

AND NOW YOUNG DRIVERS
NOVICE DRIVERS:
BEWARE OF VOIDING YOUR INSURANCE COVERAGE

Novice and young drivers who take a “sip” of beer before driving void their automobile liability and collision insurance coverage. Other seemingly minor breaches of highway traffic rules can have the same effect. Few drivers, and even fewer of their parents, understand the devastating personal consequences that can flow from breaches of the graduated licencing provisions or, as of August 1, 2010, the provisions prohibiting young drivers from drinking. These results come from interpretation of the graduated licencing regulations in several little-known court decisions.

It is widely known that, since the graduated licencing provisions were implemented in Ontario in approximately 1994, it has been an offence for a novice driver (*i.e.* someone who has a G1 or G2 licence) to operate a motor vehicle when his or her blood alcohol concentration is not zero. Similarly, it is widely known that it is an offence for a G1 driver to operate a vehicle on a 400 series highway. What is not widely known is that violation of these and other licence conditions also void insurance coverage. Without insurance, if the novice driver is in an accident while violating any of the graduated licencing provisions, the financial consequences can be devastating.

Similarly, it has been widely publicized recently that as of August 1, 2010, young drivers (*i.e.* those under age 22 regardless of their class of licence) will also be committing an offence and will face roadside suspensions and fines if they operate a motor vehicle with a blood alcohol concentration that is not zero. However, it is not widely known that young drivers void their insurance coverage if they operate a vehicle in such circumstances.

Some cases which have interpreted the graduated licencing rules are described below. For a list driving restrictions for novice drivers, see page 6.

Northover v Regier – blood alcohol not zero

On April 10, 1997 Jeffrey Regier, then 18, was driving with his friend Wayne Masse as a passenger. In an accident involving another vehicle, Masse was killed. Lawrence Northover, who was driving the other vehicle, and his passenger Rebecca Nash, were both injured.

Regier pleaded guilty to dangerous driving causing death. Regier admitted that “just” prior to the accident he drank a “large sip of

beer”. Blood testing confirmed that he had only “trace” amounts of alcohol in his blood.

At the time, Regier was a novice driver and had a G2 licence. As is widely known, one of the conditions of a G2 licence is that “The novice driver’s blood alcohol concentration must be zero at all times while he or she is operating the motor vehicle.” Since Regier’s blood alcohol concentration was not “zero”, he was “not authorized to drive”.

Every motor vehicle insurance policy in Ontario has a condition that no one can drive the insured automobile unless the person is “authorized by law to drive or operate it”. This means that if an unlicensed driver operates the vehicle, that person has no coverage for damage to the vehicle or for liability to others.

It was held that, since Regier was “not authorized to drive”, he violated his insurance policy and had no insurance coverage, including no liability coverage for the lawsuits brought against him by Masse’s family members and by Northover, Nash and their family members.

Vanderwal v State Farm – highway speed limit over 80 km/h

In another case, Richard Vanderwal, a novice motorcyclist, had a serious accident on June 29, 1992 when driving his motorcycle on the Q.E.W. A condition of a novice motorcyclist’s licence is that driving “on a highway with a speed limit in excess of 80 kilometres per hour” is prohibited.

Vanderwal was not being sued but rather he

was seeking accident benefits from his insurance company, State Farm.

Every Ontario automobile insurance policy requires an insurer to pay income replacement and other benefits, regardless of fault for the accident, in circumstances where the insured person is disabled in an auto accident. The premiums we all pay include this coverage and in part fund accident benefits.

However, the regulations in place at that time excused State Farm from paying any income replacement benefit to Vanderwal because he “was not authorized by law to drive” at the time and place where he was driving.

Since then, the accident benefit regulations have changed. For accident benefits, the issue is now “does the person have a *valid driver’s licence*”– not “is the person *authorized to drive*”. But for liability and collision coverage, the regulations have not changed.

Certas Direct Insurance v Strifler – not enough seatbelts

In *Certas Direct Insurance v Strifler*, the defendant was a G2 driver who was driving a Nissan Pathfinder which had seating and seatbelts for five, including the driver. There were eight people in the car. Three were in the cargo area and were not belted. The G2 driver lost control of the vehicle and rolled it, destroying the vehicle. The vehicle was leased to the driver’s father. Certas paid \$23,110 to the leasing company for the value

of the vehicle. Certas then sued the G2 driver and successfully argued that the driver was not covered by its policy on the vehicle because of the policy violation – the driver was “not authorized to drive” given that there were too many occupants in the vehicle. Certas successfully obtained judgment against the G2 driver.

It may not seem fair but it’s the law

Unless these decisions get reconsidered by a higher court in another case, their combined effect is that a novice driver who breaches the G1 or G2 conditions has no liability protection or collision coverage. There are arguments to support a different interpretation of the legislation, but it would require a case to go to the highest court in Ontario, the Ontario Court of Appeal, in order for these arguments to have a chance at success. Furthermore, the legislation which comes into force on August 1, 2010 strengthens the existing interpretation of these rules. A change in the law is not likely in the foreseeable future.



Note that in the case of a novice driver driving with a blood alcohol content of more than zero, it does not matter if the person was impaired. Similarly, in the case where the novice driver is driving on a highway with a speed limit of more than 80 km/h, it does not appear to matter whether the novice driver was actually travelling less than

80 km/h at the time of the accident.

Other breaches of the highway traffic rules also give rise to insurance coverage difficulties. For instance: a Class M1 driver driving a motorcycle more than half an hour before or half an hour after sunset; a Class G1 driver having an accompanying driver who has not been licensed for at least four years; a class G2 driver driving with four friends in the back seat, when the back seat is only equipped with three seat belts; or a class G2 driver driving a pickup with a person in the back (ie. the bed) of a pick-up truck.

These examples all describe illegal behaviour. It is an offence for a novice driver to contravene any of the conditions or restrictions prescribed by the regulations. (Note that it is a valid defence to such a charge “if the accused novice driver establishes that he or she took all reasonable measures to comply with the regulations”.) But it seems unfair that these offences can void insurance coverage. It is especially unfair when you consider that similar conduct by experienced, fully licenced drivers does not void insurance coverage. For example, the following serious offences void collision coverage but not liability coverage: impaired driving; racing; failing to give a breath sample; failing to stop at an accident; and dangerous driving.

The unfairness of the existing rules for novice drivers can be highlighted by comparing the consequences faced by the novice driver who has had a sip of beer to the consequences faced by a fully licenced habitual drunk driver.

Let's say they each cause an accident in which another person is seriously injured or killed and both vehicles are destroyed.

The novice driver may have only a trace amount of alcohol in his blood. His accident may have been caused by a momentary lapse of attention on his part and not as a result of alcohol impairment.

The drunk driver may have spent hours getting extremely drunk, knowing full well he must drive many kilometres to get home. He may have known he was too drunk to drive safely but have tried to drive anyway. He may have been driving at a grossly excessive speed. He may have been racing. He may have left the scene of the accident.

The novice driver will face liability to the injured persons and their families, without the benefit of liability insurance. The novice driver's insurer will not have to pay to fix his car. If the novice driver is driving his parents' car and the parents were unaware that their child was violating the licence condition, the insurer must pay the parents for the vehicle damage, but the insurer can claim the amount back from the novice driver. If the matter is pursued against the novice driver, his driver's licence will potentially be subject to indefinite suspension unless a payment plan is reached and kept up-to-date.

The novice driver will also face a 24 hour roadside suspension, a fine in the amount of not less than \$60 and not more than \$500, and a 30 day licence suspension on conviction.

On the other hand, the extremely drunk experienced driver *will* have liability coverage. His insurer will have to pay the compensation to which the victims of the accident are entitled, and he will not have to reimburse his insurer. The drunk driver's collision coverage will be void so his insurer will not have to pay for the damage to his car – the drunk driver will be on his own for that expense. Also, the drunk driver will likely face roadside suspension, vehicle impoundment, criminal charges and upon conviction jail time and fines and long term licence suspension. However, the drunk driver's liability insurance for the injury or death will remain valid. The potential financial consequences to him will not be as devastating as those of the novice driver who had a sip of beer before driving.

New legislation reinforces the interpretations of the courts to date and creates similar consequences for young drivers

Legislation which confirms this state of affairs comes into force on August 1, 2010. This legislation moves the "zero alcohol" condition from a regulation under the *Highway Traffic Act* into the Act itself.

Also, the Act as of August 1, 2010 has a provision which states: "It is a condition of the driver's licence of every young driver that his or her blood alcohol concentration level be zero while he or she is driving a motor vehicle on a highway." A young driver is defined as "a driver who is under 22 years old."

This language parallels the language used in the graduated licencing regulations. There is every reason to believe that the courts will interpret the insurance coverage issues for the new young driver provisions in the same way the novice driver regulations have been interpreted – that is, the young driver is “not authorized to drive” if his or her blood alcohol level is not zero and therefore in this circumstances the liability and collision coverage is void.

Novice drivers must be aware that seemingly minor violations can have grave consequences. Novice drivers and others such as their parents who let a novice driver use their car must be vigilant in understanding and following the conditions

of the novice driver’s licence. Drivers who are 21 or younger must also be made aware that not only will they be committing an offence, but also they will lose insurance coverage if they drive while they have any alcohol in their blood.



EVEN EXPERIENCED DRIVERS MAY VOID COVERAGE IF THEY DRIVE IN VIOLATION OF LICENCE CONDITIONS, OR PERMIT OTHERS TO DO SO

It would appear from the above cited decisions that *any* violation of the driving conditions for a given class of licence will violate the “not authorized by law” condition for insurance. Clearly, if you drive a motorcycle but don’t have a class M, M1 or M2 licence, you are “not authorized to drive” and therefore not covered. However, even seemingly minor breaches of the “class of licence” rules appear to breach the standard Ontario motor vehicle insurance policy, even for experienced drivers. For example, if you tow a trailer with a weight of more than 4,600 kilograms, you need a Class D licence. If you do so without a Class D licence,

you are “not authorized by law to drive”. It seems your coverage would be void.

In addition, **if you as an experienced driver permit a novice driver to drive after they have had a “sip of beer” or in other in circumstances where the novice driver is “not authorized to drive”, you are committing a policy violation** since your insurance policy says you shall not “permit any other person to drive or operate the automobile unless the ... other person is authorized by law to drive or operate it.”

CONDITIONS FOR NOVICE DRIVERS IN ONTARIO

Violation of any of the following rules is not only an offence but it may also void liability and collision insurance coverage for the novice driver. The novice driver is “not authorized to drive” unless he or she meets these conditions:

For Class G2 drivers:

- blood alcohol concentration must be zero
- there must be an operable seat belt assembly available for use by every passenger
- between the hours of midnight and 5 a.m., there must be not more than one¹ passenger in the vehicle under the age of 20²

For Class G1 drivers, the above conditions must be met and in addition:

- an accompanying driver must occupy the seat beside the driver, for the purpose of giving the driver instruction in driving
- no person other than the novice driver and the accompanying driver shall occupy a front seat
- the accompanying driver must be a fully licenced driver in a Class G vehicle
- the accompanying driver must have been licensed for 4 years
- the accompanying driver must be wearing his or her corrective eyewear, if required, and must meet the applicable requirements of the *Highway Traffic Act*
- the accompanying driver’s blood alcohol level must be less than .05
- the vehicle cannot be driven on a 400 series highway or other designated highways where the speed limit is in excess of 80km/h, such as the QEW, the Don Valley Parkway, the Gardiner Expressway, the E.C. Row Expressway or parts of the Conestoga Parkway

For Class M2 drivers:

- blood alcohol concentration must be zero

For Class M1 drivers, the above condition must be met and in addition:

- the motorcycle may only be driven from one-half hour before sunrise to one-half hour after sunset
- no passenger may be carried on the motorcycle
- the motorcycle may not be driven on a highway with a speed limit in excess of 80 km/h (with some exceptions)

¹ If the driver has had a G2 licence for at least six months, there can be three passengers. “At least six months” means at least the immediately preceding six months *i.e.* no gaps such as from a suspension.

² Other than a person who is a member of the G2 driver’s “immediate family.” Also, this rule does not apply if the novice driver is at least 20 years old. “Immediate family” includes immediate family who are related by blood, marriage, conjugal relationship outside marriage or adoption.

Potential Consequences of Not Having Automobile Insurance

The consequences to any driver who has caused an accident (and the owner of the vehicle which that driver was operating) can be devastating if there is no valid liability insurance on the vehicle.

If another person is injured as a result of the accident, there may be a crushing financial judgment rendered against the driver or owner. The victim of the accident will likely receive compensation, even if the uninsured driver cannot afford to pay. This is because there are rules which usually require the victims' own insurance companies to pay the judgment,¹ or which permit payment of some or all of the compensation from the Motor Vehicle Accident Claims Fund.² However, the victims' insurance companies or the Fund may be able to claim over against the responsible uninsured driver and owner. The uninsured driver's and owner's future wages could be subject to garnishment and their assets subject to seizure.

Once a judgment is obtained against the driver or owner, their driver's licences may be subject to suspension until the judgment is paid. Section 198 of the *Highway Traffic Act* permits a suspension of the person's driver's licence if there is an unpaid judgment "for damages ... occasioned by a motor vehicle". Other provisions permit the driver or owner to apply to court to get their driver's licence back if they make a payment plan; however, this leaves the prospect that the driver or owner will be making payments for many years, possibly even for life.

Bankruptcy will not solve the problem for the driver or owner. A discharge from bankruptcy might be opposed and the driver or owner required to pay part of the judgment. Bankruptcy might prevent the driver's or owner's wages from being garnished; however, the driver's licence suspension likely would not be affected by the bankruptcy.

Moving from Ontario likely also will not assist the driver or owner (depending on where the person moves) because of reciprocal arrangements between provinces which permit mutual enforcement of driver's licence suspensions.

Ontario insurance policies are required to include coverage for certain accident benefits, regardless of fault for the accident. Injured persons get these benefits from their own insurance company. If they do not have insurance, there are a series of priority rules so that other insurers or the Motor Vehicle Accident Claims Fund must pay the benefits. However, if the driver knew or ought to have known that he or she was operating the vehicle while it was not insured, many of the benefits, including income replacement benefits, are not payable to the injured driver. Medical and rehabilitation benefits remain payable.

In addition to the devastating civil consequences described above, a driver who is caught driving without insurance is liable under the *Compulsory Automobile Insurance Act*

to pay a heavy fine of “not less than \$5,000 and not more than \$25,000 for a first conviction,” and on a subsequent conviction “not less than \$10,000 and not more than \$50,000 and, in addition, his or her driver’s

licence may be suspended for a period of not more than one year.” Further, the vehicle being operated is subject to being impounded for three months.

¹ This assumes the victim has a motor vehicle and has his or her own insurance.

² Although the amount available to the victims from the fund is limited to \$200,000 which may not be enough in some cases.

The importance of knowing and obeying the conditions and limitations of your driver’s licence cannot be overstated.

Don’t drink and drive!

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with reference to current law and your specific circumstances.

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