

Citation: *R. v. Gaven*, 2019 YKTC 44

Date: 20191015
Docket: 18-11385
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Chief Judge Chisholm

REGINA

v.

REID RUTHERFORD GAVEN

Appearances:
Kelly McGill
Timothy Foster

Counsel for the Territorial Crown
Counsel for the Defence

RULING ON APPLICATION

Introduction

[1] Reid Gaven is charged that on July 28, 2018 he failed to remain at the scene of an accident pursuant to s. 94(1)(a) of the *Motor Vehicles Act*, RSY 2002 c. 153, (the “*Act*”). It is common ground that in the early morning hours of July 28, Mr. Gaven collided with an unattended parked truck in downtown Dawson City. The truck that he was driving stalled. He remained in and restarted the vehicle, after which he left the scene of the collision.

[2] The defence has made a “no evidence” motion at the close of the Crown’s case and argues that Mr. Gaven is charged under the wrong section of the *Act*.

Position of the parties

[3] Mr. Gaven submits that each of the three subsections of s. 94 refers to a different type of accident and each imposes specific responsibilities on the driver, depending on the type of accident. Mr. Gaven contends that the situation in which he found himself is clearly covered by subsection (2) which has lesser responsibilities than those found in subsection (1). As such, Mr. Gaven argues that he should have been charged under subsection (2). Therefore, there is no evidence upon which he could be convicted.

[4] The Territorial Crown responds that s. 94(1) of the *Act* contains the primary obligations of a driver who is directly or indirectly involved in an accident, and that subsections (2) and (3) are exceptions that apply to specific factual situations. The Crown submits that a driver who is directly or indirectly involved in any type of accident is obliged to a) remain at the scene of the accident; b) render all reasonable assistance; and c) produce certain particulars, in writing, to any person suffering loss or injury, to any peace officer and to a witness. A driver who commences these steps, but is unable to complete them, may instead resort to the provisions of subsections (2) or (3).

[5] As such, the Crown argues that the police properly charged Mr. Gaven as he failed to remain at the scene of the accident.

Analysis

[6] Sections 94(1) to (3) of the *Act* reads as follows:

94(1) When an accident occurs on a highway, the driver or other person in charge of a vehicle that was directly or indirectly involved in the accident

(a) shall remain at or immediately return to the scene of the accident;

(b) shall render all reasonable assistance; and

(c) shall produce in writing to anyone sustaining loss or injury, to any peace officer and to a witness

(i) their name and address,

(ii) the number of their operator's licence,

(iii) the name and address of the registered owner of the vehicle,

(iv) the registration number of the motor vehicle, and

(v) a financial responsibility card in respect of that vehicle, issued pursuant to Part 4 of this Act or Part 6 of the *Insurance Act*,

or any other information that is requested.

(2) The driver of a vehicle that collides with an unattended vehicle shall stop and

(a) shall locate and notify the person in charge or owner of the unattended vehicle of the name and address of the driver, the number of the driver's operator's licence and the registration number of the vehicle striking the unattended vehicle; or

(b) shall leave in a conspicuous place in or on the vehicle collided with a written notice giving the name and address of the driver, the number of the driver's operator's licence and the registration number of the vehicle striking the unattended vehicle.

(3) The driver of a vehicle involved in an accident resulting in damage to property on or adjacent to a highway, other than a vehicle under subsection (2), shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and of the name and

address of the driver, the number of the driver's operator's licence and the registration number of the vehicle.

...

[7] Section 95 of the *Act* states:

(1) Subject to subsection (2), if an accident results in injury or death to a person or in property damage to an apparent extent of \$1,000 or more, the driver shall immediately make a written report in the prescribed form and containing any information that is required to a peace officer having jurisdiction where the accident occurred.

...

[8] The issue before me is one of statutory interpretation. I am cognizant of the principles in this area. As the Supreme Court of Canada stated in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, at para. 21:

Although much has been written about the interpretation of legislation... Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

Today there is only one principle or approach, namely, 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, the object of the Act, and the intention of Parliament.

[9] As a starting point, it is nonetheless presumed that the ordinary meaning of a legislative text is what the legislature intended. As stated by Professor Ruth Sullivan in the text, *Statutory Interpretation* (3rd ed. 2016), at p. 59:

The starting point of every interpretative exercise is determining the 'ordinary meaning' of the text. This is what Driedger means when he says the words of an Act are to be read in their ordinary, grammatical sense. It is the meaning that spontaneously comes to the mind of a competent language user upon reading the text.

In practice, the ordinary meaning is presumed to be the meaning intended by the legislature, and in the absence of a reason to reject it, it should be adopted by the court. ...

[10] Mr. Gaven submits that the decision in *Insurance Corp. of British Columbia v. Pariah Productions Inc.*, 2010 BCSC 164, is relevant to the question in issue. The wording of the British Columbia legislation at the time of the accident in *Pariah* was similar to the Yukon legislation.

[11] The driver of the vehicle owned by Pariah drove into a wall while trying to enter a fast food restaurant drive-through. The Insurance Corporation of British Columbia ("ICBC") defended an action by Pariah for indemnity for the cost of repairing the damage to its vehicle. ICBC defended the action by arguing that Pariah's driver breached, *inter alia*, the obligation under s. 68(1) of the B.C. *Motor Vehicle Act*, [RSBC 1996] Chapter 318, to remain at the scene of the accident.

[12] The summary conviction appeal court endorsed the reasoning of the trial judge that s. 68(1) and s. 68(3) (collision with property, other than a vehicle) dealt with two different types of accidents, and as a result, the type of accident in which the driver was involved dictated the obligations imposed on that driver. Although the accident in that case involved damage to a building and not to another vehicle, and thus did not speak specifically to s. 68(2) (the equivalent to s. 94(2) of the *Act*), Mr. Gaven argues that the same principle applies. In other words, a driver is required to comply with s. 94(1) in

certain circumstances, but in other factual situations, captured by ss. 94(2) or 94(3) respectively, the legislation imposes lesser obligations on the driver.

[13] In arguing that s. 94(1) applies to all types of motor vehicle accidents, including ones involving an unattended vehicle, the Crown points to a hypothetical accident where a pedestrian is injured as the result of a driver colliding with an unattended vehicle. The Crown argues that in such a situation the driver should be obligated to stop and render all reasonable assistance. I agree that the driver would be obligated to do so, because those circumstances would bring the matter outside the provisions of subsection (2) (which contemplates damage to an unattended vehicle) and under subsection (1) (which contemplates another person at the scene of an accident who may have suffered loss or injury).

[14] Additionally, the Crown presents a different hypothetical situation in support of its argument. It involves a passenger in the driver's own vehicle being injured as a result of the driver having struck an unattended vehicle. In my view, that scenario is not encompassed in subsection (2), which only speaks to a collision with an unattended vehicle. If personal injury occurs due to any type of accident, the driver's responsibilities flow from subsection (1).

[15] Additionally, in both of the hypotheticals set out by the Crown involving personal injury as a result of an accident, the driver would be bound pursuant to s. 95(1) of the *Act* "to immediately make a written report" to a peace officer.

[16] I am unable to accept the argument that subsections 94(2) and (3) only become applicable in a factual situation where a driver is unable to meet the s. 94(1) obligations.

The plain and ordinary meaning of the words in s. 94 does not support this interpretation. There is an absence of clear language in the legislation in this regard, which language would be required to buttress such an interpretation. I have come to this conclusion having considered contextually Part 6 of the *Act*.

[17] Additionally, where accidents encompassed by subsections (2) and (3) occur, it is logical that those subsections would preclude the application of subsection (1). Otherwise, a driver who, for example, strikes an unattended vehicle would face two sets of inconsistent obligations.

[18] Pursuant to subsection (2)(b), the driver would have the option to “stop” and leave their particulars in writing in a conspicuous place in or on the struck vehicle; whereas under subsection (1)(c), the driver would be obliged to “remain” at the scene and to provide personal particulars in writing “to anyone sustaining loss or injury, to any peace officer and to any witness”.

[19] I conclude that the legislation sets out a scale of obligations of a driver involved in an accident, depending on the type of accident. I find that the s. 94(2) and s. 94(3) obligations apply independently of each other and of the s. 94(1) obligations. Sections 94(2) and 94(3) treat accidents that are inherently less serious than the type of accidents covered by s. 94(1). This results in obligations under s. 94(2) and s. 94(3) that are less onerous than those set out in s. 94(1).

[20] The fact situation of Mr. Gaven’s accident brings it under s. 94(2) of the *Act*, and, therefore, he should have been charged pursuant to that section and not s. 94(1)(a).

[21] In the result, I grant the “no evidence” application of the defence.

CHISHOLM C.J.T.C.