

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

JAMIE EVA AGNES LEDGER, a minor,  
SARAH McKAY, a minor, by their Litigation  
Guardian, MARSHA LEDGER and the said  
MARSHA LEDGER

Plaintiffs

**- and -**

RILEY SABOURIN and CRYSTAL  
VINCENT

Defendants

)  
)  
) *G. W. Freitag*, for the Plaintiffs  
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)  
) *S. Crowe*, for the Defendant Riley Sabourin  
) *H. Klein*, for the Defendant Crystal Vincent  
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)

) **HEARD:** January 28 and 30 , 2019,  
) at Thunder Bay, Ontario

**Mr. Justice T. A. Platana**

**Reasons For Judgment**

**Overview**

[1] This action arises out of a motor vehicle accident that occurred in the early morning hours of November 26, 2013, on Pic Mobert First Nation. At the commencement of trial, counsel for the Defendant, Riley Sabourin (“Mr. Sabourin”), and counsel for the Defendant, Crystal Vincent (“Ms. Vincent”), appeared and advised that the action had been resolved as between the

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Plaintiffs and the two Defendants except for an outstanding issue of costs. Counsel for the Plaintiffs did not appear.

[2] At the time of the accident, Mr. Sabourin was operating a motor vehicle owned by Ms. Vincent. Mr. Sabourin was not licensed to drive. Counsel agreed that the sole issue before me was whether Mr. Sabourin was in possession of Ms. Vincent's vehicle without her consent.

[3] Counsel agree that the onus to prove no consent is on Ms. Vincent and that I must look at all the circumstances to make that determination, not just the facts of the evening in question.

[4] Both Defendants testified, and counsel read in portions of the Examination for Discovery of both Defendants.

### **Ms. Vincent's Evidence**

[5] Ms. Vincent testified that she and Mr. Sabourin have lived together for 20 years. In November 2013, she was employed by Pic Mobert First Nation. Mr. Sabourin was working at a mine 30 kilometers from their home.

[6] Ms. Vincent was the registered owner of two vehicles, a 1995 Chevrolet Avalanche and a 2008 Jeep Cherokee. She had a "G" category driver's license. He has never had a license. Her evidence is that Mr. Sabourin had no control over either and that he needed her permission to drive either vehicle. Prior to November 2013, she had never given him permission to do so.

[7] Ms. Vincent knew that, prior to 2013, Mr. Sabourin had driven her vehicles, but she does not think that this occurred more than five times. Mr. Sabourin had been in a previous accident in 2009. He was driving a Sebring that Ms. Vincent owned. He had been drinking at the time.

[8] Ms. Vincent acknowledged in discovery that when he was drinking she could not control him. She did not know that he had been driving prior to the 2009 accident. She told him that he “had no business driving it” and that “he shouldn’t drive.” Prior to 2010, he had used one of her vehicles at times. She did not hide the keys, but he took them from her “on occasion.”

[9] Ms. Vincent asked Mr. Sabourin to move a vehicle from the front of the driveway to the back of the house “two or three times.” Counsel asked her about him using the truck to go to the garbage dump, and she said he never asked to do so, and that she was not aware if he had done so. In discovery, she stated that he “probably” drove a vehicle to the dump, which is one-half block away, but that she did not give him permission to do so. She acknowledged that he took the keys on occasion.

[10] After the 2009 accident with the Sebring, he had used the Avalanche on occasion to haul wood off the reserve. However, he had to ask permission to use the vehicle and a friend, Mr. Desmoulins, drove. She gave the keys directly to the friend.

[11] Ms. Vincent stated that the accident, which is the subject of this claim, occurred November 26, 2013. Mr. Sabourin was working night shift at the mine. He would get a ride to work from his cousin when on day shift. She would drive him to work when he was on night shift. He had never driven any of her vehicles to work.

[12] On the day of the accident, after she drove him home from work at around 3:30 a.m., she went to bed, and he stayed up, as was his custom. Before she went to bed, there was no discussion about him using a vehicle. The keys were in her jacket pocket. She stated that she had not given him permission to drive and would not have given it to him if he asked because he did not have a license.

[13] In cross-examination, she acknowledged that, prior to 2013, although she was not aware that he had driven her vehicle, other people had told her that they had seen him driving. She agreed he did drive, but not after he quit drinking in 2010.

[14] She acknowledged that she did not hide the keys from him after either of the accidents. She had taken the keys from him on occasion.

[15] She had asked him to move the truck in the driveway “two or three times.” She was not aware that he had used the truck to go to the garbage dump.

[16] After both the 2009 accident and the 2013 accident, Ms. Vincent did not involve the police, as, in her words, “technically they weren’t stolen.”

[17] Her evidence is that 50 percent of residents on the reserve drive without a license.

[18] She acknowledged that he has, at times, paid for gas, maintenance, and other costs for her current vehicle. He has never driven this vehicle, but she has two sets of keys, and there is nothing to prevent him from getting into it if he needs.

[19] Counsel read in portions of Mr. Sabourin's examination-for-discovery. Mr. Sabourin acknowledged that he did not have a driver's license and has not had one since his beginner's license in 1996. He acknowledged that he was driving Ms. Vincent's Avalanche truck and that he did not have permission to do so at the time of the accident. He stated that he never had permission to take it, but other than that she would not "let me drive it anyway." He had taken it before. It was uncommon for him to do so and that she did not know he had done so prior to this accident.

[20] Counsel read in the following portion of the Mr. Sabourin's discovery transcript:

Q: So you were-were you-was it your understanding that you were allowed to drive the Avalanche?

A: In a way I was, yeah, in a way.

Q: How do you mean, in a way?

A: Because it was in the driveway.

Q: So because the car was, the Avalanche was in the driveway you were allowed to drive it?

A: No, I wouldn't say I was allowed to drive it.

Q: So I'm, just trying to understand what you said then. So you said, in a way you were allowed to drive it but then you just said that you weren't allowed to drive it?

A: It's – I wasn't allowed to drive it. It was there and I just took it.

Q: Oh, okay so if I'm understanding correctly, you were able to drive it because it was in the driveway but you were not allowed to drive it?

A: Yes sir.

Q: And how did you know that you weren't allowed to drive the Avalanche?

A: Because I didn't have a license.

[21] He further stated that Ms. Vincent never told him not to drive the vehicles and that the reason he was not allowed is because he did not have a license:

Q: So is it my understanding that Crystal never told you not to drive her vehicles?

A: The understanding, she never told me not to drive them. She never did say that.

Q: So the reason why you weren't allowed to is just because you didn't a license?

A: Because I didn't have a driver's license.

[22] He did not have permission to drive the Sebring vehicle involved in the 2009 accident. She did not know that he was taking it.

[23] He also stated that she had seen him drive the Avalanche on a prior occasion when he took the truck to the dump.

Q: And have you ever driven Crystal anywhere?

A: I don't think so, other than that to a garbage bin that was it.

Q: You drove Crystal to the garbage bin?

A: No, well I was in – I was loading up the truck with garbage and she - I wanted to take the garbage to – to the bin, just a few houses down. So, I jumped in the truck and she seen me drove the truck to the bin and back. She wasn't in the truck.

Q: So there was one time where Crystal saw you drive the truck off of your – away from your house?

A: Yeah and that's the time when she seen me drive the truck to – to the garbage bin and back.

Q: How long of a drive is that?

A: I'd say a block, maybe 200 metres, 300 metres, the most.

Q: And you were driving by yourself?

A: Yes.

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Q: And this – was this the Avalanche truck?

A: Yes.

Q: Do you remember approximately when this was?

A: Oh, it had to be before work I guess.

Q: No, sorry, like a year or month?

A: Oh, I don't know. It could have been that summer.

Q: Before the accident?

A: Yeah.

[24] With respect to Mr. Sabourin having permission to use the vehicle, the discovery indicates:

Q: She never – you never spoke with Crystal about who was allowed to use the truck or the Jeep?

A: No.

Q: Had Crystal ever given you permission to use the vehicles?

A: Well she gave me permission to use the vehicles if I had a driver to go get wood that I need on the highway, yeah.

Q: So she gave you permission with – to have someone else drive you ...

A: Yeah.

Q: ...in vehicles? And why weren't you able to drive the truck at that time, on that occasion?

A: Well, I'm hauling wood out on the highway, picking up wood.

Q: So did you believe you had permission to drive the truck that morning?

A: I believe I did, yeah.

Q: And you believe that – or and you were permitted to drive that truck?

A: I wouldn't say permitted.

Q: So, you said that you wouldn't say permitted and that's only because of the – your license?

A: What do you mean, like?

Q: So what I'm trying to say is, why don't you believe you were permitted?

A: Why do I believe I'm permitted?

Q: You were not permitted? You said that you don't – you wouldn't say you were permitted to drive the truck?

A: See, like I'm – you're consuming me here on how you're wording this. Am I allowed to drive the truck or am I allowed to drive the truck, is that what you're asking me, or?

### **Mr. Sabourin's Evidence at Trial**

[25] Mr. Sabourin's evidence is that, on the early morning of this accident, he "assumed he was allowed to use" the truck. There was some confusion over his evidence, but he stated that he had driven it before, on the reserve, to visit his brother once every four months and once a week to the garbage. He assumed he could use it "because he lived with her." He stated that Ms. Vincent has never said "do not drive" or directed him not to, but has told him that he "shouldn't be driving."

[26] He testified that Ms. Vincent keeps one set of keys for the vehicle in her jacket and a second set on the table. There were times he took the keys without telling her. He stated that she has never stopped him from driving. He has driven the truck only on reserve land and never on the highway. He would tell her he was taking garbage to the bin, and she never stopped him from using the truck to do so. His evidence is that, prior to the accident with the Sebring in 2009, he had driven that vehicle when drinking.



[27] In cross-examination, he stated that when he took the Avalanche to get wood a friend of his drove and got the keys from Ms. Vincent.

[28] He acknowledged contributing to her costs for gas, insurance, and other expenses and said that he did so because they used the vehicle for his benefit when she drove him to and from work.

[29] He has not driven her vehicle since 2013. He still carries a set of keys for her new truck, although he has never driven it.

[30] Counsel read in certain portions from the transcripts of Ms. Vincent's examination-for-discovery:

Q: You didn't report the vehicle stolen?

A: No.

Q: Had Riley ever driven the vehicle stolen?

A: No.

Q: Had Riley ever driven any of your cars prior to that?

A: When he was drinking, yes.

Q: When he was drinking?

A: Uh-hum.

Q: So if he was drinking, he would drive your cars?

A: How can I control a person? Can you control a person when they're drinking?

Q: I'm just asking?

A: I have no control over him.

Q: So he drove the car on occasion?

A: Sometimes when he did, yeah.

Q: Any idea how often he would have driven your vehicles?

A: No.

Q: A few times?

A: A couple of times maybe.

Q: Okay. Have you ever received reports or information or someone at Pic Mobert telling you they've seen Riley driving your vehicles around?

A: On occasion, yeah, people have said that to me, yeah.

Q: And what did you do to ensure that he didn't, in fact, drive those vehicles?

A: I probably didn't take the necessary steps to ensure that he didn't get his hands on those keys.

### **Ms. Vincent's Position**

[31] Counsel for Ms. Vincent, Mr. Klein, acknowledges that the onus is on Ms. Vincent to establish that she had not given Mr. Sabourin consent to drive the vehicle. Mr. Klein argues that the evidence establishes that Ms. Vincent never gave Mr. Sabourin permission to use the vehicle. Mr. Klein acknowledges that prior to Mr. Sabourin's accident with the Sebring in 2009, when both were drinking, Mr. Sabourin did drive Ms. Vincent's vehicle on occasion. However, Mr. Klein argues that, subsequent to that accident, she told Mr. Sabourin not to use her vehicles and only let him move the car while in the driveway or to drive to the garbage bin 200-300 yards away from their residence. Mr. Klein notes that, when Mr. Sabourin went to get wood, Ms. Vincent gave the Avalanche keys to a friend who drove the truck while Mr. Sabourin was a

passenger. Mr. Klein notes that, on the night of the accident, Ms. Vincent was asleep and not aware that Mr. Sabourin had taken the vehicle.

[32] Mr. Klein references Mr. Sabourin's evidence where he acknowledges that the last time he had driven the Sebring in 2009, she had not given him permission to do so.

[33] Mr. Klein references the evidence that Mr. Sabourin stated that he knew he could not drive, but "assumed" that he could take it. Following the Sebring accident, she always told him that "he should not drive." Mr. Klein notes that, in his discovery, Mr. Sabourin said that in response to specific questions:

Q: So you said you didn't have permission to drive the Avalanche at that time. Have you – has – have you ever had permission to drive that Avalanche? Had you?

A. Not at the time, no.

Q: So you've never had permission to drive the Avalanche?

A: I wouldn't say permission.

Q: Sorry, what do you mean by permission?

A: Well, I would just – if the keys were sitting there I'd take it, but other than that, she wouldn't let me drive it anyway.

Q: She would not let you drive it?

A: No.

Q: And she is Crystal?

A: Yes.

Q: So when you took those keys and drove it, was Crystal aware that you took the car?

A: No.

[34] In response to questions in discovery, he stated that he “wouldn’t say that he was allowed ... I just took it.”

[35] Mr. Klein references Mr. Sabourin’s evidence that he has a set of keys for Ms. Vincent’s current vehicle even though he has never driven it.

[36] Mr. Klein frames the issue to be determined as whether, in all the circumstances, Mr. Sabourin was justified in deeming that he had Ms. Vincent’s implied consent to possess her vehicle on that occasion? Mr. Klein acknowledges that there is a subjective component to this question, but argues that the belief of the person taking the vehicle is not determinative of the question.

[37] He cites *Finlayson v. GMAC Leasing Ltd.*, 2007 ONCA 557, 86 O.R. (3d) 481, where the Ontario Court of Appeal held that the issue is possession, not driving. At para. 18, the court stated:

[18] On a plain reading of s. 192(1), a vehicle owner is liable for the negligent operation of the vehicle on a highway unless the vehicle was in another’s possession without the owner’s consent. There is no question but that vicarious liability pursuant to s. 192(1) of the Act is based on possession, not operation, of the vehicle. See *Thompson v. Bouchier*, [1933] O.R. 525, [1933] O.J. No. 356 (C.A.) and the long line of cases in which it has been followed.

[38] He references the decision in *Myers-Gordon v. Martin*, 2013 ONSC 5441, 117 O.R. (3d) 142, affirmed in 2014 ONCA 767, 247 A.C.W.S. (3d) 209, where Kent J. noted, at para. 20:

[T]he court found that there was consent to possession despite the condition of non-operation. A registered owner’s daughter and the daughter’s boyfriend were not licensed and were prohibited from driving the vehicle in question until they had their licenses. The vehicle was parked in the driveway of the mother’s home where she lived with her daughter and the daughter’s boyfriend. The keys were left on a

hook inside of the door of the house. The keys were not specifically given by the mother to the daughter or her boyfriend and, while the mother was away from the home, the daughter and her boyfriend took the vehicle, drove it on the highway and were involved in an accident. Justice Strathy found that the mother was liable as the owner of the vehicle as she had consented to her daughter and boyfriend having possession and control of the vehicle even though they had been prohibited from operating it. Justice Strathy reviewed the case law and distilled from it the following eight principles:

1. The question of whether a motor vehicle is in the possession of some person without the consent of the owner is a question of fact to be determined by the evidence in a particular case.
2. The meaning of possession is a question of law but the application of the definition to any particular set of facts is not a question of law alone.
3. Possession is a concept capable of different meanings and there are different types of possession. The primary definition of possession contemplates power, control or dominion over property.
4. Once ownership of a vehicle is established, the onus passes to the owner to establish that the vehicle was, without the consent of the owner, in the possession of some person other than the owner.
5. The owner's vicarious liability is based on possession, as opposed to operation of the vehicle.
6. Consent to possession of a vehicle is not synonymous with consent to operate it.
7. If possession is given, the owner will be liable even if there is a breach of a condition attached to that possession, including a condition that the person in possession will not operate the vehicle.
8. Breach of conditions placed by the owner on a person's possession of the vehicle, including conditions as to who may operate the vehicle, do not alter the fact of possession.

[39] He cites *Argante v. Munro*, 2014 ONSC 3626, 244 A.C.W.S. (3d) 746, as confirming that because keys are left in an accessible location does not provide evidence of implied consent. He relies on *Watts v. Bowman*, 2016 ONSC 3994, 267 A.C.W.S. (3d) 691, at para. 19, for the proposition that “while there is a subjective component to the test, the trial judge must consider

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all of the evidence, all of the circumstances, to determine whether the owner has established that the driver did not have implied consent.”

[40] He cites *Michaud-Shields v. Tough*, 2018 ONSC 4977, 295 A.C.W.S. (3d) 615, at para. 30, where the judge states “there must be an understanding between both the owner and the driver (either express or implied) that the driver is authorized by the owner to use the vehicle.”

[41] In support of his argument that Mr. Sabourin was not justified in all the circumstances in deeming that Ms. Vincent had implied consent to take the vehicle, Mr. Klein relies on the evidence that:

- Mr. Sabourin took the keys while Ms. Vincent was asleep. She had no expectation that he would drive;
- There was no discussion about him using the truck;
- His reasons to use the truck to go see his cousins to tell him the roads were bad made no sense;
- He did not ask permission, and he knew that she would have said “no”;
- He exercised no control over the vehicle. He paid some of the expense. However, he benefited because she drove him to work;
- When he used the truck to get wood, he had to ask her permission or his friend, Mr. Desmoulins, to drive. Ms. Vincent gave the keys directly to Mr. Desmoulins;
- The evidence of Mr. Sabourin’s prior use of Ms. Vincent’s vehicle relates to the Sebring in 2009. Mr. Sabourin says that he drove it twice, the second time after the accident, to the dump;
- After they both stopped drinking, she never gave him permission to drive. His evidence is that, if the keys were there, he would do it, but “she wouldn’t let me drive it anyway”;
- His evidence is that she always told him that he “shouldn’t drive”;

- At trial, her evidence is that she never gave him permission;
- Access to the keys does not legitimize unauthorized use.

### **Mr. Sabourin's Position**

[42] Mr. Crowe, on behalf of Mr. Sabourin, asks me to consider the long-term relationship between the two Defendants and characterizes it as a “normal” situation where “what’s yours is mine.” He submits that in this relationship Mr. Sabourin never had to ask permission to use the truck, he simply assumed that he could do so. Mr. Crowe asks me to consider the following aspects of Mr. Sabourin’s evidence:

- He shared expenses for the truck;
- There is conflicting evidence as to how often he drove prior to and after the Sebring accident. Whether it was two or three times per week, once a week, moving the truck in the driveway, or driving to the garbage bin, there are multiple occasions when he drove;
- When making a “wood run” off reserve he knew he needed someone else to drive, implying that when on reserve he believed he could drive;
- When questioned at discovery, his reason for her not allowing him to drive was that he did not have a license, not that she had not told him not to drive.

[43] Mr. Crowe asks me to consider Ms. Vincent’s evidence, and in particular, what she knew about him driving. He references the evidence that:

- She knew he was unlicensed;
- Ms. Vincent stated that she heard from others on the reserve that they had seen him driving. When she went home to investigate, “most of the time the vehicle was at home.” (I consider this as what was said to her, but not as proof of him actually driving);
- She knew he had driven the Sebring on at least two occasions;

- She knew he had used the truck for garbage runs;
- She had asked him at times to move the vehicle in the driveway;
- She was aware that 50 percent of drivers on Pic-Mobert reserve drive without a license or insurance;
- Prior to the time they both quit drinking, she knew he had driven her vehicle, and in fact they sometimes alternated drivers;
- She stated that when he was drinking, she couldn't "control him." Counsel agrees this was when they were drinking, but suggests that history is still relevant to be considered "in all of these circumstances";
- She made no effort to keep the keys from him. Her own evidence is that she "probably didn't take enough measures" to do so.
- When she became aware that he had been driving she took no preventative measures other than telling him that he "should be careful."
- She did not call the police to report a stolen vehicle after either accident;
- He has keys for the new truck.

[44] Mr. Crowe submits that all of the evidence above and the relevant factors culminate in Mr. Sabourin believing that, on the night in question, he could take the vehicle if he wanted. Counsel argues that the history of his use of her vehicles shows that this was not a "one-off" but consistent with his previous use.

[45] Mr. Crowe refers to *Watts v. Bowman* for the proposition that I should not consider what Ms. Vincent's answer might have been if Mr. Sabourin had requested to drive the truck. At para. 21, Corkery J. notes:

[21] I make no finding about what Christina or Amanda thought about what might have happened if Amanda had, in fact, asked her mother permission. This is speculative. The task for the trial judge in applying the *Palsky* test is not to try to ascertain what an owner might have done under different circumstances, but to consider the actual circumstances.



[46] Counsel argues that the facts indicate that Mr. Sabourin understood that he could drive on the reserve and that Ms. Vincent acquiesced in that view. She demonstrated trust in him by leaving the keys accessible. He had used her vehicle before without asking, and she had taken no steps to prevent repetition of use.

[47] Mr. Crowe relies on the summary of the indicia of implied consent considered in *Myers-Gordon* and, in particular, the factors that i) implied consent is not to be determined solely at the time of the accident; ii) Ms. Vincent knew he had driven in the past and gave only an admonishment to “be careful”; iii) the keys were left where accessible; iv) the nature of the relationship, the carefree attitude towards the keys together with the fact that Ms. Vincent knew that he had taken her vehicle on a previous occasion without her consent; others told her that they saw him driving; and, even if that was not proven in evidence, she checked and determined that the vehicle was not always in the driveway, and she took no steps in response.

[48] Mr. Crowe references *Emond v. Reid* (1993), 41 A.C.W.S. (3d) 220 (Ont. Ct. (Gen. Div)), and submits that paras. 75 and 76 are instructive, precedential authority for the case before me:

[75] On the authority of the *Donald*, *Walker*, *Doherty*, *Deakins* and *Usher* decisions, *supra*, the following principles are applicable to the case at bar.

- The owner of the vehicle must show that the motor vehicle was without his/her consent in the possession of a person other than the owner.
- It is the possession of the vehicle that is crucial. The owner may be liable despite the fact that the possessor was forbidden from driving. Cf. *Donald*, *supra*.
- Permission to have possession of the vehicle may be inferred from acts which fall short of being direct and positive. A person may be said to have

permitted possession and use if he/she failed to take precautions which could be considered as reasonable to avoid the incident from occurring, e.g. contravention of a condition. Cf. *Walker*, supra.

- An express refusal cannot assist the owner, if the owner is aware that a person will probably drive without taking steps to assure such express refusal is carried out. Cf. *Usher*, supra.
- Possession of the keys to the vehicle or a tolerant, indulgent, or ineffective control over an irresponsible member of the family can lead to an inference of implied consent.

[76] Mrs. Gardner's admitted course of conduct over a period of years demonstrates that she was fully aware of her son's conduct and behaviour in relation to the keys. She nonetheless never changed her habits, never took steps to change the location of her keys, never confronted him with respect to alleged non-authorized possession of the vehicle, never sought assistance from anyone else to dissuade her son. Even if the alleged refusal to consent had been established as express, her course of conduct revealed otherwise. I am satisfied that the defendant Raymond Gardner's negligent operation of a motor vehicle was done while he had possession of that vehicle with the consent of the owner Mrs. R. Gardner.

## Analysis

[49] The issue to be determined is whether Ms. Vincent has discharged her onus of proving that she did not provide implied consent to Mr. Sabourin's possession of her vehicle on the day in question. I must consider all of the circumstances, not just the night in question.

[50] In *Connors v. D'Angelo*, 2017 ONSC 1104, 276 A.C.W.S. (3d) 940, Perell, J. relies on the indicia of implied consent outlined in *Mayer-Gordon*. When considering the factors and indicia of consent, I note that, as in *Myers-Gordon*, Mr. Sabourin had previously driven with Ms. Vincent's permission, although she knew that he was unlicensed. I find this fact relevant even

considering that, when Mr. Sabourin drove the Sebring, on or before 2009, he and Ms. Vincent were both were drinking at the time.

[51] Further, her evidence is that, acting on information received from others, she would check to see if he had been driving by looking to see if her truck was at home, and it was not always there. I construe the fact that she checked as an indication of her knowledge and a lack of trust in Mr. Sabourin. They both knew he was prone to taking it. There is nothing in the evidence to suggest that she discussed any of this information with him. While I do not accept the evidence of his driving as proven fact, the information, at minimum, provided an obligation on Ms. Vincent to question Mr. Sabourin about it. She stated that “I probably didn’t take the necessary steps to ensure that he didn’t get his hands on those keys.”

[52] I rely on the fact that she made no effort to ensure that the keys were not accessible to him. She acknowledged that, prior to 2013, he had driven her vehicle, but that she “didn’t think more than five times.” On occasion, she herself had asked him to move the vehicle in the driveway. Leaving the keys accessible, knowing that he had previously taken them without her knowledge, she, in essence, relinquished control over her physical possession of the vehicle.

[53] She indicated that, on previous occasions, she “had no control over him.” Even accepting she said this in reference to when they were both drinking, this is evidence that factors into the entirety of the circumstances.

[54] I take into account that, even at the time of trial, he had a set of keys for her new truck.

[55] Nowhere in the evidence is there any indication that she told him not to use her truck. The evidence is that the most significant instruction she ever gave him was that he “shouldn’t be driving” or that he “should be careful.”

[56] I have also considered the circumstance of the relationship between the parties. They have resided together for many years. He has paid for some of the expenses for her truck which at minimum is suggestive of a sharing relationship between the two: *Deakins v. Arsen*, [1971] S.C.R. 609, cited by Perell, J. in *D’Angelo*.

[57] The case law is clear. The onus is on Ms. Vincent to establish on a balance of probabilities that the truck was in Mr. Sabourin’s possession without her consent. In reviewing the factors outlined above and taking into account all of the circumstances, I find that Ms. Vincent has not met the onus on her. The factors I have considered satisfy me that, on the balance, Mr. Sabourin was justified in deeming that he had Ms. Vincent’s implied consent to possess the truck at the time of the November 26, 2013, accident.

### Costs

[58] As between the Defendants, costs are awarded to Mr. Sabourin. If the parties cannot agree on costs, the parties may make submissions in writing. Mr. Sabourin shall submit costs within ten days. Ms. Vincent shall have five days to reply.

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The Hon. Mr. Justice T. A. Platana

**Released:** March 25, 2019

**CITATION:** Ledger v. Sabourin et al., 2019 ONSC 1893  
**COURT FILE NO.:** CV-14-297-00SR  
**DATE:** 2019-03-25

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

JAMIE EVA AGNES LEDGER, a minor,  
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Guardian, MARSHA LEDGER and the said  
MARSHA LEDGER

Plaintiffs

**- and -**

RILEY SABOURIN and CRYSTAL  
VINCENT

Defendants

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**REASONS FOR JUDGMENT**

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Platana J.

**Released:** March 25, 2019

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