

Automobile Insurance, Impaired Driving, and You



A Look at Newfoundland & Labrador's
Automotive Insurance Laws

Why This Pamphlet?

Most Canadians have some understanding that impaired driving is a criminal offence and that it carries significant penalties. It is probably safe to say that far fewer Canadians appreciate the insurance consequences of impaired driving. This is hardly surprising, considering the complexity of the provincial and territorial automobile insurance laws.

While the primary purpose of this pamphlet is to explain the insurance consequences of impaired driving, we also discuss the related problem of unauthorized driving.¹ Research suggests that a majority of impaired driving offenders continue to drive, at least occasionally, while suspended or otherwise unauthorized.²

We begin with a brief overview of Newfoundland and Labrador's automobile insurance system. This is followed by a discussion of driving without insurance, which is all too common among impaired driving offenders. The impact of a driver's offence and crash record on his or her insurance premiums is then outlined. Finally, we explain the potentially devastating financial consequences that can result if you, or anyone to whom you lend your car, crash while impaired or unauthorized.

Newfoundland and Labrador's Insurance System

Except for some optional no-fault accident benefits, Newfoundland and Labrador has a fault-based automobile insurance system that is administered by private companies. At-fault drivers are liable for the injuries and damages that they cause. If the parties cannot settle the matter themselves, either party can sue the other. Newfoundland and Labrador places no restrictions on an injured party's right to sue at-fault drivers for losses in excess of any no-fault accident benefits that he or she has received.

Driving Without Insurance

The offence of driving without insurance carries a fine of between \$1,000 and \$3,000 for a first or subsequent offence.³ Failure to pay the fine results in imprisonment for between 7 and 15 days. A subsequent default results in imprisonment for between 30 and 90 days.⁴ Moreover, if you are convicted of driving without insurance your vehicle registration may be suspended or cancelled.⁵



How Offences and Crashes Affect Premiums

Each insurance company has its own system for classifying drivers and setting insurance premiums. However, all insurance companies consider a person's driving record when determining rates. In Newfoundland and Labrador, your driving record for insurance purposes includes all at-fault crashes occurring within the past six years, and all federal and provincial driving offences occurring within the past three years.⁶ Typically, insurance premiums increase by 50% or more for a first at-fault crash or major provincial traffic offence, such as racing or careless driving. Subsequent at-fault crashes or major provincial offences will result in additional increases of 100% or more.⁷

A federal impaired driving conviction will generally prevent a driver from obtaining insurance in the "regular market". In most cases, the offender will have to seek coverage from the Facility Association.⁸ While this non-profit organization is required to provide coverage to all licensed drivers, regardless of how bad their records are, it can set premiums that reflect the risks that such drivers pose.⁹

The Association's rates vary depending on the circumstances of each driver. Nevertheless, drivers forced to resort to the Facility Association following an impaired driving conviction will likely find that their premiums have increased three or fourfold.¹⁰

The Insurance Consequences of Driving While Impaired

Your insurance coverage will be severely limited if you, or anyone to whom you lend your car, cause a crash and are convicted of driving while impaired, driving with a blood-alcohol concentration (BAC) above 0.08%, or refusing to provide breath or blood sample.¹¹

First, your insurance company is not required to compensate you for the cost of repairing or replacing your vehicle, no matter how much collision insurance you purchased.¹²

Second, even if you had purchased optional no-fault accident coverage, your medical and rehabilitation expenses and lost earnings benefits would be negated. Moreover, your dependants would be denied no-fault death benefits, and your estate would be denied no-fault funeral expenses.¹³

Third, while your insurance company remains liable for third-party losses up to your policy limit, it can sue you to recover any damages that it has paid.¹⁴ In effect, you lose the financial protection of the third-party liability coverage that you purchased. In the end result, your own insurance company can sue you for any claims that it has paid up to your policy limit, and injured third parties can sue you for any remaining losses in excess of your policy limit.

The Insurance Consequences of Driving While Unauthorized

Your insurance coverage is also severely limited if you, or anyone to whom you lend your car, drive while unauthorized and cause a crash.¹⁵

First, your insurance company is not required to compensate you for the cost of repairing or replacing your vehicle, no matter how much collision insurance you purchased.¹⁶

Second, even if you had purchased optional no-fault accident coverage, your medical and rehabilitation expenses and lost earnings benefits would be negated. Moreover, your dependants would be denied no-fault death benefits, and your estate would be denied no-fault funeral expenses.¹⁷

Third, your insurance company can sue you to recover any third-party claims that it has paid. Furthermore, it is only liable for third-party losses up to the \$200,000 provincial minimum, even if you purchased additional third-party coverage.¹⁸ Consequently, an injured third party can sue you personally for any losses in excess of \$200,000, and your insurance company can sue you for any award that it paid up to this figure.¹⁹

Unpaid Judgments

If you fail to pay a judgment arising from a crash, the Registrar of Motor Vehicles must suspend your current driver's licence and vehicle registration, and cannot renew them.²⁰

Summary

In addition to criminal prosecution, driving while impaired has serious insurance consequences. As demonstrated, not only will your insurance premiums skyrocket, if and when you regain your licence, but your collision, no-fault accident benefits and third-party coverage may be severely limited. Unauthorized driving has similar insurance consequences.

Your conduct, and that of anyone to whom you lend your car, can largely negate your insurance coverage and expose all of your personal assets to open-ended liability. Thus, criminal prosecution may be the least of your problems.

Endnotes

- * This pamphlet was prepared by R. Solomon, K. Hanc, R. Swart, and L. Visser. The authors would like to thank the provincial and territorial officials who reviewed the background document and patiently answered our questions. Given that automobile insurance law is exceedingly complex and frequently amended, readers with specific legal questions are advised to contact their local insurance authorities or a lawyer. (Faculty of Law, University of Western Ontario, Dec. 2004)
- 1 We have used the term "unauthorized" driving to include driving while unlicensed, disqualified, suspended, or prohibited.
 - 2 American studies indicate that as many as 75% of suspended and revoked drivers continue to drive, at least occasionally. A recent Canadian study suggests that the rate in Canada is likely similar. See T. Newman *et al.*, *National Cooperative Highway Research Program Report 500, Volume 2: A Guide for Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses* (Washington: Transportation Research Board, 2003) at III-1; and J. Malenfant, R. Van Houten and B. Jonah, "A Study to Measure the Incidence of Driving Under Suspension in the Greater Moncton Area" (2002), 34 *Accid. Anal. and Prev.* 439 at 441.
 - 3 *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, Schedule, s. 75(5)(b).
 - 4 *Ibid.*
 - 5 *Highway Traffic Act*, *supra* note 3, s. 41(1)(d).
 - 6 The Facility Association, online: <<http://www.facilityassociation.com/fapdfs/Consumer%20Brochure%204-25-02.pdf>>.
 - 7 Correspondence with B. Boland (London, Ontario West Insurance Brokers), 29 July 2004 [Boland].
 - 8 Insurance Council of Canada, *The Choice is Yours* (Toronto: Insurance Council of Canada, 1997). Apparently, a small number of private insurance companies also provide coverage for "high-risk" drivers in some jurisdictions. However, even if an offender can obtain insurance from one of these companies, his or her premiums will likely increase at least two or threefold.
 - 9 The Facility Association, online: <<http://www.facilityassociation.com>>.
 - 10 Boland, *supra* note 7; and correspondence with J. Hepburn (Toronto, Facility Association), 16 April 2004.
 - 11 Insurance companies are permitted to deny collision coverage and no-fault accident benefits to both impaired and unauthorized drivers, and invariably appear to do so. *Automobile Insurance Act*, R.S.N.L. 1990, c. A-22, ss. 30 and 43(b).
 - 12 *Ibid.*, s. 30.
 - 13 *Ibid.*, s. 43(b).
 - 14 *Ibid.*, s. 28(13).
 - 15 See *supra* note 11.
 - 16 *Ibid.*, s. 30.
 - 17 *Ibid.*, s. 43(b).
 - 18 *Ibid.*, s. 28(11).
 - 19 *Ibid.*, s. 28(13).
 - 20 *Highway Traffic Act*, *supra* note 3, s. 81(1).



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