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CONTROLLING UNCONTROLLED INTERSECTIONS

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In a recent decision involving a 7 year old cyclist, the Supreme Court of British Columbia considered the law relating to uncontrolled intersections. The case was a re-trial of an action for damages sustained by the boy who alleged he was struck by the Defendant's vehicle while proceeding through an uncontrolled intersection.

The case is a sad reminder that the issue of fault is not resolved by simply looking at who got to the intersection first. Nor does the right of way analysis turn on "who hit whom". Instead, the test is the same as it has always been. The driver on the left, whether that is a motorist or a cyclist, must yield the right of way to the driver on the right if they approach the intersection at approximately or so nearly at the same time that there would be an imminent hazard of collision if both continued on the same course at the same speed.

The injured cyclist argued that the obligation to yield the right of way fell on the driver who had been on the cyclist's left as he approached the intersection. Even if it could be said that the driver had arrived there first and the cyclist seconds later, that did not alter the basic proposition that the driver on the right has the right of way. So said the cyclist.

While the Court accepted the cyclist's analysis of the law, and accepted that the cyclist had been to the motorist's right, the Court found that the accident did not occur in the intersection but occurred prior to the motorist reaching the intersection. The Court found that the collision occurred after the cyclist had at one point cut the corner and essentially driven into the car before it had arrived at the intersection. The rules and principles relating to the right of way at uncontrolled intersections were restated but, unfortunately, found not to apply to or benefit the cyclist, because the accident was found to have occurred outside of the intersection.

The take away for cyclists from this case is that the location of an accident is critical to any analysis of liability. Cyclists who find themselves in this unfortunate situation would do well, if able, to do use whatever means at their disposal to determine where a collision occurred. This may be a humorless task but a phone



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camera photo of the resting positions of the car and bicycle can go a long way to proving this factual issue. Confirmation of accident location from independent witnesses, including the Police, is also very useful.

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