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The Evangelical Fellowship *of* Canada

## **Zoned Out: Religious Freedom in the Municipality**

**An Introductory Guide to Understanding the Religious Freedoms of Faith Groups and the Engagement Process When Facing a Zoning Challenge**

June 2010

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## Table of Contents

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1. Introduction .....	3
2. Freedom of Religion .....	3
<i>Charter</i> Protection .....	3
Religious Freedom Defined .....	3
Rights Alignment .....	4
Practical Implications of Religious Freedom .....	5
3. Municipal Law .....	5
What is it? .....	5
Does the <i>Charter</i> apply to municipalities? .....	6
Procedural Obligations of Municipalities .....	8
4. Intersection of Municipal Law & Religion .....	9
Taxation & Miscellaneous By-Laws .....	9
By-laws Restricting Use .....	11
Zoning .....	11
5. Conclusions & Recommendations .....	14
Step One: Build Relationships .....	14
Step Two: Know the Zoning By-Law .....	15
Step Three: Land Availability .....	15
Step Four: Challenging the By-Law .....	16
Other Ways to Challenge the By-Law .....	18
Final Thoughts .....	19

*Special thanks to Deina Warren and Nadine Tepper for their invaluable contributions to this project.*

## **1. Introduction**

The purpose of this report is to briefly review the scope and extent of religious freedom in Canada, outline the place of municipal law in the broader Canadian legal landscape, and to examine ways in which municipal law may potentially violate those religious freedoms.

Although a number of these potential problems will be touched upon, the specific focus will be municipal zoning by-laws. Why does zoning matter? Zoning can have a profound impact upon a congregation wishing to relocate, build a new place of worship, renovate an existing building to become a place of worship or expand a place of worship. As Janet E. Buckingham explains, “individual belief would lack its richness, its connectedness, and much of its character-building and meaning-giving power if it were cut off from the extended life of religious communities.”<sup>1</sup>

This issue will be examined in the context of five case studies from three different provinces and is followed by recommendations for those churches and congregations facing discrimination and/or violations of religious freedoms in the context of municipal zoning by-laws.

## **2. Freedom of Religion**

### **Charter Protection**

The primary constitutional source<sup>2</sup> of religious freedom in Canada is the *Charter of Rights and Freedoms*. Section 2 guarantees that “everyone has the following fundamental freedoms”:

- (a) Freedom of conscience and religion;
- (b) Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) Freedom of peaceful assembly; and
- (d) Freedom of association.

Section 15(1) guarantees equality rights:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Though section 15 provides for equality regardless of religion, freedom of religion claims are more frequently considered under s. 2(b).

### **Religious Freedom Defined**

Though it is granted protection under the *Charter*, religious freedom is neither defined nor given scope in the *Charter*. To understand the extent of this freedom we must refer to court decisions, specifically Supreme Court of Canada (SCC) decisions.

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<sup>1</sup> Janet E. Buckingham, “The Fundamentals of Religious Freedom: The Case for Recognizing the Collective Aspects of Religion” (2007) 36 Sup. Ct. L. Rev. (2d) 251 at 280, citing W. Cole Durham Jr., “The Right to Autonomy in Religious Affairs: A Comparative View” in Gerhard Robbers, ed., *Church Autonomy: A Comparative Survey* (Frankfurt: Peter Lang, 2001) 712 at 713.

<sup>2</sup> Various provincial and federal human rights codes (considered quasi-constitutional documents) generally also provide protection from discrimination based on religious belief. However, for the purposes of this report, only the *Charter* will be referenced.

How does our nation's top court define religion? Religion and religious belief have been given a broad definition by the Supreme Court. In *Syndicat Northcrest v. Amselem* the court defined religion in the following way:

...religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfillment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.<sup>3</sup>

Although the scope of religious *belief* is given a broad definition, religious *freedom* is a different but related concept. In the landmark SCC case of *R. v. Big M Drug Mart Ltd.*, the concept of religious freedom was fleshed out:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that. Freedom can primarily be characterized by the absence of coercion or constraint. [...] Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.<sup>4</sup>

Religious freedom is therefore more than the ability to privately hold a specific belief and more than a lack of government interference. Rather, it includes public, communal and practical aspects.

### **Rights Alignment**

The *Charter* requires that not only must the *purpose* of a given law (or by-law) align with the rights it sets out, including religious freedom, but the *effect* of a given law must not interfere with a right or freedom guaranteed by the *Charter*.<sup>5</sup>

However, *Charter* protection is not meant to protect from all forms of minor interference. As the court in *Edwards Books* explained, not

...every burden on religious practices is offensive to the constitutional guarantee of freedom of religion. [...] The purpose of s.2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs in turn govern one's

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<sup>3</sup> 2004 SCC 47, [2004] 2 S.C.R. 551 at para. 39.

<sup>4</sup> [1985] 1 S.C.R. 295 (S.C.C.), paras. 94-95.

<sup>5</sup> *Big M. Drug Mart* at pp. 331-334; *R. v. Edwards Books & Art Ltd.*, [1986] 2 S.C.R. 713 at para. 82.

conduct and practices. The Constitution shelters individuals and groups only to the extent that religious belief or conduct might reasonably or actually be threatened.<sup>6</sup>

The *Charter* is meant to protect from state-imposed costs or burdens that interfere in more than a trivial or insubstantial way with religious belief or practice.<sup>7</sup>

### **Practical Implications of Religious Freedom**

What real world implications do the above decisions have on religious freedom? Taking a brief look at other religious freedom cases, it is clear that a broad range of activity and practice is protected under s.2(a).

For example, it allows parents to educate their children according to their religious beliefs;<sup>8</sup> allows Orthodox Jews to set up succahs (small huts) on condominium balconies during the festival of Succot despite a by-law prohibiting decorations, alterations and constructions on balconies;<sup>9</sup> protects religious officials from the obligation to perform same-sex marriages<sup>10</sup>; protects the performance of religious rites<sup>11</sup>; allows Sikhs employed by the Royal Canadian Mounted Police to wear turbans in addition to their standard uniforms<sup>12</sup>; permits Sikh students and staff to wear properly secured kirpans (small ceremonial daggers) to public schools.<sup>13</sup>

## **3. Municipal Law**

### **What is it?**

Canada divides its government into federal and provincial realms of authority.<sup>14</sup> The *Constitution Act, 1867* that divides Canada into this federal system also specifies which level of government exercises power over a certain subject area. For example, the federal government has exclusive authority over “militia, military and naval service, and defence,”<sup>15</sup> and provincial governments have jurisdiction over “the establishment, maintenance, and management of hospitals, asylums, charities” and “municipal institutions in the province” among others.<sup>16</sup>

These municipal institutions may be labelled in a variety of ways: cities, towns, townships, counties, municipal districts, regions, upper-tier municipalities, lower-tier municipalities and single-tier municipalities.<sup>17</sup>

Regardless of the label, municipalities exercise authority within a limited and specific scope similar to the federal and provincial governments. However, instead of that scope being set out

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<sup>6</sup> *Edwards Books*, at para. 97.

<sup>7</sup> *Edwards Books*; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567 at para. 32

<sup>8</sup> *R. v. Jones*, [1986] 2 S.C.R. 284. This assumes, not unreasonably, that the parents have complied with the provincial education requirements and approval process in place to use an alternative (i.e. non public) method of education.

<sup>9</sup> *Amselem* case generally

<sup>10</sup> *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 S.C.R. 698 at para. 57

<sup>11</sup> *Ibid.*

<sup>12</sup> *Grant v. Canada (Attorney General)* (1995), 120 D.L.R. (4th) 556 (F.C.A.).

<sup>13</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] S.C.J. No. 6; *Tuli v. St. Albert Protestant Separate School District No. 6* (1985), 8 C.H.R.R. D/3906 (Alta. Q.B.); *Peel Board of Education v. Ontario (Human Rights Commission)* (1991), 80 D.L.R. (4th) 475 (Ont. Div. Ct.).

<sup>14</sup> *Constitution Act, 1867*.

<sup>15</sup> *Ibid.*, s.91(7)

<sup>16</sup> *Ibid.*, ss.92(7), (8)

<sup>17</sup> Virginia MacLean & John Tomlinson, *A User's Guide to Municipal By-Laws*, 2<sup>nd</sup> Ed. (Markham: LexisNexis, 2008) at p.7.

by a constitutional document, the scope of municipal authority is set out by the province, including on those powers and functions that are given to the municipality by the province.<sup>18</sup> The provincial government may only grant a municipality authority which the provincial government itself possesses.<sup>19</sup> In other words, “municipal governments are creations of the provinces and the only powers they enjoy are powers delegated to them by provincial governments.”<sup>20</sup>

When a municipality enacts by-laws, those by-laws must not conflict with provincial or federal legislation. For example, since the federal government has exclusive jurisdiction over the military, a municipality is not permitted to enact a by-law that tries to exert any type of control over military matters.

### **Does the *Charter* apply to municipalities?**

The *Charter* applies to the Parliament and government of Canada including the Yukon and Northwest Territories, and the legislature and government of each province.<sup>21</sup> Section 32(1) of the *Charter* reads:

This Charter applies:

- (a) To the Parliament and Government of Canada in respect of all matters within the authority of Parliament...;
- (b) To the Legislature and Government of each Province in respect of all matters within the authority of the Legislature of each Province.

There is no mention of municipalities – does this mean that the *Charter* does not apply?

Even though municipal institutions do not have “independent constitutional status” or a “defined area of municipal constitutional law *per se*” as do the federal and provincial governments, municipalities are nonetheless undoubtedly subject to the *Charter*.<sup>22</sup> All municipalities are “delegates of provincial jurisdiction”<sup>23</sup> and are therefore subject to the same *Charter* scrutiny as a provincial legislature. The fact that municipalities are established in order to “perform a governmental function” and can be considered a distinct level of government also favour applying the *Charter* to municipalities.<sup>24</sup>

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<sup>18</sup> *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844 (pp.51-52).

<sup>19</sup> *Ontario (Attorney General) v. Canada (Attorney General)*, [1896] A.C. 348 (P.C.)

<sup>20</sup> Felix Hoehn, *Municipalities and Canadian Law: Defining the Authority of Local Governments* (Saskatoon: Purich Publishing, 1996) at p.1.

<sup>21</sup> Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c.11, s.32(1) [hereinafter referred to as *Canadian Charter of Rights and Freedoms*].

<sup>22</sup> Stanley M. Makuch, Neil Craik & Signe B. Leisk, *Canadian Municipal and Planning Law, 2<sup>nd</sup> Ed.* (Toronto: Thomson Canada, 2004) at p. 131; *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 855 at pp.55; *Hutterian Brethren Church of Eagle Creek Inc. v. Eagle Creek 376*, [1983] W.W.R. 438 (Sask. C.A.).

<sup>23</sup> *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 45, [2000] 2 S.C.R. 409 at para.33; *McCutcheon v. Toronto (City)* (1983), 41 O.R. (2d) 652 (H.C.).

<sup>24</sup> *McKinney v. University of Guelph* (1987), 63 O.R. (2d) 1, affirmed [1990] 3 S.C.R. 229.

## **Requesting Recognition of *Charter* Rights in Vancouver**

Vancouver is located on the west coast in British Columbia, and as of 2006 had a population of 578,000.

In the case of Tenth Avenue Alliance Church in Vancouver, the congregation faced a slightly different challenge. The church is located one block from a major arterial route of the city, between a residential area and apartment blocks. In 2004, the congregation which numbered 800-900 members, sought to replace a 1938 addition with a new, smaller section and applied for a development permit as rezoning was unnecessary in this case. However, the city would not grant a development permit unless the church also applied for a Permit for Social Service Use because of the community ministries the church provided. This was the first time a church had been asked to obtain a Permit for Social Service Use. Tenth Church initially sent a letter to the city outlining the *Charter* protection for freedom of religion and worship and explained how the city's position interfered with Tenth Church's *Charter* rights. At no time was Tenth Church given written responses or reasons for decisions made by the city even when specifically requested, and the church was at one point told that the city was not required to comply with the *Charter*.

However, Tenth Church followed through and applied for the Permit for Social Service Use but the city did not process the application. Despite this, the originally requested development permit was granted.

Tenth Church began the work, after some construction-related delays, at which point the city decided to process the Permit for Social Service Use. Tenth Church again sent the city a letter outlining their concerns around the permit. The city continued to press the need for the permit. In order to be granted the permit, the city placed some heavy demands on the church. For example, the city required an extensive management plan, a 24-hour phone line (even though the programs offered by the church ran once per week), a complaints process, names and addresses of people who attended the programs, and delved into other areas of church operations that were irrelevant to the permit. These additional demands took up significant time and resources – over 2 years. While the city backed down on some of their heavier demands, these requirements caused the church leadership to question whether the Social Services permit was appropriate or even necessary.

After seeking legal advice in this regard, Tenth Church decided to withdraw its application for a Permit for Social Service Use. The community programs and services were viewed by the church as an integral part of its worship, a regular practice of the denomination, and following through on biblical directives to care for the poor and demonstrate faith through works.

In the spring of 2007, an interfaith group of Christian, Jewish, Muslim and Sikh leaders was formed to address the city's narrow approach to what is considered a "church use" versus a "social service use." This group held a press conference in August 2007 to highlight the ongoing struggle that Tenth Church was facing, and what other faith groups involved in similar community service would presumably face. It was after this meeting and intensive media coverage that the city relented on the social service permit requirement.

In the spring of 2008, city council voted in favour of a 3 year moratorium on social services permits for churches. It is unclear what will happen upon its expiry in 2011 although the current municipal administration appears to be supportive of faith-based community service and programs.<sup>25</sup>

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<sup>25</sup> Special thanks to Mardi Dolfo-Smith, Senior Associate Pastor of Tenth Avenue Alliance Church, for contributing this case study.

## Procedural Obligations of Municipalities

Not only are municipalities subject to the *Charter* but municipalities must also adhere to certain legal principles known as 'natural justice' or 'procedural fairness.' Principles of procedural fairness are drawn from the *Charter*, the *Bill of Rights* (which only applies to federal legislation), other statutes,<sup>26</sup> regulations, rules and the common law and form part of what is known as administrative law.<sup>27</sup> Administrative law allows courts to supervise the "functioning of persons and bodies that derive their powers from either statute or the Royal prerogative" should those persons or bodies stray beyond the scope of their authority or fail to protect procedural rights or fairness.<sup>28</sup>

This duty of procedural fairness arises when public bodies, such as a municipality, make decisions affecting "individual rights, privileges or interests"<sup>29</sup> and would therefore be applicable if a church applied for rezoning to establish a house of worship.<sup>30</sup> What are these procedural rights? They can include such things as notice of hearings or meetings, the opportunity to make written or oral submissions, the right to counsel, the right to disclosure, the right to present witnesses, the right to cross-examine witnesses, the right to an impartial and unbiased decision maker and the right to reasons for any decision made.

Unfortunately it is not always a straightforward answer as to which of the rights listed above are applicable because the type of procedural rights appropriate in a given circumstance will vary depending upon five factors. The five factors are (1) the nature of the decision and the decision-making process; (2) the nature and wording of the statutory scheme governing the public body making the decision; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party(ies) involved; (5) the amount of deference accorded to the public body by the courts.<sup>31</sup>

The nature of the decision and decision-making process refers, in the context of re-zoning applications, to the municipality making a combined administrative and political decision. To justify court intervention and imposition of procedural protections, there must be "good and sufficient reason" for the court's involvement, such as the decision maker exercising a discretion to grant (or not grant) a re-zoning application in an arbitrary or capricious manner.<sup>32</sup>

The second factor depends upon which statute establishes the municipal authority to make the challenged decision. If the statute does not provide for any appeal from a final decision to a designated body then a court is more likely to review that decision.

Third, where the decision impacts a *Charter* right such as freedom of religion which is of "primary importance"<sup>33</sup> greater procedural protections would be necessary.

Fourth, where a pattern of behaviour has been established – for example, issuing reasons for denying a re-zoning application – there is a legitimate expectation that those procedures will be

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<sup>26</sup> For example, Quebec's *Charter of Human Rights and Freedoms*, R.S.Q. 1977, c. C-12 or Ontario's *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22 (as amended).

<sup>27</sup> See *Board of Education of the Indian Head School Division No. 19 of Saskatchewan v. Knight*, [1990] 1 S.C.R. 653.

<sup>28</sup> David Mullan, *Administrative Law* (Toronto: Irwin Law, 2001) at p.3.

<sup>29</sup> *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643.

<sup>30</sup> As occurred in *Congregation des temoins de Jehovah de St.-Jerome-Lafontaine v. Lafontaine (Village)* 2004 SCC 48, [2004] 2 S.C.R. 650. For further discussion of this case see section 4. For further discussion of procedural fairness see section 5.

<sup>31</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

<sup>32</sup> *Congregation des temoins*, at para. 7.

<sup>33</sup> *Ibid* at para. 9.

followed in subsequent interactions. Where there is a departure from the established pattern, a court is more likely to intervene and require that the procedure pattern be followed.

Finally, where the decision making body has developed and demonstrated expertise in the subject matter, a court is less likely to interfere. Municipalities are generally accorded deference in the area of rezoning, a task courts do not perform on a regular basis; however, this does not preclude a court from reviewing whether procedural fairness was violated in a particular case. In *Congrégation des témoins de Jéhovah de St.-Jérôme-Lafontaine v. Lafontaine (Village)*, the Supreme Court of Canada found that the municipality's duty of fairness to the applicant for rezoning "required the Municipality to carefully evaluate the applications for a zoning variance and to give reasons for refusing them."<sup>34</sup> The court also confirmed one of its previous decisions requiring that "municipal councillors must always explain and be prepared to defend their decision."<sup>35</sup>

While these principals are generally applicable, churches applying for re-zoning applications may not be guaranteed the exact same procedural rights as the factors (such as the relevant statutes) may be different depending upon the province and municipality in which the application is made.

#### **4. Intersection of Municipal Law & Religion**

As with all levels of government, and as explained above, municipalities are required to exercise their authority in a manner consistent with *Charter* principles.<sup>36</sup> Therefore, freedom of religion must be acknowledged and respected in municipal regulations, by-laws and practice. Practically, this means that freedom of religion "imposes on the state and public authorities, in relation to religion and citizens, a duty of religious neutrality that assures individual or collective tolerance, thereby safeguarding the dignity of every individual and ensuring equality for all."<sup>37</sup> By-laws therefore must "be structured in such a way as to avoid placing unnecessary obstacles in the way of the exercise of religious freedom."<sup>38</sup>

The most common areas of interaction or overlap occur in taxation, by-laws restricting use and zoning/land use planning.

#### **Taxation & Miscellaneous By-Laws**

Most jurisdictions exempt religious organizations from paying taxes on real property used for religious purposes. For example, in Ontario s.3(1) of the *Assessment Act*<sup>39</sup>, exempts from taxation places of worship and the adjoining land where the land is owned by a church or religious organization or is leased to it by another church or religious organization.

In Ontario jurisprudence "worship" is broadly defined and can include a home church provided that "individual worshippers may come from widely different places and may be personally entirely unknown to one another"<sup>40</sup> in addition to meeting other statutory requirements (such as the arrangement between the homeowner and religious worshippers). On the other hand, a

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<sup>34</sup> *Ibid* at para. 12.

<sup>35</sup> *Prud'homme v. Prud'homme*, [2002] 4 S.C.R. 663, 2002 SCC 85.

<sup>36</sup> Section 52(1) *Constitution Act*, CITE; Section 32(1) *Charter*, CITE; *McCutcheon v. Toronto (City)* (1983), 41 O.R. (2d) 652 (Ont. H.C.); David Boghosian and J. Murray Davison, *The Law of Municipal Liability in Canada* (loose-leaf) (Markham: LexisNexis, 1999) at para 2.197.

<sup>37</sup> *Congregation Lafontaine* at para. 65 [Emphasis added].

<sup>38</sup> *Ibid* at para. 71.

<sup>39</sup> R.S.O. 1990, c. A.31.

<sup>40</sup> *Re: Singh and City of Sudbury* (1975), 8 O.R. (2d) 377, citing *Church of Jesus Christ of Latter-Day Saints v. Henning*, [1963] 2 All E.R. 733.

camp/conference ground owned by a church was not entitled to a tax exemption and did not fall within the umbrella of “seminary of learning.”<sup>41</sup>

In *Westwood Congregation of Jehovah's Witnesses (Trustees of) v. Coquitlam (City)*<sup>42</sup> the Congregation faced an unpleasant situation. For 35 years the Congregation had met for worship in the City and City Council had granted a municipal tax exemption; however, that exemption ended when the province expropriated the Congregation's property and they had to purchase property and build a new Hall. Shortly after the Congregation occupied its new Hall, the City passed a by-law establishing that Council would not grant any new tax exemptions (as had been the practice). The Congregation's Hall was the *only* religious property in the City subject to taxation. Even the Royal Canadian Legion Branch No. 263 was granted reprieve from taxation – not by exemption but through a “substantial” grant to subsidize the property tax levied.

The court found that the Council's decision *did not* violate the Congregation's right to freedom of religion:

In the case at bar, Council's decision not to grant the permissive tax exemptions to the Congregation constitutes an indirect burden on the practice of the members' religion. *Edward's Books* suggests that such a burden may be found to infringe the fundamental freedom of religion if the burden is not trivial or insubstantial. Here the burden is indirect and, in my view, not substantial. Moreover, the complaint is the refusal to grant a benefit given to others. This is, in my view, very similar to the complaint in *Adler* of a refusal to provide funds for religious schools. *Adler* provides strong authority for the view that the freedom of religion does not extend so far.<sup>43</sup> [Emphasis added.]

The court's conclusion that the burden was neither direct nor substantial is troubling. It appeared that this religious group was specifically targeted by the municipality and they faced discrimination in form of a financial hardship that other groups did not have to face. The municipality's measures appear to be quite a direct and substantial burden to the religious freedoms of the Congregation.

However, because the Congregation was not provided reasons for the rejection of their request other than a simple recitation of the by-law, the matter was remitted to Council for reconsideration.

Other by-laws<sup>44</sup> that have been subjected to judicial scrutiny include prohibitions on doing business on Sundays and Christian holidays,<sup>45</sup> permitting requirements for door-to-door visits by religious groups,<sup>46</sup> and opening municipal Council meetings with prayer.<sup>47,48</sup>

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<sup>41</sup> *Retreat and Camp Corporation of Essex Presbytery v. Colchester North (Township)*, [1995] O.J. No. 2790 (Gen. Div.). See also *Rahimi v. Ontario (Regional Assessment Commissioner, Region No. 9)* (1997), 32 O.R. (3d) 306, [1997] O.J. No. 292 (QL) (Gen. Div.) in which the arrangement between the property owner and the local Baha'i Spiritual Assembly – an intention to create a tenancy – meant the property was subject to taxation and not able to take advantage of the exemption.

<sup>42</sup> 2006 BCSC 1208, 272 D.L.R. (4<sup>th</sup>) 675.

<sup>43</sup> *Westwood* at para.128; *Adler v. Ontario*, [1996] 3 S.C.R. 609.

<sup>44</sup> These examples were taken from *The Law of Municipal Liability in Canada* at para. 2.198.

<sup>45</sup> See *London Drugs Ltd. v. Red Deer (City)* (1988), 52 D.L.R. (4<sup>th</sup>) 203 (Alta. C.A.); *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd.* (1991), 78 D.L.R. (4<sup>th</sup>) 333

<sup>46</sup> *Beauchemin v. Blainville (Town)* (2001), 202 D.L.R. (4<sup>th</sup>) 147 (Que. S.C.). The by-law was found to violate s.2(a) and was not justified under s.1.

<sup>47</sup> See *Freitag v. Penetanguishene (Town)* (1999), 47 O.R. (3d) 301 (C.A.); *Allen v. Renfrew (County)*, [2004] O.J. No. 1231 (S.C.J.). Non-sectarian prayer that still made reference to God did not violate s.2(a).

<sup>48</sup> Other tax cases include *Re Baptist Convention of Ontario & Quebec and City of Kanata et al.* (1985), 51 O.R. (2d) 400 (Ont. H.C.J.), *Eastern Ontario and Quebec District of the Pentecostal*

## By-laws Restricting Use

As part of municipal plans, by-laws are created to limit the uses to which properties or structures may be put. For example, in *Re Town of Deep River and Incumbent Rector and Wardens, St. Barnabas Parish*<sup>49</sup> the parish was not permitted to operate a youth hostel during the summer months as part of the Canadian Youth Hostel Association because it was not a permitted use. A church was to be a “building open to the public as a place of worship” and not a fee-for-service youth hostel.

Neither was a church permitted to operate a private school in the Halton, Ontario region because the private activities fell outside of the scope of uses permitted in the zoning by-law. The court found that the permitted “church” use did not include “all manner of socially beneficial activities not anticipated by the official plan or the comprehensive zoning by-law” but was intended to signify “a place dedicated to traditional worship.”<sup>50</sup> The *Charter* argument was rejected because the by-law did not prohibit religious worship, invade the conscience of adherents, was not passed for a religious purpose, applied to all denominations, and did not prohibit the community from worshipping on the property.

Likewise, in *Val-Morin (Municipalité de) v. Congregation of the Followers of the Rabbis of Belz to Strengthen Torah*<sup>51</sup>, the court explained that freedom of religion “does not include the right to establish a place of worship or a religious school wherever one wishes.”<sup>52</sup> In this case the congregation had bought two properties in a residential zone originally intended to be cottages. Over the years, the buildings came to be used as a synagogue and school without the congregation having applied for a zoning amendment or exception. The municipality questioned the activities and ultimately took legal action to stop the prohibited use. While the by-law restricted the use of buildings owned by the congregation, there were “many other parts of the municipality” that did permit those uses.<sup>53</sup>

## Zoning

What is zoning and what are zoning by-laws? Zoning can be defined as follows:

A community plan or comprehensive zoning by-law represents a general statement of the broad objectives and policies of the local government respecting the form and character of existing and proposed land use.<sup>54</sup>

It is “a form of planning by a municipality but is actually a means of carrying out a plan rather than an element or factor in the plan itself. Broadly stated, zoning power enables local governments to control the use of land and the construction and use of buildings and other structures.”<sup>55</sup> It should be noted that while land use planning is often most closely associated with municipalities, it is common for it to be a combined effort of the province and the municipality.<sup>56</sup>

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*Assemblies of Canada v. Ontario (Regional Assessment Commissioner, Region No. 3)* (1996), 64 A.C.W.S. (3d) 1264 (Gen. Div.).

<sup>49</sup> [1972] 3 O.R. 90 (Ont. Co. Ct.).

<sup>50</sup> *Milton (Town) v. Smith* (1986), 32 M.P.L.R. 107, [1986] O.J. No. 2748 (Ont. H.C.)

<sup>51</sup> [2008] R.J.Q. 879, 46 M.P.L.R. (4th) 33 (C.A.), leave to appeal refused [2008] S.C.C.A. No. 256.

<sup>52</sup> From the case summary contained in John Laskin et al. *The Canadian Charter of Rights, Annotated, Vol. 2* (loose-leaf) (Aurora: Canada Law Book, 2004) at 2-20.18.

<sup>53</sup> In fact the congregation owned a third property zoned for religious purposes but chose not to use it for religious gatherings or education.

<sup>54</sup> *Save Richmond Farmland Society v. Richmond (Township)*, [1990] 3 S.C.R. 1213

<sup>55</sup> Rogers, *Canadian Law of Planning and Zoning* at para. 4.2.

<sup>56</sup> See Ian MacF. Rogers, *Canadian Law of Planning and Zoning* (loose-leaf) (Toronto: Thomson Reuters, 2009) at para. 1.5.

A zoning by-law is intended to set out “uses and performance standards for the proper and orderly planning and development of a municipality or part of a municipality.”<sup>57</sup>

Regulating the location of religious institutions and uses is not in and of itself a violation of the *Charter*. In fact, it is only where the purpose or effect of a zoning by-law is to interfere with “the ability of adherents to live in accordance with their religious beliefs” that the by-law may violate the *Charter*.<sup>58</sup> This, of course, is a logical conclusion because zoning by-laws are a “species of municipal by-law” and are therefore “subject to the same limitations respecting the general exercise of municipal power.”<sup>59</sup>

Although not decided on the basis of *Charter* infringement, a 1975 British Columbia decision<sup>60</sup> provides an interesting case study. The District of Surrey amended an existing by-law to create “zone P-3” that was set aside for churches; however, no land was actually placed under that label. Rather, a congregation seeking to build a house of worship had to apply for a P-3 classification and if the application was approved, the existing zoning was changed. If it was not approved the zoning remained the same and the congregation could not build. This amendment was made at the time an Assembly Hall of Jehovah’s Witnesses sought to construct a new building. The Assembly Hall was denied P-3 classification. The court found that the by-law was *ultra-vires* (beyond the scope of the District’s authority) because it was “misdescribed” as a zoning by-law – it was purportedly created for churches, but no land was placed under the P-3 zone! In the result, the District was ordered to provide a building permit.

Another pre-*Charter* case was that of *Re H.G. Winton Ltd. and Borough of North York*<sup>61</sup> but the outcome in that case turned on the fact that North York engaged in discriminatory behaviour and bad faith. In that case, Zoroastrians wanted to buy a property that was zoned as residential but permitted some institutional uses, including churches. Prior to purchase, the Zoroastrians confirmed with North York the permitted use. Four days later a petition was sent to the mayor and one week after the petition, a new by-law was introduced without public hearing, without notice and with all three readings taking place at the initial meeting. This by-law restricted zoning of the neighbourhood in which the Zoroastrians bought land to single-family dwellings. Needless to say, the court found the council acted “unreasonable and arbitrarily and without the degree of fairness, openness and impartiality required of a municipal government,” and declared the by-law null and void.

When a church sought to locate in a primarily industrial area with no sidewalks or public transportation and the Town had a list of alternative available sites, the Ontario Municipal Board rejected a church’s application to relocate to that industrial neighbourhood. Instead, the OMB recommended further discussions between the Town and church, and that the town further consider its land use policies “to accommodate places of worship other than in conventional areas.”<sup>62</sup>

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<sup>57</sup> *Holt v. Wilmot (Township)* (2000), 40 O.M.B.R. 122 (Ont. M.B.).

<sup>58</sup> Hoehn, *Municipalities and Canadian Law* at p. 343.

<sup>59</sup> Makuch, *Canadian Municipal and Planning Law* at p.196.

<sup>60</sup> *Assembly Hall of Jehovah’s Witnesses v. Surrey (District)* (1975), 4 W.W.R. 607, [1975] B.C.J. No. 290 (Q.L.) (B.C.S.C.).

<sup>61</sup> (1978), 20 O.R. (2d) 737, [1978] O.J. No. 3488.

<sup>62</sup> *Church on the Rock v. Collingwood (Town)*, [1994] O.M.B.D. No. 664.

### **Zoning Challenges in Montreal, Quebec: Finding a New Church ‘Home’**

Montreal is located in southern Quebec, close to the Ontario border with an amalgamated population of approximately 1.8 million.

In the late 1990s, an approximately 75 member congregation determined that its existing building was too small and sought to purchase a more suitable property for sale. The new, proposed property was located in a residential neighbourhood and had been used by another religious organization as a not-for-profit second hand resale store. As such it was zoned ‘commercial’ and prior to that, its original zoning was ‘industrial’.

Arrangements were made with the organization in terms of sale price and a conditional bill of sale. The only issue to resolve was whether the property could be appropriately rezoned. When the church approached the city, its request was refused on the grounds that the property was located in a residential zone. The church could not be located in residential “C-2” zones (despite the fact that the church’s current building was in a C-2 zone). The city insisted that the church look at “C-4” zones which are located on major arteries, usually commercial areas, and tend to be very expensive.

Church members found some city representatives to be entirely uncooperative. At one point, a city representative discouraged them from challenging the zoning decision. The suggestion was that the appeal process would be lengthy and expensive and a moratorium on new church projects had recently been put in place.

None of the city’s decisions or instructions was ever put into writing.

Due to the relatively small size of the congregation, retaining a lawyer was financially impossible, and the church decided not to pursue the re-zoning application further.

In the end, the church decided to rent space from another church or school. City property was not available for rent because of the religious purpose for which it would be used.

The church stated that its greatest challenge in this process was a general lack of information - whether other churches faced or were facing this problem; the City of Montreal’s official zoning policy as it related to churches; and the best and most economical means to challenge city decisions.<sup>63</sup>

### **Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village), Supreme Court of Canada**

*Congrégation* is a Supreme Court of Canada decision that touches on the issue of zoning and religious freedom and is therefore important to consider on its own.<sup>64</sup> In this case, the congregation had attempted on three separate occasions to secure zoning amendments in order to purchase property and build a new place of worship. The congregation felt that there was no suitable land available in P-3 zones, the only areas that permitted places of worship, and sought amendments for properties in a residential zone and a commercial zone. Each time the municipality refused.

The majority in this case decided on the basis of a procedural fairness issue<sup>65</sup> – namely that the municipality failed to provide reasons for rejecting the congregation’s second and third zoning amendment applications – and remitted the zoning decision to the Village for reconsideration.

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<sup>63</sup> Special thanks to Jay Pinney, Leader of the Comité d’implantation d’églises du Québec (President/Leader of Church Planting Quebec), which is a part of Church Planting Canada for contributing this case study.

<sup>64</sup> *Congrégation des témoins Jéhovah*, *supra* note 30.

<sup>65</sup> As discussed above.

However, the dissenting judges analyzed, “for the sake of discussion only,” the constitutional and religious freedom issues raised by Congregation.<sup>66</sup>

Emphasizing the principle of state neutrality vis-à-vis religion, Justice LeBel explained this obliges the government to only set up social and legal frameworks which respect all beliefs and allow believers to associate freely in order to exercise their freedom of worship. This freedom was recognized as being a fundamental and collective aspect of freedom of religion.

In this case, because the dissenting judges found property was available in P-3 zones, the municipality was not “placing unnecessary obstacles” in the way of the congregation and its worship. However, if there was no land available in the specified zones, government neutrality and restraint would not be sufficient to protect religious freedom. Further, the responsibility for a lack of suitable land being available could not be placed upon the shoulders of unwilling landowners.

Although this analysis was undertaken by the dissenting judges, it provides a useful framework for churches facing potential discrimination by municipalities through the application of zoning by-laws.

Ultimately, the Court found that as a place of worship is integral to religious believers so they may declare, manifest and practice their beliefs through worship, teaching and dissemination, the municipality or government must review its zoning by-laws to ensure that land is available for a religious group.

## **5. Conclusions & Recommendations**

### **Step One: Build Relationships**

Several people whose congregations were impacted by interactions with municipal governments shared their experience with us in the preparation of this guide.

A number of interviewees highly recommended establishing a good working relationship with the councillor or local government representative for your specific area. Depending on how your municipality is structured, the title of this individual will vary. Your representative can be your greatest ally in the application process, and even before that process begins. The councillor can help you understand the by-laws in your region, how you can apply for exceptions or re-zoning, and should your application require consideration and debate by the entire council, having your representative approach the application with a favourable opinion can only help you in this process.

Depending on your region, an important element of this relationship may be educational. Apparent from our interviews was that there is often a lack of understanding as to what an evangelical congregation actually does, and that churches are more than buildings where people show up on a Sunday morning. The community services, youth programs, etc. that churches often provide may be unknown to your local municipality.

Part of this education may also emphasize that while the city or municipality may lose small amounts of land tax revenue, the services and community contribution of your church likely more

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<sup>66</sup> Because of this, while the case is very helpful in outlining what would presumably be the Supreme Court’s approach to such an issue in the future, as Kent Roach aptly observes, this dissent “raises, but does not resolve, the issue of whether and when the state has a positive obligation under the *Charter* to accommodate the exercise of religion.” See *The Charter of Rights and Freedoms*, 4<sup>th</sup> Ed. (Toronto: Irwin Law, 2009) at p.136-137.

than compensate for that financial loss. Not only are the programs in themselves valuable, but the sense of community that can be built around a church cannot be accounted for financially.<sup>67</sup>

### **Working Collaboratively for the Greater Good in Vancouver, British Columbia**

In the case of the First United Church in Vancouver, the church received a request from the city's mayor to open at night to provide a warm place for people to sleep.

In September 2009, the city approached the church seeking to change the building use from 'Church' to 'Social Service Agency' because of the overnight shelter. Also, the city wanted to bring First United into line with social agency shelters by having the church go through the permit process. The city understood "church" to be a place of worship alone, a definition that First United felt was theologically shallow and quite different from their understanding of the concept.

The interaction between First United and the city was not hostile or threatening; on the contrary, the city presented a cooperative attitude, and simply expressed its request as a merely procedural matter. While First United initially considered following through with the city's request, upon further reflection and consultation with the church leadership, it decided it would be more appropriate to simply articulate and explain to the City of Vancouver what "church" meant to them. To them, it encompassed more than a building in which to worship. The city agreed to have a conversation with the church on this matter.

Building on the already existing and relatively strong relationship with the Mayor and the city generally, both First United and the City of Vancouver came away from that meeting with a better understanding of one another's views on "church" and service.

By viewing city officials as potential allies, clearly articulating the theological understanding of the church as to its own role and purpose within the community, relying on the experiences of other congregations, and taking a firm yet non-aggressive position, First United was able to work with city officials to come to an agreement and understanding about the church's role in the community and that its zoning designation did not need to be changed to 'social service agency' in order to accommodate its community service programs.<sup>68</sup>

### **Step Two: Know the Zoning By-Law**

Without a clear and comprehensive understanding of your municipality's zoning by-laws, it will be impossible to know if there is religious discrimination taking place. It is important to know how land is zoned, whether there are specific parcels of land already set aside for religious institutions, where those are located, how many there are, and what approval process is required in order to purchase and develop a certain piece of property. If you have developed a good working relationship with your local representative he or she can be a great resource in your search for answers.

### **Step Three: Land Availability**

Once a basic understanding of the zoning by-laws is in place, the next stage is to determine if there are properties available among those set aside for religious purposes. If there are properties available, those properties should be investigated.

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<sup>67</sup> For more information on the charitable giving and involvement of evangelical Canadians, refer to 'Evangelical Giving and Volunteering', *Church and Faith Trends*, January 2009, Vol. 12, Issue 2.

<sup>68</sup> Special thanks to Rev. Sandra Severs, Deputy Executive Minister and Don Evans, Director of Finance & Fund Development at First United Church in Vancouver, for contributing this case study.

Where property is available, it will be difficult to establish a religious freedom contravention unless there are significant and substantial barriers that make it close to impossible for the church to purchase and (re)develop that land.

### **Challenges, then Cooperation, to Find Land in Scarborough**

Located in East Toronto, in the province of Ontario, Scarborough has a population of just over 600,000. As of 2006, it is represented by ten of the 44 council members on Toronto's City Council.

In the mid-1990s, a 225 member congregation in Scarborough worshipped in a leased, commercial unit of a chain mall but sought a permanent location. They purchased a residential property and attempted to have it re-zoned as a place of worship.

The city denied the application for a number of reasons. They included the potential for community opposition and that the church would potentially harbour drug dealers and people involved in other illegal activities as part of its community service programs. These were grounds that the church felt were unsubstantiated.

At this point, a city councillor was approached and enlisted to assist the church through the zoning process. However, upon appeal, the re-zoning request was still denied.

Some city representatives were unfortunately uncooperative and unresponsive, and some members of the community felt that the challenges they faced were due to the fact that the prime real estate they proposed taking over would be tax exempt.

Church members sought legal advice during this process but they found it financially impractical to retain counsel and were left to deal with city on their own.

Seemingly at a dead end, the church asked the city to propose areas where they could relocate, and they were given a temporary variance to use a commercial facility.

A change of strategy was then implemented. The church seized an opportunity to work collaboratively with the municipality on amendments to the by-laws in order to expand the borders within which churches could locate, as they had become aware that 8-10 other faith groups were in similar situations. As a result, the congregation was eventually able to move into a 28,000 square foot building in an industrial/commercial complex because of this co-operative approach to municipal engagement.

Although this congregation was ultimately able to find a suitable property, it came at considerable expense - from the rezoning application to the appeal process, complying with occupancy permit requirements and building specifications, and other conditions imposed by the city.

Challenges remain for other churches in the Greater Toronto Area, as churches find themselves pushed out of urban areas into industrial, commercial and semi-rural locations. As it was for the Scarborough congregation, it is crucial for other groups to establish and maintain a good working relationship with their local municipal representative.<sup>69</sup>

### **Step Four: Challenging the By-Law**

If there is no property available, presumably the church would have to apply for a zoning exception or exemption. In this case, if an exception or exemption is denied then it is appropriate to consider taking action based on freedom of religion considerations.

To establish a *Charter* violation, the party claiming the violation bears the onus of proving that claim.

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<sup>69</sup> Special thanks to Don Meredith, Pastor of the Pentecostal Praise Centre in Vaughan, Ontario and the Chair of the GTA Faith Alliance, for contributing this case study.

The first stage requires that the claimant demonstrate that freedom of religion is at issue by showing:

1. He or she (or a worship community) has a practice or belief, having a nexus with religion, which calls for a particular line of conduct, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials; and
2. He or she is sincere in his or her belief.<sup>70</sup>

At this stage the court is seeking to determine whether the person (or community of worship) has a subjective (i.e. personal) belief and whether that belief is sincere. Sincerity does not rest on whether "religious experts" agree that the practice is obligatory, or even whether other members of the same religions see the practice as valid.<sup>71</sup> What this means is that both "obligatory as well as voluntary expressions of faith" are protected,<sup>72</sup> because it is not the role of the court to make theological decisions as to what practices are required or mandatory in any given religion. Rather, the focus of the court is the sincerity of belief.

Once it is established that freedom of religion is at issue, the claimant must be able to demonstrate that the municipal action/by-law has interfered with his or her religious freedom "in a manner that is more than trivial or insubstantial."<sup>73</sup>

If the claimant can establish a *Charter* violation, the onus then shifts to the municipality to justify that infringement on the basis that the limit or infringement is justified by law, and that it is a reasonable limit to impose in a free and democratic society. This is known as the *Oakes* test and comes from a 1986 decision of the Supreme Court of Canada by the same name.<sup>74</sup>

It is essentially a three-part test that asks (1) whether the infringement or limit upon religious freedom is prescribed by law, (2) whether the purpose of the limit is pressing and substantial, and (3) whether the means chosen by the government to give effect to that purpose are proportional to the limit upon religious freedom. Without getting into too many legal details, the test can be briefly fleshed out and explained as follows.

1. Prescribed by Law: the law, or by-law in the municipal setting, must not be arbitrary and must not be vague but rather it must be intelligible and accessible.<sup>75</sup> In the case of published, duly enacted by-laws this branch of the test would presumably be met.
2. Pressing and Substantial Objective: the objective of the government/municipality must be "pressing and substantial" so as to justify infringing upon the *Charter* right at stake, must be clearly defined and not overstated.<sup>76</sup>
3. Proportionality: this branch of the test has three sub-sections under which the concept of proportionality is analyzed.
  - a. Rational Connection: this part of the analysis simply asks if the infringing law/by-law is rationally connected to the pressing and substantial objective. This must be proven on a balance of probabilities, and is a relatively easy hurdle to pass.<sup>77</sup>

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<sup>70</sup> *Syndicat Northcrest v. Amselem*, *supra* note 3 at para. 56.

<sup>71</sup> *Ibid* at paras.41-44

<sup>72</sup> *Ibid* at para.47.

<sup>73</sup> *Ibid* [*Amselem*] at para.59.

<sup>74</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103.

<sup>75</sup> *R. v. Therens*, [1985] 1 S.C.R. 613; *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606.

<sup>76</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199

- b. Minimal Impairment: this simply asks whether the limit on the *Charter* right is “reasonably tailored” to achieve the pressing and substantial objective and if there are “less harmful” means of attaining that goal.<sup>78</sup> The law/by-law must be designed so that rights are impaired or infringed no more than necessary, but if the law/by-law chosen falls within a range of acceptable options, courts will grant the governments some deference in its chosen form of law/by-laws.
- c. Proportionality (Cost/Benefit): this asks whether the overall effects of the *Charter* infringement are proportionate to the pressing and substantial objective. The more serious the deleterious effects upon the *Charter* right, the more important the objective must be.<sup>79</sup> First, the benefits of the legislative goal should be outlined, followed by the seriousness and negative effects of the *Charter* violation upon the claimants.<sup>80</sup> Then the court must weigh and balance the deleterious and salutary effects to determine whether the law is proportional, and whether the violation of the *Charter* right can ultimately be justified.

If the court determines that the law passes these hurdles, the *Charter* violation is deemed to be justifiable in our society. Should the law fail to pass these hurdles it violates the *Charter* and is generally of no force and effect.<sup>81</sup>

Should a church congregation come to the point of bringing a constitutional claim against a municipality, it would be prudent to seek legal advice, as *Charter* claims can be complex and challenging.

### **Other Ways to Challenge the By-Law**

In addition to challenging by-laws for violating the *Charter* it is also possible to challenge the exercise of the municipality’s authority through a process known as judicial review. This allows an individual to have a court review whether the municipality stayed within its bounds, and whether it acted fairly.

#### **Jurisdiction**

Is the by-law or authority exercised by the municipality beyond its permissible scope? To answer this question, it is necessary to understand the statutory authority upon which the municipality relies in making its decision or enacting a by-law.

#### **Procedural Fairness**

Did the municipality act in accordance with the common law principles of procedural fairness? For example, was the congregation given reasons by the municipality for the rejection of its application? Was the congregation given an opportunity to respond either in writing or in person? As discussed above, the procedural rights required will vary according to the factual circumstances. However, in any case, it is important to have documentation to prove a claim that the principles of procedural fairness have been violated. Asking for municipalities to commit

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<sup>77</sup> *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] S.C.J. No. 37 at paras. 48-52, 141-142.

<sup>78</sup> *Alberta v. Hutterian Brethren of Wilson Colony* at para.53. See also *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927.

<sup>79</sup> *R. v. Oakes* at pp.139-140. See also *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] 1 S.C.R. 877.

<sup>80</sup> *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835.

<sup>81</sup> Courts have the ability to construct remedies pursuant to section 52 of the *Constitution Act, 1982* and section 24(1) of the *Charter*. Generally these include declaring laws null and void, reading in (i.e. adding sexual orientation as a ground for equality claims; see *Vriend v. Alberta*, [1998] 1 S.C.R. 493), reading down (limiting the scope of the law so as to avoid violating the constitution; see *R. v. Butler*, [1992] 1 S.C.R. 452), ordering structural injunctions (see *Doucet-Boudreau v. Nova Scotia (Ministry of Education)*, [2003] 3 S.C.R. 3) or what the court deems just and appropriate in the circumstances (see s.24(1) *Charter*).

decisions and communications to writing would be extremely helpful in this regard.<sup>82</sup> Where churches have had oral communications with city representatives it may also be helpful to follow up with a confirmation letter to establish in writing the contents of the conversation.

If you believe that your church's procedural rights may have been violated or that the municipality has acted beyond the scope of its authority, document the occurrence(s) and seek legal counsel in this regard.

### **Procedural Fairness and Lack of Written Decisions and Refusals in Laval**

Laval is located close to Montreal, Quebec and has a current population of close to 400,000.

Established in 1989, a church located in the north-central part of the city had approximately 50-85 members and met in schools. In September 1999, the congregation bought a piece of land in the same part of the city that was zoned as half-commercial and half-residential at the time of purchase. It housed a run down, empty tavern. The congregation felt it would be an ideal location and would be easy to obtain new zoning, as it was not a lucrative property for either commercial or residential use. Unfortunately, the city gave a verbal refusal, at least twice, to grant a zoning amendment and thus no further steps were taken to make an official request. Given the small size of the congregation, retaining a lawyer was not feasible.

The church still owns the land and is unsure as to how they will move forward.

The City failed to provide any written official documentation or reasons for its refusals.<sup>83</sup>

### **Final Thoughts**

The sense among church leaders is that municipalities began to restrict the granting of zoning applications in the late 1990s. Although it is unclear as to why this has happened, there are a number of possibilities. Municipalities may have been caught off guard by, and been unprepared for, an increasing number of applications, which may be due in part to new immigrants seeking to establish places of worship. In some cases, churches have simply been excluded from urban development plans. Another important factor is the potential loss of revenue associated with designating property for places of worship. As all levels of government tighten belts and shift responsibility for services, municipalities often feel significant financial pressure as they try to balance the provision of services with reasonable taxes and levies. Losing land tax revenue by re-zoning properties for the purpose of worship may result in unwelcome monetary loss to a city. Finally, there is often a misunderstanding of what it means to be a "church," whether from stereotypes, simple ignorance or lack of personal experience on the part of the decision-makers.

Overcoming these barriers can be challenging, particularly for a church congregation. When involved in conflict it can be difficult to know what position and what sort of posture is appropriate for a church to take when faced with these circumstances. This is a situation that can be exacerbated when a church is unaware of its legal rights and the municipality's legal obligations.

Understanding that churches across the country have encountered similar problems, and armed with at least a basic understanding of the scope and extent of religious freedom in Canada, the place of municipal law in the broader Canadian legal landscape, ways in which municipal law and religious freedom intersect, suggestions and recommendations about how to approach the situation, and broad outlines of potential legal challenges will hopefully better prepare other congregations as they seek to establish houses of worship in which to glorify and praise God and spread the Good News of the gospel.

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<sup>82</sup> It may even help avoid a violation of procedural rights; particularly the requirement that reasons be provided for decisions.

<sup>83</sup> Special thanks to Scott Campbell, Field Supervisor of Eastern Expansion for the Baptist General Conference of Canada, for contributing this case study.