

LEGAL PAPER

On Your Bike

By Van Krkachovski

It may be due to higher gas prices. It may be due to environmental concerns about greenhouse gases. Or it may be just because people want to get out and have a bit more exercise. Regardless of the motivation, bicycle sales are soaring and so too are accidents involving bicyclists. It is something that municipalities should consider since they have the same obligations and the same exposure to liability with bicyclists as they do with pedestrians.

In a recent case in Vancouver, a cyclist sued the city for injuries he suffered when his bicycle hit a pothole on a road that was notorious for its poor condition. The judge ruled that because the street was prone to potholes the municipality had an obligation to continuously inspect and repair a street and ruled for the plaintiff. The implications of this ruling were onerous since it seemed to suggest that a municipality must be out patrolling and fixing its roads 24 hours a day, seven days a week. The Supreme Court reversed the judgement but it shows how far a judge can go if he sympathizes with a plaintiff.

A municipality's obligations are the same for bicyclists as they are for pedestrians. It is obligated to keep the road and sidewalks in a reasonable state of repair and that responsibility covers not just problems that can be readily spotted but those hazards that may not be so obvious as well. This is particularly apropos for winter conditions when snow and ice can obscure bumps, cracks, potholes, and raised manhole covers. With more and more cyclists on the road even in the winter, municipalities must keep their specific needs in mind as well.

As with cases involving pedestrians, the law is not entirely on the side of the plaintiff. Bicyclists have obligations as well. Anyone injured as a result of what he or she believes is municipal negligence must give the municipality notice within 10 days of the incident so that the municipality's defence is not prejudiced. This is particularly important in cases involving winter conditions since those conditions can change in a matter of hours. A patch of ice that was there in the morning may no longer be there the next day when the municipality goes out to investigate.

Bicyclists also have an obligation to take due care when cycling. Damages can be reduced, perhaps greatly, if the judge believes there was contributory negligence on the part of the plaintiff. There was a case, for example, where a bicyclist was injured while riding across some private property in the winter of 1999 (that was the winter the army was called out to help clear the snow in Toronto). The judge, while he may have privately applauded the cyclist for travelling under his own steam rather than taking a car or the bus, ruled that choosing



to bicycle in such conditions was in itself prima facie evidence of contributory negligence. In other words, what was a sane person doing out in those sorts of conditions?

The court may also consider whether the plaintiff has taken due care to protect himself. While bicycle accidents have increased, fatalities have declined in large part to the use of helmets. Helmets are mandatory for children under the age of 18 and highly recommended for everyone else. A judge may consider that the lack of a helmet is in itself a contributory factor in the severity of head injuries suffered in a bicycle accident.

It is worth noting, however, that while cyclists are obliged to follow the rules of the road, the judge may take into consideration mitigating circumstances. The judge ruled in a case in Hamilton that even though a cyclist was injured in a fall while riding on a sidewalk over a bridge, he had chosen the sidewalk because he thought it was safer and therefore the municipality was not absolved of responsibility.

The Ontario Ministry of Transportation has developed design guidelines regarding the shared use of roads by motorists and cyclists and published Ontario Bikeways: Planning and Design Guidelines. It provides direction on the use of shared road bikeways, shoulder bikeways, bike lanes, and bike paths, recommends bikeway widths as a function of average daily roadway traffic and the amount of truck traffic; and provides guidelines for the separation of motor vehicle and bicycle traffic at certain defined levels of traffic volumes. Municipalities should review these guidelines to ensure that their bikeways meet the generally accepted standards. **M**

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