Liability

## Law of Negligence

* **Ryan**: conduct is negligent if it creates an objectively unreasonable risk of harm
	+ plaintiff must prove all elements, defendant proves contributory negligence, volenti, waiver of liability through k
		- damage cannot be too remote

**TEST**: DOC + SOC +Breach + Causation = D is liable (**Ryan, Anns/Kamloops**)

 It is trite law that an action in negligence cannot succeed unless the plaintiff proves three key elements: duty of care, breach of the standard of care, and causation. The test for DOC is found in **Anns/Kamloops** and **Ryan**, among so many others. Finding a duty of care requires a relationship of sufficient proximity between the defendant and the plaintiff, whose harm must have been reasonably foreseeable to the defendant. Provided a DOC exists, the plaintiff must then prove the defendant exhibited conduct falling short of the reasonable standard of care. here must be conduct on the part of the defendant that falls short of a reasonable standard of care. Determining the SOC depends on the facts of the case, but will generally be what an ordinary, reasonable and prudent person in similar circumstances would have done (**Ryan**). To determine the SOC, the plaintiff will have to look to applicable statutory regulations, the criminal code, professional codes of conduct, etc. If using the code of professional conduct or industry practices, the plaintiff should be aware that it is open for the court to find these codes or practices as falling below the SOC, as was the outcome in **Ter Neuzen**. After establishing the SOC, the plaintiff will have to demonstrate that the defendant’s conduct fell below this SOC. This may require the plaintiff to enter an expert report in cases of professional negligence or medical malpractice. For MVA cases, it may be sufficient to point to the provisions of the Act and match them with the accident reports, witness statements, and black box data to show that the defendant’s driving failed to meet the requirements of the Act.

Duty of Care

* DOC either exists or it does not, but scope can be limited to certain situations and not others
* Factors from US courts (**Rowland v. Christian**)
	+ foreseeability of harm, magnitude of harm, social value of D’s activities, utility of D’s conduct, possible alternatives to D’s conduct, costs associated with alternative conduct, usefulness of alternative conduct, safety of alternative conduct
* NB: only apply the test for DOC when there is no recognized DOC in law and your argument is novel
	+ ie **Aberdeen** is authority that drivers have a general DOC to all users of the road, including cyclists

**TEST (Ryan, Anns/Kamloops**): 1. Proximity + reasonable foreseeability of harm

 ` 2. No policy reasons to negative or limit the scope of novel duty

Standard of Care + Breach

* Depends on the facts of case—relevant to consider likelihood of foreseeable harm, gravity of harm, burden/cost incurred to prevent the foreseeable harm
* Proving SOC
	+ statutory obligations (MVA: see below)
	+ industry practices, regulatory standards—professional practices are SOC, but the custom itself can fall below the SOC (**Ter Neuzen**)
	+ professional codes of conduct
	+ criminal code
* **Stewart**: all motorists have general duty to keep proper lookout and take reasonable precautions (see also **Hmaied**) etc

**TEST (Ryan, Anns/Kamloops):** what an ordinary, reasonable and prudent person in the similar circumstances would have done—locate in statute or policy or procedure

Causation

* Must be a causal link between act or omission and harm
	+ P shows on BOP causation, has to show D’s negligence was necessary to bring about injury
* **Athey**: do not have show D’s negligence was sole cause of injury just beyond de minims range
* **Hanke**: but for test is intended to ensure P will receive compensation for negligence only where a substantial connection exists between harm and negligence
	+ limits material contribution to impossible cases
* **Clements**: test for causation in Canada is but for the negligent act, the injuries would not have occurred, question of fact, onus is on plaintiff
	+ no need for scientific evidence of precise contribution, just more likely than not
	+ D can call evidence that accident would have happened notwithstanding D’s negligence (ie the accident was inevitable)
	+ material contribution is dead—>applies only to cases where it would be impossible to prove causation, ie where there are multiple tortfeasors
		- use MC when D acts negligently to expose P to risk of injury AND impossible to prove D’s negligence because there are a number of at-fault tortfeasors
* **Ediger**: affirms Clements
* **Mustapha**: causation of psychiatric injury requires assessment of what a person of ordinary fortitude would suffer in the same circumstances
	+ **Zawadzki**: alcoholism can arise from chronic pain and mood, genetic predisposition to addiction puts someone into thin skull category
* **NB: causation applies to liability as well as damages—>have to prove breach caused injuries, and have to prove injuries caused the losses being claimed**

**TEST**: But for the defendant’s negligent conduct, the plaintiff’s harm would not have occurred (**Clements**)

 The test for causation in Canada is the but for test. In satisfying this test, the plaintiff must be able to prove BOP that, but for the defendant’s negligence, the harm would not have occurred. The defendant’s negligence need not be the sole cause of the plaintiff’s harm. The plaintiff simply has to show that the defendant caused the harm beyond a de minims range (**Athey**). The but for test ensures the plaintiff will receive compensation only where a connection exists between the defendant’s tortious conduct and the injuries (**Hanke**). Causation is no longer considered on a material contribution standard, as per **Hanke**. The material contribution test is now limited to very rare cases that involve multiple tortfeasors where it would be virtually impossible for the plaintiff to prove that any of their individual acts acts caused the injury on a but for standard. The SCC in **Clements** confirmed that the material contribution test is of extremely limited application, and show only be used when multiple defendants negligently expose the plaintiff to an unreasonable risk of harm and it would be impossible to provide that an individual defendant actually caused the harm. The most recent comment on causation from the SCC, **Ediger**, confirms **Clements**.

 Causation in psychiatric injury cases is slight different than physical injury claims. The test remains but for the defendant’s negligence, the harm would not have occurred. However, the SCC has raised the threshold of remoteness. In **Mustapha**, the SCC found that even where there is causation on a but for standard of psychiatric injuries, if the injuries are beyond that which a person of ordinary fortitude would have suffered, the injuries are too remote to be compensable. If the psychiatric injuries fall within the ambit of what a persona of ordinary fortitude would have suffered—ie if the plaintiff suffers from alcoholism and addiction as a result of serious chronic pain—they may be compensated. This is a fact driven analysis, and will depend between cases.

#### Indivisible vs Divisible Injuries

* **Estable**: divisible injuries are capable of being separate out, such as injuries to different body parts or injuries to which D has not contributed (question of fact)
	+ if divisible, use **Long—**assess damages twice (day before tort and day of trial), each D is responsible only for their share of the injury, P recovers this share from each tortfeasor
	+ indivisible injuries cannot be separated (aggravation or exacerbation of earlier injury, injury to same body part, global symptoms impossible to separate)
		- use **but for** test to determine causation: so long as D’s act is a cause of the harm, fully liable for the damage
* **Athey**: separation of divisible injuries isn’t apportionment because it is making D liable for whatever they themselves have caused and nothing more
	+ injury + its consequences are indivisible—D is fully liable
	+ thin skull: vulnerable to future injuries, tortfeasor must take victim as he finds him
	+ crumbling skull: injury was going to happen regardless of D’s negligence
* **Bradley**: once injury is indivisible tortfeasors are jointly liable—P can claim full amount from any of them, they can seek contribution and indemnity from each other
	+ if injury cannot be divided, neither can liability be divided

**TEST FOR ASSESSING DIVISIBLE INJURIES (Long):** each D is responsible for their injuries they caused

**TEST FOR ASSESSING INDIVISIBLE INJURIES (Bradley):** Ds are jointly liable, P can recover full amount from any of them

 The difference between an indivisible and divisible injury is relatively straightforward, and best explained by example. Divisible injuries are capable being separated, while indivisible injuries are intertwined and incapable of being assessed separately. For example, if a plaintiff suffers a MTBI in a motor vehicle accident, then slips in a puddle of water at a restaurant and breaks her leg six months later, the MTBI and the broken leg are clearly divisible. If, however, the plaintiff suffers a soft tissue injury to her shoulder in a motor vehicle accident, and six months later gets into another accident that exacerbates her shoulder pain, these injuries would be indivisible. Assessing damages differs depending on whether the injuries are divisible or indivisible.

 Courts will use the approach from **Long v. Thiessen** if the injuries are divisible. This requires assessing the damages for each injury separately, so that each defendant is only responsible for their share, and the plaintiff can recover from each tortfeasor. If the injuries are indivisible, as they so frequently are, courts will use the approach expressed in **Bradley v. Groves**. Once the court finds the injuries are indivisible, the tortfeasors are jointly liable, which means that the plaintiff can recover the full amount of damages from any of them, unless she is contributorily negligent in which case liability is severed.

Apportionment of Liability

* **Nance**: P shares responsibility for damage suffered as a result of his own fault and other parties
	+ **Bow Valley**: D need only prove P did not in his own interest take reasonable care of himself and contributed to his own injury
* **Negligence Act ss 1, 2(c), and 4**
	+ s 1: applies where P is one of the persons who caused the loss
		- s 2(c): in s 1, P shall recover from D only proportion of the loss that corresponds to that D’s fault
	+ s 4: applies when two or more persons cause damage to P
* D must show (1) P’s error or omission, and (2) breach caused or contributed to P’s loss
* Joint and several liability
	+ P recovers entire claim from one of several Ds regardless of degree of fault between Ds
		- Ds contribute and indemnify each other to degree of their fault
		- P can recover from most solvent D, gives paying D right to pursue other Ds for their proportionate contributions
	+ available when joint or independent torts cause a single indivisible injury
	+ if P is contributorily negligent, statute severs liability and P has to seek recovery from Ds in proportion to their liability
		- ie P is 25% at fault, D1 is 50% at fault, and D2 is 25% at fault—>P can only recover 25% from D2 and 50% from D1
			* what if D1 is insolvent? too bad
* Policy reasons for joint and several liability
	+ Joint and several liability is efficient, promotes access to justice
	+ The defendants are in the best position to apportion damages amongst themselves.
	+ Once liability has been established and damages awarded, the defendants are free to litigate amongst themselves to better divide liability.
	+ It should not be the responsibility of those harmed as a result of multiple defendant to have to seek out all those responsible in order to obtain full compensation. The burden should rest on those found responsible to pursue indemnification from each other.
	+ J and S liability protects victims from being under compensated if one of the defendants cannot pay his or her share of proportionate liability.
	+ Opponents of the principle of J and S liability note that its use (instead of proportionate responsibility) has led to cases in which a party with a very minor part of the responsibility unfairly shoulders the burden of damages.

 In BC, apportionment of liability is governed by the Negligence Act. Section 1 provides that liability is to be apportioned when the plaintiff is contributorily negligent—as in, the plaintiff shares responsibility for the damages suffered as a result of her own fault and the defendant’s fault (**Nance**). To prove contrib, the defendant need only show that the plaintiff did not act in her own interest to take reasonable care of herself, and therefore contributed to her own injury (**Bow Valley**). In this situation, section 2(c) of the Negligence Act operates to restrict the plaintiff’s recovery from the defendant the proportion of the loss that corresponds to the defendant’s negligence. Put differently, if the plaintiff is found 50% contributory negligent, she can only recover 50% of her loss from the defendant. Section 4 operates when two or more persons cause the plaintiff’s damage.

 Under the concept of joint and several liability, the plaintiff can recover her entire claim from one of multiple defendants, regardless of the degrees of fault between the defendants. The defendants will contribute and indemnify each other proportional to their degree of fault. This allows the plaintiff to recover from the most solvent defendant, and allows the paying defendant the right of recovery against the other defendants for their share of the damages. Joint liability is permitted when joint or independent torts cause an indivisible injury.

 The situation becomes more complicated when the plaintiff is found to be contributorily negligent. In this situation, the statute severs liability as between all of the parties. Therefore, if the plaintiff is 25% at fault, the first defendant is 70% at fault, and the second defendant is 5% at fault, the plaintiff can only recover 70% of the damage award from the first defendant and 5% from the second. If the first defendant is impecunious or insolvent, the plaintiff is, to put it plainly, out of luck.

 There are strong policy reasons for allowing joint and several liability, not the least of which is that it promote efficiency and access to justice. As between the defendants, they are in the best position to apportioned damages amongst themselves, rather than put the burden of doing so on the injured plaintiff. It should not fall to the injured plaintiff to have to go find all of the responsible parties in order to obtain full compensation. Joint and several liability also protects injured, not at fault plaintiffs from being under-compensated if one of the defendants cannot pay his or her share of the damages. However, joint and several liability is problematic insofar as it can disadvantage a plaintiff who is found to be partially at fault for the accident. In these cases, it is possible that the plaintiff will be unable to recover their damages from an insolvent defendant. Moreover, j/s liability can be unfair for defendants, as it raises the possibility of one party with a very minor part of the responsibility having to shoulder the full burden of damages.

Nonpecuniary damages

## Justification for NPDs

* Rationale for NPDs in trilogy (**Andrews, Thornton, Teno**)
	+ **Andrews**: money is awarded because it will serve a useful function in making up what has been lost, even though what has been lost is incapable of being replaced in any direct way
	+ **Teno**: NPDs set up a fund for P to draw upon to provide some substitute for lost amenities
		- what amount can allow P to live her life tolerably in light of the loss?

 Unlike their American counterparts, courts in Canada have treated general damages for pain and suffering with great restraint. General damages are capped at roughly $359,000. The original cap of $100,000 was introduced in 1978 when the SCC issued “the trilogy” (**Andrews, Thornton, and Teno**) decisions. The cap is adjusted every year for inflation.

 Courts award compensation for nonpecuniary damages because it helps to make up what has been lost for the plaintiff—a normal lifespan. Plaintiff receive these damages even though what they have lost is essentially untenable and unquantifiable. Moreover, the loss of enjoyment of life is wholly incapable of ever being replaced by a monetary sum. As per the Court in **Teno**, the nonpecuniary damages set up a fund for the plaintiff to draw upon during her lifetime. The fund is meant to provide some substitute for lost amenities and pleasures. Nonpecuniary damages reflect the amount of money that will the plaintiff to live her life tolerably in light of the loss.

## Calculating NPDs

* **Milina**: NPDs assessed by considering the individual situation of the plaintiff and the extent to which money can provide solace, with regard to rough upper limit of $100,000 (approx $359,000)
* **Stapley**: nonexhaustive factors to consider
	+ age
	+ nature of the injury
	+ severity/duration of pain
	+ disability
	+ emotional suffering
	+ loss or impairment of life
	+ impairment of family, marital and social relationships
	+ impairment of physical and mental abilities
	+ loss of lifestyle
	+ stoicism (should not penalize the plaintiff: **Giang**)

 Calculating nonpecuniary damages is inevitably something akin to trying to hit a moving target. The courts have provided some guiding framework through the case law. In **Milina**, the court found that assessing NPDs requires considering the individual situation of the plaintiff and the extent to which money can provide solace with regard to the rough upper limit. In **Stapley**, the BCCA provided a list of non exhaustive factors used to determine the quantum of nonpecuniary damages for a particular plaintiff. These factors, taken together, represent a holistic analysis to assessing pain and suffering. In practice, courts will often look to counsel’s submissions regarding analogous cases involving plaintiffs of similar age, injuries, and dispositions.

Elderly Plaintiffs

* Golden years principle: elderly should get increased NPDs because they have worked hard their entire lives, and injury has taken away their enjoyment (**Giles, Ingvaldson, Pingitore**)
	+ any substantial impairment in the limited amount of activity and movement which a person can undertake is very serious
	+ **Etson**: injury to a geezer is more profound than a young person because geezer may already e constrained by age
* Some cases suggest the NPDs should be reduced
	+ **Olesik:** P was 88, would have limited duration of pain and suffering
	+ **Munro**: loss of amenities would not be over as long a period of time as a young person
* **Johal v. Radek**, 2016 BCSC 454: advanced age and golden years doctrine basically balance each other out

 There is a line of cases in BC that espouses the golden years principle with respect to nonpecuniary damages for elderly plaintiffs. These cases (**Giles, Ingvaldson, Pingitore** to name a few) suggest that elderly plaintiffs deserve greater compensation for pain and suffering because their “golden years” have been marred and impaired by the injuries. Any substantial impairment to the already limited amount of activity and movement that an elderly person can enjoy represents a serious insult to their enjoyment of life. Thus, the golden years principle argues that an injury to an older person is more profound than an injury to a younger person because the elderly plaintiff is already constrained by age—the injury has robbed them of what little vitality they have left (**Etson**).

 A different line of cases suggests that the nonpecuniary damages for elderly persons should be reduced because they, practically speaking, will have less time to suffer through their injuries than would a person injured in the prime of their lives (**Olesik**). The loss of amenities and enjoyment would not be over as long amount of time as a young person facing a normal lifespan (**Munro**).

 The tension between these lines of cases has recently been resolved in 2016 decision **Johal v. Radek**. In Johal, the court considered the different opinions regarding enhanced or diminished NPDs for elderly plaintiffs and found that the two tensions essentially cancel each other out. It is arguable that this “middle ground” approach sacrifices fairness for efficiency and compromise. The reality is that many elderly plaintiffs are likely retired. This fact is significant because it means these plaintiffs’ pecuniary losses (past income loss and future income loss) are likely to be minimal. If courts show restraint in awarding NPDs because plaintiffs have a full right of recovery for pecuniary damages, elderly plaintiffs should receive enhanced NPDs due to their lack of pecuniary losses. The current state of the law undercompensates elderly persons.

Athletes

* **Morrow**: aspiring athlete injured, authority for enhanced nonpecs for athletes
	+ aggravated damages awarded within general damages—awarded when D’s conduct aggravates the injury
		- different from punitive damages, which are meant to directly punish the D
		- address intangible things like grief, humiliation, wounded pride, damaged self-esteem
* **Hagreen**: even where there is no significant expression of frustration in inability to achieve goal of peak athleticism, reasonable prospect of that and consequent diminution of enjoyment in life
	+ Both decisions reflect reality that injuries to an athlete are grievous losses because they directly impact their enjoyment of life

 Awarding enhanced NPDs to athletes fully conforms with the principles of restitutio in integrum. If tort compensation is to put the plaintiff back to position they have been in but for the harmful act, an athlete’s so-called original state is far and away different from average person. The athlete-plaintiff, depending on the circumstances of the case, may have had significant career prospects. As was the case in **Morrow**, it’s very possible that a young athlete with serious career prospects would not have applied him or herself in other areas of their schooling, choosing instead to focus on their athletic form. In truth, this training is no different from a burgeoning piano prodigy focusing on their craft rather than studying for an algebra test. The point is that the original position for the athlete plaintiff, or for any plaintiff who hopes to have a career based on their acquired talents, militates for enhanced nonpecuniary damages. The pain and suffering associated with one’s career hopes and dreams being dashed is significant. Even if the plaintiff has not made a significant expression of frustration due to their inability to reach their goals of peak athleticism, the court must still consider the reasonable prospect of diminution of enjoyment in life (**Hagreen**). The decisions regarding athletes’ NPDs reflect the sad reality that an injury to an athlete are grievous losses because they directly impact the plaintiff’s enjoyment of life, arguably more so than an individual with a sedentary lifestyle.

Previously Disabled Plaintiffs

* **Bracey**: brain damage in wheelchair struck in crosswalk, which causes leg fracture and torn ligaments
	+ robbing someone of the already limited pleasures and comforts life still held for her is reason to increase her NPDS, represents a monstrous injury
* **McAllister**: MS affected P’s leg, accident injured other leg and compounded MS symptoms
	+ injuries sustained would be significant for a healthy person, even worse for an unhealthy person
* **Hesko**: aggravation and causing deterioration more quickly than normal can increase NPDs
* **Agar**: increased NPDs even where there was significant possibility condition would have deteriorated regardless of accident (had CF, accident prevented him from exercising)
	+ judge assesses damages by arriving at a global which represents nonpecuniary loss to P by considering real and substantial future possibilities, both positive and negative, that could impact the P’s quality of life

 To paraphrase from **Bracey**, to rob a disabled person who already has limited pleasures and comforts in life of what little enjoyments are left for her represents a monstrous injury. Injuring a previously disabled person will likely result in enhanced NPDs. This is because the injuries sustained, which would be significant for a healthy person, are even worse for an individual who is already disabled (**McAllister**). A judge may provide enhanced NPDs to these plaintiffs even if there was a significant possibility their health condition would have deteriorated notwithstanding the injury, as was the case in **Agar**. The judge will assess damages at a global number that represents the plaintiff’s nonpecuniary losses by considering real and substantial future contingencies, both positive and negative, that could impact the plaintiff’s quality of life.

Sexual Abuse and Defamation—uncapped damages?

* Very difficult to assess in sexual abuse cases because P has suffered physical and emotional injuries
	+ **SY**:possible consequences of abuse are immeasurable—like measuring the depth of the ocean by looking at the surface of the water
		- policy considerations regarding negligence and malpractice do not arise from intentional torts with criminal behaviour—damages are uncapped
* **Scientology**: no cap on damages for defamation because they are not like PI cases (where you can recover for every aspect of the injury)

 In theory, damages for pain and suffering in sexual abuse cases are uncapped. Thus, it is possible for a plaintiff alleging this type of harm to receive damages greater than $359,000 (the current rough upper limit of damages in Canada). Damages for pain and suffering in these cases are difficult to assess because the plaintiff has suffered both physical and emotional injuries. As the BCCA stated in **SY**, assessing the harms done to victims of sexual abuse is like trying to measure the depth of the ocean by looking at the surface of the water. Moreover, there are strong policy considerations militating in favour of uncapped damages for sexual abuse victims. First, the allegations are unlikely to be grounded in negligence. There is no such thing in law as negligent sexual assault—the Supreme Court of Canada was extremely clear about this in **Scalera**. It is difficult to imagine a set of pleadings that would contemplate negligent, as opposed to intentional, sexual assault. Thus, the insurance concerns about negligent harm and malpractice do not arise from intentional torts—which would likely be excluded under any insurance policy worth its salt—involving criminal behaviour. Similarly, the SCC in **Hill v. Church of Scientology** found that the cap does not apply to nonpecuniary damages in defamation lawsuits. This is because plaintiffs in defamation and sexual abuse cases are different from plaintiffs in conventional personal injury cases. Plaintiffs in sexual abuse and defamation cases will not be able to recover for their pecuniary damages—loss of future care, past income loss, etc—because these losses are generally not demonstrable for such plaintiffs. The SCC considered this disparity in plaintiffs a reasons why damages for defamation are uncapped. A similar reasoning likely applies for victims of sexual abuse.

 Notwithstanding the uncapped damages for sexual assault, the awards have generally tended to be well within a conventional amount. For example, in **SY**, the BCCA stated that the abuse was one of the worst cases ever litigated in this province. However, the court had no difficulty reducing the award of $350,000 for general damages to $250,000. **SY** was decided in 1996, when the cap on general damages was roughly $248,900. The plaintiff in **SY** received general damages that conformed to the cap on general damages, even though it was an egregious case, and even though the court expressly stated that the cap does not apply to sexual abuse claims. This is a troubling twist in our law that needs developing further.

## Aggravated and Punitive Damages

* Aggravated damages: same behaviour can arise from aggravated and punitive damages
	+ aggravated are compensatory, require proof of injury, likely subsumed into the nonpecs for purposes of meeting the cap
	+ compensate harm done by wrongful act aggravated by manner in which act was done
		- conduct that shocks the plaintiff
* Punitive damages: meant to punish the D and send message of deterrence, denunciation, or moral retribution—not meant to compensate P (**Fidler**)
	+ conduct that shocks the court
	+ **Whitten**: test for PDs
		- D commits independent or separate actionable wrong causing damage to P (law)
		- D’s conduct is sufficiently harsh, vindictive, reprehensible, and malicious as attract an award (fact)
	+ only awarded where combined award of general and aggravated damages are not sufficient to achieve goal of punishment and deterrence

**TEST FOR PDs (Whiten)**: 1. D commits independent or separate actionable wrong causing damage to P

 2. D’s conduct was sufficiently harsh, vindictive, reprehensible, and malicious

 3. Combined general and aggravated damages are not sufficient to achieve punishment and deterrence.

 Aggravated and punitive damages both address exceptional circumstances in addition to the quantum of general damages for pain and suffering. Aggravated damages, unlike punitive damages, are included under the nonpecuniary head of damages. They are compensatory in nature and require proof of injury. Aggravated damages are subsumed into the nonpecuniary quantum for the purpose of adhering to the cap. For example, a judge cannot award a plaintiff $300,000 for pain and suffering and $100,000 in aggravated damages—the total award of $400,000 exceeds the current cap on nonpecs, $359,000. Aggravated damages are meant to compensate for harm done by a wrongful act that aggravated the injury. They address conduct that shocks the plaintiff. The plaintiff must be able to prove actual evidence of aggravation and mental distress, but no independent actionable wrong in addition to the tortious conduct need be proven. In **Morrow**, the court awarded $35,000 in aggravated damages against the defendant doctor because his negligence aggravated the plaintiff’s injuries, causing the plaintiff extreme embarrassment and diminution of enjoyment of life.

 Punitive damages are distinct from general damages. They occupy a separate head of damage. Therefore, an award of punitive damages is not subject to the cap on general damages. Where aggravated damages compensate for conduct that shocks the plaintiff, punitive damages address conduct that shocks the court. These damages are not meant to compensate the plaintiff for her injuries. Rather, their purpose is to punish the defendant and send a message of deterrence, denunciation, and moral retribution. The test for punitive damages is found in **Whitten**. The defendant must have committed an independently actionable wrong in addition to causing harm to the plaintiff—this is a question of law. Second, the defendant’s independent conduct must have been sufficiently harsh, vindictive, reprehensible, and malicious to attract punishment from the court—this is a question of fact. It is important to note that punitive damages will only be awarded where the combination of general and aggravated damages is not sufficient to achieve the goal of deterrence, denunciation, and punishment.

Pecuniary Damages

* **Andrews**: principle of full compensation, P can recover subject to remoteness full amount of pecuniary losses
	+ puts P back into economic position they would have been in but for the negligence
	+ NPDs limited to ensure the adequacy of pecuniary compensation (**Agar**)

 Pecuniary losses refer to the plaintiff’s financial losses as a result of the injures. They include claims for past wage loss, future loss of earnings capacity, special damages, future cost of care, and loss of marriageability (among others). As per the trilogy, plaintiffs in Canada should be able to recover, subject to rules of remoteness and mitigation, full compensation for their pecuniary losses. The principle of full compensation for pecuniary losses is a response to the cap on nonpecuniary damages—judges have adhered to the cap so as to ensure the adequacy and sufficiency of pecuniary damages (**Agar**).

## Past Wage Loss

* Loss of earning capacity resulting from injuries suffered in an accident (**Rowe**)
* **Piper**: assess by looking at what P would have earned but for the injury, not could have earned
	+ damages only cover past net income loss, so deduct income tax payable from gross
	+ assessment does depend on hypothetical events on BOP, will be made out as long as it is a **real and substantial possibility and not mere speculation**
		- past actual events (ie miss one month of work): BOP
		- past hypothetical events (ie potential promotion missed because P could not apply for it after being injured): real and substantial possibility—P was promotable, promotion was due when P was injured, injuries prevented P from applying for promotion
			* court then assesses likelihood of event—if promotion was 100k, 25% chance P was going to get it, P gets 25k

**TEST (Piper)**: 1. Prove past actual events on BOP

 2. Prove past hypothetical events as real and substantial possibility

 3. Deduct income taxes applicable

 Past wage loss is a claim for loss of the value of the world the plaintiff would have performed but for the injury (**Rowe**). The BCSC established how to assess past wage loss in **Piper**. These damages are quantified by looking at what the plaintiff would have earned but for the injury, not what they COULD have earned. They only address past net income loss, meaning the income tax payable on the gross amount is deducted. The assessment does depend on proving certain hypothetical events, but will be proven so long as the plaintiff shows the loss is a real and substantial possibility and not mere speculation. There are two factual scenarios the plaintiff must prove: past actual events (ie missing one month of work) shown on BOP, and past hypothetical events (ie plaintiff missed out on a promotion because they could not apply), which are proven on a real and substantial possibility standard. The plaintiff would have to show she was promotable, that the promotion was due when she was injured, and her injuries prevented her from applying for the promotion. The court will then assess the statistical likelihood of the event, such as the promotion, occurring. For example, if the promotion would result in pay raise of 100k and there was a 25% chance the plaintiff was going to get the promotion, the plaintiff will receive 25k in past wage loss.

## Future loss of earnings

* SOP is simple probability: establish real and substantial risk of pecuniary loss, given weight relative to their likelihood of occurring (**Athey**)
* **Perren**: test for future income loss
	+ real and substantial possibility of future event leading to income loss
	+ future event will be considered as long as it is not speculation
	+ P may prove future income loss even if they have gone back to work
		- ie they will not progress in their profession as much had they not been injured
	+ inability to do another job that is not a realistic alternative is not proof of future loss
	+ loss of capacity is what the court compensates for
	+ P has to quantify the loss
		- earnings approach: used when the loss is easily measurable
			* **Fox**: P had to work part-time, which was a demotion
		- capital asset approach: used when the loss is not easily measurable
			* P rendered less capable from earning income from all types of employment
				+ less marketable or attractive to potential employers
				+ lost ability to take advantage of job opportunities
				+ less valuable to himself as a person capable of earning income
			* **Rosvold**: what is being compensated is loss of earning capacity as a capital asset—projections of past earnings are useful to consider
			* **Miller**: young person with uncertain career path, difficult to measure impact
				+ consider positive contingency of health recovery, opportunities for advance
				+ negative contingency of tanked economy, etc
				+ quantifying these damages is an assessment not a mathematical calculation
			* **Rozendall**: Court has to compare likely future of P’s working life had the accident not happened with likely future given the accident
			* **Williams v. Loverock**: inability to overtime makes P less capable of earning future income
			* **Pallos**: even though P earned more in the year since he was injured, there was evidence showing he would not be able to earn as much as his disability deteriorated
* Proving future income loss
	+ historical earnings
	+ comparative earnings from co-workers in similar positions before and after the injury
	+ opportunities for promotion
	+ opportunities for change of vocation or advancement

**TEST (Perren)**: 1. Real and substantial possibility of future income loss that is not speculative

 2. Earnings: easily quantifiable losses

 3. Capital asset: consider positive and negative contingencies, years left of their working life

 Future loss of earning capacity is arguably the most significant head of damage in a personal injury claim. The standard for proving the damages is simple probably. The plaintiff need only establish a real and substantial risk of pecuniary loss, with appropriate consideration of both the positive and negative contingencies, as per **Athey**. The BCCA set out the considerations relevant to quantifying future loss of earnings capacity in **Perren**. First, the plaintiff must demonstrate there is a real and substantial possibility of future income loss, which will be considered as long as it is not speculation. Even if the plaintiff has gone back to work, the plaintiff may still have a claim for future income loss, as was the case in **Rozendall**. The plaintiff’s inability to earn income in another line of work that is not a realistic alternative to their pre-accident employment is not proof of a future loss—what the court compensates is the loss of the earning capacity itself. Ultimately, the plaintiff must be able to quantify her losses—an arbitrary number is not acceptable as a compensable amount.

 Quantifying this loss is perhaps the most complicated part of the analysis. There are two approaches to assessing the loss—the earnings approach and the capital asset approach. The courts use the earnings approach is used when the plaintiff’s loss is easily measurable. For example, in **Fox** the plaintiff was forced to start working part-time in her same employment. The loss of earnings capacity was easily quantified. The capital asset approach is used when the plaintiff’s loss is not easily measurable, such as when the plaintiff is a young person with uncertain career prospects. Future earnings capacity for these plaintiff refers to the reality that they are less marketable and attractive to potential employers, they have lost the ability to take advantage of various job opportunities, and they are less valuable to themselves as a person capable of earning income. As per **Miller**, it is difficult to measure the impact of the injury on this type of plaintiff’s earning capacity. The court in this situation must consider the positive contingencies of health recovery and opportunities to advance alongside the negative contingencies of a poor economy and diminished career prospects outside of the plaintiff’s control. Quantifying loss of earnings capacity is not a mathematical calculation, but rather a principled assessment with due consideration of all the possible factors. Projections of past income earned can be useful to quantify these losses (**Rosvold**). Ultimately, the court considers the likely future of the plaintiff’s working life had the accident not occurred alongside her likely future given the injuries (**Rozendall**). Factors such as inability to work overtime (**Loverock**) and evidence of a deteriorating condition (**Pallos**) both go towards proving the loss of earnings capacity.

 The type of evidence adduced for these losses include the plaintiff’s historical earnings, as demonstrated in their tax returns for the past several fiscal years. The plaintiff might also tender comparative earnings from her coworkers in similar positions both before and after the injury, as well as lost opportunities for a future promotion, and any opportunities for change of vocation or advancement. An economist’s expert report will be very useful in assisting the court.

## Cost of future care

* Costs that P will have in the future related injuries
* **Milina**: restitutio in integrum is key—assess their damages as though they wouldn’t have to pay for care for the rest of their lives
	+ these damages provide for adequate future care based on **what is reasonably necessary on the medical evidence to promote mental and physical health of P**
		- test is objective based on medical evidence, what is reasonably justified to preserve P’s health in the future, not to make their lives better
			* medically justified is not as narrow as medically necessary

TEST **(Milina**): costs are justified on the medical evidence to promote the mental and physical health of the P

 Damages for the cost of future care compensate the plaintiff for the expenses they will incur as a result of their injuries. According to the decision in **Milina**, the principle of restitutio in integrum is key. Courts must assess these damages for the plaintiff so that the plaintiff is fully compensated for the expenses they would not have otherwise incurred. The test for quantifying cost of future care is compensation for adequate future care based on what is reasonably necessary on the medical evidence to promote the medical and physical health of the plaintiff. This test is objective and grounded in expert evidence. The plaintiff’s experts will opine of what types of treatment is medically justifies to preserve the plaintiff’s health in the future. Is is important to note that cost of future care is not intended to make the plaintiff’s life better, per se, but rather to allow the plaintiff to continue with the status quo created by their injuries. These damages are meant to provide treatment that preserves their health from deteriorating any further. Moreover, a medically justified treatment is a broader standard than treatment that is medically necessary.

## Special Damages

* Out-of-pocket expenses related to injury: physio, acupuncture, chiro, meds, home attendant, gym membership, dental appliances, home modifications, vocational counselling, rehab, in-trust claims
	+ expenses are also found in cost of future care
	+ test is whether the damages are reasonably related to P’s injuries
		- D can argue cost was unreasonable, not related injuries (or going to incur the cost anyway), expense was not medically justified (ie marijuana)

TEST (**Milina**): damages were reasonably related to P’s injuries

 Special damages are the plaintiff’s out-of-pocket expenses related to their injury. These expenses may include physio treatments, accupuncture, visits to the chiropractor, costs of medications, a home attendant, gym membership, dental appliances, home modifications, vocational counselling, and rehab. They may also include an in-trust claim from the family members who have had to take significant care of the plaintiff prior to trial, and have incurred expenses doing so. Many of these special damages are found in the head of damage cost of future care. The test for awarding special damages is whether the amounts are reasonably related to the plaintiff’s injuries. It is open to the defendant to argue that the expenses were unreasonable. For example, if a plaintiff with a neck injury who is unable to paint her own toenails incurs significant expenses getting a weekly pedicure at a luxury salon, the defendant is likely to succeed in arguing that this was not reasonable—the plaintiff cannot recover for her own expensive tastes and vanity.

Pre-Trial Strategy and Procedures

* Always begin by developing theme
	+ **ie Pololos**: PC’s theme was six years after the accident man’s life is completely destroyed, DC said it’s been six years he’s better and needs to move on with his life
* Interviewing client
	+ determine whether they are at fault for the accident—if yes, no claim!
	+ limitation period—2 years after the MVA, unless it is a child (then until they are 21)
	+ full defences? volenti, contributory negligence, waiver
* Investigating claim
	+ look at all correspondence with ICBC
	+ get full medical history of before and after accident, assess any preexisting injuries
	+ look into P’s social media, tax returns, employment history
* Build case
	+ liability: police reports, witness statements, independent investigation, photographs, black box data, cellphone records, location of impact
		- SOC: policies in place (ie if car accident, apply relevant MVA section)
	+ causation: expert reports re vehicle speed, etc
	+ damages
		- clinical records, collateral lay witnesses, social media, tax returns, receipts for special damages, medical expert reports

1. Have you identified and interviewed all your potential witnesses: client, opposing party,other parties?

2. Have you identified all of the elements of your case and through which witness you will

prove each fact?

3. Will you require expert evidence?

4. Have you set up examinations for discovery?

5. Have you considered the timing of examinations for discovery?

6. Can you use interrogatories by agreement or with leave?

7. Will you need to obtain affidavit evidence or depositions?

8. Will you need to subpoena any witnesses to ensure attendance?

9. If you are using expert evidence, have you complied with the Rule 11-6 timing and independence requirements?

10. Have you prepared the questions to be answered and the facts on which the expert will base his or her opinion?

11. Have you reviewed the other side’s expert report?

12. Is attendance of the other side’s expert for cross-examination at trial required, and if so have you given notice?

13. Have you obtained all documentary evidence?

13. Is there a need to request further documents from the other side under “stage two” disclosure?

14. Have you obtained all physical evidence?

## Examination for Discovery and Production of Documents

* “Document means photograph, film, sound recording—includes hard drives (depends on the circumstances of the case), metadata, and browser history
	+ LOD requires full disclosure, if disclosure is inadequate there are cost consequences
	+ scope of disclosure requires listing all documents that could be used to prove or disprove a material fact
		- can protect a document by privileging it, but have to state the grounds and have to sufficiently describe it, listed separated—>if not the court may refuse to uphold privilege
	+ obligation to disclose documents is ongoing
* XFD: ask broad questions, get a good idea of the other side’s case
	+ be mindful of the record so do not interrupt the proceedings too often

Trial

## Openings and Closings

* Do not inflame the jury—if you do, you’re probably going to get a mistrial application (**Zannatta**)
	+ in opening, do not argue and refer only to what you expect the evidence to be
	+ closing do your legal argument and link it to the facts, do not mischaracterize the evidence
* See appendix for sample opening and closing

## Experts

* Rule 11: duty is to assist the court and not be an advocate for the parties
	+ 11-6 expert reports
		- must contain name, address, expertise, qualifications, experience, instruction provided to expert, nature of opinion being sought, expert’s opinion rearguing those issues, reasons for opinion (factual assumptions, description of research, list of every document used in forming the opinion)
* Objecting to admissibility
	+ opinion that is speculation or guesswork, inferences or deductions
	+ has to state the grounds on which their opinion is based
	+ apply Mohan factors: relevance, necessity, absence of exclusionary rule, proper qualifications

Scope and Strategy of Experts

* Expert deals with a subject matter outside the understanding of a trier of fact, must have gained knowledge by course of study that secures habitual familiarity
	+ scope should be limited only to their area of expertise, otherwise they are vulnerable to attack (ie cannot have an orthopaedic surgeon commenting on psychiatric illness, or cannot have a sophisticated neonatal surgeon commenting on small town OB/GYN)

Cross Examining Experts

* Look to the following grounds to establish vulnerabilities
	+ expert is not qualified through education, knowledge, and experience
		- does not teach, conduct research, publish, does not keep up with advances in the field through continuing education and conferences
	+ expert relied on incomplete or inaccurate information provided to the expert
		- opinion based on hypothetical assumptions that are incomplete or inadequate
	+ expert is biased for the party that hired him
		- try to get them to admit to another diagnosis if there is credible evidence contrary to expert’s diagnosis—if they refuse, bias
		- did expert provide opinion based on incomplete information (ie did they reach unnecessarily for opportunities to support the party’s case? are their factual conclusions inconsistent with findings of fact for the court?)
		- economic motivation to testify—if expert receives 3/4 of their annual income from the party (ICBC) they may be biased
		- is the expert an asshole, are the argumentative or condescending? if so, they’ll look more biased
		- does the expert opine on the ultimate issue (ie credibility?)
	+ expert is wrong about the medicine/science/expertise
	+ expert used outdated or inappropriate methodology
	+ expert made prior statements, testimony, published papers, or made presentations that are inconsistent with the opinion presented at trial
	+ expert did not actually examine the plaintiff, or they examined them in an unethical manner
		- if this happens and it is your witness, have the expert explicitly specify this in their report and state their opinion is a provisional one

## Direct and Cross Examinations

* direct: your own witness, do not ask any leading questions unless it is an uncontroversial part of their testimony—open ended questions that allows the court to hear the witness’s testimony in their own words
* cross: other side’s witness, ONLY ask leading questions
	+ pin them down on inconsistencies with documentary evidence, XFD testimony
	+ do not ask a question you do not know the answer to!!

Defence Strategies

## Credibility & Reliability

* Credibility: witness is being honest, not making shit up
	+ examine testimony with probabilities—ask, does the testimony harmonize with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable
* Reliability: witness may be honest, but their testimony is not reliable for a variety of reasons
	+ ie witness has a sincere and honest belief in their story, but the story is not true; witness is a poor historian—not deliberately lying, just not remembering it right
* **Bradshaw v. Stenner**: ability/opportunity to observe events, firmness of memory, ability to resist influence to modify recollection, harmony with independent evidence, change of testimony between direct and XE, unreasonable, impossible, unlikely, motive to lie, demeanour generally
* Credibility challenges must be mounted on substantial evidence—concrete evidence that squarely contradicts their testimony is good
	+ plaintiff’s credibility can be severely damages when their evidence directly conflicts with evidence given by uninterested witness

 In many personal injury cases, particularly those that involve soft tissue injuries or injuries that rely on subjective complaints, credibility is often the lynchpin of the entire case. Defence counsel will often raise challenges to the plaintiff’s credibility and reliability. However, these concepts are distinct. A credible witness may not always be a reliable witness. The test for credibility, first expressed in **Faryna**, was succinctly discussed in the **Bradshaw** case. Assessing credibility requires the judge to consider the witness’s ability and opportunity to observe the events, their firmness of memory, the steadfastness of their recollection, harmony with independent evidence, changes in the testimony between direct and XE, whether the testimony is unreasonable, impossible, unlikely, whether the witness has a motive to lie, and their demeanour generally. A credible witness is one who, in light of the independent evidence and their live testimony, is providing honestly held evidence. A credible witness can still be an unreliable witness if they have a honestly held, but mistaken belief in the events. These witnesses are not deliberately lying, but are poor historians. Bringing a credibility challenge requires substantial evidence of dishonesty. If the plaintiff has lied to doctors, this will damage their credibility, as occurred in **Fothergill**. Concrete evidence that squarely contradicts the witness’s testimony helps damage their credibility. When the witness has given evidence that directly conflicts with evidence given by an uninterested witness, credibility falls into serious question.

## Failure to Mitigate

* **Janiak**: question of whether it is reasonable for P to refuse medical treatment is question of fact
	+ consider degree of risk from surgery, gravity of consequences, potential benefits to be derived from the surgery
		- if plaintiff follows any one of possible treatment options, they did not act unreasonably or fail to mitigate
* **Maslen**: mitigation for psychiatric injury requires D to establish that by following medical advice P could have overcome the problem or could in the future overcome it
	+ where appropriate remediation could have been accomplished, damages are only awarded up to the date the problem could have been resolved
* **Rozendall**: once P has proved liability, it is open to D to say P did not act reasonably and reasonable conduct would have reduced or eliminated the loss
	+ P’s life circumstances prevented her from funding any form of ongoing treatment or therapy (see also **Tsalamandris v. MacDonald**, pregnancy and care of small children defeated mitigation argument)

 The plaintiff has a duty to mitigate her damages. Failure to mitigate may result in a reduced damage award at trial. For example, if the plaintiff was given the opportunity to undergo an operation that would fully resolve her physical injuries, but she refuses to go through with the operation, the defendant is likely to raise a successful argument against her ongoing damages. The reasonableness of the plaintiff’s refusal is a finding of fact (**Janiak**). The judge will consider the degree of risk from the surgery/treatment, the gravity of the possible complications, and the potential benefits to be derived from the treatment. Arguments regarding mitigation are raised once the plaintiff has established liability. It then falls to the defendant to argue that the plaintiff did not act reasonably, and reasonable conduct in her circumstances would have either reduced or eliminated the loss (**Rozendall**).

## Dealing with Indivisible Injuries

1. Where the defendant has unlimited resources and such a defendant determines that a prior tortfeasor has obtained a release which contains an agreement on the plaintiff’s part not to make claim or take proceedings against a person who may claim contribution or indemnity, such a defendant should argue indivisible injury and issue third party

proceedings against the released tortfeasor compelling that tortfeasor to apply to have the plaintiff’s claim dismissed.

2. Where the situation is the same as 1, except for a BC Ferry type of agreement and amendment to the pleadings, such a defendant should argue indivisible injury and that there is no claim for the second legal injury (White).

3. Where the situation is the same and the plaintiff has obtained judgment against the other tortfeasor, the defendant should argue indivisible injury and as a jointly liable defendant judgment against one jointly liable defendant releases all (Law and Equity Act, R.S.B.C. 1996, c. 253, s. 53 and Drucker, Inc. v Gui, [2009] B.C.J. No. 808 (S.C.)).

4. Where the defendant does not have unlimited resources, there may be occasions when the defendant will join with the plaintiff in an effort to prove indivisible injury against another tortfeasor and jointly and severally liable so as to bring more resources to the table. Serious consideration must be given to whether arguing indivisible injury could

“backfire” on such a defendant.

5. Where the insured defendant has sufficient coverage such that the insurer does nothave to be concerned about arguing indivisible injury “backfiring” on the insured defendant and there is another tortfeasor with resources or insurance, the insurer may wish to argue indivisible injury to share the exposure to pay damages.

6. Where there is benefit to a defendant in seeking to deduct an earlier settlement, such a defendant may wish to argue indivisible injury (Ashcroft).

7. Assuming Moore does stand for the proposition that the crumbling skull argument is restricted to indivisible injury, where there is a significant pre-existing condition, such a defendant should argue indivisible injury.

8. Where the plaintiff is not contributory negligent in the defendant’s action, but is significantly contributory negligent in another action, the defendant may wish to argue indivisible injury and that the defendant gets the benefit of the plaintiff’s several liability under s. 1 of the Negligence Act.

Part 7 Benefits

* s 79: available to anyone injured through use or operation of vehicle, meets definition of insured in s 78
	+ s 78: person named in OC, member of household of OC, occupant of licensed vehicle, cyclist who collides with vehicle
* s 80: disability for employed
	+ employed person (Reg 7 s 80): TPD from occupation/employment for which insured is reasonably suited due to training and experience, occur w/in 20 days of accident
		- mandatory payment for less duration of disability or 2 years, lesser of 75% average gross weekly earnings in 12 mos preceding or $300/week (schedule 3 s 2(a))
		- can include someone unemployed at date of accident, but employed for 6 mos in last yr
		- ss 82, 83 WBC/EI claimed and paid first, deductible from any NFB
* s 84: disability for homemaker—within 20 days injury is sustained that substantially and continuously disabled, get benefits for period of disability or 104 weeks—not available for household tasks performed by member of insured’s family (but in-trust claim maybe?)
* s 85: insured has to be disabled for more than 7 days
* s 86(1): benefits continue beyond 104 weeks for duration of disability or until insured is 65 years old
* s 87: benefits reviewable every 12 months, requires the advice of an expert
* s 88(1) mandatory—surgical, medical, dental, ambulance—strict interpretation
* s 88(2) permissive—need prior approval (3), ICBC not liable for things covered under other plans (6), will not pay >medical college fee s 88(7), max 150k s 88(5) + Sch 3 s 3
* s 88(6): not liable for expenses payable under another insurance policy—ICBC is a secondary insurer
* homemaker: person who does majority of household duties regularly, based on reimbursement for obtaining help from non-family member
* s 90: medical advisor says if you do physic you’ll be better, client actually has to go see physic or they get cut off
	+ sometimes adjustors make recommendations and try to cut you off
* exclusions
	+ s 96: no coverage for nonresident involved in accident with vehicle not licensed in BC, no coverage for consequences of preexisting conditions, no suicide, vehicle being used for illicit trade (ie stolen vehicle is strict liability)
* death benefits
	+ s 91 funeral expenses up to $7500
	+ 92(2) lump sum based on age/ status: Sch 3 s 5 for scale
* s 99: have to go to medical professional as often as ICBC requires
* limitations: s 103 two years from latest of date of accident, date of last medical benefit receive, date of receipt by ICBC of notice of intent to claim
* s 97: notice of claim requirements
* deduction of NFB
	+ s 83(2): release claim against tortfeasor to the extent of benefits (not) received or entitled
	+ s 83(4): nondisclosure of benefits entitled/received until judgment
	+ s 83 only applies to judgments, not settlements (but are considered in practice)

Appendix A: Sample Opening

**Facts: defendant was through driver in intersection, hits driver making left turn. There is evidence the defendant was driving well over the speed limit, that he was looking at his cellphone when he entered the intersection on a yellow light.**

**1. Rule and consequence**

 Ladies and gentlemen of the jury, it is uncontroversial that if you break something you, you have to fix it. A driver on the road has to watch where he is going. If he doesn’t and hurts someone, he has to pay for the harm he causes.

**2. Story of what the defendant did**

 Let me take you back to [date of accident]. The defendant gets into his car. He drives down [road]. The intersection at [road] is a busy one. The defendant approaches the intersection and intends to drive straight through. The traffic light turns yellow. The defendant does not slow down. He speeds up. The defendant’s cellphone starts to buzz—there is a test message on his phone. He reaches down and picks up the cellphone. His eyes are off the road. In the middle of the intersection, he slams into another vehicle. Both the defendant and plaintiff, who was driving the other vehicle, were taken to the hospital for their injuries.

**3. Blame—why are we suing the defendant?**

 **a. What was the negligent act or choice to omit?**

A driver chooses not to keep his eyes on the road. He chooses not to heed a yellow light. He chooses to drive above the posted speed limit. You will hear evidence from [witness] who will tell you that she saw the defendant accelerate as he approached the intersection. You will also hear evidence from [cell phone company].. I expect he will testify that the defendant received a text message at [time], and opened this text message at [time]. You will then hear testimony from the responding officer, and I expect he will tell you that the accident happened at [time].

 **b. What was wrong with the negligent act? How does it foreseeably cause harm?**

The Motor Vehicle Acts says [x,y,z]. The statute expressly says that drivers cannot do these particular actions. If drivers do these things, they will have broken the laws of the province.

 **c. What should the defendant have done instead?**

 The defendant could have waited until he was at his destination to look kat his cellphone. He could have, at the very least, waited until he was stopped at a red light to look at his cellphone. The defendant could have driven at a slower speed, and he could have slowed down when he saw there was a yellow light.

**4. Undermine the case of the defence**

 The position of the defence will be disclosed in the Statement of Defence. I expect the defence will allege the plaintiff was speeding. However, I expect evidence from [expert] and [witness 1] and [witness 2] will show you that the plaintiff approached the intersection a normal speed, stopped, then proceeded with her left turn at a normal speed. ETC…

**5. Damages—what are the losses harms?**

The plaintiff, as I told you earlier, was taken to the hospital via ambulance after the accident. There, she was diagnosed with a concussion, a fractured shoulder, a fractured wrist, a broken jaw, broken teeth, and ringing in her ears. As a result of these injuries, the plaintiff has had to give up on her aspirations of having a professional lacrosse career. The plaintiff before the accident lived an active, very physical lifestyle. Today, her physical activity is extremely limited. She can no longer play lacrosse, either recreationally or competitively.

 The plaintiff’s injuries are ongoing. You will hear evidence from Doctor X. I expect Doctor X will set out a plan for the plaintiff’s future care to provide for the minimum level of care, comfort, and safety for the rest of her life. These represent the plaintiff’s financial losses that she has incurred from her injuries.

 There is a separate area of damages for you to consider. These damages are not easily translated into a dollar amount. They are called nonpecuniary damages, which is a technical term that refers to non-monetary losses and includes pain and suffering and loss of amenities of life. These damages represent what makes life worth living.

**6. Money—what do you want?**

 Ladies and gentlemen, what we are asking is [amounts for damages]. When you assess the damages, you must only take into account the plaintiff’s harms and losses—nothing else.

Appendix B: Sample Closing

1. State central issue of the case—ie liability, quantum, or both? Then say what you ultimately want.
2. Cover the evidence—do it party by party, and only talk about the best nuggets of evidence that go towards proving the facts you need for liability and quantum
3. Discuss the law—what is the legal basis for the complaint? DOC—>Breach—>Causation
4. Link the facts from the evidence to the law to prove your pleadings.
5. Ending: what order do you want?

Appendix C: Motor Vehicle Act Part 3

**Definitions**

119 (1) In this Part:

"boulevard" means the area between the curb lines, the lateral lines or the shoulder of a roadway and the adjacent property line;

"bus lane" means a lane of a laned roadway in respect of which prescribed signs or markings indicate that the lane is reserved for the exclusive use of buses or other prescribed motor vehicles and devices;

"business district" means the territory contiguous to a portion of a highway having a length of 200 m along which there are buildings used for business, industrial or public purposes occupying

(a) at least 100 m of frontage on one side of that portion, or

(b) at least 100 m collectively on both sides of that portion,

and includes that portion of the highway;

"combination of vehicles" means a combination of motor vehicle and trailer or motor vehicle and trailers;

"controlled access highway" means a highway designated as such under Division 3 of Part 4 of the Transportation Act;

"crosswalk" means

(a) a portion of the roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by signs or by lines or other markings on the surface, or

(b) the portion of a highway at an intersection that is included within the connection of the lateral lines of the sidewalks on the opposite sides of the highway, or within the extension of the lateral lines of the sidewalk on one side of the highway, measured from the curbs, or in the absence of curbs, from the edges of the roadway;

"cycle" means a device having any number of wheels that is propelled by human power and on which a person may ride and includes a motor assisted cycle, but does not include a skate board, roller skates or in-line roller skates;

"designated use highway" means a highway or part of a highway in respect of which a traffic control device indicates that the highway or part of a highway is reserved for the exclusive use of persons, organizations, vehicles or cycles, classes of persons, organizations, vehicles or cycles prescribed under section 209.1 or specified in a bylaw or resolution of the council of a municipality under section 124.2;

"designated use lane" means a lane of highway in respect of which a traffic control device indicates that the lane is reserved for the exclusive use of persons, organizations, vehicles or cycles or classes of persons, organizations, vehicles or cycles prescribed under section 209.1 or specified in a bylaw or resolution of the council of a municipality under section 124.2;

"driver" means a person who drives or is in actual physical control of a vehicle;

"high occupancy vehicle lane" means a lane of a laned roadway in respect of which prescribed signs or markings indicate that the lane is reserved for the exclusive use of buses, motor vehicles that meet prescribed occupancy requirements and other prescribed motor vehicles and devices;

"intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of the 2 highways that join one another at or approximately at right angles, or the area within which vehicles travelling on different highways joining at any other angle may come in conflict;

"laned roadway" means a roadway or the part of a roadway that is divided into 2 or more marked lanes for the movement of vehicular traffic in the same direction;

"official vehicle" has the meaning prescribed by regulation;

"owner", with respect to a vehicle, means

(a) the person who holds the legal title to the vehicle,

(b) a person who is a conditional purchaser, a lessee or a mortgagor, and is entitled to be and is in possession of the vehicle, or

(c) the person in whose name the vehicle is registered;

"park", when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading;

"pedestrian" means a person afoot, or an invalid or child in a wheelchair or carriage;

"residence district" means the territory continuous to a portion of a highway having a length of 100 m along which there are buildings used for residence purposes only or for residence and business purposes occupying

(a) at least 50 m of frontage on one side of that portion, or

(b) at least 50 m collectively on both sides of that portion,

and includes that portion of the highway;

"roadway" means the portion of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and if a highway includes 2 or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of them collectively;

"sidewalk" means the area between the curb lines or lateral lines of a roadway and the adjacent property lines improved for the use of pedestrians;

"stop" or "stand" means,

(a) when required, a complete cessation from movement, and

(b) when prohibited, the stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or to comply with the directions of a peace officer or traffic control device;

"through highway" means a highway or part of a highway at the entrances to which stop signs are erected under this Act;

"traffic" includes pedestrians, ridden or herded animals, vehicles, cycles and other conveyances, either singly or together, while using a highway to travel;

"traffic control device" means a sign, signal, line, meter, marking, space, barrier or device, not inconsistent with this Part, placed or erected by authority of the minister responsible for the administration of the Transportation Act, the council of a municipality or the governing body of a treaty first nation or a person authorized by any of them to exercise that authority;

"traffic control person" means any person who is a member of a class of persons designated or assigned, in accordance with the regulations or a bylaw or resolution of the council of a municipality, to direct traffic;

"traffic control signal" means a traffic control device, whether manually, electrically or mechanically operated, by which traffic is directed to stop and to proceed.

(2) For the purpose of the definition of "intersection" in subsection (1), "highway" does not include a lane or way less than 5 m in width separating the rear property lines of parcels of land fronting on highways running more or less parallel to and on each side of the lane or way.

**Application**

120 Unless the context otherwise requires,

(a) the provisions of this Part relating to pedestrians and to the operation of vehicles refer to pedestrians and to the operation of vehicles on a highway,

(b) the provisions of this Part do not apply to persons, vehicles and other equipment while actually engaged in highway or public utility, construction or maintenance work on, under or over the surface of a highway while at the site of the work, but do apply to them when travelling to or from that site, and

(c) a person riding an animal or driving an animal driven vehicle on a highway has the rights and is subject to the duties of the driver of a vehicle under this Part.

**Construction and maintenance vehicles**

121 Despite section 120 (b), the driver of a vehicle referred to in that section must drive with due regard for safety, having regard to all the circumstances, including the nature, condition and use of the highway and the amount of traffic that is, or might reasonably be expected to be, on it.

**Exemption for emergency vehicles**

122 (1) Despite anything in this Part, but subject to subsections (2) and (4), a driver of an emergency vehicle may do the following:

(a) exceed the speed limit;

(b) proceed past a red traffic control signal or stop sign without stopping;

(c) disregard rules and traffic control devices governing direction of movement or turning in specified directions;

(d) stop or stand.

(2) The driver of an emergency vehicle must not exercise the privileges granted by subsection (1) except in accordance with the regulations.

(4) The driver of an emergency vehicle exercising a privilege granted by subsection (1) must drive with due regard for safety, having regard to all the circumstances of the case, including the following:

(a) the nature, condition and use of the highway;

(b) the amount of traffic that is on, or might reasonably be expected to be on, the highway;

(c) the nature of the use being made of the emergency vehicle at the time.

**Police traffic direction**

123 If a peace officer reasonably considers it necessary to

(a) ensure orderly movement of traffic,

(b) prevent injury or damage to persons or property, or

(c) permit proper action in an emergency,

the peace officer may direct traffic according to his or her discretion, despite anything in this Part, and everyone must obey his or her directions.

**Obeying traffic controls**

125 Unless otherwise directed by a peace officer or a person authorized by a peace officer to direct traffic, every driver of a vehicle and every pedestrian must obey the instructions of an applicable traffic control device.

**Traffic control signals inoperative**

125.1 (1) The driver of a vehicle approaching an intersection that has traffic control signals that are inoperative must stop before entering the intersection.

(2) If 2 vehicles have come to a stop at an intersection described in subsection (1) from different highways at approximately the same time, the driver of a vehicle must yield the right of way to the vehicle that is on the right of the vehicle that he or she is driving, but if one of the vehicles is already entering the intersection, the driver of the other vehicle must stop and yield the right of way to the entering vehicle while it is proceeding into or across the intersection.

**Traffic control signals**

126 If traffic is controlled by traffic control signals exhibiting coloured lights or arrows, only the colours mentioned in sections 127 to 134 may be used.

**Green light**

127 (1) When a green light alone is exhibited at an intersection by a traffic control signal,

(a) the driver of a vehicle facing the green light

(i) may cause the vehicle to proceed straight through the intersection, or to turn left or right, subject to a sign or signal prohibiting a left or right turn, or both, or designating the turning movement permitted,

(ii) must yield the right of way to pedestrians lawfully in the intersection or in an adjacent crosswalk at the time the green light is exhibited, and

(iii) must yield the right of way to vehicles lawfully in the intersection at the time the green light became exhibited, and

(b) a pedestrian facing the green light may proceed across the roadway in a marked or unmarked crosswalk, subject to special pedestrian traffic control signals directing him or her otherwise, and has the right of way for that purpose over all vehicles.

(2) When a green light alone is exhibited at a place other than an intersection by a traffic control signal,

(a) the driver of a vehicle

(i) may cause the vehicle to pass the signal, and

(ii) must yield the right of way to a pedestrian still in the roadway or on a crosswalk in the vicinity of the signal when the green light is exhibited,

(b) a pedestrian still in the roadway or on a crosswalk in the vicinity of the signal when the green light is exhibited must proceed as quickly as possible from the roadway, and

(c) a pedestrian must not enter the roadway in the vicinity of the signal until either

(i) the traffic control signal facing the vehicular traffic exhibits a red light, or

(ii) a traffic control signal instructs the pedestrian that he or she may cross the roadway.

**Yellow light**

128 (1) When a yellow light alone is exhibited at an intersection by a traffic control signal, following the exhibition of a green light,

(a) the driver of a vehicle approaching the intersection and facing the yellow light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, unless the stop cannot be made in safety,

(b) a pedestrian facing the yellow light must not enter the roadway, and

(c) a pedestrian proceeding across the roadway and facing the yellow light exhibited after he or she entered the roadway

(i) must proceed to the sidewalk as quickly as possible, and

(ii) has the right of way for that purpose over all vehicles.

(2) When a yellow light alone is exhibited at a place other than an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the signal must cause it to stop before entering the nearest marked crosswalk in the vicinity of the signal, or if there is no marked crosswalk, before reaching the signal, unless the stop cannot be made in safety, and

(b) a pedestrian must not enter the roadway in the vicinity of the signal until either

(i) the traffic control signal facing the vehicular traffic exhibits a red light, or

(ii) a traffic control signal instructs the pedestrian that he or she may cross the roadway.

**Red light**

129 (1) Subject to subsection (2), when a red light alone is exhibited at an intersection by a traffic control signal, the driver of a vehicle approaching the intersection and facing the red light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, and subject to the provisions of subsection (3), must not cause the vehicle to proceed until a traffic control signal instructs the driver that he or she is permitted to do so.

(2) The driver of a bus approaching an intersection and facing a red light and a prescribed white rectangular indicator may cause the bus to proceed through the intersection.

(3) Despite subsection (1), and except when a right turn permitted by this subsection is prohibited by a sign at an intersection, the driver of a vehicle facing the red light, and which in obedience to it is stopped as closely as practicable to a marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, as closely as practicable to the intersection, may cause the vehicle to make a right turn, but the driver must yield the right of way to all pedestrians and vehicles lawfully proceeding as directed by the signal at the intersection.

(4) When a red light alone is exhibited at an intersection by a traffic control signal,

(a) a pedestrian facing the red light must not enter the roadway unless instructed that he or she may do so by a pedestrian traffic control signal,

(b) except when a left turn permitted by this paragraph is prohibited by a sign at the intersection, the driver of a vehicle facing the red light at the intersection of not more than 2 highways, and which in obedience to it is stopped as closely as practicable to a marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, as closely as practicable to the intersection, may cause the vehicle to make a left turn into a highway on which traffic is restricted to the direction in which he or she causes the vehicle to turn, but the driver must yield the right of way to all pedestrians and vehicles lawfully proceeding as directed by the signal at the intersection, and

(c) a pedestrian proceeding across the roadway and facing the red light exhibited after he or she entered the roadway

(i) must proceed to the sidewalk as quickly as possible, and

(ii) has the right of way for that purpose over all vehicles.

(5) When a red light is exhibited at a place other than an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the signal must cause it to stop before entering the nearest marked crosswalk in the vicinity of the signal, or if there is no marked crosswalk, before reaching the signal, and

(b) a pedestrian may proceed across the roadway.

**Arrows**

130 (1) When a green arrow is exhibited at an intersection by a traffic control signal,

(a) the driver of a vehicle facing the green arrow may cause it to enter the intersection and to make only the movement indicated by the green arrow, but must yield the right of way to pedestrians lawfully in the intersection or in an adjacent crosswalk and to other vehicles lawfully in the intersection, and

(b) a pedestrian facing the green arrow must not enter the roadway unless a pedestrian traffic control signal or the exhibition of a green light by a traffic control signal instructs the pedestrian that he or she is permitted to do so.

(2) When a yellow arrow is exhibited at an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the intersection and facing a yellow arrow must cause the vehicle to stop

(i) before entering the marked crosswalk on the near side of the intersection, or

(ii) before entering the intersection, if there is no marked crosswalk,

unless the stop cannot be made in safety,

(b) the driver of a motor vehicle approaching the intersection and facing the yellow arrow may, when a stop cannot be made in safety, proceed with caution to make the only movement indicated by the arrow but must yield the right of way to pedestrians lawfully in the intersection or in an adjacent crosswalk, and to other vehicles lawfully in the intersection,

(c) a pedestrian facing the yellow arrow must not enter the roadway, and

(d) a pedestrian proceeding across the roadway and facing the yellow arrow exhibited after he or she entered the roadway

(i) must proceed to the sidewalk as quickly as possible, and

(ii) has the right of way for that purpose over all vehicles.

**Flashing lights**

131 (1) When rapid intermittent flashes of red light are exhibited at an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the intersection and facing the flashes of red light must cause the vehicle to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk then before entering the intersection, and must not cause the vehicle to proceed until it is safe to do so, and

(b) a pedestrian facing the flashes of red light may proceed with caution across the roadway, in a marked or unmarked crosswalk.

(2) When rapid intermittent flashes of red light are exhibited at a place other than an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the signal

(i) must cause it to stop before entering the nearest marked crosswalk in the vicinity of the signal, or if there is no marked crosswalk then before reaching the signal, and

(ii) may, after having caused the vehicle to stop, cause it to pass the signal and any crosswalk only if conditions of pedestrian traffic in the roadway or any crosswalk in the vicinity of the signal permit it to do so with safety, and

(b) a pedestrian may proceed across the roadway.

(3) When rapid intermittent flashes of yellow light are exhibited at an intersection by a traffic control signal,

(a) the driver of a vehicle facing the flashes of yellow light may cause it to enter the intersection and proceed only with caution, but must yield the right of way to pedestrians lawfully in the intersection or an adjacent crosswalk, and

(b) a pedestrian facing the flashes of yellow light may proceed with caution across the roadway, in a marked or unmarked crosswalk.

(4) When rapid intermittent flashes of yellow light are exhibited at a place other than an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the signal may cause the vehicle to pass the signal only with caution, and must yield the right of way to pedestrians in the roadway or on any crosswalk in the vicinity of the signal, and

(b) a pedestrian may proceed across the roadway with caution.

(5) When rapid intermittent flashes of green light are exhibited at an intersection or at a place other than an intersection by a traffic control signal,

(a) the driver of a vehicle approaching the intersection or signal and facing the signal must cause it to approach the intersection or signal in such a manner that he or she is able to cause the vehicle to stop before reaching the signal or any crosswalk in the vicinity of the signal if a stop should become necessary, and must yield the right of way to pedestrians lawfully in a crosswalk in the vicinity of the signal or in the intersection, and

(b) a pedestrian may proceed across the roadway with caution and at an intersection only in a marked or unmarked crosswalk.

**Pedestrian controls**

132 (1) When the word "walk" or an outline of a walking person is exhibited at an intersection by a pedestrian traffic control signal, a pedestrian may proceed across the roadway in the direction of the signal in a marked or unmarked crosswalk and has the right of way over all vehicles in the intersection or any adjacent crosswalk.

(2) When the word "walk" or an outline of a walking person is exhibited at a place other than an intersection by a pedestrian traffic control signal, a pedestrian may proceed across the roadway in the direction of the signal and has the right of way over all vehicles.

(3) When the word "wait", the words "don't walk" or an outline of a raised hand are exhibited at an intersection or at a place other than an intersection by a pedestrian traffic control signal,

(a) a pedestrian must not enter the roadway, and

(b) a pedestrian proceeding across the roadway and facing the word "wait", the words "don't walk", or an outline of a raised hand exhibited after he or she entered the roadway

(i) must proceed to the sidewalk as quickly as possible, and

(ii) has the right of way for that purpose over all vehicles.

**Pedestrian controlled signal**

133 Where a pedestrian is instructed or permitted by a traffic control signal to enter or to proceed across a roadway, he or she must do so

(a) at an intersection, only in a marked or unmarked crosswalk, and

(b) at a place other than an intersection, in the vicinity of which there is a marked crosswalk, only in the crosswalk.

**Lane direction control signals**

134 Where lane direction control signals are placed over individual lanes of a highway, vehicular traffic may travel in a lane over which a green signal is shown, but must not enter or travel on a lane over which a red signal is shown.

Obstruction of signal prohibited

135 (1) A person must not erect or maintain on or in view of a highway a device that purports to be, resembles or interferes with the effectiveness of a traffic control device, unless the person is authorized to do so by

(a) the minister responsible for the administration of the Transportation Act,

(b)the council of the municipality in which the device is placed, erected or maintained,

(c) the governing body of the treaty first nation in whose treaty lands the device is placed, erected or maintained, or

(d) a person duly authorized by a person or body referred to in paragraphs (a) to (c).

(2) A person, other than the minister responsible for the administration of the Transportation Act the council of a municipality, the governing body of a treaty first nation or a person authorized by any of them, must not place, erect or cause to be placed or erected a traffic control device on a highway.

(3) A person must not permit or allow the erection or maintenance of a light, lighting fixture or object reflecting light that, because of the emission or reflection of light, may affect the visibility of the highway or anything on it to the driver of a vehicle.

Prohibition against obstruction of traffic light safety devices

135.1 A person commits an offence who, without lawful excuse, intentionally obstructs or otherwise interferes with the operation of a traffic light safety device, as defined in section 83.1 (1).

**Altering signal**

137 Except with lawful authority, a person must not alter, injure or remove, or attempt to alter, injure or remove a traffic control device or any part of it.

**Work in progress**

138 On a highway where new construction, reconstruction, widening, repair, marking or other work is being carried out, traffic control devices must be erected indicating that persons or equipment are working on the highway.

**Erection of speed sign**

139 On a highway where new construction, reconstruction, widening, repair, marking or other work is being carried out, traffic control devices must be erected to limit the rate of speed of vehicles or to restrict the manner in which the vehicles are to proceed on the highway.

**Obedience to speed signs**

140 Where traffic control devices as indicated in section 138 or 139 are erected or placed on the highway, a person must not drive or operate a vehicle at a greater rate of speed than, or in a manner different from, that indicated on the signs.

**Obeying flagger**

141 If a flagger is controlling the movements of traffic around the section of highway being worked on, a person must not drive or operate a vehicle other than as directed by the flagger.

**Obeying traffic control person**

141.1 (1) In this section, "authorization" means an authorization that is prescribed or authorized by a regulation under section 209.1 or a resolution or bylaw of the council of a municipality under section 124.2.

(2) If a traffic control person is controlling the movements of traffic on a highway, a person must obey the directions of the traffic control person.

(3) If a highway or lane has been designated as a designated use highway or designated use lane, as the case may be, the driver of a vehicle must, on the request of a traffic control person or peace officer, produce to the traffic control person or peace officer an authorization, and allow the authorization to be taken in hand and inspected by the traffic control person or peace officer.

(4) If a driver or person in charge of a motor vehicle does not produce an authorization to use the designated use highway or designated use lane on the request of a traffic control person or peace officer under subsection (3), the traffic control person or peace officer may direct the driver or person in charge of the motor vehicle to remove the motor vehicle from that highway or lane immediately.

**Removal of temporary sign**

142 A person must not leave temporary traffic control devices in place on a highway after the reason for them being there no longer exists.

**Newly painted lines**

143 A person must not drive on or over a newly painted line or marking on a highway when the line is indicated by a traffic control device.

**Careless driving prohibited**

144 (1) A person must not drive a motor vehicle on a highway

(a) without due care and attention,

(b) without reasonable consideration for other persons using the highway, or

(c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

(2) A person who contravenes subsection (1) (a) or (b) is liable on conviction to a fine of not less than $100 and, subject to this minimum fine, section 4 of the Offence Act applies.

**Slow driving**

145 (1) A person must not drive a motor vehicle at so slow a speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.

(2) If the driver of a motor vehicle is driving at so slow a speed as to impede or block the normal and reasonable movement of traffic, a peace officer may require the driver to increase his or her speed, or to remove the motor vehicle from the roadway to the nearest suitable place and to refrain from causing or allowing the motor vehicle to move from that place until directed to do so by a peace officer.

**Speed limits**

146 (1) Subject to this section, a person must not drive or operate a motor vehicle on a highway in a municipality or treaty lands at a greater rate of speed than 50 km/h, and a person must not drive or operate a motor vehicle on a highway outside a municipality at a greater rate of speed than 80 km/h.

(2) The minister responsible for the administration of the Transportation Act may, by causing a sign to be erected or placed on a highway limiting the rate of speed of motor vehicles or a category of motor vehicles driven or operated on that portion of the highway, increase or decrease the rate of speed at which a person may drive or operate a motor vehicle or a category of motor vehicle on that portion of the highway.

(3) If the minister responsible for the administration of the Transportation Act has caused a sign to be erected or placed on a highway limiting the rate of speed of motor vehicles or a category of motor vehicles driven or operated on that portion of the highway, a person must not, when the sign is in place on the highway, drive or operate a vehicle on that portion of the highway at a greater rate of speed than that indicated on the sign for that category of motor vehicle.

(4) The minister responsible for the administration of the Transportation Act may, by notice in the Gazette, define areas in the unorganized area of British Columbia, and may by causing signs to be erected at the entrance to an area so defined direct the rate of speed at which a person may drive or operate a motor vehicle or a category of motor vehicle in that area, but the rate of speed must not be greater than 60 km/h.

(5) If the minister responsible for the administration of the Transportation Act has caused signs to be erected or placed on a highway in accordance with subsection (4), a person must not, when the sign is in place on the highway, drive or operate a vehicle on a highway at a greater rate of speed than that indicated on the sign for that category of motor vehicle, unless another sign on a specific highway in the defined area so indicates.

(6) Subject to subsections (2) and (3), a municipality may by bylaw direct the rate of speed at which a person may drive or operate a motor vehicle on a highway in the municipality.

(7) If, under a bylaw adopted by a municipality or a law enacted by a treaty first nation, signs have been erected or placed on a highway limiting the rate of speed of motor vehicles driven or operated on a designated portion of the highway, a person must not, when the sign is in place on the highway, drive or operate a motor vehicle on that portion of the highway at a greater rate of speed than that indicated on the sign.

(8) A municipality may by bylaw direct that the rate of speed at which a person may drive or operate a motor vehicle in the municipality on a lane not exceeding 8 m in width must not be in excess of 20 km/h.

(9) Despite section 260 (3) [enforcement powers] of the Community Charter, a person who contravenes a bylaw made under subsection (6) or (8) does not commit an offence against the bylaw.

(10) A municipality that has enacted a bylaw under subsection (8) and a treaty first nation that has enacted a law having the same effect are not required to erect signs designating the rate of speed at which motor vehicles may be driven or operated.

(11) A person must not drive or operate a motor vehicle on a lane in a municipality that has enacted a bylaw under subsection (8) or in the treaty lands of a treaty first nation that has enacted a law having the same effect at a greater rate of speed than 20 km/h.

**Schools and playgrounds**

147 (1) A person driving a vehicle on a regular school day and on a highway where signs are displayed stating a speed limit of 30 km/h, or on which the numerals "30" are prominently shown, must drive at a rate of speed not exceeding 30 km/h while approaching or passing the school building and school grounds to which the signs relate, between 8 a.m. and 5 p.m., or subject to subsection (1.1), between any extended times that are stated on the signs.

(1.1) Extended times under subsection (1) may not begin later than 8 a.m. or end earlier than 5 p.m.

(2) A person driving a vehicle on a highway must drive the vehicle at a rate of speed not exceeding 30 km/h when approaching or passing, between dawn and dusk, a public playground for children where signs are displayed stating a speed limit of 30 km/h, or on which the numerals "30" are prominently shown.

**Excessive speeding**

148 (1) A person who drives a motor vehicle on a highway at a speed greater than 40 km/h over the applicable speed limit set under the authority of an enactment commits an offence and is liable on conviction to not less than the aggregate of the fine amount and the applicable supplemental fine amount, if any, prescribed under section 148.1 for this offence and, subject to those amounts, section 4 of the Offence Act applies.

(2) If a person is charged with an offence under subsection (1) and the evidence does not prove the offence but does prove a contravention of section 140, 146 or 147, the person may be convicted of contravening section 140, 146 or 147, as the case may be, and the person is liable on that conviction to not less than the aggregate of the fine amount and the applicable supplemental fine amount, if any, prescribed under section 148.1 for that offence.

**Meeting school bus**

149 The driver of a vehicle on a highway, on meeting or overtaking a school bus

(a) that is designated as a school bus,

(b) that is stopped on a highway, and

(c) on or near which a sign or signal is displayed indicating the school bus is receiving or discharging school children,

must stop the vehicle before reaching the bus and not proceed until the bus resumes motion or the driver of the bus signals to other drivers that it is safe to proceed.

**Driver on right**

150 (1) The driver of a vehicle must confine the course of the vehicle to the right hand half of the roadway if the roadway is of sufficient width and it is practicable to do so, except

(a) when overtaking and passing a vehicle proceeding in the same direction,

(b) when the right hand half of the roadway is closed to traffic while under construction or repair,

(c) on a highway designated and marked by signs for one way traffic,

(d) if necessary when operating snow removing equipment, or

(e) if

(i) the movement of a vehicle, or combination of vehicles, is permitted by and is done in conformity with the terms of the oversize permit issued under the Commercial Transport Act, and

(ii) the width of a vehicle, or combination of vehicles, or the width of a load on the vehicle makes the operation of the vehicle or combination of vehicles on the right hand half of the roadway unsafe.

(2) The driver of a vehicle proceeding at less than normal speed of traffic at the time and place and under existing conditions must drive the vehicle in the right hand lane available for traffic, or as closely as practicable to the right hand curb or edge of the roadway, except when

(a) overtaking and passing another vehicle,

(b) preparing for a left hand turn at an intersection or into an exit, a private road or a driveway, or

(c) passing an official vehicle stopped on the side of or on the roadway.

(3) The driver of a vehicle passing around a rotary traffic island must drive the vehicle to the right of the island.

**Driving on laned roadway**

151 A driver who is driving a vehicle on a laned roadway

(a) must not drive it from one lane to another when a broken line only exists between the lanes, unless the driver has ascertained that movement can be made with safety and will in no way affect the travel of another vehicle,

(b) must not drive it from one lane to another if that action necessitates crossing a solid line,

(c) must not drive it from one lane to another without first signalling his or her intention to do so by hand and arm or approved mechanical device in the manner prescribed by sections 171 and 172,

(d) when approaching an intersection intending to turn left must drive the vehicle in the centre lane or in the lane nearest the centre of the roadway on the right hand half of the highway,

(e) when approaching an intersection intending to turn right must drive the vehicle in the lane nearest to the right hand side of the roadway,

(f) must not pass a vehicle on the left if that action necessitates driving on that part of the highway designated for travel in the opposite direction, and

(g) if a traffic control device directs slow moving traffic to use a designated lane, must when driving slowly drive the vehicle in that lane only.

**When drivers must not use leftmost lane**

151.1 (1) In this section, "leftmost lane", in relation to a laned roadway to which this section applies, means the lane that is furthest to the left of the marked lanes available for traffic proceeding in the same direction, other than

(a) a bus lane,

(b) a high occupancy vehicle lane, or

(c) a designated use lane.

(2) This section applies to a laned roadway if

(a) there are 2 or more marked lanes available for traffic proceeding in the same direction, other than a bus lane, a high occupancy vehicle lane or a designated use lane,

(b) the speed limit is at least 80 km/h, and

(c) the actual speed of traffic is at least 50 km/h.

(3) A driver of a vehicle in the leftmost lane must exit the lane on the approach of another vehicle in that lane, if it is safe to do so, except when

(a) overtaking and passing a third vehicle,

(b) allowing traffic to merge,

(c) preparing for a left hand turn at an intersection or into an exit, a private road or a driveway, or

(d) passing an official vehicle stopped on the side of or on the roadway.

**High occupancy vehicle lane**

152 If a laned roadway has a high occupancy vehicle lane, a person must not drive a motor vehicle or other device in that lane unless permitted by the regulations.

**Bus lane**

153 If a laned roadway has a bus lane, a person must not drive a motor vehicle or other device in that lane unless permitted by the regulations.

**Designated use highway**

153.1 If a highway or part of a highway is a designated use highway, a person must not drive, operate, stand or park a motor vehicle on that highway or part of a highway except as authorized by a regulation under section 209.1 or a bylaw or resolution of the council of a municipality under section 124.2.

**Designated use lane**

153.2 If a highway has a designated use lane, a person must not drive, operate, stand or park a motor vehicle in that lane except as authorized by a regulation under section 209.1 or a bylaw or resolution of the council of a municipality under section 124.2.

**Passing when meeting vehicle**

154 (1) The driver of a vehicle must drive the vehicle on the right hand side of the roadway when meeting another vehicle that is moving.

(2) The driver of a vehicle on a highway that has a width for only one line of traffic in each direction must, when meeting another vehicle that is moving, drive the vehicle so that the other vehicle is able to travel in at least 1/2 of the main travelled portion of the highway as nearly as possible.

**Suspension of sections 151 and 155**

156 If the driver of a vehicle is causing the vehicle to enter or leave a highway and the driver has ascertained that he or she might do so with safety and does so without unreasonably affecting the travel of another vehicle, the provisions of sections 151 and 155 are suspended with respect to the driver while the vehicle is entering or leaving the highway.

**Duty when overtaking**

157 (1) Except as provided in section 158, the driver of a vehicle overtaking another vehicle

(a) must cause the vehicle to pass to the left of the other vehicle at a safe distance, and

(b) must not cause or permit the vehicle to return to the right side of the highway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, a driver of an overtaken vehicle,

(a) on hearing an audible signal given by the driver of the overtaking vehicle, must cause the vehicle to give way to the right in favour of the overtaking vehicle, and

(b) must not increase the speed of the vehicle until completely passed by the overtaking vehicle.

**Passing on right**

158 (1) The driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle, except

(a) when the vehicle overtaken is making a left turn or its driver has signalled his or her intention to make a left turn,

(b) when on a laned roadway there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive, or

(c) on a one way street or a highway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and is of sufficient width for 2 or more lanes of moving vehicles.

(2) Despite subsection (1), a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right

(a) when the movement cannot be made safely, or

(b) by driving the vehicle off the roadway.

**Passing on left**

159 A driver of a vehicle must not drive to the left side of the roadway in overtaking and passing another vehicle unless the driver can do so in safety.

**Clear view on passing**

160 A driver of a vehicle must not drive to or on the left side of the roadway, other than on a one way highway, unless the driver has a clear view of the roadway for a safe distance, having regard for all the circumstances.

**Obedience to traffic control devices**

161 Despite anything in this Act, if on or over a highway there is

(a) one or more traffic control devices indicating the direction vehicles must proceed, a person must not drive a vehicle other than in the direction indicated,

(b) a traffic control device indicating that a certain vehicle movement is prohibited, a person must not drive a vehicle in a movement prohibited by the sign,

(c) one or more traffic control devices indicating that use, access or egress is regulated or restricted on the designated use highway, a person must not drive or operate a vehicle on the designated use highway except as authorized by a regulation under section 209.1 or a bylaw or resolution of the council of a municipality under section 124.2, and

(d) one or more traffic control devices indicating that the use, access or egress is prohibited on the designated use highway, a person must not drive or operate a vehicle on the designated use highway in a manner prohibited by the traffic control device except as authorized by a regulation under section 209.1 or a bylaw or resolution of the council of a municipality under section 124.2.

**Following too closely**

162 (1) A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

(2) The driver of a commercial motor vehicle or a combination of vehicles, when driving on a roadway outside a business or residence district, must not follow within 60 m of another commercial motor vehicle or a combination of vehicles, but this must not be construed to prevent one commercial motor vehicle or a combination of vehicles overtaking and passing another.

(3) The driver of a motor vehicle in a caravan or motorcade, other than a funeral procession, outside a business or residence district, must leave sufficient space between his or her vehicle and another vehicle or combination of vehicles to enable a vehicle to enter and occupy that space without danger.

**Entering controlled access highway**

164 (1) If on a controlled access highway there is a sign indicating a location at which vehicles are permitted to enter, a person must not drive a vehicle on to the highway except at that location.

(2) If on a controlled access highway there is a sign indicating a location at which vehicles are permitted to leave, a person must not drive a vehicle from the highway except at that location.

**Turning at intersections**

165 (1) If the driver of a vehicle intends to turn it to the right at an intersection, the driver must cause it to approach the intersection and then make the turn as close as practicable to the right hand curb or edge of the roadway.

(2) When the driver of a vehicle intends to turn it to the left at an intersection where traffic is permitted to move in both directions on each highway entering the intersection, the driver must

(a) cause the vehicle to approach the intersection in the portion of the right side of the roadway that is nearest the marked centre line, or if there is no marked centre line, then as far as practicable in the portion of the right half of the roadway that is nearest the centre line,

(b) keep the vehicle to the right of the marked centre line or centre line of the roadway, as the case may be, at the place the highway enters the intersection,

(c) after entering the intersection, turn the vehicle to the left so that it leaves the intersection to the right of the marked centre line of the roadway being entered, or if there is no marked centre line then to the right of the centre line of the roadway being entered, and,

(d) when practicable, turn the vehicle in the portion of the intersection to the left of the centre of the intersection.

(3) When the driver of a vehicle intends to turn the vehicle left at an intersection where traffic is restricted to one direction on one or more of the highways, the driver must cause the vehicle to approach the intersection in the extreme left hand lane available to traffic moving in the direction of travel of the vehicle, and after entering the intersection turn the vehicle to the left so as to leave the intersection as nearly as practicable in the left hand lane available to traffic moving in the direction of travel of the vehicle on the highway being entered.

(4) If at an intersection there is a traffic control device indicating the course to be travelled by vehicles turning at the intersection, a driver must turn a vehicle at the intersection in the manner directed by the traffic control device.

(5) A person must not turn a vehicle at an intersection unless it is in the position on the highway required by this section.

**Turning left other than at intersection**

166 A driver of a vehicle must not turn the vehicle to the left from a highway at a place other than an intersection unless

(a) the driver causes the vehicle to approach the place on the portion of the right hand side of the roadway that is nearest the marked centre line, or if there is no marked centre line, then as far as practicable in the portion of the right half of the roadway that is nearest the centre line,

(b) the vehicle is in the position on the highway required by paragraph (a), and

(c) the driver has ascertained that the movement can be made in safety, having regard to the nature, condition and use of the highway and the traffic that actually is at the time or might reasonably be expected to be on the highway.

**Turning right other than at intersection**

167 A driver of a vehicle must not turn the vehicle to the right from a highway at a place other than an intersection unless

(a) the driver causes the vehicle to approach the place as closely as practicable to the right hand curb or edge of the roadway, and

(b) the vehicle is in the position on the highway required by paragraph (a).

**Reverse turn**

168 Except as provided by the bylaws of a municipality or the laws of a treaty first nation, a driver must not turn a vehicle so as to proceed in the opposite direction

(a) unless the driver can do so without interfering with other traffic, or,

(b) when he or she is driving

(i) on a curve,

(ii) on an approach to or near the crest of a grade where the vehicle cannot be seen by the driver of another vehicle approaching from either direction within 150 m,

(iii) at a place where a sign prohibits making a U-turn,

(iv) at an intersection where a traffic control signal has been erected, or

(v) in a business district, except at an intersection where no traffic control signal has been erected.

**Starting vehicle**

169 A person must not move a vehicle that is stopped, standing or parked unless the movement can be made with reasonable safety and he or she first gives the appropriate signal under section 171 or 172.

**Yielding to bus**

169.1 (1) Subject to subsection (2), the driver of a vehicle on a highway, on overtaking a bus that is stopped, standing or parked, must yield the right of way to the bus if

(a) the bus displays a sign or other signal device requiring the driver of the vehicle to yield to the bus, and

(b) the bus driver has signalled an intention to move into the travelled portion of the highway.

(2) Subsection (1) applies if, at the point on the highway where the driver overtakes the bus, the applicable speed limit is not more than 60 km/h.

(3) Despite subsection (1), a bus driver must not move a bus into the travelled portion of the highway unless it is safe to do so.

(4) A sign or signal device referred to in subsection (1) (a) must not be displayed on any vehicle other than a bus that is

(a) operated by or on behalf of

(i) British Columbia Transit under the British Columbia Transit Act, or

(ii) the South Coast British Columbia Transportation Authority under the South Coast British Columbia Transportation Authority Act, or

(b) operated by or on behalf of a person, municipality or treaty first nation as part of an independent transit service approved by the South Coast British Columbia Transportation Authority under section 5 of the South Coast British Columbia Transportation Authority Act.

**Signals on turning**

170 (1) If traffic may be affected by turning a vehicle, a person must not turn it without giving the appropriate signal under sections 171 and 172.

(2) If a signal of intention to turn right or left is required, a driver must give it continuously for sufficient distance before making the turn to warn traffic.

(3) If there is an opportunity to give a signal, a driver must not stop or suddenly decrease the speed of a vehicle without first giving the appropriate signal under sections 171 and 172.

**Means of signalling**

171 (1) Subject to subsection (2), if a signal is required a driver must give it by means of

(a) his or her hand and arm,

(b) a signal lamp of a type approved by the director, or

(c) a mechanical device of a type approved by the director.

(2) When a vehicle is constructed or loaded in a manner that makes a signal by hand and arm not visible both to its front and rear, or a body or load extends more than 60 cm to the left of the centre of the steering wheel, a driver must give signals as provided by subsection (1) (b) or (c), and a person must not drive the motor vehicle on a highway unless it is so equipped.

**Left hand drive signals**

172 (1) When a driver of a left hand drive vehicle gives a signal by hand and arm, the driver must do so from the left side, and must signify

(a) a left turn by extending his or her left hand and arm horizontally from the vehicle,

(b) a right turn by extending his or her left hand and arm out and upward from the vehicle, and

(c) a stop or decrease in speed by extending his or her left hand and arm out and downward from the vehicle.

(2) A person must not drive a right hand drive vehicle on a highway unless it is equipped with a mechanical or electrical signalling device approved by the Lieutenant Governor in Council.

**Yield signs**

173 (1) Except as provided in section 175, if 2 vehicles approach or enter an intersection from different highways at approximately the same time and there are no yield signs, the driver of a vehicle must yield the right of way to the vehicle that is on the right of the vehicle that he or she is driving.

(2) Except as provided in section 175, if 2 vehicles approach or enter an intersection from different highways at approximately the same time and there is a yield sign, the driver of a vehicle facing the sign must yield the right of way to all other traffic.

**Yielding right of way on left turn**

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

**Entering through highway**

175 (1) If a vehicle that is about to enter a through highway has stopped in compliance with section 186,

(a) the driver of the vehicle must yield the right of way to traffic that has entered the intersection on the through highway or is approaching so closely on it that it constitutes an immediate hazard, and

(b) having yielded, the driver may proceed with caution.

(2) If a vehicle is entering a through highway in compliance with subsection (1), traffic approaching the intersection on the highway must yield the right of way to the entering vehicle while it is proceeding into or across the highway.

**Emerging from alleys**

176 (1) The driver of a vehicle in a business or residence district and emerging from an alley, driveway, building or private road must stop the vehicle immediately before driving onto the sidewalk or the sidewalk area extending across an alleyway or private driveway, and must yield the right of way to a pedestrian on the sidewalk or sidewalk area.

(2) The driver of a vehicle about to enter or cross a highway from an alley, lane, driveway, building or private road must yield the right of way to traffic approaching on the highway so closely that it constitutes an immediate hazard.

**Approach of emergency vehicle**

177 On the immediate approach of an emergency vehicle giving an audible signal by a bell, siren or exhaust whistle, and showing a visible flashing red light, except when otherwise directed by a peace officer, a driver must yield the right of way, and immediately drive to a position parallel to and as close as possible to the nearest edge or curb of the roadway, clear of an intersection, and stop and remain in that position until the emergency vehicle has passed.

**Rights of way between vehicle and pedestrian**

179 (1) Subject to section 180, the driver of a vehicle must yield the right of way to a pedestrian where traffic control signals are not in place or not in operation when the pedestrian is crossing the highway in a crosswalk and the pedestrian is on the half of the highway on which the vehicle is travelling, or is approaching so closely from the other half of the highway that he or she is in danger.

(2) A pedestrian must not leave a curb or other place of safety and walk or run into the path of a vehicle that is so close it is impracticable for the driver to yield the right of way.

(3) If a vehicle is slowing down or stopped at a crosswalk or at an intersection to permit a pedestrian to cross the highway, the driver of a vehicle approaching from the rear must not overtake and pass the vehicle that is slowing down or stopped.

(4) A pedestrian, cyclist or the driver of a motor vehicle must obey the instructions of an adult school crossing guard and of a school student acting as a member of a traffic patrol where the guards or students are

(a) provided under the School Act,

(b) authorized by the chief of police of the municipality as defined in section 36 (1), or

(c) if located on treaty lands, authorized by the chief of the police force responsible for policing the treaty lands.

**Crossing at other than crosswalk**

180 When a pedestrian is crossing a highway at a point not in a crosswalk, the pedestrian must yield the right of way to a vehicle.

**Duty of driver**

181 Despite sections 178, 179 and 180, a driver of a vehicle must

(a) exercise due care to avoid colliding with a pedestrian who is on the highway,

(b) give warning by sounding the horn of the vehicle when necessary, and

(c) observe proper precaution on observing a child or apparently confused or incapacitated person on the highway.

**Pedestrian walking along highway**

182 (1) If there is a sidewalk that is reasonably passable on either or both sides of a highway, a pedestrian must not walk on a roadway.

(2) If there is no sidewalk, a pedestrian walking along or on a highway must walk only on the extreme left side of the roadway or the shoulder of the highway, facing traffic approaching from the opposite direction.

(3) A person must not be on a roadway to solicit a ride, employment or business from an occupant of a vehicle.

(4) Except for a person who solicits a ride in an emergency situation, a person who contravenes this section commits an offence.

**Motor assisted cycles**

182.1 (1) A person who is under the age of 16 years commits an offence if that person operates a motor assisted cycle on a highway.

(2) A parent or guardian of a person under the age of 16 years commits an offence if the parent or guardian authorizes or knowingly permits the person to operate a motor assisted cycle on a highway.

(3) The Insurance Corporation of British Columbia may make regulations respecting motor assisted cycles including, without limitation, regulations prescribing

(a) the criteria that must be met by a device in order for it to qualify as a motor assisted cycle for the purposes of this Act,

(b) the requirements that must be met in relation to operators of, and equipment attached to, motor assisted cycles, and

(c) restrictions on what may be attached to or carried on a motor assisted cycle.

**Rights and duties of operator of cycle**

183 (1) In addition to the duties imposed by this section, a person operating a cycle on a highway has the same rights and duties as a driver of a vehicle.

(2) A person operating a cycle

(a) must not ride on a sidewalk unless authorized by a bylaw made under section 124 or unless otherwise directed by a sign,

(b) must not, for the purpose of crossing a highway, ride on a crosswalk unless authorized to do so by a bylaw made under section 124 or unless otherwise directed by a sign,

(c) must, subject to paragraph (a), ride as near as practicable to the right side of the highway,

(d) must not ride abreast of another person operating a cycle on the roadway,

(e) must keep at least one hand on the handlebars,

(f) must not ride other than on or astride a regular seat of the cycle,

(g) must not use the cycle to carry more persons at one time than the number for which it is designed and equipped, and

(h) must not ride a cycle on a highway where signs prohibit their use.

(3) Nothing in subsection (2) (c) requires a person to ride a cycle on any part of a highway that is not paved.

(4) Despite section 165, a person operating a cycle who intends to turn it to the left at an intersection where there is more than one lane from which left turns are permitted must

(a) cause the cycle to approach the intersection in the lane closest to the right side of the highway from which a left turn is permitted,

(b) keep the cycle to the right of the line that divides the lane referred to in paragraph (a) from the lane immediately to the left of that lane,

(c) after entering the intersection, turn the cycle to the left so that it will leave the intersection to the right of the line referred to in paragraph (b), and

(d) when practicable, turn the cycle in the portion of the intersection to the left of the centre of the intersection.

(5) A person must not ride a cycle, skate board, roller skates, in-line roller skates, sled, play vehicle or other similar means of conveyance when it is attached by the arm and hand of the rider or otherwise to a vehicle on a highway.

(6) A cycle operated on a highway between 1/2 hour after sunset and 1/2 hour before sunrise must have the following equipment:

(a) a lighted lamp mounted on the front and under normal atmospheric conditions capable of displaying a white light visible at least 150 m in the direction the cycle is pointed;

(b) a red reflector of a make or design approved by the Insurance Corporation of British Columbia for the purposes of this section;

(c) a lighted lamp, mounted and visible to the rear, displaying a red light.

(7) Despite any other provision of this Act or the regulations, a cycle may be equipped with a flashing red light that is of a make or design approved by the Insurance Corporation of British Columbia for the purposes of this section.

(8) A cycle operated on a highway must be equipped with a brake that will enable the person operating the cycle to make the braked wheels skid on dry, level and clean pavement.

(9) If an accident occurs by which a person or property is injured, directly or indirectly, owing to the presence or operation of a cycle on a highway or a sidewalk, the person in charge of the cycle must

(a) remain at or immediately return to the scene of the accident,

(b) render all possible assistance, and

(c) give to anyone sustaining loss or injury his or her name and address and the name and address of the owner of the cycle, and if the cycle has been licensed and registered, the licence or registration number of the cycle.

(14) A person must not operate a cycle

(a) on a highway without due care and attention or without reasonable consideration for other persons using the highway, or

(b) on a sidewalk without due care and attention or without reasonable consideration for other persons using the sidewalk.

(15) If a person is convicted of an offence under this Act in respect of his or her riding or operating a cycle, the court may, in addition to or in place of any penalty otherwise prescribed, order the cycle seized, and on the expiry of that period the person entitled to it may again have possession of the cycle.

(16) For the purpose of seizing and impounding a cycle under an order made under subsection (15), a peace officer may enter any place or building in which the cycle is located.

(17) A person operating a cycle on a highway must signify

(a) a left turn by extending the person's left hand and arm horizontally from the cycle,

(b) a right turn by doing either of the following:

(i) extending the person's left hand and arm out and upward from the cycle so that the upper and lower parts of the arm are at right angles;

(ii) extending the person's right hand and arm horizontally from the cycle, and

(c) a stop or decrease in speed by extending the person's left hand and arm out and down from the cycle.

**Bicycle safety helmets**

184 (1) A person commits an offence if that person operates or rides as a passenger on a cycle on a highway and is not properly wearing a bicycle safety helmet that

(a) is designated as an approved bicycle safety helmet under subsection (4) (a), or

(b) meets the standards and specifications prescribed under subsection (4) (b).

(2) A parent or guardian of a person under the age of 16 years commits an offence if the parent or guardian authorizes or knowingly permits the person to operate or ride as a passenger on a cycle on a highway if that person is not properly wearing a bicycle safety helmet that

(a) is designated as an approved bicycle safety helmet under subsection (4) (a), or

(b) meets the standards and specifications prescribed under subsection (4) (b).

(3) A person who is convicted of an offence under subsection (1) or (2) is liable to a fine of not more than $100.

(4) The Lieutenant Governor in Council may make regulations as follows:

(a) designating a helmet as an approved bicycle safety helmet for the purposes of this section;

(b) prescribing standards and specifications for bicycle safety helmets.

(5) Regulations made under subsection (4) (b) may adopt by reference, in whole or in part, standards or specifications published by a national or international standards association, as amended from time to time.

(6) The Lieutenant Governor in Council may make regulations as follows:

(a) providing for and requiring the identification and marking of bicycle safety helmets;

(b) exempting any person or class of persons from the requirements of this section and prescribing conditions for those exemptions.

**Railway crossings**

185 (1) When a driver is approaching a railway crossing at a time when

(a) a clearly visible electrical or mechanical signal device gives warning of the approach of a railway train,

(b) a crossing gate is lowered or a flagger is giving a signal of the approach or passage of a railway train, or

(c) a railway train is approaching and is within approximately 500 m of a crossing or by reason of its speed or nearness to the crossing is an immediate hazard and emits an audible signal or is visible,

the driver must stop the vehicle within 15 m but not less than 5 m from the nearest rail of the railway, and must not cause or permit the vehicle to proceed until he or she can do so safely.

(2) A person must not drive a vehicle through, around or under a crossing gate or barrier at a railway crossing while the gate or barrier is closed or is being opened or closed.

(3) If a stop sign is erected at a railway crossing, a driver approaching the railway crossing

(a) must stop his or her vehicle

(i) no closer than 5 m, and

(ii) no farther than 15 m from the nearest rail of the railway, and

(b) must not proceed until he or she can do so safely.

(4) Except at a railway spur line or an industrial track in a business or residence district, the driver of

(a) a bus carrying passengers for compensation,

(b) a school bus carrying a child,

(c) a vehicle carrying explosive substances or any poisonous or flammable substance as cargo, or

(d) a vehicle used to carry flammable liquids or gas, whether or not it is then empty,

approaching a railway crossing that is not protected by gates or railway crossing signal lights, unless otherwise directed by a flagger, must

(e) stop his or her vehicle

(i) no closer than 5 m, and

(ii) no farther than 15 m from the nearest rail of the railway,

(f) remaining stopped, must listen and look in both directions along the railway for an approaching train, and for signals indicating the approach of a train, and

(g) must not proceed until he or she can do so safely.

(5) When a driver has stopped in accordance with this section, the driver must

(a) cross the railway tracks in a gear that he or she will not need to change while crossing the tracks,

(b) not shift gears while so crossing, and

(c) not stop with a part of the vehicle on or over the tracks.

(6) Despite this Act, the driver of a vehicle approaching the track of a railway must proceed with caution to avoid a collision between the vehicle and an approaching train.

**Stopping at intersections**

186 Except when a peace officer directs otherwise, if there is a stop sign at an intersection, a driver of a vehicle must stop

(a) at the marked stop line, if any,

(b) before entering the marked crosswalk on the near side of the intersection, or

(c) when there is neither a marked crosswalk nor a stop line, before entering the intersection, at the point nearest the intersecting highway from which the driver has a view of approaching traffic on the intersecting highway.

**Where parking prohibited**

187 (1) Subject to subsection (3), if outside of a business or residence district it is practicable to stop, park or leave a vehicle off the roadway, a person must not stop, park or leave the vehicle either unattended or attended on the roadway.

(2) Subject to subsection (3), a person must not park a vehicle so as to obstruct the free passage of traffic on the highway.

(3) Subsections (1) and (2) do not apply when a vehicle is so disabled that it is not practicable to avoid stopping and temporarily leaving it on a highway.

**When vehicle stopping prohibited**

189 (1) Except when necessary to avoid conflict with traffic or to comply with the law or the directions of a peace officer or traffic control device, a person must not stop, stand or park a vehicle as follows:

(a) on a sidewalk or boulevard;

(b) in front of a public or private driveway;

(c) in an intersection, except as permitted by a sign;

(d) within 5 m of a fire hydrant measured from a point in the curb or edge of the roadway that is closest to the fire hydrant;

(e) on a crosswalk;

(f) within 6 m of the approach side of a crosswalk;

(g) within 6 m on the approach to a flashing beacon, stop sign or traffic control signal located at the side of a roadway;

(h) within 6 m either side of the entrance to or exit from a hotel, theatre, public meeting place, dance hall, fire hall or playground in rural area;

(i) within 15 m of the nearest rail of a railway crossing;

(j) subject to subsection (4), on a highway for the principal purpose of

(i) displaying a vehicle for sale,

(ii) advertising, greasing, painting, wrecking, storing or repairing a vehicle, unless repairs are necessitated by an emergency,

(iii) displaying signs, or

(iv) selling flowers, fruit, vegetables, sea foods or other commodities or articles;

(k) alongside or opposite a street excavation or obstruction when stopping, standing or parking obstructs traffic;

(l) on the roadway side of a vehicle stopped or parked at the edge or curb of a roadway;

(m) on a bridge or other elevated structure on a highway, or in a highway tunnel, except as permitted by a traffic control device;

(n) in a place in contravention of a traffic control device that gives notice that stopping, standing or parking there is prohibited or restricted;

(o) in a manner that obstructs the visibility of a standard traffic sign erected by or with the authority of the minister responsible for the administration of the Transportation Act, a municipality or a treaty first nation.

(2) A person must not move a vehicle that is not lawfully under his or her control into a place mentioned in subsection (1).

(3) Despite subsection (1) (f) and (g), a municipality may provide by bylaw that, if authorized by a sign posted by the municipality, a person may park a cycle or motorcycle within 6 m of the approach side of a crosswalk or within 6 m on the approach to a flashing beacon, stop sign or traffic control signal if the cycle or motorcycle is

(a) of a size that, and

(b) parked so that

the cycle or motorcycle does not obstruct a motorist's view of the crosswalk, flashing beacon, stop sign, traffic control signal or an intersection.

(3.1) If a municipality enacts a bylaw referred to in subsection (3), or a treaty first nation enacts a law having the same effect, a person may park a cycle or motorcycle in accordance with the bylaw or law.

(4) Subsection (1) (j) does not apply to a person acting under and in accordance with an authorization given under section 62 (2) or (6) of the Transportation Act.

**Manner of parking**

190 Except when a municipality, a treaty first nation or the minister responsible for the administration of the Transportation Act permits, a driver must not stop, stand or park a vehicle on a roadway other than on the right side of the roadway and with the right hand wheels parallel to that side, and where there is a curb, within 30 cm of the curb.

**Leaving parked vehicle**

191 (1) A motor vehicle must be equipped with a lock or other device to prevent the unauthorized use of the motor vehicle.

(2) A driver must not permit a motor vehicle to stand unattended or parked unless the driver has

(a) locked it or made it secure in a manner that prevents its unauthorized use, and

(b) if the motor vehicle is standing on a grade, turned the front wheels of the vehicle to the curb or side of the highway.

**Parking on private property**

192 (1) If a motor vehicle or trailer is left without the occupier's consent on private property in a municipality or treaty lands or for a period exceeding 72 hours on private property not in a municipality or treaty lands, the owner of the motor vehicle or trailer is deemed to have authorized and empowered the occupier to be the owner's agent for the purpose of towing it to a place of storage and of storing it.

(2) The agent has a lien against the motor vehicle or trailer for all reasonable advances made or charges incurred in connection with the towing and storing of it in the course of the agency.

(3) The procedure respecting enforcement of the lien must be governed by the Warehouse Lien Act.

**Caution in backing vehicle**

193 The driver of a vehicle must not cause the vehicle to move backwards into an intersection or over a crosswalk, and must not in any event or at any place cause a vehicle to move backwards unless the movement can be made in safety.

**Motorcycles**

194 (1) A person must not operate a motorcycle on a highway unless seated astride the driver's seat of the motorcycle.

(2) A person, other than the operator, must not ride on a motorcycle on a highway unless

(a) the motorcycle is designed and equipped to carry more than one person,

(b) the other person rides

(i) astride the permanent and regular seat if designed for 2 persons, behind the operator,

(ii) astride another seat firmly attached to the motorcycle behind the seat occupied by the operator, or

(iii) on or in another seat firmly attached to one side of the motorcycle, and

(c) in the case of paragraph (b) (i) or (ii), the other person has both of his or her feet positioned on the foot pegs or floorboards of the motorcycle.

(3) A person must not operate or ride as a passenger on a motorcycle on a highway if the person is not wearing a motorcycle safety helmet that

(a) is designated in regulations under subsection (6) (a) as an approved motorcycle safety helmet, or

(b) meets the standards and specifications prescribed under subsection (6) (b).

(4) A person who is operating a motorcycle must not permit another person under the age of 16 to ride on the motorcycle in contravention of

(a) subsection (2), or

(b) subsection (3).

(5) Despite subsections (2) and (3), a person under the age of 16 who contravenes subsection (2) or (3) does not commit an offence.

(6) The Lieutenant Governor in Council may make regulations as follows:

(a) designating a helmet as an approved motorcycle safety helmet for the purposes of this section;

(b) prescribing standards and specifications for motorcycle safety helmets;

(c) exempting a person or class of persons from the requirements of subsection (3) and setting out conditions for the exemption.

(7) Without limiting section 210 (7), regulations under subsection (6) of this section may incorporate by reference, with or without modification, in whole or in part, a standard or specification or an approval, certification or designation associated with a standard or specification of or published by a national or international standards association, as amended from time to time before or after the making of the regulation.

(8) Without a warrant, a peace officer may

(a) demand that a person produce a motorcycle safety helmet to allow the peace officer to determine whether the motorcycle safety helmet complies with subsection (3), and

(b) seize the motorcycle safety helmet if, on production of the motorcycle safety helmet, the peace officer has reasonable grounds to believe that a person has contravened subsection (3) or (4).

(9) A person commits an offence if the person obstructs or attempts to obstruct a peace officer acting under the authority of subsection (8).

(10) Except when overtaking and passing other motorcycles, more than 2 operators of motorcycles must not operate their motorcycles side by side in the same direction in the same traffic lane.

**Requirements for moving vehicle**

195 (1) A person must not cause a vehicle to move on a highway if

(a) the control of the driver over the driving mechanism of the vehicle, or

(b) the view of the driver to the front or sides of the vehicle

is obstructed.

(2) A passenger in a vehicle must not occupy a position in it that interferes with the driver's view ahead or with his or her control over the driving mechanisms of the vehicle.

**Travelling through canyons**

196 When travelling through defiles or canyons or on mountain highways, the driver of a motor vehicle must hold the motor vehicle under control and as near the right hand edge of the highway as reasonably possible, and on approaching a curve where the view is obstructed within a distance of 60 m along the highway, must give audible warning with the horn of the motor vehicle.

**Coasting down grade**

197 When travelling down grade a driver must not coast with the gears of the vehicle in neutral or the clutch disengaged.

**Following fire vehicle**

198 A driver other than that of an emergency vehicle must not follow fire apparatus closer than 150 m or drive or park within 150 m of the place on the same highway on which fire apparatus has stopped in answer to a fire alarm.

**Driving over fire hose**

199 Unless he or she has received consent of the fire department official in command or a peace officer, a person must not drive a vehicle over an unprotected hose of a fire department when laid down on a highway or private driveway at a fire or an alarm of fire.

**Driving on sidewalk**

200 A driver must not drive on a sidewalk, walkway or boulevard, except when entering or leaving a driveway or lane or when entering or leaving land adjacent to a highway, or by permission granted under a bylaw made under section 124.

**Sign as evidence**

201 The existence of a sign permitted by this Act and purporting to regulate the use of the highway in any manner is evidence the sign was duly erected and maintained by the proper authority under this Act and in accordance with this Act and the regulations.

**When opening door prohibited**

203 (1) A person must not open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so.

(2) A person must not leave a door open on the side of a vehicle available to moving traffic for longer than is necessary to load or unload passengers.

**Depositing articles on highway**

204 (1) A person must not throw, deposit, drop or leave on a highway a glass bottle, glass, nail, tack, wire, can or other thing or substance likely to injure a person, animal or vehicle on the highway.

(2) A person must not place, deposit or dump, or cause to be placed, deposited or dumped, garbage, swill, cans, bottles, papers, ashes, refuse, the carcass of a dead animal, offal, trash, rubbish or a noisome, nauseous or offensive matter in or on a highway, including a portion of the right of way of it.

(3) A person must not place, deposit or dump, or cause to be placed, deposited or dumped, rocks or dirt in or on a highway, including a portion of the right of way of it, without the consent of the party with jurisdiction over the highway at issue, which may be either the minister responsible for the administration of the Transportation Act, the council of a municipality or the governing body of a treaty first nation, or a person authorized by one of them to exercise the jurisdiction.

**Transporting explosives**

206 (1) A person operating a vehicle transporting explosive cargo on a highway must at all times comply with this section.

(3) Every vehicle transporting explosives must be equipped with not less than 2 fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle.

(4) The Lieutenant Governor in Council may make regulations governing the transportation of explosives and other dangerous articles by vehicles on the highways.

**Warning devices**

207 (1) For the purpose of this section, "darkness" means the period from 1/2 hour after sunset to 1/2 hour before sunrise and any other occasion when there is not sufficient light to render clearly discernible a substantial object on the highway at a distance of 60 m, and "daylight" means the balance of the 24 hour day.

(2) A person must not drive or operate on a highway a motor home licensed under this Act, or a commercial vehicle or combination of vehicles licensed under the Commercial Transport Act, that has a seating capacity of more than 10 passengers or where the overall width of the vehicle and the vehicle's load or the combination of vehicles' and the vehicle's load exceeds 2.3 m, unless there is carried in the driver's compartment of the vehicle, in a readily accessible location, warning devices

(a) of a type approved by the director to warn the travelling public of an emergency breakdown during darkness, and

(b) at least 2 red flags, of a minimum size of 30 x 30 cm, or 2 warning devices of a type approved by the director, for a warning during daylight.

(3) Every operator of a vehicle of a type referred to in subsection (2), when the vehicle becomes and so long as it remains disabled on a public highway

(a) during daylight, must place and retain 2 red flags or 2 warning devices of a type approved by the director on the highway, one at a distance of approximately 30 m in front of the vehicle and one at a distance of approximately 30 m behind the vehicle, and

(b) during darkness, must place and retain 2 approved warning devices appropriate for use during darkness, as provided in subsection (2), on the highway at the same distance in front and behind the vehicle as under paragraph (a).

**Winter tires and traction devices**

208 (1) For the purpose of this section, "winter tire" means a tire that meets the standards and specifications prescribed for winter tires.

(2) The minister responsible for the administration of the Transportation Act may, by public notice or by placing signs, prohibit any vehicle or a class of vehicles from being driven or operated on a highway, unless the vehicle is equipped with chains, winter tires or traction devices, or a combination of these, that the minister responsible for the administration of the Transportation Act considers adequate in view of prevailing road conditions.

(3) A public notice or sign under subsection (2) may provide differently in relation to specified dates, prevailing weather conditions or any other criteria the minister responsible for the administration of the Transportation Act considers necessary or advisable.

(4) A person who drives or operates a vehicle in contravention of a prohibition made under subsection (2) commits an offence.

Appendix D: Part 7 Regulation

**Interpretation**

78 In this Part:

"chiropractor" means a person entitled to practise chiropractic under the Health Professions Act or a similar law of another jurisdiction;

"dentist" means a person entitled to practise dentistry under the Health Professions Act or a similar law of another jurisdiction;

"employed person" means a person

(a) who, on the date of an accident for which a claim is made, is employed or actively engaged in an occupation for wages or profit, or

(b) who

(ii) for any 6 months during the period of 12 months immediately preceding the date of an accident for which a claim is made is employed or actively engaged in an occupation for wages or profit;

"head of household" includes an insured whose only dependants at the date of an accident resulting in the death of the insured are his parents if, at the date of the accident, the dependent parents resided with the insured;

"homemaker" means the male or female member of a household who, without payment, does the majority of the housekeeping for the household;

"insured" means

(a) a person named as an owner in an owner's certificate,

(c) a member of the household of a person named in an owner's certificate,

(c.1) an insured as defined in section 42 who is not in default of premium payable under section 45,

(c.2) a member of the household of an insured described in paragraph (c.1),

(d) an occupant of a vehicle that

(i) is licensed in the Province and is not exempted under section 43 or 44 of the Act, or

(ii) is not required to be licensed in the Province, but is operated by a person named in a driver's certificate,

(e) a cyclist or pedestrian who collides with a vehicle described in an owner's certificate, or

(f) a resident of the Province who is entitled to bring an action for injury or death under section 20 or 24 of the Act,

and includes the personal representative of a deceased insured;

"medical practitioner" means a person entitled to practise medicine under the Health Professions Act or a similar law of another jurisdiction;

"parent" means the person entitled to claim a child as a dependant under the Income Tax Act of the Province;

"physiotherapist" means a person entitled to practise physical therapy under the Health Professions Act or a similar law of another jurisdiction;

"rehabilitation" means the restoration, in the shortest practical time, of an injured person to the highest level of gainful employment or self sufficiency that, allowing for the permanent effects of his injuries, is, with medical and vocational assistance, reasonably achievable by him;

"rehabilitation team" means a team of individuals, including representation from the rehabilitation staff of the corporation, established

(a) to determine the appropriate group residence for an insured,

(b) to determine the care needs of an insured under section 88 (2) (c), and

(c) to evaluate any aspect of the funding, development of treatment, or rehabilitation plan for an insured.

**Coverage and benefits**

79 (1) Subject to subsection (2) and sections 80 to 88, 90, 92, 100, 101 and 104, the corporation shall pay benefits to an insured in respect of death or injury caused by an accident that arises out of the use or operation of a vehicle and that occurs in Canada or the United States of America or on a vessel travelling between Canada and the United States of America.

(2) Where an accident occurs in the United States or on a vessel travelling between Canada and the United States, no benefits are payable under this Part to

(a) a cyclist, or

(b) a pedestrian

unless he is named in an owner's certificate or a driver's certificate or is a member of the household of a person named in a certificate.

**Disability benefits for employed persons**

80 (1) Where, within 20 days after an accident for which benefits are provided under this Part, an injury sustained in the accident totally disables an insured who is an employed person from engaging in employment or an occupation for which the insured is reasonably suited by education, training or experience, the corporation shall, subject to section 85, pay to the insured for the duration of the total disability or 104 weeks, whichever is shorter, the lesser of the amounts determined under paragraphs (a) and (b):

(a) the applicable amount of disability benefits set out in section 2 of Schedule 3;

(b) in respect of an accident that occurred

(i) before January 1, 1987, an amount per week calculated by taking 75% of the insured's gross earnings for the 12 month period immediately preceding the accident, dividing by 52 and multiplying that amount by the weekly benefit multiplier in Column B of Table 1 of Schedule 3 opposite the year of the accident in Column A,

(ii) on or after January 1, 1987 but before January 1, 1991, an amount per week calculated by taking 75% of the insured's gross earnings for the 12 month period immediately preceding the accident, dividing by the number of weeks and fractions of weeks actually worked during that period and multiplying that amount by the weekly benefit multiplier in Column B of Table 1 of Schedule 3 opposite the year of the accident in Column A, or

(iii) on or after January 1, 1991 an amount per week calculated by taking 75% of the insured's gross earnings for the 12 month period immediately preceding the accident and dividing by the number of weeks and fractions of weeks actually worked during that period.

(2) Where disability benefits are payable to an insured for a period of less than one week, the amount payable for each day shall be determined by dividing the amount payable weekly by the number of days the insured regularly works in a week.

**Deduction of other benefits**

81 (1) In this section:

"other disability compensation" means compensation similar to benefits

(a) paid or payable under vehicle insurance, wherever issued and in effect,

(b) paid or payable under a policy of accident, sickness or life insurance purchased by a group or individual, or

(c) paid by an employer;

"weekly net lost earnings" means the amount by which the disability benefits payable to an insured as calculated under section 80 (1) (b) exceed the weekly gross total of payments to the insured of all other disability compensation.

(2) Where an employed person is injured in an accident for which disability benefits are payable under section 80 and some or all of the insured's lost earnings arising from the accident are payable as other disability compensation, the corporation shall not pay any disability benefits to the insured under that section unless the weekly gross total of other disability compensation payable to the insured is less than 75% of the weekly gross lost earnings of the insured, in which case the corporation shall pay to the insured the lesser of

(a) the amount of disability benefits payable under section 80, or

(b) the weekly net lost earnings of the insured.

**Employment during total disability**

81.1 (1) If an insured who is entitled to disability benefits under section 80 becomes capable of engaging in employment or an occupation but, because of injuries suffered in the accident is incapable of earning an amount that exceeds 125% of the disability benefits determined under sections 80 and 81, the insured may keep earnings from that employment or occupation, without deduction from disability benefits, in an amount that does not exceed 25% of those disability benefits, but any amounts earned in excess of 25% of the disability benefits will be deducted from the disability benefits payable by the corporation.

(2) No disability benefit is payable under section 80 if the application of subsection (1) would result in a payment of less than $5 a week.

**Payments under Workers Compensation Act**

82 Where an insured who is a worker to whom the Workers Compensation Act or a similar law of another jurisdiction applies is injured or killed in the course of his employment, the corporation is not liable to pay benefits under this Part for the injury or death, notwithstanding that the insured, his spouse or personal representative, has elected not to claim or has forfeited the insured's claim under the Workers Compensation Act or other similar law for the injury or death, except to the extent that the amount of any benefit payable under this Part exceeds the amount that would be payable to the insured, his spouse or personal representative under the Workers Compensation Act or other similar law for the same injury or death.

**Unemployment benefits**

83 Where an insured who is also an insured person under the Employment Insurance Act (Canada) is injured, the corporation is not liable to pay benefits under this Part for the injury, notwithstanding that the insured, his spouse or personal representative has elected not to claim or has forfeited the insured's claim under the Employment Insurance Act (Canada) for the injury, except to the extent that the amount of any benefit payable under this Part exceeds the amount that would be payable to the insured, his spouse or personal representative under the Employment Insurance Act (Canada) for the same injury.

**Disability benefits for homemakers**

84 (1) Subject to section 85 and subsection (2) of this section, where, within 20 days after an accident for which benefits are provided under this Part, an injury sustained in the accident substantially and continuously disables an insured who is a homemaker from regularly performing most of the insured's household tasks, the corporation shall compensate the insured for the period of the disability or 104 consecutive weeks, whichever is shorter, for reasonable expenses incurred by the insured to hire a person to perform the household tasks on the insured's behalf, subject to a maximum amount per week as set out in section 2 of Schedule 3.

(2) No compensation is payable under this section in respect of household tasks performed by a member of the insured's family.

**Waiting period**

85 (1) No disability benefits are payable under section 80 or 84 unless the insured is disabled for a period of more than 7 days.

(2) If the insured is disabled for more than 7 days, no disability benefit is payable by the corporation for the first 7 days after the disability commenced.

**Disability beyond 104 weeks**

86 (1) Where an injury for which disability benefits are being paid to an insured under section 80 or 84 continues, at the end of the 104 week period, to disable the insured as described in the applicable section, the corporation shall, subject to subsections (1.1) and (2) and sections 87 to 90, continue to pay the applicable amount of disability benefits to an insured described in section 80 or 84

(a) for the duration of the disability, or

(b) until the insured reaches 65 years of age,

whichever is the shorter period.

(1.1) Subsection (1) does not apply to an insured who, at the end of the 104 week period, has reached 65 years of age.

(2) Where benefits are payable under the Canada Pension Plan or the Quebec Pension Plan to an insured during the period and in respect of a disability for which benefits are payable to the insured under this section, the amount payable each month under this section shall be reduced by an amount not exceeding the amount of the first regular monthly benefit cheque received by the insured under the Canada Pension Plan or the Quebec Pension Plan after the insured becomes eligible for benefits under this section, and that amount shall continue to be deducted notwithstanding that the amount payable to the insured under the Canada Pension Plan or the Quebec Pension Plan may be increased during the time the insured remains eligible for benefits under this section, but if the amount payable to the insured under the Canada Pension Plan or the Quebec Pension Plan decreases, the benefits payable under this section shall be increased accordingly.

(4) Where an insured is receiving other disability payments as defined in section 81 and under the terms of the contract for payment of those other disability payments the payments are reduced by any amount received under the Canada Pension Plan or the Quebec Pension Plan, the reduction of disability payments under subsection (2) shall be prorated.

(5) Where an insured who is an employed person returns to work but, because of injuries suffered in the accident, is incapable of earning the amount of his present disability benefits, the corporation will pay the difference between his disability benefits and the amount the insured is presently earning through his employment.

**Review of benefits**

87 Any benefits payable under section 80, 84 or 86 may be reviewed every 12 months and terminated by the corporation on the advice of the corporation's medical adviser.

**Medical or rehabilitation benefits**

88 (1) Where an insured is injured in an accident for which benefits are provided under this Part, the corporation shall, subject to subsections (5) and (6), pay as benefits all reasonable expenses incurred by the insured as a result of the injury for necessary medical, surgical, dental, hospital, ambulance or professional nursing services, or for necessary physical therapy, chiropractic treatment, occupational therapy or speech therapy or for prosthesis or orthosis.

(2) Where, in the opinion of the corporation's medical adviser, provision of any one or more of the following is likely to promote the rehabilitation of an insured who is injured in an accident for which benefits are provided under this Part, the corporation may provide any one or more of the following:

(a) funds to the insured once during the lifetime of the insured for the acquisition by the insured of one motor vehicle equipped as necessary and appropriate to its use or operation by the insured, the choice of make or model of vehicle to be in the sole discretion of the corporation;

(b) funds to the insured once during the lifetime of the insured for alterations to the insured's residence that are necessary to make the residence accessible to and usable by the insured, the style and cost of the alterations to be in the sole discretion of the corporation and the alterations to be limited to necessary ramps, a necessary lift, necessary bathroom alterations and, where the insured is a homemaker or a person who lives alone, necessary kitchen alterations

(c) reimbursement to the insured for the costs of attendant care, other than care provided by a member of the insured's family, where the insured has returned to and is residing in the community but is not capable of performing some or all of the tasks necessary to sustain an independent lifestyle, the amount of the reimbursement to be limited to the lesser of

(i) the monthly cost of a group residence, including a long term care facility, that would be appropriate to the care needs of the insured as determined by the rehabilitation team, and

(ii) the monthly cost of attendant care required by the insured as a result of injuries from the motor vehicle accident, the level and type of which will be determined by the rehabilitation team using the same standards and criteria applied under the Long Term Care Program of the Continuing Care Division of the ministry of the minister responsible for the administration of the Continuing Care Act;

(d) reimbursement to the insured for costs incurred from time to time by the insured for the purchase and reasonable repair, adjustment or replacement of one or more of the following items:

(i) a wheelchair;

(ii) a medically prescribed bed for other than hospital use;

(iii) bowel and bladder equipment;

(iv) aids for communication, dressing, eating, grooming and hygiene;

(v) transfer equipment;

(vi) a ventilator;

(e) funds to the insured for vocational or other training that

(i) is consistent with the insured's pre-injury occupation and his post-injury skills and abilities, and

(ii) may return the insured as nearly as practicable to his pre-injury status or improve the post-injury earning capacity and level of independence of the insured;

(f) funds for any other costs the corporation in its sole discretion agrees to pay.

(3) Before incurring an expense or obligation under subsection (2) for which the insured intends to request payment by the corporation, the insured shall obtain written approval from the corporation and the corporation may, before giving its approval, require the insured to submit such information as it considers necessary to assist it in making a decision.

(4) The corporation is not liable to insure, repair, replace or maintain a motor vehicle acquired by an insured under subsection (2) (a) except in the course of an approved repair resulting from a subsequent claim for insured loss or damage to the vehicle.

(5) The amount by which the liability of the corporation under this section is limited is the amount set out in section 3 of Schedule 3.

(6) The corporation is not liable for any expenses paid or payable to or recoverable by the insured under a medical, surgical, dental or hospital plan or law, or paid or payable by another insurer.

(7) The maximum amount payable by the corporation under this section for medical, surgical, dental, nursing or physical therapy services or for chiropractic treatment, occupational therapy or speech therapy listed in the payment schedules established by the Medical Services Commission under the Medicare Protection Act is the amount listed in the payment schedules for that service, treatment or therapy.

(8) The corporation is not liable to pay for more than 12 physical therapy treatments for an insured for each accident unless, before any additional treatment is given, the corporation's medical advisor or the insured's medical practitioner certifies to the corporation in writing that, in his opinion, the treatment is necessary for the insured.

**Arbitration**

89 For the purpose of section 88 (1), any dispute between the corporation and an insured as to whether or not an expense is reasonable, shall be submitted to arbitration under the Commercial Arbitration Act.

**Power to terminate benefits for refusal to undergo treatment or training**

90 (1) Where, in the opinion of the corporation's medical adviser or vocational adviser and in the opinion of the medical practitioner attending an insured who is receiving benefits under section 80, 84, 86 or 88,

(a) any medical, surgical or other similar treatment is likely to relieve in whole or part the disability of the insured, or

(b) a retraining or educational program is likely to assist in the rehabilitation of the insured,

the corporation may require the insured, at the expense of the corporation, to undergo treatment or complete the program.

(2) Subject to subsection (3), where an insured refuses to comply with a requirement under this section, the corporation may, after giving the insured at least 60 days' notice in writing, by registered mail, postage prepaid, addressed to the insured at his last address according to the corporation's records, terminate payment of benefits under section 80, 84, 86 or 88.

(3) The insured may, within the period of 60 days mentioned in subsection (2), apply to a judge of the Supreme Court for an injunction against terminating the benefits on grounds that

(a) the treatment the insured is required to undergo

(i) is unlikely to relieve the insured's disability, or

(ii) may injuriously affect the balance of the health of the insured, or

(b) the program the insured is required to complete is not likely to assist in the rehabilitation of the insured.

**Funeral expenses**

91 Where the death of an insured is caused by an accident described in section 79, the corporation shall, subject to section 88 (6), promptly reimburse for burial and funeral expenses not exceeding the amount set out in section 4 of Schedule 3.

**Death benefits**

92 (1) In this section and section 5 of Schedule 3:

"dependent child" includes

(a) a child of a parent who is not the head of household of which the child is a member but who is legally liable to support or contribute to the support of the child, and

(b) for the purpose of payment of death benefits in respect of the death of an insured, a child of the insured who is born after the death of the insured and survives for 60 days after birth;

"head of household" includes an insured who was not, at the date of an accident resulting in the death of the insured, residing in the household of which the spouse of the insured was a member, but

(a) was legally liable to contribute to the support of the household, and

(b) during the 12 months immediately preceding the accident provided the major portion of the household's income;

"spouse in household" includes an insured who was not, at the date of an accident resulting in the death of the insured, residing in the household of which the spouse of the insured was a member, but

(a) was contributing or legally liable to contribute to the support of the household, or

(b) would have been responsible for supporting and rearing the dependent children in the household if the spouse of the insured had died.

(2) Subject to section 94, the corporation shall pay a death benefit in an amount that is based on the age and status of a deceased insured as set out in section 5 of Schedule 3, where

(a) the death of an insured is caused by an accident for which benefits are provided under this Part, and

(b) the deceased insured is survived by

(i) a spouse, dependent child or dependent parent, or

(ii) a parent, where the deceased insured is a dependent child.

**Supplemental, additional and survivor's death benefits**

93 (1) Where the deceased insured is survived by a spouse and one or more dependants, or by more than one dependant, the corporation shall pay, in addition to the benefit payable under section 92, a supplemental death benefit in the amount set out in section 6 of Schedule 3 for each survivor, other than the first.

(2) Where the deceased insured is survived by a spouse or one or more dependants or by a spouse and one or more dependants, the corporation shall, in addition to the benefits payable under section 92, pay, for the period of 104 weeks after the death of the deceased insured,

(a) additional death benefits in the applicable amount set out in section 7 of Schedule 3 for the first survivor, and

(b) survivor's death benefits in the applicable amount set out in section 8 of Schedule 3 for each survivor, other than the first,

but the total amount payable under this subsection shall be reduced by the amount of any payment under sections 80 and 84.

(3) Payments under this section terminate on the death of all survivors of the deceased insured.

(4) No benefit is payable under this section unless a benefit is also payable under section 92.

**Rules for payment of death benefits**

94 (1) Any benefits payable under section 92 or 93 in respect of a spouse of a deceased insured shall be paid to that spouse.

(2) Where a deceased insured is survived by more than one spouse, the total amount of benefits payable under sections 92 and 93 in respect of all spouses shall not exceed the amount that would have been payable

(a) to the spouse having the greatest claim, or

(b) where the claims are equal, to one spouse

if that spouse had been the only spouse and that amount shall be

(c) divided equally among and paid to the spouses, if the deceased insured had the same status in relation to each spouse, or

(d) paid to the spouse in relation to whom the insured had the status of head of household, in any other case.

(3) For the purpose of subsection (2), "claim" does not include any amount payable in respect of a dependant other than a spouse.

(4) Any benefits payable under section 92 or 93 for or on behalf of a dependent child of a deceased insured where that child is

(a) under the age of 19 shall be paid in accordance with section 32 of the Act, or

(b) 19 years of age or older shall be paid

(i) to the surviving spouse of the deceased insured if the surviving spouse has guardianship or custody of the dependent child,

(ii) where the deceased insured is survived by more than one spouse, to the spouse having guardianship or custody of the child, or

(iii) where there is no surviving spouse who has guardianship or custody of the dependent child, to the dependent child.

(4.1) A benefit payable under section 92 in respect of the death of a dependent child must be divided equally among and paid to the surviving parents who at the time of the child's death had care and control of the child or were contributing regularly to the support of the child.

(5) Where a deceased insured is survived by dependants, the total amount of benefits payable under sections 92 and 93 shall be divided equally among and paid to the surviving dependants.

(6) An entitlement to benefits payable under section 92 or 93 shall be determined as of the date of death of the insured.

**Sixty day rule and common disaster**

95 (1) Any benefits payable under section 92 or 93 shall be paid only to a person who survives the deceased insured by at least 60 days.

(2) Where the death of the head of household and of a spouse or dependant of the head of the household is caused by a common disaster, any benefits payable under section 93 shall be paid only in respect of the death of the head of household.

(3) The corporation may, in its sole discretion, waive the 60 day survival requirement under subsection (1).

**Restriction on benefits**

96 The corporation is not liable to pay benefits under this Part in respect of the injury or death of a person

(a) who is resident outside the Province and, at the time of the accident, is the occupant of a vehicle not described in an owner's certificate,

(b) who, at the time of the accident, is

(i) an occupant of or is struck by a vehicle that could not be licensed under the Motor Vehicle Act or Commercial Transport Act or that is of such design that if owned or operated in the Province could not be licensed under one of those Acts,

(ii) the occupant of a vehicle exempted under section 43 or 44 of the Act, whether or not the vehicle is operated by a person named in a driver's certificate, or

(iii) the occupant of a vehicle that is of such design that it could be licensed under the Motor Vehicle Act, the Commercial Transport Act or similar legislation of another jurisdiction, but that is in fact not licensed under the applicable legislation unless the occupant had reasonable grounds to believe that the vehicle was licensed,

(c) who commits suicide or attempts to commit suicide, whether he is sane or insane,

(e) who is the occupant of a vehicle that, at the time of the accident, is being used for an illicit or prohibited trade or transport, or

(f) whose injury or death is caused, directly or indirectly, by sickness or disease, unless the sickness or disease was contracted as a direct result of an accident for which benefits are provided under this Part.

**Notice of claim**

97 (1) Where an accident occurs for which benefits are provided under this Part, the insured shall

(a) promptly give the corporation notice of the accident,

(b) not later than 30 days from the date of the accident, mail to the corporation by registered mail, or deliver to the nearest claims centre of the corporation, a written report on the accident with particulars of the circumstances in which the accident occurred and the consequences of the accident, and

(c) within 90 days from the date of the accident furnish the corporation with a proof of claim in a form authorized by the corporation.

(2) The corporation is not liable to an insured who, to the prejudice of the corporation, fails to comply with this section.

**Medical certificates**

98 (1) An insured shall, on request of the corporation, promptly furnish a certificate or report of an attending medical practitioner, dentist, physiotherapist or chiropractor as to the nature and extent of the insured's injury, and the treatment, current condition and prognosis of the injury.

(1.1) The certificate or report required by subsection (1) must be provided to the corporation

(a) in any form specified by the corporation including, without limitation, narrative form, and

(b) in any format specified by the corporation including, without limitation, verbal, written and electronic formats.

(2) The corporation is not liable to an insured who, to the prejudice of the corporation, fails to comply with this section.

**Medical examination**

99 (1) An insured who makes a claim under this Part shall allow a medical practitioner, dentist, physiotherapist or chiropractor selected by the corporation, at the expense of the corporation, to examine the insured as often as it requires.

(2) The corporation is not liable to an insured who, to the prejudice of the corporation, fails to comply with this section.\

**Autopsy**

100 (1) Where death occurs as a result of an accident for which benefits are provided under this Part, the corporation may withhold benefits payable under section 92 or 93 until the insured claiming the benefits allows the corporation to order an autopsy or post mortem examination of the body of the deceased insured to be performed at the expense of the corporation.

(2) Where death occurs a considerable time after the date of the accident and in circumstances that, in the opinion of the corporation, raise doubt as to whether the deceased insured died from natural causes or as a result of the accident, the corporation shall not pay any benefits under section 92 or 93 unless, before burial or cremation of the deceased insured, the insured claiming the benefits informs the corporation of the death and allows the corporation to order an autopsy or post mortem examination.

(3) The corporation shall refer any dispute respecting an autopsy or post mortem examination to the chief coroner or another coroner appointed under the Coroners Act.

**Time of payment**

101 Benefits payable under this Part shall be paid by the corporation

(a) in the case of weekly benefits, within 4 weeks after it receives proof of claim, and thereafter at 4 week intervals if the insured complies with sections 98 and 99 when required by the corporation, and

(b) in any other case, within 60 days after it receives proof of claim.

**Alteration of form of payment**

102 The corporation may, at any time, make a lump sum payment of benefits or otherwise alter the form of payment to benefit the insured.

**Limitation**

103 (1) No person shall commence an action in respect of benefits under this Part unless

(a) he has substantially complied with the provisions of sections 97 to 100 that are applicable to him, and

(b) the action is commenced within 2 years after

(i) the date of the accident for which the benefits are claimed,

(ii) where benefits have been paid, the date he received the last benefit payment under this Part, or

(iii) the date on which the corporation receives a notice under subsection (2).

(2) If an insured makes a claim for benefits under this Part and the corporation has not made a payment in accordance with section 101, the insured may issue written notice to the corporation within 2 years of the date of the accident for which the benefits are claimed of the insured's intention to commence an action in respect of benefits under this Part.

(3) A notice referred to in subsection (2) must be

(a) in the form established by the corporation, and

(b) sent by registered mail addressed to the claim office dealing with the insured's claim.

**Other insurance**

104 (1) If benefits

(a) are provided under this Part and evidenced by an owner's certificate in respect of a vehicle involved in an accident, and

(b) are also provided under this Part and evidenced by an owner's certificate in respect of a vehicle not involved in the accident, or by a driver's certificate,

the benefits described in paragraph (a) are primary and the benefits described in paragraph (b) are available only to the extent that the amount of those benefits exceeds the amount of benefits described in paragraph (a).

(2) If an insured is also insured under vehicle insurance that provides compensation similar to benefits provided under this Part or similar benefits or insurance under similar legislation of another jurisdiction, the liability of the corporation for payment of benefits under this Part must be determined,

(a) if a claim is made in respect of an accident that occurs in the Province, as if section 179 applied in respect of benefits provided under this Part, and

(b) if a claim is made in respect of an accident that occurs in another jurisdiction, as if the provisions of the legislation of that jurisdiction respecting terms, conditions and priorities of vehicle insurance applied in respect of benefits provided under this Part.

(3) Subsection (2) does not apply in respect of benefits payable under section 80.

Appendix E: Occupiers Liability Act

**Definitions**

1 In this Act:

"limited liability entity", in relation to a resource road, means each of the following:

(a) the maintainer, if any, of the resource road;

(b) the government;

"maintainer", in relation to a resource road, means the person, including, without limitation, the government, that is obligated or authorized under an enactment to maintain the resource road, but does not include a prescribed person or a person within a prescribed class of persons;

"motor vehicle" means a vehicle that is

(a) intended to be self-propelled, and

(b) designed primarily for travel on land on surfaces other than rails;

"occupier" means a person who

(a) is in physical possession of premises, or

(b) has responsibility for, and control over, the condition of premises, the activities conducted on those premises and the persons allowed to enter those premises,

and, for this Act, there may be more than one occupier of the same premises;

"premises" includes

(a) land and structures or either of them, excepting portable structures and equipment other than those described in paragraph (c),

(b) ships and vessels,

(c) trailers and portable structures designed or used for a residence, business or shelter, and

(d) railway locomotives, railway cars, vehicles and aircraft while not in operation;

"resource road" means any road or portion of a road that is

(a) on Crown land, and

(b) used or intended for use by motor vehicles,

but does not include a municipal highway or a provincial public highway as those terms are defined in the Transportation Act;

"tenancy" includes a statutory tenancy, an implied tenancy and any contract conferring the right of occupation, and "landlord" must be construed accordingly.

**Application of Act**

2 (1) Subject to section 3 (4), and sections 4 and 9 and subsection (2) of this section, this Act determines the care that an occupier is required to show toward persons entering on the premises in respect of dangers to them, or to their property on the premises, or to the property on the premises of persons who have not themselves entered on the premises, that are due to the state of the premises, or to anything done or omitted to be done on the premises, and for which the occupier is responsible by law.

(2) This Act establishes the duty of care to which a limited liability entity is subject in relation to a resource road in all circumstances other than those referred to in section 3.1 (2).

**Occupiers' duty of care**

3 (1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.

(2) The duty of care referred to in subsection (1) applies in relation to the

(a) condition of the premises,

(b) activities on the premises, or

(c) conduct of third parties on the premises.

(3) Despite subsection (1), an occupier has no duty of care to a person in respect of risks willingly assumed by that person other than a duty not to

(a) create a danger with intent to do harm to the person or damage to the person's property, or

(b) act with reckless disregard to the safety of the person or the integrity of the person's property.

(3.1) A person who is trespassing on premises while committing, or with the intention of committing, a criminal act is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the duty of care set out in subsection (3).

(3.2) A person who enters any of the categories of premises described in subsection (3.3) is deemed to have willingly assumed all risks and the occupier of those premises is subject only to the duty of care set out in subsection (3) if

(a) the person who enters is trespassing, or

(b) the entry is for the purpose of a recreational activity and

(i) the occupier receives no payment or other consideration for the entry or activity of the person, other than a payment or other consideration from a government or government agency or a non-profit recreational club or association, and

(ii) the occupier is not providing the person with living accommodation on those premises.

(3.3) The categories of premises referred to in subsection (3.2) are as follows:

(a) premises that the occupier uses primarily for agricultural purposes;

(b) rural premises that are

(i) used for forestry or range purposes,

(ii) vacant or undeveloped premises,

(iii) forested or wilderness premises, or

(iv) private roads reasonably marked as private roads;

(c) recreational trails reasonably marked as recreational trails;

(d) utility rights of way and corridors excluding structures located on them.

(4) Nothing in this section relieves an occupier of premises of a duty to exercise, in a particular case, a higher standard of care which, in that case, is incumbent on the person because of an enactment or rule of law imposing special standards of care on particular classes of person.

**Duty of care of limited liability entities**

3.1 (1) Subject to subsection (2), a person who enters onto or otherwise uses a resource road is deemed to have willingly assumed all risks, and a person who is, in relation to the resource road, a limited liability entity is, in relation to that resource road, subject only to the duty of care set out in section 3 (3) and, for that purpose, a reference in section 3 (3) to an occupier is deemed to include a reference to a limited liability entity.

(2) Subsection (1) does not apply in relation to the duty of care to which a limited liability entity is subject in relation to a resource road

(a) in prescribed circumstances,

(b) if the person in relation to whom the duty of care is owed is a prescribed person or a person within a prescribed class of persons, or

(c) if under another enactment or at law a limited liability entity is subject to a more limited duty of care than the duty of care to which the limited liability entity is subject under subsection (1).

(3) In the situation referred to in subsection (2) (c), the limited liability entity is subject to the more limited duty of care.

(4) A reference in sections 4 and 5 to an occupier in relation to premises is deemed to include a reference to a limited liability entity in relation to a resource road.

**Contracting out**

4 (1) Subject to subsections (2), (3) and (4), if an occupier is permitted by law to extend, restrict, modify or exclude the occupier's duty of care to any person by express agreement, or by express stipulation or notice, the occupier must take reasonable steps to bring that extension, restriction, modification or exclusion to the attention of that person.

(2) An occupier must not restrict, modify or exclude the occupier's duty of care under subsection (1) with respect to a person who is

(a) not privy to the express agreement, or

(b) empowered or permitted to enter or use the premises without the consent or permission of the occupier.

(3) If an occupier is bound by contract to permit persons who are not privy to the contract to enter or use the premises, the duty of care of the occupier to those persons must, despite anything to the contrary in that contract, not be restricted, modified or excluded by it.

(4) This section applies to all express contracts.

**Independent contractors**

5 (1) Despite section 3 (1), if damage is caused by the negligence of an independent contractor engaged by the occupier, the occupier is not on that account liable under this Act if, in all the circumstances,

(a) the occupier exercised reasonable care in the selection and supervision of the independent contractor, and

(b) it was reasonable that the work that the independent contractor was engaged to do should have been undertaken.

(2) Subsection (1) must not be construed as restricting or excluding the liability, imposed by any other Act, of an occupier for the negligence of the occupier's independent contractor.

(3) If there is damage under the circumstances set out in subsection (1), and there is more than one occupier of the premises, each occupier is entitled to rely on subsection (1).

**Tenancy relationship**

6 (1) If premises are occupied or used under a tenancy under which a landlord is responsible for the maintenance or repair of the premises, it is the duty of the landlord to show toward any person who, or whose property, may be on the premises the same care in respect of risks arising from failure on the landlord's part in carrying out the landlord's responsibility, as is required by this Act to be shown by an occupier of premises toward persons entering on or using the premises.

(2) If premises are occupied under a subtenancy, subsection (1) applies to a landlord who is responsible for the maintenance or repair of the premises comprised in the subtenancy.

(3) For the purposes of this section

(a) a landlord is not in default of the landlord's duty under subsection (1) unless the default would be actionable at the suit of the occupier,

(b) nothing relieves a landlord of a duty the landlord may have apart from this section, and

(c) obligations imposed by an enactment in respect of a tenancy are deemed to be imposed by the tenancy.

(4) This section applies to all tenancies.

**Application of Negligence Act**

7 The Negligence Act applies to this Act.

**Crown bound**

8 (1) Except as otherwise provided in subsections (2) and (3), the Crown and its agencies are bound by this Act.

(2) Despite subsection (1) but subject to subsection (3), this Act does not apply to the government or to the Crown in right of Canada or to a municipality if the government, the Crown in right of Canada or the municipality is the occupier of

(a) a public highway, other than a recreational trail referred to in section 3 (3.3) (c),

(b) a public road,

(c) a road under the Forest Act,

(d) a private road as defined in section 2 (1) of the Motor Vehicle Act, other than a private road referred to in section 3 (3.3) (b) (iv) of this Act, or

(e) an industrial road as defined in the Industrial Roads Act.

(3) This Act does not apply to the government if the government is the occupier of a resource road, except to the extent provided in section 3.1.

**Act not to affect certain relationships**

9 This Act does not apply to or affect the liability of

(a) an employer in respect of the employer's duties to an employee,

(b) a person under a contract for the hire of, or for the carriage for reward of persons or property in, any vehicle, vessel, aircraft or other means of transport,

(c) a person under the Hotel Keepers Act, or

(d) a person under a contract of bailment.

Appendix F: Negligence Act

**Apportionment of liability for damages**

1 (1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

(2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

(3) Nothing in this section operates to make a person liable for damage or loss to which the person's fault has not contributed.

**Awarding of damages**

2 The awarding of damage or loss in every action to which section 1 applies is governed by the following rules:

(a) the damage or loss, if any, sustained by each person must be ascertained and expressed in dollars;

(b) the degree to which each person was at fault must be ascertained and expressed as a percentage of the total fault;

(c) as between each person who has sustained damage or loss and each other person who is liable to make good the damage or loss, the person sustaining the damage or loss is entitled to recover from that other person the percentage of the damage or loss sustained that corresponds to the degree of fault of that other person;

(d) as between 2 persons each of whom has sustained damage or loss and is entitled to recover a percentage of it from the other, the amounts to which they are respectively entitled must be set off one against the other, and if either person is entitled to a greater amount than the other, the person is entitled to judgment against that other for the excess.

**Apportionment of liability for costs**

3 (1) Unless the court otherwise directs, the liability for costs of the parties to every action is in the same proportion as their respective liability to make good the damage or loss.

(2) Section 2 applies to the awarding of costs under this section.

(3) If, as between 2 persons, one is entitled to a judgment for an excess of damage or loss and the other to a judgment for an excess of costs there is a further set off of the respective amounts and judgment must be given accordingly.

**Liability and right of contribution**

4 (1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.

(2) Except as provided in section 5 if 2 or more persons are found at fault

(a) they are jointly and severally liable to the person suffering the damage or loss, and

(b) as between themselves, in the absence of a contract express or implied, they are liable to contribute to and indemnify each other in the degree to which they are respectively found to have been at fault.

**Negligence of spouse in cause of action that arose before April 17, 1985**

5 (1) In an action founded on fault or negligence and brought for loss or damage resulting from bodily injury to or the death of a married person, if one of the persons found to be at fault or negligent is the spouse of the married person, no damages, contribution or indemnity are recoverable for the portion of loss or damage caused by the fault or negligence of that spouse.

(2) The portion of the loss or damage caused by the fault or negligence of the spouse referred to in subsection (1) must be determined although that spouse is not a party to the action.

(3) This section applies only if the cause of action arose before April 17, 1985.

**Questions of fact**

6 In every action the amount of damage or loss, the fault, if any, and the degrees of fault are questions of fact.

**Actions against personal representatives**

7 (1) If a person dies who, because of this Act, would have been liable for damages or costs had the person continued to live, an action or third party proceedings that, because of this Act, could have been brought or maintained against the person who has died may be brought and maintained or, if pending, may be continued against the personal representative of the deceased person.

(2) The damages and costs recovered under subsection (1) are payable out of the estate of the deceased person in similar order of administration as the simple contract debts of the deceased person.

(3) If there is no personal representative of the deceased person appointed in British Columbia within 3 months after the person's death, the court, on the application of a party intending to bring or continue an action or third party proceedings under this section, and on the notice to other parties, either specially or generally by public advertisement, as the court may direct, may appoint a representative of the estate of the deceased person for all purposes of the intended or pending action or proceedings and to act as defendant in them.

(4) The action or proceedings brought or continued against the representative appointed under subsection (3) and all proceedings in them bind the estate of the deceased person in all respects as if a duly constituted personal representative of the deceased person were a party to the action.

(5) An action or third party proceeding must not be brought against a personal representative under subsection (1), or against a representative of the estate appointed under subsection (3), after the time otherwise limited for bringing the action.