

No Charter right to bicycle lanes (Cycle Toronto v. Ontario (Attorney General))

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In previous court decisions, the Ontario Superior Court of Justice first refused to grant an injunction against the Ontario government's removal of bicycle lanes on some major city roads in Toronto, then granted the injunction, and then later concluded that the government's legislation to remove the bicycle lanes breached section 7 of the *Canadian Charter of Rights and Freedoms*.

The provincial government appealed the last ruling to the Court of Appeal of Ontario, which in *Cycle Toronto v. Ontario (Attorney General)*, 2026 ONCA 582, overturned the finding of unconstitutionality, paving the way for the removal of the bicycle lanes. The Court of Appeal concluded that there is "no constitutional obligation to build bicycle lanes or to retain any that have been built."

The expansion of bicycle lanes in Toronto has engendered diametrically opposed passionate opinions among Toronto's residents. While many cyclists and cyclist advocates have argued, among other things, that bicycle lanes protect cyclists from car traffic, reduce injuries, prevent deaths and provide people with a safe alternative form of transportation, opponents contend that the bicycle lanes increase traffic congestion on major roadways, reduce emergency responder response times and negatively impact businesses because the bicycle lanes take away parking space and make travel to the businesses inconvenient.

On November 25, 2024, the Ontario government passed the *Reducing Gridlock, Saving You Time Act*, which among other things, amended section 195.6 of the *Highway Traffic Act*. The amendment required the Minister of Transportation to remove bicycle lanes from Bloor Street, University Avenue and Yonge Street, three major arterial roads in Toronto. The government later repealed and replaced section 195.6 to direct the Minister to "reconfigure" rather than "remove" the bicycle lanes from these roadways.

Notwithstanding the new language, the Ontario Superior Court of Justice (2025 ONSC 4397) found that section 195.6 was unconstitutional. The Court found that the removal of bicycle lanes, which the government still proposed doing, would make the roads less safe for cyclists and other users of the road. This negatively impacted rights to life, liberty and security of the person under section 7 of the Charter.

The Court also found that rather than reducing traffic congestion, the removal of the bicycle lanes would increase traffic congestion. In making this finding, the Court relied on expert evidence provided by a cyclist advocate who had agreed that while the removal of bike lanes would initially result in benefits, it would, in the future, be ineffective.

Lastly, the Court concluded that section 195.6 could not be saved under section 1 of the Charter. Although the Court accepted that the objective of reducing traffic congestion was a pressing and substantial concern, it concluded that the law was not rationally connected to its objective because restoring lanes for vehicular use would not reduce traffic congestion. As well, the Court determined that the rights of cyclists were not minimally impaired by the legislation and that the purported benefits of the law did not outweigh its negative impacts.

On the appeal, the government argued that the Court committed several errors, including that in failing to recognize that section 7 of the Charter was only concerned with the deprivation of life and security of the person caused by the coercive power of the state, in failing to recognize that section 7 did not create a positive right to state-provided harm reduction measures and in finding section 195.6 to be arbitrary and grossly disproportionate.

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The Court of Appeal agreed with the government's arguments.

The Court of Appeal reasoned that under Canada's Constitution, there are clearly defined roles between the courts and the legislature. While the government has the authority to propose legislation and make decisions on whether to legislate on any given matter and how to do so, the role of the courts is to adjudicate disputes. The courts do not have a role in involving themselves in matters of legislative policy, which is what the application judge did in finding that section 195.6 breached the Charter.

The Court of Appeal noted that the application judge's decision was full of criticism of the legislation and the government's conduct in promoting its passage. As well, the application judge expressed concern that the government acted contrary to internal policy advice and public criticism of the removal of the bike lanes. However, these concerns should have been irrelevant.

The Court of Appeal found that based on *Dorceus v. Ontario*, 2026 ONCA 321, judicial review under the Charter was not a time for courts to comment on or to critique policy or political decisions. The removal of the bike lanes was a political decision.

Moreover, the Court of Appeal determined that the Charter did not preclude a government from repealing prior legislation that was not mandated by the Charter, regardless of the benefit of the prior legislation.

The Supreme Court of Canada stated that "Parliament is not bound by its past policy choices...legislation must be assessed on its own to determine whether it is constitutionally compliant, without having regard to the prior legislative scheme" (*R. v. Sharma*, 2022 SCC 39), and that it is an "established constitutional principle that Parliament cannot, through ordinary legislation, fetter itself by inhibiting future legislative action" (*Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14). In the Court of Appeal's view, this is a bedrock principle of parliamentary sovereignty.

By raising the Charter to defeat section 195.6, the Court of Appeal further noted that the cyclists were essentially attempting to maintain the status quo of the government decisions which introduced the bike lanes. However, there was no constitutional right to the bike lanes in the first place, either specifically or as inference from any of the rights set out in the Charter. The existence of bike lanes was fully dependent on legislation, and therefore the government's decision to remove them could not effect a deprivation of rights under section 7.

With respect to arguments about the legislation's purported arbitrariness and gross disproportionality, the Court of Appeal explained that section 195.6 was not arbitrary because it was rationally connected to its view that removal of the bike lanes would reduce traffic congestion. Moreover, the analysis of the application judge was focused on the efficacy of the legislation, which was a legal error. The Court of Appeal stated that:

[t]he Charter does not require the legislature to act in a manner the court considers optimal. It does not require the legislature to legislate in accordance with predictions, expert or otherwise.

The legislation was also not "grossly disproportionate", which only arises in extreme cases. In this regard, the application judge minimized the purpose of section 195.6 and trivialized it. In essence, the legislation was about traffic regulation and could not be described as being "draconian". While the application judge had referenced the concerns of intervenor groups that the legislation would disproportionately impact low-income, disabled individuals and children, the Court of Appeal found that there was no basis for those submissions and that they should have not been referenced.

In the result, Premier Ford's government has won this round of the battle to remove bike lanes from Bloor Street, University Avenue and Yonge Street. However, the government's victory at the Court of Appeal will likely face one last challenge at the Supreme Court of Canada because of the significant public interest and debate over the efficacy of bike lanes. Although it is unknown at the time of writing, it is probably highly likely that Cycle Toronto will seek leave to appeal the Court of Appeal's decision to the Supreme Court. A PDF version is available to download [here](#).

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