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DESIGNATED BIKE ROUTES: UNFINISHED BUSINESS

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David Hay

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I recently concluded a complicated case involving a cyclist who sustained significant orthopaedic and near catastrophic injuries on the Sunrise Bike Route. To me the case provided another illustration of the legal ambiguity surrounding bike routes and the divergent perspectives that emerge from that legal vacuum.

My readers will recall several articles over the years in which I have lamented the absence of any Provincial legislation pertaining specifically to bike routes. Cyclists might be aware of the City of Vancouver street and traffic bylaw, as it pertains to cyclists, which provides that while on a designated bike path, cyclists are required to confine their bicycles to the right hand edge or curb of any such street unless it is impracticable to travel on such side. This is a slight variation on a similar provision in the *Motor Vehicle Act* which requires cyclists to ride as near to the right side of the road as "practicable". Despite the preparation of a very comprehensive and laudatory bicycle plan, and some two decades of work on the betterment of Vancouver from a cycling perspective, there remains significant doubt as to what a cyclist can or cannot do on a designated bike route.

Let us examine the facts of my recent case. My client, an experienced commuter cyclist, was travelling from his employment in Richmond to his residence in North Vancouver. Given this distance, one can readily appreciate why this cyclist, travelling on the right side of the curb lane on what is supposedly a shared use roadway, would need to maintain a healthy speed. At its intersection with 29th Avenue, Slocan begins to slope at an incline of approximately three degrees. A few blocks prior to that intersection, a cab driver, also northbound with two passengers, passed the cyclist. The cab driver continued along Slocan Street. When he reach his passengers' destination at the intersection of Slocan Street and 28th Avenue, he slowed his cab to a stop in the middle of the road. My client proceeded down the hill and - not clear on the cab's intentions - decided to maintain his trajectory in what he described as his "corridor". He passed the cab on the right. Unfortunately, as he was doing so, the cab decided to pull over to the right side of the street, cutting off the cyclist, and causing a very serious injury.



Given the circumstances of the accident, there was very little question, at least from our perspective, that the cab driver was liable in negligence. He had cut off the cyclist in circumstances where he knew or ought to have known that the cyclist might be present. He had also failed in his duty to keep a proper lookout and properly shoulder check.

In twenty years of cyclist advocacy, I have never seen the driver admit 100% liability for an accident. This case was no exception. While admitting some liability, the cab driver through his counsel suggested that the cyclist was also partly liable for passing on the right at too high a speed. The allegation of speed arose from the ambulance and hospital records wherein the cyclist indicated that he had been travelling at 50 kph when he was cut off by the cab. As to passing on the right, the cab driver maintained that the cyclist was prohibited from doing so except in exceptional circumstances and only if the move could be made safely. As the argument went, despite travelling on a designated bike route, the corridor on the right side of the curb lane did not constitute an “unobstructed lane of travel” so as to provide for an exception to the general prohibition against passing on the right. Even if it did, the cyclist was travelling too fast in the circumstances.

The highest Court in British Columbia has said that the distance between a lane of parked cars and the adjacent lane is an unobstructed lane of travel for cyclists. However, in the case of the Sunrise Bike Route, and many bike routes in this city in the Lower Mainland, there were no painted lines in the curb lane so as to expressly bring Slokan Street within the meaning of the exception. Intuitively, one would think a cyclist travelling on a bike route would enjoy more legal protection than a cyclist travelling on a general roadway in the corridor between parked vehicles and another lane of traffic. However, absent express definition of a cyclist’s rights on a bike route, one is loath to make recommendations on the strength of “intuition” only.

What is needed is legislation which defines cyclists’ rights, as opposed to their obligations only, when travelling on a designated bike route. The City has jurisdiction to make laws pertaining to its streets and the ways in which vehicles including bicycles use its streets. One of the rights which must be provided for is the right to pass vehicles on the right while travelling in the cycling corridor. Many bike routes feature a painted white line which separates cyclists from the vehicular travel. Paint can go a long way in establishing a right to proceed in the circumstances. Certainly, in the subject case, my job would have been a lot easier if city resources had been used to paint a white line on Slokan Street, a bike route which has existed since 1998. However, it seems to me our understanding of the legalities of bike routes must be broader and more principled and must arise from statute, rather than a simple can of paint. These statutes, and cases which interpret the statutes, must reflect the realities cyclists face while on long commutes over designated bike routes.





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David Hay is a litigation lawyer and partner at Richards Buell Sutton, LLP. He has a special interest in bike injury and can be contacted directly at 604.661.9250 or by email.



700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA

TELEPHONE
604 682 3664

FAX
604 688 3830

RBS.CA