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KEEP A LID ON IT: MANDATORY HELMET LEGISLATION REVISITED

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Ever since the introduction of mandatory helmet legislation in British Columbia in September 1996, I have received at least two calls a month asking that I spearhead a challenge to the helmet laws. My answer has always been the same - "You are talking to the wrong friendly neighbourhood bike lawyer". My perspective is shaped at a visceral level. When helmeted cyclists describe for me the circumstances of significant head trauma, it seems obvious to me, and to them, that the use of a helmet may well have saved their lives.

My perspective is fortified by the fact that helmeted clients do not face allegations of associated contributory negligence in head injury cases. My helmeted clients are therefore in a superior legal position. Naturally, given what I know and what I have seen, I am inclined to favour helmet use.

Until recently, I really was not prepared to listen too long to those who called for a challenge to mandatory helmet use. Lately, however, I will admit to being troubled by a plethora of very learned articles, studies and statistics that indicate the helmet legislation in some provinces have not proved to be in the interest of the health and safety of their populations. Indeed, it seems that there is no clear evidence of a benefit related to mandatory helmet use. If anything, the studies appear to indicate a number of negative effects.

First, it appears that helmet legislation has caused a reduction of cycling. It all started in Australia and New Zealand, which introduced legislation between 1990 and 1992. These Commonwealth jurisdictions appear to have influenced five provinces in Canada (Ontario, Nova Scotia, British Columbia, Alberta and New Brunswick) to all eventually follow suit. Surveys from down under and from four Canadian provinces (no data appears to be available related to New Brunswick) suggest helmet use discourages cycling. This is not good. Not only does the community suffer the loss of obvious health benefits associated with cycling, it also faces the increased environmental and social costs associated with other less benign modes of transportation. By way of recent example, mandatory helmet use has been an unacceptable thorn in the side of the development of bike sharing programs in Vancouver. I have read one particularly compelling



study which indicates that helmet law has discouraged cycling in British Columbia by an astonishing 28%. . Naturally, given the infinite number of variables, this and other studies must be taken with a few grains of salt. Nonetheless, they make a thought provoking point.

Then there is the evidence from many jurisdictions that wearing of helmets might even make cycling more dangerous. In addition to evidence of higher rotational acceleration afflicting helmet users, there is also evidence that helmet promotion diverts attention from other more worthwhile safety strategies, cycling education, sensible riding, better cycling facilities and the need to generally demand a greater role for cyclists in society.

The Netherlands, the jurisdiction routinely held out as the model of a civilized cycling community, offers surprising statistics which feature low helmet use and low fatality rates. Don't we want to take a page out of their bike diary?

Then there is the constitutional argument. I suppose this is where I could take my rightful place. Helmet laws arguably infringe civil liberties and cannot be justified as a reasonable limit on same under the *Canadian Charter of Rights and Freedoms*. Clearly, helmet laws lead to overzealous and often selective law enforcement which perpetuates discrimination and increases the perception that law is arbitrary and favours those in a superior social economic position. Add to this the fact that the failure to wear helmets often leads to unnecessary and unfair prejudice in cases involving claims for compensation. After all, from an insurer's perspective, if you were not wearing a helmet, you definitely "shot the deputy".

Against this background, it is important to remember that the voice which speaks against mandatory helmet use is still very much a dissenting voice. There is a widespread perception that helmets save lives. I share that perception. It seems to me there is very little appetite for legislative change in this Province. I have been told directly by government representatives that there is no interest in a review.

Frankly, I'd personally prefer it if you did not remove your helmet as a result of reading this or any other articles about helmet use. Again, forgive me, but I come by my bias naturally. So I write this piece not in an effort to advocate any particular position, but to simply apologize to all of those people who, over the years, have called me to enlist my help in mounting a challenge to the existing laws, and, to whom, I have seemed dismissive. I still don't think I am your man, but I want you to know that statistically there is at least a chance you may have something to say. Your view may not be popular, but that does not make it wrong.

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