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The British Columbia Court of Appeal has produced a brand new decision involving two cars which adversely impacts a cyclist's ability to pass vehicles on the right. Not only does the decision represent another nail in the passing on the right coffin, it underscores the necessity for legislative change.

The facts of the case were simple enough. A car was turning left at an intersection. Another driver was going straight through, passing vehicles to her left which had stopped to allow the left turning car to proceed. The road was divided by a solid yellow line. The car proceeding straight was in a lane which widened to accommodate a second lane for right turning vehicles about 200 feet ahead. This is called a "de facto lane" - it is in fact wide enough to accommodate two lanes of traffic but is not separated from the lane next to it by a white line marking.

Cyclists live and breathe in de facto lanes. They lay awake dreaming about de facto lanes. These lanes represent a natural invitation to pass on the right because there is physical space to do so.

At Trial, the driver of the left turning vehicle was found completely at fault. However, she successfully appealed on the basis that the other driver could not properly pass vehicles on the right in the de facto lane because she could not fit herself within the strict confines of the *Motor Vehicle Act*.

By way of background, many cyclists were concerned about a decision from the Court of Appeal in 2010 wherein a cyclist was faulted for riding between the through lane and the de facto right lane rather than taking the through lane prior to reaching an intersection. That case is thought to have at least acknowledged the existence of de facto lanes but left some uncertainty as to whether or not a de facto lane was one of the exceptions to the general prohibition against passing on the right found in the *Motor Vehicle Act*. On the facts of that case it was unnecessary to decide whether or not the *Motor Vehicle Act* permitted the cyclist to pass on the right, given the finding that he had dangerously placed himself between the through lane and the de facto lane.



In this new decision, B.C.'s highest Court appears to have completely closed the door on any hope that the de facto lane is an unobstructed lane of travel for purposes of fitting in to one of the exceptions to the *Motor Vehicle Act* prohibition.

The Court reminded the parties that the *Motor Vehicle Act* prohibits one vehicle passing another on the right: *"the driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle...."*. The Court then went on to define the three exceptions as follows: *"essentially, passing on the right is permitted when the overtaken vehicle is turning left, when passing on a lane roadway, or when passing on a one way street where room permits."*

The trouble lies in the Court's finding that a de facto lane is not one of the exceptions to the prohibition against passing on the right. Mr. Justice Lowry, writing for the whole Court, stated: *"the exception is confined to passing on the right where there are two marked lanes for vehicles proceeding in the same direction and only then when passing can be undertaken in safety. Here, there was only one such lane regardless there was what might be called a second de facto lane. I recognize this means drivers proceeding to turn right at the intersection, as Ms. Marrison was, could not align their vehicles to enter the 100 foot marked lane until it was virtually reached, if there were vehicles ahead in the 'through' lane that were not turning left, but that is what the Act provides and it appears to me to be with good reason. If it were otherwise, drivers would be entitled to pass on the right wherever the road is sufficiently wide for two vehicles to pass."*

Inasmuch as the *Motor Vehicle Act* provides that cyclists have the same obligations as motorists, this decision is highly problematic. The reality of a cyclist's daily commute features routine travel to the right side of vehicular traffic, often overtaking vehicles in heavy traffic situations. British Columbia's highest Court has confirmed this is now only legally possible when there is a marked lane in which to pass and only then when it is safe. No one would quarrel with the latter proposition that the passing must be safe, but the narrow definition of a laned roadway puts cyclists in the unenviable position of having to routinely break the law when passing in a widened lane not marked by a white line.

Once again I'm left wondering why anyone ever thought it was a bright idea to enact a law which states that motorists and cyclists have the same legal obligations. In my humble opinion, this was de facto a bad move and needs to be revisited by the legislature. It reminds me why I wear a helmet. So I don't tear my hair out.

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