

## EXECUTIVE SUMMARY

This report summarizes the provincial and territorial automobile insurance legislation relating to impaired and unauthorized driving.\* In most provinces and territories, such conduct negates the driver's collision coverage, severely limits the driver's no-fault accident benefits, exposes the driver to open-ended liability for third-party injuries and losses, and may limit the right of innocent victims to recover from the at-fault driver's insurance company. As outlined below, the document also summarizes our findings and recommendations for strengthening the current insurance laws to more adequately compensate victims and to better deter impaired, uninsured and unauthorized drivers.

- The mandatory minimum amount of third-party liability coverage and “uninsured driver” protection should be increased to \$500,000 in all jurisdictions.
- Insurance plans with comprehensive and substantial no-fault accident benefits are preferable to insurance plans with limited no-fault benefits. Access to generous no-fault accident benefits ensures that victims receive compensation, even if the at-fault driver has few assets, or was impaired, uninsured or unauthorized.
- From a victim's perspective, preserving the right to sue for losses in excess of his or her no-fault benefits is important. Moreover, as a matter of fairness, MADD Canada believes that such remaining losses should be borne by the at-fault driver and not by the innocent victim.
- The minimum fine for driving without insurance should be increased to \$5,000 for a first offence in every jurisdiction.
- Those who drive while uninsured should be subject to a six-month licence suspension for a first offence and an automatic licence revocation for a second offence within three years.
- The police should be required to impound any vehicle that they have reasonable grounds to believe is being driven without insurance.
- If a driver or owner is responsible for three or more impoundments within a ten-year period, his or her vehicle should be forfeited to the provincial or territorial government.
- A driver's insurance premiums should reflect the crash risk that he or she poses. As a matter of fairness, responsible drivers should not be charged elevated premiums to subsidize the premiums of irresponsible drivers. Moreover, research indicates that risk-rated premiums enhance traffic safety by reducing driving among high-risk groups.
- In order to encourage at-fault drivers to compensate those whom they have injured, the Registrar (Superintendent) of Motor Vehicles should be required to suspend the licence and vehicle registration of any person who fails to satisfy an outstanding judgment arising from a crash.

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\* We have used the term “unauthorized driving” to refer to driving while unlicensed, suspended, disqualified, or prohibited.

- Insurance companies should be required to compensate third parties to the full extent of the insurance contract, even if the insured driver was impaired or unauthorized to drive at the time of the crash.
- Legislation should be introduced requiring insurance companies to bring the insurance consequences of impaired and unauthorized driving to the attention of their customers.

This report is part of a broader two-year project. A far more detailed summary of the legislation, including specific recommendations, has been prepared for each province and territory. A short public information pamphlet has also been produced for each province and territory on the specific insurance consequences of impaired and unauthorized driving.

## INTRODUCTION

Few areas of Canadian law are as complex or politically volatile as the provincial and territorial automobile insurance legislation. Yet, few areas have as great an impact on the daily lives of Canadians. In addition to almost 2,000,000 crashes that involved only property damage, more than 360,000 Canadians were injured and more than 3,000 were killed in motor vehicle crashes in 2001.<sup>1</sup> Research indicates that approximately 12% of the property damage crashes, 20% of the injuries, and 40% of the fatalities are alcohol and/or drug-related.<sup>2</sup> The annual cost of these impairment-related crashes is estimated to be as high as \$10.8 billion.<sup>3</sup>

This report is intended to serve two purposes. First, it summarizes several key features of the provincial and territorial automobile insurance laws relating to impaired driving. While our primary concern is with impaired driving, we have also addressed the related problem of unauthorized driving.<sup>4</sup> Research suggests that a majority of impaired driving offenders continue to drive, at least occasionally, while suspended or otherwise unauthorized.<sup>5</sup> This report contains a series of tables to allow readers to compare the insurance provisions in their province or territory with those in the other Canadian jurisdictions. We have included all amendments that were proclaimed in force as of December 1, 2004. A more detailed summary of the legislation, including specific recommendations, has been prepared for each province and territory. Moreover, a short public information pamphlet has been produced for each province and territory on the specific insurance consequences of impaired and unauthorized driving.

Second, this report outlines MADD Canada's findings and recommendations on the current automobile insurance legislation. MADD Canada had no preconceived position on these issues. Rather, its views are based on an assessment of which insurance provisions best advance the organization's goals of preventing impaired driving and assisting the victims of this crime. On some issues, the evidence was relatively clear and a firm conclusion could be reached. However, on other issues, the evidence warranted a more guarded position. Finally, there were some issues on which no preference was expressed because several approaches appeared to be equally appropriate.

## MINIMUM INSURANCE REQUIREMENTS

**(i) Introduction:** Automobile insurance in Canada is provided by private companies, and/or by provincial or territorial government agencies. The preferable approach, from MADD Canada's perspective, is the one that delivers the most comprehensive and substantial coverage to the largest number of victims in the most efficient and effective manner. Regardless of the form of administration, every vehicle should carry minimum amounts of insurance that include accident benefits, third-party liability coverage, and uninsured protection.

**(ii) Accident Benefits:** Accident benefits coverage is mandatory in every Canadian jurisdiction, except for Newfoundland and Labrador where such coverage is optional.<sup>6</sup> Accident benefits provide insured parties with no-fault compensation from their own insurance company when they are injured or

killed in a motor vehicle crash. The benefits typically include: medical and rehabilitation costs; loss of earnings; death benefits for the deceased's family; and funeral expenses.

As Table 1 indicates, there is tremendous variation in the maximum awards available under these headings. For example, medical and rehabilitation costs are capped at \$10,000 in the Yukon,<sup>7</sup> but are not subject to an upper limit in Québec or Manitoba.<sup>8</sup> Moreover, there are a myriad of deductibles, eligibility thresholds, and caps on the various benefits provided in each jurisdiction.

**Table 1: Selected Accident Benefits\* (Maximum Payments)**

		Medical/Rehab.	Lost Earnings	Death Benefits to Spouse**	Funeral Costs
	<b>AB</b>	\$50,000	\$300/week for 104 weeks	\$10,000	\$2,000
	<b>BC</b>	\$150,000	\$300/week to age 65	\$5,000	\$2,500
	<b>MB</b>	no upper limit	90% of net income for duration of disability (max. gross \$65,000)	\$325,000	\$6,663
	<b>NB</b>	\$50,000	\$250/week for life	\$50,000	\$2,500
	<b>NFLD</b>	optional	optional	optional	optional
	<b>NWT</b>	\$25,000	\$140/week for life	\$10,000	\$1,000
	<b>NS</b>	\$25,000	\$140/week for life	\$10,000	\$1,000
	<b>NU</b>	\$25,000	\$140/week for life	\$10,000	\$1,000
	<b>ON</b>	\$100,000 if catastrophic: \$1,000,000	\$400/week to age 65, reduced thereafter	\$25,000	\$6,000
	<b>PEI</b>	\$25,000	\$140/week for duration of disability	\$10,000	\$1,000
	<b>QC</b>	comprehensive coverage as per regulations	90% of net income to age 65, reduced thereafter (max. gross \$55,000)	\$275,000	\$4,142
<b>S A S K</b>	<b>(i) no-fault</b>	\$5,268,450	90% of net income to age 65 (max. gross \$59,062)	45% of net income for life (max. gross \$59,062)	\$7,903
	<b>(ii) fault</b>	\$20,600 if catastrophic: \$154,500	\$309/week for life	45% of net income for life (max. gross \$59,062)	\$5,150
	<b>YK</b>	\$10,000	\$300/week for 104 weeks	\$10,000	\$2,000

\* Manitoba, Québec and Saskatchewan also provide substantial lump-sum payments for non-economic losses to those with permanent or catastrophic personal injuries.

\*\* In some jurisdictions, death benefits also include fixed weekly payments to the deceased's spouse, and/or smaller lump-sum payments and fixed weekly payments to the deceased's dependants.

While it is not feasible in this document to summarize the multitude of deductibles, thresholds and caps that apply to the various benefits in each province and territory, their importance should not be overlooked. The vast majority of insurance claims involve minor or moderate injuries and losses. If the

relevant benefits are subject to significant deductibles, thresholds and caps, then these victims will have to absorb a significant percentage of their injuries or losses without compensation. For example, an injured party's total award for "non-pecuniary" losses\* is subject to a \$30,000 deductible in Ontario, unless the award exceeds \$100,000.<sup>9</sup> Thus, from a victim compensation perspective, it is important to consider not only the maximum payment, but also any related deductibles, thresholds or caps.

As we shall discuss, the limits on no-fault accident benefits cannot be viewed in isolation from an injured party's right to sue. Generally speaking, the more limited the no-fault benefits, the broader the injured party's right to sue. Saskatchewan is unique in giving drivers a choice of two insurance plans. The "no-fault" plan provides very generous no-fault accident benefits, but limits an injured party's right to sue for "non-economic" losses.<sup>10</sup> The "fault" scheme provides much lower no-fault accident benefits, but gives an injured party a broader right to sue for non-economic losses.<sup>11</sup>

**(iii) Third-Party Liability:** With the exception of Québec and Nova Scotia, the mandatory minimum amount of third-party coverage is \$200,000 across Canada. Québec only requires \$50,000 of third-party coverage, but this applies exclusively to property damage.<sup>12</sup> Nova Scotia recently increased its minimum third-party coverage to \$500,000.<sup>13</sup> The mandatory minimums in the other jurisdictions were, for the most part, established more than 20 years ago when damage awards were significantly lower. Increases in wages, and in health care, rehabilitation and living costs have rendered these minimums inadequate. The current third-party minimums frequently cast the financial burden of the at-fault driver's negligence on injured victims, their families and the government. The more serious the crash, the more likely it is that the victim and the government will have to subsidize the losses caused by the at-fault driver. Consequently, we recommend that the mandatory minimum third-party coverage be increased to \$500,000. This is not unreasonable, given that most drivers already purchase additional third-party coverage.<sup>14</sup>

**(iv) Uninsured Protection:** Uninsured coverage provides victims with compensation for personal injuries and property damages when the at-fault driver is uninsured, or flees and is not apprehended. Unfortunately, it is not uncommon for impaired driving offenders to drive while uninsured or flee the scene to evade criminal charges. Currently, the minimum uninsured protection is equivalent to the minimum third-party liability coverage, which in most jurisdictions is only \$200,000. In keeping with our recommendation to increase third-party coverage, the minimum "uninsured coverage" should be increased to \$500,000. This would help ensure that there is more adequate compensation for those seriously injured by at-fault drivers who flee or are uninsured.

## NO-FAULT AUTOMOBILE ACCIDENT COMPENSATION

The issue of fault versus no-fault compensation has generated considerable controversy. Many organizations and individuals hold strong beliefs about the relative merits of the two approaches. Our goal in this section is not to resolve these controversies, but rather to explain the role of no-fault compensation in the provincial and territorial insurance plans, and outline some preliminary observations.

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\* Non-pecuniary (non-economic or non-monetary) losses typically include: claims for pain and suffering; loss of enjoyment of life; and loss of care, guidance and companionship arising from the death of a close family member.

Under no-fault systems, those who are injured in a crash receive compensation from their own insurance company, regardless of fault. In other words, crash victims are not required to prove that another party was at fault in causing their injuries in order to obtain compensation. No-fault systems are intended to reduce the delays and costs of initiating adversarial proceedings, thereby providing benefits to victims as quickly and efficiently as possible.

Automobile insurance systems can be divided into three broad categories based on the role of fault in awarding compensation. First, in a pure fault-based system, victims do not receive any no-fault benefits, but rather are required to seek compensation from the at-fault driver and his or her insurer. The automobile insurance system in Newfoundland and Labrador comes closest to a pure fault-based scheme in Canada.<sup>15</sup> Second, in a pure no-fault system, injured parties receive compensation for all their personal injuries and property damages from their own insurance company, regardless of who was at fault. Injured parties have no right to sue an at-fault driver, even if their losses exceed the no-fault benefits that they received. Québec and Manitoba come closest to this model, but only in relation to personal injuries.<sup>16</sup> Third, in modified fault-based systems, the injured party typically receives no-fault accident benefits for specified injuries and losses up to pre-set maximums, and may then sue the at-fault driver for certain losses in excess of these limits. In terms of personal injuries, most jurisdictions in Canada can be described as having a modified fault-based system, because they provide some combination of no-fault and fault-based compensation.<sup>17</sup>

There has been considerable debate about the deterrent impact of fault versus no-fault compensation.<sup>18</sup> Opponents of no-fault contend that it removes the deterrent impact that the threat of a lawsuit would otherwise have on a driver's behaviour.<sup>19</sup> In response, it is argued that if irresponsible drivers are not deterred by the risks of killing or maiming themselves, being criminally prosecuted or losing their licence, then the threat of a potential lawsuit is unlikely to alter their conduct.<sup>20</sup> In our view, the latter position appears to be more compelling. However, the issue is largely irrelevant in Canada, at least in regard to impaired and unauthorized driving. As will be discussed later in this paper, such conduct negates a driver's collision insurance, severely limits his or her no-fault benefits, and exposes him or her to open-ended personal liability in every jurisdiction except Québec.

In terms of victim compensation, plans with generous no-fault accident benefits appear to be preferable to plans that provide limited benefits and rely more heavily on adversarial proceedings. Access to comprehensive and substantial no-fault benefits ensures that victims can obtain compensation, even if the at-fault driver has few assets, flees, or was impaired, unauthorized or uninsured. Moreover, no-fault plans can provide victims with benefits in a more timely<sup>21</sup> and cost-efficient<sup>22</sup> manner than adversarial proceedings. While the potential advantages of no-fault compensation systems can be readily identified, the impact of any particular plan on crash victims will depend on the specifics of the plan and how efficiently it is administered.

## **THE RIGHT TO SUE**

As Table 2 illustrates, an accident victim's right to sue varies across Canada. For the most part, jurisdictions that provide the most comprehensive no-fault benefits impose the greatest limits on the right

to sue. The significance of these limits will depend on the extent to which they are offset by readily available and substantial no-fault benefits. For example, under Saskatchewan’s no-fault insurance plan, the right to sue for non-pecuniary losses is severely limited. However, those who suffer a “catastrophic injury” are entitled to a no-fault payment of up to nearly \$185,000.<sup>23</sup>

From a victim’s perspective, preserving the right to sue for losses in excess of his or her no-fault benefits is important. Moreover, as a matter of fairness, MADD Canada believes that such remaining losses should be borne by the at-fault driver and not by the innocent victim. However, if financial tradeoffs have to be made, the majority of victims are better served by having generous no-fault benefits, even if this means that some limits have to be imposed on their right to recover from the driver’s insurer.

**Table 2: Right to Sue**

	Medical/Rehab.*	Lost Earnings*	Pain and Suffering*	Vehicle/Property Damage
<b>AB</b>	√	√	limited	√
<b>BC</b>	√	√	√	√
<b>MB</b>	no	no	no	√
<b>NB</b>	√	√	limited	√
<b>NFLD</b>	√	√	√	√
<b>NWT</b>	√	√	√	√
<b>NS</b>	√	√	limited	√
<b>NU</b>	√	√	√	√
<b>ON</b>	limited	√	limited	no
<b>PEI</b>	√	√	√	√
<b>QC</b>	no	no	no	√
<b>SASK</b>	<b>(i) no-fault</b>	√	very limited	√
	<b>(ii) fault</b>	√	√	√
<b>YK</b>	√	√	√	√

\* We are referring to the right to sue for losses in excess of the no-fault accident benefits.

It must be acknowledged that some victims would fare better for certain losses under a fault-based scheme with an unlimited right to sue, than under a generous no-fault plan. This would likely be the case in terms of lost earnings for a high-income earner who was seriously injured by a well-insured driver.<sup>24</sup> Similarly, a fault-based system may provide more coverage for pain and suffering, and certain costs, such as child care and massage therapy expenses. Nevertheless, the number of victims who would do better under a fault-based system is relatively small. One must also consider the injured party’s legal costs, which may amount to a third of the total damage award.<sup>25</sup>

Finally, a damage award simply permits the successful party to pursue various creditors’ remedies against the at-fault driver. If, as is often the case, the at-fault driver has limited third-party coverage and

few personal assets, the injured party's damage award may be largely unrecoverable. The Société de l'assurance du Québec (SAAQ), which administers the provincial no-fault plan, reported that 28% of crash victims received no compensation prior to the plan's introduction. Moreover, 43% of victims' economic loss claims, which include loss of earnings, and medical and rehabilitation expenses, went uncompensated.<sup>26</sup>

In order to encourage at-fault drivers to compensate those whom they have injured, the Registrar of Motor Vehicles should be required to suspend the licence and vehicle registration of any person who fails to satisfy an outstanding judgment arising from a crash.<sup>27</sup>

## **DRIVING WITHOUT INSURANCE**

Driving without insurance should be made a serious provincial offence punishable by a significant fine, vehicle impoundment and licence suspension. In addition, the police should be given the right to arrest, without a warrant, any driver who they have reasonable grounds to believe is uninsured. Those who choose to drive without insurance impose the risk of uncompensated losses and injuries on all other users of the road. Although governments and insurance companies provide some protection through mandatory uninsured coverage or underinsured motorist funds, compensation is typically limited to the minimum third-party liability coverage. Thus, in serious crashes, most of the financial burden may be borne by victims, their families and the public through healthcare, rehabilitation and social costs.

As Table 3 illustrates, the minimum set fines for driving without insurance vary significantly, ranging from a low of \$300 in British Columbia to a high of \$5,000 in Ontario.<sup>28</sup> The minimum fine should be increased to \$5,000 in all jurisdictions. While this amount may appear inordinately high, significant fines may be required to deter motorists who are financially motivated to drive without insurance.<sup>29</sup> Given that insurance premiums have increased sharply in most jurisdictions,<sup>30</sup> some drivers may decide to drive without insurance and risk the current fines. In our view, a minimum fine of \$5,000 would serve as a deterrent and better reflect the seriousness of this conduct.<sup>31</sup>

Furthermore, the police should be required to impound any vehicle that they have reasonable grounds to believe is uninsured.<sup>32</sup> Drivers of these vehicles have shown their unwillingness to respect the law and have cast the risks of their driving on the public.<sup>33</sup> The impoundment period should be 45 days for a first occurrence, and 90 days for a second occurrence within three years involving the same owner or driver. Moreover, if a driver or owner is responsible for three or more vehicle impoundments within a ten-year period, his or her vehicle should be forfeited to the province or territory.<sup>34</sup>

Finally, those who drive while uninsured should be subject to licence suspensions and revocations.<sup>35</sup> A first offence should result in a minimum licence suspension of six months. A subsequent conviction within three years should result in an automatic licence revocation. Those who repeatedly drive without insurance should lose their driving privileges and be required to establish why these privileges should be reinstated.



**Table 3: Sanctions For Driving Without Insurance (First Offence)**

	<b>Fines/Imprisonment</b>	<b>Licence Suspension</b>	<b>Vehicle Impoundment</b>
<b>AB</b>	\$2,500 - \$10,000 fine	no	no
<b>BC</b>	\$300 - \$2,000 fine and/or imprisonment for up to 6 months	no	no
<b>MB</b>	up to \$2,000 fine	may suspend up to 1 year	no
<b>NB</b>	\$500 - \$10,000 fine and/or imprisonment for up to 180 days	must suspend*	no
<b>NFLD</b>	\$1,000 - \$3,000 fine	may suspend if in crash with damages >\$500*	no
<b>NWT</b>	minimum fine of \$500 and/or imprisonment for a minimum of 3 months	no	no
<b>NS</b>	\$1,000 fine	must suspend*	no
<b>NU</b>	minimum fine of \$500 and/or imprisonment for a minimum of 3 months	no	no
<b>ON</b>	\$5,000 - \$25,000 fine	no	may impound for up to 3 months
<b>PEI</b>	\$600 - \$2,000 fine	no	no
<b>QC</b>	\$325 - \$2,800 fine	may suspend up to 1 year	no
<b>SASK</b>	up to \$1,000 fine	no	no
<b>YK</b>	\$400 - \$2,000 fine and/or imprisonment for up to 90 days	no	may impound for 30 days

\* The driver's licence is suspended until he or she provides proof of insurance.

## **IMPACT OF OFFENCE AND CRASH RECORDS ON PREMIUMS**

As a matter of fairness, the premiums of responsible drivers should not be set at a rate that subsidizes the insurance costs of irresponsible drivers. Research indicates that risk-based pricing of premiums can also significantly enhance traffic safety by reducing driving among high-risk groups. The authors of a recent study examined the impact of “social-pricing” of insurance on crash rates and costs in British Columbia.<sup>36</sup> They concluded that the reduction in the frequency and severity of collisions resulting from a shift to risk-based premiums could save the province “as much as 36% in direct and human capital costs”.<sup>37</sup> Thus, both fairness and traffic safety considerations indicate that the premiums of high-risk drivers should reflect the risks that they pose.

This goal can be accomplished in two ways. First, the government can establish a formal system of imposing specified insurance surcharges or penalties for driving offences and at-fault crashes. Alberta, British Columbia, Manitoba, Saskatchewan, and Québec have adopted this type of approach. Second, it can be left to insurance companies to set premiums for high-risk drivers. In our view, the insurance

surcharges or penalties currently imposed on impaired drivers under some government programs do not adequately reflect the risks posed by this behaviour. For example, Québec’s premium surcharge for impaired driving is only \$300 to \$400, depending on whether it is a driver’s first, second or subsequent conviction within five years.<sup>38</sup>

## FACTORS LIMITING COVERAGE: IMPAIRED DRIVING

In most jurisdictions, at-fault drivers who are convicted of driving with a BAC above 0.08%, driving while impaired, or refusing to provide a breath or blood sample have their insurance coverage severely limited.

**(i) Collision and Accident Benefits Coverage:** Except for Québec, every jurisdiction denies impaired driving offenders collision coverage for damages to their own vehicle.<sup>39</sup> Moreover, as the following table illustrates, their accident benefits are also severely limited in most jurisdictions.<sup>40</sup>

**Table 4: Impaired Driving Convictions<sup>41</sup> and Offenders’ Insurance Benefits**

	Collision	Medical/Rehab.	Lost Earnings	Death Benefits	Funeral Costs
AB	none	full	none	full	full
BC	none	full	full	full	full
MB	none	full	none	full	full
NB	none	none	none	full	none
NFLD*	none	none	none	none	none
NWT	none	none	none	full	none
NS	none	none	none	full	none
NU	none	none	none	full	none
ON	none	full	none	full	full
PEI	none	none	none	full	none
QC	full	full	full, unless imprisoned	full	full
SASK	none	limited	full (1st offence) none (2nd offence)	full	full
YK	none	full	none	full	full

\* Accident benefits coverage is optional in Newfoundland and Labrador. The information in this chart is based on the assumption that the driver had purchased accident benefits coverage.

**(ii) Third-party Coverage:** As Table 5 illustrates, insurance companies in most jurisdictions remain liable to the full extent of the third-party coverage that an impaired driving offender purchased. However, in some jurisdictions, an impaired driver’s third-party coverage is limited to the statutory minimum,

regardless of how much additional insurance coverage he or she had purchased. In these jurisdictions, injured third parties do not benefit from the extended coverage that the offender purchased.<sup>42</sup>

Insurance companies in most jurisdictions are entitled to recover from the at-fault impaired driver any awards that they paid to third parties. In essence, impaired drivers lose the financial protection of their third-party coverage. They can be sued by their own insurance company for any claims that it has paid out and by an injured third party for any remaining losses in excess of their policy limit.

**Table 5: Impaired Driving Convictions<sup>43</sup> and Third-Party Liability Coverage**

	Insurers' Liability for Third-Party Losses	Insurers' Right to Recover Third-Party Payout from Offender	Licence Suspensions for Outstanding Judgments
AB	full extent of contract	√	may be suspended and cannot be renewed
BC	up to \$200,000*	√	licence may not be renewed
MB	full extent of contract	no	must be suspended and cannot be renewed
NB	full extent of contract	√	must be suspended and cannot be renewed
NFLD	full extent of contract	√	must be suspended and cannot be renewed
NWT	full extent of contract	√	may be cancelled and cannot be renewed
NS	full extent of contract	√	must be suspended and cannot be renewed
NU	full extent of contract	√	may be cancelled and cannot be renewed
ON	full extent of contract	√	must be suspended and cannot be renewed
PEI	full extent of contract	√	may be suspended and may not be renewed
QC	full extent of contract	no	must be suspended and cannot be renewed
SASK	up to \$200,000	√	must be cancelled and cannot be renewed
YK	full extent of contract	√	may be suspended and cannot be renewed

\* If the impaired driver purchased excess third-party coverage from a private insurance company, the third-party claim is limited to \$200,000. In contrast, if the offender purchased excess coverage from the Insurance Corporation of British Columbia, the third party is compensated to the full extent of the coverage purchased. Legislation is pending that would require private insurers to fully compensate third parties.

It may be justifiable to limit an impaired driver's right to recover for his or her own property damages, personal injuries and financial losses. Similarly, it may be appropriate to permit insurance companies to recover from an offender any damages that they have paid to third parties. However, insurance companies should be required to compensate third parties to the full extent of the insurance

contract, even if the insured was impaired at the time of the crash. In our view, these financial risks should be borne by insurance companies that profit from the premiums, not by innocent third parties.

In addition, legislation should be introduced requiring insurance companies to bring the insurance consequences of impaired driving to the attention of their customers. Few people understand that an impaired driving conviction can negate their collision insurance, limit their accident benefits and expose them to potentially devastating third-party liability claims. Similarly, many individuals do not appreciate that they have open-ended liability if they lend their vehicle to a person who later drives while impaired.

## FACTORS LIMITING COVERAGE: UNAUTHORIZED DRIVING

As Table 6 illustrates, most jurisdictions severely limit the insurance benefits of at-fault unauthorized drivers. First, insurance companies in every jurisdiction deny these drivers collision coverage for damages to their own vehicle.<sup>44</sup> Second, insurance companies in most jurisdictions severely limit the accident benefits of such drivers.<sup>45</sup>

**Table 6: Insurance Benefits of Unauthorized Drivers**

		Collision	Medical/Rehab.	Lost Earnings	Death Benefits	Funeral Costs
AB		none	full	none	full	full
BC		none	none	none	none	none
MB		none	full	full	full	full
NB		none	none	none	full	none
NFLD*		none	none	none	none	none
NWT		none	none	none	full	none
NS		none	none	none	full	none
NU		none	none	none	full	none
ON		none	full	none	full	full
PEI		none	none	none	full	none
QC		none	full	full	full	full
S A S K	(i) no-fault	none	full	full	full	full
	(ii) fault	none	none	none	none	none
YK		none	full	none	full	full

\* Accident benefits coverage is optional in Newfoundland and Labrador. The information in this chart is based on the assumption that the driver had purchased accident benefits coverage.

Third, in most jurisdictions, an unauthorized driver's third-party coverage is limited to the statutory minimum, regardless of how much additional coverage he or she had purchased.<sup>46</sup> Thus, injured third

parties do not benefit from the at-fault driver's additional third-party coverage. Finally, in most jurisdictions, insurance companies are entitled to recover from unauthorized drivers any claims that they paid to third parties. In essence, unauthorized drivers lose the financial protection of their third-party coverage. They can be sued by their own insurance company for any claims that it has paid out and by an injured third party for any remaining losses in excess of the statutory minimum.

Again, it may be justifiable to limit an unauthorized driver's right to recover for his or her own property damages, personal injuries and financial losses. Similarly, it may be appropriate to permit insurance companies to recover from such drivers any damages that they have paid to third parties. However, insurance companies should be required to compensate injured third parties to the full extent of the insurance contract, even if the insured breached his or her insurance contract. As mentioned, these financial risks should be borne by the insurance companies that profit from the premiums, rather than by innocent third parties.

As explained in relation to impaired driving, legislation should be introduced requiring insurance companies to bring the insurance consequences of unauthorized driving to the attention of their customers.

## **CONCLUSION**

While some automobile insurance issues, such as premiums, generate a great deal of attention, other important issues are rarely addressed. Unfortunately, the insurance consequences of impaired and unauthorized driving fall into the latter category. The Canadian public needs to understand that impaired and unauthorized driving may negate their collision insurance, reduce their no-fault accident benefits, expose them to open-ended liability, and limit the insurance coverage available to injured third parties. The public must also appreciate that the current laws can be strengthened to better deter impaired and unauthorized driving, and to more adequately compensate victims. MADD Canada trusts that this document will further public understanding of these laws and highlight the need for reform.

## Endnotes

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- <sup>1</sup> G. Mercer and M. Marshall, *Estimating the Presence of Alcohol and Drug Impairment in Traffic Crashes and their Costs to Canadians: 1999 Review & 2001 Update* (Vancouver: Applied Research and Evaluation Services, University of British Columbia, November, 2003) at 3.
- <sup>2</sup> *Ibid.* at 4.
- <sup>3</sup> *Ibid.* at 6.
- <sup>4</sup> We have used the term “unauthorized” driving to refer to driving while unlicensed, suspended, disqualified, or prohibited.
- <sup>5</sup> 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 may be 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.
- <sup>6</sup> If injured in a crash, a Newfoundland and Labrador driver who has not purchased optional accident benefits coverage must pay his or her own medical and rehabilitation costs or attempt to recover them from the at-fault party, if there is one. Insurance Council of Canada, *Automobile Insurance in Canada* (Toronto: Insurance Council of Canada, 1999) at 5.
- <sup>7</sup> The Yukon, Y.O.I.C., 1988/90, Schedule, Subsection 3, s. 3.
- <sup>8</sup> Manitoba, *Automobile Insurance Coverage Regulation*, Man. Reg. 290/88R, s. 9(1); and Québec, *Automobile Insurance Act*, R.S.Q. c. A-25, s. 83.2. While there is no dollar cap on the total amount of medical and rehabilitation coverage provided, Québec limits coverage for certain services, such as chiropractic and physiotherapy treatments. See Société de l’assurance automobile du Québec (SAAQ), *Compensation Table* (Québec: Direction des communications, 2003).
- <sup>9</sup> *Insurance Act*, R.S.O. 1990, c. I.8, s. 267.5(7) and (8).
- <sup>10</sup> This limit on the right to sue for non-economic losses is not as significant as it would first appear to be. Under the no-fault plan, those who suffer a “permanent impairment” or a “catastrophic injury” are entitled to a lump-sum payment for non-economic losses of up to \$150,974 and \$184,396 respectively. Saskatchewan Government Insurance, online: <[http://www.sgi.sk.ca/sgi\\_internet/pdf/no\\_fault\\_coverage\\_guide.pdf](http://www.sgi.sk.ca/sgi_internet/pdf/no_fault_coverage_guide.pdf)>.
- <sup>11</sup> Saskatchewan Government Insurance, online: <[http://gi.sk.ca/sgi\\_internet/sgi\\_pub/vehicle\\_insurance/coverage\\_information/nofault\\_highlights/nofault\\_hi\\_benefits\\_package.html](http://gi.sk.ca/sgi_internet/sgi_pub/vehicle_insurance/coverage_information/nofault_highlights/nofault_hi_benefits_package.html)>.
- <sup>12</sup> Québec, *Automobile Insurance Act*, R.S.Q. c. A-25, s. 87.
- <sup>13</sup> *Insurance Act*, R.S.N.S. 1989, c. 231, s. 125(1). It should be noted that Manitoba’s third-party liability limit of \$200,000 applies to property damages and claims for out-of-province crashes.
- <sup>14</sup> According to the Insurance Bureau of Canada (IBC), the majority of drivers purchase more than the minimum coverage required by law. IBC, online: <[http://www.ibc.ca/homeauto\\_auto\\_liability.asp](http://www.ibc.ca/homeauto_auto_liability.asp)>.

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- <sup>15</sup> Newfoundland and Labrador, *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, s. 81(1).
- <sup>16</sup> Québec and, to a lesser extent, Manitoba base compensation for property damages on fault. Québec, *Automobile Insurance Act*, R.S.Q. c. A-25, ss. 108-109; and Manitoba Public Insurance Corporation, online: <[http://www.mpi/mb.ca/englis/insurance/basic/ap\\_deductibles.html](http://www.mpi.mb.ca/englis/insurance/basic/ap_deductibles.html)>.
- <sup>17</sup> If personal injuries and property damages are considered together, then all of the provinces and territories could be classified as having modified fault-based compensation systems.
- <sup>18</sup> For example, a Harvard study indicated “that reductions in accident liability produced by no-fault liability laws have led to an increase in traffic fatalities (estimated to be on the order of 6%).” A. Cohen and R. Dehejia, “The Effect of Automobile Insurance and Accident Liability Laws on Traffic Fatalities” (2004), Harvard Law and Economics Discussion Paper No. 479, online: <<http://ssrn.com/abstract=557922>>. See also J. Cummins, R. Phillips and M. Weiss, “The Incentive Effects of No-Fault Automobile Insurance” (October 2001), 44 *J.L. & Econ.* 427 at 427.
- In contrast, a RAND Corporation study found “no evidence that the implementation of no-fault insurance laws influenced the fatal accident rate” and concluded that there was “little support for the hypothesis that no-fault affects rates of driver negligence in fatal accidents.” D. Loughran, “The Effect of No-Fault Auto Insurance on Driver Behaviour and Auto Accidents in the United States” (2001), RAND Corporation Working Paper, at xv-xvi. See also P. Kochanowski and M. Young, “Deterrent Aspects of No-Fault Automobile Insurance: Some Empirical Findings” (1985), 52 *Journal of Risk and Insurance* 269; and IBC, *Insurance Myths*, online: <[http://www.ibc.ca/home\\_alta\\_insurance\\_myths.asp](http://www.ibc.ca/home_alta_insurance_myths.asp)>.
- <sup>19</sup> See for example, Cohen and Dehjia, *supra* note 18. Unfortunately, the authors failed to consider the role of insurance premiums on traffic fatalities. Research indicates that the increases in fatalities that were observed in some no-fault jurisdictions were not due to the introduction of no-fault compensation per se. Rather, these increases apparently resulted from a failure to set premiums at rates that reflected the drivers’ risk of crash. For example, the first version of Québec’s no-fault insurance plan included a flat premium that decreased the cost of insurance for young male drivers by about 80%. As we shall discuss, such pricing policies keep high-risk drivers on the roads, thereby increasing traffic safety risks. G. Schwartz, “Auto No-Fault And First-Party Insurance: Advantages and Problems” (2000), 73 *S. Cal. Rev.* 611 at 649-650. See also P. Kovacs and D. Leadbetter, “The Economic Burden of Motor Vehicle Collisions in British Columbia” (2004), 72(3) *Insurance and Risk Management*, 465 at 472-475.
- <sup>20</sup> See for example, C. Brown, “Deterrence in Tort and No-Fault: The New Zealand Experience” (1985), 73 *Calif. L. Rev.* 976 at 978; G. Schwartz, *supra* note 19; and L. Klar, *Tort Law*, 3rd ed. (Toronto: Thomson Canada Limited, 2003) at 15.
- <sup>21</sup> The SAAQ, which administers the provincial no-fault plan, has stated that the first income compensation cheque to an accident victim is issued on average 22 days after receipt of a claim. This is in contrast to the two to ten years that Québec victims had to wait prior to the introduction of no fault. SAAQ, *Quebec’s Automobile Insurance Plan* (Quebec: SAAQ, 2001) at 11-12. See also, the IBC which indicates that under fault-based compensation systems victims may not receive compensation for three to five years after the accident. IBC, *Insurance Myths*, *supra* note 18.
- <sup>22</sup> For example, SAAQ has reported that it pays out 88¢ on the dollar in compensation, whereas in jurisdictions that rely on the courts the payout is only 64¢ on the dollar with the rest going to administrative costs. SAAQ, *supra* note 21 at 6. See also, R. Devlin, “Liability versus No-Fault Automobile Insurance Regimes: An Analysis of the Experience in Quebec”, in G. Dionne, ed., *Contributions to Insurance Economics* (London: Kluwer Academic, 1992); S. Carroll and A. Abrahamse, “The Effects of a Choice Automobile Insurance Plan on Insurance Costs and Compensation: An Analysis Based on 1997 Data” (1992), RAND Institute for Civil Justice, MR-970-ICJ;

and S. Carroll and J. Kakalik, “No-Fault Approaches to Compensating People Injured in Automobile Accidents” (1991), 60(2) *Journal of Risk and Insurance* 265.

- <sup>23</sup> *Supra* note 10. See also Manitoba which has eliminated the right to sue for non-pecuniary losses, but provides similar no-fault impairment benefits. *Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, s. 127; and Manitoba Public Insurance Corporation, online: <<http://www.mpi.mb.ca/english/claims/PIPP/Impairment%20overview.html>>.
- <sup>24</sup> For example, Manitoba, which provides the highest awards for loss of earnings, caps these benefits at 90% of net income up to an annual gross income of \$65,000. *Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215, s. 111(1).
- <sup>25</sup> An older study in Manitoba conducted before the province adopted a no-fault insurance scheme found that 35-40% of victim settlements went to legal firms in the form of fees. Similarly, a 1995 KPMG report noted that up to 33% of claimant payouts in British Columbia go to legal fees. IBC, *supra* note 18.
- <sup>26</sup> SAAQ, *supra* note 21, at 11. SAAQ also indicates that few at-fault drivers are sufficiently solvent to pay even modest damage claims. SAAQ found that 43% of drivers involved in a crash that resulted in an impaired driving conviction had no employment income, 41% earned less than \$30,000, 14% earned between \$30,000 and \$50,000, and that only 2% earned over \$50,000. *Ibid.* at 13.
- <sup>27</sup> Such legislation currently exists in Newfoundland and Labrador, and there are similar provisions in other jurisdictions, including Ontario. See *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, s. 81(1); and *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 198(1).
- <sup>28</sup> British Columbia, *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, ss. 26(1)(c), 90 and 91(1); and Ontario, *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, s. 2(3).
- <sup>29</sup> In Ontario, the maximum fine for a first offence is \$25,000. *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, s. 2(3). There is a difference in the deterrence arguments regarding impaired driving and driving without insurance. People who drive impaired risk killing themselves and criminal prosecution. The likely deterrent impact of a possible lawsuit pales by comparison to these more serious risks. Whereas, a person who drives without insurance typically risks only a fine. In other words, a person’s decision to drive without insurance may be more financially motivated than a person’s decision to drive while impaired.
- <sup>30</sup> A recent study found that the average indexed cost of premiums in Canada rose almost 250% from 1991 to 2003. See J. Suggett and B. Malone, *Trends in First Time One-Year Licence Suspensions: Ontario (1991-2001)* (Mississauga, Ontario: MADD Canada, 2004) at 4.
- <sup>31</sup> In addition, failure to pay the fine should be punishable by a possible jail term. Subsequent convictions for driving without insurance should carry more onerous penalties than a first conviction.
- <sup>32</sup> More than half the provinces and territories already have vehicle impoundment programs for drivers who the police have reasonable grounds to believe are committing a federal impaired driving offence, or are driving while suspended or prohibited for a federal impaired driving offence. See R. Solomon, S. Pitel and L. Visser, *Rating the Provinces: The 2003 Report Card* (Mississauga, Ontario: MADD Canada, 2003) at 8.
- <sup>33</sup> Various North American impoundment programs have shown positive results in terms of lower recidivism rates and reductions in subsequent crashes and traffic convictions. See for example, D. DeYoung, *An Evaluation of the Specific Deterrent Effects of Vehicle Impoundment on Suspended, Revoked, and Unlicensed Drivers in California* (Washington: National Highway Traffic Safety Administration, 1997) at 40-43; and D. Beirness, H.



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Simpson and D. Mayhew, *Evaluation of Administrative Licence Suspension and Vehicle Impoundment Programs in Manitoba* (Ottawa: Transport Canada, 1997) at 48, 57 and 59.

- <sup>34</sup> Preliminary evidence from a New York City vehicle forfeiture program has shown promising results. See *Actions to Reduce Fatalities, Injuries and Crashes Involving the Hard Core Drinking Driver* (Washington: National Transportation Safety Board, 2000) at 24.
- <sup>35</sup> Although many individuals continue to drive at least occasionally during their suspension or revocation period, licence sanctions have a greater deterrent impact than other penalties. See E. Chamberlain and R. Solomon, “Misplaced Sympathies: Why Driving Prohibitions Are Neither Cruel Nor Unusual” (2001), 45 C.L.Q. 331 at 345-351. For a general review of these issues, see E. Chamberlain and R. Solomon, *MADD Canada Model 2003* (Mississauga, Ontario: MADD Canada, 2003) at I-86 to I-90.
- <sup>36</sup> Kovacs and Leadbetter, *supra* note 19. See also M. Mullins, *Public Auto Insurance: A Mortality Warning for Motorists* (Toronto: Fraser Institute, September, 2003), who states at page 5: “The unintended costs of mispricing are more deaths, injuries and property damage, especially for young drivers”.
- <sup>37</sup> *Ibid.*, at 475.
- <sup>38</sup> SAAQ, *A Tougher Law to Discourage Repeat Offenders* (Québec: Direction des communications, 2003). Moreover, there is no premium surcharge for at-fault crashes in Québec.
- <sup>39</sup> See for example, Alberta, *Insurance Act*, R.S.A. 2000, c. I-3, s. 638; and Prince Edward Island, *Insurance Act*, R.S.P.E.I. 1998, c. I-4, s. 242.
- <sup>40</sup> For example, impaired driving offenders in Ontario are denied lost wages coverage, non-earner benefits, and compensation for lost education, visitor and housekeeping expenses. However, insurance companies are required to provide the remaining accident benefits, including medical and rehabilitation expenses, death benefits and funeral expenses. *Statutory Accident Benefits Schedule - Accidents on or after November 1, 1996*, O. Reg. 403/96, s. 30(4) [*SAB Schedule*].
- <sup>41</sup> The term “impaired driving” refers to the federal offences of driving with a BAC above 0.08%, and driving while one’s ability to do so is impaired by alcohol or drugs. In British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan, drivers convicted of failing to provide a breath or blood sample will also have their coverage limited. In some jurisdictions, coverage may be denied if the driver’s control over the vehicle was impaired by alcohol or drugs, regardless of whether criminal charges were laid or a conviction was obtained.
- <sup>42</sup> In Saskatchewan, if a third-party claim exceeds the \$200,000 provincial minimum, Saskatchewan Government Insurance can raise any defence against the third party that it is entitled to raise against the insured. *Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35, s. 45(4). See also British Columbia, *Insurance Act*, R.S.B.C. 1996, c. 266, ss. 159(4) and 160(3).
- <sup>43</sup> See *supra* note 41.
- <sup>44</sup> See for example, Alberta, *Insurance Act*, R.S.A. 2000, c. I-3, s. 638; and the Yukon, *Insurance Act*, R.S.Y. 2002, c. 119, s. 150(1).
- <sup>45</sup> For example, unauthorized drivers in Ontario are denied lost wages coverage, non-earner benefits, and compensation for lost education, visitor and housekeeping expenses. However, the insurance company is required to provide the remaining accident benefits, including medical and rehabilitation expenses, death benefits

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and funeral expenses. *SAB Schedule*, *supra* note 40, s. 30(1). See also New Brunswick, *Standard Automobile Policy for New Brunswick*, S.P.F. No. 1, Section B, Subsection B, s. 2(b)(ii).

<sup>46</sup> See for example, Nova Scotia, *Insurance Act*, R.S.N.S. 1989, c. 231, s. 133(11); and Ontario, *Insurance Act*, R.S.O. 1990, c. I.8, s. 258(11).