



IN THE SUPREME COURT OF BRITISH COLUMBIA

No. 26342
Prince George Registry

BETWEEN:

KRISTA LYNN BURTT, on her own
behalf and on behalf of her unborn
child

PLAINTIFF

AND:

PAUL BAZINET and SPRUCE CITY
SANITARY LTD. and ARGO ROAD
MAINTENANCE (FORT GEORGE) LTD.

DEFENDANTS

AND

No. 25847
Prince George Registry

BETWEEN:

KRISTA LYNN BURTT

PLAINTIFF

AND:

PAUL BAZINET, SPRUCE CITY SANITARY
LTD. and BERNARD RUFF, Executor
for the Estate of RONALD KASPER
RUFF and ARGO ROAD MAINTENANCE
(FORT GEORGE) LTD.

DEFENDANTS

AND:

INSURANCE CORPORATION OF BRITISH
COLUMBIA

THIRD PARTY

REASONS FOR JUDGMENT

OF

THE HONOURABLE

MR. JUSTICE MEIKLEM

Counsel for the Plaintiff:	D. Byl and J. Dowhaniuk
Counsel for the Defendants:	John M. Hogg, Q.C.
Counsel for the Third Party:	James A. Horne, Q.C.
Place and Date of Trial:	Prince George, B.C. May 21, 22 and 23, 1996

INTRODUCTION AND ISSUES

1 The issue of liability has not been ordered to be tried separately, but counsel have utilized the three days of available trial time to present the evidence on that issue, and request my decision. The defendant Argo Road Maintenance (Fort George) inc. has been relieved of attendance by a consent dismissal order. The question is apportionment of liability for the plaintiffs' losses between Paul Bazinet and Ronald Ruff, who was killed when his pickup collided with the rear end of Bazinet's tandem tank truck on very icy road conditions on Shelley Road North on January 29, 1993. The plaintiff Krista Burttt was a passenger in Ronald Ruff's vehicle.

REVIEW OF EVIDENCE AND FINDINGS OF FACT

2 Shelley Road North is a paved secondary road with marked centre lines, and a posted speed limit of 80 k.p.h. The accident occurred as both vehicles were northbound on Shelley Road North at the point where Shelley Lagoon Road, joins it from the west, approximately 2.5 kilometers north of the junction of Shelley Road North and Highway 16 east of Prince George.

Mr. Bazinet had intended to turn left onto the Shelley Lagoon road and proceed to the lagoon to discharge the contents of his tank truck. Due to the slipperiness of the road, his vehicle did not respond when he turned his steering wheel, and he slid past the side road, coming to a stop after he gained traction on the right shoulder. He reversed his vehicle in order to return to a position where he could make the turn.

4 One important factual issue relates to how far past the lagoon side road Mr. Bazinet was when he decided to reverse to it. There is no dispute that when the collision occurred, his truck was still about one truck length north of the point where it could have turned onto the lagoon side road. According to Krista Burtt, Bazinet's truck appeared motionless from the time that she first saw it which was about 10 seconds prior to impact as the Ruff pickup rounded a corner which she described as about 200 yards from the site of the collision. Other evidence establishes the sight line distance as about 286 meters. Mr. Bazinet's evidence is that he had been reversing slowly and upon seeing the Ruff vehicle in his rear-view mirror, approaching quickly, he stopped in an effort to resume forward travel. He experienced difficulty engaging a forward gear and was stationary when struck.

5 There is conflict in the evidence as to how far past the lagoon turn-off Mr. Bazinet drove before stopping and reversing. Louise Lafreniere was driving southward and said she first saw

Bazinet's truck as it was opposite a familiar stump. This stump was recently measured by the plaintiff as being 594 feet north of the north edge of the Lagoon Road intersection. Ms. Lafreniere's estimate was that Mr. Bazinet's truck was at least 5 truck lengths from the intersection, and she declined to agree to any lesser distance. Mr. Bazinet said he travelled 3 truck lengths past the intersection, before obtaining sufficient traction on the shoulder to come to a stop.

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Ms. Burtt testified that while travelling on Highway 16 prior to turning onto Shelley Road North, she had seen Bazinet's truck ahead of them as it turned off the highway onto Shelley Road North. She says this was from a point which she measured later as 1 km. away. She and Mr. Ruff had been travelling at the posted maximum 90 k.p.h. on the highway, and travelled a steady 40 - 50 miles per hour after turning onto Shelley Road North. Mr. Bazinet testified his speed was a steady 30 k.p.h, but I am satisfied this is incorrect because Mr. Harvey West's calculations under cross-examination indicate Mr. Ruff's vehicle would have caught up to Bazinet's in less than 1 km with that speed differential. However, unless Mr. Bazinet was driving faster than Mr. Ruff, which is most unlikely considering he was driving a partly loaded tank truck on an icy road, it is almost certain that he was less than 1 km. ahead of them when he initially drove past the lagoon road following his slowing for the turn, and sliding past it. Since about 250 meters of the distance between them was closed while he was stationary

according to Ms. Burt, on her evidence the time that would have elapsed while he came to his initial stop, reversed slowly, and stopped again would approximate the time it took for the Ruff vehicle to travel 750 meters. By my calculations, that interval would be about 34 seconds at 50 mph, and at 40 mph it would be about 42 seconds. I find that an interval of time in that range would not be sufficient time for Mr. Bazinet to stop and reverse his truck the distance approaching 580 feet, (less one truck length) suggested by the plaintiff's counsel. As I will explain, I do not necessarily accept that the Bazinet vehicle was stationary for the entire time it took the Ruff vehicle to travel the final 250 meters, but even if the time interval was a full one third longer, it included Mr. Bazinet's two stops, and the time he had available to travel backwards was very short. It could not possibly have approached more than two minutes as submitted by Mr. Byl.

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I think that Mr. Bazinet's evidence of passing the lagoon side road by approximately three truck lengths is the estimate most consistent with the other reliable evidence. I also think Mr. Bazinet's estimate of truck lengths is likely to be more accurate than Mrs. Lefreniere's. She was driving past him going in the opposite direction and would have had only an instant to gauge the distance with any accuracy. As the driver who made the decision to reverse to the road he had missed, Mr. Bazinet would have been more likely to direct his mind specifically to the distance involved.

He also is of course vastly more familiar with the length of his truck, which, with the protruding discharge valve/manhole at the rear is actually about thirty-six feet long. My finding is that Mr. Bazinet was probably 120 - 150 feet past the turn he had originally intended to make when he made the decision to reverse his vehicle.

8 The evidence clearly establishes that the road surface at the site of the collision was very slippery on the travelled portions of the pavement. The pavement and centre line are clearly visible in the photographs taken at the scene shortly after the accident, but there was a transparent film of ice covering the pavement which was formed either by freezing drizzle, or a light drizzle having fallen on the cold road surface earlier in the morning. Constable Gibbins described the weather as cloudy with a very very light drizzle that barely required him to use his windshield wipers on his way to the scene. Highway 16 was wet and not slippery, he said, but he noticed Shelley Road getting slippery about 500 meters from the highway as he proceeded northward, causing him to reduce his speed to 50 - 60 k.p.h. prior to the scene of the collision.

9 Constable Gibbins said he had no trouble stopping. He brought his police vehicle to a stop straddling the shoulder, where the photographic evidence shows there was some loose snow following what appears to have been a fairly recent grading. This snow

appears in the photographs to be discoloured by the presence of some residual sand from old application, and from vehicular traffic. This covering of snow extended over the graveled shoulder and a portion of the pavement on the right side of each lane, and the shoulder obviously provided much better traction for stopping than did the clearer, but icy centre portion of the road. The shoulder provided the traction for Mr. Bazinet to stop, and later Constable Gibbins, and, it is reasonable to infer, the many other motorists whose progress was interrupted by the accident. Exhibit 1, photos 12 and 19 shows a line of stopped vehicles over 200 meters long which included a loaded logging truck.

10

The report of Harvey West, of Baker Materials Engineering Ltd. states that if the tire-ground friction coefficient was .27, as measured by the RCMP at the scene, the minimum braking distances required at 80 kph (50 mph) to come to a halt would be 93 meters where skidding might result, and 125 meters for hard braking which would not cause skidding. At 70 kph (43 mph) the corresponding distances are 71 meters and 95.9 meters respectively. These distances do not include driver reaction time, where a mean value of 1.1 seconds is generally applied. Including that factor, the distances required to stop on the subject surface, without stopping are 150 meters at 80 kph and 117.2 meters at 70 kph.

the pedestrians are depicted in Exhibit 1 photo 12, which appears to be about three to four ordinary car lengths south of the point of impact. It was his impression that Mr. Ruff was just putting his brakes on at the moment that their vehicles passed, because he saw the vehicle start to slide to one side and then straighten as the brakes were pumped.

14

Krista Burtt's evidence was that the Ruff vehicle slid the entire distance of the straight stretch south of the collision site, and she re-iterated that when cross-examined. She had also made this assertion on examination for discovery, but then retreated to saying Ruff locked his brakes on just prior to telling her to brace for the collision. I find Ms. Burtt's evidence of her observations in the few seconds preceding the collision to be very unreliable for two reasons. In the first place I have serious doubts about her honesty; she admitted lying initially on examination for discovery concerning Mr. Ruff's cultivation of marijuana, and she admitted lying to Social Services on several occasions and as recently as one month before the accident, in order to receive benefits. Secondly, I found her to be prone to hyperbole in recounting specific observations. Some of this may be the result of honestly-held impressions, but exaggerated due to the trauma of the event. One example is her testimony that the glare on the ice ahead of the northbound Ruff vehicle was "sheer brilliant, like I've never seen before", and was worse than the glare in Exhibit 1-13. This simply cannot reasonably be true; Exhibit 1-13

is a photograph taken in a southerly direction, nearly directly toward the sun, which at the time that photograph was taken (30 to 60 minutes after the accident) was shining brightly enough to cast the shadow of the utility pole and wires.

15 It is not reasonable to believe that Ruff's vehicle slid the entire length of the straight stretch, which is approximately 200 meters long, or even half that distance. It may well have seemed to her that they were sliding for as long as 10 seconds, but I find that evidence wholly unreliable. That assertion is inconsistent with the technical evidence on stopping distances, and inconsistent with the reactions one could reasonably expect of even a modestly competent driver with any winter driving experience, given the availability of a snowy shoulder that obviously could provide better traction than the travelled lane for anyone who had made a conscious decision to brake heavily that far away. Her account is also inconsistent with Mr. McMechan's observations about the movements of the Ruff vehicle, which I found reliable.

16 Ms. Burt said that she had been gazing out the passenger window reflecting on the "nice day", and her attention was drawn by Mr. Ruff saying "Hmmm" and starting to pump his brakes. There was terse conversation between them about what the tank truck was doing and she was straining to see whether it was turning left or right, but could see not turn signals despite her effort. She said she noticed dirt on the defendant's tail lights from 100 yards away.

She agreed that she was familiar with the road and knew that the dump road entered from the left and that she expected the truck to turn left. She said she had in fact said to Mr. Ruff, "why isn't he turning left?", and she said Mr. Ruff told her when she first spotted the truck on the highway, that it was a sewage truck going to the lagoon. She conceded that one possible reason for him not turning could have been the approach of oncoming southbound traffic and that she had seen the logging truck approaching southbound.

17 I find, contrary to the argument of Mr. Hogg, that Mr. Bazinet was not in the location he would have been if waiting to turn left, but he was within one truck length of that position, and by both his evidence and Ms. Burt's, was stationary briefly.

18 Mr. Bazinet's explanation for being stationary was that he had stopped and made a decision to go forward after seeing the Ruff vehicle approaching quickly in his rear-view mirror, but was having difficulty engaging his transmission. This is the only reasonable explanation for him stopping while reversing that emerges from the evidence, since the turn could not be made from where the truck was when struck, and he was not successful in moving forward prior to the collision. Mr. Bazinet's evidence was that the Ruff vehicle was "quite a ways" down the straight stretch behind him when he first saw it, and that he was only stopped for about two seconds when the collision occurred. This cannot be expected to be an entirely reliable estimate, of course, but I

think it very unlikely that the Bazinet truck was immobile the entire time that Mr. Ruff travelled the final 250 meters to the point of impact, which Ms. Burttt estimated as taking 10 seconds, (which is very close the actual 11 seconds it would take at 50 m.p.h.) The Ruff vehicle was probably within the 200 metre straight stretch when Mr. Bazinet saw him in the rear view mirror, and it would have taken some time for Mr. Bazinet to stop his truck.

19 In my view the reliable part of Ms. Burttt's evidence is her observation that the Bazinet vehicle did not appear to move the entire time her attention was drawn to it, rather than her estimate of how much time elapsed, or her evidence that she saw the Bazinet vehicle as soon as she rounded the curve some 286 meters to the south. My conclusion is that her attention was drawn to the Bazinet vehicle at a much closer distance than she asserts.

20 Ms. Burttt was gazing out her side window when her attention was initially drawn to the scene in front by Mr. Ruff's "Hmmm" exclamation. She says that Mr. Ruff then feathered the brakes without effect, before locking them on at about the same time that he said " Hold on". My conclusion on all the evidence is that by the time he decided to stop, Mr. Ruff was probably too close to the Bazinet vehicle to make use of the snowy shoulder for traction. If he had made his exclamation and unsuccessfully tried to slow as far away as 250, or even 200 meters, there is no

explanation for why he would not have used the shoulder for traction, or even steered into the shallow ditch to avoid the collision.

21 Mr. Ruff's belated decision to slow down may not have been due to a failure to see Mr. Bazinet's truck earlier. He obviously saw it before Ms. Burtt did, and I find it would have been clearly visible in his line of sight from the time he rounded the curve 286 meters (940 feet) south of the intersection. He may have originally intended to drive around it and was thwarted by the oncoming logging truck, or he may have expected Mr. Bazinet to complete his left turn into the lagoon road before it became necessary to stop, and belatedly realized he was not going to. I think it is more likely that his exclamation related to either of these events than that it marked his first observation of the mere presence of Mr. Bazinet's truck.

22 Mr. McMechan said that he saw Mr. Bazinet's front right side turn signal operating as he passed. Mr. Bazinet says that he had activated his left turn signal originally and did not cancel it or activate the right turn signal. Constable Gibbins observed the front left turn signals flashing when he attended, and did not recall looking at the rear signals. It is difficult to reconcile these accounts in order to make a finding as to whether the Bazinet vehicle was exhibiting a turn signal prior to impact. The photographic evidence shows that there was a film of dirt on the

lights which would not have totally obscured a normal signal, but which probably would have significantly obscured a dim, fast signal which was in fact what Dennis Crate, a Motor Vehicle Branch inspector found when he examined Bazinet's vehicle following the accident. The light ceased functioning during his test, in fact, and although he conceded that it could possibly have been damaged in the collision, I find that unlikely because there is no apparent damage to that side of the rear of the vehicle.

23 Mr. Bazinet said that he performed a pre-trip inspection that morning, and found all his lights working other than a front marker light, and the non-operational lower backup lights. He said that he had not completed his log book to that effect in the morning, but was in the process of doing that to avoid being ticketed when Constable Gibbins arrived and observed him changing the date on a January 24th entry. He also testified that the rear signal lights were clean on that inspection. I do not find that evidence believable. There is no comparable amount of dirt or road grime apparent on the rear lights or other rear surfaces of any of the several other vehicles depicted in the photographs.

24 It is questionable whether a left turn signal would have been an appropriate signal in the circumstances where Mr. Bazinet was reversing, although any visible signal would have enhanced the visibility of his truck, and a left turn signal should have deterred a following driver from planning to pass him. In the

circumstances here, where visibility was not a problem and I am able to infer that Mr. Ruff expected the Bazinet truck to turn left, I do not think the presence or absence of a left turn signal is materially relevant to the causation issue.

25 There were two rear-facing custom-mounted backup lights near the top of the tank at the rear of Bazinet's truck that were capable of being switched on manually, but Mr. Bazinet said he did not switch them on because he saw no one behind him when he looked in the rear view as he started to reverse. This response begs the question of why he did not switch them on later when he did see the Ruff vehicle behind him. If these lights had been on, they would probably have provided Mr. Ruff with the message that the Bazinet vehicle was reversing, and therefore probably past the point where it could make the left turn - something which may not have been apparent to him due to the proximity of the truck to the intersection.

26 There was evidence that the slack adjustment on three out of four rear brake push-rods on Mr. Bazinet's truck exceeded the allowable specifications under the Motor Vehicle Act Regulations. The permitted maximum stroke length should have been 1 7/8 inches, whereas these three were 2.5, 2.25, and 2 inches respectively. There was no expert evidence as to what effect, if any, this would have on the sufficiency of his braking. Mr. Bazinet said that his brakes functioned well, and that he intentionally avoided reducing

the push-rod slack in winter conditions, so as not to make his brakes too responsive, because if air brakes lock up, they kill the motor and he loses the steering. In any event, the evidence does not support an inference that inadequate or uneven braking played a role in causing this accident.

FINDINGS ON NEGLIGENCE

27 I find Mr. Bazinet's decision to attempt to reverse 120 to 150 feet to the intersection that he had overdriven due to the exceptionally slippery road surface clearly breached the standard of care expected of a reasonably prudent driver in the conditions that prevailed. His truck thereby became an obstacle and an added hazard to all other users of an already dangerous roadway.

28 His failure to make the turn in the first place was due to him driving too fast for the prevailing conditions, of which he had made note when his truck swerved upon earlier use of the engine brake which he then switched off. Although that probably was negligence also, that negligence might arguably not be causally connected to the accident because the nexus is broken by the intervening reversing action, which was the result of a decision not necessarily dictated by the initial negligence.

29 His negligence in reversing in these circumstances was compounded by his failure to switch on his upper backup lights while he conducted this unsafe manoeuvre. He apparently consciously

decided against doing so on the basis that there was nobody visible behind him that would be warned by him doing so, and in my view this was an additional element of his lack of due care.

30 Mr. Ruff was clearly driving too fast for the road conditions. He knew the road well and knew that the defendant's vehicle was travelling in front of him and would have to slow down and turn at the lagoon road. His excessive speed constituted a hazard to other users and himself, and he seriously compounded that negligence by either failing to keep an adequate lookout to see the defendant at the first opportunity or by an unreasonable decision not to slow down when the hazard of the defendant's truck came to his attention and he had ample opportunity to slow down and properly assess whether it would be safe to pass him. He was also negligent in failing to utilize the added traction of the shoulder when he decided to stop, or, as a last resort, drive into the shallow ditch where there was ample room for his vehicle, and negligible risk of injury.

31 The negligence of both drivers contributed to the accident.

APPORTIONMENT OF LIABILITY BETWEEN THE DEFENDANTS

32 The plaintiff relied heavily on *Gill v. Canadian Pacific Railway Company et al.* [1972] 3 W.W.R. 401, where the British Columbia Court of Appeal overruled an assessment of equal fault,

and found the sole cause of the plaintiff's driver rear-ending a front end loader travelling slowly on an arterial highway in darkness was the near total lack of adequate rear lighting. One taillight was emitting no light and the other was obscured and only visible within 100 feet, which provided the plaintiff's driver with no reasonable opportunity to take evasive action. The Court of Appeal could find no negligence on the part of the following driver. I find this case clearly distinguishable from *Gill* in that we are not dealing with darkness, or near darkness, or a visibility problem such that a following driver can be held blameless for not seeing the obstructing vehicle earlier. I have held that Mr. Bazinet's failure to provide an available signal about his direction of travel by switching on his upper backup lights was part of his negligence and was probably a contributing cause, but here the negligence of Mr. Ruff is obvious and cannot be equated to the blameless driving of Mr. Aujla in the *Gill* case.

33 I will not comment on each of the authorities cited to me, but they have all been considered, and several were helpful.

34 Mr. Byl cited a passage from the dissenting judgment of Madame Justice Southin in *Lloyd v. Fox*, [1991] 6 W.W.R.100 which requires comment. Southin J.A. quotes the well known passage of Lord Atkinson in *Toronto Railway v. King*, [1908] A.C. 260, to the effect that drivers are entitled to drive as if other drivers are observing the rules of the road, and then observes that it is a

fundamental rule of the road that one does not block a highway.

35 The facts in *Lloyd v. Fox* were that the plaintiff motorcyclist was travelling a narrow hilly country road on Texada Island, and collided with one of two pickup trucks whose drivers had been travelling in opposite directions and had decided to stop and chat on a curve near the crest of a hill, blocking the travelled portion of the road. The trial judge's apportionment of 40% fault to the plaintiff on the basis of his excessive speed in the circumstances, which included his particular knowledge that obstructions by stopped vehicles or wildlife were common, was upheld by the majority decision, but commented upon as being at the upper limit of appropriateness. Southin J.A. would have apportioned only 15% fault to the plaintiff, her finding being that his only negligence consisted of him not applying his brakes in the manner of a reasonably competent driver.

36 The factual distinctions are readily apparent. Mr. Bazinet did not block the entire travelled portion of the roadway, and his backing manoeuvre was undertaken where there was ample distance for other northbound drivers to see his vehicle in time to stop, such that one could not even attempt the "agony of collision" argument that was unsuccessfully pursued through to the Court of Appeal in *Lloyd*. Mr. Ruff was not driving on a bright sunny June afternoon needing only to gauge his speed relative to foreseeable and expected traffic and wildlife hazards, because here the road

and weather conditions also called for a slower speed.

37 Certainly Mr. Ruff was entitled to drive on the assumption that Mr. Bazinet and others on the road would observe the law and the rules of the road. Mr. Bazinet was entitled to make the same assumption. Mr. Bazinet probably contravened s. 194 of the Motor Vehicle Act, in moving backwards when it was unsafe to do so, and Mr. Ruff probably contravened s. 149(1)(c) in driving at an excessive speed relative to the road and weather conditions.

38 The case of *Udesen v. Reimer* (1994) 92 B.C.L.R. (2d) 58 BCCA is close on its facts to being an apportionment of liability that should apply to the facts before me. The Court of Appeal overturned the trial judge's apportionment of 85% against the defendant and apportioned 40% to a plaintiff who rear-ended the defendant's stalled car during an interval when the defendant had abandoned it on a busy portion of the Trans Canada Highway within the City of Kamloops to call a tow truck without doing a number of things that were possible to provide warning to following traffic. The basis of the reapportionment was that while the Court of Appeal agreed with the judge's finding of negligence in not taking more time to assess the status of the distance to the defendant's car before looking to her rear view to see if she could change lanes, it found her negligent in the additional respects of not applying her brakes in a more timely fashion, and in not turning into an adjacent left-turn lane that was an escape route.

39 Plaintiff's counsel suggests *Udesen* is a useful benchmark, but that the conduct of Mr. Bazinet is more egregious, and that the apportionment should be 90% against the defendant, and 10% against the plaintiff. While I acknowledge that Mr. Bazinet's negligence goes to both the creation of the obstacle and absence of due care in warning others, and that provides a foundation for arguing that he should bear a proportion of fault greater than that of the defendant in *Udesen*, the trial judge's reasons detailing the negligence of that defendant make it clear that the hazard Mr. Udesen was thoughtless about was a much more obvious and immediate danger than the one in the case at bar. The traffic was heavy, flowing at 80 kph, and his car was stranded in the fast, "through", lane some 50 to 75 feet from an intersection that traffic would not slow for because it had the benefit of an advance warning signal preceding light changes.

40 I think that Mr. Ruff's negligence was more egregious than Ms. Udesen's, in that there was no finding that in her case she was driving at an excessive speed relative to the road and weather conditions.

41 Mr. Hogg submitted that I should find that the defendant was stopped, waiting for traffic to clear so that he could make his signalled left turn, doing nothing other than that to which he was entitled, and that Mr. Ruff came around the curve three football fields away, too fast, and not paying attention until it was too

late. He argued that I should find Mr. Ruff's negligence the sole cause of the accident on those facts. I have not made all those findings of course, but I cannot ignore how close to that scenario the facts as I have found them lie; Mr. Bazinet was within one truck length of the position suggested, and Mr. Ruff knew that the lagoon was Mr. Bazinet's destination, without the necessity of a turn signal.

42 It was argued that all reference to backing up is a red herring, that Mr. Bazinet was stopped, and it is irrelevant how he came to be where he was, since he was not in the process of backing up at the time of the collision. This argument is somewhat tenuous of course in light of Mr. Bazinet's own evidence that he was only stopped for 2 seconds when the collision occurred.

43 Absent my finding that Mr. Bazinet was doing nothing wrong, Mr. Hogg's argument is intended, I am sure, to point out that any risk created by Mr. Bazinet had virtually dissipated to being a situation no different than the one that Mr. Ruff could have faced due to oncoming traffic, even in the absence of Mr. Bazinet's extra travel. Mr. Bazinet was probably not in that position when Mr. Ruff first saw him, but he was within one or two truck lengths of it.

44 On the basis of the findings of fact and law that I have made I do not find either party's argument for a lesser proportion

of the fault more persuasive than the other's. I do not discern a sound basis for distinguishing between the degrees of fault of the two drivers, and I therefore apportion liability for the plaintiffs' losses equally between Mr. Bazinet and Mr. Ruff's estate.

45 The trial will continue on the remaining issues on a date to be arranged with the trial coordinator.

A handwritten signature in cursive script, appearing to read "Ed Ruff", is written over a horizontal line.

Prince George, B.C.