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DAVID HAY'S TOP TEN LIST OF DO'S AND DON'TS FOLLOWING A TRAFFIC ACCIDENT

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The things people do and say following a traffic accident are often given significant weight by a judge or jury during the trial process. Underlying the theory of evidence is the notion that the further one is from the event in issue, the more inherently unreliable is the recollection of that event, given the impact of anger and denial around the trauma itself, the tendency to reconstruct, and factors related to litigation around the event. However, witnesses I have come across over the course of ten years of practising law have seldom possessed the presence of mind following a serious trauma to take steps to protect their legal position related to that trauma. Let's face it, the furthest thing from anyone's mind following an accident on a bicycle is the possible impact of what they say or do on a lawsuit over the accident. With that caveat in mind, here is my top ten list of do's and don'ts following an accident. This list is based on some of the difficulties I have seen people get in which might have been avoided if they simply had been a wee bit more mindful of the future implications of their conduct.

I preface this list by saying that if you have been involved as a cyclist in a serious traffic accident (and in my experience most accidents between cars and bicycles are relatively serious) there is very little if any anything you can do to improve your legal position and almost invariably, anything you say or do in an effort to explain what happened will be used against you. So don't try.

The Do's

1. Try to observe where you are immediately following an accident - make a mental note of where you are in relation to your bike, the car which struck you, and a reference point such as the painted lines of cross walk, a light standard, fire hydrant, corner, bus stop, etc.
2. Try to obtain as much information as you can relating to the identity of the driver, licence plate of the vehicle, and any witnesses to the accident - this is particularly important if the accident is a hit and run and the police do not attend. Get legal advice immediately as there is a positive obligation



on you to attempt to ascertain the identity of the driver and owner of the vehicle.

3. If the ambulance attendants ask you to go to the hospital, go - you score no points for being stoic and from a medical point of view it is usually a good idea to take the time to get examined.
4. Control your temper and avoid belligerence or antagonistic behaviour - you may be understandably upset but restraint in these circumstances is of immense value - conversely, displays of anger only predispose witnesses, adjusters, and the ultimate triers of fact to not see things your way.
5. Talk to a lawyer prior to talking to ICBC - you are required at law to provide information to ICBC but you are not required to provide information directly to ICBC and there is seldom an upside.

The Don'ts

6. Do not apologize - we have a tendency to apologize to the person who stepped on our foot. Unfortunately, an apology is often interpreted later as an admission against interest even when, at the time it was made, it may have had nothing to do with who was at fault for the accident.
7. Do not discuss with the driver of the car or the witnesses what happened unless the driver is explaining to you how he/she was at fault for the accident - in that event, listen carefully and do not offer a statement such as 'It's ok, I think I am fine.' Accident victims are often in a state of shock as a result of which they cannot experience the full extent of their injuries until sometime later.
8. Do not agree to settle the dispute privately. It may be that you can do this but wait until you have had a chance to fully consider what happened and the consequences.
9. Do not give or sign long winded or complicated statements surrounding the circumstances of the accident - you will likely be approached both by the police and ICBC - if it is not practical or reasonable to contact a lawyer prior to giving a statement, then keep it very short and concise to allow for further reflection: remember, your statement can seldom help you.
10. Do not pay a traffic ticket related to the accident simply because you have no time to file a dispute. The payment of a ticket, though not conclusive of your legal dispute with the driver, certainly indicates a guilty mind or a lack of confidence in one's position and tends to impact on a case in negligence against the wrongful driver.

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