

CITATION: *Charles Frederick Armstrong v. The Township of Russell*, 2025 ONSC 3790
COURT FILE NO.: CV 24-00000070-0000
DATE: July 10, 2025

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN: Charles Frederick Armstrong, Applicant

-AND-

The Township of Russell, Respondent

BEFORE: Justice M. Flaherty

COUNSELS: Roberto D. Aburto & Alice M. Mihailescu – Lawyers for the Applicant

J. F. Lalonde & Kevan Wylie – Lawyers for the Respondent

HEARD: June 16, 2025

AWARD

FLAHERTY J.

[1] The applicant, Mr. Armstrong, was the successful candidate in the Township of Russell’s 2024 municipal by-election.

[2] He alleges that the Township of Russell’s *Sign By-Law*, By-law 2016-052 (“By-Law”), is unconstitutional because its restrictions on how and where municipal election signs can be displayed violate his freedom of expression, contrary to s. 2(b) of the *Canadian Charter of Rights and Freedoms* (“Charter”). Mr. Armstrong submits that this infringement is not reasonably justified under s.1 of the *Charter*.

[3] The Township’s position is that the By-Law does not infringe s. 2(b) and, in any event, that any breach would be saved by s. 1 of the *Charter*.

[4] For the reasons that follow, I find that Mr. Armstrong's freedom of expression under s. 2(b) of the *Charter* has been breached and the violation is not justified under s. 1. The By-Law does not minimally impair Mr. Armstrong's freedom of expression, nor is there proportionality between its objectives and its effects.

OVERVIEW

The By-Law

[5] The Township adopted the By-Law in 2016, under the authority of s. 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25. The By-Law was amended in 2018.

[6] The purpose of the By-Law is stated in s. 1.3.1 as follows:

The purpose of this By-law is to regulate signs in the Township of Russell with the intent of authorizing signs that:

- a) are appropriate in size, number, and location to the type of activity or use;
- b) provide reasonable and appropriate means for the public to locate and identify;
- c) are compatible with their surroundings;
- d) protect and enhance the aesthetic qualities and visual character of the Township of Russell;
- e) are consistent with the Township of Russell's planning, urban design, and heritage;
- f) do not create a distraction or safety hazard for pedestrians or motorists;
- g) minimize adverse impacts on nearby public and private property; and
- h) regulate signs while impairing the public's right to expression as little as possible.

[7] Mr. Armstrong alleges that the following provisions of the By-Law are unconstitutional because they restrict where and when election signs can be displayed:

- a. 7.1.1(a)(i), which prohibits the erection of municipal election signs until 30 days prior to the voting day. Before it was amended in 2018, the By-Law provided that no temporary election signs pertaining to municipal, county, provincial or federal elections could be erected prior to 2:00 pm on nomination day. Since 2018, the temporal window for posting municipal election signs has been reduced to 30 days. Notably, this provision distinguishes between municipal election signs, on the one hand, and federal and provincial election signs. The latter can be erected as of the date of the issue of the writ of election.
- b. 7.1.1(a)(vii), which prohibits the erection of election signs related to a by-election, when that by-election is held between the fourth Tuesday of October and March 31 of any year.
- c. 7.1.1(a)(xi), which prohibits election signs being placed on any public property. The By-Law defines “public property” to include real property owned by or under the control of the Township, including a park, but not a street.
- d. 7.1.1(a)(xiii)(a), (e), (f) and (g), which prohibit the placement of an election sign:
 - o within three meters of a road or road allowance;
 - o on a tree, fence, wall, gate or utility pole located on “public property of a street”;
 - o in a roadway or shoulder that abuts a park; and
 - o within 30 meters of another election sign of the same candidate.

The 2024 By-Election

[8] The 2024 by-election was declared on June 24, 2024, and voting day was September 30, 2024. Under the By-law, the first date which candidates could post election signs in the was on August 31, 2024.

[9] Mr. Armstrong displayed 14 signs for his campaign between August 2 and August 8, 2024. There is no dispute that this was contrary to s.7.1.1(a)(i) of the By-Law.

[10] After receiving a complaint from a sitting councillor, the Township put Mr. Armstrong on notice that he could be charged under the By-Law for displaying election signs more than 30 days before voting day. Mr. Armstrong refused to remove the signs.

[11] Ultimately, the Township removed nine of Mr. Armstrong's 14 signs. In addition, the Township issued a summons against Mr. Armstrong in the Ontario Court of Justice and brought nine charges against him, under s. 7.1.1(a)(i) of the By-Law. That proceeding is in abeyance pending the outcome of this application.

[12] The Township agreed to return the signs to Mr. Armstrong, provided he paid the fees set out in the By-Law. Mr. Armstrong paid the Township \$450, and his nine signs were returned to him.

THE ISSUES

[13] The Application raises the following issues:

- a. Are some of Mr. Armstrong's allegations moot, either because the provisions did not apply to the 2024 by-election or because he was not charged under those provisions?
- b. In limiting where and when election signs may be displayed, do all or some of the above provisions of the By-Law breach s. 2(b) of the *Charter*?
- c. If so, is the infringement a reasonable and justified restriction under s.1 of the *Charter*?
- d. Has the Township been unjustly enriched in the amount of \$450, namely the fees Mr. Armstrong paid to retrieve his signs?

[14] There is no dispute that the Township has the authority to regulate election signage. The main issue is whether it did so in a manner that is unconstitutional.

ANALYSIS

Are the Allegations Moot?

[15] The Township submits that any allegations about the constitutionality of s. 7.1.1(a)(vii) are hypothetical and the court should decline to deal with them on this basis.

[16] Section 7.1.1(a)(vii) prevents candidates from displaying election signs on public property, when a by-election is held between the fourth Tuesday of October and March 31. Mr. Armstrong was a candidate in the 2024 by-election, which was held from June to September. Accordingly, the restrictions at s. 7.1.1(a)(vii) did not apply.

[17] I accept that allegations related to s. 7.1.1(a)(vii) are moot. The onus is on the applicant to satisfy the court that the issue should be determined, despite its mootness. In deciding whether to exercise my discretion to determine a moot issue, I am guided by *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, and the following three factors:

- (1) the existence of an adversarial context in which the parties have a stake in the outcome;
- (2) judicial economy and the special circumstances of the case, including whether the hypothetical question is of a recurring nature but of brief duration, making it elusive of review, or a matter of public importance, the resolution of which is in the public interest; and
- (3) the proper function of the courts and the need to avoid intruding into the role of the legislative branch.

[18] In my view, these factors favour exercising my discretion and determining the issue, despite its mootness. First, there is an adversarial context, and the parties have presented a full record. Both have an interest in the outcome.

[19] Second, judicial economy favours deciding the issue now rather than in future litigation. The restrictions at issue are tied to by-election cycles, which are brief and recurring. Restrictions on candidates' and citizens' ability to display election signs are matters of public importance and a resolution of the matter is in the public interest. Moreover, the constitutionality of s. 7.1.1(a)(vii) is one of many issues in dispute between the parties. Declining to address this specific issue would not have avoided or materially reduced the extent of the litigation.

[20] Finally, examining whether s. 7.1.1(a)(vii) violates constitutional principles within the framework of related legal proceedings does not expand the court's role or amount to a free-standing, legislative-type pronouncement.

[21] Although the constitutionality of s. 7.1.1(a)(vii) of the By-Law is a moot issue, in the particular circumstances of this case, it is appropriate to exercise my discretion and determine the issue.

[22] In oral argument, counsel for the Township also submitted that, because Mr. Armstrong was only charged under s. 7.1.1(a)(i), the constitutionality of any other provision of the By-Law is also a moot issue. I disagree. These other restrictions are live issues between the parties. They applied when Mr. Armstrong campaigned in September 2024, and they limited where and how he could display his election signs. Non-compliance with a particular provision of the By-Law is not a precondition to asserting that it restricted a constitutional right to freedom of expression.

Freedom of Expression

[23] To determine whether there has been a breach of s. 2(b), the first step is to determine whether the activity at issue constitutes expression within the scope of s. 2(b). Second, the court must assess whether the purpose or effect of the By-Law is to restrict freedom of expression: *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, and *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084. At this stage of the analysis, the burden of proof rests with the Applicant.

[24] In this case, there is no dispute that an election sign is a form of expression. However, the parties advance different positions about whether the By-Law's purpose or effect restricts freedom of expression.

[25] Mr. Armstrong submits that election signs are important and common forms of political expression. Restrictions on when and where those signs can be displayed limit his freedom of expression.

[26] The Township submits the purpose and effect of the By-Law is not to restrict the content of expression within the meaning of s. 2(b). Rather, the By-Law is content-neutral; its purpose and effect are aimed at the location and timing of the expression and its "harmful physical

consequences.” According to the Township, these restrictions are not a limitation on the expression itself. They are a justifiable and content-neutral means of preventing the physical intrusions that can accompany expression: *Irwin Toy*, at para. 50.

[27] In *Irwin Toy* (at para. 51), the majority of the Supreme Court described this distinction as follows:

Thus, for example, a rule against handing out pamphlets is a restriction on a manner of expression and is "tied to content", even if that restriction purports to control litter. The rule aims to control access by others to a meaning being conveyed as well as to control the ability of the pamphleteer to convey a meaning. To restrict this form of expression, handing out pamphlets, entails restricting its content. By contrast, a rule against littering is not a restriction “tied to content”. It aims to control the physical consequences of certain conduct regardless of whether that conduct attempts to convey meaning. To restrict littering as a "manner of expression" need not lead inexorably to restricting a content.

[28] In essence, the Township submits that regulating election signs is akin to regulating litter. I cannot agree. In considering the above passage from *Irwin Toy*, I find that restrictions on election signs are more like restrictions on handing out pamphlets – in both cases, the manner of expression is tied to its content. Restriction on election signs affects more than just the physical consequences of the sign that is displayed. The Supreme Court reached a similar conclusion in *Ramsden*. In that case, the court concluded that preventing poster on utilities poles was a violation of s. 2(b) and a limit to freedom of expression.

[29] The Township states that *Ramsden* is distinguishable on the facts because it involved a blanket prohibition on postering. In this case, the By-Law restricts, but does not fully prohibit, the display of election signs.

[30] The degree of restriction is relevant to the s. 1 analysis, and I will address it at that stage. For the purpose of s. 2(b), however, the issue is whether there has been some restriction to the expression. I find that – as with pamphlets and posters – restrictions on election signs are tied to the content of the expression and are a violation of s. 2(b) of the *Charter*.

[31] The Township has not taken the position that s.2(b) protections do not apply to election signs in a public location. Applying *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, I am satisfied that elections signs on public property attract s. 2(b) protection. Historically, public property and intersections have been used to express a variety of messages, including campaign signs. There can be no doubt that the posting of election signs on public property promotes democratic discourse and is consistent with the purpose of s. 2(b).

[32] I find that election signs on public property attract s. 2(b) protection. This is not to say that restrictions on election signs displayed on public property (and elsewhere) may not be restricted. I address this issue under the s. 1 analysis, below.

Are the Limitations on Freedom of Expression Justified under Section 1?

[33] At this stage of the analysis, the legal onus shifts to the respondent to demonstrate that the violation is justified under s. 1 of the *Charter* because it is reasonable and demonstrably justified in a free and democratic society: *R. v. Oakes*, [1986] 1 S.C.R. 103. At this stage, the respondent must establish that:

- a. the objective of passing the By-law is pressing and substantial;
- b. the By-Law is rationally connected to the objectives sought;
- c. the By-Law minimally impairs the right of freedom of expression as guaranteed in s. 2(b) of the *Charter*; and
- d. there is proportionality between the effects and the objects of the By-Law?

[34] Mr. Armstrong concedes that the objective of the By-Law is pressing and substantial. He also concedes that it is rationally connected to the objectives sought.

Does the By-Law Minimally Impair the Right of Freedom of Expression?

[35] To establish minimal impairment, the Township need not show that it selected the least drastic means of achieving its objectives. The By-Law will meet the requirements of this stage of the *Oakes* test if it “falls within a range of reasonable alternatives” which could be used to pursue

the pressing and substantial objective: *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, [2007] 2 S.C.R. 391, at para. 150.

[36] That said, the Township must do more than simply assert that the By-Law minimally impairs freedom of expression. It must provide evidence of a search for a minimally impairing solution to the problem it sought to address: *Health Services*, at para. 151.

[37] The Township submits that the By-Law is minimally impairing because:

- a. Before amending the temporal restrictions in the By-Law in 2018, it considered how certain other municipalities addressed the issue. Counsel submits that the Township's temporal window of 30 days is within the range of what is done in other municipalities and, therefore, within the range of reasonable alternatives.
- b. Restrictions as to when and where election signs can be displayed are necessary to achieve the By-law's objectives. Without these restrictions, the Township submits that there would be "an unsightly proliferation of election signs."
- c. The restrictions apply equally to all municipal candidates and did not disadvantage Mr. Armstrong, who was the successful candidate. Moreover, nothing prevented Mr. Armstrong and other candidates from campaigning using other media, including social media.

[38] There are several difficulties with these arguments.

[39] First, the Township's review of what is done in other municipalities was not a search for a minimally impairing solution. There was no evidence before me or before the Township's council about what, if any, consideration these other municipalities gave to minimally impairing freedom of expression. I make no findings about the constitutionality of by-laws in other municipalities; that is not the issue before me. However, to establish minimal impairment, it is not sufficient for the Township to say, "we are doing what everyone else is doing." The Township must present evidence of a search for a minimally impairing solution. In this case, there is no evidence that the Township, or any of the municipalities whose practices it relied on, did so.

[40] Significantly, for the 2024 by-election, the impact of the By-Law was to prevent the display of election signs for more than half the duration of the campaign. Other than relying on sector norms, the Township has provided no evidence or rationale for the restrictions it placed on election signs. For example, the Township provided no evidence of safety or aesthetic issues related to election signs.

[41] As I describe in more detail when I consider proportionality, some of the restrictions in the By-Law apply only to election signs or only to municipal election signs. Other types of signs, like real estate signs and signs for community events are not restricted in the same ways. The Township has provided no evidence to show that meeting the By-Law's objectives requires more rigorous restrictions on election signs, compared to other types of signs.

[42] As the court concluded in *Shurman v. Vaughan (City)*, 2007 82793 (ONSC) at para. 26, the fact that all candidates in the Township are barred from posting election signs for the same period and in the same way does not, in any way, enhance the argument that the by-law minimally impairs freedom of expression. Minimal impairment does not turn on whether a candidate was successful, whether they were treated differently from other candidates, or whether other forms of expression were available. Under s. 1 of the *Charter*, the issue is whether the Township attempted to accomplish its objectives in a way that minimally impaired the applicant's right. For the reasons provided, I find that it did not.

Proportionality

[43] In assessing proportionality, the court must examine the intent of the legislation in light of the effect it may have on any *Charter* right. As noted, there is no dispute that the stated objectives of the By-Law are pressing and substantial.

[44] However, the impact of the By-Law on freedom of expression is also substantial. The By-Law restricts political expression, which is the epitome of speech that furthers the aspirations of a democratic society: *Harper v. Canada (Attorney General)*, 2004 SCC 33, [2004] 1 S.C.R. 827, at paras. 10-11. In addition, the By-Law restricts that speech at its most important moment, during an election campaign.

[45] Freedom of expression protects not only the individual who speaks the message, but also the recipient. As a result, there is a dual effect to limiting the display of election signs. For example, as the court explained in *Shurman*, by limiting when a candidate can display election signs, the Township is also limiting when citizens can express their political views by displaying election signs on their own private property. This result not only exceeds the stated objectives of the By-Law, but also surpasses any limitation on freedom of expression that could be justified pursuant to s. 1 of the *Charter*: *Shurman*, at para. 34.

[46] As noted, in several respects, the By-Law distinguishes between election signs and other signs, such as real estate signs or signs about temporary events. The By-Law prevents the display of by-election signs between the fourth Tuesday of October and March 31. It also prevents the display of any election sign on public property and in certain other locations, such as on a roadway or shoulder that abuts a park. There are no similar restrictions on the display of real estate signs or signs for temporary community events. Election signs are treated differently from other signage and there is no evidence that this more restrictive approach advances the By-Law's stated objectives.

[47] In conclusion, the Township has not established that the benefits conferred by the By-Law are proportionate to the harm it occasions.

Unjust Enrichment

[48] To successfully claim unjust enrichment, the applicant must prove three things: (i) that the Township received a benefit, (ii) that Mr. Armstrong suffered a loss corresponding in some way to the benefit, and (iii) that there was no juristic reason for the benefit and the loss: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at paras. 31-32.

[49] By requiring payment from Mr. Armstrong in exchange for the return of his signs, the Township has been enriched by \$450. Mr. Armstrong has suffered a corresponding deprivation. There is no juristic reason for this enrichment. In requiring payment, the Township relied on a provision of the By-Law that is unconstitutional. There is no reasonable expectation, nor any no public policy justification, for a candidate to be charged fees based on an unconstitutional by-law.

DISPOSITION

[50] For these reasons, I find that:

- a. Sections 7.1.1(a)(i), (vii), (xi) and (xiii)(a), (e), (f), and (g) of the By-Law violate the applicant’s freedom of expression under s. 2(b) of the *Charter*.
- b. This breach is not a reasonable or justified restriction pursuant to s. 1 of the *Charter*.
- c. The Township has been unjustly enriched and Mr. Armstrong is entitled to damages in the amount of \$450.

[51] Mr. Armstrong has been entirely successful in this application. The parties are encouraged to reach an agreement regarding legal costs. If an agreement cannot be reached, they may make brief written submissions of no more than three pages, double spaced, 12-point font. The applicant’s costs submissions are to be served and filed within 14 days. The respondent’s submissions are to be served and filed within 30 days. There will be no reply submissions without leave.

Justice M. Flaherty

Released: July 10, 2025

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