

**From:** <sabadash@trinity.utoronto.ca>  
**To:** teycc@toronto.ca; mayor\_miller@toronto.ca  
**Date:** Mon, Jun 9, 2008 11:24 AM

Dear Mayor Miller,

I just received a copy of the plans for the refurbishing of Bloor Street. Apparently you are discussing this in Council tomorrow, so I don't have a lot of time to draft my letter and give it more thought. However, I am extremely dismayed that the proposal does not include plans for a bike lane (even though your super plan for a cyclable city by 2012 would suggest this). We need to reduce the volume of vehicular (ie cars) traffic and increase green space and pedestrian & bicycle traffic. I'm sure you too want to reduce emissions and make our city a more people-focussed place. To that end, you should be advocating a reduction of street parking to discourage people from driving in the core. Cycling has become extremely dangerous on Bloor, especially in the section between Avenue Road and Yonge. We need a proper bike lane here, not sharrow (motorists disregard them) and a widening of sidewalks, not roads. Hope you vote in the right direction tomorrow,

Thanks for you time,

Deborah Sabadash

**CC:** Councillor\_Heaps@toronto.ca; councillor\_giambrone@toronto.ca;  
Councillor\_Vaughan@toronto.ca

2008 Jun 9 - 9 PM 12:35

2008 JUN 9 12:35 PM  
TORONTO

**From:** hamish wilson <hamishw2@hotmail.com>  
**To:** teycc@toronto.ca  
**Date:** Mon, Jun 9, 2008 3:44 PM  
**Subject:** Re: 16.26,BloorTransformationProject

2008 JUN 10 A 8:57

Dear Toronto East York Community Council  
Re: Bloor St. Transformation Project

While streets are complex with eternal tensions between those who wish to congregate for slow functions including socializing, and those who wish to pass through the public space to another area, and nobody truly owns this public space, the plans for the Bloor project as put before you are not worthy of endorsing, and represent a clearly botched opportunity for improved transport in this critical greenhouse century.

Indeed, the report doesn't even mention the term "bicycles" as if "bike" is a foul four-letter word, instead of the compact fluorescent of transport.

While many have put considerable time and resources into developing this plan, it really fails to provide adequately for cyclists. Wide curb lanes and sharrows, not mentioned in this report, are not enough, though neither are the way we do bike lanes either relying on mere white lines to keep the vehicles out.

It's not as if the sidewalks are so terribly meagre now as they're a good 3 to 4 metres wide, with zero dedicated width to cyclists btw.

It's also possible that adding laybys may actually pinch pedestrians, and it's also possible that the cyclists will start to ride on the big wide sidewalks because the City will have failed to provide safe space on the road for us.

Of course the Bike Plan didn't include Bloor St. as it is more of a political document than a planning one, and being on the TCC at the time, I know full well that Bloor St. was suggested as a bike lane route, but staff nixed it because of the politricks.

And while there's history of BYBIA involvement and interest in the realm of the street, there's a strong claim to putting bike safety ahead of these private interests dating from 1992. There was a report that was discovered recently by citizens from the initial laying out of the Toronto bike network, and Bloor in this wider stretch from Spadina to Broadview emerged as the #1 choice for an east-west route.

There is also the impeccable logic of having the major subway beside it to facilitate the squeezing of the cars, if required, as great mobility and access occurs with the subway.

Your report here though, doesn't seem to think we should squeeze the cars despite the Official Plan blahblah about reducing the dependency on the car, which can be done by providing safe bike lanes.

And the report doesn't make any mention of the new study finally of using Bloor/Danforth for a bikeway, even though this Marshall Macklin Monaghan report analyzed the street pretty well. Staff cannot have been unaware of this plan, as Mr. Egan's name was on the front cover. Mr. Rae also was a rookie politician when it was drawn up.

A great deal of bike traffic is funnelled into this portion of Bloor from the Viaduct, and it is poor planning to think that providing a bit of east-west bike lane on Wellesley is adequate. It isn't, especially at connecting points, and a major flaw of the bike network is its lack of connectivity.

The spacing of bike facilities is showing up in the eastern core of downtown about every 700 M, and this would include Bloor St., and the Viaduct makes it even more of a throughfare.

fTo →

So approving all of this without even referring to bikes is a major disservice to cyclists.

There has been interest in the issue from both cyclists and the TCC and it's successor, but the recent agendas have been curtailed and manipulated to limit discussions of this stretch as the progressives want to keep private interests happy.

If we had an EA, and this is another major fault with this project - there has been an evasion of an EA in my view - we may have seen a development of about 6 different design options for bike safety

I'm favouring a physically separated bike path with blue paint and sharrows through intersections as the Copenhagen standard to aim for.

And I'd suggest that approving this report as is, is kinda like saying status quo roadkill roulette is just fine.

And I believe we're seeing the private paving party (a P3) perverting public priorities.

Certainly there's blahblah about climate change too, but as another indicator, we have no sense that there's any concern with the wasting of fine good sidewalks which have a lot of embodied energy and CO2 within them. How many tons of good materials are being wasted?

We have a once in a century opportunity to truly plan for bike usage on this street, but this report and this project is not providing it.

Please also bear in mind, that providing for bikes is a very cheap way to provide extra capacity and a better service to the many TTC customers on the Bloor/Danforth subway, some of whom are very frustrated with overcrowding.

If safe bike lanes could bleed off 2% of the subway traffic, and there's a large latent demand for both transit and cyclists, we could do two green transport groups a favour, instead of a diss.

- 1) This project needs a EA
- 2) thi project needs a high degree of bike safety and interrelating to council-approved studies of Bloor/Danforth as a bikeway
- 3) and direct consultation with the TCAC, as despite some individual members' efforts, they've all been told it's a "done deal", and no changes are possible, which is not the case. If it is the case, then I believe you are misinforming many thousands about how "green" toronto is, and it is at marked odds with what Councillor Rae promised ahead of his recent re-election, which was indeed, bike lanes on Bloor.

Carmudgeonly

Hamish Wilson  
#302, 296 Brunswick Ave.  
Toronto, ON  
M5S 2M7

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Try Chicktionary, a game that tests how many words you can form from the letters given. Find this and more puzzles at Live Search Games!  
<http://g.msn.ca/ca55/207>

CC: Councillor\_Heaps@toronto.ca; councillor\_rae@toronto.ca

Monday, June 9, 2008

Toronto and East York Community Council  
Toronto City Hall

HAND DELIVERED

Dear Committee Members,

***Re: Agenda Item # TE 16.26  
Bloor Street Transformation Project***

We wish to bring to your attention two concerns about the Bloor Street Transformation Project relating to compliance with the Ontario *Environmental Assessment Act* --- specifically the *Municipal Class Environmental Assessment* (MCEA) --- and the provincial *Planning Act*, including important transportation planning direction under associated legislation such as the *Growth Plan for the Greater Golden Horseshoe* and the *Provincial Policy Statement, 2005*.

We are particularly concerned that this project ignores the directives of provincial planning legislation in failing to provide for cycling safety.

**Environmental Assessment**

We believe there is good reason to believe that this project has been incorrectly categorized under the MCEA, thereby prejudicing public opportunities for scrutiny and input that might expose deficiencies in compliance with provincial planning laws (more fully discussed below) particularly relating to alternative transportation and the failure to provide for safe cycling infrastructure.

Toronto planning staff have determined that this project falls under Schedule A+ of the MCEA. We believe it is properly under Schedule B or C, which would require the City to follow specified procedures.

As you know, the MCEA provides a mechanism for municipal infrastructure projects to avoid individual scrutiny under the province's *Environmental Assessment Act*,<sup>1</sup> and instead makes them subject to conditions specified under the MCEA on the basis that

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<sup>1</sup> Ontario's *Environmental Assessment Act*, s. 13(3)(a) stipulates that no person shall proceed with an undertaking with respect to which an approved class environmental assessment applies unless the person does so in accordance with the class environmental assessment.



many such projects will have similar environmental impacts – and therefore can be dealt in a more uniform manner in mitigating potential environmental harms.

The MCEA has four schedules. Schedules A and A+ are projects of a routine nature for which few procedural requirements apply. Schedules B and C, however, require the City to respect particular procedural steps, including public consultation. The Ministry of Environment retains some control over the process if decisions are not made properly.

The City of Toronto is currently characterizing the Bloor Transformation as a Schedule A+ project, meaning that the project is pre-approved. We are not at all confident that this designation by city staff is correct – and indeed, questions raised by Mr Hamish Wilson in letters to the Ministry of Environment's Approvals and Assessment Branch, simply confuse the issue either because the EAA Branch has misconstrued the MCEA or the nature of the project based on advice from city staff.

In a letter to Hamish Wilson dated May 13, 2008, Agatha Wright of the EAA Branch, concludes that: “In accordance with the Class EA, works undertaken by private sector developers, such as the BIA, are exempt from the Environmental Assessment Act.”

This statement is incorrect in this case. This project involves a major public roadway, public sidewalks, and the provision of significant public funds, largely to finance the project on a pay-back arrangement with the BIA. In any case, the city is involved in the Bloor St. reconstruction. The division of the project between city work and city-financed work to avoid a more stringent Schedule appears to be rather arbitrary.

In an earlier letter from the Ministry dated April 10, 2008 also addressed to Hamish Wilson, the Ministry relies for its conclusion that no environmental assessment is needed on the City's advice that: “there will be no change to the purpose, use and capacity of the road [and the city is therefore] classifying this Project as a Schedule A+ Project under the [MCEA].”

We believe this conclusion requires further scrutiny, given, for example, the removal of on-street parking (and the opportunity this would provide for bike lane space).

A review of the MCEA schedules shows the following relevant considerations:

A. at an estimated cost of \$25 million, this project falls well over the threshold that requires at least a Schedule B designation:

#### CONSTRUCTION OR RECONSTRUCTION OF LINEAR PAVED FACILITIES AND RELATED FACILITIES

11. Streetscaping (e.g. decorative lighting, benches, landscaping) not part of another project

<2.2 m [Schedule A+]

>2.2 m [Schedule B]

B. If the reconstructed road will change the purpose and use of the roadway by removing parking lanes, a Schedule C EA designation may be required.

20. Reconstruction or widening where the reconstructed road or other linear paved facilities (e.g. HOV lanes will not be for the same purpose, use, capacity or at the same location as the facility being reconstructed (e.g. additional lanes, continuous centre turn lane)

<2.2 m [Schedule B]

>2.2 m [Schedule C]

C. Finally, there is also discretion in the City to place a project under a schedule carrying greater procedural requirements if the facts warrant. Given the significant public interest in the Bloor-Yorkville area as a popular destination, as well as repeated concerns expressed by cyclists over safety issues on Bloor St., a Schedule C designation under the MCEA is likely the most appropriate choice.

Appendix 1A to the MCEA also says: "A proponent may elect to undertake an individual environmental assessment should the magnitude of the project, the anticipated environmental impact of the project or its **controversial nature warrant it.** (emphasis added)

### **Planning Act considerations**

Recent changes to the *Planning Act* and related legislation have been made with a view to ensuring that municipal planning decisions respect broader social concerns about smog, global warming; and other harms. Each of these laws provide specific direction aimed at achieving greater reliance on alternative means of transportation, including pedestrian and cycling options.

Relevant planning laws:

1. *Planning Act*

This Act says that municipal decisions affecting planning matters shall:

- a) be consistent with any Provincial Policy Statements; and
- b) conform with, or not conflict with, provincial plans [ie Growth Plans] that are in effect.

2. *Places to Grow Act*

Under this Act, passed in 2005, the province can pass growth plans for specific areas to direct growth, design, and development of cities.

3. *Growth Plan for the Greater Golden Horseshoe*

This plan, which applies to Toronto, was passed under the *Places to Grow Act*.

4. *Provincial Policy Statement, 2005* (PPS 2005)<sup>2</sup>

The majority of the policies in this statement as well as the *Growth Plan for the Greater Golden Horseshoe* relate to broader issues of urban form and the use of public space, including a major emphasis on more sustainable transportation.

We are concerned that the proposed design for the Bloor Street Transformation does not take into consideration the City's substantive obligations under the *Planning Act* to be consistent with the PPS 2005 and to conform with the *Growth Plan for the Greater Golden Horseshoe*. The PPS 2005 and the *Growth Plan for the Greater Golden Horseshoe* both focus heavily on planning our cities to be more environmentally friendly in their overall design and layout, and to reduce auto-dependency in favour of more sustainable forms of transportation.

The current Bloor Street Transformation Project, for example, removes on-street parking and makes some improvements for pedestrians but does not include any provision for bike lanes. This is a significant oversight given that safe cycling is a key element of current planning legislation.

Policy 1.5.1 of the PPS 2005 states, for example, that:

Healthy, active communities should be promoted by planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, and facilitate pedestrian and non-motorized movement, including but not limited to, walking and cycling.

Policy 1.6.5.1 states that: "Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs."

The *Growth Plan* is even more specific in its policy prescriptions, by including requirements that the transportation system be planned to offer a balance of transportation choices.

Section 3.2.2 states:

1. The transportation system within the GGH will be planned and managed to -  
...  
b) offer a balance of transportation choices that reduces reliance upon any single mode and **promotes transit, cycling and walking**  
c) be sustainable, by encouraging the most financially and environmentally appropriate mode for trip-making  
...  
e) provide for the **safety** of system users. (our emphasis)

Section 3.2.3 which deals with "Moving People" goes on to say:

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<sup>2</sup> Prior to Jan. 1 2007, municipalities were free to merely "have regard to" the Provincial Policy Statement; the correct standard is now consistency with the PPS. This is a significantly higher standard.

3. Municipalities will ensure that pedestrian and bicycle networks are integrated into transportation planning to -
- a) **provide safe, comfortable travel for pedestrians and bicyclists within existing communities and new development**
  - b) provide linkages between intensification areas, adjacent neighbourhoods, and transit stations, including dedicated lane space for bicyclists on the major street network where feasible. (emphasis added)

Although “where feasible” would not normally impose an obligation on the City, it should be noted that as long ago as 1992, the Bloor-Danforth east west route has been identified as an ideal cycling route. *The Route Selection Study for On-Street Bicycle Lanes, Final Report*, prepared by Marshall Macklin Monaghan Limited for the City of Toronto Planning and Development Dept, **February 1992**, noted that:

Bloor/Danforth was the most popular bicycle route according to the 1990 Bike to Work Survey. It is an ideal route due to the fact that there are few street car track crossings, it is the most direct east-west route that spans the entire City, it has a relatively flat gradient, and has excellent potential for utilization based upon 1990 origin/destination data ...<sup>3</sup>

Section 5.1.2 of that report then concludes that: **The recommended east-west route for Phase 1 implementation is Bloor Street. The route section extends from Spadina Avenue to Broadview Avenue.**<sup>4</sup>

Consistency or conformity, with planning legislation provisions would suggest, at the very least, a careful assessment of any safety issues existing along the street to be reconstructed and how these can be addressed, an assessment of opportunities to reduce automobile reliance and promote sustainable transportation in any reconstruction project, and, since Bloor St. is part of the major street network, a feasibility study of providing dedicated lane space for bicyclists.

None of these assessments or considerations appear to have been carried out for the Bloor Street Transformation Project or to have had any role in the planning process. As a result, the proposed design for the project neglects to address some of the most significant safety concerns on Bloor St. City documents reveal that Bloor Street has one of the highest rates of car-bike collisions in the city (see [http://www.toronto.ca/transportation/publications/brochures/2005\\_cyclist\\_collision\\_summary\\_leaflet.pdf](http://www.toronto.ca/transportation/publications/brochures/2005_cyclist_collision_summary_leaflet.pdf)), and that the city’s cyclists place the construction of a bike lane on Bloor St. as their single highest priority (see <http://www.toronto.ca/cycling/public-consultations/summary-072607.htm>).

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<sup>3</sup> The full report is available from the Urban Affairs Office on John St. Ref # 711.72097135 M 13

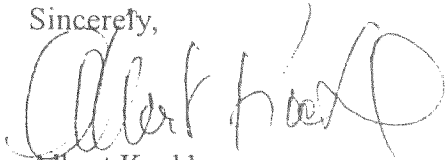
<sup>4</sup> The quote continues: “Danforth Avenue east of Broadview was eliminated from Phase 1 due to the amount of on-street parking as well as the road width to maintain left turn lanes.



The proposed design, by retaining two lanes of motor vehicle traffic in each direction while neglecting the needs of cyclists, fails to ensure the safety of transportation system users, fails to reduce reliance on the automobile, fails to promote or facilitate cycling, and fails to provide safe, comfortable travel for bicyclists. It is difficult to see how such a design can be considered consistent with the PPS 2005 or to be in conformity with the *Growth Plan for the Greater Golden Horseshoe*.

The PPS 2005 and the *Growth Plan for the Greater Golden Horseshoe* embody a core set of principles designed to help cities better manage growth, to plan more sustainably and to address the environmental, social and economic challenges associated with past planning practices that favoured the automobile. By planning in a manner that is consistent with these policies, the City of Toronto will begin to build a healthier, more livable, and more prosperous community, as required by law.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert Koehl". The signature is fluid and cursive, with a large loop at the end.

Albert Koehl  
Staff Lawyer

Abusell



June 10, 2008

To Toronto and East York Community Council,

Re: Transportation Services report on the Bloor Street Transformation

On May 25th of this year, 1500 cyclists traveled en masse down Bloor Street in support of bike lanes on Bloor. This was the largest bike advocacy event in Toronto's history.

Indeed, cyclists have been asking for bike lanes on Bloor at least since 1992 when a report prepared by the city declared that Bloor was cyclists' favored route for lanes. Since that time, nothing has been done to make Bloor more cycle friendly, despite it being one of the most highly trafficked east-west bike routes in the city AND one of the most dangerous, with perhaps the highest car/bike collision rates in the entire city. (See Figure 3.9: Locations of all motor-vehicle collisions involving bicycles). Enough car-nage. Let's make Bloor safe for all road users.

Besides the route being central, Bloor is long, flat and free of streetcar tracks making it easy to repaint/redesign. Already a bike lane exists over the Viaduct to Sherbourne (and the city has plans of extending it to Church this ? year.) It's unconscionable that the city is now reconstructing the road west of Church while not considering bike safety -- even though there is adequate space for bike lanes, according to Toronto Bike Planner Dan Egan. At a time when congestion, climate change and smog plague our city, every road reconstruction should incorporate bike facilities.

Yet this report makes absolutely no reference to cycling although City Council approved a motion to ask staff to report on bicycle lanes on Bloor and Danforth. There is not even a reference to when this may be reported on, and there is zero accommodation for bikes along this central stretch.

The recommendations include car parking on both sides of Bloor Street between Spadina Avenue and Avenue Road, and between St. Pauls Square (one block east of Church Street) and Sherbourne Street. This recommendation effectively closes the door on the possibility of bike lanes on these sections since it would not be wide enough. This recommendation is contrary to the City Council approved Bike Plan which shows the existing Davenport Road bike lanes being extended east along Davenport Road/Church Street and Bloor Street East to Sherbourne Street.

There are plenty of Toronto Parking Authority parking lots and private parking lots in these areas. Cyclists should not have their street amenities reduced in areas already well served by off street parking facilities.

Bike lanes produce bike riders. A 1998 Environics poll found that 70 per cent of Canadians would bike to work for distances that took less than 30 minutes if they had a dedicated bike lane. And where bike lanes have been created in Toronto, the number of cyclists increased by up to 42 per cent, presumably because of the huge untapped potential of Toronto's 950,000 adults who ride a bike.

As congestion increases and air quality worsens, municipal governments must respond by supporting active transportation. It's relatively inexpensive, and would prove very popular. The great cities of Europe, the US and Canada are all creating safe and plentiful bicycle space on the roads. Toronto is falling behind – let's catch up, starting with an east-west bicycle expressway along Bloor!

I urge TEYCC to send this report back to the drawing board to properly & safely accommodate the thousands of cyclists who use, or would use, this stretch of Bloor every day. Thank-you.

Angela Bischoff

- Take the Tooker
- Bells on Bloor
- Toronto Cyclists Union

214 Macdonell Ave. Toronto, M6R 2A8

[greenspi@web.ca](mailto:greenspi@web.ca)

647 342 1964

Figure 3.9: Locations of All Motor-Vehicle Collisions Involving Bicycles

Jan. 1, 1997 to Dec. 31, 1998.

(2558 Collision Locations Known)



## **Bloor Street Transformation Project:**

### **Avoiding Municipal Liability for Bike/Car Accidents on Bloor**

This submission outlines why the city should include bicycle lanes in the Bloor Street transformation project design to avoid municipal liability for ensuing bike/car accidents.

Maintaining the current unsafe situation for cyclists on Bloor Street not only contradicts the city's stated commitment to promote cycling, but also creates the potential for municipal liability. The Municipality's failure to include safer transportation networks for cyclists in the redevelopment of the Bloor Street corridor may leave them liable to cyclists injured while travelling on the redeveloped portion of Bloor Street. This liability arises under section 44 of the Municipal Act, based on the interpretation of the statute in the case law.

#### **Statutory Framework**

The relevant provisions of the Municipal Act, 2001 are contained in section 44, and are reproduced below:

##### Section 44(1):

The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge.<sup>1</sup>

##### 44(2):

A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default.

##### 44(3):

Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

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<sup>1</sup> Municipal Act, S.O. 2001, c. 25, s. 44.

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge,
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.<sup>2</sup>

## Standard of Repair

### Case Law

Section 44 imposes a positive duty on municipalities to repair highways and bridges in its jurisdiction. "Non-repair of the highway" includes the physical condition of, and obstructions upon a highway, the original design and construction of the highway, signage, and traffic control issues.<sup>3</sup> Judges can also look at the character of the road, the locality, the requirement of traffic on it, the season of year, climatic conditions and the type of roadway. Whether or not there is a condition of non-repair is a question of fact in each case, depending on the surrounding circumstances.<sup>4</sup>

- Johnson v. Milton (Town) [2006]

Two cyclists riding tandem lost control at an unsigned sharp right turn. Included in the reasons why the road was found to be in a state of non-repair were the lack of signage warning of the sharp turn, and slope of the hill, which was steeper than generally recommended.<sup>5</sup>

- Ryan v. Victoria (City) [1999]

A motorcyclist was injured when his front tire became trapped in a gap running alongside the inner edge of a set of railway tracks. The Supreme Court of Canada held

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<sup>2</sup> Subsection 4 of the Municipal Act refers to regulations by the Minister of Transportation establishing minimum standards of repair for highways.

<sup>3</sup> Mero v. Waterloo (Regional Municipality) (1992), 7 O.R. (3d) 102 (Ont. C.A.).

<sup>4</sup> Thomson Rogers, *Municipal Liability*, (Aurora: Canada Law Book) 1996, 42-43.

<sup>5</sup> Johnson v. Milton (Town) [2006] O.J. No. 3232.

that the road was in a state of non-repair because the tracks "created a considerably greater risk than was absolutely necessary".<sup>6</sup>

- *Simpson v. Baechler et al.*, (2007)

A pedestrian was struck by a car when crossing the street. A utility pole obscured the pedestrian's and motorist's view of each other. The court noted that "the City was under a duty of care to refrain from acting in a manner that would unreasonably compromise the safety of those using the streets."<sup>7</sup>

- *Cantlon v. Timmins (City)* [2006]

Non-repair stemmed from the negligent design of a traffic control set-up for a construction project. The negligent design created a hazard for the reasonable driver exercising ordinary care: "The essential breach of duty by the defendants was not one of failing to alert a driver to a hazard but rather of creating a hazard by misleading traffic devices."<sup>8</sup>

- *Ritchie v. Ottawa (City)* (1983)<sup>9</sup>

The standard of repair with regards to the design of a roadway has to take into account the safety of cyclists, as well as motorists. In this case, a bicyclist hit a pot hole, lost control of her bicycle, and sustained injury.<sup>10</sup> The court found the municipality liable, even though the pothole did not constitute a state of non-repair for "vehicular traffic", presumably referring to motor vehicles. The travelled portion of the road did not have to be maintained at the same standard as a bicycle path, but a higher standard than required for motor vehicles was needed where the municipality knew the road in question was used by cyclists.

- *Yovanovich v. Windsor (City)* [2007] O.J. No. 2134.

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<sup>6</sup> *Ryan v. Victoria (City)* [1999] 1 S.C.R. 201.

<sup>7</sup> *Simpson v. Baechler et al.*, (2007) BCSC 347 at para 45.

<sup>8</sup> *Cantlon v. Timmins (City)* [2006] O.J. No. 1918 at para 125.

<sup>9</sup> *Ritchie v. Ottawa (City)* CCH DRS 1983, P90-385 (Ont. Co. Ct.)

<sup>10</sup> David Boghosian and Murray Davison, *The Law of Municipal Liability in Canada* (Markham: Butterworths, looseleaf) 3.114.

A cyclist hit a sewer grate that was not flush with the road and was thrown from his bicycle. The court found that the municipality owed a duty to the plaintiff to keep the road in a state of repair that was reasonable in all the circumstances. The city knew cyclists would be travelling on the road, and it was reasonable for cyclists to expect that the road, including the right-hand side, would be suitable for safe travel.

All of these cases show that the design of the road can be a source of municipal liability. The most important precedent in terms of municipal liability for cyclist accidents due to the non-repair of roads is the Hannah Evans case.

- Evans v. The City of Toronto (2004)

Signs labelled a portion of Queen Street in Toronto as a bike route, although it had previously been deemed unsafe. The city was found liable 25% liable for the cyclist's accident damages. The judge directly referenced the city's policy to encourage cycling as a source of liability: "cyclists should have an equal share of the road that is safe, especially when the city has adopted a bicycle-friendly policy and encourages cycling". The general circumstances were also deemed important: "with the proliferation of bicycles and the City's encouragement for health reasons, reducing congestion, less burning of fossil fuels, the City should have done something *more positive* about bike safety at this location".<sup>11</sup>

This case shows the direction of the law on this issue. The city's policy to encourage cycling and its knowledge of the unsafe nature of the road were important factors in the finding of liability. Just as in the Evans case, cyclists do not have an equal share of the road on Bloor, and the city is aware of the dangerous situation.

### **The Case at Hand**

The municipality is aware that Bloor Street is a popular thoroughfare for cyclists, especially since a reasonable alternative route is not available. Based on the case law mentioned above, failing to provide a safe route for cyclists on Bloor Street in the slated redevelopment may constitute "non-repair" in design and construction. The character

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<sup>11</sup> Evans v. The City of Toronto (2004) Ont. Court of Justice, (File No. T64013/02)



of the road is such that there is heavy cyclist and motor traffic on the street, of which the city is aware. Even if the new design is adequate for motor vehicle traffic, the city could still be found liable if the safety of cyclists is not considered.

Bicycles are recognized as vehicles under the Ontario Highway Traffic Act. According to the Metropolitan Toronto By-Law 32/92, 17(1), a bicycle over 61 cm (24") cannot be on the sidewalk, and cyclists face fines of \$85.00.<sup>12</sup> Providing a safe avenue of travel on roadways is necessary.

## Defences

Section 44(3) of the Municipal Act provides three defences that will exempt a municipality from liability for non-repair:

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge,
- (b) it took reasonable steps to prevent the default from arising
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

The city of Toronto cannot avail itself of any of these defences.

A.

The legal claims will invariably focus on whether the municipality knew about a situation of danger and allowed it to persist.<sup>13</sup> The majority in *Housen v. Nikolaisen* [2002] held that where the state of non-repair is a permanent design feature of the road, knowledge of it may be inferred.<sup>14</sup> The *Housen* court notes that mere knowledge of the history of accidents at any given location is not sufficient to impute knowledge of

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<sup>12</sup> Highway Traffic Act, Toronto By-law 17. (1).

<sup>13</sup> Keith M. Landy, *Pleading the Plaintiff's Case Against a Municipality*, CBA, March 3, 2000, 13.

<sup>14</sup> *Housen v. Nikolaisen* [2002] 2 S.C.R. 235 at para 61.

a state of non-repair.<sup>15</sup> Actual or imputed knowledge of a condition of non-repair is required in order to give rise to liability.<sup>16</sup>

In this case, it is not even necessary to show imputed knowledge of the unsafe nature of Bloor Street for cyclists. A Traffic Data Centre and Safety Bureau map in 2005 showed the incidence of bicycle accidents on downtown streets, including Bloor Street. The number of accidents reported on major arterial roads was 619, in contrast to 226 on minor arterial roads, and 192 on local roads. Of all roads, Bloor Street has the highest car/bike accident rate in Toronto, according to the city's 2005 Cyclist Collision Summary Leaflet. The ability of a plaintiff to show an accident history at the same location is generally very helpful in bringing a successful action against a road authority.<sup>17</sup>

The City of Toronto Bike Plan specifically notes that bicycle collision patterns follow traffic patterns. The report found that collisions are more frequent on streets with high bicycle traffic, for example Bloor, College and Queen Street in downtown Toronto.<sup>18</sup> As well, in a letter of formal notice to the Toronto City Clerk's Office and Toronto City Hall on July 26, 2001, the organization *Advocacy for Respect for Cyclists* point out that the City of Toronto Car/Bike Collision study shows high accident areas on east-west corridor streets, including Bloor: "The above-noted streets [including Bloor] have become unsafe both for bicyclists to travel upon and unsafe for pedestrians to cross... the combination of high speed motor vehicles, on-street parking and a lack of rational bicycle lane route facilities and/or traffic calming measures on these streets has created an unreasonable risk of harm to both bicyclists and pedestrians".

The City of Toronto *Bicycle/Motor-Vehicle Collision Study, 2003* also noted that collisions were mainly on arterial roads, particular the central East-West routes in the city.<sup>19</sup> The study noted that the frequency of collisions corresponded with traffic volume and cycling patterns. Most of the reported accidents were in dry weather conditions during rush hours, so the accidents cannot be blamed on uncontrollable factors like the weather. Rather, it is the design of roads that is unsafe for cyclists commuting to work,

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<sup>15</sup> Ibid. at para 165.

<sup>16</sup> Supra note 10 at 3.25.2.

<sup>17</sup> Ibid at 3.34.

<sup>18</sup> City of Toronto Bike Plan- Shifting Gears, TBP Steering Committee and Toronto Cycling Committee, June 2001, 2-11 <<http://www.toronto.ca/cycling/bikeplan/>>.

<sup>19</sup> *Bicycle/Motor-Vehicle Collision study, 2003*, City of Toronto, executive summary, i.

who are trying to contend with motor vehicle traffic on these busy East-West streets through the city.

In the *Ontario Bike Plan*, a February 2008 study conducted by the government of Ontario and other stakeholders, safety was noted as a major concern. According to their statistics, on average 19 cyclists were killed and 2,900 were injured in the period between 1998 and 2004. However, it is also acknowledged that statistics involving cyclists are not readily available.<sup>20</sup> Furthermore, the report specifically calls for inclusion of bicycle facilities in all new road construction and reconstruction projects.<sup>21</sup>

All of this evidence shows that the city will not be able to make out a defence under s.44(3)(a). City documents examine the accident rates on Bloor Street for bicycles, and notice of this situation has been recognized several times.

B.

The city has also not taken reasonable to ensure the safety of cyclists. As of yet the safety of cyclists does not seem to be a consideration in the Business Improvement Area's *Bloor Street Transformation Project*. The focus of the project is on widened sidewalks, decorative lighting, mature trees and shrubs, etc., but no mention is made of improving infrastructure for cyclists.<sup>22</sup> The new design of Bloor Street is an easy opportunity to address these safety issues, since the cost of bicycle lanes will be much less in an original design, rather than as a retroactive measure. In light of the above mentioned evidence, this lack of consideration is not reasonable.

Sharrows are designs painted on roadways to mark a bicycling route. Available guidelines show that sharrows or shared lane markings are not sufficient for this context. A 1999 study in Gainesville, Florida found a very slight increase in the distance of the cyclist from the curb when sharrows were present, and no difference in the distance

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<sup>20</sup> Ontario Bike Plan, Cycle Ontario Alliance, Vandermark Consulting, February 2008, 21. <<http://www.tbn.ca/forms/OntarioBikePlan-2008-web.pdf>>.

<sup>21</sup> Ibid., 29.

<sup>22</sup> Bloor Street Transformation Project <[http://www.toronto.ca/bia/transformation\\_project.htm](http://www.toronto.ca/bia/transformation_project.htm)>, <<http://www.toronto.ca/bia/pdf/bloorstreet.pdf>>.

between passing motor vehicles and the cyclist. The conclusion was that these differences were not significant when practically applied.<sup>23</sup>

A 2004 San Francisco study looked at the effects of shared lane markings on a street with on-street parking. They found that when passing cars were present cyclists moved back to the right, putting themselves squarely back within the zone where they could be hit by parked motorists opening their car doors. The authors noted that the Florida study was performed on streets with no on-street parking and where cyclists were less likely to be experienced. They did not recommend shared lane markings as a substitute for bicycle lanes.<sup>24</sup>

The 2007 Update to the Ontario Waterfront Trail Design, Signage and Maintenance Guidelines recommends that shared road lanes only be selected as an appropriate design on a low volume roadway. In addition, the shared lane should be between 4 and 4.5 metres wide (pp. 1-49, 1-50). Table 4.3 (p. 1-56) sets out the appropriate design that should be selected dependent on speed, volume, and other factors. While shared travel lanes may be appropriate for low speed, low volume local streets, the higher the volume, speed and percentage of trucks, the greater the amount of separation needed to ensure that cyclists will be safe. For a 50km/h arterial road, with volumes of traffic greater than 3000 annual average daily traffic per lane and where trucks are equal to or less than 6% of volume, the only appropriate designs are an exclusive cycling lane, or a shared wide curb lane (4-4.5m).<sup>25</sup> A design option including sharrows is not a reasonable solution for the safety concerns of cyclists.

Based on the evidence of what the city knows about the dangerousness of the current situation and the inadequateness of using sharrows, the best way to avoid municipal liability for bicycle accidents will be to include bike lanes in Bloor Street Transformation Project design.

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<sup>23</sup> Wayne Pein, William Hunter, J. Richard Stewart. Evaluation of the Shared-Use Arrow, December 1999.

<[http://www.dot.state.fl.us/safety/ped\\_bike/handbooks\\_and\\_research/research/finalwwh.pdf](http://www.dot.state.fl.us/safety/ped_bike/handbooks_and_research/research/finalwwh.pdf)>

<sup>24</sup>San Francisco's Shared Lane Pavement Markings: Improving Bicycle Safety, Final Report, February 2004.

<[http://www.sfmta.com/cms/uploadedfiles/dpt/bike/Bike\\_Plan/Shared%20Lane%20Marking%20Full%20Report-052404.pdf](http://www.sfmta.com/cms/uploadedfiles/dpt/bike/Bike_Plan/Shared%20Lane%20Marking%20Full%20Report-052404.pdf)>.

<sup>25</sup> Ontario Waterfront Trail Design, Signage and Maintenance Guidelines, 2007.

<<http://www.waterfronttrail.org/library-publications.html>>.

C.

The 1996 Ontario MTO Bikeways Planning and Design Guidelines notes that shared roadway markings are to be used on local urban and suburban roads, or other roads with low motor vehicle traffic volumes (s. 2.4.1). Where bicycle use is high or where motor vehicle volume or speeds are higher, it notes that a bike lane is more appropriate (s. 2.4.3). Table 4.2-1 states that shared roadway bicycle facilities should only be provided on arterials where there are "very low", fewer than 1000 per day, motor vehicle volumes. Wide curb lanes and bike lanes on arterials should only be provided if traffic volumes are "moderate." Physically separated bike paths should be provided if traffic volumes are higher. S.4.2.1 states that shared roadways should not be used where traffic volume exceeds 20,000 per day, or 6000 per day for inexperienced cyclists. On standard-width roads, shared-use designations should be used on local roads with fewer than 1000 vehicles per day.<sup>26</sup> These standards are not being upheld in the current Bloor Street transformation project design.

## Conclusion

The City of Toronto Bike Plan acknowledges the importance of bicycles as a mode of transportation in Toronto. At the time of its publication, approximately 48% of the city's population were cyclists, and approximately 60% of households owned bicycles. Further, about 20% of cyclists used their bicycles for utilitarian purposes, a substantial portion of the city's population.<sup>27</sup> Municipal authorities claim to encourage cycling as a viable form of transportation, but neglect the needs of cyclists. According to the 2005 Cyclist Collision Summary Leaflet, Bloor Street has the highest car/bike accident rate in Toronto. However, even this statistic masks the seriousness of the issue because as many as 90% of bicycle accidents go unreported. Despite the danger cycling Bloor Street poses, the Business Improvement Area's planned design disregards the need for safer cycling infrastructure.

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<sup>26</sup> Ontario Bikeways Planning and Design Guidelines, Ministry of Transportation, (St. Catharines, 1996).

<sup>27</sup> *City of Toronto Bike Plan- Shifting Gears*, TBP Steering Committee and Toronto Cycling Committee, June 2001, 2-9.

Section 44 of the Municipal Act gives municipalities a positive duty to maintain roads in a state of repair, appropriate for its users in the circumstances. The evidence of the city's encouragement of cycling as a mode of transportation, its knowledge of the unsafe design for bicyclists and the high accident rates on arterial roads like Bloor Street could create municipal liability for ensuing accidents. The trend in the case law has been to recognize that design features are an important source of liability under the non-repair section of the Municipality Act. The cases also show that the inquiry into the appropriate standard of care is sensitive to the type of road involved and the traffic, both of which will increase the city's liability for bicycle accidents in this context. The systemic accident problems on Bloor Street suggest that the city has a responsibility to address these issues by creating separate bike lanes, before more accidents occur, or the city will be found responsible for cyclist/car accidents.

Liam Barry  
on behalf of  
Jacques Wilson  
June 10 2008

Members of Council,

My name is Kristen Courtney. I am an avid cyclist and have been hit by cars a number of times since moving to Toronto. I've just finished law school at the University of Toronto where this past year I undertook an extensive research project for my Municipal Law class relating to the promotion of sustainable urban transportation in Ontario's cities. My interest in the Bloor Street Transformation Project arose as a result of that research as it became clear that the current design for this project is inadequate from both a legal and a policy perspective.

There are a number of cycling advocates here today to ask that community council reject the recommendations in this staff report and not approve the roadway alterations as currently put forth by Transportation Services. In asking this, I'd like to make clear that we are not opposed to the Bloor Street Transformation Project. In fact, we think it's a fabulous opportunity to revitalize this section of Bloor, to make it greener, and more attractive for everybody. What we *are* opposed to is the current design, which, as you are aware, fails to accommodate cyclists.

Road reconstruction projects only take place every 30-50 years, so this project represents a critical opportunity to improve the safety of Bloor St. Unfortunately, the road alteration report that you'll be voting on today makes no mention of cyclists whatsoever, and does not include any safety assessment of the proposed design. This is a gross oversight given the city's knowledge that Bloor St. has one of the highest car-bike collision rates in the entire city.

For greater certainty, cyclists are not asking council to take away space for pedestrians to make room for bike lanes. This is a false dichotomy. The safety of all road-users, and the promotion of all forms of sustainable transportation must be considered in conjunction with one another at the initial planning stage, and outcomes will depend on the characteristics of each particular street.

While I understand that the negotiations between the city and the BIA have been long and complex, I'd like to remind the councillors that their overriding obligation is to the public, and the public interest.

Voting against this staff report does not mean the Bloor Street Transformation Project does not go ahead. What it means is that you require a higher standard of planning on the part of your staff and the BIA.

There are countless excellent reasons why you should not allow this project to proceed with its current design, without bike lanes. While you're going to hear about some of these in greater detail from others, I will provide a brief overview.

1. An environmental assessment has not been carried out. Under the Municipal Class Environmental Assessment process for municipal road projects, this project would be subject to a minimum of a Schedule B environmental assessment. Both

entirely preventable, and are a direct result of city council having failed to provide safe and adequate bicycling facilities. City figures suggest that approximately 10,000 cyclists get injured in collisions with motor vehicles every year in Toronto, and approximately 2/3 of these are on the city's major arterials – streets like Bloor, Queen and King. Bloor St. was identified as particularly hazardous for cyclists at least as far back as the 2003 Toronto Bicycle / Motor-Vehicle Collision Study, carried out by Transportation Services staff. It has been consistently ranked as one of the top most dangerous streets in Toronto for cyclists in the City's annual Cyclist Collision Summary Leaflet prepared by Transportation Service's Traffic Safety Unit. To pass up the opportunity that the current reconstruction offers to improve the safety of Bloor St. for cyclists would condemn another generation of Toronto cyclists to unnecessary injuries and should raise some important ethical issues with any councillor considering which way he or she is going to vote today.

4. The fourth reason that the current design for this project should not be approved is that to do so would open up the city to legal liability for injuries sustained by cyclists while riding on the reconstructed road. Municipalities have a statutory duty to provide safe roadways for all road users, and both the statutes and the case law make it clear that this includes the design of the roadway. The submission by Jacqueline Wilson addresses this point in greater detail.
5. Finally, the last major reason this project should not be approved as-is is that it will be impossible to later retrofit the reconstructed segment to provide safe and well-designed bike lanes without tearing up the new sidewalks. It will be cheaper and the street better designed if bike lanes are incorporated at the initial planning stage. Bikeway design guidelines from a number of jurisdictions indicate that the most appropriate style of bikeway for a street with the characteristics of Bloor St. would be a physically separated one. Proceeding with the Bloor Street Transformation Project without considering the required space for physically-separated bike lanes may well make their inclusion at a later date impossible.

Staff involved in this project have indicated that sharrows are being considered for this stretch of Bloor. However, all of the bikeway design guidelines warn against the installation of sharrows on a street with the characteristics of Bloor St. For example, the most recent Ontario Ministry of Transportation Bikeways Planning and Design Guidelines states that shared-use designations should generally only be used on local roads with fewer than 1000 vehicles per day and in no case should shared roadways ever be used where traffic volumes exceed 20,000 vehicles per day. The staff report indicates that this section of Bloor sees well over those limits at 30,000 vehicles per day. My review of over a dozen other design guidelines that address the issue of sharrows and shared-lane designations confirms that shared lanes are only appropriate for low speed, low volume local streets. These guidelines also set the width for a shared curb lane at 4.3-4.5 metres, or with an absolute minimum of 4.0 metres. The proposed Bloor



**From:** <sabadash@trinity.utoronto.ca>  
**To:** teycc@toronto.ca; mayor\_miller@toronto.ca  
**Date:** Wed, Jun 11, 2008 11:34 AM

Dear Mayor Miller,

Since no one seems to care about setting up bike lanes in this city, how about changing the law so that cyclists can ride on the sidewalks where it is safe? Also, how about a tax rebate for those of us who do not (or cannot) use the roads because of unsafe driving practices of many of Toronto's motorists?

Thanks,

Deborah Sabadash

**CC:** Councillor\_Heaps@toronto.ca; councillor\_giambrone@toronto.ca;  
Councillor\_Vaughan@toronto.ca

2008 JUN 11 P 12:16  
POLICE OFFICE  
SECTION

**From:** "Krista Darin" <krista@bonsmots.ca>  
**To:** krista@bonsmots.ca; clerk@toronto.ca  
**Date:** 6/20/2008 9:47:09 AM  
**Subject:** Where are the bike lanes?

Dear Mayor Miller and Councillors:

With reference to the upcoming vote concerning alterations to Bloor St.(Council Item TE16.26), I would like to express my strong disapproval of the extant plans. In view of our city's attempts to be a greener city, in light of rising gasoline prices, in light of threats of climate change, I find it extremely upsetting that these modifications could be approved as they stand, without bike lanes.

I urge you to vote down this proposal pending the addition of bike lanes.

Thank you for your consideration,

Krista Darin  
Tel.: (416) 895-1795  
Email: krista@bonsmots.ca

701-62 Wellesley Street West  
Toronto, ON M5S 2X3

9

Marilyn Toft  
City Clerk, City of Toronto

CITY OF TORONTO OFFICE  
CITY CLERK

2008 JUN 23 P 1: 52

June 23, 2008

Dear Council Members;

**Re: Road Alterations - Bloor Street Transformation Project**

Concern: The Pedestrian Throughway will be difficult for Blind/low vision pedestrians.

As a Legally Blind individual, I have serious concerns about some aspects of the design features of the sidewalk of this project. It is of critical importance to me and to all blind or partially sighted pedestrians to have a 'safe and consistent line' to move along as we traverse public sidewalks. (FYI A legally blind individual usually has a degree of residual vision but little capacity remains to define details or have good depth perception.)

The following features present serious mobility issues for me and for most visually limited persons:

1. Lay-by features for vehicles to make short stops. The sudden change in the curb causes many stumbles and/or falls for the blind, perhaps for everyone. As well, the lay-by seriously reduces the sidewalk space available for pedestrians.
2. irregular sidewalk landscaping or furniture features. As a blind pedestrian, I am suddenly confronted by obstacles in the space I think should be clear.
3. reduction of the sidewalk width which leads to greater pedestrian congestion on Bloor Street, an already very busy pedestrian throughway. Pedestrian congestion greatly increases mobility problems for the blind.(and for everyone)

I realize that there is the push of the designer wanting specific features in a plan. Commercial and Retail interests provide another strong voice.

***However, I request that you look carefully and critically at these plans with a view to safe pedestrian use in a heavily walked space. I urge you to vote thoughtfully and with conscience on this issue.***

Sincerely,

Kathryn Holden, Ward 27 Constituent

Cc: Councillor Kyle Rae, Ward 27  
Councillor Pam McConnell, Ward 28  
Councillor Adam Vaughn, Ward 20