



Canada's only national political pro-choice advocacy group

POB 2663, Station Main, Vancouver, BC, V6B 3W3 • info@arcc-cdac.ca • www.arcc-cdac.ca

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Regulation of Graphic Flyers to Residences

Dear Community and Protective Services Committee members, and City Clerk:

May I please provide the following information and recommendations to aid you during your CPSC meeting on Tue Mar 1, in relation to the agenda item for the bylaws to regulate graphic flyers. Thank you for this opportunity.

First, I appreciate that the CPSC asked staff to provide a report asking for bylaw drafts with penalties. This is essential to ensure an effective bylaw that will actually deter the people delivering the flyers.

The Abortion Rights Coalition of Canada (ARCC) recommends that the city **enacts both bylaws** as drafted in Appendix A and Appendix C. They do not conflict with each other. Appendix A would help capture other unwanted flyers besides graphic flyers, giving residents the ability to opt out by posting a 'No Flyers' or similar notice at their mailbox. It would also result in little or no legal risk for the city, especially since several other cities have similar bylaws. However, this bylaw would be less effective against graphic flyers as residents may not take the initiative to post the required notice, plus the \$75 penalty may not be a sufficient deterrent to those delivering unwanted flyers.

I believe the Appendix C bylaw specifically banning delivery of graphic flyers to any residential property would have the most effective impact in terms of stopping the harms of graphic flyers. It does not depend on residents being required to post a 'No Flyers' or similar notice, and the heavier fine of \$350 would more effectively deter people delivering the flyers. The bylaw is also not limited to the flyers depicting aborted fetuses, but any type of graphic flyer that may trigger a negative effect on people's health and well-being – this broader, more proportionate approach will help the bylaw withstand Charter scrutiny.

I realize that enacting the Appendix C bylaw may invite a legal challenge. First, I would urge you to please not cave into extremist bullies. This would set a bad example to the dozens of other cities across Canada that have also been suffering from the graphic imagery, and would subject your own citizens to this abusive graphic imagery for years to come with little recourse.

Second, you would be on strong legal grounds in terms of the *Charter of Rights and Freedoms*, because cities need to consider a range of objectives and rights, not only freedom of expression. While it's true the Appendix C bylaw would violate freedom of expression rights under Section 2(b) of the Charter, this can be saved under a Section 1 defence, which allows justifiable limits on rights to protect other competing rights and objectives.

Below I have outlined three key factors that should be weighed against the freedom of expression of those delivering the graphic flyers. These factors would contribute to a strong Section 1 Charter argument to prohibit the delivery of graphic flyers to homes:

1. **Existing case law supports some limits on freedom of expression:** Considerable case law supports justified limits to freedom of expression to protect the Charter rights of others. In addition to several Supreme Court cases ([R. v. Keegstra](#) on hate speech, [R. v. Butler](#) on obscenity, and [R. v. Sharpe](#) on child pornography), the following provincial cases may be of interest to the city:
 - [R. v. Spratt](#) (2008 BCCA 340) allowed the infringement of anti-abortion protesters' freedom of expression around abortion clinics, in order to ensure the safety, privacy and dignity of women accessing abortion care.
 - [American Freedom Defence Initiative v. Edmonton](#) (2016 ABQB 555) upheld the city's removal of a prejudicial bus ad about honour killings of Muslim women, because the City's objective of providing a safe and welcoming transit system outweighed the limitation on freedom of expression caused by the refusal to run an offensive and discriminatory ad.
 - [Guelph and Area Right to Life v. City of Guelph](#) (2022 ONSC 43) granted a judicial application to an anti-choice group who sued over its bus ads being refused, but the court did not require the City to post the ads, instead remitting the decision back to the City to reconsider and carry out a Charter balancing exercise. The court said the city needs to weigh the anti-choice group's freedom of expression against the city's statutory objectives and competing Charter rights, including gender equality rights as the intervenor ARCC had argued (Para 91).

In relation to the recent Guelph case above, I would like to emphasize that the graphic flyers being delivered by the Canadian Centre of Bio-Ethical Reform (CCBR) undermine gender equality rights, which are protected under Section 15 of the Charter. Not only do the flyers specifically cause harm and trauma to women and gender-diverse people who can get pregnant, they also target their legal rights and essential health needs, thereby seeking to challenge their Charter rights to equality, life, bodily autonomy, privacy, and conscience.

2. **Courts respect Ad Standards decisions and advertising code:** As of 2022, eight court decisions have [endorsed cities' use](#) of the *Canadian Code of Advertising Standards*, which is administered by Ad Standards on behalf of the advertising industry. It's important to note that the graphic imagery of aborted fetuses – both in the form of flyers delivered to homes and signage on streets – has been deemed by Ad Standards to violate the Code:
 - In three separate decisions in 2014, 2015, and 2017, Ad Standards Council ruled that graphic flyers depicting aborted fetuses contravened Clause 14 (d) of the Code: "Council concluded that by its use of highly graphic and disturbing images, the advertiser displayed obvious indifference to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population." In all 3 cases, the flyers were delivered by and/or produced by the Canadian Centre for Bio-ethical Reform (CCBR).
 - In a 2009 decision, Ad Standards Council ruled that a large image of an aborted fetus on the side of a moving truck contravened Clauses 14(c) and (d) of the Code: "Council...concluded that the advertising using the image of an aborted embryo in this medium and in this way, displayed obvious indifference to conduct or attitudes that offend the standards of public

decency prevailing among a significant segment of the population. Council also concluded that the imagery, when combined with the words ‘unmasking choice’, denigrated women who have chosen to have an abortion.” The truck with billboards was operated by the CCBR.

Because courts have supported the use of the Code by cities, including their reliance on Ad Standards decisions (provided this is not the only factor cities rely on), this gives added authority to cities to prohibit the graphic flyers by taking into account the decisions and the Code as one part of a Charter balancing exercise.

3. **Municipalities have authority to protect public safety:** Municipalities and cities have considerable authority to pass bylaws to protect public safety and well-being, ensure a safe and welcoming transit system, and fulfill other statutory objectives for the protection of their communities. The [same court decisions](#) that support cities’ use of the Advertising Code also recognize municipal authority in upholding their statutory objectives, and indeed, expect cities to include these in a Charter balancing exercise of competing rights.

In the case of the graphic flyers, the City of London has ample evidence of the harms to the community in the form of multiple complaints, including descriptions of emotional upset, rage, fear, and traumatic responses and aftereffects – including amongst children as well as people who have had miscarriages or abortions.

Further, in the Appendix C bylaw, I would recommend that the city include another “Whereas” that specifies the city’s evidence for the harms of the graphic flyers, such as the complaints and letters received, the public petition, etc. This would help strengthen a Charter Section 1 justification.

To conclude, I ask the CPSC to recommend that City Council pass both bylaws as drafted in Appendices A and C, but especially Appendix C. Please take into account the factors above that justify the prohibition of graphic flyer delivery under Section 1 of the Charter, which have been informed by legal advice I have received as well as existing jurisprudence.

Thank you very much,



Joyce Arthur (she/her)
Executive Director
Abortion Rights Coalition of Canada (ARCC)
joyce@arcc-cdac.ca