

CANADA / JUDGMENT

Cycle Toronto v. Ontario (Attorney General)

2025 ONCA 908

COURT

Court of Appeal for Ontario

DECIDED

31 December 2025

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Cycle Toronto v. Ontario (Attorney General)

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Zarnett, Benjamin

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Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Cycle Toronto v. Ontario (Attorney General), 2025 ONCA 908

DATE: 20251231

DOCKET: M56499, M56506, M56510, M56513, M56538 (COA-25-CV-1047)

Zarnett J.A. (Motion Judge)

BETWEEN

Cycle Toronto, Eva Stanger-Ross, and Narada Kiondo

Respondents

and

Attorney General of Ontario and Minister of Transportation

Appellants

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

Donald Eady, Andrew Lewis, Greta Hoaken, Braxton Murphy, Catherine Dunne, Lindsay Beck and Bronwyn Roe, for the respondents

George Avraam, Jennifer R. Bernardo and Ryan Carroll, for the proposed intervener, Canadian Constitution Foundation

Megan Savard and Cheryl Milne, for the proposed intervener, David Asper Centre for Constitutional Rights

Louis Century, Amy Chen and Umaiyahl Nageswaran, for the proposed intervener, Greenpeace Canada

Nikolas De Stefano, for the proposed intervener, Canadian Public Health Association

Vilko Zbogar, Meaghan Daniel and Vibhu Sharma, for the proposed intervener, For Our Kids Toronto

Heard: in writing

REASONS FOR DECISION

- [1] These reasons address motions to intervene in the appeal brought by the appellants (collectively “Ontario”) from the July 30, 2025 judgment of Schabas J. of the Superior Court of Justice.[1]
- [2] The judgment under appeal made two declarations. The first concerned s. 195.6 of the Highway Traffic Act, R.S.O. 1990, c. H.8 (the “HTA”), as it read from November 11, 2024 to June 4, 2025 – a provision that required the removal of bicycle lanes on certain Toronto streets and their restoration for use by motor vehicle traffic. The judgment declared that that section infringed s. 7 of the Canadian Charter of Rights and Freedoms and could not be justified under s. 1 of the Charter. The second declaration was made in light of the repeal of s. 195.6 of the HTA, and its replacement with differently worded provisions on June 5, 2025. The judgment declared that any steps taken to remove the physical separation between motor vehicle traffic and the bicycle lanes on those Toronto streets, including by reconfiguring them, would be in breach of s. 7 of the Charter and not saved by s. 1.

- [3] Each of five organizations move for leave under r. 13.03(2) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, to intervene in the appeal as a friend of the court, and request that they be allowed to file a factum and present oral argument at the hearing of the appeal. The proposed interveners are:
- Canadian Constitution Foundation (“CCF”)
 - David Asper Centre for Constitutional Rights (“Asper Centre”)
 - Greenpeace Canada (“Greenpeace”)
 - Canadian Public Health Association (“CPHA”)
 - For Our Kids Toronto (“FOKT”)
- [4] Three of the proposed interveners – Greenpeace, CPHA and FOKT – intervened, and made written submissions only, on the application before the Superior Court.[2]
- [5] The respondents take no position on any of the motions to intervene in this court.
- [6] Ontario opposes the motions brought by Asper Centre, CPHA, FOKT and Greenpeace. Ontario takes no position on the motion brought by CCF. If permission is granted to any intervener, Ontario asks that their intervention be limited to written submissions of ten pages with no oral argument.
- [7] The appeal is perfected and scheduled to be heard on January 28, 2026.
- [8] For the reasons that follow, the motions are granted in part, on the terms described below.

The Test

- [9] In determining a motion for leave to intervene as a friend of the court, relevant considerations are “the nature of the case, the issues which arise and the likelihood of the [proposed intervener] being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties”: *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.), at p. 167; *Foster v. West*, 2021 ONCA 263, at para. 10; *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 29, at para. 8.
- [10] In constitutional cases, the approach to granting interventions may be somewhat relaxed; a proposed intervener typically meets at least one of the following three criteria: (1) it has a real, substantial and identifiable interest in the subject matter of the proceedings; (2) it has an important perspective distinct from the immediate parties; or (3) it is a well-recognized group with a special expertise and a broadly identifiable membership base: *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, 98 O.R. (3d) 792, para. 2; *Reference re Greenhouse Gas Pollution Pricing Act*, at para. 8.

- [11] Nevertheless, even where in a constitutional case a proposed intervenor meets one or more of these criteria, the overarching consideration remains whether the intervenor is likely to make a useful contribution: Bedford, at para. 2; Peel, at p. 167. The “Bedford criteria” have been applied in service of answering that ultimate question, though the presence or absence of any of them is not determinative: Fair Voting BC v. Canada (Attorney General), 2024 ONCA 619, at para. 11. Some degree of overlap with the arguments of a party is not necessarily fatal to an intervention request where the proposed intervenor is in a position to bring a different perspective to bear: Peel, at p. 167. But, “[s]ubmissions that are duplicative of the submissions of others are not useful, and can in fact imperil the fairness of the hearing”: Fair Voting, at para. 13.

The Nature of the Appeal

- [12] At the heart of this case are important issues regarding the scope of s. 7 of the Charter, which provides that: “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” It is unnecessary to review, in detail, all the issues raised on the appeal. Instead, I briefly highlight three that are germane to the disposition of the intervention requests.
- [13] First, Ontario submits that the application judge erred in giving effect to what they say is, in essence, a claim to “a positive right to safety while cycling” and to the continuation of existing safety measures, that is, bicycle lanes. Ontario submits that s. 7 of the Charter does not create a positive right to state-provided harm reduction measures; it does not “mandate that the state take action to reduce the risk of harm from third parties or to safeguard citizens from life’s hazards. Nor does it require the state to continue the measures it has previously taken to those ends.” Ontario argues that the judgment below significantly expands the scope of s. 7 of the Charter contrary to existing authority.
- [14] Second, Ontario argues that the application judge erred in relying on the decision of the majority in Drover v. Canada (Attorney General), 2025 ONCA 468, 177 O.R. (3d) 561, leave to appeal requested, [2025] S.C.C.A. No. 383, that s. 7 of the Charter “is not limited to an individual’s interactions with the administration of justice”. Drover, according to Ontario, was entirely about the liberty interest protected by s. 7, and the majority’s holding does not extend to cases concerning the life and security of the person interests, which are the only interests claimed by the respondents in this case. Those interests, according to Ontario, are “engaged only when [they are] impacted by coercive measures deployed by the state such as penal sanctions, civil committal, child apprehension, etc.” (emphasis in original).
- [15] Third, Ontario submits that the application judge, in finding that there was a deprivation of a protected s. 7 interest other than in accordance with the principles of fundamental justice, erred in finding that the negative effects of the impugned legislation were grossly disproportionate to its asserted benefit. Ontario argues that on this point, while the application judge articulated the law correctly, he made errors of mixed fact and law in its application, including relying on submissions made by CPHA and FOKT for which there was

no evidence.

- [16] The respondents address all of these points. On the first point, they argue that trying to distinguish between “positive” and “negative” rights is unedifying and, in any event, theirs was not a positive rights claim; rather, the Superior Court was asked to strike down legislation – which is state action – that put people at risk by removing a safety feature on roads, something that the government exclusively controls. On the second point they argue that s. 7 of the Charter does not require an “administration of justice” threshold regardless of the interest engaged and type of deprivation asserted. According to the respondents, the majority decision in *Drover* is authority for the proposition that “[s]tate action, not interaction with the administration of justice, is what is required to engage s. 7”. On the third point, the respondents challenge Ontario’s assertion that there was any error in the gross disproportionality conclusion, asserting that each proposition the application judge accepted, including those advanced by interveners, was well grounded in the evidence.

The Proposed Intervenors

- [17] Each of the proposed interveners is a well-recognized group with an interest in the issues on appeal. The disposition of each motion turns on other features of their proposed interventions, which I discuss below.
- a. CCF
- [18] CCF proposes to focus their submissions on the distinction between positive and negative rights claims under s. 7 of the Charter. CCF suggests an analytical framework to distinguish between positive and negative rights that focuses on the source of the deprivation of rights.
- [19] As noted, neither the respondents nor Ontario take a position on this intervention. CCF’s proposed analytical framework may be germane to the positive/negative rights dichotomy that is raised as an issue on the appeal, and may provide a useful additional, and distinct perspective for this court to consider. CCF’s motion to intervene is therefore granted, on the terms described below.
- b. Asper Centre
- [20] Asper Centre proposes to make submissions on the positive/negative rights framing, on the interpretation of the decision in *Drover*, and on that decision’s binding effect. On the first issue, Asper Centre would outline how the positive and negative rights framing is unhelpful and, in their view, not required, and would suggest an alternative analytical framework for s. 7 claims without the positive/negative rights dichotomy. Asper Centre also proposes to submit that the proper interpretation of the majority decision in *Drover* is that it is not limited to the liberty interest. Finally, Asper Centre proposes to argue that as a prior decision *Drover* is binding on the panel hearing this appeal, as Ontario did not request a five-judge panel.

- [21] Ontario opposes Asper Centre's intervention on the basis that their proposed submissions duplicate the submissions of the respondents.
- [22] Asper Centre's proposed submissions on the positive/negative rights issue, and on the interpretation of the majority decision in *Drover*, appear to be sufficiently distinct from those of the parties and any other proposed intervenor such that they may provide a useful perspective for the court. Accordingly, Asper Centre is granted leave to intervene, limited to those two issues. The court does not need the assistance of an intervenor on the binding effect of a prior decision of this court once it has been properly interpreted; as such, leave to intervene does not extend to that issue.
- [23] With that exception, Asper Centre's motion is granted, on the terms described below.
- c. Greenpeace
- [24] Greenpeace proposes to make submissions about why this is not a positive rights case, based on exclusivity and protection from third-party harm principles it says flow from Supreme Court of Canada jurisprudence and the direct causal link arising from Ontario's exclusive control over the regulation of public roads in the province.
- [25] Although Ontario submits that the positive/negative rights argument is duplicative, in my view, the focus, emphasis and proposed analytical framework Greenpeace argues for are sufficiently distinct from that of the respondents and other intervenors that its perspective may be useful. Greenpeace's motion to intervene is granted on the terms described below.
- d. CPHA
- [26] CPHA's motion indicates that it proposes to make the following submissions:
- The positive and negative rights dichotomy is unhelpful in the s. 7 framework because the state has acted by passing legislation. The question is whether the legislative action offends s. 7 of the Charter.
 - Equality principles should inform the court's analysis of the principles of fundamental justice. Equality has an overarching character, so the analysis should include whether the impugned legislation disproportionately impacts life, liberty and security of the person of marginalized, disadvantaged and vulnerable people (in this case, people who do not have the means to use alternative transit options).
- [27] CPHA also states that if granted leave it would file a factum that would be substantially the same as the factum they filed on the application in the Superior Court. That factum essentially argued the merits of the application, weighing-in on a number of issues, the fact finding that should occur, and the outcome.
- [28] CPHA's intervention should be permitted, but on a more limited basis than it proposes.

- [29] I am not satisfied, given the overlap between its proposed arguments and those of the respondents, that the perspective CPHA would bring to bear on the positive/negative rights issue is at all distinct from that of the respondents. Accordingly, its intervention would not be useful on that issue.
- [30] The issue on which I grant CPHA's request to intervene is its second proposed submission (also described in paras. 28-32 of its factum in the Superior Court) about the use of equality principles as an interpretive tool in the analysis of fundamental justice and gross disproportionality under s. 7 of the Charter.
- [31] The application judge found that the impugned legislation interfered with the respondents' right to life and security of the person in a way that violated the principles of fundamental justice, because (in addition to his view that the law was arbitrary) he concluded that its negative effects were grossly disproportionate to its asserted benefit. He adopted, as part of his reasons for finding gross disproportionality, the description provided by CPHA of the impugned legislation's impact on low-income and disabled individuals, as well as the description provided by FOKT about the impact on children: *Cycle Toronto*, at paras. 206-7.
- [32] Ontario does not challenge, on appeal, the application judge's articulation of the law as it pertains to gross disproportionality in a s. 7 analysis, derived from Supreme Court of Canada case law. Ontario argues that the application judge "made errors of mixed fact and law in considering the evidence and applying the law to the facts ... [and] ... erred in relying on submissions made by Interveners that had no grounding in the factual record." The respondents dispute that there were any errors, arguing that the application judge's findings, including those adopted from interveners' submissions, were grounded in the evidence in the record.
- [33] As Ontario points out, this is not a s. 15 case, and an intervenor is not permitted to expand the appeal by raising an issue not raised by the parties. That said, to the extent that CPHA proposes to advance an analytical framework concerning how gross disproportionality should be considered when the interests affected are those of marginalized persons, those submissions may provide a useful perspective on an existing issue without expanding the scope of the appeal. I would limit its intervention to addressing that issue.
- [34] For clarity, other than as noted above, I do not grant leave to CPHA to intervene on the other issues, factual and legal, that it addressed in its factum in the Superior Court. CPHA's factum as an intervenor in this court must be limited to the issue on which its intervention is being permitted.
- [35] Therefore, CPHA's motion is allowed in part, on the terms described below.
- e. FOKT

- [36] FOKT proposes to focus its submissions on how the best interests of the child principle, articulated in Article 3.1 of the United Nations Convention on the Rights of the Child, Can. T.S. 1992 No. 3. (which Canada ratified in 1991), should factor into the s. 7 analysis, and on whether the factual findings underpinning the application judge's decision were grounded in evidence and should be given deference.
- [37] I grant FOKT's request to intervene, on a more limited basis than it proposes.
- [38] For reasons similar to those relating to CPHA's proposed intervention, I consider that the first area of FOKT's proposed submissions – addressing how the gross disproportionality analysis is to be conducted where the interests of children are affected – may provide a useful additional perspective for the court without unfairly expanding the issues on the appeal. The application judge referred to FOKT's submission about the interests of children in the course of his reasons.
- [39] However, the second area, the factual record and the inferences to be taken from it, as well as the deference to be shown to the findings in this particular case, are quintessentially matters for the parties who developed the record and are not issues on which an intervenor's perspective is needed. Ontario's complaint in this appeal that the application judge made a finding based on submissions of interveners for which, according to Ontario, there was no evidence does not give FOKT a perspective, distinct from that of the respondents, about whether there was evidence to support his finding – that is an issue for the respondents, who have taken it up in opposition to the complaint made by Ontario.
- [40] FOKT's motion is therefore allowed in part, on the terms described below.

Disposition

- [41] The motions for leave to intervene are granted on the following terms:
- (1) Each of the interveners shall take the record as it is and not supplement the record by way of their factum or otherwise;
 - (2) Each of the interveners is permitted to serve and file a factum on the appeal of no more than ten (10) pages in length by January 12, 2026;
 - (3) The factums of CCF and Greenpeace on the appeal shall be in substantially the same form as the draft factums submitted on their intervention motions;
 - (4) The factums of Asper Centre, CPHA and FOKT on the appeal shall not address any issues other than those they have been specifically granted leave to address, as noted above;
 - (5) Any party wishing to reply to any of the interveners' factums on the appeal may deliver a reply of no longer than five (5) pages by January 19, 2026;
 - (6) CCF, Asper Centre and Greenpeace shall each be permitted ten (10) minutes to make oral submissions at the hearing of the appeal;

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- (7) CPHA and FOKT shall each be permitted five (5) minutes to make oral submissions at the hearing of the appeal;
- (8) The interveners shall not be entitled to, nor subject to, any costs of these motions or of the appeal.

“B. Zarnett J.A.”

- [1] Reasons for the Superior Court judgment are reported at: *Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 4397, 177 O.R. (3d) 341.
- [2] These interventions were apparently permitted without a formal motion.

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