Court of Appeal File No.:
Superior Court File No.: CV-24-00732896

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

ATTORNEY GENERAL OF ONTARIO and
MINISTER OF TRANSPORTATION

Appellants (Respondents)

- and -

CYCLE TORONTO, EVA STANGER-ROSS, and NARADO KIONDO

Respondents (Applicants)

APPLICATION UNDER RULE 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (UK), 1982, c 11.

NOTICE OF APPEAL

THE APPELLANTS, the Attorney General of Ontario and the Minister of Transportation ("Ontario"), **APPEAL** to the Court of Appeal from the Judgment of the Superior Court of Justice dated July 30, 2025, made at Toronto.

THE APPELLANTS ASK THAT the Judgment be set aside and a judgment be granted as follows:

a) That the appeal be allowed and the Application be dismissed with costs to the Appellants in this Court and the Court below; and

b) Such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS OF APPEAL are as follows:

1. On July 30, 2025, the Superior Court rendered the Judgment, issuing declarations that

   a. s. 195.6 of the *Highway Traffic Act,* RSO 1990 c. H.8 (*HTA*) as it read from November 11, 2024 to June 4, 2025 (the "former s. 195.6") infringed s. 7 of the *Charter* and could not be justified under s. 1; and

   b. any steps taken to remove the physical separation between the motor vehicle traffic and the bicycle lanes on Bloor Street, University Avenue, Avenue Road, and/or Yonge Street in the City of Toronto, including by "reconfiguring" those bicycle lanes, would be in breach of s. 7 of the *Charter* and not saved by s. 1.

2. The former s. 195.6 of the *HTA* required the Minister of Transportation to remove bicycle lanes and any related features on Bloor St., Yonge St., and University Ave. (the "target roads") and to restore the lanes for use by motor vehicles.

3. After the hearing but prior to the release of the Court's decision, the former s. 195.6, as challenged by the Respondents, was repealed by way of the *Plan to Protect Ontario Act (Budget Measures) 2025*, SO 2025, c 10, which added a materially different version of s. 195.6 to the *HTA* (the "new s. 195.6"). The new s. 195.6 has been in force since June 5, 2025.

4. The new s. 195.6 no longer compels the Minister of Transportation to remove all bicycle lanes on the target roads. Instead, it now gives the Minister the duty to restore a lane for motor vehicles on Bloor St., University Ave., Avenue Rd. (including Queen's

Park Crescent East and West), and Yonge St., by *reconfiguring* bicycle lanes or parts of bicycle lanes on those streets.

5. The Minister now has no duty or power to remove bicycle lanes outright unless and until the Lieutenant Governor in Council ("LGIC") passes a regulation under s. 195.18(2)(c) of the *HTA* (which was amended to give the LGIC that power on June 5, 2025) requiring the Minister to do so. No such regulation has been passed.

6. The Applicants did not seek to amend their Notice of Application to challenge the new s. 195.6 or s. 195.18(2)(c). Nor did they serve a Notice of Constitutional Question alleging those provisions were unconstitutional.

7. The Court held that despite the repeal and replacement of the provision challenged by the Respondents, the application was not moot. It also found that even if the application had been moot, it would have exercised its discretion to decide the application in any event.

8. The Court found that the former s. 195.6 unjustifiably infringed s. 7 of the *Charter* and could not be saved by s. 1 of the *Charter*. The Court did not declare the former s. 195.6 of the *HTA* to be of no force and effect because the provision had already been repealed.

9. Despite acknowledging that the new s. 195.6 had not been challenged by the Applicants, the Court went on to find that any steps taken to reconfigure bike lanes on the target roads that removed their "protected" (or protective) character for the purpose of installing a lane for motor vehicles in order to reduce congestion, would be in breach of s. 7 of the *Charter* and not be saved by s. 1.

10. Even though no regulation has been made under s. 195.18(2)(c), the Court also

found that any future regulation requiring the removal of bike lanes would breach s. 7 and not be saved by s. 1.

11. In so holding, the Court exceeded its jurisdiction and proper constitutional role and made multiple errors of law and mixed fact and law, as set out below.

A. The Court erred in finding that the former s. 195.6 of the *HTA* infringed s. 7 of the *Charter* and was not justified under s. 1 of the *Charter*

1) The Court Erred in Finding a Deprivation of Life and Security of the Person

12. The Court erred in law in finding that the now-repealed statutory obligation to remove all bike lanes on the target roads could amount to a deprivation within the meaning of s. 7 of the *Charter*.

13. In particular, the Court erred in finding that removing a "harm-reduction" measure provided by government could constitute a deprivation in the absence of a constitutional obligation to provide the harm-reduction measure in the first place.

14. Absent such a finding, the Court had no basis to go on to consider the principles of fundamental justice.

15. The Court erred in law in finding that the former s. 195.6 deprived the Applicants of their life and security of the person.

16. In particular, the Court departed from the binding jurisprudence of the Supreme Court of Canada that the interests protected by s. 7 are *only* engaged where the machinery of the state – by penal sanction or other state-imposed coercive measure – impinges upon life or security of the person.

17. The Court also erred in equating the removal of a state-provided measure that reduces the risk of being harmed by third parties with imposing a criminal prohibition, or other coercive measure, on individuals who seek to take their own harm-reduction

measures against those third-party risks.

18. In effect, the Court erroneously found there to be a positive constitutional right to the permanent maintenance of existing bike lanes.

2) The Court Erred in Finding a Breach of the Principles of Fundamental Justice

19. The Court also made errors of law and mixed fact and law in finding that the former s. 195.6 was not in accordance with the principles of fundamental justice. These findings are not subject to deference as the Supreme Court of Canada and this Court have recently held that findings of mixed fact and law in connection with a constitutional question are to be reviewed on a correctness standard.

20. The Court erred in finding that former s. 195.6 was arbitrary (a legal conclusion or conclusion on a question of mixed fact and law) even though there is a rational connection between restoring these lanes for use by motor vehicle use and the number of cars that these roads can carry in a particular period of time.

21. The Court disregarded Ontario's evidence which demonstrated that travel times increased after the installation of the target bike lanes, instead preferring unqualified opinion evidence that removing the target bike lanes would not improve congestion generally.

22. The Court erred when it held that the phenomenon of induced demand will mean that congestion as experienced by each driver individually will not improve when motor vehicle lanes are restored, and thus the impugned measure was arbitrary.

23. This conclusion disregards entirely that the carrying capacity of the roadways for motor vehicles transporting people and goods will be increased by the restoration of a lane for motor vehicle traffic. The Court misapprehended the legislative objective of

addressing congestion as being concerned only with the individual experience of each driver and their particular travel times, rather than the public interest in the relief of congestion in the City by increasing arterial road capacity, and thus moving *more* people and goods within any given period of time.

24. Even if it is accepted that there will be induced demand as drivers avail themselves of the newly restored lanes, it is unquestionable that more motor vehicles will be accommodated by roadways with more lanes available to motor vehicle traffic, moving more persons and goods in any given period than the volume of persons and goods moved on the narrower roadways that accommodate separated bike lanes.

25. Moreover, the public interest in the impugned measure is not merely to improve travel times for individual motorists and delivery vehicles, but to improve congestion more broadly. The evidence was uncontroverted that bicycle traffic is a very small proportion of overall road use in Toronto (even in temperate seasons). Permitting additional bicycle traffic cannot make up for the loss of capacity for motor vehicles on the target roadways.

26. The Court further erred in finding that former s. 195.6 was grossly disproportionate (a legal conclusion or conclusion on a question of mixed fact and law).

27. In particular, it articulated but failed to give effect to the high bar established by the binding jurisprudence for finding gross disproportionality, failed to consider that congestion, road capacity, and road safety all involve a multitude of complex factors, not solely whether there are protected bike lanes, and improperly relied on negative impacts alleged by Interveners that had no foundation in the evidence.

28. Moreover, as with its arbitrariness analysis (see paragraphs 20-25 above), the

Court erred in considering the question of gross disproportionality from the perspective only of gains in travel times for individual motorists, rather than the broader objectives of relieving the economic chokehold that congestion and reduced road capacity places upon the City.

29. Further, the Court erred in treating the analysis with respect to the congestion impacts as the impact on congestion of bike lanes generally, instead of the impact of the target bike lanes on congestion. The Court ignored the expert evidence of Dr. Murtaza Haider that travel times on the corridors where the target bike lanes are installed had increased after the installation of the target bike lanes. The evidence of the Applicants' expert witness Dr. Shoshanna Saxe, on which the Court relied, also showed an increase in travel times on the Bloor Street corridor, but was ignored by the Application Judge.

30. As with its arbitrariness analysis, the Court failed to consider that the restoration of a lane of vehicular traffic is the equivalent of building three new two-way arterial roadways into and out of the heart of the City. The restored lanes would be able to move a commensurately larger volume of people and goods in any given period of time.

31. The Court further failed to properly consider the fact that any increased safety risks to bike lane users could be mitigated by the use of secondary roads, alternative bike routes, or alternative means of transportation.

32. The Court erred in its analysis of the safety impacts of the target bike lanes. The Court addressed the safety impact generally and did not consider the safety impact of the removal of the target bike lanes.

33. The Court made errors with respect to the treatment of the safety of the target bike lanes, including:

a. The Court misapprehended the evidence of the Applicant's expert Dr. Linda Rothman who acknowledged on cross-examination that her analysis was not complete because it ignored other variables that concern safety including the number of cyclists, the overall citywide trend of decreased collisions, and individual street design and intersections.

b. The Court largely ignored the Respondents' expert evidence from Barry Raftery. Mr. Raftery identified the factors that affect the safety of bicycle riders and how they are not influenced by the removal of the target bike lanes. Mr. Raftery introduced evidence of the features of the target bike lanes that illustrate the reasons why in his opinion, safety would not be affected by the removal of the target bike lanes. He also referred to data from the Toronto Police Service that showed that between 2006 and 2023, there were 46 cyclist fatalities reported, 33 of which occurred at intersections. Intersections are not protected by bike lanes and therefore collisions at intersections would not be affected by the removal of the target bike lanes.

34. The Court made errors which tainted the gross disproportionality analysis, including:

a. The Court relied on the Ministry's Transportation Tomorrow Survey ("TTS") which found in 2024 that 4.4% of all trips within the City were taken by bicycle or other micromobility to prove that the Premier was wrong to state that 1.2% of people commute by bike. The TTS statistic referred to number of "trips", not number of people.

b. The Court relied on an assumption about the reason for enacting immunity provisions (ss. 195.10-195.14) to show the safety risks of the legislation even though there was no evidence of the reason for enacting those provisions in the record.

c. The Court erred in its treatment of the evidence of fact witnesses. The Court dismissed the Respondents' fact evidence as "anecdotal", yet relied on the same kind of fact evidence led by the Applicants to find that there are safety benefits to using protected bike lanes.

d. The Court ignored the Respondents' fact evidence on the impacts in the community of the target bike lanes, including evidence from a former Toronto Fire Captain on the impact of the Bloor Street lanes on emergency response times. Instead, the Court relied on hearsay evidence from Toronto's Fire Chief contained in a newspaper article attached to an affidavit of the Applicant.

3) The Court Erred in Finding the Former s. 195.6 Could Not Be Justified Under s. 1 of the *Charter*

35. The Court erred in law in finding that former s. 195.6 could not be justified under s. 1 of the *Charter*.

36. The Court erred in requiring the government to prove that the provision would in fact reduce congestion, rather than merely showing that it is reasonable to suppose it will further that goal. In any event, for the same reasons that the Court erred in finding that former s. 195.6 was arbitrary and grossly disproportionate, as set out above at paras. 26-34 it also erred in finding that the provision was not rationally connected to the Legislature's objectives.

37. The Court erred in finding that former s. 195.6 was not minimally impairing. The minimal impairment stage is concerned with the law's purpose, not its effects. The Court failed to identify any alternative options that would have substantially achieved the Legislature's objectives. Instead, it jumped to a consideration of the law's effects, a matter reserved for the final stage of the s. 1 analysis.

38. The Court erred in finding that the deleterious effects of former s. 195.6 outweigh its salutary effects. The Court failed to give proper weight to the demonstrated impacts of bike lanes on congestion, the harms caused by congestion in Ontario's political and economic capital, the small proportion of roadways in Toronto affected by the impugned provision, and the availability of viable alternative routes and modes of transport.

B. The Court Had No Jurisdiction to Comment on the Constitutionality of Hypothetical Future Action Taken Under Statutory Provisions That Were Not Before It

39. The Court had no jurisdiction to make any findings regarding the constitutionality of the new s. 195.6 or of s. 195.18(2)(c) as neither provision was challenged by the Applicants.

40. In any event, since no Notice of Constitutional Question was served in relation to those provisions, any decision regarding their constitutionality should be considered a nullity in accordance with s. 109 of the *Court of Justice Act*, RSO 1990, c C.43.

41. Furthermore, unlike the former s. 195.6 which directly mandated the removal of all bike lanes on the target roads, neither the new s. 195.6 nor s. 195.18(2)(c) directly mandates any particular action involving any particular bike lane. Rather, both sections grant discretionary authority to the Minister and the LGIC respectively.

42. There was no evidence before the Court on how those discretionary authorities might be exercised in the future or what the impact of that exercise might be on the life

and security of the person of cyclists.

43. The mere possibility that a discretionary authority might be exercised in an unconstitutional manner does not affect the constitutionality of the provision granting that authority.

44. The *Judicial Review Procedure Act*, RSO 1990, c. J.1 grants the Divisional Court exclusive jurisdiction to consider the propriety of the exercise, refusal to exercise, or proposed or purported exercise of the statutory powers conferred by the new s. 195.6 and by s. 195.18(2)(c).

45. Absent a finding under s. 6(2) of the *Judicial Review Procedure Act* that the case is one of urgency, a single judge of the Superior Court has no jurisdiction to judicially review delegated statutory authority. No such finding was sought or made in this case and the Court therefore erred in commenting on the constitutionality of any proposed or purported exercise of the Minister and the LGIC's statutory powers.

46. In any event, any such determination was premature in the absence of any evidence of how and when the powers would be used.

47. The Court erred in law in its excessive reliance on statements by the Minister of Transportation in the course of legislative debate as evidence of the proper interpretation of the duty and powers conferred by the legislation or how the Minister intended to exercise those powers once granted. In any event, the Minister's comments cannot overcome the clear wording of the statute which expressly gives only the LGIC the discretion to make a regulation requiring removal.

48. The Court also erred in making blanket findings without evidence that any reconfiguration that involved the removal of any protective features (even on a

temporary basis) or any regulation requiring the removal of any portion of the bike lanes on the target roads would infringe s. 7 of the *Charter* and not be justified under s. 1 of the *Charter*. Such findings can only be made on a full factual record about the particular proposed reconfiguration or removal and its potential impact on both cyclists and motor vehicle traffic.

C. Ontario Should Be Awarded Its Costs Here and Below

49. If Ontario's appeal is successful, it should be awarded its costs throughout.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c C.43.

2. The appeal is from a final order of a judge of the Superior Court of Justice from which no appeal lies to the Divisional Court.

3. Leave to appeal is therefore not required for this appeal.

August 21, 2025

ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
McMurtry-Scott Building
720 Bay Street, 4th Floor
Toronto ON, M7A 2S9

Josh Hunter (LSO# 49037M)
Tel: (416) 908-7465
Email: joshua.hunter@ontario.ca

Cara Zwibel (LSO# 50936S)
Tel: (416) 894-3107
Email: cara.zwibel@ontario.ca

Elizabeth Guilbault (LSO# 83208O)
Tel: (437) 244-4293
Email: elizabeth.guilbault@ontario.ca

Counsel for the Appellants

TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN LLP**
115 Wellington Street West
35th Floor
Toronto ON, M5V 3H1
Tel: (416) 646-4300

Donald Eady (LSO# 30635P)
Tel: (416) 646-4321
Email: donald.eady@paliareroland.com

Andrew Lewis (LSO# 39149E)
Tel: (416) 646-4310
Email: andrew.lewis@paliareroland.com

Greta Hoaken (LSO# 87903I)
Tel: (416) 646-6357
Email: greta.hoaken@paliareroland.com

Braxton Murphy (LSO# 87655A)
Tel: (416) 646-6334
Email: braxton.murphy@paliareroland.com

Catherine Dunne (LSO# 91028H)
Tel: (416) 646-6358
Email: catherine.dunne@paliareroland.com

ECOJUSTICE CANADA
1910-777 Bay Street, P.O. Box 106
Toronto ON, M5G 2C8

Lindsay Beck (LSO# 62107D)
Tel: (416) 368-7533 ext. 551
Email: lbeck@ecojustice.ca

Bronwyn Roe (LSO# 63840R)
Tel: (416) 368-7533 ext. 529
Email: broe@ecojustice.ca

Lawyers for the Respondents

AND TO: **ADDARIO LAW GROUP LLP**
30 Duncan St. 5th Floor
Toronto, ON M5V 2C3

Nikolas De Stefano (LSO# 84027O)
Tel: (416) 649-5018
Email: ndestefano@addario.ca

Counsel for the Intervener, Canadian Public Health Association

AND TO: **GOLDBLATT PARTNERS LLP**
20 Dundas St W. Suite 1039
Toronto, ON M5G 2C2

Louis Century (LSO# 66582C)
Tel: (416) 979-4388
Email: lcentury@goldblattpartners.com

Counsel for the Intervener, Greenpeace Canada

AND TO: **ZBOGAR ADVOCATE PROFESIONAL CORPORATION**
887 Woodbine Ave
Toronto, ON M4C 4V6

Vilko Zbogar (LSO# 46142G)
Tel: (416) 855-6710
Email: vilko@zapc.ca

MEAGHAN DANIEL, BARRISTERS & SOLICITOR
Meaghan Daniel (LSO# 57068V)
Tel: (514) 944-8154
Email: meg@meaghandaniel.com

Counsel for the Intervener, For Our Kids – Toronto

Court of Appeal File No.:
Superior Court File No.: CV-24-00732896

ATTORNEY GENERAL OF ONTARIO and MINISTER OF TRANSPORTATION	-and-	**CYCLE TORONTO, EVA STANGER-ROSS, and NARADA KIONDO**
Appellants (Respondents)		Respondents (Applicants)

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPEAL

THE ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto ON, M7A 2S9

Joshua Hunter (LSO# 49037M)
Tel: (416) 908-7465
Email: joshua.hunter@ontario.ca

Cara Zwibel (LSO# 50936S)
Tel: (416) 894-3107
Email: cara.zwibel@ontario.ca

Elizabeth Guilbault (LSO# 83208O)
Tel: (437) 244-4293
Email: elizabeth.guilbault@ontario.ca

Of Counsel for the Appellants (Respondents)