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B.C.'s public auto insurer blames 'careless' cyclist for his own death in crash with alleged drunk driver

By Joe O'Connor (National Post)

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On May 31, Ross Chafe, a former Canadian national team cyclist, was struck and killed by an allegedly impaired driver near Whistler along with a fellow cyclist. The Insurance Corporation of British Columbia says Chafe was to blame.

Every Tuesday, Gary Baker would wait for the inevitable moment during the Whistler Cycling Club's evening ride up the Callaghan Road near the ski resort when Ross Chafe, a regular, would disappear from view on his custom-built blue Marinoni speed bike.

Beetling up and away from the group to the top of a 12 km climb, before effortlessly coasting back down again to check on the stragglers.

"Ross was a phenomenal rider, but he was also very safety conscious," says Baker, the cycling club's vice-president, and one of the stragglers Chafe checked up on.

On May 31, Chafe, a former Canadian national team cyclist, was struck and killed by a car on a mountain road near Whistler along with fellow cyclist Kelly Blunden. Samuel Alec, a serial drunk driver with multiple convictions on his record, was allegedly impaired when he crossed the centre line, mowing down the two men.

Alec was charged with a string of offences in August, including impaired driving causing death. Whistler, meanwhile, mourned the loss of two popular locals, a grief that has turned to disbelief this month when the Insurance Corporation of British Columbia (ICBC) — a provincial Crown corporation — filed court documents claiming that Chafe was to blame for his own death.

"How could Ross be at fault here?" Baker said. "I just find it appalling what they are saying about him."

The ICBC initially argued in its B.C. Supreme Court filings that Chafe, a 52-year-old former Canadian national cycling team member who represented Canada at three world championships, the Pan Am and Commonwealth Games, “was impaired by alcohol, drugs, fatigue, illness or any combination thereof,” at the time of the accident that killed him.

The public insurer then amended its legal defence, removing any suggestion that Chafe was riding while impaired, but holding to its arguments that an elite rider on a custom-fitted bike possibly had faulty brakes, wasn’t riding as close as possible to the road’s shoulder and may not have been riding legally at the time of his death — and that Chafe didn’t do enough to avoid getting himself killed by an alleged drunk driver.

“He failed to take reasonable or proper or any precaution to avoid the accident,” the ICBC argues in its filings. “He failed to give any or adequate warning to (the driver of the vehicle) when the accident was, or should have appeared, imminent.”

Chafe’s widow, Dr. Lizanne Bussieres, is a former Canadian Olympic distance runner who finished third in the 1986 Boston Marathon. In September, she sued Alec and Carmen Ned, the owner of the 1995 Chevrolet Cavalier Alec was alleging driving on the day her husband was killed. (Paul Pierre Jr., a passenger in the vehicle, was also killed.)

Bussieres’ lawsuit was filed under the Family Compensation Act for the benefit of herself and the couples’ three daughters, Alexandra, Fabienne and Isabelle, aged 17, 15 and 11.

Bussieres wants compensation for the loss of guidance, support, household assistance and inheritance, as well as special damages for funeral and memorial service costs.

None of the allegations have been proven in court and neither Ned nor Alec has filed statements of defence.

The ICBC was not named in the initial suit, and later applied to be included as a third party, a measure that the insurer told the National Post in an email Thursday was taken, “to flag any possible issues that should be explored as the court process moves ahead” — and is considered standard legal practice

The ICBC email also states that if Alec, the driver, is either convicted of impaired driving, or should there be enough evidence showing that he was indeed drunk at the

time of the crash, then the ICBC could then look to recover “money” from the driver. Thereby managing “the cost of insurance” for all its customers.

So, in other words: by being tone deaf in the midst of a terrible tragedy by filing a boilerplate-type document listing all the possible scenarios — minus impairment — Chafe could have been operating his bicycle under at the time of his death, the ICBC was simply following legal procedure.

“Whoever is making these arguments (for the ICBC) has obviously never ridden a bike before,” said Baker. “How can Ross be at fault for being on his own side of the road when he was killed? Both the guys that got killed that day, Ross — and Kelly — were very safety conscious.”

Blunden led a Wednesday night clinic for the cycling club designed for beginners with a special emphasis on safety. Chafe never abandoned a lesser rider on their mountain climbs. He was, says Baker, modest and unassuming and kind and seldom, and only when prodded, spoke about his national team past.

“These weren’t two yahoos bumbling their way down a mountainside,” said Baker. “These were family men.”

National Post, with files from The Canadian Press