



Justice Centre  
for Constitutional Freedoms

August 19, 2016

Mr. Ron Buchan  
City of Calgary, Parks Operations  
P.O. Box 2100, Station M  
Calgary, AB T2P 2M5  
Ron.Buchan@calgary.ca

Dear Mr. Buchan:

***Re: Unconstitutional Denial of Special Event and Green Space Application***

We write on behalf of Colette Schouten, who submitted an application to set up a display in Eau Claire Park.

The City of Calgary denied Ms. Schouten's application because the City "places priority" on events with "a recreational, cultural, environmental or community wellness mandate." This denial, along with the policy it is based on, violates the freedom of expression guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*.

We demand that the City of Calgary cease unconstitutionally discriminating against political speech in City parks, and that the City approve Ms. Schouten's application to host an event on September 10, 2016.

**Background Facts**

On June 20, 2016, Ms. Schouten submitted an application to have a display in the triangle greenspace of Eau Claire Park. The display would consist of 10,000 small pink and blue flags, and volunteers would be present to engage with passersby on the subject of pre-born human rights.

On June 21, 2016, Ms. Schouten received a call from Chris Milne confirming that the space had been booked, and indicating that the City of Calgary would then be reviewing the application for event approval.

Ms. Schouten waited six weeks, but received no word from the City of Calgary about her application. On August 2, 2016, she emailed Mr. Milne inquiring as to the status of her application. She also called Shauna Kirouac, who was out of the office.

On August 9, 2016, having received no response, Ms. Schouten again called Ms. Kirouac. Ms. Kirouac indicated that Ms. Schouten's application had not yet been reviewed. While on the

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phone, Ms. Kirouac pulled up the application and quickly reviewed it. She told Ms. Schouten that she did not think the application would be approved because it lacked “event components”. Ms. Kirouac told Ms. Schouten that she would check with her supervisor and director about the application. Later that day, after further consultation, Ms. Kirouac explained to Ms. Schouten that her application would not be approved because it lacked event components, it was too “high profile” and the event involved too many flags. When Ms. Schouten sought to clarify these reasons for denial, Ms. Kirouac explained that Ms. Schouten would receive an email that would explain everything.

On August 11, 2016, Ms. Schouten received an email from Chris Milne, which stated:

Hi Collette,

Unfortunately, Parks has denied your application. The City places priority on requests for parks space for Special Events which are open to the public and which have a recreational, cultural, environmental or community wellness mandate.

We have closed this request. The refund confirmation for fees paid is attached.

Thanks,

On August 15, 2016, Ms. Schouten contacted Ms. Kirouac and requested a copy of her application. That day, Ms. Kirouac sent Ms. Schouten the following email attaching a copy of the application (enclosed):

Hello Colette,

As discussed during our conversations, your event application has been denied due to the lack of event components such as Art, Culture, Activities and Entertainment.

These event components must be the main focus of the event applied for.

In addition to the lack of event components, we feel that the quantity of flags would be difficult to manage.

For any further questions, please contact Ron Buchan at 403-537-7571.

With Regards,

### ***Special Event Guidelines***

The City of Calgary has *Special Events Guidelines* which set out its policies applying to all special events in Calgary City parks.

Despite the fact that these *Guidelines* require the City to “[p]rovide fair and equitable access to user groups to allow for a diverse range of opportunities”, the *Guidelines* state as follows:

#### Event Restrictions

The City of Calgary places priority on requests for parks space for special events which are open to the public and which have a recreational, cultural, environmental or community wellness mandate. Private functions, commercial functions and/or events that are primarily religious or political in nature may be considered on a case by case basis. If approved, these events will be required to adhere to the contents of this document and may also have additional conditions placed on them.

#### Violation of Freedom of Expression

The Supreme Court has made it abundantly clear that citizens have a legal right to use public areas, including parks, for the peaceful expression of opinion: *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 S.C.R. 139 This is not a privilege conferred on citizens by government agencies. Rather, Chief Justice Lamer held in *Committee for the Commonwealth of Canada*:

Unquestionably, the dissemination of an idea is most effective when there are a large number of listeners; the economic and social structure of our society is such that the largest number of individuals, or potential listeners, is often to be found in places that are state property. One thinks immediately of parks or public roads which, by their very nature, are suitable locations for a person wishing to communicate an idea.

Accordingly, it must be understood that the individual has an interest in communicating his ideas in a place which, because of the presence of listeners, will favour the effective dissemination of what he has to say. [Emphasis added]

The leading case in Canada on the freedom of expression guaranteed by section 2(b) of the *Charter* is *Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component*, 2009 SCC 31. In that case, the Canadian Federation of Students sought to place political advertisements on the side of buses, but their requests were rejected by the transit authorities because of policies which prohibited political advertisements and advertisements of a controversial nature. The Supreme Court of Canada found that that the policies violated the freedom of expression and prohibited a “highly valued form of expression in a public location that serves as an important place for public discourse.” The Court declared that the policies in question were of no force or effect.

Ms. Schouten’s application to use a public park for an expressive display was evidently denied on the basis that its content was not sufficiently “recreational, cultural, environmental” or in support of “community wellness”. The content of Ms. Schouten’s event was to bring awareness

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to pre-born human rights, a political issue. The *Guidelines* however de-prioritize political events, resulting in the denial of Ms. Schouten's event.

Just as it was unconstitutional to prohibit political advertising on city buses, discriminating against political events in public parks is a violation of the freedom of expression. In Canada's free and democratic society, political expression is a "highly valued form of expression". Further, public parks are a very important place for public discourse.

### **Conclusion**

Both the decision to deny Ms. Schouten's application and the portion of the *Guidelines* on which that decision appears to be based violate the freedom of expression guaranteed by the *Charter* and cannot be justified in our free and democratic society.

We demand that that the City approve Ms. Schouten's application to host an event on September 10, 2016. Should the City of Calgary continue to unconstitutionally discriminate against political speech in City parks, we will be forced to take further steps to defend our client's rights, up to, and including, a court application.

We request a response from the City of Calgary no later than August 26, 2016.

Sincerely,

  
for Marty Moore  
Barrister and Solicitor

cc: Chris Milne, [FacilityBooking@calgary.ca](mailto:FacilityBooking@calgary.ca)  
Shauna Kirouac, [Shauna.Kirouac@calgary.ca](mailto:Shauna.Kirouac@calgary.ca)

Enclosure