

# Department of Justice

## Section 2(b) – Freedom of expression

### Provision

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.

### Similar provisions

Similar provisions may be found in the following Canadian laws and international instruments binding on Canada: sections 1(d) and (f) of the *Canadian Bill of Rights*; article 10 of the *International Covenant on Civil and Political Rights*; article 13 of the *Convention on the Rights of the Child*; article 5(d)(viii) of the *Convention on the Elimination of All Forms of Racial Discrimination*; article 21 of the *Convention on the Rights of Persons with Disabilities*; article IV of the *American Declaration of the Rights and Duties of Man*.

See also the following international, regional and comparative law instruments that are not binding on Canada but include similar provisions: article 19 of the *Universal Declaration of Human Rights*; article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*; article 13 of the *American Convention on Human Rights*; the First Amendment of the American Constitution.

### Purpose

**The protection of freedom of expression is premised upon fundamental principles and values that promote the search for and attainment of truth, participation in social and political decision-making and the opportunity for individual self-fulfillment through expression (*Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at 976; *Ford v. Quebec*, [1988] 2 S.C.R. 712 at 765-766).**

**The Supreme Court of Canada has maintained that the connection between freedom of expression and the political process is “perhaps the linchpin” of section 2(b) protection (*R. v. Keegstra*, [1990] 3 S.C.R. 697; *Thomson Newspapers Co. v. Canada (A.G.)*, [1998] 1 S.C.R. 877; *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827).** Free expression is valued above all as being instrumental to democratic governance. The two other rationales for protecting freedom of expression — encouraging the search for truth through the open exchange of ideas, and fostering individual self-actualization, thus directly engaging individual human dignity — are also key values that animate section 2(b) analysis.

## Analysis

Canadian courts have interpreted section 2(b) very broadly, often finding a *prima facie* breach easily.

The Supreme Court has adopted the following three-part test for analyzing section 2(b): 1) Does the activity in question have expressive content, thereby bringing it within section 2(b) protection?; 2) Does the method or location of this expression remove that protection?; and 3) If the expression is protected by section 2(b), does the government action in question infringe that protection, either in purpose or effect? (*Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011 SCC 2](#) (“Canadian Broadcasting Corp.”); *Montréal (City) v. 2952-1366 Québec Inc.*, [\[2005\] 3 S.C.R. 141](#); *Irwin Toy Ltd.*, *supra*.)

### 1. Does the activity in question have expressive content, thereby bringing it within section 2(b) protection?

Expression protected by section 2(b) has been defined as “any activity or communication that conveys or attempts to convey meaning” (*Thomson Newspapers Co.*, *supra*; *Irwin Toy Ltd.*, *supra*). The courts have applied the principle of content neutrality in defining the scope of section 2(b), such that the content of expression, no matter how offensive, unpopular or disturbing, cannot deprive it of section 2(b) protection (*Keegstra*, *supra*). Being content-neutral, the Charter also protects the expression of both truths and falsehoods (*Canada (Attorney General) v. JTI-Macdonald Corp.*, [\[2007\] 2 S.C.R. 610](#) at paragraph 60; *R. v. Zundel*, [\[1992\] 2 S.C.R. 731](#) at paragraph 36; *R. v. Lucas*, [\[1998\] 1 S.C.R. 439](#) at paragraph 25).

Freedom of expression includes more than the right to express beliefs and opinions. It protects both speakers and listeners (*Edmonton Journal v. Alberta (Attorney General)*, [\[1989\] 2 S.C.R. 1326](#)). “Expression” may include all phases of the communication, from maker or originator through supplier, distributor, retailer, renter or exhibitor to receiver, whether listener or viewer (*Dagenais v. Canadian Broadcasting Corp.*, [\[1994\] 3 S.C.R. 835](#); *Irwin Toy Ltd.*, *supra*; *Rocket v. Royal College of Dental Surgeons of Ontario*, [\[1990\] 2 S.C.R. 232](#); *R. v. Videoflicks* (1984), 14 D.L.R. (4th) 10).

Protected expression has been found to include:

- “music, art, dance, postering, physical movements, marching with banners, etc.” (*Weisfeld v. Canada*, [1995] 1 F.C. 68 (F.C.A.), CanLII - 1994 CanLII 9276 (FCA) at paragraph 30 (F.C.A.);
- commercial advertising (*R. v. Guignard*, [\[2002\] 1 S.C.R. 472](#); *Ford*, *supra*; *Irwin Toy Ltd.*, *supra*; *Rocket*, *supra*; *Ramsden v. Peterborough (City)*, [\[1993\] 2 S.C.R. 1084](#); *RJR-MacDonald Inc. v. Canada (Attorney General)*, [\[1995\] 3 S.C.R. 199](#); *JTI-Macdonald Corp.*, *supra*);
- posters on utility poles (*Ramsden*, *supra*);
- peace camps (*Weisfeld* (F.C.A.), *supra*);
- signs and billboards (*Guignard*, *supra*; *Vann Niagara Ltd. v. Oakville (Town)*, [\[2003\] 3 S.C.R. 158](#));
- picketing (*R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages*, [\[2002\] 1 S.C.R. 156](#); *Dolphin Delivery Ltd. v. R.W.D.S.U. Local 580*, [\[1986\] 2 S.C.R. 573](#); *B.C.G.E.U v. British Columbia (Attorney General)*, [\[1988\] 2 S.C.R. 214](#); *Dieleman v. Attorney General of Ontario* (1994), 20 O.R. (3d) 229 (Ont. Gen. Div.); *Morassee v. Nadeau-Dubois*; [2016 SCC 44](#));

- handing out leaflets (*U.F.C.W, Local 1518 v. Kmart Canada Ltd.*, [\[1999\] 2 S.C.R. 1083](#); *Allsco Building Products Ltd. v. U.F.C.W. Local 1288 P.*, [\[1999\] 2 S.C.R. 1136](#));
- expressing oneself in the language of choice (*Ford, supra*);
- hate speech (*Keegstra, supra*; *R. v. Zundel, supra*; *Saskatchewan (Human Rights Commission) v. Whatcott*, [2013 SCC 11](#), [2013] 1 S.C.R. 467; *Ross v. New Brunswick School Board (No. 15)*, [\[1996\] 1 S.C.R. 825](#); *Taylor v. Canada (Human Rights Commission)*, [\[1990\] 3 S.C.R. 892](#));
- pornography (*R. v. Butler*, [\[1992\] 1 S.C.R. 452](#); *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [\[2000\] 2 S.C.R. 1120](#));
- child pornography (*Sharpe, supra*; *R v. Barabash*, [2015 SCC 29](#));
- communication for the purpose of prostitution (Reference re: section 193 and paragraph 195.1(1)(c) of the *Criminal Code* (Manitoba), [\[1990\] 1 S.C.R. 1123](#));
- noise being emitted by a loudspeaker from inside a club onto the street (*Montréal (City), supra*, at paragraph 58);
- importation of literature or pictorial material (*Little Sisters, supra*);
- defamatory libel (*R. v. Lucas, supra* at paragraph 25-27);
- voting (*Siemens v. Manitoba (Attorney General)*, [\[2003\] 1 S.C.R. 6](#) at paragraph 41; *Haig v. Canada*, [\[1993\] 2 S.C.R. 995](#));
- running as a candidate for election (*Baier v. Alberta*, [\[2007\] 2 S.C.R. 673](#));
- spending in election and referendum campaigns (*Harper, supra*; *Libman v. Quebec (Attorney General)*, [\[1997\] 3 S.C.R. 569](#); *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, [2017 SCC 6](#));
- broadcasting of election results (*R. v. Bryan*, [\[2007\] 1 S.C.R. 527](#));
- engaging in work for a political party or candidate (*Osborne v. Canada (Treasury Board)*, [\[1991\] 2 S.C.R. 69](#));
- publication of polling information and opinion surveys (*Thomson Newspapers Co., supra*);
- monetary contributions to a fund may constitute expression, for example, donations to a candidate or political party in the electoral context (*Osborne, supra*), though not where the expenditure of funds would be regarded as the expressive conduct of the union as a corporate entity (*Lavigne v. Ontario Public Service Employees Union*, [\[1991\] 2 S.C.R. 211](#)) and
- political advertising on public transit vehicles (*Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*, [\[2009\] 2 S.C.R. 295](#) “GVTA”).

Freedom of expression also protects the right not to express oneself. “[F]reedom of expression necessarily entails the right to say nothing or the right not to say certain things. Silence is in itself a form of expression which in some circumstances can express something more clearly than words could do” (*Slaight Communications Inc. v. Davidson*, [\[1989\] 1 S.C.R. 1038](#) at 1080). Thus, forced or compelled expression can constitute a restriction of section 2(b) (*Slaight Communications, supra*; *RJR-MacDonald Inc., supra*; *National Bank of Canada v. Retail Clerks’ International Union*, [\[1984\] 1 S.C.R. 269](#)). The Ontario Court of Appeal held that the requirement to recite an oath to the Queen at citizenship ceremonies does not infringe freedom of expression (*McAteer v. Canada (Attorney General)*, 2014 ONCA 578, leave to appeal to the SCC denied 26 February 2015). Caution should be exercised when citing *McAteer, supra*, as this

case seems to be inconsistent with the Supreme Court's broad interpretation of section 2(b) of the Charter.

A regulatory requirement to file information and reports may amount to a restriction on freedom of expression where failure to comply is backed by sanctions such as fines or imprisonment (*Harper, supra*, paragraphs 138-139). The act of complying with the law is not the same as being compelled to express support for the law (*Rosen v. Ontario (Attorney General)* 131 D.L.R. (4th) 708 (Ont. C.A.)). Similarly, the compelled payment of taxes to government for use in funding legislative initiatives (e.g., public subsidies to election candidates to cover their campaign expenses) does not necessarily imply an expression of support for those initiatives (*MacKay v. Manitoba*, [1989] 2 S.C.R. 357; *Lavigne, supra*).

It is not necessary that an expression be received and subjectively understood for it to be protected expression under section 2(b) (*Weisfeld* (F.C.A.), *supra*; *R. v. A.N. Koskolos Realty Ltd.*, (1995), 141 N.S.R. (2d) 309 (N.S.Prov.Ct.)).

The physical sale of a non-expressive product (cigarettes) has been found not to be a form of expression (*Rosen*, (Ont. C.A.)). The yellow colouring of margarine has been found not to be a form of expression (*UL Canada Inc. v. Quebec (Attorney General)*, [2005] 1 S.C.R. 143, at paragraph 1).

## 2. Does the method or location of this expression remove that protection?

The Supreme Court has stated that the method or location of the conveyance of a message will be excluded from 2(b) protection if this method or location conflicts with the values underlying the provision, namely: self-fulfillment, democratic discourse and truth finding (*Canadian Broadcasting Corp., supra* at paragraph 37; *Montreal (City), supra* at paragraph 72). In practice, however, this test is usually just applied to an analysis of the location of expression; the method of expression is generally considered to be within section 2(b) protection unless it takes the form of violence or threats of violence.

### (i) Method of expression

Expression that takes the form of violence is not protected by the Charter (*Irwin Toy Ltd., supra* at pages 969-70). The Supreme Court has held that whether or not physical violence is expressive, it will not be protected by section 2(b) (*Keegstra, supra*; *Zundel* (1992), *supra*; *Irwin Toy Ltd., supra*). Threats of violence also fall outside the scope of section 2(b) protection (*Greater Vancouver Transportation Authority, supra* at paragraph 28; *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at paragraphs 107-108; *R v Khawaja*, 2012 SCC 69 at paragraph 70). In other respects, the form or medium used to convey a message is generally considered part and parcel of the message and included within section 2(b) protection (*Weisfeld* (F.C.A.), *supra*).

### (ii) Location of expression

Section 2(b) protection does not extend to all places. Private property, for example, will fall outside the protected sphere of section 2(b) absent state-imposed limits on expression, since state action is necessary to implicate the Charter. Certain lower court cases have suggested that freedom of expression does not encompass the infringement of copyright. This finding is justified on the basis that freedom of expression does not encompass the freedom to use someone else's private property (e.g., his or her copyrighted material) for the purposes of expression (see *Compagnie générale des établissements Michelin v. C.A.W. Canada*, [1997] 2 F.C. 306

(T.D.)). It should be noted, however, that this interpretation of 2(b) seems to be inconsistent with the Supreme Court's broad interpretation of the provision.

The application of section 2(b) is not automatic by the mere fact of government ownership of the place in question. There must be a further enquiry to determine if this is the *type* of public property which attracts section 2(b) protection (*Montréal (City)*, *supra*, at paragraphs 62 and 71; *Committee for the Commonwealth of Canada*, *supra*). In *Montréal (City)*, the majority of the Supreme Court set out the current test for the application of section 2(b) to public property (see also *GVTA*, *supra*). The onus of satisfying this test rests on the claimant (paragraph 73). 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 section 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:

- i. The historical or actual function of the place; and
- ii. Whether other aspects of the place suggest that expression within it would undermine the values underlying free expression. (*Montréal (City)*, paragraphs 73, 74).

The Supreme Court has highlighted that the ultimate question is the second factor (*Montréal (City)* at paragraph 77). In *Canadian Broadcasting Corp*, *supra*, the court added that analysis of the second factor should focus on the essential expressive activity as opposed to the "excesses" that would be incidental to this activity. In that particular case, the essential expressive activity, a journalist's ability to gather news at a courthouse to inform the public about court proceedings, was held to engage section 2(b), despite the incidental excesses of this expression ("...crowds, pushing and shoving, and pursuing possible subjects in order to interview, film or photograph them...") (paragraphs 43, 45).

Other relevant questions that may guide the analysis of whether expression in a particular location is protected under 2(b) are: whether the space is one in which free expression has traditionally occurred; whether the space is in fact essentially private, despite being government-owned, or public; whether the function of the space is compatible with open public expression, or whether the activity is one that requires privacy and limited access; whether an open right to intrude and present one's message by word or action would be consistent with what is done in the space, or whether it would hamper the activity (*Montréal (City)*, paragraph 76). There is some flexibility in the analysis and allowing public expression in a particular government-property location does not commit the government to such use indefinitely (*GVTA*, paragraph 44).

### **3. Does the law or government action at issue, in purpose or effect, restrict freedom of expression?**

#### **(i) Purpose**

Where the purpose of a government action is to restrict the content of expression, to control access to a certain message, or to limit the ability of a person who attempts to convey a message to express him or herself, that purpose will infringe section 2(b) (*Irwin Toy Ltd.*, *supra*; *Keegstra*, *supra*).

#### **(ii) Effect**

Even if a purpose is compatible with section 2(b), an individual may be able to demonstrate that the effect of the government action infringes his or her section 2(b) right. In this situation, the individual must show that his or her expression advances one or more of the values underlying section 2(b), *e.g.*, participation in social and political decision making, the search for truth and individual self-fulfillment (*Irwin Toy Ltd., supra; Ramsden, supra*). While more recent Supreme Court decisions still refer to this principle of showing the effect of government action, the Court does not appear to apply with a great deal of vigor the requirement that an individual show an advancement of values, tending instead to easily find a restriction of section 2(b).

If a court concludes that the government action, in either purpose or effect, infringes section 2(b), it will then consider whether the limit on free expression is justifiable under section 1.

**The City of Richmond does not have the statutory authority to enact or enforce Bylaw # 8713 section 1.1.2 (g).**

**BC Motor Vehicle act**

**[RSBC 1996] CHAPTER 318**

**Part 3**

**Section 124 — Municipal powers**

**124 (1) The council of a municipality may, by bylaw not inconsistent with or derogatory to this Part, provide for the following:**

- (a) the placing or erection of traffic control devices to give effect to this Act or a bylaw adopted under this section;
- (b) the regulation, control or prohibition of pedestrian traffic, ridden or herded animals, vehicular traffic and traffic by other conveyances, either singly or together, on sidewalks, walkways or boulevards, or in or on lanes or ways separating the rear property lines of parcels of land fronting on highways running more or less parallel to and on each side of the lanes or ways, and at intersections of the lanes or ways with each other or with highways;
- (c) the regulation, control or prohibition of the stopping, standing or parking of vehicles in the municipality;
- (d) in accordance with any regulation made under section 209 (2) (h), for parking zones for persons with disabilities, on highways that are not arterial highways, including providing for a system of permits for those parking zones;
- (e) the setting apart and allotting of portions of highways adjacent to federal, Provincial or municipal public buildings for the exclusive use of officials and officers engaged in them for the parking of vehicles, and the regulation of that parking;
- (f) the erection, maintenance and operation on a highway or portion of it of automatic or other mechanical meters, for the purpose of allotting and controlling parking spaces for vehicles, and measuring and recording the duration of parking, and requiring the

driver of every vehicle parked in a parking space to deposit in the appropriate meter a fee for parking in the manner and at the rate prescribed and as measured by the meter;

(g) the removal, detention or impounding of vehicles unlawfully occupying a portion of a highway or public place, and a scale of fees, costs and expenses for that purpose;

(h) the recovery of the fees, costs and expenses from the owner or by sale of the vehicle referred to in paragraph (g) at public auction or by action in a court of competent jurisdiction;

(i) the establishment and use of loading, commercial and passenger zones in the municipality and their designation;

(j) in respect of a highway in a municipality, except an arterial highway, the regulation of the width, length and height of vehicles and the width, length, height, fastenings and distribution of loads on vehicles driven or operated on them;

(k) that on a highway where construction, reconstruction, widening, repair, marking or other work is being carried out, traffic control devices must be erected or placed indicating that people or equipment are working on the highway;

(l) that on a highway where construction, reconstruction, widening, repair, marking or other work is being carried out, traffic control devices must be erected or placed to regulate or prohibit traffic in the vicinity of the work;

(m) the regulation, control and prohibition of erection or maintenance, or both, of signs, advertisements or guide posts on or over highways other than arterial highways in the municipality, and their alteration, repainting, tearing down or removal without compensation to any person for the loss or damage that results;

(n) the regulation or prohibition of pedestrian traffic on highways other than at crosswalks;

(o) the prohibition of pedestrian traffic in an unmarked crosswalk designated by a traffic control device;

(p) the establishment of school crossings in the municipality and the regulation and control of pedestrian and vehicular traffic with respect to them;

(q) the regulation of traffic passing by or in the vicinity of schools through the use of traffic patrols, and for that purpose vesting in the school children or other persons employed in traffic patrols power to require vehicles to stop at school crossings or other designated places on a highway;

(r) the establishment and use of taxi stands in the municipality and their designation;



- (s) the regulation and control of processions on highways in the municipality;
- (t) the regulation and control of persons using roller skates, sleighs, skates, skis or other similar means of conveyance on highways in the municipality and the closing of a highway or highways or part of them to permit the use of roller skates, sleighs, skates, skis or other similar means of conveyance;
- (u) the enforcement of bylaws adopted under this section by fine or imprisonment, or both, and imposing fines, penalties and costs;
- (v) the use, in places, under conditions and in circumstances specified by the bylaw, of sidewalks and crosswalks by persons riding cycles.
- (w) that a person operating or riding as a passenger on a cycle on a path or way designated under paragraph (y) must properly wear a bicycle safety helmet that
  - (i) is designated as an approved bicycle safety helmet under section 184 (4) (a), or
  - (ii) meets the standards and specifications prescribed under section 184 (4) (b);
- (x) that a parent or guardian of a person under the age of 16 years must not authorize or knowingly permit the person to operate or ride as a passenger on a cycle on a path or way designated under paragraph (y) if that person is not properly wearing a bicycle safety helmet that
  - (i) is designated as an approved bicycle safety helmet under section 184 (4) (a), or
  - (ii) meets the standards and specifications prescribed under section 184 (4) (b);
- (y) the designation of paths or ways within the municipality, other than paths or ways that are highways or are located on private property, for the purposes of a bylaw made under paragraph (w) or (x);
- (z) the exemption of any person or class of persons from a bylaw made under paragraph (w) or (x) and prescribing conditions for those exemptions;

(2) Despite subsection (1), if a municipality adopts a bylaw under that subsection that contains a provision directing the rate of speed at which a person may drive or operate a motor vehicle on a highway in the municipality, a person who contravenes that provision does not commit an offence against the bylaw.

(3) Despite subsection (1) (u), a municipality may not impose imprisonment or a fine of more than \$100 for the contravention of a bylaw made under subsection (1) (w) or (x).

(4) The powers conferred on the council of a municipality by this section include the power exercisable by bylaw to do the following:

(a) to authorize an officer or employee of the municipality to make orders in respect of the matters comprised in a bylaw adopted under subsection (1) and by those orders to exercise the powers of the municipality under that bylaw, subject to the terms and conditions prescribed in the bylaw;

(b) to authorize that officer or employee to rescind, revoke, amend or vary an order made by him or her, subject to the terms and conditions prescribed in the bylaw;

(c) to adopt, repeal and amend bylaws under this section even though authority has been given or delegated under this subsection to an officer or employee of the municipality.

(5) Except as otherwise provided by or under another statutory provision, the council of a municipality, in addition to the powers and rights conferred by subsection (1), has the same powers and rights with respect to highways, other than arterial highways, in the municipality, and their use by vehicles and persons, as are exercisable by the Lieutenant Governor in Council and the Minister of Transportation and Highways and not mentioned in subsection (1).

(6) The council of a municipality may exercise the powers and rights referred to in subsection (5) by resolution or bylaw.

(7) Without limiting the scope of subsections (5) and (6), the powers and rights referred to in those subsections include the powers and rights of

(a) the Lieutenant Governor in Council and the Minister of Transportation and Highways under section 209, and

(b) the Minister of Transportation and Highways under sections 208 and 214.

(8) For certainty, the powers and rights referred to in subsections (5), (6) and (7) do not include the power or right to direct the rate of speed at which a person may drive or operate a motor vehicle on a highway in the municipality, except the power to regulate the speed of vehicles

(a) for the protection of the highway under section 209 (1) (a), and

(b) for the time of the year and the physical condition of the highway under section 209 (1) (d).

(9) Despite subsections (5) and (6), if a municipality adopts a resolution or bylaw under those subsections that contains a provision regulating the speed of vehicles

(a) for the protection of the highway under section 209 (1) (a), or

(b) for the time of the year and the physical condition of the highway under section 209 (1) (d), a person who contravenes that provision does not commit an offence against the bylaw.

(10) A copy of an order made under a bylaw adopted under subsection (4) that purports to be under the corporate seal of the municipality and to be certified a true copy by the clerk of the municipality must be received in all courts as evidence of the order without further proof of the order or the signature or official character of the person by whom it is certified.

(11) A bylaw adopted under this section must not be quashed, set aside or declared ineffectual or void merely because of an informality or want of declaration of the power under and by which it was passed, or on the grounds of discriminatory exercise of the powers conferred by this Act.

(12) In a bylaw or order adopted or made under this section,

(a) vehicles may be classified according to their nature, type, character, weight, equipment, accessories or otherwise, and different provisions may be made for different classes,

(b) highways or portions of highways, including sidewalks and boulevards, may be classified according to widths, amount of traffic or otherwise, and different provisions may be made for different classes, and

(c) different provisions may be made applicable to different seasons of the year or to different conditions of the highway.

(13) A municipal bylaw does not apply to the regulation, control or prohibition of traffic on an arterial highway as defined in the *Highway Act* unless its application to arterial highways has been approved by the Minister of Transportation and Highways.

***Not in force***

**124.1** [Not in force.]

***Additional municipal powers***

**124.2** (1) Subject to subsections (2), (3) and (5), the council of a municipality has the same powers to make bylaws or resolutions with respect to highways, other than arterial highways, in the municipality and their use by persons, organizations, vehicles or cycles or classes of persons, organizations, vehicles or cycles as the minister has to make regulations under section 209.1.

(2) A bylaw or resolution may be adopted under subsection (1) only if it is approved in writing by the minister responsible for the *Transportation Act*, or a person designated in writing by that minister

- (a)if the highway, part of the highway or lane of the highway, or
- (b)if the designated use highway or designated use lane

in respect of which the bylaw or resolution is to apply, is within 800 metres of an arterial highway or a provincial public highway, as those terms are defined in the *Transportation Act*.

(3)A municipality must not by bylaw or resolution under subsection (1), without the written approval of the minister responsible for the *Transportation Act*, take, authorize or permit any action in respect of a highway, part of a highway, lane, designated use highway or designated use lane, that would reduce the capacity of all or any part of an arterial highway or a provincial public highway, within the meaning of the *Transportation Act*, to move people or freight.

(4)For the purpose of subsection (3), an action would reduce the capacity of all or any part of an arterial highway or a provincial public highway to move people or freight if the action would alter traffic control conditions and traffic movement on a highway in such a way that fewer persons or less freight would be able to move on the highway in a given time period than were able to move on the highway in a comparable time period before the taking of the action.

(5)A municipality must not by bylaw under subsection (1)

- (a)regulate in relation to the number of passenger directed vehicles that may be operated under passenger directed vehicle authorizations or transportation network services authorizations, or
- (b)prohibit vehicles referred to in paragraph (a) from operating in the municipality, including, without limitation, by prohibiting the issuance of a licence to a person to operate a vehicle referred to in that paragraph for the sole reason that the person holds a licence, issued by another municipality, to operate the vehicle.