**CITATION:** *Katerberg v. Ontario (Ministry of Transportation),* 2026 ONSC 3991
**COURT FILE NO.:** DC-25-00002233-00JR
**DATE:** 20260709

# ONTARIO
# SUPERIOR COURT OF JUSTICE
# DIVISIONAL COURT

**Raikes, Sutherland and Schreck JJ.**

| | |
|---|---|
| **BETWEEN:** | |
| **GEORGE KATERBERG**<br>*Applicant* | *C. Fleury and D. Leung,* for the applicant |
| **– and –** | |
| **HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF TRANSPORTATION**<br>*Respondent* | *J. Hunter and R. Amarnath,* for the respondent |
| | **HEARD:** April 9, 2026 |

## REASONS FOR JUDGMENT

**SCHRECK J.:**

[1] George Katerberg believes that COVID-19 vaccines are ineffective and dangerous and that the government knowingly misled the public by suggesting that they were not. Mr. Katerberg decided to communicate his beliefs to others, so he created a large sign identifying a number of political figures with a message stating that they lied about the vaccines. He placed the sign on a billboard he had rented on the side of Highway 17, near Thessalon, Ontario, which has been designated by the Ministry of Transportation ("the Ministry") as a "bush country highway."

[2] Ministry officials contacted Mr. Katerberg and told him that he had to remove his sign because it failed to comply with Ministry policy. Mr. Katerberg removed the sign, made revisions to it, and then sought permission to put it back up. The Ministry refused to allow him to do so.

While the Ministry offered various explanations for its decision, it ultimately relied on a policy manual which states that billboards on bush country highways "shall only promote goods and services or authorized local events offered by, or related to, businesses, municipalities, charities, not for profit organizations, or Indigenous communities." Political speech is excluded from the list of permissible messaging.

[3] Mr. Katerberg applies to this court for judicial review of the decision refusing him permission to put up his sign and seeks a declaration that the Ministry policy infringes his right to freedom of expression guaranteed by s. 2(*b*) of the *Canadian Charter of Rights and Freedoms.* The Ministry opposes the application. It submits that the type of expression Mr. Katerberg wishes to engage in is not protected by s. 2(*b*) in the circumstances of this case because the Ministry has not historically permitted political expression on bush country highway billboards. In the alternative, the Ministry submits that any infringement of Mr. Katerberg's rights is justified by s. 1 of the *Charter.*

[4] I would grant the application and issue a declaration that the Ministry policy at issue infringes s. 2(*b*) of the *Charter,* is not justified pursuant to s. 1, and is of no force or effect. Regardless of what the Ministry has historically permitted, it has decided to permit some types of expression on bush country highways and prohibit others and this type of attempt to regulate the content of expression engages and infringes s. 2(*b*). The infringement is not justified by s. 1. While the Ministry's identified objective of maintaining the integrity of bush country highways is pressing and substantial, there is no rational connection between the objective and the infringing measure.

[5] The following reasons explain these conclusions. It should be noted that this case is about Mr. Katerberg's freedom to express his views and not the correctness of those views. Nothing in these reasons should be read as endorsing or censuring Mr. Katerberg's views about the safety or efficacy of COVID-19 vaccines or any government policies respecting those vaccines.

## I. FACTS

### A. The Applicant's Sign

[6] The applicant, George Katerberg, is a retired self-employed business owner who lives in in the Ontario Municipality of Huron Shores. Based on his own observations and information he obtained from social media and other sources, he came to believe that vaccines introduced during the COVID-19 pandemic were ineffective and harmful. He also believed that various politicians and public officials who had stated that the vaccines were safe and effective were deliberately misleading the public. As a result, the applicant strongly opposed public policies that imposed any type of restriction on unvaccinated individuals.

[7] At some point in 2022, the applicant decided to put up a sign setting out his views about certain politicians and public officials who had advocated for the use of COVID-19 vaccines. He came across a billboard located for rent at the side of Highway 17, near Thessalon, Ontario, and arranged to rent it for one year at a cost of $500. The billboard was on the highway right-of-way, land owned by the Ministry.

[8] The applicant created a sign designed to occupy the full area of the billboard, which was approximately eight feet (2.44 metres) wide and 16 feet (4.88 metres) high. On the sign were photographs of the faces of the following individuals, who at the time held offices as elected or appointed public officials: Justin Trudeau (Prime Minister of Canada), Chrystia Freeland (Deputy Prime Minister of Canada), Jagmeet Singh (Leader of the Federal New Democratic Party), Doug Ford (Premier of Ontario), Dr. Theresa Tam (Chief Public Health Officer of Canada) and Dr. Anthony Fauci (Chief Medical Advisor to the President of the United States).

[9] The following text appeared at the top of the sign: "THEY KNOWINGLY LIE ABOUT SAFETY AND STOPPING TRANMISSION [*sic*]." Also included on the sign was a logo the applicant created which depicted two hammers in an "X" formation with a Canadian flag on top of them. The applicant had obtained the picture of the hammers from the cover of the album "The Wall" by the group Pink Floyd.

[10] On a date in March 2024, the applicant affixed his sign to the billboard he had rented so that it would be visible to people using Highway 17.

### B. The Regulation of Signs on Bush Country Highways

[11] Highway 17 is one of several highways that have been designated by the Ministry as a "bush country highway." Kevin DeVos, a Head of Corridor Management employed by the Ministry whose affidavit is part of the record, explained the meaning of the designation:

> Highways are designated as Bush Country Highways when considerable amounts of bush (trees, shrubs, etc.) adjacent to the highway do not allow for the normal setback of a sign on private property.

[12] The placement of signs on public highways is governed by the *Public Transportation and Highway Improvement Act,* R.S.O. 1990, c. P.50 ("the Act"). Section 34(2)(*c*) of the Act provides that subject to certain exceptions that are not relevant to this case, no person shall display a sign within 400 metres of the limit of a highway except under a permit from the Minister of Transportation. The issuance of permits is governed by s. 34(16), which provides as follows:

> 34. (16) The Minister may issue permits under this section in such form and upon such terms and conditions as he or she considers proper, and may in his or her discretion cancel any such permit at any time.

### C. The Ministry's Response

*(i) The Ministry's First Reason for Refusing Permission*

[13] On March 13, 2024, the applicant was contacted by Christopher Marsh, a Corridor Management Officer with the Ministry, who told him that the sign had to be taken down because it violated certain policies respecting the promotion of hatred because the logo the applicant had

designed was a "symbol of white supremacy." The applicant complied with the direction to take down the sign the following day.

*(ii) The Ministry's Second Reason for Refusing Permission*

[14] The applicant did not agree that the logo on the sign had any association with white supremacy and did not intend for it to convey any such ideas. He nonetheless revised his sign by removing the logo and correcting a spelling error in the word "transmission." The new sign was otherwise identical to the original sign.

[15] On June 18, 2024, the applicant sent Mr. Walsh an e-mail which included a photograph of the new sign and advised him that he proposed to place it on the billboard. On June 28, 2024, Mr. Walsh sent an e-mail in response which stated:

> After careful consideration, the decision has been made that the MTO will not permit the installation of your proposed billboard on a provincial highway in Ontario. The message on the billboard may be seen as promoting hatred or contempt for the individuals pictured on the billboard which may violate certain policies regarding advertising.

Mr. Walsh did not specify which policies he was referring to.

*(iii) The Ministry's Third Reason for Refusing Permission*

[16] After receiving Mr. Walsh's e-mail, the applicant retained counsel, who commenced an application for judicial review of the Ministry's decision. The application was later abandoned after the Ministry acknowledged that the sign did not promote hatred and agreed to reconsider its decision not to permit it.

[17] On May 25, 2025, the applicant was provided with a written decision ("the Decision") from the Ministry denying him permission to the put up his sign for reasons which included the following:

> The Ministry acknowledges that this decision impacts the Applicant's right to freedom of expression which is protected under section 2(*b*) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and that the proposed billboard is a form of political expression that lies at the core of the *Charter's* guarantee of freedom of expression. The Ministry recognizes that it cannot reject the proposed billboard because it is political expression and/or because some people may be offended by it.
>
> The Ministry will not permit the Applicant's proposed billboard to be placed at its proposed location.

> The reason for not permitting it is not the content of the proposed billboard but rather it is because of the proposed location on Ministry-owned lands along Highway 17, which is a bush country highway. The Ministry, as occupier of Ministry owned lands, did not historically permit billboards along bush country highways. The Ministry began permitting bush country highways to support their immediate communities.
>
> The Ministry never intended for bush country billboards to be used to promote causes of any kind (*i.e*., political, social, etc.). With that said, the Ministry acknowledges that there may have been some past inconsistency in the application of the Ministry's intention with bush country billboards.

The decision went on to explain that to remove any ambiguity, the Ministry had clarified its policy as set out in the *Highway Corridor Management Manual* (which is described later in these reasons).

**D. The Ministry's Policy**

[18] At the time the applicant first put up his sign, signage on all Ontario highways was subject to rules set out in the Ministry's *Highway Corridor Management Manual,* dated April 2022 ("the 2022 Manual"). The only rule with respect to the contents of billboards was set out in s. 5.7.1:

> 5.7.1 The message on the billboard must not promote violence, hatred, or contempt against any identifiable group. Identifiable group means any section of the public distinguished by colour, race, religion, ethnic origin, sexual orientation or disability.

Section 5.8 of the 2022 Manual set out requirements for billboards on bush country highways. The only rule with respect to content was s. 5.8.2.1, which contained wording identical to that in s. 5.7.1.

[19] A new *Highway Corridor Management Manual* was released in April 2025 ("the 2025 Manual"). There were no changes to s. 5.7.1, which applies to billboards on all highways. However, the rule with respect to the content of billboards on bush country highways was amended and now reads as follows:

> 5.8.2.1. A billboard sign on private property adjacent to a Bush Country highway must meet the messaging requirements set out in Section 5.7.1.
>
> A billboard sign on the highway [right of way] must meet the following requirements in addition to the messaging requirements set out in Section 5.7.1.:

a. Shall only promote goods and services or authorized local events offered by, or related to, businesses, municipalities, charities, not-for-profit organizations, or Indigenous communities.

b. Shall not demean, denigrate, or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule.

c. Shall not undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

d. Shall be in accordance with the Canadian Code of Advertising Standards.

e. Shall have no adverse effect on public safety or liability to the Ontario government.

[20] Mr. DeVos, the Ministry Head of Corridor Management, stated in his affidavit that the Manual "guides Ministry staff in determining whether to issue … permits." He also stated:

> Although it was never stated expressly in the Manual, I have been informed by Ministry staff and believe that the Ministry intended for Bush Country Billboards to support local communities and businesses near these highways. In April 2025, the Ministry revised the Manual to make its policy intention for Bush Country Billboards clear to staff and individual applicants alike.

## II. ANALYSIS

### A. Jurisdiction and Standard of Review

[21] The Ministry's decision is reviewable by this court pursuant to ss. 2 and 6(1) of the *Judicial Review Procedure Act,* R.S.O. 1990, c. J.1. Although the standard of review of an administrative decision is presumptively reasonableness, decisions on the applicability of the *Charter* and the scope of the protection it provides are reviewable for correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 53, 55; *York Region District School Board v. Elementary Teachers' Federation of Ontario,* 2024 SCC 22, 492 D.L.R. (4th) 613, at paras. 62-63.

### B. Overview of the Issues

*(i) The Analytic Framework*

[22] Section 2(*b*) of the *Charter* provides:

> 2. Everyone has the following fundamental freedoms:
>
> . . . .
>
> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

[23] The analytic framework to apply in determining whether there is a violation of s. 2(*b*) is well-established. To resolve such claims, the court must answer four questions:

> (1) Does the communication in question have expressive content, thereby bringing it within s. 2(*b*)'s scope of protection?
>
> (2) If so, does the method or location of the expression remove that protection?
>
> (3) If the expression is protected by s. 2(*b*), is there government action which infringes that protection, either in purpose or effect?
>
> (4) If s. 2(*b*) is infringed, is the infringement justified under s. 1 of the *Charter*?

See *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component,* 2009 SCC 31, [2009] 2 S.C.R. 295, at para. 37; *Montréal (City) v. 2952-1366 Québec Inc.,* 2005 SCC 62, [2005] 3 S.C.R. 141, at paras. 56, 86; *Irwin Toy Ltd. v. Québec (Attorney General),* [1989] 1 S.C.R. 927, at pp. 978-979.

*(ii) The Positions of the Parties*

[24] In this case, there is no issue with respect to questions (1) and (3). The applicant's sign contains expressive content bringing it within the scope of s. 2(*b*), and unless that protection is removed by the method or location of the expression, the Ministry's decision prevents the expression.

[25] The parties disagree however, with respect to questions (2) and (4). It is the Ministry's position that the location of the billboard on Ministry property removes it from the scope of s. 2(*b*). In the alternative, the Ministry submits that any violation of s. 2(*b*) is justified under s. 1.

**C. Is the Applicant's Sign Protected by Section 2(*b*) of the *Charter*?**

*(i) The Scope of Section 2(b) of the Charter*

[26] Not all expression is protected by s. 2(*b*) of the *Charter*. For example, since the *Charter* only applies to government action, restrictions on expression imposed by private actors on private property do not engage s. 2(*b*). However, the fact that expression occurs on government-owned

property is not, by itself, sufficient to engage s. 2(*b*). Rather, whether s. 2(*b*) is engaged will depend on the circumstances outlined in *Montréal (City),* at para. 74:

> The basic question with respect to expression on government-owned property is 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.

[27] Examples of government-owned places that are beyond the scope of s. 2(*b*) protection as a result of the application of the *Montréal (City)* test include courthouses and municipal halls (*R. v. Breeden,* 2009 BCCA 463, 277 B.C.A.C. 164, at paras. 21-22), a flagpole at city hall (*Vietnamese Association of Toronto v. Toronto* (2007), 85 O.R. (3d) 656 (Div. Ct.), at para. 19), and provincially-issued licence plates (*Grabher v. Nova Scotia (Registrar of Motor Vehicles),* 2021 NSCA 63, 461 D.L.R. (4th) 710, at para. 58).

[28] The respondent submits that s. 2(*b*) protection does not apply in this case for several reasons which can be distilled into three main categories:

> (1) The Ministry has historically limited expression on bush country highway rights of way to communications intended to support local communities and businesses;
>
> (2) The actual function of the highway right of way, which is to safely and efficiently convey motorists to their destinations, would be undermined by unregulated expression;
>
> (3) The applicant could have expressed himself by putting his sign on private property adjacent to the right of way.

*(ii) Historical and Actual Use*

[29] The historical function of a place for public discourse can be established by evidence: *Montréal (City),* at para. 79. In this case, it is difficult to make findings about the historical function of bush country highways as places for public discourse as the record is somewhat sparse. Mr. DeVos stated in his affidavit that he had been informed by "Ministry staff" that the Ministry "intended for Bush Country Billboards to support local communities and businesses near these highways," but said nothing about whether the historical use of the highways reflected that intention.

[30] The Decision itself stated that the Ministry "did not historically permit billboards along bush country highways," but began to do so at some unspecified time. The Decision confirmed Mr. DeVos's evidence that the Ministry intended for the billboards to support local communities, but also acknowledged that "there may have been some past inconsistency in the application of the Ministry's intention with bush country billboards."

[31] It should be noted that although Mr. DeVos and the Decision suggest that the Ministry's policy is intended to support local communities, s. 5.8.2.1 of the 2025 Manual is broadly worded and permits only signs that "promote goods and services *or* authorized local events." On its face, the goods and services being promoted need not be related to a local community. During the hearing, counsel for the respondent acknowledged that the policy permits commercial advertising by any business, not only those in local communities.

[32] Evidence of historical use is only relevant insofar as it answers the "basic question" in *Montréal (City),* which is whether the public place in question is somewhere "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." In this case, that question can be answered by evidence that the Ministry currently permits bush country highways to be used for public expression. This was also the case in *Greater Vancouver,* at para. 41:

> The fact that the historical function of a place included public expression *or that its current function includes such expression* is a good indication that expression in that place is constitutionally protected.
>
> . . . .
>
> While it is true that buses have not been used as spaces for this type of expressive activity for as long as city streets, utility poles and town squares, there is some history of their being so used, *and they are in fact being used for it at present*. *As a result, not only is there some history of use of this property as a space for public expression, but there is actual use -- both of which indicate that the expressive activity in question neither impedes the primary function of the bus as a vehicle for public transportation nor, more importantly, undermines the values underlying freedom of expression*. [Emphasis added].

[33] The fact that billboards on bush country highways may have historically been used for expression for the purpose of supporting local businesses and communities rather than political expression is not relevant to the s. 2(*b*) analysis. This too follows from *Greater Vancouver,* at para. 40:

> The trial judge found that there was no history of political advertising on the sides of buses …. For him, this finding was

> pivotal. *However, content is not relevant to the determination of the function of a place.* [Emphasis added].

This is consistent with the doctrine of content-neutrality, one of the central tenets of the s. 2(*b*) jurisprudence for over three decades, which was recognized in *Irwin Toy* and described in *R. v. Keegstra,* [1990] 3 S.C.R. 697, at p. 729:

> Apart from rare cases where expression is communicated in a physically violent form, the Court [in *Irwin Toy*] thus viewed the fundamental nature of the freedom of expression as ensuring that "if the activity conveys or attempts to convey a meaning, it has expressive content and *prima facie* falls within the scope of the guarantee" (p. 969). In other words, the term "expression" as used in s. 2 (*b*) of the *Charter* embraces all content of expression irrespective of the particular meaning or message sought to be conveyed (*Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [[1990] 1 S.C.R. 1123], at p. 1181, per Lamer J.).

See also *Canada (Human Rights Commission) v. Taylor,* [1990] 3 S.C.R. 892, at p. 914; *R. v. Zundel,* [1992] 2 S.C.R. 731, at p. 753; *Libman v. Québec,* [1997] 3 S.C.R. 569, at para. 31; *R. v. Lucas,* [1998] 1 S.C.R. 439, at para. 25; *R. v. Sharpe,* 2001 SCC 2, [2001] 1 S.C.R. 45, at para. 145; *Canada (Attorney General) v. JTI-Macdonald Corp.,* 2007 SCC 30, [2007] 2 S.C.R. 610, at para. 60.

[34] In para. 36 of its factum, the respondent has attempted to distinguish *Greater Vancouver* on the basis that in that case, "there was both historical and actual use of buses as a space for unregulated public expression," whereas in this case, there is purportedly no history of "unregulated" public expression on bush country billboards.

[35] With respect, this submission is based on an erroneous understanding of the facts in *Greater Vancouver,* resulting in a misinterpretation of the court's analysis. There was no history of "unregulated" public expression in *Greater Vancouver.* To the contrary, as in this case, the evidence was that the sides of buses had never been used for political expression, as was explained in the trial decision, *Canadian Federation of Students (British Columbia Component) v. British Columbia (Greater Vancouver Transportation Authority),* 2006 BCSC 455, 266 D.L.R. (4th) 403, at para. 77:

> There is some additional evidence of significance relating to this issue. There is the undisputed evidence that the outsides of the defendants' transit buses have never been used to display political advertisements, advocacy advertising, or matters of public controversy. (It appears that on one or two occasions, Translink made inadvertent mistakes in this regard, in the implementation of their policy.) The evidence shows that the defendants have, for years, displayed commercial and public service advertisements, both inside and outside their buses.

See also *Greater Vancouver* (S.C.C.), at paras. 6, 40.

[36] For these reasons, as in *Greater Vancouver,* there is nothing in the historical or actual function of billboards on bush country highways that would suggest that they are outside the scope of s. 2(*b*) protection. To the contrary, the evidence in the record demonstrates that one would expect constitutional protection for free expression on bush country highway billboards.

*(iii) Other Aspects of the Place*

[37] The second factor in the *Montréal (City)* test is to consider whether other aspects of the place suggest that expression within it would undermine the values underlying free expression. The respondent submits that such aspects exist because highways are subject to numerous regulations on a variety of matters, including with respect to billboards, which are subject to a number of rules about size, placement and content and which require a permit from the Ministry. All of these regulations are put in place to ensure that the primary purpose of the highways, to safely and efficiently transport the people of Ontario, can be achieved.

[38] It is easy to see how regulations about the size and placement of billboards are necessary to ensure the efficient and safe operation of highways. Billboards that are too large, likely to distract drivers, or too close to the road can pose a risk to the safety of highway users. However, it is difficult to understand how allowing commercial expression but not political expression on bush country highways is related to their efficient and safe operation. Indeed, the evidence in the record suggests the opposite conclusion.

[39] For example, there is no restriction on highways other than bush highways except with respect to the promotion of violence or hatred against identifiable groups. According to Mr. DeVos, the only difference between bush country and other highways is that the former do not allow for the normal setback of a sign because of the presence of bush, a distinction which is entirely unrelated to the distinction between commercial and political expression. Furthermore, s. 5.8.2.1(a) of the 2025 Manual appears to allow some types of non-commercial expression if it is related to certain local events, charities or not-for-profit organizations.

[40] The respondent places particular reliance on the fact that the applicant could have put his sign on a billboard on property adjacent to the highway right of way. According to s. 5.8.2 of the 2025 Manual, signs on private property adjacent to a bush country highway are subject to the rule against promoting violence or hatred against identifiable groups, but not the other restrictions in s. 5.8.2.1.

[41] The respondent relies on *Breeden,* where in upholding a restriction on political protest signs inside a courthouse, the court noted that the signs could have been displayed in the public area immediately outside the building. However, the court upheld the restriction primarily on the basis that the courthouse had not historically been used for expressive activities and such activities impeded its intended function and not because the signs could have been displayed elsewhere. This was explained in *Breeden,* at para. 28:

> The availability of an adjacent location where a party can engage in expression does not necessarily mean that nearby government

> owned locations without historical use for expression could not also fall under s. 2(*b*)'s protection. However, this does provide context for the analysis, and tends to indicate that extending protection into a new area of a public building will not be necessary in order for the purposes of s. 2(*b*) to be fulfilled at such a location. Expressive activity can thus continue in a mode that does not impede the proper functioning of the facility.

*(iv) Conclusion on the Applicability of s. 2(b) of the Charter*

[42] There is nothing in the record before this court that suggests that expression on bush country highways would undermine the values underlying free expression. The conclusions in *Greater Vancouver,* at paras. 46-47, are apposite to the facts of this case:

> I do not see any aspect of the location that suggests that expression within it would undermine the values underlying free expression. On the contrary, the space allows for expression by a broad range of speakers to a large public audience and expression there could actually further the values underlying s. 2(*b*) of the *Charter*. I therefore conclude that the side of a bus is a location where expressive activity is protected by s. 2(*b*) of the *Charter*.
>
> Consequently, I conclude that since the transit authorities' policies limit the respondents' right to freedom of expression under s. 2(*b*), the government must justify that limit under s. 1 of the *Charter*.

**D. Section 1 of the *Charter***

*(i) The Analytic Framework*

[43] Section 1 of the *Charter* provides:

> 1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The parties agree that the policy set out in s. 5.8.2.1 of the 2025 Manual is "prescribed by law" as that term is understood in the jurisprudence: *Greater Vancouver,* at paras. 64-65.

[44] The analytical framework for determining whether a *Charter* infringement is justified by s. 1 is well-established. It was described in *Frank v. Canada (Attorney General),* 2019 SCC 1, [2019] 1 S.C.R. 3, at para. 38:

> Two central criteria must be met for a limit on a *Charter* right to be justified under s. 1. First, the objective of the measure must be pressing and substantial in order to justify a limit on a *Charter* right.

> This is a threshold requirement, which is analyzed without considering the scope of the infringement, the means employed or the effects of the measure (*R. v. K.R.J.*, 2016 SCC 31, [2016] 1 S.C.R. 906, at para. 61). Second, the means by which the objective is furthered must be proportionate. The proportionality inquiry comprises three components: (i) rational connection to the objective, (ii) minimal impairment of the right, and (iii) proportionality between the effects of the measure (including a balancing of its salutary and deleterious effects) and the stated legislative objective (*Oakes*, [[1986] 1 S.C.R. 103] at pp. 138-39; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, [2015] 1 S.C.R. 3, at para. 139; *K.R.J.*, at para. 58). The proportionality inquiry is both normative and contextual, and requires that courts balance the interests of society with those of individuals and groups (*K.R.J.*, at para. 58; *Oakes*, at p. 139).

*(ii) Pressing and Substantial Objective*

[45] The respondent has identified the pressing and substantial objective in this case as "maintaining the integrity of Bush Country Highways." The respondent's assertion that this is a pressing and substantial objective is sufficient to meet this part of the s. 1 test: *Ontario Public Service Employees Union v. Ontario (Attorney General),* 2026 ONCA 74, at para. 22.

[46] Identifying the pressing and substantial objective is important as it is "used to properly define the impugned measure's objective for the proportionality analysis that follows": *Ontario Public Services Employees Union,* at para. 23. It is important to bear in mind that for the purposes of the s. 1 analysis, "[t]he relevant objective is that of the infringing measure, not, more broadly, that of the provision": *Frank,* at para. 46.

*(iii) Rational Connection*

*(a) Overview of Relevant Principles*

[47] The question to be answered at this stage of the analysis is whether the limit on the *Charter*-protected right is rationally connected to the pressing and substantial objective: *Frank,* at para. 59. The following principles have been established in the jurisprudence:

- the standard is not onerous and the government need only establish a rational *connection*, not a "complete rational correspondence": *R. v. Ndhlovu,* 2022 SCC 38, 474 D.L.R. (4th) 389, at para. 121; *R. v. Appulonappa,* 2015 SCC 59, [2015] 3 S.C.R. 754, at para. 80;

- the government must show that there is a causal connection between the limit and its intended purpose of furthering the pressing and substantial objective: *RJR-MacDonald Inc. v. Canada (Attorney General),* [1995] 3 S.C.R. 199, at para. 153, *Frank,* at para. 59;

- the causal connection requirement is met if it is "reasonable to suppose that the limit may further the goal, not that it will do so," and does not necessarily require that the connection be scientifically measurable or established by concrete evidence: *Taylor v. Newfoundland and Labrador,* 2026 SCC 5, 510 D.L.R. (4th) 195, at para. 211; *Alberta v. Hutterian Brethren of Wilson Colony,* 2009 SCC 37, [2009] 2 S.C.R. 567*,* at para. 48; *RJR-MacDonald,* at para. 153.

*(b) The Connection Must be Between the Objective and the Infringement*

[48] The respondent submits, in para. 57 of its factum, that "there is a clear causal connection between determining what billboards can be placed on Crown land along the highway right-of-way and advancing the Ministry's policy objective of maintaining the integrity of Bush Country Highways and their underlying purpose of safely and efficiently transporting Ontarians to their destinations." I agree that there is a rational connection between regulating billboards and the identified objective. However, that is not the connection that is relevant for the purposes of s. 1.

[49] To justify an infringement of the *Charter* under s. 1, the government must demonstrate "that there is a rational connection between the objective *and the infringement"*: *Toronto Star Newspapers Ltd. v. Canada,* 2010 SCC 21, [2010] 1 S.C.R. 721*,* at para. 19. The issue is whether "the limit may further the goal": *Hutterian Brethren,* at para. 48. In this case, the infringement is on the applicant's freedom of expression as guaranteed by s. 2(*b*) of the *Charter,* which results from the content restrictions in s. 5.8.2.1(a) of the 2025 Manual. Thus, the issue is whether that infringing measure is rationally connected to the pressing and substantial objective.

*(c) No Rational Connection*

[50] While the standard for establishing a rational connection is not onerous, it is not met in this case. I see no connection between the restrictions in s. 5.8.2.1(a) and maintaining the integrity of the bush country highways. Billboards containing political expression are not inherently more distracting or aesthetically unpleasant than those which contain commercial messaging: *Greater Vancouver,* at para. 76. As noted earlier, no similar restriction exists for highways other than bush country highways, even though maintaining the integrity of those highways is no less of a pressing and substantial objective.

*(iv) Minimal Impairment and Proportionality*

[51] As there is no rational connection between the infringing measure and the objective, the issues of whether the measure minimally impairs the applicant's *Charter* rights or is proportional to the objective do not arise. Even if I had found a rational connection, I would have concluded that a broad prohibition on all types of expression except those described in s. 5.8.2.1(a) was neither minimally impairing nor proportionate to the objective: *Greater Vancouver,* at para. 77. Regardless of whether one agrees with the applicant's views, there can be no doubt that the billboard he wishes to put up is a form of political expression that is at the core of s. 2(b) protection. Limits on this type of expression will be the most difficult to justify: *Harper v. Canada (Attorney General),* 2004 SCC 33, [2004] 1 S.C.R. 827, at paras. 10-11; *Thomson Newspapers v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, at paras. 93-94.

### E. Remedy

*(i) The Decision*

[52] As the decision which is the subject of this judicial review application was the result of the application of unconstitutional policy, it was unreasonable and must be set aside.

*(ii) Declaration of Invalidity*

[53] The parties agree that a declaration of invalidity is appropriate if the policy is found to be unconstitutional, but disagree as to the scope of the declaration. The applicant requests that the entirety of s. 5.8.2.1 of the 2025 Manual be declared to be of no force or effect. The respondent submits that any declaration should apply only to the portion of the policy that was relied on to deny the applicant permission to put up his sign.

[54] The applicant seeks to have the entire policy struck down because he is concerned that remitting the matter to the Ministry will result in him being denied permission to put up his sign based on another part on s. 5.8.2.1 and he wishes to avoid a "an endless merry-go-round of judicial reviews and subsequent reconsiderations": *Vavilov,* at para. 142. The applicant's position is entirely understandable given the Ministry's shifting justifications for refusing him permission. However, the decision that is the subject of this application relied only on s. 5.8.2.1(a). As the other subsections were not relied on, their constitutional validity does not arise. No evidence was led with respect to them, nor was the issue of their constitutionality fully argued by the parties. In these circumstances, it would be inappropriate for this court to make a declaration with respect to them.

[55] That said, while I make no finding of bad faith, the manner in which the Ministry dealt with the applicant's request for permission to put up his sign, which included shifting justifications based on various policies, some of which were not identified, is not to be encouraged. I have no doubt that the Ministry is well aware that refusing the applicant permission based on another subsection of s. 5.8.2.1 is likely to result in another judicial review application and another constitutional challenge.

*(iii) Order in the Nature of Mandamus*

[56] The applicant also seeks an order in the nature of *mandamus* compelling the Ministry to grant him permission to put up his sign. Such an order is not appropriate in this case. As noted earlier, highway billboards are subject to a number of regulations with respect to matters other than their content, including size and placement. While there is no suggestion that the applicant's sign does not comply with these regulations, the Ministry has the right to make that assessment. This is not a case like *Canada (Attorney General) v. PHS Community Services Society,* 2011 SCC 44, [2011] 3 S.C.R. 134, on which the applicant relies. In that case, an order in the nature of *mandamus* was granted because the *Charter* infringement "threaten[ed] the health, indeed the lives, of the claimants and others like them": *PHS Community Services Society,* at para. 148. The applicant faces no such danger.

## III. DISPOSITION

[57] The application for judicial review is granted and the following relief is ordered:

(1) the Decision of the Ministry of Transportation, dated May 25, 2025, is set aside;

(2) there will be a declaration that s. 5.8.2.1(a) of the Ministry of Transportation's 2025 *Highway Corridor Management Manual* infringes s. 2(*b*) of the *Charter* and is of no force or effect;

(3) the applicant's request for permission to put up his sign is remitted to the Ministry for a decision in accordance with these reasons.

[58] Neither party seeks costs and none are ordered.

Schreck J.

I agree.

Raikes J.

I agree.

Sutherland J.

**Released:** July 9, 2026

**CITATION:** *Katerberg v. Ontario (Ministry of Transportation),* 2026 ONSC 3991
**COURT FILE NO.:** DC-25-00002233-00JR
**DATE:** 20260709

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**DIVISIONAL COURT**

**Raikes, Sutherland and Schreck JJ.**

**BETWEEN:**

**GEORGE KATERBERG**

*Applicant*

**– and –**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF TRANSPORTATION**

*Respondent*

**REASONS FOR JUDGMENT**

**Released:** July 9, 2026