

Alberta Court Finds Employer Liable for Worker's Negligent, Unauthorized Driving



Under a legal theory called 'vicarious liability,' a civil court can hold an employer responsible for acts of negligence by workers acting within the scope of their employment. So if a worker is driving a company vehicle as part of his duties and negligently causes a traffic accident, the injured parties could sue his employer and win. But what if a worker wasn't using the company vehicle for work-related reasons and instead was, say, running a personal errand? And what if he'd specifically been told *not* to drive that vehicle? You'd reasonably assume that the employer would not then be liable for any accident the worker negligently causes—but at least in Alberta, you'd be wrong. Here's a look at a recent Alberta court case on this exact issue.

THE CASE

What Happened: A worker for a roofing company was given access to the company truck and trailer, which were parked at the jobsite where he was working. The company's principal told him not to drive the truck. He was to use it only to keep required tools and supplies and to stay warm (it was winter). But the company did give him the keys to the truck. Despite his instructions, he drove the truck on a personal errand to the

store and was involved in a traffic accident in which another driver was injured. It's indisputable that the accident was the result of the worker's negligent driving. The injured driver sued the worker and the roofing company. At trial, the court found that the company wasn't liable for the worker's negligent driving. So the injured driver appealed.

What the Court Decided: The Alberta Court of Appeal overturned the trial court's decision, ruling that the company *was* liable for the worker's negligent driving.

The Court's Reasoning: The appeals court explained that under the [*Traffic Safety Act*](#), an employer is liable if, at the time of an accident, the worker/driver was in possession of the vehicle with its express or implied consent. And that consent applies to possession of the vehicle only, not to driving it. In this case, the roofing company consented to the worker's possession of its truck but not to his driving it. In fact, the worker was specifically told he *wasn't* to drive the truck. However, the condition not to drive the truck wasn't in writing and could easily be changed, such as if the company's principal called the worker and asked him to drive the truck back to the shop. The appeals court concluded that such conditions attached to the worker's possession of the company truck shouldn't be enforced 'to the detriment of innocent victims of negligent driving' [[*Mustafi v. All-Pitch Roofing Ltd.*](#), [2014] ABCA 265 (CanLII), Aug. 20, 2014].

ANALYSIS

The appeals court didn't discuss the common law theories of vicarious liability, instead relying on the specific language in the traffic law. A dissenting judge disagreed with the majority's interpretation of that law and its application to these facts. He argued that although the worker had the company's consent to possession of the truck while it was parked at the worksite, he didn't have its consent when he was driving it against the company's specific instructions. And he

hadn't even disobeyed the instruction not to drive the truck for a work-related reason, such as to pick up necessary supplies'he used it for personal reasons.

Nonetheless, Alberta employers'and those in jurisdictions with similar language in their traffic laws'must be careful when they consent to workers' possession and use of their vehicles, especially when they give workers the keys to those vehicles. If workers should get into an accident while driving company vehicles'even against orders not to do so'the company could be on the hook for any damages they cause.

Insider Says: For more information on a company's possible liability for actions of workers in its vehicles, see '[Test Your OHS I.Q.: Is a Company for Injuries to Third Parties in a Traffic Accident Involving Its Vehicle](#)' and '[Brief Senior Management: Companies Can Be Liable for Accidents Caused by Workers' Distracted Driving](#).'