



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

**INSURANCE ACT
UNINSURED AUTOMOBILE AND
UNIDENTIFIED AUTOMOBILE COVERAGE
REGULATIONS**

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this regulation, current to November 18, 2017. It is intended for information and reference purposes only.

This document is *not* the official version of these regulations. The regulations and the amendments printed in the *Royal Gazette* should be consulted on the Prince Edward Island Government web site to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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INSURANCE ACT
Chapter I-4

**UNINSURED AUTOMOBILE AND UNIDENTIFIED AUTOMOBILE
COVERAGE REGULATIONS**

Pursuant to section 245(4) of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, Council made the following regulations:

1. Terms, etc., included in policy

The terms, conditions, provisions, exclusions and limits set out in Schedule A apply to payments made under subsection 245(2) of the *Insurance Act* and shall be attached to or included in every motor vehicle liability policy. (EC733/94; 645/17)

2. Terms, etc., deemed included in subsisting policy

The terms, conditions, provisions, exclusions and limits set out in Schedule A shall be deemed to be included in any motor vehicle liability policy made or renewed on or after January 1, 1995 and in any motor vehicle liability policy that is subsisting on that date. (EC733/94)

3. Certificate

A certificate of the Facility Association under subsection 245.2(4) of the Act shall be in Form 1. (EC733/94)

4. Saving

Nothing in these regulations applies to a claim, action, settlement, judgment or payment relating to an accident occurring before January 1, 1995. (EC733/94)

SCHEDULE 1

1. In this Schedule

- (a) “**insured automobile**” means the automobile as defined or described under the contract;
- (b) “**person insured under the contract**” means
- (i) in respect of a claim for damage to the insured automobile, the owner of the automobile,
 - (ii) in respect of a claim for damage to the contents of the insured automobile, the owner of the contents, and
 - (iii) in respect of a claim for bodily injuries or death,
 - (A) any person while driving, being carried in or upon or entering or getting on to or alighting from the insured automobile,
 - (B) the insured named in the contract and, if residing in the same dwelling premises as the insured named in the contract, his or her spouse and any dependent relative,
 - (I) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or
 - (II) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails, and
 - (C) if the insured named in the contract is a corporation, unincorporated association or partnership, any director, officer, employee or partner of the insured named in the contract, for whose regular use the insured automobile is furnished and, if residing in the same dwelling place, his or her spouse and any dependent relative,
 - (I) while driving, being carried in or upon or entering or getting on to or alighting from an uninsured automobile, or
 - (II) who is struck by an uninsured or unidentified automobile, but does not include a person struck while driving, being carried in or upon or entering or getting on to or alighting from railway rolling stock that runs on rails,
- if such director, officer, employee or partner or his or her spouse is not the owner of an automobile insured under a contract;
- (c) “**unidentified automobile**” means an automobile with respect to which the identity of either the owner or driver cannot be ascertained;
- (d) “**uninsured automobile**” means an automobile with respect to which neither the owner nor driver of it has applicable and collectible bodily injury liability and property damage liability insurance for its ownership, use or operation, but does not include an automobile owned by or registered in the name of the insured or his or her spouse.

UNINSURED AUTOMOBILE AND UNIDENTIFIED AUTOMOBILE COVERAGE**2.**

- (1) The insurer agrees to pay all sums that
- (a) a person insured under the contract is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile;
 - (b) a person is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injury to or the death of a person insured under the contract resulting from an accident involving an automobile;
 - (c) a person insured under the contract is legally entitled to recover from the identified owner or driver of an uninsured automobile as damages for accidental damage to the insured automobile or its contents or to both the insured automobile and its contents, resulting from an accident involving an automobile.
- (2) A dependent relative referred to in the definition of “person insured under the contract” in section 1 of this Schedule
- (a) who is the owner of an automobile insured under a contract; or
 - (b) who sustains bodily injuries or dies as a result of an accident while driving, being carried in or upon or entering or getting on to or alighting from his or her uninsured automobile;

shall be deemed not to be a dependent relative for the purposes of this Schedule.

LIMITS AND EXCLUSIONS**3.**

- (1) The insurer is not liable under subsection 2(1) of this Schedule
- (a) in any event to pay in respect of any one accident a total amount in excess of the minimum limit for a contract evidenced by a motor vehicle liability policy established under subsection 234(1) of the *Insurance Act*;
 - (b) where an accident occurs in a jurisdiction other than Prince Edward Island, to pay in respect of the accident a total amount in excess of
 - (i) the minimum limit for motor vehicle liability insurance coverage in the other jurisdiction, or
 - (ii) the minimum limit referred to in clause (a),(whichever is less, regardless of the number of persons sustaining bodily injury or dying or the amount of damages for accidental damage to the insured automobile or its contents or both the insured automobile and its contents);
 - (c) to make any payment to a claimant who claims damages resulting from an accident that occurred in a jurisdiction in which the claimant may make a valid claim for payment of such damages from an unsatisfied judgment fund or similar fund;
 - (d) to make any payment to a claimant who is legally entitled to recover a sum of money under the third party liability section of any motor vehicle liability policy;
 - (e) to make any payment to a claimant who would otherwise be legally entitled to recover a sum of money under any contract of insurance as a result of the accident,



- other than money payable on death, that exceeds the sum that the person is legally entitled to recover under subsection 2(1) of this Schedule;
- (f) subject to clauses (a), (b) and (e), to pay a claimant with respect to any one accident a sum in excess of the difference between the sum that the claimant is legally entitled to recover as damages from the owner or driver of the automobile and the sum that the claimant is otherwise legally entitled to recover under any valid contract of insurance, other than money payable on death, as a result of the accident;
 - (g) to pay a claimant the first \$250 in respect of any damages for accidental damage to the insured automobile or its contents or to both the insured automobile and its contents, resulting from any one accident; and
 - (h) to make any payment respecting bodily injury, death or damage caused directly or indirectly by radioactive material.
- (2) Where, by reason of any one accident, liability results from bodily injury or death and from damage to the insured automobile or its contents or to both the insured automobile and its contents
- (a) claims arising out of bodily injury or death have priority to the extent of ninety-five per cent of the total amount legally payable under the contract over claims arising out of damage to the insured automobile or its contents or to both the insured automobile and its contents; and
 - (b) claims arising out of damage to the insured automobile or its contents or to both the insured automobile and its contents have priority to the extent of five per cent of the total amount legally payable under the contract over claims arising out of bodily injury or death.

ACCIDENT INVOLVING UNIDENTIFIED AUTOMOBILES

4.

Where bodily injuries to or the death of a person insured under the contract results from an accident involving an unidentified automobile, the claimant or a person acting on behalf of the claimant shall

- (a) report the accident within a period of twenty-four hours after the accident or as soon after that period as practicable to a peace officer, a judicial officer or an administrator of motor vehicle laws;
- (b) deliver to the insurer within a period of thirty days after the accident or as soon after that period as practicable a written notice, stating that the claimant has a cause of action arising out of the accident for damages against a person whose identity cannot be ascertained and setting out the facts in support of the cause of action; and
- (c) at the request of the insurer, make available for inspection by the insurer, where practicable, any automobile involved in the accident in which the person insured under the contract was an occupant at the time of the accident.

DETERMINATION OF LEGAL LIABILITY AND AMOUNT OF DAMAGES

5.

- (1) Issues as to whether or not a claimant is legally entitled to recover damages and as to the amount of such damages shall be determined
- (a) by written agreement between the claimant and the insurer;

- (b) at the request of the claimant and with the consent of the insurer, by arbitration by
 - (i) one person, if the parties are able to agree on such person, or
 - (ii) where the parties are unable to agree on one person, three persons, one of whom is chosen by the claimant, one of whom is chosen by the insurer and one of whom is selected by the two persons so chosen; or
 - (c) subject to subsection (3), by the Supreme Court of Prince Edward Island in an action brought against the insurer by the claimant.
- (2) The *Arbitration Act* applies to an arbitration under clause (1)(b).
- (3) An insurer may, in its defense of an action referred to in clause(1)(c), contest the issue of
- (a) the legal entitlement of the claimant to recover damages; or
 - (b) the amount of damages payable;
- only if such issue has not already been determined in a contested action in the Supreme Court of Prince Edward Island.

NOTICE AND PROOF OF CLAIM

6.

- (1) A claimant claiming damages for bodily injury to or the death of a person resulting from an accident involving an uninsured automobile or unidentified automobile or a person acting on behalf of the claimant shall
- (a) within a period of thirty days after the date of the accident or as soon after that period as practicable, give written notice of the claim to the insurer by delivering it personally or by sending it by registered mail to the chief agent or head office of the insurer in Prince Edward Island;
 - (b) within a period of ninety days after the date of the accident or as soon after that period as practicable, deliver to the insurer as fully detailed a proof of claim as is reasonably possible in the circumstances respecting the events surrounding the accident and the damages resulting from it;
 - (c) provide the insurer, at the insurer's request, with the certificate of a medical practitioner legally qualified to practise medicine, describing the cause and nature of the bodily injury or death to which the claim relates and the duration of any disability resulting from the accident; and
 - (d) provide the insurer with details of any policies of insurance, other than life insurance, to which the claimant may have recourse.
- (2) Statutory condition 4 of subsection 220(2) of the *Insurance Act* applies with the necessary modifications where a claimant claims damages for accidental damage to an insured automobile or its contents or to both an uninsured automobile and its contents.

NOTICE OF LEGAL PROCEEDING

7.

- (1) A claimant who is a person insured under the contract or is a person claiming damages for bodily injury to or the death of a person insured under the contract and who commences an action or other legal proceeding seeking damages against another person owning or operating an automobile involved in an accident shall immediately deliver a copy of the notice of action



or other originating process to the chief agent or head office of the insurer in Prince Edward Island by delivering it personally or by sending it by registered mail.

- (2) Subject to subsection (3), if a claimant referred to in subsection (1) obtains a judgment against the other person referred to in subsection (1) and is unable to recover all or a portion of the sum awarded to the claimant in the judgment, the insurer shall, at the claimant's request, pay to the claimant the sum remaining due.
- (3) Before making payment under subsection (2), the insurer may require the claimant to assign the claimant's judgment to the insurer and the insurer shall account to the claimant for any recovery it makes under the judgment of a sum in excess of the total of the sum paid to the claimant, after deducting the insurer's costs.

PHYSICAL OR MENTAL EXAMINATIONS AND AUTOPSIES

8.

- (1) The insurer has the right and the claimant shall afford the insurer an opportunity
 - (a) to conduct a physical or mental examination of any person insured under the contract to whom the claimant's claim relates at the time and as often as the insurer reasonably requires and while the claim is pending; and
 - (b) where a claim relates to the death of a person insured under the contract, to initiate an autopsy at the insurer's expense subject to the law relating to autopsies.
- (2) The insurer shall provide the claimant, at the claimant's request, with a copy of any medical, psychological or autopsy report relating to an examination or autopsy under subsection (1).

LIMITATIONS

9.

- (1) No person shall commence an action to recover the amount of a claim provided for under the contract and under subsection 245(2) of the *Insurance Act* unless the requirements of this Schedule have been complied with.
- (2) Every action or other legal proceeding against an insurer for the recovery of an amount of damages shall be commenced within two years after the date on which the cause of action against the insurer arose and not afterward.

10.

A claimant who is entitled to claim under more than one contract providing insurance of the type provided for under subsection 245(2) of the *Insurance Act* may not recover an amount exceeding the amount which the claimant would be entitled to receive if the claimant were entitled to recover under only one of the contracts.

APPLICATION OF GENERAL PROVISIONS

11.

In so far as applicable, the general provisions, definitions and exclusions and the statutory conditions of this policy apply with the necessary modifications to this Schedule.

FORM 1

CERTIFICATE OF FACILITY ASSOCIATION

Insurance Act s.245.2(4)

I,..... of.....
(name) (address)

HEREBY CERTIFY that the Facility Association has paid out the amount of
..... to.....
(name)
(address)

in respect of damages arising out of an automobile accident.

The following person(s) were given notice of the application for payment by the above-named person and are the person(s) against whom the Facility Association seeks judgment under subsection 245.2(4) of the *Insurance Act*. [Set out name(s) and address(es) of person(s)].

Dated at..... the day of, 20.....
(witness) (signature)

for the Facility Association

