

# No Liability for Driver after Passenger Grabs the Wheel

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If the owner of a vehicle is driving and the front seat passenger grabs the steering wheel, causing an accident, is the owner vicariously liable pursuant to s. 192(2) of the *Highway Traffic Act* because the vehicle was still in the owner's possession?

On August 12, 2019, the Ontario Court of Appeal (the Court) answered "no" in its decision in [McKay v. Park, 2019 ONCA 659](#), which considered this issue in the context of a motion for summary judgment brought by the owner. The motion judge found that the driver was not negligent, since the passenger had unpredictably reached over and grabbed the steering wheel, causing the accident.

It was also alleged that the owner was vicariously liable pursuant to section 192(2) of the *Highway Traffic Act*. The motion judge rejected the argument that the owner was in "possession" of the vehicle despite sitting in the driver seat.

As a result, the defendant owner successfully moved for summary judgment dismissing the plaintiff's claim. The plaintiff's insurer appealed the decision and was unsuccessful. The Ontario Court of Appeal affirmed the motion judge's decision on both issues.

## Comment

This is an interesting decision, as cases have previously held that a vehicle owner can be found vicariously liable if they are in their car while someone else is driving.

In this appeal, the Court considered the public policy considerations underlying vicarious liability under the *Highway Traffic Act* and affirmed that the purpose of section 192 "is to have owners assume the risk of those they have entrusted with their motor vehicle." However, between this decision and another [recent decision in Moushi v. Stephen, 2019 ONSC 3125](#), vehicle owners' vicarious liability does not extend where there is no real entrustment to another.

By

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