

Why Having The Right Of Way Is Not Always Enough

August 1st, 2010



I've [previously written](#) that having the right of way is not always enough to escape blame for a motor vehicle collision. Reasons for judgement were released today further demonstrating this point.

In today's case ([Hmaied v. Wilkinson](#)) the Defendant was driving up a windy road in Port Moody, BC. At the same time the Plaintiff, then 15 years old, was jaywalking in front of the Defendant. The Plaintiff was "jogging slowly as he crossed the road".

The Defendant was speeding. He saw the Plaintiff jaywalking but "continued to drive at an excessive rate of speed directly toward (the Plaintiff)". The Plaintiff crossed beyond the Defendant's lane of travel. Unfortunately he dropped his cell phone and "instinctively turned back into the (defendant's) lane and bent over to pick it up without looking in the direction of oncoming traffic". As he straightened up after picking up his phone he was struck by the Defendant's vehicle.

Despite having the right of way, the Defendant was found 50% at fault for the crash. In coming to this finding Madam Justice Dickson provided the following reasons:

[34] I conclude that the plaintiff and the defendant both failed to exercise due care in all of the circumstances and that both failures were proximate causes of the Accident. In my view, the parties are equally blameworthy and liability should be apportioned on a 50% basis to each of them.

[35] The defendant had the right of way, but he did not take reasonable precautions in response to the obvious hazard presented by a young person jaywalking across his path of travel. I accept that he could not specifically foresee the plaintiff would drop his cell phone and move back into the middle eastbound lane in order to retrieve it. I do not accept, however, that he was entitled to assume the plaintiff would obey the rules of the road or otherwise behave in a predictable manner as he jogged diagonally across Clarke Road. On the contrary, the defendant knew that the youthful plaintiff was behaving unsafely by jaywalking in the face of oncoming traffic. In these circumstances, other forms of unsafe behaviour were predictably unpredictable and the defendant should have slowed down and changed lanes immediately when he saw the plaintiff. Had he done so, the Accident would not have happened: *Nelson (Guardian ad litem of)*, *supra*; *Ashe, supra*; *Claydon, supra*; *Karran, supra*; *Beauchamp, supra*.

[36] The plaintiff also failed to exercise due care for his own well-being. He jaywalked in the face of oncoming traffic and, mid-course, turned back to retrieve his cell phone without checking to see how close the approaching vehicles had come. In so doing, he exposed himself to the risk that he would be struck by an approaching vehicle. That risk was realised and his negligent actions were also a proximate cause of the Accident.

If you have the right of way but know that someone is failing to yield you must take reasonable steps to avoid a potential collision otherwise you can bear some of the blame.