

# CIP Society Trends Paper

## Uber: Ride Sharing and Liability Bearing

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By Ingrid Sapona

There's no doubt that the early part of this century will be characterized as the rise of the "sharing economy". Mind you, the 21st century definition of "sharing" isn't quite the same as a couple of friends sharing an order of fries at the A&W. The sharing economy is very much a for-profit marketplace where "sharing" involves an individual who owns something offering to let someone else use it for a fee. Technology is what has enabled the sharing economy – it's the magic that brings together those who have something to offer (for example, a room for a night, or a ride) with those who are in the market for that particular thing. Uber, sometimes referred to as a ride-sharing company, is one of the companies on the forefront of the sharing economy.

Uber is not the only technology-driven ride-sharing company around. Lyft (the company whose original insignia was a pink moustache that drivers often affixed to the grill of their car) and [Sidecar](#) are two other examples. In this Trends Paper we'll be focusing on Uber, the only ride-sharing company currently operating in Canada, but the insurance issues and questions are applicable to all ride-share companies.

Uber started in in 2009 in San Francisco by a few tech guys. It was launched as an on-demand car service in the San Francisco area with a few cars. Since then it has diversified into other types of services (described in the next section). It is now in over 200 cities worldwide and it claims to be offering [1 million rides per day](#). It's a private company, but it has raised some serious capital with investors keen to get in on the ground floor. As of December 2014 it is estimated to be valued at [U.S. \\$41 billion](#).

### Uber Categories

In researching Uber's services or "levels", it's easy to get confused, as the names have changed a bit over time and the descriptions for the different services focus more on having a clever marketing edge than being informative. (Indeed, some may wonder whether Uber's descriptions are intentionally vague in an effort to keep regulators a bit in the dark – much the way they maintain that they are just a ride sharing service that's making peoples' lives better and easier.) Adding to the confusion is the fact that many news reports don't differentiate – they simply talk about "Uber".

Fortunately, the actual names of all of Uber's services aren't that important for purposes of this Trends Paper. What is important is an understanding of the nature of the distinct services. There are three basic categories:

- **Uber Taxi** – basically an app-based hailing service that Uber says is for "[traditional taxi drivers who independently contract with Uber](#)". Besides Uber Taxi, other services in this

category include Uber Black, Uber SUV, and Uber Lux. Uber describes these last three services as: “[licensed chauffeurs who drive black town cars and larger vehicles or high-end luxury vehicles](#)”.

- **Uber X** – is an app-based service where individuals who Uber has authorized as Uber drivers use their own auto to provide rides for a fee.
- **Uber Pool** – this is Uber’s newest service. With Uber Pool, an individual uses his or her own car to pick up two Uber passengers who are going in the same general direction. (This is not where two friends who are going to the same place hop in the car together and get dropped off together.) Uber Pool ride fares are automatically split (the app takes care of this) and a portion is charged to each rider. To date, Uber Pool is only available in a few cities in the U.S. and not in Canada.

Uber X is really what’s in the news most often. It is reportedly “[the highest volume service on the Uber platform](#)”. This paper will focus on insurance issues related to Uber X.

Common to all the Uber services is the fact that they are only accessible through Uber’s mobile apps (iPhone and Android), so riders can’t phone or book an Uber ride using a traditional computer or radio dispatch service. As well, Uber sets the fare and charges are put through on the mobile device – no cash changes hands. The fare prices vary based on: the type of service, the distance, and the relative demand for rides in that city at any given time. (You may have heard of “surge pricing” – that’s when Uber increases fares because demand is higher than normal, for example, on New Year’s Eve.) Uber gets a cut of every ride. The amount, which Uber sometimes refers to as [a lead generating cost](#), varies but it’s about 20% of the fare. (A recent news story reported that in San Francisco [new Uber X drivers are being charged 25%](#).)

Uber has made it clear that its goal is to attract riders by charging less than its competitors. Indeed, in January they announced a temporary price cut in some of their largest markets. Though they framed it as part of their on-going attempt to deliver lower prices to make Uber an “[everyday transportation option](#)”, some believe Uber’s ultimate goal is to [drive its competition out of business](#).

## **Lawmakers and Uber**

Uber has been greeted with less than open arms by many municipalities, as well as those in the livery business. Many cities have taken the view that Uber is providing taxi services without getting the necessary licenses, not to mention not paying the necessary fees.

Municipalities that are unhappy with Uber’s entry into their towns have taken different approaches toward dealing with Uber and Uber X drivers. Toronto, for example, is seeking an injunction to shut down Uber because it hasn’t sought the appropriate licences. The city’s main arguments against Uber relate to [insurance coverage, driver screening, and vehicle inspections](#). Uber’s public response to these concerns is that it does stringent background screening of its drivers and that rides on the Uber X platform in Canada are backed by Uber’s liability insurance covering bodily injury and property damage. The matter is scheduled for court in May.

Meanwhile, Toronto’s new mayor, John Tory, has come out in favour of Uber and other

technology-based products that he sees as making peoples' lives better. Tory doesn't think the city should be taking Uber to court for violating the city's taxi licensing rules. Instead, Tory thinks lawmakers should work to [modernize rules and regulations](#) around things like cab companies. The Competition Bureau has also said it's [in favour of such companies](#) on the theory that they are beneficial to consumers because they provide convenience and better service.

The city of Ottawa has taken the position that Uber needs to be licensed and [must comply with all the rules](#) that apply to cab companies. Shortly after Uber launched in Ottawa, the city fined two Uber X drivers \$650 each [for breaking a city bylaw](#) by accepting payment for rides they provided.

Montreal recently [fined two Uber X drivers](#) \$350 each and impounded their cars. Quebec's Transport Minister said that vehicle seizure of Uber X drivers is [within the province's transport laws](#) and that they will continue impounding drivers' cars.

Negative reaction to Uber isn't strictly a local phenomenon. Some politicians beyond the municipal level also have a view about Uber. Ottawa South MP John Fraser introduced a private member's bill in the Ontario legislature in December aimed at giving municipalities more power to deal with so-called Transportation Network Companies. [Fraser's bill](#) would amend the Ontario Highway Traffic Act to increase fines to \$500-\$30,000 and subject drivers to a penalty of three demerit points for picking up people to transport them without a licence, permit, or authorization.

In B.C., in 2012 when Uber Black began operating in Vancouver, the provincial transportation regulator imposed a minimum fare of \$75/trip. Shortly after that, [the service withdrew from B.C.](#) After rumours about Uber X starting in Vancouver, B. C.'s Transportation Minister announced plans to launch an undercover investigation against it, promising that those who provide taxi-like services without the proper licence will face fines of up to \$5,000. After that announcement, B.C.'s NDP leader, John Horgan, announced plans to introduce legislation to ensure that app-based ride-share companies fall under the Passenger Transportation Act. Horgan also indicated that he believes the fine for someone who is operating without a permit [should be raised from \\$5,000 to \\$20,000.](#)

## **A Rose by Any Other Name?**

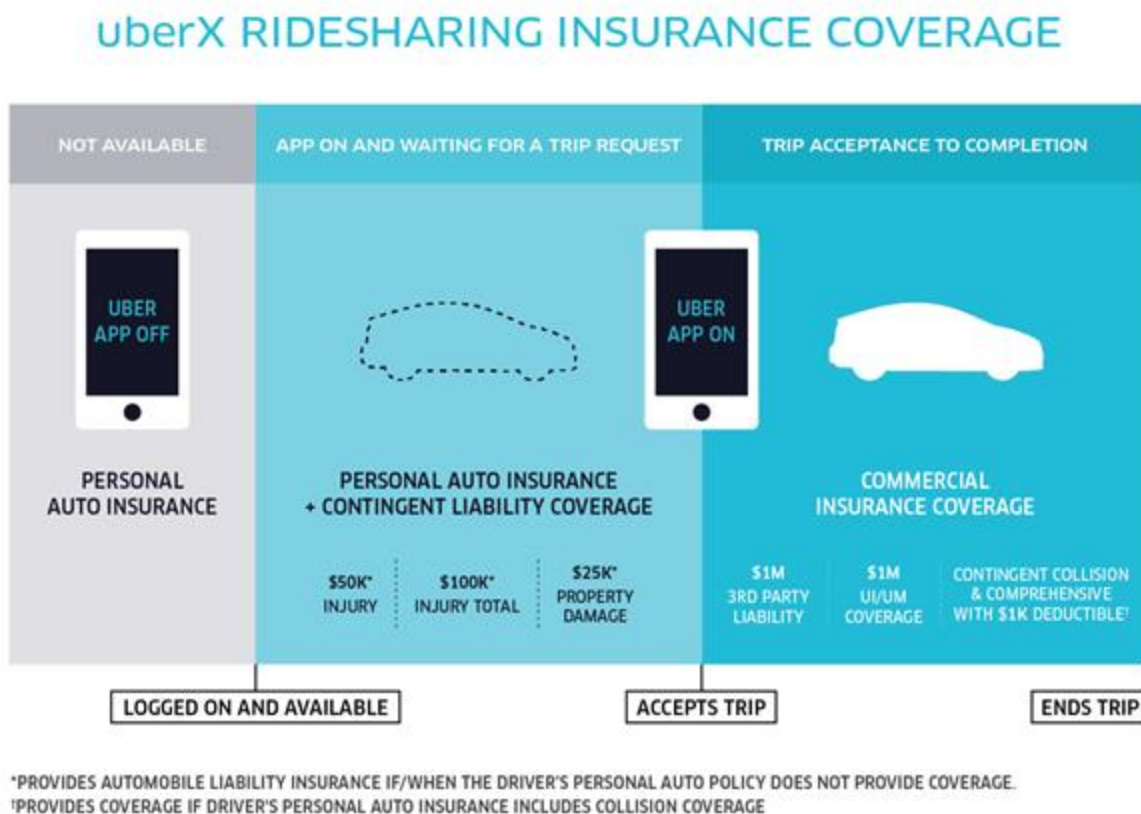
Uber [describes itself as a technology business](#) that enables its app users to arrange and schedule transportation services. The insurance industry has another name for it: a Transportation Network Company (TNC). The Insurance Bureau of Canada defines TNCs as "[companies that arrange transportation in privately owned vehicles for financial compensation that is paid to the driver and to the TNC.](#)" So, given that Uber drivers use their own vehicles and they charge for rides and Uber takes about 20% of the fair, Uber certainly seems to fit the definition of a TNC. Uber, however, goes out of its way to try to prevent being labelled a TNC. On the website under its User Terms applicable to Canada, for example, Uber states: "[For the avoidance of doubt: Uber itself does not provide transportation services, and Uber is not a transportation carrier.](#)"

## **Insurance Issues Related to Uber**

While Uber X drivers (and other TNC drivers) may assume that so long as they have auto insurance, they are covered in the event of an accident, the issue is not that straightforward. Because Uber X drivers use their own cars in a commercial endeavour – even if they only do so occasionally – the question is what kind of auto insurance they should have. As the IBC recently pointed out in various public fora, standard policies on personal-use vehicles exclude coverage if the vehicle is used to transport fee-paying passengers. The IBC went on to obliquely warn TNC drivers that if they have an accident while they’re using their car to transport paying customers, “[there will be coverage implications](#)”. Indeed, the nature of the coverage implications is the key issue. We’ll come back to that in a minute.

On its website, Uber explains that when it launched Uber X in the U.S. in 2013, it looked after making sure insurance issues were addressed. In a [blog post in March 2014](#) Uber finally made a copy of its [commercial liability policy](#) (which is issued by James River Insurance) public

The diagram below, which appears on [Uber’s website](#), shows three different periods – we’ll call them modes – during which an Uber X driver may be driving, and the relevant insurance policies Uber says may apply in the event of an accident during one of the three periods. (Note: All amounts are in U.S. dollars, because this information is applicable to U.S. drivers.)



The first mode is when the driver is not using the Uber app at all – in other words, the driver has turned the app off. (For example, when he or she is driving to the grocery store to pick up some

milk.) If the driver is in an accident while in this mode, Uber believes the driver's personal insurance will respond.

The second mode is where the driver has logged onto the app and is available to provide rides to Uber riders, for example, between rides. (In other words, when drivers are trolling for riders.) A driver is considered in this mode until the driver accepts a trip. If the driver is in the second mode, Uber believes that the driver's personal insurance will respond, though on top of that Uber provides contingent liability coverage for bodily injury up to \$50,000 per individual per accident with a total of \$100,000/accident, and up to \$25,000 for property damage. Uber makes it clear that its insurance only pays if the driver's personal insurance denies the claim or pays zero.

From the moment the driver "accepts" a trip, the driver is in mode three. So, for example, it's possible for a driver to be into mode three even though the rider is not yet in the car. If an accident occurs during this mode, Uber says drivers are covered by Uber's commercial insurance, which provides up to \$1 million of liability coverage per incident, \$1 million of uninsured/underinsured motorist bodily coverage per incident and, if the driver's personal policy covers physical damage to the car, Uber's policy includes up to \$50,000 contingent comprehensive and collision insurance (subject to a \$1,000 deductible).

In case you're wondering why the distinction between modes two and three, the answer is simple: there's a law suit in the U.S. involving an Uber X driver in San Francisco who hit and killed a child in a cross-walk while trolling. After the accident Uber distanced itself from the driver on the basis that the driver was not offering a ride at the time of the accident, [implying that the accident wasn't its responsibility](#). Since that accident, California has enacted a new law that requires ride-sharing companies to provide at least secondary insurance to their drivers from the moment they turn on the app.

By comparison, Lyft originally approached the issue of driver insurance in a manner similar to Uber, but in 2014 it changed. Lyft now makes it clear that in the event of an accident during a Lyft ride or while a Lyft driver is picking up a passenger, [Lyft's liability insurance will be the primary policy](#), rather than secondary to the driver's personal policy.

Interestingly, regardless of Uber's claim that Uber X drivers can rely on their personal insurance (backstopped by Uber's additional coverage), various U.S. insurers have stated that their policies do not cover ridesharing activities of any kind, including where the driver is alone but is trolling. There are reports of U.S. insurers [denying claims of such drivers and of some insurers cancelling policies](#) when an insured is found to be driving for a rideshare service.

## **Uber's Insurance vis-à-vis Canadian Drivers**

It should also be noted that the information described above relating to Uber's position on insurance applies to Uber in the U.S. Various Uber Canadian spokespersons have publicly stated that Uber has similar insurance coverage for Canadian drivers, but I could not find any information on Uber's website specific to insurance issued in Canada. Indeed, last fall Calgary Mayor Naheed Nenshi is [quoted as saying this](#) about his concerns with Uber's claims about insurance:

*“The challenge with insurance is Uber has claimed they have a \$5-million policy, they talk about it all the time, but they won’t show us the documentation of that policy,” he said. “This is a big deal. There is a reason every car on the road has to have insurance and we have to sort that out along with issues with of (sic) driver training. I have to say, to date, Uber has not been particularly interested in sorting that out.”*

More recently, Uber has gone to court seeking a sealing order to prevent disclosure of its insurance policy in the course of the court proceeding filed against it by the City of Toronto (See Notice of Motion filed on Feb. 12, 2015 in the Ontario Superior Court of Justice matter between City of Toronto and Uber Canada Inc., Uber B.V. and Raiser Operations BV, Court File No.: CV-14-516288). In an affidavit Uber submitted to the court in support of its motion, Uber’s Director of Insurance states: “The Insurance Policy is **not** a standard automobile liability insurance product that can be easily purchased. (*emphasis in original*) It is a new insurance product that was specifically designed to address a new market... ” and, “The Insurance Policy has been kept strictly confidential since it was developed.” (See Para. 6 & 9 of Affidavit of Henry Gustav Fuldner, Director of Insurance for Uber Technologies filed with the motion papers.) So, it seems that whether the insurance Uber has in place here in Ontario will be made public may depend on whether the court agrees that the policy should remain confidential.

## **Insurance Products Available in the U.S. for TNC Drivers**

Despite Uber’s contention that its insurance coverage is more than sufficient for Uber X drivers, Uber recently announced it is teaming up with [Metromile Inc.](#) to ensure Uber X drivers are covered at all times. Metromile is a variably-priced, [pay-per-mile insurance policy](#). According to news stories, Metromile, which is underwritten by National General Insurance Co., is offering a new personal insurance product to Uber X drivers specifically “[to cover the miles they drive on their own time or waiting to be hooked up with a paying passenger](#)”. Insureds will have to have an under dashboard, carrier-issued device that monitor’s the driver’s activities. This coverage is expected to be available starting in February to Uber drivers in California, Illinois, and Washington state.

In January, [Farmers Insurance announced it is offering an endorsement](#) to their personal auto policies specifically created to cover TNC drivers in Colorado. The coverage – known as a Rideshare Coverage endorsement – is a meant to respond to customer demand as well as to satisfy Colorado’s new ridesharing law. The Colorado law requires rideshare drivers to have coverage for the period when they are logged into a TNC application and are available to provide rides. The law also clarifies that during the period from ride acceptance to drop-off the TNC’s primary coverage applies.

Farmers is offering the endorsement to new and existing customers and will be providing customers information about the availability of such coverage at renewal time. The coverage will add about 25% to the customer’s premium.

## **Canadian Insurers’ Response**



To date, the Canadian insurance industry has not come up with a product (no specific policy or endorsement) for rideshare drivers. In fact, I could only find one Canadian insurer – Royal Sun Alliance (RSA) – that has [publicly stated its views on TNCs](#). RSA has made it clear that carrying passengers for compensation is not within the definition of a Personal Use Private Passenger Vehicle and that it will not write those risks. It also warned that in the event of a claim, if an insured did not disclose his or her intention to use their personal vehicle to transport passengers for a fee, the policy could be void for material misrepresentation. RSA also noted that, by law, the insurer would provide up to \$200,000 under the absolute liability provisions, but that the company could seek to recover from the driver or car owner for amounts the insurer pays out under such provisions.

## **What's a Canadian Driver to Do?**

So, if you're an Uber X driver in Canada (or you're thinking about becoming one), what do you do? The IBC has urged TNC drivers to ensure they have proper insurance, but it doesn't go so far as to suggest what that coverage might look like, or where a driver would obtain such coverage. Furthermore, as noted earlier, the IBC didn't describe the nature of the implications – for example, whether an insurer might simply deny coverage in a particular situation, or whether an insurer might deem an insured's policy void.

Interestingly, though it's clear that there are Uber X drivers in different Canadian cities, Stephanie Sorensen, Director, External Communications at Intact, says that they have not received any requests for coverage from Uber X drivers. “While the issue of insurance for TNC drivers is on our radar, no one has sought specific coverage for that, as far as we know,” she says. It seems likely, therefore, that some Uber X drivers are relying on Uber's assurances that so long as they have their own personal auto insurance they'll have coverage either under their own policy or under Uber's commercial insurance in the event of an accident. Or, perhaps Canadian Uber X drivers simply have not considered the insurance issue.

Philomena Comerford, CIP, President and CEO of Baird MacGregor Insurance Brokers LP, thinks that Uber X drivers who rely on Uber's assurances are naïve. “If they understood the risk they're taking, they would be terrified,” she says. “First off, Uber's policy is not Canadian paper so it's not going to cover the underlying exposure. And, as for relying on their own policy in the event of an accident, different insurers may treat it differently, but it's likely that the insurer would deny the claim. They may take an off coverage position, in which case they'll only respond to absolute liability claims and then they'll fight it out with the insured later, or they might take the position the policy is void ab initio.”

And what if a Canadian Uber X driver who is concerned about the potential insurance exposure tells his or her broker that they have signed up as an Uber X driver? The Ontario Application for Auto Insurance Form (Owner's Form OAF1) specifically requires applicants to answer yes or no to this question: “Will any of the described automobiles be rented or leased to others or used to carry passengers for compensation or hire...”. (See Owners Form (OAF 1), effective Nov. 1, 2014 by the Ontario Financial Services Commission in 2014.) Truthful drivers who drive for Uber X (or who are planning on being one) would answer yes to that. “When a personal lines broker sees that ‘yes’ on an application, the broker would basically tell the client that they would

need an endorsement to carry passengers for hire,” says Comerford, who specializes in insurance for taxi and limo fleets. “The broker would then pass it on to a transportation broker. But the problem is, insurers are highly selective when it comes to writing policies to cover such risks. And in this case, there’d be a problem right off the bat because you’re trying to insure a vehicle that is not a licensed taxi,” she says.

To date, public discussion of insurance issues related to Uber drivers has focused on claims related to accidents that may happen when an Uber driver has an Uber passenger or is trolling for one. What hasn’t been discussed is whether an insurance company may also decline to cover an accident of an Uber driver who is “off duty” if the insurer discovers that the driver didn’t disclose to the insurer that they sometimes transport passengers for hire. In other words, a driver’s failure to disclose that they drive for Uber constitutes a material misstatement that may ultimately bar them from recovering in the event of any accident, not just those that occur while on-duty as an Uber driver.

## **Conclusion**

Though Uber is facing opposition on various fronts, including lawsuits and regulatory challenges, when the dust settles, [odds are that Uber will be around in some form or another](#). In the meanwhile, brokers in jurisdictions where Uber X services are available must realize that some of their clients might be Uber X drivers. And, though they may not have a solution to offer those clients at this time, they should be considering proactively reminding their clients that they could be committing an offence or risking their coverage if they don’t inform the insurer if they are taking passengers for hire.