



PO Box 1377 Stn. B
Ottawa ON K1P 5R4

To: Community and Protective Services Committee

300 Dufferin Avenue
London, Ontario, N6B 1Z2

November 2, 2020

Dear Members of the Community and Protective Services Committee,

This submission is on behalf of We Need a Law, a national grassroots campaign that seeks to educate and equip pro-life Canadians. We encourage people to engage in the political process to advocate for laws that protect pre-born children.

We work with supporters across Canada, including in London. You may have seen our message on busses recently, saying that “Canada has no abortion laws.” The bus ads were put up by a local group who understands that engaging in the political process is not confined to election day or just to a legislature – it’s about communicating with their fellow voters. Being able to spark conversations about important topics is critical to Canadians’ ability to effect change on issues that matter deeply to them.

We are concerned that the recommendations in the petition brought before you would negatively impact the residents of London’s efforts to be active and engaged on any political topic including racism, climate change, truth and reconciliation, and abortion. There are serious constitutional questions you will need to grapple with including what justification you have to infringe freedom of expression, especially political expression.

The Supreme Court has affirmed that political expression is at the core of the *Charter’s* guarantee of freedom of expression. As the Chief Justice Dickson (as he was then) said on behalf of the majority in *R. v. Keegstra*, [1990] 3 SCR 697, “The connection between freedom of expression and the political process is perhaps the linchpin of the s. 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons.”



1. Banning flyers

Canada has a long history of communicating through flyers. Whether it's a candidate running for office, a public interest group bringing awareness to an issue, or a charitable organization offering support, Canadians are accustomed to receiving flyers in their mailboxes conveying information on a variety of topics.

As an organization, we have put flyers at front doors or in mailboxes to bring awareness to topics like the current private members bill C-233, a bill before Parliament that would ban sex selective abortion. This is an important way to communicate with those who are nominally engaged with the issue. Many Canadians would support this bill, but need to first know that it exists. Flyers are a great way to educate them.

As you consider whether to ban such flyers, you of course understand that you must balance it with the *Charter* protection of freedom of expression. Specifically, we ask that you also consider the impact it will have on Canadians' engagement with the political process. Our interest is political engagement on the abortion issue, but we know that we are not the only advocacy group that uses this method to communicate with Canadians. Other social movements also work in this way on topics that Canadians need to be aware of.

2. A reliance on the Canadian Code of Advertising Standards

Advertising Standards is a private, advisory body. They may produce helpful materials, including the *Canadian Code of Advertising Standards*, but their value is limited. It would be inappropriate for you to fetter your discretion to their *Code*, which can be changed anytime without your input.

You may find the recent Court of Queen's Bench of Alberta treatment of Advertising Standards [ASC] in *Lethbridge and District Pro-life Association v Lethbridge (City)*, 2020 ABQB 654 helpful: "As a private body, ASC is not subject to the Charter. ASC has no authority to regulate expression even though a number of entities, including the Respondent [the city of Lethbridge], voluntarily have determined that they will submit to its opinions. There is no suggestion that the Code, or any opinion provided by ACS, included any consideration of the Charter provisions or, indeed, any statutory objectives or associated values that the City was obliged to consider in making the challenged decision."

Specifically of note when it comes to assessing Advertising Standards' recommendation, it would be legally impermissible for you to fetter your discretion as the city of London by binding yourself to the decision of Advertising Standards. You have your own statutory objectives that must be considered, as well as *Charter* rights and guarantees. You cannot abdicate either of these considerations to a private body.



Conclusion

Finally, we want to stress the negative effect that pursuing a bylaw that would target the work of pro-life residents. The call to ban flyers is not about the best interests of the citizens of London, but rather there are certain pro-abortion organizations that are behind this petition. As the Alberta Court said in the decision referenced above, “Proponents for the pro-choice and pro-life groups are both experienced and well-organized groups focused on advancing their respective points of view.” In that decision, Justice Gates warns the city of Lethbridge against only listening to activists on one side of this issue.

It should be noted that, as a pro-life movement, we do not and would not advocate for silencing those who disagree with us. In fact, we encourage them to express their beliefs as well. Currently in London, both sides are welcome to distribute flyers, to spark conversations, and to engage in civil discourse. It is our hope that this unbiased freedom will remain – not only for the issue of abortion, but for the many other contentious issues that Canadians are talking about right now, whether that be racism, climate change, or truth and reconciliation.

We live in a time when a lot of hard conversations need to happen. The conversation around when human rights begin is one of those issues that needs to be heard from all perspectives. It is our hope that all those in London will continue to engage with the ongoing conversation about abortion, and that the London city council will be careful not to chill or bias that conversation.

Sincerely,

Tabitha Ewert

Legal Counsel, We Need a Law