

Toronto cyclists gain a reprieve: government enjoined from removing bike lanes (Cycle Toronto v. Ontario (Attorney General))

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In Canadian law, government enactments that potentially infringe the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) can be challenged in the courts. Notwithstanding that legislation is entitled to a presumption that it is implemented for the public good, a court can intervene to strike down unconstitutional legislation. A court can also issue an interlocutory injunction to prevent a government from acting upon impugned legislation pending a decision on the legislation’s constitutionality.

In *Cycle Toronto v. Ontario (Attorney General)*, 2025 ONSC 2424, Justice Schabas granted an interlocutory injunction to enjoin the Ontario government from removing bike lanes on three major Toronto streets pending a final determination on legislation that sought to dismantle those bike lanes.

In a previous decision, *Cycle Toronto v. Ontario (Attorney General)*, 2025 ONSC 1650, Justice Firestone had refused to grant the interlocutory injunction on the grounds that it was not the courts’ role to second-guess the wisdom of the policy to remove the bike lanes or to question whether the impugned legislation really served a public interest. In Justice Firestone’s view, the cyclists had failed to meet their burden that an interlocutory injunction preventing the removal of the bike lanes at issue would do more for the public interest when considering the legislation’s stated purpose, which was to reduce traffic congestion in the City of Toronto.

Justice Schabas held a different view, and noted that Justice Firestone’s decision was without prejudice to request further interlocutory or permanent injunctive relief on an application to a judge. Justice Schabas further explained that unlike Justice Firestone, he had the benefit of hearing full argument on the merits of the application. All of the evidence had been thoroughly reviewed in written and oral submissions and the government’s evidence had now been filed.

Like Justice Firestone, Justice Schabas applied the three-part interlocutory injunction test from *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) to assess whether an injunction should be granted pending a final determination of the government’s impugned legislation.

This test requires the court to consider:

1. Is there a serious issue to be tried?;
2. Will the applicant suffer irreparable harm if the injunction is not granted?; and
3. Which party will suffer the greatest harm if the injunction is granted or refused?

Justice Schabas, like Justice Firestone, found that the first branch of the test was met. The application was neither frivolous nor trivial. Among other reasons, Justice Schabas found that the evidence and arguments made by the cyclists raised serious issues relating to the potential infringement of rights under section 7

of the *Charter*. Section 7 of the *Charter* protects the rights of individuals to life, liberty and security of the person.

Although the government acknowledged that security of the person was engaged in connection with the removal of the bike lanes at issue, it contended that the law was not arbitrary or grossly disproportionate. Therefore, there was no serious issue to be tried.

Justice Schabas found that when the government enacted the impugned legislation, its information raised doubts about whether the removal of the bike lanes would reduce congestion. Accordingly, whether that made the law arbitrary or disproportionate required further consideration.

With respect to irreparable harm, Justice Schabas found that the cyclists had satisfied the second part of the test. The evidence established that removal of the bike lanes would result in increased collisions, injury and death to cyclists.

With respect to the third part of the test, Justice Schabas departed from Justice Firestone's decision. While Justice Firestone accepted the assumption that a law directed to a public good and that served a valid purpose was sufficient to justify dismissing a request for an injunction, Justice Schabas noted that many cases had held that the presumption of public good did not prevent injunctive relief suspending legislation in all cases. The presumption could be overcome.

Citing *The Neighbourhood Group v. HMKRO*, 2025 ONSC 1934, Justice Schabas accepted the observation that "the government does not have a monopoly on the public interest."

Justice Schabas concluded that the balance of convenience did not favour the government because the evidence demonstrated that the removal of the impugned bike lanes would have little or no impact on the objectives of reducing traffic congestion. The government was found to have relied largely on anecdotal evidence in regard to whether the removal of bike lanes would in fact alleviate congestion. No evidence appears to have been referenced by any drivers about congestion caused by the bike lanes.

Furthermore, the evidence did not demonstrate that the removal of the bike lanes would improve safety or that accidents or injuries would be decreased. Justice Schabas noted that the government's own internal advice was that accidents and injuries were likely to increase if the bike lanes were removed.

Justice Schabas found that encouraging cycling was a competing public interest and that there was no urgency in having the bike lanes removed. Although the government had initially contended that there was an urgent need to remove the bike lanes, the government presented no plans to remove them.

Lastly, granting the injunction preserved the *status quo*.

As determined in *National Council of Canadian Muslims (NCCM) v. Quebec (Attorney General)*, 2018 QCCS 2766, preserving the *status quo* when faced with a challenge to the validity of legislation can lead to the interlocutory suspension of legislation, particularly where there was compelling evidence of a potential violation of the *Charter*.

Justice Schabas concluded:

This is not a case in which granting the injunction will effectively provide success on the application. Suspending the Provision will simply preserve the *status quo* while the issue is determined. Indeed, to not grant the injunction would effectively grant success to Ontario if it in fact moves ahead and dismantles the targeted lanes without allowing the Court process to be completed. The construction costs associated with building, and demolishing, these bike lanes is significant. It is likely that the bike lanes are more easily removed than rebuilt or restored.

This decision demonstrates that evidence plays an important factor in the outcome of a case. Justice Schabas noted several times that he had before him a more fulsome evidentiary record than did Justice Firestone, who had denied the cyclists an injunction on the same impugned legislation. While the outcome of the cyclists' *Charter* challenge still awaits final determination, the granting of the injunction has provided them with a reprieve from the desire of the Ontario government to remove the bike lanes and arguably from taxpayers who have called for the removal of the impugned bike lanes and who duly cast ballots in support of the current Ontario government because of its position to remove bike lanes.

In regard to the taxpayer and voter, query whether the debate over the removal of bike lanes is best left to the electorate at the ballot box. Further, query whether decisions of the court that prevent the government from taking steps to remove bike lanes or, for example, to shutter supervised injection sites operating within 200 metres of daycares or schools, indirectly results in a court requiring a government to fund certain policies.



In general, it has been determined that [section 7](#) of the *Charter* does not place a positive obligation on the state to ensure that each person enjoys a particular standard of life, liberty and security of the person. This includes when a government previously offered a certain level or kind of service or funding for eligible persons, and subsequently reduces or changes the benefit: see *Ontario Health Coalition and Advocacy Centre for the Elderly v. HMKRO*, 2025 ONSC 415 (CanLII) at [paragraph 209](#). Accordingly, the decision raises the issue of whether courts overstep their bounds when they prevent a government from implementing a policy that was part of their electoral mandate? Will such decisions encourage governments to utilize the *Charter's* notwithstanding clause to prevent court intervention? A PDF version is available to download [here](#).

For more information please contact: [Stephen Thiele](#)

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Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com