

April 27, 2022

Dear London City Council,

I write to you again, as Eastern Outreach Director of the Canadian Centre for Bio-Ethical Reform, in response to the latest draft by-law to restrict pro-life freedom of expression in the City of London. Unfortunately, the draft by-law proposes that the City of London do what no government has the power to do — target one particular message for differential treatment based on the content of that message. I urge the City of London not to pass a by-law that would violate the section 2(b) *Charter* right to freedom of expression.

The Supreme Court of Canada in *Irwin Toy Ltd. v. Quebec (Attorney General)* held that section 2(b) of the *Charter* protects all non-violent expressive activity — that is, any activity or communication that conveys or attempts to convey meaning — without discrimination based on content, however unpopular, distasteful, or contrary to the mainstream.

Freedom of expression is a broad right, including the right to communicate controversial messages. In *R. v. Zundel*, Justice McLachlin (as she then was) stated that the purpose of protection for freedom of expression extends to protecting “beliefs which the majority regard as wrong or false,” frequently involving “a contest between the majoritarian view of what is true or right and an unpopular minority view.” She also said that “the view of the majority has no need of constitutional protection; it is tolerated in any event.” Protection for freedom of expression is especially robust when it applies to controversial or disturbing speech.

The Supreme Court has recognized leafletting as a “long standing and traditional form of freedom of expression” which has been used for hundreds of years to facilitate rational discourse and provide information to the public. Leafletting is an activity that conveys meaning and is therefore entitled to *Charter* protection, as the court has recognized in *U.F.C.W., Local 1518, v. Kmart Canada Ltd.*, (1999) 2 SCR 1083 (at paragraphs 28 and 30).

In particular, the courts have also said that expression around the abortion issue represents a “legitimate participation in an important political and social debate in Canada.” (*R. v. Whatcott*, 2005) Similarly, in *R v Watson*, the BC Court of Appeal said that “beliefs about the meaning and value of human life are fundamental to political thought and religious belief. Those beliefs find expression in the debate on abortion.” The court quoted Professor Dworkin, who said that “the importance of communicating those ideas and beliefs lies at the ‘very heart of freedom of expression.’ ”

Clearly, pro-life leaflets which convey meaning and express ideas and beliefs about the abortion issue enjoy strong *Charter* protection in Canada.

Yet, the draft by-law singles out one particular message for differential treatment. The regulations would place additional barriers and requirements on flyers containing one particular message — any image of a fetus, no matter what the fetus looks like. This is clearly designed to place restrictions and barriers on pro-life speech about the abortion issue, as the record will show over the past 18 months of deliberations in committee and council. The by-law would not affect pro-choice speech about the abortion issue. It would not affect flyers with graphic images on any other topics but the abortion issue. Flyers with graphic images of victims of the war in Ukraine, of police brutality, or of animal agriculture, or even of women who had died from botched illegal abortions would be permitted, yet flyers communicating a pro-life message about abortion would be singled out and treated differently under the law, subject to additional requirements.

This is blatant content-based discrimination, attempting to suppress and limit one particular message on one particular issue. That some city councillors do not agree with the message does not give the City of London the legal authority to violate the *Charter*. The City of London has an obligation to avoid content discrimination, and if it chooses to enact a by-law, it has an obligation to set aside the personal views of legislators and comply with the *Charter*.

This responsibility is clearly not being met with the proposed by-law, and I would urge the City of London to uphold its duty under the *Charter* and not pass such an unconstitutional restriction on pro-life freedom of expression.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blaise Alleyne', written in a cursive style.

Blaise Alleyne
Eastern Outreach Director, CCBR