

A newsletter by **Taheri & Todoro, P.C.**, devoted to Driving While Intoxicated law in New York State  
**Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, Telephone: (716) 633-0374**

## Impact of a Canadian Conviction on a NYS Driver License

If a New York State resident is convicted of an alcohol-related driving offense in Canada, the impact of this conviction in Canada is governed by Canadian law. This usually means the loss of driving privileges in Canada for one year and, frequently, increased difficulty in entering Canada, even if the convicted individual is not driving.

Such a conviction, however, also has repercussions beyond the Canadian border. A Canadian alcohol-related driving conviction will also impact on a New York State resident's driving privileges within New York State. Set forth below are the answers to some of the more common questions regarding the potential impact of a Canadian conviction on a New York State driver license.

### Does a Canadian Conviction Appear on a NYS Driver License?

Yes. According to Vehicle and Traffic Law section 1193[2](b)(8), an out-of-state conviction will result in a 90 day revocation of the driver's New York State license. If, however, the driver is under age twenty-one, he or she is subject to the same penalties to his or her driver license that would occur if convicted of an alcohol-related driving offense in New York State. As a result, the license of a driver under the age of twenty-one who is convicted in Canada usually will be revoked for one year. If that driver has a previous alcohol-related conviction, his or her license will be revoked for one year or until he or she is twenty-one years old, whichever is longer.

For other purposes, any conviction in Canada for an alcohol-related driving offense is treated by New York State as a conviction for Driving While Ability Impaired by Alcohol (VTL § 1192[1], a traffic infraction) under New York State law. As a result, even if a driver is convicted of an alcohol-related driving offense that is considered a misdemeanor under Canadian law, such a conviction cannot serve as a predicate for enhancing a later Driving While Intoxicated charge in New York State from a misdemeanor to a felony.

### Can a New York State resident drive in New York after being arrested in Canada?

Yes, until any conviction is reported to the NYS Department of Motor Vehicles. Although the Province of Ontario and other Canadian provinces will suspend a driver's privilege to drive in Canada pending prosecution, the NYS Department of Motor Vehicles does not take any action against a driver's license until *after* a conviction occurs and it is reported to New York State. As a result, a person arrested for an alcohol-related offense in Canada may still legally drive in New York State until any conviction is reported, even though they cannot drive in Canada.

Although a driver may still legally drive in New York State following a Canadian arrest, the Canadian police normally will confiscate a driver's license at the time of arrest. As a result, a New York State driver should obtain a duplicate license from the NYS Department of Motor Vehicles prior to driving.

### Can a New York State resident get a conditional

### license to drive?

Yes, if he or she is otherwise eligible. To obtain a conditional license in New York State, the driver must be eligible to participate in the New York State Driving Driver Program (DDP) and pay the applicable fees. The criteria for issuance of a conditional license are set forth at 15 NYCRR § 134. Generally speaking, if the driver does not have a prior drug or alcohol-related driving conviction within five years of the current arrest, has not participated in the DDP in the last five years, does not have a particularly "bad" driving record (such as multiple Reckless Driving convictions), and the current conviction did not also involve a fatal accident or an assault conviction, the driver will usually be eligible to participate in the DDP.

### When can the driver get a conditional license?

A driver convicted of an alcohol-related driving offense in Canada cannot enroll in the DDP until Canada reports the conviction to the NYS Department of Motor Vehicles. Once the conviction is reported to New York State, the driver should receive an "Order of Suspension or Revocation" (MV110.1L) from the DMV. This document indicates the local DMV office where he or she may enroll in the DDP. The driver should bring the following documents to the DMV with them:

- a. Driver license or proof of identity with signature;
- b. The \$75 fee payable to the "Commissioner of Motor Vehicles";
- c. The notice received from the DMV.

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: taheri@localnet.com.

Edited by James F. Orr

Newsletter available by e-mail if you contact us with your address.