

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

THE ANNOTATED BRITISH COLUMBIA INSURANCE (VEHICLE) ACT

**Gregory & Gregory
Release No. 4, July 2022**

Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

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 23 new case digest annotations throughout the Act and Regulation.

Highlights

- **Insurance (Vehicle) Act — Part 1 — Universal Compulsory Vehicle Insurance — Section 24 — Hit and Run —** The 50-year-old professional truck driver was injured in a hit and run accident in September 2016. He was driving on a highway when he says another vehicle coming in the opposite direction crossed the center line into his lane, forcing him to swerve to avoid it. As a result, his truck flipped over into a ditch, and he suffered serious injuries. The plaintiff added ICBC as a nominal defendant under section 24 of the Act, requiring him to demonstrate that he made all reasonable efforts to identify the driver of the other vehicle, and that the driver's identity was unascertainable. He had contacted the RCMP six days later to provide a statement (but not to secure the driver's identity). He posted an advertisement seeking witnesses in the local newspaper but could not recall when or how many times it was published. He also posted a sign seeking witnesses near where the accident happened, but an incomplete copy of the sign was in evidence and the plaintiff could not recall what it said. The court found that this did not amount to making "all reasonable efforts" to identify the other driver, and dismissed his claim against ICBC as a nominal defendant under the section 24 of the Act: *Clark v. Insurance Corporation of British Columbia*, 2022 BCSC 451.
- **Insurance (Vehicle) Act — Part 5 — Vehicle Actions — S. 83 — Deductions for Part 7 Benefits —** The defendant applied to deduct amounts that were paid or payable under the plaintiff's "no fault" benefits from the special damages and cost of future care awards he received at trial. The court found that \$16,000 of the plaintiff's special damage award had already been paid by ICBC and deducted that amount accordingly. The defendant also sought to deduct payment for (a) medications (b) physiotherapy (c) kinesiology and (d) gym memberships from the plaintiff's cost of future care award on the basis that they were payable under his "no fault" benefits

going forward. The Court found that the ICBC adjuster’s affidavit failed to establish the plaintiff had an unequivocal entitlement to those payments under his “no fault” benefits, as ICBC specifically failed to waive its right to require the plaintiff to submit to a medical examination or attend rehabilitative programming as a condition of entitlement. The court determined that it was not appropriate in the circumstances to allow ICBC to amend their affidavit to make the appropriate waivers, and refused to make a deduction from the future care award: *Cook v. Kang*, 2022 BCSC 408.

- **Insurance (Vehicle) Act — Part 6— Vehicle Actions — S. 98 — Recovery for Loss of Income— Past and Future Income Loss** — The 36-year-old plaintiff was the sole owner of a floor installation business at the time of the subject accident in 2018. The plaintiff performed labor for the business and supervised his subcontractors on job sites. The business was successful. It steadily increased its financial performance in the years leading up to the accident and continued to do so afterwards. The plaintiff suffered chronic low back pain following the accident and had to hire workers to perform the construction tasks he would otherwise have performed himself. The court awarded the plaintiff \$190,000 in past lost earning capacity, being the assessed amount for replacement wages. The court also awarded the plaintiff \$1.2 million in lost future earning capacity based on his likely reduced future contribution to the company due to his accident-related back pain, factoring in a 15% reduction for the likelihood that his pre-existing back pain would have caused him to reduce his contribution in any event. The plaintiff also had an established track record of renovating and “flipping” homes, and the court awarded him \$195,000 for his lost future contributions to those projects through reduced labor: *Corness v. Ng*, 2022 BCSC 334.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable

- Footnote text only appears in ProView-generated PDFs of entire sections and pages