Charter Consideration – Access zones around schools and places of worship

Bill 13 (BC) – Safe Access to Places of Public Worship Act[1]

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INTRODUCTION

The provincial government of British Columbia has announced legislation that will enable places of worship to establish 20-metre "access zones" around their property (or alternately from their entrances and exits), within which certain disruptive activities would be prohibited.

Should a church, synagogue, mosque or temple choose to post the required signage to establish such an "access zone", section 2(1) of the bill provides:

"...a person must not, in an access zone for a place of public worship,

(a) impede access to or egress from the place of public worship,
(b) disrupt activities at the place of public worship,
(c) engage in interference [defined as "advising or persuading, or attempting to advise or persuade, by any means, including, without limitation, graphic, verbal or written means, a person to refrain from participating in an activity at a place of public worship"], or
(d) intimidate or attempt to intimidate a person or otherwise do or say anything that could reasonably be expected to cause concern for a person's physical or mental safety."

Section 2(2) provides:

"...a person must not, in an access zone for a place of public worship, wilfully participate in a gathering whose participants are contravening subsection (1)(a), (b), (c) or (d)."

Section 5 authorizes police to arrest, without warrant, anyone they reasonably believe is violating the "access zone" prohibitions.

[1] https://www.leg.bc.ca/parliamentary-business/overview/43rd-parliament/2nd-session/bills/1st_read/gov13-1.htm

The bill has a sunset provision, by which it will be automatically repealed in 4 years (unless the sunset provision is itself repealed or amended).

This bill is similar in substance to the *Safe Access to Schools Act*, SBC 2024, c 18, which was enacted in 2024 with a scheduled sunset of 2026, which will likely be extended by legislative amendment to 2028.[2]

DISCUSSION

Prima facie infringement

There is no serious dispute that Bill 13 places a restraint on freedom of expression, for the most part on public property, and that it therefore infringes section 2(b) of the *Canadian Charter of Rights and Freedoms*. As with most section 2(b) cases, the legislation will stand or fall on whether it is a reasonable limit that can be demonstrably justified in a free and democratic society, per section 1 of the *Charter*.

Under the test articulated by the Supreme Court of Canada in *R v Oakes*, 1986 CanLII 46 (SCC), *Charter*-infringing legislation will be justified under section 1 if:

- It serves a pressing and substantial legislative purpose;
- The legislation is rationally connected to the purpose;
- The legislation is minimally impairing of the *Charter* right; and
- The benefits of the limitation on the right outweigh the harms.

The abortion clinic precedent

While Bill 13 is not yet enacted, and the *Safe Access to Schools Act* has not yet been challenged, both statutes are modeled to some extent on the *Access to Abortion Services Act*, RSBC 1996, c 1 [AASA], which contains similar "access zone" provisions that were upheld by the BC Court of Appeal in *R v Spratt*, 2008 BCCA 340.

The BCCA's decision in *Spratt* was heavily influenced by the conduct of anti-abortion protesters prior to the enactment of the AASA, which went far beyond mere picketing. Anti-abortion groups had reportedly vandalized buildings, blockaded entryways, locked themselves together in human chains, and terrorized patients and staff. Notoriously, a clinic in Toronto was fire-bombed in 1992, and an abortionist in Vancouver was shot and nearly killed in 1994. The Court of Appeal took note of this context, and held that protecting patients and employees of abortion clinics was a sufficiently important legislative purpose under *Oakes*. "Access zones" around clinics were found to be rationally connected to that

[2] The government introduced Bill 12 to make this amendment, which is also in first reading as of this writing.

purpose, and were sufficiently narrow to be minimally impairing of protesters' ability to express their message. Finally, the Court of Appeal found that the harm to the protesters was outweighed by the benefit to the patients. As such, the "access zones" around abortion clinics were upheld, and remain in effect to this day.

Application to Bill 13

Any challenge to Bill 13 will likely be assessed by the same framework applied in *Spratt*. The key consideration will probably be whether there exists a pressing and substantial objective that justifies limiting expression in the vicinity of churches, synagogues, mosques and temples. The BC government may point to recent occurrences in major cities of hostile demonstrations outside of synagogues, and the general climate of increased hostility to Christian – particularly Roman Catholic – churches in the wake of the Kamloops grave allegations, to argue in favour of legislative action to protect religious congregations during their services.

Assuming that the purpose of protecting religious congregations during services is a pressing and substantial objective, it seems self-evident that the limitations on expression in an "access zone" are rationally connected to that objective.

Regarding minimal impairment, legislatures are given a certain amount of leeway; a restriction doesn't fail *Oakes* on minimal impairment merely because a less-impairing alternative was potentially available. The 20-metre boundary of the "access zone" in Bill 13 is smaller than the 50-metre zone around abortion clinics under the AASA. The prohibitions in section 2 are drafted in such a way that a protester in an "access zone" would only be legally exposed when services or other activities are in progress, as opposed to 24/7. These legislative choices make it likely that Bill 13 would be found to be minimally impairing.

Finally, given the obvious harm that has been done to Jewish Canadians' ability to practice their religion – itself a fundamental *Charter* freedom – as a result of hostile and intimidating demonstrations outside of synagogues, and the right of Canadians generally not to be stuck in a captive audience (considered and affirmed in *Spratt*), it is likely that the benefits of Bill 13 will be found to outweigh the harms to the section 2(b) rights of protesters.

In conclusion, Bill 13 is likely to be upheld as a reasonable limit on free expression under section 1of the *Charter*.

Key jurisprudence to know:

R v Spratt, 2008 BCCA 340 – https://canlii.ca/t/20jnz

R v Lewis, 1996 CanLII 3559 (BCSC) – https://canlii.ca/t/1f2w8

KEY POINTS

- Protest-free "access zones" around schools and places of worship are constitutionally untested, but are based on similar zones around abortion clinics, which have been challenged and upheld by the courts.
- As with nearly all 2(b) *Charter* cases, the restriction will stand or fall on the "reasonable limit" analysis under section 1, which is fact-driven and contextual.
- Given the (relative) narrowness of the restrictions at issue, and the abortion clinic precedent, "access zones" around churches, synagogues, mosques and temples are likely to be deemed a reasonable limit on the right to free expression.

The information contained in this briefing note is provided for informational purposes only, and should not be construed as legal advice on any matter.