

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
Cite as: Pierce v. ING Insurance, 2006 NSSM 31

2006

Claim No. 259745  
Date: 20060809

**BETWEEN:**

Name: **Paul Pierce** **Claimant**

- and -

Name: **ING Insurance - Agent Allan Blair** **Defendant**

-and-

Name: **D. Luke Williams** **Defendant**

-and-

Name: **Linda Gourlay** **Defendant**

-and-

Name: **ING Insurance Broker - Agent John Chipman** **Defendant**

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on December 13, 2006. This decision replaces the previously distributed decision

**Appearances:**

Claimant:	Paul Pierce
Defendants, Williams and Gourlay:	William C. Boyte
Defendants, ING	Michelle Campbell

**DECISION**

- [1] This matter was heard in Halifax on May 9. Following the hearing written submissions were made by Mr. Boyte on May 25th and by Mr. Pierce on May 29<sup>th</sup>. Ms. Campbell had previously made written submissions under date of May 5, 2006.
  
- [2] This case involves a motor vehicle collision which occurred on September 26, 2005, at the intersection of South Park Street, Sackville Street and Bell Road in Halifax. The basic facts of the collision do not seem to be in dispute. Mr. Pierce was turning left from Bell Road onto Sackville Street. Mr. Williams was going “straight” through the lights from South Park Street onto Bell Road (actually this does involve a slight left turn as the intersection of Bell Road with Sackville Street is at somewhat of a diagonal rather than a right angle).
  
- [3] The traffic lights at the intersection in question provide an advance flashing green arrow for the cars turning left from Bell Road onto Sackville Street and the evidence established that this was the case on the day in question. Following the hearing Mr. Boyte submitted written confirmation from HRM Transportation and Public Works Services that showed that the light pattern in effect for drivers approaching from Bell Road to the intersection (in a southerly direction) would be:

Left Turn Arrow and Green	8 seconds duration
Amber Left Turn Arrow and Green	4 seconds duration

- [4] This was accepted by Mr. Pierce and I accept it for the purposes of this decision. As well, it was also in evidence and I accept that when the 4 second amber left turn arrow ended, the red light turned to green for the drivers on South Park Street, headed north. That is, the drivers in the position of Mr. Williams and in the position of Mr. MacKinnon a third party witness who also gave evidence.
- [5] The evidence Mr. Pierce gave at the hearing was not consistent with his original statement to the insurance adjuster and the statement in his May 29th written submission. At the hearing he indicated that there was no yellow turn signal and that the green turn signal simply ended. In his written submission he acknowledged that this information was incorrect and the information submitted by Mr. Boyte was correct. That is that there was a yellow turn signal interval after the green and that it had a duration of 4 seconds.
- [6] Mr. Pierce states that he entered the intersection at the time the green arrow turned to an orange arrow. I do not accept this. It is not consistent with Mr. MacKinnon's evidence which was that Mr. Pierce's vehicle was "way late". It is also not consistent with the fact of or the respective position of the vehicles at the collision. That is, if that was true, I would expect Mr. Pierce's vehicle to have cleared the intersection and the collision to not have occurred.
- [7] In my view, the green signal had turned to an amber signal before Mr. Pierce entered the intersection and at the time he entered the intersection it either showed an amber arrow or possibly, even ceased to show the amber arrow at that stage. Based on the evidence presented, I am unable to make a more specific finding than what has just been stated.
- [8] One fact that can be stated with certainty is that Mr. William's light had turned green at the time he proceeded. This was in the evidence of Mr. Williams, Mr. MacKinnon and, indeed, was fully acknowledged by Mr. Pierce.

- [9] Mr. Boyte in his well presented written submission has offered a number of authorities supporting his position that there is clear onus on the driver in Mr. Pierce's position to establish that it was reasonable to assume that the turn could be made safely.
- [10] It seems to me however, that several of these cases have to be viewed carefully in light of the fact that the situation here involved an advance flashing green arrow and not a "traditional" left turn situation. The situation here really involves a shifting right of way in light of the advanced flashing green arrow. It would seem that the fact of that shifting right of way which causes many drivers in the situation of Mr. Pierce to attempt to "run the light". In being aware of this intersection and having witnessed such on previous situations, Mr. MacKinnon was particularly aware of that type of occurrence. It would seem that Mr. Williams did not have that same appreciation for the intersection and the nice question is whether Mr. Williams ought to be held to the same degree of care which Mr. MacKinnon obviously exhibited as he did not proceed because he could tell that Mr. Pierce's vehicle was not going to stop.
- [11] I believe that Mr. Pierce was late in entering this intersection. I do not accept that he could not have stopped on the amber which he asserts. However, I am not prepared to find that he is solely responsible at law for the collision.
- [12] As stated above, I am unable to conclude with precise exactitude which signal light was on when Mr. Pierce entered the intersection. I can conclude that the amber light had ceased and the green light for Mr. Williams had turned on at some point prior to the collision. The intersection is a well known intersection and given Mr. MacKinnon's evidence of the relative speed of Mr. Pierce's vehicle and what I understand to be the distances involved, I cannot accept that the signal light was green and turned to amber as Mr. Pierce entered the intersection.
- [13] On the other hand I am struck by two inescapable facts. First, the fact that Mr. MacKinnon who was stopped next to Mr. Williams did not proceed through the intersection because he knew it would not be safe to do so. While to some extent I take Mr. Boyte's point that Mr.

MacKinnon was, because of his experience with the intersection “hyper aware” to the prospect of drivers being late, I cannot entirely dismiss the fact that he obviously exercised prudence in not proceeding. The fact that Mr. Williams did not see Mr. Pierce’s vehicle is not an answer. In fact, just to the opposite in my view.

[14] In my opinion, there is clear a duty on drivers stopped at an intersection to ascertain that the intersection is clear before proceeding once a light turns from red to green. Had Mr. Williams discharged this duty, the collision could well have been avoided. In *McDougall v. Riedel* (1990) 98 N.S.R. (2d) 164, Richard J. refers to the defendant as having proceeded:

*“blithely through the intersection at .... an excessive speed and paid little or no heed to the possibility that a vehicle may be in the intersection.”*

[15] While there was no evidence here that Mr. Williams proceeded at an excessive speed, I find the other comments of Justice Richard applicable.

[16] The other inescapable fact is that it was Mr. Williams’ car that hit Mr. Pierce’s car. That is, the front of Mr. Williams car hit the passenger door of Mr. Pierce’s vehicle. That indicates to me that the intersection was not clear when Mr. Williams proceeded and, had he been driving in a “careful and prudent manner” and keeping a proper lookout he would likely have been alert to this.

[17] In light of the above, I conclude that some portion of liability should be attributed to Mr. Williams. In the *McDougall* case Justice Richard apportioned liability at 60/40 and that would appear to be appropriate here. That is to say, I find that the accident was 60% attributable to Mr. Pierce and 40% attributable to Mr. Williams.

[18] Accordingly, I would find that Mr. Pierce is entitled to 40% of the claimed damages which would be  $\$635.89 \times 40\% = \$254.36$ .

[19] With respect to the claims against the Defendant insurers and Gourlay I find no basis for liability. I have reviewed the written and oral submissions made by Ms. Campbell and there is no legal basis at all to find against the handling of the file by the insurer adjusters. I dismiss all of the claims but that against Mr. Williams who I find to bear 40% liability for the collision.

[20] In light of the preceding, it is hereby ordered that the Defendant, D. Luke William pay to the Claimant the sum of \$254.36.

**DATED** at Halifax, Nova Scotia, this 9th day of August, 2006.

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**Michael J. O'Hara**  
**Adjudicator**

Original	Court File
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Copy	Defendant(s)