

## If My Neighbour Is a Thief, Do I Owe Him a Duty Of Care - SCC Will Decide...

Chad Leddy, Dutton Brock LLP<sup>1</sup>

The Supreme Court of Canada has granted leave to appeal the Ontario Court of Appeal's October 2016 decision in *J.J. v. C.C.*, 2016 ONCA 718, which upheld a jury verdict in which a garage owner who left keys in an unlocked car was found liable for a teenage joyrider's catastrophic brain injury.

This case arises from a series of bad decisions on a summer night in the small town of Paisley, Ontario (near Walkerton). On July 8, 2006, three teenage boys, aged 15 and 16, split a case of 24 beer that the boy C.C.'s mother D.C. bought for them to drink. They drank beer for several hours, then (after D.C. went to sleep) switched to vodka, then for good measure split a marijuana joint. One boy went home, but the remaining two, C.C. and J.J., walked around town looking to steal from cars. They found a Toyota Camry outside at Rankin's Garage. The car was unlocked with the keys in the ashtray.

Despite not being licensed and never having driven, C.C. decided to drive the Camry to a nearby town. J.J. got in as passenger and suffered serious injury when C.C. crashed the car. C.C. was convicted of a number of criminal offences including theft and dangerous operation of a motor vehicle causing bodily harm. His mother, D.C., was convicted of supplying alcohol to minors. J.J. was not convicted of any offence, but it appears to have been accepted that he participated in stealing the car.

There was some dispute at trial over security practices at Rankin's Garage. The jury found that the garage owner made a habit of leaving keys in cars left outdoors, and not in a safe as he claimed. The jury found as a fact that on the night in question the garage owner left the keys in the car, left the car unlocked, and had very little security.

The trial judge instructed the jury that the garage owner owed the injured boy 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". Essentially, an unlocked car was being treated as a loaded gun.

Remarkably, the jury apportioned the largest share of liability for J.J.'s damages to the garage at 37%. The mother who supplied alcohol was found 30% liable. The drunk teenage driver was found only 23% liable. Finally, the injured boy, J.J., was found 10% contributorily negligence for having participated in the joy ride.

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<sup>1</sup> Chad Leddy is an associate at Dutton Brock who has a general tort defence practice.

The Court of Appeal found that the judge had erred in ruling that the case law showed a duty of care already existed in such circumstances. However, applying the *Anns* test, the Court proceeded to find a new duty of care did exist in the circumstances of this case.

As Justice Huscroft put it: Could the garage owner owe a duty of care to someone who stole from him? In answering “yes”, the Court found that there were cases where a seemingly innocent party should owe a duty of care to someone who stole from him.

In finding that the loss in this case ought to have been reasonably foreseeable to the garage owner, the Court of Appeal relied on the limited and rather vague evidence at trial that there had been a history of vehicle theft in the town and on the earlier finding that the garage operated with few security measures befitting its status as a commercial operation. Based on this, the Court ruled that it was foreseeable that minors might choose to take a car joyriding, particularly when impaired by alcohol or drugs.

It should be stressed that the fact that the plaintiff in this case was a teenager who, however foolish his actions, suffered a catastrophic brain injury, presumably with heavy care needs and costs, cannot be ignored. However sympathetic the injured plaintiff’s situation may have been in this case, the Supreme Court will have to carefully consider the implications of letting this ruling stand, and allowing such a broad duty of care to become established.

The practical effects of imposing tort liability on innocent victims of crime for injuries suffered by those stealing their property could enable untold numbers of bizarre claims. For instance, one wonders if the duty of care found in this case would extend to adults taking an unlocked vehicle for a drunken joyride, or had the car been stolen from a residential driveway. Certainly both such events are foreseeable.

At its heart this case will come down to proximity, or what is reasonably foreseeable. Will the Courts insist that the answer to the old question “who is my neighbour?” includes “criminals hurt while stealing from me”? In response, will the legislature be forced to extend the protection found in the *Occupier’s Liability Act* against liability for persons hurt in the commission of criminal acts?

Consider whether expanding the protection from liability to other types of negligence claims, makes it clear that it is not reasonable that innocent crime victims have a duty to criminal perpetrators? This may entail political lobbying and negotiation from the personal injury/insurance field.