

Sex Party Declares Victory over Canada Post

In a judgment dated January 14, 2008, Justice Beaudry of the Federal Court decided [Sex Party v. Canada Post Corporation](#) [1]. The Sex Party launched a lawsuit against Canada Post after the postal service refused to mail the Party's political leaflets during the 2006 federal election. The leaflets contained sexually explicit images. The Sex Party claimed that Canada Post's actions violated their section 2(b) right to freedom of expression under the [Charter of Rights and Freedoms](#) [2].

In a 20 page decision, Justice Beaudry held that although there was an infringement of section 2(b), Canada Post's actions were justified under section 1. He rejected the argument made by Canada Post that the "location" of the expression (private mailboxes) excluded the expression from the protection of section 2(b), distinguishing *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 S.C.R. 141 (City of Montreal), as well as American jurisprudence relating to the First Amendment (namely *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983)).

Justice Beaudry upheld the refusal to mail the leaflets under section 1 because "the constraint on the applicants preferred manner of delivering their message is outweighed by the benefits of protecting children from unfiltered access to the information" [3].

The Sex Party declared the judgment a "victory" because Justice Beaudry held that the discretion exercised by Canada Post management over the subject matter was not made in accordance with their Regulations [4]. Under the regulations, a leaflet is non-mailable only if it is illegal. In this case, Canada Post conceded that the Sex Party's pamphlet was not illegal. Justice Beaudry suspended his judgment for 6 months to allow Canada Post to enact a regulation or to amend the current Regulation to ensure compliance with his decision.

[1] *Sex Party v. Canada Post Corporation*, 2008 FC 41, [2008] F.C.J. No. 45.

[2] See Martha Peden, "Sex Party Battles with Canada Post" Centre for Constitutional Studies (14 November 2007).

[3] *Supra* note 1 at para. 64.

[4] "Sex Party whips Canada Post" *Edmonton Journal* (16 January 2008).