

Legal update

Unlocked cars leave door open to unwanted duty of care

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Insurance

In *Rankin (Rankin's Garage & Sales) v J.J.*,¹ the Supreme Court of Canada overturned a controversial Ontario Court of Appeal decision² establishing a duty of care to intoxicated minors who crashed the car they had stolen from a local garage.

Ontario Court of Appeal decision

The court conceded it is relatively rare to find that a duty of care is owed to a third party in cases relating to vehicle theft, mostly because the injury to the third party was not a reasonably foreseeable consequence of the theft. In this case, however, the court found it was reasonably foreseeable that minors might steal a car from Rankin's garage because (i) there was a practice at Rankin's of leaving cars unlocked with the keys inside; (ii) there was a history of vehicle theft in that area, both from Rankin's specifically and in general; and (iii) the risk of theft was clear in the circumstances.

On the issue of proximity, the court concluded that Rankin's should have had the minors in mind as it had care and control of many vehicles for commercial purposes, which entailed the responsibility of securing them against those minors.

Supreme Court of Canada decision

Karakatsanis J., writing for the majority of the Supreme Court, settled a long-standing jurisprudential divide by affirming a business will only owe a duty to someone who is injured following the theft of a vehicle when, in addition to theft, the unsafe operation of the stolen vehicle was reasonably foreseeable.³ Thus, the plaintiff will need to present evidence creating a connection between the theft and the unsafe operation of the stolen vehicle.⁴

In this particular matter, the Court of Appeal's analysis – as well as the evidence before it – focused on the foreseeability of the theft. As pointed out by Justice Karakatsanis, none of the evidence addressed the risk of theft by minors in particular or the risk of this type of theft leading to an accident causing personal injury. Accepting that anyone leaving keys in an unlocked vehicle should reasonably anticipate that someone could be injured if the car was stolen “extend[s] tort liability too far.”⁵

Duty of care not automatic because minors involved

Justice Karakatsanis cautioned against letting one's judgment become clouded by general notions of responsibility to minors or the fact the events actually occurred: foreseeability must be tied to the particular circumstances of each case. She also explicitly rejected any argument that Rankin's garage owed a positive duty of care to the minors to secure the

vehicles. Vehicles are not inherently dangerous. Nor does storing many vehicles in one place necessarily create a risk of personal injury. Here, there was no relationship of care, control or supervision between the garage and the joyriding minors. Indeed: "Tort law does not make everyone responsible for the safety of children at all times."⁶

Garage owners safe... for now

It is important to note that Justice Karakatsanis left the door wide open, so to speak, to the possibility of establishing a duty of care in such circumstances. In her words: "This is not to say that a duty of care will never exist when a car is stolen from a commercial establishment and involved in an accident."⁷

In this particular case, the evidence was insufficient. That said, it appears that, for example, had there been evidence that the risk of theft included theft by minors specifically and/or it was foreseeable the stolen car would be operated dangerously, the court would not have hesitated to find the existence of a duty of care.⁸

Businesses should therefore aim to secure vehicles located on their premises. Storing the vehicles in a locked enclosure may not be enough if the doors are left unlocked, especially if the keys are accessible. Implementing low-cost measures such as keeping doors locked and keys secured may go a long way in helping to stave off joyriders, as well as the duty of care that may sometimes accompany them.

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Footnotes

- ¹ 2018 SCC 19.
- ² *J.J. v. C.C.*, 2016 ONCA 718.
- ³ *Supra* note 1, at paras. 2, 27.
- ⁴ *Ibid.*, at para. 26.
- ⁵ *Ibid.*, at paras. 33-34.
- ⁶ *Ibid.*, at paras. 57-61.
- ⁷ *Ibid.*, at para. 67.
- ⁸ See, for example, para. 55.

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