

**SUPREME COURT OF NOVA SCOTIA**

Citation: Ha's Driving School v. Zive, 2011 NSSC 265

Date: 20110817

Docket: Hfx. No. 343732A

Registry: Halifax

**Between:**

**Peter Ha**, carrying on business in the name and style of  
Ha's Driving School

Appellant

-and-

**Sheila Zive**

Respondent

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**Judge:** The Honourable Justice Robert W. Wright

**Heard:** June 27, 2011 in Halifax, Nova Scotia

**Written**

**Decision:** August 17, 2011

**Subject:** Small Claims Court Appeal - standard of review - error of law in failing to address standard of care of both drivers in a motor vehicle accident - interpretation of s. 114(c) of the *Motor Vehicle Act*.

**Summary:** The operator of the appellant's vehicle, after emerging from a passing manoeuvre to the right of a stopped van waiting to make a left turn into the Superstore parking lot on Barrington Street, was sideswiped by the respondent's vehicle when it exited the parking lot to turn left. The adjudicator found that the appellant was negligent for passing the stopped van on the right in an unsafe manner and dismissed his action for damages.

**Result:** Although the adjudicator was correct in finding negligence on the part of the appellant, he erred by not addressing the further question as to whether that negligence was the sole cause of the collision.

As to the requisite standard of care of the respondent driver, the court found that by looking in only one direction, she failed to discharge the heavy onus to ensure that such an entry onto Barrington Street could be made in safety. Both parties were found to be equally at fault and the case was therefore remitted to the adjudicator to assess damages under that apportionment.

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER  
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