Dear Mayor and London City Councillors,

My name is Jakki Jeffs and I am Executive Director of Alliance for Life Ontario which represents 50 affiliate member educational pro-life groups currently operating across Ontario.

Thank you for the process that you have asked the Community and Protective Services Committee to undertake for the last several months regarding Flyer delivery to Private Homes across London. We know that that the City does not have the authority to pass a by-law which violates the Charter of Rights and Freedoms and yet this very kind of by-law has been proposed to the City Council, as draft appendix "C" in the March 1st 2022 Report of the Deputy City Manager to the Chair and members of the Community Services.

In its current form it is our understanding that this draft by-law will be in violation of the Charter of Rights and Freedoms at 2b Fundamental Rights of Freedom of Expression/Speech, which is an "original" freedom. The City of London has been thrown into a national debate on abortion and specifically "victim photography," where one side is endeavoring to silence the other by using the City. While it is understandable that many Canadians do not wish to see the results of abortion and may be offended by the photos there is no right prohibiting anyone from bringing these photos to their fellow citizens' attention. None of us has a right not to be offended. I could raise many examples of things which offend me every day, but I recognize that we live in a democracy and I am willing to pay the price of being offended, to protect and remain in a society with such freedoms.

One has to ask the question, if the results of an action are so offensive should the action be taken? The "victim photography" is one way of showing Canadian citizens the injustice and violence of induced abortion. The City has no power to commit such an abuse of power and blatant overreach, by being specific with regard to the content of these specific flyers.

As a Municipal Government, City Council must consider and uphold Charter Rights when making all decisions and with greater respect to its by-laws. Draft by-law "C" as recommended to the CPS Committee in the March 1st 2022 report is a violation of Charter Rights and the City should be ready for litigation should it proceed to vote for a draft containing such a violation.

I have included below Freedom of Expression as quoted by several Canadian Courts – because it seems that this fundamental right provides the principal guideline to the London City Council and thankfully restricts many unconstitutional actions that you appear to be being asked to consider - should you vote in favour of draft by-law "C" as per the March 1st 2022 report..

I sincerely hope that City Council uphold the Charter of Rights and Freedoms and remain neutral on the content of particular flyers delivered to private homes. There are many actions the city may take which do not violate the Charter in a democratic society and we hope that clear heads, justice and democracy prevail when City council votes on this issue on March 22nd 2022.

Please see the Court decisions below regarding freedom of expression in Canada.

Sincerely submitted

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Bracken V Fort Eyrie Town 2017 ONCA 668 (CanLII

The analytical framework -- s. 2(b) analysis (25)

[25] **Freedom of expression has received broad protection in Canadian law, not only through the *Charter*, but also through legislation and the common law**. As Rand J. noted in *Saumur v. Quebec (City)*, 1953 CanLII 3 (SCC), [1953] 2 S.C.R. 299, [1953] S.C.J. No. 49, at p. 329 S.C.R.:

"Strictly speaking, civil rights arise from positive law; **but freedom of speech, religion and the inviolability of the person are original freedoms** which are at once the **necessary attributes and modes of self-expression** of human beings and **the primary conditions of their community life** within a legal order.

" Section 2(*b*) further **entrenches the limits on government action in order to safeguard the ability of persons to express themselves to others**. As expressed in *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927, [1989] S.C.J. No. 36, at pp. 968-69 S.C.R.:

Freedom of expression was entrenched in our Constitution and is guaranteed . . . 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. Such protection is, in the words **of both** the Canadian and Quebec Charters, "**fundamental**" be**cause in a free, pluralistic and democratic society we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual.**

Free expression was for Cardozo J. of the United States Supreme Court "the matrix, the indispensable condition of nearly every other form of freedom" (*Palko v. Connecticut*, 302 U.S. 319 (1937), at p. 327);

for Rand J. of the Supreme Court of Canada, it was **"little less vital to man's mind and spirit than breathing is to his physical existence**" (*Switzman v. Elbling*, 1957 CanLII 2 (SCC), [1957] S.C.R. 285, at p. 306).

And as the European Court stated in the *Handyside* case, Eur. Court H. R., decision of 29 April 1976, Series A No. 24, at p. 23, **freedom of expression:**

. . . is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

[26] In its early s. 2(*b*) jurisprudence, the Supreme Court drew on the academic literature developed in the context of the First Amendment of the U.S. Constitution **to identify a set of human goods thought to be advanced by a constitutional protection of freedom of expression**: *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, [1988] S.C.J. No. 88. These goods have been [page170] expressed variously in different decisions over the years.

In *Irwin Toy*, 1988 they were summarized as
(1) enabling democratic discourse,
(2) facilitating truth seeking, and
(3) contributing to personal fulfillment.
In *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, [2002] S.C.J. No. 7, 2002 SCC 8, at para. 32, they were rendered as

"**self-fulfilment, participation in social and political decision-making, and the communal exchange of ideas**". **Freedom of expression** is thus not only inherently valuable to the self-constituting person, but courts have long recognized that it is also instrumental to the functioning of a healthy political community, particularly by facilitating the open criticism of government: *Ramsden v. Peterborough (City)* (1993), 1993 CanLII 60 (SCC), 15 O.R. (3d) 548, [1993] 2 S.C.R. 1084, [1993] S.C.J. No. 87.

6 Québec Inc., [2005] 3 S.C.R. 141, [2005] S.C.J. No. 63, 2005 SCC 62.

[34] Having concluded that the claimant has engaged in expression and the protection of s. 2(*b*) is not negated because of an inherent limit such as method or location, the next step in the s. 2(*b*) analysis set out in *Irwin Toy* is to ask whether the government action in question restricts expression in purpose or effect: *Montréal (City)*, at para. 82.

If the government action in question does not purposefully limit the expression in question, but limits it only as a side effect of pursuing some other purpose, the claimant is put to the additional burden of establishing that the expression in issue promotes one of the three purposes of freedom of expression articulated in *Irwin Toy*, at p. 976 S.C.R.: enabling democratic discourse, facilitating truth seeking and contributing to personal fulfilment: *Montréal (City)*, at para. 83.

https://albertacourts.ca/docs/default-source/qb/judgments/lethbridge-and-district-pro-life-association-v-lethbridge-(city)-2020-abqb-654---reasons-for-decision.pdf?sfvrsn=490a6983_2

Court of Queen's Bench of Alberta; Lethbridge and District Pro-Life Association v Lethbridge City 2020 ABQB 654

2b Freedom of Expression; was given broad, purposive interpretation

Irwin Toy, supra

- Even prior to Charter – recognized the fundamental importance of "freedom of expression"
- Alberta Statutes, 1938 CanLII (SCC)at page 752-753

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https://www.canlii.org/en/on/onca/doc/2017/2017onca668/2017onca668.html

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TRESPASS NOTICE "**The trespass notice had the effect of limiting the applicant's s. 2(*b*) rights. "**

Held, the appeal should be allowed.

FEELINGS MAKE NO DIFFERENCE "An observer's subjective feelings of disquiet, unease, or even fear are not in themselves capable of ousting expression categorically from the protection of s. 2(*b*).

The application judge erred in finding that the applicant's protest was violent and that his actions therefore did not come within the protection of s. 2(*b*). The applicant did not physically obstruct anyone or prevent anyone from entering the building. There was no reasonable basis for the employees' fear. Violence is not the mere absence of civility**. An observer's subjective feelings of disquiet, unease, or even fear are not in themselves capable of ousting expression categorically from the protection of s. 2(*b*).** Moreover, the protest did not take place in a location where s. 2(*b*) protection does not exist. The literal public square is paradigmatically the place for expression of public dissent. **The trespass notice had the effect of limiting the applicant's s. 2(*b*) rights.**

The limitation of the applicant's freedom of expression was not justified under s. 1 of the *Charter*. The respondent could not establish that it was acting for a sufficiently important purpose. Even if it were to succeed on that basis, it would nevertheless fail as its actions did not minimally impair the applicant's freedom of expression and there was no proportionality between the deleterious and salutary effects of the expulsion and trespass notice. [page162]

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