



Posted on: July 13, 2006

ON YOUR WAY

David Hay

Originally published in Momentum Magazine, BC Edition

For one reason or another, cyclists tend to attract the attention of the police. I am hard pressed to think of a more benign activity than riding a bike, and yet I am often asked by cyclists to comment the issue of police detention. Specifically, cyclists want to know the extent of their rights when confronted by inquisitive police officers.

I assume for purposes of this discussion that the cyclist has done nothing wrong, at least nothing that would constitute a criminal offence or a breach of the **Motor Vehicle Act** or the regulations made thereto.

All cyclists enjoy the protection of the **Canadian Charter of Rights and Freedoms**. One of the rights under the Charter is not to be arbitrarily detained. So learned Steven Insua, a cyclist who had a very unfortunate run-in with the R.C.M.P. on May 4, 2004, in Kamloops. In fact, the events of that evening led the Crown to charge Mr. Insua with obstructing and assaulting R.C.M.P. Cst. Chris Goebel in the execution of his duty, contrary to the Criminal Code, as well as other charges.

It all started when a Ms. Compart saw a cyclist entering the parking lot of her condominium complex. She did not recognize the cyclist and believed that he was up to no good. There had been trouble with break-ins at the complex. Ms. Compart called the police.

Approximately one hour later, and five kilometres away, Cst. Goebel observed a cyclist proceeding southbound on the sidewalk on a mountain bike without lights, wearing dark clothing, carrying a backpack, and wearing no helmet. The officer told the cyclist to stop. The cyclist swore at the officer and continued riding. A pursuit ensued.

Eventually the police cornered the cyclists using two cruisers. What happened next was the subject of some evidentiary controversy, though it seems clear there was a physical altercation which led to the cyclist suffering a broken arm. The cyclist's backpack was searched and several cell phones were found, but it was never established the phones were stolen.

A crucial and essential issue in the case was whether the police violated Mr. Insua's rights not to be



arbitrarily detained. As to whether or not the police commanding the cyclist to stop amounted to a detention at law, Mr. Justice Blair stated “I do not consider, given the context of the statement, that it was a polite police request.” Once a detention was established, the next question was whether or not the detention was reasonable. If not, the police had no business stopping the cyclist at all, and any charges which flowed from the detention would as a result be dismissed.

The Supreme Court of Canada has recently confirmed that in order for a detention not to be arbitrary it must fulfill two conditions: first, the police must have reasonable grounds to detain in the sense that the individual detained was not involved in a crime under investigation and there must be a subjective and objective basis for that belief; second, the detention must be reasonably necessary in all of the circumstances, including the nature of the liberty interfered with and the public purpose the interference serves. Quoting from a Supreme Court of Canada decision called *R. v. Mann*, “The detention must be viewed as reasonably necessary on an objective view of the totality of the circumstances, informing the officer’s suspicion that there is a clear nexus between the individual to be detained and a recent or ongoing criminal offence. Reasonable grounds figures at the front-end of such an assessment, underlining the officer’s reasonable suspicion that the particular individual is implicated in the criminal activity under investigation.”

It is important to note that at this stage, in case it is not obvious, that the police do not have a general right to stop a cyclist and question that cyclist on a “hunch” based on intuition, no matter how accurate that “hunch” might prove to be.

Mr. Justice Blair carefully reviewed the evidence and concluded that there was no connection between Ms. Compart’s complaint and any offence which might have occurred and resulted in a police investigation. In addition, Blair, J. found the officer’s recollection of Mr. Insua’s clothing to be “questionable” and notable differences between Ms. Compart description of the cyclist and the cyclist seen by the police officer. In fact, Blair, J. concluded that Mr. Insua was wearing a fairly vivid orange and white shirt and cut off jeans in contrast to the more sinister description provided by Ms. Compart.

In the end, the Judge found that it was probable that the officer was proceeding on information obtained on previous dealings with the cyclist in the community rather than any proper information related to recent criminal activity. As a result, since the obstruction and assault charges require that the police officer be engaged in the execution of his duty, the Judge dismissed those charges.

Naturally, some interactions with police officers can be intimidating. But it is important to remember the mere act of riding a bicycle is not something which alone can give rise to a reasonable suspicion that the



RICHARDS
BUELL
SUTTON

Established in 1871

cyclist is criminally implicated in any activity under investigation. The police require reasonable grounds to justify stopping you even for a brief investigatory discussion.

Finally, a word of caution- my experience is that a cyclist would typically get nowhere questioning the philosophical basis for any given law during an exchange with a police officer. This is not the proper medium for any political exchange. Save that for your local M.L.A. However, it is appropriate to ask if one is being detained. If the answer to that question is “yes” then it is also appropriate to ask “why?”. Unless the police have reasonable and probable grounds to believe you’ve committed a criminal offence, there is simply no justification for anything further, including a search of your person, and you should be on your way.

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.

