

### Contributory Negligence of a Supervising Driver

<b>Reported Case</b>	<i>McLaren v. McLaren Estate</i>
<b>Citation</b>	2010 ABQB 471
<b>The Court</b>	Alberta Court of Queen's Bench
<b>At Issue</b>	Should contributory negligence be attached to a Plaintiff for her actions or inactions as a holder of an operator's license, while supervising the learner-operator?
<b>Factual Summary</b>	Kayla McLaren, who only held a learner's driving permit, was driving with her mother, Sandra McLaren (the Plaintiff); when they were involved in a serious collision as a result of snow drifts on the highway. Kayla did not survive and her mother was badly injured. It was common ground that Kayla was negligent in her driving. The Plaintiff (mother) claimed for loss of income, future loss in earning capacity, general damages for pain and suffering and various other losses including housekeeping, out-of-pocket expenses, future treatment costs, a tax gross-up and interest.
<b>Decision</b>	<p>The Court found that section 51 of the <i>Traffic Safety Act</i>, R.S.A. 2000, c. T-6 imposes an obligation on those holding an operator's license to supervise those driving with only a learner's permit. The Court determined there was more to supervision than reacting to immediate circumstances and that a supervisor's duty was ongoing. Specifically, the Court found that supervision requires the supervisor to use their experience and greater skill to anticipate problems as well as provide guidance and take charge when trouble is encountered.</p> <p>As a result, the Court concluded that the Plaintiff was negligent in that she failed to properly supervise her daughter and failed to notice dangerous circumstances or take steps in time to protect her own safety. This negligence contributed to the collision. In assessing the apportionment of fault, the Court considered the fact that the parties were in a learner/supervisor capacity and the Plaintiff was older and more experienced. Furthermore, the Court found the mother/daughter relationship increased the Plaintiff's obligation to supervise and protect her daughter. The Court found the Plaintiff was responsible for her daughter both because of her supervisory position and because she was the child's parent.</p> <p>The Court held that liability should be apportioned 75% to the daughter and 25% to the Plaintiff.</p>