



**BILL 15: *FAIRNESS FOR ROAD USERS ACT*
(*CONTRAVENTIONS CAUSING DEATH OR*
SERIOUS BODILY HARM), 2022**

Submitted to: The Standing Committee
on Heritage, Infrastructure and Cultural
Policy

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Submitted by: Ontario Bar Association





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Executive Summary

The Ontario Bar Association (“OBA”) appreciates the opportunity to provide a submission on Private Member’s Bill 15 - *Fairness for Road Users Act, 2022*. The OBA supports the goal of making the roads safer for all road users and supports the idea of making the penalties under the *Highway Traffic Act (HTA)* proportionate to the offences committed. However, the OBA is concerned that, as drafted, Bill 15 is overbroad, would cause serious unintended consequences and is susceptible to being struck down by the courts for contravening the *Charter of Rights and Freedoms*. Specifically, Bill 15 would:

- Extend significant penalties to any breach of the hundreds of requirements under the *HTA* and its regulations if the breach contributed in any way to causing an accident resulting in serious bodily harm, instead of targeting the specific breaches of the *HTA* that impact the safety of road users; and
- Unintentionally extend significant penalties to *HTA* breaches committed by vulnerable road users, including cyclists, pedestrians, and persons in wheelchairs.

The OBA

Established in 1907, the OBA is the largest volunteer lawyer association in Ontario, with over 16,000 members who practice on the frontlines of the justice system and who provide services to people and businesses in virtually every area of law and in every part of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and deliver over 325 professional development programs to a diverse audience of over 16,000 lawyers, judges, students, and professors.

This submission was prepared by the OBA’s Criminal Justice Section which represents both Crown¹ and Defense counsel practicing across every region of the province who represent a

¹ Opinions expressed by any member who is employed by the Crown is personal, and is not that of the Crown.



range of issues before every level of court. Members of this section have significant experience and expertise in both provincial and criminal offences, including matters arising under the *HTA*.

Comments:

Bill 15 seeks to amend Part X of the *Highway Traffic Act (HTA)* as follows:

s. 191.0.2 Every person who, while contravening this Act or the regulations, causes, or contributes to causing, an accident that causes the death of a person or serious bodily harm to a person is guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$50,000 or to imprisonment for a term of not more than two years, or to both, and in addition the person's driver's license or permit may be suspended for a period of not more than five years.

While the OBA supports the stated goals of the legislation, there are issues of fairness and constitutionality. There are three critical, interrelated concerns:

- (a) **Overbreadth of Offences Covered** - The *HTA* has a broad range of offences designed to prohibit or require behavior from drivers, pedestrians, cyclists, and people with disabilities using mobility devices such as manual and power-assisted wheelchairs. Contraventions of the *HTA* range from offences where culpability is high, such as careless driving (which already carries the penalties proposed in Bill 15 when death or serious bodily harm result), to low culpability offences, such as failure to carry one's drivers license when driving or beginning to cross the street when the 'do not walk' signal is flashing. The application of Bill 15 to all *HTA* offences, even the most minor, has the potential to result in disproportionate punishment – including punishing the vulnerable road users it aims to protect.
- (b) **No Causal Connection** - The issue of overbreadth in the included *HTA* offences is exacerbated by a failure to causally link the contravention to the accident from which the death or bodily harm resulted. The proposed amendment does not require that the contravention cause or even contribute to the accident. This breaks the connection between the contravention and the death or bodily harm. The proposed amendment requires only that the accused person was contravening the *HTA* **and** that the accused



person caused or contributed to the accident. It does not require that the offence which the accused committed caused the accident. The Supreme Court of Canada has ruled that a person should not be deprived of liberty unless the death is objectively foreseeable based on their actions.² By comparison, section 130(6) of the *HTA* which treats bodily harm or death as an aggravating sentencing factor after a conviction for careless driving builds in the casual connection between the contravention and the death or bodily harm. This provision does not.

(c) **'Contribution' Not a High Enough Bar** – As the law related to civil accident cases indicates, there are parties whose culpability is very low who can be said to have contributed to an accident (e.g., parties who have had to pull over due to a disabled vehicle and whose rescuers are involved in an accident). Having to prove only contribution, when combined with the two other issues above, makes it possible to severely punish entirely innocent parties.

- To illustrate the intersection of the above issues and the potential for unintended consequences, consider this example: A driver who was not carrying a license, got a flat tire, and pulled over to the side of the road. Another car pulled over to help and was struck by a third car. The driver of the second car was killed. The proposed provision would capture the driver of the first car as he contributed to the accident and was contravening the *HTA* by not having their license. While the scenario is of course unlikely, it illustrates that the breadth of the offences caught by the provision, the standard of “contribution” and the causal disconnect between the offence and the accident, has the potential to yield unintended and unconstitutional results.

(d) **Negative Impact on Vulnerable Road Users** - The *HTA* as currently drafted has much lower penalties for pedestrians and persons in wheelchairs. Unless there is a penalty specified for a particular breach of the *HTA*,³ all under Part X of the *HTA* (“Rules of the Road”) breaches committed by pedestrians and persons in wheelchairs have a **maximum** penalty of a \$50 fine.⁴ Because Bill 15 proposes the creation of a new offence with a specified penalty, the *HTA* provision setting out reduced penalties for pedestrians would

² *R. v. Vaillancourt*, [1987] 2 SCR 636.

³ Many *HTA* breaches simply fall under the general penalty provision in section 214 of the *HTA*.

⁴ *Highway Traffic Act*, section 214(2).



not apply. Pedestrians and people in wheelchairs would see the maximum fine for a relatively minor offence go from a \$50 fine to a minimum fine of \$2,000 up to \$50,000 – not to mention the introduction of jail time.

- (e) **Constitutionality** - Many of the offences in the *HTA* are 'absolute liability' offences, which means it is not necessary to prove intent. With the addition of jail time for even minor offences, Bill 15 would make it necessary to prove intent to be constitutionally compliant.

Conclusion

The OBA supports the goal of making the roads safer for all road users, including vulnerable road users such as cyclists and pedestrians. We also support making the penalties under the *HTA* proportionate to the offences committed. However, for all the reasons set out above, the OBA submits that Bill 15, as drafted, will have serious unintended consequences, without meeting its objectives.