

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Burke v. Wadden*, 2024 NSSC 49

**Date:** 20240221

**Docket:** 505860

**Registry:** Halifax

**Between:**

Devon Gerard Burke

*Plaintiff*

v.

Charles Edward Wadden and  
Blair F. MacKenzie, o/a All-Star Auto

*Defendants*

<b>DECISION ON QUESTION OF LAW</b>
------------------------------------

**Judge:** The Honourable Justice Scott C. Norton

**Heard:** February 5, 2024, in Halifax, Nova Scotia

**Decision:** February 21, 2024

**Counsel:** Jillian Kean, for the Applicant/Defendant, The Facility Association  
on behalf of Charles Wadden

Wayne Francis, for the Respondent MacKenzie

Tara Miller, KC, for the Plaintiff, not participating

**By the Court:**

**Introduction**

[1] The Plaintiff, Devon Burke, was severely injured in a single motor vehicle accident. He was a passenger in a vehicle driven by the Defendant, Charles Wadden. Mr. Wadden was not licensed or insured. The present motion before the court is brought by the Facility Association for and on behalf of Mr. Wadden for the determination of a question of law pursuant to *Civil Procedure Rule 12*.

[2] The question of law put to the Court for determination is:

***What is an “owner” under the Insurance Act/Motor Vehicle Act when a vehicle is sold and transferred?***

**Facts**

[3] The Parties filed an “Agreed Statement of Facts” that I have attached (without exhibits) as Appendix I to this decision. Briefly, the underlying claim arises from a single vehicle accident that took place on October 10, 2020 in Barrington, Nova Scotia. The vehicle was being driven by the Defendant Wadden and the Plaintiff Burke was a passenger. The Plaintiff Burke claims for catastrophic injuries suffered as a result of the accident, including a spinal injury resulting in quadriplegia.

[4] Mr. Wadden purchased the vehicle from the Defendant, Blair F. MacKenzie, operating as All-Star Auto (“All-Star”), on June 11, 2020. At the time of the purchase the registered owner for the purposes of the *Motor Vehicle Act*, RSNS 1989, c. 293, was All-Star.

[5] Four months passed, but Mr. Wadden did not register any change of ownership with the Registry of Motor Vehicles and never obtained a permit for the car from the Registry of Motor Vehicles. At the time of the accident Mr. Wadden did not have a valid license plate on the vehicle. Between June 11 and October 10, 2020, Mr. Wadden did not have a valid driver’s license.

**Procedure**

[6] The parties agree on the applicable legal framework for the motion. The Court may answer questions of law in circumstances prescribed by *Rule 12*:

### 12.01 Scope of Rule 12

(1) A party may, in limited circumstances, seek the determination of a question of law before the rest of the issues in a proceeding are determined, even though the parties disagree about facts relevant to the question.

(2) A party may seek to have a question of law determined before the trial of an action or the hearing of an application, in accordance with this Rule.

### 12.02 Separation

A judge may separate a question of law from other issues in a proceeding and provide for its determination before the trial or hearing of the proceeding, if all of the following apply:

- (a) the facts necessary to determine the question can be found without the trial or hearing;
- (b) the determination will reduce the length of the proceeding, duration of the trial or hearing, or expense of the proceeding;
- (c) no facts to be found in order to answer the question will remain in issue after the determination.

### 12.03 Determination

(1) A judge who orders separation must do either of the following:

- (a) proceed to determine the question of law;
- (b) appoint a time, date, and place for another hearing at which the question is to be determined.

(2) A judge who appoints a time, date, and place for a separated question to be determined may give directions on any of the following:

- (a) whether the hearing will be held in chambers or court;
- (b) the wording of the question to be determined;
- (c) dates for filing a further affidavit, statement of agreed facts, or brief;
- (d) cross-examination on an affidavit;
- (e) any other direction to organize the hearing.

[7] In *Aviva Insurance v. PK Construction Ltd.*, 2021 NSCA 66, and more recently in *Louisbourg Seafoods Limited v. Underwriters at Lloyd's*, 2023 NSSC 175, the courts have signaled hesitation to granting orders under *Rule 12* where the parties have taken too liberal an approach to the facts and there is a factual dispute requiring a trial, or where the question asked moves from one of law to one of mixed fact and law. This is so notwithstanding the parties' agreement to forge ahead on a *Rule 12* motion with an agreed statement of facts.

[8] I agree that the request of the parties in this case falls within the scope and intent of *Rule 12* and the authorities considering it. The question is framed deliberately as one that is not specific to the facts of this case, but phrased more generally. The parties are not asking me to weigh in on issues requiring a trial, like the question of materiality posed in *Louisbourg Seafoods Limited, supra*. The parties are not asking me to apply the meaning of terms to the facts of this case, as the parties did in *PK Construction Ltd., supra*. The question posed on this motion is only asking me to give legislation meaning by applying the rules of statutory interpretation. This request is exactly the kind of question that the Court can answer on a *Rule 12* motion to answer a question of law.

[9] *Rule 12.02(a)* permits the motion judge to find the facts necessary to determine the pure legal question if all those facts can be determined without a trial: *T.E. Gordon Home Inspections Inc. v. Smith*, 2021 NSCA 13.

[10] Here, the Agreed Statement of Facts provides certain minimal facts. These facts do not require a trial because they are uncontroversial, uncontested, and easily verifiable on reliable documentary records. They are provided to assist the Court, but ultimately only those facts that the Court thinks are necessary to determining the question of law on this motion need be gleaned from the Agreed Statement of Facts.

[11] As to *Rule 12.02(c)*, the facts as stated in the Agreed Statement of Facts will not change moving forward. The facts as stated on this motion will remain the same at trial, thus avoiding any duplication of fact finding. The facts as stated on this motion “provide a sure-footed scaffolding from which a judge can work on the pure question of law they frame” *Korecki v. Nova Scotia (Justice)*, 2013 NSSC 312, para. 81.

### **Law of Statutory Interpretation**

[12] In *Sears v. Top O’ the Mountain Apartments Limited*, 2021 NSSC 80, I reviewed the modern principle of statutory interpretation and the importance of a purposive analysis (at paras. 20-21). My review included the test set out by the Nova Scotia Court of Appeal in *Sparks v. Holland*, 2019 NSCA 3, and the comments from *Sullivan on the Construction of Statutes*. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act. This is the standard for giving words of a statute their full meaning in context. The purpose, consequences, and meaning of the legislation should also be considered. The parties agree that those same principles should be applied on this motion.

## The Legislation

[13] The purpose of the parties' request for the Court's assistance has to do with changes made in 2011 to the *Insurance Act*, RSNS 1989, c.231, and companion changes made to the *Motor Vehicle Act*, RSNS 1989, c.293, by Bill 86, *Fair Automobile Insurance (2011) Act*, SNS 2011, c.35. These changes involved provisions of the *Insurance Act* dealing with the vicarious liability of a vehicle owner where that vehicle is involved in an accident while operated by someone other than the owner.

[14] One of these legislative updates was s-s.148D(3) of the *Insurance Act*, which states as follows with respect to an action arising from a motor vehicle accident:

148D

...

(3) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle, the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and

(e) to be driving the motor vehicle in the course of that person's employment.

[15] Section 148A of the *Insurance Act* defines "owner" for the purposes of ss.148B to 148F as having the same meaning as in the *Motor Vehicle Act*. Section 148A states:

Interpretation

148A In Sections 148B to 148F, "owner" means an owner of a vehicle under the *Motor Vehicle Act*.

[16] Section 2A of the *Motor Vehicle Act* defines "owner". This is the provision under scrutiny on this motion. Section 2A of the *Motor Vehicle Act* states as follows:

Owner of vehicle

2A (1) Subject to subsections (2) and (3), in this Act, “owner” of a vehicle means

(a) where a permit is issued for the vehicle, the person who holds the permit for the vehicle; or

(b) where no permit is issued for the vehicle, the person who holds the certificate of registration for the vehicle.

...

(3) In this Act, where no permit and no certificate of registration have been issued for a vehicle or for the purpose of obtaining a certificate of registration for a vehicle, the owner of the vehicle is any person who, alone or jointly with one or more others, has the right to transfer property in the vehicle.

[17] Section 2A came into force at the same time as Section 148D of the *Insurance Act* (in 2011, per Bill 86).

### **The Parties Positions**

[18] The Facility Association asserts that an owner of a vehicle under s-s.148D(3) of the *Insurance Act* means an owner as defined in the *Motor Vehicle Act*. Section 2A of the *Motor Vehicle Act* establishes a hierarchy of vehicle owners: permit holder, then registered owner, then title holder. On the sale of a vehicle, the seller’s permit terminates and the former registration (albeit suspended) remains in effect. Where there is no valid permit, but a valid registration, s.2A of the *Motor Vehicle Act* operates to make the registered owner the “owner” for the purposes of both statutes.

[19] All-Star asserts that s.2A is clear that the owner is the person who holds the issued permit for the vehicle, and where no permit is issued, the holder of the certificate of registration is the owner. The typical transfer of a vehicle involves the exchange of some form of value (such as money) for the signed certificate of registration and the car keys. Such a transfer of ownership could occur at any time, on any day, in any corner of this province. Once the new owner drives away in the vehicle - holding the certificate of registration - there can be no doubt that person is the owner of the vehicle. It would not be unusual for there to be some lag in time for the change of registered ownership at the Registry of Motor Vehicles (“Registry”). The plain text of s.2A(1)(b) confirms that ownership transfers upon the passing of the Certificate of Registration, not upon the administrative task of changing the registration of that ownership.

[20] The parties could find no similar definition of owner in any other provincial motor vehicle legislation and no judicial interpretation of the new definition.

## Analysis

[21] The question of law posed to the Court is answered by the analysis of s.2A of the *Motor Vehicle Act*.

[22] It is an agreed fact and I find that no one held a permit for the vehicle. Accordingly s.2A(1)(a) does not apply. The question, therefore, is the meaning of “the person who holds the certificate of registration” under s-s.(1)(b).

[23] A certificate of registration is a physical document (*see* exemplar certificate at Tab 1 of Agreed Statement of Facts). The certificate contains plain instructions:

“THIS DOCUMENT IS PROOF OF YOUR OWNERSHIP OF THE VEHICLE. KEEP IT IN A SAFE PLACE, NOT WITH YOUR LICENCE OR REGISTRATION OR IN YOUR CAR. TO DISPOSE OF YOUR VEHICLE, COMPLETE THE TRANSFER SECTION ON THE REVERSE AND GIVE THE CERTIFICATE TO THE NEW OWNER.”

[24] Based on the above instructions, a vendor is to give the physical certificate to the purchaser at the time of delivering the vehicle. Section 43 of the *Motor Vehicle Act* states:

### Transfer of vehicle

43 (1) The owner of a motor vehicle for which a certificate of registration is required hereunder shall not sell or transfer his interest in or to the vehicle unless he has obtained a certificate of registration thereto nor unless having procured a certificate of registration he in every respect complies with the requirements of this Section and any person who violates this Section shall be guilty of an offence.

(2) Whenever a certificate of registration has been issued in respect of a motor vehicle the owner who sells or transfers his interest in or to the motor vehicle shall execute an assignment of his interest in or to the motor vehicle in the form provided on the reverse side of the certificate of registration for the vehicle and the owner shall deliver the certificate of registration to the purchaser or transferee at the time of delivering the vehicle.

(3) The transferee except as provided in subsection (4) shall thereupon present the certificate endorsed and assigned as aforesaid to the Department and make application for and obtain a new certificate of registration for the vehicle.

(4) When the transferee of a vehicle is a dealer...

At that point, the purchaser has ‘title’ to the vehicle and physically “holds” the certificate of registration. It is the responsibility of the transferee to present the

certificate endorsed and assigned to the Department (Registry) and apply for and obtain a new certificate of registration (s.23).

[25] The Facility Association asserts that the “holder” of the certificate of registration is synonymous with the person identified at the Registry as the registered owner. Until the transferee obtains a new certificate of registration, the seller or transferor continues to be the “holder” of the certificate and therefore the owner. With respect, if that had been the intent of the legislature, it could have more easily drafted the definition to say that the “owner” is the “registered owner”. “Registered owner” is a term defined in s.2(ay) of the *Motor Vehicle Act*. As s.2A defines “owner” and does not use the term “registered owner”, it is obvious from a plain and ordinary reading that they are not meant to be one and the same.

[26] The plain and ordinary meaning of the words in s.2A(1)(b) confirms that ownership transfers upon the delivery of the certificate of registration, not upon the administrative task of changing the registration of that ownership. The Facility Association acknowledges that the certificate of registration was provided to Mr. Wadden.

[27] This interpretation is corroborated by the text on the certificate itself: the document is proof of ownership; it should be kept in a safe place; and, it is to be given to the new owner upon transfer. Given this context, the Legislature’s use of the phrase ‘the person who holds the certificate of registration’ to define an ‘owner’ makes perfect sense.

[28] It is also corroborated by the language on the Registry website:

When an owner signs their Certificate of Registration over to someone else (and there is a section right on the certificate for doing this), the ***ownership of the vehicle is immediately transferred*** to that person. However, the name of the new owner has not yet been properly ***registered*** with the Province. To do this, the new owner contacts the Registry of Motor Vehicles, and registers as the current owner of the vehicle. This is usually done when the new owner goes to get their Vehicle Permit and licence plates.

[Bold and italics in original]

[29] The Facility Association argues that the suspension of a registration impacts the definition of owner. It refers to s.23 of the *Motor Vehicle Act* that states:

Effect of vehicle transfer



23 (1) Whenever a vehicle as registered under the foregoing provisions of this Act is sold or disposed of any permit issued respecting the vehicle shall thereupon terminate and the registration of the vehicle shall be deemed to be suspended from the date of the sale or disposal until the transferee has obtained a permit as provided by subsection (5).

(2) Notwithstanding subsection (1), whenever a vehicle is sold or disposed of the vehicle shall be deemed to be registered under the name of the new purchaser or transferee providing there is displayed valid plates assigned to that person for a period not exceeding thirty days from the time of the sale or the disposition.

[30] It is the Facility Association's submission that the suspension of the registration contemplated by s-s.23(1) continues until this condition is met, or the transferring owner takes steps to remove their name as registered owner. On the sale of a vehicle, the seller's permit terminates and the former registration (albeit suspended) remains in effect.

[31] With respect, this interpretation does not accord with the plain and ordinary meaning of the text and ignores the provisions of the legislation that places the burden upon the purchaser to take steps to obtain a new registration. To deem the seller or transferor as the "owner", when they have complied with their duty under s.43 of the *Motor Vehicle Act* to deliver the endorsed certificate of registration to the purchaser, seems to me to place an unreasonable and illogical burden on the seller or transferor of a vehicle. It may be that, as between the buyer as holder of the certificate and the Registry, the certificate is suspended. That does not impact the definition of ownership in s.2A. The holder of a suspended certificate is still the "owner".

[32] I therefore answer the question posed:

**Question:** What is an "owner" under the *Insurance Act / Motor Vehicle Act* when a vehicle is sold and transferred?

**Answer:** What is a vehicle "owner" under the *Insurance Act/Motor Vehicle Act* when a vehicle is sold and transferred is determined by s.2A of the *Motor Vehicle Act*. Section 2A of the *Motor Vehicle Act* establishes a hierarchy of owners:

First Priority: a vehicle permit holder (2A(1)(a));

Second Priority: where there is no permit holder, the physical holder of the vehicle's certificate of registration (2A(1)(b)), even if that registration is suspended by operation of the *Act*;

Third Priority: where there is no vehicle permit holder or certificate holder, a vehicle's legal title holder with the rights to transferring the vehicle (2A(3)).

[33] The parties agreed that each would bear their own costs on the motion.

[34] Order accordingly.

Norton, J.

APPENDIX I

2021

No. 505860

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**DEVON GERARD BURKE**

PLAINTIFF

and -

**CHARLES EDWARD WADDEN and BLAIR F. MACKENZIE,  
o/a ALL-STAR AUTO**

DEFENDANTS

**AGREED STATEMENT OF FACTS**

1. The Defendant Blair MacKenzie has worked In the automobile sales business for over twenty years. In 2018, he opened a used car business named All-Star Auto in North Sydney, Nova Scotia. He was a licensed car dealer. He was the proprietor of the business and did not have any employees.
2. In May, 2020, Mr. MacKenzie operating as All-Star Auto purchased a 2007 Honda Flt at a vehicle auction for purposes of re-selling at its lot in North Sydney. This was a common practice for the business.
3. Upon purchase, the car was registered at the Registry of Motor Vehicles to 'Blair MacKenzie OA All Star Auto". A Certificate of Registration of a Vehicle was Issued to Mr. MacKenzie at that time. The current whereabouts of that certificate are unknown. An exemplar certificate Is attached at Tab 1.
4. Mr. MacKenzie did not obtain a permit for the car during his period of ownership.

5. Shortly after purchase, Alf-Star Auto completed a Motor Vehicle Inspection for the car and advertised it for sale via a Facebook page. This was standard practice for the business.
6. In June 2020, the Defendant Charles Wadden contacted Mr. MacKenzie via electronic message in response to the Facebook ad for the car and was Interested In purchasing it. After some messages back and forth, they agreed to a purchase price of \$2,700. The message exchange is at Tab 2.
7. Mr. Wadden attended at All-Star Auto on June 11, 2020 to purchase the car. He provided \$2,700 in cash to Mr. MacKenzie in exchange for the car keys as per their agreement. A bill of sale signed by both parties confirmed the transaction (at Tab 3). A copy of the bill of sale was provided to Mr. Wadden.
8. Mr. MacKenzie's normal practice for used car sales is to fill out the back side of the Certificate of Registration (see exemplar at Tab 1) with the purchaser at the time of sale.  
  
Parts 1, 2 and 4 of that document are required to be completed for most purchases. The completed certificate can then be delivered to the Registry of Motor Vehicles for registration by either Mr. MacKenzie or the purchaser.
9. It was Mr. MacKenzie's intention to follow his normal practice with respect to the Certificate of Registration for the sale of the car to Mr. Wadden. He completed most of the sections that day; however, Mr. Wadden advised him that he forgot to bring his driver's license with him and, as a result, did not know his driver's license Master Number. Consequently, Part 4 of the certificate could not be completed at that time. They agreed Mr. MacKenzie would hold onto the certificate and Mr. Wadden would advise him of his Master Number soon so the certificate could be completed and delivered to the Registry of Motor Vehicles.
10. Mr. Wadden drove the car away from All-Star Auto that day. It is unknown if he had a licence plate or vehicle insurance on that day.
11. Mr. Wadden had some initial mechanical problems with the car. He exchanged Facebook messages with Mr. MacKenzie on that subject between June 11 and June 23. The car was ultimately repaired in the normal course (see messages exchange attached at Tab 4).

12. Mr. Wadden did not provide his Master Number to Mr. MacKenzie as promised.
13. On July 14, 2020, Mr. MacKenzie sent a Facebook message to Mr. Wadden seeking his Master Number for the Certificate of Registration so the new registration could be filed in Mr. Wadden's name (at Tab 5).
14. Mr. MacKenzie did not receive any reply from Mr. Wadden regarding his Master Number. As a result, in late July 2020, Mr. MacKenzie mailed the partially completed Certificate of Registration to Mr. Wadden at 28 Ferguson Drive, Sydney, NS via post. This was the address provided by Mr. Wadden at the time of purchase and listed on the car's bill of sale.
15. Mr. Wadden's actions with the car and the Certificate of Registration are unknown between the date of purchase and October 10, 2020. Mr. MacKenzie had no further involvement beyond what is described above.
16. On October 10, 2020, Mr. Wadden was involved in a single car accident while driving the car. The Plaintiff was his passenger at that time and sustained significant injuries in the accident. This accident is the primary subject matter of this legal action.
17. Subsequent to the October 10, 2020, accident it came to light that Mr.

Wadden:

- (a) Did not have a valid driver's license at any point between June 11 and October 10, 2020 (Tab 6); and
- (b) Did not register the change of ownership of the car with the Registry of Motor Vehicles after purchasing it from Mr. MacKenzie;
- (c) Never obtained a permit for the car from the Registry of Motor Vehicles; and
- (d) Did not have a valid licence plate on the Fit at the date of the Accident. The licence plate on the Fit at the date of the Accident was assigned to Kyle Anthony Donovan (Tab 7).

18. The Registrar of Motor Vehicles has confirmed that its records on the date of the accident still indicated Mr. MacKenzie was the owner of the car (see attached at Tab 8). It is unknown if the Registrar of Motor Vehicles was aware the car had been sold by Mr. MacKenzie to Mr. Wadden on June 11, 2020 when it issued that document.
19. The Nova Scotia Registry of Motor Vehicles issues a Dealer Manual for Vehicle Transactions which sets out procedures for vehicle sales (at Tab 9).
20. Discovery examination of Mr. MacKenzie was conducted on January 5, 2023.
21. Mr. Wadden was served with a subpoena to attend discovery examination on June 9, 2023. He did not comply with the subpoena or provide any explanation for his absence.

AGREED TO AS OF THIS DAY OF 18th day of January, 2024.