



Justice Centre

for Constitutional Freedoms

November 2, 2015

VIA EMAIL AND REGULAR MAIL

Yonge-Dundas Square Board of Management
City of Toronto
2 Carlton St. Suite 1707
Toronto, Ontario M5B 1J3
info@ydsquare.ca

Dear Board Members:

RE: Violation of Freedom of Religion and Expression at Yonge-Dundas Square

We act for Voices of the Nations, Inc. ("VOTN"). We write in response to the decision to deny VOTN's application to use Yonge-Dundas Square in August 2016 (the "Decision"). The reason for the Decision was that of the songs at the 2015 VOTN event were "praising Jesus", which was viewed as violation of the Yonge-Dundas Square policy against "proselytizing."

This Decision constitutes a direct violation of the fundamental freedoms of expression and religion which are guaranteed by the *Canadian Charter of Rights and Freedoms*. We request that you immediately reverse this Decision and approve VOTN's application. Failure to do so will necessitate a court action against the City of Toronto and the Yonge-Dundas Square Board of Management ("YDS") for its censorship of expression and violation of religious freedom.

Background

VOTN is an organization founded to unite and promote diversity within the Christian Community by showcasing its mosaic of fine arts and music. VOTN's mission is "[t]o provide a venue and unite the various denominations, cultures and the outstanding talents within the Christian community" and "[t]o embrace and celebrate the wonderful diversity in the city."

For the past 5 years, VOTN has held a Christian concert and cultural event at Yonge-Dundas Square. Held the first weekend in August, this annual event showcases the talents of numerous performing groups and artists from a broad cross-section of the Christian community. This event consists of performances by artists celebrating their faith.

On or about October 2, 2015, VOTN submitted an application to use the Yonge-Dundas Square for its 2016 concert and cultural event.

On October 22, 2015, Natalie Belman, the Manager of Events for Yonge-Dundas Square told VOTN that a decision had been made to prohibit VOTN from using Yonge-Dundas Square

because, she stated, performers at the 2015 event were “proselytizing”, and that was a “big issue” for YDS. Despite the fact the event did not involve preaching, Ms. Belman stated:

Well it doesn't matter if it's speaking or singing. Either way if you're praising Jesus or praise the Lord, and there's no God like Jehovah, that type of thing? That's proselytizing.

When asked about whether the Decision to prohibit VOTN's was definite, Ms. Belman stated: “Oh, this is definite, this is done.”

Ms. Belman stated that the Decision was based on YSD's “display policy” against proselytizing. The YDS *Performance and Display Policy* states:

Performances / Displays must not advocate a specific political or religious point of view for the purpose of proselytizing. Any religious or political reference should be in the context of a larger cultural event.

The *Charter* Guarantees Freedom of Religion and Expression at Yonge-Dundas Square

The *Canadian Charter of Rights and Freedoms* guarantees Canadians the “fundamental freedoms” of conscience and religion and expression (Sections 2(a) and (b)). Yonge-Dundas Square is a public square owned by the City of Toronto. Pursuant to Section 32 of the *Charter*, YDS, a board of the City of Toronto, is prohibited from violating freedom of religion or expression at Yonge-Dundas Square.

Freedom of religion under section 2(a) of the *Charter* was defined by Justice Dickson (as he then was) in the seminal case of *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at pp. 336-37:

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.

The performers “praising Jesus” at the VOTN event in Yonge-Dundas Square were simply exercising their *Charter* right “to declare religious beliefs openly”, in a public venue that all citizens are entitled to use.

The performers' songs and lyrics are likewise protected by freedom of expression under section 2(b) of the *Charter*. They clearly have expressive content, Yonge-Dundas Square is a place designed for public expression, and the Decision to prohibit them from the Square violates the protection for expression under section 2(b). See *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, 2009 SCC 31, at para. 37, citing *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, at para. 56. In *Greater*

Vancouver, the Supreme Court of Canada found that a ban on political and advocacy advertising on city transit violated freedom of expression under *Charter* section 2(b) and was not justified.

Recent statements from the Supreme Court directly apply this situation. In *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, at para. 43, Justice Abella stated:

The pursuit of secular values means respecting the right to hold and manifest different religious beliefs. A secular state respects religious differences, it does not seek to extinguish them.

In *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, the Court described the states' duty of religious neutrality. The Court stated that the rights and freedoms set out in the *Charter* "reflect the pursuit of an ideal: a free and democratic society. This pursuit requires the state to encourage everyone to participate freely in public life regardless of their beliefs": *Saguenay*, at para. 75-76. The Court continued:

The state may not act in such a way as to create a preferential public space that favours certain religious groups and is hostile to others. It follows that the state may not, by expressing its own religious preference, promote the participation of believers to the exclusion of non-believers or vice versa.

When all is said and done, the state's duty to protect every person's freedom of conscience and religion means that it may not use its powers in such a way as to promote the participation of certain believers or non-believers in public life to the detriment of others.

The Decision of YDS to ban VOTN from Yonge-Dundas Square fails to respect the right of performers to manifest their religious beliefs. In fact it evidences an intention to extinguish such expressions from Yonge-Dundas Square. The government cannot exclude "believers" from participation in public life any more than it could exclude "non-believers". Prohibiting religious expressions from the public square violates the governments' duty of religious neutrality.

Yonge-Dundas Square is a public venue which serves many diverse groups with widely-varying purposes and beliefs. As such it serves the requirement that the state "encourage everyone to participate freely in public life regardless of their beliefs". The Decision runs directly contrary to this requirement and attacks VOTN on the basis of the expression of belief, violating both section 2(a) and 2(b) of the *Charter*.

In our diverse, multicultural, free and democratic society, it is not the state's duty to ensure that everyone agrees with the views and beliefs expressed by others in the public square. Rather, it is the state's duty to ensure that everyone has the right to express their views and beliefs in the public square.

Conclusion

We request that you, the Members of the Yonge-Dundas Square Board of Management, carry out your legal responsibility, including your legal duty to respect the freedom of religion and expression at Yonge-Dundas Square, by reversing the Decision and approving VOTN's application to hold its event in the Square in August 2016. Should you fail to correct the Decision and its serious violation of VOTN's *Charter* rights by Tuesday, November 10, 2015, VOTN will have no reasonable alternative but to commence legal proceedings against the City of Toronto and the Yonge-Dundas Square Board of Management.

Yours truly,



Marty Moore, J.D.
Justice Centre for Constitutional Freedoms

cc: Voices of the Nations, Inc.
Office of the Mayor: mayor_tory@toronto.ca