

## Legal update

### Extra, extra: garage owes duty of care to intoxicated minors who steal car for joyride

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#### November 2016 Insurance

In a recent decision, a unanimous Ontario Court of Appeal reaffirms that when it comes to tort law, “Sentiment is not principle”:<sup>1</sup> the victim of a crime can and will be found liable for injuries suffered by a thief if those injuries were reasonably foreseeable in the circumstances.

*J.J. v C.C.*<sup>2</sup> involves a minor, J.J., who suffered a catastrophic brain injury after his friend C.C. crashed the car they had stolen from Rankin’s Garage & Sales for a joyride after a night of drinking.

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#### Trial judge instructs jury that duty of care owed in the circumstances

The night of the incident, J.J. (15 years) and C.C. (16 years), and a third friend, drank several beers each, some of which had been provided by C.C.’s mother, D.C. They later drank a bottle of vodka and shared a marijuana cigarette. C.C. testified at trial that the boys then walked around town intending to steal things from cars. They ended up at Rankin’s and entered the property, which was not secured. The boys then found a Toyota Camry that had keys in the ashtray. Even though he had never driven a car and did not have a license, C.C. decided to steal it. Soon after, C.C. crashed the car, causing J.J.’s injuries.

J.J. sued his friend C.C., C.C.’s mother D.C., and Rankin’s in negligence. He conceded, through his litigation guardians, that he himself had also been negligent.

The trial was heard before a jury, and the trial judge instructed the jurors that Rankin’s owed a duty of care “because people who are entrusted with the possession of motor vehicles must assure themselves that the youth in their community are not able to take possession of such dangerous objects.”<sup>3</sup> The jury found that all parties involved had been negligent and apportioned liability as follows: Rankin’s 37%, D.C. 30%, C.C. 23%, and J.J. 10%.<sup>4</sup>

Rankin appealed the decision, arguing in part that the trial judge erred in concluding that Rankin’s owed a duty of care to J.J.

#### Court of Appeal confirms existence of duty of care

The Court of Appeal confirmed Rankin’s did indeed owe a duty of care to J.J., though it did not agree with the trial judge that such a duty had already been recognized in the case law. The court therefore proceeded with a full *Anns/Cooper* analysis as to whether a duty of care did exist in this particular circumstance.

The court began its analysis by conceding 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.<sup>5</sup>

## Foreseeability

With respect to foreseeability, the court reiterated that absolute foreseeability is not required and this particular case deals with minors, “young people who are relatively immature and cannot be expected to exercise the judgment an adult would, especially if, as in this case, alcohol and drugs are involved.”<sup>6</sup> The court found it was reasonably foreseeable that minors might steal a car from Rankin’s 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.

## Proximity

On the issue of proximity, the court recalled that this criterion would be met if Rankin’s “should have had minors like J.J. in mind” when security measures were considered at the garage. It concluded that Rankin’s should have had J.J. in mind as it had “care and control of many vehicles for commercial purposes, and with that comes the responsibility of securing them against minors, in whose hands they are potentially dangerous.” The court added that to secure the vehicles was not an onerous task: Rankin’s simply had to ensure the cars were locked and the keys stored.<sup>7</sup>

## No policy concerns

The court rejected any argument relating to broad policy concerns and noted this was not a homeowner accidentally leaving keys in an unlocked car, but rather a business that was “an inviting target for theft and joyriding, especially by minors.”<sup>8</sup> Addressing the issue that wrongdoers should be responsible for any damage they cause to themselves as a result of their actions, the court recalled that the existence of a duty of care is not dependent on the illegal or immoral conduct of the plaintiff. Rather, the wrongdoing is taken into account in determining the degree of contributory negligence.<sup>9</sup>

This case reminds business owners that they can be found to owe a duty of care to the public, as well as to third parties, in circumstances other than those covered under the *Occupiers’ Liability Act*. More importantly, the Court of Appeal’s decision in this case suggests courts will be more inclined to find that such a duty of care exists if minors are involved, no matter how reckless their activities and behaviour prior to the incident. It is of note that according to the court’s reasons, Rankin’s would likely have met its duty of care had it ensured that cars were locked and the keys were stored. It is therefore of paramount importance for businesses with potentially dangerous goods on their premises not to overlook simple, cost-effective security measures.

Alexa Biscaro

## Footnotes

<sup>1</sup> *J.J. v. C.C.*, 2016 ONCA 718, para. 71.

<sup>2</sup> 2016 ONCA 718.

<sup>3</sup> Para. 13

<sup>4</sup> Para. 15

<sup>5</sup> Paras. 28-29.

<sup>6</sup> Para. 38.

<sup>7</sup> Paras. 56-58.

<sup>8</sup> Para. 68.

<sup>9</sup> Paras. 70-72.

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For further information, please contact one of the following lawyers:

> <b>Hélène Lefebvre</b>	Montréal	+1 514.847.4457	<a href="mailto:helene.lefebvre@nortonrosefulbright.com">helene.lefebvre@nortonrosefulbright.com</a>
> <b>Sally A. Gomery</b>	Ottawa	+1 613.780.8604	<a href="mailto:sally.gomery@nortonrosefulbright.com">sally.gomery@nortonrosefulbright.com</a>
> <b>Éric Hardy</b>	Québec	+1 418.640.5022	<a href="mailto:eric.hardy@nortonrosefulbright.com">eric.hardy@nortonrosefulbright.com</a>
> <b>Randy C. Sutton</b>	Toronto	+1 416.216.4046	<a href="mailto:randy.sutton@nortonrosefulbright.com">randy.sutton@nortonrosefulbright.com</a>
> <b>Alan Rudakoff</b>	Calgary	+1 403.267.8270	<a href="mailto:alan.rudakoff@nortonrosefulbright.com">alan.rudakoff@nortonrosefulbright.com</a>

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