

On March 17, 2026, the Ontario Superior Court of Justice issued a Summary Judgment decision in the matter of *Eden v Levasseur et al.*, 2026 ONSC 1634, releasing the Defendant and OPCF44R coverage provider, Heartland Farm Mutual Inc.

The plaintiff was a passenger in a vehicle driven by his friend, who caused a serious, single vehicle accident. The car was legally owned by the driver's mother.

The crux of this summary judgment motion was a determination of whether the driver had his mother's consent to possess the vehicle. If this consent was present, then the mother would share her son's liability by virtue of vicarious liability under section 192(2) of the *Highway Traffic Act*. If the Court found the driver's mother had not consented to her son possessing the vehicle, then the vehicle had effectively been "stolen" and there would be no insurance coverage attached to it. Without such coverage in place, the plaintiff would be compensated by his own insurance company, Heartland Farm Mutual Inc., through his uninsured/underinsured motorist coverage.

Counsel for the vehicle's owner, who had registered the vehicle and insured it through Aviva, took the position that the vehicle's use was expressly limited to maintenance and repair work, as the vehicle was allegedly a "project car" that the owner had purchased for her son during a difficult emotional time.

Counsel for Heartland, represented by Neil Searles and Tredegar Shea of Zuber & Company, took the position that the vehicle was clearly in the driver's possession with the consent of his mother, the vehicle's owner, and reiterated to the court that the correct test for "consent" arguments in these circumstances is whether there was consent to *possess* the vehicle, rather than consent to *operate* the vehicle.

The Court agreed with Heartland's position. Strong reliance was placed on the Court of Appeal decision of *Fernandes v. Araujo*, 2015 ONCA 571, which found that an owner will be liable for another person's negligent operation of a vehicle if they consent to that person *possessing* it, regardless of whether the owner consents to the vehicle being *operated*.

Much like in the case of *Seegmiller v Langer*, (2008), 301 D.L.R. (4th) 454 (Ont. S.C), an owner's restriction on operating the vehicle, even when explicit, will be overborne by the owner consenting to an individual taking possession of the vehicle.

After examining the evidence gathered from Examinations for Discovery and insurer's statements, the Court held that, "The indicia of implied consent to possession of the vehicle by the driver are glaringly present here: owner and driver were mother and son; they resided in the same household; the son had furnished his mother with the funds to purchase the vehicle; the mother purchased the vehicle for her son and took ownership only as a temporary and expedient measure; the mother never took possession of the vehicle or the

keys; the mother abdicated all responsibility for the vehicle, including its storage and improvement; the mother did not have any access to the vehicle or any information as to where or with whom it was stored; the son determined where the vehicle was housed; and by the time of the accident, the mother had forgotten that she even owned the vehicle.”

The Court did not mince words with respect to the mother’s position that the vehicle was in her son’s possession without her consent, finding that “it rings quite hollow for son and mother to state after the fact that permission to operate the vehicle had been withheld or even denied,” and even going so far as to state that this assertion “strains credibility and runs contrary to logic.”

The Court added that the son had “de facto” control over the vehicle, in light of the lack of attention paid by his mother to the vehicle’s whereabouts or roadworthiness, as well as the son’s unfettered use of the vehicle for several months prior to the accident.

This case reiterates the important policy consideration underlying arguments regarding consent to possess a motor vehicle, being that motor vehicles are dangerous and, in the wrong hands, can cause serious injuries. It remains the responsibility of owners of motor vehicles to exercise thoughtful dominion and control over the vehicles they register and insure, otherwise they risk being held liable for the negligence of any driver in which they entrust the vehicle’s possession.

By: Tredegar Shea and Neil Searles

[Read the full decision here](#)