



March 17, 2022

London City Council  
300 Dufferin Avenue  
London ON  
N6B 1Z2

*Via Email*

**Re: Distribution of Graphic Flyers By-law**

Dear Councillors and Members of the Community and Protective Services Committee,

I write to you on behalf of Animal Justice – Canada’s leading national animal law organization – in response to the proposed Distribution of Graphic Flyers By-law coming before City Council on March 22, 2022.

We understand and appreciate the importance of regulating the distribution of graphic flyers, particularly those that go so far as to show unnecessarily disturbing images. However, we are concerned that the broad language used in the proposed by-law may unintentionally capture a wide range of imagery, including images depicting animals that are designed to educate the public and drive legal change. As such, we recommend refining the definition of “graphic image” to provide greater clarity on the scope of imagery that the by-law aims to capture and ensure that the by-law does not fall offside of the protections for freedom of expression guaranteed under section 2(b) of the *Canadian Charter of Rights and Freedoms*.

**“Graphic Image” Definition**

The proposed by-law defines “graphic image” as “a detailed pictorial image or series of images, containing potentially sensitive content that may cause or trigger a negative reaction to the health and wellbeing of any person at any scale. An example of a graphic image may include, but is not limited to, dismembered human beings or aborted fetuses.” Any person who “deposit[s] a flyer containing a graphic image at any property” is guilty of an offence under the by-law.

Exposing the harms caused by industries that use animals, such as puppy mills or factory farms, plays an important role in educating the public about the suffering that animals endure in a variety of settings, as well as building support for laws that offer greater protections against animal cruelty. As the proposed by-law currently stands, any imagery that negatively affects a person, no matter the scale, would be prohibited. This overly broad and vague definition is concerning because it may have the unintended effect of prohibiting the distribution of flyers containing sensitive images, regardless of scope. While we recognize the importance of regulating graphic imagery being distributed to residential homes, Animal Justice respectfully requests that the Committee ensures the scope of this by-law is narrowly tailored to avoid a blanket prohibition on the distribution of contentious flyers.

## **Violation of Section 2(b) of the *Canadian Charter of Rights and Freedoms***

The broad and vague language used to define “graphic image” also raises concerns under section 2(b) of the *Canadian Charter of Rights and Freedoms* – the right to freedom of expression. As several groups and individuals have pointed out in their comments concerning the proposed by-law, restricting the distribution of flyers will engage section 2(b) of the *Charter* since the bar for establishing a violation of freedom of expression is low. The issue then becomes whether the by-law can be justified under section 1 of the *Charter*. As the language of the by-law currently stands, the by-law would have difficulty passing the section 1 test since the definition of “graphic image” is too broad and vague, making the scope of the by-law difficult to discern. In order to ensure that the by-law is justified under section 1, the definition of “graphic image” and its purposes must be carefully crafted to reflect the specific harm that it aims to prohibit. This will ensure that it does not become so broad as to affect a variety of conduct with social value.

### **Alternative Definition to Consider**

Ideally, the definition of “graphic image” should refer explicitly to the harm at issue – the distribution of flyers containing images of aborted fetuses. A revised definition such as: “graphic image means a pictorial image or series of images containing, or purporting to contain, dismembered human beings or aborted fetuses” would eliminate concerns of overbreadth and vagueness, and strengthen the by-law to withstand a potential *Charter* challenge.

### **Conclusion**

We commend the Councillors who have already expressed concern over the definition of “graphic image” and hope that you consider refining it to better reflect the purpose of the by-law.

Thank you for your attention to this matter. Please do not hesitate to reach out if we can be of further assistance.

Sincerely,



Sarah Bowman  
Student-at-Law, Animal Justice  
sbowman@animaljustice.ca