

SUPREME COURT OF NOVA SCOTIA

Citation: *Hunter v. Boone et al.; Messervey v. Boone et al.*,
2022 NSSC 187

Date: 20220629

Docket: Hfx No. 474483

Registry: Halifax

Between:

Natasha Dawn Hunter

Plaintiff

v.

Emily Boone and Enterprise Rent-A-Car Canada Company
and Arnold Messervey

Defendants

And

Docket: Hfx No. 475820

Registry: Halifax

Between:

Arnold Messervey

Plaintiff

v.

Emily Boone and Enterprise Rent-A-Car Canada Company

Defendants

LIBRARY HEADING

Judge: The Honourable Chief Justice Deborah K. Smith

Heard: May 16th & 17th, 2022, in Halifax, Nova Scotia

Written Decision: June 29th, 2022

Subject: Motor vehicle accident.

Summary: Arnold Messervey and Emily Boone collided on a multi-lane highway in Dartmouth, Nova Scotia. Mr. Messervey was travelling the full speed limit in a two-way left-turn lane. Ms. Boone was travelling across multiple lanes of highway to turn left. She failed to look to her left (where Mr. Messervey was

located) prior to entering the two-way left-turn lane. The collision ensued.

Issues:

- (1) Liability.
- (2) Use of a two-way left-turn lane.
- (3) Effect of the Nova Scotia Driver's Handbook.

Result:

Liability was apportioned 75% against Ms. Boone (and her employer) and 25% against Mr. Messervey.

Mr. Messervey was driving too fast in the circumstances (travelling in a two-way left-turn lane). However, Ms. Boone was primarily responsible for the collision as she attempted to enter a two-way left-turn lane located on an extremely busy multi-lane highway without first looking left into that lane to ensure that her maneuver could be made safely. Further, she failed to yield to Mr. Messervey's vehicle.

Two-way left-turn lanes, which permit vehicles traveling in opposite directions to both use the same lane of travel, are, by their very nature, inherently dangerous. As a result, drivers using these lanes have an obligation to drive cautiously and reasonably. That means that motorists should be traveling at a reduced speed when driving in these lanes and should enter the lanes reasonably close to the area that they intend to exit into. These lanes should not be used to travel for extended distances. What is reasonable will depend on the circumstances. Ultimately, the user of a two-way left-turn lane must meet the standard of care of a reasonable and skillful driver in the same circumstances.

While the Nova Scotia Driver's Handbook ("Handbook") can help to inform the court's interpretation of the law, it is not legislation and does not necessarily reflect the standard of care that must be met by the driver of a vehicle. In this case, while the Handbook helped to inform the courts views, the court was not prepared to adopt it outright as a statement of the appropriate standard of care.

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Decision: June 29th, 2022

Counsel: Barry J. Mason, Q.C., for the Plaintiff: Natasha Dawn Hunter
Peter C. Rumscheidt, for the Plaintiff: Arnold Messervey

Christopher W. Madill and Erin McSorley, for the Defendants: Emily
Boone and Enterprise Rent-A-Car Canada Company
Sandra Arab Clarke, Q.C., for the Defendant: Arnold Messervey

By the Court:

[1] On December 20th, 2017, vehicles driven by Arnold Messervey and Emily Boone collided on Windmill Road, a multi-lane highway in Dartmouth, Nova Scotia. At the time, Mr. Messervey was travelling with his partner, Natasha Hunter. Ms. Boone was travelling alone.

[2] On March 16th, 2018, Ms. Hunter commenced an action against Ms. Boone, Enterprise Rent-A-Car Canada Company (“Enterprise”) and Mr. Messervey. That action was defended. In addition, the Defendants Boone and Enterprise crossclaimed against the Defendant Messervey, who, in turn, crossclaimed against Ms. Boone and Enterprise.

[3] On April 27th, 2018, Arnold Messervey commenced an action against Ms. Boone and Enterprise. That action was also defended.

[4] All parties agreed to hold a single common trial for both actions. It was agreed that the evidence given at the trial would be evidence in both proceedings. I am indebted to counsel who worked cooperatively before and during the trial to ensure a smooth proceeding.

[5] All parties also agreed to bifurcate the issues of liability and damages. My decision on liability for both actions follows.

THE COURT’S FACTUAL FINDINGS:

[6] There is little dispute between the witnesses concerning the facts surrounding this accident. My findings are as follows.

[7] On December 20th, 2017, at approximately 4:30 p.m., Mr. Messervey was driving his 2012 Honda Civic EX on Victoria Road in Dartmouth, Nova Scotia. He was very familiar with the area. It was clear that day and the roads were dry.

[8] Mr. Messervey met bumper to bumper traffic when he turned onto Victoria Road. He and his partner, Natasha Hunter, were going to attend a birthday party for Ms. Hunter’s mother early that evening. They had some time on their hands before they attended the party and decided to wait out the traffic and stop for a coffee at a Tim Hortons on Windmill Road.

[9] As Mr. Messervey reached the point where Victoria Road becomes Windmill Road, there was a Ford dealership on his right. In the area of the dealership there are six traffic lanes. Three lanes head outbound from Dartmouth towards Bedford (this was the direction Mr. Messervey was travelling). Two lanes are inbound towards Dartmouth from Bedford. The final lane, next to the centre line, is reserved for Dartmouth-bound vehicles turning left into the Ford dealership. Immediately after passing the dealership in the outbound direction, this lane transitions into what is known as a two-way left-turn lane. This lane is for traffic turning left from either direction. In other words, vehicles travelling both inbound and outbound can use this single lane to turn left.

[10] As Mr. Messervey travelled outbound onto Windmill Road, he was in the lane closest to the centre line. As he neared the Ford dealership on his right, the traffic was still bumper to bumper. The lane to his left at this point (on the other side of the centre line) was solely for inbound traffic turning left. Shortly thereafter, it became a two-way left-turn lane.

[11] Across the street from the Ford dealership is a steel fabrication plant. If one is driving outbound (in the direction that Mr. Messervey was travelling), there is a roadway on the left immediately after passing the steel fabrication plant. There is then a long stretch of highway with nowhere for outbound traffic to turn left. Nevertheless, there are numerous arrows on the road indicating that the lane may be used for a left turn by both inbound and outbound traffic. In other words, for this long stretch, there is nowhere for outbound traffic to actually turn left, but the road markings indicate that both inbound and outbound vehicles can turn left.

[12] Shortly after passing the Ford dealership, Mr. Messervey pulled into what was now the two-way left-turn lane. He had used this lane on numerous occasions in the past. He intended to stay in this lane until he turned left into the Tim Hortons, a considerable distance further down Windmill Road. He entered the lane at this point to get out of the bumper-to-bumper traffic in the outbound lanes on Windmill Road. There were no other vehicles travelling in the two-way left-turn lane when Mr. Messervey entered it. As he passed the steel fabrication plant to his left, he glanced at an excavator that was in the roadway next to the plant.

[13] Mr. Messervey was travelling at less than 10 kilometres per hour as he entered the two-way left-turn lane. He could see a line of inbound traffic about to turn onto Windmill Road at an intersection ahead. Knowing that these vehicles, which would soon be travelling toward him, might also enter the two-way left-turn lane, Mr. Messervey accelerated so that he could turn in to Tim Hortons and get out of the

lane, before that could happen. The crash data information retrieved from Mr. Messervey's car establishes that he was travelling at the full speed limit of 60 kilometres per hour at the moment of collision.

[14] Emily Boone was an employee of Enterprise at the time of the accident. She was driving a Ford F-150 pickup truck, which was owned by Enterprise. Ms. Boone was delivering this vehicle to a customer at the time of the collision.

[15] Enterprise has an office on Windmill Road. The Ford F-150 was parked near the office. Ms. Boone got into the truck and moved to an exit near what was known, at the time, as Brewdebakers Restaurant. It was daylight out and visibility was good. Ms. Boone's intention was to enter Windmill Road, cross the three lanes of outbound traffic and the two-way left-turn lane, turn left and proceed inbound on Windmill Road towards what is known as the Circumferential Highway.

[16] Ms. Boone approached Windmill Road from the Brewdebakers exit. She stopped before entering the highway. There was no stop sign in the area where she was exiting. Traffic was very heavy at the time. All three outbound lanes were bumper to bumper traffic. Traffic was also heavy inbound travelling towards Dartmouth.

[17] Due to the traffic, Ms. Boone had to wait for five to ten minutes to commence her exit onto Windmill Road. Eventually, one by one, the lanes of outbound traffic stopped to allow her to enter the road. She crossed over the first two outbound lanes. As she approached the third outbound lane (closest to the centre line) a driver in that lane waved to her. Ms. Boone crossed over that lane, entered the two-way left-turn lane and collided with Mr. Messervey's vehicle. The accident occurred in Mr. Messervey's lane of travel (in the two-way left-turn lane). Neither driver saw the other before the collision.

[18] As Ms. Boone was crossing over the outbound lanes of travel, she had been looking to her left at the approaching outbound traffic. Once the driver of the vehicle closest to the centre line waved to her, she looked to her right at the approaching inbound traffic to make sure that she was not going to get hit by anyone travelling in that direction. She was looking to her right at the time the accident occurred.

[19] At no time prior to the accident did Ms. Boone look to her left into the two-way left-turn lane to see if there were any vehicles travelling outbound in that lane. That is the lane that Mr. Messervey was travelling in just prior to the collision.

THE PARTIES' POSITIONS

[20] The Plaintiff, Natasha Hunter, notes that Ms. Boone failed to look left before entering the lane where the accident occurred and submits that she failed to yield the right of way to Mr. Messervey's vehicle. This Plaintiff relies, *inter alia*, on ss. 122(2) and 123(1) of the ***Motor Vehicle Act***, R.S.N.S. 1989, c. 293, and asks that Ms. Boone and Enterprise be found solely responsible for the collision. Alternatively, she submits that these two Defendants should be found primarily responsible for the accident.

[21] Mr. Messervey also relies on ss. 122 and 123 of the ***Motor Vehicle Act***. He submits that his vehicle constituted an immediate hazard just prior to the collision and that Ms. Boone had a duty to yield to his vehicle.

[22] Mr. Messervey notes that the ***Motor Vehicle Act*** does not deal with two-way left-turn lanes and he submits that he was justified, at the time in question, in using this lane in the manner he did. In his pre-trial brief, it is noted that there are several two-way left-turn arrows painted at various locations between the roadway immediately after the fabrication plant and the next possible exit, even though there is nowhere in that area for outbound traffic to actually turn left. In addition, at trial he pointed out that near the Brewdebakers exit there is a sign over the two-way left-turn lane with left turn arrows for both inbound and outbound traffic. He submits that if he was not legally able to travel in this lane in the manner he did, why were these two-way left-turn arrows marked on the road and shown on the sign above the road? He further submits that the roadway should have been marked with single left-turn arrows for inbound traffic only (as was done down near the Ford dealership) if he was not permitted to travel in this lane until he got closer to the exit where he was intending to turn.

[23] During summation, Mr. Messervey argued that regardless of the court's conclusion on the use of the two-way left-turn lane, his use of that lane was not what caused this collision.

[24] Mr. Messervey submits that Ms. Boone and Enterprise are solely responsible for this accident. Alternatively, he suggests that any liability apportioned to him should be minimal.

[25] The Defendants, Emily Boone and Enterprise, submit that Mr. Messervey's use of the two-way left-turn lane was contrary to the ***Motor Vehicle Act*** as well as

the Nova Scotia Driver's Handbook and that his conduct fell below the standard of care of a reasonable driver in the circumstances.

[26] These Defendants acknowledge that there is no legislation or regulations in Nova Scotia that explicitly govern the proper use of a two-way left-turn lane. The *Motor Vehicle Act*, however, defines "official traffic signs" as follows:

2 (ah) "official traffic signs" means signs, markings and devices, other than signals, not inconsistent with this Act, placed or erected by authority of a public body or official having jurisdiction, for the purpose of guiding, directing, warning or regulating traffic;

[27] Section 83(2) of the said *Act* makes it an offence to disobey an official traffic sign. It provides:

83 (2) It shall be an offence for the driver of any vehicle or for the motorman of any street car to disobey the instructions of any official traffic sign or signal placed in accordance with this Act, unless otherwise directed by a peace officer.

[28] These Defendants submit that the Nova Scotia Driver's Handbook ("Handbook") which deals with the use of two-way left-turn lanes, can be used to inform the interpretation of s. 83(2). They further submit that to use a two-way left-turn lane in a manner contrary to the Handbook is to disobey the instructions of an official traffic sign in breach of s. 83(2).

[29] Counsel have referred the court to various case authorities that have dealt with liability for motor vehicle collisions. Some of these cases deal with ss. 122 or 123(1) of the *Motor Vehicle Act*. Few of these cases are similar to the circumstances surrounding this accident. Nevertheless, I have reviewed and considered these authorities prior to rendering my decision.

LAW AND ANALYSIS

[30] At the time in question, both Ms. Boone and Mr. Messervey had an obligation to operate their vehicles in a careful and prudent manner having regard to all of the circumstances (see s. 100(1) of the *Motor Vehicle Act*). In my view, for the reasons that follow, both of them failed to meet that obligation at the time of the collision.

[31] Ms. Boone was in the process of executing a left turn on an extremely busy multi-lane highway at the time of the accident. The burden on a left-turning driver is significant. Ms. Boone had to determine that her maneuver could be made safely

prior to taking any action. This placed an obligation on her to carefully look both left and right before she entered the two-way left-turn lane. It is undisputed that she failed to look left prior to entering that lane. As a result, she failed to see Mr. Messervey's vehicle approaching.

[32] Ms. Boone testified that she did not look to her left before entering the two-way left-turn lane as she did not expect any vehicles to be there. She suggested that there was nowhere for outbound motorists to turn left in the immediate area that she was travelling so she did not think that anyone would be proceeding outbound in that area. In my view, her assumption in this regard was unfounded.

[33] First, prior to this accident, Ms. Boone was aware that outbound vehicles travel the two-way left-turn lane in the same manner that Mr. Messervey did on the day in question (entering the two-way lane far from their intended exit). She had seen this happen on a number of occasions prior to this collision.

[34] Further, not far beyond the area of the accident there is a laneway on the left (Dundee Lane) that vehicles travelling outbound can turn in to. In my view, this laneway is close enough to the Brewdebakers exit that Ms. Boone could not assume that no one would be in the two-way left-turn lane travelling outbound. She had an obligation to look both left and right into the two-way left-turn lane before entering that lane.

[35] Counsel for Ms. Hunter has referred the court to s. 122(2) of the *Motor Vehicle Act* and suggests that Ms. Boone breached this section of the *Act*. Counsel for Mr. Messervey has suggested that ss. 122(2) - (4) apply to the circumstances of this case. For the reasons that follow, I have concluded that these provisions of the *Motor Vehicle Act* do not apply to this collision.

[36] Section 122 of the *Motor Vehicle Act* provides:

Right of way or left turn at intersection

122 (1)

(2) The driver of a vehicle who has stopped as required by law at the entrance to a through highway shall yield to other vehicles within the intersection or approaching so closely on the through highway as to constitute an immediate hazard, but said driver having so yielded may proceed, and other vehicles approaching the intersection on the through highway shall yield to the vehicle so proceeding into or across the through highway.

(3) The driver of a vehicle within an intersection intending to turn to the left shall **yield to any vehicle approaching from the opposite direction** which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver having so yielded and having given a signal when and as required by law may make the left turn, and other vehicles approaching the intersection from the opposite direction shall yield to the driver making the left turn.

(4) The driver of a vehicle on a highway intending to turn to the left, other than within an intersection, shall **yield to any vehicle approaching from the opposite direction** which is so close to his vehicle as to constitute an immediate hazard, but, said driver having so yielded and having given a signal when and as required by law may make the left turn, and the drivers of other vehicles approaching the turning vehicle from the opposite direction shall yield to the driver making the left turn.

(5)

[Emphasis added]

[37] Section 122(2) of the *Motor Vehicle Act* refers to a driver of a vehicle who has stopped *as required by law at the entrance to a through highway*. The *Act* does not provide a definition of a “through highway”. However, pursuant to s. 133 of the *Act*, a “through highway” can be created by a traffic authority erecting stop signs at the entrance to a highway.

[38] In *Eisenhauer v. Rice* (1952), 33 M.P.R. 63 (N.S.S.C. (*in banco*)), the court held that s. 122(2) of the *Motor Vehicle Act* (formerly s. 100(2)) deals specifically with intersections at which stop signs have been erected. See also *Ocean v. Economical Mutual Insurance Company*, 2011 NSSC 202, at ¶ 93-94. There was no stop sign at the exit that Ms. Boone was using to enter Windmill Road. In my view, s. 122(2) does not apply to the circumstances of this case.

[39] Sections 122(3) and (4) both set out the obligations of a driver of a vehicle intending to turn left with respect to *vehicles approaching from the opposite direction* (in other words, oncoming traffic). Mr. Messervey was approaching from Ms. Boone’s left. In my view, his vehicle was not approaching from the opposite direction at the time of the collision and ss. 122(3) and (4) do not apply to the circumstances of this case.

[40] Counsel have also referred the court to s. 123(1) of the *Motor Vehicle Act* which provides:

Entering a highway and emergency vehicles

123 (1) The driver of a vehicle entering a highway shall yield the right of way to all vehicles approaching on the highway.

.....

[41] Ms. Boone had an obligation pursuant to s. 123(1) of the *Motor Vehicle Act* to yield the right-of-way to any vehicles that were approaching on the highway. This obligation is also significant. In *Tantramar Holding & Leasing v. Beyer et al.* (1991), 104 N.S.R. (2d) 1 (S.C. (T.D.)), Saunders, J. (as he then was) considered s. 123(1) of the *Motor Vehicle Act* and stated, at ¶ 121:

Accordingly, the onus on the defendant Beyer to yield the right-of-way to the plaintiffs was a heavy one. He was obliged to yield the right-of-way to all vehicles approaching on the Sunrise Trail. The courts have long affirmed the heavy onus to yield the right-of-way on a driver entering a public highway from a private driveway

[42] In *Tantramar*, Saunders J. referred to the heavy onus on a driver entering a public highway from a private driveway to yield the right-of-way. At the time of this accident, Ms. Boone was not exiting from a private driveway¹. Nevertheless, I am satisfied that s. 123(1) of the *Motor Vehicle Act* placed a burden upon her to yield the right-of-way to any vehicles that were approaching on the highway². This she failed to do.

[43] In the pretrial brief filed on behalf of Ms. Boone and Enterprise, the suggestion is made that even if Ms. Boone had looked to her left prior to entering the two-way left-turn lane, she would not have been able to see Mr. Messervey as her view would have been obstructed by the heavy traffic on Windmill Road. I do not accept this proposition.

[44] Ms. Boone was driving a pickup truck at the time of this collision. At trial, she acknowledged that her vehicle was higher off the ground than a regular sedan.

[45] Just prior to the accident, Ms. Boone looked to her right to check for inbound traffic. There was bumper to bumper traffic on her right but, nevertheless, she was able to see into the inbound lanes of travel to determine whether anyone was coming. In my view, the suggestion that she would not have been able to see Mr. Messervey if she had looked to her left is mere speculation and should not enter into my analysis.

[46] In any event, if Ms. Boone had been unable to see into the two-way left-turn lane, she should not have risked entering it. Motorists cannot blindly enter a lane of

travel and then, when an accident occurs, complain that they were unable to see into it.

[47] That takes me to the issue of Mr. Messervey's driving at the time in question.

[48] As indicated previously, Mr. Messervey was travelling in a two-way left-turn lane at the time of the accident. He entered the lane at the earliest opportunity available to him, intending to turn left at a Tim Hortons down the road.

[49] The evidence satisfies me that once Mr. Messervey entered the two-way left-turn lane, there were at least two roadways where he could have turned left prior to reaching the Tim Hortons. The first was the roadway next to the steel fabrication plant. The second was Dundee Lane. In between these two roadways is a relatively long stretch of highway where there is nowhere to turn left if one is travelling outbound. In other words, Mr. Messervey did not enter the two-way left-turn lane at or near the Tim Hortons that he was intending to visit. Rather, he entered this lane long before his intended destination.

[50] It is common ground between the parties that the *Motor Vehicle Act* and its regulations are silent on the proper use of a two-way left-turn lane. In addition, counsel have advised the court that they have been unable to locate any civil cases that deal with the use of such lanes.

[51] Counsel for Ms. Boone and Enterprise referred the court to the Nova Scotia Drivers Handbook that was in effect at the time of this accident. With the agreement of all counsel, this Handbook was admitted into evidence at the time of trial. This Handbook provides:

Two-way-left-turn lanes

On certain multi-lane highways, the centre lane is reserved exclusively as a two-way-left-turn lane. This means that traffic travelling in both directions share the lane when making left turns. Never use this lane to pass or overtake another vehicle.

When a highway is divided into three or more lanes and a sign is posted or the pavement is marked designating the centre or middle lane as a two-way-left-turn lane, all drivers must drive to the right of the double lines except to prepare for a left turn.

Be careful when using this lane. Remember, other vehicles may also be using the lane from the opposite direction.

Complete a left turn in a two-way-left-turn lane in the following way:

- Turn on your left-turn signal, check traffic to the front and rear, and do a shoulder check to the left.
- When it is safe, slow down and gradually move into the two-way-left-turn lane as close to your exit point as possible. Do not drive in the two-way-left-turn lane for an extended distance.
- Reduce your speed and stop as near as possible to the point at which the left turn will be made.
- Yield to approaching vehicles. When the way is clear, complete the turn. Vehicles approaching in the turning lane from the opposite direction are also required to yield. Each driver must yield sufficiently to the other so that traffic moves smoothly without causing an immediate hazard to other drivers or pedestrians.

[52] Counsel for these Defendants submit that Mr. Messervey operated his vehicle in a manner contrary to the Handbook. In particular, they submit, *inter alia*, that he did not move into the two-way left-turn lane as close to the Tim Hortons exit as possible, that he drove in the said lane for an extended distance, that he did not reduce his speed and that he used this lane to pass or overtake other vehicles. They submit that the provisions of the Handbook dealing with two-way left-turn lanes “inform” the interpretation of s. 83(2) of the *Motor Vehicle Act*. They rely on *Montani v. Matthews*, 1992 CarswellOnt 1830 (Ont. Ct. J. (Gen. Div.)); *Groom v. Quinlan* (1983), 48 N.B.R. (2d) 269 (Q.B.); *Mabey v. Richards* (1982), 42 N.B.R. (2d) 91 (Q.B.) and *Minkoff v. Knickle* (1981), 48 N.S.R. (2d) 487 (S.C. (T.D.)), in support of this suggestion. They contend that operating a vehicle contrary to the Handbook is to disobey the instructions of an official traffic sign in breach of s. 83(2) of the *Act*.

[53] During the trial, it appeared that counsel for Ms. Boone and Enterprise were equating a breach of the Handbook with a breach of the law. In my view, the two are not necessarily synonymous. While the Handbook can help to inform the court’s interpretation of the law, it is not legislation and it does not necessarily reflect the standard of care that must be met by the driver of a vehicle. Those standards are set out in the *Motor Vehicle Act* and the common law developed by the courts.

[54] In this case, while the Handbook helps to inform my views on the appropriate standard of care when using such a lane, I am not prepared to adopt it outright as a statement of the appropriate standard of care.

[55] Two-way left-turn lanes, which permit vehicles travelling in opposite directions to both use the same lane of travel, are, by their very nature, inherently dangerous. As a result, drivers using these lanes have an obligation to drive cautiously and reasonably. That means that motorists should be travelling at a reduced speed when driving in these lanes and should enter the lanes reasonably close to the area that they intend to exit into. These lanes should not be used to travel for extended distances. What is reasonable will depend on the circumstances. Ultimately, the user of a two-way left-turn lane must meet the standard of care of a reasonable and skilful driver in the same circumstances.

[56] In the present case, Mr. Messervey did not enter the two-way left-turn lane reasonably close to the exit that he intended to take. In addition, he drove in the lane for an extended period prior to the accident occurring. This, in my view, was a breach of the standard of care expected of him in the circumstances. As indicated above, two-way left-turn lanes are inherently dangerous as they allow vehicles travelling in opposite directions to use the same lane at the same time. One can imagine the dangers that can arise if motorists travel in these lanes for extended periods.

[57] Counsel for Mr. Messervey has pointed out that there were numerous arrows in the area that Mr. Messervey was travelling indicating a left-turn for both inbound and outbound traffic even though, for a significant stretch of highway, there was nowhere for outbound traffic to actually turn left. They suggest that this indicated that he was legally able to travel in this lane provided that he was turning left.

[58] While I am at a loss to understand why the traffic authority painted left turn arrows for outbound traffic in an area of a two-way left-turn lane where there was nowhere for outbound traffic to actually turn left, I have concluded that this fact does not alter my views on liability for this collision.

[59] Mr. Messervey did not indicate at trial that these arrows led him to believe that he was permitted to enter this lane at the earliest opportunity. I am satisfied from his evidence that the way Mr. Messervey used this two-way left-turn lane on the day in question is the same way that he traditionally uses two-way left-turn lanes. In other words, the markings on the road in the area in question did not mislead him into believing that he could enter the lane early.

[60] Further, despite the fact that I have concluded that Mr. Messervey breached the standard of care expected of him when he entered the two-way left-turn lane far from the location where he intended to exit, I am not satisfied that his actions in this

regard actually caused or contributed to this collision. In *Clements v. Clements*, [2012] 2 S.C.R. 181, the court stated at ¶6:

On its own, proof by an injured plaintiff that a defendant was negligent does not make that defendant liable for the loss. The plaintiff must also establish that the defendant's negligence (breach of the standard of care) *caused* the injury.....

[Emphasis in the original]

[61] In my view, this accident did not occur as a result of Mr. Messervey travelling in the two-way left-turn lane for an extended period far from his intended exit. This collision was caused by other factors.

[62] Ms. Boone and Enterprise note that Mr. Messervey did not reduce his speed when in the two-way left-turn lane. In fact, the evidence establishes that in the five seconds prior to the collision the speed of his vehicle increased from 46 kilometres per hour to the full speed limit of 60 kilometres per hour.

[63] The driver of a motor vehicle has a duty to operate that vehicle at a careful and prudent rate of speed. Section 101 of the *Motor Vehicle Act* provides:

Careful and prudent speed

101 A person operating or driving a vehicle on a highway shall operate or drive the same at a careful and prudent rate of speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the highway and of all other conditions at the time existing, and a person shall not operate or drive a vehicle upon a highway at such a speed or in such a manner as to endanger the life, limb or property of any person.

[64] At trial, Mr. Messervey noted that he was travelling the speed limit at the time of the accident. The full speed limit is only appropriate if circumstances warrant it. As I indicated previously, in my view, the inherently dangerous nature of a two-way left-turn lane requires motorists travelling in such a lane to drive cautiously and reduce their speed.

[65] Mr. Messervey was travelling in heavy traffic at the time of the accident. He was very familiar with the area and was aware that Windmill Road is a busy highway particularly during rush hour. He knew that there were a number of businesses to his right where vehicles could have been exiting intending to turn left or right. He knew that he was travelling in a two-way left-turn lane that allowed vehicles travelling from opposite directions to use the same lane of travel. Rather than reduce his speed when using this lane, Mr. Messervey accelerated, and, in fact, was

travelling at the full speed limit of 60 kilometres per hour at the time of the collision. I find that this was a breach of the applicable standard of care.

[66] If Mr. Messervey had been travelling at a reduced rate of speed, he would have had a greater opportunity to react and respond to the impending collision. I am satisfied that his speed was one of the causes of this accident.

[67] Counsel for Ms. Boone and Enterprise suggested at trial that Mr. Messervey was not keeping a proper lookout prior to the collision. They noted that Mr. Messervey's passenger, Natasha Hunter, noticed Ms. Boone's vehicle prior to the accident. They also noted that Mr. Messervey had looked at an excavator on his left prior to the collision. Mr. Messervey acknowledged at trial that he did not see Ms. Boone's vehicle at any time prior to the accident.

[68] I will deal first with the issue of the excavator. The excavator that Mr. Messervey looked at was in the laneway to his left immediately after the steel fabrication plant. That laneway is well before the accident scene. I find that Mr. Messervey's glance at the excavator did not cause or contribute to this accident.

[69] In addition, I am not satisfied that Mr. Messervey failed to keep a proper lookout *per se* prior to the collision. It is not surprising to me that Ms. Hunter saw something (Ms. Boone's vehicle) that Mr. Messervey did not see. A passenger has the luxury of looking around while a driver, particularly someone driving in a two-way left-turn lane, needs to keep greater focus on the road directly in front of them. Having said that, I find that Mr. Messervey's speed gave him less time to observe Ms. Boone's vehicle and respond to, and possibly avoid, the collision.

[70] Finally, counsel for Ms. Boone and Enterprise submit that Mr. Messervey used the two-way left-turn lane to pass or overtake other vehicles that were on his right.

[71] In my view, two-way left-turn lanes should not be used to pass other vehicles in the sense of entering such a lane for the purpose of passing vehicles in an adjacent lane and then re-entering the adjacent lane ahead of those vehicles. However, I have no difficulty with the fact that motorists using a two-way left-turn lane may *pass by* other vehicles adjacent to them as they prepare to exit. That is what Mr. Messervey was doing in the circumstances of this case.

[72] I find that Ms. Boone was the primary cause of this collision. She attempted to enter a two-way left-turn lane located on an extremely busy multi-lane highway

without first looking left into that lane to ensure that her maneuver could be made safely. Further, she failed to yield to Mr. Messervey's vehicle. Her conduct fell well below the standard of care expected in the circumstances. Enterprise, as her employer, is vicariously liable for her actions.

[73] Mr. Messervey bears some responsibility for the accident. He was travelling the full speed limit of 60 kilometres per hour when driving in an inherently dangerous two-way left-turn lane.

[74] I apportion liability 75 % against Ms. Boone and Enterprise and 25% against Mr. Messervey.

[75] If I am in error in ¶¶ 60 - 61 in my conclusion on causation, I would nevertheless apportion liability the same way. Ms. Boone is primarily responsible for this collision.

[76] The crossclaims brought by the Defendants in Hfx No. 474483 are allowed in the proportions indicated above.

[77] Counsel are encouraged to come to an agreement on costs. If no such agreement is reached, the Plaintiffs' written submissions shall be filed with the Court and served on the Defendants by August 15th, 2022. The Defendants' written submissions shall be filed with the Court and served on the Plaintiffs by August 30th, 2022.

[78] An Order will issue accordingly.

Deborah K. Smith
Chief Justice

Notes:

¹ Section 2(au) of the *Motor Vehicle Act* defines “private road or driveway” as a road or driveway not open to the use of the public for purposes of vehicular traffic. The parking lot that Ms. Boone was exiting from was open to the use of the public.

² Section 123(1) of the *Motor Vehicle Act* traditionally applied only to vehicles entering a highway from a private road or drive (see s. 101(1) of the *Motor Vehicle Act*, S.N.S. 1932, c. 6 and s. 111(1) of the *Motor Vehicle Act*, R.S.N.S. 1967, c. 191). In 1972 s. 111(1) of the said *Act* was amended to remove the words “private road or drive” (see s. 12 of *An Act to Amend Chapter 191 of the Revised Statutes, 1967, the Motor Vehicle Act*, S.N.S. 1970, c. 53).