

TO: Members of London City Council Community and Protective Services Committee
FROM: Samuel Trosow
RE: CPSC Agenda March 1, 2022 (Flyer Distribution)

This is to follow up on my previous communications to the CPSC on the matter of a by-law regulating the distribution of leaflets to residential properties in the city as well as my presentation to the committee on November 2, 2021. Specifically, I am writing in support of the draft by-law attached as Appendix C to your agenda.

By-Law C is carefully crafted to satisfy the requirements of section 1 of the Charter

As any measure that restricts the distribution of flyers will engage section 2(b) of the Canadian Charter of Rights and Freedoms, it is crucial that council carefully consider the requirements of section 1 of the Charter. As the test for showing a basic violation of 2(b) is very low, under the case law the issue becomes whether the impugned measure can be justified under Section 1. There are several significant cases that show how a *prima facie* violation of 2(b) will survive a constitutional challenge after the application of section 1 (*R v Butler* regarding obscenity, *R v Keegstra* regarding hate speech are just two prominent examples). Should a measure restricting leaflet distribution be challenged, while a court would likely find a section 2(b) violation, they would then turn to a section 1 analysis.

As a threshold issue, the city needs to show the by-law is in furtherance of a legitimate and substantial objective. The Appendix C by-law satisfies this requirement as the resolution of November 17, 2021 made a clear finding that the “council received substantial evidence from Londoners that such unsolicited flyers cause demonstrable harm to London residents.”

I would suggest that this exact language be incorporated into the by-law, it can simply be inserted into an additional Whereas Clause.

Beyond that, you must show that any violations caused by the by-law is proportionate to the harm it is seeking to address. The Appendix C by-law meets these requirements as well as it is rationally related to the harm being addressed, it is clear in its term, and it is designed to impact the expression rights as little as possible.

Thank you for your consideration of this letter and my previous communications to you on this issue.

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