According to Rose

Volume 12 Issue 3 August 2016

Inside this issue:

A Piece of My Mind

On August 3, 2016 the federal government announced the Inquiry on Missing Indigenous Women and Girls. British Columbia Judge Marion Buller was named as chief commissioner for the inquiry. She described the goal of the Inquiry as being "to make concrete recommendations that will ensure the safety of our women and our girls in our communities". The commission will operate from September 1, 2016 to December 31, 2018. The Inquiry is funded by the Federal Government. The Mandate of the Inquiry is described as follows:

The commission is directed to examine and report on the systemic causes behind the violence that Indigenous women and girls experience and their greater vulnerability to that violence by looking for patters and underlying factors that explain why higher levels of violence occur.

The underlying factors could be historical, social, economic, institutional or cultural – it will be up to the commission to decide what underlying factors it will decide to examine and report on.

The commission is also directed to examine and report on the impacts of policies and practices of govern-

ment institutions. These include institutions such as policing, child welfare, coroners and other government policies/practice or social/ economic conditions.

This national Inquiry follows the Report from BC on the Missions Women Commission of Inquiry and the Truth and Reconciliation Commission's report. The national inquiry is one that is welcomed by the indigenous community however it is also one which will exclude consideration of any of the cases that authorities have found to not be due to foul play. This is one criticism of the Inquiry. There are several cases involving the death or disappearance of an Indigenous woman where the police have found that it is not due to foul play, while the families disagree and suggest that murder may have bene involved. Excluding these cases from the Inquiry means that these cases will not face the further scrutiny that the families are seeming. Excluding those cases may also skew the results and accordingly the resulting recommendations.

The report and recommendations will not be released until the end of 2018. With its release hopefully we will see some real measures put into place to change the reality for our Indigenous communities in Canada.

The Value of Pain and Suffering

One of the main components to a personal injury law suit is attributing a value to the pain, suffering and loss of enjoyment of life suffered by the plaintiff as a result of the injuries. These damages are called non pecuniary damages. The task for a judge in doing this is to assess what the individual's life was like prior to the injury and how it has changed as a result of the injury. In doing so, they take into consideration a variety of factors including the nature and extent of injury, the prognosis for resolution of the injuries, the particular impact the injuries have on that individual, the individual's age, the type of treatment that has been necessary and the length of time that the injuries impede the individual's normal life. A judge will also look at what other judges have awarded in similar cases as a guide to what should be awarded. In this section of According to Rose I review a selection of recent decisions to provide the reader with an illustration of the manner in which pain and suffering is assessed by our Courts.

McCullum v White 2016 BCSC 569 – the 25 year old male plaintiff was injured in two motor vehicle accidents, the first of which occurred in September 2008 and the second in March 2011. His injuries were primarily a soft tissue injury to his neck and mid to low back. In addition he suffered from headaches and a variety of other injuries which resolved within a few months, including a fracture of his sternum. The trial judge awarded $80,000 for non pecuniary damages after finding that at the time of trial, almost eight years after the initial injury, the plaintiff continued to experience back problems but there was a likelihood that he would continue to improve.

Pike v. Kasiri 2016 BCSC 555 – the male plaintiff was 33 years old when he was in-

jured in a motor vehicle accident which occurred six years prior to trial. His injuries included neck and back pain and also an injury to his left hip. The left hip injury had resulted in two surgical procedures prior to trial and wold require at least two more in the future. The trial judge found that the accident had a profoundly negative effect on almost every aspect of the plaintiff's life. He had been reduced from a high functioning athlete capable or working in a very physically demanding job to someone unable to participate in sports or work in a job that placed any physical demands on him or required him to maintain one position for any length of time. He had become socially withdrawn, irritable and inclined to hostile arguments and angry outbursts. The evidence established that he was unlikely to improve over time. Damages for pain and suffering were assessed at $190,000.

Nijjar v. Hill 2016 BCSC 546 – the female plaintiff was 25 years old at the time that she was injured in the first of two accidents. That accident occurred six years prior to trial. The second accident occurred two years later. The injuries suffered by the plaintiff resulted in neck and back pain as well as constant headaches. At the time of trial she experienced onion symptoms of pain in her neck, upper back and lower back. Non pecuniary damages were assessed at $90,000.

Dorsey v. Bhindi – the 49 year old female plaintiff was awarded $25,000 in non pecuniary damages after a finding that she had suffered a neck and back injury in a motor vehicle accident that gradually improved to the point that, 18 months post accident she had returned to her pre accident state.

Mayer v. Umabao 2016 BCSC 506 – the 69 year old male plaintiff was found by the trial judge to be a changed man following injury in an accident. The judge held that the plaintiff had suffered a considerable loss in his enjoyment of life, family, friends, social interests and vocational interests and awarded him $175,000 for loss of enjoyment of life. The injuries included a mild traumatic brain injury, somatoform disorder, vestibular injury and a variety of physical injuries. Some of his symptoms included dizziness, loss of valance, difficulty concentrating and focussing, memory problems, irritability and sleep problems.

Matharu v. Gill 2016 BCSC 624 – the 23 year old plaintiff was injured in a car accident which occurred three years prior to trial. The judge awarded $45,000 for pain and suffering after finding that she had suffered a moderate soft tissue strain to her neck and shoulders and a mild low back strain. She remained symptomatic at the time of trial but the expectation was that within 1 – 2 years her symptoms would fully resolve.

Kallstorm v. Yip 2016 BCSC 829 – the 44 year old female plaintiff was awarded $180,000 for pain and suffering for injuries she suffered in six motor vehicle accidents, the first of which occurred 15 years prior to trial. The trial judge found that the evidence established that for many years the plaintiff had suffered from chronic pain and depression which had waxed and waned, but which had proved to be persistent and unrelenting and would likely to continue to be so in the future. She was found to suffer from disabling neck and back pain, headaches and depression. The plaintiff had been converted from a happy, successful, active young single mother with a wide circle of friends into someone who suffered relentless pain and depression, was physically inactive, had gained considerable weight, had experienced a profound loss of self esteem, had few friends beyond family, and had been rejected by her son, and who as a result of those things at least in part, had attempted suicide on at least three occasions. The plaintiff's dreams of developing in her thirties a long-

term successful career, getting married and having several more children, would never be realized. Her ability to form a long term relationship, whether formally married or otherwise, remained significantly impaired. Her prospects for long-term happiness were poor.

Furlan v. Strata Plan BCS3202 2016 BCSC 213 – a 45 year old male was awarded $80,000 after he suffered injuries as a cyclist. Hi injuries included a right shoulder injury which required surgery to repair a labral tear and left him with constant shoulder pain. He also suffered a ganglion to his right wrist which was surgically removed, muscular pain affecting the right paraspinal mass in his low back, medical joint space pain in the right knee and the development of pain in his left knee due to alterations in his gait. He also suffered a soft tissue injury to his right ankle which had healed. The injury occurred six years prior to trial. The plaintiff continued to suffer from the effects of the injury at the time of trial and it was not expected that his symptoms would improve any further.

46 year old male plaintiff was awarded $75,000 for pain and suffering

Thorson v. Vandop 2016 BCSC 221 – a 35 year old female plaintiff was awarded $50,000 for pain and suffering following an injury which had occurred three years prior to trial. Her injuries resulted in pain in her neck and shoulder, stiffness in her upper back and headache. At the time of trial she continued to experience symptoms. The judge found that the plaintiff would continue to experience some periodic mild pain in her neck and shoulders, which would often cause headaches. Her relationship with her husband and daughter had suffered due to her irritability caused by her pain and the overall stress of her situation and her recreational activities had been curtailed.

Johal v. Radek 2016 BCSC 454 – the 70 year old female plaintiff was awarded $60,000 for injuries sustained in a motor vehicle accident four years prior to trial. The symptoms from her injuries included headaches, pain in her neck, lower back, left shoulder and arm. Her symptoms had improved over time but continued to give her periodic pain, exacerbated by cold weather and heavy work.

Lampkin v. Walls 1016 BCSC 1003 – a 46 year old male plaintiff was awarded $75,000 for pain and suffering at a trial to determine injuries from a motor vehicle accident. The accident had occurred almost 7 years prior to the trial. The injuries were a soft tissue type of injury to the plaintiff's back and neck. At the time of trial the judge found that the pain that he experienced from his injuries affected his work and his day to day activities. At the end of a work day his injuries were aggravated leaving him with little energy or patience to pursue his usual after work activities. His symptoms were unlikely to improve.

Jossy v. Johnson 2016 BCSC 1023 – the 33 year old female plaintiff was severely injured in a motor vehicle accident which had occurred six years prior to trial. The most significant injury was to her ankles, which resulted in three different surgeries to each of the ankles. She had had some improvement in the right ankle but the left ankle continued at the time of trial to limit her activities and would continue to do so in the future. She also suffered from soft tissue injuries to her neck and back and headaches which were continuing at the time of trial. The plaintiff also suffered significant emotional symptoms as a result of the injuries suffered in the accident, including severe panic attacks that resulted in hospitalization and then a two month in patient psychiatric program. The plaintiff was awarded $180,000 for pain and suffering.

Frahm v. Laci 2016 BCSC 1162 – the 31 year old female plaintiff was awarded $65,000 for pain and suffering for injuries sustained in a motor vehicle accident which occurred six years prior to trial. The plaintiff had suffered soft tissue injuries to her neck and back with resultant headaches. At the time f trial she continued to have neck and back pain and spasms and continued to experience headaches.

Kaler v. Lee 2016 BCSC 1125 – the 57 year old female plaintiff was awarded $120,000 for pain and suffering after being injured in three motor vehicle accidents six years prior to trial. The accidents caused soft tissue injuries which ultimately led to the development of chronic myofascial pain and headaches. She also suffered a ruptured blood vessel which led to a chronic sinus condition which required surgery and a 12 week recovery from that surgery. The plaintiff continued to experience psychological and cognitive symptoms due to the injures and continue to have ongoing symptoms of depression and anxiety. At trial six years after the first accident her pain remained constant and significant and continued to limit her ability to work and participate in her vocational and recreational activities.

Lu v. Huang 2016 BCSC 1146 – the 45 year old female plaintiff was injured in a car accident which occurred five years prior to trial. The judge awarded her $90,000 for pain and suffering after finding that the injuries suffered in the accident included injuries to the cervical, thoracic and lumbar areas of her spine, a disc protrusion n her lumbar spine, and bruising to her upper chest. As a result of the injuries the plaintiff suffered debilitating neck and back pain for a period of time and at the time of trial experienced constant cervical and lower back pain with associated numbness in her fingers and legs and constant headaches, problems with her mood including depression, irritability and shortness of temper. The judge found that there was only a small chance that her symptoms would improve.

Sclesa v. Taylor 2016 BCSC 1122 – the 40 year old plaintiff was injured in an accident that occurred six years prior to trial. The judge found that the injuries included cervical facet arthropathy, neck and back pain, a low back herniated disc, mood changes, depression and chronic pain syndrome. The injuries were found to be permanent with a poor prognosis. The symptoms were described as severe and pervasive enough to have thwarted her career plans and employability and interfered with all aspects of her life. Non pecuniary damages of $125,000 were awarded.

Mocahrski v. Ngo 2016 BCSC 1165 – the 35 year old male plaintiff was awarded $80,000 in non pecuniary damages after a finding by the trial judge that the injuries resulting from the motor vehicle accident which had occurred five years prior to trial included a left shoulder glenohumeral labral tear and ac joint pain, left shoulder impingement syndrome, myofascial pain syndrome affecting the neck and back and headaches. The soft tissue injuries were found to be moderately severe and the plaintiff was left with a permanent partial disability in his left shoulder. The symptoms associated with the injuries had and would continue to cause him occasional discomfort in the future depending on his activities.

57 year old female plaintiff was awarded $120,000 for pain and suffering

Valuing Future Loss of Earnings

A significant component of many personal injury cases is a claim for future loss of earnings. To be successful in such a claim a plaintiff must establish that there is a substantial possibility that a future loss of earnings will result from the injuries suffered. If that is established then the court will consider whether the plaintiff is less capable of earning income from all sources, is less marketable, or views himself as less capable of competing for work. The court will then award damages based on an assessment of the loss that has occurred. There are a variety of ways in which the loss may be assessed. One of those is based on the loss of a capital asset which views the plaintiff's income earning capacity itself as an asset and assesses the loss to that asset that results from the ongoing injury. The loss may also be assessed on a mathematical basis, taking the likely future earnings absent injury and comparing that to the likely future earnings with injury, less an amount for contingencies. The below cases provide recent examples of how the court assesses loss of future earnings:

1. Assessment on the basis of loss of a capital asset – in *Lampkin* the plaintiff was 46 at the time of trial and 39 at the time of injury. He suffered soft tissue injuries which the judge determined were permanent. He had continued working after the accident but required ongoing accommodation in the nature of the work that he was able to perform. Despite continued accommodation, he experienced pain at work and was exhausted and in pain at the end of a work day. His future loss was assessed on the basis of the loss of a capital asset with the trial judge noting that the plaintiff's strength was his asset. Hs strength had been diminished as a result of the accident on a permanent basis. Damages for loss of earning capacity in the amount of $175,000 were awarded.
2. Economic Assessment – In *Jossy* the 33 year old female plaintiff had not returned to work since the accident which had occurred six years prior to trial. Prior to being injured the plaintiff had worked as a care aide and had worked in a tree nursery. Her highest annual earnings prior to her injury were $13,000. The injuries suffered in the motor vehicle accident would prevent her from returning to her work as a care aide and wold also prevent her from working at the tree nursery due to her physical limitations. She was awarded $215,000 for loss of future earning capacity after a finding that there were a number of direct entry jobs that would be available to the plaintiff and other jobs that would be appropriate if she underwent retraining.
3. Pecuniary Loss – In *Kaler* the trial judge found that the plaintiff's chronic pain and ongoing flare ups as well as psychological, emotional and cognitive symptoms, established a real and substantial possibility that the plaintiff would suffer pecuniary loss in the future by missing time from work, losing her job and losing private counselling income. Prior to being injured in the accident the plaintiff had a private psychological counselling practice and also worked at an agency. Due to the injuries suffered in the accident, the plaintiff discontinued her private practice work. She was awarded $100,000 to compensate her for this future loss.
4. Injuries preventing pursuit of a goal – in *Lu* the 45 year old plaintiff was

awarded $250,000 for future loss of opportunity after a finding by the trial judge that the injuries suffered in the accident prevented the plaintiff from completing her CA designation.

5. Calculation taking into account likely residual earnings – in *Sclesa* the trial judge accepted that but for the motor vehicle accident the plaintiff would have gone on to become a manager at a Starbucks, earning $50,000 - $60,000 per year. Her earnings to retirement in such a role would have been $895,000. After taking into consideration the earnings that the plaintiff would have in a role as a part time barista, as well as after allowing for employment contingencies and life expectancy adjustments, the judge awarded $325,000 for loss of future earnings.
6. Limitations to advancement – in *Mocharski* the trial judge found that the injuries suffered in the accident would prevent the plaintiff from moving into another role that would result in increased earnings of $6,000 per year. The plaintiff was 35 at the time of trial. Taking this decreased earnings into consideration, as well as other potential contingencies, the trial judge awarded $75,000 for loss of future earnings.

Consequences of Failure to Mitigate

Plaintiffs have a duty to take all reasonable steps to lessen damages that they suffer following an injury or other event that results in a loss to them. In personal injury cases this means there is an obligation to undergo all treatment that will assist with recovery from injury. It also means returning to work as soon as is reasonably possible or seeking out alternate work which accommodates their injuries. In employment dismissal cases it means taking reasonable steps to find alternate employment. The burden is on the party alleging that there is a failure on the part of the plaintiff to mitigate their damages. They must prove on a balance of probabilities that there was some step that should have been taken, and that if it was taken the harm or damages suffered would be less. Below are some examples of how judges have recently dealt with claims of failure to mitigate:

- In *McCullum* the judge reduced the award for pain and suffering from $80,000 to $70,000 as a result of a finding that the plaintiff had failed to reasonably mitigate his damages after finding that if he had attended an active rehabilitation program as recommended his pain and physical impairment would have been better.
- In *Nijjar* non pecuniary damages were reduced by 15%, reducing the award from $90,000 to $76,500 due to what was found to be a failure to mitigate in the plaintiff not participating in an active rehabilitation program. The trial judge found that if the plaintiff had participated in the program she would have recovered more quickly and more fully.
- In *Lampkin* non pecuniary damages were reduced by 10% for a failure to pursue a recommended active rehabilitation program.

Can you rely on another's indication for you to turn?

Traffic can be a real issue in Vancouver and it is not uncommon to be in stop and go traffic. Traffic can often be backed up and if you are attempting to make a left hand turn in backed up traffic, it is common to have another motorist "wave" you through or indicate to you that you can turn in front of them. But if an accident happens when you are doing so, who is at fault?

A recent British Columbia Supreme Court decision considered this exact situation. In Ibrahim v. Ansari 2016 BCSC 1150 the plaintiff was attempting to make a left hand turn through three lanes of traffic. Traffic was backed up and traffic in the middle of the three lanes was stopped. The driver of the vehicle in that middle stopped lane waved the plaintiff through, indicating that she could make the left hand turn in front of her. The plaintiff's view of the curb lane was blocked or obstructed by the traffic that was stopped in the curb lane. The plaintiff made her left hand turn and in the process struck a vehicle that was travelling in the curb lane. The trial judge found her to be at fault for the accident.

So what did the plaintiff do wrong? Fault was attributed to her primarily for proceeding when her view of the curb lane was obstructed. She proceeded when she could not see whether it was safe to do so and when the vehicle in the curb lane was an immediate hazard. The vehicle travelling in the curb lane had the right of way and the onus was on the left turning plaintiff to yield that right of way.

Non Competition Clauses Enforceable only in Exceptional Circumstances

In many employment contracts, employees will be asked to agree to a non competition clause. Such clauses will limit the employees ability to work in the industry or in competition with the employer after the employment has come to an end. These clauses are also often accompanied by a restrictive covenant, preventing the employee from using information that they gain during their employment after the employment has come to an end.

An interesting recent decision in the British Columbia Supreme Court provided the opportunity for the court to comment on these types of clauses, particularly in the context of the modern world and the ready accessibility of information to everyone on the internet. In the case of 2909731 Canada Inc. v. Toews 2016 BCSC 852, Mr. Justice Weatherill commented that non-competition clauses are enforceable only in exceptional circumstances. He declined to give any effect to the non-competition clause in this case, finding that exceptional circumstances did not exist. He also pointed to several reasons that the restrictive covenant would not be enforceable including:

1. The use of the phrase "similar field" which was not defined and was ambiguous;
2. The plaintiff did not have a proprietary interest that was entitled to protection because there was nothing about its business that was unique or specialized;
3. The plaintiffs master contact list was nothing more than a compilation of names and contact information which was readily available in the public domain.

This decision illustrates the difficulties that employers will face in the modern age trying to restrict competition from former employees and highlights the need for carefully crafted non competition and restrictive covenant agreements. It also demonstrates for employees that they may not be restricted in the way that they anticipated.

Employee Liability for Failure to Provide Reasonable Notice

A recent British Columbia Court of Appeal decision confirmed that an employee has a duty to provide reasonable notice when they quit their employment. This duty is implied into the contract of employment and the failure to provide reasonable notice of leaving a job can result in an award of damages against the departing employee.

The case of *Consbec Inc. v. Walker* 2016 BCCA 114 considered a variety of issues including the employer's claims against the departing employee. At trial, the trial judge awarded the employer over $56,000 for the employees failure to provide reasonable notice. This award was to cover the costs of sending a temporary manager to replace the defendant and to relocate a new permanent manager.

The Court of Appeal confirmed the implied term that the employee must provide reasonable notice but found error in the manner in which the trial judge dealt with this claim. The Court of Appeal said that the trial judge should first have determined the amount of notice that the departing employee should have given. The second step should have been to determine what damages, if any, the employer had suffered due to the failure to give notice. The Court of Appeal stated that the main purpose of the notice requirement is to give the employer a reasonable time to adjust to the employee's departure. They found that reasonable notice given the nature of the employee's position, was one month. The court of appeal then went on to find that the cost of putting in place a replacement manager for that one month time period was less than what the employer would have had to pay the departing employee during the period of notice and that therefore no damages were suffered by the employer as a result of the failure to provide reasonable notice.

Occupier's Liability

There are certain situations where an "occupier" may be found liable for injures that are suffered on the premises. An occupier is the party that has care or control of the premises. Just because an injury occurs does not mean that the occupier will be liable for the injury. Rather, the court will consider whether the occupier has taken reasonable care to protect individuals using their premises from an unreasonable risk of harm

Recently a judge of the British Columbia Supreme Court had the opportunity to assess whether an occupier had taken reasonable care. In *Furlan v. Strata Plan BCS3202* the plaintiff cyclist was injured when navigating from a roadway to a pathway. He failed to see a curb that separated the two and as a result crashed his bike. The Court found that the defendant occupier's had breached the standard of care because the curb posed an objectively unreasonable risk of harm. The basis for this finding was:

1. The curb was in a place where a curb was not reasonably anticipated
2. The curb was the same colour and about the same width as the pathway and was therefore not readily visible;
3. The defendants knew that the curb was on a bike route;
4. The defendants knew or ought to have known that the curb needed to be visible to cyclists;
5. The curb was not clearly visible and at times was shaded by the shrubbery, trees and residential towers.

All of these factors led to a finding by the trial judge that the defendants had failed to take reasonable care to protect people us-

ing the pathway from unreasonable risks.

In any occupier's liability case the facts are paramount in determining whether the occupier will be liable or not. The occupier is not an insurer and for liability to result from use of the premises it falls to the plaintiff to establish that the occupier failed to take reasonable care to protect people from unreasonable risks.

Informed Consent and Causation

Medical malpractice cases are among the most difficult to prove. A bad outcome following a medical procedure does not mean that a doctor was negligent. A delay in diagnosis does not mean that a doctor is negligent. And a failure to advise of risks associated with a procedure does not always mean that a medical professional will be liable for the harm or damages that result.

In *Brodeur v. Provincial Health Services Authority* 2016 BCSC 968 the trial judge had the opportunity to review the law relating to informed consent. In this decision the mother of the plaintiff attempted a natural birth after an earlier caesarian section. There are certain risks associated with doing this and unfortunately in this case, those risks became reality. In assessing the claim, the trial judge reviewed the law relating to "informed consent". That law requires that if a risk is material, then a patient must be informed of the risk. To be successful in a claim on this basis however, the plaintiff must not only prove that informed consent was not obtained, but also that the patient would not have given consent if she had been adequately apprised of the material risk. The trial judge concluded the analysis relating to informed consent by stating that causation is not proven if the patient would have made the same decision in any event. Further it must be established that the material risk that was not adequately disclosed is, in fact, the cause of the injury.

This case provides a great illustration of the difficulties faced by plaintiffs in pursuing medical malpractice cases. It is an uphill battle, particularly when the claim is based on the failure to have been properly advised of the risks associated with a procedure. To be successful in such a claim the plaintiff has to prove:

1. That the risk associated with the procedure is a material risk – this is done either by showing that statistically the risk is significant or that if it is not statistically significant that that the risk is serious enough that it should have been disclosed;
2. That there was a failure to advise of the material risk;
3. That if they had been advised of the material risk they would not have proceeded with the procedure; and
4. That the risk that they were not advised about caused the harm or damage that they are not complaining of.

If all of the above are not established the claim will not be successful.

Our Mission

At Rose Keith Law Corporation our mission is to exceed the expectations of our clients by:

- Responding promptly
- Managing all matters in an efficient, caring and proactive manner
- Communicating clearly and regularly
- Doing all things with an aim to achieving the end result desired by our clients

Left Turning Vehicles – Who's at Fault

Many of the cases before our courts where a judge is asked to determine fault, involve left turning vehicles. While the determination of who is at fault really turns on the particular facts, especially when it involves a left turning vehicle, there are a few factors which can be determinative.

Section 174 of the *Motor Vehicle Act* is the principle piece of legislation which is relevant to a determination of liability in a left turning situation. That section of the *Act* provides as follows:

> When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

The primary question for determining fault is whether an oncoming vehicle was an "immediate hazard" or not. If there is a traffic light, the color of the light at the time of the impact is one of the most important factors. An important part of the analysis is the location of the vehicles at the time that the light turned amber and whether a motorist who is intending to travel straight through an intersection can safely bring his or her vehicle to a stop once the light has turned to amber. An amber light for a motorist intending to travel straight through an intersection requires that motorist to bring their vehicle to a stop if they can do so safely. If there is more than one lane of travel going through the intersection, if other motorists were able to come to a safe stop for the amber light there will be a heavy onus on all motorists to do so. An amber light in this circumstance changes a straight through motorist from a dominant to a servient motorist and requires them to yield the right of way to left turning motorists.

An amber light for a left turning vehicle may be the time when that motorist is required to clear the intersection. A left turning motorist has an obligation to clear the intersection once it is safe to do so. They are the servient motorist and must yield the right of way to other vehicles. That shifts however once the light changes to amber and the left turner is now the dominant driver and the motorist travelling straight through the intersection must yield the right of way to the left turner.

There are endless examples of how left turn cases are analysed by our courts. A recent one was *Swieczko v. Nehme* 2016 BCSC 399. In this case the defendant was travelling westbound in the curb lane and the collision occurred as the plaintiff was turning left from the eastbound turn lane on an amber/near red light. The trial judge found the defendant to be 100% responsible for the accident. Her analysis described the plaintiff as the left turning dominant driver and the defendant as the straight through driver was servient. She found that the defendant was thus obliged under s. 174 of the *Motor Vehicle Act* to yield the right of way to the plaintiff.

Our Core Values

We will seek for all clients the highest protection of the law possible and will do so with respect, integrity, compassion and transparency.

Rose Keith
Trial Lawyer

1486 West Hastings Street
Vancouver BC V6G 3J6

Phone: (604) 669-2126
Fax: (604) 669-5668
Email:
Rose:
rkeith@rosekeith.bc.ca
Romila:
romila@rosekeith.bc.ca
Artak:
artak@rosekeith.bc.ca

If you would like to receive this publication via email, please contact our office and your name and email address will be added to the distribution list. If you do not wish to receive this publication, please contact our office and your name will be removed from the distribution list.

NOTABLE QUOTES

"Don't wait until everything is just right. It will never be perfect. There will always be challenges, obstacles, and less than perfect conditions. So what? Get started now. With each step you take, you grow stronger and stronger, more and more skilled, more and more self-confident, and more and more successful."

Mark Victor Hansen

"Speak up. Believe in yourself. Take risks." *Sheryl Sandberg*

"Inaction breeds doubt and fear. Action breeds confidence and courage. If you want to conquer fear, do not sit home and think about it. Go out and get busy."

Dale Carnegie

"All the great speakers were bad speakers at first." *Ralph Waldo Emerson*

"Do the best you can until you know better. Then when you know better, do better."

Maya Angelou

"Always remember you are braver than you believe, stronger than you seem, and smarter than you think." *Christopher Robin*

OUR AREAS OF PRACTICE

Depending on your experience with our office you may or may not be aware of the types of problems that we routinely assist clients with. We have experience assisting clients with the following types of problems:

- injuries resulting from motor vehicle accidents
- injuries resulting from slips and falls
- injuries resulting from sexual abuse
- loss of employment
- discrimination and harassment
- damages resulting from breach of contract

Referrals in any of the above areas are welcome. If you have friends or family that require legal assistance, please refer them to our office. If we are unable to help them we usually know someone who is able.

ROSE KEITH
TRIAL LAWYER