

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lata v. Pierson*,  
2025 BCSC 140

Date: 20250129  
Docket: M224044  
Registry: New Westminster

Between:

**Rosya Roshini Lata**

Plaintiff

And

**Ted Walter Pierson, South Coast British Columbia Transportation  
Authority, Coast Mountain Bus Company Ltd., Jane Doe, John Doe and  
Insurance Corporation of British Columbia**

Defendants

- and -

Docket: M194217  
Registry: Vancouver

Between:

**Joy Domingo**

Plaintiff

And

**Ted Walter Pierson, South Coast British Columbia Transportation Authority,  
also known as Translink, also known as Coast Mountain Bus Company Ltd.,  
Insurance Corporation of British Columbia and John Doe and/or Jane Doe**

Defendants

And

**Joseph Donald Foster and City of Vancouver**

Third Parties

Before: The Honourable Madam Tucker

**Reasons for Judgment**

Counsel for the Plaintiff R.R. Lata: K.S. Taunk

Counsel for the Plaintiff J. Domingo: J. McInnis

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South Coast British Columbia  
Transportation Authority and Coast  
Mountain Bus Company Ltd.: A. Ng

Counsel for Defendants Insurance  
Corporation of British Columbia, Doe Jane  
and John Doe: K. Jenkins

No other appearances

Place and Date of Trial: New Westminster, B.C.  
July 8-10, 2024

Place and Date of Judgment: New Westminster, B.C.  
January 29, 2025

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**I. Introduction**

[1] These two actions, *Domingo v. Pierson* (Vancouver Registry, No. M194217) and *Lata v. Pierson* (New Westminster Registry, No. M224044) were joined for trial on the issue of liability alone.

[2] The actions arise out of an abrupt braking incident (the “Incident”) involving an articulated transit bus (the “Bus”) on May 14, 2018. The Bus was owned by the defendant South Coast British Columbia Transportation Authority (“TransLink”) and being operated by the defendant Ted Pierson. Mr. Pierson was driving the Bus in his capacity as an employee of the defendant Coast Mountain Bus Co. Ltd. (“Coast Mountain”). I will refer to TransLink, Mr. Pierson and Coast Mountain collectively as the “Bus Defendants”.

[3] Ms. Domingo and Ms. Lata (or the “Plaintiffs”) were passengers on the Bus at the time of the Incident.

[4] The Incident occurred when Mr. Pierson braked in response to the movement of an unidentified white vehicle (the “Sedan”), thus the Jane/John Doe defendants (the “Sedan Driver”). Pursuant to s. 24 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, the Insurance Corporation of British Columbia (“ICBC”) may be made the nominal defendant where a vehicle and driver are unidentified. The requirements of s. 24 have been met. I will therefore refer to ICBC and the Sedan Driver collectively as the “Sedan Defendants”.

[5] While contributory negligence was plead, those assertions were not pursued in closing argument.

[6] The third parties had notice of this trial on liability, but declined to participate.

**II. Background**

[7] Ms. Domingo, Ms. Lata and Mr. Pierson all testified. The Court was also provided with the expert evidence of Amrit Toor. Mr. Toor was qualified to give opinion evidence in the field of mechanical engineering and with respect to forensic

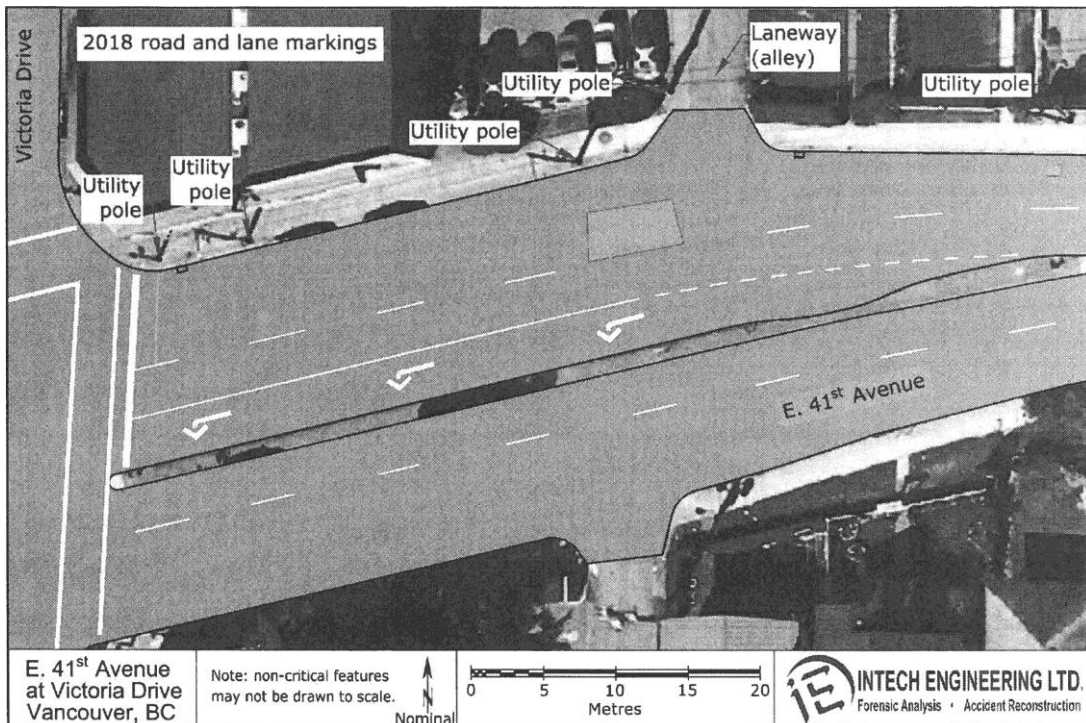
analysis and collision reconstruction. Mr. Toor provided an expert report (the “Toor Report”) and also testified.

[8] A number of videos were submitted into evidence. Various perspectives of the Incident were recorded by different cameras on the Bus, including versions of what can be described as the “Driver’s View”.

[9] The Incident occurred on May 14, 2018, shortly before 6:00 p.m., at or near the intersection of 41<sup>st</sup> Avenue and Victoria Drive in Vancouver, BC.

[10] 41<sup>st</sup> Avenue runs in a predominantly east-west direction. Victoria Drive runs in a north-south direction. At the time of the Incident, the Bus was headed west on 41<sup>st</sup> Avenue and approaching the east boundary of the intersection between 41<sup>st</sup> Avenue and Victoria Drive (the “Intersection”). The Intersection is controlled by traffic lights.

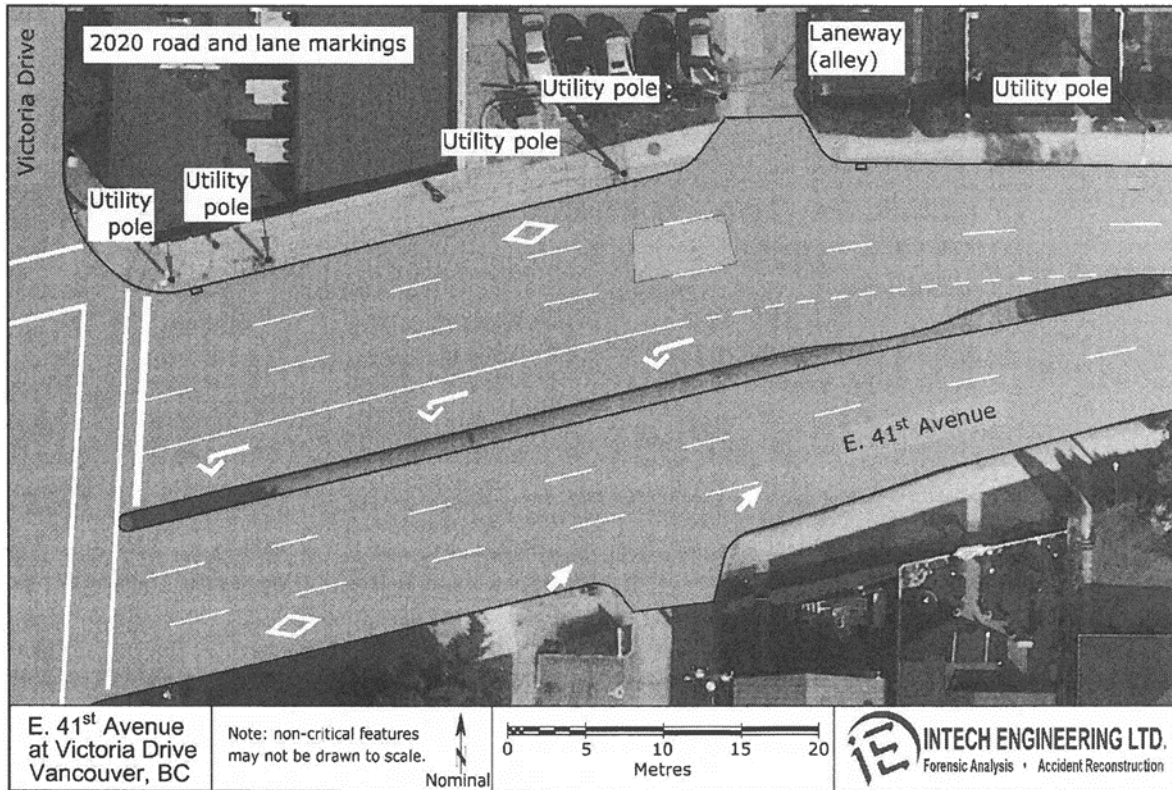
[11] The Toor Report includes a number of diagrams. The accuracy of the following diagrams is not disputed. The road and lane markings east of the Intersection at the time of the Incident (the “2018 Version”) are shown in the following diagram (Figure 3):



[12] As can be seen in Figure 3, there are no markings of any sort between the westbound interior lane marking (i.e., the broken line marking) and the sidewalk curb in the 2018 Version.

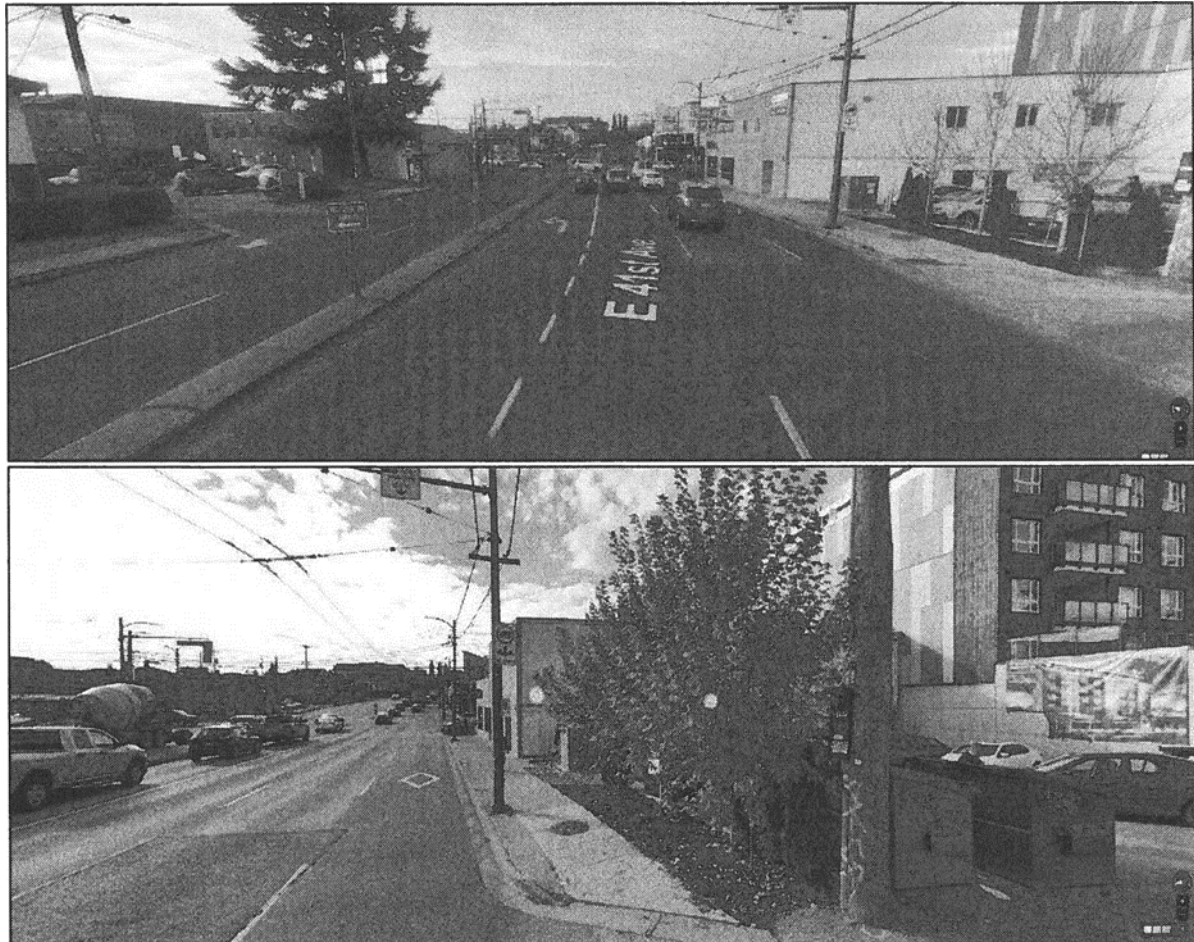
[13] In the 2018 Version, the northernmost area of 41<sup>st</sup> Avenue between the Intersection and the first laneway to the east of the Intersection was a two-hour restricted-parking area (the “Restricted Parking Area”). Between 7:00 a.m. to 9:30 a.m. and 3:00 p.m. to 6:00 p.m., parking in the Restricted Parking Area was prohibited. Outside the prohibited periods, parking in the Restricted Parking Area was permitted. There were no markings demarcating the Restricted Parking Area.

[14] The following (Figure 4) shows the Intersection with new lane markings that were introduced in 2020 (the “New Version”):



[15] As can be seen, the New Version introduced a marked bus lane (the “Bus Lane”) starting about 50 meters back along 41<sup>st</sup> Avenue. The Restricted Parking area is now marked as a separate Bus Lane.

[16] There was in 2018 (and is still now), a bus stop (the “Victoria Bus Stop”) in the curb lane on 41<sup>st</sup> Avenue immediately west of Victoria Drive. Figure 6 from the Toor Report shows how the westbound Bus Lane is aligned directly across the Intersection from the Victoria Bus Stop in the New Version:



[17] In the 2018 Version, the Victoria Bus Stop was aligned directly across the Intersection from the Restricted Parking Area.

[18] Notably, the only differences between the 2018 Version and the New Version are painted road markings. No physical alterations to the roadways or Intersection were made.

[19] The Toor Report includes an uncontentious narrative summary of what Mr. Toor says occurred based on the Driver's View video. His report states that the video shows:

- The bus travelling in a westbound direction, approximately 400 meters to the east of Victoria Drive.
- The bus approaching stopped traffic at the intersection of Victoria Drive and slowing to a complete stop for about 15 seconds approximately 80 meters from Victoria Drive.
- The bus then begins forward movement and accelerated with the flow of traffic.
- The vehicle stopped in front of the bus appears to be a vehicle similar to a 2014 Mercedes E250 (E Class) sedan, which is also similar in shape and design to some BMW 5 series vehicles.
- The unknown vehicle ahead of the bus accelerated forward with the surrounding traffic and continued forward in the right westbound lane, travelling near the painted dashed white lines with its left side.
- As the right lane widens near the intersection with Victoria Drive, the bus continued forward on a path biased towards the right side of the lane.
- Just prior to the intersection, the unknown vehicle brake lights appear to illuminate and the unknown vehicle deviated to the right to make a right turn to proceed northbound on Victoria Drive.
- The bus then decelerated and came to a stop near the intersection of Victoria Drive.

[20] Mr. Toor's summary statement accords with my own viewing of the Driver's View video.

[21] Reframing the events using the defined terms adopted in these reasons, the events were as follows. The Sedan and the Bus were travelling west on 41<sup>st</sup> Avenue toward the Intersection in the same lane. When that lane came up on the Restricted Parking Area, the Sedan hewed left immediately alongside the broken line, while the Bus stayed closely beside the curb, thus travelling through the vacant Restricted Parking Area, so as to proceed straight through the Intersection directly into the Victoria Bus Stop.

[22] The Sedan, shortly before entering the Intersection going west, deviated to the right, crossed through the Restricted Parking Area and went north onto Victoria

Drive. The Sedan did this in one continuous righthand turn. The Sedan's brake lights flickered briefly beforehand, but lit up only as the Sedan actually began turning. Mr. Pierson braked as the Sedan entered into the travel path of the Bus, which was continuing to move toward the Intersection, curbside. Mr. Pierson's braking was abrupt. There was no collision.

**III. Plaintiffs**

[23] Ms. Domingo and Ms. Lata were riding in the Bus as passengers at the time of the Incident. They were both seated in proper seats. As it happens, they were both in seats that faced forward and had no other seating directly in front of them. Both came forward out of their seats as a result of the Incident. Ms. Lata said the braking took her by surprise and was very forceful. Ms. Domingo described the Bus as having come to a "sudden", "very strong" and "unusually hard" stop.

**IV. Mr. Pierson**

[24] Mr. Pierson had nine years of driving experience as a bus driver at the time of the Incident. He was very familiar with the route he was on. By his estimate, he had driven through the Intersection hundreds of times.

[25] In his testimony about the layout of the Intersection and the Incident, Mr. Pierson consistently referred to the Restricted Parking Area as "the curb lane". For clarity, I will substitute the term Restricted Parking Area in summarizing his evidence.

[26] Mr. Pierson testified that he had never encountered cars being parked in the Restricted Parking Area, but agreed that it was possible that cars did park there at certain times of the day. In his experience, vehicles seeking to turn right and head north up Victoria Drive pull into the Restricted Parking Area and utilize it as a turning lane. He testified that if traffic was busy, vehicles would line up in the Restricted Parking Area, waiting to turn right, while vehicles travelling west through the Intersection moved forward into the Intersection on the left side of the vehicles waiting to turn right. He testified that, in his experience, westbound buses routinely

enter the Victoria Bus Stop by driving straight through the Intersection from the Restricted Parking Area.

[27] Mr. Pierson testified that the Incident occurred on a Monday and that he had slowed to a stop behind a considerable number of vehicles lined up at a red light on 41<sup>st</sup> Avenue. When the traffic began moving again on the green light, he went forward, staying immediately alongside the curb intending to go directly across the Intersection into the Victoria Bus Stop.

[28] Mr. Pierson did not see the Sedan engage its right turn signal. He testified that although there was a brief flickering beforehand, the Sedan's brake lights only lit up as it began turning. When he saw the Sedan turning into the path of the Bus, he stepped on the brakes hard to ensure there was no collision.

[29] Asked if he considered the Bus and Sedan to have been travelling in the same lane prior to the Incident, Mr. Pierson answered "technically yes, but practically no". He relied on his experience at the Intersection. He testified that it did not occur to him that the Sedan might not be following the practice known to Mr. Pierson as the Sedan had stayed at the far left (i.e., immediately beside the broken line lane markings).

[30] Mr. Pierson testified that he was maintaining or even decreasing the speed of the Bus as he approached the Intersection. He said the space between the front of the Bus and the rear of the Sedan did not begin to close until the Sedan started to turn right. He agreed that it was possible that the Bus might have eventually ended up alongside the Sedan (either in the Intersection or while the Bus was at the Victoria Bus Stop), if both vehicles had, in fact, gone west as he anticipated. However, he testified that he did not attempt to pass or overtake the Sedan during or prior to the Incident.

[31] Mr. Pierson agreed that he was aware that an abrupt deceleration could pose a danger to Bus passengers and that it was part of a bus driver's duty to avoid making abrupt stops to the extent possible. He also agreed that it was part of his

duty as a bus driver to maintain an adequate buffer space between the front of the Bus and the rear of any vehicle in front and that this buffer space should be appropriate to the speed the vehicles were travelling.

[32] Mr. Pierson was asked to estimate, based on his training and experience, the appropriate buffer space to maintain when the Bus was travelling at a number of different speeds. He said that at 50 kmph, he would generally want a minimum of three to four car lengths, and would consider six to seven car lengths to be ideal. He said that at 10 kmph, the minimum buffer space recommended would be one to two car lengths, but that he personally would want a minimum of two car lengths.

[33] Mr. Pierson testified that he was unable to say how fast the Bus was travelling immediately prior to the Incident. He estimated that there was less than a full car length, possibly half a car length, of buffer space between the Bus and the Sedan when the Sedan began its turn. Mr. Pierson firmly agreed that he would have kept a larger buffer space between the Bus and the Sedan but for his view that they were driving in separate lanes for practical purposes. He agreed that if there had been three to four car lengths of offset buffer space when the Sedan turned right, he would likely not have braked as abruptly as he did.

[34] Mr. Pierson testified that he thought that a collision might occur if he only slowed down, so he fully stopped the Bus. Mr. Pierson denied having “panicked” when the Sedan turned right, but agreed that he was startled when it did.

[35] Mr. Pierson attempted to yell out “hold on” to passengers as a verbal warning as he applied the brakes. He initially thought he had been quicker, but agreed on review of the videos that his verbal warning came too late to enable people to grab on to anything.

**V. The Toor Report**

[36] Mr. Toor concluded that the following occurred once the Bus began to move again on the change to a green light:

After approximately 70 meters of movement from the stopped position, the bus reached a speed of about 33 km/h. At this point, the bus brakes were applied (about 14 seconds after the bus had initiated movement from the stopped position), likely in response to the unknown right turning vehicle, and the bus decelerated at an average rate of about 0.33g and came to a complete stop near the intersection of Victoria Drive. During the initial phase of brake application, the deceleration of the bus was likely about 0.4g.

[37] According to Mr. Toor, the maximum average deceleration rate for transit buses is published to be about 0.6g.

[38] Mr. Toor assessed that the Sedan was about one car length ahead of the Bus when it initiated its turn to the right. He found that the Sedan's brake lights illuminated at approximately the same time as it changed its path and about 13 seconds after the Bus had begun moving again from its stopped position. In his opinion, the illumination of the Sedan's brake lights and the background sunlight would have made it impossible for Mr. Pierson to distinguish a contemporaneous turn signal. This is significantly consistent with Mr. Pierson's evidence.

[39] In Mr. Toor's opinion, the deceleration of the Bus was greater than the normal deceleration for a known hazard. He concluded that the Bus did not need to decelerate as aggressively as it did in order to avoid contact. He found that even if there had been no braking, the Bus and the Sedan would not have, in fact, come into contact.

[40] Mr. Toor stated that it is beyond the scope of the Toor Report to predict or imply what a vehicle operator would perceive as a potential hazard requiring a response, but did note that if there had been a bigger gap between the rear of the Sedan and the front of the Bus, the Sedan would have likely been perceived by Mr. Pierson as less of a hazard when it turned.

## **VI. Legal Principles**

[41] Negligence requires the plaintiffs to establish, on a balance of probabilities, that: (1) one or more of the defendants owed them a duty of care; (2) one or more of the defendants breached that standard of care; (3) the plaintiffs suffered loss or

damage; and (4) the defendant's conduct was, in fact and in law, the cause of the plaintiff's loss or damage: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3; *Shamtanis v. Leung*, 2023 BCSC 829 at para. 41.

[42] As set out in *Stewart v. Dueck*, 2012 BCSC 1729 at paras. 38–40, there are basic propositions that apply to all motorists:

[38] The authorities establish that all motorists have an overarching common law duty to exercise what constitutes, in all the circumstances, reasonable and due care. All motorists have a general duty to keep a proper look-out and to take reasonable precautions in response to apparent potential hazards: *Hmaied v. Wilkinson*, 2010 BCSC 1074 at para. 23.

[39] It is a well-settled proposition that drivers in this province are entitled to assume, within reason, that the other users of the roads in British Columbia will obey the law: *Mills v. Siefred*, 2010 BCCA 404 at para. 26.

[40] The Court's task is to determine whether each of the parties in an accident met their common law duties of care. The analysis of the standard of care, which is relevant to the particular circumstances, is informed by both the reasonableness of the parties' actions and by the rules of the road; *Salaam v. Abramovic*, 2010 BCCA 212 at para. 21; *Kilian v. Valentin*, 2012 BCSC 1434 at para. 28.

[43] However, the driver of a public passenger vehicle owes a particular standard of care at common law. Notably, the result can be a shift in the evidentiary onus in some circumstances. The applicable law is not in dispute. It is summarized by Justice Wilkinson in *Blackburn v. Lattimore*, 2021 BCSC 1417:

[24] It is well settled that the standard of care owed by a bus driver to a passenger is a high one. The standard of care is determined objectively, having regard to the conduct or behaviour that would be expected of a reasonably prudent bus driver in the same circumstances. In determining whether the standard of care has been breached, the court is to take into account the experience of the average bus driver, and anything the defendant driver knew or should have known: see *Prempeh v. Boisvert*, 2012 BCSC 304 at paras. 15-17. Liability for a breach of the standard of care may be found, despite the breach being "fleeting": *Prempeh*, at para. 29. That being said, while the standard of care is high, it is not one of perfection: *Prempeh*, at para. 16.

[25] In *Benavides v. Insurance Corporation of British Columbia*, 2017 BCCA 15 at para. 17, the Court of Appeal summarized the principles concerning the onus of proof when a passenger is injured on a bus. They are as follows:

- The mere fact that a passenger is injured while riding on a public carrier does not establish a *prima facie* case of negligence.
- The plaintiff bears the burden of proving on a balance of probabilities that the defendant breached the standard of care owed to the plaintiff.
- Once the plaintiff establishes a *prima facie* case of negligence, in practical terms, the burden shifts to the defendant to answer the case against them and to show that they were not negligent.

[Emphasis added.]

[44] There are also cases in which this Court has considered bus drivers' standard of care specifically in relation to the conduct of hard braking. Two of those cases are helpful here: *Prempeh v. Boisvert*, 2012 BCSC 304 and *Tchir v. South Coast British Columbia Transportation Authority*, 2014 BCSC 1119.

[45] In *Prempeh*, the plaintiff, a standing passenger, fell to the ground when the bus stopped abruptly. Justice Dardi found the bus driver (Mr. Boisvert) to have been *prima facie* negligent in the circumstances of the case:

[22] Mr. Boisvert was required to brake hard to avoid hitting the two vehicles that had stopped on the roadway in front of the bus he was operating. The first of the vehicles had stopped to turn left on Hamilton Street. The second car stopped behind the left-turning vehicle without a collision and without accompanying honking or screeching of brakes. It can reasonably be inferred that this occurred within a time frame that should have permitted a reasonably prudent user of the road driving behind those vehicles an opportunity to react and brake without incident. The application of the brakes was not a reaction to an emergency or unexpected hazard.

[23] Moreover, Mr. Boisvert properly conceded that, regardless of an abrupt or unexpected stop of a vehicle ahead, in order to prevent accidents prudence mandates that at all times a bus driver drive defensively and maintain a safe cushion or certain distance from a vehicle travelling in front of the bus. This is precisely to be able to stop safely in the event of an unexpected manoeuvre by that vehicle.

[24] I cannot find with precision whether the sudden and hard application of the brakes occurred because Mr. Boisvert was travelling too rapidly, not maintaining a diligent look-out or because he failed to maintain a safe distance from the vehicle in front of him. However, in weighing all of the evidence I have concluded that Mr. Boisvert's sudden and vigorous application of the brakes, in the context of all the circumstances in this case, establishes a *prima facie* case of negligence against Mr. Boisvert. It is not conduct attributable to a reasonably prudent bus driver.

[25] Having found a *prima facie* case of negligence the onus is upon the defendants to establish that Mr. Boisvert was not negligent or that the incident was attributable to some specific cause consistent with the absence of negligence on his part.

[46] In *Tchir*, Justice Davies affirmed that it is not a *per se* breach of the standard of care for a bus driver to stop abruptly. He endorsed the following statement from *Erickson v. Sibble*, 2012 BCSC 1880:

[47] In *Erickson* at para. 57, Ballance J. wrote:

[57] Although each case turns on its own peculiar facts, the authorities inform the general principles at play. Taken together, the decisions indicate that it is not, of itself, a breach of the standard of care for a bus driver to stop abruptly, even where there is an indication that special precautions may be warranted with respect to an elderly, frail or physically compromised passenger. The issue of liability will depend not only on the manner of the stop, but the reason for its suddenness and the assessment of whether, in all the circumstances, the impugned driving conduct was substandard when measured against the standard expected of a reasonably prudent driver.

[Emphasis added.]

[47] Justice Davies found that, in the case before him, the bus driver had breached the standard of care when he braked abruptly. The bus driver had braked abruptly when the vehicle travelling directly in front of the bus in the same lane stopped at an intersection, even though there was no stop sign facing him. In finding that the bus driver failed in his duty, the factors considered by Davies J. included that: the bus driver was obliged to maintain a safe buffer between the bus and the vehicle directly in front; the bus driver had observed the same vehicle being driven erratically in the blocks prior; and the bus driver was aware that vehicles sometimes risked an improper manoeuvre at that particular intersection and that, if such an manoeuvre were to occur, the trailing vehicle may need to stop abruptly: paras. 52–53.

[48] The provisions of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [MVA] are relevant in considering the common law standard of care, but not determinative: *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201, 1999 CanLII 706 (SCC) at para. 29. The question is whether, in all the circumstances, the common law duty to drive with due

care and attention was met: *Salaam v. Abramovic*, 2010 BCCA 212 at paras. 18–21; *Stewart* at paras. 38–40; *Ormiston v. Insurance Corporation of British Columbia*, 2014 BCCA 276 at paras. 13–14, leave to appeal to SCC ref'd, 36067 (5 February 2015). Thus, although the *MVA* sets some rules of the road, these rules are supplemented by common-law principles. As stated in *Salaam* at para. 21:

[21] ... a court must determine whether, and to what extent, each of the players in an accident met their common law duties of care to other users of the road. In making that determination, a court will be informed by the rules of the road, but those rules do not eliminate the need to consider the reasonableness of the actions of the parties. This is both because the rules of the road cannot comprehensively cover all possible scenarios, and because users of the road are expected to exercise reasonable care, even when others have failed to respect their right of way. While s. 175 of the *Motor Vehicle Act* and other rules of the road are important in determining whether the standard of care was met, they are not the exclusive measures of that standard.

[49] In their submissions, the parties identified the following provisions from Part 3 of the *MVA* for consideration here:

#### **Definitions**

1. In this Act:

"**highway**" includes

- (a) every highway within the meaning of the Transportation Act,
- (b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and
- (c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited,

but does not include an industrial road;

#### **Definitions**

119 (1) In this Part:

"**laned roadway**" means a roadway or the part of a roadway that is divided into 2 or more marked lanes for the movement of vehicular traffic in the same direction;

"**roadway**" means the portion of the highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and if a highway includes 2 or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of them collectively;

...

**Careless driving prohibited**

- 144 (1) A person must not drive a motor vehicle on a highway
- (a) without due care and attention,
  - (b) without reasonable consideration for other persons using the highway, or
  - (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

...

**Passing on right**

- 158 (1) The driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle, except
- (a) when the vehicle overtaken is making a left turn or its driver has signalled an intention to make a left turn,
  - (b) when on a laned roadway there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive, or
  - (c) on a one way street or a highway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and is of sufficient width for 2 or more lanes of moving vehicles.
- (2) Despite subsection (1), a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right
- (a) when the movement cannot be made safely, or
  - (b) by driving the vehicle off the roadway.

...

**Turning at intersections**

165 (1) If the driver of a vehicle intends to turn it to the right at an intersection, the driver must cause it to approach the intersection and then make the turn as close as practicable to the right hand curb or edge of the roadway.

...

- (5) A person must not turn a vehicle at an intersection unless it is in the position on the highway required by this section.

[50] Although s. 162 of the *MVA* was not identified by the parties, it is relevant as the concept of driving too closely behind was expressly raised:

**Following too closely**

162 (1) A driver of a vehicle must not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

[51] While the statutory definition of “roadway” uses the term “shoulder”, there is no statutory definition of “shoulder”.

## VII. Parties’ Position

### A. Plaintiffs

[52] The Plaintiffs are, unsurprisingly, closely aligned. I will treat theirs as a unified position. They say the Sedan Driver and Mr. Pierson were both driving negligently and that they were injured as a result of that negligence. They say liability for the Incident should be allocated 50% to the Bus Defendants and 50% to the Sedan Defendants.

[53] The Plaintiffs say that Mr. Pierson failed to comply with his obligations under s. 144 of the *MVA* and his common law obligation to meet the standard of care required of a reasonably prudent bus driver. They say Mr. Pierson was following behind the Sedan too closely while driving in the same lane or that he was improperly overtaking the Sedan on its right side while both were in the same lane. They stress that the Sedan was within Mr. Pierson’s field of view throughout.

[54] They also assert that Mr. Pierson braked unreasonably hard in the circumstances. They note Mr. Toor’s evidence that a collision would not have actually occurred even if Mr. Pierson had altogether failed to brake.

[55] They assert that the Sedan Driver turned right suddenly and without adequately signalling its intention to turn and, in doing so, acted unreasonably and presented a hazard or apprehended hazard to other users of the road.

### B. Bus Defendants

[56] The Bus Defendants submit that nothing in Mr. Pierson’s conduct fell below the standard of what would be expected of a reasonably diligent bus driver. They say that the Sedan’s unpredictable and sudden movement to the right and across the path of the Bus was solely at fault for the Incident. They assert that the Sedan turned right from the far left side of the lane in breach of s. 165(1) of the *MVA*.

[57] They submit that it was entirely reasonable for Mr. Pierson to assume that the Sedan was going straight west through the Intersection, as the Sedan had aligned itself up against the left broken lane line. They argue that Mr. Pierson was entitled to assume the Sedan Driver was intentionally driving in compliance with s. 165(1).

### **C. Sedan Defendants**

[58] The Sedan Defendants argue that it was unreasonable for Mr. Pierson to drive in the Restricted Parking Area as though it were a separate lane, when it was not.

[59] They also assert that Mr. Pierson was passing or overtaking the Sedan on its right side in the same lane in breach of s. 158 of the *MVA*. They submit that even if Mr. Pierson was not technically in breach of s. 158 prior to or at the time of the Incident, the provision informs what was reasonable in the situation by analogy.

## **VIII. Analysis**

### **A. The Sedan Driver**

[60] I find that the Sedan Driver was in breach of s. 165(1) of the *MVA*. The provision required the Sedan Driver to approach the intersection and turn right from “as close as practicable to the right hand curb or edge of the roadway”.

[61] Section 119 of the *MVA* defines “roadway” as “the portion of the highway that is improved, designed or ordinarily used for vehicular traffic”. The Restricted Parking Area is “improved” – it is paved and, in fact, paved right up to the curb. There are no markings of any kind marking off the Restricted Parking Area from the remainder of the lane or indicating that it is not to be driven in. There is, for example, no solid white line between the Restricted Parking Area and the rest of the lane notwithstanding that the paved area extends right up to the curb. Further, in Mr. Pierson’s considerable experience, the Restricted Area was ordinarily driven in by vehicles during the prohibited parking period. Therefore, the statutory definition of “roadway” in s. 119 of the *MVA* would include the Restricted Parking Area.

[62] The Restricted Parking Area was part of the lane. (Neither the Plaintiffs nor the Sedan Defendants argue otherwise. To the contrary, their express position is that the Bus and Sedan were *in the same lane*.)

[63] Accordingly, for purposes of s. 165(1), during the periods when parking was prohibited in the Restricted Parking Area, the “right hand curb” and the “edge of the roadway” were one and the same. Section 165(1) therefore obliged the Sedan Driver, in order to turn right onto Victoria Drive, to approach the Intersection alongside the curb.

[64] Further, although the Restricted Parking Area and the area where the Sedan was travelling were part of the same lane, the width of the lane ought to have alerted the Sedan Driver to the possibility that vehicles intending to turn right might be approaching the Intersection alongside the curb in compliance with s. 165(1). The Sedan Driver had an obligation to check to see if there were any such vehicles alongside the curb, assess whether it was safe to move across their path in the circumstances, and refrain from turning if there was insufficient time and space to move over to the far right of the lane in a safe manner. I infer from his manner of driving, that the Sedan Driver did not do that, but rather failed to check altogether or failed to check adequately.

[65] Rather than driving with due diligence and consideration for others, the Sedan Driver turned right abruptly and without any effective notice, entering the path of the Bus, and leaving it up to the Bus to respond accordingly. Here, Mr. Pierson was, in fact, intending to go through the Intersection to the Victoria Bus Stop. That does not, however, relieve the Sedan Driver of the responsibility for checking to see if anyone was driving curbside in compliance with s. 165(1). I note that had Mr. Pierson, in fact, intended to turn right on Victoria Drive, the Sedan would still have moved abruptly into the Bus’s path as it did, to the same result.

[66] I find that the Sedan Driver’s driving did not accord with *MVA*, s. 144(1)(a) and (b), nor comply with the common law duty of care to other users of the road.

**B. Mr. Pierson**

[67] The Plaintiffs and the Sedan Defendants say Mr. Pierson's driving was in breach of s. 158 of the *MVA*. They say there is a heavy onus on Mr. Pierson to justify having done so, relying on *Fabellorin v. Peterson* (1994), 93 B.C.L.R. (2d) 105, 1994 CanLII 221 (BC CA) as referenced by the majority in *Ormiston*. In *Ormiston*, Justice Lowry (Justice Stromberg-Stein concurring) wrote:

[6] The judge then quoted from *Fabellorin v. Peterson* (1994), 1994 CanLII 221 (BC CA), 93 B.C.L.R. (2d) 105 (C.A.). There a motorist had been held liable where he had passed other vehicles on the right before striking a pedestrian. It was said that:

[13] Section 160 [now s. 158] imposes a heavy onus on the driver of a vehicle attempting to pass other vehicles on the right. More especially is this so when the vehicles ahead have stopped or slowed on the roadway other than at an intersection or a crosswalk when there is no apparent reason for their doing so. The very fact that they have done so should alert the driver of the overtaking vehicle, intending to pass, that there must be some reason for the drivers ahead of him to have acted as they did and this should have alerted the overtaking driver to exercise extra caution to ensure that he or she can pass on the right safely.

[68] The video evidence confirms that at no time did any part of the Bus pull even with any part of the Sedan. I accept Mr. Toor's conclusion that there was about one full car length of buffer between them when the Sedan started to turn. The video is also consistent with Mr. Pierson's testimony that the gap between the rear of the Sedan and the front of the Bus was holding more or less consistently until the Sedan braked and simultaneously began turning.

[69] Section 158 provides that the driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle. The *MVA* does not define the terms "overtake" and "pass". The modern approach to statutory interpretation requires that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, 1998 CanLII 837 (S.C.C.).

[70] I see no reason to read the words “overtake” and “pass” in s. 158 to mean anything other than their primary dictionary meanings relating to relative movement. Predictable relative movement is central to the *MVA* (if not, in fact, its *raison d’être*). No alternative meaning was suggested by any of the parties.

[71] The 12<sup>th</sup> ed. of the *Concise Oxford English Dictionary* defines “overtake” in the relevant sense as follows:

1. *Chiefly Brit.* Catch up with and pass while travelling in the same direction[.]

[72] It defines “pass” in the relevant sense as to:

2. Go past or across; leave behind or on one side in a proceeding – surpass, exceed.

[73] Mr. Pierson did not pass or overtake the Sedan. The entire Bus was at all times behind the Sedan in the lane. The fact that Mr. Pierson conceded that it was theoretically possible that the Bus might have hypothetically overtaken the Sedan at some point if the Sedan had gone straight does not establish a breach of s. 158 of the *MVA*, nor an intended breach of s. 158.

[74] Counsel for the Sedan Defendants suggests that even if s. 158 is not engaged, it assists by analogy. I do not think it is a point of analogy, but I do agree that the case law dealing with s. 158 assists in assessing the respective drivers’ reasonable expectations here.

[75] In particular, some of the Court of Appeal’s comments in *Smeltzer v. Merrison*, 2012 BCCA 13, are of assistance. The *Smeltzer* facts are concisely summarized, per Justice Lowry writing for the Court, at the outset of the decision:

[2] On November 16, 2007, Ms. Smeltzer turned south onto a two-lane road at an intersection. The road was divided by a solid yellow line. She travelled only 135 feet and then stopped to turn left, across the northbound lane, into a parkade. The driver of a truck proceeding north stopped and motioned to her to make her turn in front of him. There was then a gap between the truck and vehicles backed up from the intersection ahead of it. Ms. Merrison was travelling north following two or three cars that were behind the truck. Starting about 200 feet from the intersection, the northbound lane widened (narrowing the southbound lane) to ultimately accommodate a second northbound lane, marked with a white line about 95 feet in length, for vehicles

turning right at the intersection. Cars were parked along the east side of the road. Ms. Merrison was travelling at about the posted speed limit (50 kph) and slowed. She intended to turn right at the intersection so she proceeded to pass the stopped cars and the truck ahead of her on their right, and the parked cars on her right, to enter the marked turning lane. Ms. Merrison would have travelled no more than 100 feet before reaching the beginning of the white line marking the right-turn lane, which was about 35 feet beyond the truck. Ms. Smeltzer proceeded with her turn past the front of the truck. Neither she nor Ms. Merrison saw each other before they collided.

[76] In the judgment, the Court wrote:

[15] I am unable to accept that s. 158(1)(b) permitted Ms. Merrison to pass two or three cars and the truck on the right as she contends. The exception is confined to passing on the right where there are two marked lanes for vehicles proceeding in the same direction and only then when passing can be undertaken in safety. Here, there was only one such lane regardless of whether there was what might be called a second de facto lane. I recognize this means drivers proceeding to turn right at the intersection, as Ms. Merrison was, could not align their vehicles to enter the 100-foot marked lane until it was virtually reached, if there were vehicles ahead in the “through” lane that were not turning left, but that is what the Act provides and it appears to me to be with good reason. If it were otherwise, drivers would be entitled to pass on the right wherever the road is sufficiently wide for two vehicles to pass. Drivers do not expect to be passed on the right when they are not travelling on a road with more than one designated lane. They generally expect to be able to turn off of the road to their right, whether into intersecting streets or driveways, or to pull over to the side of the road or off the road altogether without being obstructed by vehicles passing to their right.

[Emphasis added.]

[77] The Sedan Driver had a general expectation that he would *not be obstructed* by the Bus. That expectation was met. The Bus was not passing the Sedan and it did not present an obstruction.

[78] Nothing in s. 158 (or elsewhere in the *MVA* provisions identified by the parties), gave the Sedan Driver a reasonable basis to expect that every vehicle using the same lane was travelling on the same trajectory that the Sedan was. The Sedan Driver had no reasonable basis for assuming he could turn right from his far left position without entering the path of a trailing vehicle that was equally within the same lane. To the contrary, as already set out above, the Sedan Driver ought to have appreciated that there might be vehicles driving curbside in compliance with s. 165(1).

[79] That leaves the question of how Mr. Pierson's reasonable expectations were informed by the implications of ss. 158 and 165 of the *MVA*.

[80] Mr. Pierson testified that it never occurred to him that the Sedan Driver might turn right at the Intersection because the Sedan had stayed immediately beside the far left lane marking. Mr. Pierson's expectation, and his experience driving during the restricted parking period was that vehicles, in keeping with s. 165(1) of the *MVA*, approached the Intersection curbside if they intended to turn right onto Victoria Drive. Mr. Pierson's inference that the Sedan Driver's conduct signalled an intent to go straight through the Intersection was not itself an unreasonable one. However, it is an inference that must be further considered in the full context.

[81] Like the Sedan Driver, Mr. Pierson ought to have appreciated that the width of the lane that the vehicles were in presented some heightened risks. The lane is as Mr. Pierson described it – one that did not, in law, fully align with the way it was often being used in practice. Unlike most lanes, it offered users multiple lines of travel within the same lane. When the lane widened out approaching the Intersection, the Sedan Driver initially adhered to the centre line, whereas Mr. Pierson adhered to the curb. Thus far, both had made permissible choices in that it was open to them to select their respective trajectories within the lane.

[82] However, when the lane widened out, both had a responsibility to be alive to increased risks posed by the possibility of offset front and rear trailing vehicles travelling in one lane. For Mr. Pierson, being the trailing vehicle posed special risks, such as the possibility that the driver in front simply failed to register the fact that the lane had widened so significantly or might be overly reliant on the prohibition against overtaking a vehicle on the right in assessing his space to manoeuvre. There might well be other risks, but those are sufficient to ground a finding that Mr. Pierson ought not to have assumed that the amount of buffer space adequate in separate lanes would be adequate in circumstances where vehicles are travelling offset within a single wide lane.

[83] As noted at para. 53(1) of *Tchir*:

It is well established that drivers of all vehicles must allow a sufficient distance between their vehicle and those in front to stop safely in the event of sudden or unanticipated stops in their lane of travel. See: *Rai v. Fowler*, 2007 BCSC 1678; *Pryndik v. Manju*, 2001 BCSC 502 at para. 21; and *Stanowski v. Samant*, [1993] B.C.J. No. 1455 (S.C.) at para. 29.

[84] Mr. Pierson provided very candid testimony about what, in his considerable experience, was a safe and adequate buffer space between a bus and a vehicle that is directly in front of it in the same lane. He was very clear that he would never have driven with so little buffer space between him and the Sedan but for his view that they were, for practical purposes, in separate lanes.

[85] Mr. Pierson's assumption that the vehicles were in separate lanes for the "practical purpose" of maintaining an adequate buffer space was unreasonable. I don't find it necessary (nor do I have the evidence that would enable me) to make a finding as to how much buffer space would be required in the circumstances. I am satisfied, however, that one car length or less of buffer space between the Sedan and the offset Bus was not sufficient here.

[86] Mr. Toor's unchallenged conclusion is that the Bus was travelling at 33 kmph immediately prior to the Incident. Mr. Pierson's testimony supports a finding that an appropriate buffer space would have been sufficient to enable him to better appreciate the risk posed by the Sedan. Mr. Toor's evidence is that, on the facts, as they actually were, the Bus would not have collided with the Sedan even if Mr. Pierson had done nothing. A larger buffer space would have afforded Mr. Pierson more time to evaluate the Sedan's movement (i.e., to recognize that it would clear the Restricted Parking Area quickly) and/or to feel comfortable braking less abruptly than he did in fact. Accordingly, I am prepared to infer that an "adequate" buffer space would have enabled Mr. Pierson to avoid the abrupt braking that occurred in the Incident.

[87] Accordingly, Mr. Pierson was driving in breach of *MVA*, s. 162 at the time of the Incident. He was permitting the Bus to follow behind the Sedan more closely

than was reasonable and prudent, having due regard for the speed of the vehicles and the fact that they were not travelling in two separate lanes.

[88] Turning to the abruptness of Mr. Pierson's braking itself, I accept Mr. Toor's evidence that the braking was markedly abrupt as compared to normal transit bus braking speeds. The effect on the plaintiffs is apparent in the video evidence. However, I am of the view that Mr. Pierson's reaction to the Sedan entering the path of the Bus was reasonable.

[89] I note that in the Driver's View video, the camera is sitting some distance above Mr. Pierson's head. I suspect the perspective downplays somewhat the immediacy with which Mr. Pierson perceived the risk to appear. Even if that is not so, Mr. Pierson's reaction was well within the range of what was reasonable given the standard of care he owed as a public transit driver.

[90] In the video, it is unclear that the Sedan is going to turn until it does. If the Sedan Driver did use his turning signal (and I am inclined to agree with Mr. Pierson that he did not), it was visually drowned out by the brake lights and would have only been visible at the time of turning, not prior. It would not have been apparent that the Sedan Driver was going to successfully complete the manoeuvre without further slowing down or possibly even stopping while still in the path of the Bus.

[91] Mr. Pierson's response is not rendered more or less reasonable because, in hindsight, it is possible to determine that the Sedan would have been able to clear the Restricted Parking Area in sufficient time to avoid any collision. As noted at para. 26 of the *Stewart* decision, liability should not be assessed based on an "ex post facto analysis". Mr. Pierson's braking reaction was what would be reasonably expected of a prudent driver in the circumstances. His breach of duty was in allowing those particular circumstances to come into existence in contravention of *MVA*, s. 165.

[92] As in *Prempeh*, "prudence mandates that at all times a bus driver drive defensively and maintain a safe cushion [...] precisely to be able to stop safely in the

event of an unexpected manoeuvre” by a vehicle in front of the bus: para. 23. Thus, Mr. Pierson’s driving, and the resultant Incident, establishes a *prima facie* case of negligence. There is no evidence before me rebutting that *prima facie* case.

### C. Apportionment of Liability

[93] Both the Sedan Driver and Mr. Pierson have been found to be at fault in respect of the Incident. Where damage or loss is caused by the fault of two or more persons, s. 4(1) of the *Negligence Act*, R.S.B.C. 1996, c. 333 requires the court to “determine the degree to which each person was at fault”.

[94] “Fault” does not mean the extent of causation, as explained by Justice Groves in *Aberdeen v. Township of Langley, Zanatta, Cassels*, 2007 BCSC 993 [*Aberdeen BCSC*], rev’d in part, *Aberdeen v. Zanatta*, 2008 BCCA 420. “Fault” is measured by the nature and extent of the departure from the standard of care of each person responsible for the damage: *Aberdeen BCSC* at para. 62.

[95] As set out in *Aberdeen BCSC* at paras. 62–63, 66, the relevant factors for consideration in assessing relative degrees of fault include:

- a) The nature of the duty owed by the negligent party to the injured person and the magnitude of the departure from that standard;
- b) The number of acts of fault committed by the person at fault;
- c) The timing of the various negligent acts (who was negligent first);
- d) The nature of the conduct held to amount to fault, and whether the conduct was deliberate, unusual, or unexpected;
- e) The extent to which the conduct breaches statutory requirements;
- f) The gravity of the risk created;
- g) The extent of the opportunity to avoid or prevent the accident or damage; and
- h) The knowledge one person had or should have had of the conduct of the other person at fault.

[96] I consider it significant here that the Sedan Driver made an abrupt and unexpected move, without any effective warning to other users of the road, and that move put the Sedan into the pre-existing path of the Bus. Like the accident in *Lattimore*, this is a case in which the Bus driver owed a more demanding standard of care, but the Sedan Driver had a significantly better opportunity to avoid the Incident, committed more acts of fault and was in very serious breach of s. 165(1) of the *MVA*.

[97] Having considered the factors outlined in *Aberdeen BCSC*, and having applied them to the circumstances of this case, I apportion liability for the Incident 70% to the Sedan Defendants and 30% to the Bus Defendants.

**IX. Disposition**

[98] The Plaintiffs have satisfied the requirement of s. 24 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231.

[99] The position that the Plaintiffs were contributorily negligent was not pursued in closing argument. The claims that the Plaintiffs were contributorily negligent are dismissed.

[100] The Sedan Driver and Mr. Pierson were both negligent with respect to the Incident. Liability for the Incident is apportioned as 70% to the Sedan Defendants and 30% to the Bus Defendants.

“Tucker J.”