

Introduction

1. The NB Cycling Coalition's "White Paper" was presented in detail at the 12 January 2017 meeting with NB Government. Included was suggested wording to modernize outdated definitions and insert current (national and international) recognized Cycling Safety and Operating practices for NB roadways, placing them into Law or Regulations. ***This document has been updated to include results of discussions during NB cycling working group meetings in 2017.***
2. The adoption of Ellen's Law, while a progressive move forward, falls quantitatively short of the requirement to modernization relevant subsections of the current NB Motor Vehicle Act (MVA) for terminology, safety practices and cycling applications.
3. The NB Cycling Coalition's "White Paper" invents nothing not already in Law. Wording is extracted from legislation for provinces of Ontario, Nova Scotia Bill 93, Quebec and states of California and Maine. Current Law was used as the basis to compare and make suggestions to modernize and improve road safety in the current NB MVA.

Summary of NB MVA Articles effected (herein)

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|---------------------------------|-------------|----------------|-----------|-----------|----------------------|
| 4. Definitions: | "bicycle" | "bicycle lane" | "cyclist" | "sharrow" | "Vehicle" |
| 5. Powers of local authorities: | 113(1) | | | | |
| 6. Rules of the road: | 149 (3) | 149(4) | 149(5) | 149(3) | 152(4) 156(2) |
| 7. Signals: | 164 (b) (1) | | | | |
| 8. Bicycles: | 176(1)) | 179(1) | 179(2) | 179(3) | 179(4) 179(5) 181(1) |
| 9. Miscellaneous Rules: | 189 | | | | |
| 10. Parking rules: | 193(1)(o) | | | | |

MVA – Areas and Articles Addressed

11. Specific MVA definitions and subsections not addressed in Ellen's Law are described below including suggested wording. Explanatory '**Italic text**' follows each article as explanation/logic for the MVA suggested revisions.
12. The format follows sequence of the MVA and must be read in conjunction with the existing MVA.

Definitions

Existing paragraph to be repealed

"bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels;

Explanatory text: Cycling has evolved past two wheeler to include devices such as the trishaw being used by the cycling without age program at Loch Lomond Villa which is three wheeled, and electric assisted or the three wheeled hand powered cycle used by Minister Doherty. Our aging baby boomers will be traveling around retirement villages in peddle powered four wheelers. The MVA must clearly indicate what types of vehicles are included in the term "bicycle" so that the rules can be understood, promulgated and policed.

Repealed paragraph substituted by

"bicycle" means every human powered vehicle having any number of wheels with its' design and propulsion basis similar to a typical bicycle utilizing a pedal type system to initiate vehicle movement including electric motor assisted.

Add paragraphs

"bicycle lane" means a marked restricted lane on a roadway designated by pavement markings and/or signage for use by cyclists;

Explanatory text: (Wording based on Nova Scotia Motor Vehicle Act) Bike lanes are second only to segregated cycling paths when comparing safety and are used extensively throughout the province as space is not available for separate infrastructure. Rules for their used must be provided provincially so all jurisdictions (municipalities) will be policed consistently. Without clarity in the MVA policing or education is not possible.

"cyclist" means any person riding a bicycle;

Explanatory text: Required addition to the MVA indicating who a cyclist is

"sharrow" means a roadway where motorized vehicles and bicycles share the same lane, indicated by pavement markings of a bicycle with two chevrons.

Explanatory text: Sharrows are infrastructure third in line from a cycling safety perspective but still far better than nothing. Logic for addition into the MVA is similar to bike lanes. However, this road treatment is the situation where Ellen's law excels. Bolstering Ellen's law with MVA acknowledgment of the road treatment will help education.

Definitions (continued)

Existing paragraph to be repealed

“**vehicle**” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway excepting devices moved by human power or used exclusively upon stationary rails or tracks; (véhicule)

Explanatory text: This definition (underlined words) is a contradiction of MVA subsection 176. The first words out of a motorists' mouth when we are educating cycling awareness is “well the cyclists don't follow the rules”. When discussing this with the police they show frustration that charging a cyclist with an MVA violation is impossible. Of course, before we start issuing tickets a corrected MVA will allow education of all road users. Reference MVA subsection: 176, Every person riding a bicycle upon a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this Act, except those provisions which by their very nature can have no application.

Repealed paragraph substituted by

“**vehicle**” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, propelled or driven by any kind of power, including human power excepting devices used exclusively upon stationary rails or tracks; (véhicule)

Explanatory text: The simple wording above is from Ontario making clear that cyclists must follow the rules. (underlined words revised)

Powers of local authorities

Add subsection

113(1) (j) designate a sidewalk or any portion thereof as a multiuse active transportation route; and

(j.1) authorize and regulate the use of bicycles and other active transportation devices on such multiuse routes, and, for greater certainty, a sidewalk so designated is subject to all other provisions of this Act.

Explanatory text; (wording based on Nova Scotia law) Added to solve the issue of children on sidewalks for example around school zones where it may be unsafe to have 5 year olds in a bike lane beside high volume motorized traffic. Also, allowing municipalities to create connectivity of trail systems where off road cycle trails cannot be built along busy roads. The intent of the current MVA, although not clearly described, is that bicycles are not to be on sidewalks (see 179(4)).

Rules of the road

Explanatory text: The document presented to Government January 12th 2017 contained wording related to safe passing space that was extracted from other provincial/state legislation. More of a "best of" than specific wording/format from any one jurisdiction. It is clear and concise in four added subsections.

We have a one metre law "Ellen's law" that extracted one portion of the presented wording and mixed it with other wording that is in conflict with cycling safety training (sounding of vehicle horns and cyclists giving way to the right). The value of increasing the space to 1.5 metres at higher speeds is clear and is effect in Quebec as well as other countries like New Zealand and Australia where rural roads are prominent like in New Brunswick.

Add subsections

149(5) The minimum distance required in subsection 149 (3)(c) refers to the distance between the extreme right side of the motor vehicle and the extreme left side of the bicycle including all projections and attachments.

Explanatory text: Based on Ontario wording making clear that motorists must consider mirrors, truck load overhang etc. in the clearance required.

149(6) The minimum distance required in subsection 149(3)(c) is applicable whether the cyclist is in a marked bike lane, a sharrow or on an unmarked roadway.

Explanatory text: Nova Scotia states "on the roadway, on the shoulder, or in an adjacent bike lane"

~~**149(7)** The collision of a motor vehicle with a person operating a bicycle is prima facie evidence of a violation of subsection 149(3)(c)~~

~~*Explanatory text:* Based on U.S. State of Maine wording.~~

~~*EDIT: Upon discussion with officials from the Department of Public Safety, it was determined that the recommended amendment above is not necessary.*~~

152(4) The driver of a motor vehicle may cross a line to pass a bicycle in accordance with Subsection 149(3) if the driver can do so safely.

Explanatory text: Based on Nova Scotia wording. Adds clarity specifically regarding bicycles even though it is insinuated elsewhere in the MVA

Rules of the road (continued)

Add subsections

- 156(2)** The driver of a motor vehicle shall not operate the vehicle in a bicycle lane unless;
- (a) it is necessary to do so to complete a lawful manoeuvre, or
 - (b) the driver has encountered a condition on the roadway, including
 - a fixed or moving object, parked or moving vehicle, pedestrian, animal or surface hazard that makes it impracticable not to do so, and
 - (b) in all situations, the driver yields the right of way to any cyclist lawfully in the bicycle lane.

Explanatory text: The above wording is based on Nova Scotia MVA. Clarity in the New Brunswick MVA will provide a basis for public education followed by policing.

Existing paragraph to be repealed

149(3)(c) shall pass to the left a distance of at least one metre from the bicycle.

Repealed paragraph substituted by

149(3)(c) shall pass to the left a distance of at least 1.5 metres on a road where the maximum authorized speed limit is more than 50 km/h or 1 metre on a road where the maximum authorized speed limit is 50 km/h or less.

Explanatory text: Based on Quebec legislation. BC cycling coalition is lobbying for 1.5 metres passing space.

Signals

Add subsection

164 (b) (1) alternate for cyclists, to indicate a right turn the right hand and arm shall be extended horizontally.

Explanatory text: The current MVA hand signals are based on a motorist having to manually signal from the driver's seat by extending their left arm out the window. It is intuitive to indicate right turn by extending the right arm. This format is used extensively internationally. CanBike teaches this method across Canada. The wording is from Ontario legislation.

Bicycles

Add subsection.

176(1) A police officer who finds any person contravening this Act or any municipal by-law regulating traffic while in charge of a bicycle may require that person to stop and to provide identification of himself or herself

Explanatory text; Bicycles are vehicles under the MVA when ridden on highways so this subsection clarifies the authority of police and the responsibility of cyclists as road users. It is based on Ontario legislation. This is another tool in the tool belt of educators and police.

Existing subsection to be repealed

179(1) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

Explanatory text; Cyclists are allowed to be "in the lane". This statement suggests not. This is one of the biggest complaints from uninformed motorists so clarifying the law will allow education of all road users.

Repealed subsection substituted by

179(1) A cyclist who is not riding in a bicycle lane shall ride as far to the right side of the roadway as practicable or on the paved right-hand shoulder of the roadway unless the cyclist is;

- (a) in the process of making a left turn in the same manner as a driver of a motor vehicle,
- (b) travelling in a rotary or roundabout,
- (c) passing a vehicle on the vehicle's left
- (d) encountering a condition on the roadway, including a fixed or moving object, parked or moving vehicle, pedestrian, animal or surface hazard that prevents the person from safely riding to the right side of the roadway;
- (e) Traveling in a lane not sufficiently wide enough to allow safe passing by a motor vehicle
- (f) Traveling at the same speed as traffic.

Explanatory text; Rewriting and elaborating on bicycle positioning will provide basis for education of motorists and training cyclists to share the road. The wording is based on legislation from Nova Scotia and Ontario.

Bicycles (continued)

Existing subsection to be repealed

179(2) Persons riding bicycles upon a roadway shall not ride abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

Explanatory text: This was in the MVA long before bike lanes were in vogue so it is unclear what paths or parts of roadways were being referred to. Cyclists blocking traffic by riding abreast is a big complaint from motorists.

Repealed subsection substituted by

179(2) Cyclists on a roadway shall ride in single file except;

- (a) When passing another cyclist.
- (b) When traveling in a bike lane of sufficient width to allow riding abreast.

Explanatory text: Based on Nova Scotia legislation.

Existing subsection to be repealed without replacement

179(3) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

Explanatory text: This subsection is simply not applicable in today's cycling society. Bicycles are vehicles in the MVA so can be on every road. Removal of this subsection does not undermine the ability of DTI or local authorities to designate no bicycles on roadways where cycling would be unsafe, for reference see subsection 160.

Add subsections

179(4) No person shall ride a bicycle on a sidewalk except those sidewalks designated by local authorities under section 113 (1) (j)(j.1)

Explanatory text: No bikes on sidewalks is currently insinuated in the MVA because bikes are vehicles and vehicles are not allowed on sidewalks. Many municipalities have bylaws stating no bikes on sidewalks. So, let's clarify the MVA as above.

Bicycles (continued)

Add subsections

179(5) Where a roadway has a bicycle lane for bicycles travelling in the same direction that a cyclist is travelling, the cyclist shall ride in the bicycle lane unless it is impracticable to do so including but not limited to;

- (a) making a left turn in the same manner as a driver of a motor vehicle,
- (b) encountering a condition on the roadway, including a fixed or moving object, parked or moving vehicle, pedestrian, animal or surface hazard

Explanatory text: Another misconception of motorists is that cyclists must always be in bike lanes. Again, education is not possible if there are no official words upon which to base the teaching. The above is from Nova Scotia.

179(6) A cyclist on a highway shall ride in the same direction as the flow of traffic unless travelling in an established dedicated lane indicated by signage for two way or counter-flowing bicycle traffic.

Explanatory text: Another issue, especially among children, is counter flowing traffic. Bicycles are vehicles so they must conform but without clear wording education or policing is not possible. The above is based on Ontario and Nova Scotia legislation.

179(7) A cyclist operating on the far right side or on the right-hand shoulder of the roadway may pass to the right of an overtaken vehicle if it is safe to do so.

Explanatory text: Rewritten subsection 179(1) above has eliminated the insinuated action of passing on the right. Nova Scotia has created a subsection to clarify. Ontario and BC do not endorse cyclists passing on the right in safety publications however the rules are not specific other than for vehicles and bicycles are expected to have the same duties. This paragraph could be added as 150(3) in "rules of the road" as NS did. The newly created NB cycling safety handbook cautions against passing on the right especially at intersections.

179(8) Any person who defaces, destroys, or alters the manufacturer's serial or other distinguishing number or identification mark of a bicycle or who places or stamps any serial or other number or mark upon a bicycle except one assigned thereto by the Registrar is guilty of an offence.

Explanatory text: Theft of bicycles will increase as cycling popularity increases. BC, Alberta Manitoba have addressed altering of bicycle serial numbers in a manner similar to motor vehicles.

179(9) No cyclist shall wear headphones while operating a bicycle on any highway.

Explanatory text: This is written into the rules of the road in Manitoba, (maybe others) and recommended in all safety publications. Sometimes the rules are to protect people from themselves. Manitoba has the same stipulation for motor vehicle drivers.

Bicycles (continued)

Existing subsection to be repealed

181(1)No person shall operate a bicycle at night unless it is equipped with a lamp on the front that emits a white light visible from a distance of at least one hundred fifty metres to the front and with a red reflector on the rear of type approved by the Registrar which shall be visible from one hundred metres to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle, but a lamp emitting a red light visible from a distance on one hundred fifty metres to the rear may be used in addition to the red reflector.

Repealed subsection substituted by

181(1)No person shall operate a bicycle on a highway unless it is equipped with a lamp on the front that emits a white light visible from a distance of at least one hundred fifty metres to the front and with a red reflector on the rear of type approved by the Registrar which shall be visible from one hundred metres to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle, but a lamp emitting a red light, flashing or steady, visible from a distance on one hundred fifty metres to the rear may be used instead of the red reflector.

Explanatory text; This is a most controversial topic. Nova Scotia requires lights on bikes without stipulating a time of day. Ontario states lights at night. Neither stipulates whether lights can be flashing. As a minimum we should ensure the highly visible flashing lights are not controversial in the MVA as they are safer, alert motorists better and are readily available.

Some points to consider for lights required all the time:

- *Too expensive for those who can afford it the least and need bicycles more.*
- *Battery life is not available to suit touring cyclists*
- *Bill 16 requires all motor vehicles to have daytime running lights or headlights must on at all times.*
- *Bicycles are vehicles not motor vehicles.*

Miscellaneous Rules

Add underlined sentence

189 No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open upon the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. Special attention is to be afforded the possibility of cyclists approaching.

Explanatory text; The term "dooring" is used by cyclists. Other jurisdictions have specific rules regarding opening a door into a cyclist's path but NB already has subsection 189. Adding a sentence highlighting cyclists will provide another opportunity for education/awareness. Can be utilized in public education along with the "Danish Reach".

Parking rules

Add subsection

193(1)(o) in a bicycle lane

Explanatory text; Subsection 193 lists many places where vehicles are not to park. A bike lane is one of those places. Clear wording for no parking in bike lanes added to the MVA. Gives police authority.