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## CASE SUMMARY: VICARIOUS LIABILITY PROVISIONS OF HIGHWAY TRAFFIC ACT DO NOT APPLY WHERE VEHICLE OPERATED WITHOUT CONSENT OF OWNER

**Insurance law – Automobile insurance – Uninsured motorist – Consent to drive – Statutory provisions – Practice – Summary judgments**

*Ip v. Olokun*, [2019] O.J. No. 2970, Ontario Superior Court of Justice, June 4, 2019, J. Leiper J.

The owner of a vehicle that was involved in a motor vehicle accident (Smith) brought a motion for summary judgment seeking a dismissal of the plaintiffs' claim against her as well as a dismissal of the plaintiffs' insurer's cross claim (the plaintiffs' insurer extended uninsured motorist coverage to the plaintiffs).

The driver of the vehicle owned by Smith was also a defendant. The plaintiffs alleged Smith was liable for any negligence on the part of the driver as a result of the vicarious liability provisions of the *Highway Traffic Act*. The defendant driver was uninsured.

Smith sought a dismissal of the plaintiffs' action and the insurer's cross claim on the basis that she did not consent to the driver possessing the car. If that was the case, the *Highway Traffic Act's* vicarious liability provisions would not apply to her.

The court was satisfied that Smith had rebutted the presumption in the *Highway Traffic Act* and established on the balance of probabilities that she had not given implied permission to the driver to possess her car prior to or on the day of the accident. To the contrary, she had told him he was not to drive her car and he did not listen to her. As a result, the court granted the order for summary judgment in favour of Smith.

This case was digested by [Cameron B. Elder](#), 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 Cameron B. Elder at [celder@harpergrey.com](mailto:celder@harpergrey.com).