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# WHAT IS A MOTOR VEHICLE AND WHAT CONSTITUTES ITS USE AND OPERATION: AN INVESTIGATION INTO POLICY APPLICABILITY AND COVERAGE

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In Ontario and across North America, a large portion of litigation arises from the tort concept of “negligence”, wherein one or more persons sustain injuries or damages as a result of another’s breach of a requisite standard of care. A large portion of actions for negligence arise in the field of transportation law as negligent operation of a motor vehicle can and often does cause significant damage to plaintiffs.

This paper addresses two important questions that are integral to determining whether a negligence action arises from the use and operation of a motor vehicle.

Firstly, this paper seeks to determine whether a particular vehicle involved in an accident actually constitutes a motor vehicle. Sometimes, determining whether a vehicle constitutes a motor vehicle is simplistic, as is the case with a car or truck. However, this question becomes harder to answer with other vehicles such as ATVs, snowmobiles, and non-motorized vehicles like bicycles and rollerblades. This paper investigates this question by assessing relevant legislation and jurisprudence, and seeks to provide an analysis as to what constitutes a motor vehicle in the context of tort law.

Secondly, this paper seeks to determine what constitutes the use and operation of a motor vehicle. Sometimes, determining what constitutes use and operation of a motor vehicle is simplistic, as is the case when a car is in motion on a highway. These questions may arise in circumstances in which individuals are in a motor vehicle, but the motor vehicle is not moving or repair work is being conducted. However, this question becomes harder to answer in other circumstances, for example, when an individual is entering or exiting a vehicle. Whether the vehicle is in use or not may have substantial implications with respect to insurance coverage.

Difficulty often arises in determining whether an action for negligence arises from the use and operation of a motor vehicle. Such a determination may be relevant for determining the insurance policy pursuant to which an injured party may be entitled to claim. In some cases, an injured party may be barred from collecting under an automobile insurance policy. In other cases, an injured party may then be able to collect under a homeowner’s policy or other policy. This is relevant to lawyers, insurers, and brokers alike as many automobile policies will only be required to respond to accidents involving the use or operation of a motor vehicle.

## **What Constitutes a Motor Vehicle in the Tort Context?**

### **I. Background and History**

The determination of what constitutes a motor vehicle in the tort context will have a crucial role in defining the obligation of an insurer to indemnify an injured party due to the negligence of their insured. If a vehicle involved in an accident from which a claim for negligence arises is

found to be a motor vehicle then the negligent party's automobile insurer may be liable to indemnify the injured party. On the other hand, if the vehicle is not found to be a motor vehicle in law, then an auto insurer may be able to escape exposure altogether.

In 1950, the Supreme Court of Canada investigated the meaning of the word "vehicle" in the case of *Bennett & White (Calgary) Ltd. v. Sugar City (Municipality)*<sup>1</sup>. In that case, Bennett and White (Calgary) Ltd. ("the Company") was supposed to provide, at its own expense, all the machinery, tools, plant, materials, articles and other items necessary for the construction of irrigation tunnels. The Company had the right to take back the unused properties converted in the works or disposed of by the Crown upon completion of the project. The Company moved large quantities of plant and materials to the work site. The Assessment Act provided a tax exemption for property that constituted a "motor vehicle". A question arose as to whether any of the plant and equipment was exempt. The Supreme Court made the following finding:

"The word "vehicle" in its original sense conveys the meaning of a structure on wheels for carrying persons or goods. We have generally distinguished carriage from haulage, and mechanical units whose chief function is to haul other units, to do other kinds of work than carrying, are not usually looked upon as vehicles. But that meaning has ... been weakened by the multiplied forms in which wheeled bodies have appeared with the common features of self-propulsion by motor... "motor vehicle" in [the Vehicles and Highway Traffic Act, R.S.A. c. 275, 1942] does not include traction engines or vehicles running on rails. What was intended by the exemption in the Assessment Act [R.S.A. 1942, c. 157] was to make clear the uniformity between the two statutes. The exemption then does not include units of self-propelled equipment whose main purpose is either that of haulage or work as distinguished from general locomotion."<sup>2</sup>

The Supreme Court of Canada assessed four categories of vehicles to determine if they constituted motor vehicle. Those categories and the Court's findings with respect to same were as follows:

- a) **Dumptors:** Ordinary four-wheeled vehicles with gasoline engine, the body of which is a box and the purpose of which is to carry material from place to place. The court was unable to distinguish them from ordinary trucks and therefore, found that they were exempt from taxation.
- b) **Caterpillar tractors used, with concave blades attached to the front as bulldozers, or with other devices attached behind to gather up material of excavation.** The court held that these were not motor vehicles and were therefore, were not exempt from taxation.
- c) **Draglines:** these are large units, in operation like mechanical shovels, which excavate earth and other materials by means of a scoop bucket dragged along the ground by heavy cables. The court held that its whole function is that of doing work as against carrying, which excluded it from the tax exemption.
- d) **Locomotives and cars which run on rails to carry away the excavated material.** The court held that these machines were not motor vehicles, and therefore, not exempt from taxation.

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<sup>1</sup> 1950 CarswellAlta 67 [*Bennett*].

<sup>2</sup> *Ibid* at paras 35 and 36.

The definition was further investigated in the criminal case *R. v. McGarvie*<sup>3</sup>. In that case the Ontario County Court stated the following with respect to the definitions of “vehicle” and “motor vehicle”.

“The Oxford English Dictionary defines a vehicle as: a means of conveyance provided with wheels or runners and used for the carriage of persons or goods.

... the words “a vehicle that is drawn, propelled or driven” are intended to describe the kind of vehicle that Parliament wished to be included in the definition and that such words do not mean that the vehicle must be in motion under its own power or be capable of being put in motion under its own power at the time the offence is alleged to have been committed in order to be a motor vehicle within the definition.”

In the 1967 decision of *R. v. Saunders*<sup>4</sup>, the Supreme Court of Canada further clarified the definition of a “motor vehicle”, this time in the context of the *Criminal Code of Canada*<sup>5</sup>. In that case, the accused was found asleep behind the wheel of an automobile. He was intoxicated at the time. The key to the vehicle was in the ignition but the vehicle was turned off. The automobile was in a ditch. The Supreme Court held that the definition contemplates a vehicle, not its actual operability or function...and includes a vehicle which is unable to move because of either internal or external conditions.

## II. Application of the *Compulsory Automobile Insurance Act*<sup>6</sup> (CAIA) and *Insurance Act*<sup>7</sup>

Section 1.1 of the *Compulsory Automobile Insurance Act* indicates that in the context of that act, “motor vehicle” has the same definition as it does under the *Highway Traffic Act*<sup>8</sup> (HTA). Further, s. 2(1) of the *Compulsory Automobile Insurance Act* indicates that every “motor vehicle” shall be insured under a contract of automobile insurance. Specifically, that section says the following:

“2. (1) Subject to the regulations, no owner or lessee of a motor vehicle shall,

- (a) operate the motor vehicle; or
- (b) cause or permit the motor vehicle to be operated,

on a highway unless the motor vehicle is insured under a contract of automobile insurance. 1994, c. 11, s. 383; 1996, c. 21, s. 50 (3).”

Further, s. 224(1) of the *Insurance Act* provides the following definition for an “automobile” in the context of automobile insurance policies:

“224. (1) In this Part,  
“automobile” includes,

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<sup>3</sup> (1958), 124 C.C.C. 374, 1958 CarswellOnt 35, 29 C.R. 286 (Ont. Co. Ct.) at para. 4, 10, 11, 12 Kennedy Co. Ct. J. [McGarvie].

<sup>4</sup> *R. v. Saunders* (1967), [1967] S.C.J. No. 21, at para 12 [Saunders].

<sup>5</sup> R.S.C., 1985, c. C-46

<sup>6</sup> R.S.O. 1990, CHAPTER C.25

<sup>7</sup> R.S.O. 1990, CHAPTER I.8.

<sup>8</sup> R.S.O. 1990, c. H.8.

- (a) a motor vehicle required under any Act to be insured under a motor vehicle liability policy, and
- (b) a vehicle prescribed by regulation to be an automobile; (“automobile”)

As a result, the *Insurance Act* applies to “motor vehicles” as defined in the *HTA*.

*Section 1.1* of the *HTA* defines the term “motor vehicle” as:

“motor vehicle” includes an automobile, a motorcycle, a motor-assisted bicycle unless otherwise indicated in this Act, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails, a power-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-propelled implement of husbandry or a road-building machine; (“véhicule automobile”)

Therefore, the definition of a “motor vehicle” per the *HTA* is the applicable definition in the *Insurance Act*.

### **III. The *HTA* and its Application to Various Vehicles**

The *HTA* definition of motor vehicle, as per section 1.1, was described above.

It must be noted that “vehicle” is a broader term than “motor vehicle”. The term “vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle, and any vehicle drawn, propelled, or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car. Below is an analysis of how the *HTA* defines certain types vehicles in the context of that statute.

#### **a. Motorcycle**

The *HTA* defines “motorcycle” as a self-propelled vehicle having a seat or saddle for the use of the driver and designed to travel on not more than three wheels in contact with the ground, and includes a motor scooter, but does not include a motor assisted bicycle; (“motocyclette”). A “motorcycle” is considered a “motor vehicle” in the context of the *HTA*.

#### **b. Motorized Snow Vehicle**

The *HTA* states “motorized snow vehicle” has the same meaning as in the Motorized Snow Vehicles Act<sup>9</sup>. The *Motorized Snow Vehicles Act* defines a “motorized snow vehicle” as “a means of self-propelled vehicle designed to be driven primarily on snow”. A “motorized snow mobile” is specifically excluded from being defined as a “motor vehicle” in the context of the *HTA*.

#### **c. Street Car**

*Section 1.1* of the *HTA* defines a “street car” as a car of an electric or steam railway. A “street car” is specifically excluded from the definition of a “motor vehicle” within the context of the *HTA*

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<sup>9</sup> R.S.O. 1990, CHAPTER M.44

#### **d. Bicycle**

Section 1.1 of the *HTA* defines a “bicycle” as including a tricycle, a unicycle and a power-assisted bicycle but does not include a motor-assisted bicycle. “Bicycles” are excluded from the definition of a “motor vehicle” within the context of the *HTA* as they are not powered by a motor.

#### **e. Self-propelled Implement of Husbandry and Farm Tractor**

Section 1.1 of the *HTA* defines a “self-propelled implement of husbandry” as a self-propelled vehicle manufactured, designed, redesigned, converted or reconstructed for a specific use in farming. Further, that section defines “farm tractor” as a self-propelled vehicle designed and used primarily as a farm implement for drawing ploughs, mowing-machines and other implements of husbandry and not designed or used for carrying a load. All “self-propelled implements of husbandry” and in particular, a “farm tractor”, are not considered a vehicle in the context of the *HTA*. This was confirmed in the case *R v. McKenzie*<sup>10</sup> in the context of the *HTA* [R.S.O. 1960, c. 172] and still holds true in the context of the current incarnation of that statute.

Further note that in *Carroll v. Cudney*<sup>11</sup>, the court stated that a farm tractor is not a motor vehicle within the meaning of that term as it is used in the *Motor Vehicle Accident Claims Act*<sup>12</sup> (*MVACA*). However, a farm tractor is considered a “motor vehicle” in the context of the *Criminal Code*. The *MVACA* may apply to an accident in the tort context as the act applies to the satisfaction of claims arising out of a motor vehicle accident in which the defendant is unable to pay damages in accordance with a judgment.

#### **f. Forklift**

In *Jenkins v. Bowes Publishing Co.*<sup>13</sup> all counsel were in agreement that a forklift was a motor vehicle as defined by the *HTA*<sup>14</sup>.

#### **g. Off-Road Vehicle**

The Off-Road Vehicles Act<sup>15</sup> (“*OFVA*”) defines an Off-Road Vehicle (“*ORV*”) as “a vehicle propelled or driven otherwise than by muscular power or wind,” and designed to travel either on not more than three wheels, or on more than three wheels and “being of a prescribed class of vehicle.” Further, Section 2 of the *ORVA* indicates that the Act does not apply to Off-Road vehicles being operated on a highway.

With respect to insuring an off-road vehicle, S. 15 of the *ORVA* states that no person shall drive an off-road vehicle unless it is insured under a motor vehicle liability policy in accordance with the *Insurance Act*. As a result of the application of the *Insurance Act* with respect to insuring an *ORV*, the *HTA* applies in determining whether an *ORV* constitutes a motor vehicle.

#### **h. All-Terrain Vehicles (ATV) (A subset of ORVs)**

Ontario Regulation 316/03 includes, in its definition of *ATV*, a vehicle which is four-wheeled, has steering handlebars, a seat that is designed to be straddled by the driver and is not designed to carry passengers. However, the Ontario Legislature recently introduced **Bill 58** which would

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<sup>10</sup> (1961), [1961] O.W.N. 344 at 345 (Ont. Dist. Ct.) McAndrew D.C.J.) [*McKenzie*].

<sup>11</sup> (1964), 1964 CarswellOnt 187, (Ont. H.C.) at para. 2 Brooke J [*Carroll*].

<sup>12</sup> S.O. 1961-62, c. 84

<sup>13</sup> (1991), 1991 CarswellOnt 453 at para. 11 Granger J. [*Jenkins*].

<sup>14</sup> R.S.O. 1980, c. 198, s. 1(1) para. 23.

<sup>15</sup> R.S.O. 1990, CHAPTER O.4

change the definition of ATV to include one that is designed either to carry a driver or a driver and no more than one passenger.<sup>16</sup>

*R v. Hein*<sup>17</sup> discussed whether an ATV is a motor vehicle as per the *Highway Traffic Act*. In that case individuals were trespassing and drove vehicles on roads that they were not supposed to be driving on. Some of the vehicles driven were ATVs. To meet the conditions of s. 11 of the *Trespass to Property Act*<sup>18</sup> it was required that the offence must have been committed by a motor vehicle as per the definition in the *Highway Traffic Act*. The court held that all of the vehicles involved, including the ATV, fell within the definition of “motor vehicle” laid out in section 1 of the *Highway Traffic Act*.

An issue that arose in *Matheson v. Lewis*<sup>19</sup> is whether an ATV constitutes a self-propelled instrument of husbandry as per the *Highway Traffic Act*. In that case a farmer was driving an uninsured ATV on a public road directly beside his farm. The farmer was struck by a car. At the time of the accident, the investigating officer, Dennis St. Louis said that the ATV was “a self-propelled implement of husbandry” as defined under s. 1 of the *Highway Traffic Act*<sup>20</sup> and, therefore, did not have to be insured under a motor vehicle liability policy at the time of the accident.

The primary issue in *Matheson* was whether the investigating officer’s finding regarding the status of the vehicle was legally accurate. The case specifically states that if the ATV is considered a “self-propelled implement of husbandry,” then that vehicle would be excluded from Ontario’s compulsory insurance regime. The Superior Court of Justice held that this finding was accurate and therefore an ATV was excluded from Ontario’s compulsory insurance regime.

The Defendants appealed the finding in *Matheson* to the Ontario Court of Appeal<sup>21</sup>. In overturning the trial judge’s decision, the Ontario Court of Appeal held that an ATV is classified as an ORV under the *ORVA* and that the *ORVA* as well as *HTA* regulations prohibit a person from driving an off-road vehicle on public highways unless insured. The Ontario Court of Appeal further indicated that within the comprehensive legislative scheme governing automobile insurance, an ATV was not a self-propelled implement of husbandry. The legislative intent was that an ATV is an ORV. While an ATV is ideally suited for and widely used to carry out many farming tasks, it was not manufactured or designed for specific use in farming.

Further, the Ontario Court of Appeal noted that the action was statute barred due to the fact that S. 2(3) of the *CAIA* makes the failure to purchase insurance an offence. Those who fail to purchase insurance cannot recover loss or damage arising from the use or operation of an automobile.

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<sup>16</sup>“All-terrain vehicle definition could be expanded in Ontario if private member's bill passes” *Canadian Underwriter.ca Canada’s Insurance and Risk Magazine* (2 March 2015), online: <<http://www.canadianunderwriter.ca/news/all-terrain-vehicle-definition-could-be-expanded-in-ontario-if-private-members-bill-passes/1003502482/?&ref=rss&ctid=1003502482&er=NA>>.

<sup>17</sup> 2010 CarswellOnt 2344 [*Hein*].

<sup>18</sup> S.O. 2000, c. 30.

<sup>19</sup> 2013 CarswellOnt 4757 [*Matheson*].

<sup>20</sup> R.S.O. 1990, CHAPTER H.8.

<sup>21</sup> 2014 ONCA 542, 2014 CarswellOnt 9408.

## **Use and Operation of a Motor Vehicle**

### **I. Determining Use and Operation of a Motor Vehicle**

One's liability for another's injuries arising out of a motor vehicle accident can arise as a result of three separate relationships between an individual/entity and a motor vehicle. Those three relationships are (1) ownership; (2) use; and (3) operation of a vehicle. Section 1 of the *Insurance Act*<sup>22</sup> states the following with respect to the definition of a "motor vehicle liability policy":

"Motor vehicle liability policy" means a policy or part of a policy evidencing a contract insuring,

(a) the owner or driver of an automobile, or

(b) a person who is not the owner or driver thereof where the automobile is being used or operated by that person's employee or agent or any other person on that person's behalf,

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

Further, s. 239 of the *Insurance Act* provides insurance coverage, under a valid policy of insurance, to anyone operating a motor vehicle with the consent of the owner.

This means that every person that is named in the contract or that drives the insured's vehicle with the owner's consent or is an occupant of that vehicle is insured against liability arising from ownership, use or operation of a relevant automobile.

Proving damages is a matter of fact that can be established by records, expert reports, receipts and invoices, and other such documents. However, prior to any entitlement to compensation under an automobile policy of insurance, it must be determined that said injury or damage resulted from the use and operation of a "motor vehicle".

A two-part test of purpose and causal connection exists to establish whether an insured's injury has arisen as a result of the ownership, use, or operation of a motor vehicle. This test was established by the Supreme Court of Canada in *Amos v. Insurance Corp. of British Columbia*<sup>23</sup>. In that case, an individual was attacked while driving his vehicle in Palo Alto, California. He was shot and suffered serious damages. While the case involved a claim for benefits under the driver's insurance policy, the question arose as to when coverage is provided under an automobile insurance policy. The court held that:

"In the same way, while s. 79(1) must not be stretched beyond its plain and ordinary meaning, it ought not to be given a technical construction that defeats the object and insuring intent of the legislation providing coverage. The two-part test to be applied to interpreting this section is:

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<sup>22</sup> Insurance Act, R.S.O. 1990, c. I.8.

<sup>23</sup> 1995 CarswellBC 424 [*Amos*].

**1. Did the accident result from the ordinary and well-known activities to which automobiles are put?**

**2. Is there *some* nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the appellant's injuries and the ownership, use or operation of his vehicle, or is the connection between the injuries and the ownership, use or operation of the vehicle merely incidental or fortuitous?**

This two-part test summarizes the case law interpreting the phrase "arising out of the ownership, use or operation of a vehicle", and encompasses both the "purpose" and "causation" tests posited in the jurisprudence. ”

Part one of the test is known as “the purpose test”. In *Russo v. John Doe*<sup>24</sup> the court indicated that this test has a very low threshold and excludes only aberrant uses of a motor vehicle and nothing more.

Part two of the test is known as the “causation test”. In *Russo* the court stated, by citing *Vytlingam (Litigation Guardian of) v. Farmer*<sup>25</sup>, that “for coverage to exist, there must be an unbroken chain of causation linking the conduct of the motorist as a motorist to the injuries in respect of which the claim is made...The claimant must implicate the vehicle in respect of which coverage is claimed in a manner that is more than merely incidental or fortuitous”.

For this test to apply, it is necessary to first prove that the “vehicle” in question is an “automobile” in the context of the *Insurance Act*. While *Amos* created the relevant test and used it in the context of s. 79 of the *Revised Regulation (1984) Under the Insurance (Motor Vehicle) Act*<sup>26</sup>, the same principles apply in the context of s. 224(1) of the *Insurance Act*<sup>27</sup>. This is made clear in *Copley*.

## **II. Putting the Test into Action**

This test has been put to use in several tort cases. In *Lafond v. Roksa*<sup>28</sup>, the Plaintiff’s motor vehicle was cut off by the Defendant’s motor vehicle while both were driving on a roadway. Occupants of the Defendant’s motor vehicle were making faces at the occupants of the Plaintiff’s motor vehicle. The Plaintiff followed the Defendant until the Defendant stopped in the driveway belonging to a friend of Lafond. They both exited their vehicles. The Defendant then assaulted the Plaintiff, causing significant injuries.

The Plaintiff argued that the assault was as a result of the use of a motor vehicle per s. 239(1) of the *Insurance Act* and therefore, the Defendant’s automobile insurance provider was obligated to respond to the Plaintiff’s claim. To make the Defendant’s automobile insurer liable to indemnify the Plaintiff for his damages, the Plaintiff had to prove that the Defendant was actually using the Roksa vehicle at the time of the assault. The court applied the two-part test in *Amos*. The court

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<sup>24</sup> 2009 ONCA 305 [*Russo*].

<sup>25</sup> [2007] 3 S.C.R. 373 (S.C.C.) [*Vytlingam*].

<sup>26</sup> B.C. Reg. 447/83.

<sup>27</sup> Insurance Act, R.S.O. 1990, c. I.8.

<sup>28</sup> 2008 CarswellOnt 7224 [*Lafond*].

said the following:

“32 I find in the case before me that the assault did not result from the ordinary and well-known activities to which automobiles are put. I also find that there is no nexus or causal relationship between Lafond's injuries and use or operation of the Roksa motor vehicle. The injuries suffered by Lafond were not caused from one continuous act of negligent behaviour by the defendants for the following reasons. It cannot be said that the Roksa motor vehicle was used to carry out a planned assault of Lafond.

33 Although there was some activity in the Roksa motor vehicle which can be described as road rage or making of indecent gestures to Lafond, this activity does not necessarily end in assault. Had Lafond not followed the Roksa motor vehicle into the driveway then the assault may not have occurred. The following of the Roksa motor vehicle into the driveway is a break in the chain of causation in my view.

34 The fact that Lafond got out of his motor vehicle and at some time had removed his glasses are also changes in the causation. The grabbing of one of the Roksa defendants by Lafond is also a break in the causation.

35 I therefore find that there is no liability on the defendant, Dale Roksa under the circumstances as owner of the motor vehicle in question.”

In conclusion, the court held that a failure to prove causation between the use and operation of a motor vehicle and a negligent act will prevent a Plaintiff from successfully pursuing a Defendant's automobile insurer for damages in tort.

### **III. Actions that Constitute “use and operation” of a Motor Vehicle**

In *Pilliteri v. Priore*<sup>29</sup>, the court investigated the purpose test and discussed a seminal case from 1956 titled *Reliance Petroleum Ltd. v. Stevenson*<sup>30</sup> in which the court indicated its interpretation of “use and operation” of a motor vehicle. In *Pilliteri* the Plaintiff operated a fruit farming and greenhouse operation and employed a full time mechanic to repair the trucks and equipment in a building. The building was destroyed by a fire caused by the Defendant (Priore) when he was using an acetylene torch while repairing the vehicle owned by Pennacchio, which had been damaged in an accident. Priore was liable to Pilliteri for the damages to the building. Priore sought indemnification by way of a third party claim from the automobile insurers of Pennacchio. The court held that the repair constituted a “use” of the Pennacchio motor vehicle, and Pennacchio's automobile insurer was liable to indemnify Priore for his loss.

In *Reliance Petroleum*, a case that *Pilliteri* relied upon, a tank truck was delivering gasoline. A fire resulted from negligently spilled gasoline. Kerwin C.J.C. of the Supreme Court of Canada said the following at paragraph 941:

... The expression 'use or operation' would or should, in my opinion, convey to one reading it all accidents resulting from the ordinary and well-known activities to which automobiles are put, all accidents which the common judgment in ordinary language

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<sup>29</sup>1997 CarswellOnt 1255, [1997] I.L.R. I-3451 [*Pilliteri*].

<sup>30</sup>[1956] S.C.R. 936 [*Reliance Petroleum*].

would attribute to the utilization of an automobile as a means of different forms of accommodation or service.”

Kerwin further indicated that “use” and “operation” are not synonymous when he stated that “... it must be taken that the two words (i.e. 'use' and 'operation') were inserted to denote different things... (Interpolation added.)”.

In *Pilliteri*, the court indicated that “the courts have interpreted the “use” of a motor vehicle broadly in interpreting the policy when applying the purpose test.” The court proceeded to list a number of examples in which the court had interpreted whether the relationship between an individual and a vehicle constituted “use”. The examples listed in that case as well as further elaborations on those examples from cases subsequent to *Pilliteri* can be seen below.

**(a) Loading of a truck** constitutes “use” of the truck. A truck’s purpose is to carry loads. Negligence that occurred while loading a truck with household goods, irrespective of a connection to a commercial venture, was directly related to the use of a truck.<sup>31</sup>

**(b)** In *Gramak Ltd. v. State Farm Mutual Automobile Insurance Co.*<sup>32</sup> the court held that **installation of wiring for a trailer** constitutes a “use” in the context of a motor vehicle. Often, a car’s purpose is to transport personal property. Automobiles often haul trailers to transport personal property. A trailer must be connected via mechanical adjustment. Drilling a hole in a car’s trunk by a car owner’s agent was considered a “use” of an automobile. Further, in obiter, Donohue J. indicated that this extended the purpose test to repair of an automobile.

**(c)** There is some dispute as to whether maintenance and repairs are considered “use” or operation of a “motor vehicle”. **Repair to prevent deterioration** is considered a “use of a vehicle covered under an auto insurer's liability. In *Elias v. Insurance Corp. of British Columbia*<sup>33</sup>, the husband of the owner of a motor vehicle was repairing holes in that motor vehicle to prevent rust by use of a welder. A spark from the welder caused a fire. The court applied the purpose test. Boyle J. said at paragraph 141

“...Prevention of deterioration by a family member is an integral part of use. Repair work need not be necessary to immediate driveability to come within the meaning of 'use' in the regulation. The law cannot be drawn so fine that it distinguishes between one sort of repair and another - say changing the oil and fixing potential rust spots.”

**(f)** In *Pioneer Grain Co. v. Wellington Insurance Co.*<sup>34</sup> the court indicated that **being refuelled from time to time is a well-known use to which automobiles are put**. In that case, an individual siphoned gasoline into a container with the intent of later pouring the gas into his motorcycle’s gas tank. A fire broke out. The court held that the insurer of the motorcycle owner was liable under the policy for the damages caused by the fire.

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<sup>31</sup> *Huba v. Schulze (No. 2)* (1963) at p. 572 cited in *Gramak Ltd. v. State Farm Mutual Automobile Insurance Co.* (1975) 10 O.R. (2d) 518 (H.C.).

<sup>32</sup> (1975) 10 O.R. (2d) 518 (H.C.) [*Gramak*].

<sup>33</sup> (1992), 12 C.C.L.I. (2d) 135 (B.C.S.C.) [*Elias*].

<sup>34</sup> (1988), 35 C.C.L.I. 176 (Alta. Q.B.) at p. 185 [*Pioneer*].

(g) In *Boell v. Schinkel*<sup>35</sup> a dog was placed in a parked car for the purpose of being transported. **The dog jumped from the car** and caused an accident. This was held to be an ordinary use of an automobile per the purpose test.

(h) Some relationships between an individual and a motor vehicle constitute an **exception to the purpose test**. One exception that became apparent in *Swartz v. Pearson*<sup>36</sup> is that the purpose test is not met when “the use to which an automobile is being put is not an orthodox or well-known activity”. In that case a fire was caused by a cutting torch in the process of transforming a vehicle into a “demolition derby car”. Further, in *Dobish v. Garies*<sup>37</sup>, there was an intention to cut a pick-up truck in half and convert the rear to carry garbage. Using a torch to cut the vehicle was not considered “use or operation” of a vehicle.

**Exclusion clauses** are another potential barrier to exposure. In *Lupsor v. Unum Life Insurance Co.*<sup>38</sup>, the insured was working on an antique car owned by his son. The motor filled with carbon monoxide from the vehicle’s exhaust. The Plaintiff died. The insurer refused coverage on the basis that an exclusion clause denied coverage of insureds that operate a motor vehicle while driving with excessive blood alcohol concentrations. The court held that there was no suggestion that the insured was intending to drive the vehicle (or that the vehicle was capable of being put into motion) at the time of death. Therefore, the estate of the Plaintiff was allowed to recover from the insurance company. Further, the court held that exclusion clauses should be interpreted strictly and narrowly and in favour of the insured, not the insurer.

#### IV. Conclusion

This paper investigated the definition of a motor vehicle in the context of tort law. First, it demonstrated how the definition of a motor vehicle developed over time. It then specifically discussed the definition of “motor vehicle” in the context of the *HTA* and by extension, the *CAIA* and the *Insurance Act*. Further, this paper specifically investigated the status of various types of vehicles and whether those vehicles are classified as “motor vehicles” in the context of the *HTA* and Tort law. This paper determined that “motor vehicle” is a broadly yet clearly defined term that encompasses a subset of the broader subject of “vehicles”.

This paper then investigated the actions that constitute “use” and “operation” of a motor vehicle. As made clear by *Amos*, use and operation can be determined by the application of the two-part test set out in that case. That test provides an effective method for determining whether a negligent act occurred through the use and operation of a motor vehicle. As a result, it provides a mechanism that allows for the determination of whether an automobile insurer will be obligated to indemnify their insured for any loss arising from that insured’s negligent conduct.

In conclusion, there are clearly defined mechanisms for determining whether a vehicle is a motor vehicle and if a negligent act occurred through the use or operation of that motor vehicle. This allows automobile insurers a means for assessing their exposure when the answers to these questions initially appear unclear.

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<sup>35</sup> (1991), 5 C.C.L.I. (2d) 189 (Ont. Gen. Div.) [*Boell*].

<sup>36</sup> 1986 CarswellOnt 3350, [1986] O.J. No. 1149 [*Swartz*].

<sup>37</sup> (1985), 15 C.C.L.I. 69 (Alta. Q.B.) [*Dobish*].

<sup>38</sup> (2005), 2005 CarswellOnt 514 (Ont. C.A.)