SUPREME COURT OF NOVA SCOTIA
Citation: *Francis v. Armstrong*, 2025 NSSC 193

Date: 20250611
Docket: Hfx No. 523630
Registry: Halifax

Between:

Julie Francis

Plaintiff/Respondent

v.

Thomas Armstrong and Stephanie Welcher

Defendants/Applicant Armstrong

D E C I S I O N

Judge:	The Honourable Justice James L. Chipman
Heard:	May 26, 2025, in Halifax, Nova Scotia
Written Decision:	June 11, 2025
Counsel:	Lyndsay Jardine and Mark Saunders, for the Plaintiff/Respondent W.D. Samuel Ward, for the Defendant/Applicant Armstrong Kelsie Warr, watching brief for the Defendant Welcher

By the Court:

INTRODUCTION

[1] By Notice of Motion filed December 3, 2024, the defendant, Thomas Armstrong moves for an order for summary judgment on evidence. The plaintiff resists the motion.

[2] The pleadings closed on October 5, 2023 with the filing of the defendant, Stephanie Welcher's Defence to Crossclaim. On February 5, 2024, Ms. Welcher filed a Notice of Discontinuance, discontinuing her Crossclaim against Mr. Armstrong. On February 21, 2025, the parties consented to an order for leave for Mr. Armstrong to bring the within motion.

[3] In terms of evidence from the applicant, the court has the uncontested affidavit of Mr. Armstrong sworn May 7, 2025 and filed two days later. Also filed by Mr. Armstrong on May 9, 2025 is the affidavit of one of his lawyers, Elizabeth Campbell. Ms. Campbell was not cross-examined.

[4] From the respondent is Ms. Francis' affidavit sworn and filed May 16, 2025. Ms. Francis was briefly cross-examined on her affidavit. Also filed by Ms. Francis on May 16, 2025 is the affidavit of paralegal, Cassandra Giles. Ms. Giles was not cross-examined.

DISCUSSION OF THE EVIDENCE

[5] Mr. Armstrong's and Ms. Francis' affidavit evidence confirms that there was a "chain reaction" collision on Dutch Village Road in Halifax on October 16, 2021. Ms. Francis was stopped at a red traffic light. Behind Ms. Francis was Mr. Armstrong, and behind Mr. Armstrong's vehicle was Ms. Welcher driving her car. While stopped, Ms. Francis' car was rear-ended by Mr. Armstrong's vehicle, which had been rear-ended by Ms. Welcher's vehicle.

[6] Following the above-described accident, Ms. Francis commenced an action against both Mr. Armstrong and Ms. Welcher seeking damages for the alleged losses she suffered as a result of the collision.

[7] The affidavit evidence of Ms. Campbell and Ms. Giles contains exhibits with excerpts of the discovery evidence of the parties. From the excerpted discovery evidence the following is established:

Ms. Francis

- was at a complete stop at a red light.
- was struck from behind by Mr. Armstrong.
- following the collision, exited her vehicle and engaged in conversation with both defendants for approximately 30 minutes.
- during the conversation Mr. Armstrong apologized and acknowledged being too close to her vehicle.
- during the conversation she and Mr. Armstrong discussed the accident, including who was at fault for the accident, insurance coverage and the distance between Mr. Armstrong's vehicle and her car at the time of the collision.

Mr. Armstrong

- was at a full stop at a red light when struck from behind by Ms. Welcher.
- was a full car length behind the plaintiff's vehicle.
- was struck with sufficient force to throw him forward causing him to strike his chest on the steering wheel and take his foot off the brake.
- slowly rolled forward and struck the plaintiff's vehicle.
- could not recall if his vehicle immediately moved forward after being struck by Ms. Welcher, or if some time passed between the initial collision and when his vehicle began slowly moving forward.
- apologized to Ms. Francis when they spoke after the accident, but denies having any conversations with respect to the distance between their vehicles.

Ms. Welcher

- was stopped at a red light behind Mr. Armstrong with half a car length between their vehicles.
- when the light turned green she took her foot off the brake and began to move forward, anticipating Mr. Armstrong would begin to move as well.
- Mr. Armstrong did not move.

- did not apply any pressure to the gas between taking her foot off the brake and colliding with Mr. Armstrong.
- applied the brakes prior to colliding with Mr. Armstrong.
- estimated her speed at the time of the collision to be approximately seven kilometres an hour.
- there was no damage to her vehicle from the collision and she did not make an insurance claim for property damage.

[8] In Mr. Armstrong's affidavit he deposes as follows:

> 8. I was in the middle-left hand turn lane on Dutch Village Road at the intersection of Joseph Howe Drive. I drove up behind the Plaintiff, Julie Francis' vehicle. She was driving a "Volkswagen. I slowed down and then came to a complete stop behind Ms. Francis' vehicle. My foot was firmly on the brake pedal at all times up until the Accident occurred. I was stopped about one vehicle's length behind Ms. Francis' vehicle. I could see the bottom of her tires over my hood.
> 9. I was paying attention to, and keeping a lookout at, my surroundings at all times leading up to the Accident. I was looking out the front windshield.
> 10. Suddenly, and without warning, the Defendant, Stephanie Welcher, who was driving a Ford Focus, rear-ended my vehicle. I did not see her vehicle prior to the Accident. I did not have an opportunity to sound my horn or take any evasive maneuvers before being struck.
> 11. The force of the impact from being struck by Ms. Welcher caused my chest to be thrown forward and hit the steering wheel and my foot to slip off the brake. My vehicle then rolled forward into the Plaintiff's vehicle and collided with her rear bumper.
> 12. Immediately following the Accident, Ms. Francis, Ms. Welcher and I exited our respective vehicles. Ms. Francis asked me why I had rear-ended her. I told Ms. Francis that I was sorry (as I felt that this was the polite thing to do) but that Ms. Welcher had rear-ended me. When Ms. Francis realized what had happened, she asked me if I was okay, and I said that I was. We did not discuss how close I was to her vehicle.

[9] In Ms. Francis' affidavit she attaches as an exhibit an April 23, 2025 statement that she provided to her lawyer. It reads as follows:

> Statement of Julie Francis

At my discovery examination on May 28, 2024, I provided the following answers to discovery question regarding conversations I had with the Defendant Armstrong and Defendant Welcher following the motor vehicle collision on October 16, 2021.

Q. You said that you were able to "talk with the individuals", do you remember what anybody said?

A. I remember I got out and I looked at the gentleman behind me and said something along the lines of, "Dude." And he said, "It wasn't me, it was the girl behind me." And I remember the girl behind me told me that we went to high school together. And told me that she – I remember her saying at the time that she had just gotten out of an abusive relationship and she was feeling distressed due to that, and that her foot slipped. And she apologized for not hitting the brake because her foot slipped.

Q. I'm just clarifying for the record, when you say "gentleman", you're referring to Thomas Armstrong?

A. Yes.

Q. And when you say, "the girl, you're referring to Stephanie Welcher?

A. Yes.

My response to the questions was incomplete

I want to provide a more detailed account of the conversation I had with the drivers at the scene of the accident which occurred on October 16, 2021. From the time I got out of my car until I got back in, about 30 minutes passed that we were all outside exchanging information and words. At the beginning the first thing I did when I got out of the car was say to him "dude what the hell" and was waving my arms at him. He told me that it was the car behind him that hit his car first which is why his car then hit mine. I remember I went and started talking to Sephanie but felt bad to get mad because she was pregnant, and explained she was feeling high stress due to just have gotten out of an abusive relationship. She then asked me if I had graduated from Queen Elizabeth high school and told me that she recognized me and that we were in the same graduating class.

I then began the process of exchanging insurance information and drivers license information. Toward the very end of that time, after all information has been exchanged, we had a final conversation where Thomas apologized for being too close to my car. At that point my daughter had been alone in the car by herself for too long and was crying her eyes out so I was pointing out to Thomas this technically could have been avoided if "his car hadn't been stopped right up my ass" metaphorically speaking, I meant he was obnoxiously close to my vehicle and he understood what I meant. I don't' remember his exact wording, but his tone and meaning were clear – he acknowledged that he had been too close behind me.

Stephanie was in and out of the conversation as a bystander. She wanted to let us know that she was only at fault for hitting Thomas and it was his fault for hitting me. This conversation is what prompted me to mention that I work in insurance. I

> didn't bring that up randomly – it came up specifically because we were talking about his following distance. This conversation continued in to whether that might affect if he would have fault in the accident from a collision claim perspective of motor vehicle insurance. I remember feeling unsure at the time about how fault could be assigned, since his vehicle had been fully stopped but so close behind me when he got hit from his rear. That is what led me to say something along the lines of, "I work in insurance, but I'm not sure how this would play out, to my knowledge, normally when your vehicle has frontal impact with another object, insurance deems you at fault for the collision under any circumstances, as you are responsible for the front of your vehicle." The part I was not clear about was simply and only if somebody hit you first. But what we were not questioning in that discussion was whether or not he was too close to me which was the actual cause of his frontal impact to mine. That was already a given in the nature of the conversation.
>
> While I don't remember the exact words exchanged on either side, I know with certainty that the topic of him being too close came first, and it was the reason I made the comment about working in insurance. I also remember him not disagreeing or defending himself when I brought it up, or at any point during the discussion, or when Stephanie was talking about only being at fault for her impact on him. I also asked him if he had collision coverage on his vehicle at the time and explained to him that if he was considered at fault from the insurance perspective, and if he didn't have collision coverage, then the damage that he did to the front of his vehicle was not going to be covered. However, if he was found not at fault from the insurance perspective for hitting me then if he does not have collision coverage then insurance would still pay for the damages.
>
> The tone of the exchange of this conversation coming from him was more apologetic than anything, and thankful that I was giving him this insurance information to the best of my knowledge.

[10] On cross-examination Ms. Francis acknowledged that she did not remember "any particular statements made by Mr. Armstrong". Nevertheless, she maintained that the "tone and substance" of what they discussed "has resonated …stuck with me …and that he apologized for being too close to me".

SUMMARY JUDGMENT – GUIDING LAW

[11] The motion is brought under Rule 13.04 which allows a party to seek summary judgment on evidence where there is no genuine issue for trial.

[12] The purpose of summary judgment is to "put an end to claims or defences that have not real prospect of success", *Burton Canada Co. v. Coady*, 2013 NSCA 95, at para. 22.

[13] In *Arguson Projects Inc. v. Gil-Son Construction Limited*, 2023 NSCA 72 at para. 22, Justice Bourgeois reaffirmed the five sequential questions from *Shannex Inc. v. Dora Construction Ltd.*, 2016 NSCA 89, that a judge must consider on a motion for summary judgment on the evidence (paras. 34 – 42):

> 1. Does the challenged pleading disclose a genuine issue of material fact, either pure or mixed with a question of law?
> 2. If the answer to above is No, then: does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?
> 3. If the answers to the above are No and Yes respectively, does the challenged pleading have a real chance of success?
> 4. If there is a real chance of success, should the judge exercise thee discretion to finally determine the issue of law?
> 5. If the motion for summary judgment is dismissed, should the action be converted to an application, and if not, what directions should govern the conduct of the action?

[14] In *Halifax Regional Municipality v. Annapolis Group*, 2021 NSCA 3, Justice Farrar explained that in order to decide whether an allegation of fact is material, a court must decide whether the allegation is essential to establish a pleaded cause of action. At para. 36 Justice Farrar described a two-step process for how a court should determine whether there is a material fact in dispute: "[t]he first step in the analysis, therefore, is to identify the essential elements of that cause of action. The second step is to consider whether the allegations of fact in support of those elements are the subject of a genuine dispute".

[15] In *Hatch Limited v. Atlantic Sub-Sea Construction and Consulting Inc*., 2017 NSCA 61, Justice Farrar discussed the role of the judge on a summary judgment motion at paras. 23 – 25:

> 23 The role of the motions judge on a summary judgment motion is to determine whether the challenged claim discloses a genuine issue of material fact (either pure or mixed with a question of law). The onus is on the moving party to show there is no genuine issue of material fact. If it fails to do so the motion is dismissed. A material fact being one that would affect the result.
>
> 24 The motions judge must determine whether the evidence is sufficient to support the pleading, but he/she cannot draw inferences from the available evidence to resolve disputed facts.

> 25 This prohibition on weighing evidence was addressed by Saunders, J.A. in Coady. After discussing the law of summary judgment in Nova Scotia, he provides a list of principles, including:
>
> > [87] ...
> >
> > 10. Summary judgment applications are not the appropriate forum to resolve disputed questions of fact, or mixed law and fact, **or the appropriate inferences to be drawn from disputed facts.**
> >
> > 11. Neither is a summary judgment application the appropriate forum to weigh the evidence or evaluate credibility.
>
> [Emphasis in original]

[16] In *Tri-County Regional School Board v. 3021386 Nova Scotia Limited*, 2021 NSCA 4, Justice Hamilton defined material fact as a fact that "could affect the outcome at trial":

> 21 It is agreed there are facts in dispute. The question is whether any of these disputed facts are **material** as found by the judge. This requires us to consider the disputed facts in the context of the pleadings, the evidence presented and the applicable legal principles--to determine whether their resolution could affect the outcome of the trial; *Shannex, supra*, at paras. 34, 36; *SystemCare Cleaning and Restoration Limited v. Kaehler*, 2019 NSCA 29 at paras. 35, 37 and 39.
>
> [Emphasis in original]

PARTIES' POSITIONS

Mr. Armstrong

[17] The moving party says that there are no genuine issues of material fact in relation to whether or not Mr. Armstrong breached the requisite standard of care. While he acknowledges that there is a dispute regarding how close he might have been to Ms. Francis' vehicle prior to the accident, Mr. Armstrong argues that Ms. Francis has no admissible evidence capable of proving that Mr. Armstrong was too close.

[18] Mr. Armstrong adds that there is no genuine issue of material fact with respect to causation. This is because he maintains that there is a total lack of evidence that the accident could have been avoided if Mr. Armstrong had kept a greater distance from Ms. Francis' vehicle.

Ms. Francis

[19] Ms. Francis submits that the evidence reveals divergent accounts as to how the accident happened. She adds that they are not only irreconcilable but also bear crucially on the allegations of negligence as against Mr. Armstrong. Ms. Francis says that these competing factual accounts must be resolved before a determination can be made as to whether Mr. Armstrong acted reasonably before rear-ending Ms. Francis' vehicle.

[20] Ms. Francis argues that there are multiple genuine issues of material fact that go to causation and that require weighing evidence, assessing credibility and drawing inferences from fact. She submits that Mr. Armstrong has failed to establish there is no genuine issue of material fact and the motion for summary judgment must fail the initial stage of the *Shannex* analysis.

DISCUSSION, ANALYSIS AND DISPOSITION

[21] In support of his position Mr. Armstrong relies on *Roberts v. Williams*, 2007 NSSC 48. In *Roberts* the plaintiffs were passengers in a motor vehicle that was travelling south on Joseph Howe Drive in Halifax when the driver of their vehicle stopped behind a line of vehicles that were already stopped. The defendant Mr. Williams was driving his vehicle behind the plaintiffs' vehicle. He came to a stop behind the plaintiffs' vehicle. He estimated that he was stopped approximately one car length behind the vehicle in front of him. He was rear-ended by the defendant Mr. Nordin, and upon impact, Mr. Williams' vehicle moved forward and struck the plaintiffs' vehicle. Mr. Roberts successfully moved for summary judgment on the evidence.

[22] Mr. Roberts' uncontradicted evidence was he could see the rear tires of the Plaintiffs' vehicle. The Court held that Mr. Nordin was entirely liable for the accident. It is also worth noting that while there was a dispute as to whether or not Mr. Williams was at a complete stop or in the process of stopping at the time that he was struck from behind. Both the plaintiffs and Mr. Nordin referred to this as a "genuine issue of material fact". Justice LeBlanc disagreed determining that the disagreement over this fact was not material (*Roberts* at paras 21, 36 and 38).

[23] In *Graca v. Carter*, 2024 NSSC 225, Justice Bodurtha had cause to touch on *Roberts* as part of his discussion surrounding the common law presumption concerning rear-end collisions at paras. 23 – 30:

23 This was a rear-end collision. In Nova Scotia, there is a common law presumption that the driver of the rear vehicle is negligent in a rear-end motor vehicle accident. The presumption is rebuttable.

24 In this case, the burden is on the Plaintiff to rebut this presumption. In order to succeed in his action, the Plaintiff must prove that he was not negligent and must also prove that the Defendant was negligent.

25 The Automobile Insurance Fault Determination Regulations, N.S. Reg. 106/2012, s. 8(2), provides that the vehicle which rear-ends another vehicle is 100% at fault for the incident.

26 In *Laybolt v Irving Equipment Limited*, 2021 NSSC 165, the defendants - the rear vehicle - did not contest that they made contact with the rear of the plaintiff's vehicle. They asserted, however, that they were "cut off" by the plaintiff. Justice Lynch held that they did not rebut the presumption and accordingly the defendants were 100% liable for the accident.

27 The underlying principle around the presumption makes common sense. The driver of the vehicle ahead - in this case the Defendant - is required to keep a careful lookout ahead and react and respond accordingly to what is before them. When a rear-end impact occurs, it is because the driver of the rear vehicle - in this case the Plaintiff - failed to keep a proper look out to what was in front of them and failed to keep a reasonable distance between their vehicle and the vehicle in front of them.

28 A further example of the common law presumption is *Roberts v Williams*, 2007 NSSC 48, Justice LeBlanc affirmed that the rear vehicle must rebut the presumption that the collision occurred because of his or her negligence. He found that the vehicles were stopped at a red light and that the driver of the rear vehicle in a three-vehicle chain reaction was held liable for the collision.

29 Justice LeBlanc relied on the decision of *Fraser v. MacEachern* (1995), 137 N.S.R. (2d) 109 (N.S.S.C.), aff'd by 1995 NSCA 113, in which Justice Grant found that the rear vehicle in a three-vehicle chain reaction was liable. The Court held that the rear vehicle failed to keep a proper lookout or keep his car under control; had he done so, the collision would have been avoided. Grant J. said:

> 13 This has been adopted by our court and was recently stated by Roscoe, J. (as she then was) in *Wilson and Keeping v. MacInnis*, 111 N.S.R. (2d) 78. She wrote at page 81.
>
> > When there is a rear and collision, the burden shifts to the defendant as indicated in *Thompson v. Compton and Island Advertising* (1983), 59 N.S.R. (2d) 79, 125 A.P.R. 79 (S.C.T.D.), at p. 80:
> >
> > > It is well-established in this province that when a car runs into the rear of a car ahead there is a burden on the following driver to give an explanation, otherwise, an inference may be drawn that the rear driver was negligent. Masten, J.A.,

> said in *Beaumont v. Ruddy* (1932), [1932] 3 D.L.R. 75, at p. 77:
>
> > Generally speaking when one car runs into another from behind, the fault is in the driving of the rear car, and the driver of the rear car must satisfy the court that the collision did not occur as a result of his negligence.
>
> In *Sibbins v. Atkins et al*. (1982), 52 N.S.R. (2d) 112, 106 A.P.R. 112 (C.A.) a case involving a rear end collision, MacKeigan, C.J.N.S., held that the defendant had to rebut a presumption of negligence.

30 Justice LeBlanc also relied on the Nova Scotia Court of Appeal decision *MacNeil v Black*, 1998 NSCA 48, in which the Court of Appeal stated as follows:

> 8 A further burden of proof, and a considerably heavier one, falls on the defendant in rear-end collision cases. The driver of the rear car must rebut a presumption that the collision occurred as a result of his negligence. See the judgment of Roscoe J. in *Wilson v. MacInnis* (1992), 111 N.S.R. (2d) 78 (N.S. T.D.).

[24] It is important to understand that Justice Bodurtha's accurate and helpful review of the law was in the context of a trial judgment. While it is apparent that Justice LeBlanc's decision was in the context of summary judgment, it was decided under the previous summary judgment Rule and prior to *Shannex*. Furthermore, whereas the evidence was uncontradicted that Mr. Roberts could see the rear tires of the plaintiff's vehicle, the situation is not so clear here. In this regard we have the contradictory discovery evidence outlined herein at para. 6 and the affidavit evidence inclusive of the summary provided by Ms. Francis (reproduced herein at para. 9).

[25] In another pre-Rule 13.04 rear-end summary judgment decision, *Berthier v. Horton*, 2001 NSSC 166, A.C.J. MacDonald (as he then was) touched on Court of Appeal authorities including *MacNeil v. Black* and then stated as follows at paras. 5 – 8:

> 5 With this background, let me consider whether the defendant has raised an arguable issue that would rebut the presumption of liability against him. I begin by stating that the defendant would have a very difficult time in meeting this burden and counsel has acknowledged this. His twin defences of an abrupt stop and pure and simple accident would prove to be challenging before a trial judge. In fact, this court would have hoped to see the defendant file an affidavit under oath setting out his position in this matter, if he were adamant in meeting this heavy onus. At the same time, I must add that it is clear from the above passages of Freeman, J.A.,

> that the filing of affidavit evidence or other documentary evidence is not a prerequisite in defending a summary judgment application. Assertions contained in the actual pleadings will suffice provided they are not the standard wording pleadings of the plaintiff stopping abruptly and provided the pleadings raise an arguable issue. I must therefore carefully examine this defence, especially clause 2.
>
> 6 In so doing, I find that the defendant does more than make a bald assertion using standard wording. In paragraph 2 he confirmed his speed as being only fifteen kilometres per hour and confirmed that he was travelling a safe distance behind the plaintiff. These assertions are in addition to his general statement that the plaintiff stopped suddenly. At paragraph 3 the defendant also confirmed that he maintained a proper lookout and was operating his vehicle in a careful and prudent manner exercising at all times reasonable care.
>
> 7 While I am not specifically ruling out a plea of pure and simple accident, for the purposes of this application I am not swayed by the assertion that a motorist can allow his foot to slip off the break peddle [sic, brake pedal] without negligence.
>
> 8 At the same time, the defendant has in his pleadings raised an arguable issue going to liability. The issue is the assertion that the plaintiff stopped abruptly while the defendant was travelling very slowly at a safe distance and in a careful manner. On this basis, I am persuaded to deny the application.

[26] Although A.C.J. MacDonald's decision was based on the pleadings, only, it nevertheless highlights the importance of arguable issues and material facts. Furthermore, harkening back to the evidence on the within application, there is the reference to the defendant's foot slipping off of the brake pedal.

[27] Once again, here we have Mr. Armstrong acknowledging in his discovery evidence that he did not keep his foot on the brake. As well, in his affidavit he admits that his foot slipped off the brake. Further, there is Ms. Francis' evidence of the post collision conversation and Mr. Armstrong allegedly saying that he was driving too closely to Ms. Francis.

[28] Recalling the authorities, the Court of Appeal has repeatedly cautioned motion judges not to draw inferences from the available evidence to resolve disputed facts. Without question there are disputed facts on this motion for summary judgment on the evidence. Critically, Ms. Francis says that Mr. Armstrong apologized and said that he had been driving too close to her vehicle. On the other hand, Mr. Armstrong says that he was stopped about one vehicle's length behind Ms. Francis' car. He adds that he could see the bottom of her tires over his hood. Mr. Armstrong also says that the force of impact from Ms. Welcher hitting him caused his foot to slip off the brake.

[29] I am of the view that the question of whether Mr. Armstrong was travelling too closely to Ms. Francis constitutes a material fact because it could very well affect the outcome at trial; i.e., whether or not Mr. Armstrong has any fault for the chain reaction collision initiated by Ms. Welcher.

[30] Furthermore, I conclude that the fact that Mr. Armstrong allowed his foot to slip off of the brake pedal could give rise to a finding of negligence. While I am mindful that he deposes that the force of impact from being struck by Ms. Welcher caused his foot to slip, it seems to me that whether or not he could have more force on his brake pedal is a material fact that is put in issue through the negligence pleaded in the Statement of Claim.

[31] Indeed, I find that the case before me has parallels to *Stephen v. Baker*, 2024 NSSC 347 where Justice Smith refused summary judgment sought with regard to two car accidents. With respect to the initial accident, Justice Smith concluded at paras. 36 – 37:

> 36 Counsel for the Defendant Bakers says that this is a material dispute of fact. Irene Baker says she went to execute her turn into her normal lane of travel. She did not agree that she cut the corner. Mr. Stephen says that she did cut the corner, but yet he puts Ms. Baker as colliding with him on the other side of his car, the passenger side, or the front of the car. Counsel says there is an important dispute of material fact here.
>
> 37 The Court finds that there are material facts in dispute as to how the First Collision happened. **I cannot find, without weighing credibility and the evidence, whose version of what caused the accident is the right one**. This means that fault for the collision might be shared, which necessarily means that there could be a finding of contributory negligence on the part of Mr. Stephen.
>
> [Emphasis added]

[32] By way of conclusion, the defendant argues that Ms. Francis' evidence on Mr. Armstrong admitting that he was driving too closely is inadmissible. For example, in his motion brief he argues:

> 3. There is no evidence of any negligent action by Mr. Armstrong. Mr. Armstrong expects that Ms. Francis will say that Mr. Armstrong bears some liability for the accident because he stopped his vehicle too close to hers at the red light; however, her only "evidence" of this contention is her testimony that Mr. Armstrong apologized for being too close to her following the accident. While Mr. Armstrong disputes this testimony, Ms. Francis' evidence on this point is inadmissible as evidence of Mr. Armstrong's purported liability and incapable of establishing that Mr. Armstrong breached the requisite standard of care.

[33] Mr. Armstrong goes on to refer to the *Apology Act*, 2008 S.N.S., c. 34 as authority for what he asserts is inadmissible evidence. In this regard, he refers to ss. 2 and 3:

> **Interpretation**
>
> 2 In this *Act*,
>
> (a) "apology" means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate;
>
> (b) "court" includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity. 2008, c. 34, s. 2.
>
> **Effect of apology**
>
> 3(1) An apology made by or on behalf of a person in connection with any matter
>
> (a) does not constitute an express or implied admission of fault or liability by the person in connection with that matter;
>
> (b) does not constitute a confirmation of a cause of action or acknowledgment of a claim in relation to that matter for the purpose of the *Limitations of Actions Act*;
>
> (c) notwithstanding any wording to the contrary in any contract of insurance or any other enactment or law, does not void, impair or otherwise affect any insurance coverage that is or, but for 2 apology 2008, c. 34 OCTOBER 1, 2009 the apology, would be available to the person in connection with that matter; and
>
> (d) may not be taken into account in any determination of fault or liability in connection with that matter.
>
> (2) Notwithstanding any other enactment or law, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with the matter.

[34] The *Apology Act* has not been cited in many decisions of this court or our Court of Appeal. That said, I am mindful of decisions from other jurisdictions that point to the nuances involved when considering the admissibility of apologies in the context of apology legislation. For example, in *Ewert v. Canada*, [2023] F.C.J. No. 1107. Justice McHaffie noted as follows at para. 168:

> 168 While article 2853.1 is new, it bears similarity to apology legislation in common law provinces: see, e.g., *Apology Act*, SBC 2006, c 19; *Apology Act*, SNS 2008, c 34; *Apology Act*, 2009, SO 2009, c 3. Cases decided under this similar legislation confirm that apologies or expressions of regret with respect to a matter cannot be taken as admissions of liability, at least in proceedings brought against the person making the apology in respect of the matter: *Rebello v Ontario*, 2023 ONSC 601 at paras 18-23; *Symonds v Halifax Regional Municipality (Halifax Regional Police Department) (Re)*, 2021 CanLII 37128 (NS HRC) at paras 68-74. **Some cases have found that the "apology" portion of a written apology may be differentiated from factual elements of the same writing**: see, e.g., *Coles v Takata Corporation*, 2016 ONSC 4885 at paras 17-21 and cases cited therein.
>
> [Emphasis added]

[35] Ms. Francis' evidence is that the post-accident conversation between herself and Mr. Armstrong lasted approximately 30 minutes. During this conversation, she says that they discussed fault for the accident, insurance coverage and the distance between Mr. Armstrong and her vehicle. Given Ms. Francis' evidence (and even from what Mr. Armstrong has deposed to at para. 12 of his affidavit), it cannot be said that this is a situation where Mr. Armstrong simply said, "I'm sorry", with no further discussion regarding the accident.

[36] Given the available evidence on this motion coupled with the jurisprudence highlighted above, I cannot agree with the applicant's bald assertion that Ms. Francis' evidence "on this point is inadmissible as evidence of Mr. Armstrong's purported liability and incapable of establishing that Mr. Armstrong breached the requisite standard of care". In this regard there are Ontario cases which have considered that province's apology legislation (which is similar to the Nova Scotia *Apology Act*) where judges have redacted the apology portion of a statement but admitted other factual elements from the same document. On balance, it occurs to me that it will be the trial judge here who will be best situated to deal with the evidentiary issues surrounding the post-accident conversation between Mr. Armstrong and Ms. Francis.

CONCLUSION

[37] Given the evidence and authorities, I have determined that Ms. Francis has shown that there are disputes over genuine issues of material fact which will require the trier-of-fact to weigh the evidence, determine credibility and draw inferences from fact in order to properly determine causation. There is evidence that may support a finding that, had Mr. Armstrong stopped reasonably far from Ms. Francis,

he would not have struck her, particularly given the low rate of speed that Ms. Welcher says she was traveling.

[38] There are competing versions of events between the defendants. The force of the initial accident is relevant to a determination of causation and Ms. Welcher's evidence is that she travelled approximately half a car length before striking Mr. Armstrong and at no point put pressure on the gas. Ms. Welcher estimated her speed to be approximately seven kilometers an hour.

[39] Mr. Armstrong's evidence is that he was hit with such force that he was thrown forward into the steering wheel and his foot was forced off the brake. A trier-of-fact may find, based on their analysis of the evidence, that they accept one of these versions over the other. This requires an analysis of a genuine issue of material fact, which, per the first rung of *Shannex*, is not appropriate for a summary judgment motion.

[40] I would add that the plaintiff is not required to put forward expert evidence with respect to causation to succeed on a summary judgment motion of this nature. I do not agree as Mr. Armstrong suggests that the issue of causation is so technical that it can only be established by expert evidence.

[41] Once again, there are genuine issues of material fact that are established on the evidence before this Court. The disputes of genuine issues of material fact are based on the evidence of Mr. Armstrong, Ms. Welcher, Ms. Francis and the photographic evidence. Having reviewed the evidence and authorities I must conclude that there are genuine issues of material fact at issue in this case such that Mr. Armstrong should not be entitled to a summary disposition of Ms. Francis' claims against him.

[42] In the result I dismiss the motion with costs to the respondent/plaintiff Ms. Francis. If the parties cannot agree on costs, I invite written submissions within thirty days of this decision.

Chipman, J.