

## Personal Injury

# Negligent parenting allegation does not trigger auto insurance coverage, court rules

By **Terry Davidson**

(August 20, 2019, 12:17 PM EDT) -- An Ontario court has struck a "mortal blow" to negligent parenting allegations being used in auto insurance claims where there is no link to operation of the vehicle, says a lawyer.

The Aug. 14 Ontario Appeal Court decision in *Hunt v. Peel Mutual Insurance Company* 2019 ONCA 656 involves an appellant's unsuccessful attempt to have his girlfriend's insurance company defend him against a lawsuit by his daughter, a minor alleging her father was negligent in allowing her to ride in a car driven by the girlfriend, who was allegedly impaired.

According to court documents, on July 20, 2014, Bradley Hunt and his daughter were passengers in a vehicle belonging to Tammy-Lynn Dingman. At some point, it crossed the centre line and hit another vehicle, injuring Dingman, Hunt and Hunt's daughter.

At the time, Dingman had a policy with the responding defendant in this case, the Peel Mutual Insurance Co.

Upon the daughter launching her lawsuit, Hunt moved to have it declared that Peel Mutual had a duty to defend him against it, as he was an occupant of the vehicle and thus an "insured person" under s. 239 of Ontario's *Insurance Act*.

But Ontario's Superior Court of Justice denied the motion.

Hunt appealed, arguing the motions judge "misinterpreted the plain and ordinary meaning" of the section.

But Appeal Court Justices David Paciocco, Harvison Young and Benjamin Zarnett upheld the lower court's decision, finding s. 239 of the Act "makes clear that to be covered, the occupant's liability must be for loss or damage arising from the use or operation of the automobile."

"Even though [the daughter's] injuries arose from the use of a vehicle, Mr. Hunt's liability for her loss or damage does not," the Appeal Court found. "His liability is alleged to arise from negligent parenting, not from anything he did or did not do as an occupant connected to the use or operation of the automobile."

The court did not buy Hunt's argument that he deserved coverage because he was an occupant of Dingman's vehicle at the time of the crash.

"The plain language of the provision prevents the absurdity of coverage linked to his fortuitous and immaterial occupancy. Nor can the plain language of section 239 be overcome by the fact that the *Insurance Act* is consumer protection legislation, or that policies should be construed in favour of coverage."



Joseph Campisi, Campisi LLP

Personal injury lawyer and Osgoode Hall adjunct professor Joseph Campisi, who is not connected to the case, said there must be a link connecting the negligence accusations to a "motoring activity."

He said the appeal decision "delivers a mortal blow to negligent parenting allegations in auto insurance claims."

"I think it all boils down to coverage," said Campisi, principal of Campisi LLP in Woodbridge. "The court is saying that in order for auto insurance coverage to attach, the claim has to be grounded in a motoring activity. This does not include negligent parenting. The takeaway is that unless there is this connection, the court will not require the auto insurer to defend and indemnify."

Peel Mutual lawyer Edward Key, of Hamilton's Agro Zaffiro LLP, was not immediately able to comment.

Hunt's lawyer, Richard Campbell, of Waterloo's Petker Campbell Postnikoff, declined to comment. He did, however, say an appeal is not being contemplated.

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