

Fatal Accidents Act: Applies to children of all ages, regardless of marital status

On October 7, 2004 the Alberta Court of Appeal held that Section 8(2)(c) of the *Fatal Accidents Act* improperly crossed the discrimination line under Section 15(1) of the *Charter* and could not be saved under Section 1.

Section 8(2)(c) provided that \$25,000 would be awarded to minor children of the deceased and to unmarried children, 18 or over but not yet 26, and not living with a cohabitant. The court held that this provision denied to other children, because of their age and marital status, the same level of damages for grief and loss of guidance, care and companionship on the wrongful death of their parent.

In this case the deceased's only surviving child was 57 years old and married when his mother, 84 years old, was killed. It was determined that Section 15(1) of the *Charter* was violated as it had the effect of demeaning his or her dignity. The court stated that "denying the claimant group redress for the wrong done sends a signal that lives of older victims count for less in our society".

The Court of Appeal concluded that it was an appropriate case in which to sever the impugned restrictions and the words referring to age and marital status in Section 8(2)(c) were to be struck. Section 8(2)(c) will now read: "\$25,000 to each child of the deceased person".

Ferraiuolo Estate v. Olson, [2004] ABCA 281
Heard: March 3, 2004
Judgment: October 7, 2004
Fraser C.J.A., Paperny J.A., and Picard J.A.