

Review of the levels
of damages under
Section 8 of the
Fatal Accidents Act

Fall 2021

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Table of Contents

Background and Purpose	4
I. Current section 8 of Alberta’s Fatal Accidents Act	6
II. Legislative History, Amendments, and Reviews	7
III. Loss of Guidance, Care and Companionship Damages in Other Canadian Jurisdictions	9
IV. <i>Fatal Accidents Act</i>, 1976 (U.K.).....	13
V. Inflation	14
VI. Insurance premiums.....	14
VII. Recommendation.....	15
Appendix A: Case law relating to loss of guidance, care and companionship damages	16
Appendix B: Alberta Traffic Collision Statistics 2018	18

Background and Purpose

Section 8 of the *Fatal Accidents Act* (FAA) allows certain close family members of a deceased killed by a wrongdoer the right to claim compensation from that wrongdoer for the grief and loss of guidance, care and companionship of the deceased person.

In Alberta, once a claim is made and the liability of the wrongdoer is established, the amount of compensation is automatic, and there is no requirement for the family members to prove their grief. The family members entitled to make a claim are the spouse, partner, parents and children of the deceased. This compensation is referred to in the Act as “damages for bereavement”.

Section 8 does not deal with compensation to surviving family members for the loss of actual financial benefits that would have been received from the deceased person.¹ It does not deal with criminal law. It does not deal with systems such as workers' compensation that compensate surviving family members regardless of whether the death of the worker was caused by anyone's fault. Other parts of the law apply to these areas.

Section 9 of the Act requires the government to review the levels of damages in section 8 every five years to determine whether the amounts need to be adjusted. The results of the review are reflected in this Report.

The fundamental advantage of a set statutory amount of damages for bereavement is that once a claim is made and liability of the wrongdoer is established, the award is automatic and no testimony or evidence of grief is necessary for the claimant to receive the award. The underlying concept is that the law should acknowledge the grief and loss of guidance, care and companionship and allow the family members to deal with the tragedy without the intrusion of adversarial litigation.

No amount of money can fully compensate a family for their grief and loss of a loved one, so setting an amount for damages is not easy. These damages are not a measure of the value of the lost life. They are meant to give recognition to the seriousness of the family's loss and compensate for grief and loss suffered by the surviving family.

Section 8 acknowledges the grief and loss of guidance, care and companionship suffered by the surviving family members but allows them to deal with the tragedy without the intrusive inquiries that would flow from adversarial litigation. Close family members should not be exposed to questioning or have to testify on the nature of their grief and the quality of the relationship they have lost. This can be particularly difficult in the loss of a child.

¹ The *Survival of Actions Act* (SAA) allows a cause of action to survive for the benefit of the person's estate. Only those damages that resulted in actual financial loss to the deceased or the deceased's estate are recoverable. Damages for loss of expectation of life, pain and suffering and so on are not recoverable. Damages must be proven.

The amount of damages under section 8 must balance a number of factors. The amount must be large enough to be meaningful to the person receiving it. At the same time, it must be justifiable within the context of existing damages awarded across Canada. It must take into account that with a set amount, some survivors may be over compensated while others may be under compensated when the specific circumstances of each case are considered. It must also be recognized that an automatic amount is meant to save the family the stress and aggravation of adversarial litigation.

As previously stated, close family members should not be exposed to questioning or have to testify on the nature of their grief and the quality of the relationship they have lost. However, there is a consequence for keeping caring families out of the litigation arena on issues of grief and loss of guidance, care and companionship. When damages do not require proof there is a loss of discretion and flexibility. Section 8 ensures that the statutory regime compensates the people who would have received compensation under a discretionary system.

Since the cost of compensating surviving family members for grief and loss of guidance, care and companionship is paid by the wrongdoer, often the insurer of the wrongdoer makes the payment when the death results from a motor vehicle collision or other incident with insurance coverage. A change in the cost of the levels of section 8 damages may impact automobile or other insurance rates.

I. Current section 8 of Alberta's *Fatal Accidents Act*

Section 8(2) of the Alberta *Fatal Accidents Act* provides a spouse, partner, parent (mother or father) and each child (son or daughter) the right to claim compensation for the grief and loss of guidance, care and companionship suffered when the death of spouse, partner, parent or child is caused by the wrongful conduct of a third party.

These damages for grief and loss of guidance, care and companionship are paid by the person who caused the death, or, in many cases, by that person's insurance company.

Section 8 of the *Fatal Accidents Act* provides, in part:

Damages for bereavement

8(1) In this section,

- (a) "child" means a son or daughter;
- (b) "parent" means a mother or father.

(2) If an action is brought under this Act, the court, without reference to any other damages that may be awarded and without evidence of damage, shall award damages for grief and loss of the guidance, care and companionship of the deceased person of

- (a) subject to subsection (3), \$82,000 to the spouse or adult interdependent partner of the deceased person,
- (b) \$82,000 to the parent or parents of the deceased person to be divided equally if the action is brought for the benefit of both parents, and
- (c) \$49,000 to each child of the deceased person.

(3) The court shall not award damages under subsection (2)(a) to the spouse or adult interdependent partner if the spouse or adult interdependent partner was living separate and apart from the deceased person at the time of death.

(4) Repealed 2002 cA-4.5 s36.

(5) A cause of action conferred on a person by subsection (2) does not, on the death of that person, survive for the benefit of the person's estate.

In addition to statutory grief and loss of guidance, care and companionship damages, section 7 of the *Fatal Accidents Act* also allows certain family members to claim "pecuniary damages" (repayment of out-of-pocket expenses) such as expenses for care of the deceased person between the injury and the death; travel and accommodation expenses in visiting the deceased person between the injury and death; funeral expenses; and grief counseling fees.

The pecuniary damages under the Act are for actual financial loss and these amounts must be proven. These damages may be claimed by a spouse, partner, parent (including a father, mother, grandfather, grandmother, stepfather and stepmother), child (including a son, daughter, grandson, granddaughter, stepson and stepdaughter), or brother or sister of the deceased. As with section 8 damages, these pecuniary damages under section 7 are paid by the person who caused the loss (or his or her insurer).

II. Legislative History, Amendments, and Reviews

Traditionally, under the common law the courts did not award damages for wrongful death to anyone. This was consistent with the principle of tort law that intended to return the injured person to the position he or she was in prior to the act or omission of the wrongdoer. This could not be done when a person was deceased.

The courts also did not recognize the grief and loss inflicted on survivors as a legal wrong committed by the wrongdoer against the surviving relatives.

Consequently, legislatures enacted wrongful death statutes to provide certain surviving relatives of a person wrongfully killed with the right to sue the wrongdoer to recover damages. These damages may include pecuniary damages (actual financial loss) and non-pecuniary damages (proposed compensation for pain and suffering).

Originally, the legislation in Alberta only provided for damages for the loss of financial benefits that the surviving family members could have expected to receive from the deceased person. In 1967, the Act was amended to allow a court to also award damages for reasonable funeral expenses and disposal of the body.

In April 1977, the Alberta Law Reform Institute (ALRI) issued Report No. 24, *Survival of Actions and Fatal Accidents Act Amendment*. The focus of this report was the reform of survival legislation and the adoption in part of the Uniform Survival Legislation Act (issued by the Uniform Law Conference of Canada). In Report No. 24, ALRI recommended that the estate's action for loss of expectation of life be abolished and a new cause of action be created for loss of guidance, care and companionship compensation. Immediate family members would be allowed to sue for damages for loss of guidance, care and companionship. ALRI also recommended that the amount of damages be established in legislation (statutory damages without proof of grief).

The Alberta government acted on the ALRI recommendations by enacting section 8 of the *Fatal Accidents Act*. Section 8 came into force on January 1, 1979. It followed the ALRI recommendations except for one change – ALRI had recommended loss of guidance, care and companionship damages for parents only for the wrongful deaths of minor children but the legislature allowed for loss of guidance, care and companionship damages for the wrongful deaths of children of all ages.

Section 8 empowered the court to award \$3,000 to the parents of a deceased child (to be shared between the parents); \$3,000 to the spouse of a deceased; and \$3,000 to the minor children of a deceased (to be shared between all the children).

The level of damages awarded for loss of guidance, care and companionship under section 8 was criticized from the time of the enactment of the legislation especially in the case of a child's death.

In Report for Discussion (RFD) No. 12, June 1992, ALRI reviewed section 8 of the *Fatal Accidents Act*. ALRI recommended in part that the amount to be paid for loss of guidance, care and companionship continue to be established by statute to relieve the loved ones from having to prove their loss (the degree of suffering and nature of the relationship with the deceased) in an adversarial situation. It recommended that damages for the loss of a child or spouse be increased to \$40,000; and damages to each child be increased to \$25,000 to be meaningful to survivors. It also recommended that the levels of damages be reviewed regularly.

ALRI again recommended that only family members who are likely to have the closest family relationship with the deceased person should be allowed to claim loss of guidance, care and companionship damages (ie. spouses, parents and children). A parent could claim damages for the death of a minor child or an unmarried child who was less than 26 years old. A child could claim damages for the death of a parent if the child was a minor child or an unmarried child less than 26 years old.

In determining the age criteria for the child, ALRI chose 25 years of age as the outer limit of dependency as most children have finished their education by that age and are close to financial independence. ALRI intended to encompass the time in which the child-parent relationship is the closest personal relationship in the child's life.

1994 Amendments

In September 1994, the ALRI recommendations were adopted and the levels of damages were raised to \$40,000 for a spouse, cohabitant or parent losing a minor child or an unmarried child less than 26 years old, and \$25,000 to each minor child or each unmarried child under 26 years of age for the loss of a parent.

1999 Review and 2000 Amendments

In 1999, the levels of damages were reviewed by ALRI and an increase in the amounts for inflation to \$43,000 and \$27,000 respectively was recommended. Those recommendations were implemented in February 2000.

2002 Amendments

In 2002, the levels of damages were significantly increased to \$75,000 and to \$45,000 respectively in conjunction with an amendment to the *Survival of Actions Act*². Adult interdependent partners and

² ALRI recommended the SAA be amended to remove loss of future income claims (Report No. 76, *Should a Claim for the Loss of Future Earnings Survive Death?* 1998). The Government accepted the ALRI recommendation and to give effect to this recommendation amended the SAA to only allow claims for actual financial loss under that Act while

unmarried children with no adult interdependent partner were added as eligible claimants and all age restrictions were removed (age restrictions were required to be removed as a result of court decisions that struck down these restrictions as Charter violations).

2007 Review

The 2007 review was conducted by Alberta Justice and Solicitor General (JSG) in a similar manner to ALRI's 1999 review, and in consultation with ALRI. Changes to the amounts were not recommended.

2010 Amendments

Section 8 of the *Fatal Accidents Act* was amended in 2010 in two respects. The first was to remove the reference to the marital status of claimants (marital status of claimants was required to be removed as a result of court decisions that struck down these restrictions as Charter violations). The second was to remove the reference to "illegitimate" children to modernize the language and make it consistent with other Alberta statutes.

2013 Amendments

In 2012, a review was conducted and a Discussion Paper was used to obtain comments from stakeholders. In 2013, the levels of damages were adjusted for inflation and increased to \$82,000 and \$49,000 respectively.

2017 Review

The 2017 review was conducted by JSG in a similar manner to ALRI's 1999 review. Changes to the amounts were not recommended.

III. Loss of Guidance, Care and Companionship Damages in Other Canadian Jurisdictions

The right to claim loss of guidance, care and companionship damages

The right to claim loss of guidance, care and companionship damages varies throughout Canada. The majority of provinces in Canada have enacted within their fatal accident statutes provisions allowing for recovery of damages for loss of guidance, care and companionship caused by the death of the deceased (Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and Yukon). Even where damages for loss of guidance, care and companionship are not expressly included in fatal accident statutes, damages for loss of guidance, care and companionship have

also increasing bereavement damages under the FAA to ensure fair compensation for spouses, parents and children without proof of loss.

been included by the courts as allowable damages under pecuniary loss (British Columbia, Northwest Territories and Nunavut).

Four provinces (Saskatchewan, Manitoba, Yukon and Alberta) provide damages for loss of guidance, care and companionship in fixed amounts with no evidence of damages required (statutory damages). As noted above, the fundamental advantage of this approach is that the family members do not have to put forward evidence that they are grieving or have suffered a loss. The law acknowledges that grief and loss exist.

The remaining provinces and the federal government³ also allow claims for damages for loss of guidance, care and companionship but the usual rules of evidence apply and damages must be proven by the family members making the claim. This approach allows the court to review each set of facts on a case by case basis and set an appropriate amount of damages for the particular circumstances. The drawback is that family members must prove their grief and may have to testify in court, which can aggravate the loss and extend the family's grieving period.

Below is a chart of the legislation across Canada relating to damages for grief and loss of guidance, care and companionship. The amounts of statutory damages and damages in reported case law are shown on pages 11 and 12.

Jurisdiction	Are the amounts set by statute of established by the court on proof of loss?	What do the amounts compensate?
AB	Statute	Grief and loss of guidance, care and companionship
SK	Statute	Grief and loss of guidance, care and companionship
MB	Statute	Loss of guidance, care and companionship
YK	Statute	Grief and loss of guidance, care and companionship
BC	Court	Loss of guidance, companionship and care (pecuniary damages)
ON	Court	Loss of guidance, care and companionship

³ In *Ordon Estate v. Grail* [1998] 3 S.C.R. 437, the Supreme Court of Canada held that the definition of damages in the context of fatal maritime accident claims should include damages for loss of guidance, care and companionship. The Court found that contemporary conceptions of loss include the idea that it is truly a harm for a dependent to lose the guidance, care and companionship of a spouse, parent or child.

QC	Court	<i>Solatium doloris</i> moral compensation for grief and distress
NB	Court	Loss of companionship or grief
NS	Court	Loss of guidance, care and companionship
PEI	Court	Loss of guidance, care and companionship
NL	Court	Loss of guidance, care and companionship
NT	Court	Loss of guidance, companionship and care (pecuniary damages)
NU	Court	Loss of guidance, companionship and care (pecuniary damages)
Canada	Court	Loss of guidance, care and companionship

Loss of guidance, care and companionship damage awards across Canada

Alberta has reviewed the current statutory damages and the relevant reported case law since 2006 in other Canadian jurisdictions. Below is a summary of the findings.⁴

	Relationship to deceased person			
	Spouse	Parent	Child	
AB	\$82,000	\$82,000 (divided equally if both parents claim)	\$49,000	
YK	\$75,000	\$37,500 to each parent but where only one parent claims \$75,000	\$45,000	
SK	\$60,000	\$30,000	\$30,000	

⁴ See Appendix A for a list of the case law considered.

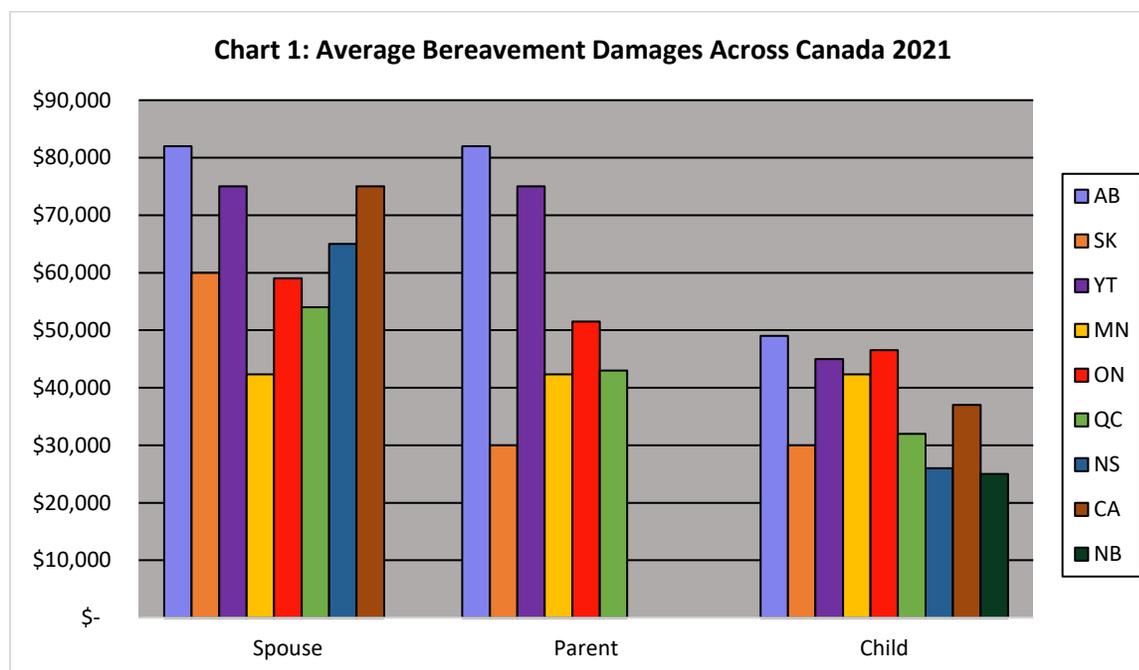
MB	\$42,301 ⁵	\$42,301	\$42,301 (minor child only)	\$14,100 (for child 18 years and older)
BC	Average \$15,000 No range	Average \$7,250 Range \$7,000 to \$7,500	Average \$35,000 No range	
ON	Average \$59,027 ⁶ Range \$7,500 to \$100,000	Average \$51,527 Range \$11,250 to \$125,000	Average \$46,511 Range \$3,000 to \$135,000	
QC	Average \$69,000 Range \$5,000 to \$150,000	Average \$38,400 Range \$6,250 to \$125,000	Average \$42,000 Range \$2,500 to \$125,000	
NS	No reported cases	No reported cases	Average \$4,000 No range	
NB	No reported cases	No reported cases	No reported cases	
PEI	No reported cases	No reported cases	No reported cases	
NL	No reported cases	No reported cases	No reported cases	
NT	No reported cases	No reported cases	No reported cases	
NU	No reported cases	No reported cases	No reported cases	
Canada	\$75,000 No range	No reported cases	Average \$37,000 Range \$25,000 to \$75,000	

⁵ These are required to be adjusted for inflation after 2002 (the amounts in 2002 dollars are \$30,000 each spouse, parent and minor child; \$10,000 for each child 18 years and older). See Bank of Canada Inflation Calculator.

⁶ The amounts in this table reflect reductions for contributory negligence as found by the court.

Comparison of Damage Awards

As shown in Chart 1 below, the current levels of damages under section 8 of the Alberta *Fatal Accidents Act* compare favourably with awards of a similar nature in other provinces across Canada.



A true direct comparison is not possible due to differing rules in each jurisdiction. For example, some jurisdictions provide an amount for each parent, whereas in Alberta damages for parents are divided equally if the action is brought for the benefit of both parents.

This chart compares averages. However, where a court determines the amount of damages based on proof of loss the range of damage awards can vary widely depending on the facts of the case.

A number of provinces have no reported cases. Similarly, there are few federal cases under the *Marine Liability Act*.

IV. *Fatal Accidents Act*, 1976 (U.K.)

England allows statutory loss of guidance, care and companionship damages for wrongful death to the surviving spouse or civil partner or surviving parents of an unmarried minor child. The current statutory amount of damages for loss of guidance, care and companionship is £15,120.

Applying the annual exchange rate for 2020, £15,120 is the equivalent of \$26,004 (Canadian Dollars)⁷.

⁷ See Bank of Canada's website. (2020 1.7199 average)

V. Inflation

According to the Bank of Canada, the Consumer Price Index for April 2021 is 140.0.⁸ If the Alberta amounts were increased for inflation, the damages could be \$88,225 for spouse, partner and parents, and \$52,720 per child.

Some of the other provinces' damages awards already factor in inflation. For example, Manitoba's is built in by statute. Courts in Ontario and Quebec often take into account the effects of inflation when reviewing previous case law to determine an appropriate award in a particular case.⁹

If Alberta increases its amounts to account for inflation, the gap between Alberta's damages amounts and the other jurisdictions would increase.

VI. Insurance premiums

Any change to the amounts of damages will likely have an impact on insurance rates.

In 1993, the Alberta Law Reform Institute (ALRI) estimated that its proposals to increase the amount of damages from \$3,000 to \$40,000 and \$25,000¹⁰ would result in a premium increase per vehicle of no more than \$22.¹¹ As complete information was not available, the analysis was based on a number of assumptions, but at the time the insurance industry agreed that the analysis was reasonably accurate.

The most recent Alberta collision statistics available are for 2018. As noted by ALRI, changes in the amount of statutory damages are most likely to affect automobile insurance premiums as compared to other types of liability insurance.

The Alberta collision statistics for 2018 indicate that 289 people were killed in that year as a result of traffic collisions. Details of the road user class (driver, passenger, or other category) and age of the deceased are included in Appendix B. Appendix B also provides details of the methodology of ALRI.¹²

⁸ See Bank of Canada's website.

⁹ See, for example, *Wilson v. Beck*, 2011 CarswellOnt 6583 at par 251.

¹⁰ \$40,000 to parents for the loss of a child, \$25,000 to each child for the loss of a parent.

¹¹ Alberta Law Reform Institute, Report for Discussion (RFD) No. 12, June 1992.

¹² Alberta Traffic Collision Statistics 2018 include the following statistics on numbers killed: 2014 – 369; 2015 – 330; 2016 – 299; and 2017 – 290 and 2018 – 289. When ALRI did Report for Discussion (RFD) No. 12, June 1992 the report was based on 1989 fatal collision statistics and in that year there were 520 fatalities. Overall it appears that fatal collisions have been less from 2014 to 2018 than in 1989. At the same time as noted in the report, with the requirement to remove the age and marital restrictions imposed by the Courts, the class of individuals able to claim bereavement damages has expanded (all parents regardless of the age or marital status of the deceased child and all children regardless of their age or marital status when their parent dies).

Based on the final 2018 statistics and ALRI's estimation that a maximum of 70% may involve a claim, the result is that claims for section 8 damages could be made in approximately 202 fatalities.

Current information is not available on the possible impacts to insurance premiums resulting from potential changes to the levels of damages. Nevertheless, it is important to note that if the statutory amounts are changed, there may be a resulting change in insurance premiums.

VII. Recommendation

On average, Alberta still has among the highest bereavement damages in Canada. Accordingly, the department recommends that Alberta retain the current amounts for the levels of damages under section 8 at this time.

Appendix A: Case law relating to loss of guidance, care and companionship damages

Québec

Chouinard c. Ailes de Gaspé inc., 2006 QCCS 5760 (CanLII), 2006 CarswellQue 11446

Tremblay c. Kyzen inc., 2006 QCCS 3275 (CanLII), 2006 CarswellQue 5224; affirmed 2008 CarswellQue 3116

De Montigny c. Brossard (Succession de), 2006 QCCS 1677 (CanLII), 40 CCLT (3d) 109, 2006 CarswellQue 2552; amount of damages affirmed 2010 SCC 51, [2010] 3 SCR 64 (appeal partially allowed on other issues)

Gravel c. Édifices Gosselin et Fiset enr., 2007 QCCS 5116 (CanLII), 2007 CarswellQue 10401

Larouche c. Blackburn, 2008 QCCS 1890 (CanLII), 2008 CarswellQue 4057

B.H. c. Centre hospitalier régional de Baie-Comeau, 2009 QCCS 585 (CanLII), 2009 CarswellQue 1212

Savard (Succession de) c. Houle, 2009 QCCS 795 (CanLII), 2009 CarswellQue 1640

L.S. c. Centre hospitalier affilié universitaire de Québec – Hôpital de l'Enfant Jésus, 2009 QCCS 1622 (CanLII); appeal allowed in part (but not on damages), 2011 QCCA 1521 (CanLII), 2011 CarswellQue 9188; leave to appeal to SCC filed Sep 29, 2011, docket 34460 ; no decision as of April 12, 2012

Larouche c. Simard, 2009 QCCS 529 (CanLII), 2009 CarswellQue 1044; appeal allowed in part (but not on damages), 2011 QCCA 911 (CanLII), 2011 CarswellQue 5199

Shaikh c. Kane, 2010 QCCS 1871 (CanLII), 2010 CarswellQue 4432

Thivierge c. Gouriou, 2011 QCCQ 340 (CanLII), 2011 CarswellQue 611

Roussin c. Plan Nagua inc., 2011 QCCS 5301 (CanLII), 2011 CarswellQue 11008

Papatie c. Québec (Procureur general), 2013 QCCS 868, 2013 CarswellQue 1798, 2013 CarswellQue 5657, EYB 2013-219071, 362 D.L.R. (4th) 720 (C.S. Que.)

Sacco c. Paysagistes Izzo et Frères Itée 2014 CarswellQue 7733

Nguyen c. Site touristique Chute à l'ours de Normandin inc. 2014 CarswellQue 519

Émond c. Benhaim 2014 CarswellQue 12131

Nova Scotia

Simpson Estate v. Cox, 2006 NSSC 84 (CanLII), 2006 CarswellNS 135; affirmed 2006 NSCA 125 (CanLII), 2006 CarswellNS 499

Federal

Wilcox v. Miss Megan (Ship), 2008 FC 506 (CanLII), 2008 CarswellNat 1193

McDonald v. Queen of the North (Ship), 2009 BCSC 1129 (CanLII), 2009 CarswellBC 2188. Court approved settlement.

British Columbia

Stegemann v. Pasemko, 2010 CarswellBC 707 (BCCA)

Camaso Estate v. Egan, 2011 BCSC 456, 2011 CarswellBC 907 (B.C.S.C.)

James Estate v. Gillis, 2011 CarswellBC 1625 (B.C.S.C.)

Haczewski v. British Columbia 2012 BCSC 380, 2012 Carswell 722, 7C.C.L.I. (5ht) 211, 33 M.V.R. (6th) 57 (B.C.S.C.)

Duncan (Litigation guardian of) v. Brown 2014 CarswellBC

Panghali v. Panghali, 2014 BCSC 647.

Ontario

Rupert v. Toth, 2006 CanLII 6696 (ON SC), 2006 CarswellOnt 1345

Wright v. Hannon, 2007 CanLII 240 (ON SC), 2007 CarswellOnt 59

Johnson v. Milton (Town), 2008 ONCA 440 (CanLII)

Madonia v. Stevens, 2008 CanLII 70461 (ON SC), 2008 CarswellOnt 8256

Singleton v. Leisureworld Inc., 2008 CanLII 16071 (ON SC), 2008 CarswellOnt 2128

Fiddler v. Chiavetti, 2010 ONCA 210 (CanLII), [2010] O.J. No 1159, 2010 CarswellOnt 1670

Wilson v. Beck, 2011 CarswellOnt 6583 (On. S.C.J.). *Medical malpractice*

Vokes Estate v. Palmer 2012 ONCA 2012 OJ No 3393 (QL); 218 ACWS (3d) 994; 26 CPC (7th) 13; 294 OAC 342 (Jury Trial award)

Rycroft Estate v. Gilas, 2017 ONSC 1397

The Estate of Carlo DeMarco v. Dr. Martin, 2019 ONSC 2788

Panchyshyn v. Hammond, 2020 ONSC 381

Campeau v. Ontario, 2021 ONSC 129

Appendix B: Alberta Traffic Collision Statistics 2018

Of the 289 fatalities the following applies:

Road User Class

Drivers	164
Passengers	39
Pedestrians	40
Motorcyclists	18
Bicyclists	2
Other	14
Unspecified	12

Age

Under 5	3
5-9	3
10-14	1
15-19	27
20-24	37
25-29	29
30-34	23
35-44	38
45-54	36
55-64	36
65 and over	55
Unspecified	1

As noted by ALRI, some fatalities would not give rise to a claim for damages that would be covered by an automobile insurance policy. These fatalities would include:

- 1) The Workers' Compensation Board (WCB) reported that in 2018 there were 27 motor vehicle incident fatalities accepted by the WCB. These deaths fall under the umbrella of the no-fault workers compensation scheme.
- 2) It can be assumed that a number of drivers who died in traffic fatalities were the cause of their own death. This may apply in the case of a single vehicle accident in which the sole occupant, the driver, dies or in the case of a multi-vehicle collision in which the deceased driver is solely responsible.
- 3) There will also be accidents in which driver error is not the cause of the collision resulting in death of a pedestrian or bicyclist.
- 4) There will be other accidents which cannot be attributed to anyone's fault such as where a car strikes a wild animal on the highway.
- 5) Finally, there will be accidents in which the deceased was contributorily negligent and, therefore, the damages will be reduced accordingly. For example, if the deceased is found to be 20% contributorily negligent, the award is reduced by 20%. ALRI suggests that a significant number of drivers who died in traffic collisions will be contributorily negligent.

Taking into account the above noted, ALRI determined that the net result is that a significant number of fatalities would not give rise to a claim for bereavement damages and in another significant number of cases recovery would be reduced by the contributory negligence of the deceased. Factoring in those considerations, ALRI estimated that a maximum of 70% may involve a claim and at least 30% would involve no claim. The result is that claims for bereavement damages based on 2018 statistics could be made in approximately 202 fatalities

Potentially, in these 202 fatalities, claims may be brought by a spouse or partner; a parent of the deceased, and children of the deceased. For example where a deceased is survived by a spouse or partner, a parent and two children the bereavement damages may total \$262,000 (\$82,000 to the spouse or partner; \$82,000 to the parent and \$49,000 to each child). However, there are too many variables to make any reasonable assumptions about whether a deceased would have left a surviving spouse or partner, whether a deceased would have left a surviving parent and whether a deceased would have left surviving children. For example the younger the deceased the less likely he or she is to have a surviving spouse or partner or have surviving children but the more likely he or she is to have a surviving parent. In the absence of specific individual data, it is not possible to determine exact bereavement damage amounts.