

NEW BRUNSWICK, CANADA

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1. Identify the venues/areas in your State that are considered dangerous or liberal.

No judicial districts in New Brunswick can be considered dangerous or liberal. Our justices are appointed, not elected and sit until age 75.

2. Identify any significant trucking verdicts in your State during 2017-2018, both favorable and unfavorable from the trucking company's perspective.

None.

3. Are accident animations and/or computer-generated evidence admissible in your State?

Accident animations and computer-generated evidence (such as an accident reconstruction reports) are admissible subject to the rules of evidence (i.e. relevance, probative value, prejudicial effect, etc.). If done by an expert, would be subject to the rules regarding expert evidence, and the file of the expert would be discoverable upon disclosure of the report.

4. Identify any significant decisions or trends in your State in the past two (2) years regarding (a) retention and spoliation of in-cab videos and (b) admissibility of in-cab videos.

None.

5. What is your State's applicable law and/or regulation regarding the retention of telematics data, including but not limited to, any identification of the time frames and/or scope for retention of telematics data and any requirement that third party vendors be placed on notice of spoliation/retention letters.

No, but all relevant information regarding a claim is technically discoverable. The bar of relevance is extremely low and any document or information with a "semblance of relevance" must be disclosed and produced, subject to claims of privilege. Telematics is becoming increasingly relevant in New Brunswick, and insurers are beginning to collect black boxes from vehicles where available.

6. Is a positive post-accident toxicology result admissible in a civil action?

Yes, subject to ordinary rules of evidence. Police reports are not admissible.

7. Is post-accident investigation discoverable by adverse counsel?

All relevant documents, including post-accident investigations in New Brunswick are discoverable unless otherwise privileged. Privileges include solicitor-client privilege (for instance, if a solicitor is involved and generates a report for the client), or litigation privilege (although litigation must be actually contemplated at the time of the investigation in order to cloak any reports in privilege). Certain evidentiary exceptions exist (i.e. expressions of opinion under the *Evidence Act*, RSNB 1973, c E-11).

8. Describe any laws in your State which regulate automated driving systems (autonomous vehicles) or platooning.

None, although updates to highway traffic laws have been considered in other jurisdictions (i.e. Ontario) and will likely be forthcoming.

9. Describe any laws or Court decisions in your State which would preclude a commercial driver from using a hands-free device to have a conversation over a cell phone.

In New Brunswick, the law does allow drivers to use a device in hands-free mode while operating a vehicle. A device is considered to be operated in hands-free mode if “it can be used exclusively by voice commands or by touching the device only once to initiate or accept a telephone call and only once to end it, while all other actions in relation to the call are performed exclusively by voice commands”.

10. Identify any Court decisions in your State precluding Golden Rule and/or Reptile style arguments by Plaintiffs’ counsel.

None, although jury trials are extremely limited and only available for select torts (i.e. defamation) and eligible criminal matters.

11. Compare and contrast the advantage and disadvantages of Federal Court versus State Court in your State.

In New Brunswick, there is only one superior court for civil matters. That said, our Federal Court of Canada, which is a statutory court, may have exclusive or concurrent jurisdiction on certain matters, i.e. maritime matters and/or a federally-regulated industry or subject matter.

12. How does your State handle the admissibility of traffic citations (guilty plea, pleas of no contest, etc.) in subsequent civil litigation?

Admissible, subject to the ordinary rules of evidence. Police reports are not admissible. The New Brunswick Court of Appeal has held, in the context of an action for damages following a motor vehicle accident, that a guilty plea to a traffic offence was not “just a simple admission

against interest to be re-examined and found wanting in a new forum”. Further, the “entry of a plea of guilty, freely given, is a self-admission of the offence” wherein the standard of proof is proof beyond a reasonable doubt and therefore cannot be simply dismissed. A guilty plea or a finding of guilt will therefore be prejudicial to any denial of liability.

Further, another recent unreported New Brunswick decision held that the doctrines of collateral attack and abuse of process applied in finding that there was no reason to reconsider the Provincial Court’s decision in finding the defendant guilty of failing to yield in an action for negligence.

13. Describe the laws in your State which regulate whether medical bills stemming from an accident are recoupable. In other words, can a plaintiff seek to recover the amount charged by the medical provider or the amount paid to the medical provider? Is there a basis for post-verdict reductions or offsets?

For New Brunswick residents, healthcare is universally provided by a provincially administered plan, Medicare. For motor vehicle accidents occurring in New Brunswick and between New Brunswick residents, there is no right of subrogation by Medicare. For Canadian residents travelling in New Brunswick and then returning home for medical care, out-of-province Medicare providers may have a subrogated claim against a New Brunswick tortfeasor for medical outlays.

The Plaintiff can recoup medical bills which are causally connected to the accident, if paid out of pocket. Private insurers (other than disability insurers), also have rights of subrogation in New Brunswick against tortfeasors if medical outlays are made in relation to the accident. Under the New Brunswick *Insurance Act*, RSNB 1973, c I-12, payments made for medical treatments under the New Brunswick no-fault provisions of the standard auto policy are deductible from a tort award.

14. Describe any statutory caps in your State dealing with damage awards.

In New Brunswick, “minor personal injuries” are capped at \$7,500 CAD (indexed to \$8,166.67 for inflation in 2019). A minor personal injury is a contusion, abrasion, laceration, sprain, strain or whiplash associated disorder that does not result in permanent serious disfigurement, or permanent serious impairment that results in a substantial inability to perform the essential tasks of employment, training or education, or normal activities of daily living.