



Resolution 2014-05

Amendments to the *Highway Traffic Act* to Include Definitions for "Sidewalk" and "Pedestrian"

Approved at the 63rd Annual General Meeting, June 25th, 2014

Preamble:

On September 28th, 2011, Peel Regional Police were called to investigate a fatal motor vehicle collision in the City of Mississauga. The victim, an 85-year-old female, was walking on the sidewalk on the south side, as she does every day. As she traversed a driveway, the resident reversed her motor vehicle, knocked the pedestrian to the ground, and ran her over, dragging her beneath the vehicle. Once on the road the driver, apparently unaware that they had struck a pedestrian, drove forward, dislodging the victim. Onlookers waved the driver down to stop. The victim succumbed to her injuries in hospital.

The driver cooperated with police, providing a video statement, indicating they did not see the victim on the sidewalk. In considering the actions of the driver, investigators were left with no legal recourse but to hold the motorist accountable. The conduct did not meet the threshold for a criminal charge and the "sidewalk" where the collision occurred is without status in the Highway Traffic Act. This fatal collision represents the second such fatality investigated by Peel Regional Police in the past two years.

These types of collisions are by no means isolated incidents. In the past five years, Peel Regional Police have investigated more than 37 collisions whereby pedestrians on the sidewalk were struck by vehicles reversing from private driveways. The numbers would be even greater if collisions involving cyclists were taken into consideration. Toronto Police Service had a recent incident which was extensively covered in the media as the defendant entered into a plea resolution. On September 4th, 2013, South Simcoe Police investigated a similar collision where a vehicle backed from a private drive into a person on a mobility device. Fortunately, the injuries were not serious.

WHEREAS in Canada, there were 374 pedestrian fatalities accounting for 12.9% of all road user fatalities. In terms of serious injuries, pedestrians accounted for 12%, corresponding to 1,833 pedestrians seriously injured in 2006. In 2003, 379 pedestrians were killed, and 13,340 were injured (both serious and non-serious injuries). This represents one pedestrian killed, and 37 pedestrians injured each day, and

WHEREAS pedestrians are vulnerable road users. In collisions with other road users they often suffer the most severe consequences because they are less protected. The

public would expect that drivers who strike pedestrians while exiting/entering driveways over the so-called "sidewalk" could be charged and prosecuted. That is not the case.

In *R. v. Green*, [2004] O.J. No. 5757(QL) (C.J.), the Court noted:

- 23 Clearly the word "sidewalk" is not included in the definition of highway, and one would have expected it to be included if the legislature intended it to be a component of the highway.
- 24 The Act does refer to sidewalks in other sections. For example, dealing with pedestrians who walk on the highway where there is no sidewalk. (see s. 179 of the *Highway Traffic Act*). The question becomes, is the sidewalk included as part of a highway based and the extended definition of highway within the Act?

In dismissing the charge, the Court wrote:

- 27 In order for the officer's actions to be justified, they must, therefore, be in conformance with a statutory power. I am of the view that **a highway does not include the sidewalks**. The officer's actions, therefore, were not sanctioned by law, and they were not permitted to stop and detain the accused using the provisions of the *Highway Traffic Act*, and

WHEREAS the *Highway Traffic Act* should be amended to include the sidewalk as part of the highway, by definition, at least as it relates to pedestrian use and safety. As well, "pedestrian" should be defined so as to clarify and ensure status under the *Highway Traffic Act*. Suggested wordings have been brought forward to safely protect pedestrians as vulnerable citizens that will be supported by legislation that properly holds motorists accountable for their actions.

Suggested Wordings:

"Sidewalk" – means that portion of a highway between the curb line and the adjacent property line or any part of a highway especially set aside for pedestrian travel and separated from the roadway.

"Pedestrian" – means a person on foot, and also includes a person in a wheelchair and a person riding on a motorized mobility device. (Note: this definition should also include children under the age of 12 riding a tricycle, bicycle or toy).

THEREFORE BE IT RESOLVED that the Ontario Association of Chiefs of Police calls on the Government of Ontario to amend Section 1 of the Ontario *Highway Traffic Act*, R.S.O. 1990, Chapter H.S. to include definitions for "Sidewalk" and "Pedestrian" be made and that any further amendments considered necessary to ensure that this objective is fulfilled also be made, and

BE IT FURTHER RESOLVED that the Ontario Association of Chiefs of Police supports this proposal on the bases that clear definitions will assist those involved in the administration of justice with occurrences and related prosecutions.

ⁱ Transport Canada, 2007

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