



Posted on: November 22, 2007

FORGET THE WITNESS, SOMEBODY GIVE ME A BUFFER

November 22, 2007

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Originally published in Momentum Magazine, BC Edition

For years I have told anyone who would listen that a cyclist's legal rights provide little solace in an orthopaedic trauma unit. For me this has been another way of encouraging cyclists and cycling advocacy groups to remember that safety is more important than a determination of right and wrong. With this universal truth in mind, how does the Lower Mainland and the Province create a transportation infrastructure which truly makes safe room for cyclists and pedestrians?

Before going further, I should qualify my comments. I am not an engineer nor do I profess to have any expertise in urban planning or transportation design. I have, however, acted for cyclists for 20 years, some of whom have been catastrophically injured.

First, with the greatest respect to those who have toiled with these planning issues, I do wonder about the wisdom of designating downtown curb lanes for "buses and bikes only". In my experience, buses and bikes do not get along.

Secondly, creating bike lanes which run immediately adjacent to the driver's side of parked vehicles is, from my rather narrow perspective, an invitation to disaster.

In both cases, the intent was inarguably pure. At the heart of these designs is a real and meaningful effort to increase awareness of cyclists and ultimately create an environment in which motorists will keep a better lookout. While this kind of thinking is certainly a step in a very positive direction, the flaw lies in proximity. Whenever a cyclist is required to ride in close proximity to parked vehicles on the right and moving vehicles on the left, or to buses, there will be accidents. A large number of my files are "door" cases which occur when the cyclist is in the designated bike lane, or cases involving cyclists who are struck by passing vehicles while attempting to maintain sufficient distance from parked cars. A third growth area relates to cyclists being struck by right-turning vehicles which have crossed the bike lane prior to executing a right turn.

I am sure that the municipal creation of bike lanes presupposed that the Provincial Government would



eventually create laws relating to bike lanes so that cyclists and motorists could understand their nature and purpose. To date, this has not occurred. Hence we are no further along in gaining a true legal appreciation of what bike lanes actually mean, other than to believe that they give rise to a greater common-law duty of care on the part of the motorist. If the cyclist is struck in a bike lane, the motorist may be more likely “wrong”, liable or at fault for the accident. However, when ruminating on questions of right and wrong and liability, I do find myself dreaming again about accident prevention.

That dream always involves a model found in several cities in Europe and apparently the future streets of New York. The New York Department of Transportation plans to reconfigure seven blocks of 9th Avenue by removing a vehicle lane and adding a bike lane. The difference is the bike lane will run between a sidewalk and a buffer zone. The buffer zone will run next to a parking lane which in turn will run next to vehicle lanes.

The aspect of the design which seems most appealing is that it uses a lane of parked cars to protect cyclists from other traffic. It does this by placing the bike lane directly next to the sidewalk on the western edge of 9th Avenue and on the other side a buffer lane with plastic bollards and large planters to keep cars from entering. The parking lane will be next to the buffer zone and beyond that will be the lanes for vehicular traffic.

According to Janette Sadik-Khan, the city’s Transportation Commissioner, the transformation was possible because traffic volumes on 9th Avenue were low enough that cars could move as smoothly in three lanes as in four. It seems to achieve reduced volumes the City of New York is also proposing congestion pricing with charge levies against drivers using the streets of Manhattan below 86th Street. The drivers who don’t want to pay to commute in their vehicles to work will then resort to their bicycles, secure in the knowledge that they can ride in a bike lane virtually free of risk of interaction with vehicles.

In addition, at each intersection, a raised pedestrian island extends into the roadway so that pedestrians walk a shortened distance across the street.

Whether or not we embrace design concepts such as those changing 9th Avenue in New York City will hopefully one day soon become a question for politicians, social planners, and engineers. For now, I will continue to dream and necessarily return to my grim reality of litigating who was right and wrong, and to what degree.

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