

HARPER GREY LLP  
3200 – 650 West Georgia Street  
Vancouver, British Columbia, V6B  
4P7  
Canada

Tel: 604 687 0411  
Fax: 604 669 9385

## CASE SUMMARY: AN INSURED IS NOT REQUIRED TO HIDE CAR KEYS TO AVOID A FINDING OF IMPLIED CONSENT WHEN SOMEONE ELSE IN THE HOUSEHOLD TAKES THE VEHICLE WITHOUT THE OWNER'S PERMISSION

### Insurance law – Automobile insurance – Uninsured motorist – Implied consent – Practice – Summary judgments

*Michaud-Shields v. Gough*, [2018] O.J. No. 4329, 2018 ONSC 4977, Ontario Superior Court of Justice, August 21, 2018, C. de Sa J.

While the insured was out of town, her son took the keys to her truck despite knowing he did not have permission to drive the truck. The son's driver's license had been suspended for over 6 years and he had been drinking before taking the truck. He caused an accident that injured the plaintiff.

The insurer applied for a declaration that the son was operating the truck with the insured's implied consent. It further argued that the insured's automobile insurance covered the plaintiff's losses and thus there was no claim against it.

The owner of a motor vehicle is liable for accidents caused by its operation under s. 192 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, except where the vehicle is "without the owner's consent in the possession of some person other than the owner".

The insurer took the position that consent should be implied as the purpose of s. 192(2) is to protect the public by imposing, on the owner of a motor vehicle, responsibility for the careful management of the vehicle. The insurer argued that the mother did nothing to prevent her son from using the vehicle, and she did not expressly forbid him to drive the vehicle while she was away. The insurer argued that the mother's decision to leave the vehicle in the driveway with the keys on the hook was an invitation to the son to drive the vehicle, and he was left with "possession" of the vehicle.

The court rejected the insurer's argument as it would require a vehicle owner to hide his or her keys in order to avoid liability. The court found that consent connotes permission, or acquiescence, and that there must be an understanding between both the owner and the driver (either express or implied) that the driver is authorized by the owner to use the vehicle.

The insurer's motion for summary judgment was dismissed.

This case was digested by [Erika L. Decker](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Erika L. Decker at [edecker@harpergrey.com](mailto:edecker@harpergrey.com).