

# Freedom of Expression and Adult Entertainment

On May 24, 2007, the Ontario Court of Appeal decided [Adult Entertainment Association of Canada v. Ottawa \(City\)](#) [1]. In 2001, following the amalgamation of surrounding municipalities into the City of Ottawa, the City developed a By-law targeting adult entertainment parlours (AEPs). By-law 2004-353 prohibited “touching between dancers and customers” and required that “all live entertainment or services be performed in open designated entertainment areas” [2]. The legislative purpose of the By-law was to provide a healthy and safe environment for patrons and employees.

The petitioners, a group comprised of owners and operators of, and performers at, AEPs, argued (among other things) that sections 18 and 20 of Schedule 11 of the By-law violated their [section 2\(b\)](#) fundamental freedom of expression under the Charter. The petitioners also claimed an infringement of their [sections 7](#) and [8](#) Charter rights. Specifically, the petitioners claimed that their privacy rights under section 7 were violated by the requirement that personal employment information be kept in the AEPs and that floor plans be posted in the premises, and that the enforcement provisions of the By-law allowed for unreasonable search and seizure. The Court held that there was insufficient evidence to justify these claims.

Regarding sections 18, 20, and 24 of Schedule 11 and the possible violation of the Charter, the Court conceded that lap dancing could be a form of expression. This concession is consonant with the tendency of the courts to “take an expansive view in approaching the characterization of conduct as expression” [3]. The By-law prohibited touching between patrons and employees - thus outlawing lap dancing - which the petitioners claimed negatively impacted the profitability of their businesses. However, the Court held that the By-law was justifiable under section 1 of the Charter. Justification of a violation of a Charter right under section 1 reflects the idea that Charter rights are not absolute and can be limited by the state to protect competing interests.

The Court also held that section 18 of the By-law was a justifiable violation of the Charter under section 1. Section 18 legislated that signage could only use the phrase “adult entertainment parlour” as opposed to descriptive words such as “nude,” “naked,” “topless,” “bottomless,” “sexy,” or any other words or pictures, symbol or representation having like meaning or implication. The Court held that this restriction did not violate the AEP’s freedom of expression because “... the prohibition ... simply deal[t] with a business advertisement” [4].

The Court recognized community standards of tolerance as a sufficiently important objective to justify the infringement of a section 2(b) right. Section 24 of Schedule 11, which required that AEPs post notices “advising that a) physical contact is prohibited and b) that sexually transmitted infections can be transmitted through unprotected physical contact,” was also

saved by section 1, because health concerns are a pressing and substantial objective in a free and democratic society.

#### Cases

- [Adult Entertainment Association of Canada v. Ottawa \(City\)](#), 2007 ONCA 389 (CanLII).
- Ontario Adult Entertainment Bar Assn. v. Metropolitan Toronto (Municipality), (1995), 35 O.R. (3d) 161 (C.A.).

#### Sources

- Jake Rupert, "Appeal court upholds bylaw banning strip club 'VIP' rooms" The Ottawa Citizen (25 May 2007), F5.

#### Further Reading

- June Ross, "Nude Dancing and the Charter", Review of Constitutional Studies, Vol. 1, No. 2, 1994.
- Graham Darling, "Backgrounder and Resources: Freedom of Expression," Centre for Constitutional Studies, <http://www.law.ualberta.ca/centres/ccs/Current-Constitutional-Issues/Freedom-of-Expression---Backgrounder-and-Resources.php>
- "Proposed bylaw could keep out adult entertainment businesses" CBC News (30 November 2006), <http://www.cbc.ca/canada/manitoba/story/2006/11/30/adult-bylaw.html>.

[1] [Adult Entertainment Association of Canada v. Ottawa \(City\)](#), 2007 ONCA 389 (CanLII) [AEP].

[2] AEP, *supra*, note 1 at 1.

[3] AEP, *supra*, note 1 at 59.

[4] AEP, *supra*, note 1 at 60.