COURT OF APPEAL FOR ONTARIO

CITATION: Beaudin v. Travelers Insurance Company of Canada, 2022 ONCA 806
DATE: 20221123
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Gillese, Miller and Coroza JJ.A.

BETWEEN

Michael Beaudin

Applicant/Respondent (Respondent)

and

Travelers Insurance Company of Canada

Respondent/Appellant (Appellant)

Daniel Strigberger, Chris Morrison, and Devan Marr, for the appellant

Neil G. Wilson and Sara Romeih, for the respondent

Heard: April 12, 2022

On appeal from the order of the Divisional Court (Justices Laurence A. Pattillo, Michael A. Penny, and Adriana Doyle), dated February 26, 2021, with reasons reported at 2021 ONSC 1389, 10 C.C.L.I. (6th) 251, affirming a decision of the Licence Appeal Tribunal, dated September 27, 2019.

Coroza J.A.:

I. OVERVIEW

[1] Michael Beaudin (Mr. Beaudin or the "respondent") was driving his dirt bike in a motocross competition when he was severely injured in an incident. Tragically,

he now has paraplegia. No other vehicles or individuals were involved in the incident.

[2] Mr. Beaudin's automobile insurance policy was with Travelers Insurance Company of Canada ("Travelers" or the "appellant"), but his dirt bike was not listed as an insured vehicle under this policy. He applied to Travelers for statutory accident benefits. Travelers denied coverage on the basis that the incident was not an "accident" as defined in the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 (the "*SABS*") because Mr. Beaudin's dirt bike was not an "automobile" within the meaning of s. 224(1) of the *Insurance Act*, R.S.O. 1990, c. I.8 and s. 3(1) of the *SABS* which states that an "accident" must involve an "automobile".

[3] Mr. Beaudin unsuccessfully applied to an adjudicator of the Licence Appeal Tribunal ("LAT") for a declaration that he was entitled to accident benefits. On a reconsideration hearing, that decision was set aside by the Associate Chair of the LAT, and Mr. Beaudin was found eligible for *SABS* benefits (the "Reconsideration Decision").

[4] Travelers appealed the Reconsideration Decision to the Divisional Court. By a decision dated February 26, 2021 (the "Decision"), the Divisional Court dismissed the appeal. Travelers now appeals to this court.

[5] This appeal depends on whether Mr. Beaudin's dirt bike is exempt from the insurance requirement of the *Off-Road Vehicles Act*, R.S.O. 1990, c. O.4 ("*ORVA*") pursuant to s. 2(1)5 of the General Regulation, R.R.O. 1990, Reg. 863 ("Regulation 863"). That determination turns on whether the *ORVA* exemption is restricted to closed course competitions that are sponsored by a motorcycle association.

[6] For the reasons that follow, I am satisfied that the Divisional Court correctly concluded that the *ORVA* exemption applies only to sponsored competitions, with the result that the dirt bike was not exempt from the *ORVA* and Mr. Beaudin was driving an "automobile" at the time of the incident. Accordingly, I would dismiss the appeal.

II. BACKGROUND

[7] Mr. Beaudin suffered his catastrophic injuries on July 9, 2017, at a closed course motocross competition in Courtland, Ontario. A closed course competition is a competitive event where motorcycles are driven in places like racetracks and motosport parks.

[8] The parties agree that the competition was sanctioned by the Canadian Motorsport Racing Competition ("CMRC"), a for-profit corporation, and organized by Stallybrass Promotions Inc. Competitors were only required to obtain a licence from CMRC and pay corresponding fees to participate in the event.

[9] Mr. Beaudin's injuries from driving in the competition were extremely severe: he will need to use a wheelchair for the rest of his life.

[10] Mr. Beaudin had purchased comprehensive motor vehicle liability insurance from Travelers prior to 2017. Mr. Beaudin's dirt bike was not directly insured under this or any policy. The policy provided statutory accident benefits coverage to insured persons involved in an "accident", as that term is defined in the *SABS*.

III. RELEVANT LEGISLATIVE PROVISIONS

[11] The legislative provisions relevant to this appeal are set out below.

A. The Statutory Accident Benefits Schedule

[12] Section 2(3) of the *SABS*, which is enacted as a regulation to the *Insurance Act*, provides that the benefits set out in the regulation will be provided in respect of "accidents" occurring in Canada or the United States of America, or on a vessel plying between ports of Canada or the United States of America. Section 3(1) of the *SABS* defines "accident":

> Definitions and interpretation
>
> **3.** (1) In this Regulation,
>
> > "accident" means an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any prescription eyewear, denture, hearing aid, prosthesis or other medical or dental device; ("accident") [Emphasis added.]

B. The *Insurance Act*, R.S.O. 1990, c. I.8

[13] Because the *SABS* Regulation does not include a definition of “automobile”, a three-part test applies to determine whether the motor vehicle that caused the particular injury is an automobile: 1) Is the vehicle an automobile in ordinary parlance? 2) If not, is it defined as an automobile in the wording of the insurance policy? 3) If not, does the vehicle fall within any enlarged definition of automobile in a relevant statute? See: *Adams v. Pineland Amusements Ltd.*, 2007 ONCA 844, 88 O.R. (3d) 321, at para. 7, and *Benson v. Belair Insurance Company Inc.*, 2019 ONCA 840, 148 O.R. (3d) 589, at para. 25, leave to appeal refused, [2019] S.C.C.A. No. 529, [2019] S.C.C.A. No. 510 (“*Benson*”). Where, as in this case and in *Benson*, the motor vehicle is not an "automobile" in ordinary parlance or defined as an "automobile" in the policy, the determination rests on whether the dirt bike falls within “any enlarged definition of automobile in a relevant statute.”

[14] Section 224(1) of the *Insurance Act* provides the following:

> Interpretation, Part VI
>
> **224** (1) In this Part,
>
> “automobile” includes,
>
> (a) a motor vehicle <u>required under any Act to be insured</u> under a motor vehicle liability policy, and
>
> (b) a vehicle prescribed by regulation to be an automobile[.][Emphasis added.]

[15] The requirement to insure a motor vehicle is found in a number of statutes: the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, which applies to on-road vehicles, the *Motorized Snow Vehicles Act*, R.S.O. 1990, c. M.44, which applies specifically to snow vehicles, and the *ORVA*, which is the applicable statute in the present case.

C. The *Off-Road Vehicles Act*, R.S.O. 1990, c. O.4

[16] Drivers who drive off-road vehicles in Ontario are required to be insured pursuant to s. 15(1), although there are exceptions to this requirement:

> Insurance
>
> **15** (1) No person shall drive an off-road vehicle unless it is insured under a motor vehicle liability policy in accordance with the *Insurance Act*. R.S.O. 1990, c. O.4, s. 15 (1).
>
> ...
>
> Exemption
>
> (9) Subsections (1), (2) and (3) do not apply where the vehicle is driven on land occupied by the owner of the vehicle. [Emphasis added.]

[17] Section 23 of the *ORVA* provides that the Minister may make regulations that include:

> (b) designated classes of off-road vehicles and exempting any class from all or any of the provisions of this Act or the regulations and prescribing conditions for any such exemptions. [Emphasis added.]

D. Section 2(1)(5) of Regulation 863 under the *ORVA*

[18] In addition to the exemption in s. 15(9) of the *ORVA*, s. 2(1)5 of Regulation 863 sets out the following further exemptions:

> **2.** (1) The following are designated as classes of vehicles that are exempt from the provisions of the Act and this Regulation:
>
> 1. Golf carts.
>
> 2. Road-building machines.
>
> 3. Self-propelled implements of husbandry.
>
> 4. Wheelchairs.
>
> 5. Off-road vehicles driven or exhibited at a closed course competition or rally sponsored by a motorcycle association.[1] [Emphasis added.]

E. Section 1 of Regulation 863 under the *ORVA*

[19] The term “motorcycle association” is defined in Regulation 863 as follows:

> “motorcycle association” means a motorcycle club or association that has or is affiliated with a motorcycle club or association that has a published constitution and a membership roster of more than twenty-four persons; (“association de motocyclistes”).

[1] Submissions were also made on the French language version of this provision: Véhicules tout-terrain conduits ou présentés lors d’une course en circuit fermé ou d’un rallye commandité par une association de motocyclistes.

F. Section 2 of the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25 ("*CAIA*")

[20] Although the *CAIA* does not directly apply in the circumstances of this case, it completes the comprehensive legislative scheme regarding automobile insurance. Section 2 of the *CAIA* provides in part:

> **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).
>
> Definition
>
> (2) For the purposes of subsection (1), where a permit for a motor vehicle has been issued under subsection 7 (7) of the *Highway Traffic Act*,
>
> "contract of automobile insurance", with respect to that motor vehicle, means a contract of automobile insurance made with an insurer. R.S.O. 1990, c. C.25, s. 2 (2).

[21] To summarize, all Ontario drivers who drive vehicles on public highways must be insured with a motor vehicle liability policy in accordance with the requirements of the *Insurance Act*. The purpose of the legislative policy requiring all vehicles that operate on Ontario highways to be insured is to protect innocent victims of automobile accidents, and to provide some statutory accident benefits

to everyone who is involved in an accident: *Matheson v. Lewis*, 2014 ONCA 542, 121 O.R. (3d) 641, at paras. 20, 22.

[22] The *ORVA* governs the licensing and operation of a variety of off-road vehicles and, as mentioned, is a component of the larger comprehensive legislative scheme regarding automobile insurance. It establishes rules governing the issuance and use of permits and plates and includes offence provisions if drivers do not comply with its requirements. The *ORVA* does not apply to off-road vehicles being operated on a highway. It provides that no person shall drive an off-road vehicle unless it is insured, although it provides an exemption where the off-road vehicle is driven on land occupied by the owner of the vehicle: s. 15(9). And, as noted above, there are also classes of off-road vehicles that are completely exempt from the provisions of the *ORVA* by operation of Regulation 863.

IV. DECISIONS BELOW

A. Licence Appeal Tribunal Decision

[23] The issue before the LAT adjudicator turned on whether Mr. Beaudin was involved in an "accident" as defined in s. 3(1) of the SABS, as "an incident in which the use or operation of an automobile directly causes an impairment or directly causes damage to any … medical or dental device."

[24] Mr. Beaudin's position was that he was driving an "automobile" because the *ORVA* required him to insure his dirt bike and s. 224 of the *Insurance Act* defines

an automobile as being a motor vehicle required by any Act to be insured. For its part, Travelers argued that drivers operating dirt bikes in closed course competitions were exempt from the *ORVA* and therefore the dirt bike was not required to be insured.

[25] On October 17, 2018, the adjudicator decided in favour of Travelers: she held that a dirt bike driven in any closed course competition was, by operation of Regulation 863, exempt from the *ORVA* and therefore not an "automobile" under the *Insurance Act*. Accordingly, the incident did not qualify as an "accident" under the *SABS.*[2]

B. Reconsideration Decision

[26] On September 27, 2019, the Tribunal's Associate Chair granted Mr. Beaudin's request for reconsideration. The Associate Chair set aside the adjudicator's decision and held that the proper interpretation of Regulation 863 was that only closed course competitions and rallies that were sponsored by a motorcycle association were exempt from the provisions of the *ORVA*.

[27] The Associate Chair found that the adjudicator had erred in holding that the purpose of the *ORVA* is to protect the public when off-road vehicles are driven in

[2] The adjudicator also found that in any event that the competition was sponsored by a motorcycle club. In the Reconsideration Decision, the Associate Chair found the Adjudicator erred in fact and law in making that finding. As it was not a question of law, this issue could not be appealed to the Divisional Court and is not before us on this appeal. Accordingly, my analysis proceeds on the basis of the Associate Chair's finding that the competition was not sponsored by a motorcycle club.

public areas. The Associate Chair held that the adjudicator had misread this court's decision in *Matheson*. Instead, the Associate Chair, relying on *Matheson*, held that universal coverage was the intended goal of the legislative scheme:

> The Court of Appeal makes it very clear at paragraphs 20 and 36 to 39 in *Matheson v. Lewis* that the legislative intent differs from what the adjudicator stated. The *Off-Road Vehicles Act* is a part of Ontario's comprehensive legislative scheme for automobile insurance designed to protect innocent victims of automobile accidents. Its intended goal is to establish universal insurance coverage. In furtherance of that goal, it makes it an offence to fail to purchase insurance and those who do fail to purchase it are barred from recovering damages or accident benefits. The intent of the scheme is to give drivers a strong incentive to purchase insurance and to punish them if they do not. [Emphasis added.]

[28] Having set out the legislative purpose of the *ORVA*, the Associate Chair moved to reading the provision at issue. He considered the other exemptions in s. 2(1)5 of Regulation 863, which are based on the type of vehicle rather than the type of competition. He noted that the preferred approach to statutory interpretation is that the words of a statute 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.

[29] Further, "motorcycle association" is a defined term, suggesting it should have application to the whole exemption. A narrow interpretation of the exemption was consistent with the legislative intent behind Ontario's automobile insurance scheme requiring universal insurance coverage, subject to limited exceptions.

Therefore, a “clear and rational reading of the provision” led the Associate Chair to conclude that to be exempt from the requirement of being insured, a closed course competition would need to be sponsored by a motorcycle association.

C. Divisional Court Appeal

[30] Travelers appealed the Reconsideration Decision to the Divisional Court on a question of law, pursuant to ss. 11(1) and (6) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G. The Divisional Court dismissed the appeal, finding that the Associate Chair made no error of law in his decision.

[31] The Divisional Court held that the Associate Chair was correct to follow the modern contextual interpretive approach in interpreting s. 2(1)5 of Regulation 863.

[32] The Divisional Court also found that the Associate Chair’s interpretation of s. 2(1)5 was consistent with this court’s view of the same provision in *Benson*. While *Benson* concerned a different issue – whether the definition of “automobile” in s. 224(1) of the *Insurance Act* applied differently if the accident occurs inside or outside Ontario – this court noted the following at para. 42:

> On a plain reading of ss. 15(1) and (9) of the *Off-Road Vehicles Act*, and s. 2(1) 5. of the *ORVA* Regulation, insurance is required to drive an off-road vehicle except on the owner’s own property or where the off-road vehicle is designated by regulation as an exempt class of vehicles. Those sections therefore have the effect of defining an off-road vehicle as an “automobile” for the purpose of s. 224(1) and s. 3(1) of the SABS Regulation 34/10 (formerly s. 2(1) of the SABS Regulation 403/96), <u>except when it is driven on the owner’s own property or</u>

> in a sponsored closed course competition or rally. There is no language that limits that definition to off-road vehicles driven in Ontario. [Emphasis added.]

V. ISSUES ON APPEAL

[33] This appeal raises the following narrow issue: did the Divisional Court err by affirming the Associate Chair's conclusion that Mr. Beaudin's dirt bike was not exempt from the provisions of the *ORVA*?

[34] Travelers argues that the Divisional Court committed the following errors:

1. The Divisional Court erred by concluding that this court in *Benson* had already ruled that only sponsored closed course competitions are exempt from the *ORVA*.
2. The Divisional Court erred in accepting the Associate Chair's conclusion that the purpose of the *ORVA* is to promote universal insurance coverage for all drivers of off-road vehicles.
3. The Divisional Court erred in failing to properly interpret the *ORVA* within the entire legislative scheme of auto insurance.

VI. STANDARD OF REVIEW

[35] The parties agree that the standard of review is correctness given that the only issue that can be appealed to this court is a question of law, pursuant to s. 11(6) of the *Licence Appeal Tribunal Act*.

VII. ANALYSIS

[36] To begin, I agree with the conclusion of the Divisional Court that the correct approach to interpreting the exemption in s. 2(1)5 of Regulation 863 is the application of the modern principle of statutory interpretation as set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, and followed in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26: "…[T]he 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." The "text, context and purpose" principle applies equally to regulations. However, regulations are also read in the context of their enabling Act, having regard to the language and purpose of the Act in general, and more particularly the language and purpose of the relevant enabling provisions: *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533, at para. 38. As Ruth Sullivan points out, in *The Construction of Statutes*, 7th ed. (Markham: LexisNexis Canada Inc., 2022), at § 13.03(3), regulations are interpreted so as to fit the scheme established by the Act and to further its purposes.

[37] As will become apparent below, the interpretation of the words "at a closed course competition or rally sponsored by a motorcycle association" must have

regard to the text and purpose of the *ORVA* and the related legislation which forms a comprehensive scheme of motor vehicle insurance.

Issue 1: Did the Divisional Court err by concluding that this court in *Benson* had ruled that only sponsored closed course competitions are exempt from the *ORVA*?

[38] In *Benson*, two appeals raised the same issue: whether the *SABS* Regulations and the definition of "automobile" in Part VI of the *Insurance Act* apply differently if the accident occurs in Ontario or outside Ontario. Two accidents had occurred outside Ontario, involving an ATV and dirt bike respectively, and each insured suffered catastrophic injuries. As in the present case, the insureds argued that the dirt bike and ATV fit into the enlarged definition of automobile in a relevant statute – s. 224(1) of the *Insurance Act*.

[39] The parties in *Benson* agreed that had the two incidents happened in Ontario, both insureds would have been entitled to receive statutory accident benefits under their respective policies because under s. 15(1) of the *ORVA*, both off-road vehicles would have required insurance in order to be driven in the locations they were being operated at the time of the accidents.

[40] However, the same insurance requirement did not apply in the jurisdictions where the incidents occurred. The courts and tribunals below had set out to determine whether the law of Ontario or the law of the jurisdiction where the incidents occurred governed the statutory accident benefits entitlement issue. On

appeal, this court held that it was an error to look to a statute of another jurisdiction or to see if there was a statute in that jurisdiction that requires insurance. Therefore, both insurers were obliged to pay statutory accident benefits because both vehicles were “automobiles” that were involved in accidents.

[41] In *Benson*, this court made very brief comments on s. 2(1)5 of Regulation 863: see paras. 14, 31, and 42. However, the analysis of the court was focused on the fact that there was no limiting language as to whether the off-road vehicle was driven in Ontario: see para. 42. These references do indicate that the court read s. 2(1)5, in passing, to mean that only off-road vehicles driven in sponsored closed course competitions did not require insurance.

[42] However, there is no dispute that the exemption in s. 2(1)5 was not argued by the parties in *Benson* and it does not appear that competing interpretations were put before the court.

[43] Travelers argues that in affirming the Reconsideration Decision, the Divisional Court improperly relied on *Benson* as having decided that issue, whereas that point in *Benson* was not in dispute. It was a base fact assumed by this court, which means it actually was not decided by this court and was not binding on the Divisional Court.

[44] To the extent that the Divisional Court held that this court had expressed firm views of the interpretation of s. 2(1)5, I agree that this was in error. That said,

as I will explain further below, this error is inconsequential. That is because the issue is now squarely before us and, in my opinion, the *obiter* comments of this court in *Benson* about s. 2(1)5 and closed course competitions are correct. That interpretation is entirely consistent with the purposes of the overall scheme of automobile insurance. Accordingly, I would not give effect to this argument because it does not impact on the disposition of the appeal.

Issue 2: Did the Divisional Court err in holding that the purpose of the *ORVA* is to promote universal insurance coverage for all drivers of off-road vehicles?

[45] Travelers argues that the Divisional Court also erred by relying upon this court's decision in *Matheson*, in holding that the goal of the *ORVA* is to promote universal coverage of off-road vehicles.

[46] In *Matheson*, the appellant had driven an uninsured ATV used for farming purposes on a public road when he was struck from behind by a truck. Since his ATV was uninsured, s. 267.6(1) of the *Insurance Act* potentially applied. Section 267.6(1) provides that a person is not entitled to recover damages for bodily injury or death arising from the use or operation of an automobile if, at the time of the incident, the person was operating an uninsured motor vehicle on a highway contrary to s. 2(1) of the *CAIA*.

[47] A motion judge had found that the ATV at the time of the accident was a "self-propelled implement of husbandry" and was not a motor vehicle required to

be insured. That was because the *CAIA*, while prohibiting the operation of a motor vehicle on a highway unless it is insured, gives “motor vehicle” the same meaning it has under s. 1 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (“*HTA*”). Section 1 of the *HTA* excludes a “self-propelled implement of husbandry” from its definition of “motor vehicle”.

[48] This court overturned that finding on appeal. It held that the motion judge had correctly identified the purpose of the *CAIA*: to protect innocent victims of automobile accidents. However, his interpretation failed to give effect to that purpose and ignored the larger statutory context. This court held that the *HTA*, the *ORVA*, the parts of the *Insurance Act* dealing with motor vehicle insurance, and the *CAIA* are all components of one comprehensive scheme: at para. 25.

[49] The motion judge's failure to give effect to Regulation 863, which “could not make clearer” that Mr. Matheson’s ATV was an off-road vehicle, and not a self-propelled implement of husbandry was a sufficient basis for allowing the appeal: at para. 27.

[50] In the Reconsideration Decision, the Associate Chair concluded that the legislative intent of the *ORVA*, as addressed in *Matheson*, is the protection of innocent victims of automobile accidents and consequently promoting universal coverage. Travelers argued that by affirming the Associate Chair’s decision, the Divisional Court erred because *Matheson* is not a case that dealt with off-road

vehicles and closed course competitions. Instead, the purpose of the *ORVA* is public safety and identification and control of off-road vehicles. Travelers argues that requiring competitors participating in a closed course competition to be insured does not further or promote those two goals.

[51] I do not accept that the Divisional court misapplied *Matheson* or did not correctly identify the purposes of the *ORVA*. Indeed, the Divisional Court did not explicitly find that the singular goal of the *ORVA* was the promotion of universal insurance coverage. Instead, the Divisional Court recognized that one aspect of the *ORVA* is that it forms one part of a comprehensive legislative scheme for automobile insurance in Ontario. At the outset of its reasons, the Divisional Court noted the following:

> The *ORVA* is part of Ontario's comprehensive legislative scheme for automobile insurance designed to protect innocent victims of automobile accidents. In that regard, its purpose is to encourage safe driving of off-road vehicles and to provide a method of control and identification of such vehicles: *Haliburton (County) v. Gillespie*, 2013 ONCA 40, 114 O.R. (3d) 116; *Matheson v. Lewis*, 2014 ONCA 542. [Emphasis added.]

[52] The Divisional Court thus identified that the *ORVA* has multiple purposes, one of which is to promote the safe operation of off-road vehicles, and one of which is to protect innocent victims of automobile accidents through the imposition of mandatory insurance.

[53] By affirming the Associate Chair's reliance on this court's decision in *Matheson*, the Divisional Court recognized that any interpretation of the provisions of the *ORVA* must be situated in a broader comprehensive scheme of auto insurance in Ontario, and that this wider context must be considered. In *Matheson*, Juriansz J.A. for this court wrote:

> The *Highway Traffic Act*, the *Off-Road Vehicles Act*, the parts of the *Insurance Act* dealing with motor vehicle insurance, and the *Compulsory Automobile Insurance Act* are all components of one comprehensive scheme. As a principle of statutory interpretation, there is a presumption of harmony, coherence and consistency between statutes dealing with the same subject matter: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867, at para. 52; Ruth Sullivan, *Statutory Interpretation*, 2nd ed. (Toronto: Irwin, 2007), at pp. 149-151. [Emphasis added.]

[54] Accordingly, any interpretation of the *ORVA* must keep in mind that it is just one piece of a comprehensive scheme of automobile insurance and that it must be read harmoniously with other legislation that makes up that scheme. The goal of the statutory automobile insurance scheme is to protect victims of automobile accidents by promoting universal coverage. Accordingly, any interpretation of the *ORVA* must take into account the intent of the overall legislative scheme of automobile insurance: *Matheson*, at para. 37.

[55] While it is true that *Matheson* was decided in the context of driving on a highway, the factual context underlying *Matheson* does not detract from the fact that if drivers without insurance are in an accident, they are faced with a serious

risk of not being able to obtain damages and benefits. It makes sense to interpret the *ORVA* consistently with the entire scheme of automobile insurance in Ontario, which promotes universal insurance coverage with only a few exceptions. One cannot completely divorce s. 15 of the *ORVA* – the mandatory insurance requirement for off-road vehicles, a requirement that protects injured persons as well as owners of property damaged – from the rest of the legislative scheme which promotes universal coverage.

[56] As I will explain below, the conclusion that sponsorship is required for closed course competitions to be exempt from the *ORVA* aligns with the view set out by this court in *Matheson* and the principle of statutory interpretation that harmony should be achieved between the various statutes enacted by the same government, especially when the statutes relate to the same subject matter: *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3, at para. 121; *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc.*, 2021 ONCA 925, 160 O.R. (3d) 205, at para. 28. The Associate Chair and the Divisional Court did not misapply *Matheson* – they properly relied on it. Consequently, I would reject this ground of appeal.

Issue 3: Did the Divisional Court err in failing to properly interpret the *ORVA* within the entire legislative scheme of auto insurance?

[57] The crux of Travelers' appeal is that the Divisional Court did not properly assess what coverage the legislature was anticipating would be required of users of off-road vehicles when it passed the *ORVA*.

[58] Travelers asserts that the purposes of the *ORVA* are public safety and the proper identification and control of off-road vehicles. In the context of persons participating in organized closed course competitions, Travelers submits that an interpretation that requires participants to obtain insurance as set out in s. 15 of the *ORVA* is inconsistent with a proper consideration of the risk involved. They argue that universal automobile insurance for vehicles used for day-to-day commutes or recreational use of a vehicle on public land makes sense because operating a motor vehicle on public highways is a risky activity to the public and it is important that innocent victims are protected from having no means to seek damages from those who might cause accidents. In contrast, requiring those who drive off-road vehicles at an organized close course competition to have licences, permits, insurance, does not make sense because the activity has little risk to anyone else but themselves.

[59] I do not accept this argument. As noted above, the exemption in the regulation must be interpreted so as to fit the remedial nature of the scheme

established by the *ORVA* and to further its purposes. The insurance requirement is one prong of that public safety scheme. Section 15 establishes a general requirement for drivers to maintain insurance from which only narrow exceptions are carved out.

[60] Because the *ORVA* is one component in a larger single scheme of automobile insurance, the *ORVA* must also be interpreted harmoniously with the other statutes that make up that scheme. In my view, the Divisional Court's conclusion that only sponsored closed course competitions and rallies are exempt from the provisions of the *ORVA* is correct in light of context and purpose of the entire legislative scheme.

[61] First, an interpretation of s. 2(1)5 that exempts participants in all closed course competitions regardless of sponsorship is inconsistent with the remedial purposes of the *ORVA*.

[62] The *ORVA* ensures that those who are covered by the provisions of the Act must wear helmets, imposes a minimum age of 12 for drivers, and as this court noted in *Haliburton (County) v. Gillespie*, 2013 ONCA 40, 114 O.R. (3d) 116, there is a mandatory insurance requirement which protects injured persons as well as owners of property damaged by off-road vehicles.

[63] If Travelers' interpretation is correct, s. 2(1)5 exempts a broader segment of the population from the entire Regulation 368 and *ORVA* scheme. The better view

is that given the important goal of public safety, the legislature intended to only provide narrow exemptions to the provisions of the *ORVA*. The legislation does so by rendering certain sections inapplicable (for example the requirement to wear a helmet) if the off-road vehicle is used on land "occupied" by the owner of the vehicle or if it belongs to a specific class of vehicle that is exempt from the *ORVA* altogether as selected by the legislature through regulation.

[64] Second, the Divisional Court's conclusion that only sponsored closed course competitions and rallies are exempt from the *ORVA* is entirely consistent with Travelers' submission that the legislature intended that only organized competitions would be exempted from the *ORVA*. Apparently, impromptu racing between two or more people at a closed location was not intended to fall within this exception. In its factum, Travelers has directed this court to Hansard excerpts that show the legislature was clearly concerned that organized races at a track or some other site should be exempt from *ORVA*. That raises the question: organized by whom?

[65] The answer is found in s. 1 of Regulation 863 which defines a motorcycle association. A "motorcycle association" means a motorcycle club or association that has (or is affiliated with a motorcycle club or association that has): first, a published constitution and, second, a membership roster of more than twenty-four persons. The organizations must have a public constitution, are organized, and contain several members.

[66] Logically, it seems to me that permitting an exemption only for sponsored events aligns with the public safety focus of the *ORVA*. Sponsoring motorcycle associations would have safety protocols in place for both closed course competitions and rallies and could be counted on to promote public safety and the safe driving of competition vehicles. Indeed, the rules of a sponsored competition would likely prescribe what protective equipment must be worn. While minimum age requirements may not be enforced, competitors would be subject to adult supervision. It is also apparent from the evidence submitted before the LAT in this case that organized competitions also provide at least some level of insurance protection for participants.

[67] I acknowledge that the event in question was “organized” and does not appear to be an impromptu one without any safety hallmarks or precautions. Nevertheless, the Associate Chair found it was not a motorcycle association sponsored event and as I have already set out above, that finding could not be appealed and that issue is not before this court. That said, whether safety can be guaranteed even through non-sponsored events is beside the point. The legislature chose the particular benchmark of sponsorship in order for the competitions to be exempt.

[68] Nor do I accept Travelers’ argument that there is a distinction between rallies and closed course competitions because they involve different kinds of risk. Travelers argues that closed course competitions are less risky than rallies

because they are private activities isolated from the public. While it acknowledges that members of the public may purchase tickets to a closed course competition, according to Travelers they are merely spectators. On the other hand, Travelers asserts that rallies are simply gatherings of enthusiasts. They are more open to the public. They also rely on the comments of the initial LAT adjudicator who observed that "[a] rally is a race or competition using public roads and therefore requires sponsorship and additional means of control for the purpose of public safety" and that a "logical reason" for excluding rallies is because they are a meeting of enthusiasts.

[69] I do not accept this distinction. It seems to me that whether a race or competition uses a private or public venue is irrelevant. Both rallies and closed course races are competitions where motor vehicles can be driven. Contrary to the assertion made by Travelers, requiring sponsorship only for rallies but not a closed course competition is not an easy line to understand. A rally is not simply just a meeting of enthusiasts. There was evidence before the adjudicator that a rally is also a race and a competition. It seems to me that both a closed course competition and a rally involve an inherent level of risk to drivers whether held on private or public property.

[70] This view is also fortified by the remarks of the Minister of Transportation and Communication (Hon. Min. Snow) during the debates relating to the proposed *ORVA* in October of 1983. The Minister was asked by members of the legislature

if an exemption would be made for competitors in dirt bike races from having to keep the numbers of their plates clean at all times. The Minister was also asked where in the statute a provision would be made for exempting organized mud races involving dirt bikes. In response, the minister stated:

> **Hon. Mr. Snow**: As I said to the honourable member when there are organized races at a track or some site, it is the intention that such races will be exempt under the regulations. I know how difficult it is to keep a licence plate clean on an automobile, let alone anything else.
>
> …
>
> **Hon. Mr. Snow**: Clause 22(b), my legal advisers tell me, is the clause under which such an exemption would take place. A vehicle used in competition, for instance, would be a class of vehicle. As a somewhat unusual example, in our regulations regarding seatbelts, taxis carrying passengers are a class of vehicles. They are not all Fords, Dodges or Plymouths, but taxis carrying passengers are exempt from the seatbelt legislation. [Emphasis added.]

[71] In sum, the legislature has chosen a sponsorship requirement for organized events such as closed course competitions and rallies as the basis for exemption from the requirements of the *ORVA*. The logical conclusion is that the legislature did so because of the reasoned conclusion that motorcycle associations would ensure that basic safety protocols are in place and would promote the control and identification of the off-road vehicles in competition. The Divisional Court's interpretation makes sense when one considers the protections that these types of sponsored events provide to participants and the general public.

[72] Finally, the Divisional Court's conclusion that closed course competitions are not exempt from the *ORVA* unless they are sponsored by a motorcycle association is consistent with the decision of this court in *Haliburton*. In *Haliburton*, the appellant had been convicted of the offence of driving his off-road vehicle without a helmet contrary to s. 19(1) of the *ORVA*. This court was required to address whether the appellant, a lessee of land in a private park, was exempt from the *ORVA* requirement to wear a helmet under the "occupier of the land" exception in s. 19(2) while driving his ATV in the common area of the park.

[73] This court held he was not within that exemption, that he was properly convicted, and that to read the meaning of occupier under s. 19(2) broadly was not consistent with the overall purpose of the *ORVA*.

[74] Writing for the court, Sharpe J.A. set out two purposes of the *ORVA*: first, the identification and control of such vehicles; and second, public safety: at para. 22. After discerning these two purposes, Sharpe J.A. observed that the interpretation put forward by the appellant would be inconsistent with both purposes of the *ORVA*: at paras. 30-31. Again, the appellant wanted a broad interpretation of "occupier" so that he could fit within the exemption, even though he did not have much control over the land he was driving his ATV on. Importantly, Sharpe J.A. noted that the "occupier" exemption did not just mean the appellant did not need to wear helmet: it would also mean he would not need a permit, the

minimum age of 12 for a driver would not apply, and neither would the insurance requirement: at para. 21.

[75] Accordingly, Sharpe J.A. held that the appellant's broad interpretation undermined one purpose, public safety, because there would be an unwarranted expansion of the number of people who did not need to wear helmets, endangering the driver and the other people around the expansive common area: at para. 30. Sharpe J.A. also noted that the interpretation undermined the other purpose, identification and control, because again it would mean the appellant would not need a permit for his ATV when in the common area: at para. 31. Consequently, the appellant's interpretation was rejected because it was contrary to both purposes of the *ORVA*.

[76] *Haliburton* confirms that the starting point is a general rule that off-road vehicles need to be insured under ss. 15(1) and (2) of the *ORVA*, and that only narrow exceptions are carved out from that general rule.

[77] *Haliburton* also confirms that one of the purposes of the *ORVA* is public safety. Any interpretation of the legislative text that would drastically undermine that objective would not be a harmonious reading contemplated by *Rizzo Shoes*. As noted above, Travelers' interpretation undermines that public safety objective. Unsponsored and unorganized events pose a greater risk to participants: there may be no requirements for helmets or protective clothing; there may be no

supervision of underage participants; and injured participants would not have access to any additional insurance provided by a sponsor. As Sharpe J.A. noted in *Haliburton*, the danger to the ATV driver's own safety was still a factor in upholding the insurance requirement (by limiting the occupier exception): at para. 30.

[78] In conclusion, I am satisfied that the Divisional Court properly interpreted the exemption in Regulation 863 in accordance with the context and purpose of its enabling statute as situated within the entire legislative scheme of auto insurance as a whole. Therefore, I would dismiss this ground of appeal.

Additional Issues

[79] During oral argument, Travelers argued that if the Divisional Court's decision were upheld by this court, then it would effectively be directing that insurance companies provide a liability policy to participants for uninsurable situations because no insurance company would write a policy for racing in these circumstances. Further, in its factum, Travelers argued that s. 4(2) of the *Statutory Conditions – Automobile Insurance*, O. Reg. 777/93 of the *Insurance Act* prohibits using insured vehicles in races.

[80] For his part, Mr. Beaudin argues that this is a new argument and should not be considered by the court. In any case, Mr. Beaudin submits he was not "racing" (and would have led evidence below to this effect). Mr. Beaudin submits that

Travelers' argument is a red herring because a violation of a statutory condition does not affect entitlement to accident benefits.

[81] In my view, this court does not need to deal with these submissions to dispose of the appeal. As the Divisional Court noted, the issue before the LAT adjudicator and the Associate Chair below was a narrow one: was Mr. Beaudin's dirt bike subject to the *ORVA*, in which case he was entitled to *SABS* or was he exempt, in which case he was not? The issue before us is also narrow and does not require us to resolve arguments that are speculative and not properly developed before the tribunals.

[82] The legislature has drawn a line in the sand – they have decided that only those competitions (closed course or rallies) that are sponsored competitions by motorcycle associations are exempt from the *ORVA*. If these events are to be held and the participants do not wish to be bound by the *ORVA*, then they are required to obtain the mandated sponsorship. That interpretation fosters the goals of the *ORVA* and is consistent with the overall scheme of automobile insurance in Ontario. It is also consistent with the decisions of this court in *Haliburton*, *Matheson*, and *Benson*.

VIII. DISPOSITION

[83] For these reasons, I would dismiss the appeal.

[84] Although at the end of oral argument, the parties advised this court that the successful party would be awarded $20,000 in costs, the costs for the motion for leave to appeal were reserved to this panel. Travelers was successful in arguing that leave to appeal should be granted and I would award $2,500 to Travelers but set it off against the agreed upon amount of $20,000. I would award Mr. Beaudin his costs of the appeal in the amount of $17,500.

Released: November 23, 2022 “E.E.G.”

“S. Coroza J.A.”
“I agree. E.E. Gillese J.A.”
“I agree. B.W. Miller J.A.”