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## Publisher's Note

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# The Annotated British Columbia Insurance (Vehicle) Act

This looseleaf contains the full text of the *Insurance (Vehicle) Act* and Regulations, as amended, plus annotations of all important case law interpreting the legislation since 1975. An introductory chapter describes the history of the legislation and the policy surrounding its development and a complete Index and Table of Concordance to the former and present Regulations are also included.

### What's New in this Update:

This release updates the case law and includes 22 new case digest annotations throughout the Act.

### Highlights

- **Insurance (Vehicle) Act — Part 1 — Universal Compulsory Vehicle Insurance — S. 24 — Remedy for Damage in Hit and Run Accident**  
— The plaintiff was injured by a vehicle that fled the scene. He pulled over

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and took the information from the witnesses and then reported the matter to the police when they attended. While his actions were reasonable and sufficient at the time of the accident, the plaintiff did not take reasonable steps to look for witnesses in the short period after the collision and his claim for this accident was dismissed: *Lane v. Ou*, 2019 BCSC 928, 2019 CarswellBC 1638 (B.C. S.C.).

- **Insurance (Vehicle) Act — Part 6 — Vehicle Actions — S. 98 — Recovery for Loss of Income** — The 68-year-old plaintiff was a truck driver. The court found that the plaintiff would have retired at age 75. While he continued to work, he did so with accommodation. The court awarded \$174,000 for loss of earning capacity on the assumption that he would continue to work for his present employer but with increasing periods where he was unable to work: *Kennedy v. Cumming*, 2019 BCSC 983, 2019 CarswellBC 1707 (B.C. S.C.).
- **Insurance (Vehicle) Act — Part 6 — Vehicle Actions — S. 98 — Recovery for Loss of Income** — The 52-year-old plaintiff had a varied work history. She was working at a nail salon at the time of the accidents earning approximately \$15,000 per year. The plaintiff had held various other jobs prior to this. Given the breadth of her workplace experience, there was a real risk of mismeasurement of her loss of capacity if too much emphasis was placed on her nail technician business as a way to assess her loss. Her pre-MVA capacity was assessed at \$60,000 per annum, taking account: her positive personality, work ethic and ambitious attitude, together with her demonstrated abilities to run her own small nail salon business, plan and execute renovations, manage rental properties, and work in retail, banking, and food and beverage jobs. The court concluded that she lost about \$25,000 per annum and awarded \$300,000 for this loss: *Morrison v. Koschzek*, 2019 BCSC 945, 2019 CarswellBC 1633 (B.C. S.C.).
- **Insurance (Vehicle) Act — Part 6 — Vehicle Actions — S. 98 — Recovery for Loss of Income** — The 36-year-old plaintiff was an elevator mechanic. Though the evidence was that the plaintiff's co-workers provided some accommodation, it was minor. There was a safety conscious culture in the industry and particularly with his employer and co-workers. Had there been a real concern with his inability to do the work, that condition would have been expressed and noted. The court also noted that the evidence indicated that the heavier work was lessened following an apprenticeship and awarded \$280,000 for loss of future income earning capacity: *Rahemtulla v. Sutton*, 2019 BCSC 1105, 2019 CarswellBC 1954 (B.C. S.C.).

- **Insurance (Vehicle) Regulation — Part 7 — Accident Benefits — S. 81 — Deduction of Other Benefits** — The plaintiff was insured under a group disability policy administered by Great West Life Assurance Company (“GWL”). After the accident, she began receiving long-term disability benefits from GWL and Part 7 benefits from ICBC. The tort action settled but the settlement did not release ICBC from Part 7 claims. ICBC maintained that the amount “paid or payable” should not include the reduction made to the monthly GWL benefit payments flowing from the applicant’s receipt of settlement funds in her personal injury action (i.e. the amount paid or payable under the policy should be \$2,931.50). The plaintiff was not receiving the full GWL amount because she received compensation in tort. The monthly reduction to the GWL benefit of \$576.42 was the amount the plaintiff was deemed to have received in tort compensation for future lost income. If the full GWL amount was deducted, the plaintiff’s tort compensation would have been effectively deducted from the Part 7 benefits. That outcome would be incorrect. The amount payable for the purposes of s. 81(2) of the Regulation was \$2,355.08: *Linblad v. Insurance Corporation of British Columbia*, 2019 BCSC 737, 2019 CarswellBC 1292 (B.C. S.C.).