



Assignment 1 - LGST 369

Commercial Law (Athabasca University)



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Tort Law

Case: Bus crash survivor alleges negligence in \$6M lawsuit

<https://www.cbc.ca/news/canada/ottawa/lawsuit-bus-crash-injuries-1.5003728>

- **Plaintiff:** Gwen Lambert and other 20 injured passengers (this is what it's considered to open "floodgates")
- **Defendants:** The City of Ottawa, Province of Ontario and OC Transpo
- **Relationship of the parties:** The plaintiff is client of the defendants just like the rest of the commuters who purchase their bus pass monthly.

DUTY OF CARE

- Aissatou Diallo had was involved in another collision months prior to this accident, thus OC Transpo should have considered offering Diallo to either drive a smaller vehicle or a desk job in their offices, thus there is duty of care by OC Transpo.
- There is duty of care by the Province of Ontario and OC Transpo, since they should have known those type of accidents can occur on the road, especially if driving such a big bus, thus the defendants should have provided appropriate training to the driver plus constant review to make sure their drivers meet the appropriate requirements to drive this type of vehicle, also they should have provided any other resources that could mitigate any damages to the plaintiff.
- Any bus driver knows there's risks of accidents when carrying several passengers in a large vehicle since it's easier to lose control of it than in smaller vehicles.
- In this case, the plaintiffs have no options to mitigate or eliminate risk of any kind since she was in a bus with no options to escape, thus it can't be said there was no duty of care by the plaintiffs. The plaintiffs could have also been more aware while taking her ride on that bus in order to prevent any unexpected event from happening.

REASONABLE FORESEEABILITY

- Car accidents are foreseeable, mostly while driving big vehicles such as the OC Transpo bus, so The Province of Ontario, the driver and OC Transpo were able to foresee these types of accidents by placing security ads on the buses that warn people of potential risks and urge them to pay more attention during their ride.
- On the plaintiffs' side, she could have probably foreseen the potential accidents but because of the accident nature, she would not have still failed to avoid sitting on the spot where most of the damage occurred, she would simply have decided

not to take the bus but it's not reasonable for someone who probably doesn't have a car or a ride to go to places she needs to be.

PROXIMITY

- There's commercial proximity in this case since the plaintiffs would buy bus passes and the City of Ottawa would offer transportation service through the OC Transpo contractor
- Reliance proximity could also be identified in this case as the plaintiffs have been probably taking the bus every day for a while now, they had never had any accidents in this type of vehicle in the past and they relied on the unit and the driver to think nothing would happen if executing that everyday activity.

STANDARD OF CARE

- On a recent tort case in Ontario, the recent decision of the Ontario Court of Appeal in *Gardiner et al. v. MacDonald et al. ("Gardiner")*[1] upheld the lower court's decision which found, in part, that the standard of care for a "professional" driver is different than that of the average motorist when assessing liability in a motor vehicle accident case. (source <https://www.beardwinter.com/news/post/different-standard-care-professional-drivers/>). In that case the court decided that the defendant was obligated to meet a higher standard of care because he was driving a commercial vehicle. That standard of care should apply to this case as well, which also, occurred in Ontario.
- Considering car accidents can be avoided by both parties or at least one, there's a standard of care by the driver. Diallo was supposed to handle a higher standard of care as a driver of a larger commercial motor vehicle, it would also be necessary to do a check the internal requirements by OC Transpo or The City of Ottawa while hiring and giving commercial licenses to their drivers.

CAUSATION

- After a **but-for test**, we can conclude that there can be causation for the damages since on one side we can say that if the driver had been more careful and probably foresee a potential accident, then maybe the plaintiff(s) might have not suffered any loss. But on the other hand, maybe there was not just one cause of damages, but also external factors like weather, conditions of the road or lack of visibility.
- Now, on the OC Transpo side, there is causation because (having antecedents of Diallo's driving record) they could have avoided this accident and the damages

that the plaintiff(s) had if they had given Diallo another position that did not involve driving public transport. Adding seatbelts would not have avoided the accident to happen, the issue was that the bus crashed with that overhang, wearing a seatbelt would have kept the passengers in their seats anyways and they would have experienced the same damages.

POSSIBLE DEFENCES

- **For the City of Ottawa:**
 - The defendant can reduce damages by claiming negligence since OC Transpo might be liable for not training their drivers, making sure their units are well maintained and implement sufficient actions to manage any foreseeable risks that could help reducing liability.
 - The City of Ottawa is providing transportation service through the company OC Transpo, which can be considered as shifting of risk, but also OC Transpo could claim contributory negligence by the City of Ottawa since they could have demanded proof or a declaration from OC Transpo that all drivers have
 - OC Transpo should have included seatbelts in every unit and mostly important make sure the drivers are fully trained, fit and that they're capable of safely driving a bus.
- **For OC Transpo:**
 - OC transpo can claim contributory negligence since the Province of Ontario and the City of Ottawa hired their services in order to perform public transportation duties in that city and province without requesting seatbelts for each seat in the bus.
 - Since the moment the user enters the bus, they're in voluntary assumption that large motor vehicle accidents happen even when drivers don't act carelessly or don't break the standard of care for their profession.
- **For Aissatou Diallo:** The defendant can claim vicarious liability since he works for OC Transpo company who is the transportation service provider involved in the accident.

Police said that impaired driving was ruled on Dallio, I would probably consider that as an injunction imposed by law for Dallio to not to continue performing that activity in order to avoid accidents like this one from happening in the future.

Other than Lamber, other potential plaintiffs could be the other 22 people injured during the accident. Some of them are suing the Province of Ontario and OC Transpo as well because of negligence.