

# Focus: Risks not resolved by ride-sharing insurance

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The superintendent of the Financial Services Commission of Ontario has approved an auto insurance policy that covers all Uber drivers, passengers and vehicle owners in Ontario from the moment the Uber app is turned on to the moment passengers exit the vehicle.

This addresses one of the public's biggest concerns with the ride-booking service, namely that there was no coverage in the event of an accident.

However, risks remain without buy-in from Uber drivers' personal insurers.

"Typically, when you own insurance as a private citizen, there is a restriction on driving for a fee or in a commercial capacity," says Stephen Birman, partner at Thomson Rogers Lawyers, a specialist in personal injury law.

"This standard insurance policy now protects all Uber drivers and anyone injured in an Uber vehicle or pedestrians. It provides standard accident benefit coverage and third party coverage. Intact says coverage applies across the board to all drivers and FSCO has approved it, so you can be confident it applies when the app is active."

The danger arises in the pre- and post-app period when the private insurance should apply but may not.

"The problem is that private insurers do not like it when you are using your vehicle for commercial purposes," warns Elliott Ambridge, partner at Ambridge Law LLP Personal Injury Lawyers. "They may say they won't cover you at all other times. It comes down to the question of how private insurance companies will react."

The ride-booking community, for which Uber provides a technology platform that matches drivers using their personal vehicles with passengers, now has the equivalent of commercial fleet insurance, made possible because of a regulatory change under the Insurance Act to allow for vehicles that can be hired through an online application.

Intact has responded with a policy paid for by Uber that automatically covers drivers. Aviva is also offering coverage that needs to be purchased as an addition to its personal car insurance.

"In terms of passengers not having insurance — and a lot of them don't have personal insurance, especially downtown in the [Greater Toronto area] — that aspect of the issue is solved," says Kaitlyn MacDonell, a personal injury lawyer at Howie Sacks & Henry LLP.

"But people may not be aware that ride-sharing changes potential coverage. An insurance policy is based on an assessment of risk. Carrying passengers for payment is an additional risk factor. The potential is there that a personal insurer will take an off-coverage position if a person is driving commercially. There's still a vulnerable population out there."

Intact spokeswoman Hazel Tan says, "To our knowledge, there is no industry-wide agreement on how to underwrite Uber drivers on a personal auto policy.

"Only Intact Insurance, Novex, Jevco and belairdirect have modified their underwriting guidelines to allow for ride sharing on their personal auto insurance policies when there is a commercial policy issued for Transportation network company usage," she says.

Birman says it's unknown how other insurers will respond.

"Will they rely on the restrictions? I wouldn't want people to end up thinking they've got great coverage from Uber plus separate private coverage, then their own insurer takes the position that because they are driving for Uber on

the side, they will no longer be given insurance in their personal capacity,” says Birman.

Ambridge says drivers should update their insurers “about material changes in the operation of the vehicle or circumstances.

“Driving for Uber is quite important and material. They would consider it fraud if you don’t inform them and the courts would support it,” adds Ambridge.

MacDonell says if an Uber driver or vehicle owner gets into a collision outside the time the app is on, and the private insurer does not honour the policy, there are limits on third-party liability to \$200,000.

“A driver may also be personally exposed if injured. Accident benefits may be limited,” says MacDonell.

Birman says this can mean serious consequences for an innocent accident victim with serious injuries, because “\$200,000 won’t go far, and there’s no further recourse against the driver unless they have significant assets.”

“The insurance company can then claim the \$200,000 against the driver,” says Birman. “You can purchase a product that protects against insufficient insurance coverage, and most people do. It’s a rider for a nominal fee, but some don’t buy it.”

Ambridge also points out that even when there is coverage, people should consider how difficult it can be to obtain accident benefits and compensation from insurers.

“Lawyers are busy because insurers don’t specifically cover what they say they will cover,” says Ambridge. “It remains to be seen how Uber insurers will react if cases start pouring in. You could complain to Uber, but what they can do in each specific case is questionable.”

There are warnings on the FSCO website that every driver should check whether their private insurer will honour their contract if Uber driving is taking place.

The Insurance Bureau of Canada also encourages all drivers to make their insurance companies aware of the activity. “This is typically one of the questions on an insurance form — the purpose for which the vehicle will be used,” says IBC spokesman Andrew McGrath.

“IBC encourages all Transportation network company drivers to contact their insurance representative to make sure they have adequate insurance. In a competitive market, we encourage consumers to shop around to find a policy that meets their unique needs.”

Birman says someone who rides in Uber vehicles or is aware that there are a lot of Uber vehicles on the road should be aware “of the enhanced risks of taking an off-coverage position.”

“They should also purchase optional accident benefits, especially given recent changes limiting benefits. With the Uber issue out there, there are even greater reasons to purchase extra protection,” says Birman.

Everyone agrees that the most important thing is disclosure.

“That’s the thought that came to my mind — disclosure, disclosure, disclosure,” says MacDonell. “The onus is on the driver and owner of the vehicle to disclose that they are driving for Uber.”