



Municipalities and the CONSTITUTION

PART II: THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

* *Editor's Note:* Part I: Powers and Paramourty ran in the Fall issue

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In my last article I wrote about the constitutional division of powers in the Canadian federation and its effect on municipal powers. In this article, I deal with something that is probably closer to home for most of us: our rights and liberties.

They are some of the things that we, as Canadians, hold as most precious: freedom of conscience; freedom to choose one's religion; freedom of thought and expression; the right to gather peacefully; the right to join associations of our choosing; the right to move to any province and to make a living there; the right to vote and to run for office; the right to life, liberty and security without fear of being arbitrarily imprisoned by the government; freedom from discrimination based on where we or our parents were born, our gender or the colour of our skin. These are the rights and freedoms that generations of Canadians have fought and died for, and for which they continue to fight and die for abroad. Many of our ancestors came to Canada seeking those rights and freedoms and many new Canadians arrive daily for the same reason.

The protection of these rights and freedoms is not new to Canadians. The Diefenbaker Government protected many of the same rights when it enacted Canada's first Bill of Rights. However, this was federal legislation and therefore only applied to areas of federal jurisdiction (remember the division of powers).

The patriation of the Canadian Constitution and the enactment of the Charter in 1982 marked a fundamental shift in Canadian democracy. Canada moved from being a parliamentary democracy to being a constitutional democracy in which these basic rights are protected from unreasonable government interference. In recognition of our collective rights and responsibilities as Canadians, these rights and freedoms are not absolute; they can be limited by our governments by law, so long as those limits are properly shown by government to be reasonable and justified in a free and democratic society.



The Charter is really all about protecting us (and our freedoms) from government. As Canadians in this progressive day and age, we prefer to think of our governments in a positive light. We find it difficult to conceive of circumstances in which the government would try to strip citizens of basic rights. History (even fairly recent history) tells us otherwise. Within the last 100 years we have taxed people based on their country of origin and determined their right to vote by their sex. Within the last 70 years we imprisoned people based on their race. Within the last 50 years we told citizens that they had to give up their homes on Indian Reserves to vote. Within the last 40 years we sterilized the handicapped and arrested and imprisoned people without

charges. Much of this was done with the best of intentions.

Municipalities are created through the legislative authority of the provinces. They are equally responsible for protecting our rights and freedoms by complying with the Charter.

From time to time, municipalities can be 'off-side' when it comes to the Charter. Sometimes this happens despite the best intentions of the municipality and its Council. Other times there is blatant disregard for the rights of citizens. Regardless of the motivation, actions of a municipality that contravene the Charter can be contested. Here are just a few examples.

In 2005, in *Montréal (City) v. 2952-1366 Québec Inc.*, the Supreme Court of Canada, in a split decision, upheld the validity of a city



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noise by-law directed to controlling loud-speakers along public streets used by hawkers to entice customers into strip clubs.

In 2004, in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, the Supreme Court of Canada was asked to consider whether the municipality's failure to deal with a church's rezoning application was contrary to the Charter. The Court decided the case in favour of the congregation, but on other grounds.

In 2003, in *Vann Niagara Ltd. v. Oakville (Town)*, the Supreme Court decided that a by-law that limited the size of signage was good legislation, on the basis that it was a reasonable limit that minimally interfered with rights of freedom of expression.

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In 1993, in the case of *Ramsden v. Peterborough (City)*, the same court considered whether a municipal by-law that prohibited the posting of posters in all public places was a reasonable limit on free expression. Even though there were good reasons to prohibit posting on some public property, such as utility poles, for reasons of safety, a blanket prohibition was found to be too broad. The Court found that the municipality did not prove that the prohibition was a justifiable limit.

There are numerous other examples at the lower court levels. Locally, you may have noted the threatened challenge of a municipal curfew by-law (which dispute was ultimately settled when the curfew was withdrawn). In Ontario, the Court of Appeal recently upheld the Ontario *Safe Streets Act*, which limited the activities of "squeegee kids" in traffic. 

James Madison said, "If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." *Until the angels are in charge, the Constitution, the good faith of our municipal governments, the courts and the vigilance of citizens will have to suffice.*



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