$150 in the Swear Jar and No @#$%&! Parties: Alberta Bylaw Prohibits Swearing, Restricts Groups

This article was written by a law student for the general public.

Introduction

The Town of Taber recently passed a bylaw that has garnered national attention for restricting swearing and gathering in groups over three, among other things. This article examines whether the bylaw could stand up to a constitutional challenge. It's also worth noting that this bylaw is very similar to other bylaws that already exist across Canada.

The *Charter of Rights and Freedoms*

The *Charter of Rights and Freedoms* is the part of our Constitution that protects certain human rights and freedoms. It safeguards Canadians from government action that violates these rights.[1]

Municipalities must comply with the *Charter*

The *Charter* explicitly states that it applies to the federal and provincial governments.[2] However, municipal governments also must comply with the *Charter*.[3] Under our Constitution, the provinces have the power to establish municipalities and delegate authority to them.[4] As such, these bodies are subject to the *Charter*.[5] The cases of *Godbout v Longueuil (City)*and *Montreal (City) v 2952-1556 Quebec Inc* show this. In *Godbout,* the Supreme Court of Canada stated that the *Charter* applies to municipalities, including municipal bylaws.[6] *Montreal (City)* makes the same point, but also demonstrates that municipalities can justify their actions, even if those actions violate a *Charter* right.[7]

Taber's *Community Standards Bylaw*

Earlier this year, the Town of Taber in Alberta passed *Community Standards Bylaw 4-2015*.[8] It bundled together some existing bylaws, such as ones limiting noise pollution and nuisances.[9] However, it also introduced new restrictions. It states among other things:

- "No person shall be a member of the assembly of three or more persons in any Public Place where a Peace Officer has reasonable grounds to believe the assembly will disturb the peace of the neighborhood, and any such person shall disperse as requested by the Peace Officer"[10]

- “No person shall yell, scream, or swear in any Public Place”[11]

The *Charter* and the Bylaw

Several parts of the bylaw have raised eyebrows, notably restrictions on gatherings and swearing.[12] Some suggest the restrictions may violate *Charter* rights, specifically freedom of expression, assembly, and equality rights.[13]

(I) Freedom of Expression: Section 2(b) of the *Charter* protects the freedom of expression.[14] Expression is defined as anything that communicates a message.[15] It is very broad and protects many things. Language conveys a meaning, and this includes explicit language. Prohibiting swearing has the potential to infringe section 2(b) because it prohibits expression. The same could conceivably be said for yelling, as that may communicate a message. It appears quite possible that the bylaw could infringe freedom of expression.

(II) Freedom of Assembly: Section 2(c) of the *Charter* guarantees a person’s freedom to gather with others.[16] The bylaw restricts groups of three and over, so it might infringe section 2(c). However, courts typically don’t treat freedom of assembly as separate from freedom of expression, since people often assemble to express themselves.[17] That said, freedom of assembly has been analyzed in addition to freedom of expression in at least one case.[18] The bylaw could possibly infringe section 2(c) as well.

(III) Equality Rights: Section 15 of the *Charter* is designed to ensure Canadians are treated without discrimination from all government laws and action.[19] That means the government cannot discriminate, for example, against people based on their religion. Here, several commentators have claimed that the local Mennonite population appears to be targeted. Townspeople have complained about young Mennonites gathering in rowdy groups, and these commentators see this as a reason behind the bylaw.[20] It is difficult to know how a court might rule if the bylaw is challenged for infringing equality rights. However, a law can violate equality rights based only on its negative effects. It doesn’t have to be discriminatory on purpose.[21]

(IV) Section 1 Justification:When a law is challenged, a court must consider arguments about why it breaches the *Charter*. However, it must also hear arguments from the government about why the law is important for Canadians. So a court must balance the government’s arguments with those complaining about the law. Courts use the *Oakes* test to determine if the law is justified.

If the bylaw is challenged, the municipal government might claim that it is there for a good reason: to preserve the peace and restrict noise. [22] However, it might be argued that the bylaw is worded too vaguely, and gives too much decision-making power to the police. For example, some commentators note that the bylaw doesn’t define swearing or yelling, and that it is not clear about when gatherings will disturb the peace.[23] In effect, the bylaw might catch more than it intended. If a law does this, it is considered overbroad, and the government’s rationale for the bylaw will not be accepted by the court.[24]

Consequences

The bylaw could potentially violate *Charter* rights, though Taber would have an opportunity to prove the bylaw is justified. Some have pointed out that there may be benefits to the bylaw, and that concern might be overblown. Taber's mayor has suggested that the town will re-examine the bylaw in the future.[25] Police officials insist the bylaw will be enforced in a reasonable and sensible way.[26] As well, they hope that the bylaw will handle nuisances and disturbances without resorting to criminal charges, and keep perpetrators out of the courts.[27]

What might be lost in all the attention, as pointed out by Taber officials, is how many communities throughout Canada have very similar bylaws.[28] For example, Red Deer has an anti-swearing bylaw.[29] Ottawa forbids "indecent" and "boisterous language" in public places.[30] Whistler banned swearing in public in 1994.[31] The Taber bylaw's wording is exactly the same as Lacombe's, which restricts groups of three and over, and forbids public swearing.[32] As well, the *Criminal Code*, though not a bylaw, includes an offence for disturbing the peace that covers swearing and yelling.[33] While Taber's bylaw could potentially violate *Charter* rights, it bears noting that if that is the case, other bylaws across the country could also be found to violate the *Charter*.

---

[1] Canadian Heritage, "The Canadian Charter of Rights and Freedoms," Government of Canada (9 January 2014).

[2] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 32 .

[3] Peter W Hogg, *Constitutional Law of Canada*, 2012 student ed (Toronto: Carswell, 2012) at 37-13.

[4] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 92(8), reprinted in RSC 1985, App II, No 5.

[5] *Ibid*.

[6] *Godbout v Longueuil (City)* [1997] 3 SCR 844 at paras 50-51.

[7] *Montreal (City) v 2952-1366 Quebec Inc*, 2005 SCC 62.

[8] *Town of Taber*, by-law 4-2015, *Community Standards Bylaw* (5 March 2015).

[9] *Ibid* at ss 30-31.

[10] *Ibid* at s 12.

[11] *Ibid* at s 15.

[12] Jen Gerson, "Taber's 'no swearing' bylaw aimed at curbing rowdy teens but critics say it goes too far" National Post (13 March 2015) [Gerson]; Erika Stark, "Forget washing your mouth out with soap, Taber establishes $150 fine for potty mouths" Calgary Herald. (10 March 2015).

[13] Patrick Shannon & Linda McKay-Panos, "Constitutionality of Community Standards By-laws" Alberta Civil Liberties Research Centre (27 March 2015) [Shannon & McKay-Panos]; Gerson, *supra* note 12.

[14] *Supra* note 1 at s 2(b).

[15] *Quebec (Attorney General) v Irwin Toy Ltd* [1989] 1 SCR 927 at 969.

[16] *Supra* note 1 at s 2(c).

[17] *R v Behrens*, 2001 CarswellOnt 5875, at para 36.

[18] *Ontario (Attorney General) v Dieleman,* 1994 CarswellOnt 151, at paras 697-699. It should be noted though, that the court here did acknowledge the freedom of assembly as being interrelated with freedom of expression and subject to the same analysis.

[19] *Supra* note 1 at s 15.

[20] Rachel Browne, "The real target of Taber's new law: Mennonites?" Maclean's (18 March 2015); Gerson, *supra* note 12.

[21] Peter W Hogg, *Constitutional Law of Canada*, 2012 student ed (Toronto: Carswell, 2012) at 55-50.

[22] Shannon & McKay-Panos, *supra* note 13.

[23] *Ibid*.

[24] Cases like *R v Demers*, 2004 SCC 46 (at paras 46, 67)and *Canada (Attorney General) v Bedford*,2013 SCC 72 (at para 162) show that where a law infringes a person's *Charter* right to life, liberty and security of the person, the fact that it is overbroad means that it will not be minimally impairing, and cannot be justified. It seems logical that if a law violates a *Charter* right, and is overbroad, then it is likely not minimally impairing.

[25] CBC, "Taber bylaw attention blown out of proportion, say residents in Alberta town" CBC News) 16 March 2015).

[26] Randy Jensen, "Taber police return fire over bylaw scorn" Lethbridge Herald, (14 March 2015).

[27] Bill Graveland, "Police in Taber angry at ridicule the Alberta town has endured over 'no swearing, no spitting' bylaw" National Post (14 March 2015).

[28] Gerson, *supra* note 12.

[29] City of Red Deer, by-law No 3383/2007, *Community Standards Bylaw*, (12 February 2007), s 3(3).

[30] City of Ottawa, by-law No 2004 – 276, *Parks and Facilities By-law*, (23 June 2004), s 12

[31] Resort Municipality of Whistler, by-law No 1076, 1994, *A by-law to amend "Nuisance Bylaw No. 305, 1983*, (21 November 1994), s 7.

[32] City of Lacombe, by-law 372, *Community Standards Bylaw* (11 September 2013), ss 12, 17.

[33] *Criminal Code*, RSC 1985, c C-46, s 175.