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R v Booyink: A Non-Stop Charter(ed) Flight to Protest in Canadian Airports?

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Case commented on: *R v Booyink*, 2013 ABPC 185

If the Canadian Centre for Bio-Ethical Reform ("CCBR") hasn't yet made an appearance in your town, city or neighbourhood, chances are they soon will. The CCBR is an educational, pro-life activist organization devoted to the stated objective of making Canada abortion-free. Its goals are to expose as many Canadians as possible to images of, and to engage directly in conversations about, abortion. The CCBR sees its messaging as educational in nature which might include any of the following strategies:

- Imagine opening your mail box to find a gripping pro-life postcard showing "invisible" aborted children.

- Then imagine walking down the street and seeing a poster of an abortion victim hanging from a pole in your neighbourhood.

- Walking further, you see activists holding signs and engage in dialogue about abortion.

- Then imagine driving through traffic and seeing a large truck with abortion imagery on its side and rear panels. (See Unmasking Choice – CAUTION – the CCBR may post graphic images)

The CCBR is not timid about its strategies for changing hearts and minds. The images of bloody aborted foetuses placed on CCBR's placards, postcards, billboards and truck panels are designed to engender angry and extreme public opposition.

Most of us recognize that public parks, gardens, squares, plazas and streets serve an important function in providing venues for public expression and protest. We also appreciate that these spaces cannot fulfill their intended purpose and function unless they remain accessible for everyone's use and enjoyment, and not merely those few who choose to protest. We all lose out if those with the largest placards, loudest megaphones or biggest demonstrations hegemonize our public space and use their *Charter* rights as a cudgel against the rest of us.

Introduction

In the fall of 2011, members of the CCBR including Emil Booyink (the "defendants") held several demonstrations by the luggage carousel in the arrivals area of the Calgary International Airport. The Calgary Airport is managed by the Calgary Airport Authority (CAA), a Provincial not-for-profit corporation created in 1990 to transfer the management and administration of the Calgary Airport from the Federal Government. At these demonstrations, the defendants held signs, handed out pamphlets and sought to engage passengers in conversation about the evils of abortion. They maintained that they had a right to protest in the Calgary Airport even though they were told by an official from the Calgary Airport that they had no rights to be there at all. The defendants were issued several notices not to trespass pursuant to section 2 of the Alberta *Trespass to Premises Act*, RSA 2000, c T-7 (*TPA*). The defendants refused to follow the direction given by the Calgary Police Service that they leave the Calgary Airport, and they were consequently charged with trespass pursuant to section 3 of the *TPA* which reads:

> 3. A trespasser, whether or not any damage is caused by the trespass, is guilty of an offence and liable (a) for a first offence, to a fine not exceeding $2000, and (b) for a 2nd or subsequent offence in relation to the same premises, to a fine not exceeding $5000.

If the protest-in-an-airport scenario strikes you as vaguely familiar, it should. In the 1991 case of *Committee for the Commonwealth of Canada v Canada*, [1991] 1 SCR 139 (*Commonwealth*) the Supreme Court of Canada held that a prohibition by airport authorities on the distribution of political pamphlets in the public areas of the Montreal airport in Dorval violated the right to freedom of expression guaranteed by section 2(b) of the *Charter of Rights and Freedoms,* Part 1 of the *Constitution Act,* 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c11 and that this infringement could not be justified by section 1 of the *Charter*. In *Commonwealth*, the Justices differed on the correct test to be applied when assessing the limits of freedom of expression on government-owned property, yet largely agreed that there would be little opportunity for the public to engage their right to freedom of expression if the public was denied the right to engage in protest on government-owned property.

In *R v Booyink*, the Crown argued that the CAA was not a government entity to which the *Charter* applied and that it was empowered, as any private landowner, to eject the defendants from its property and that its actions in doing so were exempt from *Charter* scrutiny.

The defendants believed that section 8 of the *TPA* afforded them a complete defence to the trespass charge because they reasonably believed, based on the *Commonwealth* decision, that they had a right to protest in the Calgary Airport. Section 8 of the *TPA* reads as follows:

> 8. Nothing in this Act extends to a case where the trespasser acted under a fair and reasonable supposition that the trespasser had a right to do the act complained of.

In respect of the freedom of expression issue, the defendants argued that the CAA is a public entity to which the *Charter* applies, either by acting as an agent of, or substantially controlled by, the Federal Government and that its main function, namely providing air transport to the public, is governmental in nature. The defendants further argued that their protest activities had expressive content, were consistent with the functions of public areas within airports, and that the location of the defendants' protest, namely the arrivals area of the Calgary Airport, was protected by the *Charter*.

Judge Fradsham acquitted the defendants of all charges, concluding that their section 2(b) *Charter* right to freedom of expression had been unjustifiably infringed.

Judge Fradsham's decision in *R v Booyink*

Do the defendants have a complete defence to the TPA?

Judge Fradsham begins his analysis with a discussion of whether section 8 of the *TPA* affords the defendants with a defence to the charge of trespass by determining whether they "acted under a fair and reasonable supposition that they had a right to do the act complained of."

Judge Fradsham discusses the Canadian and British common law authorities and concludes that the section 8 defence of the *TPA* is available if a defendant can prove that he or she has reasonable grounds for believing that they had a right to enter onto the complainant's property. For Judge Fradsham, this includes a defendant "...who has received legal advice to the effect that he or she had, at the time of the actions undertaken, a legal right to engage in those actions, and who has no reason to doubt the accuracy of that legal advice" (*Booyink* at para 65). Judge Fradsham concludes that the defendants had a reasonable basis for believing that they had a right to protest in the Calgary Airport. The defendants were aware of the *Commonwealth* decision and relied upon it as the legal basis for justifying their activities in the Calgary Airport. The mere fact that they were told by a Calgary Airport official that the *Commonwealth* decision did not apply was not sufficient to undermine the reasonableness of that belief.

The test which Judge Fradsham establishes for proving a section 8 defence to a charge of trespass raises serious issues for municipalities wishing to use the *TPA* as a mechanism for excluding trespassers from government property. Protesters are becoming more sophisticated in their knowledge about their legal rights and, more often than not, obtain legal advice or review freely available public legal information. It is increasingly rare to find committed activists unaware of the *Charter*, leading Supreme Court of Canada jurisprudence or applicable legislation. It will therefore be relatively simple for a defendant to a *TPA* charge to demonstrate (and correspondingly difficult for the state to refute) that they had a reasonable basis for believing they had a right to enter onto government property to engage in protest. This is especially true where, as here, protesters obtain legal advice, reasonably believe that the advice is correct and consequently, that they are lawfully entitled to come onto another's property and protest.

However, should the mere reliance on legal advice and the belief that this advice provides a legal justification for engaging in the act complained of serve as a complete defence to a trespass charge? Or, should the person relying on that advice have to prove that the advice is correct in law, thereby providing them with the necessary justification for their actions? What if the legal advice acted upon is subsequently found to be wrong or is based upon case law that is later reversed on appeal? And isn't case law subject to interpretation?

The difficulty with the current "fair and reasonable supposition" defence set out in section 8 of the *TPA* as interpreted by Judge Fradsham is that it lacks an objective test, leaving authorities in Alberta with fewer tools to prevent protesters from coming onto government-owned property and engaging in public protest.

Is the Calgary Airport Authority a government entity to which the Charter applies?

In *Booyink*, one of the legal questions which occupied much of the written submissions of both parties was whether the CAA is a government entity pursuant to section 32 of the *Charter*. Section 32 states the *Charter* applies to Parliament (including the Yukon Territory and the Northwest Territories) and to the Provincial legislatures. In order for the CAA to be subject to *Charter* scrutiny, it would need to fall under the purview of section 32.

The CAA is a statutory body created pursuant to the *Regional Airports Authorities Act*, RSA 2000, c R-9 (*RAA Act*), and is granted the capacity, rights, powers and privileges of a natural person. The *RAA Act* expressly codifies a variety of procedural matters affecting the creation and governance of the CAA. It expressly stipulates matters of procedure which the CAA must follow, such as the process to be followed in creating a regional airport authority, rules regarding the appointment of directors, the duties and liabilities of the Authority's members, directors, officers and employees regarding their rights, obligations and appointment, and other requirements such as conducting an annual public meeting.

With respect to the purpose or function of the CAA, section 21 of the *RAA Act* stipulates that the purpose of the regional airport authority in Alberta is to manage and operate airports in a safe, secure and efficient manner. This section further stipulates that the CAA must advance economic and community development by means that include promoting and encouraging improved airline and transportation service and an expanded aviation industry for the general benefit of the public in its region. Further, the Federal Government's *National Airports Policy* sets out the policy reasons for creating Canadian airport authorities and commits the Federal Government to continue with its regulatory obligations in providing for the safe and effective operation of Canadian airports and for aviation safety (*Booyink* at para 108).

In assessing whether the CAA is a governmental entity, Judge Fradsham reviews much of the recent Canadian jurisprudence pertaining to the interpretation of section 32 of the *Charter* and cites heavily from Justice La Forest's reasons in the Supreme Court of Canada decision of *Eldridge et al v British Columbia (Attorney General) et al*, [1997] 3 SCR 624 (*Eldridge*) and Justice Paperny's decision for the Alberta Court of Appeal in *Pridgen v University of Calgary*, 2012 ABCA 139, aff'g 2010 ABQB 664 (*Pridgen*).

In *Eldridge*, one of the issues was whether hospitals in British Columbia and the Medical Services Commission of British Columbia could successfully argue that the *Charter* did not apply to their decisions to deny funding for sign language interpreters because they were private, non-governmental entities. Writing for the Court, Justice La Forest confirmed that private entities may not be exempt from *Charter* scrutiny (*Eldridge* at paras 41 - 44). His Lordship set out two grounds upon which a private entity might be characterized as "government" pursuant to section 32 of the *Charter*: (1) if the entity by its very nature or by virtue of the degree of governmental control exercised over it can properly be characterized as "government," or (2) if the entity carries out an activity which can normally be ascribed to government (*Eldridge* at para 44). In this second category, the question to ask is whether the "nature of the activity itself", or the quality and function of that act, is one which government would normally perform.

In *Pridgen*, two students studying at the University of Calgary (U of C) posted comments to a public wall of Facebook which were critical of a professor teaching one of their courses. The students were found guilty of non-academic misconduct in disciplinary proceedings. The students brought a judicial review application, arguing that the U of C had infringed their

Charter section 2(b) right to freedom of expression. The U of C argued that the *Charter* does not apply to public universities because they are non-governmental bodies and consequently, that universities are immune from *Charter* scrutiny pertaining to disciplinary proceedings of its students. At the Alberta Court of Appeal, Justice Paperny provides a very useful summary of the five categories of government or government activities to which the *Charter* applies: (1) legislative enactments; (2) government actors by nature; (3) government actors by virtue of legislative control; (4) bodies exercising a statutory authority; and (5) non-governmental bodies implementing government objectives (*Pridgen* at paras 79 - 98). (For an excellent discussion of *Pridgen*, see Face-ing the Charter's Application on University Campuses by Jennifer Koshan.)

For both Justice La Forest in *Eldridge* and Justice Paperny in *Pridgen*, the rationale for extending the reach of section 32 of the *Charter* to private entities is to prevent governments from delegating important functions to those entities as a method of seeking immunity from having to withstand *Charter* scrutiny (*Pridgen* at paras 96 -100).

Having reviewed the link between the *RAA Act* and the CAA, the *National Airports Policy* and the Courts' decisions in *Eldridge* and *Pridgen*, Judge Fradsham concludes at paragraph 113 that the CAA *is* "government" as defined in section 32 of the *Charter* because "... [i]n short, the Provincial Government has the power to exercise complete control over virtually all aspects of the CAA." Judge Fradsham asserts at paragraphs 115 and 116 that, in the event he is wrong on that point, he is also of the view that the CAA is "government" by virtue of it performing government activities in operating the Calgary Airport:

> [115] The *National Airports Policy* of the Federal Government makes it clear that the *Policy*, and consequently the creation of the airport authorities, does not change the fact that "the federal government will maintain its role as regulator" of airports such as the Calgary International Airport. The Federal Government continues to be the owner of the airport, but has delegated the operation of the airport to the Calgary Airport Authority... The CAA is simply a new mechanism through which the owner of the Calgary International Airport (i.e., the Federal Government), operates its property....
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> [116] The Federal Government owns the Calgary International Airport, and one of its governmental functions is to operate that property. The Federal Government has chosen a new way of operating that property, that is, through the Calgary Airport Authority. The Calgary Airport Authority in operating the Calgary International Airport for the Federal Government is performing, on behalf of the Federal Government, the governmental activity of operating the airport.

There is a strong argument to be made that government should not be able to shirk its *Charter* obligations by a delegation of its powers to ostensibly private, non-governmental entities. To be allowed to do so would eviscerate the public's ability to hold government accountable when its actions run afoul of the *Charter*. Consider, for example, a public service managed and operated by a municipality for the purpose of fulfilling some governmental function or purpose. Should a municipality be able to avoid its *Charter* obligations merely by privatizing or downloading those services onto an ostensibly arms-length private contractor?

Much like the maintenance and operation of bus stops, train stations and other municipal transit infrastructure, the regulation, operation and maintenance of public air travel facilities such as airports comprise a governmental function. The potential for abusive application of trespass

legislation would be considerable if private contractors were left in charge of deciding who gets to access those facilities. The impact upon a person banned from using their city's only public airport could be devastating to their ability to exercise those fundamental life choices which go to exercising their personal individual autonomy and dignity protected by section 7 of the *Charter*. (For a broader discussion, see Transporting Liberty: A Right Not to be Deprived of Access to Public Transit by Jennifer Koshan and Transporting Liberty: Where is the Track Heading? by Ola Malik and Heather Beyko.)

Did the CAA infringe upon the defendants' right to freedom of expression?

In *Booyink*, Judge Fradsham concludes that the protest activities carried out by the defendants in the arrivals area of the Calgary Airport are protected by section 2(b) of the *Charter* (*Booyink* at para 134). This is unsurprising given the Supreme Court of Canada's decisions in *Commonwealth* and *Montréal (City) v 2952-1366 Québec Inc*, 2005 SCC 62, [2005] 3 SCR 141 (*Montréal (City)*) regarding the test to meet in establishing that expressive activity carried out on government-owned property is protected by section 2(b) of the *Charter*.

Judge Fradsham finds that the messages conveyed through the defendants' words and conduct have expressive content as per the Supreme Court of Canada's decision in *Irwin Toy Ltd v Québec (Attorney General)*, [1989] 1 SCR 927 (*Irwin Toy*) bringing the expressive activity within the protective scope of section 2(b) of the *Charter*. This is to be expected give that the test for proving expressive content in *Irwin Toy* is set so low that we wonder whether any lawful activity would not be captured. Indeed, at paragraph 42 of the decision, it was Justice Lamer in *Irwin Toy* who held that an activity as mundane as parking a vehicle may convey meaning and constitute an expressive activity worthy of *Charter* protection.

Judge Fradsham then applies the test outlined by McLachlin C.J.C. in *Montréal (City)* to determine whether the protest activities of the defendants were compatible with the function of the Calgary Airport or fell outside of the protective scope of section 2(b). The test set out by McLachlin C.J.C. asks "whether the place is a public place where one would expect constitutional protection for free expression on the basis that expression in that place does not conflict with the purposes which s. 2(b) is intended to serve, namely (1) democratic discourse, (2) truth finding and (3) self-fulfillment. To answer this question, the following factors should be considered: (a) the historical or actual function of the place; and (b) whether other aspects of the place suggest that expression within it would undermine the values underlying free expression (*Montreal (City)* at para 74).

Judge Fradsham turns to *Commonwealth* in which the majority of the Supreme Court of Canada concurred that the function of areas of airports which are accessible to the public are similar to streets and parks. As Justice La Forest stated in *Commonwealth*:

> [45] I agree with the Chief Justice and McLachlin J. that that freedom does not encompass the right to use any and all government property for purposes of disseminating one's views on public matters, but I have no doubt that it does include the right to use for that purpose streets and parks which are dedicated to the use of the public, subject no doubt to reasonable regulation to ensure their continued use for the purposes to which they are dedicated. I see no reason why this should not include areas of airports frequented by travellers and by members of the public.

In *Commonwealth*, Justice L'Heureux-Dubé drew a distinction between publicly accessible, non-security zones such as lounges, waiting areas, restaurants, gift and cigar shops, newsstands, and the connecting halls and foyers where expressive activity should be expected and those areas of public airports where public expression is clearly not appropriate including inside of airplanes and security zones such as Customs, check-in counters, metal detector surveillance areas and baggage inspection. In *Commonwealth*, Justice L'Heureux-Dubé explained:

> [151] ... [B]us stations and airports have much more in common with streets and parks than they do with the buses or airplanes which they service. These locations are "contemporary crossroads" or "modern thoroughfares", and thus should be accessible to those seeking to communicate with the passing crowds.
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> .....
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> [153] Airports also draw a tremendous number of travellers over the course of a day... Bus, train and airport terminals are indeed modern boulevards, extensions of Main Street. The list of sites traditionally associated with public expression is not static. As means of locomotion progress, people shall begin to gather in areas heretofore unknown. Hence the "traditional" component of the public arena analysis must appreciate the "type" of place historically associated with public discussion, and should not be restricted to the actual places themselves.
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> .....
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> [155] ... [The] respondents did not select the airport in order to convey their message to planes, but rather chose the airport for the people who would be present within it. While airport terminals do not have a monopoly on high concentrations of passers-by, few locations offer similar opportunities to encounter such a wide cross-section of the community. For the aforementioned reasons, and upon consideration of the above factors, the non-security zones within airport terminals, in my view, are properly regarded as public arenas. Therefore, the government cannot simply assert property rights, or claim that expression is unrelated to an airport's function, in order to justify the restriction.

Drawing from the majority's decision in *Commonwealth*, Judge Fradsham finds in *Booyink* that the defendants' protest is protected by the *Charter* by virtue of its location within the public area of the Calgary Airport and that the CAA had infringed upon the defendants' rights to freedom of expression when it issued them with its trespass notices pursuant to the *TPA*:

> [135] [T]he defendants' words and conduct were protected under section 2(b) as a result of their location. The Airport is public or government-owned property. *Montreal* states that the *Charter* will protect public property where the historical or actual function of the place is compatible with free expression. Based on *Committee*, the Airport attracts *Charter* protection, because it is the type of place that has traditionally served as a public forum. Airports allow members of the community to meet, congregate, and travel to other destinations. The Airport is therefore the modern equivalent of a city street. In light of this characterization, the Airport is a place that is historically protected under the *Charter*.

> [136] In addition to the Airport's historical function, the actual function of the Airport is compatible with the defendants' right to free expression. The Defendants were not in a security zone that may require more privacy; rather, the Defendants were at the Arrivals level of the Airport which serves as a connecting hall, foyer, and waiting area. Such areas are open to the public and conducive to fulfilling the purposes underlying section 2(b): that is, democratic discourse, truth finding, and self-fulfillment. The location of the defendants' expression was therefore protected under the *Charter*.
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> [137] Given that the defendants' words and conduct were protected under section 2(b) of the *Charter*, the only issue to be determined is whether the Authority's actions infringed the defendants' freedom of expression. … The legislation […] does have the effect of limiting the defendants' freedom of expression. Moreover, the defendants' expression arguably promoted one of the values underlying section 2(b): that is, self-fulfillment. The defendants' expression promoted self-fulfillment because it allowed the defendants to articulate, justify, and seek support for their own deeply-held beliefs and opinions. The defendants have successfully established a breach of section 2(b).

Having found an infringement on the defendants' section 2(b) *Charter* rights, Judge Fradsham concludes that there is no evidence to justify the infringement pursuant to section 1 of the *Charter* (it does not appear from the judgement that the Crown led any evidence justifying the infringement).

We have argued above that airports are similar in their purpose to public transit facilities and should be treated alike as far as the placing of limits on expressive activity. The Quebec Court of Appeal has held that a bylaw which allowed for the distribution of pamphlets inside a subway station (except for those areas critical to passenger circulation and safety) did not constitute an infringement on the section 2(b) *Charter* right (*Société de transport de la Communauté urbaine de Montréal v Robichaud*, 1997 CanLII 10417, 147 DLR (4th) 235). In *Société de transport*, the Court held that it was reasonable to restrict pamphleteering in areas of the station which were for the exclusive benefit of those who had paid a fare and which served as "...corridors, transit areas and platforms that lead, in a subway station, from the turnstile to the train." (at para. 27) And a bylaw prohibiting pamphleteering on transit property was found to infringe upon a political campaigner's rights to hand out election materials when he was standing beside the steps leading up to a train station, the Court found that the public area outside of a subway station could be distinguished from the restricted "fare-paid" zone in *Société de transport* (*Churchill v Greater Vancouver Transportation Authority*, 2001 BCSC 572).

It is a challenge for municipalities to restrict or limit expressive activity which occurs on property found to be synonymous with a public city street. This is because public streets have traditionally been considered to be a natural location for people to communicate with one another. It is argued that the public street gives you the choice of engaging with the protester or avoiding them if you find the message offensive or disagreeable -- you can avert your eyes or cross the street if you don't like the message coming from the person yelling into the bullhorn or printed in large type on a placard. But is this choice always that simple or obvious?

Protesters calculate the time of the day, day of the week, location for protest and method of communication which is likely to reach as many people as possible and have the largest possible impact. In considering the CCBR's tactics which by its own account are clearly intended to be

antagonistic, combative and provocative, is it realistic to believe that the public can avoid the CCBR by simply looking away or choosing another route? While waiting for your luggage or the arrival of your family in an airport concourse, how easy is it for you to avoid looking at the graphic, bloody placards depicting aborted foetuses? Do your children, sitting in the back seat of your car in a traffic jam have any choice other than to stare at the same placard (only bigger) affixed to the back of the van in front of your car? How free do you feel to avoid a protester's message when the sidewalk you are walking along is flanked on both sides by protesters yelling at you into bullhorns and shaking their placards?

We wonder whether the "captive audience" doctrine might apply in appropriate circumstances to place sensible limits on expressive activity which occurs in a public place. While the doctrine has been relied upon in limited cases to justify restrictions on expressive activity at abortion clinics (*R v Spratt*, 2008 BCCA 340), and in the lobby of a courthouse, municipal hall and fire station (*R v Breeden*, 2009 BCCA 463), it has not yet been more generally applied to justify an infringement on expressive activity which takes place on a public street. In the Ontario case of *Ontario (Attorney General) v Dieleman*, 1994 CanLII 7509, 117 DLR (4th) 449 (Ont GD), Justice Adams summarized the captive audience doctrine as follows:

> [637] It has also been held that freedom of expression assumes an ability in the listener *not* to listen but to turn away if that is her wish. The *Charter* does not guarantee an audience and, thus, a constitutional right to listen must embrace a correlative right *not* to listen. In *Committee for the Commonwealth of Canada v. Canada, supra*, at pp. 204-05, L'Heureux-Dubé J., in considering the access of would-be speakers to an airport terminal, dealt with the concern that such access could result in exposing "captive viewers or listeners" to unwanted messages. In this respect, she reproduced and approved the following excerpt from the reasons of Douglas J. in *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) at pp. 306-307:
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> > ... if we are to turn a bus or a streetcar into either a newspaper or a park, we take great liberties with people who because of necessity become commuters and at the same time captive viewers or listeners.
> >
> > In asking us to force the system to accept his message as a vindication of his constitutional rights, the petitioner overlooks the constitutional rights of the commuters. *While petitioner clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it*. In my view the right of the commuters to be free from forced intrusions on their privacy precludes the city from transforming its vehicles of public transportation into forums for the dissemination of ideas upon this captive audience.
> >
> > (Emphasis added)
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> [638] The principle behind a constitutional aversion to "captive audiences" is that forced listening "destroys and denies, practically and symbolically, that unfettered interplay and competition among ideas which is the assumed ambient of the communication freedoms." See Black Jr., "He Cannot Choose but Hear: The Plight of the Captive Auditor" (1953), 53 Columbia L. Rev. 960 at p. 967. Free speech, accordingly, does

> not include a right to have one's message listened to. In fact, an important justification for permitting people to speak freely is that those to whom the message is offensive may simply "avert their eyes" or walk away. Where this is not possible, one of the fundamental assumptions supporting freedom of expression is brought into question.

It does not appear that the captive audience doctrine was argued before Judge Fradsham and we are not clear as to whether it would even apply to the facts before him. We are curious to see whether this doctrine might attract greater judicial treatment and tilt the pendulum towards greater restrictions and limitations with respect to the rights of protest on public property.

Conclusions

The demands on public space are becoming greater as cities grow and populations become more diverse. Increasing pressures are being brought to bear on the vexing question of how to share public space and how to accommodate an increasingly diverse public use of this space. We would suggest that recent decisions in Alberta such as *R v Whatcott*, 2012 ABQB 231, aff'g 2011 ABPC 336, *R v Pawlowski*, 2011 ABQB 93, rev'g 2009 ABPC 362, leave to appeal to ABCA granted, and *Booyink*, in which challenges have been made to governments' regulation of public space, serve as a reminder that the debate over the purpose of public space is far from over.

POSTCRIPT

It does not appear that the Crown has filed an appeal of Judge Fradsham's decision. The appeal period has now expired.

The Calgary Airport Authority has filed a Statement of Claim (1301-06153) which seeks an injunction against the Centre for Bio-Ethical Reform enjoining its members from trespassing onto Calgary Airport lands and premises and further, claims damages in the sum of $500,000.00. The Statement of Claim was filed prior to Judge Fradsham's decision and it is unclear whether the Calgary Airport Authority intends to proceed with civil proceedings.

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