

**CITATION:** Khan v. Primmum Insurance Company et al., 2026 ONSC 1201  
**COURT FILE NO.:** CV-23-91359  
**DATE:** 2026/03/04

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Anoara Khanam Ali Khan, Plaintiff

**AND:**

John Doe and Primmum/TD Canada Trust (TD Defendants)

**BEFORE:** Judge Somji

**COUNSEL:** Alamgir Hussain, for the Plaintiff

Philip Byun, for the TD Defendants

**HEARD:** December 9, 2025

**MOTION TO STRIKE CLAIM FOR NO REASONABLE CAUSE OF ACTION**

**Overview**

[1] On July 24, 2020, the Plaintiff Anoara Khanam Ali Khan was in a tragic car accident. She is alleged to have sustained severe, painful, permanent physical and psychological injuries. Her husband, also a passenger in the vehicle, passed away. At the time of the accident, the Plaintiff was herself a passenger in the vehicle and her daughter, Tashrifa Khanan, was the driver.

[2] The Plaintiff brought an action for negligence against John Doe, an unidentified driver in the opposing vehicle, as well as Primmum Insurance Co. (“Primmum”) and TD Canada Trust for negligence (collectively the “TD Defendants”). The Plaintiff issued her Statement of Claim (“Claim”) on February 13, 2023.

[3] Primmum acknowledges that it was the insurer for the motor vehicle owned and operated by the driver Ms. Khanan, but argues it has no independent duty of care to the Plaintiff and certainly no relation to the unidentified driver John Doe. The liability of the TD Defendants, if any, flows from the conduct of the driver Ms. Khanan. Consequently, the TD Defendants requested Plaintiff’s counsel to amend the Claim to include Ms. Khanan as a defendant.

[4] While the Plaintiff did file an Amended Statement of Claim (“proposed Amended Claim”) on February 25, 2025, she did not add Ms. Khanan as a defendant, but rather as another plaintiff. The TD Defendants did not consent to the proposed Amended Claim.

[5] The TD Defendants now bring a motion to strike the Claim for failure to disclose any reasonable cause of action pursuant to Rule 21.01(1)(b) *Rules of Civil Procedure* R.R.O. 1990, Reg. 194 (“Rules”). Alternatively, the TD Defendants bring a motion for summary judgment pursuant to Rule 20.04 alleging there is no genuine issue for trial, and the Claim is statute barred.

[6] At the motion hearing, Plaintiff’s counsel sought an adjournment of the hearing on the grounds that they were unable to open the Motion Record because they could not access the secure portal over which the documents were sent. I denied the adjournment with reasons to follow.

[7] The issues to be decided are :

- a. Is the Plaintiff entitled to an adjournment of the motion?
- a. Should the Plaintiff’s action be dismissed for failure to disclose any reasonable cause of action or alternatively, because there is no genuine issue for trial and the action is statute barred?

[8] For the reasons set out below, the motion is granted. The Plaintiff’s action is dismissed.

### **Issue 1: Should the motion be adjourned?**

[9] The Motion Record, draft Order, and Factum was filed and served on Plaintiff’s counsel on November 28, 2025. As part of TD Bank’s security policies, the motion materials were sent to the Plaintiff’s law firm through a secure portal. Plaintiff’s counsel acknowledged that they received it but were unable to open it because they were not familiar with the portal.

[10] Plaintiff’s counsel’s explanation that they were unfamiliar with the process for accessing the motion materials is not a reasonable ground for adjourning the hearing. Plaintiff’s counsel could easily have contact TD Defendants’ counsel to obtain instructions on the use of the portal. As discussed below, concerns about the Claim were raised in prior correspondence between the

parties, and the Plaintiff was put on notice on November 4, 2024, that if they did not amend the Claim to add Ms. Khanan as a defendant, the TD Defendants would seek to strike the Claim.

[11] Furthermore, the TD Defendants filed a court confirmation form for the motion on December 2, 2025. Even after that was sent, the Plaintiff’s counsel took no steps to contact opposing counsel to obtain the Motion Record. According to the TD Defendants’ counsel, it was only three minutes before the commencement of the motion hearing that Plaintiff’s counsel reached out to ask for the Motion Record. I find that an adjournment of the hearing is not merited in these circumstances. Furthermore, if an adjournment were granted, it would delay the matter further, and for the same reasons addressed below, would result in prejudicing the TD Defendants.

[12] The motion was heard December 9, 2025. The Plaintiff did file a Responding Record dated December 9 and 10, 2025, which I have considered notwithstanding the late filing.

### **Issue 2: Should the action be dismissed?**

[13] Rule 21.01(1)(b) provides that a party may move before a judge to strike out a pleading on the ground that it discloses no reasonable cause of action.

[14] On a Rule 21.01(1)(b) motion to strike: (1) all essential elements of a cause of action are to be pleaded, and (2) the pleading must be read generously with allowances for drafting deficiencies: *Tran v University of Western Ontario*, 2015 OCNA 295 at para 16. In addition, on a motion to strike no evidence is admissible, and the facts pleaded are assumed to be true unless they are patently ridiculous or incapable of proof: *Gaur v Datta*, 2015 ONCA 151 at para 5.

[15] In her Claim, the Plaintiff alleges she was a passenger in a motor vehicle, and her daughter Ms. Khanan was the driver. The motor vehicle was travelling in Hawkesbury, in the province of Quebec, when another unidentified driver John Doe was travelling carelessly and at a high rate of speed. The Claim states that the “Plaintiff tried her best to brake to avoid an accident, however, the brakes failed, and an accident ensued.”

[16] The Claim incorrectly identifies the Plaintiff as having “tried her best to brake to avoid the accident” because it was the daughter, not the Plaintiff, who was driving. In the proposed Amended

Claim, the Plaintiff corrects this error. The Plaintiff also corrects that the accident happened in Hawkesbury, Ontario, and not the province of Quebec. The proposed Amended Claim further alleges that the collision occurred while an unidentified driver violently tried to take over Ms. Khanan's vehicle, that Ms. Khanan tried to brake to avoid an accident but the brakes failed, Ms. Khanan's vehicle landed in the ditch, and the unidentified driver in the other vehicle left the scene.

[17] Primmum is a corporation organized pursuant to the laws of Canada and licensed to conduct business as an insurance company in Ontario. TD Canada Trust is a corporation licensed to conduct business in personal and commercial banking. Primmum and TD Canada Trust are subsidiaries of TD Bank Group, but they are separate and independent divisions within the TD Bank Group.

[18] Notwithstanding concerns about deficiencies in the Claim, the TD Defendants filed on August 4, 2023, a Statement of Defence and a Cross Claim ("Defence") against the unidentified driver and co-defendant John Doe for contribution and indemnity for any amounts for which they may be found liable to the Plaintiff. The TD Defendants deny the accident occurred as a result of any fault or neglect on their part, allege the Plaintiff failed to preserve evidence, and plead the Claim is statute barred.

[19] Upon review of the materials filed, I find that the Claim does not disclose any reasonable action against the TD Defendants and should be struck without leave to amend.

[20] First, other than naming the TD Defendants in the title of the proceedings, the Claim does not disclose any information about the TD Defendants' liability for the accident. For example, the Claim does not provide any information about what duties of care the TD Defendants owed the Plaintiff, what standard of care they have allegedly breached, or how the TD Defendants' conduct contributed to the accident and the Plaintiff's injuries.

[21] Second, there are situations where a party may name an insurer in a lawsuit without naming the owner or operator of the motor vehicle such as where the owner or operator is unknown. This, however, is not such a case as the owner and operator of the motor vehicle insured by the TD Defendants is known as the Plaintiff's daughter Ms. Khanan. The TD Defendants liability for

damages for the Plaintiff's injuries can only likely flow from a finding that the driver Ms. Khanan contributed to the cause of the accident. If there is another theory of liability as against the TD Defendants, it was not set out in the Claim, proposed Amended Claim, or in the Plaintiff's Responding Motion Records filed at the motion hearing. Consequently, I find the Claim, as currently constructed, fails to disclose any reasonable cause of action against the TD Defendants.

**Issue 3: Should leave be granted to amend the Claim?**

[22] Leave to amend a statement of claim should be denied only in the clearest of cases when it is plain and obvious that there is no tenable cause of action, the proposed pleading is scandalous or vexatious, or there is non-compensable prejudice: *Henderson v Amega Holdings (Barbados) Inc.* 2025 ONSC 139 at para 33.

[23] I find that this is one of those clear cases where leave to amend should be denied.

[24] First, the Plaintiff has not brought a cross-motion seeking leave to amend the Claim.

[25] Second, it is plain and obvious that there is no tenable cause of action. Even upon a generous reading of the Claim and proposed Amended Claim, there is no basis upon which the TD Defendants could be held liable. If it is the Plaintiff's intention to pursue a claim against the TD Defendants for coverage of an unidentified motorist John Doe, it has not been set out in the Claim or proposed Amended Claim. There is no explanation in the Claim setting out how the TD Defendants caused the accident or contributed to the Plaintiff's injuries.

[26] Third, there is non-compensable prejudice to the TD Defendants if leave to amend were granted. In correspondence between May 26, 2023, and February 25, 2025, TD Defendants' counsel repeatedly requested the Plaintiff to amend her Claim to add Ms. Khanan as a defendant given it was Ms. Khanan that their client had insured. The Plaintiff failed to amend the Claim as requested and have not demonstrated any intention to do so.

[27] On the contrary, in the proposed Amended Claim sent to the TD Defendants on/around February 25, 2025, the Plaintiff added three new plaintiffs to the action including Ms. Khanan. As TD Defendants' counsel pointed out at the time, the Plaintiff's counsel is in a potential conflict of

interest if they wish to represent both the Plaintiff Ms. Khanan (the person who possibly contributed to the accident) and the Plaintiff Ms. Khan (the person harmed in the accident).

[28] The Plaintiff has not taken any further steps since February 2025, or even after the motion was filed, to amend the Claim to include Ms. Khanan as a defendant, to address the conflict of interest identified, or to substantiate within the Claim or proposed Amended Claim the basis for the TD Defendants' liability for negligence.

[29] The TD Defendants assert that they cannot issue a third-party claim as against their own client Ms. Khanan. The only way that the TD Defendants can respond to the action is in Primum's capacity as Ms. Khanan's insurer. The Plaintiff's delay in addressing the deficiencies within the Claim, which were identified by the TD Defendants early on in the proceedings, has prejudiced the TD Defendants' ability to meaningfully defend the case even as Ms. Khanan's insurer. Two and half years have passed since the Claim was issued, and five years have passed since the accident. Evidence is now likely unavailable, or stale, hampering the TD Defendants' ability to thoroughly investigate and defend against the action.

[30] For these reasons, I find the Claim and proposed Amended Claim discloses no reasonable cause of action and should be struck in its entirety without leave to amend pursuant to Rule 21.01(1)(b).

**Issue 4: Alternatively, should the action be dismissed because it fails to disclose any genuine issue for trial and is statute barred?**

[31] Finally, even if I am incorrect with respect to the above-noted findings, I find that the pursuant to Rule 20.04, and in accordance with the test set out for summary judgment in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, there is no genuine issue for trial.

[32] First, for the same reasons cited above, I find the Claim and proposed Amended Claim as currently pled does not set out any basis for the TD Defendants' factual or legal liability that would have contributed to the Plaintiff's damages and consequently, there is no genuine issue for trial.

[33] Second, the alleged accident occurred on or around July 25, 2020. Limitation and other procedural time periods were suspended on March 16, 2020, until September 14, 2020, during the

COVID-19 pandemic. The limitation clock would normally trigger on the date of the accident at which time Ms. Khan is alleged to have first sustained her injuries *Limitations Act*, 2002, S.O. 2002, c.24, s. 4 (as amended). Even with the suspension of the timelines for filing, the limitation period would have expired on/around September 14, 2022. The Claim was issued on February 13, 2023, six months after expiration of the limitation period and two years and seven months after the motor vehicle accident.

[34] Despite being requested to do so by TD Defendants' counsel on May 26, 2023, and again on November 4, 2024, the Plaintiff has failed to provide any explanation for why the Claim was issued after the expiry of the limitation period. If the delay is attributable to the Plaintiff's health and recovery from injury, the Plaintiff has not provided any medical or affidavit evidence to explain the delay. In the absence of an explanation, I am left to infer that there is no valid reason for the failure to commence the action prior to September 14, 2022. I find the action is statute barred and consequently, there is no genuine issue requiring a trial.

[35] TD Defendants' motion is granted.

### **Costs**

[36] The TD Defendants are the successful party on this motion and presumptively entitled to costs. The parties are encouraged to resolve the issue of costs and if unable to do so, they may forward brief written submissions not exceeding two pages exclusive of Bills of Costs. The Plaintiff shall file their submissions by March 18, 2026, and the Defendant shall file their submissions by April 1, 2026. Costs submissions are to be sent to [scj.assistants@ontario.ca](mailto:scj.assistants@ontario.ca) and to my attention.

### **Order**

[37] There will be an Order as follows:

- a. The Plaintiff's action is dismissed for disclosing no reasonable cause of action pursuant to Rule 21.01(1)(b).
- b. Alternatively, the Plaintiff is granted summary judgment as there is no genuine issue requiring a trial pursuant to Rule 20.04(2)(a).

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Judge Somji

**Date:** March 4, 2026