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Background

BCLI Report no. 28—Report on Post-Accident Remedial Measures

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This report examines the law of evidence with regard to issues that arise after an accident occurs on a person's property. The law now permits post-accident remedial measures to be admitted in litigation as evidence of negligence. The concern that arises is that the law may create a powerful disincentive to take the necessary steps to ensure that future accidents do not occur. A person may leave a dangerous condition unaltered in order to avoid having such measures used as evidence against them in an ongoing litigation.

Admitting evidence of remedial measures is part of a larger trend in Canadian law seeking both to relax exclusionary rules and to admit as much relevant evidence as possible for consideration. This report examines the historical exclusion of evidence in British Columbia as well the current laws of evidence related to admitting evidence of a remedial or precautionary measures taken after an accident.

Based on research and feedback from the *Consultation Paper on Post-Accident Remedial Measures* published in April 2003, the report recommends a more restrictive test. The report proposes that the *Evidence Act* be amended to provide that evidence of remedial measures taken after an alleged tortious injury or damage will not be admissible in a trial of that action, unless it is offered to prove a fact other than liability and that has been disputed by the defendant. Draft legislation is included in the report.