



Consent to Operate a Vehicle is an On-Off Switch, Not a Dimmer



Kristina Persaud

By Kristina Persaud, Lawyer

In the recent decision of *Mansour v Rampersad*, 2021 ABQB 44 the Court confirmed consent is either given or not. Further, the vehicle owner can terminate consent given to another driver in advance and at a specific point in time.

In this case, the Defendant was staying at the house of Ms. Pinksen and her husband. Ms. Pinksen went out of town and her husband lent her vehicle to the Defendant so he could run errands. The Defendant agreed to return the vehicle the same day but did not. Ms. Pinksen attempted to contact him over the next two days, but did not receive a response. She then reported to the police that the vehicle had been stolen.

A police officer contacted the Defendant and gave him a deadline by which to return the vehicle, otherwise it would be listed as stolen. Ms. Pinksen, who was present for the call, agreed to this. The Defendant did not return the vehicle by the deadline and it was listed as stolen. The Defendant was subsequently involved in a collision with the Plaintiff.

The Plaintiff sued the Defendant and Ms. Pinksen as the registered owner of the vehicle. Ms. Pinksen brought a summary dismissal application. The Master denied the application finding the Defendant had consent to drive the vehicle until its return, and found Ms. Pinksen vicariously liable for the Defendant's negligence in causing the collision pursuant to section 187(2) of the *Traffic Safety Act*, RSA 2000, c T-6.

This was appealed to a Justice who overturned the decision of the Master and found that Ms. Pinksen had terminated her consent. The Court held, "clear, unequivocal and unambiguous express termination or revocation of consent to drive is effective, even if made in advance."

Citing *Garrioch v Tessman*, 2017 ABCA 105, the Court held that consent to drive a vehicle is similar to an on-off switch; it either exists without conditions or it does not exist at all. While accepting this binding case law that states consent cannot be given with conditions, the Court also recognized that when an owner trusts someone with possession and operation of a vehicle, they still retain some control of it. Consent can be terminated or revoked by an owner, and can also be terminated while a driver maintains possession of the vehicle.

The Court found Ms. Pinksen had terminated consent by providing a deadline by which the vehicle had to be returned. She gave the Defendant express consent to return the vehicle (turning "on" the consent switch) without conditions attached. If the Defendant had caused an accident before that deadline expired, Ms. Pinksen would have been held vicariously liable. After the deadline passed, the consent switch was "off". There was nothing unclear, ambiguous or equivocal about this termination of consent. There was nothing more Ms. Pinksen could have done to terminate her consent.

This decision raises interesting issues. The law is very clear (as in *Mugford v Weber*, 2004 ABCA 145) that a vehicle owner cannot impose conditions on their consent (i.e. you can drive my car, but you cannot speed). The only exception to this was found in *Garrioch*, where the Court held that an owner can impose a condition that possession will not be passed on to third parties or classes of third parties.



BROWNLEE LLP
Barristers & Solicitors

In *Mansour*, it was accepted that an owner could terminate consent. While the Plaintiff argued that the deadline for the termination of consent was a condition being imposed (which is not allowed according to the principles of *Mugford*) the Court in *Mansour* disagreed. The Court found the deadline was not a condition, but rather a termination in advance of the consent itself which was well within the rights of a vehicle owner to impose.

The vicarious liability imposed on vehicle owners by section 187(2) of the *Traffic Safety Act* is to protect innocent third parties seeking compensation for injuries suffered at the hands of negligent drivers. The policy favours providing this compensation.

In our view, it was important in this case that the vehicle was actually reported stolen after the deadline to return the vehicle expired. This is not the same where an owner lent his vehicle to a friend and indicated the vehicle had to be returned by a certain time. A Court may find the owner vicariously liable if the friend was in an accident after this deadline. However, if the owner contacted their friend after the imposed deadline, said the vehicle had to be returned by a newly imposed deadline or it would be reported stolen, this new deadline was missed, and subsequently the vehicle was reported stolen and then an accident occurred, then this scenario would likely be determined based on the principles in *Mansour*. We suspect this decision will raise new issues with termination of consent and what will now qualify as a condition as opposed to actually turning your consent "off."

However, as it stands, the *Mansour* case provides a further example about consent that terminates after a certain amount of time where the consent switch is turned "off" at a specific time in the future. The deadline for when consent terminates can be imposed during the time the driver has consent and consent can be set to expire in the future. This is not a condition of the consent but rather it is part of the consent itself, and an owner is within their rights to impose an expiry of the consent provided.

Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information related to liability, please contact the following member of Brownlee LLP:



Kristina Persaud

403-260-1466

kpersaud@brownleelaw.com

CALGARY

1500 Watermark Tower
530 - 8 Avenue S.W.
Calgary, AB T2P 3S8
T: (403) 232-8300
F: (403) 232-8408

Toll Free: 1-800-661-9069

EDMONTON

2200 Commerce Place
10155 - 102 Street
Edmonton, AB T5J 4G8
T: (780) 497-4800
F: (780) 424-3254