

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
CHRISTOPHER RECOSKIE, TRACY RECOSKIE, and EMMETT RECOSKIE	)	No one appearing for the Plaintiffs
	)	
<b>– and –</b>	)	
	)	
JACKSON VANDENHEUVEL, JOHN JOE PRINCE, also known as JOHN PRINCE, JOHN DOE, CERTAS HOME AND AUTO INSURANCE COMPANY, CO-OPERATORS GENERAL INSURANCE COMPANY	)	Mitchell Kitigawa and Zenah Hassan for Co-operators General Insurance Company
	)	
	)	Dylan Crosby for John Joe Prince and Certas Home and Auto Insurance Company
	)	
	)	
	)	
	)	<b>HEARD:</b> April 28, 29 and 30, 2025

**HOOPER J.**

**Overview**

[1] On April 25, 2015, a serious motor vehicle accident occurred on Scenic Road in the County of Renfrew causing significant injury to Emmett Recoskie. Emmett Recoskie and his parents commenced litigation against both drivers of the two vehicles involved in the accident, Jackson Vandenheuvel (Vandenheuvel) and John Prince (Prince).

[2] Damages were resolved prior to trial. The only issue to proceed to trial was liability.

[3] It is conceded that Vandenheuvel is at least partially responsible for the accident. The issue in this litigation is whether Prince shares any liability.

[4] The Vandenheuvel vehicle was uninsured. This caused the Recoskies’ own insurance company, Co-operators General Insurance Company (Co-operators) to be added to this litigation. In Ontario, uninsured motorist coverage is a mandatory part of every auto insurance policy up to

a statutory limit of \$200,000. In addition, the Recoskies purchased additional coverage in an OPCF 44R Endorsement, commonly referred to as Family Protection Coverage. An OPCF 44R provides liability coverage in the event that the insured is involved in an accident with an underinsured, uninsured, or unidentified driver. Those coverages under the Recoskies' insurance policy do not apply if there is any other motor vehicle coverage available. While Vandenneuvel had no coverage, Prince does. Therefore, if Prince is found to be even 1% responsible, his policy of insurance will pay the entirety of the settlement with the Recoskies and Co-operators pays nothing. If Prince is not found to be responsible at all, Co-operators pays all.

[5] Co-operators, therefore, effectively stands in the shoes of Vandenneuvel, the default driver, with the onus of proving at least 1% liability against Prince.

### **Issue at trial**

[6] The parties agree that the sole issue to be decided at this trial is whether Prince bears any legal liability for the accident.

[7] Although even a finding of 1% of liability against Prince will end the issue before me, if I do find Prince to be liable, I have also been asked to assess the percentage of his liability as that will impact the crossclaim against the default driver, Vandenneuvel.

### **Evidence at Trial**

[8] Scenic Road is a narrow country road without shoulders or a marked centre line. It has hills and curves. It is often taken as a route between Round Lake and Barry's Bay. Parts of Scenic Road are paved, other sections remain gravel. The part of Scenic Road at issue in this action was gravel.

[9] On the day in question, Vandenneuvel was driving his two friends – Emmett Recoskie and Martin Recoskie – to a friend's house in Barry's Bay to hang out. At the same time, Prince was driving himself and his son, Nathan, home from Barry's Bay, having just dropped off Prince's other son to visit his girlfriend.

[10] The Vandenneuvel and Prince vehicles met moments after the Vandenneuvel vehicle went over the crest of a hill on Scenic Road. The Vandenneuvel vehicle was traveling west, the Prince

vehicle traveling east. A head on collision resulted with such force that the Vandeneuvel vehicle immediately burst into flames. Fortunately, everyone survived.

[11] There is no question that, at the time of the collision, the Vandeneuvel vehicle was over the centre of the roadway, traveling at least partially in the eastbound lane. In attempting to place liability on the Prince vehicle, Co-operators argues that the Prince vehicle was either also over the centre of the roadway and/or driving too fast under the circumstances.

***Agreed Statement of Facts***

[12] An Agreed Statement of Facts was filed with the court. The facts agreed upon by the parties include:

1. The accident occurred at the top of a hill on Scenic Road.
2. The speed limit on the relevant portion of Scenic Road was 80 km/hr.
3. The relevant portion of Scenic Road was unpaved and covered in gravel. There was no demarcation for the centre of the road.
4. There were no witnesses to the accident other than the occupants of the vehicles involved.
5. No inference should be drawn from Vandeneuvel not attending at trial.

[13] In addition to these agreed facts, parts of the evidence from the exhibits, the investigating police officer and the expert were not contested, including:

- a. The vehicle driven by Vandeneuvel was 6 feet, 1 inch wide.
- b. The vehicle driven by Prince was 6 feet, 6 inches wide.
- c. The width of the roadway at the point of impact was between 23.5 feet and 24.5 feet.
- d. The collision occurred at approximately 8:40 p.m. under clear, dusk conditions.
- e. Prior to the collision, the Prince vehicle was traveling at approximately 77 km/hr. Prince initiated braking between 2 and 4 seconds before the collision. The impact speed of the Prince vehicle was between 58 and 66 km/hr.

- f. The Vandeneuvel vehicle was likely traveling between 60 and 74 km/hr at the time of impact. There was insufficient information available to determine the speed of the Vandeneuvel vehicle in the moments before the collision or any pre-impact maneuvers taken by the driver.

[14] I have accepted these additional facts as accurate and they form part of my findings of fact.

### ***Witness Evidence***

#### *Martin Recoskie*

[15] I heard from Martin Recoskie, the front seat passenger in the Vandeneuvel vehicle. Mr. Recoskie has lived in this area his entire life and has driven on this stretch of Scenic Road many times.

[16] As Mr. Recoskie was not the driver, he conceded in his evidence that he was not paying attention to what was happening in the moments prior to the collision. He was looking at his phone. He recalls hearing Vandeneuvel say “*Oh shit*” which caused Mr. Recoskie to look up the moment before the collision. He believes that when he looked up, both vehicles were on their respective sides of the roadway. Mr. Recoskie blames the narrowness of the roadway for the collision, not either driver.

[17] I found Mr. Recoskie to be a credible witness but his evidence was not reliable. He was not paying attention until the moment before the collision. He told the court, which I accept, that he tries not to think about the accident – an accident that occurred 10 years ago. Mr. Recoskie was good friends with Vandeneuvel. He also knew Nathan Prince, the passenger in the Prince vehicle. The accident was extremely violent and traumatic with the Vandeneuvel vehicle bursting into flames. It was Mr. Recoskie and Nathan Prince who pulled Emmett Recoskie from that burning vehicle. Mr. Recoskie has tried to put this accident out of his mind. I accept this, but as a result, his recollection of the placement of the vehicles cannot be relied upon. It makes no sense. Scenic Road is wide enough for two cars to pass one another. If Mr. Recoskie’s recollection is accurate, there would not have been an accident.

[18] I have therefore not given any weight to Mr. Recoskie’s evidence.

#### *Tracy Recoskie*

[19] Rather than calling an expert to provide an opinion on the appropriate speed for an eastbound driver (Prince) approaching the crest of this hill on Scenic Road, Co-operators called Tracy Recoskie, the mother of the passengers in the Vandenheuvel vehicle. Ms. Recoskie was not a witness to the accident nor was she even in Ontario at the time. Her evidence focused on the manner in which she drove when approaching this hill on Scenic Road. Ms. Recoskie was very familiar with this stretch of roadway and testified that as she approached this particular hill in the eastbound direction, she would slow down to 30-40 km/hr at the crest of this hill.

[20] This evidence was not helpful. Ms. Recoskie's decisions as a driver do not set the standard of reasonableness or prudence. Her evidence was irrelevant and has been given no weight.

*Evidence of retired officer Neil Gonzalez*

[21] Neil Gonzalez was the OPP officer who investigated this accident. He has now retired but indicated he still has an independent recollection of this accident apart from the notes he took during his investigation. Mr. Gonzalez also confirmed that he visited the scene within the month prior to trial to prepare for giving evidence in court.

[22] Mr. Gonzalez's police notes including a rough sketch of the accident were filed as an exhibit. From these notes, it was suggested that he quickly formed an opinion that Vandenheuvel was solely responsible for this accident and did not consider other explanations, including the potential contributory negligence of Prince. Whether or not Mr. Gonzalez jumped to conclusions during his investigation 10 years ago and believed Vandenheuvel responsible for the accident is irrelevant to the issue before the court. The issue is not which driver was primarily responsible, but whether Prince bears any liability at all.

[23] The difficulty with the sketch prepared by Mr. Gonzalez is that, by his own admission, it is not precise. His measurements are all in even numbers and he conceded that he rounded his measurements. Therefore, when Mr. Gonzalez measured the road width at 24 feet, this could actually be between 23.5 feet and 24.5 feet. As a dirt road, the sides of the road are also not perfectly straight.

[24] Co-operators critiques these measurements and suggests that the roadway may be narrower than 23.5 feet at the point of impact. I note, however, that as the party that bears the burden of proof in this action, Co-operators did not retain an expert to provide any of its own measurements. As a result, the best evidence before me is that the roadway at the point of impact is between 23.5 feet and 24.5 feet wide.

*John Prince*

[25] John Prince appeared to have a good recollection of the day of the accident and the events leading up to the collision. He had been working earlier in the day with his son, Nathan. When they arrived home from work, his other son needed a lift to Barry's Bay and Nathan went along for the ride. Prince and Nathan were on their way home from Barry's Bay when the accident occurred.

[26] Prince testified that as he approached this hill on Scenic Road, he reduced his speed and made sure that he was on the far-right side of the road, his vehicle hitting the foliage on the road's edge as he did not know if there was another vehicle traveling in the opposite direction. He could not see beyond the crest of the hill as he approached it. He further testified that one of the reasons he slowed down his vehicle was out of respect for a property owner in the area who had made complaints of speeding cars creating dirt and dust from the gravel.

[27] According to Prince, when he was approximately ten feet from the top of the hill, he saw lights in his eyes as the Vandenheuvel vehicle came over the hill on his side of the road. He immediately hit the brakes and tried to turn his vehicle further to the right. He estimates he saw the Vandenheuvel vehicle 2-3 seconds before the collision.

*Expert Evidence*

[28] Prince called Mark Paquette, a forensic engineer specializing in collision reconstruction, as a witness. There was no issue taken by Co-operators that Mr. Paquette is an expert in the areas of collision reconstruction, determination of collision forces, and the analysis of event recorder data.

[29] Mr. Paquette has never attended Scenic Road. His expert opinion was based upon documentation provided by the counsel who retained him and included discovery transcripts, the motor vehicle collision report, police notes, the Event Data Recorder from the Prince vehicle, photographs taken by a newspaper reporter at the scene of the collision, and google images of the roadway.

[30] Mr. Paquette stated that he did not rely on any evidence from Prince in rendering his opinion. Therefore, even if I have issues of reliability when assessing Prince's evidence, those issues would have no impact on my assessment of Mr. Paquette's evidence or the conclusions he reached.

[31] Mr. Paquette testified that the Prince vehicle's speed was approximately 77 km/hr within 5 seconds of the accident. In his opinion, based on the evidence he reviewed, Prince likely started to brake between just under 4 and just over 2 seconds before the collision, reducing the speed of his vehicle to between 58 km/hr and 66 km/hr at impact.

[32] Mr. Paquette further opined that the Vandeneuvel vehicle was traveling between 60 and 74 km/hr at impact. Prince took his foot off the accelerator approximately 4 seconds before the crash and engaged the brake at approximately 2-3 seconds before the crash. Mr. Paquette's simulations of the accident all placed Prince's vehicle in the eastbound lane prior to the collision.

### **Law and Analysis**

[33] Vandeneuvel crossed the centre line. This is admitted. He, and therefore Co-operators (standing in his shoes), has the burden of rebutting the presumption that he was entirely responsible for this accident. To meet its burden, Co-operators makes two arguments:

- a. Prince was also driving over the centre line or, at best, Prince was driving too close to the centre line
- b. Prince was driving at too high a speed at this point in the roadway to properly react to an emergency situation

*Was Prince driving across the centre line?*

[34] Prince's evidence is that he was on his side of the roadway. Mr. Paquette's expert accident simulations place Prince's vehicle in the eastbound lane prior to the accident. There were no witnesses called by Co-operators to refute this evidence. At best, counsel for Co-operators obtained an admission from Mr. Paquette that it was possible the Prince vehicle could have been close, if not over the centre line before Prince saw the Vandenhoevel vehicle and attempted to steer to the right. Whether something is possible, is not the burden. It is also not Prince's burden to prove he was in his own lane.

[35] Co-operators submits that the court should find Prince not credible and, therefore, his evidence of driving on his side of the road should not be believed. To support this position, Co-operators relies upon the following examples:

- a. At his examination for discovery, Prince estimated the road to be 45 feet wide when it was only 24 feet demonstrating a propensity to exaggerate.
- b. Prince's explanation for traveling under the speed limit was contradicted by objective evidence.
- c. Prince's evidence that he was driving his vehicle so far over to the right side of the road as he approached the crest of the hill that he was driving through the foliage is not credible as no driver would operate their vehicle through foliage.

[36] There were problems with Prince's evidence. He did testify at his examination for discovery that he believed Scenic Road to be 45 feet wide when it was only 24 feet. While this was inaccurate, I do not believe this should impact Prince's credibility. I note that in the weeks leading up to this trial, when Prince saw the police report's measurement of the road width to be 24 feet, he reattended at the scene to verify this because he didn't think 24 feet could be right. This demonstrates that Prince wasn't trying to exaggerate during his examination for discovery; he was simply wrong. Witnesses often have difficulties estimating distances.

[37] Prince also testified that he always drove under the speed limit in the area of this accident out of respect for a local property owner who complained of speeding cars causing dust for his property when they stirred up the gravel. A picture with the neighbour's property was entered into

evidence. The neighbour's property is on an area of the roadway that is paved, not gravel. It is not in the same location as this accident. Prince was inaccurate with respect to this explanation but I do not believe this inaccuracy was sufficient to taint the balance of his evidence.

[38] As for the third example relied upon by Co-operators - Prince's evidence that he was driving his vehicle so far to the right on the roadway that branches were hitting the side of his vehicle - this is very possible. All agree there were no shoulders on this stretch of the road and the foliage was overgrown. Branches could have been hitting Prince's vehicle. As a result, this is not necessarily an inaccuracy that would impact Prince's credibility.

[39] Co-operators also cross-examined Prince on his driving habits. Co-operators had surveillance of Prince taken in 2025, nearly 10 years after the accident, in which he was speeding down Scenic Road at 6:00 a.m., writing on a clipboard while also driving his vehicle. I found this area of questioning to be irrelevant. The examples put to Prince occurred almost a decade before this accident and there is no evidence before me that Prince was distracted or speeding on the day in question.

[40] Based on Mr. Paquette's simulations and the evidence of Prince that he was driving on his side of the roadway, evidence I accept, I find it more probable than not that Prince was driving in his eastbound lane as he was ascending the hill on Scenic Road.

[41] Co-operators also made a secondary argument that even if Prince was found to be on his side of the roadway, his vehicle was traveling too close to the centre line.

[42] It is not disputed that if each vehicle had been driving on their half of the roadway, there was sufficient room for the vehicles to safely pass one another without a collision. As a result, driving "close" to the centre line but not over it would not have caused this accident absent Vandenneuvel's negligence in crossing the centre line.

[43] A driver has the right to operate their vehicle on their side of the roadway and assume that other drivers will do the same. Driving in one's own lane, close to but not over the centre line, will not create liability absent something more.

*Was Prince traveling too fast for the conditions of the roadway?*

[44] The speed limit at the collision location is 80 km/hr. The best evidence before me is that Prince was driving at 77 km/hr in the moments before seeing the Vandeneuvel vehicle. There is no evidence he was exceeding the speed limit.

[45] Co-operators argues, however, that Prince was traveling too fast given he could not see over the crest of the hill. It is Co-operators' position that Prince's speed, while below the speed limit, left Prince with insufficient time to react appropriately to the emergent situation Vandeneuvel created when he crested the hill in the oncoming lane.

[46] Vandeneuvel relies on the case of *Deering v. Scugog (Township)*, 2010 ONSC 5502 in which the court was faced with a motorist, Deering who approached the crest of a hill, was suddenly faced with an oncoming vehicle who appeared to be coming right at her, and swerved and lost control. That oncoming vehicle was found not to be in the motorist's lane – but given the way in which the road was designed and as this occurred at night with reduced visibility – the vehicle appeared to be headed straight toward Deering, who swerved and lost control. In that case, the court found Deering to be partially liable, however this summary of the findings of the trial judge illustrates the type of evidence that was before the court:

Shannon Deering had never driven on Coates Road West before August 10, 2004. Her ride through it as a passenger the day before had given her only a vague idea of the road conditions. Despite this lack of knowledge and experience of the road, she was paying no attention to her speedometer as she drove on August 10, 2004. She thought she was going about 70 to 80 km./hr. leading to the crest of the accident hill. We now know she was proceeding at 90 km./hr. at least on the ascent, and I have little doubt, as I have found, that her speed down the prior hills was more than that. She was proceeding at the rate of 25 metres per second, meaning that as she came to the point she spoke of, two-thirds or three quarters up the accident hill – an ascent of 190 metres from the prior valley, according to the survey entered in evidence – she would have no vision beyond 50 to 70 metres ahead because that is where the crest was.

At her speed and position on the hill, Shannon was close to the absolute minimum preview time in which to perceive an approaching vehicle and to react when the contra flow vehicle

appeared. And when you factor in another vehicle's speed at, say, the speed limit, one is talking about slightly more than only a second. On a dark narrow road with hills limiting one's vision and no lighting other than one's headlights, which Shannon was over-driving, there is no doubt in my mind that her speed was a significant cause of this crash.

[47] It is well-settled that a driver with the right of way may still be partially responsible for an accident, if by the exercise of reasonable care, that driver had sufficient opportunity to avoid the accident but failed to do so: *Walker v. Brownlee and Harmon*, [1952] CarswellOnt 395 (SCC), *Sant v. Sekhon*, 2013 ONSC 2982. An oncoming driver must take reasonable care to avoid an accident (*Nowakowski v. Mroczkowski Estate*, [2003] OJ 650 (SCJ), at paras. 78- 84).

[48] Whether the speed of a driver is considered excessive, even if below the speed limit, will depend on the nature and condition of the particular road travelled upon and the traffic faced by the driver. The speed of the dominant driver exercising reasonable prudence is a question of fact that turns on the circumstances of each case: *Gardiner v. MacDonald*, 2016 ONSC 602 at para. 161.

[49] In *Canadian Pacific Ltd. v. Gill et al.*, 1973 CanLII 2 (SCC), [1973] S.C.R. 654, the Supreme Court of Canada stated, at page 665:

It is trite law that faced with a sudden emergency for the creation of which the driver is not responsible he cannot be held to a standard of conduct which one sitting in the calmness of a courtroom later might determine was the best course.

[50] In these cases, the "but for" causation test "must be applied in a robust common-sense fashion. There is no need for scientific evidence of the precise contribution the defendant's negligence made to the injury:" *Gardiner*, at para. 184. A robust and pragmatic approach to causation is not, however, a substitute for factual evidence of causation: *Fowlow v. Southlake Regional Health Centre*, 2014 ONCA 193 at para. 10.

[51] I recognize that a driver traveling into a blind spot should reduce his or her speed in order to be able to react to a sudden emergency. For example, drivers are expected to slow down in fog or when the glaring sun causes a moment of blindness. However, when attempting to place liability

on that driver for failing to slow down sufficiently to react to an emergency, there must be some evidence as to what would have made a difference. Sometimes accidents cannot be avoided, even by a driver with sufficient time to react.

[52] This accident occurred at dusk. Until Vandeneuvel crested the hill, Prince was unaware there was an oncoming vehicle that had crossed the centre line and was barreling towards him. It is only at the point that the emergent situation arises when Prince's actions should be considered, yet there was a complete absence of evidence of what could or should have happened next.

[53] For example, the court was not provided with any evidence of how far up the hill the eastbound Prince vehicle would have been when Prince would have first become aware of an oncoming vehicle. There was no evidence led as to the distance between the vehicles at that point, or how a difference in the speed of the Prince vehicle would have changed Prince's reaction time. The court was also not provided with any evidence as to what evasive maneuvers were available to Prince on this narrow roadway, and how those evasive maneuvers would have made a difference on the impact forces in the collision and the resulting injuries to Emmett Recoskie.

[54] A robust and pragmatic approach to causation does not allow the court to fill in large holes in the evidence. There is no evidence before me to find that Prince caused this accident, even at 1% liability.

### **Disposition**

[55] As a result, the action is dismissed as against John Prince.

[56] If the parties cannot agree on costs, counsel for Prince will have until November 14, 2025 to file cost submissions of no more than 3 pages in length (double-spaced) excluding Bills of Costs and Offers to Settle. Co-operators will then have until November 28, 2025 to file responding cost submissions of equal length. This timeline can be adjusted on consent.

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Justice Jaye Hooper

**Released:** October 22, 2025

**CITATION:** Recoskie v. Vandenheuvel et al., 2025 ONSC 5856  
**COURT FILE NO.:** CV-17-43  
**DATE:** 20251022

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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Plaintiffs

**-and-**

JACKSON VANDENHEUVEL, JOHN JOE PRINCE,  
also known as JOHN PRINCE, JOHN DOE, CERTAS  
HOME AND AUTO INSURANCE COMPANY, CO-  
OPERATORS GENERAL INSURANCE COMPANY

Defendants

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**TRIAL DECISION**

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Justice J. Hooper

**Released: October 22, 2025**