and put in place to maintain confidentiality (e.g. NDAs).

If you have any questions please let me know.

Thank you

Mark

W. Mark A. Armitage MPA BSW
ADM | Health Sector Workforce and Beneficiary Services
Ministry of Health | 1515 Blanshard St., Victoria, B.C.
Phone (250) 952-3519



April 22, 2022

Dear Colleagues:

Re: Family Compensation Act Reforms s. 12, s. 13

My Branch has been asked by the Attorney General to put together a Cabinet submission s. 12, s. 13 to reform the Family Compensation Act.

s. 12, s. 13

We would appreciate being directed to an appropriate staff person(s) to provide information and assistance to our staff, noting at this point the direction and the possibility of a legislative project is highly confidential.

A bit of additional background. s. 12
s. 12

s. 12, s. 13

.../2

s. 12, s. 13

Happy to provide further details, and thanks in advance.

Yours truly,

A handwritten signature in black ink, reading "Paul Craven". The signature is written in a cursive, flowing style.

Paul Craven
A/Assistant Deputy Minister
Justice Services Branch
Ministry of Attorney General

Cliff 627358



BRITISH
COLUMBIA

Ministry of
Attorney General

Justice Services Branch



Reforming the Family Compensation Act

<https://intranet.gov.bc.ca/justice/jsb>

CONFIDENTIAL

01/16/2025

1



Ministry of
Attorney General

Justice Services Branch

Purpose

- ▶ The Family Compensation Act (FCA) allows surviving family members to claim only for financial losses suffered as a result of a wrongful death (where a third party has liability). Wrongful deaths of children, seniors and other non-earners are in most cases not compensable under the current FCA.
 - ▶ AG primarily hearing about concerns regarding medical malpractice, now that Motor Vehicle deaths are handled under ICBC's Enhanced Care

s. 12, s. 13



Background

- ▶ The AG has committed to reforming the Family Compensation Act (FCA) this term.
 - ▶ Key criticisms: BC's FCA is unfair, unpredictable, outdated and out of line with other PTs. The court system is slow, costly and retraumatizes families.
- ▶ Key stakeholders have opposing viewpoints regarding reforms:
 - ▶ A number of organized and vocal stakeholders are actively lobbying for reforms to the FCA to broaden the scope of damage awards, including In Their Name, Trial Lawyers Association of B.C. (TLABQ), and the Canadian Bar Association (B.C. Branch).
 - ▶ Increasing awards will increase costs for tax payers and rate payers as usually government and private insurers are defendants in FCA claims

s. 12, s. 13



BRITISH
COLUMBIA

Ministry of
Attorney General

Justice Services Branch

Ministries Impacted

s. 12, s. 13

- ▶ Ministry of Finance

s. 12, s. 13

- ▶ Ministry of Attorney General

s. 12, s. 13



Ministry of
Attorney General

Justice Services Branch

Next Steps

- ▶ Identify appropriate staff for information gathering phase
- ▶ Joint Decision Note to Ministers
s. 12, s. 13
- ▶ Joint Cabinet Submission/RFL s. 12, s. 13

From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: Wrongful Death Reform - Cross Ministry Working Group
Sent: 01/15/2025 14:09:26
Attachments: 02 Request for Decision - FCA RM feedback.docx

From: Murray, Ryan HLTH:EX
Sent: Wednesday, August 10, 2022 11:51 AM
To: Lorenson, Tanner AG:EX <Tanner.Lorenson@gov.bc.ca>
Cc: Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Nadziejko, Anita T AG:EX <Anita.Nadziejko@gov.bc.ca>; Salter, Jaclyn AG:EX <Jaclyn.Salter@gov.bc.ca>; Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Malik, Ashish AG:EX <Ashish.Malik@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>; Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>; Andersen, Maureen P AG:EX <Maureen.Andersen@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>
Subject: RE: Wrongful Death Reform - Cross Ministry Working Group

Hi Tanner, just some edits and suggestions mostly around CMPA.

Thanks
Ryan

Ryan Murray BA, MBA
Director, Physician Partnerships
Health Sector Workforce and Beneficiary Services Division | Ministry of Health
PO Box 9649 STN PROV GOVT | Victoria BC V8W 9P4
Ph: 250 952-1262 | Email: ryan.murray@gov.bc.ca |

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From: Lorenson, Tanner AG:EX <Tanner.Lorenson@gov.bc.ca>
Sent: August 10, 2022 9:40 AM
To: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Malik, Ashish AG:EX <Ashish.Malik@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>; Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>; Andersen, Maureen P AG:EX <Maureen.Andersen@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>
Cc: Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Nadziejko, Anita T AG:EX <Anita.Nadziejko@gov.bc.ca>; Salter, Jaclyn AG:EX <Jaclyn.Salter@gov.bc.ca>
Subject: RE: Wrongful Death Reform - Cross Ministry Working Group

Hello all,

I just wanted to send a follow-up email regarding the request for feedback on the FCA cabinet submission. With our timelines in mind, it would be wonderful if you could send any feedback or comments by **12pm on Friday, August 12**, so that they can be fully incorporated.

Thank you again,
Tanner

—

Tanner Lorenson (she/her)
Law Co-op Student, Policy and Legislation Division
Justice Services Branch | Ministry of Attorney General
Office Phone: (778) 974-3727 | tanner.lorenson@gov.bc.ca

From: Lorenson, Tanner AG:EX
Sent: Tuesday, August 2, 2022 12:46 PM
To: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Malik, Ashish AG:EX <Ashish.Malik@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>; Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>; Andersen, Maureen P AG:EX <Maureen.Andersen@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>
Cc: Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Nadziejko, Anita T AG:EX <Anita.Nadziejko@gov.bc.ca>; Salter, Jaclyn AG:EX <Jaclyn.Salter@gov.bc.ca>
Subject: RE: Wrongful Death Reform - Cross Ministry Working Group

Hello all,

As Anita is on leave, it would be great if you could also CC me on any feedback or comments on the draft cabinet submission so that I can continue the progress on the document.

Thank you again for your continued work on this project.

Best,
Tanner

—
Tanner Lorenson (she/her)
Law Co-op Student, Policy and Legislation Division
Justice Services Branch | Ministry of Attorney General
Office Phone: (778) 974-3727 | tanner.lorenson@gov.bc.ca

From: Tucker, Melanie AG:EX <Melanie.Tucker@gov.bc.ca>
Sent: Monday, July 25, 2022 4:51 PM
To: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Lorenson, Tanner AG:EX <Tanner.Lorenson@gov.bc.ca>; Malik, Ashish AG:EX <Ashish.Malik@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>; Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>; Andersen, Maureen P AG:EX <Maureen.Andersen@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>
Cc: Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Nadziejko, Anita T AG:EX <Anita.Nadziejko@gov.bc.ca>; Salter, Jaclyn AG:EX <Jaclyn.Salter@gov.bc.ca>
Subject: Wrongful Death Reform - Cross Ministry Working Group

Good afternoon,

Please find attached the first draft of a proposed cabinet submission for wrongful death reforms s. 12, s. 13

As you will see there is more work to be done, but I'd like to get your comments and feedback before the document is finalized anyway so it can be incorporated.

Please do not circulate this document beyond this group at this stage.

Thanks so much for your time, efforts and work so far! I will be watching from Transportation to see how it progresses.

All comments and feedback after this week should be sent to Anita Nadziejko.

Cheers,

Melanie Tucker



Cabinet Submission— s. 12, s. 13

This Template Last Updated: November 15, 2021

Minister: Honourable David Eby, QC, Attorney General and Minister Responsible for Housing

Ministry: Attorney General

Date: 31/08/2022

Title: Family Compensation Act and Wrongful Death Reforms

EXECUTIVE SUMMARY

Issue:

s. 12

s. 12, s. 13

This cabinet submission seeks policy approval to s. 12, s. 13



s. 12, s. 13

Key implications and considerations:

- The AG has publicly committed to reforming the FCA during this term of government. The FCA is tentatively on the Fall 2023 legislative agenda.

s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

Recommended option:

Option 1 – s. 12, s. 13

s. 12, s. 13

Background and context:

s. 12

s. 12, s. 13



s. 12

- One of the largest barriers to having the legislation proceed during previous attempts was s. 12, s. 13

s. 12

s. 12 s. 12, s. 13

s. 12



Key Criticisms of FCA

s. 12

s. 12, s. 13

s. 12

Data Challenges



s. 12



s. 12

s. 12, s. 13

s. 12

⁴ Source: Vital Statistics Agency, Ministry of Health

s. 12



s. 12, s. 13

s. 12, s. 13

s. 12

s. 12

s. 12

s. 12, s. 13

s. 12

s. 12, s. 13



s. 12

s. 12, s. 13



s. 12, s. 13

Policy considerations:

s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



Linkages with key Government priorities

s. 12, s. 13

[Add Gender-Based Analysis Plus (GBA+)]

Indigenous peoples:

s. 12, s. 13, s. 14

s. 12, s. 13, s. 14
Public engagement and consultation has not yet take place.
s. 12, s. 13



Options:

Option 1 (Recommended) s. 12, s. 13

Commented [TMA6]: Requested assistance with this from Eden Landero

Advantages
s. 12, s. 13



s. 12, s. 13

Disadvantages

s. 12, s. 13

Option 2 – s. 12, s. 13

Advantages

s. 12, s. 13

Disadvantages

s. 12, s. 13



s. 12, s. 13

Option 3 – s. 12, s. 13

Advantages

s. 12, s. 13

Disadvantages

s. 12, s. 13

Fiscal impacts

s. 12, s. 13

s. 12, s. 13

Treasury Board Staff comments

Treasury Board Staff (TBS) comments must be included verbatim. The comments should indicate whether TBS agrees with the characterization of fiscal impacts and whether the proposal requires Treasury Board review. If the comments are lengthy, they may be included as an appendix.



You must provide a draft and final copy of your Cabinet submission to your ministry's Treasury Board Analyst at the same time as provided to Cabinet Operations.

Impacts and outcomes:

Commented [TMA9]: Not yet started.

Discuss the expected short, medium and long-term impacts and outcomes of the recommended option and how success will be measured. Include the timeframe and method(s) by which the ministry will evaluate whether the initiative has achieved the intended outcomes.

The Ministry of Finance has developed a [Logic Model Toolkit](#) to help facilitate the completion of this section. Ministries may also wish to include an appendix with a logic model that clearly shows the relationship between key inputs, activities, outputs, and outcomes.

Business and economic implications:

Summarize the implications of the recommended policy change for businesses and the economy. If business and economic implications are not quantifiable, include a qualitative assessment. See the [Business and Economic Implications Framework \(BEIF\)](#) for more information and resources.

Attach the BEIF worksheet to the three week draft submission submitted to Cabinet Operations, and provide a copy of the worksheet to the BEIF office at BEIF@gov.bc.ca.

Legal issues and advice:

Briefly outline key legal issue(s) that are relevant to this submission, including any legal advice received from the Legal Services Branch.

Legal issues and advice respecting Indigenous rights and interests should be included under the Indigenous Peoples section above.

Ensure that your LSB advising solicitor, or the Assistant Deputy Attorney General, agrees with the summary of legal advice (if any) set out in this submission.

Legislation:

s. 12, s. 13



s. 12, s. 13

Internal consultations:

s. 12

s. 12

s. 12, s. 13

s. 12

External consultations:

An external engagement plan has been developed which includes public consultation and engagement with stakeholders, including affected families, community organizations and the legal community.

Impacted stakeholders include: the Disability Community (BC Coalition of People with Disabilities, Vancouver Island Head Injury Society) Community Organizations (Mothers Against Drunk Driving, Parents Coalition of BC, Parent and Child Advocacy Coalition), Counsellors and Psychologists (BC Assn. of Specialized Victim Assistance & Counselling Programs, BC Council for Families, BC Art Therapy Association, BC Association of Clinical Counsellors, BC Association for Marriage and Family Therapy, BC Psychological Association, College of Psychologists of BC), Funeral and Burial Sector (Funeral Services Association of BC, Cemetery and Crematorium Association of BC), Insurance and Legal Community (Coalition Against No-Fault in BC, Trial Lawyers

Commented [TMA10]: Ministry of Health:
Health Sector Workforce and Beneficiary Services Division:
Zach Matiescheyn (Nursing Policy Secretariat)
Ryan Murray (Physicians Services Branch)
Corporate Issues Client Relations Division
Susan Shust (FOI and Litigation)
Jordan Will (Patient Care and Quality Review Board Secretariat)
Leah Smith (Hospital Services Branch, Priority Initiatives and Quality)

Ministry of Finance, Risk Management Branch:
Kim Oldham (Director)
Grant Warrington (Legal Counsel, Claims Examiner)

Commented [TMA11]: Saved in the Teams folder in the engagement folder.

As discussed - additional consideration will need to be given to the approach used in engagement with the public. See email from Preet saved in the teams folder.



Association of BC, Canadian Medical Protection Association, Law Society of BC,
[College of Physicians & Surgeons of BC, Doctors of BC.](#)

Communications and public engagement:

If your Director of Communications determines a full communications plan is required,
complete the Communications Plan template (Appendix A) attached to this submission.

Commented [TMA12]: Request for plan has been submitted to Preet Grewal. She is working on this with a mid August deadline and has requested the cab sub.

Signatures:

Contact:	First Name Last Name	Shannon Salter
	Title	Deputy Attorney General and Deputy
	(XXX) XXX-XXXX	Minister Responsible for Housing
		Date Signed
		Honourable David Eby, QC
		Attorney General and Minister
		Responsible for Housing
		Date Signed



Appendix A: Communications Plan Template

Communications plan

Ministry of < Name >

Cabinet Submission

Item: e.g. Wildfire announcement

Summary:

Type:	e.g. Event / Announcement / News Release / Technical Briefing / Other		
Item summary:	< Brief description of the <i>communications</i> aspect of the item >		
Date:	Month / Day / Year	Venue / location:	
Primary:	< e.g. Premier >	Featuring:	< Other Ministers/MLAs > < Other elected officials > < Stakeholders >
Audiences:			
Message frame:	< List key messages >		
Key validating facts:	< List any facts that support the key messages >		
Potential issues/ challenges:	< List potential resulting issues with announcement >		

Media plan – stakeholders:



Approvals required:	< TB / Cabinet / PO / Other approvals outstanding >		
Stakeholders:	< Provide list of stakeholders >		
Notify stakeholders:	☐ Before announcement	☐ After announcement	
	☐	☐	
Local NR opportunity:	< List MLAs who could do a riding-specific NR >		

Media plan – event overview:

Complete only if this item involves an event.

Has an Event Plan been completed?:	☐ Yes	☐ No
Has Event Services been contacted?:	☐ Yes	☐ No
Event summary:	< Brief summary of event details (where, when, etc.) >	

Media plan – announcement:

Announcement details:	< Brief description of how the announcement, event, etc. will play out >
------------------------------	--



Specific media engagement:	< Regional media, one-on-one's, etc. >
Digital release:	< What is being done concurrently on social media? >
Ethnic media plan:	< Focus on Asian and South Asian communities >

Media plan – follow up:

Sustaining activities:	< Recommended follow-up activities, in brief, by Ministers or MLAs >
Digital follow up:	< Any ongoing social media activities? >
Consultation/ engagement:	< Does this announcement require a consultation process? If so, has this been discussed/approved by the GCPE Public Consultation Unit? >

Authorization:

_____ Director of Communications Ministry of < Name >	_____ Deputy Minister (Ministry)
---	-------------------------------------

 Month Day, Year



Appendix 2 – s. 12

s. 12

From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: Wrongful Death Working Group on July 4
Sent: 01/15/2025 14:11:07
Attachments: Discussion Paper - s. 12, s. 13

docx

From: Tucker, Melanie AG:EX <Melanie.Tucker@gov.bc.ca>
Sent: Wednesday, June 29, 2022 4:33 PM
To: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>
Cc: Lorensen, Tanner AG:EX <Tanner.Lorensen@gov.bc.ca>
Subject: RE: Wrongful Death Working Group on July 4

Thanks so much for the update Ryan.

I've attached the discussion paper as promised, which lays out the proposed model at a high level and which I was hoping to solicit your feedback on this coming Monday

I've managed to connect with RMB this week (finally) s. 12, s. 13 Grant Warrington (Claims Examiner and Legal Counsel) will be attending on Monday so Zack and Ross, you'll have a chance to hear from him as well. He seems to get assigned most medical malpractice claims currently and has a wealth of experience in this area.

For the purposes of Monday's meeting I thought the best use of our time would be to discuss the model in the concept paper and go over the Engagement Plan (also attached).

Ryan – Please pass along any comments you have by email if and when you have a chance to review. Alternatively, we can schedule another time to connect once you're back.

Wishing you a very happy long weekend!

Melanie Tucker

From: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>
Sent: Wednesday, June 29, 2022 3:40 PM
To: Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Tucker, Melanie AG:EX <Melanie.Tucker@gov.bc.ca>
Subject: RE: Wrongful Death Working Group on July 4

Unless pulled away unexpectedly, I intend to attend the meetings on those dates.

z

From: Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>
Sent: June 29, 2022 3:37 PM
To: Tucker, Melanie AG:EX <Melanie.Tucker@gov.bc.ca>
Cc: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>
Subject: Wrongful Death Working Group on July 4

Hi Melanie, FYI – I won't be at the working group meeting on July 4 or July 11 as will be on vacation.

I've cc'd Zach to let him know, and I don't know if he is available on those dates and will be at the meetings.

Thanks

Ryan

Ryan Murray BA, MBA
Director, Physician Partnerships
Health Sector Workforce and Beneficiary Services Division | Ministry of Health
PO Box 9649 STN PROV GOVT | Victoria BC V8W 9P4
Ph: 250 952-1262 | Email: ryan.murray@gov.bc.ca |

Warning: This email is intended only for the use of the individual or organization to whom it is addressed. It may contain information that is privileged or confidential. Any distribution, disclosure, copying, or other use by anyone else is strictly prohibited. If you have received this in error, please telephone or e-mail the sender immediately and delete the message.

Reforming BC's Family Compensation Act

s. 12, s. 13

Purpose

To solicit feedback from impacted government ministries on proposed reforms to BC's wrongful death law. s. 12, s. 13

Policy Rationale

The death of a loved one is an incredibly difficult event, which can permanently alter the direction of a person's life. People are expected to make reasonable provision (e.g., buying property insurance, buying life insurance or saving for retirement, etc.) but wrongful deaths by definition are unexpected events which cannot be anticipated and which can have a profound impact on families. It is therefore appropriate that there are mechanisms to enable family members to receive the supports they require to adjust to the new and unsought reality and to begin to rebuild their lives.

Overview of Current 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 Family Compensation Act (FCA) is BC's wrongful death legislation. A wrongful death under the FCA is one where damages would have been available had the person survived the injury caused by the wrongful act or negligence of another.

However, the FCA only allows for pecuniary or financial damages to be awarded to address financial loss suffered as a result of the wrongful death of a family member. This includes lost financial support, funeral expenses, and medical expenses incurred on behalf of the victim. It does not allow for non-financial losses so if the decedent was a non-income earner like a child, or a low-income earner it is often not financially worthwhile to litigate, and families receive nothing in compensation for the death.

Most Canadian provinces have amended their wrongful death legislation to allow the court to award bereavement damages.

KEY CONCERNS

The FCA is often criticized for being:

- **Out-dated**, bare-boned legislation, largely the same as the original statute upon which it was built, Lord Campbell's Act (1846).
- **Out-of-step with other jurisdictions** across Canada, which have introduced amendments to broaden eligible claimants and to add non-financial damages (with the exception of the Yukon and NWT).
- **Unpredictable** as courts have struggled with interpreting the FCA, and have attempted to fill in the gaps left by the legislation – setting standards for damage awards, and considering alternative family arrangements on an ad hoc basis. This has resulted in a large body of case law. As a result, the average person cannot look at the present legislation and determine with any degree of certainty what to expect.
- **Fundamentally unfair** in that it only creates a right of compensation for income earners who have dependents. In cases where pecuniary damages are awarded, the families of high-income earners receive higher settlement awards under the current tort system. Conversely, the families of low-income earners receive lower dollar value settlements. As many defendants are entitled to government indemnity or have errors and omissions insurance, this means taxpayers and insurance policy holders are funding large settlements to

wealthy families who could arguably have greater means and financial stability to recover than lower income families, who receive lower settlement awards or no award if it is not financially worthwhile to litigate.

- **Exclusionary** because not everyone who may be financially dependent on the deceased is covered by the FCA. Claimants are limited to “spouse, parent or child of the person whose death has been caused.” For example, siblings are not currently included as eligible claimants in BC although they are eligible in other jurisdictions such as Manitoba, Ontario and Quebec. Persons who receive support payments or any other person dependent on the deceased for financial support are also not currently included as claimants.

Model Overview

s. 12, s. 13

Terminology

s. 12, s. 13

s. 12, s. 13

GENERAL PRINCIPLES

s. 12, s. 13

s. 12, s. 13

Key Elements

After a wrongful death, families want accountability from the wrongdoer, information about how their loved died for the purposes of closure, change to the system so the same thing doesn't happen to another family, and compensation for their loss.

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

Current FCA

s. 12, s. 13

Children

This includes people for whom the deceased stood in the role of parent as well as stepchildren, adopted children, grandchildren and illegitimate children.

Parents This includes grandparents and stepparents.	s. 12, s. 13
Spouses This includes marriage-like relationships including same-sex couples.	

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

Process

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

Indigenous Considerations

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. s. 12, s. 13

Cost and Funding

s. 12, s. 13

s. 12, s. 13

Risks and Challenges

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

s. 12, s. 13

DRAFT

s. 12, s. 13

s. 12, s. 13

DRAFT

From: Rathy, Sophia HLTH:EX(Sophia.Rathy@gov.bc.ca)
To: Sophia.Rathy@gov.bc.ca, Rathy, Sophia HLTH:EX
Subject: FW: Wrongful Death Reform - Cross Ministry Working Group
Sent: 01/15/2025 15:00:50
Attachments: 02 Request for Decision - FCA.docx

From: Tucker, Melanie AG:EX <Melanie.Tucker@gov.bc.ca>
Sent: Monday, July 25, 2022 4:51 PM
To: Matieschyn, Zachary HLTH:EX <Zachary.Matieschyn@gov.bc.ca>; Lorensen, Tanner AG:EX <Tanner.Lorensen@gov.bc.ca>; Malik, Ashish AG:EX <Ashish.Malik@gov.bc.ca>; Murray, Ryan HLTH:EX <Ryan.Murray@gov.bc.ca>; Shust, Susan D HLTH:EX <Susan.Shust@gov.bc.ca>; Oldham, Kim L FIN:EX <Kim.Oldham@gov.bc.ca>; Andersen, Maureen P AG:EX <Maureen.Andersen@gov.bc.ca>; Alexander, Ross AG:EX <Ross.Alexander@gov.bc.ca>
Cc: Warrington, Grant S FIN:EX <Grant.Warrington@gov.bc.ca>; Nadziejko, Anita T AG:EX <Anita.Nadziejko@gov.bc.ca>; Salter, Jaclyn AG:EX <Jaclyn.Salter@gov.bc.ca>
Subject: Wrongful Death Reform - Cross Ministry Working Group

Good afternoon,

Please find attached the first draft of a proposed cabinet submission for wrongful death reforms s. 12, s. 13

As you will see there is more work to be done, but I'd like to get your comments and feedback before the document is finalized anyway so it can be incorporated.

Please do not circulate this document beyond this group at this stage.

Thanks so much for your time, efforts and work so far! I will be watching from Transportation to see how it progresses.

All comments and feedback after this week should be sent to Anita Nadziejko.

Cheers,

Melanie Tucker



Cabinet Submission— s. 12, s. 13

This Template Last Updated: November 15, 2021

Minister: Honourable David Eby, QC, Attorney General and Minister
Responsible for Housing

Ministry: Attorney General

Date: 31/08/2022

Title: Family Compensation Act and Wrongful Death Reforms

EXECUTIVE SUMMARY

Issue:
s. 12

s. 12, s. 13

This cabinet submission seeks policy approval to s. 12, s. 13



s. 12, s. 13

Key implications and considerations:

- The AG has publicly committed to reforming the FCA during this term of government. The FCA is tentatively on the Fall 2023 legislative agenda.

s. 12, s. 13

s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

Recommended option:

Option 1 – s. 12, s. 13

s. 12, s. 13

Background and context:

s. 12

s. 12, s. 13



s. 12

- One of the largest barriers to having the legislation proceed during previous attempts was s. 12, s. 13

s. 12

s. 12 s. 12, s. 13

s. 12



Key Criticisms of FCA
s. 12

s. 12, s. 13

s. 12

Data Challenges



s. 12



s. 12

s. 12, s. 13

s. 12

⁴ Source: Vital Statistics Agency, Ministry of Health

s. 12



s. 12, s. 13

s. 12

s. 12

s. 12

s. 12, s. 13

s. 12, s. 13

s. 12

s. 12, s. 13



s. 12

s. 12, s. 13



s. 12, s. 13

Policy considerations:

s. 12, s. 13

s. 12, s. 13



s. 12, s. 13

BC



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13



s. 12, s. 13

[Add Gender-Based Analysis Plus (GBA+)]

Indigenous peoples:

s. 12, s. 13, s. 14

s. 12, s. 13, s. 14
Public engagement and consultation has not yet take place.
s. 12, s. 13



Options:

Option 1 (Recommended) s. 12, s. 13
s. 12, s. 13

Commented [TMA5]: Requested assistance with this from Eden Landero

Advantages
s. 12, s. 13



Disadvantages

s. 12, s. 13

Option 2 – s. 12, s. 13

Advantages

s. 12, s. 13

Disadvantages

s. 12, s. 13



Option 3 – s. 12, s. 13

Advantages
s. 12, s. 13

Disadvantages
s. 12, s. 13

Fiscal impacts
s. 12, s. 13

s. 12, s. 13

Treasury Board Staff comments

Treasury Board Staff (TBS) comments must be included verbatim. The comments should indicate whether TBS agrees with the characterization of fiscal impacts and whether the proposal requires Treasury Board review. If the comments are lengthy, they may be included as an appendix.

You must provide a draft and final copy of your Cabinet submission to your ministry's Treasury Board Analyst at the same time as provided to Cabinet Operations.



Impacts and outcomes:

Commented [TMA8]: Not yet started.

Discuss the expected short, medium and long-term impacts and outcomes of the recommended option and how success will be measured. Include the timeframe and method(s) by which the ministry will evaluate whether the initiative has achieved the intended outcomes.

The Ministry of Finance has developed a [Logic Model Toolkit](#) to help facilitate the completion of this section. Ministries may also wish to include an appendix with a logic model that clearly shows the relationship between key inputs, activities, outputs, and outcomes.

Business and economic implications:

Summarize the implications of the recommended policy change for businesses and the economy. If business and economic implications are not quantifiable, include a qualitative assessment. See the [Business and Economic Implications Framework \(BEIF\)](#) for more information and resources.

Attach the BEIF worksheet to the three week draft submission submitted to Cabinet Operations, and provide a copy of the worksheet to the BEIF office at BEIF@gov.bc.ca.

Legal issues and advice:

Briefly outline key legal issue(s) that are relevant to this submission, including any legal advice received from the Legal Services Branch.

Legal issues and advice respecting Indigenous rights and interests should be included under the Indigenous Peoples section above.

Ensure that your LSB advising solicitor, or the Assistant Deputy Attorney General, agrees with the summary of legal advice (if any) set out in this submission.

Legislation:

s. 12, s. 13



s. 12, s. 13

s. 12

s. 12, s. 13

s. 12, s. 13

s. 12

External consultations:

An external engagement plan has been developed which includes public consultation and engagement with stakeholders, including affected families, community organizations and the legal community.

Impacted stakeholders include: the Disability Community (BC Coalition of People with Disabilities, Vancouver Island Head Injury Society) Community Organizations (Mothers Against Drunk Driving, Parents Coalition of BC, Parent and Child Advocacy Coalition), Counsellors and Psychologists (BC Assn. of Specialized Victim Assistance & Counselling Programs, BC Council for Families, BC Art Therapy Association, BC Association of Clinical Counsellors, BC Association for Marriage and Family Therapy, BC Psychological Association, College of Psychologists of BC), Funeral and Burial Sector (Funeral Services Association of BC, Cemetery and Crematorium Association of BC), Insurance and Legal Community (Coalition Against No-Fault in BC, Trial Lawyers Association of BC, Canadian Medical Protection Association, Law Society of BC.

Commented [TMA9]: Ministry of Health:
Health Sector Workforce and Beneficiary Services Division:
Zach Matiescheyn (Nursing Policy Secretariat)
Ryan Murray (Physicians Services Branch)
Corporate Issues Client Relations Division
Susan Shust (FOI and Litigation)
Jordan Will (Patient Care and Quality Review Board Secretariat)
Leah Smith (Hospital Services Branch, Priority Initiatives and Quality)

Ministry of Finance, Risk Management Branch:
Kim Oldham (Director)
Grant Warrington (Legal Counsel, Claims Examiner)

Commented [TMA10]: Saved in the Teams folder in the engagement folder.

As discussed - additional consideration will need to be given to the approach used in engagement with the public. See email from Preet saved in the teams folder.



Communications and public engagement:

If your Director of Communications determines a full communications plan is required, complete the Communications Plan template (Appendix A) attached to this submission.

Commented [TMA11]: Request for plan has been submitted to Preet Grewal. She is working on this with a mid August deadline and has requested the cab sub.

Signatures:

Contact:	First Name Last Name	Shannon Salter
	Title	Deputy Attorney General and Deputy
	(XXX) XXX-XXXX	Minister Responsible for Housing
		Date Signed
		Honourable David Eby, QC
		Attorney General and Minister
		Responsible for Housing
		Date Signed



Appendix A: Communications Plan Template

Communications plan

Ministry of < Name >

Cabinet Submission

Item: e.g. Wildfire announcement

Summary:

Type:	e.g. Event / Announcement / News Release / Technical Briefing / Other		
Item summary:	< Brief description of the <i>communications</i> aspect of the item >		
Date:	Month / Day / Year	Venue / location:	
Primary:	< e.g. Premier >	Featuring:	< Other Ministers/MLAs > < Other elected officials > < Stakeholders >
Audiences:			
Message frame:	< List key messages >		
Key validating facts:	< List any facts that support the key messages >		
Potential issues/ challenges:	< List potential resulting issues with announcement >		

Media plan – stakeholders:



Approvals required:	< TB / Cabinet / PO / Other approvals outstanding >		
Stakeholders:	< Provide list of stakeholders >		
Notify stakeholders:	☐ Before announcement	☐ After announcement	
	☐	☐	
Local NR opportunity:	< List MLAs who could do a riding-specific NR >		

Media plan – event overview:

Complete only if this item involves an event.

Has an Event Plan been completed?:	☐ Yes	☐ No
Has Event Services been contacted?:	☐ Yes	☐ No
Event summary:	< Brief summary of event details (where, when, etc.) >	

Media plan – announcement:

Announcement details:	< Brief description of how the announcement, event, etc. will play out >
------------------------------	--



Specific media engagement:	< Regional media, one-on-one's, etc. >
Digital release:	< What is being done concurrently on social media? >
Ethnic media plan:	< Focus on Asian and South Asian communities >

Media plan – follow up:

Sustaining activities:	< Recommended follow-up activities, in brief, by Ministers or MLAs >
Digital follow up:	< Any ongoing social media activities? >
Consultation/ engagement:	< Does this announcement require a consultation process? If so, has this been discussed/approved by the GCPE Public Consultation Unit? >

Authorization:

 Director of Communications
 Ministry of < Name >

 Deputy Minister (Ministry)

 Month Day, Year



Appendix 2 – s. 12

s. 12

APPENDIX 2

Summary of Mischaracterizations of The BC Wrongful Death Law Reform Society and the Wrongful Death Accountability Act Identified in Government Records

Prepared by the BC Wrongful Death Law Reform Society (“In Their Name”)

July 2026 — based on review of FOI disclosures MAG-2023-32966 (Ministry of Attorney General), HTH-2023-33193 (Ministry of Health), FIN-2024-40186 (Ministry of Finance), and the Premier’s Office FOI response

Purpose of This Appendix

The BC Wrongful Death Law Reform Society (the “Society”) requested, through the Freedom of Information and Protection of Privacy Act (FOIPPA), the internal records four provincial ministries hold about the Society and about its proposed Wrongful Death Accountability Act (WDAA). This appendix reviews what was disclosed. The disclosed records contain specific, sourced statements about who the Society is, who established it, and who wrote its proposed legislation — and a number of those statements are inaccurate.

This appendix sets out each inaccuracy identified, the government record it comes from, and the evidence that contradicts it. It is submitted so that the Commissioner has, in the government’s own words, a record of how the Society and its advocacy have been characterized internally, together with the evidence needed to assess the accuracy of those characterizations.

Scope and Sources

We reviewed the full text of all four disclosed FOI packages (Premier’s Office, Ministry of Attorney General [MAG], Ministry of Health [HTH], and Ministry of Finance [FIN]). The large majority of the Premier’s Office package, and substantial portions of the other three, were withheld under FOIPPA sections 12, 13, 14, 16, 17, 19, and 22 (Cabinet confidence, policy advice, solicitor-client privilege, personal information, and other exceptions), so this review is necessarily limited to what remains visible on the record. No comparable statements about the Society were located in the FIN disclosure.

Alongside the FOI records, we draw on our own contemporaneous public record — correspondence we sent to government at the time, and articles we published — to show what evidence was actually in front of government when these internal characterizations were written. Full citations and links are collected in “The Evidence Behind This Document” at the end.

Part A — Ministry of Attorney General Records (MAG-2023-32966)

A.1 Inaccurate description of the Society as having been “formed” by TLABC and CANF

A Cabinet-confidence backgrounder dated June 2, 2020 states that the Trial Lawyers Association of BC (TLABC) and the Coalition Against No-Fault Insurance (CANF) created the Society, rather than the Society having an independent, family-led origin:

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.

— MAG-2023-32966, p. 195 (backgrounder dated June 2, 2020)

A related, more frequently repeated formulation across several MAG briefing notes (2017–2022 versions) describes the Society only as “affiliated with TLABC and CANF,” for example:

the Wrongful Death Law Reform Society of BC (also known as “In Their Name,” and is affiliated with TLABC and CANF...)

— MAG-2023-32966, e.g. pp. 44, 132 (recurring text across estimates/backgrounder notes)

The facts: The Society (and its predecessor bodies — the Coalition for People with Disabilities and the Wrongful Death Law Reform Working Group) is a volunteer, family-led organization with a history predating its relationship with TLABC by decades. It was not “formed” by TLABC and CANF. TLABC and CANF are allied stakeholders who share some policy goals with the Society; they did not create it, direct it, or draft its legislation.

This is not a new position we are taking for this document. We said the same thing publicly, in real time, in a July 16, 2020 letter to every sitting BC NDP MLA: “*We’ve also come to learn that members of the BC NDP have also lied about our Wrongful Death Law Reform Society, saying that we are merely a front group for the Trial Lawyers Association... We have little to no contact, or coordination with the TLABC.*”

— Letter Sent to the BC NDP MLAs Regarding the No-Fault Fraud, July 16, 2020

A.2 Attribution of the Wrongful Death Accountability Act to TLABC

A comparative appendix included in the same MAG disclosure, titled “Summary of Canadian Jurisdictions with TLABC Proposal,” places a column for the proposed WDAA directly under the header “Trial Lawyers Association of BC”:

APPENDIX – SUMMARY OF CANADIAN JURISDICTIONS with TLABC PROPOSAL ... Trial Lawyers Association of BC ... Wrongful Death Accountability Act (proposed)

— MAG-2023-32966, pp. 97–98 (appendix accompanying a January 29, 2021 decision note prepared for then-Attorney General David Eby)

The facts: The WDAA was drafted by the Society, in collaboration with a team of constitutional law students and volunteer senior trial lawyers acting in an advisory capacity, with input from dozens of affected families. TLABC did not author it. Labelling the government’s own comparative table with TLABC’s name as the source of this legislation misattributes authorship and does not reflect the family-led drafting process behind it.

A.3 Mischaracterization of the WDAA as “a compilation of different US state laws”

The same backgrounder states, in describing what it calls “the TLABC’s preferred option”:

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.

— MAG-2023-32966, e.g. p. 44 (recurring across several versions of this backgrounder, 2017–2022)

Because the same document’s appendix (see A.2 above) places the WDAA under the “TLABC Proposal” heading, this US-law characterization is effectively transferred onto the WDAA by association, even though it is nowhere stated to apply to the WDAA specifically.

The facts: The WDAA was drafted using existing legislative precedents from other Canadian provinces and territories (surveyed in the same appendix table), not US state law. No US statutes were consulted or relied upon in drafting the WDAA.

A.4 Inaccurate characterization of the Society as having “support from” the Canadian Bar Association, BC Branch

Two versions of the same MAG stakeholder-list backgrounder describe the Society this way:

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.

— MAG-2023-32966, p. 133 and p. 143 (recurring backgrounder text)

The facts: The Society has not received support or endorsement from the Canadian Bar Association, BC Branch (CBABC). On occasion, CBABC has sought the Society’s advisement on the wrongful-death issue — that is advisement flowing from the Society to CBABC, not support flowing from CBABC to the Society. CBABC has separately, and independently, advocated in its own 2012, 2013, 2014, and 2017 platform submissions for capped bereavement damages under the Family Compensation Act — a position of its own, on the broader policy question, that is correctly described elsewhere in the same MAG disclosure (see, e.g., p. 44) without the inaccurate “support” framing. Presenting CBABC as a backer of the Society specifically is not supported by anything in the record we have seen.

A.5 Dismissal of the criticism of Enhanced Care as “unsupported”

Describing criticism of the Enhanced Care no-fault model, a MAG note states:

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... 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.

— MAG-2023-32966, p. 142–143 (undated FCA policy note)

The facts: “No evidence was provided” is not accurate, at least as it concerns our Society. On March 9, 2020 — more than a year before Enhanced Care came into force — we wrote directly to then-Attorney General David Eby, laying out a detailed, data-supported case against the no-fault proposal: ICBC’s financial history under prior road-safety strategies, the deterrent function of the tort system, and comparative UK and Canadian road-safety and fatality data. We followed that with published analysis using specific case examples (including a full worked comparison of the compensation a real BC family would have received under the tort system versus under Enhanced Care) and comparative damages data drawn from other provinces’ case law.

The claim that criticism of no-fault insurance lacks broad support also sits uneasily next to the historical record. When a broadly similar no-fault proposal was fought in 1996–97, a coalition of at least 207 non-profit organizations publicly opposed it — not primarily trial lawyers, but disability, seniors’, women’s, and health organizations including the BC Coalition of People with Disabilities, the BC Nurses’ Union, the Alzheimer Society of BC, the Canadian Mental Health Association (BC Division), and the BC Association for Community Living, among many others. That government dropped the 1996 proposal as a result.

We cannot speak to who, specifically, was consulted during Enhanced Care’s internal 2020–21 design process — that is not something we have visibility into. But the broader suggestion that opposition to no-fault insurance in BC is fringe, or unsupported by evidence, is contradicted by both our own documented

submissions to government and by decades of organized, broad-based non-profit opposition to no-fault schemes in this province.

Part B — Ministry of Health Records (HTH-2023-33193)

B.1 Omission from the named stakeholder-engagement list

An external engagement plan describes a detailed, named list of stakeholder groups for consultation on wrongful-death-related reform, organized by sector — Disability Community, Community Organizations, Counsellors and Psychologists, Funeral and Burial Sector, and Insurance and Legal Community — each with specific named organizations (e.g., BC Coalition of People with Disabilities, Mothers Against Drunk Driving, Funeral Services Association of BC, Trial Lawyers Association of BC, Coalition Against No-Fault in BC). The Society is not named anywhere in this specific list; the only reference to affected families is generic:

An external engagement plan has been developed which includes public consultation and engagement with stakeholders, including affected families, community organizations and the legal community.

— HTH-2023-33193, pp. 189–190 (Confidential Advice to Cabinet)

The facts: The Society is the organized, named advocacy body representing affected families on this specific issue — and is named individually elsewhere in the MAG disclosure. Its omission from a detailed, named stakeholder list, while smaller or more tangential organizations are named individually, is inconsistent with how the Society is treated in other ministries’ records.

Part C — What the Records Get Right

Not everything in the disclosed record is adverse. One MAG communication draft acknowledges a direct relationship between the Society and government at the ministerial level, which is useful context alongside the corrections above:

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.

— MAG-2023-32966, p. 230 (draft ministerial correspondence)

The Evidence Behind This Document

Sources cited above, for anyone who wants to verify them directly:

- **Government records (obtained under FOIPPA):** MAG-2023-32966 (Ministry of Attorney General); HTH-2023-33193 (Ministry of Health); FIN-2024-40186 (Ministry of Finance); Premier’s Office FOI response.
- **Letter to Attorney General David Eby, March 9, 2020** — “RE: BC Wrongful Death Law Reform Society’s Position on No-Fault,” signed by Michael-James Pennie, President, BC Wrongful Death Law Reform Society.
- **“No-Fault May be the Most Discriminatory Piece of Legislation Ever Proposed in BC... And it’s Back Again!”** — In Their Name, May 2, 2020 (documents the 1996–97, 207-organization coalition against no-fault).

- “How ICBC No-Fault Fails British Columbians in Cases of Wrongful Death and Continues to Allow Wrongdoers to Escape Accountability” — In Their Name, January 30, 2021 (comparative case analysis).
- “Letter Sent to the BC NDP MLAs Regarding the No-Fault Fraud” — In Their Name, July 16, 2020.

Corrections Sought

- That MAG correct its internal backgrounders to reflect the Society’s independent, family-led origin rather than describing it as having been “formed” by TLABC and CANF.
- That the appendix comparison table be re-labelled so the WDAA is attributed to the Society (with TLABC named only as a supporting/advisory stakeholder), not filed under a “TLABC Proposal” heading.
- Written clarification from MAG on whether it considers the WDAA to be modelled on US law, and if so, the basis for that conclusion — the Society’s drafting record shows exclusive reliance on Canadian provincial and territorial precedents.
- That MAG correct the record to remove the claim that the Society has “support from” CBABC, and substantiate or retract the “no evidence was provided” characterization in A.5, given the documented record above.
- That the Ministry of Health confirm the Society will be named directly — not merely folded into “affected families” — in any current or future external engagement plan.
- That the Commissioner take the corrections identified in this appendix into account in the course of the current inquiry, and that each ministry named above be asked to respond to them within a reasonable time.

Limitations of This Review

Because the majority of all four FOI packages remains redacted (primarily under FOIPPA ss. 12 and 13 — Cabinet confidence and policy advice), it is likely that additional relevant statements exist in material not yet disclosed to the Society. The corrections above are limited strictly to what is visible in the current disclosures and should not be read as an exhaustive account of how the Society or the WDAA have been characterized internally by government.

APPENDIX 3

Wrongful Death Legislation Across Canada: Verified Findings

A Report by the BC Wrongful Death Law Reform Society

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

The Wrongful Death Accountability Act: Six Core Tenets

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

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

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

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

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

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

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

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

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

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

3. No Statutory Caps Outside the Western Provinces

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

4. Other Verified Findings, Citation-Ready

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

5. Full Jurisdiction-by-Jurisdiction Summary

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

Conclusion

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