

Religious Advertising in the Public Square

Some people have questioned whether public religious advertising is either appropriate or should even be allowed. We will try and address these topics with as much clarity and sensitivity as possible.

There are three principal governing laws; the Canadian Charter of Rights and Freedoms and the Canadian and Provincial Human Rights Codes; both uphold religious freedoms and ultimately disputes are resolved by the Supreme Court of Canada.

I thought we were a “secular nation”. What does the Constitution and the Law say?

The very first words of the Canadian Constitution reads “*Whereas Canada is founded upon the principles that recognize the supremacy of God...*” to wit, under law we are recognized as a spiritual nation.

The Supreme Court in [Chamberlain v. Surrey School District No. 36](#) has ruled that a secular [*worldly or material*] society includes those of a religious faith and has adopted a [broad view of religious freedoms](#).

Statistically, 85% of Canadian adults say they believe in God to a greater or lesser degree.

Can a public transit company, city or municipality ban public religious advertising?

A public transit company, city or municipality cannot impose a blanket ban on religious (or political) advertising.

The Canadian Charter of Rights and Freedoms applies to rights of citizens in relationship to government. A recent British Columbia case has determined the Charter to be applicable to a publicly owned transit authority in respect to freedom of expression pertaining to advertising on buses (see Canadian Federation of Students v. Greater Vancouver Transportation Authority, 2006 BCCA 529). This specifically related to an ad that was deemed to be a political message. The case is currently being appealed by the Greater Vancouver Transit Authority to the Supreme Court of Canada.

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it are subject only to such *reasonable limits* prescribed by law as can be demonstrably justified in a free and democratic society. A transit company, city or municipality may impose reasonable limitations on public advertising but the limitations are subject to specific criteria. With few exceptions (e.g. tobacco) blanket bans on advertising (for example religious or political advertising) are not recognized by the courts; a rational reason has to be provided for a ban, i.e. protection of minors, etc. In such cases the courts will apply the [Oakes Test](#) asking the question, “Is the ban proportional and, if so proved, has the opportunity been given to fine-tune the material to meet the [reasonable limitations](#).”

The [Ontario Human Rights Code](#) prohibits discrimination on the basis of [creed](#) [*faith, dogma, doctrine or belief*] in the provision of services, such as advertising. Accordingly, there would be grounds for a complaint if the position is a blanket refusal to accept religious advertising without having any objective standard. This would apply to an individual who is aggrieved but not to an organization, i.e. an individual would have to file the complaint as having his/her rights discriminated against. Violation of the Code could take place on the basis of an individual being aggrieved because they wished to sponsor a Bus Stop Bible Study (for example) on that transit system and were denied on the basis of creed.

I personally find religious advertising offensive.

No individual has the right not to be offended.

The Supreme Court has ruled:

“The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism. People are free to disagree with our beliefs as they wish”,

The argument that “...if one’s moral view manifests from a religiously grounded faith, it is not to be heard in the public square, but if it does not, then it is publicly acceptable. The problem with this approach is that everyone has “belief” or “faith” in something, be it atheistic, agnostic or religious. To construe the “secular” as the realm of the “unbelief” is therefore erroneous. ([Chamberlain v. Surrey School District No. 36](#))

The Canadian [Charter of Rights and Freedoms](#) says,

*“2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and **other media of communication**;...”*

The Canadian Government website provides a [Guide to the Canadian Charter of Rights and Freedoms](#) which provides additional elaboration and clarification:

The Charter guarantees certain freedoms for everyone in Canada.

Under [section 2 of the Charter](#), Canadians are free to follow the religion of their choice. In addition, they are guaranteed freedom of thought, belief and expression. Since the media are an important means for communicating thoughts and ideas, the Charter also protects the right of the press and other media to speak out...

*These freedoms are set out in the Charter to ensure that **Canadians are free to create and to express their ideas, gather to discuss them and to communicate them widely with other people**. These activities are basic forms of individual liberty. They are also important to the success of a democratic society like Canada. In a democracy, people must be free to discuss matters of public policy, criticize governments and offer their own solutions to social problems.*

Further, the [Canadian Human Rights Commission](#) has ruled on the issue, approving such key principles, such as:

**The essence of the concept of the freedom of religion is:*

*the right to **declare religious beliefs openly and without fear of hindrance or reprisal**;*
and

*the right to manifest religious belief by worship and practice or by teaching and **dissemination**;*

For context ref: www.canadianheritage.gc.ca

Where does one draw the line?

Bus Stop Bible Studies takes their responsibility toward the general public very seriously. While we fully understand that not everyone may be in agreement with our beliefs, there is no deliberate intention to offend anyone. We have established our own [very strict criteria](#) to which all sponsored displays must adhere.

If you see a display which you deem to be offensive (not that you just choose to disagree with) please contact us, identifying the content of the display and the identification number located at the bottom

right-hand corner of each display panel. The content of the display will be carefully reviewed and, if the concern is considered valid, it will be amended or withdrawn as considered appropriate. You can review all posted studies on our [Bible Studies](#) page. All the studies have been reviewed and approved by at least one or more transit companies and fully meets the requirements of the Canadian Advertising Standards Council.

To assist municipalities and transit companies in preparing and implementing advertising regulations we offer the following suggested wording ([available as a PDF document](#)):

Bylaw: _____

Restrictions on Public Advertising in the Municipality/City of _____

Preamble:

While it is recognized that no one has the exclusive right not to be offended (affirmed by the Supreme Court of Canada affirmed in *Chamberlain v. Surrey School District No. 36* “*The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism. People are free to disagree with our beliefs as they wish*”, the following rules and guidelines are considered by the Municipality/City to be reasonable limitations on public advertising and have been established for the benefit and wellbeing of the local population. Further, it is recognized that blanket bans on advertising (for example religious or political advertising) are not recognized by the courts; a rational reason has to be provided for a ban, i.e. protection of minors, etc. In such cases the courts will apply the Oakes Test asking the question, “*Is the ban proportional and, if so proved, has the opportunity been given to fine-tune the material to meet the reasonable limitations.*”

In as much as these regulations are for, amongst other things, the protection of minors, the City/Municipality will err on the side of caution with regard to approving or accepting advertising material for public display. The onus will be on the advertiser to ensure that their material conforms to the intent of these advertising regulations and modify their content to ensure compliance when requested by the City/Municipality.

Therefore, the City/Municipality will not allow advertising at venues or on City/Municipal property or within City/Municipal limits, including public transportation, where minors may visit or congregate, either directly or through third party arrangements that:

- Conveys any message, including messages of a religious or political nature, that might be deemed prejudicial [harmful, detrimental, hurtful, damaging or injurious] to any identifiable group; presents demeaning [humiliating, debasing, corrupting or shameful] or derogatory [disparaging, critical, insulting, offensive, deprecating or belittling] portrayals of individuals or identifiable groups; or contains or promotes anything which is likely to cause deep or widespread offence [insult or affront]; or denounces [condemns, criticizes or censures] any individual on the basis of his or her beliefs or lifestyle, or
- Promotes alcohol, tobacco or other addictive substances, or [potentially] addictive activities (such as gambling or lotteries), or
- Promotes products, activities or establishments unsuitable or illegal for minors (examples would include adult entertainment establishments, R-rated movies, adult movie stores, etc.), or
- Includes images and/or messages that may be frightening to, or likely to terrify minors (examples would include graphical promotion of horror movies and violent video games), or
- Images and/or messages that are likely to cause embarrassment to a significant segment of the local population, (examples would include images of nude or scantily clad men or

- women, images or messages of an overtly sexual nature, promotion of “men’s health services” in an explicit manner, etc.), or
- Messages which are deliberately misleading in nature.

Supreme Court of Canada (Chamberlain v. Surrey School District No. 36)

In 2002, the Supreme Court of Canada (Chamberlain v. Surrey School District No. 36) clearly agreed that “secular principles” must include—and not exclude—religious believers, because the secular is the realm of competing belief systems and atheism and agnosticism are belief systems.

137 Re: assumption that “secular” effectively meant “non-religious”. This is incorrect since nothing in the Charter, political or democratic theory, or a proper understanding of pluralism demands that atheistically based moral positions trump religiously based moral positions on matters of public policy. I note that the preamble to the Charter itself establishes that “. . . Canada is founded upon principles that recognize the supremacy of God and the rule of law”. According to the reasoning espoused by Saunders J., if one’s moral view manifests from a religiously grounded faith, it is not to be heard in the public square, but if it does not, then it is publicly acceptable. The problem with this approach is that everyone has “belief” or “faith” in something, be it atheistic, agnostic or religious. To construe the “secular” as the realm of the “unbelief” is therefore erroneous. Given this, why, then, should the religiously informed conscience be placed at a public disadvantage or disqualification? To do so would be to distort liberal principles in an illiberal fashion and would provide only a feeble notion of pluralism. The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism.

BP-402E

Charter Equality Rights: Interpretation of Section 15 in [Supreme Court of Canada Decisions](#)

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The Oakes Test

Section 1 reads:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

As the terms of the section make clear, no Charter protection is absolute. In the presence of a section 15 violation, the courts therefore undertake a separate section 1 evaluation to determine whether the infringement nevertheless constitutes a reasonable limit to the equality rights guarantee.

The government [City or Municipality] bears the burden of establishing that any Charter breach is justified. The governing approach to section 1 analysis detailed by the Supreme Court of Canada in R. v. Oakes involves a two-step process. First, the objective of the legislation or government action must be shown to be sufficiently “pressing and substantial” to warrant overriding a Charter right. Second, the means adopted to attain that objective must be reasonable and demonstrably justified. This step entails a proportionality test in which the courts are required “to balance the interests of society with those of individuals or groups.” Three elements must be satisfied:

- *the measures adopted must be rationally connected to the objective;*
- *the measures adopted should cause minimal impairment to the right or freedom in question; and*
- *there must be a proportionality between the effects of the measures limiting the right or freedom and the objective identified as being sufficiently important, and between the deleterious and salutary effects of the measures at issue.*

SUPREME COURT OF CANADA ADOPTS A BROAD VIEW OF RELIGIOUS FREEDOM

Syndicat Northcrest v. Amselem, [2004] S.C.J. No. 46, 2004 SCC 47 (the "Amselem decision")

C. FINDINGS OF THE COURT

1. Freedom of Religion and Infringement

Writing for the majority, Chief Justice McLachlin and Justices Major, Arbour and Fish, Justice Iacobucci found the trial judge and the majority of the Court of Appeal took a "dubious, unwarranted and unduly restrictive" view of freedom of religion. He concluded that the basic principles underlying freedom of religion consists of the freedom to harbour beliefs and undertake practices, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or in conformity with the position of religious officials. Objective and personal notions of religious belief, obligation, precept, commandment, custom or ritual are encompassed by this freedom.

Consequently, Justice Iacobucci held that both obligatory and voluntary expressions of faith should be protected under the Quebec (and the Canadian) Charter. As it is the religious or spiritual essence of an action, not the mandatory nature of its observance, that attracts protection, Justice Iacobucci asserted that an inquiry into the mandatory nature of an alleged religious practice is both inappropriate and plagued with difficulties. He stated, "the State is in no position to be, nor should it become, the arbiter of religious dogma. ... Courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, ...[such] secular determinations ... unjustifiably entangle the court in the affairs of religion."

Justice Iacobucci explained that those advancing a freedom of religion claim must show the court that:

- *he or she has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or in conformity with the position of religious officials; and*
- *he or she is sincere in his or her belief.*

Only then will freedom of religion be triggered.

Once religious freedom is triggered, a court must ascertain whether there has been sufficient interference with the exercise of the implicated right so as to constitute an infringement of freedom of religion. It will suffice for a claimant "to show the impugned contractual or legislative provision (or conduct) interferes with his or her ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial." [emphasis in original] In this respect, "not every action will become summarily unassailable and receive automatic protection under the banner of freedom of religion." Justice Iacobucci asserted that this reflects a broad and expansive approach to religious freedom under both the Quebec and Canadian Charters, and should not be narrowly construed prematurely. Harmful conduct or conduct interfering with the rights of others would not automatically be protected. The ultimate protection of any particular Charter right must be measured in relation to other rights and with a view to the conflict's context.

Applying these principles to the facts of the case, Justice Iacobucci concluded that the lower courts failed to recognize that freedom of religion under the Quebec (and the Canadian) Charter does not require a person to prove that his or her religious practices are supported by any mandatory doctrine of faith. Justice Iacobucci wrote:

Regardless of the position taken by religious officials and in religious texts, provided that an individual demonstrates that he or she sincerely believes that a certain practice or belief is experientially religious in nature in that it is either objectively required by the religion, or that he or she subjectively believes that it is required by the religion, or that he or she sincerely believes that the practice engenders a personal, subjective connection to the divine or to the subject or object of his or her spiritual faith, and as long as that practice has a nexus with religion, it should trigger the protection of s. 3 of the Quebec Charter or that of s. 2(a) of the Canadian Charter, or both, depending on the context. [emphasis in original].

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