AGENDA

PLANNING, TRANSPORTATION AND ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

Saanich Municipal Hall, Committee Room No. 2
Thursday, June 14, 2018 from 4:30 p.m.

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1. **ADOPTION OF MINUTES** (attachment)
   - April 12, 2018
   - May 16, 2018

2. **ACTIVE TRANSPORTATION PLAN FINAL UPDATE**
   - Presentation from the Engineering Supervisor
   - Link to full report here.

3. **COMMUNITIES ON THE MOVE** (attachment)
   - BC Alliance for Healthy Living – Communities on the Move Declaration

4. **MODERNIZING THE MOTOR VEHICLE ACT TO IMPROVE SAFETY** (attachment)
   - Correspondence from City of Vancouver – Active Transportation Policy Council
   - Position Paper: Modernizing the Motor Vehicle Act – Recommendation 7

5. **DEVELOPMENT REVIEW PROCESS** (attachment)
   - Discussion of the February 22, 2018 Staff Report

* Adjournment *
* * Next Meeting: September 13, 2018 * *
Please email jeff.keays@saanich.ca or call at 250-475-1775 ext. 3430 if you are not able to attend.

GO GREEN! MEMBERS ARE ENCOURAGED TO BRING THEIR OWN MUG TO THE MEETING

MINUTES
PLANNING, TRANSPORTATION AND ECONOMIC DEVELOPMENT ADVISORY COMMITTEE
Held at Saanich Municipal Hall, Committee Room No. 2
April 12, 2018 at 4:30 p.m.

Present: Councillor Judy Brownoff (Chair), Suzanne Bartel, Bill Mumford, Andrea Mercer, Travis Lee, Peter Rantucci, Peter Pokorny

Staff: Rebecca Newlove, Manager of Sustainability; Maggie Baynham, Senior Sustainability Planner; Cameron Scott, Manager of Community Planning; Megan Squires, Planner and Jeff Keays, Committee Clerk

Regrets: Sophia Baker-French, Lois-Leah Goodwin

Guests: Paul Nursey, President and CEO – Tourism Victoria.

MINUTES

MOVED by S. Bartel and Seconded by B. Mumford: "That the Minutes of the Planning, Transportation and Economic Development Advisory Committee meeting held February 12, 2018, be adopted as circulated."

CARRIED

TOURISM VICTORIA

The Chair welcomed Paul Nursey, President and CEO - Tourism Victoria to the meeting.

Mr. Nursey provided the committee with an overview of tourism opportunities for Saanich. The following highlights were noted:

- District of Saanich has been a strong supporter of tourism.
- Saanich is home to numerous parks, industry suppliers and workforce.
- Tourism Victoria has held two lunch and learns with Saanich Council.
- Growth in tourism is significant and is driven by growing middle class (globally) and the value of "experiences" by Western economies.
- Growth is anticipated in the South Island, and more locally at the neighbourhood and village levels.
- Greater Victoria is a highly regarded destination.
- There is ongoing demand for new capacity in the region:
  - Increase in number of daily flights from Toronto and Montreal;
  - Home porting for smaller cruise ships
- Compression and Dispersion are key to sustainable growth.
  - Business flows in concentric circles, as business grows in the centre, other areas benefit.
- Vancouver is the Centre for BC: Whistler, Victoria and Kelowna follow.
- Canada is working on a coordinated compression and dispersion strategy.
- Examples of compression:
  - Ucluelet grew as tourism destination after Tofino became busier and fuller
  - When Greater Victoria becomes full, benefits and incremental business flow out in concentric waves.
- Tourism Victoria's primary job is to create the conditions for compression and

then drive dispersion through their marketing and communications.
- There was a demonstrable downturn in tourism between the years 2003-2013.
- 2016 – First statistical evidence of the impact of Short Term Rentals.
- Occupancy rates for Greater Victoria were at 73.42% in 2017.
- Revenue per available room (RevPAR) is a key performance metric used in the hotel industry. It is calculated by multiplying a hotel's average daily room rate (ADR) by its occupancy rate.
- Experiences and attractions are more effective is clusters.
    - Critical mass.
    - Efficiencies for operators and independent visitors.
- Increased meetings bookings putting pressure on accommodation stock.
    - Tourism Victoria is submitting up to 70 bids per month for conferences and events.
- 2018 will be banner year (numerous one-time events), while 2019 will be softer; anticipated return to growth in 2020.
- Hotel Developments
    - Developers look for key metrics: strong, continued occupancy rates of 70-72% and base increases in RevPAR of 5-7% annually.
    - This is the current landscape in Victoria.
- Four opportunities for Saanich:
    1. Commercial accommodation near UVIC
    2. Sports Tourism Complex near Uptown
    3. Commercial Accommodation adjacent to Highway 17
    4. Agri-Tourism Cluster
- Sustained growth since 2013 suggests the region is late to the investment cycle.
- Brands looking for growth opportunity
- Canada is in the midst of the largest hotel boom since the 1980s
- How can Saanich better position itself?
- Tourism Victoria would like feedback on the four opportunities.
- Tourism Victoria could develop a formal report for the customer market perspective, and would like to work with staff to overlay the OCP perspective.

GARDEN SUITE STUDY

Megan Squires, Planner, provided the committee with an overview of the Garden Suite Study. The following highlights are noted:
- A Garden Suite is a small detached house that is in the rear yard of a single family lot. It is accessory to the primary dwelling.
- Council approved the Terms of Reference for the study in September of 2017.
- The study area is limited to single family (RS-Zoned) properties in the Sewer Service Area.
- Currently in Phase 2 which includes stakeholder and public engagement efforts to explore interests and concerns and test ideas for potential regulations.
    - Staff hosted 2 open-houses in March
    - Staff administered a Garden Suite Survey.
    - Staff attended pop-up engagements
- Key issues going forward are:
    - Support for legalization
    - Location
    - Regulations for: size, height, parking, owner occupation.
    - Design review
    - Approval process

- A second statistically significant survey will be launched in May and staff will host a technical workshop in June to explore the regulations in more detail.
- Staff will develop draft regulations as part of Phase 3 if there is support for the initiative.

Committee discussion followed the presentation, the following highlights are noted:

- Square footage ranges from 400ft^2 to 1200ft^2 in Victoria; other jurisdictions link to size of secondary suites 90m2.
- Council restricted study area to service sewer area as the Official Community Plan policy directs growth within the Urban Containment Boundary.
- Cost per sq/ft is approximately $164-$215.
- There were numerous issues with regard to setbacks, height and illegal conversions (multiple units within one suite) in Kelowna.
- Areas outside the Sewer Service Area and Urban Containment Boundary should be considered.
- Matter such as size, scale and setbacks will be determined as part of the draft regulatory framework.
- Staff have made a distinction between Tiny Homes and Garden Suites. Suites must be in compliance with the Building Code (i.e. situated on a permanent foundation).
- Original development goal was to provide additional housing options, and increased density where there are services.
- If stratification and sub-division were considered it could create conditions for affordable home ownership.
- Concern that the development of garden suites could result in increased assessments for neighboring properties.
- This policy could create the conditions for multi-generational housing on existing properties.

CORDOVA BAY AND CADBORO BAY LOCAL AREA PLANS

The Manager of Community Planning provided the committee with an overview of the status of the Local Area Plan (LAP) process for both Cadboro Bay and Cordova Bay. The following highlights are noted:

- Terms of Reference adopted by Council in November, 2017.
- Saanich will initiate 2 LAPs per year with a targeted timeline of 18 months per plan.
    - Quadra and North Quadra are next in the queue.
- Planners meeting with Advisory Committees.
- Preparing for public engagement.
- Planning Village Design workshops.
- The LAPs will provide detailed guidance to Council, staff, property owners, developers, and the public to address growth and change within a neighbourhood.
- LAPs aid in decision making, provide a reasonable level of certainty about future uses, development and quality of life and set the context for considering development proposals.
- New areas of focus for the LAPs include:
    - Climate change
    - Range of mobility options
    - Housing affordability and choice
    - Centres and Villages
- Numerous opportunities for public engagement before targeted adoption in Spring of 2019, including (but not limited to):

    - Open houses and workshops
        - Cordova Bay – Saturday April 28th, & Wednesday, May 2nd
        - Cadboro Bay –Saturday, May 12th & May 14.
    - Pop-up events
    - Walking tours
    - Surveys
    - Focus groups
- Saanich has developed a speaker series; the first event, Building Neighbourhoods for the Future, featuring Gordon Price was be held on March 21, 2018.
    - Second event, Our Community in a Changing Climate, to be held on Monday, May 7th.
- Initial comments received by staff include:
    - Land use issues
    - Affordability and diversity of housing options
    - Active transportation facilities
    - Engaging with young families
    - Traffic management
    - Maintenance of quality of life
    - Village areas

Committee discussion followed the presentation, the following highlights are noted:

- LAPs are strongly informed by residents and local businesses, how can the broader tourism and economic development lenses be incorporated into this process?
- Will there be areas identified for specific uses i.e. Hotels?
- Improvements in business development amenities should be considered.

HOME ENERGY RETROFIT FINANCING PILOT

The Senior Sustainability Planner provided the committee with an update on the status of the Home Energy Retrofit Financing Pilot. The following highlights are noted:

- Overview at February 15, 2018 meeting.
- Application submitted to the FCM's initial screening process for a Green Municipal Fund Loan (March 1, 2018).
- Staff met with representatives from Municipal Affairs and Housing (MAH). MAH acknowledged that the project is achievable; however, they expressed concern that it was both administratively heavy and complex.
- Staff have developed a path forward following this meeting.
- Staff will bring a report to PTED in June before proceeding to Council.
- The District has been invited to submit a full application to the FCM's Green Municipal Fund; staff will defer their application until 2019.

ELECTRIC VEHICLE CHARGING STATION

The Senior Sustainability Planner provided the committee with an overview of the Electric Vehicle Charging Strategy. The following highlights are noted:

- Council adopted the September 21, 2017 Motion from PTED at their January 8, 2018 meeting.
- Transportation accounts for 2/3 of Saanich's emissions.
- There are currently three types of charging infrastructure
    - L1 – 120 V (8-12 hrs. full charge) = $500 retrofit cost
    - L2 – 240 V (4-6 hrs. full charge) = $2,500 - $15,000
    - DCFC – Variable DC Voltage (30 mins for 80% charge) = $75,000

- EV owners charge their vehicles at home over 90% of the time
- With batteries and range increasing, L2 is preferred for performance and consumer expectation.
- EV sales are up 53% in BC from 2016.
- EV sales represent 2% of all car sales in BC
- Latent demand for EVs (as portion of market share) is primarily constrained by home charging access.
- Good policies can increase EV market share.
- Benefits of Electric Vehicles
    - Five times more efficient
    - Lower fuels costs
    - Decreasing battery costs
    - Less maintenance
- Numerous municipalities have EV Bylaws
- A study conducted by the City of Richmond found that the L2 4-Way Load Managed charging system has the best performance for the least cost across all building types.
- Next steps:
    - Collaboration on Capital Region EV and E-Bike Infrastructure Planning Project
    - Council Check-in Q3.

Committee discussion followed the presentation, the following highlights are noted:

- Current parking regulations for new developments will remain cost prohibitive for entry level condos if the parking requirement ratios are maintained at current level. Policy should be reexamined in context of the EV strategy.
- Gas station development has slowed considerably. No new applications at this time.

BC ENERGY STEP CODE OVERVIEW

The Manager of Sustainability provided the committee with an overview of the current status of the BC Energy Step Code project. The following highlights are noted:

- As of December 15, 2017, under section 5 of the Building Act, the current local government bylaws on building energy efficiency will no longer be enforceable.
- Municipalities wishing to set higher energy-efficiency standards than those in the BC Building Code can do so using the BC Energy Step Code.
- The Step Code is a voluntary roadmap that establishes progressive performance steps in energy efficiency for new buildings from the current BC Building Code level to net zero energy buildings by 2032.
- The Step Code applies to new residential and commercial construction and does not currently apply to institutional buildings such as hospitals and recreation centres.
- Council approved the Terms of Reference, and allocated $25,000 from the Council Contingency for Strategic Initiatives for the BC Energy Step Code Study at their September 11, 2017 meeting.
- Staff received considerable input from the development industry on the opportunities, concerns and potential approach for local implementation.
- In collaboration with the CRD and local municipalities (Sannich, Victoria and North Saanich) staff have completed Phase 1 of the process.
- Phase 1 included engagement with the building industry and key stakeholders in order to provide information and raise awareness of the Step Code and to gather feedback on the opportunities, concerns and

potential approach for local implementation, including Step Level, timeline and support required.

- This information has been used to develop and amend a draft approach that is appropriate to Saanich.
- Key results from the industry workshops:
  - Value in regional coordination
  - Need for local training – builders, sub-trades and local government staff
  - Minimize costs while considering operational savings that support affordability.
- The Urban Development Institute and Canadian Home Builders Association are supportive of the Step Code and Three for All are advocating for Step 3 for all.
- The Urban Development Institute – Capital Region, Canadian Home Builders Association – Vancouver Island and Vancouver Island Construction Association co-hosted the local Step Code engagement alongside the District of Saanich, City of Victoria, District of North Saanich and CRD.
- The Victoria Residential Builders Association was part of the Step Code development and originally supportive of Step 2, but is no longer in support.
- The draft approach proposes adoption of the following:

All Part 9 Excluding small SFD	Part 9 Small Single Family	All Part 3
Step 1 Nov 2018	Step 1 Nov 2018	Step 1 Nov 2018
Step 3 Jan 2020	Step 2 Jan 2020	Step 3 Jan 2020

- The proposed draft approach is consistent with that being proposed by the City of Victoria.
- Feedback from the first phase of engagement and the proposed approach were presented to Council in January 2018. Staff received council direction to engage industry in a second phase of engagement on the proposed approach
- Phase 2 was initiated with a number of engagement events, the purpose was to seek feedback from the industry representatives on the proposed approach to implementation.
- Phase 2 engagement results included (but not limited to):
  - Support for an interim Step 1 period (learning opportunity)
  - General agreement to move from Step 1 to Step 3.
  - Some concerns about cost and affordability.
  - Mixed feedback on lead-in time for Step 3 - particularly Part 3 buildings
  - General support for the process and mid-construction blower door test.
  - Mixed feedback on proposed rebate.
  - Desire for Energy labelling to communicate the benefits.
  - Timeline for Step 3 viewed too fast for some (Step 3 for part 3 high rise concrete and commercial)
- Step 3 achieves a performance of 20% better than Code.
- Local case study of a Part 9 build identified marginal increase in costs associated with meeting Step 3.
- There are potential design and cost implications for Part 3 concrete high-rise and commercial buildings meeting Step 3

- Next Steps:
  - Amend proposed approach related to the second phase of industry and key stakeholder feedback
  - Report to Council

Following the BC Energy Step Code Overview presentation the Chair sought the consensus of the committee to defer the following agenda items until the next regularly scheduled meeting:

- Development Review Process
- Modernizing the Motor Vehicle Act to Improve Safety
- Hotel Motion Update

The items were deferred and will be brought forward as part of the May 10th agenda.

The meeting adjourned at 6:45p.m., and the next meeting is scheduled for Thursday, May 10, 2018.

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Councillor Brownoff, Chair

I hereby certify these Minutes are accurate.

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Committee Secretary

MINUTES
PLANNING, TRANSPORTATION AND ECONOMIC DEVELOPMENT ADVISORY COMMITTEE
Held at Saanich Municipal Hall, Committee Room No. 2
May 16, 2018 at 5:00 p.m.

Present: Councillor Judy Brownoff (Chair) Sophia Baker-French, Lois-Leah Goodwin, Peter Pokorny

Staff: Harley Machielse, Director of Engineering; Troy McKay, (A) Mgr. Transportation and Development Services; David Williams, Engineering Supervisor; Maggie Baynham, Senior Sustainability Planner and Jeff Keays, Committee Clerk

Regrets: Suzanne Bartel, Bill Mumford, Andrea Mercer, Travis Lee, Peter Rantucci

Guests: None

THE MEETING WAS CALLED TO ORDER AT 5:15PM. THE COMMITTEE DID NOT HAVE QUOROM. ALL ITEMS WERE FOR INFORMATION ONLY

MINUTES

The minutes of the April 12, 2018 Planning Transportation and Economic Development Advisory Committee were not adopted as the committee did not have quorum. The item is deferred until the next regularly scheduled meeting.

The Chair sought the concurrence of the members in attendance in order to revise the agenda to provide an opportunity for the Director of Engineering to speak to the Modernizing the Motor Vehicle Safety Act to Improve Safety.

MODERNIZING THE MOTOR VEHICLE ACT TO IMPROVE SAFETY

The Director of Engineering provided the committee with a brief overview of the potential challenges and impacts of lower the speed limits on residential streets. The following highlights are noted:

- Staff generally support the concept.
- Lowering speed limits on residential streets is in accordance with the natural hierarchy of roads – local roads, lower speeds – this is a common practice
- As it has been well established that lower speeds reduce collision risk, and considering the policy environment, it is a logical recommendation to lower speed limits on those streets with no centre line.
- Current default speed limit is 50km.
- Broad changes to speed limits without changes to the Motor Vehicle Act would be onerous and would require that each street be signed and identified by Bylaw. Also, changes to speed limits will continue to be inconsistent across the region.

Committee discussion followed the overview. The following highlights are noted:

- Victoria, Vancouver and the Lower Mainland are supportive of the concept.
- It is unclear if any municipalities are taking resolutions to UBCM.

- The item is before committee as there have been numerous requests to lower speed limits on residential streets.
- Transportation demands have changed dramatically in recent years.
- The Active Transportation Policy Council does not have the unanimous support of all road users.
- Smaller municipalities may be negatively impacted by a blanket policy change.
- Reducing the default speed limit to 30km presents as opportunity to improve road safety while at the same time reducing the costs associated with signage and bylaw changes.
- There are multiple benefits to adding a value statement regarding road user safety to the OCP.

ACTIVE TRANSPORTATION PLAN UPDATE

Troy McKay, (A) Manager - Transportation and Development Services introduced the Active Transportation Plan (ATP) Update before turning the presentation over to David Williams, Engineering Supervisor, who provided an overview of the plan. The following highlights are noted:

- Staff are in the final phase of the plan development process. The item will proceed to Council on June 18, 2018.
- The purpose of the plan is to guide the development, promotion and implementation of safe, attractive and convenient transportation in Saanich to the year 2050.
- The goals of the ATP are to:
  - Build a culture for active transportation
  - Observe a significant shift to active modes of transportation.
  - Improve safety of people using active transportation modes.
  - Create more connections and places walking and cycling.
- Targets of the ATP are:
  - Safety: Work towards zero traffic-related fatalities or serious injuries (vision zero).
  - Mode share: Double the proportion of trips made by sustainable transportation by 2036.
- Staff will employ the following strategies and actions to achieve these goals and targets:
  - Connections – establish a complete, connected and high-quality active transportation network throughout Saanich.
  - Convenience – make walking, cycling and taking transit convenient and viable forms of transportation.
  - Culture – make walking and cycling and taking transit a normal part of everyday life in the District of Saanich.
- Staff undertook considerable public consultation on the development of the plan including (but not limited to):
  - On-line surveys (2)
  - 10 pop-up engagements
  - 2800 conversations at 33 public events
  - 120 participants in stakeholder workshops
  - 4 Project Advisory Committee meetings
- A survey identified expanding the bicycle network and expanding the sidewalks network as the two highest spending priorities.
- In developing priorities and work plans staff will focus their work where they've heard it is needed and prioritize actions that have the greatest effect first.

- Final report to Council will include rationale, network maps, and short/medium and long-term priorities
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STEP CODE – FINAL RECOMMENDATION

Maggie Baynham, Senior Sustainability Planner, provided the committee with an overview of the BC Energy Step Code - Draft Recommended Approach. The following highlights are noted:

- Feedback from Phase 1 of engagement and the proposed approach were presented to Council in January 2018. Staff received council direction to engage industry in a second phase of engagement on the proposed approach
- Phase 2 was initiated with a number of engagement events, the purpose was to seek feedback from the industry representatives on the proposed approach to implementation.
- Phase 2 engagement results included (but not limited to):
  - Support for an interim Step 1 period (learning opportunity)
  - General agreement to move from Step 1 to Step 3.
  - Some concerns about cost and affordability.
  - Mixed feedback on lead-in time for Step 3 - particularly Part 3 buildings
  - General support for the process and mid-construction blower door test.
  - Mixed feedback on proposed rebate.
  - Desire for Energy labelling to communicate the benefits.
  - Timeline for Step 3 viewed too fast for some (Step 3 for part 3 high rise concrete and commercial).
- There were potential design and cost implications for Part 3 concrete high-rise and commercial buildings meeting Step 3 – as a result, the recommend approach was amended, as discussed below.
- Currently 25 BC municipalities, representing > 60% of the Provinces residential permits have given their initial notification to consult.
- 6 municipalities have given final notification (enacted).
- Following Phase 2 Industry engagement, and in response to industry feedback, staff amended the draft approach to recommend adoption of the following:

All Part 9 Excluding small SFD	Part 9 Small Single Family	Part 3 Wood-frame mid-rise residential (<6 storeys)	Part 3 Concrete high-rise residential (>6 storey's), commercial & office
Step 1 Nov 2018	Step 1 Nov 2018	Step 1 Nov 2018	Step 1 Nov 2018
Step 3 Jan 2020	Step 2 Jan 2020	Step 3 Jan 2020	Step 2 Jan 2020

- Step 1 (in place Nov 1 to January 2020) will be a step down from requirements Saanich often negotiates during development processes (e.g. Built Green Gold, EnerGuide 82).
- Step 3 will be similar to current requirements (20% improvement in energy efficiency vs. 15%) with a performance based approach (enhanced compliance).
- The impact of Step Code on construction costs were extensively vetted by industry and were considered as part of the 2017 Metrics Research

Report, the largest energy modelling exercise for a building code in Canada.
- 15 building archetypes for Part 9 and Part 3 for all BC climate zones were tested.
- Excluding small single family dwellings, the lower steps result in a <1.1% increase in costs.
- There is an opportunity to review and update the Saanich Sustainability Statement to reference Step Code requirements and to also review the bylaws and policies to align and support higher levels of energy efficiency**.**
- Staff presented the draft recommendation (as highlighted in above chart)
- Item will proceed to Council (TBD)

Committee discussion followed the presentation, the following highlights are noted:
- Builders are responsible for paying for the compliance audit, avg. value is $1100.
- Audits will be conducted by certified energy advisors, registered with Natural Resources Canada (NRCan) with quality assurance provided by a licensed third party service organization.
- Province is currently undertaking a review of the Professional Reliance Model.
- There is a need for enhanced consumer literacy with regard to home energy consumption/performance.
- Labels are an important mechanism for communicating important consumer data like energy consumption, and operating costs.
- Staff are working with other municipalities on energy labelling (e.g. energy consumption/cost of operation) as there is currently no requirement for labelling disclosure for homes.
- Information regarding the efficiency and performance of the homes systems are important; however, affordability and savings are the data sets consumers really want.
- There are champions for labelling amongst the Real Estate community.

Following the BC Energy Step Code Overview presentation the Chair sought the consensus of the committee members in attendance to defer the following agenda items until the next regularly scheduled meeting:
- Development Review Process
- Hotel Motion Update

The items were deferred and will be brought forward as part of the May 10th agenda.

The meeting adjourned at 6:45p.m., and the next meeting is scheduled for Thursday, June 14, 2018.

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Councillor Brownoff, Chair

I hereby certify these Minutes are accurate.

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Committee Secretary

COMMUNITIES ON THE MOVE DECLARATION: CREATING SMART, FAIR AND HEALTHY TRANSPORTATION OPTIONS FOR ALL BC COMMUNITIES

VISION

We envision that in 10 years, across BC - in communities small and large, it will be easy, safe and enjoyable to get around, whether by walking, biking, ride-sharing, by public transit or in a wheelchair. We want to see the provincial government making progressive investments that support active, connected and healthy communities.

This vision is guided by the following VALUES:

- Healthy Communities: Safe biking and walking routes, good street design and regular transit should be available to all British Columbians so that it's easy to be active and healthy. This can also make it easier for people to be socially connected which is important for good mental health.

- Mobility for All: A range of transportation options should be available to all British Columbians – including those who live in smaller communities, and vulnerable groups such as children, older adults and those with disabilities or low incomes, as well as non-drivers – so that everyone can have access to education, employment, shopping, healthcare, recreation, cultural events and social connections.

- Clean Air and Environment: Public transit and active modes of transportation should be available to all British Columbians as these can reduce local air pollution and carbon emissions that contribute to climate change.

- Economic Opportunities and Cost Savings: Active and public transportation facilities are smart investments as they can stimulate local business and tourism in communities of all sizes. These investments can also control rising healthcare costs because regular physical activity keeps people healthier and out of the healthcare system.

- Consideration of Community Needs: All BC communities should have a range of convenient, affordable transportation options that are tailored to their context – whether urban or remote, dense or dispersed, small or suburban.

- Safety for All Road Users: The design and rules of the road should ensure that all British Columbians can arrive at their destination safely.

How do we get there?

- **A Provincial Active Transportation Strategy**
  - Invest $100M per year over the next 10 years to support the development of local cycling and walking infrastructure within a larger provincial network. Prioritize the completion of connected cycling and walking transportation networks.
  - Develop an Active Transportation unit within the Ministry of Transportation and Infrastructure to provide professional planning and policy expertise at the provincial level.
  - Invest in Active School Travel Planning and standardized cycling education for healthy, active children.

- **Investment in Transit**
  - Invest in the full implementation of the BC Transit Strategic Plan 2030 and local governments' 'Transit Future Plans' to grow transit service and meet local needs.
  - Ensure a fair share of capital funding and secure, predictable revenue tools for the full implementation of the TransLink Mayors' Council 10-Year Vision.
  - Continue and expand the universal bus pass (UPASS) program to students and employees of post-secondary institutions.
  - Invest in public transportation systems that serve small, rural, remote and isolated communities such as the use of school buses and bus services that feed into regional centres.

- **Commitment to Equity**
  - Ensure transit accessibility for people on disability assistance by increasing the affordability of transit passes.
  - Improve handyDART service to meet demand and to expand accessibility to evenings, Sundays and holidays.
  - Ensure funding is allocated geographically and equitably across the province. Recognize infrastructure deficits for pedestrian, cycling and transit modes as well as limitations faced by rural, remote, geographically isolated and small communities as part of funding criteria.

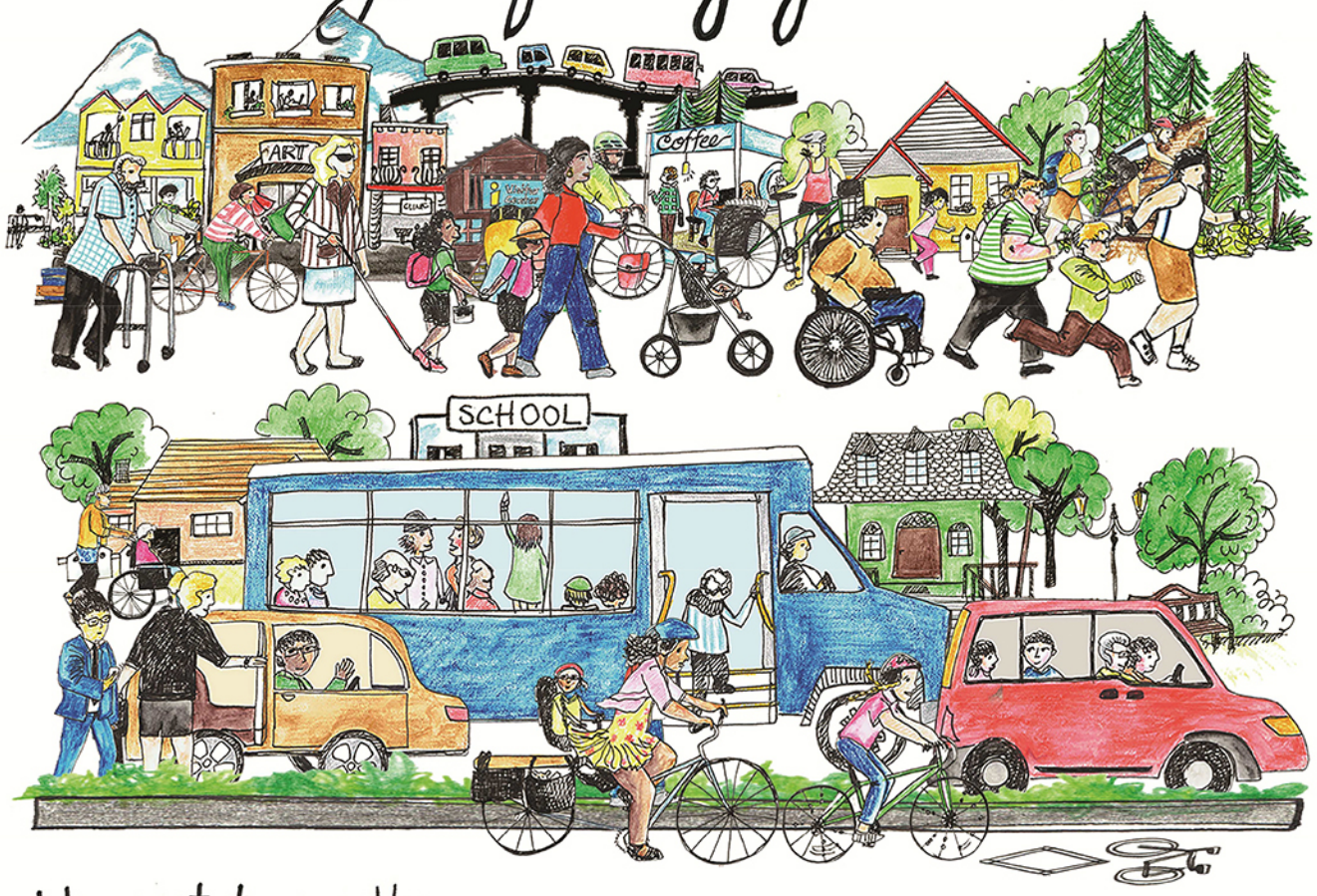
- **Consideration of Regional Needs**
  - Work with local governments to establish a Rural Transportation Strategy. Develop and invest in innovative community transportation systems, ride-sharing, tele-services and telecommuting options that can serve rural and remote British Columbians.
  - Develop and support the implementation of Winter City Guidelines that give residents the opportunity to be active all year long. This should include operational measures such as snow-clearing for active transportation networks and improved winter road maintenance.
  - Support the Metro Vancouver Mayor's Council to pursue alternative funding mechanisms.

- **Commitment to Safety**
  - Support the BC Road Safety Strategy Vision Zero: work with partners to create safer streets and to eliminate fatalities and serious injuries on the roads of BC. Speed limits should be reduced and strictly enforced, including through the use of cameras and other proven safety measures.
  - Prioritize safety measures for vulnerable road users such as pedestrians, cyclists and those in wheelchairs and mobility devices.

Communities ON THE MOVE

BC Alliance for Healthy Living

We envision that in 10 years neighbourhoods across BC will be connected by transportation systems that make it **easy, safe & enjoyable** to get around.



We want to see the PROVINCIAL GOVERNMENT making SMART INVESTMENTS that support complete communities & a wide range of mobility needs.

ENDORSERS

The following organizations have endorsed the Communities on the Move Declaration:

1. Alberni-Clayoquot Regional District
2. AMS Bike-Co-op
3. BC Healthy Communities Society (BCHC)
4. BC Lung Association
5. BCIT Green Team
6. BCIT Bicycling Committee
7. BC Recreation and Parks Association
8. Better Environmentally Sound Transportation (BEST)
9. Better Transit Alliance of Greater Victoria
10. Bike Doctor
11. BikeMaps.org
12. Biko
13. Bowen Island Municipality
14. British Columbia Chiropractic Association
15. British Columbia Cycling Coalition
16. Camosun Cycling Club Partnership
17. Canadian Cancer Society, BC and Yukon Division
18. Cardea Health Consulting Inc.
19. Cascadia Collaborative
20. Capilano Students' Union
21. car2go
22. City of Courtenay
23. City of Dawson Creek
24. City of North Vancouver
25. City of Parksville
26. City of Penticton
27. City of Rossland
28. City of Vernon
29. City of Victoria
30. COSCO (Council of Senior Citizens' Organizations of BC)
31. Cycling Without Age Victoria
32. DASH BC
33. David Suzuki Foundation
34. Delta Seniors Planning Team
35. Diabetes Canada BC and Yukon
36. Disability Alliance BC
37. District of Tofino
38. District of Ucluelet
39. Ecopath Planning
40. Exercise is Medicine on Campus, University of Victoria
41. Greater Nanaimo Cycling Coalition
42. Greater Victoria Cycling Coalition
43. Handy Dart Riders' Alliance
44. Hastings Crossing Business Improvement Association
45. HCMA Architecture & Design
46. Human Data Commons Foundation
47. Health Officers Council of BC
48. Heart and Stroke Foundation, BC and Yukon
49. HUB Cycling
50. Lake Country Planning Society
51. IBI Group
52. Modacity
53. Modo
54. Mountain Equipment Co-op
55. Multiple Sclerosis Society of Canada, BC & Yukon Division
56. North Okanagan Coalition for Active Transportation (NOCAT)
57. North Shore Safe Routes Advocates
58. North Shore Safety Council
59. Okanagan Boys and Girls Clubs
60. Pacific Blue Cross
61. Parksville and District Chamber of Commerce
62. Perkins + Will
63. Power to Be
64. Public Health Association of BC (PHABC)
65. Reckless Bike Stores
66. Renewal Funds
67. Resort Municipality of Whistler
68. Rethink Urban
69. Sechelt Downtown Business Association
70. Sik-E-Dakh Band Administration
71. Society Promoting Environmental Conservation (SPEC)
72. Squamish-Lillooet Regional District
73. Surrey Board of Trade
74. The Bike Kitchen
75. Third Wave Cycling Group Inc.
76. Town of Creston
77. Town of Gibsons
78. Town of Golden
79. Trails Society of British Columbia (Trails BC)
80. TRU Bike Club
81. viaSport BC
82. Village of Burns Lake
83. Village of Cumberland
84. Village of Keremos
85. Village of Tahsis
86. Village of Queen Charlotte
87. Walk on Victoria
88. Wesgroup
89. Wilderness Committee

CITY OF VANCOUVER

ACTIVE TRANSPORTATION POLICY COUNCIL

February 7th, 2018

Hon. John Horgan, Premier of the Province of British Columbia
Hon. Claire Trevena, Minister of Transportation & Infrastructure
Hon. Mike Farnworth, Minister of Public Safety and Solicitor General
Hon. David Eby, Attorney General
Hon. Bowinn Ma, Parliamentary Secretary for Translink
Hon. Rich Coleman, Leader of the Official Opposition
Hon. Jordan Sturdy, Opposition Critic for Transportation and Infrastructure
Hon. Andrew Weaver, Leader of the Green Party of British Columbia

Dear Sir/Madam,

RE: Modernizing the Motor Vehicle Act to improve safety

The Active Transportation Policy Council is a civic agency appointed by Vancouver City Council to advise on strategic priorities relating to walking, cycling, public transit and all active transportation modes in Vancouver.

We write to you to support and endorse Modernizing the BC Motor Vehicle Act to increase safety for our most vulnerable road users. The BC MVA was passed in 1957 with motorists in mind, and has not had any significant change since. The BC MVA does not provide adequate protection for pedestrians, cyclists, and children, and does not support the BC Government's "Vision Zero" plan to eliminate road-related injuries and deaths by 2020.

The Road Safety Law Reform Group of British Columbia, representing over 50,000 members, has published a Position Paper entitled, "Modernizing the BC Motor Vehicle Act". The position paper outlines 26 recommendations for change, including the reduction of speed limits to 30km/hour on neighbourhood streets. Reducing speed limits will reduce injuries and deaths. In London, the creation of 20 miles/hr (32 km/hr) zones was associated with a 42% reduction in road casualties. Lower speed limits have broad backing including the BC Provincial Health Officer, the World Health Organization and numerous health agencies. In addition, we believe that most people want slower speeds in their neighbourhoods. In a 2013 survey by the Canadian Automobile Association, 94% of respondents reported that speeding on residential streets was a serious threat to their personal safety.

City of Vancouver, City Clerk's Department
Legislative Operations
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4 Canada
tel: 3-1-1, Outside Vancouver 604.873.7000 *fax:* n/a
website: vancouver.ca

We believe that by changing the BC Motor Vehicle Act to the BC Road Safety Act and enacting the recommendations of the Road Safety Law Reform Group will prevent injuries and deaths and protect our most vulnerable road users.

Yours truly,

Tanya Paz, Chair
Active Transportation Policy Council
e-mail: info@vancouver.ca
tel: 604.873.7011
fax: 604.873.7419

Copies to: Mayor and Councillors
City Manager
Janice MacKenzie, City Clerk

Modernizing the BC *Motor Vehicle Act*

Position Paper

of the

Road Safety Law Reform Group of British Columbia

June 1, 2016

Endorsed by HUB Cycling, The British Columbia Cycling Coalition and the Trial Lawyers Association of British Columbia

Executive Summary

The Road Safety Law Reform Group[1] is a British Columbian consortium of representatives from the legal community, cycling organizations and research institutions. We support the BC government's "Vision Zero" plan to make BC's roads the safest in North America and eliminate road-related injuries and deaths by 2020.

We seek to make roads safer for vulnerable road users—including pedestrians, cyclists and children—by advocating for evidence-based reforms that will modernize the province's rules of the road in accordance with the BC government's vision. We have identified 26 recommendations for changes to British Columbia's traffic legislation.

Modernizing the Motor Vehicle Act

BC's *Motor Vehicle Act* (the "MVA" or the "Act"), as its name suggests, was written with motorists in mind. Rules for cyclists were largely confined to a section titled "Bicycles and Play-vehicles." The MVA was passed in 1957 and has changed surprisingly little since.

Changes to the Act are required if BC is to meet its "Vision Zero" road safety targets. Decades' worth of evidence has shown that cyclists and other vulnerable road users are not adequately protected by the nearly 60-year-old Act. The transportation environment has evolved since 1957. Cycling in particular has become an established and growing form of transportation, with significant and compounding environmental, economic and public health benefits. A quarter of BC residents now cycle weekly or daily and cycling is the fastest growing mode of transportation in Metro Vancouver.

With reform either recently completed or pending in Canada's two most populous provinces—Ontario and Quebec—British Columbia has an opportunity to capitalize on momentum. To achieve the safest roads in North America, BC too will need to align its laws with recommended cycling practices and promote behaviours that reduce collisions, injury and death.

Research-Based Recommendations for Reform

The guiding principles and specific recommendations set out in this Position Paper are based on scientific and legal research, recognized best safety practices, and the experiences of BC road users. The City of Vancouver is not a formal member of the consortium but has participated informally in support of reforms aligned with the City's Transportation 2040 policy toward an inclusive, healthy, prosperous, and livable future. Similarly, TransLink, in their Regional Cycling Strategy, endorsed amending the Act to:

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[1] The Road Safety Law Reform Group is chaired by David Hay Q.C., and consists of:

- Erin O'Melinn - Executive Director HUB Cycling
- Kay Teschke - Professor, School of Population and Public Health, The University of British Columbia
- S. Natasha Reid - Lawyer
- Arno Schortinghuis - President of the British Columbia Cycling Coalition (BCCC)
- Colin Brander - Treasurer of the BCCC
- Richard Campbell - Third Wave Cycling
- Nate Russell - Lawyer

- clarify the distinct needs, rights and responsibilities of the different classes of road users,
- provide enhanced legal protection for vulnerable road users, and
- allow and clearly define conditions to implement road safety measures such as speed limits.

Aims of Reform

Equality before the law is a guiding principle for law reform. This requires taking into account the *capabilities* and *vulnerabilities* of all road users, not only motorists. That legislation crafted in the 1950s fails to equally address vulnerable road users today is not surprising. It is, however, a good reason to look at meaningful reforms to the Act.

The aims of reform include the following, many of which are interdependent:

- clarifying the rights and duties of road users to improve understanding and compliance and reduce conflict between all road user groups,
- acknowledging the fundamental differences between road user groups' capabilities and vulnerabilities, and recognizing the increased risks faced by more vulnerable classes of road users,
- aligning the law with best practices for safer road use by vulnerable road users,
- reducing the likelihood of a collision involving a vulnerable road user,
- prioritizing enforcement of laws that target activities most likely to result in collisions, injuries and fatalities, and
- reducing the likely severity of injuries resulting from collisions involving vulnerable road users.

Summary of Proposed Reforms

The proposed reforms are set out in five sections.

Section 1: Change the Name of the Act

Section 1 recommends changing the name of the Act to one reflective of the law's essential purpose. Renaming the *Motor Vehicle Act* to the *Road Safety Act* would be a symbolic step in support of the BC Government's "Vision Zero" plan and increase public awareness by emphasizing safety.

Section 2: Amend Rules of General Application

Section 2 addresses amendments to rules of general application, including:

- adopting appropriate classifications for different road user groups, and
- empowering (while reducing the burden upon) municipalities to set suitable speed limits within municipal boundaries.

Section 3: Add Rules to Improve Cyclist Safety

Section 3 sets out amendments specific to driving and cycling behaviours. The proposed reforms include:

- a safe passing distance law,

- clarifying cyclist lane positioning at law,
- clarifying rights of way in commonly problematic situations, in particular where motorists turn across cyclist through-traffic; and
- clarifying when a cyclist may pass on the right.

Section 4: Add Rules for Cyclist-Pedestrian Safety

Section 4 is specific to cyclist-pedestrian interactions as they occur on sidewalks or in crosswalks.

Section 5: Add Fines for Violations that Threaten Vulnerable Road Users

Section 5 proposes amendments to the fines for violating MVA provisions that relate to vulnerable road users.

The proposed reforms would increase safety for vulnerable BC road users while promoting clarity, awareness and compliance with laws among all road user groups.

Contents

Introduction

The BC *Motor Vehicle Act* (the "MVA" or the "Act") was originally passed in 1957.[2] As the Act's name suggests, it was written with motorists in mind. It reflected the transportation environment of its time. But we now know, with the benefit of decades of scientific evidence, that it does little to protect vulnerable road users such as cyclists and pedestrians on today's roads.[3]

The BC government has set its "Vision Zero" plan to eliminate road-related injuries and deaths by 2020. For this to be accomplished, the MVA should be amended to protect vulnerable road users and encourage modes of transportation that yield environmental, economic and public health benefits, such as walking and cycling.

This position paper from the *Road Safety Law Reform Group*, a coalition of organizations seeking to make roads safer, contains evidence-based proposals for law reform.

An increasing number of British Columbians choose to cycle for transportation. Available data and anecdotal reports suggest the vast majority of cyclists are also motorists,[4] and most British Columbians ride bicycles at some point in their lives. Approximately 67% of adults in BC ride a bicycle at least once a year, 42% at least once a month and 25% at least once a week.[5] More would choose this option if the roads were safer for them.

The issue of MVA law reform interaction is therefore not a question of one group versus another, but about protecting British Columbians in the moments that they are vulnerable as road users, whether on foot or on a bicycle.

Other jurisdictions have modernized their laws to clarify the rights and responsibilities between motorists and cyclists, to align traffic laws with recommended cycling practices, and to ensure that the laws remain equitable for vulnerable road users. The time is right for BC to do the same.

The proposed reforms contained in this position paper have been developed following a review of the legislative history and jurisprudence, available scientific evidence, and the reported experience of BC road users. While the recommendations are in some cases

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[2] *Motor-vehicle Act,* SBC 1957 c. 39 now *Motor Vehicle Act*, RSBC 1996 c. 318

[3] British Columbia, Ministry of Health, *Where the Rubber Meets the Road*, (Office of the Provincial Health Officer, March 2016) [*Where the Rubber*]: http://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/annual-reports/reducing-motor-vehicle-crashes-bc.pdf

[4] Peter A. Cripton, et al. "Severity of urban cycling injuries and the relationship with personal, trip, route and crash characteristics: analyses using four severity metrics." *BMJ open* 5.1 (2015): e006654: http://bmjopen.bmj.com/content/5/1/e006654.full. See also Robert G. Wyckham & Sarah K. Wongkee, *Cycling Safety Issues in North and West Vancouver,* (Norwest Cycle Club, October 2013), unpublished: http://www.cnv.org/~/media/2ACEC4C6349344EFAA1E86853547DB65.pdf

[5] Andrea O'Brien, *British Columbia Cycling Coalition: Cycling Poll, 2013*, (NRG Research poll commissioned by BC Cycling Coalition, April 2013): http://bccc.bc.ca/reports/bc-cycling-poll.pdf

related to one another, the proposals may generally be viewed as capable of enactment on a stand-alone basis.

Part I: The Case for Reform

A. BC Traffic Laws are Overdue for Modernization

Vulnerable Road Users Face Increased Risk

British Columbia's traffic environment has changed significantly over 60 years, but the rules respecting people riding bicycles have not changed substantially since 1957 when the Act came into force with a section titled "Bicycle and Play-vehicles". That section established special rules for cyclists to be followed in addition to general rules of the road.[6] Bicycles are not considered "vehicles" under the Act, but someone operating a cycle has the same rights and duties as a driver of a vehicle. As this position paper discusses, the interaction between these sets of *special* and *general* rules creates confusion, risk and contradiction of best practices for cycling in traffic in some cases.

The risks caused by antiquated rules of the road are not the only factors of risk, of course. Infrastructure, geography and weather are also risk factors.[7] But legislated rules are man-made risks that can be remedied and made to apply immediately throughout BC. They complement infrastructure changes and educational programs to increase safety.

ICBC data shows that cyclists, pedestrians and motorcyclists face an inherently greater risk of death or injury in an accident with a motor vehicle relative to the motor vehicle's occupants.[8]

The BC Government's own BC Road Safety Strategy research, updated in January 2016, states that "pedestrians and cyclists are very vulnerable road users, and advances in safety for these groups are needed." The 2016 update acknowledges that "as a proportion of total serious injuries involving motor vehicle crashes, cyclists actually constitute an increasingly greater share."[9]

A review of the applicable legislation, the BC jurisprudence and the best available evidence illustrate both the challenges and opportunities for people bicycling in BC as their presence on the road increases.

A BC cyclist certainly faces higher likelihoods of injury and death than a BC motor vehicle occupant for the same distance travelled. In addition, a BC cyclist's risk of death is considerably higher than a cyclist in jurisdictions with more advanced policies.[10]

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[6] Section 166 of the 1957 *MVA* is now s. 183 of the *MVA*.

[7] British Columbia, Ministry of Public Safety and Solicitor General, *Moving to Vision Zero: Road Safety Strategy Update and Showcase of Innovation in British Columbia*, (RoadSafetyBC, January 2016), at 44 [*Moving to Zero 2016*]: http://www2.gov.bc.ca/assets/gov/driving-and-transportation/driving/publications/road-safety-strategy-update-vision-zero.pdf

[8] Refer to Part II, Section 2: General Rules, below.

[9] *Moving to Zero 2016*, at 44-45.

[10] Kay Teschke, et al. "Exposure-based traffic crash injury rates by mode of travel in British Columbia." *Can J Public Health* 104.1 (2013) [*Injury by Mode of Travel*]: e75-9.

Upgrades to infrastructure, while certainly an improvement to cycling safety as the City of Vancouver appears to have demonstrated,[11] are far from the only opportunity for improvement. For certain issues, law reform may be the sole means for change. In addition, infrastructure changes are best complemented by legal reforms that recognize their place in the road system.

The jurisprudence in BC reveals that modern best cycling practices are often at odds with legislation drafted nearly 60 years ago. This can place an unnecessary dilemma on cyclists who may choose to operate *either* according to safer cycling practices *or* to the letter of the law, but often not both. This disconnect also perpetuates the stigma that cyclists are "scofflaws" when they do not follow the rules of the road, rather than road users engaging in reasonable safe practices.[12]

When a claim for injuries arises, cyclists can be deprived of a remedy if they were contributorily negligent for violating a technical rule of the road even where they were operating according to acknowledged safer cycling practices. This is discussed further in the sections below.

Safety Risks and Laws that Deter Cycling

Fear about safety is a key deterrent to Metro Vancouverites getting on their bicycles.[13] This unfortunate situation is self-perpetuating. Cyclists are safer the more of them share the road. Fewer cyclists means increased risk, which in turn adds to safety fears. The result is a sequence of reciprocal cause and effect in which fear and low cycling rates aggravate one another. What could be more safe for a greater number of people becomes less safe for fewer.

There is clear room for improvement. Cycling is not as safe in BC as it is in many countries that report higher cycling rates. The fatality rate for BC cyclists is estimated to be 2.6 per 100 million km, significantly higher than fatality rates in Germany, Denmark and the Netherlands, which report 1.7, 1.5, and 1.1 cyclist fatalities per 100 million km, respectively. Fatalities for cyclists are significantly higher than the estimated 1.0 per 100 million km fatality rate for motor vehicle occupants in BC.[14]

Cycling has gained legitimacy, the traffic environment has matured and safe cycling research has illuminated best practices. Fortunately, it will not entail extreme changes to improve the old laws.

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[11] Vancouver has numerous infrastructure programs and has seen an increase in cycling commuters but an otherwise stable number of annual collisions (i.e. an overall declining rate of collisions). See: City of Vancouver, *Cycling Safety Study, Final Report*, (January 2015) at 15 [*Vancouver Cycling Report 2015*]: http://vancouver.ca/files/cov/cycling-safety-study-final-report.pdf

[12] *Vancouver Cycling Report 2015*, *ibid.* at 2: "societal perceptions and attitudes towards cycling may discourage some people from cycling."

[13] Meghan Winters, et al. "Motivators and deterrents of bicycling: comparing influences on decisions to ride." *Transportation* 38.1 (2011): 153-168. See also *ibid.* at 3.

[14] *Injury by Mode of Travel, supra* note 9.

Traffic has Changed

The key statutory provision governing cyclists today is s. 183 of the MVA. It is the indirect successor to s. 166 of the *Motor-vehicle Act*, SBC 1957 c. 39, which implemented the legislative framework still recognizable today. The rules set out in s. 183 have been carried forward from fragmented sources generally dating to the first half of the 20th century, a period when there were fewer than 200,000 total registered road vehicles in British Columbia, many likely foreign vehicles registered but not typically used within the province.[15] Yet cycling for transportation has changed significantly in the nearly 60 years since the statutory framework governing "bicycles and play-vehicles" first came into force under the MVA.

The number of motor vehicles on the province's roads has exploded since that time: as of 2014, there were just over 3 million registered road vehicles in British Columbia, of which approximately 160,000 are "heavy" vehicles in excess of 4,500 kg.[16]

Cycling has also changed. "Travel to Work" data from Statistics Canada shows that cycling was fairly insignificant 40 years ago: less than 0.3% of Canadians reported cycling as their principal method of commuter transportation in 1976. In 1984 motorcycles and bicycles *combined* still only accounted for less than 0.4% of commuter transportation. Then cycling among commuters more than tripled over 20 years. In 2006 and also in 2011 about 1.3% of Canadians cycled to work.[17] A quarter of BC residents now cycle weekly or daily. Cycling is the fastest growing mode of transportation in Metro Vancouver.[18]

BC is more than typically bicycle-focused, with 2.1% of the workforce commuting by bike. The cities of Revelstoke, Victoria, and Oak Bay had the highest commuter cycling rates in the country in 2011, with 10 to 12% of commuters reporting cycling as their primary means for transport.[19] Several other BC cities have commuter cycling levels higher than the provincial average, including Courtenay (2.4%), Squamish, Kelowna and Penticton (all at 3.5%); Nelson (3.8%), Terrace and Smithers (both at 3.9%), Comox (4.2%), Vancouver (4.4%), Saanich (5.4%), Esquimalt (6.4%) and Whistler (8.1%).

Despite cycling's growing place in BC transportation, it is not where it could be given the various benefits that cycling offers. Bicycling is underused for transportation in

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[15] Statistics Canada, "Motor vehicle registrations, by province", tables T147-194: http://www.statcan.gc.ca/pub/11-516-x/sectiont/4147444-eng.htm. For 1975, *Road Motor Vehicles, Registrations*; for 1960 to 1974, *The Motor Vehicle: Part III, Registrations*, annual issues 1960 to 1974; for 1948 to 1959, *The Motor Vehicle*, each annual issue; for 1945 to 1947, *The Motor Vehicle in Canada*, annual issues; for 1935 to 1946, *The Highway and Motor Vehicle in Canada*, annual issues; for 1904 to 1934, *The Highway and the Motor Vehicle in Canada*, 1934, table 6, pages 12-17; for 1903, *Ontario Ministry of Transportation and Communications*. Tables T147-194. Motor vehicle registrations, by province, 1903 to 1975

[16] Statistics Canada, "Motor vehicle registrations, by province and territory (Saskatchewan, Alberta, British Columbia)": http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/trade14c-eng.htm

[17] These figures are from Statistics Canada's 2006 Census and the 2011 National Household Survey.

[18] *Vancouver Cycling Report 2015*, *supra* note 10.

[19] Statistics Canada, "Commuting to work." *National Household Survey (NHS), 2011*: http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-012-x/99-012-x2011003_1-eng.pdf

Australia, Canada, Ireland, the United States, and the United Kingdom, constituting an estimated 1% to 3% of trips, compared with 10% to 27% of trips in Denmark, Germany, Finland, the Netherlands, and Sweden.[18] Safety is one of the most frequently cited deterrents to cycling: cyclist injury rates are higher in countries where cycling for transportation is less common.[20]

Navigating a roadway in BC is a dynamic exercise for all users but it can be a particularly challenging exercise by bicycle. It is not uncommon for cycling conditions to change frequently along a given route, as lane and shoulder widths change, road surfaces are cracked and patched, drainage gratings and utility access ports rise and sink, bike lanes (where they exist) come to an abrupt end or interruption, and all manner of large and small debris occupies the edge of the roadway. A person cycling in such dynamic conditions must evaluate and respond to the changing circumstances as best they can, all while taking into account dynamic vehicular traffic and parked cars. A cycling experience may not be at all comparable to a driving experience along the very same stretch of roadway.

Many cities throughout the province are making special efforts to increase cycling by providing designated cycling infrastructure, such as separated bike lanes along major streets, residential street bike routes and off-street bike paths. Some of this infrastructure, however, is not integrated into the Act and there is a disarticulation between the work municipalities are doing and the laws at the provincial level.

Cities are increasingly integrating measures designed to increase awareness and safety for cycle traffic into existing motorist and pedestrian infrastructure. Such measures include bike boxes, bike-specific traffic signals, and painting of high-conflict zone areas. Where these measures have no clear legal import or standing, the laws should be clarified.[21]

How the Act Stagnated

The historic statutory framework approached cycling as a play-time activity rather than a mode of public transportation. Virtually all of the rules in s. 183 of the MVA significantly pre-date the modern urban and traffic environment.

A brief history of bicycle law in BC is as follows:

- In the late 1800s, a patchwork of provincial and municipal rules in Canada and the United Kingdom arose to address the presence of bicycles upon the roadways of horsemen and carriages. Some of the rules found in s. 183 of the MVA originated in this period, including rules requiring bicyclists to stay to the right and to use a bell or a lamp at night.

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[20] Kay Teschke et al., "Route infrastructure and the risk of injuries to bicyclists: a case-crossover study." *American Journal of Public Health* 102.12 (2012); 2336-2343.

[21] Further, the effectiveness of some measures has not been demonstrated or has even been contradicted. For example, research to date has tended to show that *sharrows* (road markings depicting double chevron lines over a bicycle icon) do not improve safety for cyclists. See M. Anne Harris, et al. "Comparing the effects of infrastructure on bicycling injury at intersections and non-intersections using a case–crossover design." *Injury Prevention* 19:5 (2013): 303-310.

- In 1913, cyclists became *de facto* road users in BC, when they were banned from provincial sidewalks.[22] Despite their relegation to the roadways, cyclists were not given any corresponding legislative status as vehicles.
- From the 1920s to 1940s, rules developed prohibiting cyclists riding two abreast, trailing on the back of vehicles or streetcars, carrying more than one rider, ride without due care, and to failing to remain and report at the scene of an accident.

The rules in s. 183 of the MVA—*other than* subsection 183(1) imposing the same rights and duties on cyclists as motorists—reflect historical rules prior to 1950. Those rules generally reflect two aims: to prohibit cyclists from playing carelessly in traffic and to mandate that they stay out of the way of legitimate traffic.

The 1957 MVA legitimized cycling on the province's roads but this also resulted in the blanket imposition that the same rights and duties designed for motorists be applied to cyclists. These rules had developed in relation to the streetcar and horse-and-carriage traffic of the earlier part of the 20th century. The blanket imposition of motorist rights and duties upon cyclists was neither designed nor intended to reflect or accommodate cycling-specific capabilities or vulnerabilities; it was simply expedient.

Since the enactment of the MVA in 1957 some reforms have been designed to alter the habits of motorists in other traffic contexts. Impaired driving laws are one obvious example, but the *yield to bus* provisions of 1998[23] and the newer distracted driving offences are more recent examples. All three of these examples are ones where a motorist's conduct is regulated to protect or accommodate other road users. The time is ripe for changes to the Act that would protect and accommodate vulnerable road users.

B. Guiding Principles for Legislative Reform

The aims of reform include the following, many of which are interdependent:

- clarifying the rights and duties of road users to improve understanding and compliance by and reduce conflict between all road user groups,
- acknowledging the fundamental differences between road user groups' capabilities and vulnerabilities, and recognizing the increased risks faced by more vulnerable classes of road users,
- aligning the law with best practices for safer road use by vulnerable road users,
- reducing the likelihood of a collision involving a vulnerable road user,
- prioritizing enforcement of laws that target activities most likely to result in collisions, injuries and fatalities, and
- reducing the likely severity of injuries resulting from collisions involving vulnerable road users.

[22] *Highway Act Amendment Act, 1913*, SBC 1913, c.29.

[23] *South Coast BC Transportation Authority Act 1998* SBC 1998 c. 30, s.111.

By clarifying rights and responsibilities, aligning the law with best practices and increasing safety, legislative reforms should also serve the goal of increasing cycling's mode share within the province.

The business case for increasing cycling's mode share is compelling and has been documented for over a decade.[24] Exchanging driving for cycling for transportation significantly reduces costs for individuals and governments. A Canadian study suggests that if active transportation rates across the country were to reach Victoria, BC levels, the economic benefit to the country would be $7 billion annually.[25]

In order to meet the foregoing objectives, legislative reforms should be guided by the principle of equality under the law. Equality under the law is distinct from the application of the same law to disparate road user groups with vastly different capabilities and vulnerabilities relative to one another; it demands that the law take into account the capabilities and vulnerabilities of road users, both inherently and relative to one another.

[24] Todd Alexander Litman, *Transportation Cost and Benefit Analysis: Techniques, Estimates and Implications (Second Edition)*, (Victoria Transport Policy Institute, 2009): http://www.vtpi.org/tca/

[25] Richard Campbell & Margaret Wittgens, *The Business Case for Active Transportation*, (Go for Green & Better Environmentally Sound Transportation, March 2004): http://thirdwavecycling.com/pdfs/at_business_case.pdfhttp://thirdwavecycling.com/pdfs/at_business_case.pdf

Part II: Recommended Reforms

1. Change the Name of the Act to be more Neutral

Recommendation 1

The name of the legislation should be made neutral as between different classes of road users. *Road Safety Act* is recommended. Variations on *Traffic Act* are common in the existing legislative landscape.

Rationale

At its core, the purpose of the *Motor Vehicle Act* is to promote safe use of roads. Its name should reflect that objective, and not emphasize motorists in particular.

2. General Rules

Classification of Road Users

Recommendation 2

Section 119(1) of the MVA be amended to include the definition "vulnerable road user," meaning a pedestrian, the operator of a cycle, or the operator of a motorcycle.

Rationale

The present MVA classification scheme is as follows:

- **vehicles**: includes all vehicles *other than* human powered vehicles (thereby excluding cycles), motor-assisted cycles, vehicles that run exclusively on rails, and self-propelled mobile equipment.
- **motor-vehicles**: sub-classes of vehicles.
- **motorcycles**: another sub-class of motor-vehicles defined in s. 1 of the Act (such as buses, emergency vehicles, industrial utility vehicles, golf carts, farm tractors, etc.).
- **cycles**: includes motor-assisted cycles.*
- **pedestrians**: includes wheelchair users.*

* *Cycles* and *pedestrians* are defined in s. 119(1) only for the purposes of Part 3 of the Act.[26]

The present classification scheme fails to acknowledge the vulnerability of certain road users and provides no legislative mechanism to account for vulnerability or the differences in capabilities that may be associated with such vulnerability.

Traffic injury and fatality research supports that pedestrians, cyclists and motorcyclists be unified into a class of *vulnerable road users*, with sub-classes for each.

[26] See section 1 and subsection 119(1) of the *MVA*, which contain the definitions applicable for the purposes of the Act and for the purposes of Part 3 of the Act.

A 2015 City of Vancouver study analyzing ICBC data reported that although "vulnerable road users only accounted for approximately 3% of reported collisions in Vancouver between 2007 and 2012, these users accounted for approximately 80% of fatalities over this period."[27]

Adding a definition for "vulnerable road user" acknowledges the scientific research, and allows for consideration of the particular capabilities and vulnerabilities of these road users relative to other classes of users.

Definition of a Cycle

Recommendation 3

The definition of "cycle" in s. 119(1) of the Act be amended to provide that a "cycle" means a bicycle, tricycle, unicycle, quadracycle, or other similar vehicle, including ones that are power-assisted and require pedaling for propulsion, but excludes any vehicle or cycle capable of being propelled or driven solely by any power other than muscular power.

Rationale

The MVA currently defines a "cycle" in part by reference to what it is not: "a device having any number of wheels that is propelled by human power and on which a person may ride and includes a motor assisted cycle, but does not include a skate board, roller skates or in-line roller skates." Further, a "vehicle" as defined by the MVA in section 1, excludes a "cycle."

Prior to the introduction into the MVA of a definition for "cycles," BC law tended to treat bicycles as "vehicles".[28] The definition has been amended several times. In 1975, the term "cycle" replaced "bicycle", expanding the definition to include human powered devices with any number of wheels. In 1995, skateboards, roller skates and inline skates were excluded from the definition of cycle.[29] In 2002, the definition of cycle was expanded to encompass "motor-assisted cycles".[30]

Other jurisdictions have adopted definitions that avoid exclusions. The recommended definition is modeled on the definition of "cycle" adopted by the City of Toronto.

Motor Assisted Cycle

Recommendation 4

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[27] *Vancouver Cycling Report 2015*, *supra* note 10 at 3.

[28] *Best v. Lefroy,* 1922 CarswellBC 150, 67 D.L.R. 455, and *R. v. Justin,* [1893] O.J. No. 52. Note that although cycles are not "vehicles", an operator of a cycle is still governed by the rules of the road per section 183, discussed below, which extends the same rights and duties to operators of cycles as drivers of vehicles.

[29] SBC 1995 c. 43, s.9.

[30] SBC 2000 c. 16 s.4 (BCReg. 150/2002).

Alter the definition of "motor assisted cycle" at s. 1(d) of the Act by changing the *Motor Assisted Cycle Regulation*, BC Reg. 151/2002 to state that a motor-assisted cycle does not include a cycle which can be propelled by an auxiliary motor without the use of human muscular power. Weight limitations for motor-assisted cycles should also be considered. The classification and regulation of self-propelled electric two-wheeled vehicles should be studied to ensure safety objectives are met for this road user group.

Rationale

"Motor assisted cycles" ("MACs") were incorporated as a sub-class of "cycles" in 2002.[31] The *MVA* defines a MAC as a device with pedals or hand cranks for human power.[32] Section 182.1 of the MVA prohibits persons under 16 from operating a MAC and provides authority to ICBC to make regulations regarding device specifications (i.e. motor power), operator criteria and equipment.

The original reason for incorporating MACs into the MVA was to regulate electric-assist bicycles, sometimes called *pedelecs*, and to encourage people to commute by more environmentally friendly and healthy means.[33] Classification of a MAC as a "cycle" for the purposes of the MVA permitted their use of cycling infrastructure and required MACs to conform to the rules applicable to human-powered bicycles.

The central characteristic of an electric-assist bike is that the electrical power *assists* the cyclist: when pedaling stops, propulsion stops. The *Motor Assisted Cycle Regulation,* BC Reg 151/2002, contains the bulk of criteria for MACs, including power output and speed limitations. The *Regulation* does not, however, require the use of human power to propel the cycle. As such, the MVA and the *Regulation* are overbroad in classifying self-propelled electric two-wheeled vehicles as "cycles".

There are safety risks associated with self-propelled two-wheeled vehicles ("E-bikes") using infrastructure designed for traditional bicycles, which risks are not presented by electric-assist bicycles or pedelecs sharing traditional bicycle infrastructure. E-bikes may be significantly wider and heavier than pedelecs. The width and weight of pedelecs are comparable to the width and weight of a traditional bicycle: a typical pedelec weighs approximately 25 kg and has a normal width. Some E-bikes weigh in excess of 130 kg. Further, some scooter-style E-bikes have pedals protruding from an already wide body.

The width of some E-bikes is problematic due to the narrow traditional bicycle lanes and the absence of dual or passing lanes for bicycles. A heavy and wide-bodied E-bike sharing a separated bicycle path with traditional bicycles puts both users at risk.

The jurisprudence further muddies the legal landscape in respect of scooter-style E-bike vehicles. The *Regulations* require a MAC to have pedals, regardless of whether they are necessary for propulsion. But the pedals only make the E-bike wider, offering less clearance and safety. A scooter user who removes the pedals and improves safety by

[31] Section 182.1 of the *MVA* was added, along with a definition for "motor assisted cycle" at s.1 and a change to the definition of "cycle" at s. 119, via the *Motor Vehicle Amendment Act, 2000*, SBC 2000 c.16. This came into force on June 21, 2002 (BC Reg 150/2002). See also the *Motor Assisted Cycle Regulation*, BC Reg. 151/2002.

[32] Section 1, definition of "motor assisted cycle", paragraph (a).

[33] British Columbia, Legislative Assembly, *Hansard*, (June 8, 2000) at 1415 (Ms. J. MacPhaill).

narrowing the body of the scooter actually transforms the scooter *back* into a motor vehicle, rendering it subject to licensing and insurance. This anomalous result was remarked upon by the BC Supreme Court:

> Perhaps the regulations would benefit from a review. Judicial Justice Blackstone commented in her reasons on the uncertainty surrounding legal uses of MACs, mentioning her reading about related concerns in a Vancouver Province newspaper article. Although the MAC Regulation in my view is clear, given the possible validity of safety concerns relating to pedal placement, the increasing numbers of scooters of various kinds travelling public roads in BC communities and the fact there appears to be some uncertainty surrounding the legal definition of MACs, a review could benefit the public, and the operators of MACs in particular[…].[34]

BC regulations cap the power output of a MAC at 500 watts, approximately double that of other jurisdictions that have regulated MACs.

Electric-assist cycle regulations in Toronto and Europe require power-assisted cycles employ human power for propulsion:

- Toronto defines a bicycle to include a bicycle, tricycle, unicycle, and a power-assisted bicycle which weighs less than 40 kilograms and requires pedaling for propulsion ("pedelec"), or other similar vehicle, but excludes any vehicle or bicycle capable of being propelled or driven solely by any power other than muscular power.[35]
- The European Union defines "pedelecs" as "cycles with pedal assistance which are equipped with an auxiliary electric motor having a maximum continuous rated power of 0.25 kW, of which the output is progressively reduced and finally cut off as the vehicle reaches a speed of 25 km/h, or sooner, if the cyclist stops pedaling"[36]. The EU regulations further restrict the weight of pedelecs to no more than 40 kg.

The 50 states in the US have at least 47 different ways of regulating electric bikes and scooters.[37] Victoria, Australia, as of May 30, 2012, now has an additional category for e-bikes that meet the EU criteria with "pedelec" motor power output restricted to 200 watts.[38]

The recommendations propose that BC distinguish between *pedelecs* and *self-propelled cycles*. Pedelecs should have an auxiliary motor that cannot exclusively propel the cycle without human power. A MAC that is included as a "cycle" for the purposes of the Act should denote a cycle that requires pedaling in order to engage the power-assist. In addition, weight limitations on MACs should be considered. Finally, the classification

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[34] *R. v. Rei*, 2012 BCSC 1028 at para. 21 (emphasis added).

[35] *Toronto Municipal Code,* ch. 886.

[36] Directive 2002/24/EC, Article 1 (h).

[37] http://pedelec.com/taipei/lectures/pdf/USA.pdf .

[38] *Road Safety Road Rules 2009*, S.R. No. 94/2009.

and regulation of self-propelled electric two-wheeled vehicles should be further studied to ensure that safety objectives are met for this road user group.

Due Care and Attention/Reasonable Consideration

Recommendation 5

The MVA be amended to clarify that all persons on a highway must pay due care and attention, all persons on a highway must operate with reasonable consideration for other persons on the highway, and in both cases, having regard to whether other persons on the highway are vulnerable road users. It should remain an offence for the operator of a motor vehicle to contravene the due care and reasonable consideration rules, as well as the rule prohibiting the operation of a motor vehicle at excessive speed for the conditions.

Rationale

Due care and attention requirements are scattered throughout Part 3 of the Act:

- Section 144 prohibits the operator of a motor vehicle from driving without due care and attention, without reasonable consideration for other persons using the highway and at a rate of speed that is excessive for the road and weather conditions.
- Section 181 imposes additional rules specific to motorist interactions with pedestrians where the motorist has the right of way: the motorist must, *inter alia*, exercise due care to avoid collision with a pedestrian on the highway and observe proper precaution if the pedestrian is a child or apparently incapacitated.
- Subsection 183(14) prohibits the operator of a cycle from operating the cycle without due care and attention and reasonable consideration for others using the highway or the sidewalk, as the case may be.

The current due care and attention rules has gaps. For example, a child riding a bicycle is not clearly covered by s. 181.

The proposed amendment would clarify that all persons on a highway have a duty to pay due care and attention and give reasonable consideration to others using the highway—and that regard should be had where there are vulnerable road users.

Municipal Speed Limits

Recommendation 6

The MVA should be amended to empower municipalities to adopt a default speed limit for unsigned highways within municipal boundaries, by bylaw and posting of signs at the municipal boundary.

Rationale

The default speed limit for highways under s. 146(1) of the MVA is 50 km/h. If a municipality wishes to reduce the speed limit on a particular street, it may do so under s. 146(6) and (7). However, the process is cumbersome: the municipality must pass a bylaw and erect signage on each street or block thereof to which the limit will apply.

The present system requires a municipality to commit substantial resources in order to adopt a municipal-wide default speed limit that differs from the provincially mandated 50 km/h.

50 km/h may not be appropriate for all municipalities. Heavily urbanized municipalities may benefit from lower default speeds. Municipalities should be empowered to adopt appropriate default speed limits without the necessity of signing every block. The MVA can be amended to provide municipalities with the power to adopt a default speed limit for highways within municipal boundaries by bylaw and erection of signage at municipal entry and exit roads.

Default Speed Limit on Local Streets

Recommendation 7

A default provincial speed limit of 30 km/h for local (no center line) streets should be included in the MVA, with municipalities enabled to increase speed limits on local streets on a case-by-case basis by bylaw and posted signage.

Rationale

The province should adopt a reduced default speed limit for local streets without center lines (mainly residential streets). Enabling provisions would allow for higher speed limits on particular streets or portions thereof.

Local streets are the backbone of transportation networks in municipalities, providing access through our residential neighbourhoods. Traffic speeds on residential streets were the fourth top concern expressed in a survey of 4,020 Canadians conducted in 2013 by the Canadian Automobile Association.[39] A recent study measured driving speeds on several hundred randomly selected local streets and found that the 85th percentile was 37 km/h and the median 31 km/h, demonstrating that even 40 km/h on residential streets is widely found to be too fast for the conditions. A local street speed limit of 30 km/h would establish this guidance formally.[40]

It is well-established that lower vehicle speeds reduce collision risk. Drivers and other road users have more time to react and stopping distance is reduced. Injury severity in the event of a collision is reduced because force is exponentially reduced with lower speeds of impact.[41] These benefits accrue to all road users, including bicyclists, pedestrians, motorcyclists, and motor vehicle occupants. The BC Cycling Coalition has published some key statistics online.[42]

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[39] http://www.caa.ca/top-10-canadian-driver-safety-concerns/.

[40] *Supra* note 19.

[41] World Health Organization, *World report on road traffic injury prevention*, (2004) at 78: http://apps.who.int/iris/bitstream/10665/42871/1/9241562609.pdf.

[42] British Columbia Cycling Coalition, *Slow Down and Save Lives – 30 is the New 50*, online: http://www.bccc.bc.ca/slow-down-and-save-lives-30-is-the-new-50.

Speed limits of 10 to 30 km/h are standard in residential neighbourhoods of northern European countries with overall traffic fatality rates one-half of rates in British Columbia. Lower default speed limits on local streets have other benefits too. They provide an incentive for motor vehicle traffic to move directly to collector and arterial streets, reducing neighbourhood traffic volume, noise and air pollution.

Providing for a 30 km/h default speed limit for local streets at the provincial level provides three related benefits:

1. it makes streets safer for everyone, including motorists,
2. it provides province-wide consistency with respect to expected speeds on such streets, and
3. it relieves municipalities of the financial burden of installing signs on each block of residential streets to indicate lower speed limits on local streets as opposed to arterials.

Based on the available evidence, and the exponential reduction of severe injuries from lower speeds, "Vision Zero" requires this recommended reform.

3. Rules Relating to Motor Vehicle–Bicycle Interactions

"The same rights and duties as the operator of a vehicle"

Subsection 183(1) of the MVA imposes motorists' rights and duties on cyclists. The imposition of motorists' rights and duties upon cyclists initially occurred with the passage of the 1957 Act. Although the rule has been renumbered several times, the content of the rule has not substantially changed.[43]

Subsection 183(1) is partly to blame for the elliptical and confusing structure of the Act in respect of cyclists. Although the operator of a cycle has the same rights and duties as the operator of vehicle, yet a cycle is not a "vehicle" according to section 1 of the Act.

More importantly, the rule fails to consider critical differences between motor vehicles and cycles, and a result, imposes a system of rights and duties that may be inappropriate and unsafe in application to cyclists and that lead to inequitable results in the event a cyclist suffers injury.

Bicycles generally cannot accelerate as quickly as motor vehicles, typically operate between 10 and 40 km/h, and cannot stop as quickly. Although a cyclist has significantly less mass and less momentum than a motor vehicle, which means they may stop more quickly than a vehicle *if they fall onto the road surface*, bicycles must stay balanced and have less powerful brakes. Debris or road features such as cracks in the road surface, railway tracks and smooth metal construction plates, which pose no hazard for a motor vehicle, may pose a significant hazard to the operator of a cycle. A person cycling is extremely vulnerable relative to motor vehicles and also vulnerable (though not relatively so) in relation to potential collisions with other cyclists or pedestrians, all of which affect cycling behaviours.

[43] The rule was initially enacted as s. 166 of the 1957 Act. In 1960, s. 166 was renumbered to s. 173, and in 1979 this critical section for cyclists became s. 185.

Case Study

Joginder is cycling to work. There is only one road with twin lanes heading west out of her neighbourhood to take her downtown. As the road leaves the neighbourhood, the lanes separate—the right lane becomes the highway on-ramp and left lane passes underneath a highway overpass. The underpass lane is narrow and bounded by concrete supports and a raised median. In order to safely navigate the underpass lane, Joginder must move from the outside of the right lane to the middle of the left lane, requiring her to merge twice with vehicular traffic, at approximately the same time that drivers in both lanes are changing lanes depending on their destination and drivers in the right lane are accelerating to enter the highway. Many cyclists simply use the sidewalk to navigate the underpass, even though it is against the law.

In BC, there is no requirement for a driver to yield to a merging vehicle. The vehicle in the lane has the right of way and it is the merging vehicle that must execute the merge safely. The rule applies whether or not the merging vehicle is a vulnerable road user who may not be able to achieve vehicle speeds. On her bike, Joginder must rely on the voluntary goodwill of drivers to slow down enough to "let her in" in order to accomplish both merges safely, every day that she cycles to work. If a driver refuses to "let her in," she may run out of road before she can merge safely, but if she slows down too much to avoid running out of road too quickly, no one will "let her in" at all.

Given the chance, Joginder will (cautiously and yielding to the rare pedestrian) run the red-light at the T-intersection in advance of the lane split, in order to seize a window of car-free space to safely make the lane changes without having to rely on the uncertain goodwill of drivers. While this maneuver is unquestionably safer, it is also illegal.

This illustration about merging with vehicular traffic is but one example of how the capabilities of bicycles relative to motor vehicles affects traffic behavior in an unequal manner. The jurisprudence suggests that the blanket rule in s. 183 most often operates to the detriment of cyclists. This is not a surprising result in light of the roads themselves and the rules of the road having been designed for motor vehicles. Numerous examples are set out in other sections, as they arise in respect of specific rules which are applied to cyclists on the basis of s. 183(1).

In order to achieve equality under the law, different road users' capabilities and vulnerabilities must be taken into account. This includes the rules of the road that s.183(1) applies broadly, and in some cases without subtlety, to cyclists. To that end, rules designed for motorists but applied to cyclists should be modified as circumstances require to account for a cyclist's relative capabilities and vulnerabilities.

Safe Passing Distance

Recommendation 8

The MVA be amended to specify that a motor vehicle must leave at least 1 m between all parts of the vehicle (and any projecting objects) when passing a cyclist or other vulnerable road user at speeds of 50 km/h or less and at least 1.5 m at speeds in excess of 50 km/h.

Rationale

A one metre safe passing distance for cyclists is recognized as a minimum safe passing distance.[44] Safe passing distances have been specified by over 27 jurisdictions in North America,[45] including Ontario[46] and Nova Scotia.[47] The city of Montreal released recommendations in September of 2015 for consideration by Québec; the recommendations included a 1 m safe distance law.[48]

A cyclist can do little to avoid a hit from behind, and an objective, easy to estimate minimum passing distance is better than a subjective standard of safe driving behavior for much the same reason that a maximum speed limit is.

Not only does the *MVA* not currently define a minimum passing distance for motorists overtaking cyclists, there is some confusion as to whether the language of s. 157 of the Act even applies to passing cyclists.

Section 157 states that an overtaking vehicle "must cause the vehicle to pass to the left of the *other vehicle* at a safe distance." Bicycles, however, are not "vehicles" by definition under the Act at s. 1. The somewhat elliptical language and structure of the Act makes it unclear, but it is at best arguable that because a cyclist has the same rights as the operator of a vehicle, under s. 183(1), a cyclist has the right to be passed "at a safe distance."

In any event, even where courts have accepted that motorists have an obligation to pass cyclists safely,[49] what constitutes as a *safe* passing distance remains unclear.

Case Study

Ms. Patterson's car collided with Ms. Dupre's bicycle while her car was trying to pass. Ms. Dupre, the plaintiff cyclist, testified that the car simply passed too closely and struck her handlebars. She was thrown from her bike and injured. Ms. Patterson, the defendant motorist, testified that she left "lots of clearance" when passing Ms. Dupre.

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[44] Rod Katz et al., *Amy Gillett Foundation submission to ACT Parliament Inquiry into Vulnerable Road Users*, (Amy Gillett Foundation, October 2013) [*Inquiry into Vulnerable Road Users*]: http://www.parliament.act.gov.au/__data/assets/pdf_file/0004/516496/42_Amy-Gillett-Foundation2.pdf. This is an excellent overview of the rationale for a one-meter overtaking rule in the context of an Australia campaign to legislate this distance.

[45] *Ibid.* In the US, 25 states set a minimum distance: 23 states have implemented a 3 ft (.91 meter) lateral distance rule for cars overtaking cycles; Pennsylvania requires 4 ft; and Virginia requires 2 ft. A further 19 states have no set distance requirement, but nonetheless dictate that drivers allow a safe distance when overtaking cyclists.

[46] In 2015 the Ontario Legislature passed the *Making Ontario's Roads Safer Act* (full title, *Transportation Statute Law Amendment Act (Making Ontario's Roads Safer),* SO 2015 c.14) which brought a safe passing distance law into force on September 1, 2015.

[47] The Nova Scotia *Motor Vehicle Act* RSNS 1989, c. 293 was amended in 2010 to include a safe passing distance of 1 m: SNS 2010, c. 59, s. 10.

[48] See "Cycling Safety Recommendations: What the City Wants" *CBC News* (September 21, 2015), online: http://www.cbc.ca/news/canada/montreal/cycling-safety-recommendations-what-the-city-wants-1.3237064

[49] See *Dupre v. Patterson*, 2013 BCSC 1561. The Court did not consider the argument that a vehicle does not include a bicycle.

> Defence counsel's case theory was that Ms. Dupre swerved and collided with the side of Ms. Patterson's car. The Court's remarks implicate the problems with subjective interpretations of drivers and the lack of clarity in the Act as to safe passing distance:
>
> "I do not know what she means by 'lots of clearance.' What she believes is 'lots of clearance' may in fact be completely inadequate."
>
> The judge found the motorist at fault and concluded the accident did not occur as a result of Ms. Dupre failing to ride as near as practicable to the right side of the highway.

There is a general consensus among those jurisdictions that have specified safe passing distances that 3 ft. (if imperial) or 1m (if metric) is an appropriate minimum distance.[50]

The proposed amendment would provide clarification that a motorist has a duty to leave a safe passing distance when passing a cyclist as well as definitive guidance on the minimum such distance. This avoids subjective assessments by motorist as to what constitutes a safe distance, and provide an objective standard for enforcement.

"As far to the right as is practicable"

Recommendation 9

Amend s. 157 (2) of the MVA to exempt cyclists from a duty to give way to the right when a vehicle seeking to overtake the cyclist sounds its horn.

Section 183(2)(c) of the MVA should be amended to clarify that a cyclist shall ride as near as is safe to the right side of the right-most through-lane, except:

- when travelling with the normal flow of traffic on the highway,
- on a roadway with no center line,
- on a lane that is too narrow for a cycle and a vehicle to travel safely side by side within the lane,
- on a laned roadway on which traffic is restricted to one direction of movement, at which time a cyclist may ride as near as is safe to the left side of the left-most through-lane,
- if the right-most through-lane is obstructed by cycles or vehicles turning right and the cyclist first ascertains that the movement can be made with safety and without affecting the travel of any other vehicle,
- when overtaking and passing another vehicle or cycle proceeding in the same direction and first ascertains that the movement can be made with safety and without affecting the travel of any other vehicle,

[50] A 2003 study by the City of Toronto found that 12% of collisions occurred when motorists overtook cyclists: City of Toronto, *Bicycle/Motor-Vehicle Collision Study*, (Works and Emergency Services Department, 2003): https://www1.toronto.ca/city_of_toronto/transportation_services/cycling/files/pdf/car-bike_collision_report.pdf. A separate analysis of overtaking maneuvers between motorists and cyclists showed that a one-metre distance is entirely in keeping with regular movements, and that the average passing distance on two-lane roads without bike lanes was 1.339 meters, while on four-lane roads without bike lanes it was 2.911 meters: Kushal Mehta, Babak Mehran & Bruce Hellinga, *"*An Analysis of the Lateral Distance Between Motorized Vehicles and Cyclists During Overtaking Maneuvers.*"* *Transportation Research Board 94th Annual Meeting.* No. 15-2150. 2015.

- when preparing for a left turn at an intersection or into a road or driveway and first ascertains that the movement can be made with safety and without affecting the travel of any other vehicle, or
- if avoiding an obstruction on the highway that makes it unsafe to continue along the right side of the right-most through lane and the cyclist first ascertains that the movement can be made with safety and without affecting the travel of any other vehicle.

183(4) should be repealed.

Rationale

Section 183(2)(c) of the MVA requires cyclists to ride as far to the right as "practicable" on a highway, however no explicit guidance is provided as to the meaning of "practicable" within the MVA.

While courts have determined what is "practicable" for non-cyclists[51]—For example s. 150 of the Act states that all vehicles must confine their course to the right hand half of the roadway if it is *practicable*—it is not as clear for cyclists. Traditionally, evidence will show what was practicable in the circumstances, although it may not be determinative of negligence.[52]

If, when applied to cyclists, the term "practicable" is intended to impose a duty to stay as far to the right as is safe for the cyclist, then that is not clear in the language. If the term could be interpreted as imposing a duty for cyclists to stay as far to the right as is physically possible given the topography of the highway, then the duty conflicts with safer cycling practices. The risk of *dooring*, for example, is increased when cyclists travel too far to the right. Dooring is the number one key safety issues for cyclists in Vancouver, according to the City, and the most common type of cycling collision with motor vehicles reported in Vancouver.[53]

It is not as clear for cyclists how the term "practicable" applies to them. There is already the distinction that cyclists need keep to the right of a *highway* (which includes the shoulder) whereas motorists to the more defined surface of the *roadway* (which does not include the shoulder).

Furthermore, what is "practicable" to an experienced cyclist may not be at all obvious to a person with insufficient cycling experience. Cyclists are likely to bear a disproportionate burden in bringing expert evidence to settle questions of what is "practicable" in relation to safer cycling practices.

Best cycling practice includes riding only so far to the right as removes the risk of collision with vehicular traffic travelling in the same direction while:

1. avoiding the "door zone" of parked cars,
2. avoiding debris or road surface conditions that may cause the cyclist to lose control (such as sharply recessed drainage gratings), and

[51] *Price v. Hunter*, 36 BCLR (3d) 304 and also *Tang v. Rodgers*, 2011 BCSC 123.

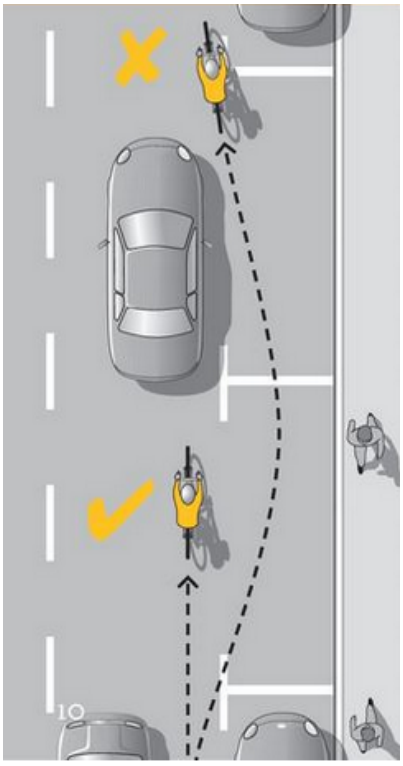
[52] *England (Next friend of) v. Hoffman*, [1976] B.C.J. No. 702.

[53] *Vancouver Cycling Report 2015*, at 106.

3. maintaining position within the natural line of sight of vehicle traffic so as to be seen.

Case Study

Where parked cars are regularly spaced, cyclists should maintain lane positioning to the left of parked cars, within the natural sight-line of vehicular traffic travelling in the same direction, rather than swerving in and out between parked cars (note the lane positioning of the two cars that are in motion).



Where parked cars are infrequently spaced, cyclists should use the "checkmark" method of lane-positioning to maximize distance between themselves and vehicular traffic travelling in the same direction while ensuring they are riding within the natural sight-line of motorists where they might be in closer proximity/passed.

The proposed amendments will clarify the practicable scenarios for staying to the right of vehicular traffic, and aligning the law with safer cycling practices.

If the amendments are adopted, a separate rule governing cyclist behavior when making left-hand turns is not required. The amendments will also clarify that cyclists are not required to yield by moving farther right than is safe in response to a honking motorist.

Passing on the Right

Recommendation 10

Amend the s. 158 of the MVA to clarify and expand when cyclists may pass on the right, by:

- clarifying s. 158 to state that when a cyclist travels to the left of parked vehicles in the right-most marked lane of a laned roadway, that this is an "unobstructed lane" where the cyclist is permitted to travel for the purposes of s. 158 (1)(b),
- exempting cyclists from the prohibition on using the shoulder at s.158 (2)(b), and
- adding exceptions to the general rule against passing on the right at s.158 (1)(a) to (c):
    - where the driver is a cyclist, and where the highway is free from obstructions and is of sufficient width for the cyclist to pass to the right of vehicular traffic,
    - where the driver is a cyclist, and there is space marked or lane designated for bicycle traffic,
    - where the driver is a cyclist using a sidewalk where cycling is permitted, and
    - where it is necessary for a cyclist to access a cyclist-controlled signal button.

Rationale

Cyclists have the same rights and duties as motorists by reason of s. 183(1). This means they are subject to the s. 158 prohibition against passing on the right. Section 158 is substantially the same today as it was in 1957.[54] Three exceptions exist to the general *no passing on the right* rule:

- where the overtaken vehicle is signaling an intention to turn left,
- where the overtaking vehicle has its own separate, marked, unobstructed lane, and
- where the two vehicles are on a one-way street travelling in the same direction and the road is sufficiently wide for two lanes of travel (even if the lanes are not marked).

Even where an exception applies: subsection (2)(a) requires passing on the right only be attempted when it is "safe"; and under no circumstances can the shoulder be used according to subsection (2)(b). This last condition is particularly ironic for cyclists, given

[54] *Motor-Vehicle Act*, SBC 1957 c. 39, s. 141.

that at all other times cyclists are expected to use the right-most portion of the highway, which generally is a paved shoulder, under s. 183(2)(c).[55]

The law as presently written puts cyclists in some untenable positions.

Because cyclists are required to ride as far to the right as practicable they are typically lane-positioned to the right of vehicular traffic. This means that cyclists who wish to pass a stopped or slower moving motorist are, by law—and if there is no separate unobstructed lane on the right—effectively required to:

1. "take the lane"[56] behind the stopped or slowing vehicle, then
2. pass on the left, which will require either occupying the oncoming vehicle lane or merging with traffic travelling in the same direction in a further left lane.

These maneuvers can be dangerous, as the associated risks are rear-ending and full frontal collision.[57]

The jurisprudence complicates matters insofar as what constitutes an "unobstructed lane" of travel for a cyclist. If a cyclist is riding in the marked curb lane of a laned roadway, the case law says this is an "unobstructed lane" for the purposes of s. 158(1)(b), even if there are parked cars.[58]

However, a cyclist riding along to the right of stopped traffic in an unmarked lane with parked cars appears to be in breach of s. 158.[59] This is further complicated by the presence of marked bike lanes and *sharrows*, which have no clear legal import with respect to whether they are markings that create an "unobstructed lane" of travel for the purposes of s. 158 of the MVA.

If there is only a single lane of travel in one direction on a two-way street, the cases interpreting s. 158 require a cyclist to either wait for a stopped vehicle to continue moving, dismount and become a pedestrian to walk along the shoulder, or undertake a potentially risky passing maneuver in the oncoming lane.[60]

In recent years, s. 158 has been instrumental in findings of contributory negligence against cyclists. This includes defeating their actions entirely.[61]

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[55] Section 158's interoperation with the definitions of "highway" at s. 1 and "roadway" at s. 119 create this oddity. A cyclist is required to ride as far to the right of the highway as practicable per s.183(2)(c), and a shoulder is a part of a "highway". Section 183(3) does not require a cyclist to drive on unpaved highway, but riding the paved shoulder is apparently required. Once on the paved shoulder, the cycle may not pass cars on the right, however, since being on the shoulder is leaving the roadway and prohibited by s. 158(2)(b) for passing maneuvers.

[56] See *MacLaren v. Kucharek*, 2010 BCCA 206.

[57] Moreover, under BC law, it is the driver merging who bears the duty of doing so safely – there is no requirement for other drivers to "let someone in." This is particularly problematic for cyclists in urban environments with heavy traffic flows, who are reliant upon driver goodwill to merge safely on account of their extreme vulnerability to injury in any collision.

[58] *Jang v. Fisher,* 1990 CanLII 2147 (BCCA).

[59] *Kimber v. Wong*, 2012 BCSC 783. See also the Court's remarks in *Dupre v. Patterson*, 2013 BCSC 1561.

[60] *Ormiston v. ICBC,* 2012 BCSC 665, reversed 2014 BCCA 276.

[61] Again, see *Ormiston v. ICBC,* 2012 BCSC 665, reversed 2014 BCCA 276.

Case Study

A van passed a cyclist on a divided rural road with one lane each direction. A little ways on, the van slowed down in its lane, almost coming to a stop. The cyclist—a youth—attempted to pass the van on the right using its lane rather than pass on the left in the lane for oncoming vehicles. As the cyclist was passing, the van unexpectedly maneuvered to the right, towards the unpaved shoulder. This forced the cyclist to the shoulder and off a steep embankment. The cyclist was severely injured. The van did not remain on scene and the driver was as only named as John Doe. At trial, the judge found the van to be 70% liable and the cyclist 30% liable: the driver should have checked for the cyclist, as the driver would have been aware of the cyclist's presence as a result of having just passed him. The trial judge observed[62]:

> "It seems very odd to me to lump cyclists with motorists. Anyone with a passing knowledge of cycling and driving can appreciate that in certain situations a cyclist could safely perform maneuvers that are prohibited under the Motor Vehicle Act."
>
> "If he can't pass on the right then presumably he has to negotiate a pass on the left which would expose him to oncoming traffic, a much more dangerous move on this winding road than passing on the right."

The trial judge also observed that the simple act of dismounting from his bicycle and walking it past the vehicle would have transformed the cyclists from a "motorist" to a pedestrian under the Act, permitting entirely different conclusions with respect to the duty owed by the driver.[63]

The BC Court of Appeal overturned the result and dismissed the cyclist's claim entirely. But the three-justice panel was not unanimous in doing so. Two justices found the cyclist to bear 100% liability on the basis that he had contravened the MVA rules against passing on the right. The third justice agreed with the trial judge that the van driver should have been alert for the cyclist, having just passed him before stopping the van.

The appellate justices did not agree on what was the proper analysis nor did they agree on the proper result. The case highlights the need for greater clarity in the law with respect to passing on the right.

Where there is room to maneuver, passing on the right is at times the safest option for cyclists. The alternative requires taking a lane—an inherently more dangerous move in the urban environment—and then passing on the left where traffic is faster and collision with oncoming vehicles more likely.

[62] *Ormiston v ICBC*, 2012 BCSC 665, paras. 30 and 31.

[63] Note, however, that a pedestrian on a highway must not walk with the direction of highway traffic, but against it on the extreme left (s. 182(2)).

Cyclists should always make the safest choice—and sometimes this will require stopping and waiting. But they should also have all of the safest options left open to them.

As it stands, cyclists choosing to pass a stopped car on an unmarked roadway can select between:

1. obeying the letter of the law and putting themselves in danger by taking a lane and passing on the left, or
2. adopting a safer cycling practice in contravention of the law which could prejudice them in the event of a collision.

There is another way that s.158 encourages unsafe choices. Because cyclists in marked unobstructed lanes have the legal right to filter in the right lane beside parked cars, this tends to encourage cyclists onto arterial routes that have more lanes. This puts cyclists on busy roads—where they have greater risk of injury—rather than local street routes with no marked lanes—where they have less risk of injury.[64]

Passing laws should be clarified for cyclists, and the allowances for passing on the right should be expanded in recognition of their natural lane positioning and vulnerability when trying to ensure a safe merge and pass on the left. The amendment would not reward careless behavior by cyclists, since the language of s. 158(2)(a) still requires any movement to pass must still be "made safely."

Rights of Way

Confusion over right of way contributes to collisions between cyclists and motorists. In a surprising 46% of reported motorist-cycle collisions in Vancouver City the right of way was inconclusive. Where it could be determined, the cyclist had the right of way in 93% of cases.[65]

The data is easily explained: by far, the most common type of collision involving right of way confusion was one in which the motorist was turning and the cyclist was travelling straight through an intersection (i.e., "right hooks" and "left crosses"). Collisions at traffic circles and sidewalk cycling collisions mid-block at driveways and end-of-block at intersections were also identified as common problem areas. Cyclists confirm these findings through their riding experiences.

Recommendation 11

Sections 165, 166 and 167 of the MVA should be amended to provide that a motor vehicle must yield to a through-moving cycle or other vulnerable road user when turning. Portions of the right-hand turn rule requiring motorists to position their vehicle at the extreme right edge of the highway should be repealed, or alternatively amended to prevent doing so when it would obstruct the travel of a person operating a cycle.

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[64] Teschke et al., *supra* note 19 cites the odds ratio of injury on local street routes with parked cars to be roughly half of the odds ratio of injury on major street routes with parked cars.

[65] Metro Vancouver News summarizes the data set out in the *Vancouver Cycling Report 2015*, *supra* note 10, here: http://www.metronews.ca/news/vancouver/2015/05/12/vancouver-drivers-at-fault-in-93-of-collisions-with-bicycles-city-report.html

Rationale

Section 165 deals with the rules for motorists turning at intersections and reads closely to what it did in 1957.[66] Sections 166 and 167 deal with turning at places other than intersections. None of these three sections clarifies rights of way where motorists are turning across through-moving cycle traffic.

Left cross: A cyclist's right of way when travelling through an intersection is clear against a motorist turning left across the intersection. The problem is largely visibility. A cyclist is required by law to stay to the right of the roadway where they are potentially obscured from view by larger through-moving vehicles and are outside the natural sight area of the turning driver. The problem may be exacerbated if the cyclist is in technical breach for passing on the right while travelling straight through an intersection.

Right hook: The right of way of a cycle travelling through an intersection where a parallel motorist is turning right is less clear. Roadways designed exclusively for motor vehicles did not present this conflict, as right turn lanes for motorists were simply not constructed to the left of through-lanes. However, separated, marked and *de facto* cycle lanes are generally at the right edge of the roadway, placing cyclist through-traffic in conflict with right-turning motorists.

Further, s. 165(1) and s. 167(a) require a right-turning motorist to position their vehicle "as close as practicable to the right hand curb or edge of the roadway" before turning. Motorists tend to position themselves at the right edge of the roadway in anticipation of a right turn even when it cannot be made immediately. This positioning is often in direct conflict with cyclist traffic.

Cases in BC show cyclists often share liability for "right hook" and "left cross" collisions regardless of their right of way—albeit to a lesser degree in "left cross" cases and to a greater degree in "right hook" ones. The basis of cyclist liability is the application of the *dominant/servient* driver legal principle—an analytical principle developed for motorist-motorist interactions that can negate a cyclist's right of way in cyclist-motorist collisions.

The dominant/servient analysis applied to "left cross" situations has resulted in findings that through-moving cyclists are partly responsible for the collision by failing to take evasive action, keep a look out[67] or ensure they were not visually obscured from left-turning traffic.[68] Cyclists have little to no control over much of these factors, given that their legislated place is at the right edge of the road where they are cut off from view.

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[66] *Motor-Vehicle Act*, SBC 1957 c. 39, s. 148.

[67] *Pittman v Chia,* [1979] 3 A.C.W.S. 541 (BCSC), at para. 4: "The Plaintiff was an experienced bicyclist and it would not be asking too much of him to expect him to realize at all times that he faced the hazard of being imperfectly observed by motorists." Liability was apportioned 25% to the plaintiff.

[68] In *Hersh v. Stinson*, [1992] B.C.J. No. 1428 (SC) the cyclist plaintiff was found 50% at fault for not seeing the left turning vehicle which came across his lane to enter a driveway of a mobile home park; *Pacheco v. Robinson* (1993), 75 B.C.L.R. (2d) 273 (BCCA) reversed a finding by the trial court that the cyclist was contributorily negligent. See also *MacLaren v. Kucharek*, 2010 BCCA 206 rev'g 2008 BCSC 673 which involved a "left cross". In *Kimber v. Wong*, 2012 BCSC 783, the cyclist's statutory breach for passing on the right resulted in the effective denial of the right of way he would otherwise have as through-moving traffic against a vehicle turning left.

The same dominant/servient analysis in "right hook" cases has resulted in a high degree of liability apportioned to injured cyclists, especially where the cyclist is in technical breach of the prohibition against passing on the right. The dominant/servient driver analysis requires the through vehicle to be proceeding lawfully to avoid responsibility.[69] As discussed, many cyclists find that it is more dangerous to "take the lane" than to proceed in a more safe—albeit unlawful—manner.

The proposed reforms clarifying the duty to yield to through-traffic and removing the requirement for motorists to position their vehicles in conflict with cycle traffic will improve safety by targeting the problematic "left cross" and "right hook" scenarios while providing for more equitable outcomes in the event of injury or loss by a vulnerable road user in those scenarios.

Roundabouts and Traffic Circles

Recommendation 12

Subsection 150(3) of the MVA should be amended to provide that:

(a) The driver of a vehicle or cycle entering a roadway in or around a rotary traffic island or roundabout shall yield the right of way to traffic already on the roadway in the circle or approaching so closely to the entering highway as to constitute an immediate hazard; and

(b) The driver of a vehicle or cycle passing around a rotary traffic island or roundabout shall drive the vehicle in a counter-clockwise direction around the island or the center of the circle.

Further, standardized signage for rotary traffic islands and roundabouts that specifies the right of way should be adopted across the province.

Rationale

Municipalities have shown greater interest in the use of traffic circles and roundabouts in recent years. This interest appears to reflect the desire to replace 2-way stop intersections with other traffic calming measures (traffic circles) and to maintain greater traffic flow as compared to 4-way stop and traffic light controlled intersections (roundabouts).

Notwithstanding increasing interest in traffic circles and roundabouts, s. 150(3) of the MVA, which governs such facilities, has essentially not changed since it appeared in the 1957 legislation as s. 136(3). Subsection 150(3) simply states the "driver of a vehicle passing around a rotary traffic island must drive the vehicle to the right of the island." This is the sole legislative guidance presently provided in respect of traffic circles and roundabouts.

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[69] In *Nelson v. Lafarge Canada Inc.*, 2013 BCSC 1552 a brisk moving cyclist was overtaking a truck when it turned right and dragged the cyclist with it. 65% liability was apportioned to the cyclist. *Kimber v. Wong*, 2012 BCSC 783, is a "left cross" case but illustrates the issue with being in technical breach and how this affects the dominant/servient driver analysis.

An Australian report[70] says that while roundabouts improve safety by reducing speed and conflict points, safety benefits do not always extend to cyclists. Dutch research has reported similar findings—while roundabouts reduce crashes between motor vehicles, they increase risk to cyclists (and pedestrians) unless carefully designed. Research concludes cycling on the edge in roundabouts is dangerous because it puts cyclists and drivers at oblique angles at the multiple entry/exit points of the roundabout.

One strategy to solve this problem is cycling in the center of the lane in single-lane roundabouts. "C1 Roundabout" is a new single-lane roundabout design concept which provides cues to cyclists to move to the middle of the lane, which is where drivers are most likely to look. Dutch research shows that for both single and multiple lane roundabouts, the safest design is a physically separate outer ring for pedestrians and cyclists. This is essentially a "protected" roundabout intersection design and provides the benefit of putting pedestrians and cyclists perpendicular to motor vehicles at crossings.

With respect to traffic circles, cyclists report difficulty safely navigating such infrastructure with vehicular traffic. Because of the speed differential between a cyclist and a driver approaching a traffic circle, which generally requires drivers to slow but does not impede cyclist speed, it can be difficult to determine who has the right of way. Oblique sight lines are also problematic as are sight-lines obscured by plantings in the center of the traffic circle.

Case Study

The City of Vancouver installed a traffic circle at the intersection of Pine Street and West 10th Avenue as part of the 10th Avenue bikeway project in 2004. The intention was to calm traffic and increase safety for cyclists along the 10th Avenue designated cycling route. It had the opposite effect: collisions substantially increased between 2005 and 2012, based on ICBC data. In the seven years prior to installation there were no reported collisions. In the seven years following installation there were 17 reported collisions. The traffic circle was removed for cyclist safety in 2013.

Revisions to legislation should strive for consistency with safety-evidence-based roundabout designs and should clarify the rights of way in respect of both roundabouts and traffic circles. The proposed amendment would go some distance towards those aims, although future amendment may be required to the extent that evidence-based protected roundabout designs are implemented.

Red Traffic Arrows

Recommendation 13

[70] Bob Cumming, "A bicycle friendly roundabout: designing to direct cyclists to ride where drivers look." *Proceedings of the fourth Australian Cycling Conference* (2012): http://www.australiancyclingconference.org/images/proceedings/acc-2012-proceedings.pdf

The MVA be amended to provide for the use of red arrow traffic signals to signify when a right-turning vehicle is prohibited from turning.

Rationale

Section 130 of the MVA provides for the use of green and yellow arrow signals.[71] In both cases, the signals indicate when turning traffic that otherwise has a green or yellow signal has the right of way because all through traffic is stopped. Red arrows could similarly be used to indicate when right-turning traffic must not proceed because through moving traffic, including cyclists in a through lane, have the right of way.

The rationale for this recommendation is the same rationale set out above in relation to clarifying rights of way as between cyclist through-traffic and turning motorist traffic. The use of red arrow traffic lights can provide additional assistance to road users, clarifying when a right-hand turning vehicle must stop.

Rail Tracks and Cattleguards

Recommendation 14

Subsection 185(7) of the MVA be amended to require motor vehicles to give cyclists space to safely cross streetcar, railway tracks or cattleguards:

185(7) Unless a special facility is provided to allow cyclists to cross the track or guard safely without using the normally travelled portion of a highway, it is unlawful to pass the operator of a cycle within 1.5 metre of a railway, streetcar tracks or cattleguard crossing of the highway. This prohibition shall at all times be posted with a sign in advance of such railway, streetcar track or cattleguard crossing and shall be effective from the location of said sign to a point 30 metres beyond the railway crossing.

Rationale

Research shows that cyclists are especially at risk where streetcar or railway tracks are involved, with a 3-fold greater risk of injury.[72] The width of a typical road bicycle tire, at approximately 1 to 1.5 inches, is sufficiently narrow to be caught in the flangeways alongside track rails. The problem is acute in traffic environments with streetcar tracks integrated into roadways.

The recommendation proposes to give cyclists adequate space to safely navigate the roadway near tracks or crossings to reduce the risk of falls and collisions.

Following too closely

Recommendation 15

Subsection 162(1) of the MVA be amended to provide that a driver of a vehicle must not cause or permit the vehicle to follow another vehicle or cycle more closely than is

[71] British Columbia, Legislative Assembly, *Hansard*, (14 July 1987) at 2522 (Hon. Mr. Michael) — speaking to Bill 36, the *Motor Vehicle Amendment Act, 1987*.

[72] Kay Teschke et al., *supra* note 19.

reasonable and prudent, having due regard for the speed of the vehicles, the amount and nature of traffic on and the condition of the highway, and having regard to whether the vehicle or cycle is a vulnerable road user.

Rationale

Subsection 162(1) of the MVA prohibits the operator of a motor vehicle from following another vehicle too closely, having regard to the traffic and road conditions. The rule has not substantively changed since it appeared in the 1957 legislation as s. 145(1).[73]

As a cycle is not a "vehicle," the rule does not clearly apply to motor vehicles following bicycles.

A review of the jurisprudence indicates that the rule has operated against cyclists without regard to their differential capabilities and vulnerabilities, and in particular, without regard to both the increased stopping distance that might be necessary for a motor vehicle to avoid hitting a cyclist who falls onto the road and without regard for a cyclist's inability to brake as quickly as a motorist.

Case Study 1

Mae-Lin is cycling to a friend's house for a barbecue. She "takes the lane" along a narrow stretch of roadway. A car is following behind her, at a reasonable following distance for a motor vehicle travelling the same speed. Mae-Lin's front wheel hits a stone and she wobbles and abruptly loses speed. The car rear-ends her.

In the absence of special consideration for vulnerable road users, when a following vehicle collides with a leading vehicle, the court must be satisfied on a balance of probabilities that the collision did not occur because of the following driver's negligence.[74]

A following driver has no special obligations under the MVA in relation to vulnerable road users. A review of the BC jurisprudence reveals that where a rear-ending involves two motor vehicles, the following vehicle is virtually always at fault unless the leading vehicle stops suddenly and unexpectedly or has stopped in a location that prevents the following vehicle from seeing the leading vehicle until it is too late.

The case law in respect of cyclist rear-endings is quite different and may involve situations where cyclists are merging and therefore servient vehicles, are coming from a far right lane of travel, and are perhaps attempting to clear multiple lanes in order to make a turn. Where cyclist rear-endings are concerned, the fact of the collision itself will give rise to questions about how a cyclist came to be in the way of a faster moving motor

[73] Subsection (2) was changed to refer to metric (60 m instead of 200 ft.) with the *Motor-vehicle Amendment Act, 1977 (No. 3)*, SBC 1977, c.42. These provisions appeared as s. 153 in the 1960 revision, and later as s. 164 in the 1979 revision.

[74] *Titan Transport Ltd. v. Quik X Transportation Inc.*, [2007] 7 W.W.R. 536 (Man QB).

vehicle, and how the cyclist acquitted him or herself of the duties owed by servient drivers in the case of a lane merge.

In one recent case, the driver in the following vehicle struck the cyclist with the front driver side of the vehicle after the cyclist merged into the lane. The driver did not see the cyclist until collision was imminent, made no attempt to swerve and even gave no evidence at trial. Discovery transcript excerpts were read in by the plaintiff. The cyclist was dressed appropriately for visibility and had signaled, but was found to have been obscured from view. The Court found that, in light of the collision having occurred, it would need expert evidence to confirm the cyclist's judgment that it was safe to merge. In the absence of such evidence, the cyclist was found 100% liable.[75]

It was notable that the defendant was able to defeat the plaintiff's case without testimony or positive defense. At a time when the cost of litigation exceeds the means of the majority of British Columbians, the need to bring expert evidence is a significant additional burden that is borne by vulnerable road users, perhaps more so than for plaintiffs in motorist-motorist collisions where the exercise of good judgment is more established.

Case Study 2

Ferris is cycling to the office on Saturday to finish a report. He is on a long downhill when he is passed by a driver who then pulls in ahead of him and brakes for a pedestrian that has come around the corner and is approaching a crosswalk. Ferris brakes hard to avoid colliding with the back of the SUV but loses control of his bike and veers off the road, going over his handlebars. The Court decides that Ferris is fully liable for his injuries because, having the same rights and duties as the operator of a vehicle, he was prohibited from following too closely. The driver was able to stop; Ferris on his bicycle is subject to the same standard.[76]

As the foregoing case studies illustrate, the present state of the law may create inequity in two respects. Firstly, it fails to expressly provide that the status of a vulnerable road user should be taken into account—and a different following distance should apply—when a motor vehicle follows vulnerable road. Secondly, it fails to acknowledge that cycles often lack control over how closely they follow motor vehicles.

Cyclists often have little choice as to how closely motorists allow their vehicles to follow, to pass, or even to lead. A cyclist, whose duty is to travel as far as practicable to the right of the road, is often passed by motorists, and often in the same lane of travel. Difficulty arises where such a motorist's passing makes the cyclist the "following" vehicle, although the cyclist had no direct role to play in following the vehicle and becoming subject to s. 162. While a motorist is bound to overtake in safety (s. 159), once this has happened the cyclist is then not just at the mercy of the motorist's sudden action, but potentially liable for following too closely under s. 162.

The proposed amendment to s. 162 of the MVA addresses the scenario in which a motor vehicle is following a vulnerable road user. It requires that the motorist take the status

[75] *Miles v. Kumar*, 2013 BCSC 1688.

[76] Adapted from *Rudman v. Hollander*, 2005 BCSC 1342.

of the lead vehicle or cycle into account when determining an appropriate following distance. The issue of lack of control over following distance by cycles is addressed by the proposed reform of the general rule applying motorist rights and duties to cyclists.

Riding Abreast

Recommendation 16

Paragraph 183(2)(d) be amended to permit cycles to be operated side-by-side where appropriate for cycling safety.

Rationale

The original rule against riding abreast in the 1943 legislation made an exception for passing.[77] The present rule, set out in s. 183(2)(d), simply prohibits riding abreast of another person cycling on the roadway. The present rule is therefore both ambiguous as to whether a cyclist may pass another cyclist and contrary to safer cycling practices.

The rule has rarely been a litigation issue in BC. In the only known case, the defendant motorist attempted to apportion liability to an elderly cyclist. The defendant had pursued and harassed the cyclist riding abreast with his son. The defendant ultimately caused the cyclist to fall and suffer injury. The cyclists happened to have been in a designated use lane for cyclists only, and the Court rejected the defendant's argument and held "the legislature intended to only prohibit cyclists from riding abreast on parts of the highway that are used by vehicles, namely, in roadways."[78]

Cycling side-by-side in a lane may improve safety where they may be easier for motor vehicles to see and to safely pass, as opposed to a longer single-file line of cycles. In cases where the through-lane is not wide enough to allow a vehicle to safely pass, two cyclists may continue to hold their space side-by-side until the lane widens or a shoulder or bike lane emerges that is safe to cycle on.

In addition, cycling side-by-side provides more comfortable and safe riding circumstances to a parent riding with a child. The parent is able to monitor the child's cycling more easily than if riding in front of the child and communicate more easily than if riding in front of or behind the child.

Prior to 1943, cyclists were historically permitted to ride abreast in BC. Cyclists are allowed to ride two abreast in many jurisdictions around the world including:

- Ontario - http://www.ottawabicycleclub.ca/road-safetyhttp://www.ottawabicycleclub.ca/road-safety
- Europe - http://momentummag.com/articles/abreast-of-reality/http://momentummag.com/articles/abreast-of-reality/
- US - Cyclists in 39 States are specifically allowed to ride two-abreast: http://bicycling.com/blogs/roadrights/2010/04/15/two-by-

[77] The *Highway Act Amendment Act, 1943*, SBC 1943, c. 26 shoehorned s. 25B into the Act to prohibit riding abreast except for the purpose of passing. The prohibition was disassociated from horse racing provisions in the 1948 revision: *Highway Act*, RSBC 1948, c. 144, s.27.

[78] *Davies v. Elston*, 2014 BCSC 2435.

two/http://bicycling.com/blogs/roadrights/2010/04/15/two-by-two/

- Oregon - http://bikeportland.org/2011/06/07/bike-law-101-riding-two-abreast-54334http://bikeportland.org/2011/06/07/bike-law-101-riding-two-abreast-54334
- Kansas - http://stevetilford.com/?p=19826http://stevetilford.com/?p=19826
- The UK - https://www.gov.uk/rules-for-cyclists-59-to-82/overview-59-to-71https://www.gov.uk/rules-for-cyclists-59-to-82/overview-59-to-71
- South Australia - http://www.dpti.sa.gov.au/roadsafety/safe_road_users/cyclistshttp://www.dpti.sa.gov.au/roadsafety/safe_road_users/cyclists

http://www.dpti.sa.gov.au/roadsafety/safe_road_users/cyclistsThe recommended amendment would provide for cyclists to ride abreast, allowing them to so do in order to pass and where it provides a safety benefit.

Riding on or Astride the Seat

Recommendation 17

Paragraph 183(2)(f) be repealed as the provision no longer has application.

Rationale

The provision in paragraph 183(2)(f) appears to be another remnant of a bygone traffic age, addressing sidesaddle riding by women.

The provision is not known to have been considered or applied by BC courts.

The recommendation to repeal the provision is therefore of a house-keeping nature.

Signaling by the Operator of a Cycle

Recommendation 18

Subsections 183(17) be amended to provide that the duty to signal applies only where traffic may be affected, to expand the manner in which cyclists may signal a turn, to repeal the requirement to signal a reduction in speed and provide an exception to the requirement to signal where signaling is unsafe, as follows:

(17) If traffic may be affected, a person operating a cycle on a highway must signify

(a) a left turn by doing either of the following:

(i) a left turn by extending the person's left hand and arm straight from the cycle, in the direction of the turn,

(ii) activating a flashing lighted arrow pointing to the left,

(b) a right turn by doing either of the following:

(i) extending the person's right hand and arm straight from the cycle, in the direction of the turn; or by

(ii) extending the person's left hand and arm out and upward from the cycle so that the upper and lower parts of the arm are at right angles,

(iv) activating a flashing lighted arrow pointing to the right.

(c) An operator of a cycle does not commit an offense if the person is operating a cycle and does not give the appropriate signal for a turn due to circumstances requiring that both hands be used to safely control or operate the cycle.

Rationale

Under current s. 183(17), a cyclist is required to signal both turns and reductions in speed. There are no exceptions for cyclists for failing to signal, although there are exceptions for motorists failing to signal.

Cyclists use their hands to balance, to steer and to brake. Further, on North American bicycles, the front brake—which supplies approximately 75% of stopping power—is operated by the left hand, which is the hand generally used for signaling.

As cyclists use their hands to control the bicycle, and removing the hands could constitute a safety risk, there should be no requirement to signal unless traffic will be affected. Safe operation of the cycle should take precedence over the requirement to signal.

The proposed amendment would remove the blanket requirement to signal in favour of a requirement to signal where traffic will be affected. It would also eliminate the requirement to signal a reduction in speed, which may be dangerous for cyclists on account of the front brake being operated by the usual signaling arm and the delay that signaling may case in stopping. Finally, an exception should be provided where it would be unsafe to remove hands from the bicycle.

Seizure of Cycle

Recommendation 19

Subsection 183(15) be amended to remove the express authorization of seizure of a cycle and subsection 183(16) be repealed.

Rationale

Subsection 183(15) of the Act expressly authorizes a Court to order that a cycle be seized where a person is convicted of *any* offence under the MVA. There are no such blanket impoundment provisions for motor vehicles. To the contrary, the preconditions for impounding a vehicle under the MVA are complex and specific, and generally require reason to believe that impoundment is the only way to ensure the vehicle will not be further used in contravention of the Act and at risk to public safety.

The impoundment process for a motor vehicle is regulated to ensure that the vehicle is appropriately stored and that the impoundment only operates for a limited period. The operator of a vehicle that is impounded has rights of review in respect of the impoundment and may even apply for early release of the vehicle on grounds of economic hardship.[79] In contrast, there is no regulation in respect of the seizure of a

[79] See section 251 of the *MVA* and Part 9, generally, which also provide a driver with rights of review in respect of an impoundment.

cycle, and no rights of review are afforded to the operator of a cycle although they may also experience economic hardships.

The recommendation to amend subsection 183(15) better aligns the treatment of motor vehicles and cycles under the Act by removing the blanket authority to seize a cycle for any contravention of the Act. In any case, whether it is a cycle, a motor vehicle or some other device at issue, the province's Courts have the inherent power to grant a seizure order where a Court is of the view that it is necessary to protect the safety of others. As such, in the unusual case in which there is reason to believe a cycle poses a significant safety risk to others, the Court is empowered to provide an appropriate remedy.

Subsection 183(16) expressly authorizes a peace officer to "enter any place or building in which the cycle is located." The provision is plainly problematic: on its face, it authorizes a peace officer to enter a dwelling in order to seize a cycle. Most people store their bicycles inside their homes or an accessory building on the same property, either for protection of property[80] or simply because they have no other alternative. Subsection 183(16) thus has potentially far-reaching constitutional implications.

The recommendation to repeal subsection 183(16) aligns the law with *Charter of Rights and Freedoms* principles prohibiting unreasonable search and seizure in order to protect places where persons have a high expectation of privacy, most notably, their homes.

4. Rules Relating to Pedestrian-Cyclist Interactions

Sidewalks

Recommendation 20

The MVA should be amended to clarify when adult cyclists are permitted to ride on the sidewalk and to provide that children 12 and under and people with disabilities are permitted to ride on the sidewalk. Existing s. 183(2)(a) should be replaced as follows:

(a) must not ride on a sidewalk unless
(i) the person is aged 12 or under, or is a person of any age with a disability that prevents the person from safely operating a cycle on a highway,

(ii) authorized by a bylaw made under section 124 or otherwise directed by a sign or pavement marking,
(iii) directed by detour to use a sidewalk, or
(iv) a parallel bicycle facility is obstructed,

and where a cycle is lawfully operated on a sidewalk, the operator of the cycle must yield to any pedestrian using the sidewalk.

Rationale

[80] In Vancouver, bicycle thefts have outnumbered vehicle thefts since 2010 according to a Vancouver Sun article based on Vancouver Police Department data: Chad Skelton, "More bikes stolen in Vancouver than cars: City police struggle to stem the tide of one of the few crimes that is getting worse" *The Vancouver Sun* (21 March 2014): http://www.vancouversun.com/news/More+bikes+stolen+Vancouver+than+cars/9230502/story.html.

The rule against cycling on sidewalks dates to the late 1800s. While the MVA maintains the historical general prohibition against riding on the sidewalk, the rule has been sufficiently altered by action at the municipal level to create considerable confusion.

While originally this rule presumably served pedestrian safety, within Metro Vancouver there are several examples of routes where cyclists are directed to use a sidewalk and prohibited from cycling on the highway. Bridges pose a particularly high degree of risk to cyclists, for example. Some municipalities have adopted "multi-use paths" to replace certain sidewalks where cycling on the particular roadway is especially dangerous.[81] These on-the-ground actions suggest that the historical rationale for the broad rule should be reconsidered in view of the risks in certain sets of circumstances, such as where the cyclist is a child or a parallel bicycle facility is obstructed.

The BC jurisprudence tends to show that cyclists who ride on the sidewalk will be found partly responsible in the event of a collision with a motorist, with breach of this rule playing an important part in the reasoning. In many cases, the factual circumstances suggest that the motorist had no expectation that a cyclist might be present on the sidewalk and took no precautionary measures specific to cyclists, such as looking where a cyclist would be rather than where a pedestrian would be.[82] In light of municipal action permitting cyclists on particular sidewalks, the general prohibition should be questioned. It continues to operate to the detriment of cyclists by condoning a level of care that is insufficient. Motorists ought to expect cyclists and pedestrians to be on sidewalks. The Act should acknowledge the due care and attention required to look for them.

A rule which clearly provides for cyclists to ride on sidewalks under appropriate circumstances, and which provides for children and people with disabilities to use sidewalks generally, will improve safety by providing clarity in the law and by contributing to the creation of a general expectation that cyclists might be riding on sidewalks.

Access to Cyclist or Pedestrian Controlled Traffic Signals

Recommendation 21

Section 183 be amended to introduce a new subsection permitting the operator of a cycle to proceed beyond a stop line or to proceed onto a sidewalk to operate a cyclist or pedestrian controlled traffic signal, and where the operator of a cycle proceeds onto a

[81] For example, the City of North Vancouver is in the process of removing a sidewalk along West 3rd Street in order to install a multi-use path. The installation of the multi-use path is part of the City's plan to provide AAA bike facilities. The location was deemed a high priority because of the danger posed to cyclists by the vehicle lane configurations. The multi-use path option was chosen over other possible cycling facilities as a result of insufficient road width to install on-road facilities.

[82] See *Hadden v. Lynch*, 2008 BCSC 295; *Deol v. Veach*, 2011 BCSC 1437; *Bradley v. Bath*, 2010 BCCA 10. In *Gregus v. Belisle*, [1992] B.C.J. No. 696 the judge held that the "purpose of s. 185(2)(1) of the Motor Vehicle Act is to prevent accidents from which the plaintiff cyclist is quite as likely or more likely to be hurt as the defendant, so the legislation has as its principal purpose the protection of the plaintiff. Where the plaintiff does not comply, then her unexcused violation is evidence of negligence."

sidewalk to operate the signal, the operator of the cycle must yield to pedestrians lawfully on the sidewalk.

Rationale

The MVA contains no rules governing access to pedestrian and cyclist controlled signals by the operator of a cycle. This is another area in which municipal action has overtaken provincial law: municipal streets now contain many cyclist controlled signals or pedestrian controlled signals which are placed on cycling routes and also intended for use by cyclists.

While the MVA contemplates pedestrian controlled traffic signals in section 133, access to a pedestrian controlled signal for a pedestrian has not been an issue since such signals are located on sidewalks. Access to signals for cyclists, on the other hand, can be problematic. Signals are often placed on the sidewalk at the far front and right edge of the roadway, which may be beyond a stop line or in a right turn lane. To operate the signal, cyclist may have to proceed past the stop line or adopt inappropriate lane positioning. Alternatively, the signal may be on the sidewalk and intended for use by both pedestrians and cyclists, requiring the cyclist to mount the curb and use the sidewalk to access the signal.

The recommendation is to provide access to cyclist and pedestrian controlled signals where they are commonly placed by municipalities, and to provide that a cyclist must yield to a pedestrian where the signal is on a sidewalk.

Crosswalks

Recommendation 22

The MVA should be amended to clarify when cyclists can ride through a crosswalk and indicate that motorists must yield to cyclists if they are in a crosswalk marked by "elephant's feet" or otherwise indicated to be a cycle crossing or cycle-priority space, such as a bike box. To that end, paragraph 183(2)(b) should be amended as follows:

(b) must not, for the purpose of crossing a highway, ride on a crosswalk unless

(i) authorized to do so by a bylaw made under section 124,

(ii) otherwise directed by a sign or pavement marking (e.g. "elephant feet"),

(iii) a trail which allows cycles crosses a highway by way of a crosswalk,

(iv) a detour directs cycles to use a crosswalk, or

(iv) a parallel bicycle facility is blocked, and in any such case,

(v) the operator of the cycle shall yield to pedestrians lawfully in the crosswalk or marked area, and

(vi) the operator of a vehicle shall yield to cycles and pedestrians lawfully in the crosswalk or marked area.

Rationale

Paragraph 183(2)(b) of the MVA prohibits riding on a crosswalk unless authorized by bylaw or directed by a sign. The rule was introduced in 1985, concurrently with s.

124(1)(v) empowering municipalities to dictate how and when cyclists can ride on sidewalks and crosswalks.[83] The legislative language of the rule is directly parallel to the prohibition against riding on sidewalks.

In the courts, the prohibition is often considered in conjunction with s.183(2)(a) relating to sidewalks. Cyclist plaintiffs riding in crosswalks will be in technical breach, and will likely attract apportioned liability. Even if their general presence might be indistinguishable from a pedestrian, stroller etc. with respect to speed and visibility, they cannot expect the same deference that pedestrians would receive.[84]

Case Study

The plaintiff cyclist was a 13-year-old boy that was struck by a truck while riding his bicycle onto a crosswalk. The trial judge found both parties equally at fault. The boy appealed, which appeal was dismissed. The Court of Appeal held that because of his breach of statute, they boy was not entitled to rely on having a right of way.[85]

The rule against riding on crosswalks has made a commonly used safer cycling practice illegal. Where a cyclist cannot safely merge with traffic in order to execute a left-hand turn, safer cycling practice is to execute a "box turn", where a cyclist wanting to take a left first almost clears the intersection in the right-most through-lane, before cutting into the intersecting street's crosswalk and re-aligning position 90 degrees so as to proceed with through traffic from the intersecting street.

Notwithstanding that the practice is used as a safer alternative to merging with one or more vehicle lanes in order to execute a left-hand turn, the former amounts to a breach of the statute where the latter—although riskier—may not.

Municipal action in respect of bicycle crossings has overtaken the existing rule. Many cities now have "elephant's feet" marking crosswalks to indicate where cyclists should ride to cross a street. Municipal signage on bike routes also direct cyclists to cross at certain crosswalks. Some municipalities have also installed painted "bike boxes" at intersections in order to allow cycles to safely navigate an intersection.

The proposed amendments modernize the law to clarify when cyclists may ride in crosswalks and provide for cyclists to yield to pedestrians when doing so. The amendment also clarifies that the operator of a vehicle must yield to both cycles and pedestrians who are lawfully in crosswalk or bike box type spaces marked for their use.

5. Offences

Dooring

Recommendation 23

[83] *Motor Vehicle (No. 2) (Amendment)*, SBC 1985, c.78 s.15.

[84] See for example, *Callahan v. Kim* [2012] B.C.J. No. 2248.

[85] *Bajkov v. Canil*, [1990] B.C.J. No. 145 (BCCA).

The MVA and Schedule 3 of the *Violation Ticket Administration and Fines Regulation* be amended to increase the fine for opening a vehicle door when it is not safe to do so from $81 to $368 and three demerit points.

Rationale

Section 203 of the MVA currently prohibits opening a vehicle door on the side available to moving traffic unless and until it is reasonably safe to do so and prohibits leaving the door open for longer than necessary to load or unload passengers. Section 203 remains substantially the same form as its original equivalent in the 1957 Act.

Current fines fail to target one of the most frequent types of motorist-cyclist collisions and fail to reflect the seriousness of the risks posed to cyclists by a "dooring," also known as the "door prize."

Since 2003, the fine for contravening s. 203(1) has been set at $81. For the 13 years before that, it was a mere $50.[86] In contrast, the fine imposed on a cyclist for contravening *any* rule set out in s. 183 is $109. When the fine was $50, cycling offences attracted fines of $75.[87] The penalty for distracted driving is currently $368, more than quadruple the fine for "dooring."

The small fines for unsafely opening a door into traffic still reflect the mild approbation one would expect for behaviour that primarily risks property damage and the offender's own safety—for example opening a door into the path of another motorist.

The issue is, however, one of safety for cyclists. Cycling safety studies consistently demonstrate that "doorings" are one of the most frequent types of motorist-cyclist collisions. A 2015 study by the City of Vancouver identified doorings as the most common motorist-cyclist collision and placed dooring as the number one issue in relation to cycling safety in the City.[88] The majority of doorings were by driver-side vehicle occupants in parked cars on arterial roads without bikeways.

While a dooring can result in superficial injuries, a high-speed dooring or a dooring or near-dooring in which a cyclist is propelled into or must swerve into other vehicular traffic has resulted in hospitalizations and deaths in BC.[89] Dooring is a serious problem.

The relatively high rates of doorings are a predictable result of cyclists' mandated position as far right as practicable on the roadway and the absence of driver training and awareness of the risks posed by the behaviour. Further, cyclists are sometimes forced to

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[86] *Violation Ticket Administration and Fines Regulation*, BC Reg 89/97, Schedule 3, as amended by BC Reg 384/2003.

[87] BC Reg 434/90. The older *Violation Ticket Fines Regulation* fined cycling without reasonable consideration at $75, but opening a door unsafely was only $50.

[88] *Vancouver Cycling Report 2015*, *supra* note 10.

[89] "Patricia Keenan, Kelowna cyclist, mourned after fatal crash into car door" *CBC News* (20 July 2015): http://www.cbc.ca/news/canada/british-columbia/patricia-keenan-kelowna-cyclist-mourned-after-fatal-crash-into-car-door-1.3160089; See also Kay Teschke et al., "Bicycling crash circumstances vary by route type: a cross-sectional analysis" *BMC Public Health* 14.1 (2014): 1205.

choose between the "lesser evil" of riding in the door zone as compared to riding in greater proximity to fast-travelling vehicular traffic.

Case Study

Anming is travelling uphill on a designated bike route with no bike lane, on his way home from work. He is travelling at approximately 10 km/h, as fast as he can go given the grade. The road is a boulevard with two lanes on each side of a grassy median; cyclists "share" the outside lane with vehicular traffic. Rush hour traffic volumes mean that both lanes are usually full; the outside lane cannot regularly encroach on the inside lane. Typical traffic speeds are 50-65 km/h, depending on congestion and street parking is permitted. Anming knows that the outside lane will be motivated to squeeze by without changing lanes and that he has little chance of survival if rear-ended. He chooses to ride in the door zone of the parked cars – although there is a high likelihood of collision with a door, the severity of the resulting injuries from a rear-ending are unacceptable.

A dooring is assumed to be the "lesser evil" in some circumstances, deaths do occur as a result of dooring, which is one of the most frequent cycling injury circumstances.

Ontario Bill 31, in effect as of September 1, 2015, provides for a fine of $365 (including victim fine surcharge and court fees) plus three demerit points against a driver who "doors" a cyclist. Drivers who unsuccessfully contest the charge could be subject to a fine up to $1,000 plus three demerit points, upon conviction.[90]

There are few reported legal cases relating to doorings; the paucity of jurisprudence likely reflects that such cases rarely get to trial. However, cyclists' claims become uncertain when their injuries are of such severity that they cannot recall the event and cannot address the self-serving evidence of the uninjured defendant motorist.

The recommended amendments will align fines for conduct that puts vulnerable road users' lives objectively at risk with fines for other behaviours that pose similar risks.

[90] Bill 31 is now *Transportation Statute Law Amendment Act (Making Ontario's Roads Safer),* SO 2015 c.14. Ontario Ministry of Transportation has information on this law online: www.mto.gov.on.ca/english/safety/bill-31.shtml.

Obstruction of a Travel Lane Designated for the Use of Cycles

Recommendation 24

Sections 153.1 and 153.2 of the MVA and Schedule 3 of the *Violation Ticket Administration and Fines Regulation* be amended to provide for a fine in respect of a contravention of section 153.1 or 153.2 of the MVA where the contravention is in relation to a designated use highway or lane that is designated for use by a class of vulnerable road user.

Rationale

Sections 152.1 and 153.2 of the MVA provide for designating a highway or a lane on a highway for use by a particular class of road user, which may include the operator of a cycle. The *Violation Ticket Administration and Fines Regulation,*[91] which sets out fines for contraventions of the MVA in Schedule 3, prescribes no amount for a contravention of section 153.1 or 153.2.

Section 161 of the MVA provides that despite any other provision of the Act, if there is a traffic control device (this includes painted markings) on or over a highway designating a highway—but not a lane—for special use, no vehicle shall operate a vehicle on the highway except as permitted by regulation. The fine for contravention of section 161 is $121.

As lanes rather than highways are designated for use by cycles, the Act and *Regulations* fail to prescribe any fine for obstructing a lane designated for use by cycles and there can be no enforcement against such behavior.

The danger posed where a designated cycle lane is obstructed is apparent: the operator of the cycle is forced to merge with vehicular traffic, sometimes abruptly. A merge is more safely accomplished the smaller the differential in speed between the merging bicycle and vehicular traffic, but this puts the cyclist in a "catch-22": if they reduce speed to ensure they can stop before colliding with the obstruction, they may be unable to safely merge to go around the obstruction, but if they maintain or even increase speed to reduce the risks associated with the merge, they are at risk of colliding with the obstruction should vehicular traffic refuse to "let them in." As the case studies presented in this Position Paper demonstrate, safely executing a merge with vehicular traffic can be both problematic and risky for cyclists.

The recommendation would clearly establish a set fine amount for obstructing a highway or lane designated for use by a vulnerable road user, which would in turn permit enforcement.

Conclusion

The Road Safety Law Reform Group strongly recommends modernization of BC traffic laws to reflect modern traffic realities and to meet BC's Vision Zero road safety objectives.

[91] BC Reg 89/97, Schedule 3, as amended by BC Reg 384/2003.

The recommendations set out in this Position Paper have been developed from scientific research, best practices for safer cycling and the experiences of BC road users.

The proposed reforms should be considered severable and capable of enactment on a stand-alone basis.

The proposed reforms should not be considered exhaustive, but rather, priority amendments to the existing legislative framework.

If adopted, the proposed reforms should increase safety for BC road users, provide clarity and promote compliance with BC traffic laws, and position vulnerable BC road users more equitably in the event of injury, loss or damage.

The BC Road Safety Law Reform Group is made up of the Trial Lawyers Association of BC, the British Columbia Cycling Coalition, HUB Cycling, and health researchers. These organizations represent approximately 50,000 supporters across B.C.

1410-04;
xref: 2860-02

Council Mar 19/18

The Corporation of the District of Saanich

Report

Mayor
Councillors
Administrator

Council
Administrator
Media

To: **Mayor and Council**

From: **Sharon Hvozdanski, Director of Planning**

Date: **February 22, 2018**

Subject: **Development Review Process**
File: 2860-02

RECOMMENDATION

That Council provide direction to staff on which, if any, of the 12 proposed options to improve the development review process, it wishes to explore further.

PURPOSE

The purpose of this report is to provide Council with information about the key development review processes overseen by the Planning Department, and outline possible actions that would help to reduce overall processing time. The focus of this report is on the Rezonings and Development Permits, as they form the bulk of applications handled by the Department and appearing before Council.

The suggested ideas are just that. Undoubtedly concerns about proposed changes will be raised. That being said, staff felt it important that the proposed improvements be brought forward for discussion. If and how they are pursued is a decision for Council in consultation with residents and stakeholders.

DISCUSSION

Background & Moving Forward

Saanich's Development Review process has, over a period of several decades, become layered and complex, which contributes to the amount of time required by staff to process an application, and for the approving authority to render a decision. This change is a reflection of evolving councils and community expectations around: citizen engagement; citizen participation in decision making; and how much and what type of information is being requested in order to make an informed decision. This situation is common amongst many local governments, in the region, and across Canada.

Continual review and improvement of operations and service delivery should be a goal of any organization. That being said, the amount of time allocated to continuous improvement must be balanced with achieving other organizational/Council/community objectives. Balance is essential, particularly when resources are stretched. Most importantly, service delivery must take into account the end users or "customers". For a municipality, the people we serve are varied and their interests and desire for resources can often be in conflict. As an example, in regard to development applications, an applicant's desire for speed needs to be balanced with the community's desire for meaningful engagement.

Saanich works at improving service delivery corporate wide, including expediting development applications, on a continual basis. Gains have and will continue to be made across the board. That being said, for development application processing times, the next level of significant improvements will require IT resources and fundamental process changes supported by Council.

Current Planning Division
The Current Planning Division is responsible for processing Rezoning, Development Permit (except Environmental, Streamside, and Fire Hazard), Development Variance Permit, Temporary Use Permit, Subdivision, Agricultural Land Reserve, Liquor Licence, Antenna, and Sign applications. While Building Permit Applications and Bylaw Enforcement cases are processed through the Inspection Services Division, the Current Planning Division also plays a key role in terms of Zoning Bylaw review of all Building Permit applications and involvement in Bylaw cases. The Current Planning Division is also responsible for managing and processing applications for the Board of Variance. Current Planning staff also work to support other divisions in the Planning Department and other corporate, Council, Council Committee, and Community initiatives/needs.

The Current Planning Division has eight full-time staff as follows: Manager of Current Planning; Senior Planner; Local Area Planners (2); Subdivision Coordinator/Approving Officer; Senior Planning Technician – Subdivision; and Development Assistants (2).

The Senior Planner and the two Local Area Planners act as File Managers for most development applications. Their role includes: File Manager; facilitator of the referral and evaluation processes; key contact for the applicant and their consultants; and lead negotiator.

Key tasks of the Local Area Planner (File Manager) related to development applications include:

- Pre-application discussions/meetings with applicant;
- Assist Administration Division staff at time of application to ensure that applicant's submission is complete;
- Review development applications for compliance with the Zoning Bylaw and other relevant bylaws and policies;
- Disseminate application information for referral to departments/sections and external agencies;
- Manage the referral process and meet associated timelines;
- Present the application to the departmental Land Use Planning Committee and the interdepartmental Development Review Committee;
- Communicate with referral departments;
- Coordinate development permit conditions and balance competing interests;
- Ensure file and Prospero folder are accurate and up-to-date;
- Attend Advisory Design Panel meetings as necessary;
- Author development application reports to Council and associated permits and documentation;
- Provide Council with a cohesive staff position on the application;
- Attend Council meetings for development applications, as required;
- Prepare and review Housing Agreements and review draft covenants;
- Administer file through to completion and sign off;

- Review Building Permit (BP) applications to ensure compliance with the Zoning Bylaw and approved Development Permits (DP), and manage communications and resolution process, if BP and DP drawings don't match;
- Undertake post development site inspections and arrange for release of the landscape bond or other assurances; and
- Assist Administration Division staff to purge the electronic and paper files when the planning process is complete.

Development applications only make up part of the Local Area Planners workload. Examples of other related duties are:

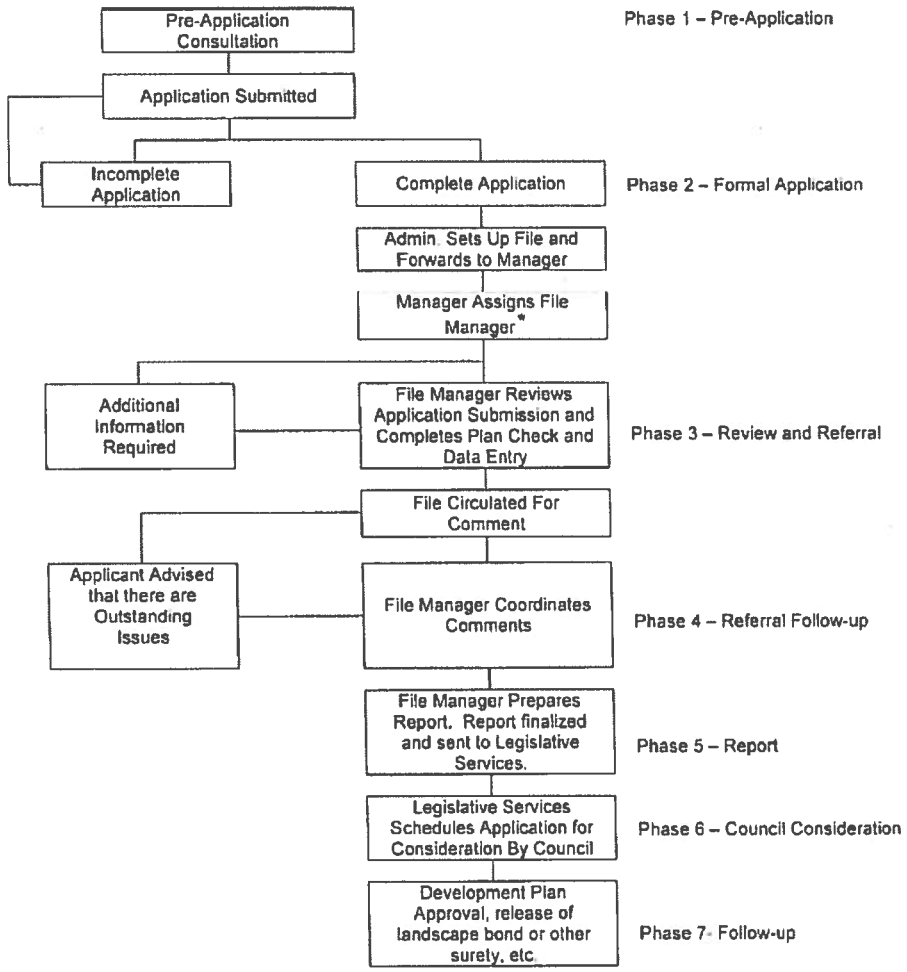
- Respond to development inquiries by letter, telephone, e-mail or personal contact at the Planning counter in a timely manner;
- Respond to Planning inquiries from other Departments;
- Review internal Engineering infrastructure upgrade plans and respond/make recommendations;
- Liaise with the Inspections Division on infractions and building matters;
- Draft bylaw amendments for consideration by Council;
- Review site servicing plans, Park's projects, Engineering projects, Environmental Development Permit referrals, etc.; and
- Planning liaison to various internal and external committees/agencies/stakeholder groups.

All of these activities are necessary and/or important function of the Planning Department. The ability to process development applications in a timely manner while maintaining other planning functions requires careful time management, project planning, and allocation of staff resources. Sometimes it is necessary to balance competing interests in order to satisfy a variety of stakeholders while continuing to move development applications forward.

Development Review Process

The Current Planning Division oversees the development review process for a wide variety of applications. In many cases, a development may require more than one type of application. Generally multiple applications for a single development are processed together. Figure 1 provides an overview of the Development Process.

Figure 1
DEVELOPMENT PROCESS OVERVIEW



Note: In the case of a Subdivision Application without rezoning, the Approving Officer or Subdivision Assistant, rather than the Local Area Planner, may be the File Manager.

Figure 1: Development Process Overview

In recent years, development activity in the region has remained high, stimulated by a buoyant economy, relatively low interest rates, and high demand for housing. In Saanich, there is a very limited supply of serviced land for new development within the Urban Containment Boundary. The Official Community Plan directs that growth will be accommodated through higher density, mixed-use development in "Centres" and "Villages" and limited infill within established neighbourhoods. Development within established neighbourhoods, "Centres" and "Villages" requires special considerations to ensure neighbourhood compatibility including extensive community consultation. Most new development requires rezoning. All commercial, industrial and multi-family housing development requires a Development Permit.

Over the past six years, the Current Planning Division has processed an average of 169 new applications per year. These numbers do not account for Current Planning staff's work on Building Permits. When you look at the number of applications handled by staff in a given year,

you also need to account for larger/more complex applications, and those received late in the year, that carry over from one year to the next year.

If you take this to the level of one Local Area Planner's work, they are handling around 50 pre/applications which includes projects ranging from a duplex, to the Nigel Valley development proposal, and the renewal of University Heights Shopping Center.

Table 1: Applications Received

APPLICATIONS RECEIVED						
	2012	**2013**	**2014**	**2015**	**2016**	**2017**
Development Permit	16	18	7	9	12	18
Development Permit Amendment (Minor)	11	13	10	14	20	16
Development Permit Amendment (Council)	10	10	11	14	21	5
Development Variance Permit	13	22	11	7	14	21
Rezoning	21	30	16	10	21	23
Subdivision	26	30	19	10	31	32
Strata Conversion	5	2	6	3	5	1
Temporary Use Permit	0	3	2	0	2	4
Liquor Licence	3	4	2	2	1	3
Antennae	2	0	0	0	1	1
Agricultural Land Reserve	0	1	5	3	1	3
Sign	63	57	64	57	69	51
Total	**170**	**190**	**153**	**129**	**198**	**178**

The time required to process development applications is influenced by a number of factors such as:

- The number of applications being processed at any one time;
- Available staff resources;
- Completeness of the application;
- Complexity of the application;
- Timely circulation response from internal departments, outside agencies, the community; association, and Advisory Design Panel;
- Applicants response to outstanding issues;
- Level of public controversy;
- Staff time required for report writing and review;
- Council's expectations respecting report content and level of community consultation;
- Backlog of items for Committee of the Whole meetings and Public Hearings; and
- Other competing corporate, Council, Council Committee and community priorities.

While processing times can vary based on the above noted factors, currently the estimated processing time for a simple application is 4-6 months, a moderately complex application is 6-8 months, and a complex application is 8-12 months. The majority of processing time is spent reviewing the vast amount of information required of applicants, negotiating with applicants, chasing referrals, and answering questions from residents and stakeholders.

What are Others Doing?

In terms of context, some communities with shorter processing times achieve them by requiring property owners/developers to get key referrals in advance of submitting their development application. While this approach looks good at face value, it is questionable from a customer

service aspect and whether it is actually any quicker, when one accounts for the pre-application work that must be undertaken by the property owner/developer and staff.

Others communities have shorter processing timeframes based on reduced expectations around the amount of information and/or the level of detail required to be provided, reviewed and presented to Council as part of its deliberation.

In other cases, communities focus more resources to the development process, and/or reduce the expectations around community engagement and citizen participation in the decision making process.

None of these approaches are right or wrong, they simply reflect the unique character of each organization, council and community.

Continual Improvement
Further improvements and time savings to Saanich's development processes can always be made. A valuable legacy of Saanich's 2009 Service Delivery Assessment process is that staff are more open to change and continue to bring forward and implement ideas for service improvement.

The development review process is constantly evolving and changing in response to market conditions, Council policies and priorities, staff resources, community input, and applicant expectations. Streamlining the development review process and reducing processing time for development applications requires a commitment from applicants, consultants, community associations and other stakeholders, and all levels of the organization to implement positive change. The overarching goals of this continual review process are to:

- Reduce time for overall application processing;
- Improve accountability for each step of the process;
- Improve communication early in the process and on-going;
- Provide clear and timely decisions and feedback from all decision makers to applicants;
- Reduce staff time spent on files (less "bureaucratic churn" and file re-referrals); and
- Strive to meet the needs of the participants in the process (applicants, Council, immediate neighbours, the general public, Neighbourhood Associations, other stakeholders, external agencies, Saanich Departments and Divisions) as best possible.

The following actions to address the Development Process Goals outlined above, have been segmented into: 1) Ongoing & Planned Work; and 2) Potential Process Options for Further Improvement that require Council Direction.

ONGOING & PLANNED WORK

Streamlining Policies, Procedures & Documents
As time permits, staff update all forms, applications, and planning related policies, procedures and documents. Application forms and submission requirements become outdated over time, and the information provided to applicants can always be improved in terms of ease of use and clarity. Procedure and related policies also require periodic assessment for inefficiencies and compliance with new regulation and best practices.

Status: Underway. This is a continual process as time permits.

Improving On-line Application Services
As capacity becomes available in the Corporate/IT work-plan, an on-line application portal will be pursued, similar to the one recently introduced by the Province for Agricultural Land Reserve Applications. The benefits of this type of system are two-fold: 1) an application can be completed at the convenience of the property owner/developer at anytime from anywhere; and 2) an application cannot be submitted until all information has been provided, thereby reducing delays.

As capacity becomes available in the Corporate/IT work-plan, staff will also pursue the introduction of the relevant components of the Tempest E-government My City application. This will allow property owners, residents and applicants to engage with Saanich through an alternate means, from anywhere at any time of the day, and monitor the progress of applications. In turn, applicants will be able to respond more quickly to outstanding issues.

Status: Pending Corporate/IT Capacity. As Council is aware, foundational work is required in terms of Saanich's IT system, before new initiatives can be undertaken. As capacity becomes available, Corporate/IT needs/initiatives are assessed and ranked for implementation.

Improving "Self-Serve" Options
E-mail and social media have improved/increased the means by which residents, developers, community associations and other stakeholders can comment, ask questions and provide input about a development application. Requests to staff for follow-up information on questions from residents on Facebook or other social media platforms is also increasing. While letters related to development have declined in favour of e-mails; phone calls, front counter inquiries, and requests for meetings continue to increase.

Citizen engagement and participation are essential to good decision making. That being said, the volume of correspondence, particularly e-mails, and the inherent desire for an immediate response, consumes significant staff time. Planner's responses often trigger additional questions that then require additional follow up work. In some cases, phone/in-person conversations can reduce this "loop", but in many cases people understandably want written documentation for their files so they can reference it at a later date.

In an effort to address this issue, Saanich has developed a number of "self-serve" options to better help the resident/developer/stakeholder and make efficient use of defined staff resources. Information about development projects are posted on the Saanich website, on-line GIS provides vast amounts of information, as does the on-line property profile query. General information about the development process is also provided on-line and in print. As with any self-serve approach, improvements can always be made. That said, defined resources must be allocated across a broad range of "customers" and their needs and wants.

Improving "self-service" options and both the quantity and quality of information on-line are two means of increasing the amount of staff time available to move applications forward to Council for consideration.

Status: Pending Corporate/IT Capacity. As Council is aware, foundational work is required in terms of Saanich's IT system, before new initiatives can be undertaken. As capacity becomes available, Corporate/IT needs/initiatives are assessed and ranked for implementation.

Developing a Clear and Consistent Community Contribution Policy
Through the rezoning process, Council has the ability to require community contributions from a developer to off-set potential community impacts. Currently, applicants are advised by staff to discuss the matter with the community to determine any specific needs. Ultimately, it is the File Manager (i.e. Local Area Planner) that is tasked with negotiating community contributions with the developer. There is no bylaw or detailed policy that sets out what may be acceptable to Council and no formula or process (e.g. Pro Forma Financial Statement) by which to establish the lift in value, or what % should be directed towards a community contribution. This often results in delays and inconsistency between developments.

Negotiating and securing community contributions can be complex. Some applicants see community contributions as an additional requirement that adds to their development costs. They see them as being redundant, particularly if a development would also be subject to Development Cost Charges. A clear and consistent community contribution policy would provide more certainty for all parties - the public, Council, and the developer. It would also allow the developer to account for community contributions in their early project planning. Staff time spent on amenity negotiations would effectively be eliminated.

As an aside, the use of covenants as a means to secure community contributions and other commitments has increased in recent years. Final approval of development applications typically does not occur until covenants are registered. Covenants and other restrictions registered on Title can make it difficult for owners to secure financing. Other methods of securing these commitments should be explored in consultation with the development industry.

Status: Underway. Per Council's Strategic Plan direction, Phase One (prepare summary of approaches used in Capital Regional District and key communities in Lower Mainland and BC) is underway. Target completion - Q2 2018.

Further Investigating Technical Support Options
Much of a Saanich Planner's (File Manager's) time is spent doing technical and administrative work that could be done by a Plan Checker/Technician or by Planning Administration staff. This includes tasks such as; development plan checks, development plan approvals, building permit referrals, data entry and updating. This situation is the outcome of trying to stretch resources to meet the needs/wants of the Council, the community, developers, external agencies and the corporation.

An increase in technical assistance would help to free up the Local Area Planners to focus on the key processing functions and report writing. Modest improvements in work flow and capacity are possible through further refinements in the work flow of technical and administration staff, both intra and inter departmentally, along with streamlining processes and possibly delaying or eliminating less valued work. More significant improvements would likely require additional staff resources. Both alternatives noted above are being looked at along with their comparative "losses and gains".

Status: Underway. Report to be prepared for Councils consideration. Target completion – Q3 2018.

Ongoing Community Engagement & Information Sharing
Public engagement and information sharing is a key component of the development review process. Often residents and applicants are not aware about the role and functions of the Planning Department, enabling legislation, application requirements, and the relationship between Official Community Plan policies, Development Permit Guidelines, and zoning regulation. Through these interactions, staff also gain valuable insight into neighbourhoods and the want and needs of residents.

As time allows, Planning works with applicants, community associations, advisory committees, special interest groups and other stakeholders to increase knowledge about planning processes and the role of staff and Council, and how they can become involved in the process. A well-informed public can help to minimize confusion, conflict and questions about policy and process in relation to specific development proposals.

Enhanced engagement efforts by the Planning Department and other key departments would be helpful to improve community discussions regarding development projects. That being said, such engagement and information sharing requires staff resources. The ability to develop and provide education programs needs to be carefully balanced with other Planning/Corporate priorities. The enhancement of Saanich's on-line resources is one area where additional attention would pay off without the need for significant ongoing staff resources. That being said, in-person discussions are invaluable for all parties.

Status: Underway. This is a continual process as time permits.

Updating the Development Review Process Manual
A Development Process Manual was prepared for all types of applications and development related procedures following the 2009 Service Delivery Assessment Review. This manual was last updated in 2014. While it is still a valuable reference for Current Planning staff, updates are required to reflect evolving processes, changes to application tracking software and enabling legislation. An updated manual would help to provide a more consistent approach and common understanding at all Planning staff levels.

Status: Underway. Target completion – Q4 2018.

Undertaking a Comprehensive Review of the Zoning Bylaw
The Saanich Zoning Bylaw needs to be made more user-friendly. Over time, numerous amendments, including the addition of new site-specific zone schedules, have resulted in bylaw inconsistencies. Some of the permitted uses lack definitions and clarity could be improved throughout the bylaw. Graphics should also be added to improve readability.

Staff have been working to address key bylaw issues as they arise but generally, these are band aid solutions to address specific issues and do little to improve the overall usability of the bylaw. The complexity of the Zoning Bylaw, combined with lack of clarity and readability means that staff spend an inordinate amount of time responding to questions about bylaw regulations and permitted uses.

A comprehensive review of the Zoning Bylaw would take considerable time and require extensive consultation. Currently, staff resources to undertake such a review are not available without taking staff away from development application work. A comprehensive review of the Zoning Bylaw would best be accomplished with the assistance of a consultant.

Status: Underway. A staff report to Council outlining; potential scope, options, and costs is being prepared. If Council supports the project, it would be forwarded to a Strategic Planning Session for prioritization in relation to Council's other corporate initiatives. Target for report completion – Q3 2018.

Updating Development Permit Design Guidelines
Along with the Official Community Plan and Zoning Bylaw, the Design Guidelines provide essential information to the development industry about the form and character of buildings that Council and the community would like to see constructed. Preliminary work was undertaken on updating the design guidelines in 2009. Further work was postponed to address other Council priorities.

As with the Zoning Bylaw, an updating of the Design Guidelines would take considerable time and require significant consultation. Currently, staff resources to undertake such a review are not available without taking staff away from development application work. An update of the Design Guidelines would best be accomplished with the assistance of a consultant.

Status: Underway. A staff report to Council outlining; potential scope, options, and costs is being prepared. If Council supports the project, it would be forwarded to a Strategic Planning Session for prioritization in relation to Council's other corporate initiatives. Target for report completion – Q3 2018.

POTENTIAL PROCESS OPTIONS FOR FURTHER IMPROVEMENT – COUNCIL DIRECTION REQUIRED

1. Re-enforce the Expectation for Complete Applications

The ability of staff to respond to development applications in a timely manner depends on the cooperation of the applicant and their consultants and the quality of information provided with the application. Hiring architects and other consultants to provide complete plan packages, transportation impact assessments, parking studies, tree reports, site servicing plans, and environmental assessments is costly. Some applicants are reluctant to provide that level of information up front with no guarantee that their application will be approved.

Pre-application meetings between staff and the property owner/developer are an option for all applicants. These meetings help to clarify and refine the level of information required based on the specific type of application, site-specific considerations, and community expectations.

While staff attempt to hold the line on this issue, pressure to take incomplete applications is significant, and it can appear bureaucratic to reject an application when a promise is made by the owner/developer that required information will follow in a timely manner. In most cases the file cannot be circulated until this information is received. Staff then spend time following up with the applicants, and processing timelines are brought into question, based on applications being opened/in-progress, but without having the necessary information to complete the review.

If Council wishes to re-enforce this expectation, incomplete applications would not be accepted. That being said, if the applicant refused to submit all of the required information, a short two page summary report of the application and outstanding information would be forwarded to Council for direction.

2. Circulation Response Times
Currently, applications are circulated internally, to outside agencies, and the community association. Through Service Level Agreements with internal departments, circulation responses are required within 30 calendar days. Based on workload and existing staffing levels, a shorter response time would be difficult to consistently achieve without additional resources.

Responses from outside agencies (e.g. Ministries, ALC) and community associations are requested within 30 calendar days. In terms of Ministries and other government bodies, formal service level agreements defining response times are unlikely to be realized. To that end, staff endeavour to develop and maintain positive staff to staff relations to help facilitate timely review of applications.

In terms of the community associations, understandably some choose not to respond until the applicant has arranged to meet with the association and undertaken a community consultation process which may include one or more open houses. Also, increasingly more often, an association will request staff to supply additional plans and consultant studies for their review. As applications become more complex, and supporting documents become more numerous, the level of review by such volunteer organizations cannot always be achieved within the 30 day timeframe, particularly during the summer months and other vacation periods when associations typically do not meet on a regular basis.

While community association input is essential, it is one aspect of the process that can delay completion of the staff report and consideration of an application by Council. Council guidance on whether they wish to set a specific time frame for community association responses, would be helpful.

3. Environmental and Social Review (ESR) Green Sheet and Memo
The ESR process was introduced in the early 1990's for all major planning and development projects. In recent years, requests from Council for ESRs have been rare, but staff are still obligated to complete the initial review (Green Sheet) and prepare a memo to Council for all rezoning applications, and subdivision applications that require Council review. Based on that memo, a councillor may request that an application be placed on a Committee of the Whole agenda for consideration of the need for an ESR to address specific items.

The ESR review has for the most part become redundant. Official Community Plan and Local Area Plan policies now cover many potential impacts. In addition, Environmentally Sensitive Areas (ESA) are identified on ESA maps available on the Saanich website. Environmental and social information necessary for Council to make an informed decision about a project is now a standard requirement as part of the application submission. This information is summarized in the Planner's report to Council, and/or included in the agenda package as a stand-alone information report from a consultant. Council also has the ability to request additional information at Committee of the Whole or Public Hearing, if an unanticipated issue arises.

4. Assign a Higher Priority to Development Applications over other Planning Work
Processing development applications is only a part of the overall workload of the Planning Department. Often, other work program priorities must compete for the limited staff resources. If the processing of development applications is a priority for Council, this needs to be reinforced through the Strategic Plan so that staff resources can be assigned accordingly.

5. Prioritize Applications for accelerating processing based on Council/Community Objectives

Within the current context, ongoing reviews for application processing efficiencies can only stretch existing resources, in a meaningful way, so far. Acknowledging this limitation, Council may wish to prioritize certain types of applications based on key objectives of the Official Community Plan such as; affordable housing, and/or creating a more resilient local economy and diverse tax base. This type of change would mean that affordable housing projects and large scale commercial and light industrial projects would "move to the front of the line". All other projects, unless directed by Council, would be handled in the order they arrive. It is important to acknowledge by accelerating certain types of applications, you would inevitably delay others.

6. Pre-Zone Focused Areas after Community Planning Process is Complete

One means of making a significant impact on development application timelines is to pre-zone lands following the approval of major land use plans, such as the "Shelbourne Valley Action Plan" and "Uptown Douglas Corridor Plan". Major and Neighbourhood "Centres" are where the vast majority of future growth and density is to be focused. Pre-zoning in these locations after a community based planning process was completed, would allow the vision to be realized more efficiently. In order to address Council and community expectations, zoning with community contribution requirements built in would need to be prepared in consideration with the public and key stakeholders, and implemented. In this scenario, a developer would then only need to apply for a Form and Character Development Permit. As Council is aware, Saanich's Design Guidelines would need to be updated to ensure clarity for the developer and that Council and community expectations are achieved.

7. Broaden the Delegated Authority for Minor Development Permit Amendments

Currently, Council has delegated authority to the Director of Planning to approve minor changes to Development Permit plans, where changes would not be detrimental to the overall character of the development and no variances would be required. Minor amendments are generally approved in about two weeks as opposed to 4-6 months if consideration by Council is required. Providing greater discretion to the Director of Planning to deal with minor amendments by increasing the scope of changes that can be considered would reduce both processing requirements and processing times.

8. Further Expand Delegated Authority

The "Local Government Act" allows for Council to delegate authority for staff and other bodies to undertake work on its behalf. For example, Council currently delegates it authority for: Fire Interface Development Permits to the Manager of Inspection Services; Streamside Development Permits to the Manager of Environmental Services; approval of the stratification of existing Buildings to the Director of Planning; and variances related to single family lots/dwellings to the Board of Variance.

When applied thoughtfully, delegation can improve processing times while still achieving Council and community objectives. When not applied judicially, delegated authority can increase demands on already taxed staff thereby slowing down development and other Council initiatives, and eliminate transparency and beneficial engagement between Council and residents. Two examples of delegation that Council may wish to explore further are: Heritage Alteration Permits without variances (the Saanich Heritage Foundation would remain part of the process); and Industrial Development Permits without variances.

9. Role of the Advisory Design Panel
The Advisory Design Panel currently meets twice per month and reviews institutional, multiple family, and commercial projects. The Advisory Design Panel provides valuable input on building design and means for further improvement. Their feedback is included in Council reports. While developers are wise to take the Advisory Design Panel's recommendations on board, they are not obligated to do so. That being said, staff cover off many, if not all, of the same issues during its review process.

Two alternatives could be pursued by Council, discontinue the Advisory Design Panel, or focus the Advisory Design Panel's work to significant building projects in Major and Neighbourhood "Centres". In the latter scenario, as an example the redevelopment of the University Heights Mall would be sent to the Advisory Design Panel, while a townhouse project would not.

10. Reduce the Number of Required Council Meetings
Currently, rezoning applications typically appear before Council four times, specifically: 1) Committee of the Whole; 2) First Reading of the Bylaw; 3) Public Hearing; and 4) Final Reading of the Bylaw, after the Restrictive Covenant is registered. While this provides multiple opportunities for public feedback, it does lengthen the development application review timeline.

An alternative approach could be to eliminate the Committee of the Whole meeting and focus input to the Public Hearing. In this scenario an application would appear before Council two or three times, specifically: 1) First Reading of the Bylaw (no Council discussion occurs, First Reading is solely granted so the application can appear at the Public Hearing); and 2) Public Hearing. After Public Hearing is complete, if Council felt the application was worthy of approval, a Council meeting would be convened the same night, to grant 2nd, 3rd and Final Reading if there were no requirements for legal documents to be prepared and registered. If legal documents were required, a third meeting would be required.

11. Increase the Number of Available Council Meetings
In 2017, Council amended its meeting schedule to hold Council and Committee of the Whole meetings on separate evenings. While this change was done to achieve a number of important objectives, it has resulted in fewer Committee of the Whole meetings available for applications to be considered at. This change has impacted timing for moving rezoning applications through the four required Council meetings (Committee of the Whole, First Reading, Public Hearing, Final Reading).

12. Process Change for Applications where Council is not the Decision Making Authority
Council policy requires certain antenna applications to appear before Council as a means to receive public input. Local governments are only required to act as a conduit for the delivery of local resident input to the Federal Authority that oversees such matters. Residents can also contact the Federal Authority directly.

While the current approach is well intentioned, Council is not the decision maker on these applications. In an effort to better allocate limited resources, which includes Council and planning staff time spent processing such applications, Council could choose to amend its current policy. The proposed change would be to eliminate the need for such applications to appear before Council. Feedback would still be collected in writing and passed along to the Federal Authority. Staff could still notify local residents to ensure they were aware of the application, who the decision making authority is, and the means to provide comment.

Provincial Liquor Licence referrals are a similar situation and would be worthy of exploring for potential resource savings as well.

ALTERNATIVES

1. That Council support the 12 proposed options for change.

2. That Council support some of the 12 proposed changes.

3. That Council provide alternate direction.

FINANCIAL IMPLICATIONS

Some of the recommended changes would require financial resources to implement. If Council supports all/some of the proposed changes, terms of reference/costs would be provided and the initiative could be accessed as part of the annual budgeting process, or independently if so desired.

STRATEGIC PLAN IMPLICATIONS

Some of the recommended changes would impact the staff available to work on other Strategic Plan initiatives. If Council supports all some of the proposed changes, terms of reference/costs would be provided and the initiative could be accessed and prioritized as part of Council's Strategic Planning Process.

CONCLUSION

The Current Planning Division oversees the development review process for a wide variety of applications. The Saanich Development Review process has, over a period of several decades, become increasingly layered and complex and as with many communities through BC and Canada, is criticized as being slow at producing decisions.

Focused changes were made to the development process following formal reviews in 2002, 2006, and 2009. Ongoing service delivery assessment and improvement takes place as time and resources permit. Despite significant changes over the last 15 years, the desire for faster development review remains for Saanich and many communities throughout BC. Staff continue to try and balance the desire for shorter processing times with the increasing demand for information to make decisions with and the community's desire for meaningful engagement and participation.

Most new development in Saanich occurs in "Centres" and "Villages", or as infill within established neighbourhoods, requiring special considerations to ensure neighbourhood compatibility including extensive community consultation. Most new development requires rezoning. All commercial, industrial and multi-family housing development requires a Development Permit.

Processing of development applications is a priority for the Current Planning Division. The time required to process development applications is influenced by a number of factors including many that are beyond the control of Planning staff. The development review process is constantly evolving and changing in response to market conditions, Council policies and priorities, staff resources, community input, and applicant expectations. This report outlines a

number of actions that could be considered to streamline the application review process, eliminate inefficiencies, and improve processing time. Streamlining the development review process and reducing processing time for development applications will require a commitment from applicants, consultants, community associations, the public, other stakeholders, and all levels of the organization to implement positive change.

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cc: Paul Thorkelsson, Administrator
Brent Reems, Director of Building, Bylaw, Licensing, and Legal Services
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Suzanne Samborski, Director of Parks and Recreation

ADMINISTRATOR'S COMMENTS:

I endorse the recommendation from the Director of Planning.

Paul Thorkelsson, Administrator