

Smokers Don't Want to Butt Out

Alberta is the latest province to enact anti-smoking legislation that will prohibit smoking in all public places and work sites. “Patrons used to smoking bars or bingo halls, once granted exceptions by municipalities, will have to butt out” [1].

The announcement coincides with a court challenge by a coalition of Quebec bar owners. The owners are claiming that Quebec anti-smoking legislation violates their s. 2(d) Charter right to freedom of association. Underlying the challenge are the large revenue losses that Quebec bars and bingo halls have suffered since the law was enacted in 2006. Bingo hall operators estimate the loss at millions of dollars, while Montreal-area bingo halls report a 20 to 30 percent drop in attendance [2]. Back in Alberta, Edmonton restaurants, casinos and bingo halls have reported a 25 to 40 percent decline in profit since the Smoke-Free Places Act came into force in 2006. The newly proposed legislation will be even tougher and more extensive.

A s. 2(d) Charter challenge to anti-smoking legislation was dismissed by an Ontario court in December 2006. In [Club Pro Adult Entertainment v. Attorney General \(Ontario\)](#) [3], the Ontario Superior Court of Justice dismissed the petitioner’s claim that Ontario’s anti-smoking legislation, the Smoke-Free Ontario Act (SFOA), violated their right to freedom of association. The petitioner argued that “the legislature targeted smoking because of its associational nature; that as long as it remains lawful to smoke there is a right to associate with others who are smoking; and... the law has the effect of fewer people exercising their right to associate freely” [4].

The Court pointed out a fundamental flaw to these arguments: smoking is not a constitutionally protected right. Freedom of association is not violated because individuals can still frequent bars and restaurants and smoke outdoors or in their own homes. According to Justice Spies, “smoking indoors is not an inherently associational activity [because] an individual alone indoors can perform the act of smoking” [5].

Although the Ontario decision is not binding on a Quebec court, it shows the legal challenge in arguing an s. 2(d) infringement with regard to anti-smoking legislation. Julius Gray, the lawyer representing the coalition of Quebec bar owners, argues that there is a legitimate Charter challenge to the legislation under s. 2(d) because “the new law has forced people to change the way they associate with other people” [6]. Businesses in other provinces will want to watch the challenge to see if it succeeds.

Further Reading

- CBC News, “Banning the butt: Global Anti-Smoking Efforts.” (10 May 2007)

[1] “Alberta Tories to ban smoking at public and work sites,” CBC News, (31 May 2007)

[2] “Quebec’s no-smoking law hurts bars, bingo, owners say” CBC News, (31 May 2007)

[3] Club Pro Adult Entertainment v. Attorney General (Ontario), 2006 CanLII 42254 (ON S.C.) [Club Pro].

[4] Club Pro, *supra*, note 3 at 173.

[5] Club Pro, *supra*, note 3 at 181.

[6] “Quebec’s no-smoking law hurts bars, bingos, owners say” CBC News (31 May 2007)