



# Justice Centre for Constitutional Freedoms

April 14, 2016

VIA EMAIL AND REGULAR MAIL

St. Catharines Public Library Board  
54 Church Street,  
St. Catharines, ON L2R 7K2  
admin@stcatharines.library.on.ca

Dear Board Members,

***RE: Request to Reverse Decision to Reject Senior's Alert Newsletter***

We write on behalf of Mary Stanko, the editor of the combined Senior's Alert and Good Neighbours Newsletter ("SA/GN Newsletter"). It has been brought to our attention that the Library Board rejected Ms. Stanko's appeal to place the Spring 2015 SA/GN Newsletter in the pamphlet and newsletter stands at the Central Library and Branches (the "Decision").

The *Canadian Charter of Rights and Freedoms* requires that the Library Board's Decision must respect Ms. Stanko's freedom of expression. In light of the facts of this case, the Decision violates Ms. Stanko's freedom of expression, and would be held to be so by a court.

We request that the Library Board respect Ms. Stanko's freedom of expression and direct that the Spring 2015 SA/GN Newsletter be posted in the pamphlet and newsletter stands at the Central Library and Branches for a period of three weeks.

**The SA/GN is an Educational and Cultural Publication**

In a letter dated December 9, 2015, Library CEO Ms. Stripnieks writes on behalf of the Library Board that it did not feel that the Spring 2015 SA/GN Newsletter met the criteria of the Library's *Operational Policy and Guidelines for Posting on Library Notice Boards and Distribution of Bulk Materials*. Both of these documents seek to implement the same policy, which states:

The Central Library and Branches have notice boards that may be used for the posting of public notices of an educational and cultural nature.

The Spring 2015 SA/GN Newsletter is comprised of an editorial critique of social events, information on Niagara's Folk Arts Festival, information on a Seniors' Day event, a Transit update, a report on Good Neighbours events, and a historical sketch of two local credit unions.

"Educational" is commonly defined as "tending or intended to educate, instruct, or inform".<sup>1</sup> "Cultural" relates to "culture" which includes "the behaviors and beliefs characteristic of a particular social, ethnic, or age group".<sup>2</sup>

<sup>1</sup> <http://www.dictionary.com/browse/educational>

<sup>2</sup> <http://www.dictionary.com/browse/culture>

In light of the foregoing, to hold that the Spring 2015 SA/GN Newsletter is not “educational” and “cultural” is entirely unreasonable. The St. Catharines Public Library has been distributing the Senior’s Alert for the past 18 years, confirming that its nature met Library criteria. *See* attached copies of the SA/GNs which had been distributed by the Library in prior years, as well as those in the Library archives, since 1997.

Thus, it is only reasonable to conclude that the Library Board’s Decision was not based on a neutral application of the criteria, but in fact was premised on a disagreement with the contents of the Spring 2015 SA/GN Newsletter.

### **The Decision Violates Ms. Stanko’s Freedom of Expression**

The St. Catharines Public Library is a branch of the government and thus bound to respect the *Charter* rights of citizens, including particularly their freedom of expression.

Initially, it is important to note that ours is a “free and democratic society”: section 1 of the *Charter*. In the words of the Supreme Court of Canada, “[a] truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct.” *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at p 336.

The Library is a public space, and the Library Board must remain neutral and neither “favour nor hinder any particular belief, and the same holds true for non-belief”: *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at para 72. It is very important to note however, that “[n]eutrality is required of institutions and the state, not individuals”: *Saguenay*, at para 74. A government or institution does not violate its neutrality by permitting individuals to express their views publicly. Rather, government and institutions violate their duty of neutrality by not permitting individuals to publicly express their views.

The *Charter* protects freedom of expression “so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream”: *Saskatchewan (Human Rights Commission v Whatcott)*, 2013 SCC 11, at para 50. As stated by Justice McLachlin (as she then was) in *R v Zundel*, [1992] 2 SCR 731, at p 753: “the guarantee of freedom of expression serves to protect the right of the minority to express its view, however unpopular it may be; adapted to this context, it serves to preclude the majority's perception of ‘truth’ or ‘public interest’ from smothering the minority's perception.”

In light of “[t]he purpose of the guarantee [] to permit free expression to the end of promoting truth, political or social participation, and self-fulfillment” (*Zundel*, at p 752), the Library Board’s Decision cannot be justified in our free and democratic society.

Ms. Stanko, who holds a master’s degree in education, wrote in the Spring 2015 SA/GN Newsletter articulating and expressing her views on social events, much like she had done in the previous years. To deny her appeal to have the Spring 2015 SA/GN Newsletter placed on the

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pamphlet and newsletter stands in the Central Library and Branches is to disregard and violate her *Charter* protected freedom of expression.

### **Conclusion**

I trust that the principles discussed above reveal why the Decision was inappropriate and must be reversed. In order to rectify the violation of Ms. Stanko's *Charter* rights, we request that the St. Catharines Public Library Board order that the 50 copies of the Spring 2015 SA/GN Newsletter refused but retained by the Library be placed in the pamphlet and newsletter stands in the Central Library and Branches for a period of three weeks beginning no later than May 1, 2016. Ms. Stanko will provide an insert about current events of interest to seniors.

We request your response no later than April 25, 2016.

Sincerely,



Marty Moore  
Barrister and Solicitor  
Justice Centre for Constitutional Freedoms

Enclosures

cc: L. Stripnieks, CEO, St. Catharines Public Library