

Amendments to *The Fatal Accidents Act* (Saskatchewan)

The Department of Justice is proposing amendments to *The Fatal Accidents Act* during the spring 2007 session of the Legislature to allow both adult and minor children to recover non-pecuniary damages.

In 2004, *The Fatal Accidents Act* was amended to allow the spouses, parents and minor children of a deceased person to recover non-pecuniary damages (damages not readily measurable in financial terms) for grief and the loss of guidance, care and companionship of the deceased. Currently, the damages recoverable under the Act for grief and the loss of guidance, care and companionship of the deceased are:

- \$60,000 for the spouse of the deceased person;
- \$30,000 for each parent of the deceased person; and
- \$30,000 for each minor child of the deceased person.

Subsequent to the amendments in 2004, the Alberta Court of Appeal in *Ferraiuolo Estate v. Olson* (2004), 246 D.L.R. (4th) 225 gave a unanimous decision that provisions restricting damage awards for grief to children based on age or marital status violated the *Canadian Charter of Rights and Freedoms*. The Court struck the age and marital status restrictions from the Alberta legislation.

In light of this decision, we are proposing amendments to the Act to remove the restriction of damages for grief and the loss of guidance, care and companionship to minor children. The result would be that all children, regardless of age, would be entitled to \$30,000 in damages for the loss of guidance, care and companionship.

Please find attached a draft of the proposed new provision.

We would very much appreciate hearing your views on the proposed amendments, particularly with respect to the transition provision. **Please provide your comments by January 5, 2007 to:**

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Proposed Changes to *The Fatal Accidents Act*

Damages for bereavement for death on or after August 1, 2004

4.1(1) In this section:

- (a) “child” does not include a grandchild;
- (b) “parent” does not include a grandparent.

(2) If the court finds the defendant liable in an action pursuant to this Act with respect to a death on or after August 1, 2004, 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), \$60,000 to the spouse of the deceased person;
- (b) \$30,000 to each parent of the deceased person; and
- (c) \$30,000 to each child of the deceased person.

(3) The court shall not award damages pursuant to clause (2)(a) to a spouse who was living separate and apart from the deceased person at the time of the deceased’s death.

Transitional

4(1) Subject to subsection (2), the amendments to *The Fatal Accidents Act* being enacted by this Act apply to all deaths occurring on or after August 1, 2004.

(2) The amendments to *The Fatal Accidents Act* being enacted by this Act do not apply to actions:

- (a) in which judgment is given before the coming into force of this Act; or
- (b) that are settled before the coming into force of this Act.