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The trouble with regulating sign content

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In the mid-1990s, Émery Guignard, a property owner in Saint-Hyacinthe, Que., fell into a dispute with his insurance company. Having exhausted his patience with the ordinary channels of complaint, he did something that cost him almost nothing: he put up a sign on a building he owned, telling passersby what he thought of the insurer.

The municipality had a bylaw confining advertising signs to industrial zones. An inspector ordered the sign removed. Guignard declined, was prosecuted, and was convicted. The amount at stake was trivial. The principle was not. In 2002, the Supreme Court of Canada struck down the bylaw's application to him as an unjustified infringement of freedom of expression.

R. v. Guignard, 2002 SCC 14 is now more than two decades old, yet it remains an instructive decision to any council considering what a sign in its community ought to be permitted to say. Its logic explains why sign bylaws, which appear to be among the most routine instruments in the municipal toolkit, are in fact among the most constitutionally exposed.

Municipalities and the Charter

The starting proposition is settled. Municipalities are subject to the Charter as creatures of the province, a principle established in *Godbout v. Longueuil (City),* [1997] 3 SCR 844 and applied consistently by Ontario courts since, including in the recent Region of Waterloo encampment litigation. Every bylaw a council adopts must, therefore, be capable of surviving constitutional scrutiny.

Sections 10, 11, and 99 of the Municipal Act, 2001, confer general authority to regulate signs and other advertising devices. That authority is genuine and considerable. It is also exercised within the constitutional frame, rather than alongside it.

To be clear, a bylaw addressing when, where, and how a sign may be displayed will ordinarily present no difficulty. However, a bylaw that reaches the message itself is a different proposition entirely.

Constitutional status of the sign

What the Supreme Court emphasized in *Guignard* was the nature of the medium.

A sign is one of the few forms of expression genuinely available to an individual who lacks money, institutional backing, or access to a newsroom. It is the inexpensive, accessible, small-scale means by which an ordinary person answers back to a corporation, a government, or a neighbour.

The court described this as counter-advertising, and it treated the ability to engage in it as central to what Section 2(b) of the Charter is meant to secure.

The consequence for municipalities is significant. Sign regulation is not understood by the courts as touching the periphery of free expression. It touches the core. The more a bylaw restricts individual, non-commercial, political, or critical expression, the heavier the justification a municipality will be required to supply.

Two questions every sign bylaw must answer

The analytical framework for assessing an infringement of Section 2(b) of the Charter is straightforward.

First, is expression engaged? As the Ontario Court of Appeal summarized in *Bracken v. Niagara Parks Police,* 2018 ONCA 261, Section 2(b) of the Charter is engaged where the activity has expressive content, where neither the method nor the location of that expression disentitles it to protection, and where the state limits the expression in either purpose or effect.

A sign is expression by definition. For any bylaw regulating content, the answer at this stage is effectively always affirmative, which means the infringement is conceded before the substantive argument begins.

Second, is the limit justified? Section 1 of the Charter requires that a limit be demonstrably justified in a free and democratic society. The test from *R v. Oakes,* [1986] 1 SCR 103 asks whether:

- the objective is pressing and substantial
- the measure is rationally connected to that objective
- it impairs the right as minimally as reasonably possible
- the salutary effects outweigh the deleterious ones

Municipalities rarely flounder on the first two branches of the *Oakes* test. Public safety, traffic sightlines, and community welfare are legitimate objectives, and most sign bylaws bear some rational relationship to them.

Typically, minimal impairment is where these cases are decided.

Offence is not harm

The difficulty with prohibiting offensive content lies in a distinction the courts have drawn repeatedly and firmly. Offence and harm are not equivalent, and the Charter protects a great deal of expression that many citizens would prefer never to encounter.

In *Irwin Toy Ltd. V. Quebec (Attorney General),* [1989] 1 SCR 927, the Supreme Court described the purpose of Section 2(b) of the Charter as ensuring that everyone may manifest their thoughts, opinions, and beliefs, expressly including those that are "however unpopular, distasteful, or contrary to the mainstream."

In *Whatcott v. Saskatchewan Human Rights Tribunal,* 2013 SCC 11, the court was more pointed still, indicating that restrictions directed at expression that is merely repugnant or offensive, or that occasions subjective emotional injury, are unlikely to satisfy minimal impairment. The operative threshold is harm, and harm must be demonstrated.

This does not render offensiveness legally irrelevant in every setting. In *Greater Vancouver Transportation Authority v. Canadian Federation of Students,* 2009 SCC 31, the Supreme Court struck down a blanket prohibition on political advertising aboard transit while acknowledging that a community standard of tolerance may support a narrower limit on genuinely offensive advertising.

Taken together with *Whatcott,* that decision is a lesson in calibration. A targeted standard, grounded in evidence and confined to a defined setting, may well hold. A general prohibition on content a municipality finds distasteful will not.

Ontario's own litigation illustrates the point.

In *Christian Heritage Party v. Hamilton (City),* 2018 ONSC 3690, the City of Hamilton removed bus shelter advertising it considered offensive without meaningful process and without weighing the expressive interest at stake, and the court found a breach of Section 2(b).

In *Guelph and Area Right to Life v. Guelph (City),* 2022 ONSC 43, the removal of transit advertising was quashed as unreasonable because the City of Guelph had deferred to an external advertising standard rather than conducting its own Charter balancing.

Evidentiary burden

The most practical lesson in this area is that a limit on expression cannot be defended in the abstract. The Ontario Superior Court made this point in *Ruck v. City of Mississauga,* 2026 ONSC 73, released in January 2026. The case concerned a naturalized garden rather than a sign.

A homeowner permitted his lawn to exceed the bylaw's 20-centimeter limit as an expression of his environmental convictions. The City of Mississauga conceded the infringement and argued justification. It lost, having been unable to explain on evidence why 20 centimeters, why the particular list of prohibited plants, or what less restrictive alternatives had been examined.

The court held that a municipality "cannot simply assert that the law minimally impairs the right." It must be able to show that a genuine search for a less restrictive solution occurred.

The corollary is more encouraging. Municipalities that assemble a proper record can and do prevail. In *Canadian Centre for Bio-Ethical Reform v Grande Prairie (City),* 2016 ABQB 734, the refusal of graphic transit advertising was upheld because the City of Grande Prairie established actual harm and connected its decision to the objective of maintaining a safe and welcoming transit system.

Hamilton, having lost in 2018 (described above), returned to substantially the same question years later with an evidentiary record and an express Charter balancing, and its refusal was sustained (see *Christian Heritage Party v. Hamilton (City),* 2024 ONSC 6181).

Limits of content regulation

Sign bylaws governing time, place, dimension, illumination, structural safety, and sightlines rest on firm ground, as the Ontario jurisprudence confirms. Such provisions regulate the packaging of expression rather than the expression itself, and they are far more readily justified.

However, if the content of a sign is to be addressed in a sign bylaw, it should be addressed as objectively as possible. The usage of broad terms such as "offensive," "exploitative," and "inappropriate" in a sign bylaw, which call for a subjective interpretation, will likely be problematic.

Municipalities should remember that, when it comes to sign bylaws, regulating when, where, or how a sign is erected is typical municipal business. Determining what that sign may say is often subject to Charter scrutiny.

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