

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hunstad v. Cormier*,
2011 BCSC 1881

Date: 20110629
Docket: S21284
Registry: Chilliwack

Between:

Tara-Lynn Hunstad

Plaintiff

And

John Frederick Cormier

Defendant

Before: The Honourable Mr. Justice N. Brown

Oral Reasons for Judgment

Counsel for the Plaintiff:

M. Hargrave

Counsel for the Defendant:

P.G. Kent-Snowsell and P. Tung

Place and Dates of Trial:

Chilliwack, B.C.
June 28 and 29, 2011

Place and Date of Judgment:

Chilliwack, B.C.
June 29, 2011

[1] **THE COURT:** On September 8, 2008, the plaintiff, Ms. Hunstad, suffered injuries while she was riding a bicycle at the intersection of McCallum Road (“McCallum”) and Marshall Road (“Marshall”) in Abbotsford, British Columbia (“City”).

[2] The parties agreed to sever liability and quantum. These reasons deal with who is to blame for the accident; and, if both the plaintiff and the defendant share blame, how to divide it.

[3] The plaintiff says only the defendant is only to blame. She says his fault lies in failing to keep a proper lookout, driving too fast, failing to see the plaintiff as he ought to have, driving without due care and attention, and some other particulars of negligence that are not relevant here. The pleadings also set out the usual omnibus clause alleging the defendant failed to drive in a careful and prudent manner, having regard to all the circumstances.

[4] The collision between the plaintiff on a bicycle and the defendant in his car occurred in one of the busiest intersections in Abbotsford, British Columbia's fifth largest City. Traffic was heavy. It was a sunny summer day; the roads were dry.

[5] The intersection lies not far south of Highway 1. McCallum is one of the main gateway routes to the centre of Abbotsford. It runs north/south; south to Highway 1 and north to the City centre. McCallum has two lanes southbound and two lanes northbound. Traffic wanting to turn right onto Marshall, a major east-west thoroughfare, needs to stay in the curb lane which, at the intersection, is dedicated to right turns. At the intersection, a small traffic island sets off the right turn lane from the adjacent ones. This allows traffic in that lane to turn westbound onto Marshall or to continue straight, southbound on McCallum. McCallum southbound has a similar arrangement, although traffic in the curb lane can choose to turn right onto Marshall or continue straight on. A dedicated merge segment allows traffic in the curb lane to turn eastbound onto Marshall or to continue southbound. A southbound left turn bay allows traffic to turn left, westbound, onto Marshall. Marshall also has two lanes each way with dedicated left turn lanes.

[6] The accident occurred roughly at the northwest corner of McCallum and Marshall. Fronting that northwest side of the intersection onto both McCallum and Marshall is a large commercial complex. A sidewalk surrounds it. Its main entrance faces diagonally into the intersection.

[7] Near the front entrance of the commercial building, a crosswalk joins the sidewalk. A marked crosswalk has been painted on a diagonal until it meets a small traffic island. On the other side of the traffic island, it continues straight, east-west across McCallum. It was in that northwest area of the intersection, near to the entrance area of the commercial complex, the accident occurred.

[8] As one might expect in a busy urban intersection, traffic signals control traffic flow in all directions. Pedestrian walk signals at all four corners of the intersection allow someone to push a button to allow them protected passage across well-marked crosswalks.

[9] Other locations relevant to the accident story are a Shell station, at the northeast corner; a Lee's Chicken outlet on Marshall, west of McCallum; and a Subway restaurant, at the southeast corner of the intersection.

[10] Besides herself, the plaintiff, called two eyewitnesses, Mr. Ken Carr, a pedestrian witness; and Mr. Mike Kott, a driver witness and his passenger spouse.

[11] Mr. Carr knew the plaintiff well enough to wave hello from time to time. That day, he was sitting at an outdoor table at the Subway restaurant near the southeast corner of the intersection, giving him a view from there across the intersection to the northwest. How reliable the view was arguable.

[12] Mr. Kott was driving a car. Just before the intersection, he had stopped in the southbound curb lane.

[13] The defendant called Constable Wilcox, an Abbotsford Police Officer. Cst. Wilcox attended the scene after the accident and spoke briefly to witnesses.

[14] Two other driver witnesses who had stopped at the north side of the intersection where the crosswalk was located also testified.

[15] One of them, Ms. Interjit Brar, was the driver of a vehicle facing southbound, positioned in the centre lane between the curb lane and the left turn bay. Her vehicle was either the second or third of three vehicles lined up behind the stop line at the intersection.

[16] Mr. Neil Ponsford was driving his vehicle in the same lane as Ms. Brar, either the second or the third one in that line, behind the first one stopped at the intersection.

[17] The issues, a mix of factual and legal questions, are:

- Whereabouts around the crosswalk and those southbound vehicles stopped at the intersection did the plaintiff, Ms. Hunstad, cross McCallum?
- What colour was the traffic signal?
- What was the pedestrian signal showing?
- What path did Ms. Hunstad take as she moved across the intersection?
- What colour sequence were the traffic lights on as she first began to move across the intersection? If they were green at first, when did they change?
- What rights and obligations did Ms. Hunstad and Mr. Cormier have or owe in the circumstances? This will depend mostly on the traffic light sequences at the time.
- If both parties are to blame, how should it be divided between them?

[18] I will not specifically answer each question, but as I review the evidence and make findings, the answers to them will be obvious.

[19] Now, to the witness evidence.

[20] Ms. Hunstad is a pleasant woman. She answered questions to the best of her ability, it appeared to me. She did not quarrel with counsel during cross-examination.

[21] Ms. Hunstad has two children. She is separated. She receives a pension, two of them, for injuries she sustained 18 years ago, from which she suffers significant disabilities that disable her from working.

[22] That day, she had been visiting a friend at his place. After leaving there, she went to a laundromat not far from the Shell station at the northeast corner. At the laundromat, she picked up a bag of clothes and put them inside a recyclable grocery bag. The relevance of that bag becomes apparent as it soon posed problems for her as she tried to negotiate her bicycle across the intersection.

[23] She then went to the Shell station I mentioned earlier to return some bottles for a refund. Using the refund, she planned to buy something to eat at Lee's Chicken, situated just west of McCallum on the south side Marshall. With that goal in mind, she left the Shell station and began to make her way towards Lee's Chicken. Once across McCallum, Ms. Hunstad said she planned to cross Marshall southbound, end up in the curb west of Marshall and then continue to Lee's Chicken.

[24] After she exited the driveway of the Shell station on McCallum, Ms. Hunstad said she headed south, making her way along the road gutter. Then, she said, she cut "a bit of a corner" and headed to the crosswalk, and once on it, proceeded westbound. Around the southbound centre lane, she said she saw a man in an SUV smile at her and wave her on. She continued on. She saw a car approaching from the north in the curb lane. She could see he was going to hit her. She could do nothing to avoid it hitting her. That is a brief version of Ms. Hunstad's evidence.

[25] Ms. Hunstad said that when she continued onto McCallum, the light was green. It was a "walk" at the time, but then it turned to "don't walk"; this was at the time, she said, when the light was going to turn amber.

[26] I cannot accept that evidence. Other evidence does not support it, and I find it highly unlikely the amber light sequenced for her as Ms. Hunstad describes.

[27] Ms. Hunstad explained it took her so long to cross the road because she had a bag of laundry over her shoulder that kept falling down under her arm. She stopped, straddling her bike in front of the left turn lane. Other witnesses disagree she stopped, although one of them said she had paused in front of the SUV before continuing towards the curb lane.

[28] Ms. Hunstad was not wearing a helmet. She was wearing a white hoodie, jogging pants and flip-flops. She was wearing contact lenses that day.

[29] On cross-examination, Ms. Hunstad confirmed that she was very familiar with the intersection having travelled in that area hundreds of times. She acknowledged it was a very busy intersection. Heavy-duty trucks come and go at all times. Businesses are situated on the various quadrants of the intersection. Many of the cars moving southbound are heading to Highway 1. Northbound traffic is also heavy.

[30] Ms. Hunstad admitted the traffic lights have buttons that activated pedestrian signals and allowed pedestrians to make their way safely across the road on a crosswalk. She described how they work, confirmed they work well, and confirmed she has used them many times.

[31] Ms. Hunstad said that when she went onto the crosswalk having “cut off the corner a bit,” as she put it, she did not press the button because she saw a walking man on the pedestrian signal. Therefore, she did not press it. However, I note that given she had cut the corner she would not have had the opportunity to press the walk button anyway.

[32] Ms. Hunstad knew the law required her to wear a helmet. She did not know the law required her to get off her bike and walk across the crosswalk, but she said she sees people do that all the time. She was aware she was supposed to ride with the traffic and admitted that when she was heading south in the curb lane on McCallum, she was moving against traffic moving south in it.

[33] Ms. Hunstad takes medications for her condition. She has been taking Oxycontin pain medication for years, as well as Tylenol 3. She denies, however, that these made her drowsy.

[34] She did not see any cars in the left lane on the crosswalk. She said a five-ton moving truck by was blocking her view. I am not clear where that would have been situated since she said she did not see any vehicles in the left southbound lane.

[35] Mr. Carr was called by the plaintiff. He described the weather as overcast. He was sitting at a table outside the Subway restaurant, found near the southeast corner of the intersection. He said he first saw Ms. Hunstad at the crosswalk heading west on Marshall. From where he was sitting, he could not see if she had a walk signal, but could see her in the crosswalk. Then, for 10 or 15 seconds, he paid no further attention as he was looking for a friend. The next thing he saw was Ms. Hunstad sliding off the front of a car and onto the road. He said the car that struck her was in the “merge” lane that would then lead traffic into a right hand turn onto Marshall. I cannot accept that evidence which I find inconsistent with the weight of all the other evidence on the point of impact between the defendant’s car and Ms. Hunstad.

[36] Mr. Carr said she was in the part of the crosswalk that leads to Investors Group, located in the commercial building on the northwest corner. Again, I cannot accept that evidence.

[37] Mr. Carr went to see if Ms. Hunstad had been hurt. He had First Aid Level 2 and was able at least to get a paper towel on her head.

[38] I note that Mr. Carr’s vantage point was about 200 feet from where these events unfolded. He was sitting in a chair. His vantage point, therefore, would be somewhat limited, since his eye level would have been about four feet off the ground, as he agreed.

[39] He said he had not been contacted about the accident until two years after by plaintiff's counsel. He said in cross-examination that he had to "create what had happened". I think he meant to say "re-create what had happened" from his memory.

[40] Mr. Kott was called by the plaintiff. He is familiar with the intersection as well. As I mentioned earlier, he had parked his vehicle in the curb on the north-east side of the intersection facing north. He was intending to continue north in the curb lane. He said he was preoccupied with watching the east-west light and then noticed a cyclist entering the intersection.

[41] He first became aware of the cyclist as she entered the intersection, when the light had turned yellow. Therefore, he sees the light turning yellow early on, as Ms. Hunstad enters into the intersection. He said she continued west in the crosswalk. About halfway across the intersection, he noticed her stop and wait, as if unsure of what she was going to do.

[42] Mr. Kott noticed cars stopped in the centre lane. Ms. Hunstad made it past the centre lane, but as she continued past it, the car in the curb lane struck her. Mr. Kott said she was in the crosswalk when hit. Ms. Hunstad ended up just on the edge of the westbound lane of Marshall, and just south of the crosswalk at or near the traffic island. He marked an Exhibit showing the location. He dialed 911, but could not remain at the scene and left his contact information.

[43] On cross-examination, he said he believed there was a high likelihood Ms. Hunstad was going to get hit given it was a busy intersection. He acknowledged it was possible the point of impact was further north in the curb lane, but he did not believe so, although he acknowledged it was possible she had cut the corner.

[44] Mr. Kott did not have the best vantage point, compared to other witnesses facing south and waiting for the light, and given their proximity to the events. His evidence with respect to the point of impact as he marked it on the Exhibit does not accord with the evidence of any of the witnesses, as he places events well south of where any other witnesses locate them.

[45] Ms. Brar was called by the defendant. She has lived in the Abbotsford area for 30 years and has travelled the intersection she said "thousands of times". She described the traffic as semi-busy that day. She was heading home with her son from school. She was driving a black Ford Explorer that she said sat up higher than normal. Nothing impeded her visibility.

[46] She was heading south in the middle lane, the second vehicle from the intersection. She noticed a person on a bicycle coming from the Shell station, and then continued onto the gutter of the northbound curb lane of McCallum. She thought, "that lady is on the wrong side and she is going to get hurt".

[47] Then, she saw Ms. Hunstad swerve, cutting a very wide swath across the street, as if she had crossed in front of the left turn bay. She was not sure, but did not think any vehicles were stopped in the left turn bay. Either way, she saw Ms. Hunstad pass in front of the car stopped ahead of her. Ms. Hunstad then continued on into the curb lane to her right, where she was struck.

[48] From the way Ms. Hunstad was swerving, she formed an impression Ms. Hunstad was on some medication or had consumed alcohol. She said that Ms. Hunstad moved continuously and did not stop. She never dismounted or put her feet on the ground.

[49] Ms. Brar said that when Ms. Hunstad crossed in front of her, the southbound traffic signal was green.

[50] After Ms. Brar saw Ms. Hunstad pass in front of the vehicle ahead of her, she describes her as "turning down" to the right, into the area of the curb lane. She described the point of impact as well south of the crosswalk leading to the commercial centre at the intersection I referred to earlier.

[51] Mr. Neil Ponsford was called by the defendant. He had been job-hunting that day and had been in the area before. He was driving a white Toyota and was on McCallum heading towards the border. He said he was stopped in the middle lane southbound, about 20 feet back from the stop line. He did not see Ms. Hunstad enter

the crosswalk area when she cut onto the crosswalk area. He said there was a purple van in front of him. He saw her cross the car in front of him somewhere between the thick stop line and the crosswalk line. He could not recall the light changing, but said he had been sitting for some time and felt as if it was about to change. He never saw Ms. Hunstad stop in the crosswalk. He put the point of impact as the area between a turquoise vehicle and the white vehicle depicted on Exhibit 7. The point of impact was clearly not in the crosswalk; rather it was well south of it. He did not really notice the defendant's vehicle.

[52] On cross-examination, he said he could not recall a car in the left turn bay. He first became aware of Ms. Hunstad's presence when she was in front of the van and proceeding westbound. He said that she then turned north and against the traffic northbound in the lane to his right, which would have been the southbound curb lane. He said she had already headed northbound towards his direction, when the collision occurred. He said Ms. Hunstad had moved in a northwest direction, as if she were trying to avoid the traffic island.

[53] On re-direct, counsel put Mr. Ponsford's statement to him confirming that the southbound traffic light had turned green just as Ms. Hunstad was turning into their lane of traffic. He said that he would not have been able to see her at all; and he said that by the time the silver car [what would have been the defendant's car] had been passing to his right, the light was green.

[54] Cst. Wilcox testified. He said that he investigated and spoke somewhat briefly to the parties that were there, including Mr. Carr, Mr. Ponsford, Mr. Cormier and Ms. Brar, and that they collectively had the same version of events. The collision did not occur in the crosswalk and he found no basis for issuing a ticket to Mr. Cormier.

[55] Mr. Cormier testified. He was a former yardmaster with the railroad. He is retired now. He said he had his fiancée (now Mrs. Cormier) with him. They had business in Abbotsford and were on their way home to North Vancouver. He was driving a 2002 model Honda; he had driven it for five years and was the principal operator, so obviously familiar with it.

[56] In brief, he said that he was driving southbound on McCallum intending to make his way to Highway 1. About halfway along the block, he could see a stale red light and some cars stopped at the intersection. Because it was a stale red, he slowed to 25 kilometres per hour. There were no cars ahead of him in his lane. About four cars from the intersection, he noticed the light had changed to green. Just then, a cyclist came to his left and passed right in front of him. He braked quickly and heavily, and stopped his vehicle in a very short distance. He said he was in shock for a few seconds. He had one second of seeing her in his peripheral vision prior to impact. He said she was definitely not in the crosswalk at the point of impact.

[57] He had no warning or indication a cyclist was about to make her way. He said the light had turned green about four lengths from the intersection. When Ms. Hunstad passed in front of him it was at riding speed, not at walking speed. He had no opportunity to avoid the collision. He said it happened in a split second. He brought his vehicle to a complete stop within one-half to three-quarters of a car length. It was a quick stop. He said that Ms. Hunstad had a hoodie on, pulled up over her head, and extending three inches over her face. Mrs. Cormier, who also testified, confirmed that.

[58] Mr. Cormier corrected his earlier impression that he had been in the lane to the left of the one he was actually in at the point of impact. On hearing the evidence at trial, he realized that he had been in error on that. This is an understandable error because the curb lane allows traffic to proceed straight through the intersection or turn right onto Marshall. In any case, his error does not detract from his testimony because his correction simply placed him where everyone else said he was, nor does it diminish his evidence on the distance of the point of impact from the intersection. Mrs. Cormier confirmed Mr. Cormier's evidence.

[59] Now, in coming to my decision, I have considered all of the evidence in its totality. The basic principles in a case such as this are relatively straightforward. Although the parties have counsel, for the parties present I will state them without legalese.

1. Each of us has a duty to look out for our own safety.
2. Each of us has a duty to look out for the safety of others, in the sense that we must take care to ensure our actions do not cause them harm.

[60] Sometimes we may not see another person or appreciate that our actions might cause harm to them, but if we should have done so, we may be found responsible for any foreseeable harm our actions have caused.

[61] The degree of care a person must exercise in a given situation is proportionate to various factors. For example, a person might have a special responsibility for another's safety, such as when an adult has charge of a child. Generally speaking, the greater the risk of harm associated with a person's responsibilities and activities, the greater the degree of care they must exercise.

[62] Where a judge finds the actions of more than one person was a significant cause of the resulting harm, they apportion responsibility between the parties on a percentage that reflects their relative moral blameworthiness.

[63] In some cases, a defendant may be found completely responsible for an accident, but a judge may still reduce the plaintiff's award of damages because they failed to exercise reasonable care for their own safety, such as by failing to wear a seatbelt or a helmet, or otherwise failing to take reasonable care for their own safety.

[64] For some complex routine activities, such as those involving ships, aircraft navigation operation of vehicles and bicycles on roads and highways, specific statutes such as the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA], govern both rules of the road for vehicles and certain obligations pedestrians owe when crossing roads. These reflect older, common law rules that have been codified and expanded to reflect the complex demands of modern traffic.

[65] The standard of care expected of a driver is not perfection, but whether they acted as an ordinarily prudent person would act (*Hadden v. Lynch*, 2008 BCSC 295 [*Hadden*]).

[66] Section 183 of the *MVA* sets out the duties of a cyclist, who in addition to some specific duties set out in s. 183, shares the same rights and the same duties as a person driving a motor vehicle. A cyclist must operate a bicycle with due care and attention, and with reasonable consideration for other persons using the highway. When using a crosswalk, they must walk their bicycle across the road. In other words, they must dismount and walk their bike across it. The practical safety considerations underlying this rule are easy to see, on just a few moments reflection.

[67] Bicycle riders must wear a protective helmet when they cycle.

[68] As Justice Barrow in *Friedrich (Litigation Guardian of) v. Vernon (City)*, 2008 BCSC 1243, states at para. 29, s. 162 of the *MVA* applies to cyclists who, as mentioned, have the same rights and duties as drivers.

[69] *Walker v. Brownlee*, [1952] S.C.J. 56, is a case cited in virtually every intersection case involving a left turning driver at an intersection and another driving straight through. It is also often cited in cases that do not involve competing rights and obligations of drivers moving through an intersection.

[70] The portions of the *Walker* principle that are central here relate to Ms. Hunstad's burden to prove that once Mr. Cormier became aware or should have become aware, by the exercise of reasonable care, of Ms. Hunstad's negligence that he used reasonable care and skill to avoid the consequences of it; and that he had sufficient opportunity to avoid the collision. This burden already assumes, then, negligence on the part of the plaintiff. It imposes a burden, (put somewhat differently) on the plaintiff of showing the defendant breached their duty to avoid the consequences of the plaintiff's negligence, insofar as it was reasonably possible to do so, with the use of reasonable care and skill; and insofar as the party with the right-of-way has a chance to avoid the consequences of the plaintiff's negligence.

[71] Therefore, this is the principle Justice Tysoe had in mind in *Kerr (Litigation Guardian of) v. Creighton*, 2008 BCCA 75, at para. 58 when he said the plaintiff in that case, Ms. Hunstad in this one, carries a burden of proving by definitive evidence

that the defendant, Mr. Cormier in this case, had enough time, enough distance, and enough opportunity to take effective measures to counteract Ms. Hunstad's negligence.

[72] I just mentioned the basic principle of negligence that the greater the risk, the greater the need for care. Chief Justice Bauman referred to it in *Hadden*, a case sharing some similarities with this one. At para. 61, he noted the plaintiff's breach of several traffic laws, such as riding on the crosswalk and not wearing a helmet. He noted the plaintiff thereby took upon himself a heightened duty to take care and to ensure he was seen by other drivers. So there is another example of a situation where specific actions or circumstances impose a duty to use extra caution.

[73] Counsel for Ms. Hunstad, Mr. Hargrave, pointed to the reference at para. 62 of *Hadden* to the presence of a crosswalk as being "precisely the place where a motorist could reasonably expect to encounter another user of the road". He referred also to *Niitamo v. Insurance Corporation of British Columbia*, 2003 BCSC 608, a 2003 decision of Madam Justice Ballance, where a trucker turning right at an intersection struck a cyclist crossing in a well-marked crosswalk. The cyclist had stopped before crossing, then mounted his bike and rode at a moderate pace across the road until he was struck, just as the truck executed its right hand turn. Ms. Hunstad relies on the comments made at para. 22 by the judge, where, distinguishing the case before her from another one, said that the trucker was approaching a marked crosswalk which "is precisely the place where a motorist could reasonably expect to encounter another user of the road". She said that when approaching a crosswalk "a motorist assumes a heightened duty to take extreme care and maintain a vigilant outlook for those who might be in the crosswalk".

[74] Of course, the nature of that care and that vigilance depends on the circumstances confronting the motorist as they approach the location of the intersection. This includes the nature and volume of the traffic, the presence of traffic and pedestrian signals, and a host of other factors that must be considered by the motorist and weighed by a judge.

[75] Ms. Hunstad acknowledges her actions walking across the road were negligent and that she bears a substantial portion of responsibility for the accident. However, she submits, as Mr. Cormier acknowledged, his attention was focussed straight ahead as he approached the intersection. He did not look to the left, as he approached the intersection because he saw no reason to do so. His attention was focussed on where he was going, which was through the intersection.

[76] Ms. Hunstad points out northbound traffic had stopped and had not started moving in response to the green light, and suggests that given the expectation drivers should have for the presence of other users of the road or on a crosswalk, in this case a cyclist, Mr. Cormier should have considered this when approaching the intersection.

[77] The question is whether Mr. Cormier should have seen Ms. Hunstad earlier; and, assuming he should have: did he have sufficient time, distance, and opportunity to avoid the consequences of her negligent actions.

[78] I cannot agree Ms. Hunstad was in the crosswalk at any time directly material to answering this question. I accept Ms. Hunstad was in the area of the east-west crosswalk for some portion of the time that she was crossing from east to west, at least where southbound vehicles had stopped and were waiting for the light to turn green. But when she found herself halfway across McCallum, the light likely had already turned yellow. She had already placed herself in a situation where she had to act with extreme caution. Instead, she left the crosswalk, choosing to turn right into the curb lane against the direction of southbound traffic. She then turned in a northwest direction, heading for the sidewalk and across the path of Mr. Cormier's car.

[79] The weight of credible independent evidence supports a finding that Mr. Cormier collided with Ms. Hunstad two lengths or more south of the crosswalk, adjacent to the Investors Group sidewalk area. Had she been in the crosswalk itself, Mr. Cormier, given how quickly he was able to stop his vehicle, most likely could have avoided the collision. However, in the circumstances created by Ms. Hunstad,

he had neither the time nor the distance, nor opportunity to take reasonable evasive action.

[80] I cannot find either that even if Mr. Cormier had strained for some reason to see if there was a pedestrian or cyclist still in the crosswalk, he would have seen Ms. Hunstad. Perfection was not required of Mr. Cormier. As it was, he was already approaching the intersection in a prudent way when he encountered Ms. Hunstad considerably north of where he could have expected to see any pedestrian. I find he had no obligation to anticipate such an unusual occurrence; one that is consistent with Ms. Hunstad's erratic actions leading up to this point. But those actions were ones Mr. Cormier did not see and could not be expected to have become aware of.

[81] This was not a school zone or a playground. This was an exceptionally busy intersection controlled by traffic lights and pedestrian walk signals. Yes, Mr. Cormier had to exercise caution as he approached the intersection. I find he did so in the circumstances he was aware of or ought to have been aware of.

[82] Mr. Cormier's speed was already at speeds less than those posted speeds for schools zones. In my view, he acted prudently, considering all these circumstances. He had the right-of-way. He was entitled to proceed. His speed was reasonable as shown by how quickly he stopped his car.

[83] Ms. Hunstad was not there to be seen as he approached the intersection. I cannot find he ought to have seen Ms. Hunstad before he did.

[84] I find Mr. Cormier did not fail in any duty he owed to the plaintiff.

[85] I find Ms. Hunstad has failed to discharge her burden of proof. She is solely responsible for the accident.

[86] **MR. KENT-SNOWSELL:** Costs, My Lord?

[87] **THE COURT:** I am not going to order costs because of Ms. Hunstad's financial situation. If you want to make some submissions on that, I will consider it, but I don't think they are appropriate in the circumstances.

[88] **MR. KENT-SNOWSELL:** I will seek instructions.

[89] **THE COURT:** Thank you.

“N. Brown J.”