



Canada's only national political pro-choice advocacy group

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Dear Mayor Ed Holder and City Councillors of London,

May I please share information in support of the motion on how the City of London could address the distribution of graphic images? I understand this motion will be voted on during the Council meeting of Nov 10. I respectfully ask that the Mayor and Council vote in favour.

The motion is not a “ban”:

Several anti-abortion groups submitted letters to the Community and Protective Services Committee in opposition to the banning of flyer delivery to homes. This motion does not in any way “ban” the flyers, it simply directs Civic Administration to investigate options to address community concerns around the graphic flyers. There is no reason to vote against the motion because it is exploratory at this stage.

Nevertheless, since one of the eventual options may be a bylaw that limits flyer delivery to residents’ homes, it is important to note that such a bylaw does not necessarily entail a “ban” on the flyers, or at least not one that would be unjustifiable under the Charter.

Freedom of expression not a strong argument for the flyers:

It is questionable whether the Charter right to freedom of expression has much application in this circumstance. A bylaw that restricts delivery of unwanted flyers to homes is merely backing up the resident’s stated wish not to receive flyers on their private property (i.e., via a “No Flyers” or similar sign).

Even if there was an infraction where the city laid charges under the bylaw and it went to court, it is doubtful that a freedom of expression argument would win. If a judge allowed the issue, they could find that the bylaw justifiably limited this Charter right to protect other rights. In this case, a flyer bylaw would meet the city’s objective of respecting the privacy of people and families in their own homes, protecting any children who could be upset by the images, and protecting women who may experience trauma at seeing the images because of past or current pregnancy experiences. Second, the images are being forced on a “captive audience,” since the resident has no choice but to receive them. There is no right to force one’s viewpoint on a captive audience – particularly when the audience has already refused the message, such as via a “No Flyers” or “No Trespassing” sign.

Here is an unofficial opinion from our lawyer Don Crane (who is retired) – he said: “I would guess that anyone who wants to deliver a flyer to someone else’s front steps would try to claim that they have a Charter right to do so, but I think it is doubtful that the claim would be given much credit, legally. Presumably the right of free expression does not come with a licence to trespass on someone’s property in order to exercise that right. From that point of view, I would think that bylaws regulating the dissemination of materials to people’s front doors would be found to be lawful.”

Finally, even if a ban on unwanted flyer delivery at homes engages the Charter, such a ban would not be overbroad. Flyers can be distributed in other ways, so delivery to homes is not essential and the bylaw could be seen as a justifiable and narrow limit to freedom of expression. Or, if material might be deemed objectionable, the city could require it to be placed in an envelope with a warning sticker. Municipalities can also specify exemptions to their flyer bylaw. For example, Ottawa and Calgary already have these bylaws and they exempt election-related materials, newspapers to paid subscribers, community newspapers, and government information circulars. Perhaps cities could make other exemptions to ensure that well-intentioned people and businesses who distribute harmless materials are not punished. (By the way, Winnipeg has a 2008 bylaw prohibiting unwanted flyers but with *no* exemptions, and none of the bylaws in these three cities have been challenged in court.)

Advertising Code not relevant to flyer bylaw:

While ARCC advocates use of the *Canadian Code of Advertising Standards* to help cities deal with unacceptable public messaging (not just anti-abortion messaging), the Code doesn’t need to be the subject of discussions or research as the City of London examines how to deal with the flyers – that’s because a bylaw to address them does not need to rely on the Code. (Nonetheless, the graphic images have been found to contravene the Code in any venue/format, including flyer delivery.)

In terms of unacceptable messaging *in public*, such as signage or advertisements, the Code is indeed a useful and accepted standard that at least 77 cities across Canada rely on, and several court decisions have said it is a reasonable guide for cities to use. Of course, it is not the only thing – cities must evaluate messaging using a range of considerations, such as a city’s statutory objectives and an advertiser’s freedom of expression.

It’s not about pro-choice vs. anti-choice:

There was a concern at the committee meeting about this being an issue between pro-choice and anti-choice, or taking one side over the other. Although ARCC is a pro-choice group, most of the remedies we recommend for dealing with the graphic images do not depend on pro-choice views – the issue here is about the graphic nature of the flyers. One can imagine other types of objectionable images or messages that should not be thrust into peoples’ homes without their permission. (An example is the *Epoch Times*, a newspaper periodically distributed to homes in some Canadian cities; it has been called racist and inflammatory:

<https://www.cbc.ca/news/canada/epoch-times-coronavirus-bioweapon-1.5548217>).

Further, ARCC's Trespass Remedy (www.arcc-cdac.ca/trespass-remedy) allows residents to use provincial trespass legislation to prohibit entry onto their property. This has nothing to do with the abortion issue, other than the barred trespasser happening to be an anti-choice group.

I would also point you to bylaws in other cities that limit the graphic signage or flyers, but without restricting them in particular. For example, Calgary's new amendment to its *Temporary Signs on Highways* bylaw limits any sign with advocacy messaging to 5" x 3.5" within 150 metres of any Calgary school, but only during school hours. The bylaw is justified based on schoolchildren being a "captive audience," and is likely to withstand Charter scrutiny because it is narrowly crafted.

There is one key aspect, however, where we should not overlook the rights of vulnerable groups who are protected from discrimination by the Charter and human rights codes. The implied message behind the graphic images is that people who have abortions are murderers and that their reproductive rights should be curtailed. Since women and transgender people who can get pregnant are protected from discrimination under the Charter (section 15) on the basis of sex, a reasonable argument can be made that the graphic flyers (and signage) are discriminatory – and possibly even hate speech in cases where public upset may lead to altercations. (To be hate speech, a message must be likely to incite hatred against a vulnerable group and likely to lead to a breach of the peace – Criminal Code, Section 319.)

Thank you very much for considering my views and information, and I hope that you will all vote in favour of the motion.

Sincerely,



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