



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **FATAL ACCIDENTS ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 19, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

If you find any errors or omissions in this consolidation, please contact:

*Legislative Counsel Office*

*Tel: (902) 368-4292*

*Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)*



## FATAL ACCIDENTS ACT

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## FATAL ACCIDENTS ACT

### CHAPTER F-5

#### 1. Definitions

In this Act

- (a) “**child**” includes
  - (i) a child conceived but not born,
  - (ii) an adopted child,
  - (iii) a person to whom the deceased stood in the place of a parent;
- (b) “**contract**” includes a covenant, an accord and satisfaction and conduct amounting to a waiver of any right;
- (c) “**court**” means in relation to any claim, the court or arbitrator by or before whom any proceeding falls to be determined and where the proceeding falls to be determined by the Supreme Court of Prince Edward Island or a judge thereof, “**court**” refers to the Supreme Court of Prince Edward Island (General Section) or a judge thereof sitting in court or in chambers;
- (d) “**damages**” include compensation;
- (e) “**deceased**” means a person whose death has been caused as mentioned in subsection 2(1);
- (f) “**dependant**” means
  - (i) the surviving spouse of the deceased,
  - (ii) a child or grandchild of the deceased,
  - (iii) a parent of the deceased,
  - (iv) a spouse of a child, grandchild or parent of the deceased,
  - (v) a person divorced from the deceased who was dependent upon the deceased for maintenance or support at the time of deceased’s death or who was entitled to maintenance or support under any contract or judgment of any court in this province or elsewhere,
  - (vi) repealed by 2008, c.8, s.11(2)
  - (vii) any other person who for a period of at least three years immediately prior to the death of the deceased was dependent upon the deceased for maintenance and support;
- (g) “**Estates Section**” means the Supreme Court of Prince Edward Island (Estates Section) or any judge thereof;
- (h) “**grandchild**” includes any child or other lineal descendant of a child of the deceased;
- (i) “**judgment**” means an order or other disposition of a proceeding and where reversed or varied on appeal means the judgment as so reversed or varied;

- (j) “**parent**” includes a person who stood in the place of a parent to the deceased, the father, mother, grandfather, grandmother, adoptive parent or adoptive grandparent of a deceased child;
- (k) “**personal representative**” means a person to whom letters probate or letters of administration (original or ancillary) or equivalent authority have been granted or resealed by the Estates Section or who is otherwise under the control of the Estates Section in the administration of the estate of a deceased person;
- (l) “**proceeding**” includes an action, application or submission to any court or judge or other body having authority by law or by consent to make decisions as to the rights of persons whether in this province or elsewhere;
- (m) “**wrongdoer**” means a person who commits a wrongful act and includes any other person liable for such wrongful act and the respective personal representatives, successors or assigns of such persons in this province or elsewhere but does not include an employer or worker in respect of a wrongful act to which subsection 13(1) of the *Workers’ Compensation Act* R.S.P.E.I. 1988, Cap. W-7, applies or their respective personal representatives, successors or assigns in this province or elsewhere;
- (n) “**wrongful act**” means a failure to exercise reasonable skill or care toward the deceased which causes or contributes to the death of the deceased. *1978, c.7; s.1. 1987;c.8, schedule; 2008,c.8,s.11(2).*

## 2. Liability for wrongful act

- (1) Where the death of the deceased is caused by a wrongful act, the wrongdoer is liable to the dependants for damages under this Act notwithstanding the death of the deceased and that the death was caused in circumstances amounting to culpable homicide.

### *Idem*

- (2) It shall not be a defence to a proceeding for the recovery of damages under this Act that
  - (a) the deceased was not entitled at any time to maintain an action or recover damages in respect of any loss to the deceased by reason of a wrongful act;
  - (b) the deceased was engaged in illegal acts or the commission of a crime at the time of the wrongful act. *1978, c.7, s.2.*

## 3. No waiver

- (1) Except for the purposes of sections 232, 246 and 247 of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, it is not competent for any dependant prior to the death of the deceased to forego or limit any rights or prospective rights to which a dependant is entitled by this Act and any contract to that end is absolutely void.

### *Idem*

- (2) Subject to subsection 7(2) and section 4, no judgment recovered and no contract made by the deceased or any dependant after the occurrence of the wrongful act is a bar to or extinguishes or limits a claim for damages or is a discharge of liability arising under this Act unless such judgment is recovered in a proceeding brought for the benefit of the dependants of the deceased by virtue of this Act or any provision on the same subject matter outside this province, or unless such contract is made after the death of the deceased and in respect to liability arising under this Act. *1978, c.7, s.3.*



**4. Res judicata**

- (1) Where a proceeding in respect of personal injuries or the death of the deceased is brought against a person in this province or elsewhere by the deceased or the dependants as such, or any of them, and it is found or adjudged that the person alleged to have caused or contributed to the injury or death or alleged to be vicariously responsible therefor did not cause or contribute to the injury or death or is not vicariously responsible therefor, for the purposes of this Act, upon final judgment, that finding is binding on any person who was a party and on the dependants, whether or not they were parties to the proceeding in which the finding and judgment were made, in any proceeding for damages under this Act and the person in whose favour any such finding and judgment is made is not a wrongdoer.

**Idem**

- (2) Where a proceeding referred to in subsection (1) (not being a proceeding under this Act) is brought and a finding or judgment is made as to the contributory negligence (including its degree or absence) of the person injured or killed, for the purposes of this Act, upon final judgment, that finding and judgment are binding on the dependants whether or not they were parties to the proceeding and on any person who was a party to the proceeding in which the finding was made.

**Evidence**

- (3) For the purposes of this Act, a copy of a decision, if any, and judgment certified under the seal of the court which made the decision and gave the judgment is proof of the findings and judgment of that court. *1978, c.7, s.4.*

**5. Wrongdoer dies before deceased**

- (1) For the purposes of this Act, if, at the time of the death of the deceased the wrongdoer is himself dead, the liability arising under this Act shall be conclusively deemed to have been subsisting against the wrongdoer before the death of the wrongdoer.

**Substitution of wrongdoer's personal representative**

- (2) Where the wrongdoer dies
- (a) at the same time as the deceased;
  - (b) in circumstances rendering it uncertain which of them survived the other; or
  - (c) after the death of the deceased,

any liability or cause of action under this Act shall be conclusively deemed to lie upon, and continue against, the personal representative of the wrongdoer or any litigation administrator acting in the place of such personal representative. *1978, c.7, s.5.*

**6. Benefit to dependants**

- (1) Every proceeding under this Act shall be for the benefit of the dependants.

**Damages for loss of pecuniary benefit**

- (2) Subject to subsection (3) and section 7, in every proceeding under this Act, such damages as are attributable to the loss of pecuniary benefit or reasonable expectation of pecuniary benefit by the dependants resulting from the death of the deceased shall be awarded to the dependants for whose benefit the proceeding is brought.

**Additional damages**

- (3) Where a proceeding has been brought under this Act, there may be included in the damages awarded
- (a) an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased; and
  - (b) where the proceeding is brought or continued by the personal representative, an amount not exceeding \$500 toward the expenses of taking out administration of the estate in this province; and
  - (c) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the deceased if the deceased had not died,.

unless any sum has been recovered under the *Survival of Actions Act* R.S.P.E.I. 1988, Cap. S-11 for such expenses. 1978, c.7, s.6; 1992, c.24, s.1.

**7. Factors excluded from assessment of damages**

- (1) In assessing damages in a proceeding brought under this Act, there shall not be taken into account
- (a) the probability that a dependant may become a spouse or the effect of such probability on any other dependant;
  - (b) any sum which has been or may be paid as a result of the death of the deceased under any contract of insurance or assurance, whether made before or after the coming into force of this Act;
  - (c) any premium that would have been payable in the future under any contract of insurance or assurance if the deceased had survived;
  - (d) any benefit, compensation, assistance or entitlement which has been or may be received by the dependant as a result of the death of the deceased under the *Workers' Compensation Act*, the *Dependants of a Deceased Person Relief Act* R.S.P.E.I. 1988, Cap. D-7, the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3, or under any other Act that is enacted by any legislature, parliament or other legislative authority and that is of similar import or effect;
  - (e) any pension, annuity, gratuity or other allowance which has been, or may be received as a lump sum or by periodic payment accruing or which may accrue to a dependant as a result of the death of the deceased including any benefit by virtue of the *Designation of Beneficiaries Under Benefit Plans Act* R.S.P.E.I. 1988, Cap. D-9, the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9 or the *Teachers' Superannuation Act* R.S.P.E.I. 1988, Cap. T-1;
  - (f) for the purpose of reducing any damages, the value of any service rendered gratuitously to a dependant or any payment to a dependant which is gratuitous and not the result of any obligation or duty to make the payment;
  - (g) the value of any cause of action, judgment or recovery under the *Survival of Actions Act* except such sum as may be attributable to
    - (i) expenses of the funeral of the deceased and the disposal of the body of the deceased,
    - (ii) costs and expenses of taking out administration of the estate of the deceased, where such expenses have been awarded or recovered thereunder;



- (h) the value to any dependant of the acceleration of the right to, or receipt of, any sum or property from the estate of the deceased and the value to the dependant of any sum or property which is, or may be, received from the estate of the deceased;
- (i) any annual income tax liability of the deceased except such portion of the annual income tax liability of the deceased as is reasonably referable to that portion of the income of the deceased retained or used for his own benefit.

**Reduction of damages**

- (2) The amount in respect of general damages for personal injuries resulting from the wrongful act allocated to the deceased in his lifetime under any judgment or contract shall be taken into account in assessing any damages in any proceeding brought under this Act. *1978, c.7, s.7; 2001, c.19, s.16; 2008, c.8, s.11(3).*

**8. Contributory negligence of dependant**

- (1) Where a dependant is a wrongdoer, the damages which would otherwise be awarded for his benefit shall be reduced in proportion to the degree in which the court finds that his wrongful act or that of any person for whom he is vicariously responsible caused or contributed to the death of the deceased.

**Contributory negligence for which deceased vicariously responsible**

- (2) Where the court finds that a person for whom the deceased was vicariously responsible has committed a wrongful act, the damages that would otherwise be awarded under this Act against any other person shall be reduced in proportion to the degree in which the court finds that the act caused or contributed to the death of the deceased.

**Contributory negligence of deceased**

- (3) Where the death of the deceased is caused by, or partly by, the failure by the deceased to exercise reasonable skill and care for his own safety, the damages that otherwise would be awarded under this Act shall be reduced in proportion to the degree in which the court finds that the deceased's failure caused or contributed to his death. *1978, c.7, s.8.*

**9. Limitation of action**

- (1) Subject to subsection 10(2) of the *Survival of Actions Act* and except where it is expressly declared in another Act that it has effect notwithstanding this Act, a proceeding may be brought under this Act within two years after the death of the deceased but no proceeding shall be brought thereafter.

**Idem**

- (2) The period of time for the bringing of any proceeding by virtue of this Act shall not be abridged by any contract. *1978, c.7, s.9.*

**10. *Survival of Actions Act* applies re notice of claim**

The provisions of the *Survival of Actions Act* respecting notice of claim apply to any claim under this Act against a personal representative of a wrongdoer. *1978, c.7, s.10.*

**11. Institution of proceeding**

- (1) A proceeding for damages arising from liability imposed by this Act may be brought by and in the name or names of any one or more of the dependants for the benefit of all dependants

or a proceeding may be brought by the personal representative of the estate of the deceased for the benefit of all dependants but only one proceeding may be continued to judgment.

**Notice to personal representative**

- (2) Where a proceeding under this Act is not brought by the personal representative of the estate of the deceased, such notice of the proceeding to any such personal representative or a dependant shall be given as the court may order on its own motion or on the application of any defendant or dependant.

**Substitution of personal representative**

- (3) Where a proceeding for damages under this Act is brought by or in the name or names of any one or more dependants for the benefit of all dependants, any personal representative of the estate of the deceased may apply to the court to be added as a plaintiff and to be granted the carriage of the action upon such terms as to costs and indemnification as the court may order and any personal representative of the estate of the deceased or any person against whom the proceeding is brought or any dependant may apply to the court for a stay of further proceedings until
- (a) there is a personal representative of the estate of the deceased;
  - (b) the personal representative of the estate of the deceased is added as a plaintiff and granted carriage of the proceeding or is added as a defendant or third party;
  - (c) the personal representative brings a proceeding on any cause of action which survives under the *Survival of Actions Act* against any person against whom an action is brought under this Act and applies to join such action with the action brought under this Act or is added as a defendant or third party; or
  - (d) the court otherwise orders,

and the court may grant such application upon such terms as to costs or otherwise as the court may order.

**Amendment of proceeding**

- (4) Where a proceeding is commenced under this Act on behalf of dependants and the person by whom the proceeding is commenced is not in fact a dependant or personal representative as alleged, such proceeding is not a nullity with respect to those persons who are dependants but the proceeding may be amended upon the application of any dependant or defendant for the purpose of securing the proper conduct of the proceeding and upon such terms including costs as the court may order.

**Absence of notice**

- (5) Except where it is expressly declared in another Act that it has effect notwithstanding this Act, it is not necessary that any notice of claim, or notice of action or intended action or any other notice, or any other document, be given or served, as provided in such other Act or otherwise, before bringing a proceeding under this Act. *1978, c.7, s.11.*

**12. Pleading this Act**

- (1) In any proceeding it shall be sufficient if facts and circumstances are alleged that bring the proceeding within the provisions of this Act without expressly referring to or pleading this Act or its provisions.



**Idem**

- (2) In any proceeding a demand for further particulars or similar demand may be made requiring an express statement that a person invokes or relies on this Act or any of its provisions. 1978, c.7, s.18.

**13. Particulars**

- (1) In every proceeding brought under this Act
- (a) the statement of claim shall contain, or the plaintiff shall deliver therewith, full particulars of the names, addresses and dates of birth of the persons for whose benefit the proceeding is brought and the basis upon which the status of dependant is claimed under this Act;
  - (b) the plaintiff shall file with the statement of claim an affidavit in which he shall state that, to the best of his knowledge, information and belief, the persons on whose behalf the proceeding is brought, as set forth in the statement of claim or in the particulars delivered therewith, are the only persons entitled, or who claim to be entitled, to the benefit of the proceeding;
  - (c) the statement of claim shall declare whether or not the plaintiff acts as personal representative and if as a personal representative whether or not the action is brought to recover damages for the estate of the deceased under the *Survival of Actions Act* as well as to recover damages for the dependants under this Act.

**Failure to supply particulars**

- (2) Where the plaintiff fails to comply with subsection (1), the court, on application or on its own motion, may order the plaintiff to give such particulars or so much thereof as he is able to give and the proceeding shall not be tried until he complies with the order unless the court otherwise orders, but the failure of the plaintiff to comply with subsection (1) or an order made under this subsection is not a ground of defence to the proceeding or a ground for its dismissal.

**Idem**

- (3) The court may dispense with any of the particulars required by this section and with the filing of an affidavit as required in clause (1) (b) if it is satisfied that there is sufficient reason for doing so.

**Excluded dependant**

- (4) Where any person is not included as a dependant for whose benefit a proceeding under this Act is brought and claims to be entitled to the benefit of the proceeding, he may apply to the court in which the proceeding is pending at any time prior to the final determination of the damages for an order declaring that he is so entitled and the court may grant the order.

**Determination of persons entitled**

- (5) Where a proceeding is brought under this Act, the court in which the proceeding is pending may make such orders as it may consider just for the determination of all questions as to the persons entitled under this Act to share in the amount, if any, that may be recovered.

**Action by excluded dependant**

- (6) A dependant who has been excluded from sharing in the amount, if any, that may be recovered in a proceeding under this Act by the intentional or negligent act or omission of the person bringing the proceeding, may bring an action and recover damages against the person who brought the proceeding and recovered damages under this Act if

- (a) his entitlement under this Act is established; and
- (b) the amount of his loss of pecuniary benefit or reasonable expectation of pecuniary benefit determined in accordance with this Act is proved. *1978, c.7, s.19.*

#### **14. Payment into court**

The defendant may pay into court one sum of money as compensation for his wrongful act to all persons entitled to damages under this Act, without specifying the shares into which, or the parties among whom, it is to be divided under this Act. *1978, c.7, s.20.*

#### **15. No settlement without leave**

- (1) No proceeding brought under this Act shall be settled or compromised without leave of the court.

##### **Confirmation necessary**

- (2) Any settlement or compromise of a proceeding under this Act made without leave of the court is not binding on the dependants whom the settlement or compromise seeks to bind until the settlement or compromise is confirmed by the court but is binding on all other parties thereto. *1978, c.7, s.21.*

#### **16. Apportionment**

- (1) The court may apportion the amount of any settlement or recovery under any judgment
  - (a) first, in reimbursement of the expenses incurred in obtaining the settlement, judgment or recovery including any sum awarded for the taking out of administration of the estate of the deceased;
  - (b) next, in payment of any amount awarded for the reasonable expenses of the funeral and the disposal of the body of the deceased; and
  - (c) lastly, among the dependants with regard to the loss of actual, or reasonable expectation of, pecuniary benefit suffered by each dependant, and the respective contributory negligence, if any, of each dependant.

##### **Entitlement as a trust**

- (2) Where any dependant is an infant, incompetent person not represented by a committee, insolvent, bankrupt or consents, the court may postpone the distribution of money to which any such dependant is entitled and may constitute the Public Trustee, the Prothonotary or some other person who consents and is approved by the court, trustee of the entitlement of any such dependants upon such terms as to management, payment or supervision as the court may order and, subject to such terms, such trustee is a trustee and the entitlement is a trust to which the *Trustee Act R.S.P.E.I. 1988, Cap. T-8* applies.

##### **Public Trustee disqualified**

- (3) The Public Trustee shall not act as trustee under this section if the Public Trustee is also the administrator or litigation administrator against whom judgment was recovered. *1978, c.7, s.22; 1994, c.52, s.79 [eff.] July 14/94.*

#### **17. Trust exempt from execution**

- (1) The beneficial interest of any dependant in any right, judgment or recovery under this Act which is held in trust under this Act for the benefit of any dependant may not be assigned, attached, or levied or sold under execution without the consent of the court.



**Idem**

- (2) In determining whether to grant such consent, the court shall consider whether as a result of such consent the dependant may become dependent or more dependent on other persons, including any person obliged or empowered to provide for the dependant under the *Family Law Reform Act* R.S.P.E.I. 1988, Cap. F-3, or the *Social Assistance Act* for necessaries. 1978, c.7, s.23; 2001, c.19, s.16.

**18. Execution where appeal on quantum**

- (1) Where there is an appeal from any judgment under this Act in which liability to the dependants is not at issue and whether or not execution under the judgment has been stayed, the court which rendered the judgment appealed from may grant an application by the personal representative or other person acting on behalf of the dependants for an order authorizing payment out of court or the granting and issuing of an execution order for such sum as does not exceed one third of the damages awarded under the judgment appealed from with liberty to apply for a further order.

**Effect of payment of subsequent execution**

- (2) Any payment made pursuant to an order under subsection (1) shall be taken into account in execution upon the judgment on disposition of the appeal. 1978, c.7, s.24.

**19. Crown bound**

This Act binds the Crown and the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-32 applies to proceedings against the Crown pursuant to this Act. 1978, c.7, s.25.

**20. Transitional**

This Act applies only to proceedings in respect of the death of any person where the wrongful act occurs after this Act comes into force.