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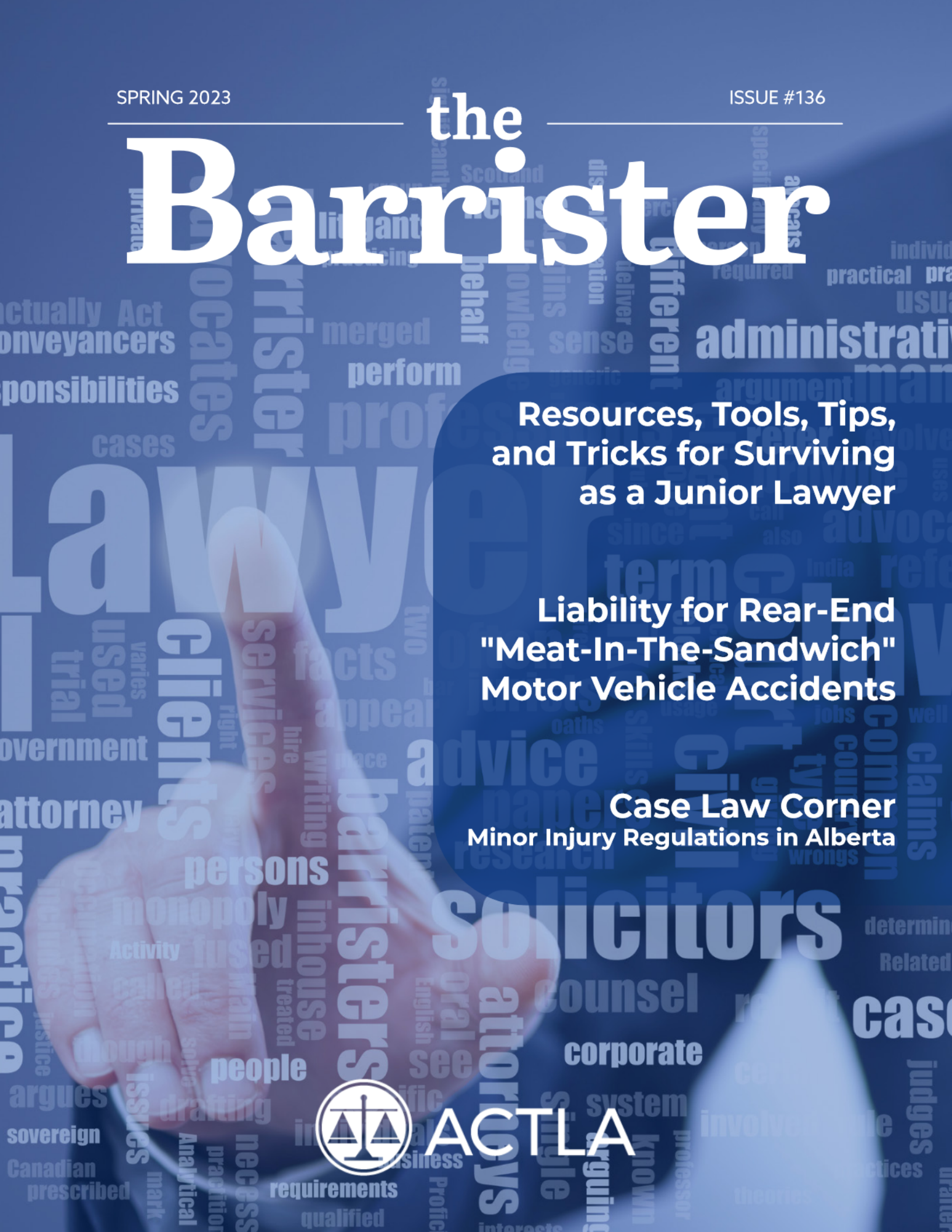
Resources, Tools, Tips, and Tricks for Surviving as a Junior Lawyer

Liability for Rear-End "Meat-In-The-Sandwich" Motor Vehicle Accidents

Case Law Corner
Minor Injury Regulations in Alberta



ACTLA

Liability for Rear-End "Meat-In-The-Sandwich" Motor Vehicle Accidents

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Bottom Line
RESEARCH AND COMMUNICATIONS

Rear-end collisions are among the more common types of accidents giving rise to personal injury claims. In determining liability where a vehicle is struck from behind, there is an initial presumption that the following driver is at fault. The presumption is rebuttable, but the onus to do so is heavy, and requires a demonstration that the driver who was struck was negligent under the common law on a balance of probabilities.

If multiple vehicles are involved in the incident, the driver who is struck may be the "meat in the sandwich" – stopping quickly to avoid a collision with a vehicle in front, but then struck from behind by another driver. Even in those cases, the burden remains on the following driver to demonstrate that they are not responsible for the accident.

The Legislative Framework

The Alberta Use of Highway and Rules of the Road Regulation, AR 304/2002 sets out the rules regarding stopping. Section 10 (b) provides:

> **Use of signalling device**
> 10 A person driving a vehicle may indicate that person's intention to carry out the following by doing the following:
> (b) in the case of stopping, if the vehicle is equipped with stop lamps that comply with the requirements of the Vehicle Equipment Regulation, by the use of the stop lamps.

At section 18, the Use of Highway and Rules of the Road Regulation contains the following provision about following too close to another vehicle:

> **Following other vehicles**
> 18(1) A person driving a vehicle shall not drive the vehicle so as to follow another vehicle more closely than is reasonable and prudent having regard for the following:
> (a) the speed of the vehicles;
> (b) the amount and nature of traffic on the highway;
> (c) the condition of the highway.

Division 9 of the Use of Highway and Rules of the Road Regulation sets out the provisions with respect to stopping. Section 35 provides:

> **Signalling stops**
> 35 Before stopping a vehicle, the person driving the vehicle shall
> (a) signal that person's intention to do so in a manner as provided for in Division 3, and
> (b) give the signal in sufficient time to provide a reasonable warning to other persons of that person's intention.

Case Law

In an old Supreme Court of Canada case, *Rintoul v. X-Ray & Radium Industries Ltd.*,[1] the Court considered the liability of drivers in rear-end collisions. Cartwright J held:

> **There can be no doubt that, generally speaking, when a car, in broad daylight, runs into the rear of another which is stationary on the highway and which has not come to a sudden stop, the fault is in the driving of the moving car, and the driver of such car must satisfy the Court that the collision did not occur as a result of his negligence** [emphasis added] (para 8).

The issue of rear-end collisions was discussed in the old case *Gilchrist v. Linau.*[2] The plaintiff brought his car to a stop because there were four stopped cars ahead of him, and his car was run into from the rear by a car driven by the defendant. Turcotte DCJ held that

1 Rintoul v. X-Ray & Radium Industries Ltd., [1956] SCR 674, 1956 CarswellOnt 77, https://www.canlii.org/en/ca/scc/doc/1956/1956canlii16/1956canlii16.html?resultIndex=1

2 Gilchrist v. Linau, 1957 CarswellAlta 73 (Alberta District Court). https://www.canlii.org/en/ab/abqb/doc/1957/1957canlii597/1957canlii597.html?resultIndex=1

the accident was caused solely by the negligence of the defendant for failing to keep a proper lookout. Turcotte DCJ held:

> **There is a heavy onus on the driver of a car running into another car from the rear** and the defendant Ursula Linau has not discharged that onus in any way. The evidence shows that the plaintiff brought his car to a stop in a gradual manner. The defendant driver did not meet with a sudden emergency; at least, if she had been keeping a proper lookout, no sudden emergency should have confronted her. This is not a case of suddenly coming upon a stalled car at night or being confronted by a car stopping quickly in front of the defendant's car [emphasis added] (para 7).

The ratio in this case emphasizes that following drivers will bear a heavy onus to show that the Accident was not caused by their negligence.

The case *Moseley v. Spray Lakes Sawmills*[3] expressly considered the liability of drivers in rear-end motor vehicle collisions. The plaintiff sustained serious injuries when his car struck the rear end of a logging truck. At the time of the accident, the roads were bare and dry with good visibility. The truck was driving at a low speed on the shoulder with its flashers on, and the driver was driving as close as possible to the shoulder. There was no evidence that the plaintiff tried to avoid the accident. The plaintiff had been travelling at an unsafe speed. The plaintiff brought an action in negligence against the driver and owner of the truck. Paperny J held that drivers must exercise the degree of care and caution that an ordinarily careful and prudent person would exercise under similar circumstances. Paperny J held:

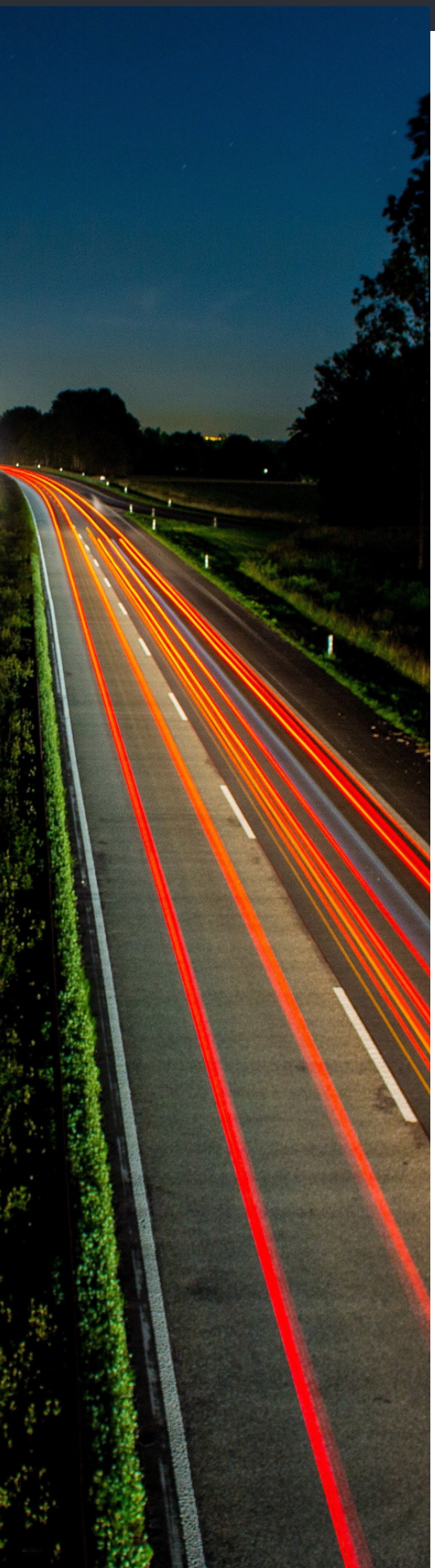
> In Osbaldeston v. Bechtold (1952), 7 W.W.R. (N.S.) 253 (Alta. C.A.), aff'd [1953] 2 S.C.R. 177 (S.C.C.), the Supreme Court of Canada held that where the driver of an approaching car has time and opportunity or would have had it had he been driving at a proper speed and keeping a proper look out to avoid a collision and did not, he alone is responsible for the resulting damage notwithstanding the *Contributory Negligence Act,* even though the driver of the stationary car was at fault in putting it in a position which made the accident possible. The Supreme Court of Canada has held in *Swartz Brothers Ltd. v. Wills,* [1935] S.C.R. 682, and *Harrison v. Bourn*, [1958] S.C.R. 733, that where there is nothing to obstruct the vision and there is a duty to look, it is negligence not to see what is clearly visible. In my view that principle applies in this case (paras 57-58).

Paperny J held that the plaintiff had sufficient time to avoid the accident; the sole cause was the plaintiff's inattention. There was no negligence on the part of the defendants, and the claim was dismissed.

In the more recent Alberta case *Cullen v. Kao,*[4] the defendant was driving home after surgery and claimed he lost vision, memory, and consciousness. His vehicle struck the rear of the first plaintiff's vehicle, which spun around and interacted with the defendant's vehicle again. The defendant's vehicle then collided with the rear of the second plaintiff's vehicle. Poelman J cited ***Rintoul***, supra, for the principle that when the plaintiff shows that the circumstances of an accident lead to a *prima facie* case of negligence against a defendant, the defendant has the burden of showing the accident was not caused by their negligence:

3 Moseley v. Spray Lakes Sawmills (1980) Ltd. (1997), 194 AR 384, 1997 CarswellAlta 1295 (QB) https://www.canlii.org/en/ab/abqb/doc/1997/1997canlii14730/1997canlii14730.html?resultIndex=3

4 Cullen v. Kao, 2019 ABQB 799, 2019 CarswellAlta 2298 https://www.canlii.org/en/ab/abqb/doc/2019/2019abqb799/2019abqb799.html?resultIndex=1



> **It has been described as a "heavy burden," in cases such as the defendant running into the rear of a plaintiff's motor vehicle in daylight with good road conditions: Graham v. Hodgkinson (1983), 40 O.R. (2d) 697 (Ont. C.A.). The policy rationale for imposing a higher burden of proof is that such a defence "is based on factors under the defendant's exclusive control or "wholly within" the defendant":** *Nasser v. Roffey,* **2019 BCSC 1263 (B.C. S.C.), para 46** [emphasis added] (para 12).

The circumstances of the collision led to a *prima facie* inference of negligence on the part of the defendant, placing the burden on him to show that his negligence did not cause the accident. Poelman J held:

> Mr. Kao thus has the burden of showing that he had acted without negligence; that is, he could not have prevented or avoided what happened by taking the reasonable precautions that would be expected from a reasonable person in his situation (para 18).

As the defendant was unable to do so, he was held liable for the accident.

The onus on the following driver was again demonstrated in *Woitas v. Tremblay.*[5] The defendant Tremblay was driving in the leftmost of three lanes of heavy traffic on the highway when traffic came to a sudden stop. Tremblay stopped her car safely, but was struck from behind by a vehicle being driven by another defendant, Bevans. The plaintiff was a passenger in another vehicle that struck one of the vehicles from behind. The plaintiff alleged that the defendants were negligent in stopping quickly and the defendants brought an application for summary dismissal. Master Wacowich held:

> As can be seen from the legislation noted, it is a requirement of all drivers that they maintain a reasonable and prudent distance behind vehicles they are following.
>
> If a driver collides with another vehicle from behind (a "rear-ender") then the onus is on the following driver to prove that the collision did not occur as a result of his/her negligence (paras 15-16).

Master Wacowich stated that a vehicle stopping quickly or even abruptly in stop-and-go traffic is not an unexpected event or an event that occurs without justification. He held:

> The Respondent's position seems to be that Tremblay should not have braked heavily. But Tremblay obviously wished to avoid colliding with the vehicle that stopped suddenly in front of her. She discharged her duty of care by driving a proper distance such that she was able to stop without impacting any other vehicle (para 19).

In the result, Master Wacowich held that the evidence did not support the plaintiff's allegation of negligence. If the driver of the plaintiff's vehicle had been keeping a proper outlook, he would not have collided with the defendants. The accident would not have happened if he had been driving in a reasonable and prudent manner as required by law and by the existing road and traffic conditions.

The Woitas decision cites the British Columbia case *Pryndik v. Manju*.[6] In that case, the defendant was forced to brake abruptly and steer his van to the shoulder of the road to

5 Woitas v. Tremblay, 2018 ABQB 588, 2018 CarswellAlta 1538. https://www.canlii.org/en/ab/abqb/doc/2018/2018abqb588/2018abqb588.html?resultIndex=1

6 Pryndik v. Manju, 2001 BCSC 502, 2001 CarswellBC 704, affirmed by 2002 BCCA 639, 2002 CarswellBC 3238 https://www.canlii.org/en/bc/bcsc/doc/2001/2001bcsc502/2001bcsc502.html?resultIndex=1

avoid colliding with the vehicle in front of him, which had braked quickly to avoid colliding with another vehicle. The plaintiff was injured when his motorcycle collided with the rear of the defendant's van. Baker J held that there was nothing the defendant did or did not do that caused or contributed to the accident. The plaintiff was negligent in following too close to the defendant:

> It is true that Mr. Manju was obliged to brake abruptly in order to avoid colliding with the rear of Mr. Limoges' vehicle, just as Mr. Limoges braked quickly to avoid the vehicle ahead of his. Had Mr. Manju's vehicle struck Mr. Limoges' vehicle, he might well have been found to have breached a duty of care owed to Mr. Limoges. However, I am not satisfied that anything done by Mr. Manju in stopping his vehicle, or in steering to the shoulder of the road, was unreasonable or in breach of any duty owed to Mr. Pryndik (para 17).

Baker J further held:

> **The operator of a motor vehicle, following other vehicles, should keep his vehicle under sufficient control at all times to be able to deal with an emergency such as the sudden stopping of a vehicle in the line of vehicles ahead and the telescope effect that results, as each successive driver attempts to bring his or her vehicle to a halt.**
>
> **This is not a case, in my view, where a driver has stopped unexpectedly and for no good reason. Mr. Manju stopped his vehicle abruptly for a very good reason - because if he had not done so, his vehicle would have struck the rear of Mr. Limoges' pickup truck.** Mr. Manju had to stop quickly, just as Mr. Limoges had stopped quickly, albeit somewhat less abruptly, to avoid colliding with the rear of the vehicle ahead of him. A vehicle stopping quickly or even abruptly in circumstances where traffic is heavy and moving in a "stop and go" pattern is not an unexpected event, nor is it an event that occurs without justification [emphasis added] (paras 21-22).

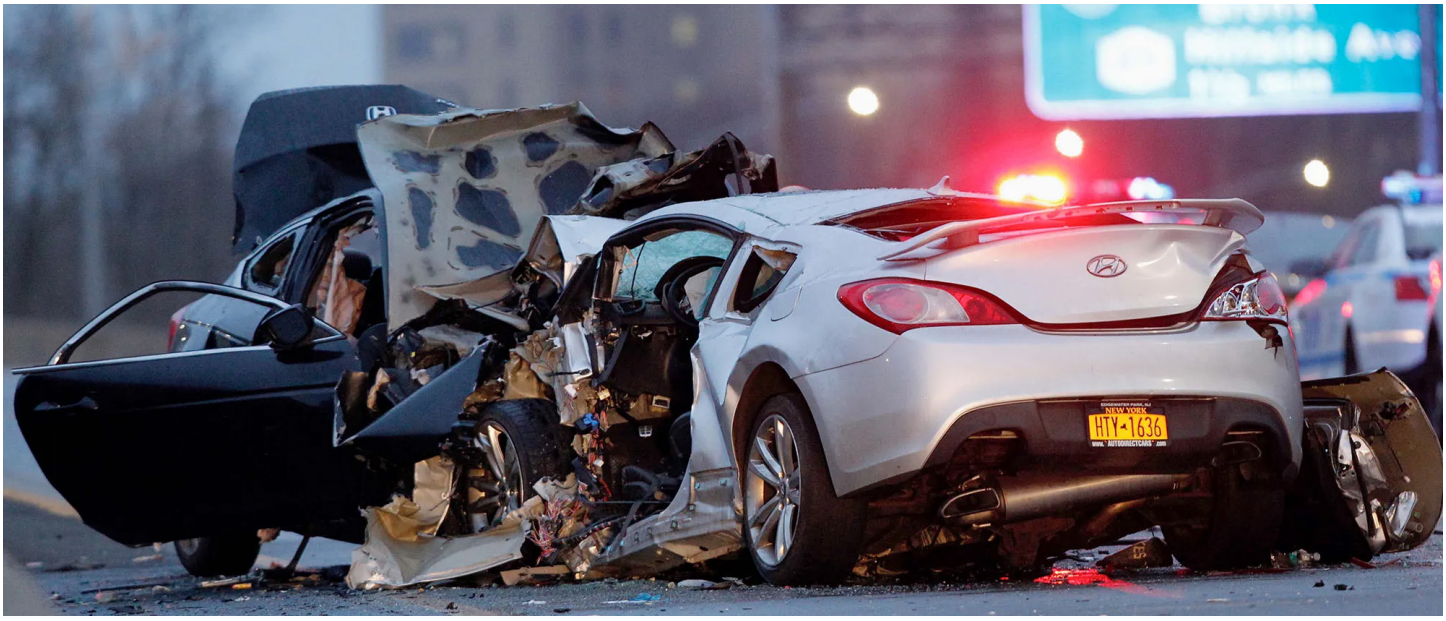
The fault for the accident was completely with the plaintiff; he was aware there was traffic ahead of him and that it was moving in a stop and start fashion. The plaintiff failed to leave enough space between himself and the defendant. The action was dismissed.

In the British Columbia case Wright v. Mistry,[7] the plaintiff's vehicle was struck from behind by the defendant's vehicle. The defendant alleged that the plaintiff had braked suddenly when the traffic light turned yellow. The plaintiff brought an action in negligence against the defendant. Choi J held:

> In *Skinner v. Guo*, 2010 BCCA 321 (B.C. C.A.),[8] our Court of Appeal wrote that generally, fault lies with the following driver in a rear-end collision. The Court wrote:

7 Wright v. Mistry, 2017 BCSC 239, 2017 CarswellBC 393 https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc239/2017bcsc239.html?resultIndex=1

8 Skinner v. Guo, 2010 BCCA 321 (B.C. C.A.), https://nextcanada.westlaw.com/Link/Document/FullText?findType=Y&pubNum=6407&serNum=2022399657&originationContext=document&transitionType=DocumentItem&vr=3.0&rs=cblt1.0&contextData=(sc.AbridgmentDigest)



> **[23] This is not to say that there is anything wrong with the generally accepted rule that following drivers will usually be at fault for failing to avoid a collision with a vehicle that has stopped quickly in front (*Ayers v. Singh* (1997), 85 B.C.A.C. 307, [1997] B.C.J. No. 350)[9]. Normally a sudden stop does not create an unreasonable risk of harm.This accords with common sense. It is, of course, open to the defendant, once the court has drawn an inference of liability based on the rear-end collision, to offer an explanation of how the accident could have come about without his negligence** [emphasis added] (para 16).

Choi J held that the evidence overwhelmingly showed that the defendant was liable for the accident. The only plausible explanation was that the defendant was either following too closely or not paying attention as the parties approached the intersection. The defendant was held fully liable for the accident.

In *Dubitz v. Knoebel*,[10] the plaintiff was injured in a motor vehicle accident when she was rear-ended by the defendant and brought an action in negligence. The accident occurred in relatively heavy traffic. The plaintiff was driving at highway speed when the vehicle in front of her stopped suddenly. The plaintiff slammed on her brakes and came to a full stop, leaving some space between her and the vehicle in front of her. The defendant ran into the rear end of her vehicle. The defendant denied liability; he said the accident happened when traffic stopped unexpectedly, requiring emergency braking. With respect to liability for a rear-end motor vehicle accident, Marchand J held:

> The case law is clear that:
>
> 1. The driver of a rear-ending vehicle is generally at fault, and the onus shifts to that driver to prove otherwise: *Robbie v. King*, 2003 BCSC 1553 (B.C. S.C.) at para. 13; *Cue v. Breitkreuz*, 2010 BCSC 617 (B.C. S.C.) at para. 15.
>
> 2. The driver of a following vehicle must leave enough space to stop safely in the event of a sudden or unexpected stop by the vehicles ahead: *Pryndik v. Manju*, 2001 BCSC 502 (B.C. S.C.) at para. 21; Cue at para. 15.
>
> 3. When a driver encounters unexpected and unforeseeable conditions, negligence cannot be presumed on the part of a driver who rear-ends another vehicle: *Vo v. Michl*, 2012 BCSC 1417 (B.C. S.C.) at para. 14 (para 242).

The defendant admitted that traffic was flowing normally. Marchand J held that the defendant was entirely at fault for the accident:

> **The accident occurred on a main thoroughfare during rush hour traffic. Reasonable drivers know that traffic can**

9 Ayers v. Singh,1997 85 B.C.A.C. 307, [1997] B.C.J. No. 350). https://nextcanada.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997407102&pubNum=0006698&originatingDoc=I48ee703371fe5bfee0540021280d79ee&refType=IC&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.AbridgmentDigest)

10 Dubitz v. Knoebel, 2019 BCSC 1706, 2019 CarswellBC 2923 https://www.canlii.org/en/bc/bcsc/doc/2019/2019bcsc1706/2019bcsc1706.html?resultIndex=1

> **unexpectedly back up and even stop in such conditions, regardless of the distance from upcoming intersections. Mr. Knoebel had a duty to leave sufficient distance between his vehicle and Ms. Dubitz's vehicle to be able to come to a safe stop for this precise reason.**
>
> **Ms. Dubitz was able to come to a safe, albeit screeching, stop when the vehicle in front of her stopped unexpectedly. Had Mr. Knoebel kept a safe distance and been paying attention, he would have been able to do likewise** [emphasis added] (paras 245-246).

Marchand J held that this was a run of the mill rear-end accident where the defendant was either following too closely or not paying enough attention or both.

Contributory Negligence

Cases where the driver who is struck from behind may bear a proportion of liability typically involve some out-of-the-ordinary behaviour by that driver that the following driver reasonably would not have anticipated.

For example, in *Rushton v. Hofer,*[11] the plaintiff was the driver following the defendant; it was the defendant's vehicle that was hit from behind by the plaintiff. The evidence was that the accident took place on a cold, snowy evening very late at night. Wilson J apportioned blame 75 percent to the defendants (who were in the vehicle that was struck) and 25 percent to the plaintiff (who rear ended the defendants). The accident took place on a curve. Based on the road and lighting conditions at the time, the defendant's taillights were not visible to the following plaintiff. The defendant took a risk in stopping on the road where he did. Wilson J held that the defendant was therefore negligent and the main cause of the accident. However, Wilson J held that the plaintiff was partly to blame for the accident:

> **He is the following driver, so there is an evidentiary burden on him to show that he is not the cause of the collision. In my opinion he was a contributing cause.** When Hofer passed him, entering upon this more narrow roadway, Rushton had knowledge from the radio and from observation that Hofer was hard to see from behind. He then knew that Hofer was immediately in front of him. He knew the road and weather conditions. He did not check his speed as he entered this narrow part and apparently, from his evidence, he could not check his speed once he saw where Hofer was. I have no evidence that he put on his high beam, although in the circumstances that may not have helped him. He should have been aware that Hofer was a hazard reasonably close in front of him. He must have been driving too fast for the light conditions available to him that night; in other words, overdriving his lights [emphasis added] (para. 26).

Wilson J further held:

> **I hold that it is a breach of duty for a following driver to drive at a speed that makes it difficult or impossible for him to stop when a hazard unexpectedly appears on the road in front of him. That would normally visit high liability on the following driver** [emphasis added] (para. 28).

11 Rushton v. Hofer, 1998 ABQB 1010, 235 AR 321
https://www.canlii.org/en/ab/abqb/doc/1998/1998abqb1010/1998abqb1010.html?resultIndex=1

In *Solbach v Siebert,*[12] Siebert was travelling south on Deerfoot when his wristwatch fell off. He stopped the car in the travelling lane to pick it up and was struck from behind by the vehicle in which the plaintiff Solbach was a passenger. The trial judge found that the stopping was unexpected and a contributing factor to the accident:

> I am satisfied that the defendant, Siebert's action in stopping his vehicle on the outside lane of the highway without making any effort to pull over to the shoulder, when there was ample opportunity to do so, and stopping on a travel portion of the highway **where oncoming traffic would not expect a vehicle to be stopped, constituted negligence on his part.** […] the stopping of Siebert's vehicle in the travelling portion of the highway was a deliberate act and not an unintentional result from other causes. **I further distinguish this case from the cases where an oncoming vehicle collides with a vehicle albeit on the travel portion of the highway but which has been stationary for some time and in plain view of the oncoming vehicle**. Accordingly, I find that the defendant, Siebert, was guilty of negligent conduct which caused or contributed to the accident which ensued. [emphasis added] (para 11)

Siebert was held 20% liable for the accident. The following driver, however, remained 80% liable:

> […] I am satisfied that the actions of the defendant, Abrahamson, **in driving his vehicle driving his vehicle directly into the rear of a stationary vehicle on the highway,** without any attempt of an evasion, when there was ample opportunity to do so, coupled with the fact that the evidence establishes that **warning of the slowing and stopping of Siebert's vehicle would have been given to the defendant […] by the brake lights** on the defendant, Siebert's vehicle, **constituted a very marked departure from the standards by which responsible and competent people in charge of motor cars habitually govern themselves**. Accordingly, I find on the evidence before me that the defendant, Abrahamson's course of conduct in driving his motor vehicle at the time of the accident constituted gross negligence which caused or contributed to the accident which ensued. [emphasis added] (at para 17)

As these cases illustrate, the onus in all cases remains on the following driver to demonstrate that liability for a rear-end collision should not rest entirely on his/her shoulders. In the absence of some unusual or unexpected behaviour by the other driver, the presumption of liability may be difficult to displace.

12 Solbach v Siebert (1990), 101 AR 201, [1989] AJ No 1189 https://www.canlii.org/en/ab/abqb/doc/1989/1989canlii3295/1989canlii3295.html?autocompleteStr=solbach&autocompletePos=1