

# Policing the Internet: Should Insulting Police Officers Online be Prohibited?

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

## Introduction

In May 2015, the municipal council in Granby, Quebec passed a bylaw (Article 17) that imposes a fine on residents who use the Internet or social media to insult police officers or municipal workers. Residents of Granby are prohibited from making comments that “provoke, insult, revile, blaspheme or harass a police officer or municipal worker in the exercise of his or her duties.” A fine for a first infraction can range from \$100 to \$1,000, and up to \$2,000 for a second infraction. The Granby bylaw places restrictions on people’s freedom to express their views on an online forum. This article will explore whether the bylaw could restrict the right to freedom of expression, which is guaranteed in the [Canadian Charter of Rights and Freedoms](#) (the *Charter*).

## Freedom of Expression

Freedom of expression is one of the fundamental freedoms protected in the *Charter*. It is found in section 2(b) and it protects everyone’s “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”.<sup>[1]</sup>

The scope of protection under freedom of expression is very broad. In *Irwin Toy Ltd v Quebec (Attorney General)*, the Supreme Court of Canada said freedom of expression protects any activity that communicates or attempts to communicate a message.<sup>[2]</sup> The message being communicated receives protection regardless of how “unpopular, distasteful or contrary to the mainstream” it may be.<sup>[3]</sup> The purpose of guaranteeing broad protection for freedom of expression is to promote the free flow of ideas, the search for truth, and self-fulfillment.<sup>[4]</sup>

Not all expressive activity is protected under section 2(b) of the *Charter*. The right to freedom of expression does not protect activity that does not convey meaning. For example, tying one’s shoelaces would not likely be protected because it lacks expressive content. Furthermore, freedom of expression does not protect activities that convey meaning through violence.<sup>[5]</sup> A person who engages in street fights for fun would not be able to justify his or her actions under freedom of expression.

In freedom of expression cases, a court first decides whether the activity being restricted is expression. If it is, the court assesses whether the law being challenged restricts expression. A law can restrict expression in two ways: either by the purpose of a law, or by its effect.<sup>[6]</sup>

If the purpose or effect of a law limits expression, then there is a violation of the freedom of expression.

Like all other rights in the *Charter*, freedom of expression is not absolute.<sup>[7]</sup> If the government creates a law that limits expression, it can justify that law by providing a rationale. The court balances the violation of the freedom with the government's rationale. To do that, the court uses the *Oakes Test*.

## **Granby Bylaw**

It is very likely that the Granby bylaw raises a freedom of expression issue because it prohibits people from making insulting comments about police officers and municipal workers on the Internet or social media. However, even if they are insulting, these comments express meaning. Therefore, those comments are likely protected by section 2(b) of the *Charter*.

Since the bylaw restricts people from making insulting comments, it likely limits freedom of expression. If a resident of Granby challenges the bylaw for violating his or her freedom of expression, the municipal government must make arguments that justify the bylaw. A court will then have to decide whether the municipal government's justification is sufficient to allow the violation.

The town of Granby could argue that the bylaw has important objectives. First, the bylaw helps ensure that police officers and municipal workers can perform their duties effectively. A website that allows people to insult or harass officers might weaken their ability to maintain public order. Second, the bylaw also protects the police and municipal workers from threats and attacks on their reputations.

Protecting the reputation of public and private persons is a legitimate goal in Canadian law. Criminal and civil laws in Canada protect individuals from unjustified attacks on their reputation. The Supreme Court of Canada has said that these legal protections recognize the dignity of every person, and that freedom of expression does not give people permission to ruin reputations.<sup>[8]</sup> Furthermore, the Internet is a pervasive tool of communication that allows for a variety of effective forms of communication.<sup>[9]</sup> A law that prohibits people from attacking the reputation of police officers and municipal workers on the Internet is a logical way of achieving the municipal government's goal.

A person challenging Granby's bylaw could respond to the municipal government by raising a number of counter-arguments. One problem with the bylaw is that it potentially penalizes activity that is not connected to its goals. For example, the bylaw could be used to ticket people who fairly criticize police officers for their actions. The Supreme Court of Canada has held that "people who enter public life cannot reasonably expect to be immune from criticism, some of it harsh and undeserved." <sup>[10]</sup> If Granby is attempting to silence fair criticism, then it might be overstepping the boundary of only protecting the reputation of officers and municipal workers. It might also discourage people from voicing genuine concerns about the conduct of police officers and municipal workers.

A person challenging the bylaw could also argue that the negative effects caused by enforcing the bylaw outweigh its beneficial purpose. Monitoring the Internet and social media for insulting comments raises privacy concerns. Suppose a resident of Granby posts a comment about a police officer on Facebook that he or she intended to be private. Will the police or bylaw officers in Granby actively search for those types of comments in order to enforce the bylaw? This problem worsens in situations where the online community shares private comments made by a writer without his or her permission. The policy might impose a fine on someone who did not intend to publicly insult an officer or municipal worker. These problems associated with enforcing the bylaw might undermine its overall purpose.

## **Conclusion**

Granby's bylaw will probably raise a number of problems for the municipality, as well as its residents. If a Granby resident challenges the bylaw, a court will have to balance the violation of his or her right to freedom of expression with the municipal government's justification. In this particular instance, a court might balance the probable goal of protecting the reputation of police officers and municipal workers, as well as their ability to perform their duties, with the right to express opinions about those individuals. If Granby's bylaw withstands a challenge from a resident on the *Charter's* right to freedom of expression, Canadians' ability to openly criticize public officials might be undermined.

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[1] *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 .

[2] *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, at para 42, 58 DLR (4th) 577 .

[3] *Ibid* at para 42.

[4] *Ibid*.

[5] *Ibid* at para 43.

[6] *Ibid* at para 48

[7] *Ibid* at para 109.

[8] *R v Lucas*, 1998 CarswellSask 93 (SCC), para 48

[9] *Canada (Human Rights Commission) v Warman*, 2014 FCA 18, para 61.

[10] *Supra* note 8 at para 48.