

TO: Mayor Ed Holder and London City Councillors

FROM: Deanna Ronson

RE: City Council Agenda, March 22, 2022, Item 6.4 (Program Regulating Distribution of Flyers By-law and Distribution of Graphic Flyers to Residential Properties By-law)

In September 2020 the City of London was bombarded with the home-delivery of flyers from the Centre for Bio-ethical Reform, containing graphic images of alleged aborted fetuses. At that time, I was serving as the Director of Pro-choice London and received countless messages and phone calls from individuals who had been traumatized by these images. Some victims were women who had suffered recent miscarriages and some were young children who had pulled the flyers from their mailbox.

We took immediate action and started an online petition calling on the City of London to introduce a by-law that would ban the delivery of flyers containing graphic images.

At the end of October 2020, I delivered a petition signed by 5k+ people (4k+ were from London and area) in support of a ban on graphic flyers. The petition was on the Community and Protective Services Committees Agenda for November 3, 2020 and was supported by a motion calling for a new by-law, put forth by Councillor Lewis, and signed by Councillors Hopkins, Kayabaga and Peloza.

I would like to extend my deepest gratitude to Councillors Lewis, Helmer, Hopkins, Peloza and former Councillor Kayabaga for their steadfast support over the last year and a half. Thank you also to all current and former members of the CPSC and City Staff for their reports to the CPSC.

We are finally closing in on achieving our goal.

Today (Tuesday), you will vote on whether or not to pass a by-law banning flyers with graphic images of aborted fetuses.

The issue at stake, **is the grievous harm that was perpetrated on thousands of residents of London when they received the graphic flyers from the CCBR.**

Some of you do not believe that the Municipality has the power to pass such a by-law. However, you absolutely do! (Please see my rebuttal to Councillor van Holst, #1 below.)

And, some of you are concerned that this by-law is indefensible. It absolutely is! (Please see my rebuttal to Councillor van Holst, #7 below.)

In regards to Mr. Honner's (lawyer to the CCBR) submission to Council, I agree with his first four paragraphs. This by-law will undoubtedly infringe upon the CCBR's freedom of expression.

I even agree with Mr. Honner that the wording of the by-law may be over-broad. That is an easy fix. A revised definition could read:

"Graphic Image means a pictorial image or series of images containing or purporting to contain dismembered or aborted fetuses."

This definition would be precise and remove any open-ended language.

Now, here is where I disagree with Mr. Honner. When it comes to justifying the limit on free expression under the Oakes test, the City will have no issue doing so. Council needs to add a "WHEREAS Clause" that specifically states that:

"The Municipal Council received substantial evidence from Londoners that such unsolicited flyers cause demonstrable harm to London residents."

That substantial evidence came in the form of a petition signed by over 4k London and area residents, countless letters/emails/phone calls to Councillors from their constituents and a Public Participation meeting before Council. All of this evidence is more than enough to withstand the *Oakes* test.

In regards to Councillor van Holst's submission to Council, I would like to clarify a few items that he discussed.

1. Councillor van Holst said that the flyer issue "*is not a municipal issue.*" That statement is incorrect.

According to the Municipal Act, 2001, S.O. 2001, c. 25, the law states that municipalities have "**broad authority**" to "*provide any service or thing that the municipality considers necessary or desirable for the public.*" The Act also states, that "*a single-tier municipality may pass by-laws respecting the following matters: . . . 6. Health, safety and well-being of persons. . . . 8. Protection of persons and property*" (<https://www.ontario.ca/laws/statute/>

01m25).

A City Staff Report delivered evidence of other cities passing similar (though not as specific) flyer by-laws. (<https://pub-london.escribemeetings.com/FileStream.ashx?DocumentId=85363>)

2. The Trespass to Property Act is NOT a remedy. It puts the onus on residents to send a letter of trespass notice to the CCBR and to add signage to their property. And, the remedy has NOT been honoured. Mr. Alleyne (Eastern Outreach Director, CCBR) may have publicly stated that they do not trespass, however, an informal poll by Pro-choice London found that at least 12 residents who had a "No Flyers" or "No Junk Mail" sign on their mailboxes **still received** flyers from the CCBR. That poll was taken from one neighbourhood only; I suspect if the entire city was polled the number would be much higher.

Plus, is it reasonable to expect that the thousands of residents who don't want these flyers will follow through on those instructions?

3. Yes, the CCBR's lawyers have stated publicly that they will challenge the by-law. They stated this before a by-law had even been passed. This is classic bullying behaviour. The CCBR is trying to bully Councillors into voting against this by-law because that's what they excel at . . . bullying people. Bullying women trying to enter abortion clinics, bullying women on street corners with their signs, etc.

4. Councillor van Holst states that "*the LTC has lost a similar lawsuit.*" This statement is incorrect.

The LTC did **NOT** lose a similar lawsuit. They settled out of court; that's a big difference.

The LTC rejected the authority of the Canadian Code of Advertising Standards and caved to the demands of anti-choice groups. "It appears the LTC didn't consider all the legal and Charter issues at stake. . . . The LTC's settlement with two anti-choice groups is legally binding and confidential" (<https://www.canlii.org/en/on/onsc/doc/2022/2022onsc1344/2022onsc1344.html>). When Joyce Arthur of the Abortion Rights Coalition and I asked the LTC why they settled instead of going to court the LTC refused to answer.

5. Councillor van Holst states that since "*no other municipality has taken this course, one might presume that their legal teams have advised against it.*"

This is an incorrect assumption. I have already spoken to a few Councillors about why this conclusion holds no weight.

No other cities in Ontario have had the need to pass such a specific by-law, because no other cities have received the grievous harm that has come to Londoners. Pretty much our **entire** city was blanketed by the flyers.

Toronto hasn't passed a specific by-law against flyers because 95% of their issue was the signage from the CCBR, not flyers.

6. I believe that taxpayers have been on the line for worse causes than this (eg. \$16 million spent on Dundas Place). Plus, I strongly believe that the City will win any legal challenge.

7. Yes, we will be accused of violating the constitution and "*interfering with freedom of expression.*" However, the proposed by-law is defensible under Section 1 and I believe that recent cases regarding religious-gathering restrictions will only help to bolster our position if the by-law is challenged.

On March 1, 2022, a ruling in the Ontario v Trinity Bible Chapel case, found that the health restrictions did indeed violate Section 2(a) of the Charter of Rights and Freedoms, but upheld that the attendance restrictions were reasonable under Section 1. (<https://www.canlii.org/en/on/onsc/doc/2022/2022onsc1344/2022onsc1344.html>)

In conclusion, the City of London has the authority to pass the proposed flyer by-law and the by-law is defensible under Section 1 of the Charter.

It is my hope that the Mayor and Members of Council will have the fortitude to stand up to these bullies (the CCBR) and pass the by-law.

Thank you all for your time and commitment to this important issue that impacts thousands of Londoners. It's been a long road and I am hopeful for a successful resolution at Council.

Sincerely,

Deanna Ronson
Abortion Rights Coalition of Canada, Member
Former Director of Pro-choice London
Resident of London, Ontario