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# CYCLISTS ARE VULNERABLE TO BEING SUED AFTER COLLISIONS WITH CARS



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Despite new safety measures like the separated bikes lanes on Howe and Dunsmuir Streets designed to keep cyclists and motorists apart on Vancouver's roads, collisions still happen. And when they do, the onus is on the cyclist to prove who is at fault. Photo by Canadian Veggie (via Flickr).

## REPORTED ON

March 30, 2012

On March 10th the CBC [reported](#) that city councillor Geoff Meggs was being sued by a motorist with whom he had been in a collision while riding his bike in 2010. The Mercedes sustained \$5,000 of damage, while Meggs was hospitalized with damaged vertebrae.

Meggs has since discovered that his homeowner's insurance will cover the cost, but his experience raises an

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important question—how do cyclists financially protect themselves against ICBC claims?

In British Columbia, when a cyclist and car collide, it is up to the cyclist to prove who is at fault. This is a problem, because it's a potentially expensive situation to be in, and not many cyclists are insured, according to bike lawyer David Hay from Richards Buell Sutton.

"[Cyclist insurance] is kind of a rare bird," says Hay. "It's only available through your homeowner's policy. Basically you're purchasing third party liability coverage, which protects you against injuries caused by your negligence while on a bike to other people."

Lindsay Olson, vice president of the Insurance Bureau of Canada assures that most insurance companies cover cyclists under homeowner's or tenants insurance. "In terms of homeowner's liability, I've been in the insurance industry now for many years and I am certainly not aware of any policies out there that limit liability coverage for cyclists," she says.

But there is no coverage for cyclists, independent of homeowner's or tenant's insurance. "No, there's not usually standalone liability policies," says Olson. "There might be, but I'm not really aware of any. Generally it's offered through a tenancy or homeowner's policy of some sort."

A broker at the Co-operators says the cost of homeowner's insurance depends. "There's a lot of factors, there's not really a set price," he says. "The policy itself depends on what kind of coverage, what kind of home, where you're living; there's a whole bunch of factors that go into it."

And the price range is significant. "Depending on the package, from \$200 to \$5000 depending on what you're insuring or what kind of policy is," says Olson.

In Vancouver, where many people cycle on a daily basis, there could be a big market for affordable bike insurance. Consider a nightmare scenario for cyclists: a driver is making a claim against a cyclist, and the cyclist is seriously injured and does not remember what happened. This is where insurance would step in to defend the cyclist.

"When cyclists are involved in collisions with cars and their injuries are serious," says Hay, "often they have post-traumatic amnesia. There's a loss of consciousness in many cases, so the memory is erased."

Currently, if ICBC decides a cyclist was negligent, a lack of insurance and memory-loss puts a cyclist in a vulnerable position. And when the cyclist is injured and making a claim against the driver, a lack of memory is problematic because the onus of proof is on the cyclist in British Columbia.

If there were no witnesses and a cyclist cannot remember what happened, prosecuting or defending an ICBC claim is both risky and costly. "It's expensive to retain engineers," says Hay. "It's expensive to do complicated re-constructions and those are usually the things required when the cyclist can't offer anything about what happened. That can often be so intimidating for people of limited means, they choose not to carry the risk associated with bringing claims and they walk away."

Adam Grossman, Senior Media Relations Advisor at ICBC contends they are thorough and fair. Responding by email, he writes that, "in assessing any claim, [ICBC] would review all evidence presented to us in order to come to a fair decision. Determining fault involves gathering the facts from all parties involved, considering the rules of the road, witness and police reports and past court decisions."

Cyclists are eligible for medical and rehabilitation benefits if injured in a collision with a car regardless of who was at fault. These benefits are available through ICBC under a part 7 claim and include temporary total disability benefits for up to 75% of a person's income with a maximum of \$300 per week.

"As long as you're a cyclist, as long as you're in BC when the accident occurs and as long as the accident involves a BC driver, you're entitled to make a claim," says Hay. "When ICBC was established it made the agreement that it would provide benefits to cyclists and pedestrians because it's the only game in town in terms of third party liability."

However, if the cyclist wants compensation for general damages, income loss and coverage for care, he or she would file a tort claim. In this case, the cyclist has to prove the driver was at fault.

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The tort claim stems from the common law of negligence, and David Hay thinks it's time British Columbia adopt reverse onus as Ontario has. That way, the cyclist is presumed innocent unless the car proves otherwise.

"It comes down to a question of resources. A driver backed by an insurance company has superior resources to argue issues of fault whereas the cyclist typically does not," Hay says. "I think its time has come and I think it would be a wonderful notion."

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**adfjasldkjf** 3 days ago

Some good research, thank you. Something to keep at back of mind is a fair number of drivers in BC are driving illegally without valid driver's licence or insurance. The coverage based on the driver's licence might not be available when you collide with one of those. Possibly the "under-insured motorist" clause would help in that situation, if you have a driver's licence yourself. I'm just guessing. I'm not a lawyer.

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**Rick Kubik** 2 days ago in reply to adfjasldkjf

Good points in the comment above, I like it and it makes me think (in a good way). If I were an insurance-type, and given the happy rise in the number of regular cyclists I'd sure be looking into developing some sort of insurance product for cyclists.

Some would snort at it, but heck, if you're riding a decent-price bike and really do care about making a better world, I'd consider the insurance a decent cost. I'd buy it.

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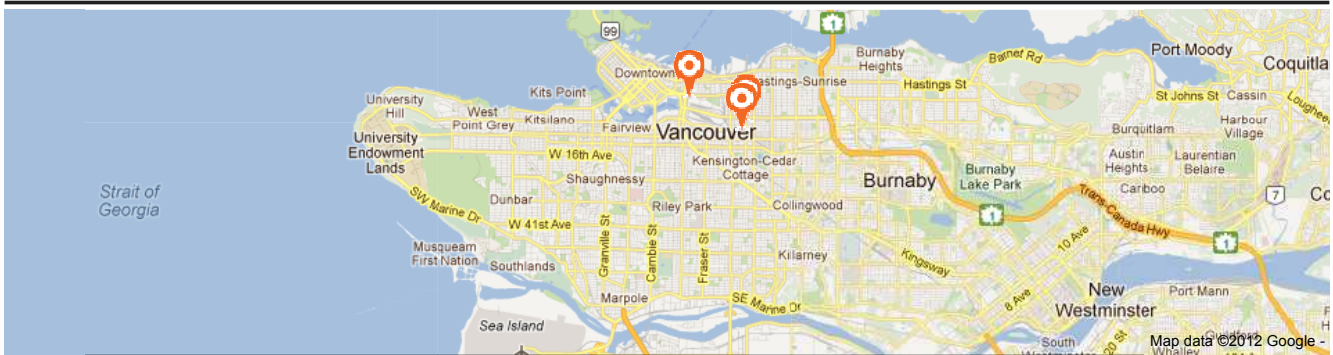


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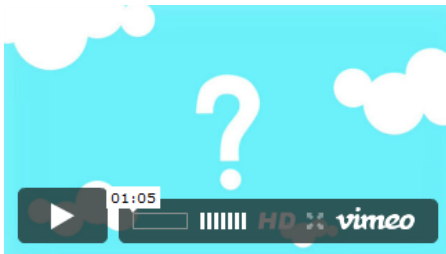


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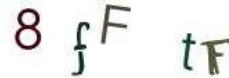
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