

CANADA / JUDGMENT

Gorman v. Meghji

2018 BCSC 1904

COURT

Supreme Court of British Columbia

DECIDED

6 November 2018

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2018 BCSC 1904 Gorman v. Meghji

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gorman v. Meghji,

2018 BCSC 1904

Date: 20181106

Docket: M153411

Registry: Vancouver

Between:

Chad Steven Gorman

Plaintiff

And

Shiraz Hassanali Meghji

Defendant

- and -

Docket: M164655

Registry: Vancouver

Between:

Shelina Meghji

Plaintiff

And

Shiraz Hassanali Meghji, Constable Chad Gorman, Constable Harmis,
Her Majesty the Queen in Right of the Province of British Columbia,
and Minister of Public Safety and Solicitor General for the Province
of British Columbia

Defendants

And

Constable Chad Gorman, Her Majesty the Queen in Right of the
Province of British Columbia, and the Minister of Public Safety and
Solicitor General for the Province of British Columbia

Third Parties

- and -

Docket: M164658

Registry: Vancouver

Between:

Safeena Meghji

Plaintiff

And

Shiraz Hassanali Meghji, Constable Chad Gorman, Constable Harmis,
Her Majesty the Queen in Right of the Province of British Columbia,
and Minister of Public Safety and Solicitor General for the Province
of British Columbia

Defendants

And

Constable Chad Gorman, Her Majesty the Queen in Right of the
Province of British Columbia, and the Minister of Public Safety and
Solicitor General for the Province of British Columbia

Third Parties

- and -

Docket: M165524

Registry: Vancouver

Between:

Shiraz Hassanali Meghji

Plaintiff

And

Minister of Public Safety and Solicitor General of British Columbia

and Constable Chad Steven Gorman

Defendants

- and -

Docket: M164660

Registry: Vancouver

Between:

Shamez Meghji,

by his Litigation Guardian, Shelina Meghji

Plaintiff

And

Shiraz Hassanali Meghji, Constable Chad Gorman, Constable Harmis,

Her Majesty the Queen in Right of the Province of British Columbia,

and Minister of Public Safety and Solicitor General for the Province

of British Columbia

Defendants

And

Constable Chad Gorman, Her Majesty the Queen in Right of the

Province of British Columbia, and the Minister of Public Safety and

Solicitor General for the Province of British Columbia

Third Parties

Before: The Honourable Mr. Justice Butler

Reasons for Judgment

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[VA M164655, M164658, M165524, M164660]

B. Ward

J. Mules

Place and Date of Trial:

Vancouver, B.C.

February 26, 27, 28, 2018

March 1, 2, 5, 6, and 7, 2018

Place and Date of Judgment:

Vancouver, B.C.

November 6, 2018

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- [1] On July 22, 2014 in the early afternoon, Constable Chad Gorman, an officer with the Langley detachment of the RCMP, was attending a call at an elementary school in Langley. While sitting in his marked police car, he received a Priority 1 alert on his radio. He was notified that a 911 call had come in from a man who said he was being chased by someone with a gun (the "911 Call"). A Priority 1 call is the most urgent priority call for RCMP officers. The call was in Cst. Gorman's zone of patrol and so he responded immediately. He initiated a U-turn and began driving towards the Fraser Highway. He says he activated his lights and sirens; this is described as a Code 3 response. He knew that one of his fellow officers, Cst. Vetter was also responding to the 911 Call and was proceeding on the same route ahead of him. When he reached the Fraser Highway he turned left and proceeded west to reach the location of the person who had initiated the 911 Call. He accelerated his vehicle quickly and reached a speed of 147 km/h.
- [2] At the same time, Shiraz Meghji and his family had just arrived in the Langley area. Mr. Meghji was driving the family's 2006 Chevrolet camper van (the "Meghji van"). Mr. Meghji's wife Shelina was sitting in the front passenger seat, his 18-year-old daughter Safeena and his 15-year-old son Shamez were sitting in the backseat. They were on vacation, having left their home in Calgary two days before. They spent the night of July 21 in Merritt, British Columbia and were heading for Vancouver. They decided to stop in Langley because Shamez wanted to visit an antique car museum located somewhere near the Fraser Highway. Mr. Meghji was not familiar with the roads. He had turned south off of the Fraser Highway when he should have turned north. As Cst. Gorman was turning onto the Fraser Highway, Mr. Meghji had turned around and was facing north at the intersection of 268 Street and the Fraser Highway (the "Intersection"). He intended to cross the highway and turn left after the Intersection.
- [3] Mr. Meghji drove into the Intersection and as his van crossed the westbound lane of the Fraser Highway his vehicle was struck at a high speed by Cst. Gorman's car. Both vehicles were destroyed by the force of the collision and the Meghji van was flipped onto its side. Somewhat miraculously, no one was killed. All five people suffered injuries, but they were able to walk away from the accident. They all commenced separate actions seeking damages for personal injury. The five actions (Vancouver Registry action nos. M153411, M165524, M164655, M164658, and M164660) were ordered to be heard at the same time on the question of liability.

- [4] The trial of the five actions was somewhat complicated by the number of counsel. Mr. Meghji had separate counsel to represent his interests as plaintiff and defendant, just as Cst. Gorman had counsel acting for him as plaintiff and counsel who represented his interests and those of the Her Majesty the Queen in Right of the Province of British Columbia and the Minister of Public Safety and Solicitor General for the Province of British Columbia (the "RCMP defendants") as defendants or third parties. I thank counsel for the care they took to avoid unnecessary duplication or repetition as they conducted examinations and made submissions.
- [5] The issue to be decided in all of these actions is whether one or both of the two drivers is at fault for the accident. If both are at fault, liability must be apportioned between the two drivers. Cst. Gorman and the RCMP defendants submit that Mr. Meghji should be found solely at fault for the accident. They say Mr. Meghji breached his statutory obligation to yield the right-of-way to Cst. Gorman's emergency vehicle travelling with lights and sirens activated. In addition, they say Mr. Meghji breached his statutory obligation to yield to Cst. Gorman's vehicle, which had the right-of-way and posed an immediate hazard. Mr. Meghji says that Cst. Gorman should be found substantially at fault for the accident. He says the officer acted negligently and unreasonably by travelling at an excessive speed in light of the conditions on the Fraser Highway at the Intersection. It was mid-day in a busy area with homes and commercial premises and the speed limit was only 60 km/h.
- [6] For the reasons that follow, I conclude that both drivers are at fault for the accident. I apportion fault 80% to Cst. Gorman and 20% to Mr. Meghji. I will explain how I arrive at this conclusion by setting out the evidence of the drivers and other lay witnesses. In addition, both vehicles had Airbag Control Modules ("ACMs") that were imaged and analyzed. These are the "black boxes" in a vehicle's airbag system that record and preserve valuable information about the speed, acceleration and deceleration of a vehicle shortly before impact. I have considered that evidence along with the evidence of the expert witnesses called by the parties. After summarizing the evidence I set out my findings of fact and my conclusions on liability based on application of the relevant law.

Agreed Statement of Facts

- [7] The parties submitted an Agreed Statement of Facts that sets out relevant information about the 911 Call, the intersection where the accident occurred as well as the ACM data from the two vehicles.
- [8] Cst. Gorman received the 911 Call at 1:28 p.m. He immediately started to drive his 2014 Ford Taurus police car (the "Gorman car") towards 49 Avenue and 240 Street, the location of the caller. He drove north on 272 Street and turned left to travel west on the Fraser Highway. Another police car, driven by Cst. Vetter (the "Vetter car"), was responding to the 911 Call along the same route ahead of the Gorman car. The Vetter car had the emergency lights and sirens activated.

- [9] The Gorman car approached the Intersection at approximately 1:30 p.m. The weather conditions were clear and the road was dry. The Fraser Highway has two through lanes and a left turning lane for west and eastbound traffic at the Intersection. On both sides of the Intersection there is a concrete median between east and westbound traffic. The speed limit on the Fraser Highway at the Intersection is 60 km/h. The Intersection has a pedestrian controlled traffic light to allow foot-traffic to cross the highway. The light flashes green for east and westbound traffic when it is not activated by a pedestrian. There were stop signs for north and southbound traffic on 268 Street.
- [10] The ACM in the Gorman car captured five seconds of pre-accident data in half-second intervals. That data shows that at -5.0 seconds the vehicle was travelling 139 km/h. It accelerated slightly and reached a speed of 147 km/h at -1.0 seconds before the accident. At -0.5 seconds the speed was 145 km/h and at zero time it is 123 km/h.
- [11] Mr. Meghji approached or was stopped at the south side of the Fraser Highway when the Vetter car drove by. Mr. Meghji stopped at the stop sign. The ACM in the Meghji van captured eight seconds of pre-accident data in miles per hour at one second intervals. The vehicle was not moving between -8.0 and -5.0 seconds. From -4.0 to -1.0 seconds it recorded speeds of 1, 6, 11 and 17 mph.

Evidence of the two drivers

Cst. Gorman

- [12] At the time of the accident, Cst. Gorman had been with the RCMP for six years. When he was in training at the RCMP depot, he took driver training courses that included high-speed driving and evasive manoeuvres. He studied emergency vehicle operation ("EVO"), including how to make decisions about an appropriate emergency response. He agreed in cross-examination that the primary objective of any intervention is public safety, and that the risks of injury, fatality and property damage must be taken into account. He received a professional passing grade on all of the driver training courses.
- [13] Cst. Gorman explained the difference between a pursuit and an emergency response ("ER"). The latter is when an officer is responding to a call. A judgment call must be made based on risk assessment. Depending on that assessment and all of the circumstances, the officer uses emergency equipment which could mean lights or sirens or both. He also explained that there are three levels of priority: Priority 3 is no immediate risk of harm; Priority 2 involves some degree of risk of harm; and Priority 1 involves immediate risk to public safety. Priority 1 calls usually require emergency equipment to be activated while a judgment call must be made by the officer as to activation of emergency equipment for Priority 2 and 3 calls. The dispatcher determines the priority level.
- [14] Cst. Gorman described how an officer who receives a call must consider the urgency of the situation, the distance to travel, and decide on the route to take based on traffic conditions and the surrounding circumstances. The primary concern is public safety, which includes

the safety of the person making the call as well as the general public. The officer is expected to make the public safety assessment on a continuous and ongoing basis. Prior to the date of the accident, Cst. Gorman had responded to four or five ERs involving a firearm. It is a fairly rare occurrence and results in a high level of stress for the officer.

- [15] On July 22, he started his shift at 6:00 a.m. He had performed a morning inspection on his car that day, which was in good working order. When he received the 911 Call, he was writing his report on the call he had just completed. Cst. Gorman knew that Cst. Vetter had been dispatched to the 911 Call. The call had been made from a location that was some distance from Cst. Gorman's location. Cst. Gorman says he immediately activated his lights and siren and kept them on continuously until the accident. He recalls changing the tone of the siren as he approached intersections on the drive. This is accomplished by pressing on the horn.
- [16] As Cst. Gorman headed north on 272 Street, he saw Cst. Vetter's car about a half block in front of him. He saw traffic pulling over and stopping at the side of the road. Cst. Gorman had to stop for one or two seconds to make sure the traffic was clear at the intersection with the Fraser Highway. He then proceeded west on the highway. The highway widens into two lanes going each direction around 270 Street. He was taught that when there are two ER vehicles there should be a safe distance between them. He did not estimate the distance between them when he was up to full speed.
- [17] Cst. Gorman was very familiar with the Fraser Highway in that area. The north side of Fraser Highway has commercial premises to the east of the Intersection and residential buildings to the west. The commercial lots all have driveways on the highway. He knew that the speed limit increased from 50 km/h at 272 Street to 60 km/h at the point where the highway widens to four lanes. He was driving in the centre or left lane as he approached the Intersection. He did not check his speed as he was driving. Instead, he made a judgment call as to a safe and effective speed. As he approached the Intersection the flashing traffic light was green. He does not recall passing any vehicles.
- [18] Cst. Gorman's evidence about how far he was from the Intersection when he first saw the Meghji van was somewhat confusing. In chief he said he was approximately 100 metres east of the Intersection. On discovery, he said he was about 150 metres from the Intersection, but in cross-examination he said he now believed he was further away from the Intersection when he first saw the Meghji van.
- [19] Cst. Gorman saw the Meghji van edging into the Intersection and then saw it stop in the eastbound lane. His evidence about where the Meghji van was stopped changed between discovery and trial. At trial, he said the Meghji van was straddling the crosswalk and the first eastbound lane when it stopped. On discovery, he said the Meghji van came to a stop blocking the two eastbound lanes. Cst. Gorman testified that he took his foot off of the accelerator when he first saw the Meghji van but then accelerated again when he saw it stop. He believed the driver of the Meghji van had stopped to let his car travel through the

Intersection. Cst. Gorman estimates that one or two seconds after he first noticed the Meghji van, he saw it accelerate across the Intersection. At trial, Cst. Gorman said he applied the brakes at that moment and made an evasive manoeuvre to the right but he could not avoid the collision. On discovery, he stated that he did not know if he applied his brakes.

- [20] In cross-examination Cst. Gorman agreed that drivers and pedestrians frequently act in unpredictable ways. Drivers do not act consistently when they hear or see police vehicles with emergency equipment activated. He also agreed that police officers are taught to slow down at intersections during EVO, even when they have the right-of-way. At trial, Cst. Gorman stated in cross-examination that as he approached the Intersection coming from the east, he would not have been able to see a vehicle stopped at the stop sign on the south side of 268 Street. He admitted that his statement to the contrary on discovery was incorrect. He changed that evidence because after the discovery he returned to the scene of the accident and re-examined the sight lines.
- [21] Some time after the accident, Cst. Gorman was given a traffic violation ticket by Staff Sargent Gerard Sokolowski who was in charge of the Langley traffic unit at the time. Sgt. Sokolowski had conducted a review of the accident and was of the view that Cst. Gorman was driving too fast. However, the traffic violation offence was never prosecuted and so Cst. Gorman does not have any charge on his driving record as a result of the accident.
- [22] In cross-examination Cst. Gorman agreed that the effectiveness of sirens diminishes as the police vehicle's speed increases. He also agreed that the sound of the sirens can be confusing if there is more than one emergency vehicle in close proximity.

Mr. Meghji

- [23] As the Meghji family proceeded on Fraser Highway, Shamez was giving directions to his father. By mistake Mr. Meghji turned left onto 268 Street. He quickly realized the error, completed a U-turn and came back to the Intersection. He intended to drive through the Intersection to make a left turn towards the antique car lot. Mr. Meghji estimates that he was 3 to 4 car lengths from the stop sign when he saw the Vetter car pass by the Intersection. Mr. Meghji believes he made a brief comment, such as, "did you see that". He came to a stop at the stop sign and saw there was no traffic coming from the west. However, from the stop line it was not possible to see the westbound traffic on Fraser Highway because there was considerable shrubbery at the southeast corner of the Intersection.
- [24] Mr. Meghji inched forward into the Intersection and looked to his right. He saw a car slowly approaching about a block away with a right turn signal on. He decided it was safe to proceed and he started accelerating through the Intersection. Once he started moving forward he never brought his vehicle to a second stop. Mr. Meghji did not hear another police siren as he drove forward. As he approached the concrete median, Mrs. Meghji, who was sitting in the front passenger seat, said that a second police car was coming towards them. Mr. Meghji looked to his right and saw a police car approaching his vehicle but

thought it was a considerable distance away. He believed that he had enough time to drive through the Intersection and attempted to do so. He thought the police car was more than a block away. He accelerated and continued to accelerate until the collision. He recalls his wife shouting, "he is going to hit us" and that he should stop.

- [25] The Meghjis were all taken to the hospital where they spent a couple of hours. They were then taken to the police station to give statements. At midnight, the police took them to their vehicle where they were able to put their luggage and possessions into six or seven garbage bags.
- [26] In cross-examination, Mr. Meghji agreed that he had to yield right-of-way to any approaching vehicles on the Fraser Highway. He knew it would take some time for his van to cross the highway, which was five lanes wide. He agreed that the police car he saw was travelling well over the speed limit and was likely headed to an emergency. He also agreed that it is not unusual to see more than one emergency vehicle responding to an emergency.
- [27] Mr. Meghji was examined for discovery on two occasions. At the first discovery, he said that the only time he fully stopped was at the stop sign. After the stop sign, he inched forward to get a clear sight line to the east, but did not come to a full stop as he did that. On the second discovery he said he stopped the van twice; once at the stop sign and a second time after he had moved far enough into the Intersection to get a clear view to the east. At trial, he gave evidence consistent with the first discovery; in other words, he came to a full stop only once.
- [28] In cross-examination Mr. Meghji said that Mrs. Meghji told him about the approaching police car when he was at or near the concrete median. He could not be sure of the location, but believed he was still on the eastbound side of the highway. He also stated in cross-examination that he recalled seeing the lights of the police car but did not hear a siren.

Evidence of the lay witnesses

- [29] A number of lay witnesses who were at or near the Intersection when the accident took place gave evidence at trial. The following is a brief summary of that evidence.

Robert Sitnik

- [30] Mr. Sitnik is a Telus lineman. He was driving a Telus truck heading southbound on 268 Street. He was stopped at the Intersection waiting to turn left onto the Fraser Highway. The pedestrian traffic light was flashing green for traffic on the highway. From that location, Mr. Sitnik had an unobstructed view for approximately 300 to 400 metres to the east. Mr. Sitnik was very familiar with the Intersection. It is usually quite busy and he described the traffic on July 22 as "routine".

- [31] Shortly after he stopped at the stop sign he heard a police siren and saw a police car that was approaching at high speed; in excess of 100 km/h. At the same time, he saw a van stopped at the northbound stop sign on 268 Street. Having heard the siren and seen the police car with emergency lights, he decided to stay put. The police car passed through the Intersection without incident.
- [32] Within 10 seconds Mr. Sitnik saw a second police car coming from the east. He recalls seeing the second police car when it was 300-400 metres from the Intersection. He was somewhat uncertain about how much time had elapsed between the passing of the two police cars. He gave an estimate of between 15 and 30 seconds for the second police car to reach the Intersection after the first police car drove past. However, he also said that he heard the second police car a short time after the first one cleared the Intersection.
- [33] In his peripheral vision, Mr. Sitnik noticed the northbound van starting to move into the Intersection. He did not see the van come to a stop after it left the stop line. The police vehicle was not far away when the van moved into the Intersection. Mr. Sitnik realized they were going to collide. He described the collision as "violent". He does not recall hearing a change in the tone or sound of the police siren as it approached the Intersection.

Celeste McNamara

- [34] Ms. McNamara was driving east on the Fraser Highway at the time of the accident. She was very familiar with the Intersection, as she drove past it on most days. A friend, Mariko Brown, was seated in the front passenger seat. Ms. McNamara said that the pedestrian light was flashing green as she approached the Intersection. However, in her statement to the police after the accident she said she was not paying attention to the light. She saw and heard police cars travelling westbound. She agrees that it is difficult to judge distances, but believes the cars were a few blocks away when she first noticed them. She estimates that the second police car was about 10 car lengths behind the first one. They were within a few seconds of each other.
- [35] After seeing and hearing the police cars, she pulled over to the right side of the road. She believes she was about 20 feet from the Intersection. After the first police car drove by, she was watching the second police car and noticed that the van that had been stopped at the stop sign on 268 Street started moving forward. It moved fairly slowly into the Intersection. She believes the collision happened in a westbound lane of the highway within five seconds of the van starting to move.
- [36] She does not recall hearing a change in the sound or tone of the police siren as it approached the Intersection.

Mariko Brown

- [37] Ms. Brown lives in Nanaimo and was visiting Ms. McNamara. As their car approached the Intersection she and Ms. McNamara were chatting. She heard police sirens and saw the police cars coming towards them. Ms. McNamara started to pull over to the side of the highway about 140 feet from the Intersection. Ms. Brown recalls seeing vehicles in front of them that did not pull over. She said the police car went "flying by us" very quickly. She estimates that about seven seconds passed from when she first saw the Vetter car until it drove past.
- [38] Ms. Brown saw the van stopped at the stop sign on 268 Street. She said it was at the stop line or behind it. She saw the van start across the Intersection. After it started she thought it hesitated slightly without stopping before going through the Intersection. She thought it was trying to make a left turn. The van was struck by the second police car which was less than five seconds behind the first. She estimated that it was only two seconds from the time the van started moving until the collision.

Tyler Simonsen

- [39] Mr. Simonsen was walking west on the south side of the Fraser Highway about 50 metres east of the Intersection at the time of the accident. He walked in that area almost every day. He heard sirens coming from behind him. He glanced around and saw two police cars approaching. He believes that the first car had its lights and sirens on and that the siren in the second police car was turned on as it was driving towards the Intersection. He says the car was 20 to 30 yards behind him when he first became aware of it. There was a slight delay between the two cars but the second one was not far behind the first; maybe a few seconds.
- [40] Mr. Simonsen saw the van pull out from the stop sign on the south side of the Intersection. Given his vantage point, he would not have been able to see the van at the stop sign. This is because there is thick foliage at that corner in the summer. The van was accelerating normally into the Intersection when he saw it. The first police vehicle had already passed through the Intersection and the second vehicle was approaching quickly. He believes the accident occurred in the middle of the westbound lanes.

Neil Walsh

- [41] Mr. Walsh worked at a rental store on Old Yale Road, which is located just north of the Fraser Highway. He was inside the premises about 250 feet from the Intersection when the accident happened. He had a clear view of the Intersection from the store. On the day of the accident the doors were open. He heard a police car with a siren coming from the east on Fraser Highway. About 10 to 15 seconds later he heard a big crash. At first he did not know if the collision involved a police car. He did not actually see the collision.

- [42] In cross-examination he said he would have been at the front counter of the store at the time of the accident. He gave a statement to the police in which he said that he saw the first police car go by with its lights on. In his statement he also indicated that he did not hear a second siren but acknowledged that one siren may have cancelled the other out.

Donald Chessell

- [43] Mr. Chessell was employed at the same rental store. He had just parked his truck in the parking lot of the business when he saw a police car with lights and sirens drive by on the Fraser Highway. He thought it was going excessively fast. He says he heard an engine roaring loudly as walked into the store where Mr. Walsh was working. He did not hear any police siren when he heard the engine of the second police car. He then heard the collision and saw an explosion of car parts as he went outside. He believes that no more than a couple of minutes passed between the passing of the two vehicles.
- [44] In cross-examination his evidence about where he was when the first police car went by was confusing. He seemed to suggest that he was still in his truck when the first police car drove through the Intersection. He was certain that the second police car was travelling faster than the first one. He saw the second car when he was inside the store. He reiterated his recollection that approximately two minutes went by between the two police cars.

Shelina Meghji

- [45] Mrs. Meghji is a public health nurse. She confirmed that her husband had turned south onto 268 Street and had to turn around to go back across the Fraser Highway. Just as the van was coming to a stop at the stop sign, she saw the first police car go by at a very high speed with lights and sirens. After a brief hesitation to make sure it was clear, her husband started to move into the Intersection. At first she could not see to the east because of the vegetation, but once they cleared the vegetation she did not see any traffic coming from the east. She thought that it was safe for her husband to proceed and believes she told him that. She is uncertain about the location of the van when she said that, but believes it was getting close to the median.
- [46] As they got closer to the median Mrs. Meghji saw another emergency vehicle, but it was quite far away. Based on a review of Google maps after the accident, she thinks it was about two blocks away near an intersection with a traffic light. She saw the flashing lights of the police car. She was uncertain if its' siren was on. She is not sure of the van's location at that moment but believes it was in the vicinity of the median. Mrs. Meghji alerted her husband when she saw another emergency vehicle and realized that it was travelling very fast. She yelled at her husband to stop before the cars collided. She emphasized several times in her examination that there was very little time from the moment they entered the Intersection until the accident happened.

- [47] In cross-examination, Mrs. Meghji was referred to her police statement in which she said that her husband came to a stop when she shouted. She subsequently saw the ACM data and realizes that could not have happened.

Safeena Meghji

- [48] Safeena was in the left rear passenger seat behind her father. She heard a siren and saw the first police car pass by. It was moving really fast. She was looking to her left, towards the west, as the van moved into the Intersection. She heard her mother say that she saw a second police car that was going to hit them. It was instantaneous between the time that her mother said there was a second police car and the actual collision. She did not see the second police car before the accident. She was looking forward as they crossed the Intersection.

Shamez Meghji

- [49] Shamez is an engineering student. He found out about the antique car museum online and directed his father as they drove through Langley. After turning left on 268 Street they made a U-turn so they could cross over to the correct side of the highway. He heard a siren and saw flashing lights as the first police car drove by. He said his father proceeded forward slowly after looking both ways. He does not recall the van stopping again after it moved into the Intersection.
- [50] Shamez was seated behind his mother. He heard her say something about another police car coming and that they should stop. The van was even with the median at that time. He looked and saw the police car just before the collision. He could not recall if it had lights on, but his statement to the police indicates that it did have emergency lights on. He does not recall if he heard a siren.

Additional police witnesses

- [51] Three additional police officers gave evidence. None of them were witnesses to the accident.
- [52] Cst. Vetter testified about his response to the 911 Call. He was travelling quickly to the call with his emergency lights and sirens on due to the urgency of the call. He does not know how fast he was going but expects he sped up when the Fraser Highway transitioned from 2 to 4 lanes. As he drove along the highway he would have made a risk assessment in order to decide how fast to travel. Factors he took into account would have been the risk for the 911 caller, the distance to travel, and the road conditions in the areas he had to pass through. Cst. Vetter was taught to exercise caution and slow down at intersections when driving in an EVO situation. He does not recall if he slowed down at the Intersection. He does not recall noting any particular hazards as he drove along the highway. He did not know that Cst. Gorman was behind him. When he arrived at the site of the 911 Call, he learned that the individual with a gun was a member of a combined forces special unit who was effecting an arrest.

- [53] Staff Sgt. Sokolowski conducted a review of the accident seven months after it happened. He made the decision to issue a traffic violation to Cst. Gorman. He confirmed that an officer in an emergency response situation must continuously assess the situation with a view to public safety. There is no maximum speed for an emergency response. However, the faster you travel the more difficult it is to assess risks to pedestrians and vehicles coming from the side. A driver tends to get tunnel vision when travelling at high speeds. He agrees that under EVO officers are taught to proceed cautiously at intersections including where there is a flashing green pedestrian-controlled light.
- [54] Sgt. Alexandra Mulvihill is the current traffic commander with the Langley RCMP. She was not a member of that detachment at the time of the accident. She was assigned the job of prosecuting the traffic violation that had been issued to Cst. Gorman. She was of the view that there were investigational gaps in the file material such that the prosecution could not proceed without further investigation. No further investigation was done.
- [55] Sgt. Mulvihill is an EVO instructor. She teaches officers to continuously conduct a risk assessment based on the changing conditions including vehicle traffic, pedestrian traffic, time of day etc. Officers are instructed about their physiological and physical reactions and how to overcome problems like peripheral vision. They must keep scanning the situation and adjust their driving accordingly. Officers are taught not to exceed their skill set or limitations. Some officers are better drivers at high speeds than others but most improve with experience.

Expert evidence

Robin Brown

- [56] Robin Brown is an engineer practicing in the field of forensic engineering and motor vehicle accident reconstruction. He was given the ACM data and had access to the accident scene information obtained and created by the Langley RCMP scene investigators, including the large volume of photographs that were entered as exhibits at trial. The information he reviewed included the RCMP Integrated Collision Analysis and Reconstruction Services Report (the "ICARS report"). This is the police accident investigation report that set out the investigators' findings. He reproduced some of the RCMP accident scene drawings detailing the skid marks and the resting positions of the vehicles. He assumed those were accurate. In 2017 he inspected and took photographs of the Intersection and surrounding area. His report was entered as an exhibit and he was cross-examined.
- [57] Robin Brown noted that the ACM for the Meghji van did not record the vehicle speed at the moment of impact. He extrapolated data for the last five seconds before the accident to conclude that the Meghji van was travelling at 22 mph (or 35 km/h) at the moment of impact. He assumed that the Meghji van continued to accelerate at the same rate in the last three to four seconds before the collision.

- [58] Robin Brown also assumed that the location of the vehicles at impact was as estimated by the police investigators. He reproduced the impact location drawing from the RCMP file. The point of impact was determined by the investigating officers based on observations of the tire marks left on the road. However, he assumed the right front tire of the Meghji van was in line with the dotted line on the Fraser Highway that divided the two westbound travel lanes.
- [59] Robin Brown's report includes photos of a vehicle in the locations that the Gorman car would have been in at one second intervals in the five seconds before the accident, taken from the south side of the Intersection. However, those photographs were taken with a camera on the hood of a car three years after the accident. By that time, the foliage had been cut back considerably. The photos taken in this way did not give an accurate representation of what a driver stopped at the stop sign would have seen for two reasons: a driver would have a different angle of vision further back from the Intersection; and there would have been more foliage blocking the view in light of the changes made after the accident.
- [60] Robin Brown calculated the distances that the Gorman car was from the point of impact by using the speed of the Gorman car from the ACM data. The distance of the Gorman car from impact in those five seconds was:

Time to Impact Speed (mph) Distance from Impact

5 seconds 86 mph 195 metres

4 seconds 88 mph 156 metres

3 seconds 89 mph 117 metres

2 seconds 90 mph 77 metres

1 second 91 mph 37 metres

- [61] Robin Brown made assumptions about the reaction time of a driver based on a study by P.L. Olson. However, it was made evident in cross-examination that the reaction times from the study were not necessarily applicable to the circumstances confronting Mr. Meghji. The Olson study considered a visual hazard directly in front of the driver. It did not consider hazards moving at high speed off to the side. In cross-examination Mr. Brown agreed with the statement in the Olson article that, "if one thing is clear perception-response time is highly variable". Mr. Brown agreed with Olson's statement that driver expectancy is an important factor in response time. If a driver's expectancies are violated, then a driver "requires more potent stimulus and/or more information" such that his or her response time can be increased.

- [62] Robin Brown also agreed in cross-examination that most drivers have difficulty assessing the speed of oncoming vehicles. Indeed, they cannot assess them with accuracy until the gap has closed to a dangerous extent. Further, Mr. Brown agreed with Olson's statement that because humans are not good at judging the speed of oncoming vehicles, they tend to assume that the approaching vehicle is travelling at approximately the same speed as other vehicles on the road. Drivers may not realize such an error until it is too late.
- [63] Mr. Robin Brown provided what he described as an "analysis" based on his examination of the accident site, his review of the available information and the assumptions noted. The analysis was premised to a large extent on the reaction times as set out in the Olson article. The significant points of his analysis are:
5. The Gorman Ford would have been visible to Mr. Meghji for the 5 seconds leading up to the impact.
 6. If Mr. Meghji had commenced his perception and reaction when his vehicle was 2 seconds from impact he would only have had to stop accelerating after the perception reaction phase and this would have allowed the Gorman vehicle to clear the path of the van. The collision would have been avoided.
 7. If Mr. Meghji commenced his perception reaction phase 1.2 seconds prior to the impact he would have to apply about 1/3rd of his breaking capacity to slow and allow the Gorman Ford to clear the path of the van. The Gorman Ford would have been about 45 meters east of the impact when Mr. Meghji would have to commence perception.
- [64] In cross-examination he agreed that if his assumed area of impact is too far north, then the starting position of the Meghji van would also be too far north. He assumed the Meghji van started 20.4 metres from impact but that distance is calculated based on the Meghji van's speed.
- [65] Mr. Robin Brown also agreed in cross-examination that he does not know how long before impact Mr. Meghji was warned of the second police car or how long before impact he actually saw the police car.
- [66] He also agreed in cross-examination that he made no attempt to assess when Cst. Gorman might have seen the Meghji van or how much time he had to react to its presence.

Darrin Richards

- [67] Mr. Richards is a biomechanical engineer and a member of the Society of Automotive Engineers. He works in the fields of accident reconstruction and biomechanical engineering. He prepared a report for the RCMP defendants. He also relied on the RCMP photographs, the vehicle inspection reports, the ICARS report and the traffic accident police investigation report. He also inspected the Intersection in 2017.

- [68] Mr. Richards notes that the data for the Meghji van is not synchronized with the start of the crash. This means that the collision could have occurred at any time between -1 and 0 seconds. In other words, the speed of the Meghji van was in excess of 17 mph (27.3 km/h), the speed at -1 seconds. The data shows that the brakes in the Meghji van were applied from -8 to -6 seconds. No brakes were applied at -5 seconds but the vehicle was not moving. It began to move between -5 and -4 seconds. Unlike the technology for the Meghji van ACM, the data for the Gorman car is recorded in relation to the impact time. Mr. Richards opines that the Gorman car speed was likely underestimated in the ACM data and was probably closer to the speed of 131 km/h at the time of impact.
- [69] Mr. Richards provides figures in which he shows the approximate location of the two vehicles at five seconds, three seconds and two seconds before impact as well as their locations at impact. He shows a photograph of the eastbound view from a position near the travelled edge of the Fraser Highway taken in November 28, 2017. There are no leaves on any of the trees or bushes and so it is possible to see some distance to the east. He opines that "Mr. Meghji would have had a clear view of westbound traffic on Fraser Highway prior to moving forward." He notes that Mr. Meghji did not apply brakes after he started moving forward.
- [70] Mr. Richards also provided a reply report to the report of Craig Brown. He disagrees with the opinion of Mr. Craig Brown as to the location of the vehicles at the point of impact. He believes that Craig Brown placed both vehicles too far to the south by approximately two metres. He is of the view that the crash simulation of the post-impact motion of the vehicles in Craig Brown's report does not match the tire marks documented at the scene. He is also of the view that the Craig Brown simulation provides little insight into the dynamics of the accident. He disagrees with Craig Brown's conclusion that the Meghji van was travelling 40 km/h at impact. He says this opinion is incorrect in part because Craig Brown used the incorrect point of impact, and in part because he assumed incorrectly that the impact occurred at zero seconds.
- [71] Mr. Richards is also critical of Craig Brown's opinion about the speed of the Meghji van at impact because it fails to take into account the fact that the speedometer's needle was stuck at 29 km/h. That speed is consistent with the ACM data. He agreed that the ACM data is reasonably accurate, but not precise.

Craig Brown

- [72] Mr. Craig Brown is a mechanical engineer specializing as a forensic engineer in analysis of motor vehicle accidents. He provided an expert report for Mr. Meghji and a reply report critiquing the reports of Mr. Richards and Mr. Robin Brown.
- [73] Mr. Craig Brown worked backwards from the point of impact, which he determined from tire markings to establish the two vehicles' starting points. As noted by Mr. Richards, he assumed that the collision took place at zero seconds using the Meghji van ACM data. The

point of impact he assumed was in the middle of the left westbound lane. As noted by Mr. Richards, this is approximately 2 metres south of the point of impact assumed by the other two experts. He concludes that the Meghji van's speed at impact was approximately 40 km/h. Based on those assumptions, he is of the opinion that the Meghji van started near the south side of the east-west crosswalk on 268 Street.

- [74] Mr. Craig Brown concludes that the impact occurred when the Meghji van was about 70% into the left westbound lane, and that the Meghji van accelerated continuously from a stopping point slightly south of the crosswalk on 268 Street. He also opines that the Gorman car was about 2.3 seconds away from impact when it was about 90 metres away, and that Cst. Gorman would not have been able to stop his vehicle at that point. Mr. Meghji's van was about 17 metres from the point of impact at the same time.
- [75] In his reply report, Craig Brown critiques Mr. Richards' reliance on the locked speedometer as an indicator of the Meghji van's impact speed. He notes that research shows that after-crash readings can change on speedometers as a result of collision forces, particularly in collisions which impact a car's interior. Craig Brown is of the view that his calculation of the Meghji van speed (32 to 40 km/h at impact) is more accurate based on tire marks and the high throttle position shown at -1 seconds.
- [76] Craig Brown notes in the reply report that Mr. Richards' calculation of the Meghji van's stopped position is inconsistent with one of the assumptions in his report: that the Meghji van was stopped behind the stop sign. He provides no explanation or description of how the Meghji van moved from the stop sign into a stopped position in the middle of the two eastbound lanes. Craig Brown is also very critical of Mr. Richards' comments about the drivers' view to the east when stopped at the south stop sign on 268 Street. Mr. Richards relies on his photograph that shows the foliage without any leaves and with the limbs cut back considerably from what it was like at the time of the accident (by approximately 1.5 to 2 metres). He is critical that Mr. Richards relies on that photograph rather than the RCMP photos that show the condition at the time of the accident.
- [77] Mr. Craig Brown is critical of Robin Brown's reliance on the article by Dr. Paul Olson to suggest a surprised perception reaction time of 1.1 seconds. Craig Brown notes that the Olson study was dealing with visible hazards on the road directly in front of the driver. He refers to another report that suggests a 1.5 second reaction time for a laterally encroaching hazard. It is also critical that Mr. Robin Brown suggested using a perception reaction time based on a visual hazards when the warning received by Mr. Meghji was audible. Craig Brown refers to a study of audible signal response times that suggests very different results. He states, "it is difficult to predict what [Mr. Meghji's] perception response time would have been to an audible signal from his wife".
- [78] In cross-examination, Mr. Craig Brown agreed that Robin Brown's point of impact is about 1.2 metres further north than his assumed point of impact. This would change the position of the Meghji van before the impact and would mean that it started 1.2 metres further north.

Mr. Craig Brown explained why he disagreed with the other party's interpretation of the skid marks. The difference relates to the 3 metre-long "skid mark" that Mr. Craig Brown says cannot have been made by anti-lock brakes. He believes it is a scrub mark that provides information about the position of the vehicles at the moment of impact.

Position of the Parties

Cst. Gorman and the RCMP Defendants

- [79] These parties submit that Mr. Meghji is solely responsible for the accident. They stress that Cst. Gorman was the dominant driver. Mr. Meghji was required to yield the right-of-way when entering a through highway and was further obliged to yield to Cst. Gorman's emergency vehicle with flashing lights and an audible siren. When Mr. Meghji entered the Intersection, the Gorman car was visible with its emergency lights and sirens activated. Mr. Meghji failed to produce any evidence to explain why he did not see the Gorman car. If Mr. Meghji had been paying proper attention, he would have seen Gorman's car and realized that he did not have time to proceed safely. Quite simply, Mr. Meghji did not proceed with caution.
- [80] These parties say Cst. Gorman's risk assessment was reasonable as he responded to the Priority 1 call and approached the Intersection. He made the decision to proceed when he saw the Meghji van enter the Intersection and then stop. That decision was reasonable and shows that Cst. Gorman was continuously assessing risk as he was trained to do. Further, no evidence was presented to suggest that there was a more reasonable speed at which Cst. Gorman should have been travelling. In order to avoid liability, Mr. Meghji must establish that Cst. Gorman had a sufficient opportunity to avoid the accident. There is no evidence to support such a finding.
- [81] These parties say there is no basis to conclude that Mr. Meghji somehow misjudged the speed of the Gorman car. They say the expert evidence of Craig Brown fails to deal with this question. In addition, they say the expert evidence of Robin Brown establishes that Mr. Meghji had sufficient time to respond to the hazard presented by the Gorman car.
- [82] The RCMP defendants submit that all claims against the province of British Columbia should be dismissed but acknowledge that the Minister of Public Safety and Solicitor General for the Province of British Columbia is liable for torts of RCMP members committed in the course of policing duties. The Meghji plaintiffs do not take issue with this submission.

Mr. Meghji and the Meghji plaintiffs

- [83] Mr. Meghji submits that Cst. Gorman should be found wholly or substantially at fault for the accident. Mr. Meghji says he complied with his statutory obligation to yield when he first arrived at the stop sign and that he proceeded with caution as he was required to do. At that point, the Gorman car was too far in the distance to be considered an immediate hazard. Accordingly, Mr. Meghji had the right-of-way when he entered the Intersection.
- [84] Mr. Meghji says he did not move forward from the stop sign and then stop part way into the Intersection as suggested by Cst. Gorman. He says Cst. Gorman's evidence cannot be accepted as it is contradicted by the ACM data from the Meghji van.
- [85] Mr. Meghji acknowledges he had an opportunity to see the Gorman car once he was accelerating into the Intersection, but says a driver must have time to perceive and react. Here, Mr. Meghji did not have sufficient time because of the excessive speed of the Gorman car. The fact that there are no cases involving accidents with emergency vehicles that were travelling at or near 147 km/h is telling; Cst. Gorman was driving at a reckless speed. He did not make a proper risk assessment in accordance with his training. As a result, he should be found solely or substantially at fault for the accident.
- [86] The other Meghji plaintiffs say Cst. Gorman should be found substantially at fault, but that Mr. Meghji was also negligent. They say liability should be apportioned 75% against Cst. Gorman and 25% against Mr. Meghji.

Analysis

Statutory Framework

- [87] Several provisions of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 (the "Act") are relevant to the circumstances of this case. Section 119(1) defines a "through highway" as a highway with stop signs erected at its entrances. The Fraser Highway is a through highway at the Intersection because of the stop signs on 268 Street.
- [88] Section 186 of the Act requires a driver at an intersection with a stop sign to stop at the marked stop line before entering the crosswalk on the near side of the intersection.
- [89] Section 122(1) of the Act permits the driver of an emergency vehicle to disregard speed limits and rules of the road provided he or she does so with due regard for safety:
- 122 (1) Despite anything in this Part, but subject to subsections (2) and (4), a driver of an emergency vehicle may do the following:
- (a) exceed the speed limit;
 - (b) proceed past a red traffic control signal or stop sign without stopping;

- (c) disregard rules and traffic control devices governing direction of movement or turning in specified directions;
- (d) stop or stand.
- (2) The driver of an emergency vehicle must not exercise the privileges granted by subsection (1) except in accordance with the regulations.
- (4) The driver of an emergency vehicle exercising a privilege granted by subsection (1) must drive with due regard for safety, having regard to all the circumstances of the case, including the following:
 - (a) the nature, condition and use of the highway;
 - (b) the amount of traffic that is on, or might reasonably be expected to be on, the highway;
 - (c) the nature of the use being made of the emergency vehicle at the time.

[90] The regulations referred to in s. 122(2) are contained in the Emergency Vehicle Driving Regulation, B.C. Reg. 133/98 (the "Regulation"). Section 4 of the Regulation applies to an emergency response and requires an officer exercising privileges under s. 122 to assess whether the risk of harm to members of the public is greater than or less than the risk if the privileges under that section were not exercised. In doing so an officer must consider the factors set out in subsections (3) to (7) which include:

- the nature and circumstances of the suspected offence or incident;
- the risk of harm posed by the manner in which the emergency vehicle is being or is likely to be operated;
- the risk of harm posed by the distance, speed or length of time required or likely to be required to exercise the privileges;
- the nature, condition and use of the highway; and
- the volume and nature of pedestrian or vehicular traffic that is, or might reasonably be expected to be, in the area.

[91] Section 6 of the Regulation states that an emergency vehicle operator exercising privileges under s. 122 of the Act must "slow that vehicle to a speed consistent with reasonable care when approaching or entering an intersection".

[92] Cst. Gorman acknowledged that the Incident Management Intervention Model ("IMIM") applies to emergency vehicle operation. The seven guiding principles of the IMIM are:

The primary objective of any intervention is public safety.

Police officer safety is an essential element of public safety.

The IMIM must always be applied in the context of careful risk assessment.

Risk assessment must take into account the likelihood and extent of fatalities, injury and damage to property.

Risk assessment is a continuous process and risk management must evolve as situations change.

The best strategy is to use the least intervention to manage the risk.

Prudent intervention causes the least amount of harm or damage.

[93] Sections 175 of the Act, set out the obligations of the driver of a vehicle who is about enter a through highway and s. 177 of the Act sets out a driver's obligation to yield when an emergency vehicle approaches:

175 (1) If a vehicle that is about to enter a through highway has stopped in compliance with section 186,

- (a) the driver of the vehicle must yield the right of way to traffic that has entered the intersection on the through highway or is approaching so closely on it that it constitutes an immediate hazard, and
 - (b) having yielded, the driver may proceed with caution.
- (2) If a vehicle is entering a through highway in compliance with subsection (1), traffic approaching the intersection on the highway must yield the right of way to the entering vehicle while it is proceeding into or across the highway.

177 On the immediate approach of an emergency vehicle giving an audible signal by a bell, siren or exhaust whistle, and showing a visible flashing red light, except when otherwise directed by a peace officer, a driver must yield the right of way, and immediately drive to a position parallel to and as close as possible to the nearest edge or curb of the roadway, clear of an intersection, and stop and remain in that position until the emergency vehicle has passed.

Findings of Fact

[94] Many of the important facts are not in issue. The expert evidence confirmed that the ACM data is reasonably accurate; indeed, the speed data is likely accurate within a few kilometers per hour. Accordingly, I have accepted the ACM speed data as setting out the speed of the two vehicles in the seconds before the accident. Because I have accepted that evidence, I have not referred to the estimates of speed given by the lay witnesses. Those estimates are of no use to my analysis of the circumstances.

[95] Three questions of fact were contested: (1) did Mr. Meghji bring the van to a stop in the eastbound lanes after leaving the stop sign; (2) did Cst. Gorman have his siren activated; and (3) how much time elapsed between the passing of the two police cars at the Intersection?

Did the Meghji van stop?

[96] Cst. Gorman said he saw the Meghji van come to a stop in the eastbound lanes. Cst. Gorman said he was slowing his police car down as he approached the Intersection, but when he saw the Meghji van stop, he decided to keep travelling at a high speed. Mr. Meghji said he started to move forward slowly and then accelerated when he thought it was safe to do so; he did not stop again. While this question was highly contested, the answer is straightforward. The ACM data is consistent with Mr. Meghji's evidence. Cst. Gorman did not slow his police vehicle. The ACM data shows that he accelerated in the four seconds before reaching the Intersection up to the final second before the collision. Mr. Meghji moved forward in the five seconds before the collision and never slowed down. Further, Mr. Meghji's brakes were not applied from -8 to -6 seconds and the Meghji van was not moving at -5 seconds, so it could not have been moving from -8 to -5. In other words, Cst. Gorman's evidence cannot be accepted. Mr. Meghji did not stop the van in the middle of the eastbound lane. Rather, he proceeded slowly forward after he stopped near the stop sign and started to accelerate when he thought it was safe to do so.

Was the siren activated?

[97] Many of the witnesses said they did not hear the siren of the Gorman car, or that it was activated as the car approached the Intersection. Mr. Meghji, Mr. Walsh and Mr. Chessell do not recall hearing a second siren. Mrs. Meghji does not recall if she heard the siren of the Gorman car. Shamez and Safeena heard the siren of the Vetter car but did not give evidence about Cst. Gorman's siren. Mr. Simonsen did not hear a siren sound from the second police car until it was just behind him. He believed it was turned on at that point. The other three lay witnesses all saw the Gorman car approaching the Intersection and heard its siren.

[98] Cst. Gorman said he turned the siren on when he left the school to respond to the call. I conclude it is very likely that he did so. This was something he was trained to do. I find that his lights and siren were turned on when he turned his car to respond to the Priority 1 call. The siren was still on as he approached the Intersection.

[99] While I conclude that Cst. Gorman's siren was on, the evidence of the other witnesses is instructive. The only witnesses who heard the siren are the witnesses who saw the Gorman car approaching. Without that visual clue, the other witnesses either did not hear it or did not realize there was a second siren as it was indistinguishable from the siren sound made by the Vetter car. The police witnesses indicated that they were instructed that a second ER vehicle should not travel too closely behind the first vehicle. I infer that one of the reasons for that instruction is the problem that occurred here: when two emergency vehicles are travelling in relatively close proximity, the efficacy of the siren on the second vehicle is greatly reduced.

Time between police cars

- [100] I set out the estimates given by the witnesses of the time or distance between the Vetter car and the Gorman car. The estimates vary by a considerable amount. Mr. Sitnik thought the time between the two cars was between 15 and 30 seconds; Ms. McNamara thought it was 10 car lengths (which would be less than 2 seconds); Ms. Brown thought that less than 5 seconds elapsed between the two cars; Mr. Simonsen thought the cars were a few seconds apart; Mr. Walsh thought the time between the sounds he heard was 10 to 15 seconds; and Mr. Chessell thought the time between the two police cars was less than two minutes. None of the Meghjis gave an estimate of the time between the two police cars.
- [101] This evidence highlights the difficulty that accident witnesses have in giving reasonable estimates of time, speed and distance. That is not surprising. Witnesses are asked to recall specific facts about a momentary event that they were not taking note of as it happened. The witnesses were undoubtedly shocked by the violent collision that occurred at the Intersection which further affects their perception and recollection of speed and timing.
- [102] Cst. Gorman thought that Cst. Vetter was a half block ahead of him as he drove up 272 Street. However, given the fast acceleration of both vehicles and the fact that Cst. Gorman stopped at Fraser Highway for a few seconds, it is likely that he was two blocks or more behind Cst. Vetter on the highway. At the speed Cst. Gorman was travelling, that would mean he was 10 to 20 seconds behind Cst. Vetter.
- [103] When I consider all of the evidence, I conclude that Cst. Gorman was likely travelling 10 to 20 seconds behind the Vetter car.

Location of Impact

- [104] The three experts posit slightly different positions for the vehicles at impact. Robin Brown and Mr. Richards place the point of impact further to the north than Craig Brown. It is difficult to determine the point of impact with any precision. Both Mr. Richards and Craig Brown relied primarily on the markings on the pavement, while Robin Brown accepted the RCMP assessment. They are all critical of each other's interpretation of the tire marks. The experts also use their point of impact to calculate the position of the Meghji van at five seconds before impact, in other words just before Mr. Meghji started to move into the Intersection. One of the problems in resolving the differences of opinion as to point of impact and location of the Meghji van at -5 seconds, is that there are critical unknown variables: the speed of the Meghji van at impact and the point in the ACM data sequence (between -1 second and zero time) when the impact occurred.

- [105] I find that Robin Brown's suggested point of impact is likely closest to where the collision occurred. As Craig Brown notes, it is about 1.2 metres north of his suggested point of impact. However, the actual point of impact is not particularly significant to the decision I have arrived at on liability. The point at which the Meghji van was located before it started to move is more relevant.
- [106] I accept that the Meghji van started from a position in front of the stop line but near the south edge of the crosswalk at the Intersection. That is generally in accordance with the opinions of both Craig Brown and Robin Brown and also accords with one of the assumptions that Mr. Richards accepts. Oddly enough, Mr. Richards opines in his report that the Meghji van started from a position north of the crosswalk in one of the eastbound lanes. He does not explain that inconsistency. It likely arises because he accepts that the Meghji van was only travelling at 29 km/h at impact. He accepts the frozen speedometer reading. I do not accept that opinion. It is very likely the Meghji van was travelling at a higher rate of speed which accounts for the fact that it was further south when it started to move. In arriving at this conclusion, I have taken into account the fact that the Meghji van was travelling approximately 8 metres per second at impact. In other words, in the space of two tenths of a second the Meghji van would travel more than 1.5 metres.

Summary of Findings of Fact

- [107] Cst. Gorman was travelling at a very high speed with lights and siren activated; upwards of 140 km/h. There were slight variations in the force Cst. Gorman applied to the accelerator pedal between 5 and 1.5 seconds prior to the accident, but he continued to apply force and continued to accelerate. Between 1.5 and .5 seconds prior to impact the force on the accelerator pedal decreased rapidly, but the car did not slow down until .5 seconds before impact. At five seconds before the Intersection, travelling at 140 km/h, Cst. Gorman was more than two hundred metres from the Intersection. It is extremely unlikely that he would have seen the Meghji van earlier than 5 seconds before impact given the speed he was travelling, the foliage cover at the corner and the distance. If he saw the Meghji van at five to three seconds before the Intersection, he did not respond to it. He did not see the Meghji van come to a stop in the eastbound lanes of the Fraser Highway. He did not react to the movement of the Meghji van until just before the collision.
- [108] Mr. Meghji started moving forward very slowly from the stop line at approximately 4.5 seconds before impact. He did not see the Gorman car or hear its siren when he looked east and started to move. When he began to move, it would have been difficult for him to see the Gorman car as he would not have been looking as far to the east for moving vehicles as he would have needed to look in order to see it. He would not have expected a car, even an emergency vehicle, to be travelling that fast in that location. At some point as he drove forward, the Gorman car reached a position where Mr. Meghji had an opportunity to see it and make an assessment as to whether to proceed. That was a momentary opportunity that likely occurred when Mrs. Meghji noticed the speeding police car. Mr. Meghji was not

looking eastward at that moment and so, even with Mrs. Meghji's warning, he was not able to take advantage of that opportunity. He continued to accelerate in an attempt to clear the Intersection.

Liability of Cst. Gorman and Mr. Meghji

[109] Assessing the liability of both drivers involves consideration of the relevant sections of the Act, the duties of a police officer driving in an emergency response situation, and the duties of a driver entering a through highway and faced with the immediate approach of an emergency vehicle. In the circumstances of this case, it would be artificial to examine the duties and obligations of the two drivers in isolation. The situation was dynamic and the circumstances must be examined throughout the moments leading up to the collision.

[110] Pursuant to s. 175 of the Act, Mr. Meghji was required to stop at the stop sign in compliance with s. 186 and yield the right-of-way to traffic that is approaching so closely as to constitute an immediate hazard. The proper approach to the assessment of liability in this situation was set out in *Walker v. Brownlee*, [1952] 2 D.L.R. 450 (S.C.C.) at 461:

While the decision of every motor vehicle collision case must depend on its particular facts, I am of opinion that when A, the driver in the servient position, proceeds through an intersection in complete disregard of his statutory duty to yield the right-of-way and a collision results, if he seeks to cast any portion of the blame upon B, the driver having the right-of-way, A must establish that after B became aware, or by the exercise of reasonable care should have become aware, of A's disregard of the law B had in fact a sufficient opportunity to avoid the accident of which a reasonably careful and skilful driver would have availed himself; and I do not think that in such circumstances any doubts should be resolved in favour of A, whose unlawful conduct was fons et origo mali.

[111] In *Pacheco (Guardian of) v. Robinson*, [1993] B.C.J. No. 154, (B.C.C.A.), the court emphasized that any doubt about whether the dominant driver had an opportunity to avoid the accident should be resolved in favour of the dominant driver.

[112] Cst. Gorman says that Mr. Meghji was the servient driver who disregarded his statutory duty to yield the right-of-way. Further, he cannot show that Cst. Gorman had a reasonable opportunity to avoid the collision.

[113] The difficulty with this argument is that I have found that Mr. Meghji did not see the Gorman car and that he cannot be faulted for that failure. When he was at a stop, his view to the location of Gorman's car was at least partially blocked by the foliage. I reject the opinions of Robin Brown and Mr. Richards to the contrary. Both based those views on the condition of the Intersection when they saw it at which time the foliage had been cut back and there were no leaves on the trees. It is clear from the police photos that a car stopped in Mr. Meghji's position near the crosswalk would not have a clear view to the east.

- [114] When Mr. Meghji started forward, the Gorman car was still far away from the Intersection. He looked to his right to see if there was a vehicle approaching so closely as to be an immediate hazard. The Gorman car was too far away for Mr. Meghji, or a reasonable driver in his position, to conclude that it was an immediate hazard. It was too far outside of the field of vision he would have been examining for hazards. Before a vehicle can be an immediate hazard, it must be in a position and travelling at a speed where a reasonable driver would be able to see it and assess the risk it posed. Mr. Meghji would not have expected any vehicle to be travelling 145 km/h and could not have judged the speed of the Gorman car at that distance.
- [115] Accordingly, Mr. Meghji did not breach his statutory obligation by entering the Intersection. As Justice Lambert J.A. observed in *Carich v. Cook*, [1992] B.C.J. No. 446, 90 D.L.R. (4th) 322 at page 326, the time to assess whether an approaching vehicle constitutes an immediate hazard is at the moment that the servient driver begins to enter the intersection. At that moment, the Gorman car was not an immediate hazard that could be perceived by a reasonable driver.
- [116] Cst. Gorman and the RCMP defendants argued that the speed of the Gorman car is not relevant to the question of whether Mr. Meghji's breached his duty to yield to through traffic. They rely on the decision in *Cooper v. Garrett*, 2009 BCSC 35, for the proposition that speed alone is not sufficient to cast blame on the dominant driver if the servient driver's actions meant that the dominant driver could not, with the exercise of reasonable care, have avoided the accident. In *Cooper*, there was a head on collision when the servient vehicle turned into the path of a through vehicle travelling at 85 km/h in a 40 km/h zone. The court rejected the argument that the through driver was at fault because the accident could have been avoided if that vehicle was travelling slower, and stated at paras. 42 and 44:
42. Travelling over the speed limit will only constitute negligence if the speed prevented the driver from taking reasonable measure to avoid the collision. However, the experts agree that the moment that Mr. Garrett encroached onto the westbound lane, it was impossible for Mr. Naeem to avoid the collision.
44. While it seems attractive to attribute blame based on the speed of the dominant driver and hypothesize on what would have happened if Mr. Naeem kept to the speed limit, the fact is that Mr. Naeem drove at the speed he did and there was nothing he could have done, driving at the speed he did, to avoid the collision. When Mr. Garrett decided to proceed with his left-hand turn, Mr. Naeem was approximately 40 metres away. He was an immediate hazard and Mr. Garrett should have yielded to him.
- [117] Of course, each case considering the obligations of dominant and servient drivers depends on its facts. In *Cooper*, the court was satisfied that the defendant would have seen the approaching vehicle if he had been looking and that he executed the turn in a way that made it impossible for the dominant driver to avoid the collision. The statement that, "there was nothing he could have done, driving at the speed he did, to avoid the collision" does not

establish a principle that can be applied in all cases. Indeed, it would lead to an absurdity: every through driver, no matter what speed the vehicle was going, would not be found at fault. In *Cooper*, the speed of the through vehicle was of little relevance because the defendant was not paying attention to the approaching vehicle that was an immediate hazard and he executed a dangerous turn into that vehicle. Any hazard that existed when Mr. Meghji entered the Intersection was created by the high speed of the Gorman car, not by a failure to pay attention.

[118] In *Hynna v. Peck*, 2009 BCSC 1057, at para. 80, Madam Justice Ballance made a similar observation about the decision in *Cooper*:

80 I do not read the *Cooper* decision as advocating, in the assessment of tort liability, the outright rejection of considerations pertaining to the speed or other conduct of the through driver who constitutes an immediate hazard. Put another way, *Cooper* does not lay down a rigid rule that the Court ought not to consider whether and how the speed of a through driver might have played a causative role in an accident where it has been found that the other driver has failed to yield the right-of-way. In my view, the dictum in *Walker* does not extend that broadly and was not intended to have that reach. The Court in *Walker* speaks of avoidance action to be taken by a reasonably careful and skilful driver. It is difficult to imagine how a driver who is speeding significantly over the applicable limit can legitimately be portrayed as standing in the position of the reasonably careful and skilful driver contemplated by Cartwright J.

[119] The next consideration is whether Cst. Gorman breached the standard of care of an emergency response vehicle driver. The leading authority in British Columbia on the general standard of care of a police officer is *Doern v. Phillips Estate*, [1997] B.C.J. No. 2625 (B.C. C.A.). Mr. Justice Finch, as he then was, writing for the court, accepted the legal standard of care as articulated by the trial judge:

13 There is no dispute in this case concerning the legal standard of care to which the police are to be held. After a through [sic] review of the relevant authorities the learned trial judge said:

Based on the authorities provided, there is little doubt that the standard of care to which a police officer will be held is that of a reasonable police officer, acting reasonably and within the statutory powers imposed upon him or her, according to the circumstances of the case

[120] At para. 18, Finch J.A. recognized the difficult task carried out by police officers and the need to carefully examine all of the circumstances when considering if an officer's conduct departs from the standard of care:

18 Every one must recognize that the members of our police forces should not be unduly hampered in the discharge of their difficult and often dangerous work. The police vehicle pursuit policy is a guideline for officers which attempts to balance the public interest in the apprehension of suspected criminals, with the need to maintain reasonable levels of safety for the police and the public as the police discharge their duties. Whether particular police conduct departs so far from the guidelines and from the standard of care imposed by law, as to constitute

negligence is a heavily fact dependent question.

[121] As I noted above, a police officer driving an emergency response vehicle must follow section 4 of the Regulation. In order to exercise privileges under s. 122(1) of the Act, the officer is required to balance the risk of harm to the public. As all of the witnesses made clear, that balancing exercise is continuous when operating a vehicle in an emergency situation. An officer is also required under s. 6 of the Regulation to slow his or her "vehicle to a speed consistent with reasonable care when approaching or entering an intersection". An officer is also required to follow the guiding principles set out in IMIM as noted at para. 92 above.

[122] In *X. v. Y.*, 2011 BCSC 944, at para. 14, Madam Justice Dardi provides a useful framework for analyzing a police officer's negligence:

14 This Court must analyze whether there was any negligence on the part of the plaintiff within the context of s. 122 of the MVA, the relevant sections of the Emergency Vehicle Driving Regulation, and any relevant police policy. The critical inquiry which informs the analysis is whether the emergency to which the plaintiff was responding was sufficiently serious to justify the exercise of his privileges under s. 122 of the MVA and the attendant risk to public safety. This mandates an assessment of whether he properly balanced the utility of his conduct with the risk to public safety: *Radke* at para. 13.

[123] I was referred to numerous decisions involving the actions of police officers in emergency response or pursuit situations. Those decisions are instructive. Of course, assessment of whether an officer breached the standard of care is a "heavily fact dependent question".

[124] Cst. Gorman referred to *Maddex v. Sigouin*, 2014 BCCA 213, for the proposition that "drivers must at all times be particularly aware and accommodating of police officers responding to highway emergencies in carrying out the onerous duties with which they are charged " While there is no doubt that is so, the circumstances in *Maddex* are not comparable in any way to the circumstances before the court.

[125] Cst. Gorman also referred to *Singh v. British Columbia (Minister of Safety)*, 2013 BCSC 923, in which the court dismissed the claim against a police officer whose vehicle struck another car at an intersection while answering a Priority 1 call. She understood that an unknown male with a knife was going to use it to harm a child. While the case involved a similar Priority 1 call, the circumstances of the officer's driving have no similarity to the present case. The court concluded that the officer "was proceeding cautiously across the intersection". Even though she was responding to a Priority 1 call, she stopped three times in the course of crossing the intersection and the accident occurred when she was travelling at a low speed.

[126] While in Singh, the intersection the police officer crossed was busy, and she was faced with a red light, the contrast between her approach and that of Cst. Gorman cannot be overstated. Cst. Gorman proceeded in a manner that was anything but cautious. He gave little or no weight to the risk to public safety that was created by his manner of driving.

[127] In *Watkins v. Dormuth*, 2014 BCSC 543, the court found the defendant police officer 100% at fault when he passed the plaintiff's vehicle on the left at 80 km/h in a 50 km zone. The defendant officer's vehicle was the third vehicle responding to the call. The plaintiff saw the two other emergency vehicles ahead of her and decided to turn left to avoid any emergency down the road. She did not see or hear the defendant's lights and siren. The defendant maintained the plaintiff was in breach of s. 177 of the Act by failing to yield. In finding the plaintiff was not at fault, Mr. Justice Blok stated at para. 89:

The duty imposed by s. 177 of the Motor Vehicle Act to yield to an emergency vehicle is not absolute. A driver must have time to perceive and react. Here, Ms. Watkins did not perceive the police car behind her and so she did not react. The defendants say she ought to have perceived it. I am not convinced of this because Cst. Dormuth's police car was behind her for only a short period of time. The defendants have not shown that this time was long enough that a reasonably alert driver would have perceived the lights and sirens of the Dormuth police car and pulled over

[128] Those comments are apposite here. The s. 177 duty is not absolute and the court must assess whether a driver had time to perceive and react to the presence of the emergency vehicle in the circumstances. The speed at which Cst. Gorman was travelling was so fast that Mr. Meghji did not have sufficient time to perceive and react to the presence of the police vehicle.

[129] In *Watkins*, Blok J., at para. 95, also referred to s. 122 of the Act and to the Regulation. He noted that emergency vehicles do not have "free rein" when exercising privileges under that section:

Emergency vehicles do not have free rein in exercising the driving privileges accorded by s. 122 of the Motor Vehicle Act. They may only do so within the limits set by the Emergency Driving Regulation and they are constrained by the duty to drive with due regard for safety: Frers, at para. 89. I conclude that Cst. Dormuth had no basis to exercise any emergency vehicle driving privileges, and I conclude that in exercising those privileges he did not drive with due regard for safety in the circumstances of this case.

[130] I have no hesitation in concluding that Cst. Gorman breached the standard of care of a reasonable police officer in travelling on the Fraser Highway at 145 km/h on a weekday afternoon through a commercial/residential zone at a speed that was close to 90 km over the speed limit. In doing so he passed through a number of intersections without slowing his car at all, let alone to a speed consistent with reasonable care. He certainly did not slow down as he approached the Intersection. He chose to travel at such a high speed because he was responding to a Priority 1 call. However, the fact that it was a very high priority emergency response situation does not give an officer the privilege of travelling at a speed

that creates an unreasonable risk to the public. He is required to take into account the time of day, that nature of the surrounding neighbourhood and the possibility that vehicles or pedestrians could cross the highway. In these circumstances, Cst. Gorman failed to properly balance the utility of his conduct with the risk to public safety.

- [131] The final question I have to consider is whether Mr. Meghji was negligent in continuing through the Intersection. The fact that the Gorman car was not an immediate hazard when Mr. Meghji entered the Intersection does not mean that he could drive through the Intersection with impunity. As noted in Carich, a driver entering an intersection, like the driver approaching it, must keep a proper lookout.
- [132] This raises the issue discussed in Watkins, did Mr. Meghji have sufficient time to perceive and react? And, if he did have an opportunity to perceive and react, did any failure on his part to do so contribute to the accident? This involves consideration of the evidence of Robin Brown. Mr. Brown opined that if Mr. Meghji had commenced his perception and reaction at either 1.2 or 2.0 seconds from impact, the accident would have been avoided. I do not accept that opinion. In providing and defending his opinion, Mr. Brown was overly argumentative. He approached the question as an advocate rather than as an independent expert. I conclude that he misused the P.L. Olson study. That study considered response time to a visual hazard directly in front of a driver, not a hazard approaching at high speed from the side. Further, he failed to give any heed to the cautions expressed by the author and, in particular, that perception and response time is highly variable and that when expectations are violated drivers require more input and thus more time to respond. He also failed to take into account the difficulty drivers have in properly assessing excessive speeds.
- [133] While I do not accept Robin Brown's opinion, I conclude that Mr. Meghji's decision to drive through the Intersection in the manner he did was negligent. He knew that one emergency vehicle had passed at high speed. He was aware of the possibility that there could be a second emergency vehicle heading in the same direction. In spite of that, he accelerated immediately after his first assessment of the situation when he did not see any vehicle that posed an immediate hazard approaching from the east. He had five lanes to cross in a vehicle that does not accelerate quickly. In those circumstances, proceeding at a slower rate would have given him some opportunity to perceive and react to Gorman's fast approaching vehicle. Had he done so, he may have had enough time to see the Gorman car and assess how fast it was travelling. In these circumstances, I conclude that Mr. Meghji must also bear some fault.

Apportionment of Fault

- [134] Where two or more parties are found at fault, liability is to be apportioned in accordance with s. 1 of the Negligence Act, R.S.B.C. 1996, c. 333:

1 (1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

(2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

...

[135] The proper approach to apportionment of fault is set out in *Cempel v. Harrison Hot Springs Hotel Ltd.*, [1997] B.C.J. No. 2853. Mr. Justice Lambert, writing for the majority, explained that approach at para. 24:

In the apportionment of fault there must be an assessment of the degree of the risk created by each of the parties, including a consideration of the effect and potential effect of occurrences within the risk, and including any increment in the risk brought about by their conduct after the initial risk was created. The fault should then be apportioned on the basis of the nature and extent of the departure from the respective standards of care of each of the parties.

[136] In *Alberta Wheat Pool v. Northwest Pile Driving Ltd.*, 2000 BCCA 505, Finch J.A., as he then was, explained, at para. 46, that blameworthiness evaluates the conduct of the parties and the degree to which each departed from the standard of reasonable care:

Fault or blameworthiness evaluates the parties' conduct in the circumstances, and the extent or degree to which it may be said to depart from the standard of reasonable care. Fault may vary from extremely careless conduct, by which the party shows a reckless indifference or disregard for the safety of person or property, whether his own or others, down to a momentary or minor lapse of care in conduct which, nevertheless, carries with it the risk of foreseeable harm.

[137] When I apply these principles to the circumstances that led to this accident, I conclude that the majority of the fault must be apportioned to Cst. Gorman because of the degree of risk created by his breach of the standard of care of a reasonable police officer, and the extent to which his actions departed from that standard. His failure to reasonably balance the factors set out in s. 4 of the Regulation led him to drive at a speed that was excessive and inconsistent with reasonable care for the public safety. His actions created the serious risk of harm that materialized when Mr. Meghji entered the Intersection. Mr. Meghji's departure from a reasonable standard of care was much less; he failed to proceed with sufficient care as he drove through the Intersection.

[138] In these circumstances, I conclude that Cst. Gorman is 80% at fault for the accident. Of course, he is not a party to these proceedings and so the Minister of Public Safety and Solicitor General for the Province of British Columbia is liable for Cst. Gorman's negligence in the course of performing his duties. Liability is thus apportioned 80% to the Minister of Public Safety and Solicitor General for the Province of British Columbia, and 20% to Mr. Meghji.

[139] In summary, the accident was caused by the negligence of both Cst. Gorman and Mr. Meghji. Liability is apportioned:

- a) 80% to the Minister; and
- b) 20% to Mr. Meghji.

"BUTLER J."

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Prepared on 27 October 2026 · Esheria