

ALAN HONNER

BARRISTER & SOLICITOR

February 28, 2022

Mayor Ed Holder
300 Dufferin Avenue
London, Ontario
N6B 1Z2

Dear Mayor Holder:

Re: Proposed By-law Prohibiting Distribution of Graphic Images

I am legal counsel for the Canadian Centre for Bioethical Reform (“CCBR”). I am writing to you about a draft by-law which seeks to prohibit the distribution of flyers containing graphic images at properties within the City of London.

The by-laws of a municipality must comply with the *Canadian Charter of Rights and Freedoms*, including the right to freedom of expression. The right to free expression broadly protects any type of activity or communication which conveys or attempts to convey meaning. When it comes to political speech, the *Charter* affords a higher degree of protection because of its importance to a democratic society.

The debates and resolutions of Municipal Council reveal that the true objective of the proposed by-law is to limit communications related to abortion by prohibiting the distribution of graphic images. Specifically, the by-law attempts to restrict political speech by limiting the ability of groups like the CCBR to convey their message. In imposing these restrictions, the by-law infringes the rights of persons expressing themselves and the rights of persons to receive information.

It is only a matter of time before this by-law is challenged in court. The *prima facie* breach of the *Charter* will easily be demonstrated. At that point, the onus will shift to the Municipality to demonstrate that the by-law is a justified limit on free expression under the *Oakes* test.

The Municipality will have difficulty in discharging this onus. The fact is that the proposed by-law prohibits the distribution of graphic images on the basis that they may *potentially* trigger a negative reaction, no matter how small, to the health or wellbeing of *any person*. As this definition is bereft of an objective standard, it is difficult to imagine how the Municipality will demonstrate that there is a compelling state objective that justifies limiting political speech. Canadian courts are unlikely to limit fundamental freedoms on this sort of metric.

As there is no compelling state objective, the court would not need to consider whether there is proportionality between the objective of the by-law and the means used to achieve it. However, if that analysis were to occur, the Municipality would not be able to discharge its onus. The true

3416 Dundas Street West, Unit 201, Toronto, ON M6S 2S1
T: 416 303 6487 • F: 416 352 5255
alan@honnerlaw.ca • www.honnerlaw.ca

objective of the by-law, as stated, is to limit expression related to abortion. The by-law exceeds this purpose by banning all graphic images whatsoever. As the by-law is overbroad, the municipality will not be able to demonstrate that it is minimally impairing under the second branch of the proportionality test.

The CCBR urges all council members to uphold the law and vote against the enactment of this proposed by-law.

Yours truly,

Alan Honner

Alan Honner
Barrister & Solicitor

Copy:

Councillor Michael van Holst
mvanholst@london.ca

Councillor Shawn Lewis
slewis@london.ca

Councillor Mohamed Salih
msalih@london.ca

Councillor Jesse Helmer
jhelmer@london.ca

Councillor Maureen Cassidy
mcassidy@london.ca

Councillor Mariam Hamou
mhamou@london.ca

Councillor Josh Morgan
joshmorgan@london.ca

3416 Dundas Street West, Unit 201, Toronto, ON M6S 2S1
T: 416 303 6487 • F: 416 352 5255
alan@honnerlaw.ca • www.honnerlaw.ca

Councillor Steve Lehman
slehman@london.ca

Councillor Anna Hopkins
ahopkins@london.ca

Councillor Paul Van Meerbergen
pvanmeerbergen@london.ca

Councillor Stephen Turner
sturner@london.ca

Councillor Elizabeth Pelosa
epelosa@london.ca

Councillor John Fyfe-Millar
jfmillar@london.ca

Councillor Steven Hillier
shillier@london.ca