

CHAPTER ELEVEN: MOTOR VEHICLE LAW

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CHAPTER ELEVEN: MOTOR VEHICLE LAW

I. INTRODUCTION

When an individual is charged with a motor vehicle offence, it is important to determine whether the charge is under provincial or federal (criminal) legislation. This determines what the procedure and potential penalty will be. In appropriate circumstances, the Crown may stay the proceedings under federal (criminal) legislation if the accused is prepared to plead guilty to a corresponding or similar charge under provincial legislation. This is often the accused's best option where the Crown has a strong case since there will be no criminal record on conviction.

A. *LSLAP's Role*

1. Provincial Driving Offences

LSLAP does not provide representation for provincial offences. If the offence is serious (i.e. those listed below in **Sections VII: Offences After an Accident, VIII: Negligent, Dangerous or Careless Driving Offences, IX: Offences Related to Drugs and Alcohol, or X: Driving While Disqualified**), the client should be referred to a lawyer. The Legal Services Society (Legal Aid) may represent the accused if there is a risk of jail time if convicted. An applicant who does not face the risk of jail time may receive legal representation if he or she faces a loss of livelihood upon conviction, has a mental or physical disability that is a barrier to self-representation, or faces immigration complications that may result in deportation. A Legal Aid applicant who does not qualify for legal representation can contact the LawLINE, a free telephone advice service of the Legal Services Society for people with low incomes. To be eligible to receive legal advice, financial eligibility guidelines must be met. Even if financial guidelines are not met, a caller may receive some legal information through Legal Services Society.

2. Federal (Criminal) Driving Offences

LSLAP will seldom provide representation in criminal motor vehicle offences. LSLAP will not provide representation for indictable offences. In addition, LSLAP does **not** provide representation if the offence involves drugs or alcohol. If LSLAP is unable to represent a client, he or she should be referred to a private lawyer since these offences can be serious. Note that the Legal Services Society (Legal Aid) may represent the accused if there is a risk of jail time if convicted. An applicant who does not face the risk of jail time may receive legal representation if he or she faces a loss of livelihood upon conviction, has a mental or physical disability that is a barrier to self-representation, or faces immigration complications that may result in deportation. A Legal Aid applicant who does not qualify for legal representation can contact the LawLINE, a free telephone advice service of the Legal Services Society for people with low incomes. To be eligible to receive legal advice, financial eligibility guidelines must be met. Even if financial guidelines are not met, a caller may receive some legal information through Legal Services Society.

B. *Governing Legislation, Regulations, and Resources*

1. Provincial Driving Offences

The important legislation for motor vehicle offences are:

- Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA];

- Motor Vehicle Act Regulations, B.C. Reg. 26/58 [MVAR];
- Offence Act, R.S.B.C. 1996, c. 338 [OA];
- Offence Act Regulations, B.C. Reg. 434/90 [OAR].

The MVA defines the offences, while the OA explains the general procedure followed for all provincial offences. The MVAR and OAR both detail penalties.

A good overview of the MVA can be found in J. Mucalov, Fight That Ticket in British Columbia, 7th ed. (Vancouver: Self-Counsel Press, 1995).

Motor vehicle law intersects with the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231. For these matters see **Chapter 12: Automobile Insurance**.

2. Federal (Criminal) Driving Offences

The principal source for criminal offences is the Criminal Code, R.S.C. 1985, c. C-46, as amended.

Further information on criminal offences and procedures can be found in **Chapter 1: Criminal Law**.

C. *Main Features*

- Motor vehicles can now be impounded for a period of 24 hours (MVA, s. 105(1)); 30 days (s. 104.3(1)); or 60 days (s. 105.2(1)).
- Under MVA s. 25(11), conditions, requirements or restrictions on a driver's license that the Lieutenant Governor in Council prescribes apply even if the driver's license is issued before the regulation comes into force.
- An individual suspected of driving with a blood alcohol level over .08 or who refuses to provide a breath or blood sample will receive a 90-day prohibition from driving (ss. 94.1 and 94.2).
- Section 83.1 introduces liability for the owner of a vehicle who has been given a violation ticket via photo radar.
- The Supreme Court of Canada ruled that the combination of ss. 99 and 102 (which creates an absolute liability offence for driving while the driver's license has been automatically suspended) is constitutional since there is little possibility of incarceration: see *R. v. Pontes* (1995), 13 M.V.R. (3d) 145 (S.C.C.).

II. PROCEDURE AND PENALTIES

A. *Provincial Driving Offences*

1. Authority of Peace Officers

According to *R. v. Ladouceur* [1990], 56 C.C.C. (3d) 22 (S.C.C.), random checks by the police for motor vehicle fitness, possession of valid license and proper insurance, and sobriety of driver violate s. 9 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

[Charter]. However, these random checks are considered reasonable limits under s. 1 of the Charter.

Pursuant to MVA s. 79 a peace officer may arrest without warrant any person:

- a) whom the officer has reasonable and probable grounds to believe was driving while prohibited by the Superintendent or peace officer (s. 95), or while prohibited by a court order or operation of law (s. 102); or
- b) whom the officer has reasonable and probable grounds to believe is not insured or who is driving without a valid and subsisting motor vehicle liability insurance card or financial responsibility card (s. 79(b)); or
- c) whom the officer has reasonable and probable cause to believe has left the scene of an accident (MVA, s. 68);

and may detain the person until he or she can be brought before a judge (s. 79).

2. Procedure

NOTE: MVA s. 124 gives municipalities authority to create motor vehicle bylaws on matters such as parking and to enforce them by fine or imprisonment under s. 124(1)(u). Municipalities cannot use this authority with respect to speeding (s. 124(2)).

An individual charged with a bylaw offence will receive a bylaw infraction notice or a Municipal Ticket Information. While the following generally applies to these offences, special procedures may be imposed. Follow the procedures outlined on the bylaw infraction notice or Municipal Ticket Information.

An individual charged with a provincial offence will likely receive a violation ticket issued under s. 14 of the OA. However, under s. 11 of the OA an Information could also be laid against the accused. This would occur for serious offences such as MVA ss. 95 and 102 (driving while prohibited). Court attendance is compulsory when an Information is laid, but, in the case of a violation ticket, court attendance is only required if a violation ticket is disputed.

A special procedure for adjudicating violation tickets is set out in OA ss. 14 – 18. To dispute a violation ticket, one must either appear in person at any Motor License Office, Government Agent's Office, or Provincial Court Registry with a copy of the Violation Ticket or mail a copy of the Violation Ticket to: Ticket Dispute Processing, Bag #3510, Victoria, B.C., V8W 3P7. The notice of dispute must contain the address of the accused and sufficient information to identify the violation ticket and the alleged contravention or fine disputed (s. 15(3)).

A person has 30 days to make his or her intention to dispute known. Read also the reverse side of violation tickets as these regulations and procedures may change from time to time. If a client does not dispute the violation ticket within 30 days, he or she is deemed to have pled guilty under OA s. 16. A person still has 14 days to appear before a justice to state why it was not his or her fault that he or she missed the deadline (an affidavit is required) (s. 16(2)).

A violation ticket dispute is heard in Provincial Court by a judge or justice of the peace who, after hearing the evidence, determines whether or not the violation took place. If an accused misses the Provincial Court hearing, he or she has 30 days to appear before a justice to explain why he or she missed the hearing (an affidavit is required) (s. 15(9.1)).

The pamphlet Fight That Ticket in British Columbia provides guidance about how to challenge a ticket. It is important to:

- Appear at the appointed time. There is a possibility the peace officer will not appear and the case will be dismissed for want of evidence.
- Read the MVA, determine the elements of the offence, and – if the Crown fails to lead evidence on any of these elements – move for dismissal at the conclusion of the Crown’s presentation. The evidence must include identification of the alleged offender by name and address as well as the time and date of the offence.
- However, pursuant to the provisions in the OA, the Crown can easily amend most mistakes on Violation Tickets.
- If the offender can show economic hardship, the judge has the power to reduce a fine. OA s. 88 states that the fine can be lowered based on the means and ability to pay. However, the minimum fines specified in the MVA must be applied (OA, s. 88).
- Consider whether the offence is strict or absolute liability. Fight That Ticket in British Columbia by J. Mucalov, 7th ed. (Vancouver: Self-Counsel Press, 1995) might assist in this determination. If the offence is strict liability, consider whether the accused may have a defence of due diligence. Generally, this means that if the accused establishes on a balance of probabilities that he or she was not negligent, in roughly the same sense as the civil standard of negligence, that person is entitled to an acquittal.

In some instances, Legal Aid is available to people charged with an offence under the MVA for which their livelihood would be in jeopardy upon conviction.

The decision of a Provincial Court judge or justice of the peace may be appealed to the Supreme Court. A record of the finding is sent to the Superintendent of Motor Vehicles. Any discretionary determination made by the Superintendent may, in certain circumstances, be subject to judicial review.

3. Penalties

To determine the penalties for a motor vehicle offence, first read the section in the MVA describing the offence because some penalties are prescribed in the MVA. For other offences, the MVAR imposes penalty points and the OAR levies fines.

a) *Penalty Points*

Penalty points are imposed in accordance with the schedule set out in the Motor Vehicle Act Regulations, B.C. Reg. 26/58, Division 28. It is important to note that conviction for Criminal Code offences also results in the imposition of penalty points. See **Appendix A** for examples of penalty points.

Under s. 28.04 of the MVAR, the Superintendent may take whatever action pursuant to the MVA and MVAR that he or she deems appropriate. It appears that the number of penalty points will be taken into account under MVA s. 93 when the Superintendent suspends a license.

The Superintendent may suspend the license of a driver who accumulates 10 or more points in any three-year period. Alternatively, the Superintendent may require the person to take a defensive driving course, or appear at a hearing to explain why his or her license should not be suspended.

b) Fines

The Offence Act Regulations, B.C. Reg. 434/90 prescribes fines for MVA offences. This chapter's **Appendix A** lists some examples of penalty points.

c) License Suspension/Cancellation and Prohibition From Driving

(1) Roadside Suspension/Prohibition Issued by a Peace Officer

These are explained in further detail in **Section IX: Offences Related to Drugs and Alcohol**. Please refer to that part for a more complete description. Police officers may issue suspensions of different lengths:

- A 12-hour driver's license suspension may be issued to an individual who has care or control of a motor vehicle with alcohol in his or her body provided that there has been a previous condition imposed under MVA s. 25(10.1) (MVA s. 90.3);
- A 24-hour license suspension may be issued when a peace officer has reasonable and probable grounds to believe that the driver's ability to drive has been affected by alcohol (s. 215(2)) or another drug (s. 215(3));
- A 90-day prohibition from driving must be issued when a peace officer has reasonable and probable cause to believe the driver operated a motor vehicle with a blood alcohol level over .08 or refused to provide a breath/blood sample as demanded under Criminal Code s. 254 (MVA, s. 94.1).

(2) By Order of a Court

A court may, under MVA s. 98(2), suspend a driver's license for a definite period of time for any conviction under the MVA, MVAR, or Criminal Code relating to the driving or operation of a motor vehicle. The power extends to out-of-province drivers' licenses.

The judge should consider the driving record and the facts of the case. Conviction includes the possibility of an absolute/conditional discharge (MVA, s. 98(1)). This section does not apply to an individual convicted of a vicarious liability offence (s. 98(3)).

(3) By Order of the Superintendent

MVA s. 90(1) states that the Superintendent may suspend a license and plates if there is:

- a failure to pay insurance premiums;
- a failure to obtain automobile insurance;
- a failure to pay fees for registration of motor vehicle, license or permit for vehicle or driver's license; or

- indebtedness to ICBC for reimbursement of money paid in respect of a claim.

Under MVA s. 94.1(1), if a driver with a condition that no alcohol can be consumed before driving has been suspended by a peace officer (via MVA ss. 90.3 or 215) and has an “unsatisfactory” driving record (as determined by the Superintendent), the Superintendent may suspend that person’s license. The driver has 30 days to appeal to the Supreme Court (s. 94(1)).

Failure to pay a judgment in an action for damages involving bodily injury, death of another person, or damage to property in excess of \$400 resulting from the use of a motor vehicle anywhere in Canada or the United States within 30 days may lead to a driving prohibition (s. 91(1)).

Failure to appear for or to pass a driver’s examination may lead to a license being suspended or canceled (s. 92).

Under MVA s. 93, the Superintendent may suspend or cancel a driver’s license on any reasonable grounds relating to the person’s ability to drive or that person’s failure to comply with any requirement of the Act. This discretionary power may be exercised without a hearing. From its silence on the matter, the MVA permits the Superintendent to limit the period during which a license is suspended to certain times of the day or week. An appeal to the Supreme Court of the suspension or cancellation must occur within 30 days (s. 94).

In *Clauson v. British Columbia (Superintendent of Motor Vehicles)* (1978), 5 B.C.L.R. 251 (Co. Ct.), the court held that the requirement in s. 93 of the Act that the Superintendent consider “any other information” when deciding to suspend a license includes information relating to the driver’s dependence on his or her car to make a livelihood. However, this part of s. 93 was subsequently deleted and now the Superintendent need only consider part of the driving record (s. 93(2)). In addition, a suspension cannot be invalid because some evidence was not considered (s. 93(3)).

(4) Automatic Prohibition

A driver convicted of a Criminal Code motor vehicle offence is automatically prohibited from driving for one year (MVA, s. 99). The automatic prohibition also applies to some offences under the MVA:

- a) s. 95: driving while prohibited by order of peace officer or Superintendent;
- b) s. 102: driving while prohibited by operation of law;
- c) s. 224: impaired driving; or
- d) s. 226(1): refusing to give a blood sample.

Under MVA s. 100(3), an individual who refuses to stop for a police officer will receive a two-year prohibition from driving if he or she is also convicted of one of the following Criminal Code offences:

- a) s. 220: criminal negligence causing death;

- b) s. 221: criminal negligence causing bodily injury;
- c) s. 236: manslaughter; or
- d) s. 249: dangerous operation of a motor vehicle.

d) *Impoundment of a Motor Vehicle*

Drivers risk having their motor vehicles impounded only when:

(1) Driving Without a License

Drivers who are not exempt from holding a license risk having their vehicle impounded if:

- a) the driver has not received a license because:
 - the driver is in debt to ICBC for reimbursement of money paid in respect of a claim (MVA, s. 26(1)(b));
 - the driver has not paid a fine owing due to a Criminal Code motor vehicle offence (MVA s. 26(1)(c)(i)) or MVA offence (MVA, s. 26(1)(c)(ii)); or
- b) the driver's license has been cancelled:
 - for failure to pay a Criminal Code or MVA fine (MVA, s. 27(3)); or
 - for current previous prohibition/suspension under the MVA, Young Offenders (British Columbia) Act, R.S.B.C. 1996 c. 494 [YO(BC)A] or Criminal Code (MVA, 60(1)(c)); or
- c) if they have been convicted of driving without a license since their last driver's license expired or was canceled.

Under MVA s. 105(1), the vehicle must be impounded for 24 hours if it is driven or operated and one of the above conditions apply. For s. 104.1 violations, the impoundment period is 30 days (s. 104.3(1)) unless the vehicle had been impounded under s. 104.1 in the past two years in which case the period is 60 days (s. 104.3(2)). The 60-day period can be reviewed (s. 104.6). All transportation, towing, care, storage, disposition, and other related costs constitute a lien on the vehicle (s. 104.5).

The owner can request a review of the impoundment (s. 104.6). If the owner is not the driver and the driver was in possession without the knowledge or consent of the owner, the driver held a subsisting driver's license, or the owner exercised reasonable care and diligence in entrusting the motor vehicle, the vehicle must be released and all costs paid by the Superintendent (s. 104.8(1)).

If the owner was the driver and had a reasonable belief that she or he had a subsisting driver's license, or was exempt from holding one, the vehicle should be released and all costs must be paid by the Superintendent (s. 104.8(2)).

A spouse can apply for a compassionate release under MVA s. 104.91 if the impoundment would lead to the loss or curtailment of employment or educational opportunities for the spouse, or it would prevent the spouse or someone under the care of the spouse from obtaining medical treatment, and there is no reasonable alternative. The owner or spouse must pay all costs (s. 104.91(4)). Only one such application can be made per impoundment period (s. 104.91(5)).

(2) **Driving While Prohibited Under MVA ss. 91(1), 92 or While Right to Drive or Right to Apply Suspended**

If a driver drove while prohibited under MVA s. 91(1) (failed to satisfy judgment), or s. 92 (did not appear for or pass a driver's examination), or while his or her license or right to apply for one was suspended, his or her vehicle must be impounded for 24 hours (s. 105(1)). The costs and charges for towing, care, and storage are a lien on the motor vehicle (s. 105(6)).

(3) **Driving While Prohibited Under MVA ss. 93, 94.2, 98, 99, 215, the YO(BC)A or the Criminal Code**

If a person drives while prohibited under MVA ss. 93, 94.2, 98, 99, 215, the YO(BC)A or the Criminal Code, the vehicle must be impounded. The same general rules apply as for a driver caught driving without a license (see above).

To get an impoundment revoked if the owner was not the driver, the owner must show that the driver was in possession without the knowledge or consent of the owner, that the driver was not prohibited under those provisions, or that the owner exercised reasonable care and diligence in entrusting the motor vehicle. If one of these is true, the vehicle must be released and the Superintendent will pay all costs (MVA, s. 104.93).

If the owner was the driver and not prohibited under the above provisions, or had no reason to believe that he or she was prohibited, the vehicle should be released and all costs paid by the Superintendent (MVA, s. 104.94).

e) *Prison*

See the MVA to determine if there is a possibility of incarceration for an offence. The OA limits the likelihood of prison since s. 6 states that there should be no imprisonment for absolute liability offences, and s. 82(1) states that there should be no prison for non-payment of fines.

f) *Breach of Insurance Conditions*

Pursuant to the Revised Regulations (1984) Under the Insurance (Motor Vehicle) Act, B.C. Reg. 447/83 s. 55(8), offences under MVA s. 224 (driving with a blood alcohol level over .08) and s. 226 (refusal to provide a blood sample) are considered a breach of certain conditions. It is also a breach of these conditions if alcohol or drugs have rendered the driver incapable of proper control of the vehicle.

B. Federal (Criminal) Driving Offences

1. Authority of Peace Officers

Pursuant to Criminal Code s. 495(1), a peace officer may arrest without warrant:

- a) a person who has committed an indictable offence or who, on reasonable grounds, the peace officer believes has committed or is about to commit an indictable offence;
- b) a person who the peace officer finds committing a criminal offence; or
- c) a person of whom the peace officer has reasonable grounds to believe that a warrant of arrest or committal is in force.

Alternatively, a peace officer may issue an appearance notice (s. 496). An arrest is more likely when the offence involves impairment by alcohol or drugs because, if acting under the authority of Criminal Code s. 495(2), the peace officer may then take such action in the belief that it is necessary to prevent “the continuation or repetition of the offence or the commission of another offence”.

However, in *R. v. Labine* (1987), 49 M.V.R. 24 (B.C. Co. Ct.), the court held that the policy of the police officer to arrest all impaired driving suspects regardless of rights afforded to them by the Criminal Code offends the Charter. Specifically, it offends s. 9 of the Charter, which protects people from arbitrary detention. The police cannot deliberately adopt a policy to deprive the accused of the right not to be arbitrarily detained notwithstanding that the officer might be acting in the execution of their duties under Criminal Code s. 495(3). Though the defence in *R. v. Labine* (above) is still good law, its applicability has been greatly limited. See *R. v. Faulkner* (1988), 9 M.V.R. (2d) 137 (B.C.C.A.) which states that unlawful arrests are not necessarily arbitrary.

2. Procedure

Please consult **Chapter 1: Criminal Law** for a complete source of information on LSLAP criminal procedure.

It is in the client’s best interest to retain qualified counsel because of the potential of a criminal record and a severe penalty that might include incarceration. Moreover, issues might arise later regarding insurance coverage. The Legal Services Society (Legal Aid) may represent persons charged with an indictable offence or a summary conviction offence where there is a likelihood of jail. An applicant who does not face the risk of jail time may receive legal representation if he or she faces a loss of livelihood upon conviction, has a mental or physical disability that is a barrier to self-representation, or faces immigration complications that may result in deportation.

In all cases, the clinician should discuss the matter with the Supervising Lawyer prior to agreeing to act for the client or going on record as counsel. LSLAP will usually only represent clients for Criminal Code offences where:

- a) the client cannot afford a lawyer;
- b) the client has been turned down by Legal Aid;
- c) the offence does not involve drugs or alcohol;

- d) in the case of a hybrid offence, the Crown indicates it intends to proceed summarily or where the offence in question is purely a summary conviction offence; and
- e) in the opinion of the Supervising Lawyer, the possibility of jail is not significant.

3. Penalties

a) *Fines/Imprisonment*

To determine the possible penalties, it is usually necessary to find out if the Crown is proceeding by way of indictment or summarily. The relevant offence sections in the Criminal Code suggest the range of punishments.

b) *Penalty Points*

The MVAR prescribes penalty points. See **Appendix A: Examples of Penalty Points and Fines.**

c) *Prohibition from Driving*

An individual can be prohibited from driving under Criminal Code s. 259. In addition, MVA s. 99 imposes a one-year driving prohibition following conviction for a Criminal Code motor vehicle related offence.

d) *Impoundment of a Motor Vehicle*

Please see description in **Section II.A.3.d** on provincial penalties.

e) *Breach of Insurance Conditions*

Pursuant to the Revised Regulations (1984) Under the Insurance (Motor Vehicle) Act, B.C. Reg. 447/83 s. 55(8), most Criminal Code motor vehicle offences are a breach of certain conditions. It is also a breach of these conditions if alcohol or drugs have rendered the driver incapable of proper control of the vehicle.

Criminal Code offences that breach insurance conditions are:

- s. 220: criminal negligence causing death;
- s. 221: criminal negligence causing bodily injury;
- s. 249: dangerous operation;
- s. 252: leaving the scene of an accident;
- s. 253(a): driving with a blood alcohol level over .08;
- s. 253(b): driving while impaired;
- ss. 255(2) or (3): causing bodily harm or death while impaired;
- s. 259(4): driving while disqualified; and

- s. 254(5): refusing to provide a breath/blood sample.

If a conviction results from any of these offences, it may render the driver or owner's insurance policy void and ICBC may legitimately deny the claim.

III. LIMITATION PERIODS

A. *Provincial Offences*

Every Information must be laid within 12 months from the time the alleged offence took place (MVA, s. 78).

B. *Federal (Criminal) Offences*

Section 786(2) of the Criminal Code states that, with respect to summary offences, "No proceedings shall be instituted more than six months after the time when the subject-matter of the proceedings arose".

There is no limitation period for indictable offences.

IV. VICARIOUS LIABILITY FOR PROVINCIAL OFFENCES

A. *General*

Vicarious liability of a motor vehicle "owner" is governed by s. 86 of the *Motor Vehicle Act*.

An "owner" includes:

- a person in possession of a motor vehicle under a contract by which he or she may become its owner on full compliance with the contract.

An "owner" is **not**:

- A seller of vehicles under contracts of conditional sale.
- A true "lessee".

In *Yeung v. Au*, [2006] B.C.J. No. 975, 2006 BCCA 217 the court held that a vehicle leased with an option to purchase is not a "vehicle that has been sold" under s. 86(3), and that unless and until the lessee should exercise the option to purchase, title remains in the lessor. The court concluded, therefore, that the lessor may be vicariously liable pursuant to s. 86(1). An application for leave to appeal to the Supreme Court of Canada from the decision in *Yeung v. Au* has been filed and the Court is scheduled to hear the appeal in the Winter 2008 session: see [2006] S.C.C.A. No. 275.

B. *For Damages*

Although the driver of a motor vehicle is primarily liable for damage caused by that motor vehicle, under MVA s. 86 the owner will also be vicariously liable for damages caused by that motor vehicle if the driver lives with and is a member of the owner's family or had the owner's express or implied consent to drive.

NOTE: This section does not give an owner a right of indemnity (compensation) against a negligent driver who drives with the owner's consent: see *Labentsoff v. Smith* (1969), 71 W.W.R. 304 (B.C. Co. Ct.).

C. For Offences

Pursuant to MVA ss. 83 and 88, the owner of a motor vehicle is liable for any violation of the MVA or MVAR unless he or she can prove that:

- a) he or she did not entrust the motor vehicle to the person in possession (MVA, s.83(3)(a)), or that such person was not an employee, servant or agent (s. 88(1));
- b) although the registered owner, he or she is not the actual owner (s. 83(5)(b)); or
- c) he or she exercised reasonable care and diligence when entrusting the motor vehicle to the person in possession of the motor vehicle at the time (s. 83(3)).

Under MVA s. 83(4), if an owner is liable for an offence committed by the driver, a fine of not more than \$2,000 may be imposed in place of the fine or term of imprisonment specified in the enactment.

Under s. 83(7), no owner is liable if the driver was convicted under MVA for:

- a) driving without a license or without the appropriate class of license;
- b) driving while prohibited by order of peace officer or Superintendent, s. 95;
- c) driving while prohibited by operation of law, s. 102;
- d) impaired driving, s. 224; or
- e) refusing to give a blood sample, s. 226(1).

An owner will not be liable for any offence where the driver has been convicted of the same offence or an included offence arising out of the same circumstances.

D. Stolen Vehicles

If a motor vehicle is stolen, both ICBC and the police should be notified immediately. However, if the owner suspects or knows the identity of the person who stole the vehicle, the police may be reluctant to pursue the matter. The owner should insist that the matter be investigated.

V. PROVINCIAL VEHICLE STANDARDS

A. Equipment Standards in General

The general rule is that: “no person shall drive or operate any motor vehicle or trailer on any highway or rent any motor vehicle or trailer unless it is equipped in all respects in compliance with the provisions of this Act and of the Regulations” (MVA, s. 219(1)).

Section 219(2) permits a peace officer to require the inspection of a registered owner’s motor vehicle and motor vehicles at a rental firm.

Under MVAR s. 25.15, where a police officer has reasonable and probable grounds to believe that a vehicle is unsafe for use on a highway, regardless of whether or not the vehicle meets the standards prescribed under the MVA, the officer may:

- a) order the vehicle removed from the highway until repairs as ordered by the officer are completed or the peace officer revokes the order; and/or

- b) order the surrender of the vehicle license and/or number plates.

B. Seat Belt Assembly

Section 220 of the MVA requires that any motor vehicle manufactured after December 1, 1963 must be equipped with at least two front seat belt assemblies before it is sold or operated.

When the motor vehicle is operated, these assemblies must be properly fastened except:

- a) when driving in reverse;
- b) in the case of a person with a certificate signed by a medical practitioner excusing that person from wearing the seat belt (see s. 220(5) for the criteria); and/or
- c) in the case of a person engaged in work which requires frequent alighting and in which the maximum vehicle speed is 40 km per hour.

A fine imposed under this section must be less than \$100 (s. 220(10)).

Courts have upheld the rules enforcing mandatory seat belt use; they are not an infringement of an individual's Charter rights. The provision is an integral part of a broad legislative scheme to promote highway safety and to minimize the overall human and economic cost of accidents. Further, the alleged infringement of a person's right to free choice is so insignificant that it cannot be considered a measurable breach of those rights: see *R. v. Kennedy* (1987), 18 B.C.L.R. (2d) 321 (C.A).

C. Air Pollution Controls

NOTE: Sections 47(1) and 47(4) of the MVA have been repealed, and MVA s. 47(2) has been amended (1994-33-3). These changes are to come into force by regulation.

Section 49(1) of the MVA empowers the Lieutenant Governor in Council to make regulations respecting the control of emissions from motor vehicles. These are set out in Division 29 of the MVAR.

Under s. 50(1) of the MVA, the Superintendent established a program to certify compliance with motor vehicle standards set out in MVA s. 49(1) and the MVAR. Under MVA s. 48, a Superintendent may refuse to issue a license for a motor vehicle that has not been certified under s. 50 within 12 months prior to the application of license renewal, and which is not exempt from this requirement.

However, under MVA s. 50(3), the Superintendent may certify a motor vehicle even though the motor vehicle does not fully comply with the Regulations under MVA s. 49, as long as the Superintendent is satisfied that the owner of the motor vehicle has made and will make all reasonable efforts to bring the motor vehicle into compliance, and undue hardship would result to the owner if the motor vehicle is not certified under this section.

It is an offence to sell or operate a motor vehicle that fails to meet these standards. The penalty is a fine of between \$50 and \$500 (MVA, s. 47(3)).

VI. PROVINCIAL REQUIREMENTS

A. Stopping for a Peace Officer

It is an offence for a person driving, or in charge of, a motor vehicle on a highway to refuse or fail to stop when signaled or asked by a uniformed peace officer (MVA, s. 73(1)). If asked, the driver must:

- a) provide his or her name and address, and the name and address of the owner of the vehicle (MVA, s. 73(2));
- b) produce or exhibit the motor vehicle license plate (s. 71); and
- c) produce his or her driver's license and the motor vehicle liability insurance card, or financial responsibility card (s. 33(1)).

Under MVA s. 70(1)(b), it is an offence to refuse or fail to produce a driver's license, permit, certificate, or motor vehicle liability insurance card when asked by a peace officer or constable.

B. Driver's Licenses

It is an offence for an individual to drive or operate a motor vehicle without a subsisting driver's license (MVA, s. 24(1)), or to drive or operate a motor vehicle of a category other than a category designated under the individual's license. The license may be subject to any restriction the Superintendent deems necessary for safety reasons (s. 25(10)). It is an offence to violate these conditions (s. 25(15)). Failure to satisfy an examiner of one's competence to drive safely will lead to the suspension or cancellation of the driver's license by the Superintendent (s. 92).

If a driver's license is lost, a duplicate will be issued. The original, if found, must be surrendered (s. 33(3)).

A driver must produce his or her license when so asked by a peace officer (s. 33). If a driver has a valid license, but is unable to produce it, that person will receive two fines:

- a) failure to produce a driver's license (\$58); and
- b) driving without a valid license (\$115).

The fine for driving without a valid license will be dropped if the driver proves he or she had a license at that time.

Under the MVA, it is an offence to make a false statement when applying for or renewing a driver's license, to give number plates to another person (s. 69(b)), or to give your driver's license to another person (s. 69(c)). Under MVA s. 70(1)(a), it is an offence to use another's license or a fictitious or invalid driver's license. Under s. 70(2), any person who commits an offence under s. 70(1)(a) is liable for a fine between \$100 and \$2,000, and/or imprisonment for a period between seven days and six months.

C. Certificate of Insurance

Section 24(3)(a) of the MVA requires that a driver must be insured. The penalty is a fine up to \$250 and/or up to three months incarceration (s. 24(5)(a)). Section 24(3)(b) states that the motor vehicle must be insured. Failure to comply will result in a fine between \$300 and \$2,000 and/or imprisonment between seven days and six months (s. 24(5)(b)).

Furthermore, a driver must produce a valid certificate of insurance when asked by a peace officer (s. 33). The penalty for failing to produce the certificate is \$50.

It is also an offence to make a false statement when applying for insurance (MVA, s. 69(a)), to lend your certificate (s. 69(c)), or to use another's certificate or an invalid/fictitious certificate (s. 70(1)(a)). Under MVA s. 70(2), you are liable to a fine between \$100 and \$2,000 and/or imprisonment for a period between seven days and six months for a violation of s. 70(1)(a).

MVA s. 24(6) also creates offences regarding insurance. It is an offence to show a peace officer or the Superintendent:

- a) a motor vehicle liability insurance card or a financial responsibility card which purports to show that there is a policy of insurance in force when there is not;
- b) a financial responsibility card purporting to show that a person is, at that time, maintaining in effect proof of financial responsibility when he or she is not; or
- c) a motor vehicle liability insurance card or a financial responsibility card that does not apply to the vehicle which the holder is driving.

Under s. 24(6), it is an offence to give or loan a motor vehicle liability insurance card or a financial responsibility card to a person not entitled to it. Section 24(6) states that failure to deliver to the Superintendent for cancellation a financial responsibility card is an offence.

VII. OFFENCES AFTER AN ACCIDENT

A. *General*

This section examines offences related to the actions taken after a motor vehicle accident. It is usually appropriate to refer clients to a private lawyer or Legal Aid, since some offences can result in imprisonment. In addition, a civil claim for damages may be initiated, and LSLAP does not handle any cases involving personal injury.

See **Chapter 12: Automobile Insurance** for information on claims regarding hit and run incidents, as well as uninsured defendants.

B. *Duty at the Scene Under the MVA*

Pursuant to MVA s. 68(1), the driver of a vehicle involved in an accident must:

- a) remain at the scene or return immediately;
- b) render all reasonable assistance; and
- c) produce in writing her or his name and address, the registered owner's name and address, the vehicle license number and particulars of insurance.

C. *Failure to Remain at the Scene*

1. **Provincial Offence**

It is an offence to omit to do the duties specified in MVA s. 68(1). The reason for leaving the scene is irrelevant. However, since this is a strict liability offence, a defence of due diligence may be available.

2. **Federal (Criminal) Offence**

Under Criminal Code s. 252(1), it is an offence for a driver involved in an accident with (a) a person, (b) a vehicle, vessel or aircraft, or (c) cattle in the charge of another person to fail to remain at the scene of an accident with the requisite intent of escaping civil or criminal liability. From s. 252(2), "in the absence of any evidence to the contrary," the failure to stop raises a presumption of intent to escape civil or criminal liability.

If a person charged with a criminal offence can show that he or she left the scene for some other purpose, even where that purpose was itself unlawful, that person is entitled to an acquittal. A person who is convicted for failing to remain at the scene of an accident is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, or is guilty of an offence punishable on summary conviction.

D. Duty Under the MVA When There is Damage to Unattended Vehicle or Property

1. Damage to Unattended Vehicles

Under MVA s. 68(2), the driver or operator or any other person in charge of a motor vehicle that collides with an unattended vehicle must:

- a) stop; and
- b) locate and notify in writing the owner of the unattended vehicle of the name and address of the driver, the operator or any other person in charge of the motor vehicle, as well as the registered owner's name and address and the vehicle license number. The information can be left in a conspicuous place on the damaged vehicle.

2. Damage to Other Forms of Property

In the event of damage to property other than another vehicle, the driver or operator or any other person in charge of a motor vehicle must take reasonable steps to locate and notify the owner of the property in writing (MVA, s. 68(3)). The driver must provide the following particulars to the owner of the property: the name and address of the driver, operator or other person in charge of the vehicle, as well as the license number of the vehicle and the name and address of the vehicle's registered owner.

E. Duty to Provide Information Under the MVA

If asked, the owner or driver of a motor vehicle a peace officer believes has been involved in an accident or a violation of the MVA must provide any information respecting the identity of the driver at the time of the accident (MVA, s. 84). However, the person has the right to remain silent until he or she speaks to a lawyer, which may be appropriate in certain circumstances.

F. Duty to Report Accidents Under the MVA

Section 67(1) of the MVA requires that police be notified in the event of an accident directly or indirectly causing:

- a) death;
- b) injury;
- c) aggregate property damage "apparently" exceeding \$1,000 in the case of a vehicle other than a motorcycle; or
- d) property damage "apparently" exceeding \$600 in the case of a motorcycle.

The driver must make the report within 24 hours if the accident occurred in a city or municipality (s. 67(3)). If elsewhere, the report must be made within 48 hours (ss. 67(5)).

If the driver is incapable of reporting, another occupant of the car, if one was present, must report in the meantime. If no other occupant capable of making a report was present, the investigating officer shall make the report (ss. 67 (6),(7)).

Accident reports are not admissible at trial except in a prosecution for making a false statement in a report (s. 67(11)). Although reports are not open to public inspection, other parties to the accident may obtain license numbers from the reports, as well as names of drivers, registered owners, and witnesses (s. 67(10)).

VIII. NEGLIGENT, DANGEROUS OR CARELESS DRIVING OFFENCES

A. *General*

A referral to Legal Services Society for legal representation is appropriate if an individual is charged with a negligent or dangerous driving offence that would result in jail time if convicted. An applicant who does not face the risk of jail time may receive legal representation if he or she faces a loss of livelihood upon conviction, has a mental or physical disability that is a barrier to self-representation, or faces immigration complications that may result in deportation. A Legal Aid applicant who does not qualify for legal representation can contact the LawLINE, a free telephone advice service of the Legal Services Society for people with low incomes. To be eligible to receive legal advice, financial eligibility guidelines must be met. Even if financial guidelines are not met, a caller may receive some legal information through Legal Services Society.

B. *Provincial Driving Offences*

1. **Careless Driving**

Section 144(1) of the MVA creates three offences of careless driving. It is an offence to drive:

- 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.

A person who commits either of the first two offences described above is liable on conviction to a fine of not less than \$100, and has six points added to his or her driving record. Subject to the minimum fine, s. 4 of the QA applies (a fine must be less than \$2,000).

A person who commits the third offence described above is liable on conviction to a fine of \$173 and three penalty points per the QAR and MVAR respectively.

To convict a driver of any of these offences, the Crown need prove only inadvertent negligence: a lack of proper care or absence of thought. The standard of care is determined in relation to the circumstances, and carelessness must be proved beyond a reasonable doubt: *R. v. Beauchamp* (1953), 106 C.C.C. 6 (Ont. C.A.).

2. **Road Racing**

Part 7 of the MVA include the following street racing provisions. This offence has, as of late, become a major public issue and the authorities will treat it very seriously. Street racing

will also be considered as an aggravating factor for other offences, including criminal code offences. Clinicians should refer clients to a lawyer to deal with these problems.

"Race" means circumstances in which, taking into account the condition of the road, traffic, visibility and weather, the operator of a motor vehicle is operating the motor vehicle without reasonable consideration for other persons using the highway or in a manner that may cause harm to an individual, by doing any of the following:

- a) outdistancing or attempting to outdistance one or more other motor vehicles;
- b) preventing or attempting to prevent one or more other motor vehicles from passing;
- c) driving at excessive speed in order to arrive at or attempt to arrive at a given destination ahead of one or more other motor vehicles;

According to S. 243, a peace officer may cause a motor vehicle to be taken to, and impounded for 30 days at, a place directed by the peace officer if the peace officer has reasonable and probable grounds to believe that:

- a) a person has operated the motor vehicle on a highway in a race and the peace officer intends to charge the person who operated the motor vehicle with a serious offence, and
- b) the person who operated the motor vehicle had, within 2 years before the day of the impoundment, operated a motor vehicle that was impounded under s. 242, and that impoundment was not withdrawn under s. 242(11).

The owner of a motor vehicle who operated the motor vehicle in a manner that resulted in the motor vehicle being impounded under s. 243 may, within 30 days of the impoundment, apply to the superintendent for a review of the impoundment (s. 246).

C. Federal (Criminal) Driving Offences

1. Dangerous Operation of a Motor Vehicle

Under the Criminal Code, it is an offence to operate a motor vehicle in a manner that is dangerous to the public having regard to the nature, condition, and use of a highway or other public place as well as the amount of traffic that at the time is, or might reasonably be expected to be, at that place (Criminal Code, s. 249(1)(a)).

In the absence of death or bodily harm, a person who commits this offence is guilty of an indictable offence and is liable to imprisonment for up to five years, or is guilty of an offence punishable on summary conviction (s. 249(2)).

If the dangerous driving results in bodily harm, an indictable offence has been committed, and the driver may be liable to imprisonment for up to 10 years (s. 249(3)).

If the dangerous driving results in death, an indictable offence has been committed, and the driver may be liable to imprisonment for up to 14 years (s. 249(4)).

Dangerous driving (s. 249) is included in the offences created under Criminal Code ss. 220 (causing death by criminal negligence), 221 (causing bodily harm by criminal negligence), and 236 (manslaughter). In other words, if the evidence does not prove one of those three offences it is still possible to convict under s. 249 (Criminal Code, s. 662.5).

2. Criminal Negligence

This section of the Code is not specifically aimed at motor vehicle operators but it can be applied to them. Under the Criminal Code, criminal negligence involves acts or omissions showing “wanton or reckless disregard for the lives or safety of other persons” (s. 219). In Canada, the law about *mens rea* requirements for criminal negligence was clarified in *R v. Creighton* [1993], S.C.J. No. 91. The standard is to be measured by a modified objective test, *i.e.* whether the conduct constituted a marked departure from that of the reasonable person in all the circumstances. Characteristics personal to the accused will not be considered with one exception: incapacity to appreciate the nature of the risks associated with his/her actions.

R v. Beatty was heard in February 2008 and addressed the issue of criminal negligence in the context of dangerous driving specifically. Unlike in *Creighton* there is no substantive dissent, though five of the 'newer' SCC justices took a slightly different approach to the modified objective test. They noted that the actual (subjective) state of mind of the accused at the time of the accident is relevant in determining if there was a marked departure from the standard of the reasonable person. In *Beatty*, a momentary lapse of attention with no other evidence of dangerous driving was NOT sufficient to warrant criminal sanction under s. 249 - criminal negligence causing death.

If the negligence results in death, an indictable offence has been committed and the driver may be liable to life imprisonment (s. 220).

If the negligence results in bodily injury, an indictable offence has been committed and the driver may be liable to imprisonment for 10 years (s. 221).

IX. OFFENCES RELATED TO DRUGS AND ALCOHOL

NOTE: Current LSLAP policy is to refer ALL impaired driving offences to the professional bar.

A. Federal (Criminal) Offences

1. Impaired Driving/Exceeding 80 Milligrams (.08)

Section 253(a) of the Criminal Code makes it an offence either to operate or to be in care or control of a motor vehicle while alcohol or drugs impair one's ability to drive. Section 253(b) makes it an offence to either operate or be in the care or control of a motor vehicle with a blood-alcohol reading in excess of 80 milligrams of alcohol per 100 millilitres of blood.

With a charge under s. 253, the Crown must prove driving if driving is charged, or prove care or control if care or control is charged. They are two separate and distinct offences, and neither is included in the other: see *R. v. Henry* (1971), 5 C.C.C. (2d) 201 (B.C. Co. Ct.); *R. v. Jones* (1974), 17 C.C.C. (2d) 221 (B.C.S.C.); and *R. v. Faer* (1975), 26 C.C.C. (2d) 327 (Sask. C.A.). However, since it is difficult to conceive of a situation when driving is not also care or control, the Crown will almost always charge care or control.

The court in *R. v. Kienapple* [1974], 15 C.C.C. (2d) 524 (S.C.C.) held that an accused cannot have multiple convictions for the same act. Therefore, an accused cannot be convicted of both impaired driving and having a blood alcohol concentration exceeding 80 milligrams.

The Crown can establish acts of care or control in two ways:

- a) Pursuant to Criminal Code s. 258(1)(a), where a person is occupying the seat or position ordinarily occupied by the person who operates the motor vehicle, that person will be presumed to be in care or control unless he or she establishes that he or she did not occupy that seat or position for the purpose of setting the vehicle in motion;
- b) If the Crown is unable to rely on this presumption (i.e. the accused establishes that he or she did not enter the vehicle with the intent to set it in motion), the Crown must then prove acts of care or control which have been defined as any use of the vehicle or its fittings and equipment or some course of conduct associated with the vehicle which create the danger or risk of putting the vehicle in motion: see *R. v. Toews* (1985), 21 C.C.C. (3d) 24 (S.C.C.).

A peace officer may demand a breath/blood sample pursuant to Criminal Code s. 254(3) if the peace officer has reasonable and probable grounds to believe the individual is impaired or has a blood alcohol level over .08. Reasonable and probable grounds may include factors such as: the physical condition of the person, if the person is incapable of providing a sample of his or her breath, or that it would be impracticable to obtain a breath sample (s. 254(3)). Refusal to provide a sample is an offence (s. 254(5) and see below).

For a charge under s. 253(b), the Crown may prove a blood alcohol reading in excess of .08 by producing a valid certificate of analysis or providing *vive voce* testimony at trial from a registered analyst or breathalyzer technician about the blood alcohol concentration at the time the accused provided a breath sample.

Once a certificate has been prepared, or the Crown has tendered *vive voce* evidence of the blood alcohol concentration, the Crown can rely on the presumption commonly known as the “presumption back” set out in Criminal Code s. 258(1)(c). Under this section, where samples of breath are taken within two hours from the time the offence is alleged to have been committed, the concentration of alcohol in the blood reflected by those samples will be assumed to have been the concentration of alcohol in the blood at the time of the offence unless the accused raises evidence to the contrary (i.e. that he or she consumed more alcohol between being stopped and the time the sample was taken). Please note that the presumption back applies only to samples demanded pursuant to s. 254(3) and not s. 254(2), which is for screening purposes (see below, Refusing to Provide a Breath or Blood Sample).

The “presumption back” also applies to a blood sample (s. 258(1)(d)).

Note that this presumption pertaining to the evidence contained in the breathalyzer certificate does not offend s. 11(d) of the Charter, the section which protects the presumption of innocence: see *R. v. Bateman* (1987), 46 M.V.R. 155 (B.C. Co. Ct.).

As stated above, a conviction requires the production of a valid certificate or *vive voce* testimony at trial from a registered analyst or a breathalyzer technician. However, the breathalyzer technician or registered analyst must have the qualifications set out in the Criminal Code.

a) Penalties

Under Criminal Code s. 255, impaired driving is a hybrid offence. The minimum fine for a first offence is \$600. If convicted of an indictable offence under s. 255, the accused may be liable for a maximum of 5 years’ imprisonment. If convicted on summary conviction, the accused may be liable for up to six months’ imprisonment. Imprisonment is mandatory for repeat offences: at least 14 days for the second offence and at least 90 days for each additional offence.

Under s. 259(1), a person's driver's license may be suspended for a period between one year and three years. If convicted a second time, the suspension would be two years to five years. On each subsequent offence, the suspension would be a minimum of three years.

However, s. 259(1.1) gives the Court discretion to authorise an offender to drive during the prohibition period if the offender registers in an alcohol ignition interlock device program. Such an authorisation will not come into effect until the expiry of an absolute prohibition period of at least three months for a first offence, at least six months for a second offence, and at least one year for every subsequent offence (s. 259(1.2)).

In addition, 10 penalty points are recorded pursuant to the MVAR, and the offence may be a breach of certain conditions under the Revised Regulations (1984) Under the Insurance (Motor Vehicle) Act, B.C. Reg. 447/83 s. 55(8).

2. Refusing to Provide a Breath or Blood Sample

A peace officer can demand a breath sample if that officer reasonably suspects a driver has consumed alcohol (Criminal Code, s. 254(2)). This is for screening purposes. In addition, an officer may demand a breath/blood sample under s. 254(3) if that officer has reasonable and probable grounds to believe that the driver is impaired or has a blood alcohol level of over .08. Refusal to provide a sample under either circumstance is an offence (s. 254(5)).

To demand the sample under s. 254(3), the test is both subjective and objective. The peace officer must hold an honest belief, and there must be reasonable grounds for this belief (based on Criminal Code s. 254(3) and Charter s. 8 (unreasonable search and seizure) as interpreted in *R. v. Bernshaw* (1994), 95 C.C.C. (3d) 193 (S.C.C.)).

NOTE: Providing a breath sample is not a voluntary procedure: the peace officer demands the sample. The driver may refuse only if he or she has a "reasonable excuse".

A reasonable excuse has been held to include the right to first consult with a lawyer in private. If the police officer does not inform the driver of his or her right to retain and instruct counsel (s. 10(b) of the Charter), the breath or blood sample, if given, may be excluded from evidence if admitting the sample "would bring the administration of justice into disrepute" (Charter, s. 24(2)). Breach of Charter s. 10(a) rights, that is, failure to be informed of reason of arrest, may also result in exclusion of evidence under s. 24(2) of the Charter.

Where an accused chooses to exercise the right to retain counsel, the police officer must provide him or her with a reasonable opportunity to retain and instruct counsel: see *R. v. Elgie* (1987), 48 M.V.R. 103 (B.C.C.A.); *R. v. Manninen*, [1987] 1 S.C.R. 1233.

The length of time constituting a sufficient and reasonable opportunity for an accused to exercise the right to retain and instruct counsel will depend on the circumstances of each case. An otherwise short period of time may not be unreasonable due to the behaviour and attitude of the individual under investigation by the police. Police officers are always mindful of the fact that they must take a breath sample within two hours of the time the offence was allegedly committed (*R. v. Dupray* (1987), 46 M.V.R. (2d) 88 (B.C. Co. Ct.)).

Not only must the police officer provide a reasonable opportunity for the accused to retain and instruct counsel, but the officer must also refrain from attempting to elicit evidence until the detainee has been offered this opportunity (*R. v. Manninen*).

B. Provincial Offences

1. Exceeding 80 Milligrams (.08)

MVA s. 224 makes it an offence either to drive or to be in the care or control of a motor vehicle with a blood-alcohol reading in excess of 80 milligrams of alcohol per 100 millilitres of blood (.08).

a) Penalties

Section 224(1) of the MVA states that a fine between \$100 and \$2,000 and/or a prison sentence between seven days and six months will be imposed. There is also a one-year driving prohibition under s. 99(2).

In addition, 10 penalty points are recorded pursuant to the MVAR, and the offence is a breach of certain conditions under the Revised Regulations (1984) Under the Insurance (Motor Vehicle) Act, B.C. Reg. 447/83 s. 55(8).

2. Refusing to Provide a Blood Sample

Section 226(1) of the MVA makes it an offence to refuse (without a reasonable excuse) to provide a blood sample when asked by a police officer.

See s. 225 for potential reasonable excuses.

a) Penalties

These are the same as for MVA s. 224.

3. Twelve and 24 Hour Suspensions, and 90 Day Prohibition

Under MVA s. 90.3, a peace officer may issue a 12-hour license suspension for an individual who has care or control of a motor vehicle with any amount of alcohol in his or her body, provided that there has been a previous condition imposed under MVA s. 2(10)(a) which prohibits that driver from driving after consuming alcohol. However, this suspension is terminated if the individual provides a medical certificate stating that his or her blood alcohol level did not exceed .03 (30 milligrams of alcohol in 100 millilitres of blood).

Under s. 215(2)(c) of the MVA, a peace officer who has reasonable and probable grounds to believe that a driver's ability to drive the motor vehicle has been affected by alcohol may order the driver to surrender his or her license. The license is then suspended, even if it is not physically surrendered, for 24 hours or until the driver proves that he or she has a count of less than .05 (50 milligrams of alcohol in 100 millilitres of blood). Such proof may be obtained by means of a test or a doctor's certificate. It is important to note that this test is completely voluntary, but it is mandatory when a peace officer requests a test.

Under s. 215(3)(c), a police officer who has reasonable and probable grounds to believe that a driver's ability to drive the motor vehicle has been affected by a drug other than alcohol may order the surrender of the driver's license. The license will again be suspended for 24 hours, or until the driver proves he or she is not affected by drugs.

If the result of any voluntary test taken is adverse to the driver, it cannot be used as evidence against the driver. It will only be used to confirm the officer's decision to suspend the license.

While a suspension under MVA s. 215 will be placed on the driver's record, this is a preferable alternative to a charge under the Criminal Code.

Under MVA s. 94.1, if a peace officer has reasonable and probable grounds to believe that a person operated or had care and control of a motor vehicle while the concentration of alcohol in the blood exceeded .08 (80 milligrams of alcohol in 100 millilitres of blood) or that a person refused to provide a breath or blood sample (as required under Criminal Code s. 254), the peace officer must issue a 90-day driving prohibition. The driver has seven days to appeal to the Superintendent (MVA, s. 94.4(1)).

X. DRIVING WHILE DISQUALIFIED

A. *Provincial Offences*

MVA s. 95(1) makes it an offence for an individual to drive knowing that, by order of peace officer or Superintendent, he or she is prohibited or his or her license is suspended. The prohibition must have been made pursuant to the MVA:

- s. 91: failure to satisfy a judgment;
- s. 92: failure to pass a driver's exam;
- s. 93: order of Superintendent; or
- s. 94.2: drove impaired or refused to provide a breath/blood sample.

The suspension must be pursuant to the driver's attendance for a driver's exam, s. 90 (funds are owed), or s. 102 (driving while prohibited by operation of law).

Under MVA s. 102(1), it is an offence to drive while prohibited due to operation of law, namely MVA ss. 98 (court ordered prohibition), 92 (automatic prohibition), or 100 (failing to stop for a peace officer) as well as two sections of the Young Offenders (British Columbia) Act, R.S.B.C. 1996 c. 494 [YO(BC)A]. Pursuant to YO(BC)A s. 7(2)(f), when a young offender is convicted of an offence under the MVA, he or she can be prohibited from driving for a specific period of time. YO(BC)A s. 7(3) states that a young offender who refuses to stop for a peace officer in violation of MVA s. 100 will be prohibited from driving for two years.

See **Section II: Procedures and Penalties**, for a further description of suspension, cancellation and prohibition.

For both offences (MVA, ss. 95(1) and 102(1)), the first conviction will result in a fine of at least \$500 but no more than \$2,000, and/or imprisonment up to six months. Subsequent convictions under s. 95(1) result in the same range of fines, but a prison term of between 14 days and one year. Subsequent convictions under s. 102(1) result in a fine of at least \$300 but no more than \$2,000, and/or a prison term of between 14 days and one year.

While MVA s. 102 creates an absolute liability offence (i.e. an individual could be automatically prohibited under s. 99 and have no defences to s. 102), there is little chance of incarceration for an absolute liability offence. This is expressly prohibited by QA s. 6, which states that there will be no imprisonment for an absolute liability offence. In addition, QA s. 82(1) states that an individual will not be jailed for non-payment of fines. For these reasons, the Supreme Court of Canada did not

strike down the inclusion of MVA s. 99 in MVA s. 102(1): see *R. v. Pontes* [1995], 13 M.V.R. (3d) 145 (S.C.C.).

A vehicle is also at risk of being impounded if the driver was prohibited from driving under MVA ss. 93, 94.2, 98, 99, and 215. See **Section II: Procedures and Penalties** for further information on impoundment.

B. Federal (Criminal) Offence

Section 259(4) of the Criminal Code states that a person who operates a motor vehicle while disqualified under the Criminal Code or a provincial statute is guilty of an indictable offence, and is liable to a maximum penalty of five years imprisonment, or is guilty of an offence punishable on summary conviction.

XI. BICYCLES

A cyclist has the same rights and duties as a driver of a motor vehicle including the duties of safe operation, care, attention, and consideration of other highway users. In addition, the MVA provides that an individual commits an offence if he or she operates or is a passenger on a bicycle on a **highway** and is not wearing a helmet. A highway is any road, street, or avenue that a vehicle can drive on (s. 184). Almost every municipality, including the City of Vancouver, has followed this section of the MVA by passing bylaws requiring cyclists to wear bicycle helmets.

Furthermore, the cyclist must ride on a designated bicycle path if available, or if not, then in single file as near as practical to the right side of the road (s. 183(2)). Lamps and reflectors are required for a cycle operated on a highway between one half-hour after sunset and one half-hour before sunrise (s. 183(6)).

In the event of an accident, the cyclist must remain at the scene and lend assistance (s. 183(9)). Any injuries or property damage exceeding \$100.00 must be reported to the police (s. 183(10)).

XII. APPENDIX A: EXAMPLES OF PENALTY POINTS AND FINES

A comprehensive list of the penalty points (from the MVAR, B.C. Reg. 26/58, Division 28) and the fines (from the OAR, B.C. Reg. 434/90) are available on the ICBC web site at: www.icbc.com/licensing/lic_fines_pen_fine_chart.asp

Some common offences and the corresponding points/fines are:

Description of Offence	Points	Ticket
No driver's licence/wrong class (<u>MVA</u> , s. 24(1))	3	\$138
Driving without insurance (<u>MVA</u> , s. 24(3)(b))	0	\$598
Disobey traffic control device (<u>MVA</u> , s. 125)	2	\$121
Unsafe U-Turn (<u>MVA</u> , s. 168(a))	2	\$121
Drive on sidewalk (<u>MVA</u> , s. 200)	2	\$81