CITATION: *Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 2424
COURT FILE NO.: CV-24-00732896
DATE: 20250422

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CYCLE TORONTO, EVA STANGER-ROSS, and NARADA KIONDO, Applicants

AND:

ATTORNEY GENERAL OF ONTARIO and MINISTER OF TRANSPORTATION, Respondents

BEFORE: Schabas J.

COUNSEL: Andrew Lewis, Greta Hoaken, Braxton Murphy, Catherine Dunne, Lindsay Beck and Bronwyn Roe for the Applicants

Josh Hunter, Cara Zwibel and Elizabeth Guilbault, for the Respondents

HEARD: April 16, 2025

REASONS ON INTERLOCUTORY INJUNCTION

Introduction

[1] On April 16, 2025, I heard full argument on this application, in which the applicants seek an order striking down s. 195.6 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 ("*HTA*") – described as the "Target Bike Lane Removal Provision" or, simply, the "Provision."

[2] The application raises important and complex constitutional issues. I have reserved my judgment in order to give the matter full and careful consideration. These Reasons address whether the implementation of the Provision should be restrained pending release of my decision on the application.

Background

[3] The Provision requires the Minister of Transportation to remove bicycle lanes and related infrastructure installed by the City of Toronto (the "City") currently on Bloor Street, Yonge Street, and University Avenue. The impugned Provision is part of a series of amendments to the *HTA* in which Ontario has, among other things, required that the City seek provincial government approval prior to installing bicycle lanes where the bicycle lanes would reduce the number of lanes available for travel by motor vehicles.

[4] The applicants claim that the Target Bike Lane Removal Provision unjustifiably infringes the rights of Toronto cyclists and other road users under section 7 of the *Canadian Charter*

of Rights and Freedoms by exposing them to a heightened risk of serious injury or death. It is also submitted that the removal of the targeted bike lanes is arbitrary and grossly disproportionate and will not achieve the stated purpose of the legislation, which is to reduce congestion.

[5] The law received Royal Assent on November 25, 2024. This application was commenced on December 10, 2024. The matter has moved quickly. A litigation schedule was put in place on January 8, 2024, and the hearing was scheduled for April 16, 2025. However, as the respondents were unwilling to agree to delay the dismantling of the targeted bike lanes beyond March 20, 2025, a motion for an interlocutory injunction was heard on March 11, 2025.

[6] The motion for an interlocutory injunction was dismissed by Regional Senior Justice Firestone on March 14, 2025: *Cycle Toronto et al. v. Attorney General of Ontario et al*., 2025 ONSC 1650. However, as Firestone RSJ stated at the conclusion of his reasons, his decision was "without prejudice to a request for further interlocutory or permanent injunctive relief beyond this time period. Such request is to be made to the application judge."

[7] At the conclusion of the hearing of the application before me on April 16, 2025, the applicants renewed their request for an interlocutory injunction.

[8] Of course, as the judge hearing the application I have the benefit of all the evidence filed by both sides on the application, as well as full argument on the merits, unlike a judge hearing an interlocutory motion.

[9] The government's evidence and the transcripts of cross-examinations of the affiants have now been filed. All the evidence has been thoroughly reviewed in written and oral submissions. I also have the benefit of written submissions from three interveners. I have heard full argument on the merits of the application, unlike Firestone RSJ, who was not able, or expected, to engage in a detailed review of the merits of the case, as he pointed out in his decision. I am therefore in a very different position from Firestone RSJ when he heard the motion for an injunction in March. Indeed, this was anticipated by him when he made his order "without prejudice" to the applicants renewing their request for an injunction before me.

The test for an interlocutory injunction

[10] The test for an interlocutory injunction is well known and was discussed by Firestone RSJ in his decision. Pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the Court may grant an interlocutory injunction where it appears to the Court to be "just or convenient to do so." A party seeking an interlocutory injunction must address the three-part test stated by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 ("*RJR*") at p. 334:

> (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 greater harm if the injunction is granted or refused – a balance of inconvenience test?

[11] The three questions must be assessed as a whole. Strength on one branch may compensate for weakness on another branch.

Serious issue to be tried

[12] I find, like Firestone RSJ, that the serious issue test is met. Indeed, without prejudging the matter, the applicants have exceeded the relatively low test of showing there is a serious issue to be tried. The application is not frivolous or trivial. As the Supreme Court of Canada stated in *RJR* at para. 53, when *Charter* rights are invoked, it is incumbent on the court to "review the matter carefully."

[13] First, I agree with Firestone RSJ that whether this case involves a "positive rights" claim, which may be dispositive of the matter, requires a "thorough analysis" which I will conduct in my reasons on the application.

[14] Second, in my view the evidence and arguments presented by the applicants raise serious issues relating to the potential infringement of rights under s. 7 of the *Charter*. This includes the applicants' and others' rights to life and to security of the person, and the right not to be deprived of those rights except in accordance with the principles of fundamental justice. The principles of fundamental justice require that laws not be arbitrary, overly broad or grossly disproportionate.

[15] The government acknowledged in oral argument that security of the person is engaged but submits that the law is not arbitrary or grossly disproportionate. Having the benefit of the government's evidence, it is clear that when the law was passed the only information the government appeared to have raised doubts about whether the removal of the targeted bike lanes would reduce congestion. Whether this makes the law arbitrary or grossly disproportionate requires further consideration by me, but having the benefit of the full record, and full argument, this branch of the test is clearly met.

Irreparable harm

[16] Like Firestone RSJ, I have no difficulty finding that the applicants have established they will suffer irreparable harm if the legislation is not suspended while I consider the matter. As Firestone RSJ stated at para. 58 of his reasons:

> Under this branch of the injunction test it is only the harm to the applicants that is considered. Based on the whole of the record, I am satisfied that on balance the applicants have established that they will suffer harm that cannot be quantified in monetary terms or cannot be cured or compensated. Proof of irreparable harm does not require absolute certainty.

[17] As I have noted, the government conceded that the applicants' right to security of the person is engaged as a result of the risk of harm flowing from the removal of the bike lanes. The government has filed evidence pointing out that there are many factors which can

contribute to or cause collisions between motor vehicles and cyclists; however, much of its argument on safety involved criticizing the expert evidence filed by the applicants on this issue.

[18] This issue requires careful consideration. I have not formed a final view on the matter; however, the weight of the evidence now before me on this application, which is more extensive than was before the Court on the motion for an injunction last month, is that harm in the form of increased collisions, injury and even deaths of cyclists may follow from the removal of the protected bike lanes. This branch of the test strongly favours granting an injunction.

Balance of inconvenience

[19] Firestone RSJ found that the balance of inconvenience favoured the government. He accepted the assumption that the law is directed toward the public good and serves a valid purpose: *Harper v. Canada (Attorney General)*, 2000 SCC 57. Applying this principle, the Regional Senior Justice found that this was sufficient to tip the balance against an injunction. As Firestone RSJ put it, the applicants had "not met the heavy burden of establishing that an injunction preventing the removal of the target bike lanes even for a short period of time will do more for the public interest when considering the legislation's stated purpose": *Cycle Toronto* at para. 79.

[20] Many cases have held that the presumption of public good, while strong, does not prevent injunctive relief suspending legislation in all cases. In *RJR* at para. 71, the Supreme Court stated:

> It is, we think, appropriate that it be open to both parties in an interlocutory *Charter* proceeding to rely upon considerations of the public interest. Each party is entitled to make the court aware of the damage it might suffer prior to a decision on the merits. In addition, either the applicant or the respondent may tip the scales of convenience in its favour by demonstrating to the court a compelling public interest in the granting or refusal of the relief sought. "Public interest" includes both the concerns of society generally and the particular interests of identifiable groups. [emphasis added]

[21] Consistent with this approach, Callaghan J. recently observed that "the government does not have a monopoly on the public interest": *The Neighbourhood Group et al. v. HMKRO*, 2025 ONSC 1934.

[22] Accordingly, the presumption in favour of the government may be overcome if the applicant has a particularly strong case and will suffer irreparable harm – both of which involve giving more weight to the first two *RJR* factors. The presumption may also be overcome by the applicant demonstrating compelling and competing public interests other than those asserted by the government. As stated in *RJR-Macdonald* at para. 85, "to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit."

[23] As I have stated, as the application judge I now have the benefit of the full record and full submissions on the merits of this case. I am engaged in the "deep dive" into the record that a judge on an interlocutory motion cannot and is not expected to conduct. In my view, based on that full record, the assumption of public good does not tip the balance in favour of the government, for several reasons.

[24] First, the evidence led by the parties, now including the government's evidence, raises concerns about whether the removal of the targeted bike lanes will serve the public good. There is evidence that their removal will have little or no impact on the professed objectives of the legislation as stated by the Minister of Transportation in the Legislature: "It's about making sure we get this city moving again. It's about making sure that everyone is safe on the roads": Legislative Assembly of Ontario, 25 November 2025, p. 10550.

[25] The evidence led by the government does not provide a compelling basis to find that removal of these protected bike lanes will improve safety, nor does it rebut the government's own internal advice prior to enacting the Bill and the advice it received subsequently that accidents and injuries are likely to increase if the lanes are removed. The government only goes so far as to say, in effect, that the issue is complex and that there remain "gaps" in fully understanding the safety implications.

[26] Put against this is compelling evidence led by the applicants from an injury prevention epidemiologist who provides extensive support for her opinion that removal of the bike lanes will lead to more accidents and injury.

[27] There is, of course, a public interest in preventing harm. Preserving the *status quo*, which is at the heart of the purpose of injunctive relief, will prevent exposure to increased risk of harm to the applicants and those whom they represent, the cycling public. This is a competing public interest which must be considered in the face of the government's response to the applicants' evidence on this issue.

[28] Second, the government's response to the applicants' position that removal of the bike lanes will not reduce congestion has not been answered directly by the government's evidence. The applicants have provided evidence from a highly qualified transportation expert that the targeted bike lanes do not cause congestion, and that their removal will not alleviate congestion. Her opinion finds much support in studies cited by her and from many organizations. In response, the government has relied on anecdotal evidence and the opinion of a real estate management professor who does not appear to directly address the key issue of whether removal of the bike lanes will in fact alleviate congestion.

[29] The evidence on these two issues – safety and the reduction of congestion – is critical to the issues before the Court under s. 7 of the *Charter*. If the removal of the lanes increases risk of harm, this supports the applicants' position that the rights to life and security of the person are infringed. If the effect of the law has no real connection to its object, then the law is arbitrary and not in accordance with the principles of fundamental justice. Further, even if the law has some connection to its objective, it may be grossly disproportionate given the harms that will result from its implementation.

[30] These are issues of fact and law that require careful consideration by me, but at this stage the apparent strength of the applicants' case and the evidence of irreparable harm now figure more strongly in my consideration of all three *RJR* factors.

[31] Third, there is the competing public interest of encouraging cycling as a means of transportation which motivated the City to build these bike lanes. The targeted bike lanes are part of a broader project of building hundreds of kilometres of integrated cycling infrastructure in Toronto, which are intended to make cycling easier and to encourage people to choose cycling over using cars. The City certainly sees a public interest in expanding the use of bike lanes, not reducing them. Ontario may well have the jurisdiction to override the City's decisions, but the City's competing view of what is in the public interest, which is supported by the applicants' expert evidence, is relevant and has not been addressed in the responding evidence.

[32] Fourth, in balancing the assumed good of the legislation against the public interest in preventing harm, one must also consider the potential harm to the constitutional rights of the applicants. As the Supreme Court stated in *RJR* at paras. 43 and 44:

> On one hand, courts must be sensitive to and cautious of making rulings which deprive legislation enacted by elected officials of its effect.
>
> On the other hand, the *Charter* charges the courts with the responsibility of safeguarding fundamental rights. For the courts to insist rigidly that all legislation be enforced to the letter until the moment that it is struck down as unconstitutional might in some instances be to condone the most blatant violation of *Charter* rights. Such a practice would undermine the spirit and purpose of the *Charter* and might encourage a government to prolong unduly final resolution of the dispute. [emphasis added]

[33] Preserving the *status quo* when faced with a challenge to the validity of legislation where there is compelling evidence of a potential violation of *Charter* rights can lead to an interlocutory suspension of legislation, as Blanchard J. held in *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec***,** 2018 QCCS 2766**,** at paras. 72-80.

[34] Fifth is the issue of urgency and what harm would be caused to the assumed public good if implementation of the Provision is suspended. In *Sobeys West Inc. v. Alberta College of Pharmacists*, 2014 ABQB 333, at paras. 42-46, the absence of urgency or evidence of immediate harm to the public interest asserted by the government led to a finding that suspending the implementation of a law for a short period of time would have little, if any, negative effect on the public interest.

[35] Here, some of the targeted bike lanes have been present for several years. Ontario introduced the Bill which ultimately contained the Provision in October, 2024. However, the draft Bill on which public comment was sought and which was considered at Committee only contained provisions empowering the Province to review and approve any proposed bike lanes that might remove a lane of motor vehicle traffic. The impugned

Provision addressing the three targeted bike lanes was added to the Bill on November 21, 2024, and passed into law just four days later on November 25, 2024.

[36] Ontario has not commenced demolition of the targeted lanes, and counsel for Ontario could not specify when that might happen other than that it might be soon. Despite professing an urgent need to reduce congestion, no evidence of any plans to demolish the lanes or what would go in their place was presented by the respondents. Nor was there any evidence of any commercial inconvenience or harm that would be caused to Ontario if implementation of the Provision is suspended.

[37] The lack of evidence and the vague assertion from counsel about when the work may begin also informs my assessment of the balance of inconvenience. In January, the government refused to refrain from demolishing the targeted lanes until the application was heard on April 16, 2025. This caused the Court to schedule the injunction motion heard by Firestone RSJ last month. That motion now appears to have been an unnecessary use of Court time necessitated by the government's intransigence. Although the Regional Senior Justice dismissed the motion, the government was aware that the request could and likely would be renewed before me.

[38] In documents disclosed to the applicants, the government has been advised by its consultants that the removal of the bike lanes is "a complex undertaking that involves extensive planning and coordination to mitigate the safety risks for cyclists." There is no evidence that the government has engaged in any planning as to how the bike lanes will be removed or what will replace them. The demolition and reconstruction will create its own impacts on traffic - both for cyclists and motor vehicles – and will likely result in considerable disturbance and congestion while that is taking place. Cyclists who continue to use these routes will be at risk of irreparable physical harm for which, as Firestone RSJ pointed out, the government will not provide any compensation in damages: *HTA*, ss. 195.10-14.

[39] 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.

[40] I must exercise my judgment in balancing the right of the government to enact and implement legislation against the importance of protecting the rights contained in the *Charter* - the supreme law of Canada. Courts must also, where possible, protect people from harm.

[41] Having regard to all the evidence and submissions now before the Court, and which was not before Firestone RSJ, I conclude that the balance of inconvenience favours the applicants. There are compelling competing public interests other than those which the legislation purports to address. Failing to suspend the Provision will cause more harm and

inconvenience to the public interest than whatever inconvenience there might be to the public interest in not allowing the legislation to be implemented while the matter is under reserve.

[42] Accordingly, I grant an injunction suspending the operation of the Target Bike Lane Removal Provision until the release of my decision on the application.

Paul B. Schabas J.

Date: April 22, 2025