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When Bicycle Lanes engage the Charter: A Court of Appeal Case to Watch for in 2026

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Introduction

Those who practise in the field of road law are well acquainted with its complexity. Traditionally, that complexity has been confined to questions of jurisdiction, road assumption, and regulatory control. However, this complexity took a deeper turn into less explored terrain in *Cycle Toronto et al. v Attorney General of Ontario et al.*, 2025 ONSC 4397: the intersection of road regulation and *Charter* rights.

From a municipal and planning law perspective, roads play a central role in developing accessible and livable communities. Decisions concerning the design, use, and regulation of roadways require municipalities to balance competing considerations, including traffic congestion and public safety. The authority to undertake this balancing exercise flows from the *Municipal Act, 2001*, and is also informed by broader planning objectives, including the requirement that new communities be planned in a manner consistent with the Provincial Planning Statement, 2024.

Against this legislative and policy backdrop, Justice Schabas of the Ontario Superior Court of Justice ruled in *Cycle Toronto et al. v Attorney General of Ontario et al.*, 2025 ONSC 4397 that a constitutional right in relation to bike lanes can exist. The case was appealed and heard on January 28, 2026.

With the Court of Appeal's decision pending, this blog provides a summary of *Cycle Toronto et al.* and considers the potential implications of the ruling for municipalities and others operating at the intersection of road, municipal, and planning law.

Case Summary

Background

In November 2025, the Ontario Legislature enacted Bill 212, *Reducing Gridlock, Saving You Time Act, 2024*. Bill 212 amended the *Highway Traffic Act* ("*HTA*") to require municipalities to obtain approval from the Minister of Transportation before constructing bicycle lanes where it results in the removal of a lane of motor vehicle traffic.[1] The amendment was aimed at improving Toronto's traffic issues.

The specific provision challenged in this proceeding was section 195.6 of the *HTA*. That section mandated the removal of existing bicycle lanes to restore lanes for motor vehicle use along certain major Toronto corridors: Bloor Street, University Avenue, and Yonge Street.

The Applicants, who were individual users of the affected bicycle lanes and an organization advocating for bicycles as a means of transportation in Toronto, sought a declaration that section 195.6 of the *HTA* violated their rights under section 7 of the *Charter*.

The Applicants argued that the targeted bicycle lanes provided physical separation between cyclists and motor vehicles, and removal of this separation would increase the risk of serious injury and death for cyclists, thereby violating their section 7 *Charter* rights.

The Respondent, the Attorney General of Ontario, took the position that the Province is entitled to make decisions regarding the maintenance and configuration of transportation infrastructure without judicial interference. They further argued that accepting the Applicants' claim would improperly subject routine highway and traffic management decisions to *Charter* scrutiny.[2]

The Court's Reasoning

Justice Schabas began by carefully framing the constitutional issue before the Court and held that the question before the Court was whether legislation that mandated the removal of existing safety features from designated bicycle lanes infringes on the applicants' section 7 *Charter* rights.[3]

On that framing, the Court ruled that the Applicants' *Charter* application was successful. The Court found that the rights to life and security of the person were violated, and it could not be saved under section 1 of the *Charter*. The removal of the targeted bicycle lanes eliminated physical separation between cyclists and motor vehicles, thereby exposing cyclists to a heightened risk of serious injury and death. [4]

Justice Schabas held that the impugned provision was arbitrary. Rather than advancing its stated objective of reducing congestion, the evidence established that removing bicycle lanes and reallocating lanes to motor vehicles would likely exacerbate congestion while simultaneously diminishing road safety not only for cyclists, but also for other users.[5]

The Court also held that the legislation was grossly disproportionate. The evidence was clear that restoring lanes of motor vehicle traffic by removing the protected bicycle lanes would predictably lead to increased collisions, injuries, and deaths. The resulting risk to life and bodily integrity was found to be grossly disproportionate to the asserted benefit, taken at face value, of saving some motorists a marginal amount of travel time.[6]

Justice Schabas also rejected the Respondent's "floodgates" argument. The Court found that Bill 212 was enacted without regard to established principles of road design and in the face of internal advice warning that the legislation would compromise safety and fail to alleviate traffic congestion. This evidence reinforced the conclusion that the amendment to section 195.6 of the *HTA* was arbitrary rather than the product of a reasoned policy.[7]

Finally, the Court dismissed the argument that cycling is merely a personal choice for which individuals assume the risk of injury. The evidentiary record demonstrated that the targeted bicycle lanes formed a critical part of Toronto's cycling network and that, without protected infrastructure on major streets, the network would be fragmented and disconnected from key destinations; thus, minimizing access to retail, employment, community amenities, etc. In this context, the Court held that cyclists could not reasonably be said to have assumed the heightened risks created by the legislative decision to remove protected infrastructure.[8]

Takeaways

Traffic congestion continues to challenge cities across Ontario as municipalities seek to accommodate growth and intensification while meeting mobility objectives. Regardless of the ultimate disposition of the appeal, municipal infrastructure and transportation authorities should be mindful that bicycle lanes situated along major roadways may not be merely discretionary design features.

Where such infrastructure forms part of an integrated transportation network and serves an established safety function, its removal may engage considerations that extend beyond routine traffic management.

At the same time, Justice Schabas was careful to reaffirm that road and traffic design remain fundamentally evidence‑driven exercises. The Court did not question the legitimacy of decision‑making grounded in data, recognized engineering manuals, and expert highway or transportation planning advice.[9] Rather, the constitutional concern arose in this case because the impugned legislation was enacted in the absence of such evidence. Municipalities that rely on sound engineering principles, empirical data, and accepted standards when designing or modifying roadways should remain on solid legal footing.

From a developer's perspective, *Cycle Toronto et al*. does not impose a positive obligation on developers to include bicycle lanes within subdivisions or infrastructure works destined for municipal assumption. Nor does it constitutionalize any particular road design outcome. To the extent that some observers have expressed concern that the decision mandates cycling infrastructure as a matter of *Charter* compliance, that concern overstates the scope of the Court's reasoning.

More broadly, the case underscores that *Charter* scrutiny can be triggered in road regulation by state action that foreseeably increases the risk of serious physical harm through the removal of established safety infrastructure without a rational, evidence‑based justification. Of course, this application of the *Charter* as a shield against a situation where the removal of infrastructure creates hazards is likely quite different from the concept of using the *Charter* as a sword to require the installation of such infrastructure in order to reduce harms which exist based on existing infrastructure.

[1] *Cycle Toronto et al. v Attorney General of Ontario et Al,* 2025 ONSC 4397 at para 1.

[2] *Ibid* at paragraph 5.

[3] *Ibid* at paragraph 151.

[4] *Ibid* at paragraph 162.

[5] *Ibid* at paragraphs 195 – 201.

[6] *Ibid* at paragraphs 202 – 206.

[7] *Ibid* at paragraphs 154 – 159.

[8] *Ibid* at paragraphs 171 – 179.

[9] *Ibid* at paragraphs 155-157.

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