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## THE HELMET LAW AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

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In the wake of a recent constitutional challenge of BC's helmet law by an unrepresented individual, and the vigorous debate thereon, it behooves me to comment further on the merit of this challenge. There is a tendency to confuse law with political issues. In my view this confusion is at the heart of the challenge.

Ron Van der Eerden was given a ticket for not wearing a helmet while riding a bicycle, contrary to the *Motor Vehicle Act*. He says the relevant provision of the *Motor Vehicle Act* violates his Charter rights, particularly his right to life, liberty and security, and his right to equality before and equal protection and benefit of the law.

The challenge stems from Mr. Van der Eerden's belief, supported to some extent by a number of studies, that helmets deter many people from cycling. Mature cycling jurisdictions such as Copenhagen shows that safety is in numbers. Despite a relatively large unhelmeted cycling population, those jurisdictions show much lower crash rates. The Charter challenge is an effort to make cycling safer by abolishing helmets, thereby increasing the number of cyclists, and in turn cycling safety in general.

On the other side of the debate, there are those concerned about the recovery of health care costs in this Province. They cite these increasing costs and suggest that health care costs related to brain injuries ought not to be born by the public in circumstances where a cyclist chooses not to wear a helmet. A new statute has arrived called the *Health Care Costs Recovery Act*. Although it does not apply to cyclists injured at the hands of ICBC insured motorists (as a Crown Corporation ICBC is not a target of the A.G. for repayment of costs) virtually every other situation where a third party is liable for someone's injuries in B.C. gives rise to an obligation on the wrongdoer to repay the province money spent on health services. This is wind in the sails of the status quo.

From a political prospective the debate is naturally divisive. The "abolitionists" accuse supporters of the status quo of closed mindedness. The supporters of the status quo accuse the abolitionists of recklessness.



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Ultimately, the common ground is that safety must be a paramount consideration. To me, the helmet law debate is a potential distraction from many of the more pressing issues facing cyclists. A full and comprehensive study of our infrastructure, and all of the codified laws relating to cyclists, will go a lot further in raising public awareness of the actual causes of accidents and the prevention of accidents.

While the Charter challenge of the helmet law has garnered significant media attention, it has an extremely remote chance of getting any traction. The Charter guarantees fundamental rights and freedoms. Driving a motor vehicle or riding a bicycle on a public highway is not a liberty interest protected by the Charter. The Charter also recognizes that governments must treat different individuals and groups in different ways. The helmet law does not discriminate as between cyclists based on personal characteristics. It treats all cyclists equally under the law. Moreover, even if the helmet law can be characterized as infringing, a most unlikely outcome of the challenge, it would almost certainly be saved as a “reasonable limit” within the meaning of the Charter of Rights and Freedoms.

At the end of the day, Mr. Van der Eerden is attempting to achieve a political remedy through the courts. It is not the role of the judges in British Columbia to substitute judicial opinions for legislative ones. The helmet law challenge, while thought provoking, is poorly conceived, and the attention it has generated is disproportionate to its legal merit.

