

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. 25 21-97-1200
Your File/V/Réf.

DATE 14 March 1997

TO/DEST. Co-ordinator Transportation Committee

FROM/EXP. Regional Solicitor
Environment and Transportation Commissioner

SUBJECT/OBJET **PRIVATE SIGNS ON REGIONAL ROADS - HIGHWAY SIGNS
BY-LAW**

DEPARTMENTAL RECOMMENDATIONS

That the Transportation Committee recommend Council approve:

- 1. The Highway Signs By-law;**
- 2. The deletion of Section 2.2.4 of the Regional Regulatory Code;**
- 3. Amendments to Parts 2.5 and 2.10 of the Regional Regulatory Code to exempt the placement of signs pursuant to the Highway Signs By-law;**
- 4. That as staff resources permit, unauthorized signs be removed from Regional roads and that staff respond as required on a complaint basis, except where a sign is an obvious safety hazard;**
- 5. That permit fees not be charged, except for banners;**
- 6. That a processing fee of \$34.00 per application be charged to cover the administrative cost of processing an application to place a banner on or over a Regional road;**
- 7. That the area municipalities be requested to adopt the Highway Signs By-law to regulate signs within their jurisdictions which will establish uniform sign regulations, and;**
- 8. That staff liaise with the area municipalities to develop standards allowing additional signs on the road allowance, by permit.**

EXECUTIVE SUMMARY

Two decisions, one by the Supreme Court of Canada (the Ramsden case) and the other by the Ontario Court of Appeal (the Quickfall case) substantially restrict the powers of municipalities to prohibit signs on road allowances. These were followed by a recent Ontario Divisional Court decision (the Canadian Mobile Sign case) that further clarifies the Court's position.

The major principles derived from the Ramsden and Quickfall cases are that the public has the right to place signs and posters on some public property. Some regulations concerning sign placement are permitted to ensure compatibility with the primary function of the property, but any regulation of signs must be content neutral and must ensure that the right of expression can be exercised. The Canadian Mobile Sign case confirms that the right to poster does not necessarily extend to other types of signs, and that municipalities can prohibit some signs.

Section 2.2.4 of the Regional Regulatory Code prohibits the placing of signs on Regional roads unless authorised by the Environment and Transportation Commissioner. As this provision violates the Charter, it is recommended that the section be deleted and replaced by a new Highway Signs By-law.

Staff does not have the resources necessary to undertake a pro-active sign enforcement programme on a continual basis. It is recommended therefore that enforcement generally be on a complaint basis.

Similarly with permits, due to the lack of resources required to commence a large scale permit issuance/inspection programme, it is recommended that permits not be issued at this time. The only exception is for banners because of the potential for damage to the supporting utility poles. It is recommended however that staff liaise with area municipality staff and report back on a potential sign permit system to authorize some signs on the road allowance subject to location, size and duration criteria. To be included in this report will be recommendations on how such a programme would be administered.

The special significance that Confederation Boulevard has for Canadians has been recognised. To preserve its dignity and integrity, the National Capital Commission has been accorded special privileges that will not be extended to other agencies.

When a municipality allows the public to use its road allowance, there is a risk involved in terms of legal liability. Accordingly, safety should be an underlying theme of all regulations. The only way to avoid any risk at all would be to prohibit every private sign on Regional roads, but with the recent court decisions pertaining to the placement of signs on the public road allowance, this is no longer an alternative available to municipalities.

The proposed Highway Signs By-law was circulated extensively to ensure that every opportunity was provided for public input. Where appropriate, the by-law has been amended accordingly.

PURPOSE

The purpose of this report is to inform the Transportation Committee and Council of the impact of recent court decisions dealing with the erection of private signs on public property. This report also sets out a proposed response to those decisions in the form of a new by-law to regulate the subject signs so as to ensure that the Region maintains effective control over activities carried out within its road allowances.

BACKGROUND

Two recent decisions - one by the Supreme Court of Canada in *City of Peterborough v. Ramsden* (the Ramsden case) and the other by the Ontario Court of Appeal in *City of Toronto v. Quickfall* (the Quickfall case) substantially restrict the powers of municipalities to prohibit signs in public places. These decisions will have an impact on the validity of current restrictions imposed by the Regional Regulatory Code. The two cases are described in detail in Annex A.

Effect of Court Decisions

The major principles to be derived from the Ramsden and Quickfall decisions may be summarized as follows:

1. The freedom of expression guaranteed under the Canadian Charter of Rights and Freedoms includes the right to erect signs and posters on some public property.
2. Some regulation of the placement of signs on public property is permitted to ensure that the erection of the signs is compatible with the primary function of the property. By way of examples, the erection of signs should not constitute an undue hazard to roadway users, should not prevent the use and maintenance of utility works and should not cause excessive visual blight in public places. However, each restriction imposed should be justified by reference to fulfilling its primary purpose while restricting freedom of expression as little as reasonably possible.
3. Any regulation of signs should be content neutral. Expression is guaranteed under the Charter no matter the nature of the statement made unless it violates applicable obscenity laws.
4. Any regulation established to permit the erection of signs on public property must include appropriate mechanisms to ensure that the right of expression can be exercised.

A more recent Court decision (the Canadian Mobile Sign case) arising from a challenge to the City of Burlington's signs by-law provides some support for the "prohibition" of certain signs, as part of the overall "regulation" process. It held that unlike the use of posters to convey messages, portable signs on public property are not protected by the Charter's Section 2(b) freedom of expression provision. The Court felt that portable signs do not have the historical or social foundation for the communication of political, social and cultural information, as do messages conveyed by poster.

Portable signs are defined in the Burlington by-law as those designed to be moved and which do not rely on a building or fixed concrete foundation for structural support, and include A-Frame signs, mobile signs and inflatable signs.

Concerns Over Visual Clutter

A legitimate concern of municipalities is that a proliferation of signs within road allowances may pose a legitimate safety hazard as a large number of signs can distract the driver's attention and contribute to collisions.

It is therefore reasonable to impose some restrictions on the placement of private signs on road allowances in situations where the erection of signs could take the attention of drivers away from potentially hazardous situations on the roadway. It is doubtful, however, that concerns over visual clutter and the diversion of the attention of drivers could justify a complete ban on all private signage within roadways.

REGULATORY RESPONSE

Proposed By-law

In the Ramsden case, the Supreme Court of Canada suggested that municipalities could pass regulatory by-laws to control the erection of signs on public property. The Court suggested that municipalities could specify or regulate such things as,

- a. location of signs;
- b. size of signs;
- c. length of time that a sign remains in place;
- d. manner of affixing signs;
- e. removal of signs after a specified period; and
- f. payment of permit fees to defray administrative costs of the municipality.

The Court did not suggest that these forms of regulation were exhaustive of the types of regulatory provisions that municipalities could enact. The proposed Highway Signs By-law sets out recommended controls over the erection of private signs on Regional roads. The regulations are a balance between opening up the road allowance for the placing and posting of signs by individuals while at the same time trying to protect both the general public and municipal staff from the potential hazards of signs placed in inappropriate locations.

The by-law has been drafted to recognize the different types of signs and to develop regulations particular to the idiosyncrasies of each. Specifically, it recognizes that there are two broad categories of signs: self-supporting signs and signs attached to structures. The recommended self-supporting sign is a ground mounted sign, such as an election sign. Signs attached to structures are separated into posters, special event signs and banners.

Prohibition of Certain Signs

The following table identifies and justifies the signs that staff feel should be prohibited on Regional roads.

PROHIBITED SIGN	JUSTIFICATION
Rotary sign	Creates a safety hazard because of sign rotation
Ground mounted sign, except for election sign	Underground utility plant is often close to surface and supports driven into ground without utility clearance may cause damage
Mobile and billboard signs	Should be located on private property because of size
Rigid sign, except for special event sign	Potential safety hazard if not installed properly - individuals would not have specialized equipment for attachment, improper fastening would damage utility pole
Portable Sign	Potential safety hazard to visually impaired pedestrians - interference with sidewalk maintenance operations, particularly during winter months

Location of Signs

The placement of signs at specific locations within the roadway can constitute a hazard to roadway users by obstructing the view of drivers on the roadway, blocking the view of regulatory signs, physically blocking vehicular or pedestrian traffic and generally distracting drivers from seeing and obeying roadway regulatory and information signs. Enforcement of regulations may also be impractical where signs are permitted at locations which are inaccessible to enforcement staff or cannot be practically removed. The following table sets out the substance and the justification for proposed regulations relating to the location of signs within road allowances.

NATURE OF REGULATION	JUSTIFICATION
Signs prohibited on travelled surface of roadway, sidewalk and shoulder	Creates a safety hazard
Signs prohibited on central boulevard and channelling island	Signs could obstruct view and distract attention of motorists and cyclists
Signs prohibited on an official or authorized sign or a traffic control signal	Signs could cause confusion for motorists and cyclists and take attention away from message on sign or traffic control signal
Signs prohibited on a pole supporting an official or authorized sign or a traffic control signal, other than a poster	Same reasons as above; posters being excepted because of court ruling that posters have historical precedent to be attached to publicly owned poles
Signs prohibited on trees and shrubs	A reasonable restriction with minimal impact on free expression intended to preserve aesthetic appearance of the roadway, and minimize maintenance and replacement costs
Signs prohibited on a decorative light standard, bench, planter, public waste receptacle, tree guard, bus stop pole, fence or a bicycle rack	Results in higher than normal maintenance cost because of damage to paint caused by glue
Signs prohibited on a guiderail	Creates a safety hazard by distracting attention of motorists and cyclists
Signs prohibited that impede or obstruct municipal maintenance operations	Efficient road maintenance operations must be preserved - signs have to be removed before work can commence - may create a safety hazard for employees
Signs prohibited that are an imitation or resemble an official sign, an authorized sign or a traffic control signal	Creates confusion for motorists and cyclists
Signs prohibited that conceal, obstruct or obscure an official sign, an authorized sign or a traffic control signal	Creates a safety hazard because sign message is concealed
Signs prohibited that are illuminated internally, illuminated externally with auxiliary lighting or accentuated by intermittent illumination	Distracts the attention of motorists and cyclists
Signs prohibited that have a variable message face	Distracts the attention of motorists and cyclists
Signs prohibited that are not securely fastened to their supports	Creates a safety hazard because sign may separate from support

NATURE OF REGULATION	JUSTIFICATION
Signs prohibited that utilize retro-reflective material	Distracts the attention of motorists and cyclists at night because light is reflected back to light source - motorists may confuse sign for an official or authorized sign
Signs prohibited where supports have to be embedded in a hard surface such as asphalt, concrete, or bricks	Creates damage that is expensive to repair
Drilling, riveting or nailing into wooden, aluminium or concrete is prohibited	Creates damage that shortens service life of pole
Signs must be removed within 48 hours of time authorized in by-law	Reduces the visual blight created by the presence of out-of-date signs
Election signs not to be placed within 3.0 m of an intersecting street	Ensures that clear sight lines are maintained
Election signs not to be placed within 0.5 m of a sidewalk, or where there is no sidewalk, within 2.0 m of the roadway or within 0.5 m of a shoulder where such exists	Ensures a buffer area for official and authorized signs - ensures that private signs will not obstruct motorists and cyclists
Posters are not to be attached to a pole with self-adhesive backing, glue, thumbtacks, nails or any other metal device, other than staples	Metal fasteners create a safety hazard for public utility employees, and glued posters are difficult to remove

Size and Materials

Signs which are excessively large may serve as a significant distraction to motorists and pedestrians. Some municipalities, such as the City of Hamilton, have imposed a restriction on the size of signs, being 280 mm by 435 mm (11 inches by 17 inches). Size restrictions appear to be reasonable in order to limit the distractions to road users and to reduce the amount of litter within the road allowance, while not unduly restricting free expression. Staff have reviewed the unique characteristics of the signs that can safely be permitted on Regional roads and recommends size limitations that are considered appropriate for each.

The material used in signs is also of importance. Staff have recommended that the material used for posters, for example, be limited to paper or light-weight cardboard. In addition, signs should not be composed of retro-reflective material, illuminated internally, illuminated externally through the installation of auxiliary lighting, accentuated by intermittent lighting or have a variable message sign face.

Manner of Affixing

Signs erected within a road allowance must be securely affixed so as to limit the amount of litter and the risk of the sign blowing away and being a menace to traffic. This is stipulated as a general regulation.

The erection of posters has always been a contentious issue because of the varied methods of attachment. This has been addressed in the proposed by-law by specifying that posters can be attached by any means other than by way of a self-adhesive backing, glue, or any metal fastening device, other than staples. These methods of attachment cause the most damage to structures and this should alleviate many concerns.

The use of any type of metal fastening device for posters was of particular concern to hydro commissions because of the hazard to staff who manually climb hydro poles. The steel cleats cannot penetrate the metal fasteners, especially after a lengthy period of using staples, which eventually build up to form a barrier.

This was one of the most contentious issues, because posterers insist that staples are one of the most commonly used methods of attachment. To prohibit staples would severely limit their ability to attach posters, as recently verified by the courts as a right under the Charter. As a compromise, staff are recommending that the use of staples continue, but that all other forms of metal fastening devices be prohibited. The City of Ottawa, when approving its signs by-law, approved the use of staples.

Attachment of banners to utility poles is also a difficult issue because of the potential for damage. The poles are generally not designed to withstand the wind-loading effect that may result if the banner is improperly attached. For this reason, one of the provisions of the proposed by-law is that applicants must obtain permission from the pole owner, and agree to abide by any specific fastening instructions stipulated by the owner. Poles that have been especially designed to withstand this type of loading are exempt from this provision.

Duration of Signs

Many of the signs are erected within the road allowance to advertise a specific upcoming event. The placement of signs for an indefinite duration will contribute to the proliferation of signs and compound problems generated by having private signs competing with regulatory signs for the attention of roadway users. Therefore, it is recommended that, except as noted below, signs only remain in place for a period of 21 days or until 48 hours after the event advertised on the sign (whichever is the shorter period). At the end of this period the person who erected the sign is responsible for its removal. Failing this, municipal staff should be permitted to remove and destroy the sign without compensation for its loss.

The proposed exceptions to the 21 day time limit are election signs and decorative banners. Decorative banners are generally used by Business Improvement Areas (BIAs) and the National Capital Commission for aesthetic purposes, and it is proposed that this practice be allowed to continue. As they are normally in place for durations longer than three months, and in the interest of eliminating unnecessary administration, it is recommended that permits for decorative banners be issued for periods

up to one year. This was a major concern expressed by the BIAs during public consultation and staff have addressed it. Election signs are currently permitted to be displayed for up to 30 days prior to the polling day. It is recommended that this long established practice also continue.

Enforcement

The current enforcement policy is that staff will investigate signs on a complaint basis only, unless the sign location poses a safety hazard. It is recommended that this policy continue, with the following exception.

Since the court cases discussed previously, staff have had no alternative but to permit signs on Regional roads, subject to safety implications. The situation has evolved to the point where there is a proliferation of signs that will not be permitted under the new regulations. Subject to resource availability it is the Department's intention to initiate an enforcement campaign to remove illegal signs following approval of the by-law. This would be accomplished by placing advertisements in the major and local papers indicating that, commencing on a yet to be specified date, staff would start removing signs. If the sign owner wished to keep the sign it should be removed prior to that date otherwise it would be confiscated and disposed of.

Permit Fees

Permit fees may be charged to compensate a municipality for the staff resources required to administer a permit system related to sign placement. With the exception of banners that require staff involvement because of the potential for damage to supporting poles, a permit system and permit fees are not recommended at this time.

However, there may be opportunity to allow other signs on Regional roads in the future under controlled conditions by permit. It is proposed that staff work with the area municipalities to develop a set of standards with respect to location, size, duration, etc. and report back. In particular, staff recognize the development industry has a great deal of interest in having access to the Regional right of way to advertize their developments to prospective customers. Under the previous by-law, as in the by-law proposed herewith, these signs are not permitted. The Department proposes to explore options to find ways to permit these and similar signs where appropriate and to establish the necessary guidelines.

ELECTION SIGNS

The provision in the Code which extends local election sign placement prohibitions to Regional roads in the area municipality would not withstand a challenge under the Charter. This prohibition would likely be seen as an unreasonable violation of freedom of expression. The remaining provisions of this section appear to be valid.

There is some legislation which has been used in the past as an indicator of how long in advance of an election signs should be posted. The Canada Elections Act, R.S.C. 1985, Chapter E-2 prohibits federal election advertising except during the 29 days prior to the polling date. The Municipal Elections Act, R.S.O. 1990, Chapter M.53 imposes similar restrictions with respect to municipal elections. There are no similar restrictions applicable to provincial elections.

The concerns relating to the placement of election signs on roads are, for the most part, no different from concerns relating to the placement of other signs within the road allowance. However, they are different in three significant ways. First, election signs only appear within road allowances for a restricted period of time, every three or four years; secondly, past practice has shown that candidates in elections have a good record of arranging for the removal of election signs shortly after the polling date; and thirdly, they serve an important and well accepted public function. Given these considerations and the reduced concern over the generation of litter from election signs, the size restrictions may be relaxed. Other provisions relating to the erection and placement of signs will be applicable to election signs. This has been addressed in the general prohibition section of the by-law.

CONFEDERATION BOULEVARD

The NCC has a concern about signs placed on Confederation Boulevard. Important Canadian landmarks such as Parliament Hill, official residences and national institutions such as the National Gallery of Canada, the Canadian War Museum, the Royal Canadian Mint, etc., are located along the Boulevard and each year thousands of tourists come to the Nation's Capital specifically to view the attractions.

Because of the Boulevard's importance to Canadians, the NCC wishes to preserve a sense of decorum and respect for the national sites, and therefore requests a standard for signs along the Boulevard that harmonizes with the surroundings. This is a reasonable request and the suggested regulations are incorporated in the new Highway Signs By-law.

LIABILITY

When a municipality allows the public to use its road allowance, it is fair to say that in terms of legal liability there is a risk involved. The Municipality is required by statute to keep its roads "in repair". Should the placement of signs create any kind of danger at all, then this would amount to "disrepair", for which the Municipality is liable for losses incurred or injury suffered. Accordingly, safety should be an underlying theme of all regulations with respect to use of the road allowance.

The risk is greatest where the Municipality establishes a "permit" system, or issues licences, because in these circumstances liability may follow if a permit or licence is issued and subsequently a loss is incurred. This is not by any means an absolute liability, but it is likely that the Municipality would be involved in any legal action involving loss or injury arising from a sign on a road allowance by way of the issuance of a permit, if there were any suggestion that the sign created a danger or hazard in any way. The advantage of the permit system however, is that the permit is usually accompanied by indemnification and proof of insurance.

But only a small part of the proposed Highway Signs By-law requires a permit. The proposal is that most signs are simply regulated by the terms of the by-law, without the issue of a permit. In these cases the risk of incurring liability is reduced, but still exists. For example, if the proliferation of a particular type of sign creates a hazard, but is permitted by by-law, there is the risk of incurring liability.

As in most cases where a Municipality invites and regulates the use of its lands, but more so in the case of its roads, there is an element of risk involved. The only way to avoid any risk at all would be to prohibit all signs on the road allowance; but with the recent court decisions pertaining to the placement of signs on road allowances, this is no longer an alternative available to municipalities.

PUBLIC CONSULTATION

This report was circulated extensively to ensure that every opportunity was extended to our citizens to provide comments on the proposed sign regulations. The comments and the Department's response to them are issued separately.

UNIFORMITY OF SIGN REGULATIONS

The drafting of a new Highway Signs By-law originally was a joint project with the City of Ottawa. At an early stage of the by-law's development the project team met with the area municipalities to determine if they would be interested in joining the project to finalize it. At the time there was no interest expressed so the project continued with only the Region and City involved.

Following public consultation and the subsequent changes to the by-law in response, some of the area municipalities expressed an interest in the final product. Staff have been meeting with the area municipalities, other than the City of Ottawa which has already approved its by-law, to amend the by-law to meet their requirements. This was done because it is in everyone's best interest to have uniform sign regulations in as many municipalities as possible.

Staff have made some amendments to the by-law as a result of these meetings. Most of the changes are minor except for one. In the original by-law sent for public consultation the by-law permitted A-frame signs on inner and outer boulevards, subject to location and time restrictions. Staff of the other area municipalities are totally opposed to allowing them on the road allowance. The by-law has therefore been amended to prohibit A-frame signs.

The area municipality staff within the suburban area and some from the rural areas now support the new by-law and have agreed to recommend its approval to their respective Councils if approved by Regional Council.

FINANCIAL IMPLICATIONS

There should not be any negative financial implications for the Regional Municipality in the long term because the regulations contained in the new Highway Signs By-law for the most part reflect what is currently happening on the road allowance with some additional restrictions for safety reasons. It is anticipated that there may be greater demands on staff time initially because of sign complaints

generated by the passing of the new by-law, but it is impossible at this time to estimate what additional staff time may be required.

CONCLUSIONS

The decision of the Supreme Court of Canada in the Ramsden case followed by the decision of the Ontario Court of Appeal in the Quickfall case place significant limitations on the ability of municipalities to prohibit the erection of private signs on public property. Any restrictions on the erection of signs must limit freedom of expression under the Charter as little as is reasonably possible in order to fulfil the primary function of the public property. This necessitates a review of current by-law provisions to ensure that restrictions on the erection of signs are justified and may withstand a challenge under the Charter. This report sets out a proposed course of action which will permit a reasonable amount of private signage within a road allowance while allowing the road allowance and facilities placed within the road allowance to function in an effective manner.

The Highway Signs By-law is available for review in the Regional Clerk's Office.

*Approved by E. McArthur
on behalf of
J.D. Cameron, Q.C.*

*Approved by
M.J.E. Sheflin, P.Eng.*

PH/EM/SEM

Attach (1)

RELEVANT COURT CASES

The Ramsden Case

In 1982 the City of Peterborough amended an existing by-law so as to ban the placing of signs or posters "... on any public property". Kenneth Ramsden was charged under the by-law after he placed on a hydro pole in a city street a poster advertising the performance of a band. Ramsden opposed the charge on the basis that the by-law violated his freedom of expression under the Canadian Charter of Rights and Freedoms (the Charter).

The relevant provision of the Charter is as follows:

2. Everyone has the following fundamental freedoms:
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

Section 2 is subject to Section 1 of the Charter, which provides that the above "fundamental freedom" is subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The City of Peterborough argued that the by-law was a valid exercise of its authority. The by-law was designed to minimize the traffic hazard which could arise from having a proliferation of private signs within roadways. The by-law also eliminated the hazard to those required to climb utility poles caused by the presence of signs and material used to attach the signs. Finally, the by-law was designed to combat the visual and aesthetic blight caused by the proliferation of signs in public places.

The Supreme Court of Canada, in a unanimous decision, struck down the Peterborough by-law as a violation of freedom of expression under the Charter.

Posting was seen by the Court as a form of expression. Posting fulfilled one of the fundamental values of freedom of expression, being the contribution to social and political decision-making. In keeping with other previous decisions considering freedom of expression, the Court refused to delve into the content of the expression itself. It does not matter whether the sign is commercial, political or otherwise in order for it to be a protected form of expression.

The Court also found that freedom of expression included the right to affix posters on some public property. There was no distinction, in the Court's view, between persons occupying public property to express themselves - a form of expression guaranteed under the Charter according to a previous decision of the Court - and the placing of a poster on public property to achieve the same purpose. The freedom of expression is an illusory right unless public places are available in which to express oneself. The Court did find, however, that not all public property could be used for this expression: the expression and its form had to be compatible with the function of the property and could not defeat the

purpose of the public property. A government office area, for example, could not be used for the purposes of a public demonstration.

The Court found that, although the by-law did seek to achieve a number of legitimate purposes and the ban on posting was rationally connected to these purposes, its effect was to limit the right of expression guaranteed by the Charter. Therefore, the by-law could only be saved if it met the reasonable limits set out in Section 1 of the Charter.

In order to meet the test set out in Section 1 of the Charter, a restriction on a freedom guaranteed by the Charter must restrict the freedom as little as is reasonably possible to meet the objectives of the restriction. In this case, the by-law banned posting on all public property. Allowing posters in some public places was not necessarily incompatible with the use of those areas. Therefore, the objectives of the by-law could have been met by imposing some restrictions on the placement of posters and enacting other forms of less restrictive regulation.

The Quickfall Case

The decision in the Ramsden case was shortly followed by the decision of the Ontario Court of Appeal in the Quickfall case. A City of Toronto by-law banned the placing of signs on trees and utility poles and, unless the consent of the owner was obtained, prohibited the placing of signs on buildings. In addition, the Municipality of Metropolitan Toronto prohibited the placing of signs within metropolitan roads "... without lawful authority...". Neither by-law provided a mechanism for receiving consent or the lawful authority to erect signs.

James Quickfall and John Tetrault were charged under the by-laws after they placed signs advertising meetings considering the Canada/US Free Trade Agreement on utility poles and a traffic signal box. They argued that the two by-laws violated their freedom of expression under the Charter.

The Ontario Court of Appeal struck down the provisions of both by-laws. The court found that the two by-laws had the effect of banning posting on virtually all property. The fact that the consent or lawful authority to erect a poster could be obtained was an illusory right because there was no mechanism in place for the granting of the authority to erect posters. The effective total ban on posting was therefore too broad a form of regulation to be a reasonable limit to freedom of expression.