



Abortion Rights
Coalition of Canada

Your Voice for Choice

Canada's only national political pro-choice advocacy group

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April 22, 2024

Dear Economic and Community Development Committee, City of Toronto,

Re: How to regulate graphic images while respecting Charter rights

As the Executive Director of the Abortion Rights Coalition of Canada, may I please provide information that could be helpful to you in considering whether and how to regulate public displays of graphic images depicting aborted fetuses, as well as graphic flyers delivered to homes? This relates to Motion MM7.17, which I understand will be discussed at your April 29 meeting when Municipal Licensing and Standards presents its report.

First, I strongly encourage Toronto to pass a bylaw to regulate the graphic flyers delivered to homes, similar to the bylaw first passed by London in 2020 and now successfully copied by eight other jurisdictions.

In this letter, I focus mostly on how graphic *signage* can also be regulated, but much of the information applies to graphic flyers as well. This letter explains the following:

- ARCC's interest and expertise in this issue
- Harms of the graphic images
- Legal avenues to restrict the graphic images, including using Section 1 of the Charter to justifiably infringe fundamental rights to protect other rights (and city objectives)
- How Ad Standards and the *Canadian Code of Advertising Standards* can enable the city to restrict anti-abortion messaging, including graphic images specifically
- Information and links to 18 legal cases and municipal bylaws that restrict, or allow the restriction, of anti-abortion messaging including the graphic images

About ARCC

The Abortion Rights Coalition of Canada is a national grassroots advocacy group for abortion rights and access. We have an ongoing project since 2017 that combats harmful anti-choice messaging, and have communicated with about 100 municipalities, as well as provincial and federal officials.

Although I am not a lawyer myself, the information and arguments we give to governments are based on legal advice.

Harms of the graphic images

The display of graphic images of aborted fetuses happens across Canada, primarily on public streets and at universities. Everywhere they appear, the graphics cause a community disturbance or nuisance. Police, cities, and universities field numerous complaints from the public and students, and the issue often creates a controversy in the press.

The images can be devastating for children. Families with young kids are often infuriated, with many stories of children traumatized as a result of having seen the pictures, including having nightmares. The privacy rights of parents to instruct and raise their children as they see fit, and in a safe manner, are being co-opted by the tactics of anti-abortion groups without permission or warning.

The images are also extremely distressing to women and gender-diverse people capable of pregnancy. For example, if someone has had a miscarriage or any negative pregnancy experience, the images can trigger traumatic memories and cause mental distress. The images can potentially induce guilt or shame in people who have had an abortion, while anyone who strongly values reproductive rights may experience the images like a gut punch, because they represent an infuriating challenge to their fundamental human rights.

Seeing graphic images of aborted fetuses can be analogized to the exposure to graphic images and events experienced by some professions, which can result in post-traumatic stress disorder (PTSD). Examples include soldiers, police officers, first responders,¹ funeral industry workers and medical examiners,² journalists³, and social media content moderators.⁴

The graphics also create an unacceptable invasion of privacy into peoples' lives because it is often difficult or impossible to avoid the pictures. When the imagery is shown on city streets, hapless pedestrians and drivers may pass by without warning, or drivers may be caught in traffic and cannot escape for several minutes. Free speech rights do not extend to forcing oneself on a captive audience, which must have the equal freedom to avoid the message without undue inconvenience or restriction of movement.⁵

Municipalities have objectives and values that are undermined by unacceptable messaging such as graphic images. Local governments have the authority to pass bylaws to keep the peace, maintain a safe and welcoming community or transit system, prevent nuisance or indecency, protect private property, limit certain signage in public, reduce noise, ensure traffic safety, and

¹ <https://www.thespec.com/local-st-catharines/life/2023/03/27/i-don-t-feel-safe-anywhere-now-first-responders-with-ptsd-support-restriction-of-flyers-that-have-graphic-images.html>

² <https://dash.harvard.edu/bitstream/handle/1/37365094/MCCLANAHAN-DOCUMENT-2019.pdf> AND: <https://pubmed.ncbi.nlm.nih.gov/28981313/> Article: <https://blog.frontrunnerpro.com/mental-health-funeral-industry/>

³ <https://journals.sagepub.com/doi/full/10.1177/2054270414533323>

⁴ <https://topclassactions.com/lawsuit-settlements/employment-labor/facebook-class-action-says-graphic-images-caused-moderators-ptsd/> AND: www.theverge.com/2020/5/12/21255870/facebook-content-moderator-settlement-scola-ptsd-mental-health

⁵ <http://ablawg.ca/2017/01/19/lost-and-found-the-captive-audience-doctrine-returns/>

so on. Courts should find such objectives to be compelling enough to override freedom of speech, at least in particular places and circumstances. The City of Toronto may find useful ARCC's comprehensive list of municipal bylaws and policies in Canada that relate to speech.⁶

Municipal actions to regulate graphic signage in public

The **City of Calgary** passed a bylaw amendment⁷ on Oct 5, 2020 to the *Temporary Signs on Highways* bylaw.⁸ It was enacted in response to graphic images of aborted fetuses being displayed outside high schools. The amendment limits signs with advocacy messaging to just 5" x 3.5" within 150 metres of any Calgary school during school hours. The city's legal department believes the restriction is justifiable under the *Charter*, as it still allows display of the images but with reasonable restrictions to protect students' rights and safety. There has been no court challenge.

After Calgary passed its bylaw amendment, several other cities besides Toronto began looking at the feasibility of restricting the graphic signage shown in public:

London: On Feb 20, 2024, the Community and Protective Services Committee received a report from staff about potentially expanding the city's graphic flyer bylaw to also prohibit graphic images in public. The report's recommendation was to ban the display of graphic signage of fetuses by defining them as violations under various clauses of the *Streets By-Law S-1*, such as sections on street obstructions, public nuisance, etc. The committee voted to send the staff report back with a directive to create a draft bylaw on regulating graphic images that would be more likely to withstand a Charter challenge. The report is expected by end of June.

Hamilton: On November 8, 2023, City Council passed a motion⁹ that directed staff to prepare a report for the Planning Committee by Q2 2024 on the feasibility of regulating or prohibiting graphic imagery that is carried, held, or displayed in public spaces (as well as the feasibility of a by-law to regulate the graphic flyers).

Oakville: On June 19, 2023, Town Council directed staff to look again at placing restrictions on graphic public displays (as well as graphic flyers).¹⁰ Staff were instructed to come back with recommendations before the end of fall, to allow the matter to be discussed as part of a review of the town's licensing bylaw. (The recommendations have been delayed but are expected in "early 2024" according to one councillor.)

⁶ City Bylaws and Use of Canadian Code of Advertising Standards: <https://www.arcc-cdac.ca/media/2022/03/City-Search-Advertising-Code-Worksheet-all.pdf>

⁷ www.cbc.ca/news/canada/calgary/calgary-abortion-safe-zone-protest-bubble-school-1.5359050

⁸ Layperson's summary: <https://www.calgary.ca/bylaws/signage.html>. Download bylaw: <http://publicaccess.calgary.ca/ldm01/livelink.exe?func=ccpa.general&msgID=VyATqqTTeT&msgAction=Download>

⁹ Pg 11, Council minutes: <https://pub-hamilton.escribemeetings.com/FileStream.ashx?DocumentId=387338>

¹⁰ https://www.insidehalton.com/news/oakville-council-directs-staff-to-take-another-look-at-restricting-graphic-anti-abortion-flyers-and/article_51de4b6d-92d8-5903-b97a-346e4208d935.html

Ability to restrict freedom of expression under the Charter

Despite the obligation of local governments in Canada to uphold Charter rights, municipalities in Canada have options to restrict the graphic images. For example, no public entity needs to allow hate speech as that goes beyond the bounds of freedom of expression. The graphic images are arguably hate speech.¹¹

Similarly, if a message is being forced on people to the extent that it's difficult to avoid, which is often the case with these graphic images, then the captive audience doctrine comes into play, as mentioned above.

A crucial section of the *Charter of Rights and Freedoms* is Section 1, which allows justifiable limits on one right in order to protect another right,¹² provided it's done in a narrow and proportionate manner.¹³ An important example of this in case law is the safe access zone laws in six provinces¹⁴ that protect abortion clinics and providers from anti-choice protests. These laws infringe freedom of expression, but the original BC law was upheld as constitutional¹⁵ because the interests of patient privacy, dignity, and safety overrode freedom of expression in this particular context.

In the case of graphic imagery in public, freedom of expression of anti-choice groups must be balanced against the rights of passersby who are subject to the images, and the rights of the former can be infringed to protect the latter.

There's some new case law relevant to this. ARCC intervened in two separate cases^{16, 17} over anti-choice bus advertising, where the cities of London and Hamilton had refused to run ads, and the anti-choice group sued. In both cases, the courts remitted the decision back to the cities to re-decide, as the cities had not properly considered the advertiser's freedom of expression rights. (*See more info on these cases below under Legal cases.*) Importantly, the courts cited ARCC's arguments that the Charter rights of women, including gender equality and bodily autonomy, should be considered alongside city objectives such as ensuring a safe and welcoming community. On that basis, ads or public messaging that target certain communities in a demeaning or discriminatory manner can be restricted.

¹¹ <https://www.cbc.ca/news/politics/summer-jobs-abortion-images-ccbr-1.4523255>

¹² https://oien.ca/wp-content/uploads/In-Brief_STUDENT_Section-1-and-Oakes_0.pdf

¹³ <https://www.cba.org/Sections/Administrative-Law/Articles/2019/The-song-remains-the-same>

¹⁴ <https://www.arcc-cdac.ca/media/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>

¹⁵ <https://www.prochoicereactionnetwork-canada.org/articles/bubble-zone-case.html>

¹⁶ *Guelph and Area Right to Life v. City of Guelph*, Ontario Superior Court of Justice, Divisional Court, 2022 ONSC 43. <https://www.canlii.org/en/on/onscdc/doc/2022/2022onsc43/2022onsc43.html>

¹⁷ *Association for Reformed Political Action Canada v. Hamilton (City of)*, 2023 ONSC 644323. <https://www.canlii.org/en/on/onscdc/doc/2023/2023onsc6443/2023onsc6443.html>

Canadian Code of Advertising Standards

Another useful tool is the *Canadian Code of Advertising Standards*.¹⁸ This is a private code for the advertising industry, administered by Ad Standards, but the Code is widely respected and adhered to, with over 90 municipalities¹⁹ citing the Code in their advertising policies or bylaws.

The Code has quite broad requirements that public messaging cannot have “unacceptable depictions and portrayals” that may be demeaning, denigrating, discriminatory etc. In fact, Ad Standards has issued FOUR separate decisions against graphic images of aborted fetuses. (See ARCC’s compilation of Ad Standards decisions²⁰ – #3, 7, 9, 10.)

While Ad Standards does not have enforcement power, local governments can cite these decisions to strengthen their case to restrict anti-choice messaging. In other words, Ad Standards decisions can be an important part of a Charter rights balancing exercise.

Legal cases and city bylaws on restriction of anti-abortion messaging

Here is information on specific legal cases and city bylaws that restrict, or support the restriction, of anti-choice messaging (with embedded links):

- Generally speaking, courts have said that in order to restrict messaging, governments and public bodies must engage in a legal analysis using the Doré/Loyola framework. These two court decisions require decision-makers to consider their relevant statutory objectives, and how the Charter values at issue should be protected in light of those objectives. This is a “proportionality analysis” – the decision-maker must balance the severity of infringement of Charter values against the statutory objective using a reasonableness standard. Further, a Section 1 analysis under the Charter requires decision-makers to balance the Charter right at issue with competing Charter rights.
 - [Doré v. Barreau du Québec](#), 2012 SCC 12, 1 SCR 395
 - [Loyola High School v. Quebec \(Attorney General\)](#), 2015 SCC 12, 1 SCR 613
 - [The Song Remains the Same: The Doré/Loyola Framework After TWU](#), Jan 7, 2019, by Guy Régimbald and John J. Wilson
- [Nine court decisions](#) have supported cities’ use of the *Canadian Code of Advertising Standards* to restrict messaging, with most cases involving anti-abortion messages. Many of these decisions have also justified the infringement of freedom of expression using Section 1 arguments. (The two cases ARCC was involved with are described in the next two bullets.)

¹⁸ <https://adstandards.ca/code/the-code-online>

¹⁹ <https://www.arcc-cdac.ca/media/2022/03/City-Search-Advertising-Code-Worksheet-all.pdf>

²⁰ <https://www.arcc-cdac.ca/media/2020/06/Ad-Standards-decisions-on-anti-abortion-ads-Upheld.pdf>

- Guelph and Area Right to Life v. City of Guelph, Ontario Superior Court of Justice, Divisional Court, 2022 ONSC 43:
 - The city refused to run three anti-abortion ads on buses because Ad Standards had deemed them inaccurate and/or demeaning to women. The anti-choice group claimed their Charter right to freedom of expression was violated. The court ruled that the City's decision was unreasonable because it didn't do a Charter analysis under the Doré/Loyola legal framework, relying only on the Advertising Code, which was appropriate but insufficient. The court remitted the decision back to the city for reconsideration, including weighing the anti-choice group's freedom of expression rights against the City's statutory objectives and competing Charter rights of women.
- Association for Reformed Political Action Canada v. Hamilton (City of), 2023 ONSC 644323:
 - The City of Hamilton refused to run an anti-abortion ad on city buses that was submitted by ARPA Canada. The ad was deemed inaccurate and in likely violation of the Advertising Code after the city sought an opinion from Ad Standards. ARPA Canada sued to have the ad posted, citing a violation of their freedom of expression. The court relied largely on the Guelph decision (above). Since the City had not done a Doré/Loyola analysis, the court remitted the matter back to the city for reconsideration, meaning the city still could justifiably refuse the ad using the Doré/Loyola framework and Section 1 arguments.
- Nine municipalities have passed bylaws that regulate the private delivery to homes of graphic flyers that show aborted fetuses:
 - London (May 2022)
 - Woodstock (Feb 2023, see pg 7)
 - Calgary (May 2023)
 - Ingersoll (June 2023)
 - Strathmore AB (July 2023)
 - Okotoks AB (Aug 2023)
 - Airdrie AB (Sept 2023, pg 18)
 - St. Catharines (Sept 2023, see S7.3)
 - Burlington (March 2024)

Further, Norwich, Oakville, Toronto, and Hamilton are moving towards passing a flyer bylaw in 2024, while it's now on the agenda of other cities including Mississauga, Vancouver, and others.

Note: A legal challenge over the flyer bylaw was recently launched against the City of St. Catharines by ARPA Canada, but I'm confident the bylaw can pass Charter scrutiny because the anti-choice group can still deliver their flyers, subject to reasonable

restrictions in order to protect the rights of residents and respect city objectives.
St. Catharines will be robustly defending its bylaw in court.

To conclude, I hope the above information can help the City of Toronto decide on a feasible way to restrict harmful graphic signage in the city. ARCC recommends drafting a bylaw similar to Calgary's but limited to graphic images of fetuses and broadly applicable in any public place.

Thank you very much for your time and consideration.

A handwritten signature in black ink, appearing to read "J Arthur". The signature is fluid and cursive, with a long horizontal stroke at the end.

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April 24, 2024

Dear Economic and Community Development Committee, City of Toronto,

Re: MLS report on regulating graphic images suffers from major shortcomings

I'm deeply concerned about the [April 16 report](#) from Municipal & Licensing Standards (MLS), which basically recommends NO action to address the graphic images of aborted fetuses, whether displayed on signage in public or delivered as flyers to residents' homes.

The MLS report is in response to the [City Council Decision EX6.23 - Graphic Image Delivery](#), July 19/20, 2023, asking staff to report on how to regulate the graphic images.

In my opinion, multiple problems with the MLS report render its recommendations untrustworthy. I've outlined these issues below.

In light of the report's serious shortcomings, I ask the Economic and Community Development Committee to please disregard the report's recommendations at its April 30 meeting, and instead ask Legal Services to proceed with drafting a viewer-discretion type bylaw for the graphic flyers, as well as a reworked Calgary-type bylaw for the graphic signage, and to provide advice on potential legal risks to consider for both bylaws.

1. **Wishes of Council disregarded.** Since 2017, multiple motions have been introduced by Council members asking staff to find ways to deal with the images, draft a bylaw etc. Yet staff has repeatedly failed to do so. The history of these motions sends a strong message – Council **wants to do something about the graphic images**. The proper role of staff therefore should be to **help them find a way to do it**. I suggest that MLS owed a duty to Council: They should have presented options for how to regulate the images alongside some legal advice on the risks. Even if MLS believed it would be too risky or difficult to do so, that should be for Council to ultimately decide, and Council has the prerogative to decide it is worth doing. But now the ECDC doesn't have enough information to make an informed decision or recommendation to Council. I believe the MLS report inappropriately ties the hands of the ECDC and Council, and fails to provide vital information.

2. **Crucial legal advice missing.** The report is written by MLS which mentions that Legal Services was consulted. But a strong and nuanced legal analysis is crucial for this particular issue due to the complex Charter issues involved. The ECDC cannot be sure that MLS staff accurately conveyed all the nuances of whatever legal advice they got. I point you to my [April 22 letter to ECDC](#), (added to your Apr 30 agenda, and written before seeing the MLS report), that explains in detail how the graphic images can be restricted while respecting Charter rights. This level of information and analysis is missing from the MLS report.
3. **Failure to disclose how other cities define “graphic images.”** MLS is aware that the existing flyer bylaws in London and other cities define graphic images as “showing or purporting to show a fetus or any part of a fetus”, yet the report does not even mention this. Instead, it implies that other cities’ bylaws fall short because they don’t “*speak to other content that may be perceived as graphic or disturbing,*” and warns about the challenge of determining what is graphic and disturbing. But why didn’t MLS simply recommend the adoption of the definition used by other cities? Confining the definition to “a fetus or any part of a fetus” appropriately limits the reach of the bylaw, making it more likely to be Charter compliant and also making it easier to enforce.
4. **Enforcement options not properly considered.** The report’s recommendations rely heavily on the claimed challenges of enforcement. First, I informed MLS in a July 14, 2023 letter that the city doesn’t have to try to catch or identify the sign holder or the person who delivered the flyer. We know that the party most often responsible for the graphic images is the Centre for Bio-Ethical Reform (CCBR). Information to identify them is even included on all the flyers and at least some of the signs. The city can simply charge the CCBR itself and/or its officers, because the CCBR is a registered corporation in Alberta and therefore constitutes a “person” under law. Second, even if a law might be hard to enforce, it’s no excuse not to pass it – a law can have an important deterrent effect as most people would stop the illegal activity just in case they get caught.
5. **Offered solutions for graphic flyers are insufficient.** The report refers to “mechanisms already available” for stopping the distribution of graphic flyers to homes but says nothing about their efficacy, which in fact is limited. Although residents can post a “No flyers” notice at their door, the CCBR is known to ignore those notices. If a resident sends in a provincial Trespass Notice to the CCBR prohibiting them from coming onto their property, that will likely work for that particular address. But it leaves out the vast majority of households, most of whom are likely unaware of this remedy. The Trespass Remedy, while valuable, also places the burden on residents by requiring them to implement the measure.
6. **Torontonians would be permanently subject to the graphic images.** The report’s recommendations would result in an unacceptable abandonment of residents to the trauma and distress of the graphic images. The risk of a lawsuit is not a sufficient reason to do nothing, given the harms involved and the City’s obligation to protect its residents. Many other cities have successfully passed bylaws and are willing to defend them robustly if needed, as St. Catharines is doing now for its flyer bylaw. Toronto is the largest city in

Canada with the most resources to defend itself, and therefore should have no excuse. Also, Toronto should be setting a good example for other cities, as many have been waiting to see what Toronto will do. The MLS report's "do nothing" prescription could have major repercussions across the country and subject many more Canadians to the graphic images.

7. **Lack of due diligence shown in looking at options.** The report dismisses Calgary's 2020 bylaw in one brief paragraph as not applicable to graphic signage. But why didn't MLS consider that the Calgary bylaw could be reworked to address the graphic images specifically? This bylaw prohibits advocacy signage outside schools larger than 3" x 5", which still allows the CCBR to have their freedom of expression while protecting the rights of students, striking a good balance of competing rights that should stand up to Charter scrutiny. In Toronto's case, you could customize the Calgary bylaw by limiting it to signs showing fetuses and making it applicable in public generally. But it didn't seem to occur to the MLS to explore this option, let alone present it to the ECDC. Again, the ECDC has not been provided with complete information to make an informed decision.
8. **Issues discussed that are irrelevant to the graphic images, creating confusion.** The report's Summary states: "*This report also responds to Council direction to review whether an owner or occupant of a property should be authorized to erect advocacy signs in common areas or on the public boulevard without the consent of other owners and occupants of the same property.*" This direction is not contained in [Item 2023.EX6.23](#) from Council, and one can see that discussing it in this report has blurred the lines between two separate issues. The "newly amended Chapter 693" is not applicable to the graphic signs because the latter are held, not mounted, and are on public property, not private. By combining the Chapter 693 issue with the graphic images issue, the report obfuscates its lack of attention to the latter. Likewise, the report's mention of Canada Post's Consumer Mail Program is irrelevant and further confuses the issue, because the graphic flyers are not delivered by Canada Post.
9. **Misinterpretation of the Canadian Code of Advertising Standards.** The report claims that because the Code is focused on advertising, it is therefore not appropriate for non-commercial purposes such as the graphic images. This is inaccurate and misleading. An ad under the Code is broadly defined as any public message where the entity responsible can be identified (summarized from Ad Standards' [Definitions](#)). This includes advocacy messaging, which Ad Standards specifically discusses in their Interpretation Guidelines, [Section 6](#). In fact, Ad Standards has ruled against the graphic images on *four separate occasions*, both the flyers and signage. Therefore, citing the Code in Toronto's bylaws relating to signs, ads, or other public messages may indeed help – not just for the graphic images, but any unacceptable public messaging. Further, the MLS report again mistakenly conflates Chapter 693 with the graphic images, claiming that the amended Chapter 693 requirements are more appropriate for advocacy signs – but Chapter 693 is not relevant to the graphic images as explained above.

10. **False fears raised to justify doing nothing.** The report warns that the city may have to set up its own decision-making entity to review sign content and weigh it against Charter considerations, and asserts this would create policy and enforcement challenges. This claim is spurious because:

- It rests on the false dilemma of how to define “graphic images” (see above).
- Ad Standards’ decision-making process is sufficient for cities to rely on, and Toronto does not need to somehow duplicate it. The real issue, which the MLS report entirely fails to explain, is this: If a city is going to refuse an ad or remove a sign, they must do a Charter analysis to balance competing rights, *in addition* to any reliance on the Advertising Code, which is a separate thing. But a Charter analysis would be required infrequently and does not require a dedicated team or entity. For example, smaller jurisdictions might hire an outside lawyer for a few hours of work.
- MLS conflates the Advertising Code issues with the Chapter 693 sign requirements (which are limited to private, mounted signs), when the Code applies broadly to any public messaging where the responsible entity can be identified.

To reiterate, in light of the above problems, I ask the Economic and Community Development Committee to please disregard the MLS report’s recommendations at its April 30 meeting, and instead ask Legal Services to proceed with drafting a viewer-discretion type bylaw for the graphic flyers, as well as a reworked Calgary-type bylaw for the graphic signage, and to provide advice on potential legal risks to consider for both bylaws.

Thank you very much for your time and consideration.



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