

September 16, 2024

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Dear Mayor and Councillors of the Regional Municipality of Springfield:

RE: By-Law 24-10 Procedures By-law 2nd and 3rd readings at September 17 Council Meeting

Charter Advocates Canada (“**CAC**”) is a charity and civil society organization registered with the Law Society of Ontario. Our purpose is to uphold the enforcement of Canada’s constitutional freedoms, civil rights and human rights. CAC’s team of lawyers are dedicated to defending Canadians’ fundamental freedoms, including the freedom of expression.

It has come to our attention that on September 3, 2024 Council commenced the process of reviewing its Procedures By-Law No. 22-22 (the “**Bylaw**”). We understand that a first reading of potential amendments to the Bylaw has taken place which includes *inter alia*, amendments to section 17.0 under its title, Public Decorum at Meetings (the “**Impugned Amendments**”).

Council has jurisdiction to implement rules of procedure,¹ including rules respecting the conduct of council meetings² and rules respecting public participation at council meetings.³ However, Council does not have jurisdiction to implement rules or procedures which undermine the constitutional rights of its residents.

It is with respect to the use of terms contained in the Impugned Amendments as well as an outright ban on expressive content, where our concerns invite your immediate attention. We urge you to carefully consider the contents of this correspondence, as we address the Impugned Amendments and its implications on the constitutionally protected rights of Springfield residents.

¹ *The Municipal Act*, C.C.S.M. c. M225, s.149(1)

² *Ibid*, at s.149(3)(d)

³ *Ibid*, at s.149(3)(e)

Section 17.0 – Proposed terminology can be used to stifle constitutionally protected expression

Residents of Springfield have shared concerns with how terms such as, “harassment free” and the terms “other behaviours which may prove disruptive” within the Impugned Amendments, could be used by Council now, or in the future, to censor expressive and dissenting content of residents to the preference of Council.

First, harassment has various definitions including within criminal law and employment law. While it is unknown how Council intends to define such a broad term in this context, its use would be problematic even if it were to adopt the current definition within the Code of Conduct.⁴ For example, a resident speaking to genuine concerns on controversial issues, could be silenced by Council on the basis of “harassment” if Council simply feels that the content of expression is “objectionable” and has a negative psychological response.

Second, the terms “other behaviours which may prove disruptive” is vague and ambiguous, such that a reasonable person could not know the standard by which they are to be held by. Expression which may be controversial but constitutional, may for a short period of time, naturally cause disruption but fall within this category of restricted conduct. Surely, disruptive conduct such as intoxication, vulgarity, excessive noise, etc., would amount to restricted conduct which would be justified. The vagueness of these terms undermines confidence that it will not be abused by Council.

Further, to the extent the Impugned Amendments with such vague and ambiguous terms is promulgated as a means of censoring content, they would represent a nullifying abuse of discretion (unauthorized and ulterior purpose) and an unreasonable infringement of residents’ *Charter* freedom of conscience and expression.

Council, including each of its councillors, is a statutory delegate which must exercise its discretion in accordance with the rule of law. This includes maintaining legal jurisdiction or “vires.” A statutory delegate loses legal jurisdiction – rendering its decisions a nullity subject to judicial review⁵ – if it commits an abuse of discretion or breaches its duty to be fair.

⁴ By-law No. 20-17, Code of Conduct for Council Members, section 7.7

⁵ *Syndicat des employés de production du Québec & de l'Acadie v. Canada (Labour Relations Board)* (1984), [1984] 2 S.C.R. 412 (S.C.C.)

Abuses of discretion which nullify decisions include: exercising a discretion for an unauthorized or ulterior purpose;⁶ ignoring relevant evidence;⁷ exercising discretion in a discriminatory manner;⁸ passing a policy or bylaw which is uncertain, including the use of terms with such wide and differing meanings they create no objectively intelligible standard by which a person might govern their actions;⁹ misconstruing the law;¹⁰ and fettering discretion.¹¹

The use of such vague terms such as, “harassment free” and the terms “other behaviours which may prove disruptive” within the ambit of decorum at meetings, creates the tools for Council to censor expressive content by residents which it may merely dislike, disapprove, disagree or find humiliating or inconvenient.

Section 17.0 (d) – Complete ban on expressive content

Section 17.0 (d) is overbroad and an unjustifiable restriction on free expression. Placards, posters and similar media have long been a vital part of public discourse, as is their use in the public space.¹² Municipal Council meetings are core public spaces for free expression, particularly to express dissent on matters important to the community as a whole.¹³

The historical function of Council meetings is that it is a place for public discourse and consistent with the purposes of freedom of expression. As the Supreme Court of Canada has held, a public place where historical use for free expression is made out, the public will have the freedom of expression in that place.¹⁴ The historical purpose of Council meetings is to provide a space for the community to express its views on matters that will affect it.

This section of the Impugned Amendments is an absolute and outright ban on expressive content. While there are reasonable limits to free expression, a complete denial of a constitutional right will be very difficult to justify constitutionally.¹⁵ This section bans all expressive media, no matter what or how the message is conveyed.

⁶ *Roncarelli c. Duplessis* (1959), [1959] S.C.R. 121 (S.C.C.)

⁷ *S. (R.) v. Canada (Minister of Citizenship & Immigration)* (2012), 2012 CarswellNat 2287 (F.C.)

⁸ *Little Sisters Book & Art Emporium v. Canada (Minister of Justice)* (2000), [2000] 2 S.C.R. 1120 (S.C.C.)

⁹ *Red Hot Video Ltd. v. Vancouver (City)* (1985), 18 C.C.C. (3d) 153 (B.C. C.A.)

¹⁰ *Barrie Public Utilities v. Canadian Cable Television Assn.* (2003), [2003] 1 S.C.R. 476 (S.C.C.)

¹¹ *H.E.U., Local 180 v. Peace Arch District Hospital* (1989), 35 Admin. L.R. 59 (B.C. C.A.)

¹² *Ramsden v Peterborough (City)*, [1993] 2 SCR 1084 at 1096.

¹³ *Gammie v Town of South Bruce Peninsula*, 2014 ONSC 6209, at para 83

¹⁴ *Montreal(City) v 2952-1366 Quebec Inc.*, 2005 SCC 62 at para 75.

¹⁵ See *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203; *UFCW v KMart*, [1999] 2 SCR 1083; *Dunmore v Ontario (Attorney General)*, 2001 SCC 94.

Conclusion

It goes without saying that the very legislative purpose of the RM is, amongst other things; to provide good government¹⁶ where Council's role is to carry out the powers, duties and functions expressly prescribed,¹⁷ including to consider the well-being and interests of the municipality as a whole,¹⁸ in order to promote public trust and confidence in the Council and municipality.¹⁹

The Impugned Amendments addressed above would not constitute good governance or a proper exercise of the powers and duties of Council. To the contrary, it both outright bans a form of expression under section 17.0(d) and establishes other mechanisms to stifle free speech of residents Council may disprove of, simply by characterizing them as "harassment" or "other behaviour which proves to be disruptive".

Such Impugned Amendments would limit Council to consider the well-being and interests of the municipality as a whole and would establish concerning unconstitutional limitation on expression.

We implore Council to strike the concerning provisions of the Impugned Amendments in its further review of the proposed amendments to the Bylaw.

Yours truly,

CHARTER ADVOCATES CANADA

Per:



Darren Leung
Staff Lawyer

¹⁶ *Municipal Act*, at s.3(a)

¹⁷ *Ibid*, at s.82(c)

¹⁸ *Ibid*, at s.83(1)(a)

¹⁹ By-Law No. 20-17 Code of Conduct For Council Members, s.3.1