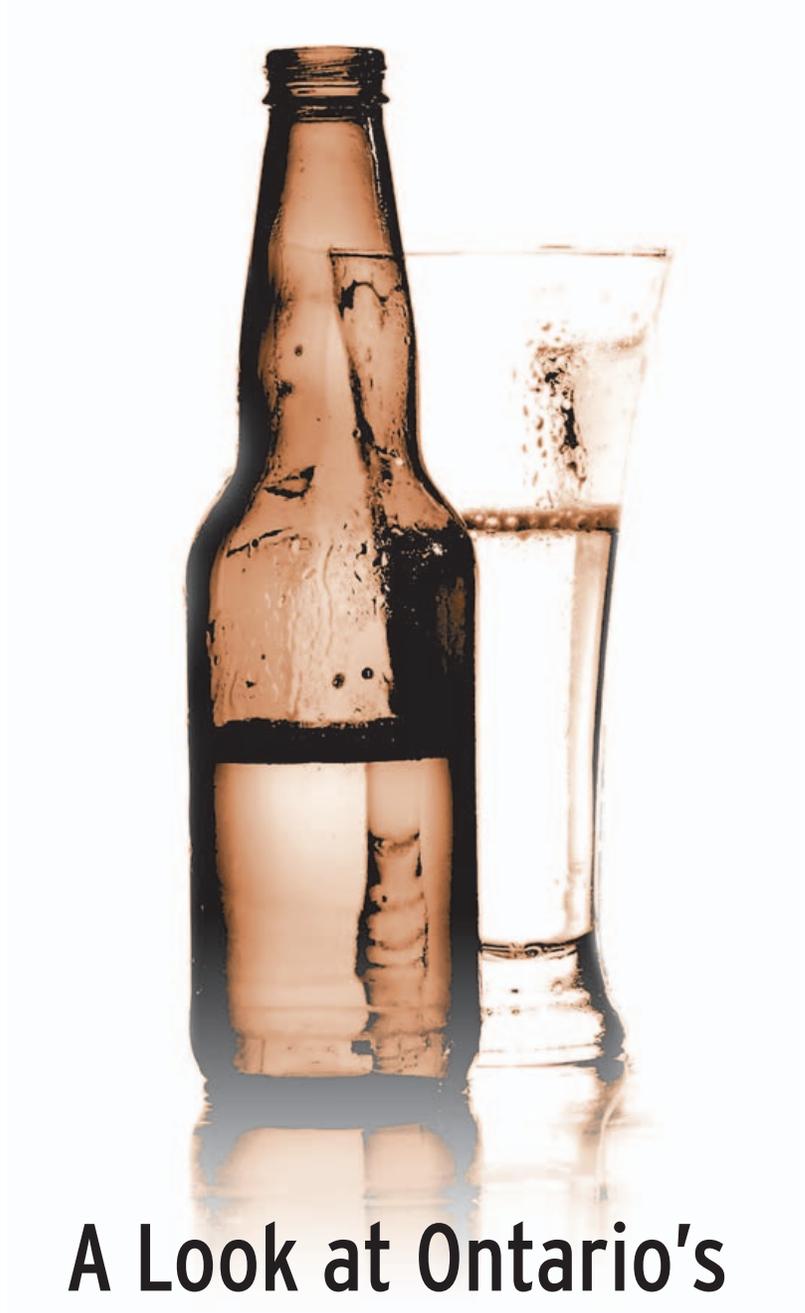


Automobile Insurance, Impaired Driving, and You



A Look at Ontario'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.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 Ontario'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, cause a crash while impaired or unauthorized.

Ontario's Insurance System

Ontario has a modified no-fault automobile insurance system that is administered by private companies. Regardless of who was at-fault in the crash, injured parties are entitled to relatively generous no-fault accident benefits for their personal injury losses.³ Injured parties have a largely unrestricted right to sue an at-fault driver for loss of earnings that exceed the no-fault accident benefits that they have received.⁴ However, their right to sue for their remaining medical and rehabilitation expenses, and for pain and suffering is limited.⁵

Ontario 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.⁶ Under Ontario's direct compensation system, drivers claim from their own insurance company for property damages caused by an insured at-fault party. However, when they are the at-fault party, drivers can only seek property damages if they had purchased optional collision insurance.

Driving Without Insurance

A conviction for driving without insurance carries a fine of between \$5,000 and \$25,000.⁷ Subsequent convictions result in fines of between \$10,000 and \$50,000, in addition to a possible licence suspension of up to a year.⁸ Moreover, the court may impound the vehicle of any offender for up to three months.⁹

Driving without insurance also significantly reduces your right to recover personal injury losses. First, you cannot recover for specified no-fault accident benefits, including loss of earnings.¹⁰ Second, you cannot sue the at-fault driver for any remaining personal injury losses that exceed the no-fault accident benefits that you have received.¹¹

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 Ontario, 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.¹² 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.¹³

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.¹⁴ While this non-profit insurance 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.¹⁵

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.¹⁶

The Insurance Consequences of Driving While Impaired

Your insurance coverage will be severely limited if you, or anyone to whom you lend your car, are at fault in causing 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 if you cause a single-vehicle crash.¹⁷ Similarly, in a multiple-vehicle crash, you can only recover collision damages to the extent that the other party was at-fault.¹⁸

Second, you will be denied some no-fault accident benefits, including lost wages coverage, non-earner benefits, and compensation for lost education, visitor and housekeeping expenses.¹⁹

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.²⁰ 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 are at fault in causing a crash.

First, your insurance company is not required to compensate you for the cost of repairing or replacing your vehicle if you cause a single-vehicle crash. Similarly, in a multiple-vehicle crash,²¹ you can only recover collision damages to the extent that the other party was at fault.

Second, you will be denied some no-fault accident benefits, including lost wages coverage, non-earner benefits, and compensation for lost education, visitor and housekeeping expenses.²²

Third, your insurance company is only liable for third-party losses up to the \$200,000 provincial minimum, even if you purchased additional third-party coverage. Furthermore, it can sue you to recover any third-party claims that it has paid.²³ In the end result, 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 has paid up to this amount.²⁴

Unpaid Judgments

If you fail to pay a civil judgment arising from a crash, the Registrar of Motor Vehicles must suspend your current driver's licence and cannot renew it.²⁵

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 By the term "relatively generous" benefits, we mean that the maximum no-fault benefits are much higher than those in most other provinces. However, some of these benefits are subject to deductibles, eligibility thresholds, and caps on certain types of expenses.
 - 4 It should be noted that the *Insurance Act*, R.S.O. 1990, c. I.8, s. 267.5(1) imposes some minor restrictions on the period for which an injured party can sue for loss of earnings [*Insurance Act*].
 - 5 *Ibid.*, s. 267.5(3) and (5).
 - 6 R.R.O. 1990, Reg. 668. The adjuster may decide that one party was entirely at fault.
 - 7 *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, s. 2(3).
 - 8 *Ibid.*
 - 9 *Ibid.*, s. 2(7).
 - 10 O. Reg. 403/96, s. 30.
 - 11 *Insurance Act*, *supra* note 4, s. 267.6(1).
 - 12 Insurance Bureau of Canada, *Frequently Asked Questions About Automobile Insurance in Ontario* (Toronto: Insurance Bureau of Canada, 2003) at 24. However, it should be noted that the standard automobile insurance application form requires disclosure of any licence suspension or prohibition within the past six years. Thus, an applicant who had his licence suspended for impaired driving or demerit points up to six years ago would face higher premiums than an applicant with a "clean" history. An applicant's wilful withholding or misstating of such information largely negates the insurance contract, with the primary exception of third-party claims. *Insurance Act*, *supra* note 4, s. 233(1).
 - 13 Correspondence with B. Boland (London, Ontario West Insurance Brokers), 29 July 2004 [*Boland*].
 - 14 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.
 - 15 The Facility Association, online: <<http://www.facilityassociation.com>>.
 - 16 *Boland*, *supra* note 13; and correspondence with J. Hepburn (Toronto, Facility Association), 16 April 2004.
 - 17 Ontario Automobile Policy, s. 7.2.2., online: <http://www.aon.com/ca/en/individuals/auto_insurance/default.jsp> [*Policy*].
 - 18 If a driver is charged with an alcohol-related driving offence, the ordinary principles of law governing the apportionment of fault apply, rather than those in the *Fault Determination Rules*. R.R.O. 1990, Reg. 668, s. 20.
 - 19 O. Reg. 403/96, s. 30(4).
 - 20 *Insurance Act*, *supra* note 4, s. 258(13).
 - 21 *Policy*, *supra* note 17, s. 7.2.2.
 - 22 O. Reg. 403/96, s. 30(1).
 - 23 *Insurance Act*, *supra* note 4, s. 258(11).
 - 24 *Ibid.*
 - 25 *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 198(1).