

Aggression Behind The Wheel

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The Supreme Court of British Columbia recently dealt with another case of road rage and discussed the various tools available to a Judge when attempting to address extremely aggressive and dangerous driving.

Patrick Hu was riding his bicycle in Surrey when he was involved in a near collision with a vehicle driven by Pavitter Mahal who was found to have run a stop sign. A verbal exchange occurred which led to Mr. Mahal pursuing Mr. Hu and cutting him off several times, culminating in an actual collision.

Criminal charges were brought for dangerous driving pursuant to s. 249(1)(a) of the Criminal Code of Canada and Mr. Mahal was convicted of that charge. He received a suspended sentence with 18 months probation, a fine of \$1,300.00, and a 30 month driving suspension under both the Criminal Code and s. 98 of the Motor Vehicle Act.

In these circumstances, it is common ground that the Motor Vehicle Act is not to be used to punish criminal conduct (that domain is reserved for sentencing under the Criminal Code) but to protect public safety. A court may consider various factors including a person's driving record and the facts of the case leading to the criminal conviction.

Mr. Mahal argued that he needed his driver's license in order to earn a living and support his children. His appeal was based on his contention that this had not been properly considered by the sentencing judge at the Provincial Court level. After upholding the conviction for dangerous driving, the Supreme Court agreed that the

impact of the prohibition ought to have been given more weight by the sentencing judge. Mr. Mahal referred to the Driver Improvement Program Policies And Guidelines of the Office of the Superintendent of Motor Vehicles (the "Guidelines") for guidance as to what may be an appropriate prohibition. Those Guidelines indicate that experienced drivers can accrue 15 demerit points over a two year period before having their licenses pulled. Mr. Mahal had no previous demerit points and all of the 10 that he did have came from his conviction.

The Crown cited various cases, one of which was the well-publicized case of R. v. Song in which a driver had struck and killed a cyclist owing to major condensation on his windshield and his fatal decision to navigate by looking out his side windows. In that case, a 3 year prohibition was imposed in addition to other penalties under the Criminal Code.

The driver cited a number of cases which he characterized as more serious than his own in which the convicted drivers received a lighter prohibition.

Counsel also reminded the Court that the minimum suspension under the Motor Vehicle Act is 12 months if a person is convicted of a motor vehicle related criminal code offence.

The Supreme Court weighed all of these factors and arrived at a sentence of 18 months, versus 30 months, citing the impact on the driver's ability to work and support his family.

From a cycling perspective, the loss of a license for 18 months following an act of road rage may appear to not adequately address aggressive driving. However,



when the loss of a livelihood for 18 months is considered in conjunction with a criminal record, such a sentence would seem to fit an interaction of this kind where very minor injuries are sustained.

Many acts of aggressive driving go unpunished for the simple reason that the assailant is never found. In these circumstances the law obviously cannot address this conduct. Until it is viewed as socially reprehensible and morally repugnant it will continue to

occur. In some cases, appropriate consequences may arise if the culprit is caught, but in far too many other cases the conduct is never addressed. 🚲

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