



Environmental Law Centre Clinic

**Murray and Anne Fraser Building
University of Victoria
P.O. Box 2400 STN CSC
Victoria, BC, Canada V8W 3H7
www.elc.uvic.ca**

Casual Carpooling: A Background Guide

Researcher: Shannon Gibson

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CASUAL CARPOOLING: A BACKGROUND GUIDE

A black and white photograph of a long, straight road stretching into the distance. The road is flanked by fields and utility poles. The perspective is from a high angle, looking down the center of the road. The road has a dashed white line down the center and solid white lines on the sides. The fields on either side are flat and appear to be agricultural. The sky is not visible, suggesting a high-angle shot.

**Compiled by:
Spring**

**Shannon Gibson
2008**

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Overview

Summary of Project

Over the past few years, Pender Island has experienced significant population growth and a corresponding increase in road traffic. This increase in traffic is placing growing pressure on the limited road system on the Island. A community group called Paths on Pender is trying to come up with alternative approaches to transportation on the Island. Although a bus system was recently established on neighbouring Salt Spring Island, given Pender's current population (estimated at just over 2000, with wide seasonal variations), a bus system would likely be uneconomical. Therefore, Paths on Pender would like to explore the feasibility of establishing "car stops" along roads on the Island.

Car Stops would be clearly identifiable spots placed at strategic locations along the road network where vehicles would be able to safely pull over and pick up individuals waiting for rides. The stops would feature a "car stop" sign and a legal disclaimer to indemnify drivers. Paths on Pender has currently identified about 26 spots around the Island where car stops could potentially be located. However, there are concerns about legality, liability, indemnity and other issues, and questions about how such systems have been implemented elsewhere.

Environmental Issues

The aim of the car stops is to combat the growing traffic problems on Pender Island by providing a simple, uncomplicated way for people to travel around the Island. It could help to reduce the number of single occupancy vehicles and reduce car parking problems at key locations on the Island such as the ferry terminal and the Driftwood, the main shopping area. Further, increases in the price of gas and diesel fuel mean that many residents are looking for ways to reduce their use of vehicles. Eventually, when the idea is accepted, it could also help promote a sense of community spirit.

There are also health and safety issues at stake. As the number of pedestrians, cyclists, scooters, cars and other traffic increases, there is also a potential for a growing number of accidents on the narrow and dangerous roads.

Legal Issues

First of all, hitchhiking is illegal in BC, but is generally only enforced along motorways. The police on the Island have verbally indicated that they do not view the proposed car stop system as being a problem. The project will

involve an assessment of the current laws and regulations governing hitchhiking and the ridesharing. Further, this project will research similar transportation or carpooling systems that have been adopted by other communities.

There are also a number of potential liability issues surrounding the proposed car stop system. Paths on Pender is interested in developing a disclaimer to be posted at each of the car stops. The project will look into the possible content of such a disclaimer and whether it would carry any legal weight. As well, Paths on Pender would like to know if they would face liability as the organizing group in the event of a serious accident and whether they could also be indemnified by the waiver. The project will also examine whether such a system would impact on the insurance of drivers.

Casual Carpooling

What is Casual Carpooling?

The car stop system proposed by Paths on Pender is not a new idea. In fact, the origins of the idea can be traced back to Washington, DC in the 1970s. The system is most commonly referred to as "casual carpooling", but is also known as "dynamic ridesharing", "instant carpooling" or "slugging".

The casual carpool idea emerged due to the large number of drivers who must commute long distances on a regular basis. Highways are often set up with carpool or HOV lanes, which can be used by commuters with two to three or more passengers. These theoretically make a commute go more quickly. Also, many toll bridges waive the toll for those who are carpooling, which results in a little money saved by the driver.

Instead of the more formal carpool arrangements between friends or co-workers, a casual carpool is informally arranged. People often set up Internet sites in order to quickly find a ride to the city they need, and the riders don't have to pay the drivers any money. Usually the only thing they need is to be at a designated location by a certain time, so the drivers do not have to go out of their way to pick up people in diverse areas. Casual carpool locations are usually next to freeway entrances. It's often a first-come, first-served deal. The casual carpool has worked well in suburban areas with a large commuting population that one can generally quickly find a ride to a major city.

Casual Carpooling Success Stories

Casual carpooling has proven successful on the Oakland Bay Bridge in the San Francisco Area, the Shirley Highway corridor in the Virginia /

Washington, D.C. area, and to a lesser extent in Houston, Texas. In each of these areas, individuals form instant carpools on a daily basis to take advantage of the travel time savings afforded by HOV lanes which require vehicle occupancy of three or more. Individuals wanting rides gather at park-and-ride lots and other locations and are picked up by drivers going to the same destination.

In all of these examples, casual carpooling was initiated by commuters and continues to operate without any formal planning or sanction by agencies or organizations. One likely reason for the success of casual carpooling is the ease and speed with which a ride may be obtained

Despite its presence for more than three decades, casual carpooling has yet to expand beyond these three cities. An important similarity among these three locations is that the HOV lanes require three or more occupants, whereas the vast majority of HOV lanes in the United States and Canada allow vehicles with two or more occupants. This higher occupancy requirement plays a significant role in the formation of casual carpools.

Washington, DC

Casual carpooling has been around in the Northern Virginia and Washington, DC area for more than 35 years. When the HOV lanes on the Shirley Highway (I95) opened in 1971, the first "slug" lines began to emerge. With these high occupancy lanes being strictly enforced, drivers had to abide by the HOV-4 rule (later changed to HOV-3) or pay stiff fines.

When a driver did not have enough passengers for the HOV, he would pull up to a line of commuters waiting for the bus and offer a ride to anybody in the line. Faced with waiting in the summer heat or winter cold for a bus that could be late or full to capacity, some commuters began opting for the car. Soon word began to spread as drivers found an easy solution to meeting the HOV requirements, and bus riders found a faster, cheaper alternative to the bus. It took some time for the word to spread, but soon enough people knew which bus stops catered to the offers of free rides.

Today, the casual carpooling system in Washington is the most widely used and highly developed system of its kind. Slug-Lines.com provides a useful online resource for people hoping to learn more about casual carpooling in the Washington area. The site provides maps of established "slug lines", message boards for carpoolers to discuss any incidents or problems encountered, reports of lost and found items, rules and etiquette for participants and news and updates relating to casual carpooling.

San Francisco, California

Casual carpool sites for rides to downtown San Francisco have been in existence in the East Bay for more than 20 years. People meet at designated spots for pick-up, mostly bus or subway stations. Most pick-up areas have a "connecting" or designated drop-off spot in downtown San Francisco.

Morning carpools are able to bypass the long delays at the Bay Bridge toll plaza. In the evenings they can take advantage of the carpool-only on-ramp to the Bridge, and carpool lanes on I-80 and I-880. The financial benefits are good: carpooling exempts car owners from the \$4 Bay Bridge toll (about \$1,000 a year in savings). The "hitch-hiker" saves money from not taking a trip on the BART transit system (costs about \$3 to \$4 depending on your final destination).

Carpoolers can check out a web site called RideNow.org to see if any bad drivers/trips have been reported. As far as anyone seems to know, over the history of East Bay casual carpooling, there have been no untoward incidents. The "three-per-car" requirement has helped. A little caution and common sense also have helped.

Houston, Texas

The casual carpooling phenomenon appears to have begun more recently in Houston than in Washington or San Francisco. Although no documented evidence exists to pinpoint when casual carpooling began in Houston, newspaper interviews of casual carpool users indicate that the mode has been used since 1990.

Casual carpooling in Houston occurs exclusively on the city's two high occupancy/toll (HOT) lanes (the only two HOV lanes that restrict usage to three or more occupants during part of the day). Pickup occurs in three locations: Kingsland Park-and-Ride lot, Addicks Park-and-Ride lot, and Northwest Station Park-and-Ride lot. Each park-and-ride facility is used primarily for transit and offers direct-connect ramps to a barrier-separated HOV lane.

Most casual carpools form between 6 A.M. and 9 A.M. As bus headways increase significantly after 9 A.M. and most commuters have already traveled to work, the use of casual carpools decreases significantly, dropping to near zero.

Etiquette and Rules

Basic Consideration for Drivers and Riders

Casual Carpooling has its own set of etiquette that you won't find written anywhere. Most of the rules are just basic courtesies, but others are truly unique to slugging. Just like other rules of etiquette, the slugging rules are only casually enforced.

- **Slugs do not talk.** This is not completely true, because there are times when conversation is acceptable, but normally slugs must wait for drivers to initiate it; otherwise, there is no talking.
- **No conversations of religion, politics, or sex.** Enough said...
- **Cell Phones** - Slugs, do not carry on a conversation while commuting. The very short, "Hey, I'm on my way" is okay, but do not have a long conversation about what you did last weekend!
- **Avoid Personal Hygiene Care** - both drivers and slugs should avoid things like: putting on make-up, combing hair, etc.
- **There is no smoking or eating by the driver or slug.**
- **A slug does not ask to change the radio station or adjust the heat or air conditioning.**
- **Normally, the slug does not open or close the window.**
- **Both slugs and drivers usually exchange a "Thank you" before and after the ride.**
- **Slugs should never take a ride out of turn.** BUT drivers have the option to pick a particular slug not at the front of the line. This situation usually happens when a driver sees a friend in line and simply calls for that individual.
- **Seat Belts** - it's understood that both drivers and passengers should buckle-up. Drivers please allow the slugs time before leaving the parking lot.
- **Consideration** - both drivers and slugs should use *common* consideration during the commute. For example, drivers should try to use a relatively clean car, avoid heavy use of perfumes or colognes, and keep the radio at a moderate level.

Source: <http://www.slug-lines.com/Slugging/Etiquette.asp>

Safety Considerations

Some rules have also been developed in order to help mitigate certain safety concerns that come along with accepting rides from strangers:

- **Slugs have the right to pass or forfeit a ride if they do not like a particular car.** Let's say a couple of rough-looking characters pull up and your gut feeling tells you this ride isn't safe. PASS. There are plenty of other rides that will pass your own personal "gut" check.
- **The line does not leave a woman standing alone.** Call it chivalry or simply thoughtfulness towards the safety of others, but this rule has certainly helped many women feel safer. Notice that I said "the line," because the rule applies to both men and women. It works like this: If the line has three people left in it and the driver needs only two in order to meet the HOV-3 requirement, the "line" should ensure that a woman is not left standing. Either a man forfeits his place in line so that he is left standing, or the ride is declined until another slug arrives. Or, it is acceptable to ask the driver if he will take more slugs in order to clear the line. Whatever the situation, the intent is not to leave a woman standing alone on the street, especially at night.

Source: <http://www.slug-lines.com/Slugging/Etiquette.asp>

Monetary Considerations

Finally, since the casual carpooling systems in urban centres have been built up around the idea that the drivers benefit from being able to access the HOV lane, passengers do not provide any payment to drivers.

- ♦ **No money, gifts, or tokens of appreciation are ever offered or requested.** A driver doesn't expect the riders to help out with gas money. The relationship between the driver and rider is mutually supporting. The driver needs the slugs just as much as the slugs need the driver. If a driver wants help with the gas, he should organize his own car pool. He shouldn't ask a slug to pitch in for helping him access the HOV!

Source: <http://www.slug-lines.com/Slugging/Etiquette.asp>

Casual Carpooling in Canada

So far, there are no documented cases of casual carpool systems being established in Canadian cities. However, Qualicum Beach on Vancouver Island is currently planning the implementation of a casual carpooling system very similar to what is being contemplated for Pender Island. Further, in 2001, the UBC TREK Program Centre (UBC's Transportation Demand Management Department) prepared a proposal recommending the university organize a casual carpooling system. To date, no such program has been implemented at UBC. Nevertheless, the proposal provides a number of useful recommendations and considerations for establishing a casual carpooling program.

Qualicum Beach Good Samaritan Ride Program

On Friday, March 28th, I conducted a phone interview with Councillor Mike Wansink, who serves on the Qualicum Beach Town Council. He indicated that he would be more than happy to answer any future questions about the Good Samaritan Ride Program and share ideas and insights with Paths on Pender. His contact information is:

Phone: (250) 752-4757

Home e-mail: mikewansink@shaw.ca (preferred address)

Work e-mail: mwansink@qualicumbeach.com

The information below is also based on the March 14th, 2008 Times Colonist article "With buses gone, Qualicum seniors will soon be 'hitching'" by Sandra McCulloch. Full article available at:

<http://www.canada.com/victoriatimescolonist/news/story.html?id=b788b5d8-1f16-4910-8e0f-71410c88fe7f&k=15699>

Background

Qualicum Beach is a small Vancouver Island town with a population of about 8500. Although the town used to have a limited bus system, BC Transit recently stopped service due to low ridership. However, this presented a problem for the aging population, 20 per cent of which is made up of seniors who don't drive.

To combat this problem, Councilor Mike Wansink began planning a pilot project that matches people needing a lift with drivers going in the same direction. Participants can wait for a ride at designated pickup spots. Colour-coding on cars and identification cards carried by riders will help match up people.

Wansink based the "Good Samaritan Ride Program" on the casual carpool system used in Washington, D.C., which he used to participate in while there

on a university fellowship. Wansink hopes a scaled-down program will work for Qualicum Beach. Of course, the success of the program will ultimately depend on a critical mass signing up for the program both as drivers and riders. Transit buses are inconvenient because they stick to a schedule that may not meet riders' needs, but this program could be an improvement as long as enough people embrace it. Wansink is aiming to get at least half of the population of Qualicum Beach registered in the program.

There are a number of benefits to the Good Samaritan Ride Program. Since the transit system was discontinued, many seniors in the community who cannot drive have faced difficulty getting around. Wansink hopes that the program will help improve the mobility of these residents and reduce the need to hire a taxi, which can be very expensive. In addition to the obvious environmental benefit of reducing the number of cars on the road, there is the potential to reduce traffic and parking problems in the town centre. With the price of gas steadily increasing, Wansink also hopes that even residents with cars will choose to use the Good Samaritan Ride Program to save money. Finally, as the program becomes more widely accepted, Wansink believes that it could help foster a sense of community among residents.

Importance of Convenience

The convenience of the program for both riders and drivers will be a critical factor in ensuring that the program can attract and maintain a sufficient ridership. Wansink and his staff are currently researching the best placement for pick-up spots. He hopes that most riders won't have to walk more than a few blocks to reach a designated pick-up spot. The placement of stops in the outlying areas of town where there is lower density will be more challenging.

In terms of matching riders and drivers, Wansink notes that picking people up going into the town centre will be less challenging because most riders and drivers will be headed in the same direction. Picking up people heading away from the town centre will be more challenging since riders and drivers will be dispersing in many different directions to the outlying areas of town. To help address this challenge, Wansink has proposed that drivers be equipped with colour coded signs that indicate the general area that they are headed towards. When dropping people off, drivers will have the option of dropping the passenger at a designated stop or even at their front door, which would greatly increase the convenience of the program for riders.

Registration and Identification

Councilor Wansink noted that when he first presented the idea, the initial reaction was often one of concern about the safety and security of riders and drivers participating in such a program. To address this concern, Wansink

proposed that all riders and drivers be required to register for the program and be issued photo IDs.

Wansink points out that based on his experience with and research on the casual carpooling program in Washington, DC, that there has never been any reports of riders or passengers being harmed through their participation in the program. This is despite the fact that Washington, DC has one of the highest crime rates in the US. Accordingly, he believes that in a small, quiet town like Qualicum Beach, any threat to participants in the Good Samaritan Ride Program will be almost nonexistent. Further, if participants ever feel uncomfortable, passengers retain the right to refuse a ride with a particular driver and the drivers may choose not to pick up a particular passenger.

Riders will have to pay a one-time charge of \$15. In order to encourage a higher number of cars in the program, there is no registration cost for drivers. If a resident intends to participate as both a driver and a rider, they will have to pay the \$15 registration fee.

In order to register, drivers must prove that they have an unrestricted driver's license and that they possess at least \$2 million dollars in third party liability insurance. As part of registration, all riders and drivers will be required to sign a waiver exempting the Town of Qualicum Beach from liability. This waiver is in the process of being drafted by legal counsel. Registration will likely be on a one-time basis, with the need for renewal to be discussed in the future.

Administration and Cost Considerations

The program will be directly administered by the town's administrative staff and there are no plans to hire additional staff to help administer the program. The \$15 dollar registration fee from riders will cover the cost for rider IDs, driver IDs and car signs and administration costs. Each ID will cost just under \$5. The town is also contributing \$5000 to cover the startup cost of installing signs around town. To reduce installation costs, Wansink is consulting with BC Hydro to install signs on existing hydro poles in order to reduce the additional cost required to install new sign posts.

Due to the short time frame in which the Good Samaritan Ride Program is being implemented, Wansink has not had the opportunity to apply for any government grants to help fund the program. However, he knows that such grants exist and suggests, if time permits, that Paths on Pender apply for such grants from the federal and/or provincial government.

One of the first hurdles that Wansink encountered in planning the program was convincing ICBC that the Good Samaritan Ride Program would not

present a risk of increased liability to the insurer. However, after explaining the nature of the program, Wansink was able to reach an understanding with ICBC that the program was really no different than a person driving their neighbour into town and back and presented no additional liability to ICBC.

The only rule is that no money can be exchanged, not even to cover the cost of gas or operating the vehicle, and this rule is to be strictly enforced. As soon as there is any exchange of money or goods this changes the nature of the transaction. Accepting money from passengers as part of an organized program can impact the rate class that a vehicle is registered under and impacts insurance rates. Further, accepting money may also raise issues of licensing, since common carriers (such as taxi drivers) who accept money in exchange for giving a ride are subject to additional regulation.

Promotion

In order to promote the program to local residents, a number of informational articles about the program and how to register have been run in the Noteworthy, a locally distributed newsletter. A website on the program is also being developed and will likely be launched in the next few weeks. The program is also being promoted through posters in the Qualicum Beach area.

The program has received a significant amount of media attention in the last few weeks. News articles have been run in the Times Colonist and a number of other local and BC newspapers. The story has been covered on the BC Almanac on CBC Radio and by Jack FM. A Channel ran a very good TV news segment on the program as well. Wansink also stated that he has received a great deal of interest in the program from many individuals and organizations from outside of BC, some even as far away as New Zealand!

The pilot program is tentatively scheduled to launch on July 1, 2008. Initial registration for the pilot program will begin in April and run until July. If the pilot program is successful, new participants will be able to register for the program on an ongoing basis.

Wansink hopes that if the Good Samaritan Ride Program is a success in Qualicum Beach, that it can serve as a model for the implementation of similar programs in other communities, such as Pender Island!

UBC Casual Carpooling Proposal (July 2001)

Excerpts from the proposal are reproduced below. The full proposal can be accessed at:

http://www.upass.ubc.ca/research/pdf/RidesharingReport_jul01.pdf

OBJECTIVES

A dynamic ridesharing program at UBC would aim to achieve the following objectives:

1.) Reduce the risks associated with hitch-hiking

In the face of the present transit strike, students are increasingly turning to hitchhiking as mode of transportation. The risks associated with taking rides from strangers can be mitigated through a more formalized program which limits participation to members (staff, students, and faculty) of the UBC community, and by providing safety tips to participants.

2.) Convert single occupancy vehicles to carpools

The greatest potential for reducing total vehicle trips to UBC lies in increasing the occupancy of vehicles already coming to campus. Because many students have variable, non-standard schedules, traditional carpooling is often not an appealing transportation option. Dynamic ridesharing is a more flexible form of carpooling, and could be instrumental in helping UBC achieve its transportation demand management objectives.

3.) Save commuters money

UBC commuters would save on the cost of driving by engaging in dynamic ridesharing. Passengers would be encouraged to give drivers a monetary contribution, the suggested level of which would be established and promoted by TREK.

4.) Foster community development

Dynamic ridesharing creates new opportunities for interaction among members of the UBC community. Interactions based on the principle of mutual aid have the potential

RECOMMENDATIONS

...the following recommendations are proposed for the implementation of a casual carpooling / dynamic ridematching system at UBC:

1. UBC should develop, implement, and support a Casual Carpooling Program as soon as possible.

Casual carpooling, without any supporting ridematching system, has proven successful in several settings, and can be implemented without significant cost. A casual carpooling program should be implemented immediately, before the end of the current transit strike if possible.

People looking for a ride would be encouraged to display hand-held, 8 ½ by 11 inch signs showing their destination. A customizable sign template could be printed from the TREK website, and durable foam-core signs could be

ordered through TREK. Drivers could display their destinations on a windshield sign, also provided by TREK.

Those seeking a ride home would stand at high-traffic locations throughout campus, such as parking lot exits. Those coming to UBC would position themselves at the sides of arterial roads serving UBC commuter traffic.

...

3. Safety features and guidelines should be developed and communicated to program participants.

Individuals participating in any ridesharing situation assume some personal risk. This risk, and participants' liability, must be communicated clearly. In order to minimize risks, the following safety features could be included in a ridematching and casual carpool program:

- ◆ Users of the internet ridematching system should have the option of, and be encouraged to, record ride matches on the system. This would create a log of the individuals sharing a ride, and the license plate number of the car involved.
- ◆ Provide free telephones at casual carpool pick-up locations. Ride-takers would be encouraged to phone (preferably) someone they knew, or (if that is not possible) a central number, and leave a message with the time and the license plate number of the car they are entering.

Participants should also be encouraged to adhere to a few simple safety guidelines. These should include:

- ◆ Do not enter a car, or take a passenger, without seeing a UBC ID card. You may wish to take note of the other person's ID number.
- ◆ Always take note of the license plate number of cars you enter.
- ◆ When taking a matched ride, if the license plate of the car that meets you is not the same as that shown on the system, do not get into the car.

Participants will primarily be UBC faculty, staff, and students. Casual carpooling programs elsewhere in which the participants are of a similar socio-economic group (e.g. white collar workers in the Washington D.C. area) have been successful because of the lack of perceived risk in sharing a ride with those 'similar' to oneself.

4. Incentives should be provided to encourage driver participation.

Many ride-sharing programs, including the Commuter Connections database, suffer from a surplus of riders and shortage of drivers. One potential incentive would be a "suggested contribution", promoted by UBC TREK, which passengers would be expected (but not required) to pay drivers. This amount would be approximately equal to the bus fare charged for the same trip.

Additionally, TREK could provide rewards, such as free day parking passes, bus tickets, TREK paraphernalia, and gift certificates, to drivers registered in a dynamic ridesharing database.

Legality of Casual Carpooling

One of the first issues that often arises when discussing the concept of casual carpooling is its comparison to hitchhiking. Although many people involved with casual carpooling insist that there is a distinct difference between the two practices (largely because hitchhiking has negative connotations), there are nonetheless a number of similarities between hitchhiking and casual carpooling. Most obvious of course is that both hitchhikers and casual carpoolers solicit rides from strangers. This presents a number of potential safety concerns.

The danger from hitchhiking that tends to draw the most media attention is the concern that a hapless hitchhiker will be kidnapped, raped or even killed by a depraved driver, or perhaps that the driver will be carjacked by a shady hitchhiker. However, the most real dangers to hitchhikers are traffic accidents and drivers under the influence of drugs or alcohol. These two risks affect not only hitchhikers, but all people. It's just that those who travel the roads on a regular basis increase their odds of having to deal with either situation (this goes for daily urban joggers and bicyclists, too). Of course, hitchhikers can minimize the risks by standing a respectable distance from the road, getting a feel for the area and being careful about choosing rides.

Interestingly enough, as far as anyone can tell, there have been no reports of commuters being injured or harmed through their participation in the casual carpool systems in Washington, San Francisco and Houston (aside from occasional car accidents that are a routine concern of any commuter). The numerous rules and etiquette that have developed alongside these casual carpooling systems have likely helped to minimize many of the safety concerns associated with the practice.

When discussing the implementation of a casual carpooling system, it's important to examine the laws surrounding hitchhiking and whether they would serve as an impediment to the implementation of a casual carpooling

program. Although hitchhiking is technically illegal in most US states, none of the established casual carpooling programs in the US have reported any incidents of police concern over the practice. The only fines that are commonly issued are to drivers blocking driveways or parking lot entrances when waiting in line to pick up passengers. Nevertheless, BC has its own laws surrounding hitchhiking which should be examined.

Statutory Prohibition Against Hitchhiking

The ***Motor Vehicle Act, R.S.B.C. 1996, c. 318*** (the "*Motor Vehicle Act*") regulates highways in British Columbia. Section 182 of the *Motor Vehicle Act* provides as follows:

Pedestrian walking along highway

182 (1) If there is a sidewalk that is reasonably passable on either or both sides of a highway, a pedestrian must not walk on a roadway.

(2) If there is no sidewalk, a pedestrian walking along or on a highway must walk only on the extreme left side of the roadway or the shoulder of the highway, facing traffic approaching from the opposite direction.

(3) A person must not be on a roadway to solicit a ride, employment or business from an occupant of a vehicle.

(4) Except for a person who solicits a ride in an emergency situation, a person who contravenes this section commits an offence.

Subsection (3) covers hitch hiking and says that a person "must not be on a roadway to solicit a ride". **Therefore, not only is actually putting out your thumb in an attempt to obtain a lift illegal, but merely being on a roadway for the purpose of soliciting a ride is illegal.** In other words, just because the police officer does not see you with your thumb out does not mean that you will be able to escape conviction for hitchhiking. If you are standing beside your backpack on a highway onramp in the middle of nowhere, the court will likely infer that you were on the highway for the purpose of soliciting a ride.

On the plain wording of s. 182, hitchhiking on the roadways of highways in British Columbia is illegal, except in emergency situations.

How do you know if you are on "a roadway"?

Section 183(2) says that a person must not be on a "roadway" to solicit a ride. Roadway is defined in s. 119(1) of the *Motor Vehicle Act* as follows:

"roadway" means the portion of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and if a highway includes 2 or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of them collectively;

This definition indicates that "roadways" are objects that are merely part of other larger objects i.e. highways.

Consistent with the above definition, the court in *R. v Gordon*, 2003 BCPC 181 [*Gordon*] held that the **roadway is the portion of the highway that cars normally drive on, and that the highway is the larger object comprised of the roadway plus the shoulder:**

Clearly there is a difference between the shoulder and the roadway which denotes the travel portion of the highway. It is also clear that a highway is more than just the roadway, the travel portion.

The Canadian Oxford Dictionary, Oxford University, Press Canada 1998, defines "shoulder" with respect to highways as: "shoulder" a strip of ground bordering a road, where vehicles may stop in an emergency.

...

I find that the shoulder of the highway is, in its ordinary meaning, part of the highway. Further, I find that the shoulder is also included in the definition of "highway" found in the Motor Vehicle Act by virtue of being a place used for the general public for the passage of vehicles, albeit in a limited way such as when pulling over to stop in an emergency as well as being a place the public has access to for parking or servicing vehicles, and in the definition of "highway" found in the Highway Act as part of "any other public way".
(*Gordon at para. 11-15*).

The foregoing suggests that hitchhiking may not be illegal so long as one is on the shoulder (and therefore on the highway, but not the roadway) when attempting to obtain a ride.

If the purpose of the rule against hitchhiking is to prevent pedestrians hanging about on dangerous highways trying to get rides, this rule seems under inclusive. Nevertheless, persons charged with hitchhiking may want to present this argument as a defence if they were standing on the shoulder when the police officer saw and approached them.

How do you know if you are on a "highway"?

The definition of roadway set out above incorporates the definition of highway i.e. it is not a roadway unless it is part of a highway. **Therefore, hitchhiking is not prohibited by s. 182(3) unless it is done on a highway.** So how do you know if you are on a highway? Section 1 of the *Motor Vehicle Act* defines "highway" as follows:

"highway" includes

(a) every highway within the meaning of the *Transportation Act*,

(b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and

(c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited, but does not include an industrial road;

Part (b) of the definition captures the essence of what types of roads are highways i.e. they are roads used by the general public. The definition of "highway" in the *Transportation Act*, S.B.C. 2004, c. 44, referred to in part (a) of the definition above, confirms this general principle:

"highway" means a public street, road, trail, lane, bridge, trestle, tunnel, ferry landing, ferry approach, any other public way or any other land or improvement that becomes or has become a highway by [an official act of government]

The general effect of these two definitions for "highway" is that all public streets, roads, trails, lanes, bridges, trestles, tunnels, ferry landings, ferry approaches and other public ways will all be "highways". Further, in *R. v. Wong*, (1997) 29 M.V.R. (3d) 194 (B.C.S.C.), Romilly J. held that a ferry was a highway as its deck was a passageway used by the public through a right of access for the purpose of parking of vehicles.

What is the penalty for hitchhiking?

Section 2 of the *Offence Act*, R.S.B.C. 1996, c. 338 (the "Offence Act") provides that offences under British Columbia enactments are punishable on summary conviction. Section 4 of the *Offence Act* is titled "General penalty" and provides that unless noted otherwise "a person who is convicted of an offence is liable to a fine of not more than \$2,000 or to imprisonment for not more than 6 months, or to both."

Section 132(2)(d) of the *Offence Act* provides that fines for contraventions of enactments can be established by regulation. The *Violation Ticket*

Administration and Fines Regulation, B.C. Reg 89/97 specifies the penalties for many *Motor Vehicle Act* offences, but not for s. 182(3). Therefore, the general sentencing provision applies and the penalty that would be applied is somewhat uncertain.

Source: LegalTree.ca - <http://www.legaltree.ca/node/671>

Conclusion

The foregoing indicates that hitchhiking is illegal, but only if it is done on the part of the highway that cars ordinarily drive on i.e. the roadway, and not the shoulder. **It is possible that an unreported court case has found to the contrary and, in light of the purpose of the *Motor Vehicle Act* to promote safety, interpreted the statute broadly and convicted persons of hitchhiking regardless of whether they were on the roadway or the shoulder.** However, there are no such cases reported (based on noting up section 182(3) using the statutory citation indexes and doing full text searches in case law databases).

The scarcity of reported hitchhiking cases is probably due to a number of factors including that it is a relatively minor offence that would be dealt with in traffic court by oral judgment, it is relatively infrequently prosecuted, would often be dealt with by way of guilty plea, and would seldom be appealed.

Therefore, the laws surrounding hitchhiking in BC are unlikely to be an impediment to establishing a casual carpooling system on Pender Island. It should be noted that a casual carpool system was proposed by the UBC TREK Program without any reference to concern over the statutory prohibition on hitchhiking. Moreover, Qualicum Beach is also moving forward with a casual carpooling program. Nonetheless, Paths on Pender should be cognizant that the laws surrounding hitchhiking in BC were established largely around the concern for the safety of both hitchhikers and drivers; such concerns should be addressed in the implementation of a casual carpooling system by taking measures to manage risks and minimize safety concerns.

Issues of Insurance

In BC, all vehicles must be insured with a minimum level of insurance coverage. In any carpool arrangement, the insurance coverage of participants is a fundamental issue that must be addressed. A letter issued to participants in the Kwantlen University College Rideshare Program in Vancouver provides a useful introduction to the issues surrounding motor vehicle insurance for carpool programs:

(Full letter available at:

[http://www.kwantlen.ca/shared/assets/Car Pool Info March 20062118.doc](http://www.kwantlen.ca/shared/assets/Car_Pool_Info_March_20062118.doc))

IF YOU OWN A VEHICLE, make sure that you protect yourself and your carpool passengers with sufficient insurance protection. The Insurance Corporation of British Columbia (ICBC) provides mandatory Third Party Legal Liability, Accident Benefits, and Underinsured Motorist Protection (UMP), and sells increased liability limits and optional insurance coverage.

It is recommended that you contact your Autoplan broker before you start carpooling and purchase the correct rating and insurance protection you and your passengers may need.

If your vehicle is insured by another insurance company located outside BC, check with them to ensure that you have sufficient Third Party Legal Liability, Accident Benefits and Underinsured Motorist Protection for you and your carpool passengers.

IF YOU DO NOT OWN A VEHICLE, check with the vehicle owner to ensure that he or she has sufficient Third Party Legal Liability, Accident Benefits, and Underinsured Motorist Protection to protect you as a carpool passenger.

The following discussion on motor vehicle insurance is compiled primarily from information from the ICBC Autoplan insurance website at: <http://www.icbc.com/insurance/> Please consult this website for further details on ICBC insurance coverage.

Rate Classes

Autoplan premiums are partly based on what you use your vehicle for. These types of use are called rate classes. There are more than 150 rate classes.

Some of the most common are:

- pleasure use only
- driving to and from work or school
- business - driving to and from work as well as for business purposes
- delivery - use of a vehicle for business delivery purposes

If your vehicle has a higher chance of being in a crash because of what you use it for, then you will pay a higher premium. On the other hand, if you just use your vehicle for pleasure, your premium will be lower. The rates reflect the level of risk for each type of use.

Note: One of the most common rate classes for regular vehicle owners is "Pleasure Use and vehicle driven to or from work or school... [various conditions]". Carpooling is considered to be an acceptable activity within this rate class.

If you insure your vehicle under the wrong rate class, any claim you make could be denied. You may be held liable for any damage caused in the crash. Therefore, it is recommended that vehicle owners contact their Autoplan broker before you start carpooling to ensure that they are insured in the correct rate class.

Third Party Liability

There are three parties involved in liability insurance. The **first party** is the insured, the **second party** is the insurance company and the **third party** is any person who may have a legal claim against the first party. In a multiple vehicle crash, there can be any number of "third parties" involved.

If you injure someone else or damage their property in a motor vehicle crash and are held legally responsible, Third Party Liability coverage pays their claims on your behalf, up to the specified limit. With Basic Autoplan, that limit is \$200,000. This is the minimum coverage that an owner must have on a BC-registered vehicle.

However, courts often award judgments for much more than \$200,000. Many motorists increase their Third Party Liability coverage, so they are better protected in case of serious injury to others. You can choose to increase your coverage from \$300,000 to \$5 million, or anywhere in between.

As a matter of policy, most insurance brokers will recommend the maximum level of Third Party Liability coverage – \$5 million. However, \$2 million is the average level of coverage among insurance holders. Again, it is recommended that vehicle owner's contact their insurance broker before carpooling to ensure that they have sufficient Third Party Liability coverage to protect themselves and their passengers.

Recommendations: Carpool.ca

To adequately protect yourself, liability insurance of at least \$1,000,000 is recommended as well as underinsured motorist protection. These are a good investment and cost only a few dollars more each year. We also recommend that you notify your insurance provider of your intent to carry passengers.

Underinsured Motorist Protection

Basic Autoplan provides Underinsured Motorist Protection (UMP) of up to \$1,000,000. This is insurance that covers you for bodily injury or death in a crash where the at-fault driver or vehicle owner does not have enough insurance to cover the damages awarded to you.

With Excess Underinsured Motorist Protection, you can increase your coverage to \$2,000,000, for \$25 a year.

If you or your passengers are injured in a crash where the at-fault driver doesn't have enough insurance to cover your claim, UMP covers you and anyone else riding in your vehicle. It covers you no matter what vehicle you're riding in, and it covers members of your household riding in any vehicle except for ones they own.

UMP also covers you and members of your household if an underinsured motorist injures you when you're a pedestrian or a cyclist.

Underinsured Motorist Protection applies to any Autoplan policyholder, as well as members of that person's household. It covers you in a variety of situations.

BC residents who do not have a BC driver's licence or own a vehicle, and are not members of the household of a person who has a BC vehicle or a BC drivers licence, may wish to consider purchasing the "Special UMP Policy for Non-Motorists" which is also available through Autoplan brokers. For a modest premium it provides \$1 or \$2 million coverage for the insured who is injured in a automobile accident as a pedestrian, commuter, bicyclist, or while a passenger in a vehicle.

Accident Benefits

Autoplan Accident Benefits help you with your medical expenses, rehabilitation costs and wage loss if you are injured in a crash, or funeral costs and death benefits in case of death. It doesn't matter who was at fault for the crash.

Accident Benefits cover:

- Everyone injured in a crash who is riding in a vehicle that is licensed and insured in B.C.
- A pedestrian or cyclist who is injured in a crash involving a moving motor vehicle if that person or a member of their household (anyone who

ordinarily resides in the same dwelling unit as you) is insured through Autoplan.

- Any cyclist or pedestrian hit and injured in Canada by a vehicle that is licensed and insured in B.C.

Liability

Introduction

Ridematching and carpooling schemes come in a variety of different formats. The potential legal liability to those administering such programs is uncertain. There are no Canadian judgments on record that directly relate to individuals who have sustained injuries in a carpool program bringing action against the administrator of a carpool program. However, as long as this uncertainty continues, and until case law develops in each jurisdiction defining the duty of care owed by ridematching organizations, providers of such services should adopt comprehensive risk management strategies to minimize their liability exposure.

At the core of successful risk management strategies should be recognition that the level of involvement of the entity in promoting and administering the services it provides correlates to the level of its liability exposure. Common elements of effective risk management systems typically include some combination of administrative oversight, contractual indemnification and insurance, and other preventative measures designed to safeguard against reasonably foreseeable risks inherent in such operations.

There are number of different elements that will influence the potential liability of carpool organizers, such as:

- ◆ Type of organization administering the program
- ◆ Scope of the service provides
- ◆ Ownership of vehicles
- ◆ Driver screening
- ◆ Driver training
- ◆ Type of insurance held by the organizing body
- ◆ Provincial or federal laws limiting liability

Note: This section is based largely on excerpts from a study entitled "Successful Risk Management for Rideshare and Carpool-Matching Programs" which was conducted by the Transport Research Board in the US. The full study is available at:

<http://pubsindex.trb.org/document/view/default.asp?lbid=415061>

Tort of Negligence

Liability for injury sustained by participants in a carpool program would likely arise under the tort of negligence. Negligence means conduct that is culpable because it misses the legal standard required of a reasonable person in protecting individuals against foreseeably risky, harmful acts of other members of society. Negligent behaviour towards others gives them rights to be compensated for the harm to their body, property, mental well-being, financial status, or relationships.

In court decisions, negligence suits are analyzed in distinct stages. First, the defendant must have had a duty of care towards the claimant. The courts have long established that all persons have a duty to use that degree of care that an ordinarily prudent person would have used under the circumstances. Second, the claimant must show that the defendant has breached that duty by not exercising reasonable care. Third, the plaintiff must further show that the defendant's negligence contributed to cause harm to the claimant. Fourth, the harm must not be too remote a consequence of the negligence; that is, the negligence must be a "proximate cause" of the harm. Finally the claimant must be able to establish what kind of damages, or compensation, he should get for his or her harm.

Legal Liability

It's important to examine the potential legal liability that could exist for an organization that makes the rideshare match or facilitates a carpooling arrangement. The primary source of possible legal liability stemming from such organization or promotion is liability for injuries sustained by participants.

Liability for Injury to Participants

Common law negligence actions must be based on the violation of a duty of care owed to the plaintiff. As a general rule, absent some heightened duty of care defined by statute, such as with common carriers (e.g. taxi drivers), private individuals owe only a duty to exercise ordinary care to avoid reasonably foreseeable injury to others. Thus, questions of tort liability turn on whether a rideshare organizer has a legal duty to protect riders against the reasonably foreseeable risks incident to the operation of a rideshare program.

The scope of such a duty will necessarily depend on the organizer's role in running the program. On a continuum of possible involvement, the more involved an organizer becomes in administering the program, the greater the potential for liability. For example, if an employer does not own or operate a carpool, but merely encourages (without requiring) the employee

to use an alternative mode of transportation, the employer should be insulated from claims of negligence asserted by employees or riders injured in accidents involving the vehicle. Under this scenario, it is difficult to identify any duty owed to participants by the organizer.

However, the more involved an organizer becomes in administering a rideshare program or in encouraging use of a particular rideshare program, the closer it comes to the kind of control that may give rise to a duty. A company might, for example, provide some matching services for its employees whereby employees with similar commute routes and times are given one another's names and encouraged to commute together. If the employer does not maintain or repair the vans, makes no representations as to the skill or competence of the drivers, and does not require an employee to participate, it still will probably not meet the threshold level of control necessary to impose liability.

By the same token, ridematching organizations such as Carpool.ca do not provide transportation, they provide information. Contacting such organizations creates no obligation on an individual's part to participate in a pooling arrangement. It is up to the individual to contact the people included on a match list. Likewise, neither organization vouches for the participants or examines their driving records. Because participation and choice of driver is absolutely voluntary, such organizations do not appear to have assumed any duty with regard to participants.

Involvement in the maintenance of vehicles and screening of participants could create greater potential exposure to liability. An organizer that provides a matching service and attempts in any way to screen participants' medical or driving records assumes a duty to do so with reasonable care. A driver with a suspended license who slips through the screening could give rise to liability if a rider is injured as a result of the driver's negligence, although questions of causation would still present a hurdle for a plaintiff in this type of action.

Employers that mandate the use of certain modes of transportation among employees are even more exposed to liability. Employees that actually become involved in the day-to-day operation of the vehicles used in a ridesharing program are similarly exposed. In this situation, it is conceivable that motor carrier regulations might apply to a rideshare operator or driver, thus imposing the higher duty of care owed by common carriers.

A Note on Privacy Laws

If ridematching organizations collect information about individuals, such organizations must inform themselves about, and take appropriate steps to

avoid, potential liability for breaching privacy laws. Organization that collects personal information concerning an individual for the purpose of implementing rideshare programs can incur liability for improperly disclosing such information without the individual's written consent.

General Insurance for Ridematching Organizers

Public or quasi-public agencies that provide ridematching services do not face significant liability exposure. Most organizations do not have special insurance policies specifically for coverage of ridematching activities. This is not to say, however, that they are uninsured. Moreover, most ridematch programs are based on the voluntary participation of the riders and drivers. Most program administrators feel that if there is no mandatory preselection of riders or drivers, then matching programs are insulated from liability. This assumption seems based in part on the argument that as a mere facilitator, the ridematching organization owes no special duty to participating individuals. Given the lack of case law defining the duty owed by a ridematching organization, it seems fair to describe the potential for liability as remote.

Organizations (and employers) that perform only ridematching services do not see themselves facing significant liability exposure, believing that the typical commercial general insurance policy provides adequate coverage. This belief should not go unexamined. Ridematching organizations that believe their comprehensive general liability policy provides adequate coverage should have their legal counsel carefully review the policy terms.

If any doubt exists regarding the scope of coverage for ridematching activities, clarification should be sought from the insurer, and if necessary, additional policy riders specifically covering matching services should be obtained.

Strategies to Minimize Potential Tort Liability

A comprehensive risk management program is a good way for ridematching and ridesharing organizers and promoters to minimize the potential for liability. Program organizers should consider the following recommendations when implementing each program.

Written Agreements: Many rideshare organizers and promoters require participants in their ridematching programs to fill out a written application. On a practical level, the written application provides greater accuracy of information. More important, a written application allows the ridematching organization to obtain a written waiver from the applicant.

Advise Potential Poolers to Meet: This is an essential step that should be emphasized by promoters. Rideshare arrangements succeed or fail based largely on the willingness of poolers to work with and accommodate one another. The more minor issues can be ironed out in advance, the greater likelihood of a long, sustained pool. Riders can perform their own risk management evaluation by assuring themselves that proposed drivers are adequately insured and licensed.

Newsletters: Many ridematching organizations publish newsletters for participants. Newsletters often contain regular features, such as "riders wanted" sections, columns with safety tips, and articles regarding trends in ridesharing and changes in the law affecting ridesharing. Newsletters serve a vital function by keeping program participants informed and involved. Moreover, articles on such issues as safety may help reduce the number of accidents or incident giving rise to claims.

Waivers

Note: This section is largely based on excerpts from a publication entitled "Avoiding Liability to Users of Municipal Facilities: Waiver, Indemnity and Insurance Clauses" by David G. Boghosian a Partner with Paterson, MacDougall LLP in Toronto. Full publication available at: http://www.boglaw.ca/pdf/avoid_liability_to_users.pdf

What is a "Waiver"?

A waiver is a legally binding contract in which a participant in a program agrees not to hold the organizing body responsible or "liable" for any damage to property or person that might be incurred as a result of participating in the program. The terms "waiver" and "release of liability" are frequently used interchangeably. Although waivers may take the form of display signs, the enforceability of such forms of waiver are questionable. As a result, a signed written contract has become the preferred approach to obtaining a release of liability from program participants.

Transport Canada recommendation: For most organizations, liability issues are an important aspect of ridematching. Employers may have some liability exposure when their promotion, intervention and assistance result in employees carpooling who would not otherwise do so. For this reason, a release of liability is generally included with ridematching registration applications. It is strongly recommended that organization planning carpooling systems seek legal counsel and identify how a waiver of liability can be incorporated into the ridematching process. Full report available at:

<http://www.tc.gc.ca/Programs/Environment/Commuter/MainGuideEN/Chapter%207.pdf>

Why Have Waiver Agreements?

The purpose of having a participant sign a waiver is to have them agree in writing that they are assuming both the legal as well as the physical risk inherent in participation in the activity. Physical risks are the risks, dangers and hazards that are inherent in the activity.

The necessity of obtaining a signed agreement providing for waiver of the right to sue can be seen to have arisen from the restriction of the common law defence to tort claims of voluntary assumption of risk. Historically, the common law voluntary assumption of risk defence was liberally applied by courts in circumstances where a plaintiff was found to have freely and voluntarily assumed the risks inherent in a particular activity. Once such a finding was made, a defendant was not liable in respect of injuries arising from the risk, including legal risks, found to have been voluntarily assumed by the plaintiff.

As a result of a series of decisions by the Supreme Court of Canada over the past 20 years, most notably, *Dube v. Labear* [1986] 1 S.C.R. 649 and *Crocker v. Sundance* [1988] 1 S.C.R. 1186, in order to rely on the doctrine of voluntary assumption of risk, a defendant must now prove that the plaintiff agreed, either expressly or by necessary implication, that the defendant would be absolved from any liability as a result of the defendant's own negligence. The mere proof of assumption of risk inherent in the activity is no longer sufficient. As a result of these decisions, a defendant now has to prove that the plaintiff, knowing of a virtually certain risk of harm, either expressly or implicitly agreed to assume all legal risks.

The Two-Part Test For Determining The Enforceability Of Waiver Agreements

Courts are reluctant to find that a plaintiff has signed away his or her legal right to sue for damages as a result of a defendant's own negligence, particularly in cases of serious injury. As such, waivers are very carefully scrutinized and will only be enforced in the clearest of cases. Courts look to both the language and format of waiver agreements as well as the circumstances in which the participant signed the waiver in order to determine whether they ought to be enforced.

In assessing the enforceability of a waiver, a court will embark upon the following two-part inquiry:

- 1. Is the release sufficiently clear and unambiguous in terms of bringing home to the participant that he/she is forfeiting his/her legal right to sue the party to be released from liability, the source of the liability, the event or activity in question and the nature of the damages or injuries sustained?*
- 2. Did the party seeking to rely upon the waiver take reasonable steps to draw the terms of the waiver to the attention of the participant (as a matter of law, it is not relevant that the participant did not in fact read and understand the waiver, so long as he or she had a reasonable opportunity to do so, and was not operating under a disability or mistake which the enforcing party knew or ought to have known)?*

Language and Format Of The Waiver Agreement:

The wording of the waiver must be clear and unambiguous. It must be clear that the party signing it understood that they were signing a document that affected their legal rights. When the waiver forms part of a broader agreement, the waiver clause should be highlighted and/or printed in bold face lettering. In addition, at the top of the agreement, a large and boldly worded heading should clearly state the legal nature of the document and the fact that by signing the document, the participant will be forfeiting his or her legal right to sue for any injuries sustained in the activity.

- **The waiver must specifically refer to the foreseeable risks, dangers and hazards in respect of which the participant is waiving his/her legal rights.**
- **The waiver must specifically state that the participant is waiving his/her legal right to sue.**
- **The waiver should refer to all potential claims in respect of which the legal right to sue is being waived, such as physical property and personal injury of any nature whatsoever.** It is important to list all of the parties who the operator wishes to protect from potential actions. This should include all parties which might be found to owe a duty of care.
- **The waiver should specifically describe the event or activity to which it applies.** The definition of the activity or event must be broad enough to encompass all potential activities. It is clearly more prudent to rely on a carefully crafted waiver than to hope that a court will interpret a vaguely worded waiver as covering a particular liability.

- **The waiver should be drafted or at least reviewed by legal counsel to ensure that all required elements are present and that the release is properly tailored to the particular event or activity in question.**
- The waiver should include a place for the releasor to write at least his or her name, address and telephone number, either at the top of the form just below the printed heading or immediately following the detailed waiver clause itself (to demonstrate that the participant was required to spend time filling out the waiver in the immediate vicinity of the warning or operative clauses). It is also advisable to have a space for the participant to place his or her initials beside the waiver clause, particularly if it is part of a broader agreement containing other terms and conditions. If the agreement is more than one page in length, the participant should be required to initial the pages before the page on which his or her signature appears, as an acknowledgement by the participant that he or she has read all of the pages.
- **A waiver must be signed by the participant in order to be valid. The waiver should also be witnessed.**

Even in cases where a defendant is unable to adduce evidence concerning the circumstances in which the waiver was signed, the mere language and format of a well drafted waiver can go a long way to satisfying the court that reasonable steps were taken to draw the waiver to the plaintiff's attention.

Circumstances in Which The Waiver Is Executed:

Plaintiffs faced with a waiver defence often deny having read the document. For that reason, it is important that the waiver be presented in circumstances in which the participant is not only told to read it entirely but that they are given sufficient time to read it in its entirety and where the witness is able to observe that the participant has read the document in its entirety. The length and complexity of the waiver, the format of the text (fine print on the reverse as opposed to bold print on the face) and the time available for reading and understanding it are all factors a court will consider in determining whether or not a participant intended to be bound by a waiver. Further, if the effect of the exclusion clause runs contrary to the normal expectations of the participant, the enforcing party will be held to a higher standard.

Another common response to a waiver defence is that, notwithstanding the clear terms of the waiver agreement, the employee responsible for having the waiver signed misled the plaintiff as to the true nature and effect of the document. For that reason, employees should be specifically warned not to

interpret the nature and effect of the release, downplay its significance or rush the participant into signing the document without fully reading it.

The witness should ensure that the participant has completed all blanks in the agreement setting out information required of the participants, that the participant has properly signed and dated the waiver and has not crossed out or defaced the waiver clause in any way. Ideally, the witness will ask the participant "have you read and do you understand the meaning of the waiver?" and obtain an affirmative response before having the participant sign it. The witness should then fill in the witness box on the waiver contemporaneously; filling in the witness box at a later time is improper and will invalidate the witness as evidence that the participant executed the release, although it will not necessarily be fatal to the enforceability of the document.

Employees responsible for the execution of waivers must ensure that they receive the waivers back from all participants before they are allowed to participate in the event or activity. Furthermore, the waiver should be retained on file for the same period of time that an organization would keep any forms relating to a potential claim, such as accident or incident reports. In addition to the obvious necessity of being able to produce the waiver relating to the event or activity in question in a future court proceeding, evidence that the participant had signed the same or similar waivers on prior occasions will be of assistance in overcoming the common response to a waiver defence that the Plaintiff did not read or understand the release before signing it on the occasion in question.

Enforceability of Unsigned Waivers

Do not disregard the value of "**Unsigned Waivers**" either. While certainly not as good as a signed document these disclaimers have their place and value. It is recognized that the complex form of waivers discussed up to this point are not appropriate for every situation.

The ability to rely on waivers in such circumstances is illustrated by the case of *McQuary v. Big White Ski Resort Limited*. In that case, the plaintiff was seriously injured while night skiing at Big White, a ski resort near Kelowna. The plaintiff was descending an intermediate slope at high speed when he lost control and went off the edge of the run. As a result of the fall, the Plaintiff suffered a fractured pelvis.

The plaintiff had been skiing on a multi-day lift pass which contained a comprehensive exclusion of liability clause printed on the face of the ticket. The plaintiff had not been required to sign any form of written waiver or

anything acknowledging his agreement to waive his legal rights. The plaintiff denied having read the wording on the lift ticket or the signage posted adjacent to the ticket wickets replicating the exclusion language on the ticket but had acknowledged that he was generally aware that lift tickets contained language providing for an exclusion of liability in favour of the ski resort.

The court dismissed the action based on the waiver found on the lift ticket, relying upon the English Court of Appeal "ticket case" of *Parker v. South Eastern Rail Co.*, and the subsequent Supreme Court of Canada case of *Union Steamships Ltd. v Barnes*, in which it was held that where a ticket holder knows that there is writing on a ticket and knows or ought to know that the writing contains conditions affecting his legal liability, he is bound by those conditions whether he or she read them or not. Applying those principles to the facts of the case before him, the trial judge in *McQuary* held that the plaintiff's failure to read the conditions on the ticket was irrelevant as he had an opportunity to read the ticket but failed to do so.

The ski industry in Western Canada uses a standard form with the following BOLD print:

**NOTICE TO ALL PERSONS USING THESE FACILITIES
EXCLUSION OF LIABILITY - ASSUMPTION OF RISK –
JURISDICTION
THESE CONDITIONS WILL AFFECT YOUR LEGAL RIGHTS
INCLUDING THE RIGHT TO SUE OR CLAIM COMPENSATION FOLLOWING
AN ACCIDENT.
PLEASE READ CAREFULLY!**

As a condition of use of the ski area and other facilities, the ticket holder assumes all risk of personal injury, death or property loss resulting from any cause whatsoever including but not limited to: the risks, dangers and hazards of skiing, snowboarding, tubing, tobogganing, cycling, mountain biking, hiking and other recreational activities; the use of ski lifts, carpet lifts and tube tows; collision or impact with natural or man-made objects or with other persons; travel within or beyond the area boundaries; or negligence, breach of contract, or breach of statutory duty of care on the part of Blackcomb Skiing Enterprises Limited Partnership, Whistler Mountain Resort Limited Partnership, Intrawest ULC, Mountain Employment Company Ltd. and their employees, instructors, guides, agents, independent contractors, subcontractors, representatives, sponsors, successors and assigns (hereinafter collectively referred to as "Whistler Blackcomb"). The ticket holder agrees that Whistler Blackcomb shall not be liable for any such personal injury, death or property loss and releases Whistler Blackcomb and waives all claims with respect thereto. The ticket holder agrees that any litigation involving Whistler Blackcomb shall be brought solely within the Province of British Columbia and shall be within the exclusive jurisdiction of the Courts of the Province of British Columbia. The ticket holder further agrees that these conditions and any rights, duties and obligations as between Whistler Blackcomb and the ticket holder shall be governed by and interpreted solely in accordance with the laws of the Province of British Columbia and no other jurisdiction.

**WHISTLER BLACKCOMB'S LIABILITY IS
EXCLUDED BY THESE CONDITIONS**

Please adhere to the Alpine Responsibility Code and
be responsible for your own safety in all activities

Two key factors examined were the prominence of the conditions both on the ticket itself - which were printed in bold face red and blue capital letters - as well as the virtually identical language on posters placed where tickets were purchased. These posters were of normal paper size but with black capital letters on a yellow background and with a vivid red border. In both cases, the language was described as "straight forward and unambiguous." These elements in combination satisfied the Court that the ski resort had taken reasonable steps to draw the terms of the exclusion to the plaintiff's attention and that "if they were seen and not read, it was a result of the plaintiff's own carelessness." He therefore dismissed the action.

Sample Disclaimers

There are number of elements that are common to many waivers implemented by carpool organizers and ridematching services in Canada. The following is a survey of some of these different elements as drawn from the waivers of a number of different carpooling and ridematching organizations:

General indemnity:

ShareYourRide.ca

Users of ShareYourRide.ca are advised that the use of this system is voluntary and entirely at the discretion of participants.

By participating in the system, you are agreeing that you are entirely responsible for your own safety while using the carpooling system.

The Saint John Parking Commission take no responsibility for any personal injuries, deaths, property damages, financial losses or other damages or losses that may result from the use of ShareYourRide.ca.

By participating in the ShareYourRide.ca system, you hereby agree to waive any and all claims that you have or may have in the future against The Saint John Parking Commission and to release them from any and all liability for loss, damage, expense or injury including death that you, your next of kin or a third party may suffer as a result of your participation in or involvement in the ShareYourRide.ca program.

You hereby also agree to indemnify and hold harmless The Saint John Parking Commission from any and all liability for personal injury,

death, property damages and any other loss, and resulting claims or actions, arising from your participation in or involvement in the ShareYourRide.ca program.

University of Ottawa Carpool

You freely accept and fully assume all risks, dangers and hazards involved in this process, and the possibility of personal and bodily injury, death, property damage, or loss that these risks, dangers and hazards might cause.

You agree to indemnify and hold harmless the University of Ottawa from any and all liability linked to personal and bodily injury, death, property damage or loss, and from resulting claims or actions arising from your participation in or involvement with this websites activity.

Responsibility for insurance:

Carpool.ca

It is solely your responsibility to notify your insurance provider of your intent to carry passengers and insure that you have adequate insurance coverage to protect yourself and your passengers.

ShareYourRide.ca

It is the responsibility of individuals participating in a carpool matching system to notify their insurance provider of their intent to carry non-family passengers and to ensure that they have adequate coverage to protect both themselves and their passengers. It is the responsibility of the individual accepting a ride in a carpool to ensure that the driver of the vehicle has an acceptable driving record, is licensed accordingly and has adequate insurance to protect both driver and passengers.

The Saint John Parking Commission is in no way responsible for verifying or certifying the reliability, driving ability or insurance status of drivers and participants using the system.

Concordia University

While ridesharing is very safe, please note that Concordia assumes no liability in any event stemming from participation in the carpooling program, and that you should check with your auto insurance provider before starting a carpool.

The organizer does not screen program drivers or participants:

Carpool.ca

This service is provided solely to assist commuters in identifying potential carpool partners. Trans Canada Carpool.ca and its subscribing entities and partners, do not assess the suitability of individuals participating in this carpool program and disclaim any liability in connection therewith.

ShareYourRide.ca

No background checks of drivers or participants, driver record checks or insurance checks are undertaken by The Saint John Parking Commission. In addition, The Saint John Parking Commission does not make any assurances or certifications regarding the condition, suitability or safety of the vehicles being used by participants in the carpooling system, the reliability or driving ability of participants or drivers, or whether those participants and drivers are insured. The Saint John Parking Commission recommends that participants exercise caution when selecting a potential carpool partner.

OttawaCarpool.ca

This service is provided solely to assist commuters in identifying potential carpool partners. OttawaCarPool.ca does not assess the suitability of individuals to participate in the carpool program. Visitors use this service at their own risk, and OttawaCarPool.ca disclaims any liability in connection therewith.

University of Ottawa Carpool

You acknowledge that the University of Ottawa does not conduct background checks or otherwise evaluate the suitability of the users of this Web site. Participants are themselves responsible for determining if it is appropriate or not to meet or share personal information with potential carpool partners.

Confidentiality of collected information:

Carpool.ca

The information collected here is strictly confidential and used for ridematching purposes only. We do not share data or sell mailing lists. By providing this information you are consenting to share your first name, last initial, and e-mail address or telephone number, with other potential carpool partners. Carpool.ca also shares participation reports and program statistics with its subscribing entities, ie your employer, post-secondary institution or regional government.

...Participants are solely responsible for determining whether and when it is appropriate to meet with or share personal information with a potential carpool partner.

University of Ottawa Carpool

For users to be able to identify potential Carpool partners you need to provide your name and at least one contact means (phone or e-mail). The University of Ottawa does not sell or disclose your personal information obtained through these processes unless legally required to by law.

Familiarity with laws governing carpooling:

University of Ottawa Carpool

You acknowledge that specific federal and provincial statutes (such as the Highway Traffic Act, the Commuter Services Act, the Public Vehicles Act, and the Insurance Act) contain legal obligations for carpooling. You therefore agree that it is your responsibility to acquaint yourself with the legal requirements of carpooling partnerships. You also acknowledge that you are responsible for contacting your vehicle insurer to make sure you have enough coverage to protect yourself and your carpool passengers.

Recommendations and Reflections

Developing a Waiver is Essential

Although organizers and promoters of ridesharing programs are not likely to face liability for injuries sustained by participants in the program, it is nonetheless essential that Paths on Pender develop a waiver to indemnify themselves against liability arising from the car stop program. At a minimum, the waiver should contain the following elements:

- ◆ General indemnity clause
- ◆ An indication that Paths on Pender does not screen riders or drivers
- ◆ Notice that it is the participant's responsibility to ensure that drivers have adequate insurance coverage
- ◆ Notice that it's the participants responsibility to familiarize themselves with any laws governing ridesharing

Signed Waivers are Preferable

Although a sign at the car stop that clearly displays the terms of the waiver in clear and bold format would have some value in reducing liability, signed waivers have more much more weight.

Ideally, all program participants should be required to sign a waiver indemnifying Paths on Pender from liability. There is a need to alert divers in particular about the importance of ensuring that they have sufficient insurance coverage and that they are insured under an appropriate rate class. Nonetheless, it is passengers who would be more likely to try and bring action against Paths on Pender in the event of a car accident caused by a driver in the program (though again, the likelihood of liability is still very low). Drivers would likely not be able to bring action for an accident caused by their own negligent driving.

Car Stop Waiver

Regardless of whether program participants are required to sign a waiver, all car stop signs should be equipped with a sign outlining the nature of the program and the waiver of liability. Such a sign would likely be useful for reducing liability to people being picked up at the stop, but would have less of an impact on drivers picking up passengers because they would likely not have a reasonable opportunity to read the waiver. The format and content of such a waiver should be discussed with legal counsel.

Ensuring Drivers Have Proper Insurance Coverage is Essential

Appropriate insurance coverage is an essential requirement to protect the interests of both riders and drivers. As must be made explicit in any waiver, ensuring adequate insurance coverage will ultimately be the responsibility of drivers. If drivers have any doubts about whether they are adequately covered, they should consult with their auto insurance broker.

There is some variation in terms of what amount of third party liability coverage should be recommended or required. As a matter of policy, insurance brokers will often recommend the maximum \$5 million dollar coverage, although \$2 million is the average purchased by vehicle owners. Carpool.ca recommends as minimum of \$1 million in third party liability coverage and the Qualicum Beach Good Samaritan Ride program will require drivers to have at least \$2 million in coverage.

Verifying Driver Insurance Coverage and Registration

Paths on Pender has expressed their preference for not having registration and identification as a formal requirement for participation in the car stop program on Pender Island due to the increase in cost and administrative overhead. There are a number of key points that must be addressed when considering the registration requirement for riders and drivers.

On one hand, the more involved Paths on Pender is in screening drivers for adequate insurance coverage and appropriate license class, the higher the potential duty of care to riders becomes (although the level of liability is

likely still quite low). On the other hand, registration provides an ideal opportunity to require participants to sign a waiver. Obviously, a registration system could still be implemented without providing ID cards to riders. A middle ground might be to provide stickers for registered cars without requiring riders to carry IDs. The waiver at the car stop sign could indicate that only those cars with stickers have been registered for the program.

Ultimately, the waiver should likely indicate that even if drivers are registered with the program, participants are nonetheless personally responsible for ensuring that drivers have adequate insurance coverage before accepting a ride.

No Exchange of Money

Although a casual exchange of money to cover the cost of gas would likely go under the radar, program participants should be instructed that they should not exchange money or gifts under the car stop program. Although cost sharing is commonly used under regular carpooling arrangements, the car stop program is different because of the random nature of the match ups and the irregularity of the trips. ICBC would be very nervous if there was a perception that drivers were using the program to make a profit, even if the intention was merely to cover the cost of operating the vehicle. Drivers who regularly accepted money from riders could risk breaching their rate class and affecting their insurance rates.

Drivers should be encouraged to participate in the program as part of community spirit. If they expect to be compensated for their participation in the program, they should be encouraged to split their time between riding and driving in order to help spread the burden of costs.

The waiver should clearly state that there is to be no exchange of money between riders and drivers. Drivers should be instructed to neither ask for nor accept money or gifts from passengers. Similarly, riders should not offer money and should be aware that drivers should not ask them to pay for a ride.

Attracting and Retaining a Significant Ridership is Essential

The success of the program will ultimately depend on a sufficient proportion of the population participating in the program. Further, there must be an appropriate balance between the number of riders and drivers.

Convenience and Placement of Stops

The number and placement of stops is key to ensuring that the program is convenient enough for participants that it is worth their while. Ideally, participants should not have to wait more than a few minutes to catch a ride

and should not have to walk too far to reach a car stop. If the program is not convenient, potential riders who have access to cars will likely just continue to drive themselves.

Cars should have enough space at a car stop to fully pull off to the side of the road so that they are not blocking oncoming traffic when they stop to pick up a passenger. Having sufficient space for a car to pull off will also make standing at a car stop safer for passengers. If a stop is poorly situated and places a pedestrian in danger, this could also be a potential source of liability for Paths on Pender.

Safety and Security of Participants

One concern that is often raised is whether participants will feel safe getting into a car with or picking up a stranger when there is no system of registration. Councillor Wansink indicated that one of the primary reasons the Qualicum Beach program chose to implement a registration system with ID cards for was to address safety concerns. Participants may feel more secure getting into a car with a stranger knowing that they are legitimately registered with the program. Further, it provides some assurance to riders that drivers have adequate insurance coverage.

Because of Pender Island's relatively small population, local residents will not likely be too concerned with getting into a car with "strangers". Further, once the program is in place for a while and passengers and riders living in the same area have crossed paths a few times, these concerns should largely dissipate. However, if tourists and other non-locals begin to use the program, especially in the busier summer months, this may raise some concerns among residents if the car stop program is open to anyone who happens to walk or drive by. Of course, participants are always free to not pick up a rider at a stop if they are not comfortable doing so and riders may similarly pass up a ride with a particular driver.

Perhaps one of the best ways to get people more comfortable with the car stop program is to hold social events for residents who are interested in participating in the program. Such social events could provide opportunities for people to meet with other residents from their area. Once people have met one another, they will likely feel much more comfortable picking them up at a car stop or accepting a ride from them. Further, social events could be a prime opportunity to explain the rules of the program and perhaps get people to sign a waiver!

Etiquette and Rules

Establishing some basic rules and etiquette could be helpful in ensuring that participants will want to continue sharing rides. Basic considerations such as

not smoking and not playing loud music will hopefully be implicitly understood, but it may be useful to develop a basic "code of conduct" for riders and drivers. The etiquette that has been developed in the casual carpooling systems in the US may be a useful starting point.

Promotion

Proper promotion of the car stop program will be important not only for attracting participants but also for conferring legitimacy to the program. Promotion through local media such as newspapers and radio will likely be important for spreading the word. Developing a website providing information on the program and perhaps a map of car stop locations will provide a useful source of information that can be easily referenced. Finally, if the car stop program is a success, promotion is useful for helping other communities consider and adopt similar programs (perhaps on the other Gulf Islands)!

Conclusion

Well, this is the end of what has turned out to be a fairly lengthy background report. I hope that the information provided will be useful in your quest to establish a car stop program on Pender Island. If you have any follow up questions, please do not hesitate to contact me:

E-mail: sggibson@uvic.ca

Phone: (250) 744-4055

If the need arises, I'm sure another Environmental Law Centre student would be happy to take over this file. I hope that this report will also provide a useful background for them.

I've really enjoyed working on the project and I wish you the best of luck with making car stops a reality!

Shannon Gibson
UVic Environmental Law Centre
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