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21 June 2018

Mr Lemuel WOO  
Clerk to Subcommittee on Proposed Resolution  
under Section 4(5) of the Fatal Accidents Ordinance (Cap 22)  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Mr WOO,

**Subcommittee on Proposed Resolution under Section 4(5) of the  
Fatal Accidents Ordinance (Cap 22)**

At the captioned meeting, Members requested the Government to provide information on how the classes of recognized dependants entitled to claim for the statutory sum to be awarded as damages for bereavement under the *Fatal Accidents Ordinance* (Cap. 22) (**the “Ordinance”**) compared with that of similar compensations in overseas jurisdictions. Our reply is set out in the ensuing paragraphs.

**Hong Kong**

2. Section 4(2) of the Ordinance sets out the classes of persons

who are entitled to claim for the statutory sum to be awarded as damages for bereavement under the Ordinance, as follows:

- “(a) the wife or husband of the deceased, unless they had been living apart for a continuous period of at least 2 years immediately preceding the death of the deceased; or
- (b) where there is no spouse by or for whom a claim can be made under paragraph (a), the children of the deceased; or
- (c) where there is no person by or for whom a claim can be made under paragraph (a) or (b), the wife or husband of the deceased (notwithstanding that they had been living apart); or
- (d) where there is no person by or for whom a claim can be made under paragraph (a), (b) or (c), any concubine taken by the deceased before 7 October 1971; or
- (e) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c) or (d), any person who -
  - (i) was living with the deceased in the same household immediately before the date of his death; and
  - (ii) had been living with the deceased in the same household for at least 2 years before that date, as the husband or wife of the deceased; or
- (f) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d) or (e), the parents of the deceased or (if the deceased was illegitimate) his mother; or
- (g) where there is no person by or for whom a claim can be made under paragraph (a), (b), (c), (d), (e) or (f), but the deceased was at the date of his death a minor, any person who during any marriage to which that person was a party treated the deceased

as a son or daughter of the family in relation to that marriage;  
or

- (h) where there is no other person by or for whom a claim can be made under this subsection, any brother or sister of the deceased.”

3. Section 2 sets out the general interpretation provisions of the Ordinance. Section 2(1) defines the term “wife” as follows:

- “(a) in the case of a Christian marriage or its civil equivalent, the lawful wife; and
- (b) in the case of any other lawful marriage-
  - (i) the lawful wife of such marriage; or
  - (ii) if there is more than one lawful wife, the lawful principal wife recognized as such by the personal law of the husband of such marriage, or if there is no lawful principal wife, the lawful wives so recognized.”

4. We have researched into the law of five common law jurisdictions which provide for statutory bereavement damages in a fixed sum, namely England and Wales and the provinces of Alberta, Manitoba, Saskatchewan and Yukon in Canada, and set out below the classes of persons entitled to statutory bereavement damages in the five jurisdictions.

### **England and Wales**

5. In England and Wales, section 1A(2) of the *Fatal Accidents Act 1976* (c.30) provides that a claim for damages for bereavement shall only be for the benefit:

- “(a) of the wife or husband or civil partner of the deceased; and
- (b) where the deceased was a minor who was never married or a

civil partner—

- (i) of his parents, if he was legitimate; and
- (ii) of his mother, if he was illegitimate.”

## Canada

6. In Canada, the jurisdictions that provide for statutory damages for bereavement in fixed amounts are Alberta, Manitoba, Saskatchewan and Yukon.

7. In **Alberta**, section 8 of the *Fatal Accidents Act* (R.S.A. 2000 c. F-8), provides that the court shall award damages for grief and loss of guidance, care and companionship of the deceased person to the following persons:

- (a) the spouse or adult interdependent partner<sup>1</sup> of the deceased person if the spouse or adult interdependent partner was not living separate and apart from the deceased person at the time of death;
- (b) the parent(s) of the deceased person; and
- (c) the child(ren) of the deceased person.

8. In **Manitoba**, section 3.1(2) of the *Fatal Accidents Act* (C.C.S.M. c F50) provides that the court shall award damages for the loss of guidance, care and companionship of the deceased to the following

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<sup>1</sup> Section 3 of the *Adult Interdependent Relationship Act* (S.A. 2002 c. A4-5) defines “adult interdependent partner” as follows:

“3(1) Subject to subsection (2), a person is the adult interdependent partner of another person if

- (a) the person has lived with the other person in a relationship of interdependence
    - (i) for a continuous period of not less than 3 years, or
    - (ii) of some permanence, if there is a child of the relationship by birth or adoption,
 or
  - (b) the person has entered into an adult interdependent partner agreement with the other person under section 7.
- (2) Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement under section 7.”

persons:

- (a) the spouse of the deceased;
- (b) the common-law partner<sup>2</sup> of the deceased;
- (c) the support recipient<sup>3</sup> of the deceased;
- (d) the parent(s) of the deceased;
- (e) the child(ren) of the deceased; and
- (f) the family member(s)<sup>4</sup> of the deceased.

9. In **Saskatchewan**, section 4.1 of the *Fatal Accidents Act* (c F-11) provides that the court shall award damages for grief and loss of guidance, care and companionship of the deceased person to the following persons:

- (a) the spouse<sup>5</sup> of the deceased person who was not living separate

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<sup>2</sup> Section 1 of the Act defines a “common-law partner” as follows

- “(a) a person who, with the deceased, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, and who was cohabiting with the deceased immediately preceding the death of the deceased, or
- (b) a person who, not being married to the deceased, cohabited with him or her in a conjugal relationship
  - (i) for a period of at least three years immediately preceding the death of the deceased, or
  - (ii) for a period of at least one year immediately preceding the death of the deceased and they are together the parents of a child.”

<sup>3</sup> Section 1 of the Act defines a “support recipient” as “a person to whom the deceased was, at the time of his or her death, required to pay support pursuant to a valid and subsisting written agreement or court order”.

<sup>4</sup> Section 3.1(1) of the Act defines “family member” as follows:

- “(a) a son or daughter of the deceased who, at the time of the death of the deceased, was 18 years of age or over,
- (b) a step-son or step-daughter of the deceased, or a person to whom the deceased stood in loco parentis,
- (c) a step-mother or step-father of the deceased, or a person who stood in loco parentis to the deceased, and
- (d) a brother, sister, grandson, granddaughter, grandfather or grandmother of the deceased.”

<sup>5</sup> Section 1(d) of the Act defines “spouse” as follows:

- “(i) the wife or husband of the deceased; or
- (ii) a person with whom the deceased cohabited as spouses:

and apart from the deceased person at the time of the deceased's death;

- (b) the parent(s) of the deceased; and
- (c) the child(ren) of the deceased.

10. In **Yukon**, under section 3.01(2) of the Fatal Accidents Act, the court shall award damages for grief and the loss of guidance, care and companionship to the following persons:

- (a) the spouse<sup>6</sup> of the deceased person who was not living separately and apart from the deceased when the deceased died;
- (b) the father and mother of the deceased; and
- (c) the daughter(s) and son(s) of the deceased.

Yours sincerely,



( Miss S K LEE )

Deputy Solicitor General (Policy Affairs) (Ag.)

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- (A) continuously for a period of not less than two years; or
  - (B) in a relationship of some permanence, if they are the parents of a child.”

<sup>6</sup> Section 1 of the Act defines “spouse” as “an individual who, when the deceased died

- (a) was married to the deceased (including in a marriage that was voidable but had not been voided by order of a court), or
- (b) cohabited with the deceased as a couple and had done so throughout the immediately preceding twelve months.”