



As at April 19, 2013, except updated British Columbia (June 2015); Ontario (June 2015); Saskatchewan (January 2014) & Prince Edward Island (February 2014)

# CANADIAN VEHICLE VICARIOUS LIABILITY REPORT

prepared for the

## Canadian Finance & Leasing Association

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## VEHICLE OWNER VICARIOUS LIABILITY (CANADA)

This report is a summary of the key legislation in the Canadian Provinces which imposes vicarious liability on lessors, renters and conditional sale vendors as owners of motor vehicles for damages caused by lessee, rental customer and conditional sale purchaser drivers. Exceptions for certain classes of vehicles are noted. The chart is not exhaustive and does not cover other or all situations in which an owner of a motor vehicle may be held liable.

Generally speaking, the following parties are exposed to claims for vicarious liability for personal injury claims as owners of motor vehicles, but please read the chart for more detail:

- (a) Lessors/renters whose leases have options to purchase: BC\*, Alberta\*, Saskatchewan\*, Manitoba\*, Ontario\*, PEI\*
- (b) Lessors/renters whose leases have no options to purchase: BC\*, Alberta\*, Saskatchewan\*, Manitoba\*, Ontario\*, New Brunswick, Nova Scotia, PEI and Newfoundland and Labrador
- (c) conditional sale vendors: Alberta, Ontario, PEI\*

- \*Sask: has a right for residents to purchase tort claim insurance and with case law, rights to certain benefits above no fault insurance
- \*Ontario: has capped lessor liability for personal injuries for accidents that occurred on or after March 1, 2006, but there is liability for property damages
- \*B.C. has capped lessor liability for personal injuries for accidents that occurred on or after November 8, 2007; based on case law this capped liability is \$1 million from lessee + \$1 million from lessor
- \*AB: has capped lessor liability for personal injuries for accidents that occurred on or after March 1, 2011
- \*Quebec: has no liability for personal injuries, but there is liability for property damage for vehicles leased for a term of less than one year
- \*Manitoba: has no liability for personal injuries, but property damage liability continues
- \*NS: has no liability for conditional sellers and lessors with an option to purchase
- \*PEI: has no liability for conditional sellers and lessors with an option to purchase, for accidents occurring on or after February 1, 2014

There is no legislated cap on damages for vicarious liability in any of the provinces, except in Ontario, BC, Alberta and Nova Scotia and only in the circumstances as noted below. The vicarious liability cap does not appear to be limited to personal injury claims in Nova Scotia but also caps third party property and environmental damages.

These do not protect against property damages in Ontario or environmental claims. They do not protect against product liability claims or negligence for provision of a defective or badly maintained or equipped motor vehicle.

Provincial legislation imposing a vicarious liability “cap” of \$1 million on vehicle lessors and rental companies was adopted in Ontario (effective date March 1, 2006), followed by British Columbia (effective date November 8, 2007), then Alberta (effective date March 1, 2011), and finally Nova Scotia (effective date April 1, 2013). However, while a \$1 million cap is common to all four jurisdictions, the provincial legislation in these four provinces varies as follows:

Ontario - The 2006 amendments to the *Insurance Act* and *Highway Traffic Act* (Ontario) caps the vicarious liability of lessors and rental companies at \$1 million for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of a motor vehicle that is leased or rented. If the customer has \$1 million of valid insurance, there is nothing due from the lessor. If the customer has less than \$1 million of valid insurance, the lessor or rental company is liable for the difference up to \$1 million and no more for bodily injury.

The Ontario legislation does not “cap” vicarious liability for lessors or rental companies for

- (i) property damage; or
- (ii) for accidents involving taxicabs, limousines or “livery vehicles” [as defined in Regulation passed pursuant to the Insurance Act]; or
- (iii) for accidents caused their employees. The liability for the driver, lessee or rental customer, or the operator of a vehicle or the employer of the driver of a vehicle remains unlimited.

- 7.(1) For the purposes of clause 267.12 (4) (c) of the Act, a livery vehicle is a motor vehicle,
  - (a) that is designed for transporting not more than nine passengers; and
  - (b) that is not a taxicab or limousine.
- (2) Subsection 267.12 (1) of the Act does not apply in respect of a livery vehicle during any period in which it is used to transport passengers for a fee.

British Columbia –2007 legislative amendments in British Columbia cap the vicarious liability of lessors and rental companies for their vehicles in British Columbia, other than for vehicles used as taxis, buses, and limousines.

The wording of the British Columbia amendments have been interpreted such that a payment of \$1 million under the lessee’s insurance has the effect of reducing the statutory liability of the lessor to the full extent of the payment made. The British Columbia Court of Appeal also found that a driver of a leased vehicle may seek additional indemnification pursuant to the lessor’s excess policy unless the lessor’s insurance includes a specific exclusion as required by British Columbia law.

Alberta - The statutory and regulatory provisions relevant to the Alberta cap on vicarious liability that came into effect March 1, 2011 are contained in the Alberta *Traffic Safety Act* and related *Commercial Vehicle Certificate and Insurance* Regulation and the Alberta *Insurance Act* and its related Miscellaneous Provisions Regulation.

The *Traffic Safety Act* provides a blanket \$1 million cap on claims for “loss or damage sustained by a person”. Therefore, while this proviso does not specifically continue on to reference “property” (as B.C.’s corresponding legislation does) the wording appears to cover losses other than

personal injuries sustained by individuals and is significantly broader than the corresponding provision (section 267.12) of the Ontario *Insurance Act*.

The only exception is that by Section 31.1 of the *Commercial Vehicle Certificate and Insurance Regulation*, all commercial vehicles used or intended to be used to transport passengers, including taxis, buses, limousines, airport shuttles, funeral service and other passenger vehicles that are driven or owned by persons who have broadly defined financial interests or other business or blood relationships with lenders, lessors, renters or sellers of those vehicles, are excluded from the limitation on liability provided by the cap regime.

Nova Scotia – The Nova Scotia *Insurance Act* and the *Non-Owned Automobile Insurance Liability Regulations* exempt conditional sellers, and cap the vicarious liability of rental companies and lessors whose leases have no option to purchase. The provisions came into effect April 1, 2013.

A lessor or renter's maximum liability under the Insurance Act is net of all other amounts received in respect of the same incident and a lessor or renter will not be required to make any payments to a claimant beyond a top-up to the prescribed maximum liability of \$1 million (or greater if required by law or prescribed by regulation).

The *Non-Owned Automobile Insurance Liability Regulations* establish the priority of payment among automobile insurance policies in reference to "motor vehicle liability policies" which are defined under the *Insurance Act* to include property damage. Although the vicarious liability provisions have not yet received judicial consideration, the wording suggests that the vicarious liability cap is not restricted to personal injury claims, but also extends to third part property damage.

The only exception is that by Section 8 of the *Non-Owned Automobile Insurance Liability Regulations*, the cap does not apply to vehicles engaged in the public carrier of passengers, or passengers and freight, for gain (such as taxis and busses).

Prince Edward Island – Amendments to the PEI *Highway Traffic Act* removed deemed vicarious liability for a conditional seller, lender or seller who was not in possession of the vehicle at the time loss or damage was sustained. The provisions came into effect February 1, 2014.

**Reminder: vehicles move and the accident may occur in a jurisdiction other than where the customer resides or is located, changing the owner's exposure to liability.**

**In this chart, "lessor" includes both longer term leases as well as short term renters of vehicles.**

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
ALBERTA	<p><u>Traffic Safety Act, R.S.A. 2000, c. T-6, Sections 1(1)(ee) and 187 ["TSA"] and Insurance Act, R.S.A. 2000, c. I-3, Section 650 ["IA"]</u> (see below)</p>	<p><b>TSA</b></p> <p><b>1(1)(ee) "owner"</b> means the person who owns a vehicle and includes any person renting a vehicle or having the exclusive use of a vehicle under a lease that has a term of more than 30 days or otherwise having the exclusive use of a vehicle for a period of more than 30 days.</p> <p><b>(The following underlined amendments to the TSA and IA were effective March 1, 2011.</b></p> <p><b>187(0.1)</b> In this section,</p> <p><u>(a) "lender" means a person who holds a security interest in a motor vehicle through a written security agreement, who under that agreement has lent money to a person in respect of the motor vehicle and who is not in possession of the motor vehicle but retains title to the motor vehicle, or a person to whom the lender has assigned the agreement;</u></p> <p><u>(b) "lessor" means a person who by agreement, in the ordinary course of the person's business, leases or grants exclusive use of a motor vehicle to another person for a term of more than 30 days or otherwise grants exclusive use of a motor vehicle to another person for a period of more than 30 days, and who is not in possession of the motor vehicle, or a person to whom the lessor has assigned the agreement;</u></p> <p><u>(c) "motor vehicle liability policy" means a motor vehicle liability policy under the Insurance Act;</u></p>	<p>The definition of "owner" is inclusive, and would likely include both a conditional sale vendor and a lessor such that both would be vicariously liable for the negligence of the driver.</p> <p>Note the cap does NOT apply to commercial vehicles used or intended to be used to transport passengers.</p>	<p>The Courts will look at a number of factors in determining ownership, and there can be more than one owner: <i>Ford Credit Canada Ltd. v. Solis</i> (2003) 226 D.L.R. (4<sup>th</sup>) 744 (Alta. C.A.), aff'g <i>Mahan v. Hindes</i> [2002] 2 W.W.R. 360 (Alta. Q.B.); affirmed by Alberta C.A. (2003) 226 D.L.R. (4<sup>th</sup>) 744, and <i>Alas v. Solis</i> (2001) 203 D.L.R. (4<sup>th</sup>) 409 (Alta. Q.B.).</p> <p>Consequently, both a lessee and a lessor could be "owners" under the <i>Act</i>.</p> <p>The amendments create a cap on liability (which is the greatest of \$1 million, the provincially required amount of third party liability insurance, and the amount established by regulation) which is reduced to the extent of any recovery under the third party liability provisions of a policy "issued to a person other than a lender, lessor, renter or seller" relating to the same motor vehicle accident. This cap will apply to "lenders" and "sellers";</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<b>ALBERTA (CONTINUED)</b>		<p><u>(d) “security agreement” means a security agreement under the Personal Property Security Act;</u></p> <p><u>(e) “security interest” means a security interest under the Personal Property Security Act;</u></p> <p><u>(f) “seller” means a person who holds a security interest in a motor vehicle through a written security agreement and sells the motor vehicle to another person under a contract in writing but retains title to the motor vehicle until the purchaser has carried out the terms of the contract and who is not in possession of the motor vehicle, or a person to whom the seller has assigned the security agreement or the contract.</u></p> <p><b>(1)</b> In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who, at the time that the loss or damage occurred,</p> <p>(a) was driving the motor vehicle, and</p> <p>(b) was living with and as a member of the family of the owner of the motor vehicle,</p> <p>is deemed, with respect to that loss or damage,</p> <p>(c) to be the agent or employee of the owner of the motor vehicle,</p> <p>(d) to be employed as the agent or employee of the owner of the motor vehicle, and</p>		<p>essentially creditors who may be caught by the definition of “owner” in the <i>TSA</i> by virtue of having taken or retained title to a vehicle as lender or conditional sales vendor. In its final form, the cap also applies both to “lessors” and “renters”. So while the term “lessor” retains the requirement for the term of a lease to be more than 30 days a person who, in the ordinary course of their business, rents a vehicle for a period of not more than 30 days and is not in possession of the vehicle will be entitled to rely on the cap.</p> <p>The Alberta cap is set out in amendments to the <i>TSA</i> rather than the <i>IA</i>. Alberta has provided no amendments to the <i>IA</i> for the purpose of ordering the priority of response of: policies for which the owner and related persons may be the named insured; policies with the owner and lessor as jointly named insured; and the lessor’s commercial umbrella policy. Regulations under section 650 of the</p>

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<b>ALBERTA</b> <b>(CONTINUED)</b>		<p>(e) to be driving the motor vehicle in the course of that person's employment.</p> <p><b>(2)</b> In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who, at the time that the loss or damage occurred,</p> <p>(a) was driving the motor vehicle, and</p> <p>(b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle,</p> <p>is deemed, with respect to that loss or damage,</p> <p>(c) to be the agent or employee of the owner of the motor vehicle,</p> <p>(d) to be employed as the agent or employee of the owner of the motor vehicle, and</p> <p>(e) to be driving the motor vehicle in the course of that person's employment.</p> <p><b>(2.1)</b> Notwithstanding any other provision in this Division except subsections (5) and (6), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, the maximum amount for which a lender, lessor or seller of the motor vehicle is liable in respect of the same incident in its capacity as a lender, lessor or seller of the motor vehicle is the amount determined under subsection (4) less any amounts that</p>		<p><i>Insurance Act</i> are set out in Section 7.1 of the Miscellaneous Provisions Regulation. These provisions which also come into force on March 1, 2011, are designed to ensure that the liability cap is not frustrated or circumvented by a requirement for an insurance policy issued to an owner of a motor vehicle who acts as a lessor or renter to respond in priority to the insurance issued to the lessee, rentee or driver of the motor vehicle.</p>



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<b>ALBERTA</b> (CONTINUED)		<p><u>(a) are recovered for loss or damage under the third party liability provisions of contracts evidenced by a motor vehicle liability policy issued to a person other than a lender, lessor or seller.</u></p> <p><u>(b) are in respect of the use or operation of the motor vehicle, and</u></p> <p><u>(c) are in respect of the same incident.</u></p> <p><b>(3)</b> Notwithstanding subsections (1) to (2.1), nothing in this section relieves any person who is deemed to be the agent or employee of the owner and to be driving the motor vehicle in the course of that person's employment from liability for the loss or damage.</p> <p><b>(4)</b> <u>The maximum amount for which a lender, lessor or seller of a motor vehicle is liable for the purposes of subsection (2.1) is the greatest of</u></p> <p><u>(a) \$1 000 000.</u></p> <p><u>(b) the amount of third party liability insurance required by law to be carried in respect of the motor vehicle, and</u></p> <p><u>(c) the amount established, or determined in the manner prescribed, by regulation.</u></p> <p><b>(5)</b> Subsection (2.1) does not apply</p> <p><u>(a) in respect of amounts payable by a lender, lessor or seller other than by reason of vicarious liability imposed by</u></p>		



PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>ALBERTA</b> <b>(CONTINUED)</b></p>	<p>Insurance Act, R.S.A. 2000, c. I-3, Section 650 ["IA"]</p>	<p><u>this section, or</u></p> <p><u>(b) to prescribed lenders, lessors or sellers or motor vehicles, or prescribed classes of lenders, lessors or sellers or motor vehicles.</u></p> <p><u>(6) This section applies only in relation to loss or damage sustained on or after the date this section comes into force.</u></p> <p><u>(7) The Minister may make regulations</u></p> <p><u>(a) establishing amounts payable, or prescribing the manner of determining amounts payable, for the purposes of subsection (4)(c);</u></p> <p><u>(b) prescribing lenders, lessors and sellers and motor vehicles or classes of lenders, lessors and sellers and motor vehicles for the purposes of subsection (5)(b).</u></p> <p><u>(8) The Minister may make different regulations under subsection (7)(b) in relation to lenders, lessors and sellers and motor vehicles, or classes of lenders, lessors and sellers and motor vehicles, for different circumstances.</u></p> <p><b>IA</b></p> <p><b>650(4)</b> <u>Despite subsection (1), the Lieutenant Governor in Council may make regulations</u></p> <p><u>(a) respecting the priority of payment of insurance held by a lessor as defined in section 187 of the <i>Traffic Safety Act</i> or a rental car company in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by</u></p>		



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		<u>the lessor or rental car company:</u>  <u>(b) defining terms for the purposes of this section:</u>  <u>(c) where regulations are made under clause (a) or (b), modifying any provision of this Act to the extent that the Lieutenant Governor in Council considers necessary in order to carry out the purpose and intent of this section.</u>		

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BRITISH COLUMBIA	<p><u>Motor Vehicle Act</u>, R.S.B.C. 1996, c. 318, ss.86(1.2)-(4)</p> <p>and</p> <p><u>Insurance (Vehicle) Act</u>, R.S.B.C. 1996, c. 231, s.82.1 (see below)</p>	<p><b>MVA</b></p> <p><b>86</b></p> <p>(1.2) In the case of a motor vehicle that is in the possession of its lessee, in an action to recover for loss or damage to persons or property arising out of the use or operation of the motor vehicle on a highway, a person driving or operating the motor vehicle who acquired possession of the motor vehicle with the consent, express or implied, of its lessor is deemed to be the agent or servant of, and employed as such by, that lessor and to be driving or operating the motor vehicle in the course of his or her employment with that lessor.</p> <p>(1.3) The liability under subsection (1.2) of a lessor is subject to the applicable limit established under section 82.1 of the <i>Insurance (Vehicle) Act</i>.</p> <p>...</p> <p>(3) In this section:</p> <p><b>"lessee"</b> means a person who leases or rents a motor vehicle from a lessor for any period of time;</p> <p><b>"lessor"</b> means the following:</p> <p>(a) subject to paragraph (b), a person who, under an agreement in writing and in the ordinary course of the person's business, leases or rents a motor vehicle to another person for any period of time;</p> <p>(b) if the lessor referred to in paragraph (a) has assigned the agreement, the assignee;</p>	<p>Section 86 of the <i>Motor Vehicle Act</i> is to be read conjunction with section 82.1 of the <i>Insurance (Vehicle) Act</i>, and section 181 of the <i>Insurance (Vehicle) Regulation</i>.</p> <p>Note the liability cap does NOT apply to vehicles used as taxis, buses and limousines.</p> <p>On September 5, 2013, Mr. Justice Bowden rendered judgment in <i>Stroszyn v. Mitsui Sumitomo Insurance Company Limited</i>, 2013 BCSC 1639. This decision substantially changed the application of the British Columbia lessor cap of \$1,000,000.</p> <p>Justice Bowden departed from our prior understanding of the effect of the latter lessor cap. At paragraph 35 he found:</p> <p>"[35] In my view, the payment of \$1,000,000 on behalf of the lessee does not reduce the liability of Honda Canada to zero. It is simply a payment by one joint tortfeasor towards the total liability of the jointly liable parties. By virtue of s. 86(1.2) of the MVA, both the driver, Mr. Chen, and Honda Canada are jointly liable for the damages of \$1,600,000. Pursuant to s. 82.1, Honda Canada's portion of that liability cannot exceed \$1,000,000. Of the total liability, \$1,000,000 has been discharged by ICBC on behalf of the lessee, but Honda Canada remains liable as a joint tortfeasor, for \$600,000."</p>	<p>These sections are in force as of, and apply to, accidents occurring after November 8, 2007. Accidents occurring prior to this date still engage vicarious liability under the predecessor statutory provisions.</p> <p>It is unclear from the face of the legislation whether the \$1 million lessor vicarious liability cap is engaged only when there is insufficient primary insurance or whether it can be engaged regardless of the existence and amount of primary insurance.</p> <p>Lessors should consider notifying their excess insurers for claims in which the quantum may exceed \$1 million assuming the driver of their vehicle may be entitled to additional coverage if the excess policy does not include the required exclusion in compliance with s. 61(2) of the <i>Insurance (Vehicle) Act</i></p> <p>Lessors' contingent claims budget reserves should also be updated to account for any amounts that may be</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>BRITISH COLUMBIA</b> (CONTINUED)</p>	<p><i>Insurance (Vehicle) Act</i>, R.S.B.C. 1996, c. 231, s.82.1</p>	<p><b>"owner"</b></p> <p>(a) includes a purchaser of a motor vehicle who is in possession of the motor vehicle under a contract of conditional sale by which title to the motor vehicle remains in the seller, or the seller's assignee, until the purchaser takes title on full compliance with the contract,</p> <p>(b) if a purchaser of a motor vehicle is in possession of the motor vehicle, does not include the seller of that motor vehicle under a contract of conditional sale described in paragraph (a) or the assignee of that seller, and</p> <p>(c) does not include a lessee of a motor vehicle who is in possession of the motor vehicle under an agreement in writing with the owner, whether or not the lessee may become its owner in compliance with the agreement.</p> <p>(4) This section, as amended by section 43 of the <i>Miscellaneous Statutes Amendment Act (No. 2), 2007</i>, applies only in relation to loss or damage sustained on or after the date that section comes into force.</p> <p><b>I(V)A</b></p> <p><b>82.1</b> (1) In an action to recover for loss or damage to persons or property arising out of the use or operation of a leased motor vehicle on a highway in British Columbia, the maximum amount for which the lessor of the motor vehicle is liable, in that lessor's capacity as lessor of the motor vehicle, in respect of any one incident is the</p>	<p>On Appeal, the court found that the chambers judge erred. The \$1 million settlement payment was a payment made on behalf of both the lessee and driver. ICBC insured all parties under the primary policy and its payment to the injured party was made on behalf of both the lessee and the driver. As such, the payment had the effect of reducing the statutory liability of the lessor to the full extent of the payment made.</p> <p>The British Columbia of Appeal further held that the driver is an insured under the excess policy, subject to the same terms and conditions in the underlying policy, as a result of the insurer's failure to expressly exclude drivers from coverage in accordance with the terms of s. 61(2) of the <i>Insurance (Vehicle) Act</i>.</p>	<p>self-insured.</p>



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<b>BRITISH COLUMBIA (CONTINUED)</b>		<p>amount determined under subsection (2).</p> <p>(2) The maximum amount for the purposes of subsection (1) is the greatest of the following amounts:</p> <ul style="list-style-type: none"> <li>(a) \$1,000,000;</li> <li>(b) the amount established, or determined in the manner prescribed, by regulation;</li> <li>(c) the amount of third party liability insurance coverage required by law to be carried in respect of the motor vehicle.</li> </ul> <p>(3) Subsection (1) does not apply</p> <ul style="list-style-type: none"> <li>(a) in respect of amounts payable by a lessor other than by reason of vicarious liability imposed under section 86 of the <i>Motor Vehicle Act</i>, or</li> <li>(b) to prescribed lessors or motor vehicles, or prescribed classes of lessors or motor vehicles.</li> </ul> <p>(4) This section applies only in relation to loss or damage sustained on or after the date this section comes into force.</p>		

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MANITOBA	<p><u>The Highway Traffic Act, S.M. 1985-86, c. 3, C.C.S.M.C. H60</u> ("HTA")</p> <p><u>The Drivers and Vehicles Act, C.C.S.M.C. D 104</u> ("DVA")</p>	<p>HTA: "Owner" means owner as defined in <i>The Drivers and Vehicles Act</i></p> <p>DVA: "Owner" includes a person who has exclusive use of a vehicle under a lease or other agreement for a period of more than thirty (30) days.</p> <p><b>HTA 153(1)</b> Where loss or damage is sustained by any person by reason of a motor vehicle upon a highway the onus of proof that the loss or damage did not arise entirely or solely through the negligence or improper conduct of the owner or driver is upon the owner or driver.</p> <p>(2) Subsection (1) does not apply in case of a collision between motor vehicles on the highway or to an action brought by a passenger in a motor vehicle other than a public service vehicle in respect of any injuries sustained by him while a passenger.</p>	<p>The Act does not specifically provide that an owner will be held vicariously liable for the negligence of the driver.</p> <p>The definition of "owner" is inclusive and would likely include both a lessor and a vendor under a conditional sale contract.</p> <p>However, <i>The Manitoba Public Insurance Compensation Act</i> has removed all tort rights in respect of recovery for losses due to bodily injury or death to a Manitoba resident as a result of a motor vehicle accident occurring after March 1, 1994 in Manitoba.</p>	<p>Manitoba's no-fault system eliminates claims for losses due to bodily injury or death occurring after March 1, 1994 in Manitoba.</p> <p>However, a tort action can still be brought for property damage or with respect to injuries which occur outside of Manitoba.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
NEW BRUNSWICK	<p><u>Motor Vehicle Act</u>, R.S.N.B. 1973, c. M-17.</p> <p>and</p> <p><u>Insurance Act</u>, R.S.N.B. 1973, c. I-18. (see below)</p>	<p><b>Motor Vehicle Act:</b></p> <p>"Owner" means the legal owner of a vehicle unless the vehicle is the subject of a contract under the terms of which another person has possession and may acquire legal title thereto, in which event while that person has possession against the legal owner, "owner" means that other person.</p> <p>"Registered Owner" means a person in whose name a vehicle is registered, as in this Act provided.</p> <p><b>267(1)</b> The owner of a motor vehicle, or farm tractor is liable as well as the driver thereof to an action for tort as a result of negligence in the operation of the motor vehicle or farm tractor unless the motor vehicle or farm tractor was at the time of the negligent operation thereof in the possession of some person other than the owner without the owner's consent.</p> <p><b>27(2)</b>The registration certificate shall be delivered to the owner and shall contain upon the face thereof the date issued, the name and address of the owner, the registration number assigned to the vehicle and such description of the vehicle as may be determined by the Registrar and upon the reverse side a form for endorsement of notice to the Registrar upon transfer of the vehicle.</p> <p><b>27.1</b> Notwithstanding subsection 27(2), the registration certificate for a vehicle being leased for a period of thirty days or more shall contain, in the place of the name and address of the owner,</p>	<p>Neither a vendor under a conditional sales contract nor a lessor under a lease with an option to purchase will be held liable for the negligence of the driver as long as the buyer/lessee has possession of the vehicle. The definition of "owner" in the Act provides the buyer/lessee in possession would be considered the "owner" in these circumstances.</p> <p>A lessor under a lease with no option to purchase may be held liable as an "owner". There may be an exception for this if the lessor can show that it has no other indications of ownership (i.e., the lessee actually has exclusive use and control of the vehicle).</p> <p>A rental company is likely to be found liable as "owner".</p> <p>Note: For all leases of thirty days or more, both the lessor and the lessee must be listed as registered owners pursuant to s. 27.1.</p> <p>When the lessee is a registered owner pursuant to s. 27.1, the lessee, not the lessor, then attracts liability for certain offences under the Act: overtaking a stopped school bus (s. 188), violation of parking rules (ss. 192-195), abandonment of vehicles (s. 196), and violation of any local by-laws.</p>	<p>Caselaw indicates that a rental company is likely to be found liable as owner: see <i>Landry v. Enterprise Rent-a-Car Canada Ltd.</i>, 2012 NBQB 148 (Q.B.) [no <i>prima facie</i> defence so as to set aside a noting in default].</p> <p>Lessors under a lease without an option to purchase may also be found liable. The Court will look at the circumstances of the case to determine whether the registered owner of the vehicle is the "owner" for the purposes of assigning liability under s. 267(1): <i>Therault v. Aubin and Ouellette</i> (1991), 121 N.B.R. (2d) 235 (C.A.)</p> <p>A registered owner, (lessee or lessor) will not be excused from liability if there are other indications of ownership (see <i>Whelton v. Mercier</i>, 2004 NBCA 83). <i>Whelton v. Mercier</i> involved an agreement for the transport of goods by truck. Lessee was an extraprovincial trucking company that leased trucks and drivers from lessor. Both were listed as</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>NEW BRUNSWICK</b> <b>(CONTINUED)</b></p>		<p>the name of the owner together with the name and address of the lessee under the lease.</p> <p><b>188(1)</b> The driver of a motor vehicle meeting or overtaking a stopped school bus upon a highway when flashing red lights are displayed on such school bus shall bring such motor vehicle to a stop at not less than five metres from such school bus and shall not pass such school bus until it is again in motion or the flashing red lights cease to be displayed.</p> <p><b>188(1.2)</b>The owner of a motor vehicle shall be guilty of a violation of subsection (1) committed by any person operating the motor vehicle unless the owner establishes that another person</p> <p>(a)was operating the motor vehicle and had possession of it without the owner's consent, express or implied, at the time of the alleged violation,</p> <p>(b)has been charged with and convicted of the violation, or</p> <p>(c)admits to being the driver of the vehicle at the time of the alleged violation.</p> <p><b>188(1.3)</b>Notwithstanding subsection (1.2), if the registration certificate for a motor vehicle respecting which a violation of subsection (1) is committed shows the name and address of a lessee of the vehicle as provided for in section 27.1, the lessee shall be guilty of the violation unless the lessee establishes that another person</p> <p>(a)was driving the motor vehicle and</p>		<p>registered owners pursuant to extra-provincial trucking license requirements. Lessor admitted it was the true "owner" of the tractor trailer, but the Court refused to grant summary judgment dismissing the claim against the lessee because the lessee had some other indicia of ownership, e.g.. exclusive use, insurance policy.</p> <p>Generally speaking, a Plaintiff in New Brunswick will commence an action against both a lessor and lessee.</p> <p><b>Damages Cap and Priority of Coverage:</b> New Brunswick has a cap on general damages in our <i>Insurance Act</i> for minor personal injuries sustained in a motor vehicle accident. It has no cap on vicarious liability of renters/lessors. With respect to insurance coverage, s. 265(1) of the <i>Insurance Act</i> provides that an owner's policy is first loss insurance.</p>



PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>NEW BRUNSWICK</b> <b>(CONTINUED)</b></p>		<p>had possession of it without the lessee's consent, express or implied, at the time of the alleged violation,</p> <p>(b)has been charged with and convicted of the violation, or</p> <p>(c)admits to being the driver of the vehicle at the time of the alleged violation.</p> <p><b>188(1.4)</b>A lessee charged with a violation by virtue of subsection (1.3) may be charged as the principal offender, but the information shall show that the charge is laid by virtue of subsection (1.3).</p> <p><b>188(1.5)</b> Notwithstanding section 362, proof that any person is or was, on a date stated in the proof, shown on a registration certificate as provided for in section 27.1 as the lessee of a motor vehicle respecting which a violation is alleged to have been committed on the same date under subsection (1) shall be <i>prima facie</i> evidence that the person was operating the motor vehicle at the time of the alleged violation.</p> <p><b>270(1)</b>The owner of a motor vehicle or farm tractor shall be guilty of any violation of this Act or of the regulations, or of any local by-law committed by any person operating or in charge of that vehicle, and involving</p> <p>(a)the equipment, mass, size or loading of the vehicle unless he establishes that the offence was committed without his knowledge and consent and by a person over whom he had no authority or control;</p> <p>(b)the operation of the vehicle, including the prohibited use of any</p>		<p>The terms "owns" and "owner" are not defined in the <i>Insurance Act</i>. Courts have taken a broad approach to the definition of "owner", except in the context of an exclusion in a policy. See <i>Burke Estate v. Royal &amp; Sun Alliance Insurance Co. of Canada</i>, 2011 NBCA 98.</p> <p>Owner's policies held by rental companies and/or lessors under a lease without option to purchase will likely be considered first loss insurance under section 265(1), pursuant to the following Ontario decisions considering a similar provision: <i>Guardian Insurance Co. of Canada v. York Fire &amp; Casualty Insurance Co.</i>, [1989] O.J. No. 2233 (H.C.), varied with respect to costs only at [1992] O.J. No. 3714 (C.A.); <i>Avis Rent A Car System Inc. v. Certas Direct Insurance Co.</i> [2005] O.J. No. 1951 (C.A.); and <i>Morrison v. Ashley</i>, 2012 ONSC 745.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>NEW BRUNSWICK</b> <b>(CONTINUED)</b></p>		<p>equipment thereon, unless he established that the vehicle was being operated by a person who</p> <p>(i) had possession of the vehicle without the owner's consent, express or implied,</p> <p>(ii) is charged with and convicted of such violation, or</p> <p>(iii) admits that he was the driver of the vehicle at the time of the alleged offence, and claims no privilege in respect to such admission.</p> <p><b>270.1(1)</b> Notwithstanding section 270, if the name and address of the lessee of a motor vehicle are shown on the registration certificate for the motor vehicle in accordance with section 27.1, the lessee shall be guilty of any violation of section 192, 193, 193.1, 194, 195 or 196 or of any violation of a local by-law established under paragraph 113(1)(a) committed in respect to that motor vehicle unless the lessee establishes that at the time of the violation the motor vehicle was being operated by some other person without the lessee's consent, express or implied.</p> <p><b>270.1(2)</b> A lessee charged with a violation by virtue of subsection (1) may be charged as the principal offender, but the information shall show that the charge is laid by virtue of section 270.1.</p> <p><b>270.1(3)</b> Notwithstanding section 362, proof that any person is or was, on a date stated in the proof, shown on a registration certificate in accordance with section 27.1 as the lessee of a motor vehicle in respect to which an offence is alleged to have been</p>		

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>NEW BRUNSWICK (CONTINUED)</b></p>	<p><u>Insurance Act, R.S.N.B. 1973, c. I-18</u></p>	<p>committed on such date under section 192, 193, 193.1, 194, 195 or 196 or under a local by-law established under paragraph 113(1)(a) shall be prima facie evidence that such person was operating the motor vehicle at the time of the alleged offence.</p> <p><b>362</b> Proof that any person is or was on a date therein stated the registered owner of a motor vehicle in respect to which any offence is alleged to have been committed on such date under this Act, or the regulations, or any by-law or regulation of local authority passed under the authority thereof shall be prima facie evidence that such person</p> <p>(a)was operating the motor vehicle, and (b)was the owner of the motor vehicle at the time of the alleged offence.</p> <p><b>Insurance Act:</b> <b>“owner’s policy”</b> means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;</p> <p><b>265(1)</b>Subject to section 247, insurance under a contract evidenced by a valid owner’s policy of the kind mentioned in the definition “owner’s policy” in section 1 is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and</p>		



**CANADIAN VICARIOUS LIABILITY REPORT** as at April 19, 2013, except updated: British Columbia (June 2015), Ontario (June 2015) and Saskatchewan (January 2014) & Prince Edward Island (February 2014)

<b>PROVINCE</b>	<b>DESCRIPTION</b>	<b>RELEVANT PROVISION</b>	<b>LIABILITY</b>	<b>COMMENTS</b>
<b>NEW BRUNSWICK (CONTINUED)</b>		within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.		

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
NEWFOUNDLAND AND LABRADOR	<u>Highway Traffic Act, RSNL 1990, c H-3, s. 200</u>	<p><b>2 (vv)</b> "Owner" means</p> <p>(i) the person who holds the legal title to a vehicle,</p> <p>(ii) in the case of a vehicle that is registered, the person in whose name it is registered,</p> <p>(iii) in the case of a vehicle that is the subject of a mortgage, the mortgagor if the mortgagor is entitled to possession of the vehicle,</p> <p>(iv) in the case of a vehicle that is the subject of a hire-purchase agreement, the person in possession of the vehicle under the agreement, or</p> <p>(v) in the case of a vehicle that is the subject of a conditional sale contract, the buyer under the conditional sale contract if the buyer is entitled to possession of the vehicle.</p> <p><b>200</b> (1) Without effect upon the liability of the driver of a vehicle, the owner of a vehicle is liable for loss or damage sustained by a person because of negligence in the operation of the vehicle unless the vehicle was without the owner's consent in the possession of some person other than the owner.</p> <p>(2) A person driving a vehicle who is living with and as a member of the family of the owner of the vehicle shall be considered to be in possession of it with the owner's consent unless the contrary is proved.</p> <p><b>211.</b> The registration of a vehicle in the name of a person is for the purposes of the Act and the regulations presumptive evidence that that person is the owner of the vehicle.</p>	<p>A 2002 case from the Newfoundland Court of Appeal has confirmed that the following persons are NOT "owners" for the purposes of attracting vicarious liability, for the driver's negligence under s. 200 of the <i>Highway Traffic Act</i> (NL):</p> <p>a a vendor under a conditional sale contract, where the buyer is entitled to possession of the vehicle; AND</p> <p>b. a lessor under a lease with an option to purchase (i.e. a hire-purchase agreement), where the "buyer" is entitled to possession of the vehicle under the agreement.;</p> <p>However, a lessor under a lease with <i>no option to purchase</i> would likely be held liable as an "owner" and would be vicariously liable for the negligence of the driver.</p>	<p>In <i>Kerri v Decker</i>, 2002 NFCA 11, the Newfoundland Court of Appeal ruled that, while there is a presumption that a registered owner of a vehicle is the owner and vicariously liable for the negligence of the driver, that presumption will be displaced in favour of the following persons (assuming they are different than the registered owner), who will be treated as the sole owner for the purposes of vicarious liability under s. 200 of the <i>Highway Traffic Act</i> (NL):</p> <p>(a) a mortgagor of a vehicle, where he or she is entitled to possession of the vehicle;</p> <p>(b) the person in possession of a vehicle under a hire-purchase agreement; and</p> <p>(c) the buyer of a vehicle under a conditional sale contract, if he or she is entitled to possession of the vehicle.</p> <p>Leave to appeal this decision to the Supreme Court of Canada was refused: 2002 Carswell Nfld 288.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
1. NOVA SCOTIA ACCIDENTS PRE APRIL 1, 2013	<u>Motor Vehicle Act,</u> R.S.N.S. 1989, c. 293, ss. 62 and 248	<p>"Owner" means a person who holds the legal title of a vehicle and includes a transferee or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Act.</p> <p><b>62(1)</b> The owner of a motor vehicle engaged in the business of renting motor vehicles without drivers, who rents a vehicle without a driver to another, otherwise than as part of a <i>bona fide</i> transaction involving the sale of the motor vehicle, permitting the renter to operate the vehicle upon the highways, shall be jointly and severally liable with the renter for any damages caused by the negligence of the latter in operating the vehicle and for any damages caused by the negligence of any person permitted to operate the vehicle by the person renting the same and with the express or implied permission of the owner.</p> <p><b>62(4)</b> Any provision in any rental contract, whereby the owner of any motor vehicle so rented is relieved from liability in respect of any matters mentioned in subsection (1), shall be void.</p> <p><b>248(3)</b> A person operating a motor vehicle, other than the owner thereof, shall be deemed to be the servant and</p>	<p>Neither a vendor under a conditional sale contract nor a lessor under a lease with an option to purchase would be held liable for the negligence of the driver, as long as the buyer/lessee has an immediate right of possession to the vehicle (the Act provides the lessee/buyer in those cases would be considered the "owner").</p> <p>However, a lessor under a lease with no option to purchase would likely be held liable as an "owner" and would be vicariously liable for the negligence of the driver.</p>	<p>Caselaw: <i>Mader v. Lahey</i>, [1997] N.S.J. No. 571 (S.C.); affirmed by Nova Scotia court of appeal (1998) 169 N.S.R. (2d) 182</p> <p><i>Gilbert v. Giffin and Chrysler Financial</i> 2010 NSCA 95.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
1. NOVA SCOTIA ACCIDENTS PRE APRIL 1, 2013 (CONTINUED)		agent of the owner of the motor vehicle and to be operating the motor vehicle as such servant and agent acting in the course of his employment and within the scope of his authority as such servant and agent unless and until the contrary is established.		
2. NOVA SCOTIA ACCIDENTS ON OR AFTER APRIL 1, 2013	<u>Insurance Act</u> , R.S.N.S. 1989, c. 231, as <u>amended</u> , ss. 191.9 and 192	<b>148D (1)</b> In this Section,  <b>(a)</b> “conditional seller” means a person who, by agreement, in the ordinary course of the person’s business, enters into an agreement with another person for the conditional sale or lease of a vehicle with the right of purchase on performance of the conditions set out in the agreement and with an immediate right of possession vested in the conditional vendee or lessee;  <b>(b)</b> “lender” means a person who holds a security interest in a motor vehicle through a written security agreement, who under that agreement has lent money to a person in respect of the motor vehicle and who is not in possession of the motor vehicle, or a person to whom the lender has assigned the agreement;  <b>(c)</b> “lessor” means a person who, by agreement, in the ordinary course of the person’s business, leases or grants exclusive use of a motor vehicle to another person for a term of more than thirty days or otherwise grants exclusive use of a motor vehicle to another person for a period of more than thirty days, and who is not in possession of the	The vicarious liability provisions limit liability of motor vehicle leasing and rental businesses for damages to a maximum of \$1 million. The provisions also retain the existing exemption from vicarious liability for conditional sale vendors and codify the existing case law exempting lessors and renters with an <i>option to purchase lease</i> from any vicarious liability.  Lessors and renters under contracts without an option to purchase will still be exposed to liability; however, this exposure will be significantly limited. The starting point for lessors and renters is s. 148D (4), which holds that a lessor or renter’s maximum liability under s. 148D (7) is net of all other amounts recovered in respect of the same incident – this maximum liability is to be \$1 million dollars (or greater if required by law or prescribed by regulation).  The amounts to be subtracted from the maximum lessor/renter liability in s.148D(4) are broadly defined and it is clearly stated that the insurer of a lessor/renter will not be required to make any payments to a claimant beyond a top-up to the lessor/renter’s prescribed maximum	The definition of ‘owner’ under the <i>Motor Vehicle Act</i> , as well as sections 62 and 248, (all three of which are referenced above regarding the statutory regime in Nova Scotia prior to April 1, 2013), were repealed pursuant to the <i>Fair Automobile Insurance (2011) Act</i> (Bill 86).  As a result, the new regime is governed by the sections of the Insurance Act and the <i>Non-Owned Automobile Insurance Liability Regulations</i> set out herein.  Pursuant to the <i>Fair Automobile Insurance (2011) Act</i> (Bill 86), the new definition of ‘owner’ under the <i>Motor Vehicle Act</i> is as follows:  <b>2A (1)</b> Subject to subsections (2) and (3), in this Act, “owner” of a vehicle means  <b>(a)</b> where a permit is

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>2. NOVA SCOTIA</b>  <b>ACCIDENTS ON OR AFTER</b>  <b>APRIL 1, 2013</b>  <b>(CONTINUED)</b></p>		<p>motor vehicle, or a person to whom the lessor has assigned the agreement, but does not include a conditional seller;</p> <p><b>(d)</b> “renter” means a person who, by agreement, in the ordinary course of the person’s business, rents a motor vehicle to another person for a term of no more than thirty days and who is not in possession of the motor vehicle, or a person to whom the renter has assigned the agreement;</p> <p>...</p> <p><b>(g)</b> “seller” means a person who holds a security interest in a motor vehicle through a written security agreement, who sells the motor vehicle to another person under a contract in writing when the purchaser has carried out the terms of the contract and who is not in possession of the motor vehicle, or a person to whom the seller has assigned the security agreement or the contract.</p> <p>...</p> <p><b>(4)</b> Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, the maximum amount for which a lessor or renter of the motor vehicle is liable in respect of the same incident in the person’s capacity as a lessor or renter of the motor vehicle is the amount determined under</p>	<p>liability of \$1 million.</p>	<p>issued for the vehicle, the person who holds the permit for the vehicle; or <b>(b)</b> where no permit is issued for the vehicle, the person who holds the certificate of registration for the vehicle.</p>



PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>2. NOVA SCOTIA</b>  <b>ACCIDENTS ON OR AFTER</b>  <b>APRIL 1, 2013</b>  <b>(CONTINUED)</b></p>		<p>subsection (7) less any amounts that</p> <p><b>(a)</b> are recovered for loss or damage under the third party liability provisions of a contract evidenced by a motor vehicle liability policy issued to a person other than a lessor or renter;</p> <p><b>(b)</b> are in respect of the use or operation of the motor vehicle; and</p> <p><b>(c)</b> are in respect of the same incident.</p> <p>...</p> <p><b>(7)</b> The maximum amount for which a lessor or renter of a motor vehicle is liable for the purpose of subsection (4) is the greatest of</p> <p><b>(a)</b> one million dollars;</p> <p><b>(b)</b> the amount of third party liability insurance required by law to be carried in respect of the motor vehicle; and</p> <p><b>(c)</b> the amount established, or determined in the manner prescribed, by regulation.</p>		
<p><b>NOVA SCOTIA</b>  <b>ACCIDENTS ON OR AFTER</b>  <b>APRIL 1, 2013</b></p>	<p><i>Non-Owned Automobile Insurance Liability Regulations,</i>  N.S. Reg. 186/2013</p>	<p><b>Priority of payment for insurance held by lessor or renter</b></p> <p><b>4 (1)</b> The order in which the third party liability provisions of any motor vehicle liability policies apply in respect of the following liability must be determined in accordance with this Section and Section 5:</p> <p><b>(a)</b> liability that arises from or occurs in connection with the ownership of a leased or rented</p>	<p>The <i>Non-Owned Automobile Insurance Liability Regulations</i> establish the priority of payment of automobile insurance policies in claims involving rented and leased vehicles. Pursuant to s. 4 (2) of the <i>Regulations</i>, the insurance of the lessor/renter is first loss insurance unless insurance is available under a contract described in s. 4 (3). If an insurer under a contract described in s. 4 (3) fails to respond to a claim on</p>	<p>Note: Although at present only public passenger vehicles are excluded from the cap, pursuant to Section 148D (8)(b), (9)(b) and (10) the Governor in Council may make different regulations for different classes of conditional sellers, lenders, lessors, renters</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>NOVA SCOTIA</b>  <b>ACCIDENTS ON OR AFTER</b>  <b>APRIL 1, 2013</b>  <b>(CONTINUED)</b></p>	<p><i>Non-Owned Automobile Insurance Liability Regulations,</i>  N.S. Reg. 186/2013  (continued)</p>	<p>automobile; or</p> <p><b>(b)</b> liability that, directly or indirectly, arises from or occurs in connection with the use or operation of a leased or rented automobile.</p> <p><b>(2)</b> Except as provided in subsection (3), insurance available under a contract evidenced by an owner's policy issued to a lessor or renter is first loss insurance.</p> <p><b>(3)</b> Subsection (2) does not apply if there is insurance available under any of the following contracts:</p> <p><b>(a)</b> a contract evidenced by a motor vehicle liability policy under which the lessee or rentee of the automobile is entitled to indemnity as an insured named in the contract; or</p> <p><b>(b)</b> a contract evidenced by a motor vehicle liability policy under which the driver of the leased or rented automobile is entitled to indemnity as any of the following:</p> <p><b>(i)</b> an person who is a partner, officer or employee of an insured named in an approved standard policy form (NSPF 6) for non-owned automobiles that is part of the contract,</p> <p><b>(ii)</b> an insured named in the contract,</p> <p><b>(iii)</b> the spouse or adult interdependent partner of an insured named in the contract who resides with that insured,</p>	<p>behalf of a lessee/rentee (i.e. the driver), that insurer is liable to indemnify the insurer of the lessor/renter for any liability, costs and expenses incurred as a result of such failure (s. 4 (6)(b)). Section 4 (4) sets out the priority of payment among the insurers listed in s. 4 (3) and the <i>Regulations</i> place the insurance issued to the lessor/renter last in line:</p> <ol style="list-style-type: none"> <li>1. insurance under which the driver of the leased or rented automobile is entitled to indemnity as a person who is a partner, officer or employee of an insured named in an approved standard policy form (NSPF 6) for non-owned automobiles that is part of the contract;</li> <li>2. insurance under which the lessee or rentee of the automobile is entitled to indemnity as an insured named in the contract;</li> <li>3. insurance under which the driver of the leased or rented automobile is entitled to indemnity as an insured named in the contract;</li> <li>4. insurance under which the driver of the leased or rented automobile is entitled to indemnity as the spouse or adult interdependent partner of an insured named in the contract who resides with that insured;</li> </ol>	<p>and sellers as well as for different classes of vehicles, including regulations that deem the vicarious liability provisions inapplicable to any of these classes.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
NOVA SCOTIA ACCIDENTS ON OR AFTER APRIL 1, 2013 (CONTINUED)	<i>Non-Owned Automobile Insurance Liability Regulations</i> , N.S. Reg. 186/2013 (continued)	<p>(iv) an unnamed insured.</p> <p>(4) Subject to subsection (5), if subsection (3) applies, then the priority of pay among insurers is as follows:</p> <p>(a) insurance described in subclause (3)(b)(i) is first loss insurance;</p> <p>(b) insurance described in clause (3)(a) is excess insurance to the insurance identified as first loss insurance in clause (a);</p> <p>(c) insurance described in subclause (3)(b)(ii) is excess insurance to insurance identified as excess in clause (b);</p> <p>(d) insurance described in subclause (3)(b)(iii) is excess insurance to insurance identified as excess in clause (c);</p> <p>(e) insurance described in subclause (3)(b)(iv) is excess insurance to insurance identified as excess in clause (d);</p> <p>(f) insurance described in subsection (2) is excess insurance to insurance described in subsection (3).</p> <p>...</p> <p>(6) If an insurer under a contract described in subsection (3) fails to respond to a claim or civil action on behalf of a lessee, rentee or driver,</p> <p>(a) an insurer under a contract described in subsection (2) must respond to the claim; and</p>	<p>5. insurance under which the driver of the leased or rented automobile is entitled to indemnity as an unnamed insured; and</p> <p>6. insurance issued to the renter/lessor.</p>	

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>NOVA SCOTIA</b>  <b>ACCIDENTS ON OR AFTER</b>  <b>APRIL 1, 2013</b>  <b>(CONTINUED)</b></p>	<p><i>Non-Owned Automobile Insurance Liability Regulations,</i>  N.S. Reg. 186/2013  (continued)</p>	<p><b>(b)</b> the insurer under a contract described in subsection (3) who failed to respond is liable to indemnify all of the following for any liability, costs and expenses incurred as a result of the failure:</p> <p><b>(i)</b> any insurer who responds to the claim or civil action under clause (a),</p> <p><b>(ii)</b> any insurer who responds to the claim or civil action under a contract described in subsection (3), if the insurance described in the contract of the insurer who responds is excess insurance in accordance with subsection (4) to the insurance available under the contract of the insurer who fails to respond.</p> <p>...</p> <p><b>Public passenger vehicle exemption</b></p> <p><b>8</b> Subsection 148D(4) of the Act does not apply in respect of a motor vehicle that is a public passenger vehicle as defined in the <i>Motor Carrier Act</i>.</p>	<p>Pursuant to s. 8, the cap does not apply to vehicles engaged in the public carrier of passengers, or passengers and freight, for gain (such as taxis and busses).</p>	

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
1. ONTARIO ACCIDENTS PRE-MARCH 1, 2006	<u>Highway Traffic Act</u> , R.S.O. 1990, c. H.8, ss. 192(1) and (2)	<b>192. (1)</b> The owner of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway unless the motor vehicle or street car was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur, and the driver of a motor vehicle or street car not being the owner is liable to the same extent as the owner.  <b>(2)</b> Where a motor vehicle is leased, the consent of the lessee of the motor vehicle to the operation or possession thereof by some person other than the lessee shall, for the purposes of subsection (1), be deemed to be the consent of the owner of the motor vehicle.	Both lessor and conditional sale vendor are vicariously liable for the negligence of the driver.	"Owner" is not defined in the legislation. The cases appear to take a broad view of "owner" and it likely encompasses both a conditional sale vendor and lessor. <i>Edler v. Boyles Transport Ltd.</i> (1974), 6 O.R. (2d) 72 <i>Hayduk v. Pidoborzny</i> , [1972] S.C.R. 879 (on appeal from Alberta court of appeal)
2. ONTARIO ACCIDENTS ON OR AFTER MARCH 1, 2006	<u>Highway Traffic Act</u> , R.S.O. 1990, c. H-8, as <u>amended</u> , ss. 191.9 and 192  <b>AND</b>  <u>Insurance Act, R.S.O.</u> 1990, c. I.8, as amended (see below)	<b>Highway Traffic Act</b> <b>191.9</b> In this Part, "lessee" means a person who leases or rents a motor vehicle or street car for any period of time. <b>192. (1)</b> The driver of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway.  <b>(2)</b> The owner of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway, unless the motor vehicle or street car was without the owner's consent in the possession of some person other than the owner or the	Under the <b>Highway Traffic Act</b> , each of the driver, owner and lessee is jointly and severally liable for the negligence of the driver.	Although s. 192 of the <b>Highway Traffic Act</b> has been revised, the effect of the section does not appear to have changed, and the above comment continues to apply.

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>2. ONTARIO ACCIDENTS ON OR AFTER MARCH 1, 2006 (CONTINUED)</b></p>	<p><u>Highway Traffic Act, R.S.O. 1990, c. H-8, as amended</u>, ss. 191.9 and 192</p>	<p>owner's chauffeur.</p> <p>(3) A lessee of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway, unless the motor vehicle or street car was without the lessee's consent in the possession of some person other than the lessee or the lessee's chauffeur.</p> <p>(4) Where a motor vehicle is leased, the consent of the lessee to the operation or possession of the motor vehicle by some person other than the lessee shall, for the purposes of subsection (2), be deemed to be the consent of the owner of the motor vehicle.</p> <p>(5) The driver, owner, lessee and operator that are liable under this section are jointly and severally liable.</p>		
<p><b>ONTARIO ACCIDENTS ON OR AFTER MARCH 1, 2006</b></p>	<p><u>Insurance Act, R.S.O. 1990, c. I.8, as amended</u></p>	<p><b>Insurance Act</b>  <b>267.3</b> In sections 267.4 to 267.12, "owner" includes an operator as defined in subsection 16(1) of the <i>Highway Traffic Act</i> and a person who is a lessee for the purposes of section 192 of that Act;  <b>267.12</b> (1) Despite any other provision in this Part, except subsections (4) and (5), in an action in Ontario for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of a motor vehicle that is leased, the maximum amount for which the lessor or lessors of the motor vehicle are liable in respect of the same</p>	<p>Under the <b>Insurance Act</b> the liability of a lessor of a motor vehicle (subject to exceptions noted below), when the vehicle is in the lessee's control at the time of an accident, is "capped" – currently at \$1.0 million.</p> <p>This is as a result of the operation of ss. 267.12(1) and 267.12(3), the latter of which provides that the "cap" is the "greatest of" (a) \$1.0 million; (b) the third party liability insurance required by law to be carried – currently \$200,000 (s. 251(1)); and (c) the amount set by regulation – currently there is no</p>	<p>To date there has been no judicial consideration of the amendments to the <b>Insurance Act</b>.</p> <p>The liability of a conditional sale vendor remains unaffected by the recent amendments to the <b>Insurance Act</b>, and is not limited.</p> <p><i>Sienna Foods v. Old Republic Insurance Company of Canada</i>  2012 ONCA 583 the</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>ONTARIO</b>  <b>ACCIDENTS ON OR</b>  <b>AFTER MARCH 1, 2006</b>  <b>(CONTINUED)</b></p>		<p>incident in their capacity as lessors of the motor vehicle is the amount determined under subsection (3) less any amounts,</p> <p>(a) that are recovered for loss or damage from bodily injury or death under the third party liability provisions of contracts evidenced by motor vehicle liability policies issued to persons other than a lessor;</p> <p>(b) that are in respect of the use or operation of the motor vehicle; and (c) that are in respect of the same incident.</p> <p>(3) The maximum amount for the purposes of subsection (1) is the greatest of,</p> <p>(a) \$1,000,000;</p> <p>(b) the amount of third party liability insurance required by law to be carried in respect of the motor vehicle; and</p> <p>(c) the amount determined in the manner prescribed by the regulations, if regulations are made prescribing the manner for determining an amount for the purposes of this clause.</p> <p>(4) Subsection (1) does not apply,</p> <p>(a) in such circumstances as may be prescribed by the regulations or to such persons, classes of persons, motor vehicles or classes of motor vehicles as may be prescribed in the regulations, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed by the regulations;</p> <p>(b) in respect of amounts payable by a lessor other than by reason of the</p>	<p>regulation in place.</p> <p><u>NOTE:</u> The “cap” only applies where the lessor’s liability arises as a result of the vicarious liability imposed under s. 192 of the <i>Highway Traffic Act</i> (s. 267.12(4)).</p> <p><u>NOTE:</u> The “cap” does NOT apply with respect to motor vehicles used as a taxicab, livery vehicle or limousine for hire, or with respect to such other vehicles as may be prescribed by regulations (currently there are no such regulations in place).</p> <p>The above provisions do not in any way affect the liability of a conditional sale vendor.</p>	<p>insurer of the truck rental company which owned the truck, was liable for the cargo of the truck renting customer damaged in the traffic accident</p> <p><i>Xu v. Mitsui Sumitomo Ins. Co. Ltd.</i> 2014 ONSC 167, upheld by the Court of Appeal at 2014 ONCA 805.</p> <p>The O.E.F. 110 endorsement, approved January 1, 2008, provides that the lessor’s policy restricts coverage of the lessee to \$1.0 million. There was therefore a legislative “gap” from March 1, 2006 to January 1, 2008.</p> <p>Issue: is coverage available to the lessee under the lessor’s policy during the legislative “gap” for the full value of the policy?</p> <p>The Court held that under s.267.12(1) the liability of lessors, subject to the prescribed exceptions, is \$1.0 million. Section 267.12(1) precludes a lessee from securing</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>ONTARIO</b>  <b>ACCIDENTS ON OR</b>  <b>AFTER MARCH 1, 2006</b>  <b>(CONTINUED)</b></p>		<p>vicarious liability imposed under section 192 of the <i>Highway Traffic Act</i>, or</p> <p>(c) in respect of a motor vehicle used as a taxicab, livery vehicle or limousine for hire.</p> <p>(6) In this section,  “lessor” means, in respect of a motor vehicle, a person who is leasing or renting the motor vehicle to another person for any period of time, and  “<b>Insurance Act</b> s.267.12(1) referenced above, enacted March 1, 2006.  “leased” has a corresponding meaning.</p>		<p>coverage under a lessor’s policy beyond the \$1.0 million cap.</p> <p>Where an excess or umbrella insurance policy qualifies as an owner’s policy under the <i>Insurance Act</i>, the policy will cover the lessee/driver as if he or she was a party to the insurance contract. In <i>Xu</i> the excess policy was not issued to the lessor, but to a related company. It was therefore not an owner’s policy and did not extend coverage to the driver (lessee).</p>
				<p>If the excess policy was issued to the lessor and qualified as an owner’s policy, coverage would have been available to the driver (lessee). However, the court would still have concluded that the policy was not required to respond on behalf of the lessee during the legislative “gap”, as the liability of the lessor is still capped at \$1.0 million.</p> <p>This issue of the “legislative gap” is unlikely to arise again, as it ended December 31, 2007.</p>



PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>PRINCE EDWARD ISLAND</b>  <b>ACCIDENTS BEFORE</b>  <b>FEBRUARY 1, 2014</b></p>	<p><u>Highway Traffic Act</u>,  R.S.P.E.I. 1988, c. H-5  before amendment by  <u>An Act to Amend the</u>  <u>Highway Traffic Act</u>,  S.P.E.I. 2013, c. 14  (see below)</p>	<p><b>1 (m.1) "owner"</b> includes:  (i) the person who holds the legal title to a vehicle,  (ii) in the case of a vehicle that is registered, the person in whose name it is registered,  (iii) in the case of a vehicle that is the subject of a mortgage, the mortgagor if he is entitled to possession of the vehicle,  (iv) in the case of a vehicle that is the subject of a hire-purchase agreement, the person in possession of the vehicle under the agreement, or  (v) in the case of a vehicle that is the subject of a conditional sale contract, the buyer under the conditional sale contract, if he is entitled to possession of the vehicle;</p> <p><b>286.</b> When loss or damage is sustained by any person by reason of a motor vehicle upon a highway the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the owner or driver is upon the owner or driver.</p> <p><b>287.</b> In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle upon a highway, every person driving the motor vehicle who is living with and as a member of the family of the owner thereof and every person driving the motor vehicle with the consent, expressed or implied, of the owner thereof shall be deemed to be the agent or servant of the owner of the motor vehicle and to be employed as such and shall be deemed to be driving the motor vehicle in the course of his employment, but nothing in this</p>	<p>An owner is effectively deemed to be vicariously liable for a driver who is driving with the expressed or implied consent of the owner.</p> <p>The definition of "owner" is inclusive, rather than exhaustive, leaving it subject to argument in each case as to whether a vendor under a conditional sale contract or a lessor under a lease with or without an option to purchase would be considered to be an "owner".</p> <p>Despite agreement between the lessor (GMAC) and lessee (a local dealer operating as "Choice-Rent-A-Car") that the lessee was the owner, <i>Gallant v. Piccott</i>, 2000 PESCAD 17, held that issues of ownership, consent and liability under the <i>HTA</i> could not be decided on a motion for summary judgment by the lessor (GMAC), but instead ought to be left for determination at trial. In its decision, the appeal division notes that if the evidence of ownership presented on the motion were accepted at trial, "it would appear they are both owners as far as the <i>Highway Traffic Act</i> is concerned and ss. 286 and 287 would come into play" (see para. 24). A subsequent decision between the parties (2001 PESCTD 52) finds the lessor GMAC jointly and severally liable, indicating that both the lessor and the lessee were owners.</p>	<p>The definition of "owner" is identical to that in the Newfoundland legislation, except that the PEI definition uses "includes" rather than "means", permitting argument as to whether situations not specifically listed in the PEI definition might also be considered to fall within the definition of an "owner" and permitting a finding that there are multiple owners. The Nfld. Court of Appeal decision in <i>Kerri v. Decker</i> underlines the importance of the distinction between the use of "means" and "includes", thus it is not clear the result would be the same in PEI, though the reasoning would otherwise be persuasive.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>PRINCE EDWARD ISLAND ACCIDENTS BEFORE FEBRUARY 1, 2014 (CONTINUED)</b></p> <p><b>PRINCE EDWARD ISLAND ACCIDENTS ON OR AFTER FEBRUARY 1, 2014</b></p>	<p><u>Highway Traffic Act, R.S.P.E.I. 1988, c. H-5 as amended by An Act to Amend the Highway Traffic Act, S.P.E.I. 2013, c. 14</u></p>	<p>subsection relieves any person deemed to be the agent or servant of the owner and to be driving the motor vehicle in the course of his employment from the liability for such damages.</p> <p><b>1 (m.1) "owner"</b> includes:</p> <p>(i) the person who holds the legal title to a vehicle,</p> <p>(ii) in the case of a vehicle that is registered, the person in whose name it is registered,</p> <p>(iii) in the case of a vehicle that is the subject of a mortgage, the mortgagor if he is entitled to possession of the vehicle,</p> <p>(iv) in the case of a vehicle that is the subject of a hire-purchase agreement, the person in possession of the vehicle under the agreement, or</p> <p>(v) in the case of a vehicle that is the subject of a conditional sale contract, the buyer under the conditional sale contract, if he is entitled to possession of the vehicle;</p> <p><b>286.(1)</b> Subject to subsection (2), when loss or damage is sustained by any person by reason of a motor vehicle upon a highway the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the owner or driver is upon the owner or driver.</p> <p>(2) Subsection (1) does not apply to an owner who, in relation to the motor vehicle referred to in that subsection,</p> <p>(a) is a conditional seller, lender, or seller; and</p> <p>(b) was not in possession of the motor</p>	<p>An owner who (a) is a conditional seller (sale or lease with a right to purchase), lender or seller <u>and</u> (b) was not in possession of the motor vehicle when the loss or damage was sustained, is exempted from deemed vicarious liability for the driver.</p> <p>An owner is otherwise effectively deemed to be vicariously liable for a driver who is driving with the expressed or implied consent of the owner (under s. 287(1)).</p> <p>For lessors under a lease with no option to purchase, vicarious liability remains as it was prior to the amendments, that is, subject to argument in each case (see above for the situation prior to the amendments effective February 1, 2014).</p>	<p>The amendments effective February 1, 2014 exempting conditional sellers, lenders and sellers, have not yet been judicially considered.</p> <p>There has been no change for lessors under a lease with no option to purchase (see above for the situation prior to the amendments).</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>PRINCE EDWARD ISLAND ACCIDENTS ON OR AFTER FEBRUARY 1, 2014 (CONTINUED)</b></p>		<p>vehicle when the loss or damage was sustained.</p> <p>(3) For the purposes of subsections (2) and 287(2),</p> <p>(a) “conditional seller” means a person who, in the ordinary course of the person’s business, enters into an agreement with another person for the conditional sale or lease of a motor vehicle with a right of purchase on the performance of the conditions set out in the agreement and an immediate right of possession in the conditional buyer or lessee, and includes a person to whom the conditional seller has assigned the agreement;</p> <p>(b) “lender” means a person who holds a security interest in a motor vehicle through a written security agreement and under that agreement has lent money to a person in respect of the motor vehicle, and includes a person to whom the lender has assigned the agreement;</p> <p>(c) “security agreement” and “security interest” mean a security agreement and a security interest as defined in the Personal Property Security Act R.S.P.E.I. 1988, Cap. P-3.1, or the equivalent terms under personal property security legislation of another province.</p> <p>(d) “seller” means a person who holds a security interest in a motor vehicle through a written security agreement and who sells the motor vehicle to another person under a written contract, and includes a person to</p>		

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>PRINCE EDWARD ISLAND ACCIDENTS ON OR AFTER FEBRUARY 1, 2014 (CONTINUED)</b></p>		<p>whom the seller has assigned the contract. R.S.P.E.I. 1974, Cap. H-6, s.271; 2013, c.14, s.6.</p> <p><b>287.</b> (1) Subject to subsection (2), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle upon a highway, every person driving the motor vehicle who is living with and as a member of the family of the owner thereof and every person driving the motor vehicle with the consent, expressed or implied, of the owner thereof shall be deemed to be the agent or servant of the owner of the motor vehicle and to be employed as such and shall be deemed to be driving the motor vehicle in the course of his employment, but nothing in this subsection relieves any person deemed to be the agent or servant of the owner and to be driving the motor vehicle in the course of his employment from the liability for such damages.</p> <p>(2) Subsection (1) does not apply where the owner, in relation to the motor vehicle referred to in that subsection,</p> <p>(a) is a conditional seller, lender, or seller; and</p> <p>(b) was not in possession of the motor vehicle when the loss or damage was sustained. R.S.P.E.I. 1974, Cap. H-6, s.272; 2013, c.14, s.7.</p>		

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
QUÉBEC	<u>Automobile Insurance Act, R.S.Q., c. A-25</u>	<p><b>"Owner"</b>: means a person who acquires or possesses an automobile under a title of ownership, under a title involving a condition or a term giving him the right to become the owner thereof, or under a title giving him the right to use it as the owner thereof charged to deliver over, and a person who leases an automobile for a period of not less than one year.</p> <p><b>108.</b> The owner of an automobile is liable for the property damage caused by such automobile.</p> <p><b>110.</b> When an automobile is registered in the name of a person other than the owner, such person is jointly and severally liable with the owner, unless he proves that the registration was effected by fraud and without his knowledge.</p>	<p>An "owner" is not liable for bodily injury caused by an automobile by virtue of the no-fault system, but an "owner" is liable for property damage.</p> <p>A vendor under a conditional sale contract would NOT be an "owner" under the Act.</p> <p>A lessor will be jointly and severally liable with the "owner" (the lessee) as a result of s. 110 of the Act. The liability will only be with respect to property damage.</p>	<p>There has been very little case law interpreting a lessor's liability.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
SASKATCHEWAN	<i>Highway Traffic Act</i> , SS 1986, c H-3.1 (past version in force between Jun 27, 2003 and Jun 29, 2004) (Repealed by TSA))	<b>Liability of operator and owner</b> 86(1) If loss, damage or injury is caused to a person by a motor vehicle, the person driving it at the time is liable for the loss, damage or injury if it was caused by that person's negligence or improper conduct. [...]	From 1986 to June 30 2004, this statute specifically allowed for vicarious liability of owners. This section was repealed in June 2004.	
(HISTORICAL)				
(CURRENT)	<u><i>The Traffic Safety Act</i>, S.S. 2004, c. T-18.1</u>	<b>2.(1)(x)</b> "owner" includes: (i) a lessee of a motor vehicle; or (ii) a person who is in possession of a motor vehicle under a contract by which that person may become the owner of the motor vehicle on full compliance with the terms of the contract;  <b>Onus of proof in accident</b> <b>256(1)</b> If loss, damage or injury is sustained by a person by reason of a motor vehicle on a highway, the onus of proof that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle is on the owner or driver.  <b>(2)</b> This section does not apply to a collision between motor vehicles on a highway.	Under the TSA there is no statutory provision on vicarious liability that would make an owner liable for the driver/operator.  As a general rule owners, including vendors or lessors, will not be subject to any vicarious liability for personal injury damages. (see AAIA below).  Under the TSA the key is the registered owner as opposed to the title owner.	

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>SASKATCHEWAN</b> <b>(CONTINUED)</b></p>	<p><u>Automobile Accident Insurance Act, R.S.S. 1978, c. A-35</u></p>	<p><b>Part VIII – No fault</b></p> <p><b>No Fault</b></p> <p>101 (1.1) This Part applies to any person who sustained bodily injury caused by a motor vehicle arising out of an accident on or after the date that this Part comes into force and who has not provided the insurer with a tort election in the manner prescribed by Part IV.</p> <p>101 (1.2) A person who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II other than a death benefit pursuant to Part II relating to the death of an insured.</p> <p>108(1) An insured who is resident in Saskatchewan at the date of the accident, and the insured's surviving spouse or dependant, are entitled to benefits if the accident occurs in Canada or the United States of America or on a vessel travelling between ports of those countries.</p> <p>(2) An injured person who is not a resident of Saskatchewan and who is injured in Saskatchewan in a motor vehicle registered in Saskatchewan is deemed to be a resident of Saskatchewan, unless there is an agreement between the insurer and a government or agency of the government of the jurisdiction where the injured person resides that provides otherwise.</p> <p>Benefits for non-residents</p> <p>109(1) Subject to this Part, a person injured in an accident that occurs in</p>	<p>By default, Saskatchewan residents are subject to no-fault insurance coverage under Part VIII of the <i>Automobile Accident Insurance Act</i>.</p> <p>However, SK residents can opt out of the no-fault regime by electing tort liability under Part IV of the <i>Automobile Accident Insurance Act</i> (less than 1%)</p> <p>In both cases, owners would generally not be held vicariously liable for bodily injury and damage to property caused by a motor vehicle accident.</p> <p>Circumstances creating a special relationship would be required to create common law vicarious liability against an owner.</p> <p>SK residents under tort coverage are allowed to claim for damages for economic loss for living assistance, rehabilitation and net loss of income above the annual statutory threshold, outside of the statutory no-fault benefits, against any third party.</p> <p>For non-residents injured in SK they would likely be deemed residents and subject to no-fault coverage, but that depends on where the injured party is from. If injured in SK in a vehicle registered in SK a non-resident would be deemed a resident, unless there is a reciprocal agreement with the jurisdiction where they reside.</p>	<p>NOTE: in 2012, the Saskatchewan Court of Appeal held in <i>John Acton v. Rural Municipality of Britannia No. 502 and Ron Handel Farm Ltd.</i>, 2012 SKCA 127, that the plaintiff could both collect no fault benefits <b>and</b> sue in tort for his non-reimbursed economic losses arising from his catastrophic injuries in a single vehicle accident.</p> <p>Leave to appeal to the Supreme Court of Canada has been denied.</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>SASKATCHEWAN (CONTINUED)</b></p>		<p>Saskatchewan who is not resident in Saskatchewan, and any surviving spouse or dependant of that person, is entitled to benefits:</p> <p>(a) in accordance with any agreement between the insurer and a government or an agency of the government of the place of residence of the person injured; or</p> <p>(b) if no agreement exists, to the extent that the insurer determines that the person injured is not responsible for the accident.</p> <p><b>Part IV – Tort Liability</b></p> <p><b>Actions for bodily injury prohibited</b></p> <p>40.1 Notwithstanding any other Act or law but subject to this Part and Part VIII:</p> <p>(a) no person has any right of action respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force; and</p> <p>(b) no action or proceeding lies or may be commenced in any court respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force.40.2 (1) A</p> <p><b>Tort Election</b></p> <p>Saskatchewan resident may provide the insurer with a tort election that sets out that resident’s intention to:</p>		





**CANADIAN VICARIOUS LIABILITY REPORT** as at April 19, 2013, except updated: British Columbia (June 2015), Ontario (June 2015) and Saskatchewan (January 2014) & Prince Edward Island (February 2014)

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>SASKATCHEWAN (CONTINUED)</b></p>		<p>(a) elect to obtain coverage pursuant to Part II; (Bodily Injury Benefits);</p> <p>(b) waive the resident's right to obtain benefits pursuant to Part VIII; (No Fault Bodily Injury Benefits) and</p> <p>(c) elect to bring an action for loss or damage for bodily injury caused by a motor vehicle arising out of an accident.</p> <p>41(1) Subject to subsection (2), no action may be brought for bodily injury to any person respecting, arising out of or stemming from bodily injury or damage to property caused by a motor vehicle arising out of an accident against a Saskatchewan resident who:</p> <p>(a) is a Part VIII beneficiary; and</p> <p>(b) is the owner, operator or passenger of the motor vehicle involved in the accident.</p> <p>(2) Notwithstanding subsection (1), an action may be brought against a Part VIII beneficiary mentioned in subsection (1) for:</p> <p>(a) property damage in excess of any insurance money paid or to be paid to the person claiming against the Part VIII beneficiary pursuant to section 51.1;</p> <p>(b) economic loss caused by that Part VIII beneficiary in excess of any benefits or insurance money paid or to be paid to the person claiming against that Part VIII beneficiary pursuant to Part II or section 51.1; and</p> <p>(c) non-economic loss caused by that</p>		

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>SASKATCHEWAN (CONTINUED)</b></p>		<p>Part VIII beneficiary in excess of any insurance money paid or to be paid to the person claiming against that Part VIII beneficiary pursuant to section 51.1, but only if:</p> <p>(i) the loss is caused by a Part VIII beneficiary operating a motor vehicle who is convicted of an offence pursuant to paragraph 253(a)</p> <p>or (b), subsection 254(5) or subsection 255(2) or (3) of the Criminal Code;</p> <p>or</p> <p>(ii) the loss is caused by a Part VIII beneficiary operating a motor vehicle who intentionally caused or attempted to cause bodily injury to another person and, as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to section 235, 236, 239, 249, 266, 267, 268 or 269 of the Criminal Code.</p>		
<p><b>RELATING TO BUSES SPECIFICALLY</b></p>	<p><u><i>The Motor Carrier Conditions of Carriage Regulations, M-21.2 Reg 5</i></u> (formerly under The Motor Carrier Act which was repealed by The Traffic Safety Act (T-18.1). These Regulations continue in force under The Traffic Safety Act)</p>	<p><b>2 (b.1)</b> “commercial vehicle” means any of the following vehicles:</p> <p>(ii) a vehicle registered in Class PB or PS with a seating capacity, according to the manufacturer of that vehicle, of more than 10 persons including the driver;</p> <p><b>Property damage insurance</b></p> <p>7(1) In this section, “motor vehicle liability policy” means a policy of insurance that insures the operator of the vehicle, and every other person who with his or her consent operates the vehicle, against <u>liability imposed by law arising out of the ownership, use or operation of a vehicle</u> resulting from</p>	<p>Any person who <b>operates</b> a passenger bus in SK is obligated to file a motor vehicle liability policy to insure against:</p>	<p>No judicial treatment of this Regulation.</p> <p>PB refers to a vehicle registered as a public service vehicle (intercity passenger bus) according to the The Automobile Accident Insurance (General) Regulations, 2002</p>

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
<p><b>SASKATCHEWAN</b> <b>(BUSES - CONTINUED)</b></p>		<p><u>loss of or damage to any property</u>, whether real or personal, of any person whether that person is a passenger in the vehicle or not.</p> <p>(1.1) Subject to the amounts mentioned in subsection (2), the following persons shall file with the board a motor vehicle liability policy:</p> <p>(a) any person who operates a commercial vehicle and is not exempt from the requirement of obtaining a safety certificate;</p> <p>(b) <u>any person who operates a Class PB vehicle.</u></p> <p>(2) Every policy required pursuant to subsection (1.1) to transport:</p> <p>(a) general merchandise except the commodities set out in Schedule XII of the Transportation of Dangerous Goods Regulations (Canada), being SOR 85-77 of January 18, 1985, as amended from time to time, made pursuant to the Transportation of Dangerous Goods Act (Canada), as amended from time to time, shall insure to the limit of at least \$1,000,000;</p> <p>(b) the commodities mentioned in clause (a) shall insure to the limit of at least \$2,000,000;</p> <p>(c) passengers, and the passenger seating capacity of the vehicle used for transporting passengers is 15 or less, shall insure to the limit of at least \$1,000,000; or</p> <p>(d) <u>passengers, and the passenger seating capacity of the vehicle used for</u></p>	<p>7(2)(d) liability imposed by law arising out of the ownership, use or operation of a vehicle resulting from loss of or damage to any property (at least 3 million if carries more than 16 passengers)</p> <p>8(2)(d) liability imposed by law arising out of the ownership, use or operation of a vehicle resulting from bodily injury to or the death of any person (at least 3 million if carries more than 16 passengers)</p>	
<p><b>SASKATCHEWAN</b></p>				



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PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
(BUSES - CONTINUED)		<p><u>transporting passengers is 16 or more, shall insure to the limit of at least \$3,000,000; exclusive of interest and costs.</u></p> <p>(3) Where the board accepts a bond in place of a motor vehicle liability insurance policy, the bond shall be in the same amount that is required in the case of an insurance policy.</p> <p><b>Bodily injury insurance</b></p> <p>8(1) In this section, "motor vehicle liability policy" means a policy of insurance that <u>insures the operator of the vehicle,</u> and every other person who with his or her consent operates the vehicle, <u>against liability imposed by law arising out of the ownership, use or operation of a vehicle</u> resulting from <u>bodily injury to or the death of any person,</u> whether that person is a passenger in the vehicle or not.</p> <p>(1.1) Subject to the amounts mentioned in subsection (2), the following persons shall file with the board a motor vehicle liability policy:</p> <p>(a) any person who operates a commercial vehicle and is not exempt from the requirement of obtaining a safety certificate;</p> <p>(b) <u>any person who operates a Class PB vehicle.</u></p> <p>(2) Every policy required pursuant to subsection (1.1) from a person who is authorized by an operating authority certificate to transport:</p> <p>(a) general merchandise except the commodities set out in Schedule XII of</p>		
SASKATCHEWAN				



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(BUSES - CONTINUED)		<p>the Transportation of Dangerous Goods Regulations (Canada), being SOR 85-77 of January 18, 1985, as amended from time to time, made pursuant to the Transportation of Dangerous Goods Act (Canada), as amended from time to time, shall insure to the limit of at least \$1,000,000;</p> <p>(b) the commodities mentioned in clause (a) shall insure to the limit of at least \$2,000,000;</p> <p>(c) passengers, and the passenger seating capacity of the vehicle used for transporting passengers is 15 or less, shall insure to the limit of at least \$1,000,000; or</p> <p>(d) <u>passengers and the passenger seating capacity of the vehicle used for transporting passengers is 16 or more shall insure to the limit of at least \$3,000,000; exclusive of interest and costs.</u></p> <p>(3) Where the board accepts a bond in place of a motor vehicle liability insurance policy, the bond shall be in the same amount that is required in the case of an insurance policy.</p>		

PROVINCE	DESCRIPTION	RELEVANT PROVISION	LIABILITY	COMMENTS
SASKATCHEWAN (CONTINUED)	<u>The Vehicle Classification and Registration Regulations, H-3.1 Reg 3</u> (formerly under The Highway Traffic Act which was repealed by The Traffic Safety Act (T-18.1). These Regulations continue in force under The Traffic Safety Act.)	<p>2.(1)(s) “<b>passenger vehicle</b>” means a motor vehicle with the body style of a car, a sport utility vehicle or a <u>bus</u>, but does include a motor vehicle with the body style of a bus converted to a truck;</p> <p>2.(1)(w) “<b>registered owner</b>” with respect to a motor vehicle means the person in whose name the motor vehicle is registered pursuant to <i>The Vehicle Administration Act</i>,</p> <p>2.(1)(4) For the purposes of section 81.4 of the Act, “<b>commercial vehicle</b>” means any of the following vehicles:</p> <p>(c) a vehicle registered in Class PB or PS with a seating capacity, according to the manufacturer of that vehicle, of more than 10 persons, including the driver.</p> <p><b>Class PB</b>  <b>9</b> A class of vehicles to be called "Class PB" is hereby established consisting of vehicles to be used for the transportation of passengers or passengers and express.</p>		
	<u>The Commercial Vehicle and Drivers (Record-Keeping) Regulations, H-3.1 Reg 22</u>	8 Every carrier must maintain a written record of the carrier’s existing <b>public liability insurance coverage</b> for all of the carrier’s commercial vehicles.		
	<u>The Registration Exemption and Reciprocity Regulations, 1987, H-3.1 Reg 4.</u>	<p>2 (c) commercial vehicle. means:            (iii) a bus</p> <p>2 (g) owner., in the case of a commercial vehicle or a farm vehicle, includes a lessee of the vehicle who operates the vehicle under a valid written rental agreement with the owner;</p>		



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<b>SASKATCHEWAN (CONTINUED)</b>		Charter buses 9(1) Where a person: (a) is ordinarily resident in a province other than Saskatchewan; and (b) is the owner of a bus that is registered in that province; he is, while using the bus to transport passengers on a charter trip into or through Saskatchewan, exempted from the provisions of subsection 23(1) of the Act.		

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