

# Index

References are to section numbers (e.g., § 11:1), chapter appendix numbers (e.g., APP 60A), section numbers of the Regulations — Statutory Accident Benefits Schedule - Accidents On or After November 1, 1996, O. Reg. 403/96 (e.g., APP B [SABS/96 s. 2]) and Statutory Accident Benefits Schedule - Effective September 1, 2010 (e.g., APP A [SABS/10 s. 2]), and sections of the Licence Appeal Tribunal, Animal Care Review Board and Fire Safety Commission Common Rules of Practice and Procedure, Version 1 — October 2, 2017 (e.g., APP C [LAT2]).

## ACCESS TO INFORMATION

See Government Records

## ACCIDENT BENEFIT CLAIMS

Public adjusters, prohibition against,  
§ 38:29  
settlement  
arbitration expenses, § 38:28  
restrictions on, § 38:27

## ACCIDENT BENEFIT LITIGATION

Generally, § 62:2  
Appeals, § 62:9  
Case conference, § 62:5  
Hearing, § 62:7  
How to prepare LAT file, § 62:3  
Post-case conference, § 62:6  
Practical advice, § 62:1  
Pre-hearing, § 62:6  
Production stage, § 62:4  
Request for reconsideration, § 62:8

## ACCIDENT BENEFITS

Action to claim  
commencement, § 68:23  
tort action combined  
basis, § 68:24  
form, APP 68C  
Bill 59  
see Bill 59  
Explanation, APP 5A, APP 5B  
Management of  
generally, § 45:1, § 45:7  
case manager, appointment of, § 45:5  
internal resources, developing, § 45:2  
management system, developing,  
§ 45:3  
monitoring, § 45:6  
rehabilitation activities, § 45:5

## ACCIDENT BENEFITS—Cont'd

Management of—Cont'd  
relationships outside of office, develop-  
ing, § 45:4  
Motor Vehicle Accident Claims Fund,  
§ 174:7  
Obtaining file, § 93:17  
Payments, client record, APP 5D  
Records, importance, § 120:6  
System, see also management of  
tort claim interface  
collateral benefits, deductibility of,  
§ 86:2 to § 86:9  
benefits available but not received,  
§ 86:3  
matching principle, § 86:2  
split and deduct, § 86:9  
future collateral benefits, § 86:10  
trial strategies, § 86:15

## ACCIDENT RECONSTRUCTIONIST REPORT

Generally, § 63:19

## ACCIDENT REPORT, OBTAINING

Generally, § 63:3

## ACCOUNTANT REPORT

Generally, § 102:14

## ACTUARY REPORT

Generally, § 102:14

## AERIAL PHOTOGRAPHY

Generally, § 63:27

## AFTER EVENT INSURANCE

Adequate coverage, § 71:3, § 166:3  
Case law summary, APP 60A  
Conflicts of interest, § 71:4, § 166:6  
Off-coverage positions, § 166:6

## **AFTER EVENT INSURANCE—Cont'd**

- Premium, § 166:2
- Relationship between lawyer, client and insurer, § 166:4
- Terms and risks, discuss with client, § 71:2, § 166:5

## **AGGRAVATED DAMAGES**

- Aggravated v. punitive, § 80:2

## **ALCOHOL COMMISSION RECORDS**

- Generally, § 63:31

## **AMBULANCE RECORDS**

- Obtaining, § 63:16
- Request letter, APP 10A, APP 63C

## **BANKRUPTCY**

- Generally, re personal injury claims, § 32:1, § 32:12
- Artificial allocation of tort award, § 32:11
- Conforti and Morasch decisions, § 32:3
  - components of personal injury action generally, § 32:4
  - future income loss, § 32:7
  - health care costs, § 32:8
  - housekeeping/home maintenance expenses, § 32:8
  - in-bankruptcy lost income, § 32:6
  - loss of competitive advantage, § 32:7
  - loss of earning capacity, § 32:7
  - pain, suffering and loss of enjoyment of life, § 32:10
  - pre-bankruptcy lost income, § 32:5
  - statutory accident benefits, § 32:9
- Scheme of Bankruptcy and Insolvency Act re income, § 32:2

## **BEST EVIDENCE RULE**

- Generally, § 104:23

## **BIFURCATION OF CASE**

- Generally, § 141:1
- Availability of, § 141:2
- Jurisdiction to hear motion re, § 141:3
- Justifying circumstances, § 141:6
- Practical strategies, § 141:7
- Rule 6.1.01, judicial treatment of, § 141:5
- Test for, § 141:4

## **BILL 59**

- See also Damages
- Compliance at retainer
  - see Retainer

## **BILL 59—Cont'd**

- Statutory accident benefits schedule
  - see Statutory Accident Benefits Schedule
- Tort rights
  - effect, § 21:1
  - general damages deductibles
    - generally, § 21:6, § 21:7
    - accidents on/after October 1, 2003
      - increase, § 21:6
      - no deductibles for higher assessments, § 21:7
  - general damages threshold, § 21:2
    - see also Threshold
  - health care expenses
    - accident benefit relationship, § 21:22
    - accidents occurring on/after October 1, 2003, § 21:14
    - catastrophic impairment threshold
      - generally, § 40:1, § 41:1 to § 41:8
      - American Medical Association methodology, § 21:16
    - assessment dispute, § 21:20
    - behavioural disorders, § 21:18
    - chronic pain, § 21:19
    - definition, § 21:15
    - effect, § 21:21
    - mental disorders, § 21:18
    - musculoskeletal, § 21:17
  - limits on income tax gross up, § 21:25
  - subrogation
    - accident benefit insurer, § 21:24
    - OHIP, § 21:23
  - income loss
    - accident benefit relationship, § 21:12
    - collateral benefits deduction
      - CPP disability benefits, § 21:9
      - future, § 21:11
      - past, § 21:9
      - pre-trial collateral benefits, § 21:10
    - past, § 21:8
  - protected defendant, § 21:8
  - unprotected defendant, § 21:13

## **BILL 164**

- Limitation periods, § 36:20
- Notice requirements, § 36:19

## **BIOCHEMICAL ENGINEER REPORT**

Generally, § 63:21

## **BRAIN INJURIES**

Adult, § 53:10

Anatomy, § 15:2

Catastrophic impairment, § 15:10

Children

catastrophic impairment, § 53:9,  
§ 56:19

developing a case, § 15:1, § 15:15 to  
§ 15:36

Kings Outcome Scale for Childhood  
Head Injury (KOSCHI),  
§ 15:13, § 56:20

theory of vulnerability, § 15:8

Classification of injury, § 15:9

Defences, § 15:14

Glasgow Coma Scale, § 15:9, § 15:11,  
§ 56:2

removal, § 56:8

Glasgow Outcome Scale, § 15:12, § 56:2  
interpretation and use, § 56:10

Glasgow Outcome Scale-Extended  
(GOSE)

generally, § 56:9

disability levels, § 56:12

key considerations, § 56:11

Impact of the new definition, § 56:22

Mental and behavioural impairment,  
§ 56:15, § 56:18

Mild, § 56:14

Policy shift, § 56:3

Review of assessment in 1996 and 2016  
S.A.B.S., § 56:13

Types of injuries, § 15:3

Whole Person Impairment Rating, § 56:2,  
§ 56:16, § 56:17

## **BROKERS, ACTIONS AGAINST**

Generally, § 19:1

Failure to provide full coverage, § 19:8

Negligent brokers

generally, § 19:4

causation, § 19:6

contributory negligence, § 19:6

standard of care, § 19:5

establishing, § 19:4

No-fault benefits scheme, changes to,  
§ 19:2

claims against insurance brokers arising  
out of, § 19:3

## **BULLOCK ORDER**

See Costs

## **BUSINESS RECORDS**

Admissibility

procedure

Evidence Act, § 106:13

notice, service, § 106:15

test, § 106:2

## **CASE MANAGEMENT RULES, EFFECT**

Generally, § 79:11

## **CATASTROPHIC IMPAIRMENT**

Ambiguities, § 55:22

Ambulatory impairment, § 53:7, § 55:1,  
§ 55:5

Application for determination, APP 53F

ASIA Impairment Scale, APP 53B,  
§ 54:2, § 55:6, § 55:7

Assessments

Licence Appeal Tribunal, by, § 56:4

Brain injury

see also Brain Injuries

adult, § 53:10

children, § 15:10, § 53:9

Glasgow Coma Scale, § 15:9,  
§ 15:11

Glasgow Outcome Scale, § 15:12

Kings Outcome Scale for Childhood  
Head Injury (KOSCHI),  
§ 15:13, APP 53D

mild, § 56:14

Definition

after 2016, § 55:3

comparison table, § 56:6

history, § 56:5

pre-2016, § 55:2

Determination of, § 56:7

Extended Glasgow Outcome Scale, APP  
53E

Interpretation of

aftermath of Desbiens v. Mordini,  
§ 41:6

approach in Desbiens v. Mordini,  
§ 41:4

extreme impairments, § 41:5

marked impairments, § 41:5

post-Desbiens landscape, § 41:7

pre-Desbiens landscape, § 41:3

statutory definition, § 41:2

## **CATASTROPHIC IMPAIRMENT**

### **—Cont’d**

- Mental and behavioural impairment,  
§ 53:12, § 57:1
- Paraplegia and tetraplegia, § 55:1, § 55:4
- Proof of marked impairment after Pastore  
generally, § 44:1, § 44:8
- four aspects of function, § 44:3
- activities of daily living, § 44:3
- adaptation, § 44:6
- concentration, § 44:5
- social functioning, § 44:4
- interpretation, issues of, § 44:7
- mechanics, § 44:2
- Renewing application for  
catastrophic jurisprudence, § 43:1
- material change in condition (MCC)  
test
- application of  
generally, § 43:3
- baseline assessment, § 43:4
- inter-observer variances, § 43:6
- intra-observer variances, § 43:6
- materiality, § 43:5
- McLinden procedural paradox, § 43:2
- reapplication, § 43:7
- timing, § 43:7
- Spinal cord injuries, § 53:6
- Spinal Cord Independence Measure  
(SCIM), APP 53C, § 54:2, § 55:8  
to § 55:21
- Vision loss, § 53:8
- 55% whole person impairment, § 53:11
- Whole person impairment
- combining impairments, § 58:3
- early determination, § 58:6
- insurance reform, § 58:4
- original definition, § 58:2
- revised definition, § 58:5

## **CATASTROPHIC IMPAIRMENT EXPERT, REPORT**

- Generally, § 102:15

## **CAUSATION, CONCURRENT**

- American jurisprudence  
generally, § 17:22
- California insurance industry practice,  
§ 17:25
- Garvey case, § 17:24
- Partridge case, § 17:23

## **CAUSATION, CONCURRENT—Cont’d**

- Amos case, effect of, § 17:21
- Apportionment, § 17:27
- Bill 164 and, § 17:6
- Case law re, § 17:14
- Categorization of, § 17:15
- Defined, § 17:8
- Derksen v. Roy’s Electric, § 17:1, § 17:4,  
§ 17:5, § 17:12
- Duty to defend, § 17:28
- Ford Motor case, § 17:7
- Intervening cause, § 17:18
- Materiality requirement, § 17:13
- Multiple causes and, § 17:11
- No proximate cause, § 17:9
- Onus, § 17:3
- Policy wording and, § 17:26
- Practice hints, § 17:29
- Pre-Derksen, § 17:2
- Single actor
- generally, § 17:19, § 17:20
- Harroun, Hechavarria and Pugsley  
cases, § 17:20
- “other persons,” § 17:19
- Two independent concurrent acts, as,  
§ 17:10

## **CAUSATION, POST-CLEMENTS**

- Clements v. Clements  
generally, § 11:2
- “but for” causation, § 11:3
- Ediger v. Johnston, § 11:5
- Goodman v. Viljoen, § 11:6
- impact on how test is applied, § 11:4
- material contribution, on, § 11:7
- Damages issues, versus, § 11:9
- Frequently asked questions, § 11:1
- Multiple causes
- Athey v. Leonati “material contribu-  
tion,” § 11:8

## **CELLULAR PHONE RECORDS, OBTAINING**

- Generally, § 63:18

## **CHANGE OF VENUE MOTION**

- Generally, § 72:9
- Case law, § 72:3
- Legislation, § 72:2, § 72:8

**CHILDREN**

See Plaintiff, incapacity; Substitute Decisions Act; Waivers, minors

**CHIROPRACTOR REPORT**

Generally, § 102:10

**CLAIM RESOLUTION,  
EXPLANATION**

Generally, APP 5A, APP 5B

**CLIENT**

Intake

see Intake

Resumé, damages issues, § 67:10

Retainer

see Retainer

**CLIMATOLOGIST REPORT**

Generally, § 63:24

**CLINICAL NOTES, OBTAINING**

Generally, § 63:17

**CLOSING ADDRESS**

Argument on facts, § 161:3

Content of, § 7:36, § 160:8

analogies, use of, § 160:16

biblical passages, use of, § 160:23

challenging of jurors, reference to,  
§ 160:9

defence counsel's sympathy argument,  
dealing with, § 160:19

discussion of evidence, § 160:10

evidence not called by defendant,  
§ 160:21

finality of decision, § 160:24

final thought, leaving, § 160:25

introductory line, § 160:8

judge's charge

capitalizing on, § 160:11

no requirement to review facts of  
case, § 7:42

nullifying, § 160:12

jury empowerment, § 160:20

liability, § 160:15

overreaching plaintiff, § 160:22

plaintiff caught in lie, § 160:18

portrayal of plaintiff, § 160:13

prejudice, dealing with, § 160:17

trial transcripts, use of, § 160:14

**CLOSING ADDRESS—Cont'd**

Damages issues

analogies

disability, effect on income earning,  
§ 164:9

head injury without fracture,  
§ 164:10

thin skull, § 164:8

approaches, adaptation of, § 164:18

arbitrary rules governing, § 7:40

before and after picture, § 164:5

causation

material contribution test, § 164:12

partial cause, § 164:11

emotion, § 164:14

exhibits, § 164:3

finality of award, § 164:15

final thoughts, § 164:16

injury effect, § 164:4

non-pecuniary general award, § 164:13

overreaching, avoiding, § 164:6

perspective of judge and jury, § 164:2

questions for jury

discussion, § 164:17

form, APP 59A

Delivery

creating appropriate perception,  
§ 161:6

final words, § 161:4

opening, § 161:2

peroration, § 161:4

rhetoric, § 161:5

Described, § 160:2

Elements, essential, § 160:4

Enhancing damages, role in, § 10:26,  
§ 10:27

Exhibits, use of in, § 160:6

Judge's charge, objections to, § 7:43,  
§ 7:44

Non-jury trial

argument on fact, § 161:9

argument on law, § 161:10

courtesy, § 159:13

credibility, § 159:12

documentary assistance to trial judge,  
§ 161:12

emotion, § 159:9

exaggeration, § 159:8

focus on judge, § 159:6

legal principles, § 159:5

## **CLOSING ADDRESS—Cont'd**

- Non-jury trial—Cont'd
  - logic, § 159:3
  - objective, § 159:2
  - opening, § 161:8
  - organization, § 159:10
  - presentation, § 161:13
  - primacy and recency, § 159:7
  - reinforcing opening, § 159:11
  - requested findings, § 161:11
  - weaknesses, dealing with, § 159:4
- Objections, § 7:38, § 7:39, § 7:41, § 156:28
- Objectives, § 160:3
- Order of, § 7:37
- Plaintiff emotion, use of, § 160:7
- Preparation, § 161:1
- Problems, dealing with in, § 160:5
- Purpose, § 7:36
- Sample closing statement, APP 132B

## **COLLATERAL BENEFITS, ASSIGNMENT AFTER TRIAL**

- Generally, § 173:1
- Assignment/trust, § 173:4
  - offers to settle and, § 173:7
- Co-operation, obligation re, § 173:6
- Future benefits, differing values of, § 173:5
- Insurance Act, s. 267.8 provisions, § 173:2
- Matching deductions, § 173:9
- Moore action
  - costs ruling, § 173:11
  - proving entitlement, § 173:10
  - settlement issues, § 173:13, § 173:14
- Non-protected defendants, status of, § 173:3
- Standard of proof re assessment, § 173:8

## **COLLATERAL BENEFITS, DEDUCTIBILITY**

- Accident benefits, § 28:15 to § 28:21
  - improvident settlement, § 28:19
    - Peloso v. 778561 Ontario Inc., § 28:20
  - loss of income, payments, § 28:15
- SABS, § 28:15
  - Cromwell v. Liberty Mutual Insurance Co., § 28:16

## **COLLATERAL BENEFITS,**

### **DEDUCTIBILITY—Cont'd**

- Accident benefits, § 28:15 to § 28:21
  - Cont'd
  - SABS, § 28:15—Cont'd
    - Vanderkop v. Personal Insurance Co. of Canada, § 28:17
    - who pays, § 28:21
- Tort claims, Insurance Act, § 28:2
  - attendant care, deductions for, § 28:9
  - deductible
    - CPP disability benefits, § 28:3
    - LTD benefits, § 28:3
      - Anand v. Belanger, § 28:4
    - future accident benefits, § 28:12
    - future benefits, arbitration for, § 28:14
    - future collateral benefits, § 28:12
      - Stokes v. Desjardins Groupe d'Assurances, § 28:13
    - general damages, § 28:7
      - Walker v. Ritchie, § 28:8
    - housekeeping benefits, § 28:10
      - Sutherland v. Singh, § 28:11
    - medical benefits, deductions for, § 28:9
    - non-deductible
      - employment insurance benefits, § 28:5
      - ODSP, § 28:5
      - pensions, § 28:5
        - Demers v. B.R. Davidson Mining & Development Ltd., § 28:6
      - rehabilitation benefits, deductions for, § 28:9

## **COLLISION CENTRE REPORT, OBTAINING**

- Generally, § 63:4

## **COMMENCEMENT**

- Liability investigation
  - see Liability
- Parties
  - see Parties

## **COMMERCIAL HOST, PARTY, AS**

- See Parties

## **COMMERCIAL HOST LIABILITY**

- Causation, § 83:13
- Duty, origin of, § 83:2
  - limits on, § 83:6
  - patron's duty, § 83:3



## COMMERCIAL HOST LIABILITY

### —Cont’d

- Duty, origin of, § 83:2—Cont’d
  - statutory duty, § 83:5
  - to those in contact with patron, § 83:4
- Fault, apportionment of, § 83:14
- Foreseeability, § 83:12
- Insurance policy, considerations arising from, § 83:15
  - deductibility of benefits under Insurance Act, § 83:18
  - drunk driving, effect on coverage, § 83:16
- OHIP subrogated claim, potential immunity from, § 83:19
- uninsured motorist coverage, potential application, § 83:17
- Standard of care, scope of, § 83:7
  - positive duty to prevent calamity, § 83:11
  - preventative duty, § 83:8
    - defence of no sign of intoxication, § 83:10
    - obligation to monitor, § 83:9

## COMMON RULES OF PRACTICE AND PROCEDURE

- See Licence Appeal Tribunal, Rules of Practice

## COMPUTER ANIMATIONS

- Demonstrative evidence issues
  - see Demonstrative Evidence
- Testimony of animator, § 63:22

## CONFLICTS OF INTEREST

- See also Contingency Fees
- Generally, § 4:16
- Conflicts created by current legislative scheme, § 4:6
- Conflicts inherent in client-lawyer relationship, § 4:2
- Conflicts issues in proposed new scheme, § 4:13
- Contingency fee agreements (CFA), § 4:4
- Proposed rule to eliminate conflict in most cases, § 4:10

## CONTINGENCY FEES

- Generally, § 4:16
- Conflicts created by current legislative scheme
  - ascribing amount towards costs, § 4:6

## CONTINGENCY FEES—Cont’d

- Conflicts created by current legislative scheme—Cont’d
  - prospect of doing trial without compensation, § 4:7
  - s. 20.1(2) of Solicitors Act, § 4:8, APP 4A
- Conflicts of interest in client-lawyer relationship, and, § 4:2
- Contingency fee agreements (CFA)
  - “costs plus” CFAs expressly prohibited by Solicitors Act, § 4:4
  - models, § 4:3
  - “percentage of the total” CFAs prohibited by case law, § 4:5
- Contingency Fee Agreements regulation, problems, § 4:9
- Gross-up, § 4:11
- History of contingency fee legislation, § 3:1
- Proposed rule to eliminate conflict in most cases, § 4:10
  - conflict possible where recoverable costs exceed the norm, § 4:14
  - disincentive to make offer to settle in some cases, § 4:15
- Recommended changes, § 4:12, APP 4B, APP 4C
- Reforms consultation documents, APP 4D
- Solicitors Act, ss. 20, 20.1, APP 4A

## CORONER’S OFFICE RECORDS

- Generally, § 63:32

## CORPORATE SEARCHES

- Generally, § 63:15, § 93:15

## COSTS

- Bullock order
  - Hoang v. Vicentini, § 70:4
  - multiple causes of action, § 124:8
  - nature, § 124:6
  - significance, § 124:5
- Current regime
  - Andersen v. St. Jude Medical Inc.
    - judicial treatment of, § 167:13
  - principles from
    - consistency with other costs awards, § 167:9
    - fact-specific analysis, § 167:8
    - hours and rates calculation, § 167:10

## **COSTS—Cont'd**

- Current regime—Cont'd
  - Andersen v. St. Jude Medical Inc.—Cont'd
    - principles from—Cont'd
      - reasonable expectation of parties, § 167:11
    - premiums not available under, § 167:12
  - Rules of Civil Procedure, R.R.O. 1990, Reg. 194
    - information for the profession, **APP 167C**
    - Rule 1.03, **APP 167A**
    - Rule 57.01, **APP 167A**
    - Tariff A, **APP 167B**
- Grid regime
  - application of, § 167:3
  - creation of, § 167:2
  - elimination of
    - changes to rule 57.01(1) and Tariffs, § 167:5
    - new rule 57.01(6): Costs Outline, § 167:6, **APP 167D**
- Sanderson order
  - Hoang v. Vicentini, § 70:4
  - multiple causes of action, § 124:8
  - nature, § 124:7
  - significance, § 124:5

## **COUNSEL IMAGE**

- Confidence, § 140:4
- Credibility, § 140:5
- Dynamism, § 140:3
- Language, significance, § 140:1
- Negative aspects, § 140:6
- Significance, § 140:2

## **CPP DISABILITY BENEFITS**

- As related to long term disability benefits, § 29:15
  - CCPD offsets, § 29:16
  - deduction of child's benefit, § 29:18
  - Gross versus net deduction, § 29:19
  - offset for estimated amount, § 29:17
- Deductibility in motor vehicle tort, § 29:8
  - history, § 29:9
- Deductibility in statutory accident benefits, § 29:10
  - available but not applied for, § 29:14
  - impairment "As a Result of the Accident," § 29:13
  - retroactive payments, § 29:11

## **CPP DISABILITY BENEFITS—Cont'd**

- Deductibility in statutory accident benefits, § 29:10—Cont'd
  - temporary disability payments, § 29:12
- Entitlement to, § 29:2
  - denial of CPPD, § 29:6
  - eligibility requirements, § 29:3
  - payments and calculation, § 29:5
  - qualifying contributions, § 29:4
- Impact of favourable eligibility determination, § 29:7

## **CREDIBILITY, IMPEACHING**

- Generally, § 152:1
- "Credibility," defined, § 152:2
- Cross-examination, importance of, § 152:3
- Goals of impeachment, § 152:5
- Prior inconsistent statements, § 107:6, § 152:4
- Procedure, § 152:6
  - admitting inconsistent statement for truth, § 152:9
  - Browne v. Dunn, rule in, § 152:8
  - discovery transcripts, use of, § 152:11
  - entering statement as exhibit, § 152:10
  - relevance and collateral fact rule, § 152:6
  - statutory authority, § 152:6
- Techniques, suggested, § 152:12, **APP 101A**

## **CRIMINAL CONVICTIONS, IMPLICATIONS UNDER S.A.B.S.**

- Criminal offence, § 49:2
  - Bill 59, § 49:3
  - current schedule, § 49:4
- Material misrepresentation, § 49:8
- No consent, § 49:7
- Not insured, § 49:5
- No valid licence, § 49:6

## **CRIMINAL RECORDS**

- Generally, § 63:33

## **CROSS-EXAMINATION**

- Allowable types, § 147:18
- Bad answer, dealing with, § 147:28
- Collateral facts rule, § 147:49, § 154:4
- Controlling witness, § 147:42
- Delivery, § 147:25



**CROSS-EXAMINATION—Cont'd**

- Discovery transcripts
  - traditional approach, § 147:43
  - use of transparencies, § 147:44
- Experts
  - agreement, obtaining, § 147:52
  - bias, exposure, § 147:55
  - deference to own expert, § 147:61
  - direct attack, § 147:63
  - factual underpinning attack, § 147:56
  - field of expertise, attacking, § 147:53
  - general rules, § 147:50
  - hypothetical, variation, § 147:57
  - leading authorities, § 147:58
  - methodology attack, § 147:54
  - minority viewpoint, § 147:62
  - prior statements, § 147:59
  - professional disagreement, § 147:60
  - qualifications, § 147:51
- Fact not yet proved, § 147:47
- Factual purpose, § 147:23
- General to specific, § 147:27
- Good answer emphasis, § 147:29
- Headlines, § 147:22
- Impeachment, opportunity to comment, § 147:48
- Introductions, avoidance, § 147:32
- Leading questions, § 147:19
- Objectives, § 147:17
- Plaintiff's doctor, of, § 148:1 to § 148:18
- Preparation
  - discovery, at
    - commitment to answers, § 147:65
    - further information request, § 147:68
    - opinions of expert, § 147:67
    - timing, § 147:64
    - witness particulars, § 147:66
  - written, § 147:69
- Prior inconsistent statement
  - evidentiary value, § 147:46
  - impeaching
    - see Credibility, impeaching
  - procedure, § 147:45
- Prohibitions, § 154:5
- Restrictions, prohibited questions, § 147:31
- Rule in *Browne v. Dunn*, § 154:3
- Short questions, § 147:20
- Simple words, § 147:21
- Single fact per question, § 147:24

**CROSS-EXAMINATION—Cont'd**

- Strong start and finish, § 147:26
- Success, criteria, § 147:71
- Summons, use of, § 147:70
- Tag endings, avoiding, § 147:32
- Techniques to avoid
  - anger, § 147:38
  - answer unknown, § 147:40
  - argument, § 147:37
  - asking for reason, § 147:39
  - misrepresentation, § 147:36
  - offensiveness, § 147:34
  - pointlessness, § 147:33
  - sarcasm, § 147:35
- Timing, § 147:30

**CRUMBLING-SKULL DOCTRINE, USE OF**

- Generally, § 120:8

**DAMAGES**

- Catastrophic
  - definition, § 40:1, § 41:1 to § 41:8, § 42:1 to § 42:9
- Categories, explanation, APP 5A, APP 5B
- Demonstrative evidence
  - see Demonstrative Evidence
- Discount rates
  - Ontario Rules, § 169:10
  - cost of care needs, § 169:12
  - future loss of income, § 169:11
  - present value, § 169:1
  - references, APP 169A
- Documents
  - accuracy factors, § 67:6
  - client resumé, § 67:10
  - clinical notes
    - organization, § 67:12
    - pre-accident, § 67:11
  - collection
    - commencement of action, relationship, § 67:4
    - cost, § 67:5
    - efficiency, § 67:2
    - hospital records, sample index, APP 67O
    - request letters
      - ambulance records, APP 10A
      - doctor's records
      - former doctor, APP 67C

## DAMAGES—Cont'd

- Documents—Cont'd
  - collection—Cont'd
    - request letters—Cont'd
      - doctor's records—Cont'd
        - present doctor, **APP 67D**
      - employer information
        - client not working, **APP 67J**
        - client working, **APP 67I**
        - employment records, **APP 67L**
        - former employee, **APP 67K**
      - hospital records, **APP 67B**
      - hospital uninsured room rate, **APP 67G**
      - income tax returns, **APP 67N**
      - OHIP subrogation
        - decoded summary, **APP 67F**
        - general, **APP 67E**
      - school records, **APP 67H**
      - use of, § 67:14
      - Workplace Safety and Insurance Board, **APP 67M**
    - timing, § 67:3
  - employment effects, § 67:9
  - impact
    - nature, § 67:8
    - severity, § 67:7
  - level of activity post-accident, **APP 67Q**
  - level of activity pre-accident, **APP 67P**
  - medical records
    - organization, § 67:12
    - pre-accident, § 67:11
  - non-protected defendants, effect on, § 67:13
  - OHIP, subrogated interest, § 67:13
  - organization, § 67:15
  - significance, § 67:1
  - vehicle damage, § 63:30
- Enhancing
  - see Enhancing Damages, Strategies for Family Law Act claims, explanation, **APP 5A, APP 5B**
- General damages and future care threshold
  - see Threshold
- Interdependent relationship, loss of, re, § 13:9
- Threshold for general damages and future care
  - see Threshold

## DEFENCE

- Attack on plaintiff
  - see Plaintiff
- Exposure
  - factors
    - actual earnings loss, § 84:4
    - counsel reputation, § 84:24
    - earnings, § 84:4, § 84:6, § 84:7
    - Family Law Act claims, § 84:18
    - future cost of care
      - accountant's report, § 84:16
      - catastrophic impairment assessment, § 84:15
    - issues, § 84:9
    - medical reports, obtaining, § 84:13
    - occupational therapist
      - assessment, § 84:12
      - retainer, § 84:10
    - records, obtaining, § 84:11
    - rehabilitation consultant, § 84:10
    - report, § 84:14
  - future income loss, § 84:3
  - homemaking capacity loss, § 84:8
  - jury notice, § 84:23
  - marriage, reduced opportunity, § 84:17
  - OHIP subrogation, § 84:20
  - standard of proof, § 84:21
  - statistics, use of, § 84:5
  - thin-skull doctrine, § 84:19
  - threshold, § 84:22
  - meaning, § 84:1
  - purpose, § 84:1
  - theme of case, § 84:2
- Inoculation against
  - belief systems, § 137:5
  - income tax evasion, § 137:3
  - meaning, § 137:1
  - necessity for, § 137:1
  - post-accident activity levels, § 137:7
  - surveillance, § 137:4
  - thin-skull claim, § 137:2
  - timing, § 137:1
  - working despite injury, § 137:6
- Insurer
  - see Insurer
- Opening statement
  - case law, § 136:4
  - objections, § 136:3

## **DEFENCE—Cont'd**

- Opening statement—Cont'd
  - persuasive narrative, § 136:2
  - remedies, § 136:5
  - timing, § 136:1

## **DEFENDANT**

- Consent to obtain documents
  - autopsy report, APP 50
  - clinical notes and records, APP 5N
  - disability benefits applications, APP 5M
  - statutory accident benefits applications, APP 5L
- Notice letter
  - fatality, APP 5J
  - injury, APP 5I
- Protected
  - see Bill 59, damages, calculation of
- Unprotected
  - see Bill 59, damages, calculation of; Unprotected defendants

## **DEMONSTRATIVE EVIDENCE**

- Computer animations
  - see Computer Animations
- Damages, § 102:16
- Disadvantages, § 147:14
- Effectiveness, § 145:3
- Elmo presenter, § 145:5
- Focus group role, § 145:7
- Ineffective types, § 145:3
- Introduction, § 147:15
- Nature of trial, § 145:4
- Opening statement
  - balancing, § 145:6
- Persuasive power, § 145:2
- Preparation
  - non-jury trial, § 145:5
- Presentation
  - size, § 147:13
  - types, § 147:13
- Pre-trial conference, § 127:26
- Selection, § 145:9
- Strategic use, § 145:1
- Theme, relationship, § 145:8

## **DISCOVERABILITY**

- See also Limitations Act, 2002
- Generally, § 30:1
- Due diligence, § 30:4
  - adding a party, § 30:5

## **DISCOVERABILITY—Cont'd**

- Statutory deductible, § 30:3
- Summary judgment, § 30:6
- Threshold, § 30:2
- Unidentified motorists, § 30:8
- Uninsured and underinsured motorists, § 30:8

## **DISCOVERY**

- Affidavit of documents, § 99:6
- Answers, duty to correct, § 94A:18
- Asking questions, § 101:2
- Brief
  - advantages, § 95:3
  - form, APP 19A
- Cleanup questions, § 101:17
- Counsel, difficult, characteristics of and handling of, § 94A:20, § 99:30, § 99:37
- Deemed undertaking rule, § 97:6
- Defendant, of
  - accident benefits file
    - adjuster
      - authority, § 95:24
      - decision-making, § 95:25
      - role, § 95:20
    - bad faith, § 95:18
  - claim
    - documents supporting, § 95:23
    - handling policies, § 95:19
  - general, § 95:17
  - good faith obligation, § 95:22
  - net worth of defendant, § 95:26
- documents
  - privilege claims, § 95:7
  - production from insurer, § 95:8
- examination, conduct of, § 94A:16
- favourable evidence, obtaining
  - admissions, § 95:11
  - independent recollection, § 95:12
- presence of client, § 95:6
- questioning
  - making record, § 95:9
  - preparation method, § 95:10
- representative of insurer, selection, § 95:4
- surprise elimination
  - expert evidence, § 95:13
  - surveillance, § 95:14
  - witnesses, § 95:15
- tort defendant, APP 19B

## DISCOVERY—Cont'd

Discovery plan, § 99:5

### Documents

affidavit of defendant

privilege, § 93:9

surveillance, § 93:10

affidavit of plaintiff, § 93:2

obtaining from client, § 93:11, § 94A:2  
to § 94A:4

obtaining from defence

Bill 59 and Bill 198 cases, § 93:4

expert reports, § 93:7

materials on which based, APP 17A

road authority, § 93:6

scope, § 93:3

tavern liability cases, § 93:5

obtaining from third party

accident benefits file

request, APP 93B

scope, § 93:17

corporate searches, § 93:15

income loss claims, § 93:18

medical records, § 93:16

Ministry of Transportation searches,  
§ 93:14

police records, § 93:13

organization, § 93:2

### Experts

sample questions, § 98:3

Framework, § 99:8

Goals, § 101:4

Order of examination, § 95:5, § 101:15

### Plaintiff

generally, § 96:1, § 96:9

approaches to

described, § 96:6

guarded approach, § 96:6

thorough approach, § 96:6

career training, § 96:8

accident benefits file, § 96:8

employment information, § 96:8

experience resumé, § 96:8

income tax returns, § 96:8

student records, § 96:8

credibility of, § 101:5

daily living, care and well being, § 96:8

accident benefits file, § 96:8

hospital records, § 96:8

medical reports, § 96:8

## DISCOVERY—Cont'd

### Plaintiff—Cont'd

daily living, care and well being, § 96:8

#### —Cont'd

physicians' clinical notes, etc.,

§ 96:8

defence request for productions,

sample, APP 96B

employment, § 96:8

accident benefits file, § 96:8

collateral benefits, § 96:8

CPP application, § 96:8

EI file, § 96:8

employment information, § 96:8

experience resumé, § 96:8

income tax returns, § 96:8

medical reports, § 96:8

physicians' clinical notes, etc.,

§ 96:8

student records, etc., § 96:8

union records, § 96:8

workplace safety and insurance file,  
§ 96:8

permanency of impairment, § 96:8

“be expected not to substantially  
improve,” § 96:8

“continuous since the incident,”  
§ 96:8

“subject to the person reasonably  
participating” in treatment,  
§ 96:8

“when sustained by persons in simi-  
lar circumstances,” § 96:8

perspective of plaintiff

deemed undertaking rule, § 97:6

evaluation of case, § 97:7

issues list, § 97:9

objections, § 97:11

preparation, § 97:1

refusals, § 97:12

scope of examination, § 97:4

steps to be taken, § 97:8

subsequent information, § 97:13

tax evader, § 97:5

timing, § 97:3

undertakings, § 97:2, § 97:10

preparation for, § 96:7

threshold regulations, § 96:2, APP 96A

generally, § 96:8

“important” function, § 96:4

“permanent” impairment, § 96:5

## **DISCOVERY—Cont'd**

- Plaintiff—Cont'd
  - threshold regulations, § 96:2, APP 96A
  - Cont'd
    - “serious” impairment, § 96:3
    - witnesses, § 96:9
- Post accident and injuries, § 101:7
- Pre-accident academic history, § 101:10
- Pre-accident health history, § 101:6, APP 101B
- Pre-accident work history, § 101:9
- Pre- and post-accident medication, § 101:8
- Preparation
  - areas of inquiry
    - accident
      - distance issues, § 94:6
      - essential facts, § 94:5
      - time issues, § 94:6
    - background of client, § 94:4
    - identifying, § 94:3
    - injuries
      - activities
        - difficulty or impossibility, § 94:12
        - employment, § 94:15
        - infrequent, § 94:13
        - vacations, § 94:14
      - list, § 94:8
      - medical records consistency, § 94:10
      - ongoing symptoms, severity, § 94:9
      - pre-accident, § 94:16
      - treatment, § 94:11
    - causation, § 94:17
    - client, of, § 94A:5 to § 94A:15
    - file review, § 94:2
    - significance, § 94:18, § 95:1
  - Procedural entitlements, use of prior to examination, § 99:3
  - Purpose, § 95:2, § 99:2
  - Quick reference guide, § 98:1
  - Refusals, § 94A:17
    - responses to, § 98:2
  - Relevance issues, § 95:2
  - Remedies, § 99:48
  - Representative of insurer, selection, § 95:4

## **DISCOVERY—Cont'd**

- Subsequent work-up
  - damages
    - demonstrative evidence, § 102:16
    - reports
      - accountant, § 102:14
      - catastrophic impairment expert, § 102:15
      - chiropractor, § 102:10
      - family physician, § 102:8
      - functional capacity expert, § 102:11
      - future cost of care expert, § 102:13
      - physiotherapist, § 102:10
      - psychovocational expert, § 102:12
      - treating specialist, § 102:9
  - defence discovery, § 102:3
  - defence doctors, § 102:6
  - liability, reports
    - accident reconstructionist, § 102:18
    - biomechanical engineer, § 102:21
    - computer animator, § 102:19
    - human factors expert, § 102:20
    - need for, § 102:17
  - party represented, significance, § 102:2
  - plaintiff discovery, § 102:4
  - reports, ordering, § 102:5
  - significance, § 102:1
  - treating doctors, § 102:6
  - undertakings
    - generally, § 101:18
    - fulfilling, § 102:24
    - letter of compliance, APP 102A
    - noting, § 102:23
    - status record, § 102:25
- Surveillance
  - generally, § 101:11
  - disclosure obligations, post Iannarella v. Corbett
    - generally, § 103:1
    - Court of Appeal decision, § 103:2
    - pre-trial disclosure, § 103:5
    - principles from case, § 103:4
    - Rules of Civil Procedure, and, § 103:3
- Threshold, § 101:13
- Transcripts and answers to undertakings, use of
  - admissions, use of, § 7:9

## **DISCOVERY—Cont'd**

Transcripts and answers to undertakings,  
 use of—Cont'd  
 contradicting/impeaching, § 7:10  
 improper impeachment, consequences,  
 § 7:11  
 preliminary preparation, § 7:8  
 qualifying answers, § 7:12  
 rebuttal, § 7:13  
 use as demonstrative evidence, § 7:14  
 Use at trial, cross-examination, § 101:3,  
 § 147:43, § 147:44  
 Who to examine, § 101:14  
 scheduling of examinations, § 101:16  
 Witness, § 94A:19  
 difficult, handling of, § 99:23, § 99:37

## **DISPATCH RECORD, OBTAINING**

Generally, § 63:5

## **DISTRACTED DRIVING, BURDEN OF PROOF**

Generally, § 90:1

## **DOCTORS, PREPARATION AS WITNESSES**

See Witnesses

## **DOCUMENTS**

Damages  
 see Damages  
 Index, § 111:8  
 Privilege, criteria, § 93:9

## **DRIVERLESS CARS**

Generally, § 176:15  
 Benefits  
 environmental effects, § 176:6  
 fewer vehicles, fewer injuries, § 176:4  
 increased access to the world, § 176:7  
 increased productivity, § 176:5  
 safer roads, § 176:3  
 Dangers, § 176:8  
 Evolution of autonomous vehicles,  
 § 176:2  
 Impact on motor vehicle litigation  
 cyberattacks and privacy, § 176:13  
 insurance policies, § 176:10  
 liability, impact on, § 176:11  
 premiums, effect on, § 176:12  
 Regulation, § 176:14

## **EARNINGS LOSS**

Proof, § 84:4  
 Types, § 84:6

## **ECONOMIST REPORT**

Generally, § 102:14

## **ELMO PRESENTER**

Generally, § 145:5

## **EMPLOYER**

Information request  
 client not working, APP 67J  
 client working, APP 67I  
 employment records, APP 67L  
 former employee, APP 67K  
 Party, as, alcohol cases  
 see Parties

## **ENHANCING DAMAGES, STRATEGIES FOR**

Closing address  
 arming favourable jurors, § 10:26  
 getting jurors to listen, § 10:27  
 Credibility issues  
 keeping out of case, § 10:2  
 no improvement of symptoms, § 10:7  
 pre-accident health, § 10:3  
 surveillance, § 10:6  
 symptoms at collision scene and  
 hospital, § 10:4  
 visits to family doctor, § 10:5  
 Examination-in-chief  
 first witness, § 10:21  
 giving examples, § 10:23  
 plaintiff, § 10:22  
 treatment provider, § 10:24  
 Motivated plaintiff, § 10:8  
 Opening statement  
 effect on jury, § 10:9  
 emphasis on ease of preventing  
 wrongdoing, § 10:11  
 good storytelling, tips for, § 10:12  
 structure of, § 10:20  
 where to start story, § 10:10  
 Worthwhileness of verdict, § 10:25

## **EVIDENCE**

Generally, § 7:45  
 Challenges  
 accident benefits, § 89:6  
 documentary evidence, § 89:2



**EVIDENCE—Cont'd**

- Challenges—Cont'd
  - exhibits, § 89:2
  - expert evidence, § 89:4
  - hearsay, § 89:3
  - impeachment of witness, § 89:5
- Demonstrative
  - see Demonstrative Evidence
- Documentary
  - admissibility, § 107:2
  - failure to prove material document, § 107:7
  - prior written statements, § 107:6
- Exhibits
  - see Exhibits
- Hearsay
  - see also Hearsay
  - generally, § 104:24
  - admissibility, theory of, § 156:20
  - exceptions to, § 156:19
    - admissions, § 156:19
    - business records, § 156:19
    - declarations against interest, § 156:19
    - reliability and necessity, § 156:19
    - res gestae, § 156:19
    - testimony in former proceedings, § 156:19
  - identifying, § 156:14
  - “it’s not for its truth” issues, § 156:15
    - identifying, § 156:15
    - responding to, § 156:16
  - non-hearsay statements, § 156:18
  - relaxation of rules re, § 156:21
    - necessity, § 156:23
      - economic considerations, § 156:24
      - report, necessity of filing, § 156:25
    - reliability, § 156:22
    - relevance test, § 156:17
- Internet records, § 107:9
- Objections to answers, § 7:34
- Objections to exhibits, § 7:35, § 156:26
- Objections to questions
  - generally, § 7:33, § 156:1
  - argumentative, § 104:19
  - assuming facts not in evidence, § 104:15
  - best evidence rule, § 104:23
  - characterization improper, § 104:18

**EVIDENCE—Cont'd**

- Objections to questions—Cont'd
  - compound, § 104:22
  - confusing, § 104:20
  - foundation insufficient, § 104:16
  - hearsay, see Hearsay
  - irrelevance, § 104:12
  - leading, § 104:13
  - making, § 156:2
    - absence of jury, in, § 156:5
    - breaking opponents’ flow, § 156:7
    - damaging answers, § 156:6
    - displaying competence to trial judge, § 156:8
    - first in trial, § 156:3
    - how to make, § 156:10, § 156:11
    - jury’s reaction to, § 156:2
    - procedure, § 156:11
    - protecting record, § 156:9
    - timing of, § 156:10
  - misleading, § 104:20
  - misstating evidence, § 104:17
  - objectionable questions, list re, § 156:13
    - argumentative, § 156:13
    - assuming facts not in evidence, § 156:13
    - best evidence rule violation, § 156:13
    - calls for conclusion by lay witness, § 156:13
    - calls for irrelevant answer, § 156:13
    - compound, § 156:13
    - hearsay answer, § 156:13
    - improper characterization, § 156:13
    - improper re-examination, § 156:13
    - insufficient foundation, § 156:13
    - leading questions, § 156:13
    - misstates evidence or misquotes witness, § 156:13
    - poorly framed, § 156:13
    - previously asked and answered, § 156:13
    - privileged communication, calls for, § 156:13
    - speculative, § 156:13
    - opinion requiring conclusion, § 104:14
- Surveillance
  - see Surveillance
  - speculative, § 104:21

## **EVIDENCE—Cont'd**

- Surveillance—Cont'd
  - types of
    - form, re, § 156:12
    - substance, re, § 156:12

## **EXAMINATION FOR DISCOVERY**

- See Discovery

## **EXAMINATION-IN-CHIEF**

- Direct questions, § 147:3
- Enhancing damages, role in, § 10:21 to § 10:24
- Leading questions
  - answer, effect, § 147:5
  - determination, § 147:4
  - objections, § 147:7
  - permissibility exceptions, § 147:6
- Objectionable questions, § 147:8
- Objections, significance, § 147:2
- Objectives, § 147:9
- Significance, § 147:1
- Structure, § 147:12
- Witnesses
  - order, § 147:11
  - selection, § 147:10

## **EXHIBITS**

- Business records
  - see Business Records
- Criteria, § 106:2
- Marking documents as, § 107:5
- Photographs, § 106:22
- Requests to admit, § 106:10

## **EXPERTS**

- Admissibility threshold, § 7:29, § 12:2, § 112:3
- Biomechanical engineering
  - causation, § 66:2
  - collision reconstruction, § 66:9
  - concussions, § 66:8
  - injury biomechanics, § 66:11
  - pedestrian/bicycle collisions, § 66:13
  - prevention, § 66:3
- Case law, § 116:4
- Choosing, § 113:3, § 144:11
  - multiple similarly qualified, § 113:7
  - perceived impartiality, impact on, § 113:8
  - reliability of evidence, § 113:5
  - reliable field of study, § 113:6

## **EXPERTS—Cont'd**

- Choosing, § 113:3, § 144:11—Cont'd
  - types, § 113:4
- Conflicting interests and ethical issues, § 114:1
  - Carmen Alfano Family Trust v. Persanti, § 114:2
  - lessons from Persanti and other recent cases, § 114:3
  - admissibility of a biased expert, § 114:4
  - appearance as advocates, § 114:6
  - influencing opinions, § 114:8
  - pre-existing bias, § 114:5
  - relationships with litigants, § 114:9
  - staying within area of expertise, § 114:7
- Cross-examination
  - see Cross-examination
- Defence, § 105:6
- Draft reports, § 115:7, § 116:2, § 118:2
- Evidence, post- Moore and Westerhof, § 116:1 to § 116:4
- Failure to get or audit facts, § 115:3
- Future care, § 12:1 to § 12:8
  - see also Future Cost of Care
- Human factors, § 63:20, § 64:2
- Impartiality, § 112:2, § 112:5
- Impartiality, appearance of, § 115:4, § 115:5, § 116:1, § 118:4
- Intra-trial considerations, § 112:10
- Maintaining independence under Rule 53, § 114:1 to § 114:10
- Medical report, use of, § 144:10
- Moore v. Getahun, § 116:2, § 118:2
- New rules codify existing duty, § 115:2
- Number at trial
  - statutory limits, § 111:23
- Objections to testimony, § 7:32
- Obtaining reports, § 113:9
  - preparing for trial, § 113:9
- Participant experts exception to R. 53, § 7:31
- Plaintiff's, § 105:5
- Post-trial considerations, § 112:12
- Preparation as witnesses, § 113:9
- Pre-trial considerations, § 112:7
- Production of files, § 115:6
- Qualification of, § 7:28, § 12:2
- Reliability, § 113:2
- Report, use of, § 7:30

**EXPERTS—Cont’d**

- Scope of testimony, § 112:6
- Second-hand evidence, reliance on by, § 12:3
- Tendering, § 154:7
- Transportation engineering, § 65:1
  - common issues, § 65:3
  - Deering v. Scugog (Township), § 65:7
  - human factors, § 65:5
  - road environment, § 65:2
  - role, § 65:4
  - substantive safety, § 65:6
- Treating witnesses and Rule 53, § 115:8, § 116:3
- Westerhof v. Gee Estate, § 116:3

**EXPOSURE OF DEFENCE**

- See Defence

**FAMILY DOCTOR**

- Report, § 102:8
- Witness summons, form, APP 111A

**FAMILY LAW ACT CLAIMS**

- Economic loss claims, § 84:18
- Parties to claim
  - see Parties

**FEES**

- Agreement in violation of Solicitors Act, § 2:1 to § 2:13

**FIELD NOTES, OBTAINING**

- Generally, § 63:8

**FOCUS GROUPS**

- Demonstrative evidence, § 145:7
- Trial preparation, § 104:26

**FORMALITIES**

- Business records
  - see Business Records
- Medical reports
  - see Medical Reports
- Request to admit
  - see Request to Admit
- Settlement offer
  - see Settlement

**FREEDOM OF INFORMATION**

- See Government Records

**FUNCTIONAL CAPACITY EXPERT, REPORT**

- Generally, § 102:11

**FUTURE COST OF CARE**

- Expert evidence
  - see also Experts
  - approach to future care evidence, § 12:8
- Frazer v. Haukioja, § 12:6
- qualification of expert witness, § 12:2
- reliance on second-hand evidence, § 12:3
- Song and Frazer, implications of, § 12:7
- Song v. Hong, § 12:5
- Expert report, § 102:13
- Factors in claim
  - see Defence, exposure

**FUTURE INCOME LOSS, FACTORS IN CLAIM**

- Generally, § 84:3

**GOVERNMENT RECORDS**

- Freedom of information
  - access
    - exemptions, § 63:39
    - right, § 63:38
  - adjudication, § 63:53
  - appeal
    - costs, § 63:51
    - grounds, § 63:49
    - notice, § 63:50
  - burden of proof, § 63:54
  - directory of records, § 63:40
  - institutions subject to, § 63:36
  - judicial review, § 63:55
  - legislation
    - administration, § 63:37
    - scope, § 63:35
  - mediation, § 63:52
  - request procedure
    - access
      - denial, § 63:46, § 63:48
      - grant, § 63:46
      - original records, § 63:47
    - copies, § 63:47
    - fees, § 63:45
    - persons entitled, § 63:43
    - third parties, notice to, § 63:44
    - time limit, § 63:43
    - written, § 63:41
- Rules of Civil Procedure, § 63:56
- steps, summary, § 63:55

## **GOVERNMENT RECORDS—Cont'd**

Obtaining, problems, § 63:34  
Rules of Civil Procedure, production under, § 63:56

## **GUARDIANS**

See Substitute Decisions Act

## **GUARDIANSHIP APPLICATIONS, PERSONAL INJURY RELATED**

ODSP issues, advising on, § 171:4  
Opposition by allegedly incapable person, § 171:2  
Rule 7 and, § 171:8  
Structure of proceeds, § 171:3

## **HEALTH CARE CONSENT ACT**

Consent, § 6:2  
capacity to consent to treatment, § 6:4  
definition, § 6:1  
informed, § 6:4  
Purposes, § 6:3  
Substitute decision-makers, § 6:6 to § 6:9

## **HEARSAY**

See also Evidence  
Admissibility  
business records  
common law, § 111:20  
principled approach, § 111:21  
statutory exception, § 111:19  
expert opinion  
criteria, § 111:22  
number of witnesses  
practical issues, § 111:24  
statutory limits, § 111:23  
necessity  
economic factors, § 111:16  
general, § 111:15  
reports, § 111:17  
rationale, § 111:13  
reliability, § 111:14  
Definition, § 104:24  
Exceptions, § 104:24  
Objections, § 104:24

## **HIGHWAY REPAIR**

Inspection, § 18:3  
Liability theory, § 18:2

## **HOME MAINTENANCE SERVICES**

Loss of, § 84:8

## **HOME MAINTENANCE SERVICES**

### **—Cont'd**

Proving claims re  
see Housekeeping/home maintenance capacity, claims for loss of

## **HOMEMAKING CAPACITY, LOSS OF**

Generally, § 84:8

## **HOMEOWNERS INSURANCE COVERAGE**

Generally, § 158:1  
Auto policies in Ontario, standard wording, § 158:2  
CGL policies, § 158:4  
Concurrent coverages, auto and non-auto negligence, § 158:12  
Definitions re “auto,” § 158:13  
Family members, claims by, § 158:14  
Lefor (Litigation Guardian of) v. McClure, § 158:10  
Liability theory, § 158:2  
Loading and unloading cargo cases, § 158:11  
Negligent supervision cases, § 158:9  
Pender (Guardian ad litem of) v. Squires, § 158:8  
Typical provision, § 158:3  
“Use and operation of an automobile,” meanings of, § 158:5  
current test, § 158:7  
historical context, § 158:6  
Vytlingham and Herbison test, § 158:7

## **HOSPITAL**

Records  
index, sample, APP 67O  
obtaining, § 63:16  
request letter, APP 67B  
Uninsured room rate, request letter, APP 67G

## **HOST ALCOHOL CASES, DOCUMENT DISCOVERY**

Generally, § 93:6

## **HOUSEKEEPING/HOME MAINTENANCE CAPACITY, CLAIMS FOR LOSS OF**

Generally, § 9:1, § 9:8  
Bill 198 and housekeeping claim, § 9:4  
Defence approach to, § 9:7  
Initial interview, § 9:2

## HOUSEKEEPING/HOME

### MAINTENANCE CAPACITY, CLAIMS FOR LOSS OF—Cont'd

- Pleading, § 9:3
- Pre-examination for discovery, § 9:5
- Quantification of value, § 9:6

## HOUSING BENEFITS

- Preserving after settlement, § 172:14 to § 172:17
  - considerations during settlement, § 172:17
  - effect by personal injury settlement or award, § 172:16
  - eligibility for, § 172:15
  - rent-geared-to-income housing, § 172:14
  - social housing, § 172:14

## HUMAN FACTORS EXPERT

- See also Experts
- Generally, § 63:20, § 64:2
- Accident analysis, § 64:5
- Issues in motor vehicle accidents, § 64:6

## IMPEACHMENT

- See Credibility, Impeaching

## INCOME TAX

- Evasion, inoculation against effect, § 137:3
- Returns, request letter, APP 67N

## INFANTS' ACTIONS, SETTLEMENT OF

- Approval
  - avoiding conflicts of interest, § 125:8
  - checklist motion for approval under Rule 7.08(4), APP 125I
  - materials required, § 125:9
    - affidavit of Litigation Guardian, § 125:13
    - affidavit of solicitor, § 125:14
    - consent of child over 16, § 125:19
    - draft judgment, § 125:20
    - exhibits, § 125:18
    - factum, § 125:21
    - minutes of settlement, § 125:12
    - motion record, § 125:10
    - service, § 125:22
    - support for sealing order, § 125:17, APP 125J

## INFANTS' ACTIONS, SETTLEMENT OF—Cont'd

- Approval—Cont'd
  - preparing Litigation Guardian/infant to provide instructions, § 125:7
- Judge's approval required, § 125:2, § 125:3
- Parens patriae jurisdiction of court, § 125:1
- Precedents
  - consent, APP 125D
  - index, APP 125B
  - judgment, APP 125G
  - motion record, APP 125A
  - notice of motion, APP 125C
  - order, APP 125F
  - outline of complex factum supporting motion for approval of settlement, APP 125E
  - partial judgment, APP 125H
- Rules of professional conduct
  - joint retainers, Rule 3.4-5, § 125:6
  - Litigation Guardian, role of, § 125:4
  - representing persons with diminished capacity, Rule 3.2-9, § 125:5

## INFORMATION AND PRIVACY COMMISSIONER

- Adjudication, § 63:53
- Establishment, § 63:37
- Mediation, § 63:52

## INOCULATION

- See Defence

## INSURANCE

- Automobile
  - coverage issues, § 22:1
  - Motor Vehicle Accident Claims Fund, § 22:38, § 174:1 to 174:9
  - policy breaches, § 22:3
    - absolute liability limit, § 22:32
    - impact on other insureds, § 22:31
    - relief from forfeiture, § 22:25
  - purpose of, § 22:2
  - uninsured and underinsured motorist coverage, § 22:33
- Insurance Act
  - pre-judgment interest
    - 2015 amendments, § 168:1
    - retroactive nature, § 168:3, § 168:7

## **INSURANCE—Cont'd**

- Insurance Act—Cont'd
  - pre-judgment interest—Cont'd
    - 2015 amendments, § 168:1—Cont'd
    - statutory entitlement, § 168:2
  - rates, APP 168A
- Ombudsman, appointment, § 36:21
- Particulars, letter requesting, APP 5K

## **INSURER**

- Adjuster, discussions, § 79:10
- No-fault, notice letter
  - fatality, APP 5F
  - injury claim, APP 5E
- Notice of accident, time limit, § 5:4
- Notice of intention to commence action,
  - time limit, § 5:4
- Reserves, mediation, effect on, § 126:13
- Waiver letter, APP 5P

## **INTAKE**

- Case selection factors, § 1:3
- Claim category factors, § 1:5
- Decisions, client focus, § 1:4
- Interview, conduct, § 1:2
- Potential assessment, § 1:5
- Procedure, § 1:1
- Questionnaire
  - form
    - interview, APP 1A
    - phone, APP 1B
  - purpose, § 1:1

## **INTERDEPENDENT RELATIONSHIP, LOSS**

- Component of claim for
  - increased income, § 13:3
  - shared expenses, § 13:4
  - shared housemaking, § 13:5
- Damages arising from, calculation of, § 13:9
- Future development of damage head, § 13:10
- Judicial recognition of, § 13:1
- “Permanent interdependent relationship,” § 13:6
- Proving claim for, § 13:8
- Scope of claim for, § 13:7

## **JURIES**

- Addresses to the jury
  - generally, § 133:22

## **JURIES—Cont'd**

- Addresses to the jury—Cont'd
  - case law, § 133:9
  - objections, § 133:7
  - practical matters, § 133:6
  - remedies, § 133:5
  - rules, § 133:2
- Involvement, storytelling, § 138:1
- Mistrial, factors, § 155:6
- Objections, § 155:4
- Selection
  - prior steps, § 155:2
  - procedure, § 155:3
- Voir dire, § 155:5

## **JURISDICTION, ASSUMPTION OF**

- Forum non conveniens, § 69:13
- Forum of necessity, § 69:12
- Liability, § 69:9
- Test, § 69:4

## **JURY NOTICE, FACTORS JUSTIFYING**

- Generally, § 84:23

## **JURY NOTICE, STRIKING IN CIVIL TRIAL**

- Approaches, § 121:5
- Canadian law, § 121:2
- Considerations, § 121:8

## **LAT HEARINGS**

- Generally, § 62:2
- Appeals, § 62:9
- Case conference, § 62:5
- Hearing, § 62:7
- How to prepare LAT file, § 62:3
- Post-case conference, § 62:6
- Practical advice, § 62:1
- Pre-hearing, § 62:6
- Production stage, § 62:4
- Request for reconsideration, § 62:8

## **LAY WITNESSES**

- See Witnesses

## **LEADING QUESTIONS, CROSS-EXAMINATION**

- Generally, § 147:19

## **LIABILITY**

- Demonstrative evidence
  - aerial photograph, § 63:27
  - photographs, § 63:29



**LIABILITY—Cont’d**

- Demonstrative evidence—Cont’d
  - sketches, § 63:28
- Investigation
  - records
    - see Records
  - significance, § 63:1
- Professional liability, § 1D:1 to § 1D:5
- Settlement offer
  - form, APP 68A
  - pre-commencement, § 68:5
- Theory development
  - commercial host
    - Liquor Licence Act, § 18:6
    - Occupier’s Liability Act, § 18:7
  - pedestrian cases, § 18:4
  - road authority
    - general rules, § 18:2
    - policy defence, § 18:3
  - significance, § 18:1, § 18:8

**LICENCE APPEAL TRIBUNAL**

- Decisions of
  - appeals, § 59:18
  - attendant care, § 59:17
  - catastrophic decisions, § 59:7
  - costs, § 59:2
  - procedural, § 59:12
  - reconsideration, § 59:8
- Procedures at
  - Bill 15, § 61:2
  - duties and powers, § 61:3
  - Licence Appeal Tribunal Rules, § 61A:1 to § 61A:25

**LICENCE APPEAL TRIBUNAL, RULES OF PRACTICE**

- AABS applications, APP C [LAT20]
- case conference summary, APP C [LAT20.4]
- combining, APP C [LAT20.5]
- interpreter, APP C [LAT20.6]
- response to, APP C [LAT20.2, LAT20.3]
- Accommodation for Human Rights Code, APP C [LAT7]
- Added parties, APP C [LAT2.6]
- Adjournments
  - request for, APP C [LAT16.1]
  - oral, APP C [LAT16.2]
- Application of, APP C [LAT1.5]

**LICENCE APPEAL TRIBUNAL,**

**RULES OF PRACTICE—Cont’d**

- Authority for rules, APP C [LAT1.1]
- Case conferences
  - direction at, APP C [LAT14.1]
  - format of, APP C [LAT12]
  - member not to participate on hearing
    - panel except on consent, APP C [LAT14.3]
  - not public, APP C [LAT14.5]
  - orders at, APP C [LAT14.1]
  - representative, attendance and authority
    - of to settle issues, APP C [LAT14.6]
  - scope of subject-matter, APP C [LAT14.2]
  - settlement discussions, confidentiality
    - of, APP C [LAT14.4]
- Communications
  - contact information, change in, APP C [LAT4.4]
  - copies to parties, APP C [LAT4.3]
  - English or French, APP C [LAT4.1]
  - interpreter, notice regarding, APP C [LAT4.2]
  - written, copies to other parties, APP C [LAT4.3]
- Complete file required, APP C [LAT3.3]
- Conflict, APP C [LAT1.2]
- Constitutional question, notice of, APP C [LAT11]
- Costs
  - amount of, APP C [LAT19.6]
  - powers of tribunal, APP C [LAT19.5]
  - requests for, APP C [LAT19.1]
  - how to make, APP C [LAT19.2]
  - submissions on, APP C [LAT19.3]
  - content of, APP C [LAT19.4]
- Definitions, APP C [LAT2]
- Disclosure
  - disclosure of documents, APP C [LAT9.2]
  - failure to comply with disclosure rules, APP C [LAT9.4]
  - production of documents, APP C [LAT9.1, LAT9.3]
- Dismissal without hearing
  - grounds for, APP C [LAT3.4]
  - notice, APP C [LAT3.5]
- Errors, review and correction of, APP C [LAT17]

**LICENCE APPEAL TRIBUNAL,  
RULES OF PRACTICE—Cont'd**

Expert witnesses  
generally, **APP C [LAT10.1]**  
challenges to qualifications, reports,  
statements, **APP C [LAT10.4]**  
disclosure timelines, **APP C [LAT10.3]**  
identification and disclosure, **APP C  
[LAT10.2]**

Hearings  
access to  
audio and video recording, **APP C  
[LAT13.2]**  
closed hearing, request for, **APP C  
[LAT13.3]**  
general public access, **APP C  
[LAT13.1]**  
format of, **APP C [LAT12]**

Highway Traffic Act appeals, **APP C  
[LAT23]**  
disclosure timelines, **APP C [LAT23.3]**  
scheduling of, **APP C [LAT23.2]**

Human Rights Code, accommodation for,  
**APP C [LAT7]**

In force, **APP C [LAT1.4]**

Leaving before end, no further notice,  
**APP C [LAT3.7]**

Liberal interpretation, **APP C [LAT3.1]**

Liquor licence conditions, application to  
remove, **APP C [LAT21]**  
reply to, **APP C [LAT21.3]**

Motions  
contents of, **APP C [LAT15.1]**  
service  
notice of, **APP C [LAT15.2]**  
of responding party's materials, **APP  
C [LAT15.3]**

Practice directions, **APP C [LAT3.2]**

Public interest objectors, notice to  
effect of party status, **APP C  
[LAT22.5]**  
non-party objectors, **APP C [LAT22.6]**  
notice, **APP C [LAT22.2]**  
proceeding where does not attend case  
conference, **APP C [LAT22.3]**  
request to be made party in a public  
interest hearing, **APP C  
[LAT22.4]**

Reconsideration of Tribunal decision  
criteria for granting, **APP C [LAT18.2]**

**LICENCE APPEAL TRIBUNAL,  
RULES OF PRACTICE—Cont'd**

Reconsideration of Tribunal decision  
—Cont'd  
outcome, after granting, **APP C  
[LAT18.4]**  
request for, **APP C [LAT18.1]**  
submissions, **APP C [LAT18.3]**

Service and filing  
actual receipt, **APP C [LAT6.4]**  
certificate of service, **APP C [LAT6.6]**  
deemed receipt, **APP C [LAT6.2,  
LAT6.3]**  
documents filed after 5:00 p.m., **APP C  
[LAT6.5]**  
form of service, **APP C [LAT6.1]**  
representation, **APP C [LAT6.7]**  
service, certificate of, **APP C [LAT6.6]**

Summons  
attendance money, **APP C [LAT8.3]**  
filing request for, **APP C [LAT8.2]**  
issuance of, **APP C [LAT8.1]**  
service of, **APP C [LAT8.3]**

Time, calculation of  
counting days, **APP C [LAT5.1]**  
expiry of time on a holiday, **APP C  
[LAT5.2]**

Version, **APP C [LAT1.3]**

**LIMITATIONS**

Special provisions, **§ 79:2**  
Statutory accident benefits schedule,  
**§ 36:20**

**LIMITATIONS ACT, 2002**

Generally, **§ 30:1**  
Derivative vs. distinct cause of action,  
**§ 1B:4**  
Discoverability, **§ 1B:2**  
Limitation period, **§ 1B:3 to § 1B:5**  
Plausible inference of liability, **§ 1B:3**  
Unidentified motorist coverage, **§ 1B:5**

**LIQUOR LICENCE ACT**

Liability theory, **§ 18:6**

**LITIGATION LOANS**

Generally, **§ 166B:1 to § 166B:5**  
Third-party financing of, **§ 166C:1, 1  
§ 166C:2**

**MARRIAGE, REDUCED OPPORTUNITY**

Generally, § 84:17

**MARY CARTER AGREEMENT**

Amended agreement, § 123:6, APP 123B

does it preserve strategic reasons, § 123:9

outcome, § 123:7

Laudon v. Roberts decision

agreement, APP 123A

amended agreement, APP 123B

appeal, § 123:4

trial, § 123:3

Legal basis, § 123:2

Origin, § 123:2

Post-Laudon era, § 123:5

Worst case scenarios, § 123:8

**MATERIAL CONTRIBUTION**

See Causation, Post-Clements

**MEDIATION**

Benefits, § 128:13

Client preparation

letter, APP 128A

procedure, § 128:2

Development, § 128:1

Disclosure, § 126:10

Failure, delayed success, as, § 126:7

Insurer's reserves, § 126:13

Issue identification, § 126:9

Mandatory, introduction of, § 128:1

Mediator

see Mediator

Memorandum

background for, § 128:4

diagnosis, § 128:8

housekeeping claim

contents, § 128:9

form, APP 128B

injuries, § 128:7

liability issues, § 128:5

loss of income and earning capacity

contents, § 128:10

form, APP 128C

medical prognosis, § 128:8

medical treatment, § 128:6

Multiple parties, § 126:11

Opening

issues, § 128:12

**MEDIATION—Cont'd**

Opening—Cont'd

worksheet, APP 128D

Professionalism in

generally, § 130:1, § 130:7

bad behaviour, dealing with, § 130:5

memos and opening statements,

§ 130:4

negotiations/settlement, § 130:6

relationship between counsel and cli-

ent, mediator's perspective

generally, § 130:8, § 130:14

mediation memo, § 130:9

settlement strategies, § 130:10

where case can't be settled, § 130:13

scheduling and delivery of materials,

§ 130:2

Questioning plaintiff, § 128:11

Settlement offer, timing, § 126:12

Strategies

see Mediation, Failed

**MEDIATION, FAILED**

Generally, § 129:11

Agreed statement of facts/evidence,

pursuing, § 129:6

Defensible claims, resolution of, § 129:10

Experts reports, absence of, § 129:9

Motions, § 129:7

Narrowing of issues, § 129:5

Previewing witness at, § 129:3

Strength of opposite case, opportunity to

assess, § 129:2

Theory of claim, presentation of, § 129:4

Trial scheduling, advancing, § 129:8

**MEDIATOR**

Choice, § 126:8, § 128:3

**MEDICAL RECORDS**

Obtaining, § 93:16

Request letter

former doctor, APP 67C

present doctor, APP 67D

**MEDICAL REPORTS**

Admissibility

Evidence Act, § 106:17

Definition, § 111:19

**MINIMUM MAINTENANCE  
STANDARDS FOR MUNICIPAL  
HIGHWAYS**

See also Road Authority  
Generally, **APP 25A**

**MINISTRY OF TRANSPORTATION,  
SEARCHES**

Generally, § 93:14

**MOTOR VEHICLE ACCIDENT  
TRIALS AND EVIDENTIARY  
CHALLENGES**

Accident benefits, § 89:6  
Documentary evidence, § 89:2  
Exhibits, § 89:2  
Expert evidence, § 89:4  
Hearsay, § 89:3  
Impeachment of witness, § 89:5

**MUNICIPAL ROAD AUTHORITIES,  
LIABILITY FOR NON-REPAIR**

See Road Authority

**NEGLIGENT ENTRUSTMENT, TORT  
OF**

Generally, § 27:1  
Basic elements of, § 27:3  
Canadian case law, § 27:7 to § 27:12  
  doctrine accepted, § 27:7  
  successfully argued, § 27:8  
  unsuccessfully argued, § 27:9  
    entrustee not negligent, § 27:10  
    no duty of care owed to plaintiffs,  
      § 27:11  
    not proximate cause of damages,  
      § 27:12  
History of doctrine, § 27:2  
Issues moving forward, § 27:13  
  claims against employers, § 27:16  
  claims by plaintiff against entrustor,  
    § 27:14  
  extension to sales, § 27:15  
Particular elements examined, § 27:4 to  
  § 27:6  
  chattel, § 27:6  
  incompetence, inexperience or  
    recklessness of entrustee, § 27:4  
  knowledge of entrustee's condition,  
    § 27:5  
Source of liability, as a, § 27:17

**NEUROPSYCHOLOGICAL  
ASSESSMENTS**

Baseline, establishment of, § 146:6  
Brain disorders, common assessment  
  problems, § 146:17  
Collateral information, quality of,  
  § 146:15  
Definition, § 146:2  
Emergency of, § 146:3  
Interpretation errors, § 146:8  
Practice effect, the, § 146:7  
Standard assessment protocols, § 146:4  
Test environment, § 146:16  
Test sensitivity, lack of, § 146:14  
Validity measures, use of, § 146:5

**NON-PECUNIARY CLAIMS UNDER  
THE FAMILY LAW ACT**

Case summaries, § 81:14  
“High watermark” cases, § 81:13  
Overview, § 81:12, § 81:15

**NON-REPAIR**

Liability of Municipal Road Authorities  
  for  
    see Road Authority  
Proving  
  see Road Authority

**NOTICE REQUIREMENTS,  
STATUTORY ACCIDENT  
BENEFITS**

Generally, § 36:19

**OCCUPIER'S LIABILITY ACT,  
LIABILITY THEORY**

Generally, § 18:7

**OFF-ROAD VEHICLES**

Generally, § 23:3  
Coverage issues in  
  accident benefits claims, § 23:6  
  tort claims, § 23:5  
Insurance coverage for, § 23:4

**OHIP, SUBROGATED CLAIM**

Request letter  
  decoded summary, **APP 67F**  
  general, **APP 67E**

**ONTARIO DISABILITY SUPPORT  
PROGRAM (“ODSP”) BENEFITS**

Preserving after settlement, § 172:14 to  
  § 172:17  
basics, § 172:2  
generally, § 172:2

**ONTARIO DISABILITY SUPPORT PROGRAM (“ODSP”) BENEFITS—Cont’d**

- Preserving after settlement, § 172:14 to § 172:17—Cont’d
  - basics, § 172:2—Cont’d
    - eligibility
      - asset rules and exemptions, § 172:3
      - income rules and exemptions, § 172:4
    - estate planning, § 172:13
    - Henson trust, § 172:9
    - minor plaintiffs
      - future eligibility considerations, § 172:12
    - personal injury settlements and awards
      - exemptions to, § 172:5
        - damages for pain and suffering, § 172:5
        - director’s approval, § 172:6
        - legal costs incurred, § 172:8
        - treatment of interest earned, § 172:7
    - settlements/awards, proceeds of, § 172:11
    - structured settlement
      - issues to consider, § 172:10

**ONTARIO MOTORIST PROTECTION PLAN**

- Limitation periods, § 36:20
- Notice requirements, § 36:19

**OPENING STATEMENT**

- Generally, § 7:24, § 132:1, § 134:3
- Argument, prohibition on, § 135:2
- Case law re, § 134:3
- Content of, § 135:2
  - credibility, commenting on, § 135:5
  - insurance, mention of, § 135:7
  - law, commenting on, § 135:6
  - quantum of damages, mention of, § 135:4
- Copy to court, § 7:25
- Enhancing damages, role in, § 10:9
- Extravagant/inflammatory statements, § 135:3
- Facts, selecting and ordering of, § 135:9
- General rules, § 131:1
- Judicial pronouncements re, § 135:2
  - Brochu v. Pond, § 135:3

**OPENING STATEMENT—Cont’d**

- Judicial pronouncements re, § 135:2
  - Cont’d
    - Hall v. Schmidt, § 135:2
    - Ivanovski v. Gobin, § 135:3
    - Khazzaka v. Commercial Union Assurance, § 135:3
    - Marrelli v. Deathe, § 135:2
- Juries
  - see Juries
- Mediation
  - see Mediation
- Non-jury trial
  - structure
    - evidence
      - joint documents brief indexes
        - collateral benefits, APP 143B
        - financial, APP 143C
        - liability, APP 143D
        - medical, APP 143A
- Objections
  - making, § 7:24, § 156:27
- Rhetoric
  - see Rhetoric
- Sample statement, APP 132A
- Storytelling, § 135:9, § 138:1

**PARTIES**

- Commercial host alcohol cases
  - breach of duty, § 68:10
  - duty of care, § 68:9
  - foreseeability, § 68:11
  - issues, § 68:8
- Employer alcohol cases
  - breach of duty, § 68:10
  - duty of care, § 68:9
  - foreseeability, § 68:11
  - issues, § 68:8
- Family Law Act claims
  - damages
    - dependency claims, § 68:30
    - loss of care, guidance and companionship, § 68:27
    - pecuniary loss, § 68:28
    - specified expenses, § 68:29
    - statutory provision, § 68:26
    - issues, § 68:25, § 68:31
- Hoang v. Vicentini, § 70:2 to § 70:6
- Innocent drivers, § 68:4

## **PARTIES—Cont'd**

### **Innocent owners**

- vehicle operated with consent, § 68:2
- vehicle operated without consent, § 68:3

### **Insurers**

- accident benefits
  - commencement, § 68:23
  - tort action combined, § 68:24, APP 68C
- non-traditional motor vehicles
  - backhoe, § 68:20, § 68:22
  - snowmobile, § 68:21, § 68:22
- underinsured motorist coverage
  - eligible claimants, § 68:17
  - scope, § 68:16
  - uninsured coverage priorities, § 68:18
- uninsured/unidentified motorist coverage
  - entitlement, § 68:13
  - insured persons, § 68:14
  - policy limits, § 68:15
  - underinsured coverage priorities, § 68:18

### **Liability settlement offer**

- form, APP 68A
- timing, § 68:5

### **Naming, § 70:1**

- cost considerations, § 70:7

### **Non-protected defendant**

- definition, § 68:6
- host alcohol cases
  - breach of duty, § 68:10
  - duty of care, § 68:9
  - foreseeability, § 68:11
  - issues, § 68:8

- road authority, § 68:7

### **Selection, issues, § 68:1, § 68:32**

### **Social host alcohol cases**

- breach of duty, § 68:10
- duty of care, § 68:9
- foreseeability, § 68:11, § 75:3
- issues, § 68:8
- specific knowledge of intoxication, § 75:2

### **Statement of claim**

- see Statement of Claim

## **PECUNIARY CLAIMS UNDER THE FAMILY LAW ACT**

- Initial considerations, § 81:2 to § 81:5
  - other considerations before advancing claim, § 81:5
  - statutory deductible, § 81:4
  - what types of claims can be advanced, § 81:3
  - who can advance claims, § 81:2
- Loss of income, § 81:7
- Other claims, § 81:11
- Services rendered, § 81:8

## **PEDESTRIANS**

- Liability theory, § 18:4
- Reverse onus, § 18:4

## **PHOTOGRAPHS**

- Obtaining, § 63:29
- Police, obtaining, § 63:9

## **PHYSIOTHERAPIST REPORT**

- Generally, § 102:10

## **PIERRINGER AGREEMENTS**

- Bradley case, § 122:5
- Considerations when entering, § 122:7
- Example, § 122:3
- Joint and several liability and, § 122:2
- Pierringer v. Hoyer case, § 122:4
- Sample partial release and hold harmless agreement, § 122:8
- Unfairness and prejudice concerns, § 122:6
- Use of, § 122:1

## **PLAINTIFF**

- Attack by defendant
  - accident benefits file, § 120:6
  - credibility
    - method, § 120:2
    - preparation sheet, APP 120A
  - crumbling-skull doctrine, § 120:8
  - investigation, § 120:3
  - medical examinations, § 120:5
  - methods, § 120:1
  - pre-morbid health history, § 120:7
  - surveillance, § 120:4
- Incapacity
  - generally, § 74:1
  - contingency agreement, § 74:8
  - definition of, § 74:2



**PLAINTIFF—Cont'd**

- Incapacity—Cont'd
  - litigation guardian, § 74:9
  - Office of the Children's Lawyer, § 74:10
  - Office of the Public Guardian and Trustee, § 74:11
  - role of, § 74:11
  - obtaining evidence, § 74:21
  - practice tips, § 74:7
  - Rules of Professional Conduct, § 74:6, § 74:8, § 74:14
  - settlement, § 74:22
- Medical examination
  - see Defence

**PLEADING, STATEMENT OF CLAIM**

- See Statement of Claim

**POLICE**

- Departments, APP 63B
- Officer interview, § 63:10
- Records
  - see Records

**PRE-TRIAL CONFERENCE**

- Attendance, § 127:24
- Confidentiality, § 127:2, § 127:9
- Costs, § 127:8
- Damage assessments, § 127:18
- Demonstrative evidence, § 127:26
- Development, § 127:1, § 127:2
- Disclosure
  - documents, § 127:7
  - general, § 127:17
- Discretion of judge, § 127:5
- Effects, study, § 127:1
- Factors, § 127:2
- Follow-up, § 127:27
- Judicial officer, powers, § 127:5
- Memorandum
  - assessment chart, § 127:23
  - basis for action, § 127:20
  - damages, § 127:22
  - liability, § 127:21
  - significance, § 127:19
- Oral submissions, § 127:24
- Orders at
  - appeal, § 127:6
  - jurisdiction, § 127:5
- Practice directions
  - general, § 127:10

**PRE-TRIAL CONFERENCE—Cont'd**

- Practice directions—Cont'd
  - Toronto, § 127:11
- Purpose, § 127:4
- Significance, § 127:28
- Simplified procedure, § 127:12
- Strategies
  - file review
    - damages, § 127:16
    - importance, § 127:14
    - liability, § 127:15
    - significance, § 127:13
- Types, § 127:1

**PRIVATE INVESTIGATOR, RETAINING**

- Generally, § 63:25

**PRIVILEGE, DOCUMENTS**

- Generally, § 93:9

**PRODUCTS LIABILITY**

- Generally, § 16:1, § 16:2
- Class actions, § 16:8
- Strategies, § 16:9

**PROTECTED DEFENDANTS**

- See Damages

**PROVINCIAL OFFENCES RECORDS**

- Generally, § 63:33

**PSYCHOVOCATIONAL EXPERT REPORT**

- Generally, § 102:12

**PUNITIVE DAMAGES**

- Aggravated v. punitive, § 80:2
- Claim, § 79:4
- Post-Whiten state of affairs, § 80:5
  - accident benefit cases, § 80:6
  - MVA negligence cases, § 80:5
- Recent developments, § 80:7
  - automobile insurance policy, § 80:7
  - new award in MVA content, § 80:8
  - new level of awards in LTD cases, § 80:10
  - punishing insurers when not available, § 80:9

**RECORDS**

- Alcohol commission, § 63:31
- Ambulance
  - obtaining, § 63:16

## RECORDS—Cont'd

- Ambulance—Cont'd
  - request letter, **APP 63C**
- Cellular phones, § **63:18**
- Clinical notes, § **63:17**
- Coroner's office, § **63:32**
- Criminal offences, § **63:33**
- Disclosure, government records
  - see Government Records
- Experts
  - accident reconstructionist, § **63:19**
  - biomechanical engineer, § **63:21**
  - computer animator, § **63:22**
  - forensic climatologist, § **63:24**
  - human factors, § **63:20**
  - toxicologist, § **63:23**
- Government
  - see Government Records
- Hospital, § **63:16**
- Police
  - accident reports, § **63:3**
  - collision centre, self reporting, § **63:4**
  - dispatch record, § **63:5**
  - field notes, § **63:8**
  - motion for production
    - affidavit, **APP 63E**
    - notice, **APP 63D**
    - order, **APP 63F**
  - obtaining, § **63:2**, § **93:13**
  - officer interview, § **63:10**
  - photographs, § **63:9**
  - request letter, **APP 63A**
  - technical traffic investigation report, § **63:7**
  - witness statements, § **63:6**
- Private investigator, § **63:25**
- Provincial offences, § **63:33**
- Road authority
  - corporate searches, § **63:15**
  - drawings, as built, § **63:12**
  - highway cameras, § **63:13**
  - ownership searches, § **63:11**
  - traffic sequence records, § **63:14**
- Treating physicians, § **63:17**

## RE-EXAMINATION

- Objectives, § **147:73**
- Scope, § **154:7**
- Test, § **147:72**

## REQUEST TO ADMIT

- Documents, authenticity, § **107:3**

## RESUMÉ, CLIENT

- Form, **APP 5C**
- Purpose, § **5:2**

## RETAINER

- Accident benefits schedule, **APP 5D**
- Accounts, explanation, **APP 5A**, **APP 5B**
- Bill 59 and Bill 198 compliance documents
  - consent to defendant
    - autopsy report, **APP 5O**
    - clinical notes and records, **APP 5N**
    - disability benefits applications, **APP 5M**
    - statutory accident benefits applications, **APP 5L**
- insurance particulars, letter of request, **APP 5K**
- notice to defendant
  - fatality, **APP 5J**
  - injury claim, **APP 5I**
- notice to no-fault insurer
  - fatality, **APP 5F**
  - injury claim, **APP 5E**
- scope of requirements, § **5:3**, § **5:5**
- sending to adjuster, § **5:6**
- statutory declaration
  - fatality, **APP 5H**
  - injury claim, **APP 5G**
- time limits, § **5:5**
- waiver letter, **APP 5P**
- Client resumé
  - form, **APP 5C**
  - purpose, § **5:2**
- Documents required, **APP 5A**, **APP 5B**
- Initial interview, § **5:3**
- Initial letter
  - forms, **APP 5A**, **APP 5B**
  - purpose, § **5:2**
  - surveillance issue, § **5:2**
- Organization, § **5:1**, § **5:8**
- Pre-retainer intake
  - see Intake
- Pre-trial conference memo
  - advantages, § **5:7**
  - form, **APP 5P**
  - purpose, § **5:7**

## **RHETORIC**

- Analogies, § 140:15
- Belief systems, linking, § 140:8
- Counsel image
  - see Counsel Image
- Damages, avoiding discussion, § 140:18
- Function, § 140:19
- Issue selection, § 140:7
- Language
  - powerful, § 140:9
  - word selection, § 140:10
- Parallelism, § 140:12
- Prejudice, dealing with, § 140:17
- Repetition, § 140:13
- Rhetorical questions, § 140:16
- Rule of three, § 140:11
- Similes, § 140:14

## **ROAD AUTHORITY**

- Discovery, § 93:6
- Documents
  - see Records
- Liability theory
  - general rules, § 18:2
  - policy defence, § 18:3
- Non-repair, liability of municipal road authorities for
  - bad driving, foreseeability of, § 25:25
  - caselaw, § 25A:1 to § 25A:6
  - Minimum Maintenance Standards for Municipal Highways (“MMS”)
    - approaches for dealing with
      - compliance with by road authority, § 25:10
      - gaps in regulation, § 25:11
      - legality of, § 25:12
    - ice and snow conditions, relating to
      - “as soon as practicable,” interpretation of, § 25:20
      - “becomes aware,” significance of, § 25:17
    - classification of roadway, § 25:14
    - duty to deploy “as soon as practicable,” § 25:16
    - duty to plow snow, § 25:22
    - duty to treat ice, § 25:21
    - patrol frequency, § 25:19
    - slush, § 25:23
    - standard of care, § 25:15
    - weather forecasting, § 25:18
  - impact of regulation, § 25:8

## **ROAD AUTHORITY—Cont’d**

- Non-repair, liability of municipal road authorities for—Cont’d
  - Minimum Maintenance Standards for Municipal Highways (“MMS”)
    - Cont’d
      - introduction of, § 25:6
    - MMS, O. Reg. 239/02, APP 25A
      - proposed recommendations, APP 25A
  - onus of proof, § 25:24
  - overview of law
    - duty of care
      - codification of common law, § 25:6
      - common law interpretation, § 25:5
      - introduction of MMS, § 25:7
    - history, § 25:3
    - joint & several liability, § 25:4
  - proving liability, practical strategies
    - failure to comply with maintenance obligations, establishing, § 25:26
  - lay witnesses, § 25:49
  - municipality productions
    - accident history/locations, § 25:45
    - affidavit of documents, § 25:37
      - undertaking check list, APP 25B
    - collision reports, § 25:45
    - contracts with independent contractors, § 25:43
    - maps, § 25:42
    - patrol manuals, § 25:40
    - road reports, § 25:46
    - route books, § 25:47
    - RWIS, § 25:44
    - salt management plans, § 25:41
    - sanding sheets, § 25:48
    - training manuals, § 25:39
    - undertaking check list, APP 25B
    - weather monitoring, § 25:44
    - webpage, § 25:38
    - winter plowing/sanding/salting
      - daily records, § 25:48
  - operational structure
    - communications, § 25:30
    - examination for discovery
      - admissions to obtain, § 25:32
      - who to examine, § 25:31
    - overview, § 25:27

## **ROAD AUTHORITY—Cont'd**

- Non-repair, liability of municipal road authorities for—Cont'd
  - proving liability, practical strategies—Cont'd
    - operational structure—Cont'd
      - patrolmen, § 25:28
      - plans, § 25:33
      - plow operators, § 25:29
      - routes, § 25:33
    - third party documents
      - police records, § 25:34
      - radar imagery, § 25:36
      - weather records, § 25:35
  - Thornhill (Litigation Guardian of) v. Shadid, § 25:1, § 25:2
- Non-repair, proving
  - generally, § 24:1
  - collision history, § 24:6
  - reasonable driver, § 24:3
    - human factors, § 24:4
  - standard of care, § 24:2
    - road design, § 24:4
- Party, as, § 68:7

## **RULE OF THREE**

- Generally, § 140:11

## **RULES OF CIVIL PROCEDURE**

- Annual Reports of the Office of, and, 2021, § 1C:2
- Caselaw, § 1C:3
- CPD Handout, § 1C:1
- LSO Rules of Professional Conduct, § 1C:4

## **SANDERSON ORDER**

- See Costs

## **SCHOOL RECORDS, REQUEST LETTER**

- Generally, APP 67H

## **SETTLEMENT**

- Court approval
  - Marcoccia #1 decision
    - facts, § 170:2
    - fees, approval of, § 170:6
    - prior approval practice, § 170:4
    - process under rule 7.08, § 170:5
    - retainer agreement, § 170:3

## **SETTLEMENT—Cont'd**

- Court approval—Cont'd
  - post-Marcoccia #1 decisions
    - Beaulieu (Litigation Guardian of) v. Conseil Scolaire de District Catholique du Nouvel-Ontario, § 170:9
    - Cogan (Re), § 170:14
    - Dhaliwal v. Miller, § 170:12
    - Giusti (Litigation Guardian of) v. Scarborough Hospital Grace Division, § 170:20
    - Lau (Litigation Guardian of) v. Bloomfield, § 170:10
    - Marcoccia (Litigation Guardian of) v. Ford Credit Canada Ltd., § 170:19
    - Morris v. Sparling, § 170:11
    - Rivera v. LeBlond, § 170:8
    - Symington (Litigation Guardian of) v. Adam, § 170:13
  - recommendations for counsel, § 170:21
- Mary Carter
  - see Mary Carter Agreement
- Negotiation
  - client involvement, § 126:6
  - defence materials, handling, § 126:5
  - hidden bad facts cases, § 126:3
  - mediation
    - see Mediation
  - pleadings factors, § 126:4
  - timing, § 126:1
- Offer
  - Bill 59
    - factors, § 124:4
    - form, APP 125I
  - contested motion, § 124:16
  - creative forms, § 124:12
  - defence agreement to dismissal, § 124:11
  - liability
    - form, APP 68A
    - multiple defendants
      - form, APP 125C
      - methods, § 124:14
    - two defendants
      - form, APP 125B
      - methods, § 124:13
  - mediation, relationship, § 126:12
  - pre-judgment interest provision, § 124:10

## **SETTLEMENT—Cont'd**

- Offer—Cont'd
  - quantum, § 124:2
  - several defendants, § 124:5
  - solicitor-client costs provision, § 124:9
  - structure, § 124:4
  - timing, § 124:3
  - unidentified driver
    - form, **APP 125D**
    - methods, § 124:15
  - use of, § 124:1
- Pierringer
  - see Pierringer Agreements
- Pre-commencement offer, liability issues, § 68:5
- Reasons for, § 104:1
- Timing issues, § 126:2

## **SHARED FAMILY INCOME, REDUCED OPPORTUNITY**

- See also Interdependent Relationship, Loss
- Generally, § 84:17

## **SHARED LIVING RELATIONSHIPS, RECOGNITION OF LOSS**

- See Interdependent Relationship, Loss

## **SKETCHES, OBTAINING**

- Generally, § 63:28

## **SNOWMOBILES**

- Generally, § 23:2
- Coverage issues in
  - accident benefits claims, § 23:6
  - tort claims, § 23:5
- Insurance coverage for, § 23:4

## **SOCIAL HOST, PARTY, AS**

- See Parties

## **SOFT TISSUE**

- Perceptions, § 14:2
- Strategies
  - defence's, § 14:21
  - plaintiff's, § 14:18
- Terminology, § 14:8

## **SPECIFIED BENEFIT**

- Attendant care benefits
  - eligibility, § 53A:14
  - quantum, § 53A:15
    - economic loss as result of providing attendant care, § 53A:17

## **SPECIFIED BENEFIT—Cont'd**

- Attendant care benefits—Cont'd
  - quantum, § 53A:15—Cont'd
    - provided in the course of employment, § 53A:16
- Caregiver benefit
  - application process, § 53A:13
  - duration, § 53A:11
  - eligibility, § 53A:10
  - quantum, § 53A:12
- Income replacement benefits
  - eligibility, § 53A:2
  - quantum, § 53A:3
- Non-earner benefits
  - complete inability test, § 53A:7
  - duration, § 53A:8
  - eligibility, § 53A:4
  - quantum, § 53A:9
  - test met, § 53A:5
  - test not met, § 53A:6

## **STATEMENT OF CLAIM**

- Amount claimed
  - client expectations, § 79:5
  - punitive damages, § 79:4
  - tactical factors, § 79:3
- Case management rules, effect, § 79:11
- Draft, client review
  - advantages, § 79:6
  - letter, **APP 79A**
- Form, **APP 68B**
- Human context, § 79:1
- Insurance adjuster discussions, § 79:10
- Insurance coverage issues, § 79:8
- Issuance
  - limitations, § 79:2
  - timing, § 79:2
- Matters to be included, § 79:7
- Opportunity, § 79:12
- Organization, § 79:1
- Significance, § 79:1
- Subheadings, § 79:1
- Theory of case, § 79:1
- Waiver of defence, § 79:9

## **STATEMENT OF DEFENCE, WAIVER**

- Considerations, § 79:9
- Letter to insurer, **APP 5P**

## **STATISTICS, USE OF**

- Generally, § 84:5

## STATUTORY ACCIDENT BENEFITS SCHEDULE

- “Accident,” definition of, § 51:1, APP 51A
- Amendments to, overview, § 53:1, § 53:13, APP 53A
- Ancillary goods or services, § 38:17
- Assessment, § 36:27, § 38:9
  - designated, § 38:22
  - pre-mediation, § 38:24
- Assessment centres, designated, § 38:25
- Attendant care benefits
  - amendments, § 53:3, § 54:2
  - Bill 59, under, § 36:8
  - Bill 198, under, § 38:7, § 38:20
  - co-mingling with medical and rehabilitation benefits, § 50:1 to § 50:5
  - “incurred” requirement
    - generally, § 39:9
    - jurisprudence re
      - F.(L.) v. State Farm Mutual Automobile Insurance Co., § 39:11
      - McKnight v. Guarantee Co. of North America, § 39:12
      - McMichael v. Belair Insurance Co., § 39:13
      - Monks v. ING Insurance Co. of Canada, § 39:14
  - qualifications of person providing care
    - generally, § 39:2
    - jurisprudence re
      - Bellavia v. Allianz Insurance Co. of Canada/ING, § 39:6
      - Fernandes (Power of Attorney for Property of) v. Certas Direct Insurance Co., § 39:5
      - Haimov v. ING Insurance Co. of Canada, § 39:7
      - Lane (Parent of) v. Economical Mutual Insurance Co., § 39:8
      - Michalski (Guardian of) v. Wawanesa Mutual Insurance Co., § 39:4
- Benefit limits, § 36:9
- Caregiver benefits, § 36:7
- Case managers, § 36:10, § 38:8
- Catastrophic impairment
  - see also Catastrophic Impairment
  - definition of under Bill 198, § 38:4, § 40:1, § 42:1

## STATUTORY ACCIDENT BENEFITS SCHEDULE—Cont’d

- Catastrophic impairment—Cont’d
  - definition of under Bill 59, interpretation of cls. (f) and (g) of aftermath of Desbiens v. Mordini, § 41:6
  - approach to before Desbiens v. Mordini, § 41:3
  - approach to in Desbiens v. Mordini, § 41:4, § 42:2, § 42:3
  - cases decided after Desbiens v. Mordini, § 41:7, § 42:8
  - legislative gap, § 41:2
  - marked or extreme impairments, § 41:5
- Catastrophic impairment claims, § 87:7
- Changes to, § 38:1
- Clothing damages, § 36:14
- Collateral benefits, § 36:29
- Comparison with tort claim, § 87:1
  - loss of guidance, care and companionship, § 87:13
  - pain, suffering and loss of enjoyment, § 87:12
  - pecuniary loss, § 87:14 to § 87:22
  - tort damages, § 87:8
- Criminal convictions, implications of criminal offence, § 49:2
  - Bill 59, § 49:3
  - current schedule, § 49:4
  - material misrepresentation, § 49:8
  - no consent, § 49:7
  - not insured, § 49:5
  - no valid licence, § 49:6
- Death benefits, § 36:16, § 38:10
- Disability assessment
  - attendant care, § 36:32
  - catastrophic impairment, § 36:34
  - designated assessment centre
    - accident benefit analyst unit, role, § 36:46
    - complaints, § 36:46
    - discipline, § 36:46
    - forms, § 36:45
    - roster, § 36:44
    - system, § 36:45
  - guidelines
    - health information disclosure, § 36:38
    - medical/rehabilitation plan, § 36:48



## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Disability assessment—Cont'd
  - guidelines—Cont'd
    - neutrality
      - addenda to reports, § 36:41
      - communication with parties
        - verbal, § 36:42
        - written, § 36:42
      - subsequent treatment, § 36:40
    - production of notes and records, § 36:37
    - revision, § 36:47
    - surveillance, § 36:36
  - medical, § 36:31
  - post 104 weeks, § 36:35
  - purpose, § 36:30
  - rehabilitation, § 36:31
  - residual earning capacity, § 36:33
  - significance, § 36:49
- Dispute resolution
  - action in Superior Court
    - appeals, § 52:8
    - costs recoverable, § 52:10
    - discovery process, § 52:4
    - document exchange, § 52:4
    - jury trial, right to, § 52:11
    - procedure, § 52:6
    - punitive damages, § 52:7
  - arbitration through Financial Services
    - Commission of Ontario
      - appeals, § 52:8
      - costs recoverable, § 52:9
      - discovery process, § 52:4
      - document exchange, § 52:4
      - expenses, § 36:24
      - hearings, § 52:5
      - private, § 36:23
      - procedure, § 52:3
      - special awards, § 52:7
  - choice of procedure, considerations, § 52:1
- License Appeal Tribunal
  - appeal, § 60:4
  - costs, § 60:3
  - differences from trial, APP 60A
  - introduction, § 60:1
  - process, § 60:2
  - Proposed Amendments to Insurance Act Regulations Regarding the

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Dispute resolution—Cont'd
  - License Appeal Tribunal—Cont'd
    - Ontario Automobile Insurance Dispute Resolution System (AIDRS), APP 60C
    - Rules of Practice and Procedure, APP 60B
    - special award, § 60:7
    - transition rules, § 60:5
  - mediation, § 36:22
  - neutral evaluation, § 36:22, § 52:2
  - ombudsman, § 36:21
- Economic loss for “incurred expense”
  - changes post Henry v. Gore, § 47:5
  - other considerations, § 47:6
  - post-September 2010, § 47:3
  - pre-September 2010, § 47:2
  - recent amendments, § 47:1, APP 47A
  - recent decisions interpreting, § 47:4
- Examination expenses, § 36:15
- Funeral benefits, § 36:16
- Glasses damages, § 36:14
- Health practitioner, defined, § 38:3
- Hearing aids damages, § 36:14
- Housekeeping expenses, § 36:13
- Income replacement benefits
  - collateral benefits deduction, § 36:5
  - disability test
    - first 104 weeks after accident, § 36:3
    - post-104 weeks after accident
      - generally, § 36:3, § 48:2
      - “complete inability,” § 48:3
      - “engage” in employment, § 48:5
      - real life considerations, § 48:4
      - “reasonably suited,” § 48:6
- entitlement, § 36:2
- maximum amount of, § 38:30
- payment
  - amount, § 36:4
  - period, § 36:3
- “Incurred”
  - declaration regarding future statutory accident benefits, § 46:3
  - interpretation of, § 46:2
  - use of word in Schedule, § 46:1
- “Incurred expense”
  - changes post Henry v. Gore, § 47:5
  - other considerations, § 47:6

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

“Incurred expense”—Cont'd  
 post-September 2010, § 47:3  
 pre-September 2010, § 47:2  
 recent amendments, § 47:1, APP 47A  
 recent decisions interpreting, § 47:4  
 Information disclosure, § 36:25, § 38:12  
 Insurer examinations, § 36:26, § 38:21  
 Limitation periods, § 36:20  
 Medical benefits  
     amendments, § 53:2  
     co-mingling with attendant care  
         benefits, § 50:1 to § 50:5  
     entitlement, § 36:8  
 Medical expenses, guidelines re payment,  
     § 38:5  
 Minor injury guideline, § 87:6  
 Non-earner benefits  
     amendments, § 53:4  
     entitlement, § 36:6  
     test for  
         complete inability to carry on a  
             normal life, § 48:7  
         “continuously prevents the person  
             from engaging in,” § 48:9  
         “substantially all,” § 48:8  
 Notice requirements, § 36:19, § 38:11  
 Ontario Statutory Accident Benefits,  
     § 87:2  
 Optional benefits, § 36:17  
 Pre-approved framework guidelines,  
     § 38:14  
 Procedural changes  
     assessments, § 36:27  
     information disclosure, § 36:25  
     insurer examinations, § 36:26  
     treatment plan, § 36:28  
 Professional services guideline, § 38:31  
     completion of forms, re, § 38:33  
     maximum fees, § 38:32  
 Regulation, Accidents On or After  
     November 1, 1996  
     application, APP B [SABS/96 s. 3]  
     assignment of benefits, APP B  
         [SABS/96 s. 65]  
     attendant care benefit  
         duration of, APP B [SABS/96 s. 18]  
         entitlement to, APP B [SABS/96 s.  
             16]

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

Regulation, Accidents On or After  
 November 1, 1996—Cont'd  
 attendant care benefit—Cont'd  
     maximum limits on, APP B  
         [SABS/96 s. 19]  
 caregiver benefit, APP B [SABS/96 s.  
     13]  
 case manager services, APP B  
     [SABS/96 s. 17]  
 company automobiles, APP B  
     [SABS/96 s. 66]  
 copies, APP B [SABS/96 s. 67]  
 damage to clothing, glasses, hearing  
     aids etc., APP B [SABS/96 s. 23]  
 death benefit, APP B [SABS/96 s. 25]  
 definitions, APP B [SABS/96 s. 2]  
 delivery of documents, APP B  
     [SABS/96 s. 68]  
 dependant care benefit, APP B  
     [SABS/96 s. 28]  
 designated assessment centres  
     establishment of, APP B [SABS/96  
         ss. 52 to 52.2]  
     requirements re, APP B [SABS/96  
         ss. 53, 54]  
 examination costs, APP B [SABS/96 s.  
     24]  
 exclusions, APP B [SABS/96 s. 30]  
 forms, APP B [SABS/96 ss. 69, 69.1]  
 funeral benefit, APP B [SABS/96 s. 26]  
 housekeeping and home maintenance  
     expenses, APP B [SABS/96 s. 22]  
 income calculation  
     income tax calculations, APP B  
         [SABS/96 s. 63]  
     net weekly income formula, APP B  
         [SABS/96 s. 61]  
     self-employment income, APP B  
         [SABS/96 s. 62]  
     severance and termination pay, APP  
         B [SABS/96 s. 64]  
     unreported income, APP B  
         [SABS/96 s. 64.1]  
 income replacement benefit  
     adjustment after age 65, APP B  
         [SABS/96 s. 9]  
     amount of, APP B [SABS/96 s. 6]  
     collateral payments, APP B  
         [SABS/96 s. 7]

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Regulation, Accidents On or After November 1, 1996—Cont'd
  - income replacement benefit—Cont'd
    - eligibility criteria, **APP B [SABS/96 s. 4]**
    - entitlement arising after age 65, **APP B [SABS/96 ss. 10, 10.1]**
    - gross income calculations, **APP B [SABS/96 s. 8]**
    - maximum amount of, **APP B [SABS/96 s. 7]**
    - period of, **APP B [SABS/96 s. 5]**
    - temporary return to employment, **APP B [SABS/96 s. 11]**
- interaction with other systems
  - accidents outside Ontario, **APP B [SABS/96 s. 57]**
  - other collateral benefits, **APP B [SABS/96 s. 60]**
  - social assistance payments, **APP B [SABS/96 s. 58]**
  - workers' compensation benefits, **APP B [SABS/96 s. 59]**
- interpretation, **APP B [SABS/96 s. 2]**
- lost educational expenses, **APP B [SABS/96 s. 20]**
- medical benefit
  - duration of, **APP B [SABS/96 s. 18]**
  - entitlement to, **APP B [SABS/96 s. 14]**
  - maximum limits on, **APP B [SABS/96 s. 19]**
- non-earner benefit, **APP B [SABS/96 s. 12]**
- notices, **APP B [SABS/96 s. 68]**
- optional benefits, **APP B [SABS/96 s. 27]**
- optional indexation benefit, **APP B [SABS/96 s. 29]**
- procedures for claiming benefits
  - application for approval of assessment or examination, **APP B [SABS/96 s. 38.2]**
  - application for benefits, **APP B [SABS/96 s. 32]**
  - assessment or examination after denial of benefits, **APP B [SABS/96 s. 42.1]**
  - attendant care benefits, **APP B [SABS/96 s. 39]**

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Regulation, Accidents On or After November 1, 1996—Cont'd
  - procedures for claiming benefits
    - Cont'd
      - conflict of interest, **APP B [SABS/96 s. 38.3]**
  - designated assessments, **APP B [SABS/96 s. 43]**
  - determination of catastrophic impairment, **APP B [SABS/96 s. 40]**
  - determination of continuing entitlement to specified benefits, **APP B [SABS/96 s. 37]**
  - duty of applicant to provide information, **APP B [SABS/96 s. 33]**
  - election of income replacement, non-earner or caregiver benefit, **APP B [SABS/96 s. 36]**
  - examination required by insurer, **APP B [SABS/96 s. 42]**
  - explanation of benefit amounts, **APP B [SABS/96 s. 45]**
  - income replacement, non-earner or caregiver benefits and house-keeping or home maintenance expenses, **APP B [SABS/96 s. 35]**
  - mediation proceedings, **APP B [SABS/96 s. 50]**
  - medical and rehabilitation benefits, **APP B [SABS/96 ss. 38, 38.1]**
  - method of payment, **APP B [SABS/96 ss. 44, 44.1]**
  - notice of application for benefits, **APP B [SABS/96 s. 32]**
  - other benefits, **APP B [SABS/96 s. 41]**
  - overdue payments, **APP B [SABS/96 s. 46]**
  - pre-approved framework guidelines, **APP B [SABS/96 ss. 37.1 to 37.3]**
  - pre-claim examination, **APP B [SABS/96 s. 32.1]**
  - repayments to insurer, **APP B [SABS/96 s. 47]**
  - right to dispute, **APP B [SABS/96 s. 49]**
  - termination of benefits for material misrepresentation, **APP B**

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

Regulation, Accidents On or After  
November 1, 1996—Cont'd  
procedures for claiming benefits  
—Cont'd  
[SABS/96 s. 48]  
time limit for proceedings, APP B  
[SABS/96 s. 51]  
time limits, failure to comply with,  
APP B [SABS/96 s. 31]  
transitional rules, APP B [SABS/96  
s. 41.1]  
rehabilitation benefit  
duration of, APP B [SABS/96 s. 18]  
entitlement to, APP B [SABS/96 s.  
15]  
maximum limits on, APP B  
[SABS/96 s. 19]  
rental automobiles, APP B [SABS/96 s.  
66]  
responsibilities of insured person  
employment, APP B [SABS/96 s.  
56]  
rehabilitation, APP B [SABS/96 s.  
55]  
treatment, APP B [SABS/96 s. 55]  
substitute decision-makers, APP B  
[SABS/96 s. 68.1]  
transitional provisions, APP B  
[SABS/96 ss. 70, 70.1]  
visitors' expenses, APP B [SABS/96 s.  
21]  
Regulation, Accidents On or After  
September 1, 2010  
application, APP A [SABS/10 s. 2]  
assignment of benefits, APP A  
[SABS/10 s. 62]  
attendant care benefit  
duration of, APP A [SABS/10 s. 20]  
entitlement to, APP A [SABS/10 s.  
14]  
maximum limits on, APP A  
[SABS/10 s. 19]  
caregiver benefit, APP A [SABS/10 s.  
13]  
case manager services, APP A  
[SABS/10 s. 17]  
copies, APP A [SABS/10 s. 67]  
damage to clothing, glasses, hearing  
aids, etc., APP A [SABS/10 s. 24]

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

Regulation, Accidents On or After  
September 1, 2010—Cont'd  
death benefit, APP A [SABS/10 s. 26]  
definitions, APP A [SABS/10 s. 3]  
delivery of documents, APP A  
[SABS/10 s. 64]  
dependant care benefit, APP A  
[SABS/10 s. 29]  
examination costs, APP A [SABS/10 s.  
25]  
exclusions, APP A [SABS/10 s. 31]  
forms, APP A [SABS/10 ss. 66, 67]  
funeral benefit, APP A [SABS/10 s. 27]  
housekeeping and home maintenance  
expenses, APP A [SABS/10 s. 23]  
income calculation, APP A [SABS/10  
s. 4]  
income replacement benefit  
adjustment after age 65, APP A  
[SABS/10 s. 8]  
amount of, APP A [SABS/10 s. 7]  
collateral payments, APP A  
[SABS/10 s. 47]  
eligibility criteria, APP A [SABS/10  
s. 5]  
entitlement arising after age 65, APP  
A [SABS/10 s. 9]  
gross income calculations, APP A  
[SABS/10 s. 4]  
period of, APP A [SABS/10 s. 6]  
temporary return to employment,  
APP A [SABS/10 s. 11]  
interaction with other systems  
accidents outside Ontario, APP A  
[SABS/10 s. 59]  
other collateral benefits, APP A  
[SABS/10 s. 47]  
social assistance payments, APP A  
[SABS/10 s. 60]  
workers' compensation benefits,  
APP A [SABS/10 s. 61]  
interpretation, APP A [SABS/10 s. 2]  
lost educational expenses, APP A  
[SABS/10 s. 21]  
medical benefit  
duration of, APP A [SABS/10 s. 20]  
entitlement to, APP A [SABS/10 s.  
15]

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Regulation, Accidents On or After September 1, 2010—Cont'd
  - medical benefit—Cont'd
    - maximum limits on, **APP A [SABS/10 s. 18]**
  - non-earner benefit, **APP A [SABS/10 s. 12]**
  - notices, **APP A [SABS/10 s. 64]**
  - optional benefits, **APP A [SABS/10 ss. 28 to 30]**
  - optional indexation benefit, **APP A [SABS/10 s. 30]**
  - procedures for claiming benefits
    - application for approval of assessment or examination, **APP A [SABS/10 s. 38]**
    - application for benefits, **APP A [SABS/10 s. 32]**
    - attendant care benefits, **APP A [SABS/10 s. 42]**
    - conflict of interest, **APP A [SABS/10 s. 46]**
    - determination of catastrophic impairment, **APP A [SABS/10 s. 45]**
    - determination of continuing entitlement to specified benefits, **APP A [SABS/10 s. 37]**
    - duty of applicant to provide information, **APP A [SABS/10 s. 33]**
    - election of income replacement, non-earner or caregiver benefit, **APP A [SABS/10 s. 35]**
    - examination required by insurer, **APP A [SABS/10 s. 44]**
    - explanation of benefit amounts, **APP A [SABS/10 s. 50]**
    - income replacement, non-earner or caregiver benefits and house-keeping or home maintenance expenses, **APP A [SABS/10 s. 35]**
    - mediation proceedings, **APP A [SABS/10 s. 55]**
    - medical and rehabilitation benefits, **APP A [SABS/10 ss. 38, 39]**
    - method of payment, **APP A [SABS/10 s. 48]**
    - minor injury guideline, **APP A [SABS/10 s. 40]**

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Regulation, Accidents On or After September 1, 2010—Cont'd
  - procedures for claiming benefits
    - Cont'd
      - notice of application for benefits, **APP A [SABS/10 s. 32]**
      - other benefits, **APP A [SABS/10 s. 43]**
      - overdue payments, **APP A [SABS/10 s. 51]**
      - pre-approved framework guidelines
        - see procedures for claiming benefits - minor injury guideline
      - repayments to insurer, **APP A [SABS/10 s. 52]**
      - right to dispute, **APP A [SABS/10 s. 54]**
      - termination of benefits for material misrepresentation, **APP A [SABS/10 s. 53]**
      - time-limit for proceedings, **APP A [SABS/10 s. 56]**
      - time-limits, failure to comply with, **APP A [SABS/10 s. 34]**
    - rehabilitation benefit
      - duration of, **APP A [SABS/10 s. 20]**
      - entitlement to, **APP A [SABS/10 s. 16]**
      - maximum limits on, **APP A [SABS/10 s. 18]**
    - responsibilities of insured person
      - employment, **APP A [SABS/10 s. 58]**
      - rehabilitation, **APP A [SABS/10 s. 57]**
      - treatment, **APP A [SABS/10 s. 57]**
    - substitute decision-makers, **APP A [SABS/10 s. 65]**
    - transitional provisions, **APP A [SABS/10 s. 68]**
    - visitors' expenses, **APP A [SABS/10 s. 22]**
  - Rehabilitation benefits
    - amendments, § 53:2
    - co-mingling with attendant care benefits, § 50:1 to § 50:5
    - entitlement, § 36:8
  - Repayment to insurance companies, § 38:23

## STATUTORY ACCIDENT BENEFITS

### SCHEDULE—Cont'd

- Student expenses, § 36:11
- Transportation expenses, § 36:15, § 38:6
- Treatment plan, § 36:28, § 38:18, § 38:19
- Treatment/rehabilitation requirements, § 38:26
- Visitors' expenses, § 36:12
- WAD I, § 38:15
- WAD II, § 38:16
- Weekly benefits, termination of, § 38:13

## STATUTORY DECLARATION

- Fatality, APP 5H
- Injury claim, APP 5G

## STRATEGIES, CLIENT FOCUS

- Generally, § 1:4

## SUBROGATION

- Health care expenses
  - accident benefit insurer, § 21:24
  - OHIP, § 21:23
- OHIP
  - claim effect, § 84:20
  - request letter
    - decoded summary, APP 67F
    - general, APP 67E

## SUBSTITUTE DECISIONS ACT

- Generally, § 73:1
- Application for guardianship
  - court attendance, avoiding, § 73:11
  - evidence on, § 73:9
  - notice of application, § 73:6, APP 73A
  - procedure, § 73:7
  - property vs. personal care, § 73:5
  - security, posting of, § 73:10
  - timing of, § 73:4
- Capacity
  - assessments, § 6:16
  - definition, § 6:1, § 6:10 to § 6:19
  - presumption of, § 6:10
  - regaining, § 6:19
- Court appointed guardianship, § 6:18
- Guardian
  - application for
    - see application for guardianship
  - choice of, § 73:3
  - duties and obligations of, § 73:3, APP 73B

## SUBSTITUTE DECISIONS ACT

### —Cont'd

- Guardian—Cont'd
  - purchase of home by, § 165:1, § 165:3
  - legislative framework, § 165:2
  - statutory, § 73:6
- Incapacity, definition, § 74:3
  - onus of establishing, § 6:14
  - to manage personal care, § 6:13
  - to manage property, § 6:12
- Litigation guardian, appointment of, § 73:2
- Power of attorney, § 6:11
  - capacity to grant, § 6:15
- Purpose and function of, § 73:2
- Statutory guardianship for property, § 6:17

## SUMMARY JUDGMENT

- Generally, § 34:11
- Case law, § 34:5
- Cost consequences, § 34:10
- Motion for
  - generally, § 34:4
  - materials, § 34:9
  - timing, § 34:7
  - where appropriate, § 34:8
- Purpose, § 34:2
- Test, § 34:3
- Waivers, § 85:11

## SUMMONS TO WITNESS

- See Witnesses

## SURVEILLANCE

- Admissibility
  - establishing, § 111:10
  - impeachment, for, § 111:12
  - substantive evidence, as, § 111:11
- Disclosure requirements
  - generally, § 157:3
  - affidavit of documents, § 157:4
  - documentary vs. informational disclosure, § 157:5
  - failure to disclose, § 107:8
  - future surveillance, re, § 157:7
  - level of disclosure, § 157:6
  - particulars, timing, § 157:9
  - particulars at oral discovery, where no, § 157:8
  - substantive v. impeachment evidence, § 157:3



## **SURVEILLANCE—Cont'd**

- Document disclosure, § 93:10
- Explanation, APP 5A, APP 5B
- Impeaching credibility, § 107:8, § 144:12
- Inoculation against, § 137:4
- Litigation privilege, waiver of, § 157:10
- Litigation privilege and, § 157:2
- Use against plaintiff, anticipating, § 120:4
- Use at trial, § 157:11

## **TAVERN LIABILITY**

- Apportionment of liability, § 19:9, § 82:11
- Defences available
  - generally, § 82:7
  - in care of responsible person, § 82:9
  - not driving when leaving, § 82:10
  - no visible intoxication, § 82:8
- Duty of care
  - generally, § 82:2
  - intoxicated person, § 82:3
  - limitations on duty, § 82:6
  - monitoring consumption of alcohol, § 82:5
  - third parties, § 82:4

## **TEAM MEETINGS, CLIENT FOCUS**

- Generally, § 1:4

## **THEME**

- Closing
  - damages, § 163:5
  - judge's charge, relationship, § 163:3
  - liability, § 163:4
  - relating to evidence, § 163:2
  - significance, § 163:6
- Significance, § 163:1
- Witness list, relationship, § 144:13

## **THIN SKULL**

- Doctrine, advantages, § 84:19
- Establishing, § 137:2

## **THRESHOLD**

- Evidence, § 31:3
- Statutory requirements, § 31:2
- Three-part test, § 31:4
- Trends
  - generally, § 31:8
  - returning to work, impact of, § 31:11
  - role of experts, § 31:10
  - significance of jury verdict, § 31:9

## **TORT**

- Accident benefits
  - see Accident Benefits
- Bill 59
  - see Bill 59
- Damages arising from ownership, use or operation of vehicle, what constitutes
  - Amos v. Insurance Corp. of British Columbia, § 51:2
  - drive-by shootings, § 51:7
  - Herbison v. Lumbermens Mutual Casualty Co., § 51:4, § 51:6
  - Russo v. John Doe
    - appeal decision, § 51:10
    - facts, § 51:8
    - summary judgment motion, § 51:9
  - Vytlingam (Litigation Guardian of) v. Farmer, § 51:5, § 51:6

## **TOXICOLOGIST REPORT**

- Generally, § 63:23

## **TRAFFIC INVESTIGATION, TECHNICAL REPORT**

- Generally, § 63:7

## **TREATING SPECIALIST REPORT**

- Generally, § 102:9

## **TRIAL**

- Binder, § 7:16
- By ambush
  - adverse costs insurance, § 100:4
  - disclosure obligations, § 100:2
  - expert evidence, § 100:3
  - surveillance, disclosure of, § 100:6
- Closing address
  - see Closing Address
- Counsel image
  - see Counsel Image
- Cross-examination
  - see Cross-examination
- Digital, § 7:15
- Documents, organization, § 154:2
- Examination-in-chief
  - see Examination-in-chief
- Exhibits, objections to, § 156:26
- First day, see also Opening Statement
  - generally, § 134:1
  - choice of witness, § 134:4
  - conclusion of, § 134:5
  - demeanour of lawyer, § 134:2

## TRIAL—Cont'd

Motions that may be brought at trial  
 adjournment, § 7:23  
 amend pleadings, § 7:23  
 appeals, § 7:23  
 bifurcation of trial, § 7:23  
 change of venue, § 7:23  
 disqualify judge, § 7:23  
 exclusions and presumptions, § 7:21  
 issue estoppel and res judicata, § 7:23  
 mistrial, § 7:23  
 non-suit/directed verdict, § 7:23  
 opening statements, dealing with,  
   § 7:20  
 re-opening case, § 7:23  
 routine motions, § 7:19  
 sealing court records, § 7:23  
 striking the defence, § 7:23  
 striking the jury, § 7:22  
 withdrawal of counsel, § 7:23  
 Notebook, § 111:1  
 Objections  
   see Evidence  
 Opening statement  
   see Opening Statement  
 Preparation  
   generally, § 105:1, § 105:14  
   continuing disclosure obligations,  
     § 105:3  
   demonstrative aids, § 105:13  
   demonstrative evidence  
     see Demonstrative Evidence  
   discovery obligations, letter re, **APP**  
     **105B**  
   documents/exhibits, preparation for  
     trial  
     another method, § 7:3  
     contested, use of during opening,  
       § 7:5  
     determining admissibility, § 7:7  
     inefficient way to admit at trial, § 7:4  
     most efficient way to deal with, § 7:2  
     theoretical way to attempt to admit,  
       § 7:6  
   evidentiary issues, § 111:9  
   evidentiary objections  
     meeting, § 104:11  
     scope  
       see Evidence  
   expert witnesses, defence, § 105:6

## TRIAL—Cont'd

Preparation—Cont'd  
 focus groups, § 104:26, § 105:7  
 formalities  
   see Formalities  
 motion record, **APP 105F**  
 potential traps, avoiding, § 104:25  
 pre-trial notices  
   generally, § 105:8  
   notices of intention, § 105:9, **APP**  
     **105E**  
   requests to admit, § 105:8, **APP**  
     **105D**  
 pre-trial orders and briefs of law  
   generally, § 105:11, § 105:12  
   briefs of law, § 105:12  
   preliminary matters, § 105:11  
 pre-trial tips  
   consider settlement, § 110:16  
   endure witnesses are prepared,  
     § 110:11  
   know the law, § 110:15  
   make facts easy to understand,  
     § 110:7  
   plan for dealing with documents,  
     § 110:2  
 proximate  
   factors, § 104:3  
   law clerk, § 104:7  
   lead counsel, § 104:4  
   legal assistant, § 104:5  
   second lawyer, § 104:6  
 readiness  
   see readiness, *infra*  
 remote, § 104:2  
 settlement offer, § 105:10  
 significance, § 104:27  
 starting, § 105:2  
 summons to witness  
   see Witnesses  
 theme  
   examples, § 104:10  
   impact words, § 104:9  
   ingredients, § 104:8  
 trial prep meeting, sample summary of,  
   **APP 105A**  
 witnesses  
   see Witnesses  
 Reasons for proceeding, § 104:1  
 Settlement, reasons for, § 104:1

## **TRIAL—Cont'd**

- Strategy
  - examination-in-chief
    - see Examination-in-chief
  - order of witnesses
    - see Witnesses
- Technology, § 142:1 to § 142:21
- Theme
  - see Theme
- What to bring, § 7:18

## **UNDERINSURED MOTORIST COVERAGE**

- Generally, § 33:13, § 22:35
- Eligible claimants, § 68:17
- Limitation period for, § 33:14
- Scope, § 68:16
- Standards of proof for, § 33:7
- Uninsured coverage priorities, § 68:18

## **UNDERTAKING, DEEMED, RULE**

- Generally, § 97:6

## **UNINSURED/UNIDENTIFIED MOTORIST COVERAGE**

- Generally, § 22:34
- Background, § 33:2
- Entitlement, § 68:13
- Evidence of the insured, § 33:6
- Insured persons, § 68:14
- Minimum limits, § 33:3
- Policy limits, § 68:15
- Recent cases, § 33:10
- 1% rule, § 33:3
- Standards of proof for, § 33:7
  - recent cases on, § 33:8
- Underinsured coverage priorities, § 68:18
- Unidentified claims, § 33:5

## **UNPROTECTED DEFENDANTS**

- See Damages
- Bar against uninsured actions, § 77:8
- Calculation of damages between protected and unprotected defendants
  - generally, § 77:14
  - income loss, § 77:16
  - loss of earning capacity, § 77:16
  - non-pecuniary damages, § 77:15
- Collateral benefit deductions, § 77:5
- Construction zones, § 77A:6
- Definition of, § 77A:2
- Future collateral benefits, § 77:6

## **UNPROTECTED DEFENDANTS —Cont'd**

- Implications of being, § 77A:3
- Protection from liability, § 77:4
- Provisions applicable to protected and unprotected defendants
  - generally, § 77:10
  - mandatory mediation, § 77:11
  - notice and disclosure requirements, § 77:10
  - OHIP subrogated claims, § 77:12
- Public authorities
  - generally, § 77:17
  - uninsured plaintiffs and highway non-repair, § 77:9
  - vicarious liability, § 77:7
  - when is public authority an unprotected defendant, § 77:3
- Public transit, § 77A:4
- Repair shops
  - duty of care, § 76:8
  - framing the claim
    - generally, § 76:6
    - breach of contract, § 76:6
    - breach of warranty, § 76:6
    - negligence, § 76:7
  - spoliation of evidence, § 76:11
- Taverns, § 77A:5
- Vehicle manufacturers
  - generally, § 76:1; § 76:2
  - driverless cars, § 76:5
  - electronic data
    - generally, § 76:9, § 76:10
    - event data recorder, § 76:10
    - Uber case study, § 76:9
  - framing the claim
    - generally, § 76:3
    - breach of contract, § 76:3
    - breach of warranty, § 76:3
    - negligence, § 76:4
  - spoliation of evidence, § 76:11

## **VEHICLE DAMAGE, DOCUMENTATION**

- Generally, § 63:30

## **WAIVERS**

- Generally, § 85:13
- Assessing validity, § 85:5
- Consumer Protection Act, § 85:9
- Electronic, § 85:4

## **WAIVERS—Cont'd**

- Jury notice, § 85:12
- Minors, § 85:10
- Recreational activities, § 85:1
- Summary judgment motions, § 85:11
- Tickets, § 85:3
- Written, § 85:2

## **WINTER MAINTENANCE MINIMUM STANDARDS**

- Generally, § 26:1 to § 26:8

## **WITNESSES**

- Choice
  - factors, § 144:9, § 147:10
  - theme, relationship, § 144:13
- Credibility, collateral attack, § 144:12
- Credibility, impeaching through prior inconsistent statements
  - generally, § 152:1 to § 152:12
  - goals of, § 152:5
  - process for, § 152:6
  - techniques, § 152:12
- Expert
  - see Experts
- Lay
  - generally, § 105:4
  - interview checklist, APP 105C
  - order, § 144:4
- List, § 111:7
- Order
  - damages or liability, § 144:6
  - exclusion until called, § 144:8
  - factors, § 147:11
  - grouping, § 144:2
  - lay witnesses, § 144:4
  - legal restriction, § 144:7
  - plaintiff, § 144:5, § 144:7
  - primacy and recency, § 144:3
  - significance, § 144:1

## **WITNESSES—Cont'd**

- Order—Cont'd
  - strength first and last, § 144:3
- Statements, police record, obtaining, § 63:6
- Summons
  - documentary production, § 111:4
  - notice, form, APP 111A
  - oral evidence, § 111:3
  - purpose, § 111:2
  - quashing, § 111:5
  - settlement incentive, § 111:6
  - use at trial, § 111:2

## **WORKPLACE SAFETY AND INSURANCE BOARD, RECORDS REQUEST**

- Generally, APP 67M

## **WORKPLACE SAFETY & INSURANCE ACT**

- Generally, § 1E:1
- Actions barred by statute, § 1E:12 to § 1E:21
- Coverage under, § 1E:10
- Definitions, § 1E:3 to § 1E:9
- Early and safe return to work, § 1E:28
- Election by worker, § 1E:22 to § 1E:26
- Employer's obligation to re-employ, § 1E:27
- Labour market reassessments, § 1E:28
- Non-resident workers/employers, § 1E:29
- Rights of action, § 1E:11
- WSIB interplay with other benefit sources, § 1E:30 to § 1E:35

## **WRONGFUL DEATH, THEORY OF DAMAGES**

- See Damages