

# **Bill210:** *The Highway Traffic Amendment Act* *(Bicycle Helmets)*

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## **I. INTRODUCTION**

According to current Manitoba law, it is illegal to ride a bicycle on the sidewalk. Under s. 145(8) of *The Highway Traffic Act*, all cyclists; including children, are to ride only on public roads and highways with the other traffic, unless the rear diameter of the bicycle wheel is less than 410 mm. Common sense would seem to dictate that when sharing the roads with motor vehicles, a reasonable bicyclist would wear a helmet. Nevertheless, in Manitoba this is not the case. Despite a concerted government effort promoting bike helmet usage over the past 15 years, only 28% of Manitobans wear bike helmets.<sup>1</sup> In an attempt to substantially increase the use of bicycle helmets in Manitoba, Dr. Jon Gerrard, the MLA for River Heights, introduced legislation to the Manitoba Legislature with Private Members' Bill 210, *The Highway Traffic Amendment Act (Bicycle Helmets)*. Essentially, Bill 210 required anyone riding a bicycle on a highway or bicycle path to wear a proper protective helmet.

The following paper will examine the circumstances surrounding the Manitoba Legislature's consideration of Bill 210. Areas that will be explored are: the discussion of the bill in the Legislature, the debate surrounding whether or not mandatory bicycle helmet legislation is necessary, where Manitoba currently sits in terms of its need and support of helmet legislation contrasted with those who oppose it, how other provinces have dealt with this issue, and why Bill 210 ultimately did not pass in the Manitoba Legislature.

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Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVI No. 538 (26 May 2005) at 3008-3009.

## II. BACKGROUND

Bill210, *The Highway Traffic Amendment Act (Bicycle Helmets)*, was sponsored by Dr. Gerrard, and seconded by Kevin Lamoureux, the MLA for Inkster. It was designed as an amendment to the *Highway Traffic Act*, and was intended to be inserted into s. 145(4) of the Act.<sup>2</sup> Section 145(4) requires that anyone riding a power assisted bicycle must wear a helmet. Bill210 was designed to expand the existing law that required helmet use for motorcycles and power assisted bicycles, to also cover self propelled bicycles.

At the time of drafting Bill 210, Dr. Gerrard was a member of the All Party Task Force on Children's Health Issues. The task force was made up of four NDP MLAs, two Conservative MLAs, and one Liberal MLA, Dr. Gerrard. The task force traveled around Manitoba and received presentations from many groups on issues affecting children's health. One of the areas examined was injury prevention-and more specifically whether or not bicycle legislation was necessary. After looking at all of the information presented to the task force, Dr. Gerrard decided to introduce legislation regarding bike helmets before the task force finished its report, as he felt that action taken prior to the summer break would have a greater impact on the lives of Manitobans.<sup>3</sup>

### A. First Reading

Bill210 had its first reading on 26 May 2005, during which Dr. Gerrard made a brief statement regarding the bill. Dr. Gerrard's statement had two main points. The first was that education alone had achieved only a 28% use of bike helmets in Manitoba. The second was that there was evidence that legislating the use of helmets could reduce the number and severity of bicycle injuries requiring hospitalization.<sup>4</sup> No one else spoke on the Bill, and the House adopted it at this stage.

### B. Second Reading

The second reading of Bill210 occurred on 2 June 2005. Dr. Gerrard was the only member of the House to speak on the Bill. Dr. Gerrard began his discussion of Bill 210 by stating that the bill was about saving lives and saving money.<sup>5</sup> Dr. Gerrard argued that in provinces with mandatory bike helmet laws,

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Bill 210, *The Highway Traffic Amendment Act (Bicycle HelmetS)*, 3d Sess., 38th Leg., Manitoba, 2005.

Interview of Dr. Jon Gerrard, the MLA for River Heights, by Lana Jackson (1 December 2005).

*Supra* note 1 at 3008-3009.

Manitoba, Legislative Assembly, *Debates and Proceedings*, VoL LVI No. 57A (2 June 2005) at 3201-3203.

the rate of helmet usage was higher, and the rate of hospitalization and death due to injury from bike accidents was lower.<sup>6</sup> Dr. Gerrard highlighted the importance of injury prevention, and that by wearing a helmet, a bicyclist significantly reduces their chances of head injury; which in turn saves our health care system money, as head injuries are very costly to treat.

Dr. Gerrard concluded his comments by mentioning that bike helmet legislation was similar to seatbelt legislation. While he acknowledged some of the concerns that Bill 210 amounted to government interference in the lives of its citizens, Dr. Gerrard reminded the House that once seatbelt legislation had been passed, wearing a seatbelt became normal behaviour among the public, and mandatory bike helmet legislation would follow in the same manner. Following the introduction by Dr. Jon Gerrard, debate on the bill was adjourned by Greg Dewar, the MLA for Selkirk, and seconded by Ms. Irvin, Ross, the MLA for Fort Garry. The house adopted the motion to adjourn debate on the bill, presented by Mr. Greg Dewar, and Bill 210 never went any further in the legislative process. Dr. Gerrard's initiative to legislate the use of bike helmets failed. The following section will examine the positive and negative aspects of bike helmet legislation.

### III. THE PROS AND CONS OF BIKE HELMET LEGISLATION

One of the obvious benefits of wearing a bike helmet is injury prevention. The Canadian Paediatric Society, in a 2005 report, *Are We Doing Enough? A Status Report on Canadian Public Policy and Child and Youth Health*, reported that bicycle injuries are the third leading cause of injury for children 10-14 years old, and that bike helmets reduce the risk of injury by 88%.<sup>7</sup> Furthermore, Safe Kids Canada, in its June 2005 Position Statement on Bicycle Helmet Legislation stated that:

Despite studying many factors, only the presence of a bicycle helmet law in the child's province was significantly associated with a lower rate of hospitalization for head injury among young cyclists.<sup>8</sup>

It should be noted that while it seems like a logical conclusion that bike helmet legislation reduces injuries, a study in Calgary found just the opposite. A study reported in the *Calgary Sun* in July of 2003 actually found that injuries from bike accidents were up from 5% prior to the legislation to 10% following the

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*Ibid.*

Canadian Paediatric Society, Status Report, "Are We Doing Enough?"(2005), online: Canadian Paediatric Society <[http://web.archive.org/web/20061006051255/http://www.cps.ca/english/proadv/Advocacy/Status\\_Report.pdf](http://web.archive.org/web/20061006051255/http://www.cps.ca/english/proadv/Advocacy/Status_Report.pdf)>.

Safe Kids Canada, "Position Statement on Bike Helmet Legislation", online: Sick Kids Foundation <<http://www.sickkids.ca/SKCFForPartners/custom/BikeLegislationPositionStatement.pdf>>.

enactment of legislation.<sup>9</sup> However, the article went on to clarify that the increase was described by those conducting the study as "nothing more than interesting", and the increase was in fact due to a change in how the data was coded, and was not a result of the new legislation.<sup>10</sup> The connection is clear: wearing a helmet significantly reduces injuries, and mandatory bike helmet legislation is a proper means to ensure helmet usage.

While the majority of studies focused on the impact of bike helmet usage and children under the age of 18, the effects of wearing a helmet are also beneficial to adults. While adults may not be as reckless as children when riding and are therefore unlikely to have as many self caused accidents, adults are more likely than children to ride on busier streets with other traffic and therefore put themselves in an equally serious potential injury situation. One can hardly argue the very real possibility of head injury when a person on a bicycle is involved in an accident with a car. The reality that adults are just as likely to be injured on bicycles is evident in the fact that next to the age category of 5-14 years of age, the group with the highest number of reported injuries, the age group of 25-34, receives the second highest rate of injuries due to bicycle-related accidents.<sup>11</sup>

Requiring adults to comply with the law will also increase the success of the legislation, due to its inclusive nature and the fact that it is easy to understand and apply. The legislation will in turn have a wider impact, and will likely be more widely known, as it applies to more than a limited portion of the public.<sup>12</sup> Furthermore, adults set a positive example by wearing a bike helmet. A Toronto study shows that a child is 100 times more likely to wear a helmet if their parent wears a helmet.<sup>13</sup>

Coinciding with the reduction of injuries following bike helmet legislation is the economic benefit to society as a whole. One can hardly turn on a television set or pick up a newspaper without hearing of some problem with our health care system. Long lineups at emergency rooms, extended waits for tests, and an overall overcrowding of facilities are very real problems facing our health care system. In a publicly funded health care system, it is important to reduce unnecessary costs. It falls upon the government to reduce health care costs and keep citizens healthy by any practical means available.<sup>14</sup> Mandatory bike helmet

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David Sands, "Helmet Law stats called surprise" *Sun Media* (12 July 2003), online: CALGARYSUN.COM<<http://www.magma.ca/-ocbc/CalgarySun.htm>>.

<sup>10</sup> *Ibid.*

<sup>11</sup> Winnipeg Regional Health Authority, "Position Statement on Cycling Safety" online: WHRA <[http://www.wrha.mb.ca/healthinfo/preventinj/files/Cycling\\_PS.pdf](http://www.wrha.mb.ca/healthinfo/preventinj/files/Cycling_PS.pdf)> at 3.

<sup>12</sup> Safe Kids Canada, "Facts and Myths about Helmet Legislation" online: Sick Kids Foundation <<http://www.sickkids.ca/SKCforPartners/custom./FactsandMythsaboutHelmetLegislation.pdf>>.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Supra* note 3.

legislation is a cost effective way of reducing overall costs. The cost of a bike helmet ranges from \$20 to \$35, while the savings to the health care system could be quite significant. Safe Kids Canada estimates that every dollar invested in helmet saves about \$30 in societal costs.<sup>15</sup> When Dr. Gerrard spoke on Bill 210, he stated that one child's serious head injury would cost the health care system between \$1-1.5 million.<sup>16</sup>

The number one injury prevented by the use of bike helmets is head injuries. Head injuries are very costly to the health care system and can lead to lifelong difficulties and problems.<sup>17</sup> Treatment of a head injury usually involves a hospital stay, rehabilitation and support services. A serious head injury can also result in long-term brain damage of the individual, which reduces one's ability to contribute meaningfully to society.

Overall, bike helmet legislation is effective and efficient. Its practical appeal has even found support in the majority of Canadians. Public opinion is in favour of helmet legislation. Safe Kids Canada conducted a poll in Alberta, Quebec and Manitoba, and found that approximately 75% of those surveyed supported the legislation.<sup>18</sup>

Those in opposition to bike helmet legislation have various concerns, the strongest being that bike helmet legislation is another example of the government becoming too involved in the daily lives of its citizens. As W. F. Deedes once observed: "You cannot legislate or regulate for every conceivable accident or mishap which may befall the human race."<sup>19</sup> The following area will first look at a few minor arguments in opposition to bike helmet legislation and then focus on the main arguments.

It has been argued that forcing helmet usage on the public will essentially result in a backlash against bike riding. The backlash will reduce the number of people receiving the benefits of cycling, and overall the health of the public would deteriorate. These concerns were proven in a study conducted in Australia.<sup>20</sup> However, a study conducted in the Toronto area showed that mandatory helmet legislation did not have a significant negative impact on child cycling in the community.<sup>21</sup> Also, in Ontario and British Columbia, studies have shown

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<sup>15</sup> *Supra* note 8.

<sup>16</sup> *Supra* note 5 at 3201-3203.

<sup>17</sup> *Supra* note 3.

<sup>18</sup> *Ibid.*

<sup>19</sup> Avery Burdett, "No to Ontario's Helmet Legislation" *Ottawa Citizen* (August 1995), online: *Ottawa Citizen* <<http://www.magma.ca/ocbc/law.html>>.

<sup>20</sup> *Ibid.*

<sup>21</sup> Alison K. Macpherson, Patricia C. Parkin & Teresa M. To, "Mandatory helmet legislation and children's exposure to cycling" (2001) 7 *Injury Prevention* 228, online: <[http://ip.bmjournals.com/cgi/content/full/7/3/228?maxtoشو= &HITS= IO&hits=10&RESULTFORMAT=1&title=helmet&searchid= 1131998165483\\_245&stored\\_search=](http://ip.bmjournals.com/cgi/content/full/7/3/228?maxtoشو= &HITS= IO&hits=10&RESULTFORMAT=1&title=helmet&searchid= 1131998165483_245&stored_search=)

that post legislation, cycling in general seems to be on the rise in both areas of transportation and recreation.<sup>21</sup>

A further criticism is that the dangers of cycling are exaggerated and that mandatory helmet legislation is simply an alliance of "headline seeking politicians and a manipulative safety industry, all with aid of a far too uncritical news media."<sup>22,23</sup> In the article, *No to Ontario's Helmet Legislation*, author Avery Burdett discusses possible myths surrounding the value of a helmet. A small piece of plastic on the head will not protect all of the other parts of the body that may be injured in a cycling accident. Many other injuries will not be prevented by the use of a helmet, and Mr. Burdett suggests that a better solution would be to educate children on bike safety by introducing it into the school curriculum. Furthermore, he cites that in Holland, where helmets are not mandatory, cycling is almost at par with car use, and reminds that it's better to cycle than not cycle at all.<sup>24</sup> Overall, he argues that cycling reduces pollution, traffic congestion, and is beneficial to one's health and should be left alone by legislators.<sup>25</sup>

The main concern of those opposed to bike helmet legislation that it is an infringement of personal choice. It is true that it does remove an individual's choice regarding their own personal safety. In Ian Hunes review of Joel Feinberg's book, *The Moral Limits of the Criminal Law: Harm To Self*, Mr. Hunt recognizes that we are:

[C]hallenged to reconcile, somehow, our legitimate concern with diminishing overall harm with the threatened proliferation of criminal prohibitions enforcing a 'Spartan like regime' of imposed prudence.<sup>26</sup>

Mr. Feinberg essentially is in favour of a "soft paternalistic" approach to legislative involvement in the lives of citizens. This approach would allow a person, in the absence of abnormal impairment, to act on his own preferences, even if unreasonable, and that the only way to allow for "paternalistic legislation is if the legislation is needed to protect others from the harm."<sup>27</sup> It is interesting though, that even Mr. Feinberg is in agreement that if an individual is allowed to make unreasonable choices, they ought to be held accountable for their choices and suggests that instead of legislation, a government should insist

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&FIRSTINDEX=10&sortspec=relevance&resourcetype=1,2,3,4,10&journalcode=injury prev>.

<sup>22</sup> *Supra* note 8.

<sup>23</sup> *Supra* note 19.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Ian Hunt, "Risking One's Life: 'Soft Paternalism' and Feinberg's Account of Legal Liberalism", (1995) Can. J.L. &Jur. 8. 311 at para. 1.

<sup>27</sup> *Ibid.*

on appropriate insurance, so that those who take the risk will bear the cost of their conduct.<sup>28</sup>

Requiring private insurance is simply not an option in Canada's current Medicare system. All Canadians bear the costs of an individual's unreasonable choice not to wear a bike helmet. Bicycle helmet legislation is needed to protect not only the individual cyclist from self-harm, but more importantly to protect Canadian taxpayers from the unnecessary costs associated with bicycle injuries.

As stated by Jeffery Miller in his article, *A Bicycle Built for Hanging Up*, the "'Do your own thing' [idea] has 10D perverted our idea of democracy that it seems it [is] always acceptable."<sup>29</sup> However, personal choice does not always override the common good. There is no absolute right in Canada that is without an exception. Even the *Canadian Charter of Rights and Freedoms* has appropriate checks and balances. Wearing a bike helmet has been proven to significantly reduce costly head injuries. It is not a measure that might make a difference; it is a strategy that has had proven results.

Another argument in opposition to bike helmet legislation is that it is discriminatory to lower income families. The cost of purchasing a helmet may be too high for a family with limited means, and will therefore not allow all citizens to enjoy the health benefits of cycling. However, the cost of helmets is related to demand. In other provinces that have introduced mandatory legislation, bike helmet sales have jumped dramatically following legislation, and price, accordingly, went down.<sup>30</sup> Furthermore, it is very likely that if a family is in need of assistance, charitable organizations will be able to collect used helmets to distribute to those who need them.

#### IV. A CLOSER LOOK AT CONCERNS IN MANITOBA

In February 2003, IMPACT presented a study entitled, *Bicycle Injuries in Manitoba: Time for Legislation?*<sup>31</sup> Some statistics reported in the study were that every year in Manitoba, on average, 100 children under the age of 20 sustained bicycle-related injuries; and that between the years of 1990-1999 one child

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<sup>28</sup> *Ibid.*

<sup>29</sup> Jeffery Miller, "Bicycle Built for Hanging Up" *The Lawyers Weekly*. Vol. 23, No. 18, (12 September 2003) (QL).

<sup>30</sup> *Supra* note 3.

<sup>31</sup> Dr. Lynne Warda & Gemma Briggs, "Bicycle Injuries in Manitoba: Time for Legislation?" IMPACT (February 2003) online: Health Sciences Centre <[http://www.hsc.mb.ca/impact/bike\\_2003.htm](http://www.hsc.mb.ca/impact/bike_2003.htm)>. IMPACT is the injury prevention centre of Children's Hospital in Winnipeg, Manitoba, Canada. IMPACT was formed in 1995 to reduce the number of childhood and adolescent injuries in Manitoba. Online: <[http://www.hsc.mb.ca/impact/About\\_Impact.htm](http://www.hsc.mb.ca/impact/About_Impact.htm)>.

even died in a fatal bicycle-related accident.<sup>32</sup> Furthermore, head injury was the most common reason for hospital admissions, accounting for 2/3 of all admissions.<sup>33</sup> The study found that in 1996 only 21% of children cyclists wore helmets, and that overall helmet use by cyclists resulted in a reduction of serious head injury by 85%, reduced brain injury by 88%, and reduced injuries to upper and mid-face by 65%.<sup>34</sup> While the report mentioned one study in which parental involvement was found to be the strongest tactic to encourage helmet use, the majority of studies cited in the report indicated that education and parental involvement had little influence on helmet usage.<sup>35</sup> IMPACT's findings demonstrated a significant number of serious bicycle-related injuries could have been prevented had helmets been worn, and in conclusion the report stated the need for helmet legislation in Manitoba.<sup>36</sup>

IMPACT's report also presented counter-arguments regarding the importance of bike helmet legislation. The possible negative effects of bike helmet legislation were presented in three broad categories. The first was that mandatory helmet requirements would lead to risk compensation. Essentially, because people had more protection, they would ultimately undertake riskier behaviour. The report did not think this was a relevant concern as there was no research to support the assertion.<sup>37</sup>

The second concern was that mandatory legislation would infringe on personal freedom. There is always some public opposition to legislation that will have an effect on personal choice. Even if the infringement on personal choice will have a positive outcome such as improved health and economic benefits, many will still oppose it, as we saw with the public outcry associated with mandated seatbelt use, and the smoking ban in public places.

The final area of concern was the possible reduction in bicycle riding following mandatory helmet legislation. An Australian report completed in 1996 showed a decline in bicycle riding following helmet legislation.<sup>38</sup> However, the IMPACT report concluded that regarding this concern, a contradictory finding was obtained in an Ontario Study in 1999. A reduction of cyclists due to mandatory helmet legislation has yet to be found in any Canadian province that has enacted bike helmet legislation.

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<sup>32</sup> Warda & Briggs, *ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> Colin F. Clarke, "Social damage and accident effects of the bicycle helmet law," online: Mandatory Bicycle Helmet Law in Western Australia <[http://www.cyclehelmets.com/helmet\\_damage.html](http://www.cyclehelmets.com/helmet_damage.html)>.



IMPACT conducted another study in 1997 observing helmet use in Manitoba and found that while helmet use is only at 23% for urban citizens; helmet use is even lower in rural areas at 9%.<sup>39</sup> While a mass media campaign may be somewhat successful in an urban area, it is far less likely to have any impact in a small rural community. When helmet use is at such a low rate, the amount of taxpayer dollars that will have to be spent to increase helmet usage using an education/mass media campaign is astronomically high and simply impractical.<sup>40</sup>

The Winnipeg Regional Health Authority's *Position Statement on Cycling Safety* stated that it supports all age provincial legislation regarding bike helmet usage.<sup>41</sup> The WRHA found that between 1992 and 2001 there were 1 427 cycling injury hospital admissions in the Winnipeg area, and that on average, every death resulting from a cycling related accident took 39 potential years from the victim's life.<sup>42</sup> With regard to the concern that helmet legislation would discourage those in lower-income groups to cycle, the position statement announced that the WRHA would be willing to work with partners to increase the accessibility to helmets where cost might prevent citizens from complying with the law.<sup>43</sup>

One of the more colourful opinions in opposition to bike helmet legislation in Manitoba was addressed in the *Winnipeg Sun* on 31 May 2005, in Frank Landry's article entitled, "We Don't Need Bicycle Helmet Law".<sup>44</sup> In his article, Mr. Landry cites the problem with over-regulation of the government in our day to day lives. Some examples he provides are minimum drink pricing, mandatory public auto insurance, and business closures at 6 p.m. on Sunday. Mr. Landry goes on to explain that the key to bike helmet usage is personal responsibility. Parents should police their own kids to make sure they wear helmets, and that adults should be able to decide for themselves.<sup>45</sup>

While this idea sounds good, it should be remembered that many adults would actually choose not to wear a seatbelt if it wasn't mandatory. The idea of self choice is okay if it doesn't impact on anyone else. However, in the case of not

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<sup>39</sup> Sande Harlos *et al.*, "Urban and rural patterns of bicycle helmet use: Factors predicting usage." (1999) 5 *Injury Prevention* 183, online: IP ONLINE <<http://ip.bmjournals.com/cgi/reprint/5/3/183?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&author1=warda&fulltext=bicycle+helmet+use&andorexactfulltext=and&searchid=1&FIRSTINDEX=0&sortspec=relevance&volume=5&resourcetype=HWCIT>> at 183.

<sup>40</sup> *Supra* note 3.

<sup>41</sup> *Supra* note 11 at Z.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Frank Landry, "We Don't Need Bicycle Helmet Law" *Winnipeg Sun* (31 May 2005).

<sup>45</sup> *Ibid.*

wearing a bike helmet, the public doesn't get to choose whether or not someone is treated in the hospital for an injury sustained from a bike accident.

In conclusion, Mr. Landry reminds us that joggers, who use the same paths as bicyclists, do not have to wear helmets. While he may have had a somewhat coherent argument up to this point, this conclusion simply makes no sense. Joggers do not run down the street in the same lanes as motor vehicles, nor do they travel at quick speeds, and they are closer to the ground and much less likely to become projectile objects in the event of an accident.

Overall, the numbers speak for themselves; experience worldwide has shown that education alone, at best, will result in a mere 50% usage of bike helmets.<sup>46</sup> More specifically, in Manitoba, a study conducted by IMPACT in April of 2005 found that helmet use remained low despite several decades of helmet promotion in numerous educational campaigns and school based interventions.<sup>47</sup> Although there may be a slight increase in helmet use following mass media campaigns, the effects of the campaigns are short-lived because there is nothing left behind once the posters and advertisements are removed.<sup>48</sup> Simply stated, education alone does not work.

While some of the concerns against bike helmet legislation are valid, less than 50% usage is not good enough. Mandatory bike helmet legislation has a definite success rate and clear data that supports it.<sup>49</sup> The infringement upon personal choice is minor, and is more than offset by the need to reduce costs in our health care system. Unlike other health issues that have numerous contributing factors that are difficult to prevent, wearing a helmet is a simple and effective way to minimise the most serious bicycle related injuries, and reduce costs in our already over-burdened health care system.

## V. BIKE HELMET LEGISLATION IN OTTAWA PROVINCES

Currently, the majority of Canadian provinces have enacted some form of bicycle helmet legislation. The following chart will show when each province enacted their legislation and the effects of each. The information on the chart was gathered from the Safe Kids Canada website and is current as of June 2005.<sup>50</sup>

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<sup>46</sup> *Supra* note 8.

<sup>47</sup> Dr. Lynne WardaGemma Briggs & Justin Rivard, "Advocating for Helmet Legislation: Using Observational Data as an Advocacy Tool" IMPACT (April 2005) online: Health Sciences Centre <[http://www.hsc.mb.ca/impact/advo\\_helmet\\_leg.htm](http://www.hsc.mb.ca/impact/advo_helmet_leg.htm)>.

<sup>48</sup> John C. Leblanc, Tricia L. Beattie & Christopher Culligan, "Effect of legislation on the use of bicycle helmets" (2002) 166:5 Canadian Medical Association Journal 592, online: CMAJ <<http://www.cmaj.ca/cgi/reprint/166/5/592.pdf>>.

<sup>49</sup> *Supra* note 3.

<sup>50</sup> *Supra* note 8.

Province/Territory	Legislation
British Columbia	<ul style="list-style-type: none"> <li>- all ages</li> <li>- effective 3 September 1996</li> <li>- \$29 fine</li> </ul>
Alberta	<ul style="list-style-type: none"> <li>- under 18</li> <li>effective 1 May 2001</li> <li>- \$69 fine</li> </ul>
Saskatchewan	<ul style="list-style-type: none"> <li>- no legislation</li> <li>- Yorkton is the only municipality with a by-law, \$5 fine</li> </ul>
Manitoba	<ul style="list-style-type: none"> <li>- no legislation</li> <li>- a person over the age of 16 may transport a child under the age of 6 on a bicycle if the child is wearing a helmet; effective June 2004, maximum fine \$2 000</li> <li>- operators of power-assisted bicycles over the age of 14 must wear a helmet; effective June 2004, maximum fine \$2 000 (no one under 14 years of age is allowed to operate a power-assisted bicycle)</li> </ul>
Ontario	<ul style="list-style-type: none"> <li>- under 18 (originally all-ages, but scaled back after it passed)</li> <li>- effective 1 October 1995</li> <li>- \$80 fine</li> </ul>
Quebec	<ul style="list-style-type: none"> <li>- no legislation</li> <li>- some municipal regions have by-laws</li> </ul>
New Brunswick	<ul style="list-style-type: none"> <li>- all ages</li> <li>- effective 15 December 1995</li> <li>- \$21 fine</li> </ul>
Nova Scotia	<ul style="list-style-type: none"> <li>- all ages</li> <li>effective 1 July 1997</li> <li>- \$25 fine (min.)</li> </ul>
Prince Edward Island	<ul style="list-style-type: none"> <li>- all ages</li> <li>- effective 5 July 2003</li> <li>- \$50-\$100 fine</li> </ul>
Newfoundland	<ul style="list-style-type: none"> <li>- no legislation</li> <li>- some municipal by-laws</li> </ul>
Yukon	<ul style="list-style-type: none"> <li>- no legislation</li> <li>- City of Whitehorse has by-law for all ages (covers most of population in Yukon)</li> </ul>
Northwest Territories	<ul style="list-style-type: none"> <li>- no legislation</li> <li>- some municipal by laws</li> </ul>
Nunavut	<ul style="list-style-type: none"> <li>- no legislation</li> </ul>

## VI. PROVINCIAL LEGISLATION IN PRACTICE

For the majority of Canadian provinces and municipalities with bike helmet legislation, enforcement has been varied. Generally, parents are responsible for ensuring compliance with children less than 16 years of age.<sup>51</sup> Law enforcement

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<sup>51</sup> *Supra* note 8.

has focused on educating and the law has been used as an incentive to encourage the purchase and use of helmets.<sup>52</sup> With regard to the enforcement of fines, they are usually waived when the offender purchases a helmet.<sup>53</sup> Following the enactment of legislation, bicycle related injuries also typically decrease. In Ontario, following the enactment of legislation, a study from the Canadian Institute for Health Information found that hospitalizations due to cycling were down 13% and that head injuries were down 26% in the same period.<sup>54</sup>

The increase of helmet use in provinces with legislation has been dramatic. In Nova Scotia, prior to legislation, helmet usage was at 36%. Following legislation, usage jumped to 84%.<sup>55</sup> A study conducted by the Canadian Medical Association in Halifax found that the number of injured cyclists with head injuries was halved in the year following enactment of bicycle helmet legislation.<sup>56</sup> Furthermore, the reduction of injuries was due solely to the helmet law, as there were no mass media campaigns promoting helmet use following the 1997 enactment of legislation. In Alberta, a study conducted in Edmonton following the introduction of legislation found that there was a substantial post-legislation increase in helmet use, but only in the ages affected by the law.<sup>57</sup>

In British Columbia, helmet usage by males increased from 44% to 68% following legislation, and for women, usage went from 50% to 76% following enactment.<sup>58</sup> A study conducted by the University of North Carolina that observed British Columbia's legislation from 1996-1999 determined that, overall, the legislation had a levelling effect; in that areas where use was lowest prior to the legislation, use increased more dramatically following the legislation than in areas where use was higher to begin with.<sup>59</sup>

Specifics of the University of North Carolina study indicated that helmet use on commuter routes rose from 60% to 75%, but more importantly, residential neighbourhood use rose from 39% to 72%, while recreational helmet use rose

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> Bicycle Helmet Safety Institute, "Helmet Laws for Bicycle Riders," online: BHSI <[www.helmets.org/mandator.htm](http://www.helmets.org/mandator.htm)>.

<sup>55</sup> Warda & Briggs, *supra* note 31 at Legislation heading.

<sup>56</sup> *Supra* note 48 at 4.

<sup>57</sup> Brent Hagel, Jacques Rizkallah & Andrea Lamy, "Changes in cyclist helmet wearing following the introduction of helmet legislation in Alberta for those under age 18" (August 2004), online: Alberta Children's Hospital <[http://207.35.157.99/natconf/proceedings/Monday\\_Poster\\_Final.pdf](http://207.35.157.99/natconf/proceedings/Monday_Poster_Final.pdf)> at 47.

<sup>58</sup> Warda & Briggs, *supra* note 31 at Legislation heading.

<sup>59</sup> University of North Carolina Highway Safety Research Center, "British Columbia Helmet Study" online: University of North Carolina Highway Safety Research Centre <[http://www.hsrc.unc.edu/safety\\_info/bicycle/helmet\\_use\\_bc.pdf](http://www.hsrc.unc.edu/safety_info/bicycle/helmet_use_bc.pdf)> at 18-19.

from 48% to 74%.<sup>60</sup> Essentially, the bicycle helmet legislation encouraged people to use helmets in the segments of population that were least likely to wear a helmet prior to the legislation. This finding is proof that for certain areas of the population, education is not always sufficient to convince citizens to wear a helmet. As observed in other Canadian provinces, the only way to achieve helmet use beyond the 50% range is to legislate.<sup>61</sup> There is conclusive evidence that rates of compliance regarding helmet use are around 80%-90% in provinces with mandatory helmet legislation.

## VII. WHYDIDN'TBILL210PASS?

Clearly, Bill210 did not pass due to lack of government knowledge of the issue. In 2003, following completion of its study, IMPACT compiled data and presented it to the Ministers of Health and Transportation in a formal call for legislation.<sup>62</sup> Also, the Manitoba Medical Association, IMPACT, and the Manitoba College of Physicians and Surgeons have made repeated calls for legislation.<sup>63</sup>

Theresa Oswald, Minister for Healthy Living, announced at the start of Safe Kids Week in June of 2005 that injury was the leading cause of childhood hospitalization and death in the province.<sup>64</sup> In her press release, Ms. Oswald acknowledged that injuries due to bicycle accidents increase significantly in the summer; when an average of two kids per day are treated at the Children's Hospital.<sup>65</sup> Dr. Sande Harlos, a member of the Safe Kids Week Planning Committee, encourages the use of helmets by adults and children alike; citing that a bicycle helmet reduces the risk of head injury by more than 85%.<sup>66</sup>

The NDP government would argue that it has taken steps to encourage bike helmet use. In the spring of 2005, an All-Party Task Force examined factors that affect children's health, in particular the task force examined injury prevention. At the conclusion of its examination, the task force did not recommend mandatory legislation, instead it encouraged education. It should be noted that the All Party Task Force finding is simply reflective of the NDP

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<sup>60</sup> *Ibid.*

<sup>61</sup> *Supra* note 3.

<sup>62</sup> Warda & Briggs, *supra* note 31 at Legislation heading.

<sup>63</sup> *Ibid.*

<sup>64</sup> Manitoba Healthy Living, "Safe Kids Week: Parents Play Key Role in Helping Children to be Active and Stay Safe" online: Safe Kids <<http://www.gov.mb.ca/healthyliving/safekids/newsrelease.html>>.

<sup>65</sup> Mia Rabson, *Winnipeg Free Press*, "Gerrard Backs Compulsory Bike Helmets" (27 May 2005).

<sup>66</sup> *Supra* note 64.

and Conservative position on bike helmet legislation, and indicative of the lack of personal opinion in our extremely rigid political system which puts towing the party line above all else.

The NDP solution that followed in the summer of 2005 could be considered a strong public education campaign that focused on increasing bicycle ridership and increased helmet use, and also sought to introduce measures to help low income families purchase helmets.<sup>67</sup> In enacting its public education campaign, the Manitoba government failed to effectively encourage bike helmet use in the province. It decided once again to rely on the strategy of education and encouragement.

One might ask why a government would continually approach a problem with the same ineffective solution year after year. The answer is simple. While the education only strategy has proven unsuccessful time and time again, there is one benefit to an education and encouragement campaign; it gives the impression that the government is doing something. Even though the effects of education campaigns are shortlived, they don't stir up public debate, and they are clearly visible. The NDP response to low helmet use in the province failed to respond to clear data that legislation is most effective and failed to use taxpayers' dollars in the most cost.-effective way possible.<sup>68</sup>

The most likely reason that Manitoba does not yet have legislation in this area is best summed up by Mr. Landry in his article, "We Don't Need Bicycle Helmet Law". In his article, Mr. Landry states that despite his concerns regarding bicycle helmet law, Dr. Gerrard's Bill 210 doesn't have much of a chance of becoming law. The reasoning behind this assertion is that the Minister of Transportation, Ron Lemieux, "appeared cool" to the idea, Mr. Lemieux had expressed concerns that poorer people may not be able to afford helmets, and questions remained over how the police would enforce the Bill, should it pass.

It should be kept in mind that six out of 10 provinces have enacted legislation for bike helmet use, and enforcement has not been found to be a problem, nor has it taken officers away from their other various duties. Furthermore, Mr. Lemieux's own government announced in Safe Kids Week that it would facilitate a system to aid underprivileged citizens in purchasing helmets.

Legislation that is not supported by the NDP is unlikely to get passed in legislature. While the NDP relies on the public's negative reaction to the loss of personal choice, one must remember that the NDP government did introduce seatbelt legislation, amid public disapproval. According to Dr. Gerrard, some politicians are still "old school" and lack the ability to understand how science

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<sup>61</sup> *Supra* note 8.

<sup>68</sup> *Supra* note 3.

should be used in legislation.<sup>69</sup> Dr. Gerrard also stated that the same politicians are more interested in politically manipulating data to suit their own ideas, and in the long run, to manipulate data to our detriment.<sup>70</sup>

Essentially, any potential arguments opposing bike helmet legislation are simply ways to divert the public from the real issue. The Manitoba Government has already taken partial steps to legislate in the area of helmet legislation-with its education and mass media awareness campaigns, and the commitment of thousands of dollars of tax payer's money to the cause-and has therefore already acknowledged the practical and important aspects of wearing a helmet on a bicycle. There is already existing legislation requiring helmets for power# assisted bicycles, and legislation that requires infant children and young passengers on bicycles to wear helmets as well. It seems unfair that thus far only young children have been deemed to be worth protecting through mandatory helmet legislation.

The numbers are dear in supporting mandatory bicycle helmet legislation. All that remains is for the government to take the final step; complete the transition once and for all with an effective, efficient solution and pass mandatory helmet legislation.

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<sup>69</sup> *Supra* note 3.

<sup>70</sup> *Ibid.*