

## E-Slips

# Regulators, auto insurers (slowly) rolling us into more efficient future

By Darcy Ammerman



Darcy Ammerman

(September 3, 2019, 11:42 AM EDT) -- Following in the now dusty footsteps of Nova Scotia, electronic proof of auto insurance (EPAI) has been approved for use in two additional Canadian jurisdictions this summer: Newfoundland and Labrador and, most recently, Alberta. In comparison, EPAI has already been approved for use in 94 per cent of all states in the U.S.

Of course, approval at a regulatory level does not necessarily translate into timely availability to consumers. The onus shifts to insurance companies to decide whether to offer the option to consumers and how to enable access (e.g., through a mobile application created and provided by the insurer, using the Centre for Study of Insurance Operations (CSIO)'s "My Proof of Insurance" electronic delivery solution).

The potential for this advancement in Canada has been under consideration since at least 2015, when CSIO published a report indicating that provincial and territorial insurance regulators aren't strictly required to wait for statutory change before approving EPAI in their respective jurisdictions. The Electronic Commerce Committee of the Canadian Council of Insurance Regulators (CCIR) confirmed this position in its issues paper released in May 2016.

However, implementation remains elusive in most of Canada. In fact, the CCIR (which cites the "complete implementation of the electronic proof of automobile insurance" as one of its strategic initiatives) indicated that a national harmonized approach isn't possible due to certain operational challenges across different jurisdictions.

The most commonly cited hurdles relate to privacy, liability of law enforcement, technological concerns and transferability.

In terms of privacy, the application or wallet used to view the EPAI from an electronic device should have a lock screen requiring a password to view any additional items. Similarly, it should be prohibited for law enforcement to require a driver to produce this password.

If a driver encounters technological challenges (such as insufficient battery power or reception), it should be mandated that law enforcement allow a reasonable period of time to provide proof of insurance (similar to when a driver is unable to produce his or her driver's licence upon request).

Keeping a paper copy handy would solve any transferability issues for consumers travelling to a jurisdiction that has not yet approved the use of EPAI (which includes most of Canada). Notably, in all three Canadian provinces where EPAI has been approved, consumers are still able to receive and use the paper version, if they choose.

Even if a consumer opts for the delivery of electronic documents (which is another similar initiative being considered across Canada), insurers should make sure that the consumer is able

to print the eSlip if they wish to carry a paper version as a backup (which, of course, defeats the whole purpose of EPAI but may be a smart thing to do during the transition period).

Similar to the Superintendent of Insurance of Nova Scotia and Newfoundland and Labrador, the Superintendent of Insurance of Alberta notes that EPAI is associated with increased security and privacy concerns and has set out nine specific requirements for insurers who choose to offer EPAI to their customers.

These requirements include cautioning insureds that their device may be damaged during the course of inspection by law enforcement and that the consumer remains responsible for providing proof of coverage in the event of, for instance, the lack of power or cellular service.

The superintendent has also sent a clear message that non-adherence to privacy legislation by insurers (e.g., adding features to monitor or collect user data when accessing EPAI without clear and informed consent) will not be tolerated.

In Ontario, EPAI is cited in the 2019 budget as one of the changes that the government of Ontario is taking "early action" on.

However, a specific timeline for implementation remains elusive. Interestingly, the Financial Services Commission of Ontario approved EPAI for ridesharing drivers back in 2016, so there is at least some data available to guide a wider rollout. The recent transition to a new insurance regulator may be one reason for the delay, given that the Financial Services Regulatory Authority of Ontario officially took the reins from the financial services commission in June.

Without clear legislation governing how law enforcement should conduct themselves, some uncertainty and fear regarding EPAI will continue to exist. However, many consumers are willing to overcome this fear in the name of convenience and efficiency. In the meantime, CSIO, CCIR (among others) and insurers have been left to tackle the thorny issues of privacy and consumer protection and should be commended for their efforts throughout the process thus far.

*Darcy Ammerman is a partner in the Ottawa office of McMillan LLP advising on all aspects of domestic and cross-border debt financing transactions, financial institution regulation, regulation of service contracts/warranties and insurance matters. In the insurance area, Darcy advises on regulatory approvals, reorganizations, direct marketing and coverage issues (including with respect to cybersecurity coverage).*

*Photo credit / Chainarong Prasertthai ISTOCKPHOTO.COM*

*Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Yvette Trancoso-Barrett at [Yvette.Trancoso-barrett@lexisnexis.ca](mailto:Yvette.Trancoso-barrett@lexisnexis.ca) or call 905-415-5811.*