



A Bird? A Plane? No, it's an Automobile



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A Manitoba Court of Queen's Bench decision that a golf cart is an automobile for the purpose of determining no-fault benefits is limited in scope, but it does call into question statutory definitions of the word 'automobile' in insurance regimes throughout Canada.

Jeff Hruska suffered an injury to his right leg when it came into contact with a golf cart driven by his friend at a Manitoba golf course on Apr. 26, 2003. Seven years later, Manitoba's Court of Queen's Bench considered whether Hruska was entitled to no-fault benefits pursuant to the Manitoba Public Insurance Corporation Act (MPICA) or alternatively whether he was entitled to sue the golf course in negligence. At issue was whether or not the golf cart met the definition of the word "automobile" under the act.

The consequences of *Hruska* are not far-reaching in Canada, since the decision focused on definitions specific to Manitoba's no-fault insurance scheme. However, *Hruska* serves as a helpful

reminder to governments and insurers in no-fault provinces to ensure that their contractual or legislative definitions accord with the realities of modern transportation.

Part I of the MPICA defines "automobile" as "a motor vehicle." In Part II, "automobile" is defined as "a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires." On a plain reading of the sections, a golf cart fits into the definition of an "automobile" under Part II. Even if one were led to the definition of "vehicle" in Part I of the MPICA, and thereby to the *Highway Traffic Act*, that definition would not exclude a golf cart or other novel devices such as a segway. In *Hruska*, the court held a vehicle "is a device by which a person may be transported on a highway and is not designed to be moved solely by human muscular power, or used on tracks; nor is it a motorized mobility aid." As such, a golf cart was determined to be an automobile.

One wonders whether Manitoba's legislature intended a broader definition of "automobile" to be used for the calculation of no-fault benefits rather than for purposes of registration and insurance. In particular, the definition of "motor vehicle" was changed in the *Highway Traffic Act* in 1988 to conform to the passing of *The Off-Road*

Vehicles Act. Arguably it was the legislative intent in 1988 to eliminate off-road vehicles from the insurance scheme under the MPICA, but it was clear this objective was not achieved with respect to other vehicles such as golf carts.

In Ontario, the struggle to determine the relationship between the definitions of “automobile” in the *Insurance Act* and within contracts of insurance was resolved in *Regele v. Slusarczyk* in 1997. In *Regele*, the Court of Appeal held the operative definition of automobile is found at s.224(1) of the *Insurance Act*. As a result, in Ontario, when determining the issue of whether a vehicle is an “automobile,” one must review the following definition: “In this Part, ‘automobile’ includes a motor vehicle required under any Act to be insured under a motor vehicle liability policy.”

The *Regele* and then later the *Morton* decisions also describe a two-part analysis. First, does “automobile” in ordinary parlance include the vehicle at issue? If so, the vehicle is an “automobile” within the meaning of Part VI of the *Insurance Act*. If not, a second question is posed: Does the vehicle qualify as an automobile under an expanded definition in the policy or the *Insurance Act*?

In determining the meaning of “automobile,” the courts have not demanded specific evidence about the general use or understanding of the term. Instead, judges have exercised their own opinion. For example, in *Regele*, the issue was whether a farm tractor was an automobile. Ontario Court of Appeal Justice George Finlayson (as he was at the time) simply stated that “[i]n ordinary parlance, an automobile does not include a farm tractor.” The *Morton* decision dealt with two separate incidents involving backhoes. In applying the ordinary parlance test, Ontario Court of Appeal Justice Marvin Catzman (as he was at the time) determined an “automobile” does not include a backhoe. One might speculate that, as technology changes, ordinary parlance would exclude personal transportation devices such as segways, podcars and golf carts as meeting the definition of “automobile.” However, since the *Insurance Act* lacks precise definition, the first part of

the test leaves the decision at the discretion of the judiciary.

If a vehicle is not found to be an “automobile” in ordinary parlance, the analysis must then focus on whether the vehicle fits within the enlarged definition in 224(1) of the *Insurance Act* or the definition found within the policy. The question then becomes whether the vehicle required motor vehicle insurance at the time and in the circumstances of the accident. If it did not, the vehicle will not be an “automobile”



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within the scope of the *Insurance Act* or contract of insurance.

Interestingly, Saskatchewan has avoided the debate about the definition of “automobile” related to the provision of no-fault benefits. This is likely due in large part to the comprehensive exclusion sections set out in Part II of the *Automobile Accident Insurance Act* (AAIA). Saskatchewan’s AAIA is similar to the legislation in Manitoba, in that it defines a motor vehicle as “any motor vehicle propelled by any power other than muscular force and adapted for transportation on highways, but not on rails.” However, the AAIA specifically provides that no-fault benefits do not apply to bodily injuries caused by an automobile while the automobile is not in motion; by or by the use of a device that can be operated independently and that is mounted on or attached to the automo-

bile; by a self-propelled agricultural implement; by a wheelchair; by a special mobile device; by a snowmobile; by an all-terrain vehicle; caused by the autonomous act of an animal that is part of the motor vehicle’s load; by an action performed by the victim in connection with the maintenance, repair, alteration or improvement of the automobile; caused while putting a load on or taking a load off the motor vehicle or caused as the result of a motor vehicle contest, show or race on a track or other location. Further there are exclusions for accidents caused by motor vehicles in specified situations.

Saskatchewan’s AAIA deprives all insureds a right of legal action for “bodily injuries caused by an automobile,” except for those who have chosen the option of being able to sue for tort damages. Therefore, the case law in Saskatchewan surrounds whether or not the motor vehicle was the dominant feature leading to the damages, not whether the motor vehicle was an “automobile” as defined by the legislation.

In *Hruska*, the Manitoba Court of Queen’s Bench focused on the plain meaning of definitions set out in the MPICA to determine that a golf cart was indeed an automobile, entitling the plaintiff to obtain no-fault benefits. Its legislative framework lacked the precision found in Saskatchewan’s legislation to avoid the debate altogether. In Ontario, the legislation — and sometimes the insurance policies — lack precise definition. This has required courts to develop a two-part test to determine whether or not damages were in fact caused by an “automobile” and if coverage applies. The lesson, of course, is to ensure that definitions of “automobile” found within contracts of insurance and legislation are specific enough to reflect the evolving nature of personal transportation. As gasoline becomes more expensive, electric transportation devices (i.e. segways) will be increasingly seen in our communities. Inevitably, accidents will occur. In order to avoid litigation, legislation must be amended and insurance contracts be made more precise to ensure that only licensed or defined vehicles will be considered “automobiles” in the future. ≡