

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute  
1822 East Mall, University of British Columbia  
Vancouver, British Columbia V6T 1Z1  
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: [bcli@bcli.org](mailto:bcli@bcli.org)  
Website: [www.bcli.org](http://www.bcli.org)

## Backgrounder

### LRC 106—Report on Vicarious Liability under the Motor Vehicle Act

Date: June 1989

The *Motor Vehicle Act* imposes duties and liabilities on both the owners and operators of motor vehicles. Most often the owner and operator of a vehicle are the same person, but what is the legal position of the owner of a vehicle driven by another person in a way that gives rise to civil liability, or that violates provincial law? The answer lies in sections 76 to 81 [now sections 83–88] of the *Motor Vehicle Act* which broadly speaking impose liability on the owner of a vehicle for wrongs and offences that are committed by the operator. Liability of this kind is known as “vicarious liability.” The concept of vicarious liability is a contentious one due primarily to the notion that only blameworthy conduct should attract punishment or liability. The aim of this report is therefore to consider alternatives to the vicarious liability concept in respect of motoring offences. The report focuses on both civil and criminal–penal liability.

Civil liability arises under section 79 of the Act and is the liability of the owner to compensate others for damage and injury caused by the operator. Where the owner of a vehicle permits another person to operate it, and that person wrongfully injures a third party, the owner is jointly liable along with the driver for damages. This result might be seen to be unfair where an owner is not in a position to exercise effective supervision and control over the use of a vehicle unless the concept of ownership within the Act embraces the notion of effective supervision and control. The impact of this concept has diminished somewhat since the advent of compulsory insurance but it remains significant in two respects: indemnification and for recovery where insurance does not cover the losses or all of them.

The Act already goes some way to avoiding the potential unfairness by expressly providing that a conditional vendor under a conditional sale agreement (who retains legal title until the contract is fulfilled) is not the owner for the purposes of civil liability but no mention is made of vehicle leasing schemes, which are now very common. The report recommends that this type of arrangement should also be treated in the same manner so that lessors are not liable under the Act. It is proposed that the lease must be for a term of 60 days or more to qualify.

Criminal or penal liability arises under section 76 of the Act and is the liability of the owner to be punished for offences committed by the operator. Conceivably under the Act, an owner can be imprisoned or fined for an offence committed without his knowledge. The report looks first at the status of section 76 as applied to the *Charter of Rights and Freedoms* and comes to the conclusion that its validity is open to question under the *Charter*. The report then goes on to examine the goals for imposing vicarious liability and whether these goals can be achieved by other means. The report concludes that by and large the key reasons and functions for imposing vicarious liability could be achieved through the enactment of new provisions, or the modification of existing ones, shaping each so as to avoid vicarious liability. A list of recommendations are provided.

There is also a minority recommendation (not supported by the full Commission) in the report that “speeding in close proximity to other vehicles or persons” should be added to the list of offences under section 76 of the Act.

### **Further Developments**

See *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, s. 219 (implements, in part, recommendation from this report).