

Legal Information Sheet:

Individuals and organizations are being fined for putting posters on the "mobilier urbain" (defined in English as 'street furniture') pursuant to Regulation 21(6) ([RRVM](#), c. P-12.2). That regulation states:

21. Sans restreindre la portée générale des articles 25 et 26, il est interdit...
(6) de coller, clouer ou brocher ou autrement fixer quoi que ce soit sur le mobilier urbain.

Ville de Montréal qualifie Reg. 21(6) in [Règlement 520](#) :

La pose d'une affiche publicitaire temporaire est autorisée sans limite sur une palissade de chantier sauf si le propriétaire l'interdit ou la limite au moyen d'une inscription à cette fin.

A 'mobilier urbain' is defined quite broadly as 'les arbres, arbustes, bancs, bollards, bornes d'alimentation du métro, bornes d'incendie, bornes géodésiques, bornes repères, buttes de décélération, câbles, chambres de vanne, clôtures, conduits, fontaines, grilles, lampadaires, monuments, murs, murets, panneaux de signalisation, parcomètres, poteaux, poubelles, puisards, puits d'accès, récipients pour matières recyclables, regards, réverbères, tuyaux, voûtes et autres choses semblables, d'utilité ou d'ornementation, mis en place par la ville à ses fins'.

Under the regulations, a natural person ticketed for posting on 'street furniture' is subject to fines of between \$100 to \$1000 for a first offence (s. 43(1)(a)) and between \$300 to \$2000 for repeat offenders (s. 43(1)(b)). Businesses are liable for fines from \$200 to \$2000 for a first offence (s. 43(2)(a)), and for fines from \$600 to \$4000 for repeat offences (s. 43(2)(b)).

There is a strong argument that the Montreal municipal Regulations banning posting violates the guarantee of freedom of expression that is found in s. 2(b) of the Canadian Charter of Rights and Freedoms ("the Charter"). Indeed, in [Ramsden v. Peterborough \(City\)](#), [1993] 2 S.C.R. 1084 the Supreme Court of Canada held, in a unanimous decision, that posting is expression that is protected by the Charter. The Court referred to posting as "historically and politically significant" and said that "it is clear that posting on public property, including utility poles, fosters political and social decision-making" (Ramsden p. 249). The Court further held that posting on some public property is protected by the Charter and that an absolute ban on posting on public property violates the Charter. The Court concluded that municipalities that wish to regulate posting have to do something more than just ban it outright everywhere.

Any law or regulation which violates the Charter can be struck down by a court for being unconstitutional. Although the constitutionality of earlier versions of the Montreal city regulations governing posting have been challenged on these grounds, the courts have, as of yet, not found these laws to be unconstitutional (See for example: *Jaggi Singh c. R*, 2004 CanLII 48545 (QC C.S.)) although a number of appeals of tickets are underway to the Superior Court.

Posting is an essential part of the cultural, social and political discourse in Montreal. So long as citizens are fined for posting in Montreal without reasonable alternatives that enable them to post 'legally' being made available, the Charter challenges to the regulations will likely continue to arise.

While it is true that the Regulations referred to above do not specifically ban postering, the effect of these regulations is to place serious limits on where postering can take place. Generally, the only practical locations to poster in the Ville de Montreal are the 'street furniture'. Montreal's Regulation effectively bars businesses who cannot afford to pay the rates required to effectively poster on construction barriers from expressing themselves and spreading the word about their events.

There are, however, solutions to the current situation. In *Ramsden* the Supreme Court highlighted options that could be pursued as alternatives to outright bans on postering such as "reserving particular locations, such as kiosks, for the posting of temporary signs... specifying or regulating the location, size of posters, the length of time that a poster might remain in any location, the type of substance used to affix posters, and requiring that the posters be removed after a certain specified time. If necessary, a reasonable fee could be imposed to defray costs of administering such a system."