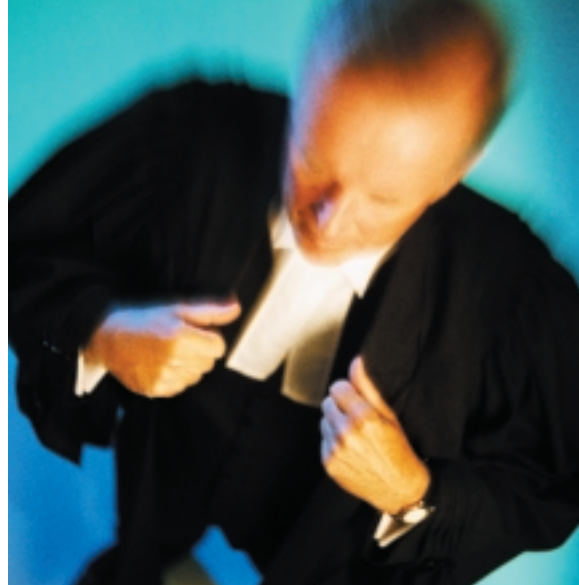


PROVINCE ABOLISHES CLAIMS FOR FUTURE INCOME LOSSES AFTER DEATH



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Since the Alberta Court of Appeals Decision in *Duncan (Estate) v. Baddeley* (1997), 196 AR 161, the estate of a deceased person has been able to recover damages for income that was lost because of the person's early death. After wide spread criticism of this rule, including criticism from the Alberta Law Reform Institute, the Alberta Legislature has abolished these claims.

For any cause of action that arises after November 1, 2002, claims for loss of future income will not be allowed in the event of the death of the Plaintiff. Accordingly, if a person dies in a car accident on October 30 of this year, his estate can still maintain a claim for the earnings that were lost by reason of his death. If the car accident occurred after November 1st, this claim would not be allowed.

Also effective November 1st are changes to the *Fatal Accidents Act*. These changes increase the damages for bereavement that relatives of a person killed in a fatal accident were allowed to claim in their names. The amount that a parent can claim for a child living at home has been increased from \$43,000.00 to \$75,000.00. The amount that a child who is still living at home can claim for the death of a parent has been increased from \$27,000.00 to \$45,000.00.

PREVIOUS S. 5 OF THE SURVIVAL OF ACTIONS ACT

5 If a cause of action survives under section 2, only those damages that resulted in actual financial loss to the deceased or the deceased's estate are recoverable and, without restricting the generality of the foregoing, punitive or exemplary damages or damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities are not recoverable.

NEW S. 5 OF THE SURVIVAL OF ACTIONS ACT

5(1) If a cause of action survives under section 2, only those damages that resulted in actual financial loss to the deceased or the deceased's estate are recoverable.

(2) Without restricting the generality of subsection (1), the following are not recoverable:

- (a) punitive or exemplary damages;
- (b) damages for loss of expectation of life, pain and suffering, physical disfigurement or loss of amenities;
- (c) damages in relation to future earnings, including damages for loss of earning capacity, ability to earn or chance of future earnings.

(3) Subsection (2)(c) applies only to causes of action that arise after the coming into force of this section.

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2(1) THE FATAL ACCIDENTS ACT IS AMENDED BY THIS SECTION.

(2) Section 8(2) is amended

(a) in clause (a) by striking out “\$43 000” and substituting “\$75 000”;

(b) by repealing clause (b) and substituting the following:

(b) \$75 000 to the parent or parents of the deceased person if the deceased person, at the time of death,

(i) was a minor, or

(ii) was not a minor but was unmarried and was not living with a cohabitant, to be divided equally if the action is brought for the benefit of both parents, and

(c) by repealing clause (c) and substituting the following:

(c) \$45 000 to each child of the deceased person who, at the time of the death of the deceased person,

(i) is a minor, or

(ii) is not a minor but is unmarried and is not living with a cohabitant.

(3) Section 9(1) is amended by striking out “September 1, 1994” and substituting “June 1, 2002”.

(4) Section 8(2) of the *Fatal Accidents Act*,

(a) as amended by this section, applies only in respect of deceased persons who die after the coming into force of this section, and

(b) as it existed before the coming into force of this section, applies in respect of deceased persons who die before the coming into force of this section.

(5) This section comes into force on Proclamation.

NOTE THAT THE PREVIOUS S. 8(2) WAS AS FOLLOWS:

(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 subsections (3) and (4), \$43 000 to the spouse or cohabitant of the deceased person,

(b) \$43 000 to the parent or parents if

(i) the deceased is a minor child, or

(ii) the deceased is an unmarried child who died when 18 years of age or older and had not reached the deceased’s 26th birthday and was not living with a cohabitant, to be divided equally if the action is brought for the benefit of both parents, and

(c) \$27 000 to each child of the deceased person who, at the time of the death of the deceased person, is

(i) a minor, or

(ii) unmarried and 18 years of age or older and has not reached the child’s 26th birthday and is not living with a cohabitant.