

1994 BILL 33

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Second Session, 23rd Legislature, 43 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 33**

**FATAL ACCIDENTS AMENDMENT ACT, 1994**

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**MR. BRASSARD**

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 33*  
*Mr. Brassard*

## **BILL 33**

1994

### **FATAL ACCIDENTS AMENDMENT ACT, 1994**

*(Assented to , 1994)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

Amends RSA  
1980 cF-5

*1 The Fatal Accidents Act is amended by this Act.*

*2 Section 1 is amended*

*(a) by adding the following after clause (a):*

(a.1) "cohabitant" means a person of the opposite sex to the deceased who lived with the deceased for the 3-year period immediately preceding the death of the deceased and was during that period held out by the deceased in the community in which they lived as the deceased's consort;

*(b) by adding the following after clause (b):*

(c) "spouse" means husband or wife.

*3 Section 3(1)(a) is amended by adding "cohabitant," after "husband,".*

## **Explanatory Notes**

**1** Amends chapter F-5 of the Revised Statutes of Alberta 1980.

**2** Definitions.

**3** Section 3(1) presently reads:

*3(1) An action under this Act*

*(a) shall be for the benefit of the wife, husband, parent, child, brother or sister of the person whose death has been so caused, and*

*(b) shall be brought by and in the name of the executor or administrator of the person deceased,*

*and in the action the court may give to the persons respectively for whose benefit the action has been brought those damages that the court considers appropriate to the injury resulting from the death.*

*4 Section 7 is repealed and the following is substituted:*

**Damages**

**7** If an action is brought under this Act and if any of the following expenses and fees were reasonably incurred by any of the persons by whom or for whose benefit the action is brought, then those expenses and fees, in a reasonable amount, may be included in the damages awarded:

- (a) expenses incurred for the care and well-being of the deceased person between time of injury and death;
- (b) travel and accommodation expenses incurred in visiting the deceased between time of the injury and death;
- (c) expenses of the funeral and the disposal of the body of the deceased, including all things supplied and services rendered in connection with the funeral and disposal;
- (d) fees paid for grief counselling that was provided for the benefit of the spouse, cohabitant, parent, child, brother or sister of the person deceased.

*5 Section 8(2) to (4) are repealed and the following is substituted:*

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

- (a) subject to subsections (3) and (4), \$40 000 to the spouse or cohabitant of the deceased person,
- (b) \$40 000 to the parent or parents if
  - (i) the deceased is a minor child, or
  - (ii) the deceased is an unmarried child who died when 18 years of age or older and had not reached his 26th birthday and was not living with a cohabitant,

to be divided equally if the action is brought for the benefit of both parents, and

- (c) \$25 000 to each child of the deceased person who, at the time of the death of the deceased person, is

**4** Section 7 presently reads:

*7 Where an action has been brought under this Act there may be included in the damages awarded an amount sufficient to cover the reasonable expenses of the funeral and the disposal of the body of the deceased if those expenses were incurred by any of the persons by whom or for whose benefit the action is brought.*

**5** Section 8 presently reads:

*8(1) In this section,*

*(a) "child" means a son or daughter, whether legitimate or illegitimate;*

*(b) "parent" means a mother or father.*

*(2) If an action is brought under this Act, the court shall, without reference to any other damages that may be awarded and without evidence of damage, give damages for bereavement of*

*(a) \$3000 to the spouse of the deceased person,*

*(b) \$3000 to the parent or parents of the deceased child, to be divided equally if the action is brought for the benefit of both, and*

*(c) \$3000 to the minor child or children of the deceased parent, to be divided equally among the minor children for whose benefit the action is brought.*

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

- (i) a minor, or
- (ii) unmarried and 18 years of age or older and has not reached his 26th birthday and is not living with a cohabitant.

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

(4) The court shall award damages under subsection (2)(a) to the cohabitant and not to the spouse if at the time of death the deceased person was living separate and apart from the spouse and was living with the cohabitant.

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

*6 Sections 2, 3, 4 and 5 apply with respect to an action brought under this Act only if the deceased person dies on or after the date sections 2, 3, 4 and 5 are proclaimed in force.*

*7 This Act comes into force on Proclamation.*

*(4) Subsection (2) applies only where the deceased person, deceased child or deceased parent, as the case may be, died on or after January 1, 1979.*

**6** Transitional.

**7** Coming into force.