

Off-Road Liability: Ontario Court of Appeal Affirms Broad Application of Statutory Liability for Motor Vehicle Owners in ATV Accident Case

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March 14, 2024

In its recent decision in *Desrochers v McGinnis*, the Ontario Court of Appeal affirmed the broad application of a vicarious liability provision in Ontario's *Highway Traffic Act* (HTA) which renders a vehicle owner liable for any loss or damage sustained due to the negligent operation of the vehicle.¹ Of importance for vehicle manufacturers who may be named as defendants in such cases, this case demonstrates that the common law and statutory provisions of the HTA can be relied upon to shift liability to other involved parties, such as the owner or user of the vehicle.

Background to the Case and Trial Decision

The plaintiff was operating a high output all-terrain vehicle (the ATV) on an unpaved public road when she lost control and hit a tree, suffering a severe brain injury. At the time of the accident, the plaintiff was with her then boyfriend, who was following in a pickup truck after having transferred control of the ATV to the plaintiff. The plaintiff and her boyfriend were visiting the farm property owned by the boyfriend's parents. The boyfriend's father was the owner of the ATV.

The plaintiff, by way of her litigation guardian, sued the boyfriend and his parents, claiming damages for the injuries she suffered. At trial, the boyfriend was found negligent for allowing the plaintiff to drive the ATV when he knew (or should have known) that she was not qualified to do so. The trial judge also assessed the plaintiff's contributory negligence at 10%. The Court found that the boyfriend's parents owed the plaintiff a duty of care, but that they had not breached the applicable standard of care. There was an additional claim against the boyfriend's father, as the owner of the ATV, pursuant to section 192(2) of the HTA, which states:

192(2) The owner of a motor vehicle or street car is liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle or street car on a highway, unless the motor vehicle or street car was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur.²

This claim was also dismissed at trial, as the trial judge found that, although the boyfriend's transfer of

control of the ATV to the plaintiff was negligent, such negligence was not “in the operation of a motor vehicle” as required by section 192(2) of the HTA.

The Court of Appeal Reverses Dismissal of Statutory Liability of ATV Owner

On appeal, the Court of Appeal affirmed the trial judge’s findings with respect to the common law claims against the boyfriend and his parents, affirming the lower court’s conclusion that the boyfriend was negligent in turning over control of the vehicle to the plaintiff but that his parents had not breached the standard of care applicable to them in the circumstances and were therefore not liable in negligence.

The Court did, however, reverse the lower court’s findings with respect to the father’s statutory liability under section 192(2) of the HTA.³ The determination of this matter turned on the interpretation of “negligence in the operation of a motor vehicle,” and whether that phrase encompassed the boyfriend’s conduct in allowing the plaintiff to operate the ATV. Or, as the Court phrased it, “does ‘negligence in the operation of a motor vehicle’ include negligence in turning over a vehicle to a person who is not fit or equipped to drive it in the circumstances?”⁴ The Court found that it did and found the father liable under the HTA.

The Court identified the statutory purpose of section 192(2) of the HTA as “protecting the public by imposing on the owner of a motor vehicle responsibility for the careful management of the vehicle.” Therefore, the owner assumes the risk of those they entrust with possession of the vehicle that they will observe the law. If they fail to do so, the owner will bear responsibility for all loss or damage sustained by a person as a result of the user’s negligence.

On the night of the accident, the boyfriend drove the ATV and then transferred the care and control to the plaintiff. In both cases, the Court found that the ATV was in the possession of the plaintiff and the boyfriend on the consent of its owner, the boyfriend’s father. The boyfriend’s negligence in this action contained two elements: 1) transferring management of the ATV to the plaintiff, a person he should have known lacked adequate training; and 2) transferring the management of the ATV to a person he knew had no experience in operating the ATV in the particular circumstances (driving at dusk when there was no street lighting and maneuvering a sharp turn on a gravel road).⁵

The Court further underscored that the HTA, unlike other equivalent statutes in other provinces, did not contain a definition of “operate” or “operation” that would constrain section 192(2)’s application to the boyfriend’s conduct in this case.⁶ As such, the Court found it was appropriate to adopt a broad interpretation of the provision, consistent with its statutory purpose, that encompassed the boyfriend’s transfer of the ATV to the plaintiff as falling within the definition of “negligence in the operation of a motor vehicle.”

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Consequently, the Court allowed the plaintiff's appeal on this issue and the father was held vicariously liable under section 192(2) of the HTA for the plaintiff's injuries.

Key Takeaways

Desrochers provides helpful insight for manufacturers of ATVs and other motor vehicles with respect to the potential liability of other parties in product liability claims arising from motor vehicle accidents under Ontario law. The Court's application of section 192(2) of the HTA demonstrates the relative ease in establishing statutory liability against a vehicle owner, even where the owner is not, themselves, liable in negligence.

Although not a product liability case itself, it is not difficult to imagine a similar case involving a claim against the ATV manufacturer alleging that a defect in the vehicle caused or contributed to the accident. In such cases, manufacturers and their counsel would be wise to consider the potential liability of other involved parties including the user and, if different, the owner of the vehicle. Such parties may be pursued for contribution and indemnity by way of crossclaim or third party claim in order to reduce or even eliminate the manufacturer's potential exposure. The availability of insurance in most motor vehicle accident cases and the harsh reality of Ontario's joint and several liability regime (where even a 1% finding of liability can result in a 100% responsibility for the payment of damages to the plaintiff) makes ensuring that all such parties are at the table all the more important.

Cassels Product Liability Group: What We're Up To

- Danielle DiPardo joined the Cassels partnership effective January 1, 2024. Based out of Cassels' Vancouver office, Danielle has extensive experience handling product liability matters and is called to the bar in both British Columbia and Ontario.
- Cassels was a proud sponsor and attendee at the Defence Research Institute's annual Product Liability Conference held in Denver on February 7-9, 2024. Chris Horkins, Jeremy Martin, and Jessica Kuredjian attended the conference.
- Cassels was recently ranked as a market leading firm in product liability in the 2024 edition of the Canadian Lexpert Directory. Stefanie Holland and Chris Horkins were both ranked as "repeatedly recommended" lawyers in product liability litigation.
- Chris Horkins was recently accepted as a member of the International Association of Defence Counsel, an invitation-only global legal organization for attorneys who represent corporate and

insurance interests. Read more here.

¹ *Desrochers v. McGinnis*, 2024 ONCA 63, <<https://canlii.ca/t/k2hvb>> [*Desrochers*].

² *Highway Traffic Act*, RSO 1990, c H.8, <<https://canlii.ca/t/565jw>>, s. 192(2). (The statutory definition of “motor vehicle” under the HTA includes ATVs.)

³ *Desrochers*, at para 47.

⁴ *Desrochers*, at para 49.

⁵ *Desrochers*, at paras 68-70.

⁶ *Desrochers*, at para 71.

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