

Compensation for Relational Harm

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I. Executive Summary

When someone is hurt or killed as a result of another's wrongdoing, the people who suffer loss go beyond the immediate victim to those with whom the victim had a significant relationship. The private law in Canada, whether in the common law or civil law tradition, has recognized that the scope of the defendant wrongdoer's responsibility may properly extend to these plaintiffs and their "relational losses". In the common law, legislative schemes have responded to the law's traditional failure to recognize such victims appropriately, and have identified certain relationships which qualify for compensation. These relationships, originally confined to parent-child and husband-wife, were those seen by society to be particularly emotionally and economically close. Today, the list of potential beneficiaries of compensation for relational loss has expanded. Further, non-pecuniary injury such as loss of care and guidance is increasingly included. Finally, there is greater willingness to allow for claims arising from wrongful injury in addition to those arising from wrongful death.

The common law approach remains markedly status-based and restrictive when compared to the civil law approach in Quebec. In the civil law, relationships are not identified prior to the inquiry into the nature of the loss suffered. This is not to say that the doors are wide open to recovery by anyone affected by someone's death or injury. Indeed, the quality of the relationship is investigated in order to evaluate the claim of injury and it is not surprising that the leading recent case in Quebec in which compensation for relational loss was particularly generous is one in which the relationship was that of mother and son. Further, causation operates as a significant limiting mechanism in this context in the civil law; that is, losses must be shown to be the direct and immediate result of the wrongdoing. Despite these qualifications, the approach of the civil law is more functional in nature and therefore more accurate in its response to the law's aim of including in the wrongdoer's responsibility any actual relational loss

suffered. Finally, the civil law has no principled difficulty with compensating psychological and even purely emotional loss.

This report recommends an approach focused on the question, "What kind of relational loss have you suffered?". Both pecuniary and non-pecuniary losses should be compensable; this implies considerably greater acceptance of psychological and emotional harm suffered as a result of wrongdoing. Relational losses should be recoverable whether they arise out of wrongful death or wrongful injury. Finally, and most significantly, the law should respond as effectively as possible to actual relational loss. Rather than simply add to the ever-expanding list of potential beneficiaries, common law legislation can retain the assumptions of closeness in certain relationships in a more flexible way. That is, named relationships such as parent-child, spousal, or sibling can be included as illustrative of the kinds of relationships that may result in "relational loss". If a claimant can show a significant relationship and therefore can attach the adjective "relational" to the loss suffered, and further can show the damages claimed, then that person will have a successful claim against the wrongdoer responsible for the immediate victim's death or injury.

In this suggested approach, successful claims are not limited to named categories of potential beneficiaries; on the other hand, the kinds of economic/ emotional relationships targeted by overall legislative aims in this area of law are acknowledged and built into the law's analysis. This Report suggests that Common law legislative schemes across the country move away from a rigid approach that may overlook significant close adult personal relationships properly giving rise to loss allocated to a wrongdoer or tortfeasor. With respect to federal legislative schemes, the already fairly expansive lists of potential beneficiaries should be understood as illustrative but not definitive of the kinds of relationships that give rise to "relational loss". Anyone who has suffered "relational loss" (damage to a significant relationship, marked by close emotional and economic ties, between immediate victim and plaintiff) should be able to bring a successful claim against the defendant for tangible and intangible injury.

II. INTRODUCTION

One of the many areas of law requiring examination in the context of close personal adult relationships is that of wrongfully caused relational harm. As requested by the Law Commission of Canada, this Report investigates the issues relevant to this area and offers an analysis of the current state of the law, a discussion of the objectives that underlie the law, and recommendations as to desirable directions for law reform. The Report casts a broad net across Canadian law on the topic of civil liability for relational harm so as to provide a study based on the experience of Canada as a whole. The common law, provincial law, federal law, and the civil law are all considered in order to provide as rich a picture as possible.

The Report begins with an account of the state of the law in Canada as it concerns wrongfully caused relational harm. A hypothetical example is introduced, designed to raise a broad range of the issues that can arise in wrongful death or injury situations. The description of the law as it currently stands is extensive in that it indicates and explains the difficulties encountered in the common law of relational harm, provides tables illustrating both provincial and federal legislation, and sketches the particular approach of Quebec's civil law system, appropriately situating that approach such that tradition-specific capacities and limits are understood. Wrongful death retains a central significance in this report because it has been given considerable legislative attention and because, by definition, it brings to the fore the law's principal concerns surrounding relational harm. Relational harm in the context of wrongful injury is also given careful attention, however, given that it is equally relevant to the notion of close adult personal relationships. Indeed, claims for relational harm in a situation of wrongfully caused injury highlight the moral dimensions of compensation for relational harm, since in most personal injury cases the primary victim will have already been compensated for any financial losses.

After presenting the state of the law, the Report offers an analysis of the purpose and objectives of accidental death and injury legislation and provides a comparative discussion of legislative and civil law approaches to this kind of compensation. The final section of the Report offers recommendations for reform. A more complex, flexible and responsive framework is offered for approaching the question of who may bring a successful claim for damages contingent on the relationship between the claimant and the person who has died or been injured. Concerns with under-inclusiveness and with the desire to recognize appropriately close personal relationships in this context are addressed so as to meet the law's objectives as meaningfully as possible. This is a sensitive area of law in that we are addressing the pain suffered by survivors and by people closest to the victims of serious injury; concern for the perspective of these potential claimants is therefore of utmost and guiding importance.

In a nutshell, this Report's principal recommendation is that the primary question asked in determining eligibility for compensation should be "What kind of relational loss have you suffered?". This question incorporates elements of a status-based approach (based on the question "Who are you?") and a functional approach (based on the question, "What loss have you suffered?"). That is, certain relationships will lead to appropriate assumptions as to injury suffered by a "secondary" victim, although, in general, it will be appropriate to investigate the quality of the relationship in order to assess a victim's claim of injury. The objective of the law's provisions for recovery by someone related in some significant way to the primary victim of wrongful behaviour is best met by enlarging and intertwining the "who" and the "what" of compensation.

III. STATE OF THE LAW

A. Working Example

June is a scientist. She has been working for the past five years as a researcher for a pharmaceutical company named NuCure that is seeking to develop a cure for breast cancer.

June is the company's top researcher. In the last year she has finally made some progress in her lab, and feels she is just on the brink of developing a new treatment that, due to its novel approach to the disease, promises to be an effective cure. She has informed NuCure of her latest progress and told them that she expects a breakthrough any day now. In their excitement, NuCure sends out a press release to local newspapers, announcing the expected breakthrough. Many women with breast cancer read the article, and are given hope by the news.

On her way to work one morning, June is tragically struck and killed by a falling window-washing ledge that was hung fifteen floors above the street by old ropes that snapped under the weight of the ledge. The employees for the window-washing company, Sparklit, had failed to check the old ropes to ensure that they were safe before hanging the ledge. Sixteen people, most of them on their way to work, witnessed June's death. An ambulance was called immediately. One person went to try and rescue June, but it was too late. People were frozen on the sidewalk in horror and disbelief. It could have been any one of them. Most of them couldn't work that day. One man, in particular, was so traumatized by the event that he experienced a nervous breakdown that caused him to develop a permanent respiratory problem. He had to be hospitalized for a week, and will have breathing trouble for the rest of his life.

June's partner of seven years, Margaret, was informed of June's horrible accident over the phone. She rushed to the hospital to find June's dead body. She and June had just recently decided to adopt a child, and had signed all the papers. Margaret is a writer, and June supported the two of them between Margaret's books. Margaret has been very depressed since the day she had to identify June's body at the hospital. June's large family is in disbelief at the event. All are incensed, including NuCure and some of the witnesses, at the wanton carelessness that was the cause of June's death. NuCure will suffer immense financial losses from June's death, as she was the only one who could complete the new treatment she was working on. In addition, the women who were expecting a breakthrough from NuCure feel that

they have lost a significant chance of overcoming their disease. Despite their grieving, Margaret and the members of June's family feel that they must take action against Sparklit for the wrongful death of their loved one. In addition, NuCure, the witnesses, and the women diagnosed with breast cancer all want compensation for their losses resulting from Sparklit's negligence.

Who can bring a successful claim, and *what* losses might be compensated?

B. The Common Law

The common law has not allowed wrongful death claims since 1808, when it was decided in the now well-known decision of *Baker v. Bolton*¹ that "in a civil Court, the death of a human being could not be complained of as an injury". In that case a husband was denied damages incurred by him upon the death of his wife due to a stagecoach accident.

Most of the claims that arise out of wrongful death, excepting claims made in the name of the deceased, are what can be called claims of 'relational harm'. This is because they are not claims for directly inflicted injury, but for injury inflicted indirectly, in virtue of one's relationship with the deceased. So, for instance, June's death has several harmful consequences for Margaret. Not only has Margaret lost the love and support she expected to receive from her partner, she has also lost the financial support from June that was crucial to Margaret's sustenance as an author. When this sort of harm is brought about through the negligence of another, it is termed 'wrongful' or 'wrongfully caused' 'relational harm'. All of the claimants in our example might wish to make claims for wrongfully caused relational harm. As has been noted above, the common law since 1808 has not recognized this sort of harm arising from someone's death; instead, according to the common law, all tort claims die with the deceased.

¹ (1808) 1 Camp 493, 170 E.R. 1033 (K.B.) [hereinafter *Baker*].

The logic behind this common law position is hard to discern. Some authors suggest that it is simply the result of judicial confusion². In the U.K., the Law Lords tried to explain their position in the later judgement of *Admiralty Comm'rs. v. S.S. Amerika*³, arguing that claims for relational harm are based on rights of which one has been deprived, and that these rights are generally extinguished at death such that no claims of deprivation can survive. At the time of *Baker*, there were two main kinds of rights that one could have in one's relationship with another. The first was *servitium*, which existed between a master and his servant, and the second was *consortium*, which existed between a husband and his wife. *Servitium* was the right of a master to the services of his servant, and *consortium* was the right of a husband to the support, comfort, affection and services of his wife⁴. These rights were contingent, according to the House of Lords, upon the wife or servant being *alive*. The rights no longer existed once the person died; hence a claim for their loss upon death could not be upheld.

The one important exception to the common law position on relational harm in the area of wrongful death claims is the more recently developed action for psychiatric illness⁵. In order to understand the common law's treatment of relational loss, it is helpful to review in some detail its approach to what is commonly called "nervous shock". According to the common law, those who suffer psychiatric harm as a result of the wrongful death of another, can in limited circumstances claim damages for the injury they have suffered. The term 'limited' cannot be overemphasized. As recently confirmed in the British Columbia case of *Rhodes v. CN Railway*⁶, the courts have placed serious constraints on recovery for relational psychiatric illness. That is, they have insisted on a particularly close connection between "primary" and "secondary" victims and between the claimant and the scene of the wrongful death.

² J.G. Fleming, *The Law of Torts*, 9th ed. (Sydney: LBC Informations Services, 1998), at 729-30.

³ (1917), 2 K.B. 648.

⁴ P. Osborne, *The Law of Torts* (Toronto: Irwin Law, 2000)

⁵ One of the first notable psychiatric illness, or "nervous shock" cases, as they were then called (and are still sometimes called today), was *Victorian Railways Commissioners v. Coultas* (1888) 13 A.C. 222.

⁶ [1991] C.C.L.T. (2nd) 118 [hereinafter *Rhodes*].

In the *Rhodes* case, a mother claimed to have experienced psychiatric illness as a result of the wrongful death of her son in the Hinton, Alberta train disaster of 1986. Upon hearing about the crash over the news, Mrs. Rhodes made her way from Vancouver to Hinton as soon as possible, knowing that her son had been on that train. She was not able to witness the crash site until eight days after the accident, however, by which time most of the evidence of the disaster was gone. It took her many days to discover that her son was indeed killed and not injured in the crash. Despite her difficult experience in Hinton and her chronic depression that was the result, the B.C. Court of Appeal presiding over the case held that she had not met the proximity requirements necessary for recovery for psychiatric harm.

That is, it was not enough for Mrs. Rhodes to have suffered psychiatric harm as a result of the incident. She also had to meet several proximity criteria, such as proximity of relation, proximity in time and place, and causal proximity, in order to be granted recovery⁷. In imposing these criteria, the law attempts to respond only to certain relationships (e.g. parent-child) and to distinguish between mental suffering and grief, which in itself the common law does not award damages for⁸, and psychiatric injury, which it may. When the proximity requirements are met, courts can deem the plaintiff's injury 'reasonably foreseeable', and can impose liability on the defendant⁹. As the deceased's mother, Mrs. Rhodes definitely met the requirements of relational proximity, but the court found that this proximity was not enough to make up for her lack of proximity in other respects, such as time and place. Because she only heard of the accident over the radio, and was not at the crash site during the aftermath of the accident, the actual trauma of the incident did not strike her closely enough to justify recovery¹⁰. Interestingly, Mrs. Rhodes did make repeated efforts to reach the scene of the accident, efforts denied by Via Rail. By deciding that there was insufficient connection to the wrongful death scene, the court

⁷ *Ibid.*, at 129 and 151, in the judgments of Taylor and Wallace J.J.A, respectively.

⁸ This common law position dates as far back as *Lynch v. Knight* (1861) 9 H.L.C. 576, 11 E.R. 854 (H.L.).

⁹ *Rhodes*, *supra* note 6 at 150.

¹⁰ *Ibid.*, at 132 and 152-3.

appears to assert that the plaintiff's experience of loss (compounded by the refused access to the crash site) was somehow less traumatic or significant than it would have been had she reached the site or found her son's body at the hospital or morgue, situations that have been sources of liability for psychiatric harm in other cases¹¹.

It seems that the type of experience courts have in mind when they speak of psychiatric harm is the sort of disorder that results from having immediately witnessed or been a part of a traumatic and horrific experience. The example of war and the sort of post-traumatic stress disorder that veterans might develop from having been involved in bombings and other such events where they feared for their own lives or had to witness the destruction of others, seems to be the sort of phenomenon that tort law is trying to recognize in the accident context¹². Unfortunately, this sort of focus has worked inconsistently and indeterminately to deny compensation in meritorious circumstances. Simple bystanders have been denied compensation because they lacked a relationship of proximity to the deceased, while family members have been denied compensation because they were not close enough to the scene of the accident, or weren't in fear for their own lives (were simple bystanders!)¹³.

Some authors have argued that there is a gendered undercurrent in this area of the common law, since its focus on the type of accident and the circumstances of the plaintiff with respect to it, versus the seriousness and veritability of the injury that resulted, fails to recognize that some people may be either socially or biologically particularly sensitive to negligence, i.e. pregnant women, and that some relationships may be socially particularly sensitive to relational harm, i.e. maternal relationships. A focus on war-like trauma as the only kind of foreseeable psychiatric harm discredits other kinds of traumatic experiences as less 'real' or less worthy of compensation, and in so doing introduces a gender bias into the law, since in many cases the

¹¹ For example in the English and Australian cases of *McLoughlin v. O'Brian* [1983] 1 A.C. 310 (H.L.) and *Jaensch v. Coffey* (1984) 155 C.L.R. 549 (H.C. Austl.), respectively.

¹² *Rhodes*, *supra* note 6 at 132, 139-40, 161, and 181; Chamallas, M. and Kerber, L.K., "Women, Mothers, and the Law of Fright: A History" (1990) 88 Mich. L. Rev. 814 at 836 and 850.

'other' and 'unforeseeable' psychiatric harm is experienced by women¹⁴. The complaint is rooted in the law's suspicion of women plaintiffs claiming recovery for shock, miscarriage, or psychiatric illness upon witnessing an accident or the death of their child¹⁵. *Rhodes* is just one example justifying such a critique.

Such extensive coverage of "nervous shock" in the common law is justified in the context of this Report because it illustrates the reluctance of the common law to recognize claims for relational harm in the context of wrongful death. Even in this one situation (i.e. where the harm is psychiatric injury) such recovery may indeed be possible but the law imposes serious limitations.

In our example, then, several claims potentially could be made for psychiatric harm. The witnesses to the event might want to claim for the mental disturbance that cost them a day or more's work, and the bystander who developed respiratory problems might want to claim damages for the nervous breakdown he suffered and its consequent results. The rescuer may have been traumatized by his or her attempts to help the victim, only to find her crushed by the impact of the ledge. Margaret would certainly attempt to claim for the chronic depression she has suffered since identifying June's body at the hospital, and members of June's family may have suffered a shock-induced psychiatric illness upon hearing of June's sudden and horrifying death.

Common law courts would be expected to take a very restricted approach to granting recovery. They will try to draw a line between injuries that can be related to the experience of the accident and injuries that have more to do with the individual's reaction to it¹⁶. To begin with, it should be noted that the claims from the bystanders will fail for lack of a recognized psychiatric illness. The common law's refusal to compensate for grief or emotional distress is

¹³ *Hay or Bourhill v. Young* [1942] 2 All E.R. 396, *Waube v. Warrington* (1935) 216 Wisc. 603, *Amaya v. Home Ice, Fuel & Supply Co.* (1962) 23 Cal. Rptr. 131

¹⁴ Chamallas and Kerber, *supra* note 12 at 824-834, 837-841, and 864.

¹⁵ *Ibid.* at 844-45; see e.g. *Victorian Railways*, *supra* note 5, *Mitchell v. Rochester Railway* (1896) 151 N.Y. 107, *Bourhill*, *Waube*, and *Amaya*, *supra* note 13.

illustrated in cases such as these¹⁷. Even the witness who suffered a nervous breakdown, however, will likely not be recognized because the accident didn't threaten him personally or anyone close to him; all of the witnesses were onlookers, and not really involved in the accident. The rescuer, on the other hand, might have a successful claim due to his or her proximity to the accident¹⁸, although it would not necessarily be easy to define the nature of the relationship as proximate. Margaret's claim might also succeed, since in identifying the body – which must have been extremely injured - she was a part of the aftermath of the accident¹⁹, whereas June's family's claims for psychiatric harm would likely fail as their difficulties could only be attributed to the news of the accident, versus the actual experience of it, their being far away from both the scene of the accident and its aftermath.

Appreciating the policy concerns that seem to lie behind limited recovery for psychiatric harm helps us see the way in which the law sees close personal relationships. That is, the law makes assumptions about the closeness of particular, recognized relationships and builds those assumptions into tools to circumscribe liability and recovery. What then are the policy concerns which might be offered to explain seemingly arbitrary and inconsistent rules?²⁰ They include 1) proliferation of claims and a consequent flooding of the courts, 2) a deleterious impact on insurance premiums or an increased and unreasonable burden on the defendant in comparison to their moral blameworthiness, 3) an increase in the number of fraudulent claims, 4) conflicting medical opinions, 5) discouraging rehabilitation in the important area of mental health, and 6) the issue of whether or not it is generally wise in contemporary society to increase sensitivity towards, and awareness of psychiatric harm²¹. The result of these policy concerns is that

¹⁶ *Rhodes*, *supra* note 6; *Beecham v. Hughes* (1988), 52 D.L.R. (4th) 625 (B.C.C.A.).

¹⁷ Osborne, *supra* note 4 at 75-78.

¹⁸ *Chadwick v. British Transport Commission*, [1967] 1 W.L.R. 912 (Q.B.).

¹⁹ *McLoughlin*, *supra* note 11.

²⁰ L. Bélanger-Hardy, "Nervous Shock, Nervous Courts: The *Anns/Kamloops* Test to the Rescue?" (1999) 37(3) *Alta. L. Rev.* 553 at 573-588.

²¹ *Ibid.* at 580; Osborne, *supra* note 4 at 74-5.

psychiatric harm is a very uncertain and limited form of recovery for victims of relational harm.

As Philip Osborne comments in *The Law of Torts*:

“Few observers would claim that negligence law in respect of psychiatric injury is in a satisfactory state. The policies driving the law in this area are clear but there has been a failure to translate that policy into principles that are clear, fair and rational. The use of largely arbitrary proximity devices to limit recovery by relational victims is bound to produce unpredictable and uneven adjudication. The current law also reflects an over-reaction to the dangers of psychiatric injury claims. So long as the requirement of nervous shock, or even serious emotional distress, is maintained, liability is not likely to explode exponentially if conventional negligence doctrine is applied.”²²

At common law, therefore, survivors in wrongful death cases are generally left with the legacy of *Baker* and little or no hope of a successful claim for the losses they suffer. The relationship between the dead person and the potential plaintiff, however close, is recognized only as one part of the analysis of a claim for psychiatric injury brought on by the wrongfully caused death of another.

When we turn to wrongfully caused injury, as opposed to death, of another, the reasoning in *Amerika* (the case that tried to explain *Baker*) dictates that loss of *consortium* or *servitium*, experienced upon the wrongful *injury* of one’s wife or servant, would be recoverable in common law. This is indeed the case in the common law through the recognized actions of *per quod consortium amisit* and *per quod servitium amisit*²³. Hence the notion that, from the defendant’s perspective, “it is better to kill than to maim”. In Canada, the existence of these actions varies from province to province. Actions for loss of *servitium* are thought to be anomalous and out of step with the common law’s general refusal to grant compensation for relational economic loss, and so some of the provinces have abolished the action by legislation²⁴. In addition, the *action per quod consortium amisit* failed to be extended to wives in

²² Osborne, *ibid.* at 79-80.

²³ Osborne, *supra* note 4 at 183-84; M. Popescul, “Action Per Quod Consortium Amisit” (1978-79) 43 Sask. L. Rev. (No 2) 27.

²⁴ See e.g. *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 63; J. Irvine, “The Action Per Quod Servitium Amisit in Canada” (1980), 11 C.C.L.T. 241 at 242.

the House of Lords decision of *Best v. Samuel Fox*²⁵, and all of the Canadian provinces have today responded to this unfair position by either abolishing the action for *consortium* legislatively or by extending it to women²⁶.

In response to the shaky and incomplete recognition of relational harm offered by the common law, the Canadian federal and provincial governments have intervened to enact wrongful death legislation, as well as – in some jurisdictions - legislation creating a right of action for victims of relational harm due to the wrongful *injury* of a loved one.

C. Provincial and Federal Legislation

All of the provinces and territories have what is often referred to as ‘fatal accident’ legislation. This legislation provides a right of action for certain categories of people upon the wrongful death of someone close to them. In addition, all of the provinces and territories have what is called ‘survival’ legislation, which allows a right of action to survive the death of the deceased, so as to claim from the tortfeasor damages that would have been owed to the deceased had he or she lived. This last sort of action is for the benefit of the estate of the deceased, whereas the ‘fatal accident’ legislation operates to give close relatives of the deceased a right of action in their own right for personal damages suffered. In many cases the beneficiaries of the ‘fatal accident’ legislation will also be the heirs of the deceased, in which case they will benefit from both pieces of legislation. The federal government has also enacted ‘fatal accident’ legislation in the areas of its competence where this was deemed relevant or necessary²⁷.

All of the ‘fatal accident’ legislation in Canada today can be traced back to a common origin. This is *Lord Campbell’s Act*, 1846²⁸ of the U.K., a copy of which was enacted in Canada

²⁵ (1952) A.C. 716 (H.L.).

²⁶ See e.g. *Domestic Relations Act*, R.S.A. 1980, c. D-37, s. 43; Osborne, *supra* note 4 at 185.

²⁷ For example, *Canada Shipping Act*, R.S.C. 1985, c. S-9.

²⁸ Formal title: *An Act for compensating the Families of Persons killed by Accidents*, 1846, 9 & 10 Vict., c. 93.

in 1847 with the title: *An Act for compensating the Families of Persons killed by Accident, and for other purposes therein mentioned*²⁹. Comments made by members of the House of Lords on the second reading of *Lord Campbell's Act* offer an explanation for its adoption as well as further insight into the common law's reasons for denying compensation in the first place. According to the *Parliamentary Debates*, Lord Brougham argued that:

“The law of England was, with regard to the subject of compensation for loss of life, an exception to the law of every other country; and this very fantastical reason was given for a very bad law – the badness of the law being equalled by the reason – that the value of life was so very great that nothing could be a compensation for it: because they could not give an infinite value for a life, they refused to give any value at all for it. The argument, in fact, blew hot and cold, because it made life either infinitely valuable, or of no value whatever.”³⁰

In addition to this concern for protecting the interests of relational harm sufferers, the legislation also focused on the appropriate scope of the wrongdoer's responsibility, as is evidence by the opening line of the 1847 Canadian version of *Lord Campbell's Act*. “Whereas a person, who by his wrongful act, neglect or default may have caused the death of another person, should be answerable in damages for the injury so caused by him...”³¹

The core structure and wording of *Lord Campbell's Act* remain virtually the same in today's provincial and federal fatal accident legislation in Canada. A typical opening section of the legislation is found in s. 3 of Alberta's *Fatal Accident Act*:

“When the death of a person has been caused by a wrongful act, neglect or default that would, if death had not ensued, have entitled the injured party to maintain an action and recover damages, in each case the person who would have been liable if death had not ensued is liable to an action for damages notwithstanding the death of the party injured.”³²

Each piece of legislation specifies what categories of persons are to benefit from the legislation, and stipulates that damages are to be awarded to them in proportion to the injury

²⁹ S.C. 1847, c. 6.

³⁰ U.K., H.L., *Parliamentary Debates*, ser. 3, vol. 85, col. 967, at col. 969, (24 April, 1846).

³¹ *Supra* note 29, preamble.

³² R.S.A. 1980, c. F-15, s. 2.

that resulted to them from the death. Initially, this type of legislation was meant to benefit the husband, wife, parent, and child of the deceased person (although, interestingly, step-parents, grandparents and grandchildren were deemed to be included)³³. A uniform origin to the legislation encouraged a uniform approach across Canada to its interpretation that was also consistent with the common law's broader principles, and damages awarded under the legislation were typically limited to pecuniary damages incurred. In *Ottawa v. Lett*³⁴, this was interpreted less strictly to mean any damages that could be evaluated monetarily, in which case loss of household services rendered by the deceased, and loss of the care, guidance, and tutorship of the deceased by the child could be claimed. Beyond that, the common law maintained its fundamental distinction between pecuniary and non-pecuniary damages, and refused to offer compensation for such "sentimental" damages as grief and loss of companionship, damages that couldn't readily be evaluated monetarily³⁵.

Although the common law position on damages has remained the same until today, legislative enactments have over time made changes to the list of beneficiaries, as well as to the types of damages that can be claimed. That is, in answer to the question, "Who can bring a successful claim under the legislation?", the category of potential claimants has been broadened. In answer to the question, "What losses count and can be compensated?", the possibilities for recovery for non-pecuniary loss have been increased. In addition, two very recent Supreme Court judgements, *M. v. H.*³⁶ and *Ordon Estate v. Grail*³⁷ have had a significant broadening impact on this area of the law, by constitutionally requiring an inclusion to the list of beneficiaries in some cases, and further expanding the interpretation of 'damages' in others. These cases will be further discussed below.

³³ *Lord Campbell's Act*, *supra* note 28 at s. 2.

³⁴ (1885), 11 S.C.R. 422.

³⁵ *Ibid.* at 432-34.

³⁶ [1999] 2 S.C.R. 3.

³⁷ [1998] 3 S.C.R. 437.

The following table illustrates the types of non-pecuniary damages (i.e. *excluding* pecuniary losses) that are compensable under the various provincial, territorial and federal fatal accident schemes. Note that many provinces now explicitly include awards for the loss of care, guidance and companionship of a loved one, and, further, that such awards are not limited only to children of the deceased. Further, Alberta allows a fixed amount for *grief*, *in addition to* the loss of care, guidance and companionship, and Nova Scotia explicitly refers to pecuniary and non-pecuniary losses with no traditional common law distinction made between the two categories of damages. The table also indicates the noteworthy differences that can be found in the lists of beneficiaries of the various jurisdictions, lists that have generally expanded since the earlier days of *Lord Campbell's Act* and its legislative cognates. Appendix A, found at the end of this Report, reproduces relevant sections of the original *Lord Campbell's Act*; Appendix B includes detailed information tables on the current status of 'fatal accident' legislation in Canada today.

TABLE 1: Beneficiaries and the Nature of Damages Claimable in Provincial, Territorial, and Federal ‘Fatal Accident’ Legislation

Province	Death & Injury?	Cohabitants?	Same-sex couples?	Adopted Children?	Siblings?	Grief?	Care, Guidance & Companionship	Practical Expenses?
Alta.	No	Yes	No	No	Yes	Yes (parents and children)	Yes (parents and children)	Yes
B.C.	No	Yes	Yes	Yes	No	No	No	Some
Man.	No	Soon	Soon	No	Yes	No	Yes	Some
N.B.	No	Yes	No	Yes	Yes	Parents only	Parents only	Some
Nfld.	No	No	No	Yes	No	No	No	Some
N.W.T.	No	No	No	Yes	No	No	No	Some
N.S.	No	Yes	No	Yes	No	Non-pecuniary damages are explicitly allowed	Yes	Yes
Nun.	See	N.W.T.	-	-	-	-	-	-
Ont.	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
P.E.I.	No	Yes	Possibly	Yes	Possibly	No	Yes	Some
Sask.	No	Yes	No	Yes	No	Grief counselling	No	Yes
Yuk.	No	No	No	No	No	No	No	Some
CSA, Part XIV	Yes (Ordon)	No	No	Yes	No	No	Yes (Ordon)	No
CAA	No	Yes	Yes	Yes	Yes	No	No	No
MLA	Yes	Yes	Yes	Yes	Yes	No	Yes	Not specified

CSA: *Canada Shipping Act*, R.S.C. 1985, c. S-9.

CAA: *Carriage by Air Act*, R.S.C. 1985, c. C-26

MLA: *Marine Liability Act*, R.S.C. 2001, c. 6

D. Recent Developments

In the recent decision of *M. v. H.*, the Supreme Court held that the extension of certain benefits to opposite-sex partners but not to same-sex partners constitutes discrimination on the basis of sexual orientation and violates s. 15 of the *Canadian Charter of Rights and Freedoms*.

In *M. v. H.*, M. was seeking support payments from her same-sex partner of five years, H., after

the breakdown of their relationship in which she had been financially dependant on H., and which left her in a dire financial situation upon their break-up. M. brought a constitutional challenge to Ontario's *Family Law Act*³⁸ which imposed support obligations on opposite-sex cohabitants in a conjugal relationship of a minimum of three years upon their break-up, but didn't extend this obligation to same-sex cohabitants in a conjugal relationship of the same number of years. The court found that the term 'conjugal' was indeed extendable to same-sex partnerships³⁹, and that the *Family Law Act*'s omission of same-sex couples was discriminatory in that it promoted the view that "M., and individuals in same-sex relationships generally, are less worthy of recognition and protection"⁴⁰.

The *prima facie* violation of s.15 of the *Charter* could not be justified under section 1 because, in failing to extend benefits to same-sex partners, the relevant provisions of the *Family Law Act* showed insufficient rational connection to the objectives of the law, which were to provide support to those in financially dependent relationships upon the breakdown of those relationships and in so doing to ease the burden of such break-downs on the public purse⁴¹. The implications of *M. v. H.* seem relatively clear: that benefits extended to opposite-sex cohabitants in a conjugal relationship must also be extended to same-sex couples in similar relationships. What is not clear, is whether in the particular circumstances of the case a s. 1 analysis will always fail. Much will depend on the particular objectives of the legislation at stake.

In Ontario, *M. v. H.* forced amendment to a definition central to a large part of the *Family Law Act*, including Part V, "Dependant's Claim for Damages" - Ontario's 'fatal accident' legislation. The result is that fatal accident claims in Ontario are now extended to same-sex couples. Some provinces have already taken steps to make similar changes to their 'fatal accident' legislation, wanting to keep in step both with society and constitutional requirements. It

³⁸ R.S.O. 1990, c. F. 3.

³⁹ *Supra*, note 36 at 49-52.

⁴⁰ *Ibid.* at 58.

⁴¹ *Ibid.* at 62-76.

remains to be seen, however, whether 'fatal accident' legislation which does not include same-sex partners as intended beneficiaries and therefore (it is assumed) would be found to constitute a *prima facie* infringement of s.15 of the *Charter*, would fail a s. 1 analysis.

Ordon Estate v. Grail is the second recent important decision of the Supreme Court relevant to 'fatal accident' legislation, although here the context is specifically *federal* fatal accident legislation. This case was the result of a group of boating accidents on the Great Lakes where some of the participants were injured and others killed. The family members of the injured and deceased persons brought claims for compensation from the wrongdoers under Ontario's *Family Law Act*, only to discover that boating accidents are the proper domain of the *Canada Shipping Act*⁴², which has its own 'fatal accident' section. As one can see from TABLE 1, the Ontario *Family Law Act* provides a right of action for siblings upon either the wrongful death or injury of a loved one; it also provides for not only pecuniary damages but damages for the loss of care, guidance and companionship of that loved one. By contrast, the *Shipping Act* was confined to claims arising from wrongful death, allowed only for pecuniary losses, and made no provision for siblings. Thus, claimants falling into the categories specified by the *Shipping Act* had no right of action unless the "primary" victim had actually died, and, if that were indeed the case, could not claim any non-pecuniary damages. Claimants such as siblings who were not explicitly named in the *Act* were left with the common law situation whereby they could not make claims arising from wrongful death. People claiming losses arising from wrongful injury could be successful only if they were spouses (required for loss of consortium). Finally, even successful claimants under the *Act* (i.e. people falling into the named categories and suffering from relational harm arising from wrongful death) were restricted to pecuniary damages according to maritime law.

The main question at issue in *Ordon* was whether the provincial *Family Law Act* could fill in the gaps of the *Canada Shipping Act*. For our purposes, it is the Court's judicial amendment

to maritime law surrounding wrongful death situations that is of primary significance. That is, the Court interpreted the *Act* in such a way as to expand the law's restrictive approach to wrongful death and wrongful injury, an approach which was based, in the Court's words "anachronistic and historically contingent"⁴³ understandings of relational harm. Thus, the *Canada Shipping Act* was interpreted to allow claims in wrongful death situations for loss of guidance, care and companionship; further, in the context of wrongful injury, all the beneficiaries listed in the *Act* qualify for the common law *action per quod consortium amisit*. The Court did not however go so far as to expand that list of beneficiaries with the result that plaintiffs arguing that as *siblings* they should be compensated for their losses arising from another's death, could not succeed without legislative amendment to the *Act*⁴⁴.

In the wake of *Ordon*, changes to the *Shipping Act* have been made, reflected in new federal legislation, coming into force in August 2001, entitled the *Marine Liability Act*, R.S.C. 2001, c.6 The list of beneficiaries has been expanded (to include cohabitants, adopted children, siblings), and the types of compensable losses diversified (to include loss of guidance, care and companionship). Further, relational losses can be claimed in situations of wrongful injury as well as wrongful death. Federal legislation in the context of shipping accidents is now arguably the most generous scheme in all of Canada.

The significance of *Ordon* obviously goes beyond changes to federal and maritime law in Canada. In applying a broad and generous interpretation to the *Act* "in step with modern understandings of fairness and justness"⁴⁵, the Court's reasoning is relevant to a more general critique of common law and legislative frameworks in common law jurisdictions. For example, while Ontario has already extended its fatal accident legislation to cover wrongful injury (as opposed to only death) of a loved one and to provide compensation both for pecuniary loss and

⁴² *Supra* note 27.

⁴³ *Supra* note 37 at 508.

⁴⁴ *Ibid.* at 510-513.

⁴⁵ *Ibid.* at 509.

for the loss of care, guidance, and companionship, reform of other legislative schemes that have not been similarly extended may receive substantial support and guidance from *Ordon*.

To return to our case scenario, legislative schemes, varying to some degree from province to province, might provide compensation for Margaret, June's family, and their adopted child. That is, as explicitly provided by the legislation, June's parents, grandparents and possibly siblings could claim damages. Margaret might be explicitly provided for or, after *M. v. H.*, would be read in as a same-sex partner and therefore analogous to a spouse. The child would be able to bring a successful claim in provinces providing for adopted children. That is, members of June's "linear" family and her seven-year partner could be compensated, as a result of legislative and judicial expansions to the common law and the *Lord Campbell's Act* original list of beneficiaries.

As for the type of losses that could be recovered, pecuniary losses would be compensable in every jurisdiction; in some provinces, claims could be brought for the loss of June's guidance, care and companionship; in still others, grief could be compensated. Other potential plaintiffs (i.e. those not named in the pertinent legislative scheme) would be subject to common law rules regarding the foreseeability or proximity of the victim and to common law "policy" regarding recognition of such claims; in general they would not be successful (with the exception of the rescuer). Finally, claims for psychiatric injury or "nervous shock" would be possible depending on the plaintiff's proximity, both relational and physical, to the immediate victim. If June were hurt, rather than killed, Ontario specifies that the same list of beneficiaries could claim; in other provinces the legislation dealing with wrongful death does not include wrongful injury. At common law, husbands or employers could claim; such a possibility has generally been abolished by statute. Interestingly, it seems that following *Ordon*, relational loss arising from wrongful injury might be claimed by the same people eligible to claim for wrongful death.

In the Analysis section of this Report, the character of the common law and legislative approach to relational loss arising from wrongful death and injury will be examined more closely. Special attention will be paid to the over- and under-inclusiveness of limited status-based lists of potential claimants or beneficiaries and to the spectrum of recognized losses, in order to provide a critical assessment of the state of the law in Canada. Before turning to that analysis, however, the civil law approach to relational harm requires attention in order to ensure a complete survey of the treatment of these issues across the country. The civil law of Quebec offers an alternative to the approach of provincial and federal common law legislation and understanding the framework and parameters of civil liability in Quebec is crucial to an assessment of that alternative.

E. The Civil Law

A chief distinguishing characteristic of extra-contractual liability in the Civil law tradition is its openness in principle to all claims of wrongful injury. Art. 1457, the central and most general civil liability provision of the *Civil Code of Quebec*, reads as follows:

1457. Every person has a duty to abide by the rules of conduct which lie upon him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is responsible for any injury he causes to another person and is liable to reparation for the injury, whether it be bodily, moral, or material in nature.

He is also liable, in certain cases, to reparations for injury caused to another by the act or fault of another person or by the act of things in his custody.

In *Regent Taxi v. Congrégation des Petits Frères*⁴⁶ the Supreme Court decided that the word “another” in art. 1053 of the *Civil Code of Lower Canada* – the precursor to art. 1457 in the new *Code* - was to be interpreted according to its plain meaning, such that liability for wrongfully caused harm to another was not restricted to immediate victims of that harm. This liberal interpretation of “another” has without a doubt been imported into the *Civil Code of Quebec*

under art. 1457, so that there are no *a priori* restrictions under that provision as to who can succeed in a claim for injuries caused by someone's faulty or wrongful conduct⁴⁷.

In addition, art. 1056 of the *Civil Code of Lower Canada*, a provision specifically aimed at wrongful death claims, was eliminated from the *Civil Code of Quebec* when the latter came into force in 1994. It is generally thought that art. 1056 C.C.L.C. was Quebec's version of *Lord Campbell's Act*, which had been incorporated into the laws of Lower Canada, and then included in the C.C.L.C. upon its codification in 1886⁴⁸. Indeed, art. 1056 shared a similar structure with other provincial fatal accident legislation, and like those pieces of legislation, provided a right of action only for certain family members in wrongful death situations. The provision was a source of difficulty and disagreement in Quebec civil law, because its reasons for inclusion in the C.C.L.C. were unclear, and as such its significance within the broader context of the code was unclear also. Some thought it was meant to expand what was a limited liability under 1053; others thought it was meant to limit, in the context of wrongful death claims, an otherwise expansive liability for wrongfully caused harm to another under 1053. The latter point of view prevailed in *Regent Taxi*, and since that time 1056 has been viewed by many as a somewhat of an artificial and frustrating constraint on a system that offers in principle a liberal approach to civil liability, especially in view of the fact that the French *Code*, an important model for Quebec law, has no equivalent provision, instead treating wrongful death claims on their merits⁴⁹. As such, the disappearance of 1056, -"[une] disposition embarrassante"⁵⁰-, from the new *Code*, is a welcome change in the civil law of Quebec. It strengthens the position in *Regent Taxi*, and eliminates what is now considered to have been an anomalous provision contrary to civil law's approach to dealing with liability to "indirect" victims.

⁴⁶ [1929] S.C.R. 650.

⁴⁷ P., Deslauriers, "Le préjudice comme condition de responsabilité", in *Collection de Droit 2000-2001*, vol.4 (Cowansville: Les Editions Yvon Blais, 2000) at 136-37.

⁴⁸ Robinson, A. "Le sens du mot 'autrui' dans l'article 1053 du Code civil et l'affaire *Regent Taxi*" (1978) 19 C. de D. 677 at 684-686, and 694-696.

⁴⁹ *Supra* note 46 at 657; L. Baudouin, *La Responsabilité Civile* (Cowansville: Les Editions Yvon Blais Inc., 1998) at 157-161; Robinson, *ibid.* at 678.

The approach under the new *Civil Code* (and under the old *Code*, with the exception of 1056) is thus that *anyone* can claim damages for harm suffered as a result of wrongful conduct, so long as they can prove, first, that they suffered recognizable injury, and, second, that there is a sufficient causal link between that harm and the fault.

An important and relatively recent wrongful death case in Quebec civil law illustrates this approach and further indicates the relative openness of the civil law to damages. In *Augustus v. Gosset*⁵¹, a mother claimed damages for the fatal and wrongful shooting of her son by a police officer. The case was decided under article 1056 of the C.C.L.C. but, it has been assumed, captures the situation under the C.C.Q. There was no issue as to whether or not the mother could make a claim (she was simply “another” as provided for in the Code); rather the case focused on the question of whether “moral” injury included grief or *solatium doloris*, and determined that indeed grief can be recognized as loss in the civil law of extra-contractual obligations.

The challenge ahead for Quebec courts dealing with wrongful death cases under art. 1457, will be to define the scope of such claims and to establish what does and does not constitute recognizable relational harm in the wrongful death/ injury context. For instance, commentators suggest that there is little doubt that under the new *Code*, individuals can make independent claims for harm suffered upon the wrongful death of their same-sex partners⁵². No issue will exist as to whether such claimants fall into recognized categories; rather the expected issue will focus on what amount of time in a partnership is required for such a claim to succeed. That is, what are the features of a relationship that would give rise to real “relational” loss? Will there be successful claims related to the wrongful death of ex-husbands or wives, or ex-common law partners? What about best friends? Will the loss of the friendship constitute moral injury and if so in theory, what features of the friendship would be significant? What about a

⁵⁰ Deslauriers, *supra* note 47 at 136.

⁵¹ [1996] 3 S.C.R. 268.

business associate? A new lover? These are all questions that will have to be dealt with and addressed as they come before the courts⁵³. Note that, in contrast to the situation in common law jurisdictions, the question is never primarily or explicitly whether this particular *person* “counts”, but rather whether the quality of the injury complained of and grounded in the particular relationship allows that *loss* to “count”.

Cases of relational harm through injury to another, like cases of relational loss arising from wrongful death, pose no particular problem under art. 1457 C.C.Q. There is no difficulty granting damages to the loved one of someone who has been injured, as long as the harm is certain, can be proved, and has a sufficient causal link to the fault. For instance, in *Hopital Notre-Dame v. Laurent*⁵⁴, a husband was granted damages for loss of *consortium* due to the injury of his wife as a result of medical negligence. The case for loss of *consortium* between a husband and wife in particular was easy for the court to accept given that, under the *Code*, husband and wife owe each other succour and assistance⁵⁵. Thus, Laurent had to prove not that he would have received such attention from his wife if not for the injury (that is, it was owed to him under law) but rather only that she was less capable of rendering it now that she had sustained the injury. In other cases, proving the claimed loss could be more complicated and difficult.

Lest it seem that the doors to successful claims are wide open in Quebec civil law, it must be noted that only “direct and immediate” losses will be compensated. That is, causation operates as the principal limiting mechanism of civil law liability and it is generally causation that circumscribes the success of claims in the context of wrongful death or injury. Art. 1607 of the Civil Code of Quebec provides as follows:

1607. The creditor is entitled to damages for bodily, moral or material injury which is an immediate and direct consequence of the debtor’s default.

⁵² Deslauriers, *supra* note 47 at 136.

⁵³ *Ibid.*

⁵⁴ [1978] 1 S.C.R. 674.

⁵⁵ Art. 173 C.C.L.C., today art. 392 C.C.Q.

It is important to note that, as was pointed out by M. le juge Mayrand in *J.E. Construction v. General Motors*⁵⁶, the requirement that harm be a “direct and immediate consequence” of the fault is not meant to exclude what in the civil law are called “victims by ricochet”. These include victims of relational harm and any person who suffers harm in virtue of an initial injury to someone else. What art. 1607 is meant to do is exclude harm that is attributable to another intermediate cause, or a cause more preponderant than the fault of the defendant.

Examining the hypothetical situation of June’s wrongfully caused death, this time through the lens of Quebec civil law, illustrates the key features of the civil law’s approach. Anyone who could show loss arising as the direct and immediate result of Sparklit’s carelessness might have a successful claim. That is, it is theoretically possible that Margaret, an adopted child, June’s family, the observers, the rescuer, NuCure, and the women suffering from breast cancer all might have been wronged according to the law. No one would be excluded because of a lack of duty owed (either in the law or by statute) to that person. Neither would there be any discussion of “nervous shock”, given that psychiatric injury doesn’t receive particular analytical treatment in the civil law.

In all likelihood, it would be Margaret and the adopted child and June’s parents who would have the strongest claims. For the others, claims would be more tenuous with respect to the requisite element of “causation”. Thus, for example, women with breast cancer who were aware of the cure being developed in June’s lab might claim for moral damages, such as loss of hope, and the added psychological burden of going through less effective and more painful treatments for cancer knowing that things might have been different⁵⁷. If we take this to be the harm that these women want to have compensated by Sparklit, are the requirements of causation met? A civil law response to that question might suggest that the moral suffering

⁵⁶ [1985] C.A. 275.

⁵⁷ *Laferriere v. Lawson*, [1991] 1 S.C.R. 541.

experienced and to be experienced by these women due to the loss of hope that arose with June's death is more properly attributable to the fact that June herself did not adequately share the information on the cure with others. Indeed, NuCure should have taken steps to ensure that this was done in the event of an accident to June. This is an example, then, of a fault on the part of June or NuCure whereby Sparklit would probably be relieved from liability⁵⁸. As for the bystanders, the rescuer, and the witness who experienced a severe psychological reaction to June's traumatic death, these injuries may well be attributable to the fault of the defendants making them more likely to be recovered, but proving the nature of the loss in these cases would not necessarily be easy.

What we find, after considering the hypothetical scenario, is that successful recovery in civil law doesn't look entirely different than it does in common law. Civil law uses causation to deny claims roughly similar to those denied by the common law's insistence on a duty of care. Of course, the emphasis differs: the common law's obsession is with "whom", the civil law's with "what" and "how". Common law, or at least its statutory complement, may offer more certainty; civil law focuses on accuracy in its insistence on actual loss tied to the relationship. Further, a key difference between the two systems is that civil law is more open to recognizing and compensating moral injury, and this generosity may translate into greater openness to a greater number of claims and claimants in the wake of a wrongfully caused death. Thus, to refer back to cases we have seen above, both *Rhodes* and *Gosset* involved mothers devastated by the wrongful death of their respective sons. The mother in the common law situation, while she would have fallen into a statutorily recognized category of claimants who could recover pecuniary damages, was forced to try to satisfy the elements of a nervous shock claim in order to recover for psychiatric damage. She failed. On the other hand, the mother in the civil law context succeeded not only in being recognized as someone who had sustained losses but in being compensated for her substantial grief.

⁵⁸ *Dequire v. Adler* [1963] B.R. 101.

IV. ANALYSIS

Given the above survey of Canadian law, two approaches emerge. The first, found in common law legislation, is one based on relational status of the claimant. The second, found in the civil law, is one focused on relational harm suffered by the claimant. This section delves into the ostensible purposes of ‘fatal accident’ legislation in order to better compare and assess these two approaches. That is, the positive features of a status-based approach include privacy and efficiency, while those of a civil law approach are openness and accuracy. The challenge is how to better include relationships in the law of wrongful death and injury, ideally by integrating the positive characteristics of both approaches.

A. Purposive Analysis

The original purpose of fatal accident legislation was clearly to remedy what was an unacceptable position at common law. Moral considerations and the need for compensation dictated that close relatives of the deceased should have a right of action against the wrongdoer for their losses. It may be that the original class of beneficiaries – husband, wife, parent and child – were chosen because they had a legal entitlement to support from the deceased. There was thus little need to prove (i.e. it could be safely assumed) that the death of the deceased had deprived them of some future benefit. Compensation could be awarded automatically and it was just a matter of calculating the damages suffered. Indeed, the first Bill⁵⁹ of *Lord Campbell’s Act* initially directed the next of kin of the deceased as the sole beneficiary of the legislation. This was changed after a meeting of the Select Committee on the matter to extend the benefits

⁵⁹ 18 May 1846, 9 Vict.

instead to the husband, wife, parent and child and then, in an interpretation section of the *Act*, to grandparents and grandchildren⁶⁰.

Although the original impetus for legislative change to the common law remains relevant today, the overall purpose of the legislation has expanded to embrace other objectives. The law today indicates a desire to give *recognition* to those close to the deceased for the harm they have suffered⁶¹, and, in so doing, underlines a normative conception as to who should be closest to us in life and in death. Further, societal conceptions of harm have changed, so that the psychological aspects of the loss of a loved one are increasingly recognized by the law. Thus we see, for example, the new *Marine Liability Act* including damages for loss of care and guidance as a major change to the *Canada Shipping Act*. Another, even more striking example, is Alberta's amendment to its fatal accident legislation to increase the amount awarded for grief from \$3, 000 to \$43, 000, with the stipulation that this amount be evaluated every five years to ensure its adequacy. Alberta's legislators stated that the repealed amount of \$3, 000 for grief was an insult to the deceased's family members⁶².

Of course, one often unstated goal behind fatal accident legislation remains relief for the state from the burden of abandoned dependants. That is, the privatization of pecuniary damages suffered by the loss of someone upon which the claimant was financially dependant can be an important part of the loss-spreading regime of the State⁶³. Indeed, financial concerns seem to have been a main thrust behind all 'fatal accident' legislation from very early on, evidenced by the simple fact that only pecuniary damages have been granted under such legislation until relatively recently.

Bringing these considerations together, the two main goals of fatal accident legislation appear to be 1) to recognize relational harm suffered by family members closest to the victim,

⁶⁰ 3 August, 1846, 10 Vict.

⁶¹ Alberta Law Reform Institute, "Non-pecuniary damages in wrongful death actions – A review of section 8 of the Fatal Accidents Act", Report No. 66, May 1993 at 14 and 44

⁶² *Ibid.* at 2; Alberta, Legislative Assembly, *Debates*, (30 May 1994) at 2286-87 (Mr. Brassard).

and 2) to relieve the burden of financial dependants on the public purse. A plausible explanation for the original class of beneficiaries of fatal accident legislation is that these people – husband, wife, child, and parent – were legally entitled to future support from each other, making them the only possible *a priori* choice of claimants. Right from the beginning, however, that list was expanded (from grandparents under the *Lord Campbell's Act* to same-sex partners after *M. v. H.*), indicating the increasing complexities of at least financial, but also emotional, ties. The general objective of recognition has required both this expansion of the list of claimants and increased generosity with respect to the nature of damages that can be awarded. As in all of tort law, the choices made as to included beneficiaries and range of damages always reflect the law's sense of the appropriate scope of the defendant wrongdoer's responsibility.

This concern for the scope of the defendant's burden seems to explain the distinction usually made in the legislation between relational harm caused by the wrongful *injury* of a loved one and that suffered due to wrongful *death*. That is, if we think about the nature of the losses experienced by those in close relationships with the survivor of an accident, it may indeed be the case that the losses, both pecuniary and non-pecuniary, are heavier than in a situation of death. That is, grief and loss of care and companionship are ongoing and continually immediate rather than diminishing, as are the financial burdens associated with the change in the relationship. But the law is generally much less willing to include these losses within the responsibility of the wrongdoer. Instead, given the fact that the survivor can claim pecuniary and non-pecuniary losses associated with the accident's consequences, the legislation in general has not insisted that the survivor's close family members and partner can claim parallel and perhaps overlapping losses. Ontario and the new *Marine Liability Act* eliminate the traditional distinction (as does the reasoning in *Ordon*) thus resulting in a greater generosity to "secondary" victims of wrongful injury (and arguably greater insurance costs for the defendant).

⁶³ This objective becomes apparent in judicial analysis of the *Family Law Act*, R.S.O. 1990, c. F.3 in *M v. H.*, *supra* note 36 at 62-76.

B. Comparative Analysis

The recognition of relationships, and the consequential assumptions as to relational loss, have real advantages. At the time of death, family members and partners can come forward and, if they show resulting financial or emotional losses, will be appropriately compensated. There is a certainty built into the common law legislative schemes; there is also (arguably very appropriate) respect for privacy in the sense that the claimants need not primarily focus on the nature of the relationship in order to make an argument about the losses suffered. The obvious disadvantage of such a status-based approach is both its under-inclusiveness and over-inclusiveness if we understand the purpose of fatal accident and wrongful injury legislation to compensate for actual financial and psychological losses suffered by people connected to the primary victim. That is, such a legislative aim cannot be met by a list of status-defined beneficiaries. Some relationships will, in reality, not be “close” enough to give rise to loss, although according to statute they “should” be. On the other hand, some relationships are indeed close enough but not listed in the legislation; again statutory language and the reality of people’s lives and relationships do not precisely fit together.

The case of *M. v. H.* illustrates the problem of chronic under-inclusiveness, generally understood to be the significant disadvantage of a status-based approach. *M. v. H.*, as we have seen, was a *Canadian Charter* challenge to the *Family Law Act* of Ontario, an act which failed to extend the status-based benefits in its legislation to same-sex couples. The *Charter* claim was successful, and Ontario has since included same-sex couples as beneficiaries in wrongful death and other actions provided by its legislation. Other provinces and the federal government have made, or are making, moves to conform to the decision in *M. v. H.* (e.g. British Columbia⁶⁴,

⁶⁴ *Family Compensation Act*, R.S.B.C. 1996, c. 126 as amended by S.B.C. 1999, c. 29 and S.B.C. 2000, c. 24, s. 12

Manitoba⁶⁵ and the *Marine Liability Act*). One could argue that so long as the legislature can respond to such challenges, there is no problem with a status-based approach. The counter-argument, however, is that a status-based approach involves legislatures in an endless process that is always trying to catch up with reality.

A further example is provided by *Martin v. Mineral Springs Hospital*, a case in which a couple was denied recovery under the *Fatal Accidents Act* of Alberta for damages incurred upon the stillbirth of their daughter as a result of a physician's negligence. The reason for denial was that an unborn child was not yet considered a 'child' by law and thus the plaintiffs in *Martin* were not recognized as 'parents' in the specific categories of beneficiaries in the Alberta legislation. The plaintiffs' claim in *Martin* for psychiatric damage was successful, but psychiatric illness is a very limited means of recovery for such cases and it encourages the development of a lasting psychiatric illness as the only means of recognition for such a devastating loss. Granted this is not an example of harm to close adult personal relationships; however, it is a good example of the consequences of an explicit status-based approach.

The civil law approach to liability ensures that actual losses – both financial and moral - connected to the wrongdoing may be recognized. This is an extremely attractive feature of the civil law system when it comes to claims of relational harm. The flexibility inherent in the approach means that losses (and relationships) not yet explicitly dealt with either by legislators or courts will not be excluded. The ongoing legislative "catch-up" can therefore be avoided. Further, it can be argued that law's recognition and appropriate allocation of losses as a result of carelessness are extremely important to meaningful interpersonal relations in society.

There are arguably disadvantages to the civil law approach, however, that mirror the positive features of a status-based approach. Despite attempts by the court in *Augustus v. Gosset* to develop reasonably predictable awards for moral damages upon the loss of a loved

⁶⁵ Bill 41, *An Act to Comply with the Supreme Court of Canada Decision in M. v. H.*, The Legislative Assembly of Manitoba, 2nd Session, 37th Legislature.

one, the civil law's approach to moral damages in particular necessitates an invasion of privacy for the plaintiff. This comes, of course, at a difficult time in the plaintiff's life, given the limits of prescription that usually give the plaintiff a maximum of three years to bring a claim. Establishing the loss in a system that makes no explicit assumption as to close relationships involves substantial preliminary inquiry into the actual features of the relationship, whether that of parent-child, brother-sister, husband-wife, or roommate-roommate.

While the civil law may be commended for its refusal to avoid the granting of adequate moral damages simply because of the difficulty in calculating such harm, it may not be desirable from the plaintiff's perspective to demand an analysis of her relationship with the deceased in order to put a price tag on non-pecuniary suffering. Indeed, as recognized by the Supreme Court, claimants may even decide against pursuing a wrongdoer for precisely the reason that they don't want their grief or caring for the deceased to be exposed to the courts. According to L'Heureux Dubé J. in *Augustus*, with respect to the calculation of *solatium doloris*:

“I emphasize the importance that the award be reasonably predictable so that the parent who might find it objectionable and demeaning to publicly articulate his grief will not be less compensated than the one who more easily exteriorizes his emotions.”⁶⁶

Despite this caveat, L'Heureux Dubé J. did set out the factors to be considered when assessing *solatium doloris*, including, *inter alia*, the nature of the relationship between the plaintiff and the deceased, the effect of the death of the deceased on the plaintiff, and the plaintiff's ability to cope with the death⁶⁷. Indeed, the civil law requirement that full compensation unique to an individual be awarded⁶⁸ means that an invasion of privacy, in spite of the requirement that awards be predictable, is unavoidable. Further, as already mentioned, prescription requirements guarantee that this invasion of privacy will be untimely.

⁶⁶ *Gosset*, *supra* note 51 at 295.

⁶⁷ *Ibid.* at 296-97.

⁶⁸ *Ibid.*

The advantage of status-based approaches is that the preliminary step of establishing one's "right" to consideration is avoided. That is, a certain assumption is made that, given the relationship, the claimant is in the position to have suffered at least pecuniary, and often also non-pecuniary, losses. It is true that, in general, losses still have to be proved and assessed (only Alberta offers grief compensation automatically and without inquiry⁶⁹). But the loss doesn't turn on the actual quality of the relationship as it appears to in civil law. For example, a widow would be assumed to have suffered; the assessment of her losses would be the focus of the court's analysis rather than the nature of the marriage and the ensuing "true" pain and suffering experienced.

While accuracy and appropriate compensation of real losses resulting from a wrongdoer's actions are significant goals and should be met as fully as possible, the goals inherent in the common law legislative schemes are also worthy and the normative assumptions reflected in those schemes about families and close relationships do capture important societal values and choices. Indeed, as the Law Commission of Canada reflects on how to best support and include close adult personal relationships, it may well be appropriate to retain, with appropriate transformation, the assumptions of emotional and economic interdependency that underline traditional common law insistence on relationships.

V. RECOMMENDATIONS

The Law Commission of Canada suggests an analytical framework for assessing law and legislation that is helpful in clarifying conclusions and desirable directions with respect to wrongful injury and death. It is obvious that there exist legitimate policy objectives for legislation aimed at compensation for people in close personal relationships with the immediate victims of fatal or serious wrongdoing. Relationships clearly matter; the entire thrust of the law in this area

⁶⁹ *Fatal Accidents Act*, R.S.A. 1980, c. F-5; Alberta Law Reform Institute, *supra* note 61 at 45.

is to define appropriately the scope of the wrongdoer's responsibility, given that we understand individual victims to live within a web of significant relationships. Individuals do not self designate as beneficiaries in this context, although individuals may indeed name beneficiaries in their life or disability insurance policies. On the other hand, individuals, influenced by the society to which they belong, may well make (implicit) assumptions as to who would be affected (and would deserve to be compensated) in a situation of wrongful death or injury. Finally, the way in which relationships are currently included deserves careful analysis, in-depth understanding, and appropriate modification along the following lines.

Four guiding principles are articulated here in order to ground and justify recommendations regarding compensation for people closely affected by the wrongful death or injury of someone with whom they had a relationship.

First, the law should respect close personal relationships in our lives. Different kinds of relationships should receive different treatment by the law of civil liability. That is, the nature of the relationship between the immediate victim of wrongdoing and others affected by that victim's plight should matter in the private law's perspective on the nature of the harm suffered and the appropriateness and assessment of any claim for losses. In keeping with this principle, there should be increased recognition for the emotional and psychological losses that result from the wrongful death (and, by extension, injury) of a loved one. Emotional interdependency has not been fully acknowledged by the common law as shown by its extremely narrow acceptance of claims for psychiatric harm and its general reluctance to recognize moral injuries. Legislation has therefore become the principal source of this kind of recognition for family members and those close to the deceased. Beyond filling a gap left by the common law, responsiveness to emotional/psychological links and loss means that, even in a situation of financial independence of a claimant, compensation might be possible. Indeed, emphasizing compensation for this kind of damage in the wake of wrongful death or injury means that claimants are similarly compensated regardless of the wealth of the immediate victim.

Second, we should think as broadly and creatively as possible about private law's acknowledgement and support of personal relationships. Traditionally based on assumptions about family format, structure and economic arrangements, the common law legislative insistence on precisely and exclusively naming potential beneficiaries in a situation of wrongful death (and more rarely wrongful injury) requires reworking. It is already the case that legislators are aware of the need to revisit the lists of potential beneficiaries in order to be more generous, realistic and responsive. But expanding the lists is not enough nor is it the ideal approach. Instead, the relationships - characterized by family and spousal ties - that are typically included could be captured more effectively in order to meet the legislative aim of acknowledging the many people who could or should be close to us both in life and in death. That is, in giving guidance and meaning to "relational loss", common law legislation might define it as loss, either pecuniary or non-pecuniary (loss of companionship, care, guidance and support), arising in the context of a "close personal relationship". The legislation might even specify examples (non-exclusionary) of such relationships (i.e. parent-child, spousal, and sibling relationships) and that analogous relationships characterized by emotional and economic interdependency are included. Assumptions regarding what kinds of relations give rise to real loss for individuals who lose a loved one can thus be retained in the law but the emphasis is reversed. Rather than saying no relationships count other than the ones specified, the law could start from the premise that loss based on damage to a significant relationship will be recognized. Any relationships specified would be meant to give guidance as to what law and society mean by significant relationships (i.e. usually *not* the bystander or an employer or a student) in the context of compensation for losses arising from wrongful death or injury.

Third, the law should aim to respond to actual relational loss. As already noted, this means avoiding an exclusionary list of those relationships which are deemed to have the potential for giving rise to real loss. Even if legislation broadens such a list as much as possible (the path taken by the *Marine Liability Act*), or adopts a less specific list with the explicit addition

of anyone in “analogous relationships”, the focus remains on the “whom”, rather than on the relational loss itself. The emphasis in litigation would inevitably end up being on the existence of an included or analogous relationship. Instead, drawing on the civil law experience and approach, greater emphasis should be on compensating plaintiffs who have truly suffered relational harm as a result of the immediate victim’s death or injury. Thus, while a legislative framework might incorporate the common law tradition by offering guidance as to the interpretation of “relational loss” (i.e. as noted above, by referring explicitly to certain kinds of relationships as analogous examples), it should be open to anyone to bring claims for such loss. For example, a roommate, or a great-aunt, might, in a particular case, be extremely close to the immediate victim. From the defendant’s perspective, it is appropriate to assume that the victim had, in her life, people extremely close to her such as the roommate or particular family member or child. When meaningful relationships are damaged by the wrongdoing, the law in this area could better recognize that harm and the people suffering it. However, while it may be foreseeable to the defendant that many people might be very sad or shocked at the death of a friend/ colleague/ mentor/ employee, policy reasons (earlier canvassed) and this suggested focus on the relational nature of the harm dictate against placing the total burden of that grief and shock on the shoulders of the defendant.

The fourth principle, already alluded to above, is one of openness to both pecuniary and non-pecuniary claims. In the kinds of relationships giving rise to recognized relational harm, emotional connection and tangible economic ties often co-exist. Thus, in showing that the loss suffered is relational in nature – i.e. that it arises through the closeness of the claimant to the immediate victim – the claimant will often point to both financial and what might be termed psychological aspects of the loss and of the relationship. It makes sense, then, to insist on greater openness by the law to emotional and psychological damage in this context. On the other hand, willingness to make awards for loss of companionship or for grief does entail intensive inquiry into the relationship – an inquiry that will feel very different to the plaintiff than

simply an inquiry into actual and projected financial damages. It may be that if we truly want to respect privacy and to transmit a normative message with respect to close relationships, it would be appropriate to set fixed amounts for grief or for emotional loss arising out of wrongful death (arguably the same aims don't exist in the wrongful injury context). This would be essentially an "insurance" approach with automatic compensation once the plaintiff showed a close "family-like"/ interdependent relationship. That is, status-based awards, meant simply to recognize certain relationships (e.g. parent-child) at a time of hardship (specifically death), might be appropriate, even in a generally "functional" scheme, as fixed sum awards for grief and emotional hardship experienced in the wake of wrongful death.

In conclusion, the law should be more open, generous and flexible both in the "who" and the "what" of compensation for relational losses in wrongful death and injury. Intangible damage incurred by those close to the immediate victims of someone's wrongdoing should be contemplated and provided by the law. And the "list" of people who may be affected by someone's death or injury and whose relational loss is recognized by the law should be enlarged. Rather than adding more categories to the legislative language, however, this goal should be accomplished by making eligibility for compensation hinge on the claimant's answer to the question, "**What kind of relational loss have you suffered?**".

The answer to this question properly includes some discussion of "who" the claimant is with respect to the immediate victim. That is, in addressing the notion of relational loss, the law cannot avoid giving greater weight to some relationships than to others. Indeed, it must do so in order to respond appropriately to claims for damages in this context. Assumptions, whether implicit or mentioned as guidelines in the legislative scheme, will mean, for example, that members of the victim's immediate family or the victim's emotional partner in life are seen as serious claimants. Regardless of the particular plaintiff's status, however, investigation into the relational nature of the loss will take place, meaning that interdependent emotional and economic relationships will be significantly recognized. If and when the quality of the affected

relationship is such that substantial loss of a relational character has been sustained, then the claimant can succeed; in other words, the defendant's scope of responsibility extends to the real losses experienced by those close to the immediate victim and caused by the wrongdoing.

The Law Commission of Canada is urged to acknowledge the complexity of this area of law, the desirability for greater uniformity in the common law legislative schemes in Canada, and the potential lessons to be learned from Quebec civil law. It is also reminded that the limiting mechanisms in common and civil law civil liability are importantly different, and that it is not in the scope of this Report to suggest a complete overhaul to tort law and its insistence on foreseeability, proximity and common law "policy". This Report instead attempts to convey a complete and sensitive picture of this area of law in Canada, to capture the multiple aims and objectives of the law, and to suggest a way to respect relationships that are expected to be close and those that, while not necessarily traditionally recognized, are indeed close.

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Shauna Van Praagh is an Associate Professor in the Faculty of Law at McGill University and McGill's Institute of Comparative Law. She teaches Extracontractual Obligations/Torts, Children and the Law, Foundations of Canadian Law, Feminist Legal Theory and Social Diversity and Law. Professor Van Praagh's principal research and writing intersect family law, human rights and legal theory, by focusing on issues related to the children of religious communities. She teaches in the integrated McGill programme which introduces first year students to the law of Obligations in both the Common law and Civil law traditions of Canada.

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APPENDIX A – Lord Campbell’s Act, 1846 (original version)

An Act for compensating the Families of Persons killed by Accidents. [26th August 1846].

Whereas no Action at Law is now maintainable against a Person who by his wrongful Act, Neglect, or Default may have caused the Death of another Person, and it is oftentimes right and expedient that the Wrongdoer in such Case should be answerable in Damages for the Injury so caused by him: Be it therefore enacted by the Queen’s most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That whensoever the Death of a Person shall be caused by wrongful Act, Neglect, or Default, and the Act, Neglect, or Default is such as would (if Death had not ensued) have entitled the Party injured to maintain an Action and recover Damages in respect thereof, then and in every such Case the Person who would have been liable if Death had not ensued shall be liable to an Action for Damages, notwithstanding the Death of the Person injured, and although the Death shall have been caused under such Circumstances as amount in Law to Felony.

II. And be it enacted, That every such Action shall be for the Benefit of the Wife, Husband, Parent, and Child of the Person whose Death shall have been so caused, and shall be brought by and in the Name of the Executor or Administrator of the Person deceased;

...

V. And be it enacted, That the following Words and Expressions are intended to have the Meanings hereby assigned to them respectively, so far as such Meanings are not excluded by the Context or by the Nature of the Subject Matter; And the Word “Parent” shall include Father and Mother, and Grandfather and Grandmother, and Stepfather and Stepmother; and the Word “Child” shall include Son and Daughter, and Grandson and Granddaughter, and Stepson and Stepdaughter.

APPENDIX B – PROVINCIAL ‘FATAL ACCIDENT’ LEGISLATION TABLES

Province/Territory	Alberta
Title	<i>Fatal Accidents Act</i>
Last Consolidation	R.S.A. 1980, c. F-5
Amendments/Changes	S.A. 1994, c. 16; S.A. 1996, c. 28; A.R. 20/2000
Beneficiaries	Children (including illegitimate children), grandchildren, stepchildren, siblings, parents, stepparents, grandparents, cohabitants (of the opposite sex and for a min. of 3 years), spouses (husband or wife)
Nature of Damages Awarded	<ul style="list-style-type: none"> - Those damages that the courts considers appropriate to the injury resulting from the death + - Reasonably incurred expenses (including traveling, care, funeral & disposal of the deceased, and grief counselling expenses) + - Grief and loss of guidance, care and companionship (\$43,000 for the spouse or cohabitant or parent of the deceased, to be divided equally in the case of claims by both parents; \$27,000 for children of the deceased)
Noteworthy Characteristics	<ol style="list-style-type: none"> 1) Bereavement damages are awarded automatically to those designated (parents, spouse, cohabitant, children), no questions asked, and without consideration of other damages granted. The amounts awarded for bereavement are to be reviewed every five years by the executive council to ensure their adequacy.

Province/Territory	British Columbia
Title	<i>Family Compensation Act</i>
Last Consolidation	R.S.B.C. 1996, c. 126
Amendments/Changes	S.B.C. 1999, c. 29; S.B.C. 2000, c. 24, s. 12
Beneficiaries	Children (including illegitimate and adopted children), grandchildren, stepchildren, parents, grandparents, stepparents, spouses (including marriage-like relationships between opposite-sex and same-sex couples of no less than 2 years duration, ending no earlier than a year prior to the death of the deceased)
Nature of Damages Awarded	-Damages "proportionate to the injury". + -Practical expenses such as medical or hospital expenses and expenses for the funeral and disposal of the remains of the deceased.
Noteworthy Characteristics	1) B.C. explicitly includes a 'partnership' or 'corporation' among its possible defendants. 2) There is no mention in the legislation of damages for grief and loss of care, guidance and companionship. 3) Siblings are not included among the beneficiaries.

Province/Territory	Manitoba
Title	<i>The Fatal Accidents Act</i>
Last Consolidation	R.S.M. 1987, c. F50
Amendments/Changes	Proposed amendments are presently being presented to the legislature: Bill 41, An Act to Comply with the Supreme Court of Canada Decision in <i>M. v. H.</i> , has received its second reading (June 12 th , 2001).
Beneficiaries	Child (includes someone to whom the deceased stood in loco parentis), grandchild, stepchild, siblings, parent (includes someone who stood in loco parentis to the deceased), grandparent, stepparent, spouse, common-law partner (soon: see Bill 41), support recipient.
Nature of Damages Awarded	-Damages proportional to the pecuniary loss resulting from the death of the deceased. + -Funeral expenses + -Damages for loss of the care, guidance and companionship of the deceased.
Noteworthy Characteristics	<ol style="list-style-type: none"> 1) The proposed Bill 41 extends benefits to cohabitants in a 'conjugal relationship', -the required gender of the cohabitant (opposite, the same, or either opposite or the same) is unspecified-, introducing a term was deemed to extend to same-sex couples in <i>M. v. H.</i> 2) The act explicitly limits damages awarded to pecuniary damages, and then lays out the exception of the loss of care, guidance, and companionship as a possible head for non-pecuniary damages.

Province/Territory	New Brunswick
Title	<i>Fatal Accidents Act</i>
Last Consolidation	R.S.N.B. 1973, c. F-7
Amendments/Changes	S.N.B. 1980, c. C-2.1, s. 153; S.N.B. 1981, c. 80, s. 29; S.N.B. 1982, c. 3, s. 27; S.N.B. 1986, c. 36, s. 1; S.N.B. 1987, c. 6, s. 29; S.N.B. 1992, c. 58, s. 1; S.N.B. 1995, c. 39, s. 1, 2.
Beneficiaries	Child (including adopted and illegitimate), grandchild, stepchild, siblings, parent, grandparent, stepparent, spouse, cohabitant, support recipient.
Nature of Damages Awarded	-Pecuniary + -Funeral and disposal of the body expenses + -Grief and loss of companionship (parents only) + -Punitive or exemplary damages where appropriate (these go to the estate of the deceased)
Noteworthy Characteristics	<ol style="list-style-type: none"> 1) New Brunswick is the only province to explicitly authorize exemplary damages, but only for the benefit of the estate of the deceased. 2) Only parents can be awarded damages for grief and loss of companionship. 3) Like Manitoba, the NB legislation explicitly provides that it is for pecuniary damages that the act is meant to compensate, and makes an exception for moral damages for parents.

Province/Territory	Newfoundland
Title	<i>Fatal Accidents Act</i>
Last Consolidation	R.S.N. 1990 c. F-6
Amendments/Changes	S.N. 1995, c. L-16.1, s. 28
Beneficiaries	Child (including an adopted child, and someone to whom the deceased stood in the place of a parent), grandchild, stepchild, spouse, parent (including an adoptive parent, and a person who stood in the place of a parent to the deceased), grandparent, stepparent.
Nature of Damages Awarded	-“Damages...proportional to the injury resulting from the death” + - Expenses for the funeral and disposal of the body of the deceased
Noteworthy Characteristics	

Province/Territory	Northwest Territories
Title	<i>Fatal Accidents Act</i>
Last Consolidation	R. S. N.W. T. 1988, c. F-3
Amendments/Changes	
Beneficiaries	Child (includes adopted child and someone to whom the deceased stood in loco parentis), grandchild, stepchild, spouse, parent (includes adoptive parent and someone who stood in loco parentis to the deceased), grandparent, stepparent.
Nature of Damages Awarded	-Damages "proportional to the injury resulting from the death" + -Medical and funeral expenses
Noteworthy Characteristics	

Province/Territory	Nova Scotia
Title	<i>Fatal Injuries Act</i>
Last Consolidation	R.S.N.S. 1989, c. 163
Amendments/Changes	
Beneficiaries	Child (including a person to whom the deceased had a settled intention to act as a parent, and the illegitimate child of the deceased mother), grandchild, stepchild, spouse, opposite-sex cohabitant (of at least one year prior to the death of the deceased) parent (including the mother of the illegitimate deceased child), grandparent, stepparent.
Nature of Damages Awarded	-Non-pecuniary and pecuniary damages as are proportionate to the injury (including, though not restricted to, expenses incurred for the care of the deceased, and an amount for the loss of guidance care and companionship reasonably to be expected) + -funeral expenses
Noteworthy Characteristics	1) Nova Scotia explicitly offers both pecuniary and non-pecuniary damages without further restriction

Province/Territory	Ontario
Title	<i>Family Compensation Act</i>
Last Consolidation	R.S.O. 1990, c. F-3
Amendments/Changes to Part V	S.O. 1999, c. 6, s. 25
Beneficiaries	Child (includes a person whom the deceased demonstrated a settled intention to treat as a child of his or her family), grandchild, sibling, spouse (includes a cohabitant), same-sex partner, parent (includes someone who demonstrated a settled intention to be a parent of the deceased), grandparent.
Nature of Damages Awarded	-Pecuniary damages resulting from the death or injury, including: -expenses reasonably incurred for the benefit of the injured or deceased persons -funeral and travel expenses -expenses for services rendered gratuitously to him or her by the claimant, or for the loss of income that was the result thereof -compensation for the loss of care, guidance and companionship reasonably to be expected had the death or injury not occurred
Noteworthy Characteristics	1) Ontario is the only province that includes non-fatal injuries in its dependants compensation legislation

Province/Territory	Prince Edward Island
Title	<i>Fatal Accidents Act</i>
Last Consolidation	R.S.P.E.I. 1988, c. F-5
Amendments/Changes	S.P.E.I. 1992, c. 24, s.1; S. P.E.I. 1994, c. 52, s. 79
Beneficiaries	Child (including a child conceived but not born, and adopted child and someone to whom the deceased stood in the place of a parent), grandchild or any other lineal descendant of the deceased, in-law, spouse, dependent opposite-sex cohabitant, support recipient, any other person dependent on the deceased for at least three years prior to the death of the deceased.
Nature of Damages Awarded	-Pecuniary damages + -Funeral and disposal of the body expenses + -Administration of the estate expenses (in particular circumstances and not exceeding \$500) + -Damages for the loss of care, guidance and companionship reasonably to be expected
Noteworthy Characteristics	1) P.E.I. includes an unborn child as a beneficiary 2) The act has a definition of dependency that extends itself to anyone who has been financially dependent for a certain amount of time. Same-sex couples and siblings, for example, could be granted pecuniary compensation under these headings.

Province/Territory	Saskatchewan
Title	<i>Fatal Accidents Act</i>
Last Consolidation	R.S.S. 1978, c. F-11
Amendments/Changes	S.S. 1984-85-86, c. 16, s. 8; S.S. 1989-90, c. 54, s. 4; S.S. 1993 c. 8
Beneficiaries	Child (includes adopted child and a person to whom the deceased stood in loco parentis), grandchild, stepchild, spouse (includes opposite-sex cohabitant), parent, adoptive parent, grandparent, stepparent, and a person who stood in loco parentis to the deceased).
Nature of Damages Awarded	-“such damages as are proportioned to the injury resulting from the death” + -medical expenses, funeral expenses, grief counselling, loss of earnings, and any other out-of-pocket expenses reasonably incurred.
Noteworthy Characteristics	