



May 3, 2022

Regulation of Graphic Flyers of Aborted Fetuses to Residences

Dear Mayor and City Councillors of London:

In relation to the May 3 Council agenda item for the bylaw to regulate the delivery of graphic flyers, may I please add some information that I hope will be useful for the Council to consider.

ARCC supports the bylaw as recommended by the Community and Protective Services Committee – Bill No. 138, “A by-law to regulate the delivery of graphic images in the City of London,” which requires that graphic images showing fetuses must be “fully concealed within a sealed envelope or package” and have identifying information and a warning on the outside.

We urge the Council to pass this bylaw immediately, given the length of time it has taken to arrive at this solution and the need to ensure protection for London residents this year. In terms of the constitutionality of the bylaw, I refer you to the previous submissions for the March 22 Council meeting sent by myself, Sam Trosow, and Deanna Ronson, in relation to the outright ban on the graphic flyers. (See Section 6.4 of Agenda, items 7,8,9.)

New bylaw reduces burden on freedom of expression

While we believe the outright ban would have been justified under Section 1 of the Charter, the new bylaw significantly reduces the burden on Section 2(b)'s freedom of expression. This will give the city an even more robust Section 1 defence to infringe freedom of expression. For example, the people delivering the flyers are not prevented from doing so – they must simply make a reasonable accommodation to reduce the harms of the flyers to residents. They also have other ways of delivering their message, with or without the graphic images. Therefore, the bylaw strikes a proportionate balance between the rights of the anti-abortion activists, the rights of residents, and the city's statutory objectives; and would more likely meet the minimal impairment test in a Section 1 analysis.

New court decision upholds bylaw against unwanted flyers in Quebec

An April 20 decision from the Quebec Superior Court upheld a bylaw prohibiting delivery of unwanted flyers to homes in Mirabel Quebec. The case is *Médias Transcontinental c. Ville de Mirabel*, 2022 QCCS 1350. The 50-page decision is [online in French only](#) (a translation may be available soon), but here is a summary of facts taken from news reports and selected bits of translation:

- A company called Médias Transcontinental (MTC) delivers a plastic bag full of colorful coupons and promotional materials called “Publisac” to homes in some Quebec cities.

- Based on numerous complaints, the city of Mirabel passed a bylaw in October 2019 (Bylaw 2326) that restricts the distribution of flyers to those who request them by affixing a sticker to the mailbox – i.e., an “opt-in” approach. Further, *not* having a sticker would prevent *all* unwanted flyers from being delivered, not just the Publisac.
- MTC sued Mirabel on the grounds that their freedom of expression was being violated. The company continued to deliver its Publisac in contravention of the bylaw.
- On April 20, 2022, the Quebec Superior Court upheld the bylaw based on the city’s objective to reduce waste paper. The judge said: “Bylaw 2326 is a public interest bylaw justified by the desire to reduce the management of residual materials and promote the cleanliness of the territory. These are overriding environmental issues.”
- While the judge found the bylaw did infringe freedom of expression, he said “...the beneficial effects of Regulation 2326 far outweigh any as-yet-unknown detrimental effects that might result from the minimal infringement of MTC's commercial freedom of expression.”
- The judge also said that Mirabel was empowered to regulate the distribution of printed advertising on its territory under Quebec’s *Municipal Powers Act*.
- MTC plans to appeal the ruling, in part because it said the bylaw makes their flyer delivery system not viable, requiring them to “discontinue the distribution of the Publisac in Mirabel after more than 30 years of operations in the city.”
- The City of Montreal announced its own plan to develop a similar regulation requiring explicit consent for the distribution of flyers including the Publisac, starting in May 2023.

Here are several articles about the court decision:

- [Transcontinental \[halting\] flyer distribution in Mirabel to Canada Post during appeal](#), Canadian Press, Apr 25
- [A Quebec court has upheld the crackdown on unwanted flyers in a Montreal suburb](#), Worabia.com, Apr 22
- [La Cour supérieure donne raison à Mirabel](#), La Ville de Mirabel, 20 avril 2022.
- [Mirabel gagne sa cause dans le dossier du Publisac](#), Jeanne Corriveau, Le Devoir, 20 avril 2022

To conclude, we ask the Mayor and Council to please pass the new bylaw as recommended by the CPSC, taking into account the Mirabel court case and the fact that this bylaw infringes even less on freedom of speech than an outright ban would, and is more likely to sustain a Charter 1 challenge.

Thank you very much.



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