



Posted on: September 15, 2010

## THE SQUEEZE

September 15, 2010

David Hay

*Originally published in Momentum Magazine, BC Edition*

A recent decision of our BC Supreme Court featured a detailed consideration of the legal principles involved when a cyclist is squeezed between moving and parked traffic. The potential liability of both the driver of the passing vehicle and the driver of the badly parked vehicle was decided.

Let us examine the facts. Christine McEachern, a 27 year old cyclist, was travelling southbound along the paved shoulder of King George Highway passing a series of diagonal parking stalls belonging to a local store. A pick-up truck was parked in one of the stalls. Its back end was extending onto the shoulder of the roadway, leaving very little room for the cyclist to negotiate her way between the pickup and moving traffic on her left.

Ms. McEachern has no memory of the accident. In particular, it was not possible for the presiding trial Judge to make a finding as to whether or not the cyclist was walking or riding her bicycle when she passed the pickup at the time of the accident. She went around the back of the pickup and was struck by a passing tractor trailer, suffering a severe brain injury.

The cyclist alleged the tractor trailer was negligent in causing the squeeze, and the driver of the parked vehicle was negligent in leaving part of his vehicle in the shoulder of the roadway. After 100 days of trial, largely dedicated to an analysis of the catastrophic injuries sustained by the Plaintiff, Mr. Justice Ehrcke dismissed the case against the driver of the pick-up truck, but allowed the case against the passing semi.

In his analysis of the conduct of the driver of the pickup, Ehrcke J. concluded that the pickup's encroachment on the shoulder, while potentially hazardous, "neither forced nor lured the Plaintiff into harm's way". His Lordship concluded that the parked job created an inconvenience only, rather than an unreasonable risk of harm. Because the harm arose when the cyclist decided to proceed past the back of the pick-up truck, and because the concordant reduction of space was "clear for all to see", the truck's encroachment in the shoulder did not represent negligence on the part of its driver, though it was clearly found to be a thoughtless inconvenience.



RICHARDS  
BUELL  
SUTTON

*Established in 1871*

The conduct of the passing truck driver was viewed differently. He was found to have had an opportunity to read the situation and foresee that his passing the cyclist at the same time as she passed the back of the pick-up truck would create a dangerous situation, i.e. a squeeze. Because the driver failed to foresee the harm arising from that situation, he was liable to the Plaintiff in negligence.

The judgment serves as a useful reminder to cyclists that it is very difficult to assign any fault to drivers who simply create obstructions by leaving their vehicles in places which inconvenience cyclists. Had the case simply involved an unoccupied pick-up truck obstructing the path of a cyclist, the cyclist would almost certainly be found 100% liable for running into the back of the pick-up truck. It is extremely difficult to base a finding of negligence on any obstruction, if that obstruction ought to have been obvious to the cyclist at the time of the loss. Hazards which are not obvious are, however, horses of a different colour.

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.

