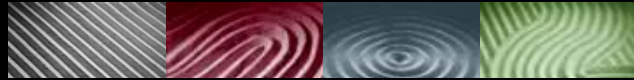


MILLER THOMSON LEGAL NOTES



New Rules for Leased or Rented Vehicles: by Randall B. Carter

On March 1, 2006 portions of a Bill of the Ontario Legislature, Bill 18, came into affect making changes to the *Highway Traffic Act*, the *Insurance Act*, and the *Compulsory Automobile Insurance Act*, regarding leased and rented vehicles. On January 1, 2007, certain corresponding changes and amendments were made to OAP1 policy and endorsements.

Firstly, the *Highway Traffic Act* was amended to include a "lessee" with respect to vicarious liability. "Lessee" is now defined as a person who leases or rents a motor vehicle for any period of time, capturing short-term rentals and long-term leases. A lessee is now liable, under Section 192 of the *Highway Traffic Act*, for loss or damage caused by the negligence of an operator of that vehicle on a highway, with the lessee's consent.

Secondly, the *Insurance Act* was amended to cap the maximum liability of lessors. Under Section 267.12, the maximum is \$1,000,000.00 minus the amounts that are recovered under the liability provisions of motor vehicle liability policies issued to persons other than the lessor, i.e. the lessee and the driver.

Thirdly, Section 277 (1.1) of the *Insurance Act* has been amended to change the order of priority in which policies respond to claims involving leased or rented vehicles. Now the liability policy in the name of the lessee or renter is the highest in priority, followed by liability insurance covering the driver, such as that which is afforded by Section 2.2.3 of the OAP1 "Other Automobiles", which affords coverage for liability, accident benefits, uninsured automobile and direct compensation coverage for automobiles other than a described automobile "when driven by you or your spouse". Now, the last in line of priority is the lessor's policy. Note that Section 3.3.5 of the OAP1 has been added to reflect these priority changes. A significant gap in coverage, because of the inclusion of lessees for vicarious liability, can arise when a vehicle is rented on a short-term basis. If the vehicle is rented as a temporary substitute vehicle, i.e. the leased vehicle is in for repairs or otherwise out of service, the lessee policy of insurance simply follows to that temporary substitute vehicle for all purposes, including coverage when

when someone else drives with the lessee's consent. However, if the vehicle is rented for any other purpose other than as a temporary substitute, the renter allows someone else to drive, they get into an accident and cause bodily injury and property damage, the "Other Automobile" provisions in the OAP1 do not come into play as the vehicle was not "driven by you". Consequently, the OAP1 has been amended to include a new provision 2.2.4, "Other Automobiles That Are Rented or Leased". This provision extends liability coverage referable to "other automobiles", when rented for not more than 30 days, with respect to the liability of the person renting the automobile arising from the negligence of the driver of that automobile, as long as the driver is not an excluded driver. Additionally, this coverage can be extended to other named individuals, in addition to the named insured, by adding the newly amended OPCF2, for liability, accident benefits, uninsured automobile and direct compensation property damage coverages and by adding the newly amended OPCF27 for loss or damage to the non-owned automobile itself, i.e. an extension of collision coverage.

The OPCF5 and OPCF5 (c), the Permission to Rent or Lease endorsements, have been amended to reflect that even though the lessor may be named in the lessee's policy, for the purposes of S.267.12 of the *Insurance Act*, the policy is deemed to have been issued only to the lessee, so that amounts payable under the lessee's policy reduce the lessor's liability.

It is the writer's understanding that the Insurance Bureau of Canada is presently working on amendments and endorsements for the garage policy and the non-owned auto policy to make coverages consistent with the changes to the OAP1 and its endorsement.



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