

## Can A Pedestrian Be At Fault When Hit In A Marked Crosswalk In An ICBC Claim?

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The short answer is YES.

If you are a pedestrian injured in a BC car crash and were in a marked crosswalk at the time of the crash you can still be found partially or even perhaps wholly responsible for the crash. While this may be more of an exception than a rule [reasons for judgement were released today](#) illustrating this principle,

The Plaintiff was crossing a marked crosswalk on November 29, 2004 in White Rock, BC. It was dark and stormy out. It was either sleeting or snowing. Shortly after entering the cross-walk the Plaintiff was struck by the defendants vehicle. It was a significant impact and the Plaintiff has not worked since this crash.

The court found that both the driver and the pedestrian were equally to blame for this crash. The courts key reasons are set out in paragraphs 35-39 of the reasons for judgement which I reproduce below:

[35] *The defendant was a novice driver, travelling in a residential area in bad weather conditions and on slippery roads. It was very dark. Thrift Avenue is a bus route, which increases the possibility that pedestrians might be in the vicinity. He was approaching an intersection. Mr. Thorner was travelling at the maximum allowable speed, but in those particular weather, visibility, and road conditions, he should have adjusted his speed generally, and in particular as he neared a residential intersection so that he would be able to fulfil his responsibility to take reasonable care for other users of the highway, including a pedestrian crossing in the unmarked crosswalk. Although he was travelling at the prescribed speed, that speed, in those conditions, made it almost impossible to avoid an accident, should a pedestrian cross his path. I find that Mr. Thorner was negligent.*

[36] *The plaintiff has not satisfactorily explained why he did not see an approaching vehicle with its headlights illuminated that was there to be seen. It was a dark rainy night. He was dressed in dark clothing. He was crossing a through street at an unmarked uncontrolled intersection. A bus had just passed in front of him, indicating the presence of traffic. Mr. Bell left a place of safety and stepped out into the unmarked crosswalk at the intersection, wearing dark clothing on a dark rainy night, without checking adequately or at all to see that there was no oncoming traffic from his left. There is no other available conclusion, given that the Thorner vehicle, headlights on, was there to be seen, approaching on the roadway. Mr. Bell should have been aware that it would be difficult for a driver on such a night to see a person dressed in dark clothing. It seems obvious that he did not take reasonable care for his own safety. I find that Mr. Bell was contributorily negligent.*

[37] *It is therefore necessary to apportion liability. Degrees of fault or blameworthiness are assessed by considering the nature and extent of the departure from the respective standards of care of each of the parties, that is "the amount by which each proximate and effective causative agent fell short of the standard of care required of that person in all the circumstances": **Cempel v. Harrison Hotsprings Hotel Ltd.** (1997), 43 B.C.L.R. (3d) 219, 100 B.C.A.C. 212).*

[38] *In these circumstances, it is difficult to ascribe precise amounts of liability based on the respective departures from the applicable standard of care for each of Mr. Bell and Mr. Thorner. Mr. Bell, before leaving his place of safety on the curb and stepping into the roadway in these weather and lighting conditions, while dressed in dark clothing, should have kept adequate watch for oncoming cars that were there to be seen, but Mr. Thorner also had a responsibility to drive in a manner, in these unfavourable conditions, that would allow him to take care for other reasonable users of the road, and cope with the possibility that a pedestrian might cross in an unmarked crosswalk on a bus route in a residential area. Neither showed a reckless disregard for their own safety or those of others, but their respective lapses each carried risks of foreseeable harm.*

[39] *In these circumstances, I am unable to find that either should bear a greater portion of blame, and I divide liability equally between Mr. Bell and Mr. Thorner. Given the divided success, unless there is a reason to speak to costs of which I am not aware, each party should bear his own costs.*