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THE GREAT HELMET LAW DEBATE

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As a bike lawyer in downtown Vancouver for roughly 25 years it behooves me to offer my views on the great helmet law debate which is presently raging, rising, bubbling and backfiring in British Columbia. I have many thoughts on the subject and thought that by clarifying my own views I might help others come to a better understanding of the factors at play in this debate.

First, by way of background, four provinces currently have provincial mandatory bike helmet laws for all ages B.C., New Brunswick, Nova Scotia and Prince Edward Island. Two provinces have mandatory bike-helmet laws for those aged 17 and younger: Alberta and Ontario. The other provinces and territories do not have provincewide mandatory helmet laws, but some municipalities do require this.

Typically, provincial legislation also empowers municipal councils to enact bylaws that require helmets for bicycle users.

In the United States, there is no federal law requiring helmet use. The various states began adopting laws in 1987, mostly limited to children under 18.

Clearly, in North America, there is no social consensus on whether adult helmet laws are necessary.

British Columbia's mandatory helmet law was introduced as a private member's bill in 1995 and became part of the Motor Vehicle Amendment Act.

The debates of the legislative assembly do not disclose any significant controversy around the proposed mandatory helmet law and, in fact, at the time it was introduced, the private member from Okanagan West was credited with a sensible piece of law reform.

Section 184(1) of the Motor Vehicle Act makes it an offence for a person to operate or ride as a passenger on a bicycle on a highway (defined as basically all of the roadways within the province designed or intended for use by the general public) without a bicycle safety helmet. Section 184(1) would not include cyclists



riding on private property or specific paths or ways not accessible to vehicles, like the seawall, trails through parks, etc.

Bicyclists in Vancouver on some of the paths and ways not covered by Section 184 are still required to wear a helmet pursuant to a City of Vancouver street and traffic bylaw. Cyclists must wear a helmet if the path or way they are travelling on is identified and marked under Schedule C of the bylaw, for example, the seawall and paths along False Creek. The bylaw can impose additional helmet requirements because of the municipal powers authority given to the city pursuant to Section 124 (1) of the Motor Vehicle Act.

Immediately after the introduction of a mandatory helmet law, a number of groups lobbied for exemptions. Those exemptions continue to stand.

Today, if you can establish that wearing a helmet would interfere with an essential religious practice, or if you are the operator of – or a passenger carried by – a pedicab, or quadricycle, or if your doctor recommends for medical reasons you not wear a helmet, or if you are a kid under 12 operating a non-chain driven three- or four-wheeled cycle designed for recreational use (tricycle), you are not required to wear a helmet. The lieutenant-governor in council can give exemptions to anyone pursuant to Section 184(6) of the Motor Vehicle Act.

After the introduction of the helmet law, there was a backlash. However, it was small. In the mid-'90s the cycling population in B.C. was much smaller and, while there was some resistance to the restriction of individual freedoms, the law was generally accepted as part of a broader legislative change around cyclists and the adoption of a provision in the Motor Vehicle Act, which gave cyclists the same rights and obligations as motorists.

It is beyond the scope of this article to discuss whether it is a good idea to treat cyclists and motorists as the same. Since the introduction of this law, motorists have been quick to point out that cyclists have the same obligations, whereas cyclists are quick to point out that cyclists have the same rights. Inasmuch as cars are completely different than bicycles, this legislative change has had a troubled evolution.

Cycling in B.C. and worldwide has increased exponentially since the mid-'90s. Concerns around climate change and the desire for alternative modes of transportation have persuaded many people to emancipate themselves from their dependence on the automobile.

As the cycling population increased, so did the resistance to helmet laws throughout the world. B.C. is no different. In many jurisdictions with public bike-share systems similar to the one being proposed for Vancouver, helmet laws have been abolished for the simple reason that people don't wish to spontaneously



rent a bike if they must wear a helmet, particularly if they think the helmet has been worn by somebody else.

B.C.'s mandatory helmet law may be a significant challenge to the implementation of a public bike-share system. Australia had to repeal its laws to allow for the development of its public bike-share system.

Public bike-share systems appear to be the most obvious candidate for an exemption. The latest increase in the temperature around helmet-law discussions results directly from the City of Vancouver's endorsement of - and support for - the implementation of a public bike-share system.

MISPLACED ARGUMENTS

Many of the arguments for and against the mandatory helmet law in B.C. are misplaced. First, as a society, we have placed a heavy reliance on statistics and studies. Data relating to helmet use and injury rates in populations over time are inherently flawed.

Potential weaknesses of these studies are too numerous to mention. It is distracting and bothersome when, in the heat of a debate around a very visceral and thought-provoking subject, someone throws in a statistic or a survey or study in support of their position.

Those against the helmet law say it reduces the number of cyclists on the road. While that is clearly a potent point, there is simply no persuasive data in support of that proposition. Indeed, how could there be? If you were one of the people surveyed as to whether a mandatory helmet law caused you to not ride your bike, and you answered "yes," are you really able to say truthfully that is the only reason you would not ride a bike and, but for a helmet law, you are absolutely certain, beyond a shadow of doubt, that you would ride? Could you honestly say no other factor affected your motivation to stop driving your car and get on your bicycle? Surely the profound subjectivity of these surveys makes them wholly unscientific and yet, they are advanced in the guise of science.

Those in support of the helmet legislation cite studies showing that increased helmet use decreases head injury rates in the populations for which the laws are implemented.

Frankly, I don't know why a study is needed to demonstrate that the use of a helmet reduces head trauma. Ask anyone who has been involved in a serious bicycle accident in which significant head contact and helmet damage occurred and they will tell you that there is not a day that goes by that they do not drop to their knees and express thanks that they were wearing their helmet.

Conversely, those advocating for the abolition of helmet laws do themselves a disservice when they argue





there is no evidence helmets reduce head trauma. This must be something we accept as a given unless we are prepared to abandon everything that experience has taught us.

This is not to discredit studies. They play a vital role in the collection and analysis of data used in transportation planning. See, for example, the pro-gram called Cycling in Cities based at the University of B.C. school of population and public health and in particular Bicyclists' Injuries and the Environment, a study of data collected in emergency rooms directed by Kay Teschke with which I am happy to be associated.

Studies clearly have their place, but not at the epicentre of a debate about the desirability of a law.

At the heart of that debate is the clash between individual freedom and personal responsibility. This is not a debate about whether helmets them-selves are a good thing, or how good a thing they are. It is a debate about the very purpose of regulatory laws in a free and democratic society.

There will always be two valid perspectives. On either side of that question one thing which must be common ground is that in order for laws to survive they must be knowable, ascertainable, comprehensible, and accepted, at least by a majority of reasonable citizens.

The enforcement of B.C.'s Mandatory Helmet Law has been less than satisfactory. Unfortunately, whenever a law is enforced badly, not enforced, or enforced arbitrarily, belief in the law itself quickly subsides. Based on my observations (no study required), many cyclists in B.C. are not wearing helmets. It is not uncommon to see a helmetless cyclist ride directly in front of a squad car. On the other hand, when the VPD decides to enforce the helmet law they often do so by handing out tickets for several hours on a bike route. This is not dissimilar to herding bison off a cliff and naturally leads to significant cynicism. It may be that the helmet law is a law that can't be properly enforced and ought to be re-examined for that reason. The lack of consistent enforcement ought to inform the legislative assembly as to the value of its laws.

Another distraction is the attention given to whether the helmet law is unconstitutional. The Constitution is reserved for profound restrictions of individual liberty and discrimination on the basis of one of several enumerated grounds. It must be remembered that the right to drive a car has been found to be not constitutionally guaranteed. The regulation of activities on our roadways is simply not in the same league as an unlawful search and seizure, discrimination or wrongful arrest and imprisonment. The use of the Charter of Rights and Freedoms to challenge helmet laws is a massive distraction from what is at its heart and soul a political issue.

The single most important issue facing cyclists today is the absence of proper infrastructure to allow cycling to prosper, as it should, as it must, in a civilized community. If we accept as a general proposition that our



societies would be healthier if they had fewer cars and more cyclists, then it follows we need to dedicate our resources to infrastructure, change and development.

IMPROVE INFRASTRUCTURE

The enactment and attempted enforcement of mandatory helmet laws distract from the real issue: How do we improve our infrastructure to make cycling safer?

Accidents do not happen because cyclists were not wearing a helmet. Accidents happen because there is an unacceptable proximity between automobiles and cyclists. Until this changes, and our particularly North American consciousness evolves so that our minds can better anticipate the presence of a cyclist on a roadway, we will continue to see an unacceptably high level of cycling casualties.

We are still a very teenage region when it comes to cyclists. We do not enjoy the harmony that appears to exist between cyclists and motorists in other more mature cycling jurisdictions. To say we ought to be more like Denmark or the Netherlands does not make it so. We will, hopefully, get there one day but, for now, harm reduction requires that we recognize the realities we face as we evolve and struggle with ways in which we can arrive at a better coexistence between cyclists and motorists.

It is often argued that helmet laws mischaracterize cycling as a dangerous activity. Unfortunately, from my perspective, and from the perspective of many emergency room doctors, it is a dangerous activity. But our perspectives are myopic and distorted. Many of us working in the medical-legal community regard automobiles as instruments of death and destruction.

REDUCING RISK

But that is not to say we never drive or, we do not or cannot harbour sympathy for a driver of a vehicle involved in the injury of a cyclist. There is an irreducible risk of disaster striking. It can arise from only momentary inattention despite leading to life-altering consequences.

These disasters can be catastrophic for the parties involved and also their families and their broader communities. It is vitally important to do what we can to reduce this harm and the maintenance of an unenforceable helmet law may not be the magic bullet we are seeking. We must accept that cyclists need a safe way to commute.

We need to embrace physically separated bike lanes designated bikeways with traffic diversion, bike paths not shared with pedestrians and reduced speed limits on residential streets. These are but a few examples of progress achieved in jurisdictions with much lower rates of cycling casualties and fatalities.





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In the dialogue around the mandatory helmet laws we ought not to seek to alienate one another. It seems this debate has become somewhat symbolic of the division between motorists and cyclists.

We ought to strive for a world where a helmet law is regarded as unnecessary, either because everybody decides for themselves to wear a helmet or cycling casualties had been all but eradicated by the creation of better facilities infrastructure.

Some people will always wipe out on their bikes, and there is always the potential for injury, but those on either side of the debate need to set aside distracting positional arguments and work together to create a safer and more respectful environment.

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