

May 16, 2025,

Dear Mayor and Councillors,

City of Toronto

I am Chair of the Alliance of Canadians Combatting Antisemitism. I have lectured extensively on legal measures to combat hate and have appeared before House of Commons and Senate Committees and the Supreme Court of Canada on multiple occasions in relation to legal remedies to combat hate and the constitutionality of legislation to combat hate and its relationship to fundamental freedoms under the Canadian Charter of Rights and Freedoms.

I support municipal bubble legislation, in the absence of province-wide legislation. I also commend those at the City of Toronto who have supported the enactment of such legislation. I provided [written submissions](#) to the City in support of the legislation. As well, earlier this week, I made a presentation to a number of Councillors and/or their staff focused on the constitutionality of such legislation. It was supplemented by a [detailed legal analysis](#).

I have reviewed the draft Article prepared by Staff in contemplation of the upcoming City Council meeting. There are several provisions of the proposed Article that are commendable. However, key provisions undermine the underlying purpose of such an Article and, as a result, are unlikely to protect those who are entitled to use and enjoy places designated as vulnerable social infrastructure and permit them to access those sites without reasonable fears for their safety and security.

With respect, it is unfortunate that the jurisdictional scan provided to City Council includes Ontario's bubble legislation respecting access to abortion service facilities, but not British Columbia's analogous bubble legislation. The latter is of critical importance because its constitutionality was unanimously upheld by the British Columbia Court of Appeal in *R. v Spratt* and leave to appeal that decision was refused by the Supreme Court of Canada. It represents the most authoritative decision in Canada on the constitutionality of bubble legislation and therefore, the most useful guide as to language that should be used to safeguard fundamental freedoms of speech and assembly, while protecting vulnerable social infrastructure. It demonstrates that this balance can be maintained without imposing so many preconditions to the Article's application that it has no practical value.

Most problematic with Toronto's draft Article is the requirement that access zones can only be created **after** a vulnerable institution has already been the target of activity described in subsection 55A within the anticipated access zone. As well, the onus is placed on the owners of vulnerable institutions to demonstrate that the activity will again occur or continue to occur within the anticipated access zone. The owner must also demonstrate that the prior targeted activity impeded access to the institution, although the prohibited conduct in subsection 55A is not confined (nor should it be) only to conduct that impedes actual access to the institution. As reflected in the British Columbia Court of Appeal decision, properly regulated behaviour extends beyond physically impeding access. The point is that protest activity too closely proximate to vulnerable infrastructure undermines the rights of those using the infrastructure. Protests can fully take place but just outside the access zone or elsewhere.

In an environment in which protestors target multiple vulnerable infrastructure locations associated with the Jewish community (or other communities), this Article will merely result in rotational protests to avoid application of the law. The Article also creates an offence respecting false information provided by an owner. A poisoned, polarized, often hate-filled environment now exists in this city. The requirement that owners bear the burden (as victims of their own targeting) of applying for protection of limited duration one-by-one, with inevitable accusations that their attestations are false and that they should be charged with providing false information, will generate endless litigation, antithetical to the purpose of the legislation, and effectively inhibit owners from seeking to rely on this Article. This is precisely what preventative bubble legislation is intended to avoid. This Article effectively requires each vulnerable institution to seek the functional equivalent of injunctive relief.

Renewal of the access zone requires the owner to again demonstrate all preconditions for an original application. This would include proof of activity listed in subsection 55A (which the access zone is designed to prevent). In other words, the success of an access zone in preventing prohibited activity makes it impossible for the access zone to be renewed.

Subsection D states that “for greater certainty, Subsection A does not prohibit peaceful gatherings, protests or demonstrations, including any such activities that occur as part of a labour union strike, information pickets and/or activities relating to labour disputes. I support the “carve out” for labour disputes, but no clarity is provided by saying that peaceful gatherings, protests or demonstrations are not prohibited. The prohibited activities in subsection 55A appropriately include conduct that is not necessarily violent. The language in subsection D creates inconsistency and ambiguity in its application.

Finally, the 20 metre perimeter provides inadequate protection to vulnerable social infrastructures. The City should adopt a wider perimeter zone in the interests in reducing confrontation and reasonable fears of those, including children and seniors, who are entitled to use and enjoy these vulnerable locations.

In summary, the Article, as currently crafted, allows the rights of those attending vulnerable social infrastructure to be trumped by measures that ostensibly protect freedom of speech and assembly, but are overly broad and unnecessary. Limitations on close proximity to vulnerable social infrastructure, given the current environment in Toronto, are minimally intrusive of those fundamental freedoms, as reflected in the most authoritative jurisprudence on point.

I do not support this legislation unless significant amendments are made to rectify the key deficiencies identified in these submissions.

Yours truly,

Mark Sandler

Mark Sandler, LL.B., LL.D (honoris causa)