



in their name

the call for a wrongful death act in BC

Families denied justice for wrongful death of loved ones seek a new law

Community advocates explain what a new law should contain and why

prepared by
Ann Vrlak

for
BC Coalition of People with Disabilities

funded by
The Law Foundation of British Columbia

2008



Contents

Introduction	5
the families	7
Laura Jane White	7
Dallas John Hein	11
Theresa Pereira	15
Heidi Klompas	19
the community	23
A matter of family	23
appendix	29
BC Coalition of People with Disabilities	19
Coalition Against No-Fault in BC	29
Trial Lawyers Association of BC	30

in their name: the call for a wrongful death act in BC
was produced by BC Coalition of People with Disabilities

Funded by the Law Foundation of British Columbia



Our sincere thanks to the people interviewed for this project:

Catherine Adamson, Wendy Craven, Bea Pereira, and Robert and Rose White

We also thank the following members of the Wrongful Death Law Reform Group:

Isao Asano, Lorraine Bergen, Randy DeLair, Debbie Dupasquier, Carol Grant, Howard and Christine Hewitt, Haiyan Jiang, Angela Knudtson, Mary Lindsay, Kay Narlin, Sandi Pavan, Linda Porter, Saideh Saemian, Connie Sinclair, Peter Sun, Raymond Tang, Norma Woods and Fei Zheng.

interviews, writing, editing, design: Ann Vrlak

writing "a matter of family": Ben Doyle

proofreading: Shelley Hourston

advisors: Margaret Birrell, Jane Dyson, Ben Doyle, Don Renaud

BC Coalition of People with Disabilities

204-456 W. Broadway

Vancouver, BC V5Y 1R3

tel: 604-875-0188 fax: 604-875-9227 email: feedback@bccpd.bc.ca

TTY for hearing impaired: 604-875-8835 toll-free: 1-800-663-1278

web: www.bccpd.bc.ca

Introduction

This report may be unlike many prepared by a community organization. Its intention is to bring attention to a particular social issue, but it does so primarily through the intensely personal stories of grieving families. Because of this, and because part of the ongoing grief these families experience is caused by the impersonal response to their suffering, it seems almost necessary to write this introduction from a personal point of view.

On behalf of BC Coalition of People with Disabilities, I met the four families in this report in the summer of 2007. They had all lost loved ones through what they believe were the negligent actions of another. And they all, at some point in the arc of their grief, sought out the advice of a lawyer: what compensation was available for the loss of their loved one, for pain and suffering, for counselling or time needed from work?

And all discovered the same shocking fact: that the deaths of some individuals in BC are considered, under the *Family Compensation Act (FCA)*, to have “no value.” Where direct financial losses through death can be shown, the law allows survivors to seek justice and compensation. However, the law discriminates against families who lose a teenager or a retired mother, for example: they have no legal standing to sue hospitals or reckless drivers, or to seek compensation for pain and suffering for the loss of family who are not “bread-winners.” In cases where people are injured through negligence, rather than killed, these forms of loss are recognized.

It is almost indescribable what it was like to sit and talk to these families. For some, years have passed since their family member died, but the grief remains a tangible presence in the room. Is this a natural part of grieving a sudden, unexpected death? No doubt it is, but the grief they describe is only part of a debilitating mix of outrage and incomprehension at the absence of official acknowledgment of their loss. The words that family members use to describe how they felt when they encountered this legal black hole are eerily similar, as is the emotional impact. It is as if they are told their loved one did not exist or did not matter. This is surely not the intent of the law, but this is what it means to each and every family.

Would a better law mean these families and others like them would not grieve? Would mere compensation “make everything all right”? Of course not. However, a more just law would not discriminate against families because of the age, health or employment status of their loved one. It would not add more grief to the grieving and deny justice and compensation that would be available to others with family who are injured through accident or wrongdoing.

With this report, we hope to make the case that a new law is long overdue in British Columbia.

I have done my best to present the families’ stories faithfully. They would be the first to say that the stories are their recollections and there may well be facts or events that would be remembered differently by others. But, they would also say: “We would love the opportunity to learn all the details.” Because of the current Act, however, they are denied the power to compel answers to questions about how and why their loved ones

5 in their name

the call for a
wrongful death
act in BC

And all discovered the same shocking fact: that the deaths of some individuals in BC are considered, under the Family Compensation Act (FCA), to have “no value.”

It is as if they are told their loved one did not exist or did not matter. This is surely not the intent of the law, but this is what it means to each and every family.

died, and to hear the explanations of those who were directly involved. Since they are denied that opportunity, we publish their stories here.

The first part of this report, “the families,” documents the stories of four families. The second, “the community,” looks at the *Family Compensation Act* from the community’s perspective and offers a proposal for a new wrongful death act in British Columbia.

Our sincere thanks to Catherine Adamson, Wendy Craven, Bea Pereira and Robert and Rose White for agreeing to be interviewed for this project, even though it meant rekindling their grief. These families will not reap any benefit from changes in the law. This report is dedicated to Heidi, Dallas, Theresa and Laura—and many others— “in their name.”

—Ann Vrlak

the families

Laura Jane White

January 20, 1987-July 12, 2002

On Thursday, June 20, 2002, Laura Jane White was admitted to hospital to confirm a diagnosis of leukemia. She was 15 years old.

Laura's parents, Robert and Rose, and her sister, Christine, rallied around her after this devastating news and prepared as best they could to support her through treatment. They were given information about the recommended chemotherapy treatment by Dr. D. and Dr. B, and the doctors said the cancer was treatable with a success rate of 40-50%. The family was also given a list of possible side effects of the chemotherapy which sounded very unpleasant, but insignificant in the larger picture of saving Laura's life. It is this list of minor side effects that the Whites believe drastically misled them about the possible dangers to Laura—dangers that eventually led to her death 22 days later.

Robert and Rose agreed to treatment and Laura started the first round of chemotherapy the same day. Soon after, Laura had surgery to insert a chest catheter for the injection of chemotherapy drugs throughout the phases of treatment. Surgeons told Robert and Rose the surgery went well.

Over the next week, Laura had many ups and downs from the chemotherapy. Some days, she could not eat and vomited frequently. Other days, she was able to eat a little fruit, visit with friends and family, or watch a World Cup Soccer game Robert had recorded for her. Christine came in most evenings to see her sister and "you could always see a sparkle come into Laura's eyes when Christine was there," said Robert. They would talk about an online computer game they played together and about Laura's dog Ayla.

Several times, the family asked to see Laura's regular doctor, Dr. D., but were told he "was not available." They later learned he was on holiday.

By June 27, Laura was beginning to have difficulty breathing. She was also developing severe bloating and cramping in her stomach, and her immune system was decimated by the chemotherapy.

For several days, she continued to have a hard time breathing. An x-ray showed her right lung had collapsed. Robert asked the staff what had caused it and they said the lung was probably slightly punctured when the chest catheter was put in. Laura needed another surgery to insert a chest tube through her ribs to drain fluids and air from the space around her lungs.



7 in their name

the call for a
wrongful death
act in BC

It is this list of minor side effects that the Whites believe drastically misled them about the possible dangers to Laura—dangers that eventually led to her death 22 days later.

A website created for Laura is a collage of angels, roses and butterflies. A picture of a broken heart rests in the upper corner slowly flashing the words, one after the other: "This..is..my..heart.. I..lay..before ...you." Three guestbooks are full with stories, regrets and positive wishes.

"I kept agreeing with the doctors, when they said 'don't worry, don't worry.' They said that so many times. It haunts me now."

Robert described the next day, July 3, as "the turning point." The pain Laura was experiencing from the chest tube was unbearable. The doctors started administering morphine without notifying anyone in the family. Morphine is known to have its own severe side effects.

The family was surprised and alarmed that doctors recommended resuming the chemotherapy. Shouldn't Laura recover a little from her collapsed lung before continuing? No, the doctors reassured them, all was well and the lung tube would be out in a day or so. The chemotherapy resumed and Laura became weaker, still in a great deal of pain from the tube. However, her lungs did not clear and the tube remained in. Doctors and nurses continued to reassure the family that everything was all right.

July 10 was a "day of joy" when the Whites learned the leukemia was in remission. Robert and Rose called family members with the wonderful news.

Meanwhile, doctors ordered an x-ray of Laura's stomach because the cramping and abdominal pain were worsening.

The next day, Laura was in even more pain. That evening, she was taken to the intensive care unit (ICU). At 7 a.m. July 12, a staff member told Rose to go to Laura's room right away. She found doctors working frantically on Laura; she could not breathe. Rose phoned Robert and told him to come to the hospital. When he arrived, doctors were still trying to resuscitate Laura. Finally, a doctor emerged from the room and told Robert and Rose that Laura was in a coma and would probably not survive. Stunned, Robert and Rose went into Laura's room to be with her. She was on life support.

Robert said, "At 8:30, Laura was pronounced dead and we were in absolute shock." It is barely possible to imagine anything worse, but "the ICU staff took Laura off life support—without talking to us," Robert said. Christine was not at the hospital yet, so the family was not able to "say all our goodbyes together."

A few weeks after Laura's death, Robert talked to the pathologist who said the cause of death was necrotizing enteritis which in turn was caused by a bacteria known as the "ICU superbug." How Laura became infected is a point of contention: a crucial question that will never be properly answered. Dr. D. told the family the bacteria came from Laura's stomach—a common bacteria that does not cause problems in someone with a normal immune system. However, Robert's gastroenterologist said that Dr. D's explanation was incomplete. In his opinion, the infection came from the catheter line which doctors at the hospital knew was showing signs of infection.

"Laura was given broad-based antibiotics, but there was no change in the infection. My doctor said they should have discontinued that antibiotic when they saw it wasn't working, and given her one that would be more effective against the superbug. Because Laura's immune system was so weakened, the bacteria flourished." The doctor also said that a CT scan, done when Laura's stomach pain started, would have been much more effective than an x-ray to detect the infection.

About a month after Laura's death, Robert and Rose spoke to a lawyer about the possibilities of suing the doctors and the hospital. "We just wanted the money to cover any legal costs and anything leftover would go to a foundation. The big thing we wanted was changes around the chemotherapy treatments," said Robert. "Trying to deal with the hospital on my own was very hard."

The family found that Laura's death was worth "nothing" according to BC's *Family Compensation Act* because she was not a "breadwinner." "We couldn't believe it," Robert said. They phoned two other lawyers and were given the same answer.

Robert said if they had been able to receive some financial acknowledgment of Laura's loss, the family "would have been able to move past this faster." And, what about Laura being a future breadwinner? "We are elderly parents, and she was the kind of girl who would have helped us out a bit when we get older."

The Whites' lives will never be the same. "We look at life a lot differently," said Robert. "My health has not been as good. I haven't been able to work full time since she died." Robert looked out the window and said, "It was good though, I left my job the October before Laura died, so I could spend more time with her and Christine. I'm glad I did that." Rose couldn't work for two months after Laura died.

The family was left with a debilitating mix of grief, helplessness, anger—and for Robert—guilt. "I felt responsible," he said. "I was there, Rose left me in charge. I kept agreeing with the doctors, when they said 'don't worry, don't worry.' They said that so many times. It haunts me now."

"The hospital made some minor changes after what happened to Laura," Robert said. "But we want the side effect literature changed to list the severe ones that can kill your child. I had a lot of concerns about cleanliness at the hospital too. Laura's immune system was completely gone, she was supposed to be in isolation, but the staff left her door open constantly. They didn't use masks when they came in."

Rose said, "the number one mistake at the hospital was communication. They talked to us on the first day and that's it. After, they didn't tell us anything." She said that government should change the law with "suggestions from people who have gone through this, like us. No one else should have this happen to them."

"To me, it's important that some legacy will be left behind for Laura," Robert said. "That some wrong will be righted. That will go a long way in saying, 'Laura this is for you.' She was always helping others, so maybe she can help others that way." ❖

Robert and Rose prepared a 15-page document about Laura's death: a chronology of events, concerns and questions that now will never be answered. Here are some of those questions.

1. Why wasn't the lung x-rayed earlier?
2. We read that, when there are complications of any kind, chemotherapy drugs are discontinued. [Yet], when Laura was in a lot of pain from the tube in her side, and morphine with its severe side effects was given to her, the chemotherapy [was] resumed.
3. Morphine can have extreme side effects. The family should have been consulted...Why wasn't it?
4. Why were we not told that surgery to put in the central line can puncture the lung?
5. Who was the doctor in charge while [Laura's doctor] was on holiday?



Laura and Ayla



Christine, Rose and Robert

About Laura

When she first began to talk, Laura said in strong tones, “My name is Wawa”, and from that day on, she was known to her close friends as “Wa.”

One day when Laura was an infant in her crib, Christine took advantage of mom being in the other room on the phone. She reached into the crib, managed to get Laura out of the crib and onto the bed, then from the bed onto the floor. Mom, having a sense that something wasn’t quite right, rushed in to find Christine blessing Laura with the Rosary, and Laura giggling and clapping as she lay on the floor looking up at her big sister.

Laura started playing soccer with older girls when she was five years old. It was evident right from the start she had a special talent for the game. Laura, even though generally a quiet girl, was very competitive. She didn’t become competitive all on her own. Mom and dad encouraged her to develop her skills, and did so by offering cash incentives for scoring goals. Whether she got the money or not was never the issue. She was simply proud to be doing her best. Of course, dad always did pay up.

Laura loved to learn. She did not necessarily like to be taught, however. When Rose told Laura that she had arranged for piano lessons, Laura said, “Why waste money on a teacher, mommy, I can teach myself.” Rose told her that she had already paid for the month, so why not take the lessons. “Okay,” said Laura, “but after this month, don’t waste your money.” After that month, there were no more lessons, and Laura taught herself to play the piano and the guitar.

Laura always wanted a dog, but had a slight fear of dogs from a bad experience when she was a small child. It was her dream and ambition to become a veterinarian. When she was ten, Laura began volunteering at the City Pound, walking dogs to help her get over her fear. A couple of years later, Laura’s cousin Richmond brought a black lab puppy over to the house. Laura and Christine hid the puppy; they thought their dad wouldn’t let them keep her. The next morning, everyone heard the puppy’s whining and whimpering and the secret was out. It was love at first sight for the entire family and Ayla was there to stay. Laura did have a condition placed on Ayla’s membership in the family. If at any time the puppy exhibited a mean streak, she would not be allowed to stay. So Laura took it upon herself to train Ayla and, to this day, Ayla has Laura’s spirit of gentleness. Ayla became Laura’s best companion with not an ounce of badness in her.

From Laura’s eulogy, written by Gail Suderman

Dallas John Hein

October 25, 1979 – September 4, 2005



II in their name

the call for a
wrongful death
act in BC

In September 2005, Dallas John Hein was beginning a new life. At the age of 25, after a few years of youthful indecision, he had found his calling: firefighting. He had been working for the Half Moon Bay Fire Department in Sechelt, BC for two months, excited about his new career.

One weekend, Dallas went to the annual campout in Sicamous, BC with his slow-pitch baseball team—the same weekend his sister, Kristy, was leaving to live in Australia for a year. He phoned her from Sicamous to say goodbye and he phoned his mother Wendy just to say, “Hi, I love you, ma.”

He spent Saturday night around the campfire with his friends and his new girlfriend, Krystal. He drank a few beers, planning to stay overnight at the campsite. But, a park ranger told them there were too many people at the site, so Dallas, Krystal and her sister and brother-in-law decided to drive to Kelowna. They left at about 10 p.m. with Krystal’s brother-in-law driving. They stopped at a party on the way and, a few hours later, were back on the road. At the same time, the driver of another car left Kelowna driving toward them, drunk and on Ecstasy.

No one knows for sure what happened. The drunk driver may have fallen asleep. But, sometime in the early morning, he swerved across 3 lanes of highway to slam head-on into Dallas’ car. To make matters worse, both cars in the collision were Neons which experts say are among the poorest for protection in front-end collisions.

Dallas was still alive when paramedics arrived at the scene of the accident, but his heart had stopped by the time they pulled him from the tangled wreckage. He was rushed to the nearest hospital in Vernon.

On Sunday, his friends awaited Dallas at the campsite and began to worry. Other people at the campsite asked, “Did you hear about that bad accident on the highway? Four people were killed.” Monday morning Dallas’ friends drove to the RCMP office in Vernon and learned the worst: it was Dallas’ car in the accident and he had been killed. He didn’t have a wallet with him, so no one was able to identify him until his friends came looking for him two days after the accident. None of the friends could face phoning Wendy.

Unaware of what had happened, Wendy went to work as usual on Tuesday. Her mother phoned saying that Dallas’ best friend, Mark, had driven by to pick Dallas up on the way to work, but he was not there. Wendy phoned Mark to find Luke’s number—one of the young men Dallas was camping with. She reached Luke and, after a long pause he said, “Wendy, I’m sorry...”

Wendy said, “I just knew. I knew Dallas was gone, but I didn’t want to hear the words.” She dropped the phone and told her husband Bill to take over—and he heard the un-

They stopped at a party on the way and, a few hours later, were back on the road. At the same time, the driver of another car left Kelowna driving toward them, drunk and on Ecstasy.

Wendy said, "I just knew. I knew Dallas was gone, but I didn't want to hear the words."

thinkable news. Bill then talked to the RCMP who said they would fax pictures of Dallas to the RCMP office near Wendy's home in Langley to make an official identification.

It was a long, terrifying drive to the station. "My husband looked first," remembered Wendy. "It was Dallas."

When Dallas died, he had an accident claim pending with ICBC. After his funeral, Wendy went to ICBC to inquire about funeral expenses, the old accident claim and about what compensation might be available to her family for Dallas' death. It was at this meeting that she learned the pending accident claim would be closed and there was no possibility of a claim for "pain and suffering" for his death. She could not believe it.

"ICBC put together a report on Dallas. They asked me what he was doing in his life, what his plans were—everything. I thought it had something to do with deciding on compensation, but it obviously didn't. I still have no idea why they wanted all that."

Wendy left the office and did not pursue the issue for a couple of months. "I was too devastated then to do anything about it." She later called the insurance adjuster in Vernon who had the file on Dallas' case. "I wanted to know what we pay third party liability for. He told me, it's to cover someone being injured and, I am not joking, he said, 'Haven't you ever heard that saying: it's better to kill someone than injure them? You won't have to pay out as much.'"

Wendy could not believe he had said this to her. "When I asked again, trying to understand, he said, 'Well, is this all about money?' You know, I could hardly talk, but I said, 'No, it's whether or not your loved one is valuable or not. It's attributing value to my son's life.'"

Wendy said, if she had been eligible for compensation, she would have found counselling for her daughter. "She's been having a really hard time, she and Dallas were very close. Just recently, she was able to get some counselling through her job. I was lucky, I was able to have some covered through work." Even then, Wendy could not work for 4 months. "And my mother and father found Dallas' death extremely difficult. He'd visit them every day. He was very close to his grandparents and loved them very much."

"You know, I think governments and corporations like ICBC bank on the fact that people are in so much pain, it's hard for them to come out and stand up," Wendy says. "They make you feel guilty for even thinking about money. Our family, like other families, was traumatized by the death of our child. Then we're victimized again by a government that is supposed to be working on our behalf."

It is apparent in Wendy's voice and in her expression what hurts the most: "They say my son had no value. Because he didn't have children yet, because he was single, because he was trying to be a responsible young man by getting his life together first, finding his way. His life has 'no value'? That couldn't be farther from the truth."

"When I asked again, trying to understand, he said, 'Well, is this all about money?' You know, I could hardly talk, but I said, 'No, it's whether or not your loved one is valuable or not. It's attributing value to my son's life.'"

continued on page 14

About Dallas

When Dallas first put on his fire gear, he said, "I knew this was right for me," Wendy remembers. It was just two months before his death that Dallas had begun to live his dream to work as a firefighter. His training instructor said Dallas "never quit." After his death, the Half Moon Bay Fire Department retired Dallas' uniform number, 29, and agreed to his burial in fire gear. The firefighters already considered the hard-working, affable young man one of their own.

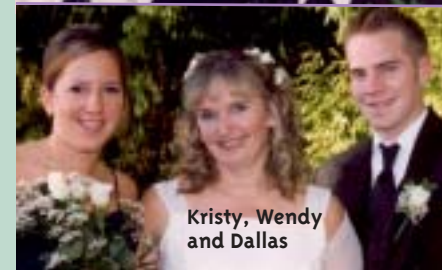
"He was always laughing," Wendy says. "He was so much fun to be around. His best friend Mark told a story at Dallas' funeral." When Mark hired Dallas to work at his painting company, he sat Dallas down to tell him what was expected. "I told Dallas there are certain rules, I want things done this way and I want this stuff done—how to be a good painter, basically." Dallas listened, and then said, "Well, Mark, I'd like to have a couple of girls working around the site naked, but that won't happen either. We don't always get what we want."

One year, when his sister Kristy got a new car, her old "beater" went to Dallas. When it needed a new water pump, Wendy's boyfriend invited Dallas over and they put the pump in together. "Well," Wendy says, "Dallas stood around being thankful and wanting to help, but really being hopeless at doing anything with cars." The boyfriend spent all day fixing the car, on a freezing winter day. "On his way out the door, Dallas gave me a big hug and said in my ear, 'Maybe we should give this one a chance.' So, I did. I married him."

Wendy and her extended family are very close, including vacationing together. "And it was a family tradition that Dallas and grandpa would room together—the guys." Over the years, after hearing stories of their great vacations, more and more members of the family wanted to join in. In February 2005, 27 members of the family went on holiday together to the Dominican Republic: Wendy's five siblings, mom and dad, cousins and significant others. And 25-year-old Dallas and grandpa rooming together.



Carey and Dallas



Kristy, Wendy and Dallas



Wendy and Dallas dancing at her wedding

Dallas, continued from page 12

Wendy knew she could not allow other parents to go through what she has. Mothers Against Drunk Driving (MADD) provided some outlet for her grief and her outrage. One of the practical things she thinks ICBC should do is to develop a package for people who experience the sudden death of a loved one. "They could easily put something together to help people with what to do: funerals, counselling contacts, legal assistance. You need help with things at a time like that— you can't think."

If she could talk to policy-makers, Wendy would say, "I want you to know that these children are valuable. To dismiss them in this way, and say they're of no consequence, is totally wrong. You put dollar values on virtually everything else in our lives, but neglect the most important part of our lives: our children."

Because of the current law, "it's like Dallas was non-existent. I can't tell you what that feels like."

"Dallas is gone, but I want other families to benefit from the pain and suffering we've gone through. That's why I'm so forceful on this issue to get a new act," she says. "There's got to be some way to make these deaths meaningful, that they didn't die for nothing. I want to do this for him, to get this law revised for other families." ❖

Theresa Pereira

February 2, 1935- June 19, 2006

Theresa Pereira had cataract laser surgery on May 10, 2006. She was a healthy 71-year-old who was often mistaken for someone much younger because she was so active and vibrant. Theresa was happy with the results of the surgery; she was able to see much better than before. She attended follow-up appointments with her doctors and was told that her eye was healing well.



On Sunday, May 21, while Theresa was washing her face, some water splashed into her eye. When she talked to her daughter, Beatrice (Bea), later in the day, Theresa said her eye was teary and a little sore. She had a headache and the area around the eye was quite swollen. Bea told Theresa to go to emergency, but she insisted that if she put in her eye drops and went to bed early, it would be fine in the morning. However, the next day the eye was worse.

Gordon, Theresa's son, drove her to the hospital around noon. A doctor at the hospital examined Theresa and found the eye was infected. She was told to go to an eye clinic near the hospital because of their specialized eye equipment.

It was the Victoria Day long weekend, so the only staff at the clinic was a resident doctor. The resident told Theresa the infection was serious and needed immediate treatment. Some fluid from the inside of Theresa's eye would need to be removed to identify which infection they were dealing with and find the appropriate treatment. A freezing solution (Lidocaine) would first be injected just below the infected eye, then a retinal specialist would insert a syringe into the eye to extract a small amount of fluid.

The resident told Theresa and Gordon she needed to order antibiotics which would take about an hour to arrive. She suggested they go for lunch. When they returned, Theresa was taken into a procedure room. The resident administered the Lidocaine and stepped out of the room to page the retinal specialist, leaving Theresa alone.

Waiting for the specialist's call, the resident mentioned to Gordon that Theresa said she felt like her food was coming up to her throat, but the feeling had passed. The specialist called and the resident then returned to the procedure room. She found Theresa in the reclining chair unconscious and not breathing. Gordon heard her shout, "Theresa!" several times. The resident opened the door and waved frantically for Gordon to come in.

The resident began mouth-to-mouth resuscitation, but soon rushed out to phone 911. The paramedics arrived and Gordon went to the waiting room, stunned. The resident said his mother had thrown up and possibly inhaled some of the vomit when the paramedics put a breathing tube down her throat.

15 in their name

the call for a
wrongful death
act in BC

It was the Victoria Day long weekend, so the only staff at the clinic was a resident doctor. The resident told Theresa the infection was serious and needed immediate treatment.

After speaking with the specialist, the resident told Gordon she was very sorry for what had happened to his mother. She also admitted that the specialist told her he “couldn’t believe” she had told Theresa to eat lunch before the procedure.

While the paramedics were trying to revive Theresa, a doctor came in and said, “Is this our patient?” After speaking with the specialist, the resident told Gordon she was very sorry for what had happened to his mother. She also admitted that the specialist told her he “couldn’t believe” she had told Theresa to eat lunch before the procedure.

The paramedics told Gordon to meet them at the hospital. He phoned Bea in Point Roberts and, a few hours later, she had rushed to the hospital. At first, Gordon and Bea were told that the Lidocaine had entered Theresa’s cerebral fluid and frozen her brain. The doctors believed the freezing would wear off and Theresa would regain consciousness.

However, they soon realized the lack of oxygen to Theresa’s brain—for over 3 minutes—was a compounding factor that now kept Theresa in a coma. Then began the family’s long wait. Theresa was admitted into ICU and the next day, Theresa’s daughter, Crystal arrived from Toronto.

At some time during her care, the intravenous needle was placed incorrectly into Theresa’s arm which caused severe burns from the medication entering the layers of the epidermis. The burn was so severe that the Plastic Surgery Department was asked to take a look at it.

On June 13, Theresa was moved from the ICU to a standard ward. The next day, an ultrasound was done which showed a blood clot. Doctors decided to administer a blood thinner (as opposed to doing a procedure to “cap” the main artery and ensure that the clot would not reach the brain). Theresa’s organs began to fail, but, because of the blood thinner, doctors were unable to get a proper blood sample to find out why. She was immediately rushed back to the ICU where doctors inserted an intravenous line to stabilize her. Theresa’s heart was now beating with the help of medication.

On June 19, at about 7 a.m., the family was told Theresa had internal bleeding and her condition was worsening. They could operate, but, because it would be an “exploratory” surgery, the doctors would be unable to seal the incision. Then, doctors realized blood was barely flowing to Theresa’s extremities. The family was now faced with the most difficult decision: to decide when life actually ends.

Twenty-eight days after Theresa went to the clinic, the family decided to take their mother off life support and allow her to die peacefully. The doctors agreed to wait for Theresa’s husband, Oswald, to be transported from his care residence. His wheelchair was brought to her bedside and his hand placed into hers.

Bea said, “When this happened at the eye clinic, mom was alone. But there was no way we were going to let her die alone.” Family and friends were called and more than 25 people gathered in Theresa’s hospital room to say goodbye. The hospital chaplain played the guitar and everyone sang hymns softly as Theresa’s heart stopped.

Theresa’s funeral was attended by almost 500 people.

Two days after Theresa died, the family was dealt yet another blow. Theresa’s husband, Oswald, who had been in care since 2004 diagnosed with dementia, had a massive stroke that left him paralyzed on his left side. He died peacefully on July 5, just 16 days after Theresa’s death.

On behalf of the family, Bea spoke with a lawyer about their mother's unexpected death. The answers she received shocked her.

"He told me we had no recourse because she was retired and that no claim could be made for pain and suffering because she was in a coma," Bea remembered. "I thought he didn't know what he was talking about." She asked about medical negligence; surely there was enough of a case to show her mother's death was preventable? "He said there was such a small chance of success, against the hospital with the current law, that he wouldn't recommend pursuing it."

At the time of writing this story, it is more than a year since Theresa's death and the medical investigative report (subsequent to the coroner's report which found the cause of death to be "undetermined") had not yet been released. "I have been in touch with them several times; the report was promised in February [2007]. And there are time limitations on filing law suits."

What if Theresa's family had received justice and fair compensation for their mother's death? What difference would this have made? "We would have had some closure," she said. "It's so hard to move on until we know what really happened. I have to keep worrying about this report, and what it will reveal. It's always there. It's all I think about because it's not over." Bea, her sister Crystal, and Crystal's 10-year-old daughter, Jacelyn, have been to several bereavement support sessions trying to find a way to cope with the loss of both parents, especially their mother. Bea's brother, Gordon, is still very much affected by what he experienced. Bea has at least had support from her employer. "They are so great. They have stepped up like you would not believe. Letting me have some time off, and being understanding. I couldn't work for a few months."

In addition to her grief, Bea inexplicably feels guilt. "I decided to go to Point Roberts, even though mom was having trouble with her eye. My guilt is that I should have been there." Today, after having some counselling, Bea can "talk about it without crying, though the guilt is not 100% gone."

"All the money in the world will not bring my mother back or take this pain away," Bea said. "But in a sense I want to teach the hospital a lesson. Admit your mistakes, do not try to sweep a person's life away. By taking some responsibility, a family like ours may be given some very necessary closure, and it says that mom's life meant something to someone other than her family and friends. Hospitals and doctors should be held accountable."

Bea wants the BC government to know that "the law definitely needs to be changed. You can't imagine how much more grief this causes families who are already grieving. Our questions remain: how is it possible for someone to go in for a perfectly 'routine' procedure and end up dead? Worse yet, why is no accountability required? What does this say about our society and the current system which we have in place?" ❖

Bea wants the BC Government to know that "the law definitely needs to be changed. You can't imagine how much more grief this causes families who are already grieving."



Theresa and Oswald



Bea and Theresa

Back: Crystal, Gordon, Bea
Front: Theresa, Jaceyln, Oswald



About Theresa

Theresa Pereira was a vibrant, family-oriented person. Bea said, "She was the type of person who would see someone at a gathering who was sitting alone, or didn't know anyone, and she'd talk to them. Before they'd know it, she'd have them up dancing and socializing with her. I think it was because of mom's experiences when she first came to Canada. After we moved here from Bombay 33 years ago, there were some hard times. My mother felt strange here, like an outsider. I think that's why she always noticed the person who was left out and would want to connect with them."

"Mom was always smiling and cracking jokes; the life of the party. We made fun of a book where she kept track of funny things that happened to her," Bea remembers.

Theresa always had matching accessories for every outfit no matter what colour it was and she always made sure she faced the world with a smile. "Nobody can smile the way a beautiful spirit does—and mom's smile was truly one of this kind," said Gordon.

Every day, Theresa visited her husband in the care facility to feed him dinner. Bea would visit too and they would drive home together. "Dad would get very depressed and mom was the only one who could bring him out of it. They loved each other so much; it would have been their 45th anniversary last December [2006]." Bea said, "rather than think of this as a horrendous tragedy, we chose to remind people at dad's funeral of the beautiful love story it was meant to be. Our mom always had looked for the positive in every situation—that's the legacy she left us. We only hope we can continue living our lives in the same way."

"We know that if our mom was alive today and managed to survive this ordeal somehow, she would not have held this against the resident or any other member of the hospital staff," said Crystal. "She'd probably say it was God's plan for her—that's just the person she was. So, we made sure her message of 'forgiveness' was given to the resident (by each one of us) the day of her passing. That's the way we decided to honour her memory."

Heidi Klompas

May 5, 1980—October 8, 1997

How do I tell you this story? How do I begin? I feel this story needs to be told for many reasons. Hopefully, people in positions of power will recognize themselves and stop missing so many opportunities to save lives...Our lawmakers, our politicians, must explore more diverse opportunities to improve our justice system...Canadians might see themselves in the ordinary lives of the people in this story and realize this too could happen to their families."

From "Heidi Dawn Klompas: Missed Opportunities," by Catherine Adamson, Heidi's mother



On September 13, 1997, a group of teens was having a gathering near Stokes Pit, a park bordering Langley and Surrey. Heidi Klompas, 17, drove to the party with her friend Kendra who was the designated driver for the night. They were celebrating their final year of high school. Late in the evening, one of the teens, John (not his real name), had too much to drink and argued with friends who tried to prevent him from driving away. He became angry, took his keys over his friends protests and spun off in his Cadillac.

Sometime later, John's friends were surprised to see his car return. But something was terribly wrong: they saw John's head dropping toward the steering wheel, he seemed to be passing in and out of consciousness. John's car ran down a group of 17 teenagers. One girl died on the scene.

Heidi was one of the victims: the bones in both her legs were shattered, but she was alive. Paramedics rushed her to the hospital. Despite the severity of her injuries, the surgery to repair her legs was repeatedly delayed and a series of fatal errors began. The orthopaedic surgeon was called and the family was told several times "he is on the way." Finally, eight hours after Heidi was admitted, the surgeon arrived. However, Heidi's surgery was further delayed when the surgeon told the family he would do a hip operation on another patient first.

Heidi was put on intravenous (IV) fluids. When IV fluids are used, fluid output (urine) against input is measured to maintain a safe balance in the body. In Heidi's case, this was not monitored adequately and she experienced a fluid overload that compromised her lung function. Also, while she was left unattended, she had a brain seizure and aspirated (inhaled vomit). Nurses gave her a sedative to counteract the seizure and, afterward, Heidi could not be woken up. She was transferred to another hospital where a neurosurgeon was standing by.

Her mother, Catherine, was with Heidi when she arrived at the second hospital. She heard the orthopaedic surgeon say, "Oh, God—look what they've done to her legs." He said the tensor bandages were so tightly wound around Heidi's ankles they were cutting off circulation and nerves—which could cause Heidi to lose her feet.

John's car ran down a group of 17 teenagers. One girl died on the scene. Heidi was one of the victims: the bones in both her legs were shattered, but she was alive.

“What really bothers me about this whole thing is, if there were penalties and proper compensation, then the insurance companies would think twice about insuring bad doctors.”

However, the severity of her leg condition was no longer the main problem: it was her brain. Heidi was now suffering from fat embolism syndrome which occurs when “fat from the marrow of a broken bone enters the bloodstream and forms an embolus that lodges in the lungs . . . smaller fat droplets . . . travel to the brain . . . [causing] seizures, coma . . . [and] cerebral edema [brain swelling].”*

In Heidi’s case, the marrow’s fatty tissue from her broken bones travelled to her brain and caused a series of small strokes. Her brain swelled and began to squeeze the brain stem. She had a tube in her mouth to help her breathe. Doctors tried to reduce the swelling and, after two weeks, she started to “lighten up” neurologically—to become more conscious. The doctors decided they should remove the breathing tube so Heidi would be able to speak more easily as she regained consciousness. So, they performed a tracheotomy, surgically inserting a breathing tube into her trachea.

More questionable judgments and actions followed. Because Heidi was a teenaged girl, doctors decided for the sake of “vanity” to perform the tracheotomy lower than the usual position near the larynx. However, she had developed a severe infection which ate through her trachea and the lining of a nearby major artery leading to the brain. Heidi had a sudden, major bleed from this artery, with the high pressure blood pouring into her lungs and stomach. Nothing could be done.

Heidi’s heart stopped for more than 30 minutes and she suffered massive brain damage. Within three days, she was declared brain dead. Her family was devastated.

It was about two years after Heidi died, and after two official reports about her death had been released (from the coroner and the Children’s Commission, both of which found errors were made), that Catherine discovered the law’s limits on compensation for loss of a child. She was stunned.

“What really bothers me about this whole thing is,” Catherine said, “if there were penalties and proper compensation, then the insurance companies would think twice about insuring bad doctors.”

It is clear that Catherine did not want money for personal gain, that money could never compensate for the loss of a daughter. “It’s not that I want the money, but the truth is costs act as a deterrent to bad doctors practising. Otherwise, they’re untouchable.”

The grief over Heidi’s death and the absence of a way to seek justice, took their toll on the family. “My husband and I were divorced. I couldn’t continue with my job. I wouldn’t wish what we went through on my worst enemy.”

Catherine also wants the hospitals to be held more accountable—and only new laws can make that happen. “We learn from our mistakes, but first you have to admit they were made. The hospital and doctors didn’t admit any were made. So, what do they learn from this?”

When the family was told their daughter “didn’t count,” in the eyes of the law, it was another kind of wounding. Their grief and suffering was met with an absolute, cold silence.

continued on page 22

About Heidi

One of my most treasured memories of Heidi is the vision of this tanned teenager stretched out in the front passenger seat of my car as I drive home from Osoyoos in the sweltering summer heat. The windows were all rolled down, the sunroof open, and Heidi's legs extended out the window so the wind could cool her toes. With her long curly hair blowing in the breeze, she entertained her sister Laura and I with her rendition of Shania Twain's "Any Man of Mine" (...better be proud of me). We had the tape playing at full blast and she sang the song at the top of her lungs, with a country twang, to our astonishment and our great amusement. What a heavenly creature she was. Heidi was brilliantly happy that August of 1997.

Heidi's school sent notices home to all the parents, which requested signed permission for their daughters to try out for the school's May Queen. Heidi wanted to put her name in the draw, so I agreed to allow this, thinking that she only had a one in fifteen chance of winning. Well, she won...Heidi rode in the parade on the May Queen float amongst the girls in pretty dresses, and flowers and ribbons. And she had a great time doing the "Queen's wave," just like Queen Elizabeth: a gloved hand that slowly passes back and forth in front of her face...The kids back at school honoured Heidi as their very own May Queen. She did the school proud.

"Of my three children, Heidi was the child who enjoyed painting with me...Heidi could see the beauty in everything and everyone. She delighted in flowers and loved to clip the roses and make beautiful arrangements for me. She loved the way the trees danced in the wind; she loved the sounds of the ocean; she loved the crunching underfoot as she walked on the crispy fallen skins of the red Arbutus trees on the islands...I cherish the artwork Heidi left behind because it provides me with her vision of the world. She drew and painted what she loved, and in the last years she drew the beauty she loved the most: the beauty found in her friends' faces. Heidi loved beauty, and in loving it she personified it. She was beauty. Plato would have loved her."

From "Heidi Dawn Klompas: Missed Opportunities."



Laura and Heidi



Courtney, Jamie and Heidi



Heidi and grandmother Dorothy

Heidi, continued from page 20

“If we had been able to sue, we would at least have had a sense of justice served. That would have meant so much.”

Though Catherine can gain nothing from a new wrongful death act, she wanted to be part of this report for the sake of others. “If there is public exposure to wrongdoing, there’s always change. Let’s not have this happen to someone else.”

“Changing this legislation will save lives. What’s more important than that?”

* From *Heidi Dawn Klompas: Missed Opportunities*, pp. 78-9. ❖

the community

A matter of family

For most people, family is at the heart of what matters most in life. Losing a loved one — a sibling, spouse, child, grandchild, parent or grandparent — can be a devastating and life-altering experience. Imagine adding to this grief the knowledge that your loved one's death was the result of another person behaving harmfully or recklessly.

Causes of wrongful death range from reckless driving to poor medical care to faulty use of equipment. When these preventable circumstances contribute to the death of a loved one, the family's grief and suffering are compounded by outrage.

For the families in this report, and others thrust into dealing with a wrongful death in British Columbia, matters become even more painful and frustrating if they seek advice on legal avenues to find justice. They discover that current legislation fails to provide for all the losses—emotional, financial and beyond—resulting from the wrongful death of their child, parent, sibling, spouse or another relative.

BC's current *Family Compensation Act (FCA)* governs in cases of wrongful death. The *Act* takes into account the direct financial losses resulting from death, however, it fails to acknowledge the multi-layered collective experience of affected families. Children, seniors and people with disabilities who may not represent a measurable financial loss, for example, are among the classes of people whose lives are not fully "valued" or respected after they die.

BC's laws make a further unjust and unjustified distinction between wrongful acts that lead to injury and wrongful acts that lead to death: the injured and their families can seek justice and compensation, but the families of deceased victims cannot.

Burnaby-based lawyer Don Renaud says, "The public has no idea the law in this area is so inadequate. The lives of children, people with disabilities and seniors are valueless in the eyes of the law."

Striving to Make Things Right

For these reasons, BC Coalition of People with Disabilities (BCCPD) along with the Coalition Against No-Fault (CANF) and the Trial Lawyers Association of BC (TLABC), are seeking a new wrongful death act in British Columbia. A new act is needed to enable family members, who suffer the loss of a loved one due to the harmful actions of others, to obtain a full measure of justice.

For more than two years, this has been a coordinated quest by our three organizations—though calls for change have been sounding out in this province for decades. We are hopeful that the BC Government will become a leader among Canadian provinces and territories by creating a just wrongful death act.

A BC-based circle of advocacy and support for grieving families has emerged in recent years. In the summer of 2005, representatives from BCCPD, CANF and TLABC met with a

A Brief History

It has been more than 160 years since *Lord Campbell's Act* (1846) was created as a way to reform unjust laws and thereby enable families to obtain justice after the wrongful deaths of their loved ones. However, it limited access to justice in a drastic way—even though it was an attempt to right the wrongs created by far earlier decisions (*Higgins v. Butcher* in 1607 and *Baker v. Bolton* in 1808). This inadequate Act became the model for wrongful death legislation throughout the Common Law world. Today, in some parts of Canada, the legislation is known as the *Fatal Accidents Act*. In British Columbia, it remains the *Family Compensation Act*.

Throughout history, various pieces of legislation referred to damages and the entitlement of dependents, but the nature and extent of damages were not specified. And damages in wrongful death cases have been restricted to the loss of financial benefits to those left behind. These “pecuniary losses” involve a benefit or advantage that can be measured in dollars, such as financial support, services or contributions. Under these forms of legislation, the nature and extent of allowable damages are so limited as to make access to the courts a practical impossibility.

Many provinces in Canada have amended the laws set out by *Lord Campbell's Act*, though none has done so sufficiently to provide proper or fair compensation for all people impacted by the death of a loved one. BC has not made any amendments to this Act which pre-dates the province's existence—and confederation. Society, on the other hand, has changed significantly since the mid-1800s and the legislation of today must reflect this reality.

group of these families and were deeply affected by their experiences. We knew this was a crucial issue for our organizations to address. We worked together to understand the issue and prepare alternative proposals for wrongful death legislation in our province. The families formed a group to represent their interests and help coordinate their goal of legal change in BC: the Wrongful Death Law Reform Group (WDLRG).

A Time for Change

As it stands, BC's legislation is based on an 1846 Act from Britain (please see A Brief History on this page): a law which does not recognize forms of loss other than those causing a direct financial impact. This leaves families without the legal means to seek justice when the wrongful death of a loved one leads to a loss of guidance, care and companionship or for the damage caused by stress, anguish and grief. Moreover, in cases where wrongful actions lead to injuries that eventually cause death, the law does not provide for the pain and suffering that occurs from the period between the date of injury and the eventual death. We believe this is untenable and unjust, particularly because the law most affects people who are at an extremely vulnerable point in their lives and in need of social support.

The families, BCCPD, CANF and TLABC are on solid ground with their collective goal. Public polling conducted in 2005 revealed that 77% of citizens support changing the law to allow for greater compensation to families of those killed due to the negligence or recklessness of others.

The current legislation has barred a countless number of families from seeking justice after the wrongful death of their loved ones. The families included in this report are only a fraction of those who have been negatively impacted. Sadly, and without reason, nothing has been done to right this wrong that has existed for more than 160 years.

The BC Government's Review

In the fall of 2006, CANF wrote to BC Attorney General Wally Oppal and circulated a media release to spell out the need for new legislation to govern in cases of wrongful death. CANF later met with a representative of the Attorney General's Ministry who is directly involved with this issue. The meeting was very positive and a consultation paper was circulated within a few weeks, as promised by the representative.

In June 2007, the BC government invited public consultation and set out to review the existing *Family Compensation Act*.

BC Needs a New Act

British Columbia, and all of Canada, needs a very different legal paradigm for cases of wrongful death. For this reason, BCCPD, CANF and TLABC are advocating for a new wrongful death act, rather than recommending changes that will merely "tinker" with the *Family Compensation Act*. We believe these changes are necessary and long overdue—more than 160 years overdue, in fact.

The goal is to create legislation for our province that enables innocent families to seek justice and fair compensation for all of their losses. In order for this to be realized, changes need to be made with regard to the eligibility of claimants and the nature and extent of compensation permitted under the new law.

We propose the following as a definition for any new piece of legislation governing wrongful death:

- A. The court, notwithstanding any other damages that may be awarded, may award damages generally to the decedent's estate and/or survivors for:**
 - 1. solace and bereavement**
 - 2. personal anguish**
 - 3. emotional stress**
 - 4. loss of companionship, comfort, love and affection**
 - 5. loss of advice, counsel, guidance, protection and care**
 - 6. the decedent's mental anguish, pain and suffering from the date of injury to death**
- B. The court may also award punitive damages to the decedent's estate for wilful, wanton or reckless conduct shown by a preponderance of evidence.**

British Columbia, and
all of Canada, needs a
very different legal
paradigm for cases of
wrongful death.

After meeting some of the families in the Wrongful Death Law Reform Group, Margaret Birrell, said “These families were willing to come out and work for change while knowing they would not receive any direct benefits from amendments made. It is a huge generosity of spirit.”

Other Improvements Needed

- As noted, the *Family Compensation Act* provides that children, parents and spouses of wrongful death victims can be compensated for financial losses, but not for non-financial losses. However, the *Act* prohibits siblings, step-siblings – or others who relied on a deceased victim financially – from being compensated for care, maintenance or education, or who were entitled to support by way of agreement or court order. BCCPD and its partners on this campaign propose that all of the latter cases be included in a new act.
- Compensation for a loss of guidance, care and companionship requires an assessment of each individual set of circumstances, rather than being a fixed or one-size-fits-all amount.
- The law should clearly recognize that even cases of severe injury, rather than death, could cause a loss of guidance, care and companionship.
- In cases where punishment of the wrongdoers is warranted, provisions should exist that allow both punitive and aggravated damages to be pursued by the surviving family members.
- Where appropriate, expenses should be recoverable and costs should be available in instances where defendants are unwilling to be reasonable with regard to settlement offers.

Conclusion

The families who shared their stories for this report know that they will not reap any benefits from new legislation. However, they are passionate about the need for a law that will allow families in the future to obtain justice and be compensated fully for their grief and associated losses.

BCCPD, CANF and TLABC, believe that fundamental legislative change around wrongful death is sorely needed. We urge the provincial government to continue its dialogue with us, and other concerned groups, so that together we can design an act that will truly respect the needs of British Columbians who lose a loved one through wrongful death. ❖

BC Coalition of People with Disabilities

BCCPD is a not-for-profit organization that represents people with all types of disabilities throughout BC. Our membership includes individuals and groups from the communities of people who use wheelchairs, people with visual or hearing impairments, and people with hidden disabilities, mental health disabilities, learning disabilities and HIV/AIDS.

Our mandate is to raise public and political awareness around issues of concern to disability communities and to create change. We hope through our work to improve people with disabilities' access to all aspects of our communities.

BC Coalition of People with Disabilities

204-456 W. Broadway

Vancouver, B.C. V5Y 1R3

tel 604-872-1278 • fax 604-875-9227

Toll Free 1-800-663-1278 • TTY 604-875-8835

feedback@bccpd.bc.ca • www.bccpd.bc.ca

Coalition Against No-Fault in BC

CANF represents a diverse range of organizations that are aligned in opposition to all forms of no-fault legislation. Member groups represent a variety of community-based interests: from advocates for people with disabilities to those fighting on behalf of consumers and their rights.

CANF members rallied together in late 1996 to fight against the implementation of no-fault auto insurance in British Columbia. The threat of no-fault was a common rallying point for many community groups, including a variety of organizations representing people with disabilities, as well as women's networks, seniors' associations and student unions.

Coalition Against No-Fault in BC

R 141-757 West Hastings Street, Suite 655

Vancouver, BC V6C 1A1

tel 604-682-1441 • Toll Free 1-888-224-8811

www.canf.bc.ca

Trial Lawyers Association of BC

TLABC is a not-for-profit society made up of members throughout BC and beyond, all united with the aim of maintaining access to the courts, protecting the rights of individuals and preserving the process of trial by jury. Our membership represents a diverse range of legal professionals and practice areas, from personal injury litigation and family law to criminal, employment and labour law. Our mission is to support and promote diligence and excellence in advocacy and jurisprudence on behalf of consumers in BC. Together, we strive to: protect the rights of individuals, preserve the jury system, enhance trial practice, ensure access to the courts, advance the interests of innocent parties, and maintain judicial integrity and independence.

Trial Lawyers Association of BC

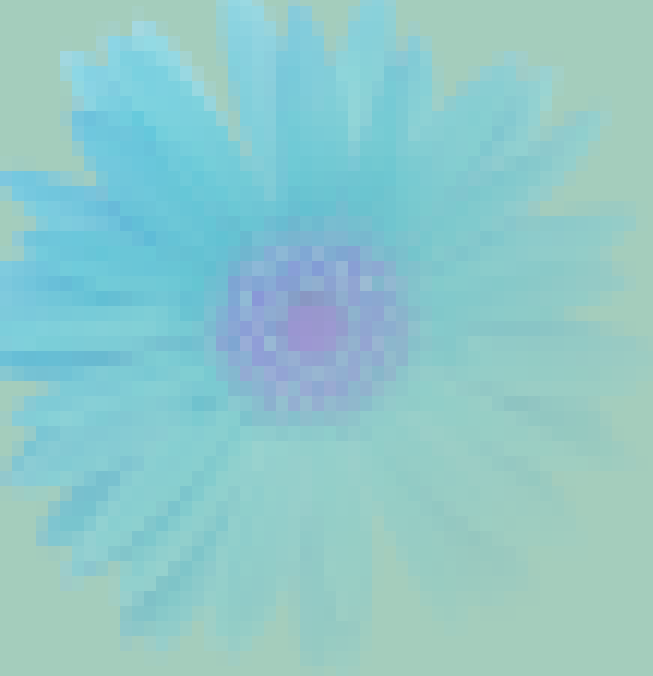
1111 - 1100 Melville Street

Vancouver, BC V6E 4A6

tel 604-682-5343 • fax 604-682-0373

Toll Free 1-888-558-5222

tla-info@tlabc.org • www.tlabc.org



in their name

the call for a wrongful death act in BC

prepared by
Ann Vrlak

for
BC Coalition of People with Disabilities

funded by
The Law Foundation of British Columbia

2008