

CASE LAW UPDATE

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Vancouver (City) v. Zhang

(2010) 325 D.L.R. (4th) 313 (B.C.C.A.) (Released 19 October 2010)

Enforcement of Municipal By-Laws – Injunctions – Constitutional Law – Freedom of Expression under s. 2(b)

This appeal was concerned with whether a by-law prohibiting the construction of new structures on city streets without first obtaining written consent from the City of Vancouver was constitutionally valid (the “by-law”).

Falun Gong practitioners set up banners and a makeshift shelter and meditation hut in front of the Chinese Consulate in the City. The structure was primarily located on the grassy portion of a City street. The City brought a successful application for an injunction requiring the practitioners to remove the structures and prohibiting them from placing new structures on the street. The BCSC found that this method of expression was not protected by s. 2(b) of the Charter. The BCSC held that, in any event, the by-law was reasonably justified under s.1.

The British Columbia Court of Appeal overturned the lower court decision and declared the provision of the by-law of no force and effect. The court found that public streets are spaces in which political expression takes place and the City’s limitation on the use of a structure for the purpose of political expression was a violation of s. 2(b) of the Charter.

The Court of Appeal further found that the City’s violation of s. 2(b) of the Charter was not justified under s. 1. Although regulation of structures on public streets is a pressing and substantive objective that is rationally connected to the goal of regulating the placement of structures on public streets, the by-law did not minimally impair the practitioners’ rights. The by-law was an absolute prohibition with an uncertain possibility of exception by City council on unknown grounds. The by-law did not reflect the considerations made when approval is granted and there was no scheme that considered political speech and expression. Ultimately, the court found that regulation of commercial and artistic expression cannot justify a by-law that precludes any use of structure, however minimal, for political expression. Finally, the practitioners’ inconvenience in not being able to use the structure to aid expressive activity outweighed the minimal benefit to the City.

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