



Posted on: January 1, 2012

## A LEGAL MOMENT - BREAKING THE RULES

January 1, 2012

*As seen in Momentum Magazine, January 2012*

I am back from a *brief* hiatus. It was long enough to constitute the end of the Legal Brief as we knew it. So instead of announcing my column's return, I announce its reincarnation. From now on it shall be called A Legal Moment. Moment is part of Momentum, and so much occurs in the moment for a cyclist. If harm occurs, the moment is dissected, broken into bits of time and space, and analyzed.

When it comes to resolving broader issues of liability, the starting point of any legal analysis is whether any rules were broken and what is the legal consequence of breaking a rule.

A recent Supreme Court decision analyzed in some detail the liability of a cyclist riding on a sidewalk. Naturally, the cyclist had collided with the driver of a vehicle who claimed he had not seen the cyclist on the sidewalk before the cyclist stopped and attempted to cross an exit-way.

The cyclist conceded riding on the sidewalk amounted to breaking the rules, specifically section 183 of the *Motor Vehicle Act* which provides that a person operating a cycle "must not ride on a sidewalk unless authorized by a bylaw..." He also conceded that the Defendant driver had given him no indication that he had seen him. There had been no eye contact despite excellent visibility on the day in question. The driver had stopped at the exit-way and had looked in the direction of the cyclist but saw nothing. He looked in the other direction and did not look again before proceeding. A collision occurred, with each party blaming the other.

The Trial Judge considered the standard of care of the driver in these circumstances. Though it is not at law one of perfection, the driver was found to have fallen beneath it, for the simple reason that he failed to see the cyclist, who was there to be seen. The Judge did not accept that the cyclist's presence was not foreseeable at law. The driver had admitted to seeing cyclists on the sidewalk in that area (Scott Road and 72<sup>nd</sup> Avenue in Surrey) on previous occasions. In addition, the cyclist was at law no different than a pedestrian in the sense that his presence ought to have been anticipated on the sidewalk. The Judge appeared to have no difficulty finding that the driver had breached his duty of care by not keeping a proper lookout.



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The analysis turned to what the cyclist might have done wrong. It is well settled that a breach of the *Motor Vehicle Act* does not necessarily establish negligence. In this regard the Court stated:

*"In order to find negligence the Court must find that an individual did not exhibit the standard of care which was required in the circumstances and that the negligence contributed to the accident."*

The cyclist had also breached Section 183(2)(b) of the *Motor Vehicle Act* by entering the unmarked crosswalk while riding his bicycle. This was also considered in the mix.

Ultimately the Court found that the cyclist was required to take reasonable care for his own safety. In particular, the Court found that the cyclist should have made some form of eye contact to ensure that the Defendant had seen him. For this he was found 25% at fault for the accident.

It is important to remember that if the cyclist had not been on the sidewalk or had not entered an unmarked crosswalk on his bicycle he would not have been obliged to make eye contact with the driver. While prudent, this is not legally necessary if the cyclist is not otherwise breaking any rules. The cyclist is entitled to proceed with the right of way and is not required to anticipate every eventuality.

Many of the rules which govern cyclists are clearly suspect. However, that is a political challenge. Breaking them compromises a cyclist's legal position because it removes the ability to rely on the right of way and leads to increased scrutiny of the conduct of both parties.

