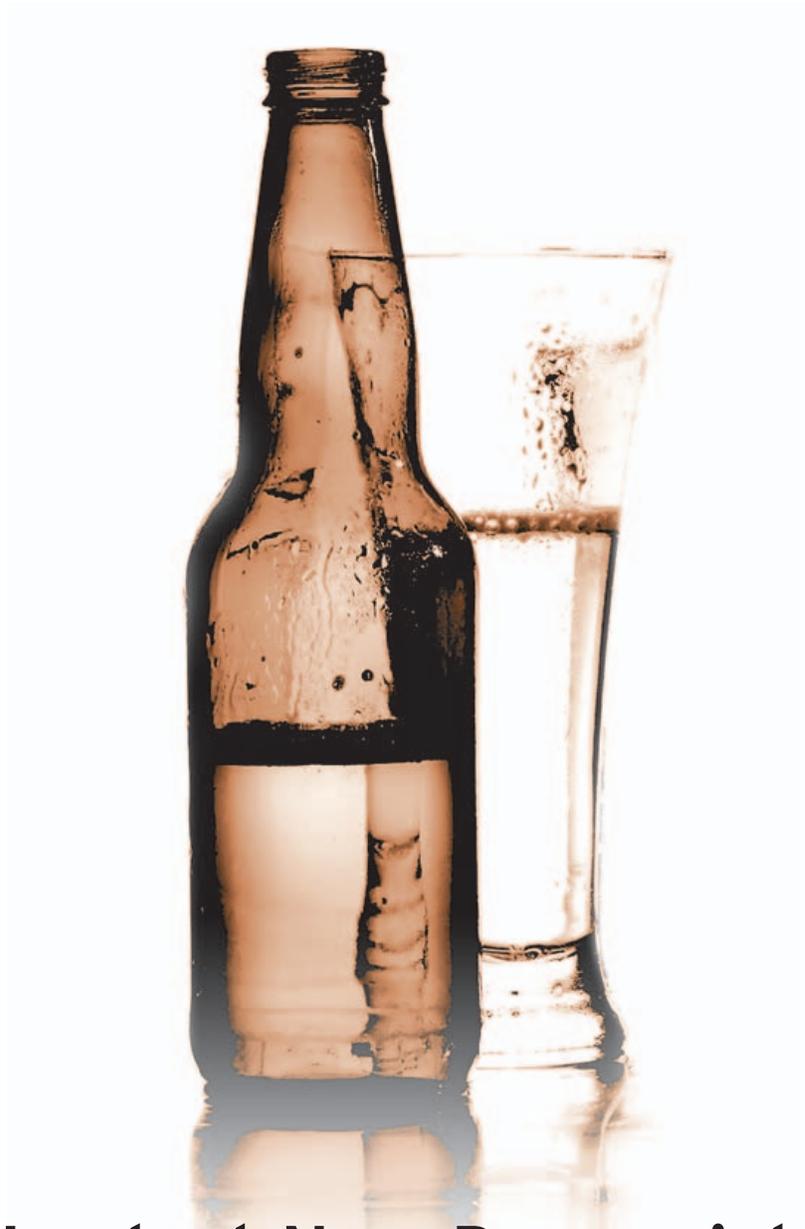


# Automobile Insurance, Impaired Driving, and You



## A Look at New Brunswick's Automotive Insurance Laws



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## 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.<sup>1</sup> Research suggests that a majority of impaired driving offenders continue to drive, at least occasionally, while suspended or otherwise unauthorized.<sup>2</sup>

We begin with a brief overview of New Brunswick'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.

## New Brunswick's Insurance System

Except for some limited no-fault accident benefits, New Brunswick has a fault-based automobile insurance system for personal injuries that is administered by private companies. The at-fault driver is liable for the personal injury losses that he or she causes. If the parties cannot settle the matter themselves, either party can sue the other.<sup>3</sup> New Brunswick places few restrictions on an injured party's right to sue at-fault drivers for losses in excess of the no-fault accident benefits that he or she has received.<sup>4</sup>

New Brunswick has a fault-based insurance system for property damage. When a collision occurs, an insurance adjuster reviews the facts and uses the "Fault Determination Rules" to apportion fault between the drivers.<sup>5</sup> Under New Brunswick's direct compensation system, drivers claim from their own insurance company for property damages caused by a New Brunswick insured at-fault party. However, when they are the at-fault party, drivers can only recover property damages if they had purchased optional collision coverage.

## Driving Without Insurance

The offence of driving without insurance carries a fine of between \$500 and \$10,000, and/or imprisonment for up to 180 days.<sup>6</sup> If you are convicted, your licence and vehicle registration must be suspended until you provide proof of insurance.<sup>7</sup> Moreover, your vehicle may be seized and sold to satisfy an unpaid fine.<sup>8</sup>

## 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 New Brunswick, 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

## 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 a breath or blood sample.

**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.<sup>14</sup>

**Second**, offenders will be denied no-fault accident benefits, including medical and rehabilitation expenses, lost wages coverage and homemaker benefits. Moreover, the offender's estate will be denied no-fault funeral expenses.<sup>15</sup>

**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.<sup>16</sup> 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.

**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.<sup>17</sup>

**Second**, these drivers will be denied no-fault accident benefits, including medical and rehabilitation expenses, lost wages coverage and homemaker benefits. Moreover, the driver's estate will be denied no-fault funeral expenses.<sup>18</sup>

**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.<sup>19</sup> Consequently, injured third parties 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.<sup>20</sup>

## 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.<sup>21</sup> Moreover, your vehicle may be seized and sold to satisfy the unpaid judgment.<sup>22</sup>

## 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 will 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.



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## 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 *Motor Vehicle Act*, R.S.N.B. 1973, c. M-17, s. 271.
  - 4 N.B. Reg. 2003-20, ss. 4 and 2(2). The government of New Brunswick recently imposed a limit on the amount an insured party can recover for non-monetary losses, such as pain and suffering. If the insured suffered minor personal injuries, the award for non-monetary losses will be limited to a maximum of \$2,500.
  - 5 *Fault Determination Regulation - Insurance Act*, N.B. Reg. 2004-141.
  - 6 *Provincial Offences Procedure Act*, S.N.B. 1987, c. P-22.1, ss. 56(8) and 64(1).
  - 7 *Motor Vehicle Act*, *supra* note 3, s. 274.
  - 8 *Provincial Offences Procedure Act*, *supra* note 6, s. 87.
  - 9 The Facility Association, online: <<http://www.facilityassociation.com/fapdfs/Consumer%20Brochure%204-25-02.pdf>>.
  - 10 Correspondence with B. Boland (London, Ontario West Insurance Brokers), 29 July 2004 [Boland].
  - 11 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.
  - 12 The Facility Association, online: <<http://www.facilityassociation.com>>.
  - 13 Boland, *supra* note 10; and correspondence with J. Hepburn (Toronto, Facility Association), 16 April 2004.
  - 14 Insurance companies are permitted to deny collision coverage to both impaired and unauthorized drivers, and invariably appear to do so. *Insurance Act*, R.S.N.B. 1973, c. I-12, s. 252.
  - 15 *Standard Automobile Policy for New Brunswick*, S.P.F. No. 1, Section B, Special Provisions, Definitions and Exclusions of Section B, s. 2(b)(i), online: <<http://www.aon.ca/quicken/english/auto/provincialautopolicies.htm>> [Policy].
  - 16 *Insurance Act*, *supra* note 14, s. 250(13).
  - 17 See *supra* note 14.
  - 18 *Policy*, *supra* note 15, Section B, Special Provisions, Definitions and Exclusions of Section B, s. 2(b)(ii).
  - 19 *Insurance Act*, *supra* note 14, s. 250(11).
  - 20 *Ibid.*, s. 250(13).
  - 21 *Motor Vehicle Act*, *supra* note 3, s. 276(1).
  - 22 *Provincial Offences Procedure Act*, *supra* note 6, s. 87.