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NEITHER HERE NOR THERE

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A recent decision of the British Columbia Court of Appeal, *MacLaren v. Kucharek*, has created a stir in the cycling community. Danny MacLaren, a 49 year old paramedic and experienced cyclist, was found partly responsible for an accident involving a left-turning driver. There was no suggestion on the facts of the case that he had any opportunity to avoid the car once it commenced its left turn. As a result, the case has engendered some press and an alarmed reaction.

In my view, the case is probably confined to its unique facts.

The accident occurred at the intersection of 140th Street and Laurel Drive in Surrey. The cyclist was southbound on 140th Street. He intended to pass through the intersection where the accident occurred, and continue onto a bike path, which would lead him to the hospital grounds where he was employed. For some distance prior to the accident he had been travelling on the right side of the road in a single lane for southbound traffic. That lane widens into two lanes at the accident site, and thereafter widens into three lanes, including a left and right turn lane and a through lane at the next intersection. The cyclist's intention to proceed straight through that next intersection was deemed to be important to the legal analysis.

At trial the cyclist testified that as the road widened, right-turning vehicles moved into the right lane, while vehicles planning to travel straight through or turn left position themselves accordingly. The idiosyncratic feature of this intersection was that some vehicles travelled abreast for a short distance before the intersection in preparation for the trifurcation of the roadway.

The cyclist's habit was to move to the left as he reached the intersection to accommodate his decision to proceed into the through lane and avoid the right-turn only lane. He was in this position alongside a car when the Defendant car turned left in front of him.

The cyclist succeeded at trial. The Trial Judge was persuaded that he did everything right and there was nothing he could have done to anticipate the presence of a left-turning vehicle. However, that decision was



altered in the Court of Appeal and the cyclist and driver were each found 50% to blame.

The driver based the appeal on his assertion that the cyclist was passing on the right, given the evidence that there was a car to his left immediately before the impact which must have obstructed the left-turning driver's vision. The Court of Appeal found it unnecessary to make that determination. The court found fault with the cyclist for "riding between what were effectively two lanes of travel before entering the Laurel Drive intersection". The Court of Appeal held that *Motor Vehicle Act* did not authorize the cyclist to ride between two lanes of traffic and thereby dangerously positioned himself alongside a vehicle to his left. The court stated:

"While Mr. MacLaren did the right thing by moving out of the curb lane, he should have moved in behind the vehicles travelling towards the 'through' lane, not beside them."

This case does not stand for the proposition that a cyclist must always take the lane when proceeding through an intersection. Given the idiosyncrasies of this roadway and the traffic patterns, the court found that once the cyclist moved from a position as near to the right as practicable, he needed to then establish himself in a lane so as to avoid the inherent danger of being *neither here nor there* on the roadway.

With respect, there are aspects of this decision that are difficult to reconcile with the practical realities of riding a bicycle on a busy urban street. However, given the unique facts of the case, it is doubtful whether the decision can be said to stand for any broad propositions of law.

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