

# Too close for comfort: Motion to strike bystander's claim fails

10 novembre 2023

In [Bustin v. Quaranto, 2023 ONSC 5732](#), the Court denied a defendant's motion to strike a bystander's claim that they suffered physical and mental injuries after witnessing a double-fatality motor vehicle collision. The Plaintiff was not involved in the collision and did not have any relationship with the victims, however, the Court found that their physical proximity was enough to succeed against the motion to strike.

## Facts

The incident arose out of a fatal motor vehicle collision that occurred on King Vaughan Road in Vaughan, Ontario. The Defendant, who was alone, was driving one of the vehicles while the second vehicle had two occupants, who were both killed in the collision. The Plaintiff was not directly involved in the collision, rather he witnessed the collision from a near-by property.

The Plaintiff sued the Defendant alleging that, "as a result of witnessing the double-fatality motor vehicle collision, he suffered physical and mental injuries akin to or notionally equivalent to being struck by the Defendant's vehicle in the collision."

The Defendant pleaded that he did not owe a duty of care to the Plaintiff and that any injuries suffered by the Plaintiff were not foreseeable. The Defendant then brought a motion to strike the Plaintiff's statement of claim for disclosing no reasonable cause of action under Rule 21.01(1)(b) of the Rules of Civil Procedure.

## Law on a motion to strike

Rule 21.01(1) and (2) provides that a party may move before a judge to strike out a pleading on the ground that it discloses no reasonable cause of action or defence. Notably, the motion is decided on the face of the pleadings alone with the facts pleaded in the statement of claim assumed to be true unless they are manifest incapable of being proven.

The burden on the moving party on a motion to strike is a stringent one. The court will only strike a claim under Rule 21.01(1)(b) if it is "plain and obvious" that the claim has no

reasonable prospect of success. Novel claims present a particular challenge on a motion to strike. It is not determinative that the law has not yet recognized the claim. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.

## Analysis of the plaintiff 's claim

To succeed, a negligence claim requires proof of a duty of care, a breach of the standard of care, compensable damage, and causation. In this case, the Court was satisfied that the Plaintiff had an arguable basis to claim that the Defendant owed him a **duty of care**. **Canadian jurisprudence has recognized the case of Alcock v. Chief Constable of Yorkshire Police, [1991] UKHL 5 in which United Kingdom House of Lords** found a duty of care towards bystanders and others physically present at an accident who suffer nervous shock. While the Court in Alcock acknowledged the case of a bystander unrelated to the victims of an accident may be a difficult one, there is a reasonable foreseeability that bystanders may suffer psychiatric injury when there is particularly horrific catastrophe occurring in close proximity. In the statement of claim the Plaintiff alleged that he was close enough to see and hear the fatal collision as it occurred. This brought the Plaintiff within the physical proximity recognized in Alcock. **While the Plaintiff's claim was relatively novel, the Court recognized that a trial may be** needed to properly consider the duty and its application to the Plaintiff in the circumstances. As such, the Court concluded that it was neither plain nor obvious that **the Plaintiff's claim had no reasonable prospect of success or was otherwise certain to fail.**

## Considerations for other cases

The Bustin decision is a reminder to not to be too quick to dismiss the viability of an **unrelated bystander's claim**. **The acknowledgement, even at the stage of a motion to strike,** that bystanders may be able to claim damages for incidents they have witnessed expands the potential range of liability for all parties. There are numerous circumstances, beyond just motor vehicle collisions, that may rise to the level of severity to trigger a potential duty of care to a bystander. While each bystander claim will have to be considered on its particular facts, the acknowledgment of such a duty creates more expansive liability exposure for any such public incident.

**Par**

[Sarah Sweet, Jonathan Thoburn](#)

**Services**

[Contestation de réclamations d'assurance](#)

## BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

[blg.com](http://blg.com)

### Bureaux BLG

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000, rue De La Gauchetière Ouest  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir sopesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à [desabonnement@blg.com](mailto:desabonnement@blg.com) ou en modifiant vos préférences d'abonnement dans [blg.com/fr/about-us/subscribe](http://blg.com/fr/about-us/subscribe). Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à [communications@blg.com](mailto:communications@blg.com). Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur [blg.com/fr/ProtectionDesRenseignementsPersonnels](http://blg.com/fr/ProtectionDesRenseignementsPersonnels).

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.