

**CITATION:** Fabrizi v Chu., 2021 ONSC 2600  
**COURT FILE NO.:** CV-13-475467-00A1  
**DATE:** 20210412

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
)  
TATE MORAN ) No one appearing for the plaintiff  
Plaintiff )  
)  
- and - )  
)  
OTTAVIO FABRIZI, ELAINE ) *David Zarek and Natasha Skupsky,*  
INGLESON, AND ROBERTA BERIAULT ) lawyers for the defendant Ottavio  
Fabrizi  
Defendant )  
)  
- and - )  
)  
DENNIS G. K. CHU and JOHN DOE ) *Todd McCarthy,* lawyer for the  
Third Parties ) third party Dennis G.K. Chu  
)  
)

**HEARD: March 30-31, 2021**

**REASONS FOR DECISION**

**DIAMOND J.:**

Overview

[1] A motor vehicle accident occurred on October 9, 2008 at the intersection of Rathburn Road and Perivale Road in the city of Mississauga, Ontario.

[2] The plaintiff, who was a minor at the time of the accident, was a passenger that day in a vehicle (“the minivan”) owned by his mother (the defendant Roberta Beriault) and driven on the date of the accident by his grandmother, the defendant Elaine Ingleson (“Ingleson”).

[3] A vehicle (“the Buick”) driven by the defendant Ottavio Fabrizi (“Fabrizi”) struck the minivan causing the plaintiff to suffer various injuries. After being sued by the plaintiff, Fabrizi commenced a third party action against Dennis G.K. Chu (“Chu”) for contribution

and indemnity, alleging that Chu's negligent operation of his vehicle ("the Nissan") caused the motor vehicle accident between the minivan and the Buick.

[4] The main action settled. The plaintiff was paid the all-inclusive sum of \$220,000.00 as a term of the settlement. None of the parties to the third party action take any issue with the reasonableness of the settlement amount.

[5] The trial of the third party action proceeded before me on March 30-31, 2021. I heard *viva voce* evidence from Fabrizi, Danielle Scire ("Scire", Fabrizi's girlfriend at the time of the accident), Chu and Christopher DeMaria ("DeMaria", an independent third party witness). I also received evidence by way of read-ins from the examinations for discovery of Fabrizi and Ingleson.

[6] At the conclusion of the trial, I took my decision under reserve. These are my Reasons.

#### The Trial Evidence

[7] As I will address later in these Reasons, each of the trial witnesses gave different accounts of the accident, with the versions offered by Fabrizi/Scire and Chu being the most divergent.

#### *Danielle Scire*

[8] Scire testified that she and Fabrizi had been dating since April 2007. On the date of the accident, Scire was approximately 18 years old. Fabrizi was driving the Buick, which was owned by his father. Scire was in the passenger seat. They were on their way back to Fabrizi's home from the grocery store.

[9] They were travelling northbound on Perivale Road, a two lane residential street. Approximately two stops signs before Perivale Road met up with Rathburn Road (a four lane street), Chu was driving the Nissan in front of them very slowly. According to Scire, she could see Chu talking on his cell phone while driving. She told Fabrizi that he should pass the Nissan. Fabrizi did, and went around the left side of the Nissan.

[10] Scire testified that after passing the Nissan, she turned around and saw Chu drive the Nissan through a stop sign, swerving his car and approaching the Buick. Chu appeared extremely angry, and then sped up to drive around the Buick and "block them in" where Perivale Road met up with Rathburn Road. Chu exited the vehicle, "hands flailing". Chu's vehicle was stopped diagonally straddling the Perivale Road left turn lane and the curb lane where the Buick was "pinned in".

[11] Scire says that she and Fabrizi locked the doors and windows. Chu took off his sweater and was wearing a "wife beater" tank top. He was swearing, yelling, and punching and hitting the Buick.

[12] According to Scire, Fabrizi eventually reversed the Buick, and “escaped” by driving around the left side of the diagonally parked Nissan.

[13] Fabrizi tried to turn right onto Rathburn, but unfortunately struck the passenger side of the minivan. Scire gave evidence that Chu laughed at them after the accident occurred, and then drove off in the Nissan.

[14] Scire and Fabrizi are no longer common-law partners, although they have a child together. They lived in a common-law relationship for approximately nine years, and Scire admitted having discussed the incident with Fabrizi on several occasions during that period.

*Ottavio Fabrizi*

[15] To begin, Fabrizi gave his testimony in a very agitated, defensive and sometimes adversarial manner. Fabrizi advised that he has unfortunately suffered from recreational drug addiction issues for several years, and has relapsed on a few occasions. While he was not under the influence of any recreational drugs during the trial, he did admit that he was using recreational drugs at the time he was examined for discovery (2015), and he suffered from and continues to experience both long and short term memory problems. Fabrizi was adamant that his evidence was truthful, both at discovery and at trial, but he was unable to recall certain incidents during his trial testimony.

[16] According to Fabrizi, on October 9, 2008 he was driving the Buick with Scire in the passenger seat. He had not ingested any alcohol, drugs or other medication that day. He believed that Chu was on the phone when driving the Nissan in front of them, and he wanted to get around Chu as he was only driving approximately 20 km/h in a 40 km/h zone.

[17] After passing the Nissan, Fabrizi saw Chu in his rearview mirror “tailing him”. Chu then drove to the left of the Buick and blocked in the Buick at the corner of Perivale Road and Rathburn Road, preventing Fabrizi from making his right turn onto Rathburn Road. Chu left his vehicle, and was screaming and hitting the Buick. Fabrizi did not exit his vehicle because “Chu appeared insane”.

[18] Fabrizi described Chu as a stocky and muscular individual. Fabrizi felt threatened and was quite scared for his and Scire’s safety after Chu exited the vehicle and started swearing and hitting the Buick.

[19] Fabrizi reversed the Buick, and drove around the left side of the Nissan, ending up on the outside of the Perivale Road left turn lane but seeking to turn right onto Rathburn Road. As he entered Rathburn Road, he hit the minivan.

[20] At discovery, Fabrizi’s evidence seemed to state that his vehicle was actually stopped while attempting to make that right onto Rathburn Road when he felt a “nudge”. More importantly he did not recall whether he moved his vehicle once Chu blocked him in. Fabrizi also did not recall how he “pulled out” his vehicle after being blocked in by Chu (the words

“pulled out” were used in the motor vehicle accident report prepared by the attending police officers).

[21] Of note, according to the motor vehicle accident report, the accident took place in the Rathburn Road left passing lane, and at the eastern point of the intersection (i.e. after the minivan almost made it through the Perivale Road intersection).

*Christopher DeMaria*

[22] At the time of the accident, DeMaria was employed by Waste Management as a road supervisor. On October 9, 2008, he was driving a Waste Management pick up truck on Perivale Road together with a co-employee.

[23] According to DeMaria, he saw two black cars speed by him on Perivale Road south of (ie. before) Rathburn Road. The Buick was out in front of the Nissan, with the Nissan catching up to the Buick. While he wasn't entirely sure, DeMaria estimates that his truck was approximately 50-200 yards behind the two vehicles.

[24] DeMaria recalled seeing Chu out of his vehicle yelling at the people in the Buick, threatening violence and hitting the Buick. According to DeMaria, the Nissan tried to “block the Buick in”.

[25] In his statement given to police, (upon which DeMaria relied during his testimony given the passage of time since the date of the accident), DeMaria wrote the following:

“They pulled up to a red light at Rathburn. The person in the black Nissan got out of the vehicle and started yelling at the people in the Buick. He was also hitting the window of the Buick, and threatening them with violence. The Buick pulled out to try and get away. The Nissan pulled out and tried to cut off and blocked the Buick in. The Buick then tried to pull away from the person in the Nissan, who was out of the vehicle again.”

[26] After the Buick made contact with the minivan “travelling eastbound on Rathburn Road”, Chu drove away.

[27] In cross-examination, DeMaria seemed to recall two separate incidents of Chu exiting the Nissan. In other words, Chu may have exited his vehicle to start yelling and screaming at the Buick, then went back to his vehicle and subsequently drove to position the Nissan to block the Buick in against the curb lane on Perivale Road. Chu exited the vehicle a second time to continue berating Fabrizi and Scire.

[28] It is unclear from DeMaria's evidence whether Fabrizi reversed his vehicle to drive all the way around the left side of the Nissan. DeMaria's statement states that the Buick “tried to pull away from” the Nissan. DeMaria could not recall how the Buick eventually

“escaped” from being blocked in (i.e. whether Fabrizi simply drove straight to make a right on Rathburn Road, or reverse to pull around the Nissan).

*Elaine Ingleson*

[29] As stated, Ingleson did not testify at trial. Both parties relied upon her discovery evidence, which I have reviewed.

[30] The “highlights” of Ingleson’s discovery evidence are as follows:

- As she was driving through the intersection, she slowed down because the Buick was stopped in the curb lane in the intersection. She wondered whether the vehicle had stalled.
- She recalls a man standing outside the “big black Sedan” (i.e. the Buick).
- She saw a grey pickup truck parked on Rathburn Road to the right of the intersection around the corner from where the Buick was stopped.
- When she slowly drove through the intersection (after the light turned green), she recalls the Buick blocking the curb lane going eastward. She saw the man driving the Buick talking, possibly to the man standing outside the Buick.
- She slowly accelerated through the intersection when she felt a big bang that pushed her minivan sideways. Her minivan was pushed into the westbound left turn lane (she was travelling eastbound).
- The rear of her minivan was still in the intersection, but the front of the minivan had pass through the intersection.
- People walked around outside after the accident, but no one came to her or the plaintiff’s aid. They sat in the van for some time before any ambulance or police arrived.
- The black sedan (ie. the Buick) was located on Rathburn Road in the curb lane facing north on Perivale Road, but it was on Rathburn Road.
- The Buick was inside the intersection but had not made any turn. The full car was facing north.
- The front end of the Buick was completely blocking the Rathburn Road eastbound curb lane. The black sedan was at the eastbound curb of Rathburn Road just past the corner of Perivale Road.

*George Chu*

[31] Chu gave a much different account of the events leading up to the accident.

[32] At the time of the accident, Chu resided with his parents in a house on Perivale Road near Rathburn Road. He was employed as a flight attendant with Air Canada. He was heading home to get ready for work on the day of the accident, and not running late.

[33] According to Chu, there was a garbage truck stopped in the curb lane on Perivale Road which he was passing to the left. He noticed the Buick “zoom by him” on the left side, and as a result a young boy riding his bicycle southbound on Perivale Road (ie towards the two cars) fell off his bike onto the road.

[34] Chu was upset with the driver of the Buick, and sped up next to the car at the stop light at Rathburn Road. The Buick was stopped in the curb lane on Perivale Road, when Chu pulled up next to him in the left turn lane. He rolled down his window to tell Fabrizi that he was “driving crazy”.

[35] Chu says that he told Fabrizi that he should not leave because he could kill someone. Fabrizi then swore back at Chu and spit in his face. As the Buick drove away, Chu admitted to being out of the car and hitting the top of the Buick. Fabrizi drove straight onto Rathburn Road and hit the minivan.

[36] Chu then drove away after the accident, a decision which he regrets. He did not want to miss work. This evidence was confusing, as his home was merely three houses south of where the accident occurred.

[37] Of note, each of Scire, Fabrizi and DeMaria did not recall any child riding a bicycle, or the presence of a garbage truck, on Perivale Road. Both Fabrizi and Scire deny any spitting incident as well.

[38] Chu admitted to driving relatively slowly before the Buick passed him, but that was likely due to him passing the garbage truck at the same time. Chu never stopped to see if the child who allegedly fell off his bike was injured. He chased the Buick down instead.

[39] Chu admitted being very agitated when he exited his vehicle to scream and yell at Fabrizi. He admits stopping his car in the left turn lane, but denies blocking the Buick in as Fabrizi simply drove straight into the intersection when the accident occurred.

[40] Chu testified that he left the accident because he was worried that someone would have blamed him for having caused the accident. He did not stay to see if anyone was hurt.

[41] After he left, Chu may have performed some errands before heading to work.

Assessment of Credibility

[42] As the trier of fact, I am charged with determining the truth. On occasion, that task can be rendered unenviably difficult when both sides of a dispute are motivated to offer evidence designed to “fit” within a specific theory of the case.

[43] In *Prodigy Graphics Group Inc. v. Fitz-Andrews* 2000 CarswellOnt 1178 (S.C.J.) Justice Cameron offered a non-exhaustive list of traditional criteria by which the evidence of each witness, and, where appropriate, the exhibits presented at trial, ought to be assessed:

- i) Lack of testimonial qualification
- ii) Demeanour of Witness: apparent honesty, forthrightness, openness, spontaneity, firm memory, accuracy, evasiveness
- iii) Bias/Interest in the Outcome (if a party, motive)
- iv) Relationship/Hostility to a party
- v) Inherent probability in the circumstances i.e. in the context of the other evidence, does it have an "air of reality"
- vi) Internal consistency i.e. with other parts of this witness' evidence at trial and on prior occasions
- vii) External consistency i.e. with other credible witnesses and documents
- viii) Factors applicable to written evidence:
  - (a) Presence or absence of details supporting conclusory assertions
  - (b) Artful drafting which shields equivocation
  - (c) Use of language in an affidavit which is inappropriate to the particular witness
  - (d) Indications that the deponent has not read the affidavit
  - (e) Affidavits which lack the best evidence available
  - (f) Lack of precision and factual errors
  - (g) Omission of significant facts which should be addressed, and
  - (h) Disguised hearsay

[44] The assessment of the credibility of witnesses is especially important when bearing in mind the onus of proof. As the trial judge, I must decide whether a specific proposition of fact has or has not been established on a balance of probabilities by the party having the onus of proof. For a party to seek to discharge its legal onus of proof, I must first be satisfied with the credibility and reliability of the evidence in order to be in a position to make the relevant findings of fact.

[45] Put another way, a moving party has the onus of factual proof of the evidence necessary to satisfy its legal burden. As stated by Justice Stinson in *Zesta Engineering Ltd. v. Cloutier* 2010 ONSC 5810 (S.C.J.) (CanLII):

“In certain instances it is simply not possible to reconcile some aspects of the evidence that was presented by the witnesses at this trial. In part, I liken the situation to attempting to assemble several old jig-saw puzzles whose various parts have sat, co-mingled, in the bottom of an actively-used desk drawer for a decade: some pieces are missing, some are undecipherable, some have changed over time and no longer fit together, and some are not what they seem to be, all due to the passage of time and intervening events. In this case my task is to use the pieces of evidence to re-create as clear a picture of past events as I can give the foregoing limitations, applying the "real test of...truth" as described above, drawing inferences where appropriate, and applying the rules of burden and standard of proof, as required.”

[46] In evaluating the credibility or reliability of evidence, I look to a number of interrelated factors such as its probability, logical connection with other findings and support from independent facts or documents. As held by Justice Brown (as he then was) in *Atlantic Financial Corp. v. Henderson et al.*, [2007] CanLII 15230 (S.C.J.):

“In deciding between these two diametrically opposed positions, I am guided by the observations made about assessing the credibility of witnesses by O’Halloran, J.A. in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) where he stated, at page 357:”

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”



What Happened on October 9, 2008?

[47] As previously stated, there are inherent problems with the reliability of Fabrizi's evidence. While he was generally consistent with the account given by Scire, he was evasive and argumentative at times, expressing significant frustration with having to relive and recreate the accident, and continue to participate in this litigation generally.

[48] I found Scire to be both credible and reliable. While she shares a child with Fabrizi, there are no longer in a common-law relationship and, as such, Scire has "no skin in this game".

[49] I also found DeMaria to be credible and reliable, although he understandably needed to rely upon the contents of his written statement throughout his testimony.

[50] The one major difficulty I had with the version of events put forth by Fabrizi was Scire's insistence (with which Fabrizi generally agreed) that Fabrizi reversed the Buick in order to escape being pinned against the curb lane by the Nissan. According to Ingleson and the motor vehicle accident report, the accident occurred after the minivan had travelled through the intersection, and the front of the Nissan hit the passenger side of the minivan.

[51] If the Buick reversed to get around the Nissan, it would have travelled at least one and a half, and likely two, full car lengths to enter Rathburn Road in the middle, if not western part, of that intersection. If this was so, the accident would have not occurred where it did. As a result, I have doubts whether Fabrizi reversed his vehicle at all. As the accident took place after Ingleson drove her minivan through the intersection, and the front of the Buick hit the passenger side of the minivan, it is more likely that the Buick was not pinned against the curb on Perivale Road, and simply drove forward to escape Chu's verbal threats. This seems to be confirmed by both Ingleson, (although she was not paying close attention) and DeMaria, who did not mention, in either his written statement or at trial, the Buick reversing to get around the left side of the Nissan.

[52] I also have concerns with the credibility and reliability of Chu's evidence. Nobody else saw a child fall off his bike, and nobody else saw a garbage truck stopped in the curb lane on Perivale Road. If Chu was allegedly motivated by Fabrizi's careless driving (which caused the child to allegedly fall off his bike), and Chu then witnessed Fabrizi hit the minivan within minutes of that bicycle incident, why would Chu drive away and refuse to assist the people in the minivan and talk to the police? If Chu was motivated to ensure that Fabrizi was stopped from driving recklessly, the reasonable and expected course of action would have been for Chu to speak to the police and give his account of what allegedly happened.

[53] Chu testified that he was on his way home. He actually passed his home on Perivale Road to approach the Buick. When the accident occurred, Chu did not go home, even though his home was essentially right there. Chu instead explained that he may have gone to “run some errands”. This is not conduct consistent with the version of events offered by Chu at trial, and is more likely evidence of Chu avoiding the police due to a concern that he may have been charged or blamed for causing the accident – something which Chu in fact partially admitted during cross-examination.

### Decision

[54] The third party claim seeks contribution and indemnity from Chu on the basis that the accident was caused entirely, or in part, by Chu’s negligence, breach of duty, or perhaps some other tortious conduct. Fabrizi argues that Chu’s negligence is clear given that his conduct created a risk of injury to other users of the road, and the loss suffered was both within the ambit of that risk and foreseeable in the circumstances. By obstructing Perivale Road, Chu set forward a chain of events that ultimately led to the plaintiff’s injuries.

[55] There is no doubt that some form of “road rage” occurred on October 9, 2008. On the totality of the evidence, I reject Chu’s version of events insofar as his reasons for chasing after the Nissan. I do not accept that Chu witnessed a child falling off his bike as a result of Fabrizi passing the Nissan. In fact, if Chu’s version of events is to be believed, the Nissan passed the Buick which was passing the garbage truck at the same time. There was likely little, if any, room for all three vehicles to occupy Perivale Road (as a two lane residential street), let alone room for a bicycle as well. The more likely version of events is that Chu was upset with Fabrizi having passed him, and drove to catch up to the Buick with a view to berating Fabrizi for his actions.

[56] As stated above, while I find that Fabrizi and Scire were the victims of Chu’s road rage, I cannot accept that Chu’s Nissan in fact pinned Fabrizi’s Buick in the curb lane. While the Court does not carry on business in the field of accident reconstruction, the location of the accident is inconsistent with Fabrizi being forced to reverse his Buick and ultimately enter Rathburn Road approximately two car lengths to the left of the curb lane. I find that while Chu likely stopped his Nissan very close to the Buick, and perhaps diagonally and not straight, Fabrizi was not pinned in and simply drove forward and ultimately struck the minivan.

[57] I agree with Fabrizi that threats of physical violence amount to intentional tortious conduct. There is ample evidence in the record before the Court to find that Chu verbally assaulted Fabrizi and threatened him with violence. Scire gave evidence that she was “freaking out” as she was a young, 18 year old girl being screamed at and threatened by what she described to be a muscular, agitated man. Scire testified that she was pleading with Fabrizi to leave the scene as soon as possible. No doubt this contributed to Fabrizi’s state of mind as he drove away from the scene and struck the minivan.

[58] This leaves the issue of causation. The law of causation has been helpfully summarized in the recent decision of *Blenus v. Fraser* 2021 NSSC 79 (CanLII):

“The law of causation has been developed by the Supreme Court of Canada through a line of cases including *Snell v. Farrell*, 1990 CanLII 70 (SCC), [1990] 2 S.C.R. 311, and *Athey v. Leonati*, 1996 CanLII 183 (SCC), [1996] 3 SCR 458. *Snell* and *Athey* set out the principles that “[c]ausation is established where the plaintiff proves to the civil standard on a balance of probabilities that the defendant caused or contributed to the injury” and that “[t]he general, but not conclusive, test for causation is the “but for” test, which requires the plaintiff to show that the injury would not have occurred but for the negligence of the defendant” (*Athey* at paras. 13-14). Where the “but for” test is unworkable, Major J. noted in *Athey*, “the courts have recognized that causation is established where the defendant’s negligence “materially contributed” to the occurrence of the injury” (para. 15).

The Court returned to the subject of causation in *Clements v. Clements*, 2012 SCC 32, [2012] 2 SCR 181. In that case, a passenger on a motorcycle who was injured in a crash claimed that the driver’s negligence caused her injury. The driver took the position that a tire puncture and resulting deflation actually caused the crash, and that this would have happened regardless of the driver’s negligence. The trial judge held that “but for” negligence could not be established, but found liability based on the “material contribution” test. The British Columbia Court of Appeal held that the material contribution test did not apply, a conclusion affirmed by the majority of the Supreme Court of Canada. Speaking for the majority, McLachlin C.J. described the “but for test” as follows:

The test for showing causation is the “but for” test. The plaintiff must show on a balance of probabilities that “but for” the defendant’s negligent act, the injury would not have occurred. Inherent in the phrase “but for” is the requirement that the defendant’s negligence was necessary to bring about the injury — in other words that the injury would not have occurred without the defendant’s negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.

The Chief Justice said the “but for” test “must be applied in a robust common sense fashion. There is no need for scientific evidence of the precise contribution the defendant’s negligence made to the injury” (para. 9). She continued:

A common sense inference of “but for” causation from proof of negligence usually flows without difficulty. Evidence connecting the breach of duty to the injury suffered may permit the judge, depending on the circumstances, to infer that the defendant’s negligence probably caused the loss. See *Snell* and *Athey*...

Where “but for” causation is established by inference only, it is open to the defendant to argue or call evidence that the accident would have happened without the defendant’s negligence, i.e. that the negligence was not a necessary cause of the injury, which was, in any event, inevitable. As Sopinka J. put it in *Snell*, at p. 330:

The legal or ultimate burden remains with the plaintiff, but in the absence of evidence to the contrary adduced by the defendant, an inference of causation may be drawn although positive or scientific proof of causation has not been adduced. If some evidence to the contrary is adduced by the defendant, the trial judge is entitled to take account of Lord Mansfield’s famous precept [that “all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted” (*Blatch v. Archer* (1774), 1 Cowp. 63, 98 E.R. 969, at p. 970)]. This is, I believe, what Lord Bridge had in mind in *Wilsher* when he referred to a “robust and pragmatic approach to the . . . facts” (p. 569). [Emphasis by McLachlin C.J.]

In some cases, an injury — the loss for which the plaintiff claims compensation — may flow from a number of different negligent acts committed by different actors, each of which is a necessary or “but for” cause of the injury. In such cases, the defendants are said to be jointly and severally liable. The judge or jury then apportions liability according to the degree of fault of each defendant pursuant to contributory negligence legislation.

To recap, the basic rule of recovery for negligence is that the plaintiff must establish on a balance of probabilities that the defendant caused the plaintiff’s injury on the “but for” test. This is a factual determination. Exceptionally, however, courts have accepted that a plaintiff may be able to recover on the basis of “material contribution to risk of injury”, without showing factual “but for” causation. As will be discussed in more detail below, this can occur in cases where it is impossible to determine which of a number of negligent acts by multiple actors in fact caused the injury, but it is established that one or

more of them did in fact cause it. In these cases, the goals of tort law and the underlying theory of corrective justice require that the defendant not be permitted to escape liability by pointing the finger at another wrongdoer. Courts have therefore held the defendant liable on the basis that he materially contributed to the risk of the injury.

*Clements* remains the leading authoritative statement of the Canadian law of causation.”

[59] In my view, on the balance of probabilities the accident would not have occurred but for Chu’s conduct. Had Chu not pulled up next to the Buick, exited his vehicle, and verbally threatened Fabrizi, I find that Fabrizi would have had a clear path to either proceed on Perivale Road, or turn right onto Rathburn Road.

[60] Ingleson gave evidence that she was waiting at a red light before she proceeded to drive through the intersection. Whether or not Fabrizi’s car was pinned against the curb lane, he none the less felt an increased, necessary urge to leave the scene as soon as possible and escape the threatening atmosphere caused by Chu, whose conduct was necessary to ultimately bring about the plaintiff’s injuries.

[61] In any event, even if the “but for” test was unworkable on the facts before the Court, I would have found that Chu was liable based upon the “material contribution” test.

[62] This leaves the apportionment of liability. While I have found that Fabrizi likely feared or apprehended imminent contact of a harmful or present nature on the part of Chu, those threats were not so imminent as to absolve Fabrizi from the responsibility to proceed in a reasonable and prudent fashion especially given that, by everyone’s account, the stop light was red. Fabrizi was still under an obligation to enter Rathburn Road safely, and based upon the photographs of the accident it appears that he accelerated towards Rathburn Road at a relatively high rate of speed, which caused the damage to the minivan and the plaintiff.

[63] In all the circumstances of the case, I find Chu to be 50% responsible for causing the plaintiff’s injuries. There shall therefore be judgment in favour of Fabrizi against Chu for the sum of \$110,000.00.

#### Costs

[64] If the parties are unable to resolve the costs of the third party action, they may serve and file written costs submissions (totaling no more than five pages including a Costs Outline) in accordance with the following schedule:

- (a) Fabrizi shall serve and file his written costs submissions within 10 business days of the release of these Reasons; and

(b) Chu shall serve and file his responding written costs submissions within 10 business days of the receipt of Fabrizi's written costs submissions.

A handwritten signature in black ink, appearing to be "Diamond J.", written in a cursive style.

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Diamond J.

**Released: April 12, 2021**

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

TATE MORAN

Plaintiff

– and –

OTTAVIO FABRIZI, ELAINE INGLESON, AND  
ROBERTA BERIAULT

Defendant

– and –

DENNIS G. K. CHU and JOHN DOE

Third Parties

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**REASONS FOR DECISION**

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**Mr. Justice Diamond**

**Released: April 12, 2021**