

Toronto cyclists refused injunction to prevent government's removal of traffic congesting bike lanes (Cycle Toronto v. Ontario (Attorney General))

Canadian Charter of Rights and Freedoms | Constitutional Law | Injunction | Litigation | Litigation & Dispute Resolution

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In an earlier [blog](#), I wrote about the decision in *The Neighbourhood Group v. HMTK*, 2025 ONSC 1924 (not yet on CanLII), in which an interlocutory injunction was granted against government legislation pending a determination of whether the legislation actually breached the *Charter of Rights and Freedoms* (the "**Charter**"). In that case, the Ontario Superior Court of Justice permitted supervised consumption sites located within 200 metres of daycares and school to remain open, contrary to section 2 of the *Community Care and Recovery Act, 2024*, even though the court had not yet conducted a comprehensive constitutional review of the section.

In contrast, in *Cycle Toronto v. Ontario (Attorney General)*, 2025 ONSC 1650 (CanLII), the court refused to grant an interlocutory injunction pending the determination of a Charter challenge to a provision in the provincial government's *Reducing Gridlock, Saving You Time Act, 2024* which permitted the province to remove certain dedicated bike lanes on major streets in Toronto, such as Bloor Street, a major east-west thoroughfare in Toronto.

The applicant cyclists contended that the bike lane removal provision unjustifiably infringed [section 7](#) of the [Charter](#) because such removal would likely imperil the health of cyclists and increase their risk of personal injury or death.

Like the decision in *The Neighbourhood Group* case, the court's ultimate decision on whether to grant or refuse the injunction rested on the application of the tripartite test for an injunction confirmed by the Supreme Court of Canada in *RJR-Macdonald v. Canada (Attorney General)*, 1994 CanLII 117 (SCC).

The tripartite injunction test requires a court to determine:

- a. Whether there is a serious issue to be tried;
- b. Whether irreparable harm will be suffered by the moving party if the injunction is not granted; and
- c. Whether the balance of convenience favours granting or refusing the injunction.

At the first stage, the party seeking the injunction is only required to show that the issues raised in the proceeding are neither frivolous nor vexatious.

This is a low threshold. Accordingly, at this stage, the court does not engage in an extensive analysis of the merits of the case unless the result of the interlocutory motion will amount to a final determination of the action or when the question of constitutionality to be tried is a simple question of law alone. These exceptions, however, are exceedingly rare.

In *Cycle Toronto*, the Attorney General contended that the merits of the application should be assessed because the cyclists were raising only a question of law. In the Attorney General's view, [section 7](#) of the [Charter](#) was only engaged where state action deprived an individual of life, liberty or security of the person but here,

the impugned provision deprived no one of anything. The impugned provision simply mandated physical changes to certain transportation infrastructure, and therefore section 7 of the Charter was not engaged.

On the other hand, the cyclists argued that the impugned provision heightened physical risk of harm and death. In this regard, the cyclists referred to a City of Toronto Bloor Street Bike Lane study which showed a 56% reduced collision rate between cyclists and motor vehicles on those bike lanes.

The court rejected the Attorney General's arguments and concluded that the cyclists had met the first stage of the test. The motion judge stated that the interests of justice and procedural fairness required that the determination of the constitutional question raised by the cyclists be determined on a full record at a hearing.

With respect to irreparable harm, the party seeking the injunction must show that they will suffer irreparable harm that cannot be quantified in monetary terms or cured because one party cannot be compensated in damages. The motion judge noted that in *Toronto Standard Condominium Corp. No. 2395 v. Wong*, 2016 ONSC 8000, "a risk of personal injury or assault" is sufficient to show irreparable harm.

While the cyclists submitted the risk of personal injury or harm was supported by expert evidence, including expert evidence produced by the Attorney General, the Attorney General contended that the evidence of increased risk or danger to cyclists was speculative.

The Attorney General highlighted that 96-97% of trips in Toronto were made by modes of transportation other than bicycles, and therefore it would not cause irreparable harm for cyclists to be diverted to other routes or modes of transportation.

The motion judge found that the cyclists had satisfied the second part of the test. The motion judge noted that proof of irreparable harm did not require absolute certainty, and that a report of the Chief Coroner for Ontario acknowledged that cyclists were among the most vulnerable road users.

The decision to reject the granting of the injunction turned on the motion judge's analysis under the third branch of the test. Here, the motion judge heavily relied on the Supreme Court of Canada decision in *Harper v. Canada (Attorney General)*, 2000 SCC 57. In that case, the Supreme Court stated that in assessing the balance of convenience where a party seeks the suspension of a law or regulation, the court is required to proceed on the assumption that the law is directed toward the public good and serves a valid public purpose.

Laws that are duly enacted for the public good should not easily be held inoperable in advance of a complete constitutional review, which normally does not occur on an interlocutory injunction motion.

Among other arguments, the cyclists contended that the government did not have a monopoly on the public interest, and that given the irreparable harm, the balance of convenience favoured them.

The cyclists also argued that the *status quo* should prevail. If the injunction was refused, the government could proceed to begin removing the bike lanes which would make it harder to put the cyclists back into the same position they would be in prior to removal. The cyclists would not be able to use vanished bike lanes.

The Attorney General countered that suspending the operation of the impugned provision would irreparably harm the public interest, which was to reduce traffic congestion. This was a broad purpose and public good when weighed against an unknown subset of only 3% of trips in Toronto that occurred by bicycle.

The motion judge concluded that the role of the court was not to second-guess the wisdom of the government's policy, and that the cyclists had not met their burden of showing that an injunction preventing the removal of the congestion causing bike lanes would do more for the public interest when considering the legislation's stated purpose. The motion judge accepted that if the bike lanes were removed, the volume of cyclists using these roads would decrease.

It remains to be seen whether the impugned provision that allows the province to remove bike lanes from heavily travelled major streets in densely populated Toronto breaches the Charter. However, the key takeaway from this decision is that on interlocutory injunction motions in Charter challenge cases, courts are required to presume that the impugned legislation is directed toward the public good and serves a valid public purpose, thereby tilting the balance against granting an injunction pending a fulsome constitutional review and hearing. In this regard, the will of elected legislators is preserved and their legislation is not overridden until a final determination on the legislation's constitutionality is made. A PDF version is available to download [here](#).

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