

## Municipality found 20% responsible for collision where public transit bus had right of way

February 08, 2016

On January 26, 2016, Madame Justice Rocco released her reasons for judgment in [Gardiner v. MacDonald, 2016 ONSC 602](#).

The case arose from a collision between a public transit bus and an SUV in an intersection. The collision resulted in the death of three of the SUV's occupants including its operator. The operator of the SUV had been drinking and entered the intersection on a red light. The bus entered the intersection on a green light just moments later and struck the SUV from the side. The case proceeded to trial solely on the degree, if any, to which the bus operator and the municipality were liable for the accident.

Upon considering the evidence of the bus operator and a number of accident-reconstruction experts, the court made the following findings of fact:

1. The bus operator was likely speeding just before he entered the intersection;
2. A lower rate of speed would have given the bus operator time to evade the SUV;
3. The prevailing weather conditions decreased the ability to avoid a collision; and
4. The bus operator looked away from the road as he approached and entered the intersection.

Justice Rocco concluded that the bus operator had been negligent in his operation of the bus and apportioned 20% of the liability for the accident to the municipality. In doing so, the court laid out the following principles:

1. Speeding does not, in itself, constitute negligence as the question of whether a vehicle's speed is reasonable turns on the factual circumstances, including the traffic and road conditions.
2. Although drivers may assume that other drivers will obey the applicable traffic signs and signals, drivers with the right of way must still exercise proper care and determine whether it is safe to proceed.
3. Professional drivers may be held to a higher standard of care than the general public which, in the case of bus drivers, is that of a "reasonable bus driver in like circumstances."

Justice Roccamo concluded that the bus operator had been travelling in excess of the speed limit along its route, despite poor weather and road conditions. As a result, although the bus operator had the right of way upon entering the intersection, his speed was unreasonable in the circumstances as it prevented him from recognizing and reacting to the hazard posed by the SUV.

**This case affirms that liability in motor-vehicle accidents occurring in intersections is rarely clear-cut, even in cases where the right of way is undisputed. In apportioning liability for an accident, the court will assess the reasonableness of each drivers' actions in all the circumstances.**

As a final note, this case is of particular importance to municipalities operating public transit services. The court's finding that the bus operator was a professional driver means that they will be held to a higher standard of care than ordinary drivers in similar situations.

By

[David Elman](#), [Jeremy Ablaza](#)

Expertise

[Insurance Claim Defence](#), [Public Law Litigation](#), [Government & Public Sector](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

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

### **BLG Offices**

#### **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 De La Gauchetière Street West  
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

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.