

## PUBLICATION

### Precedent-Setting Personal Injury Judgment Won

Simon J. Muller  
Austin S. Paladeau

December 20, 2019

Simon Muller and Austin Paladeau of McLeod Law's [Personal Injury](#) group represented an injured Plaintiff at trial. The decision of the Alberta Court of Queen's Bench, helps clarify the application of the "inevitable accident" defence. The Court found in favour of our client, confirming that she was entitled to personal injury damages.

Here is the case summary in [Cullen v. Kao, 2019 ABQB 799](#):

Simon Muller and Austin Paladeau represented the injured plaintiff, Ms. Cullen, in her personal injury claim for damages caused by a car accident. Ms. Cullen was driving southbound on 14th Street in Calgary when her vehicle was struck twice from behind by a vehicle operated by the defendant, Mr. Kao. His vehicle continued to strike four other vehicles after Ms. Cullen's.

Ms. Cullen sued Mr. Kao for damages and Mr. Kao defended on the basis of the "[inevitable accident](#)" which is a legal term implying that an accident occurred due to factors beyond a persons reasonable control.

Right before the accident happened Mr. Kao underwent a medical procedure and was advised to immediately stop driving if he had troubles breathing, felt light-headed, dizzy, or experienced vision loss. Mr. Kao left the medical clinic driving his vehicle until he reached the intersection of 14th Street SW and Heritage Drive. He brought his vehicle to a full stop before the intersection at a red light. While he waited for the light to turn green, he began to feel unwell—like he could not get air in his lungs. He was dizzy and became disoriented. His vision was blurry and he knew he could not operate his vehicle safely.

When the light turned green, Mr. Kao chose to act instead of keeping his vehicle stopped at the intersection. He attempted to maneuver his vehicle through the intersection so he could change into the far right lane and bring his vehicle to a safe stop on the shoulder of 14th Street SW. Mr. Kao's *evidence* was that his next clear memory was sitting in his vehicle, stopped, after the five collisions occurred. His vehicle continued south on 14 Street SW, causing the collision with Ms. Cullen and others.

Mr. Kao's argument was based on the "inevitable accident", that the medical event he experienced absolved his responsibility for the accidents, as there was nothing he could have reasonably done to avoid the accidents.

Justice Poelman of the Court of Queen's Bench heard the case. In considering Mr. Kao's liability to Ms. Cullen,

Justice Poelman rejected Mr. Kao's defence, stating:

"The only question is whether he responded to his symptoms reasonably. The standard of care is what would have been done by the reasonable person in the circumstances. I conclude that he failed to meet the required standard acting as he did—that is, attempting to drive away from the intersection, cross other lanes of traffic and exit from fourteenth street SW. The reasonable person in like circumstances, in my view, would have remained stopped, activated his hazard flashes and either called or waited for assistance."

Ms. Cullen was awarded judgment in her favour.

---

If you or someone you know is injured in a motor vehicle accident, we can help. Contact one of our lawyers in our [Personal Injury group](#)—we are here to assist you.