

How Local Governments Can Regulate Public Messaging

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Definitions

The following definitions are excerpted from the Canadian Code of Advertising Standards:¹

Advertiser is defined as an "entity" that has, or shares with one or more other entities, the final authority over the content of an advertisement.

Entity is a term that includes, but is not limited to, one or more brands, persons, companies, and organizations.

Advertising and advertisement(s) are defined as any message (other than those excluded from the application of this Code), the content of which message is controlled directly or indirectly by the advertiser expressed in any language and communicated in any medium (except those listed under Exclusions) to Canadians with the intent to influence their choice, opinion or behaviour.

[Advertising also includes "government advertising", "political advertising", and "election advertising", as defined below.]

Government advertising is defined as "advertising" by any part of local, provincial or federal governments, or concerning policies, practices or programs of such governments, as distinct from "political advertising" and "election advertising".

Exclusions:

- **Political advertising** is defined as "advertising" appearing at any time regarding a political figure, a political party, a government or political policy or issue publicly recognized to exist in Canada or elsewhere, or an electoral candidate. *[Note: Ad Standards specifically excludes abortion-related ads from this definition].*
- **Election advertising** includes "advertising" about any matter before the electorate for a referendum, "government advertising" and "political advertising", any of which advertising is communicated to the public within a time-frame that starts the day after a vote is called and ends the day after the vote is held. In this definition, a "vote" is deemed to have been called when the applicable writ is issued.
- Canadians are entitled to expect that "political advertising" and "election advertising" will respect the standards articulated in the Code. However, it is not intended that the Code govern or restrict the free expression of public opinion or ideas through "political advertising" or "election advertising", which are excluded from the application of this Code.

ARCC has defined the following terms for the purposes of this document:

Advertisement / public messaging: Any messaging provided to the public that is consistent with the Code's definition, whether paid or unpaid, permitted or non-permitted. Includes messaging by any means or venue, including but not limited to: delivery to private homes or mailboxes, at public events, at City Hall, on public sidewalks or roadways, in parks or other public land, and on transit vehicles/structures.

Acceptable public messaging: Public messaging that meets, or likely meets, all Code requirements, and does not violate any laws or bylaws.

Unacceptable public messaging: Public messaging that contravenes, or likely contravenes, one or more Code requirements, and/or may violate a law or bylaw.

Graphic images / graphic flyers: Public messaging that contravenes Section 14(d)² of the Code (*Unacceptable Depictions and Portrayals*) because it contains images of aborted fetuses. The definition would also include obscene images that violate section 163 of the *Criminal Code*, "Corrupting Morals."³

¹ www.adstandards.com/en/standards/thecode.aspx

² Section 14(d): "Advertisements shall not: undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population."

³ <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-163.html>

Introduction

To help manage unacceptable public messaging, and avoid disputes and lawsuits, we encourage local governments in Canadian towns, municipalities, and cities to pass and enforce applicable bylaws and policies that limit unacceptable public messaging in line with *the Charter of Rights and Freedoms*, and to use and cite the *Canadian Code of Advertising Standards* when making decisions on unacceptable public messaging.

Extreme anti-abortion groups have caused concern and upset among the general public for their graphic depiction of allegedly aborted fetuses, and comparisons of abortion to atrocities such as genocide. These groups often display signs in high-traffic locations where they can be seen by anyone passing by, including children and motorists. They also deliver graphic flyers to homes, and drive large trucks covered with billboard-sized photos of aborted fetuses.

These images have caused concern and outrage even for those who are against abortion. What can be done about them? This report describes remedies against this graphic imagery, as well as against other unacceptable public messaging such as inaccurate or demeaning advertising.

Harms of Aborted Fetus Imagery in Public

The anti-abortion groups Canadian Centre for Bio-Ethical Reform (CCBR)⁴ and Show the Truth (STT)⁵ regularly engage in a variety of questionable activities involving the display or distribution of graphic images of alleged aborted fetuses.⁶ (We say “alleged” because the provenance of these images is unknown and highly questionable.⁷)

Both groups hand-deliver graphic postcards or flyers to residential homes and display graphic signs on busy public sidewalks and even outside high schools. In addition, the CCBR engages in hanging huge banners of aborted fetuses over highway overpasses, driving through traffic or across Canada in big-box trucks with billboard-size photos on the side, staging demos at family events like the Calgary Stampede as well as other venues like universities and colleges, and advertising on city transit buses such as in Peterborough. (Note: To date, no anti-abortion bus ad has used graphic images of aborted fetuses, but most contain offensive or demeaning language that implies women are killers or should have their rights restricted.)

These activities change very few minds on abortion⁷, but they do cause many citizens to become upset and irate. In every city in which they appear, the graphics cause a community disturbance or nuisance. Police and city field numerous complaints from the public, children are distraught, and the issue often creates a controversy in the press.

Families with young kids are often the most infuriated, with many stories of children traumatized as a result of having seen the pictures, including having nightmares. The privacy

⁴ CCBR’s website: www.endthekilling.ca/ and Facebook page: www.facebook.com/canadiancbr/
Caution: Sites contain graphic images and hate speech.

⁵ Show the Truth website: www.showthetruth.org/index.html and Facebook page: www.facebook.com/pages/category/Organization/Show-the-Truth-Canada-253235404812492/
Caution: Facebook site contains graphic images.

⁶ Other groups or individuals also use such imagery on occasion, primarily local *ad hoc* groups trained by CCBR with names like London Against Abortion, Toronto Against Abortion, Montreal Against Abortion, etc.

⁷ <http://rabble.ca/columnists/2013/07/why-foetus-porn-doesnt-help-anti-choice-cause>

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.

In addition, the images can be quite devastating 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. (Please see Appendix 1 for examples of complaints.)

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,⁸ funeral industry workers and medical examiners,⁹ journalists¹⁰, and social media content moderators.¹¹ People can even get PTSD from watching traumatic events on TV.¹²

Further, the graphics create an unacceptable invasion of privacy into peoples' lives because it is often difficult or impossible to avoid the pictures. This is especially the case when flyers are delivered to homes without permission from residents. Citizens have a common-law right to peaceful enjoyment of their homes. 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.¹³

Both the CCBR and STT target children by showing graphic imagery outside high schools, by delivering flyers to homes without envelopes, and arguably by displaying signs on city streets. Advertising directed to children can be limited or banned to protect them. The landmark 1989 decision *Irwin Toy Ltd v Quebec (AG)*¹⁴ ruled that the restriction of advertising directed to children was a justified limit on freedom of expression under Section 1 of the *Charter of Rights and Freedoms*, because there was a pressing and substantial government objective to protect children from the manipulation of advertising.¹⁵

Finally, most local governments and transit companies have objectives related to ensuring a safe and welcoming community and transit system, or upholding community standards by not

⁸ <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>

⁹ <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/>

¹⁰ <https://journals.sagepub.com/doi/full/10.1177/2054270414533323>

¹¹ <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

¹² <https://journals.sagepub.com/doi/full/10.1177/0956797612460406> AND: <https://journals.sagepub.com/doi/full/10.1177/2167702619858300>

¹³ <http://ablawg.ca/2017/01/19/lost-and-found-the-captive-audience-doctrine-returns/>

¹⁴ *Irwin Toy Ltd v Quebec (AG)* [1989] 1 S.C.R. 927 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/443/index.do>

¹⁵ <https://globalfreedomofexpression.columbia.edu/cases/irwin-toy-ltd-v-quebec/>

allowing obscene, vulgar, or offensive public messaging. These objectives have been viewed favourably by the above-cited court decisions as a means to justify the refusal of ads that may be harmful to communities.

Bylaws and Other Municipal Remedies

Cities should consider the following situations pertaining to unacceptable public messaging.

Temporary Signs Can Be Prohibited in at Least Some Circumstances

Some cities have bylaws regulating temporary signs, but sign content is often not considered.¹⁶ Cities should add a citation to the *Canadian Code of Advertising Standards* such that the content of any temporary sign must not contravene any law or the Advertising Code. This would give authority to remove unacceptable temporary signage, if accompanied by a Charter balancing exercise of competing rights and objectives. (See page 10 for detailed information on the Code.)

While the actual removal of temporary signs based on content has not been tested in court, municipal use of the Code has court support (see page 12). Further, signage that constitutes hate speech would have much less protection – see *Appendix 5, Graphic Images May Be Hate Speech*.

Some anti-choice activists deliberately target their unacceptable signage at children or schools.¹⁷ The latter could be addressed via zoning restrictions or a buffer zone bylaw. For more information, see later in this report:

- *Safe Zones Outside Schools* – page 21
- *ARCC’s Model “Adult Content Sign” Bylaw* (using zoning restrictions) – Appendix 3

Flyers to Homes Can Be Banned or Regulated

Some cities have bylaws prohibiting delivery of non-election flyers to homes that have a “No flyers” or similar notice posted. Such bylaws have never been contested in court as infringing the *Charter of Rights and Freedoms*. * Further, a Code citation is not required, and cities can also exempt certain flyers from the bylaw, such as election flyers or commercial flyers.

*Where a city bans the graphic flyers specifically, this could meet the “reasonable limits” test in Section 1 of the Charter because of the demonstrable harms caused by the flyers, which can be collected via public complaints and submissions. To help ensure “minimal impairment” of freedom of expression, a bylaw could be passed requiring the flyers to be delivered in a sealed envelope, as the City of London has done (see page 23). Further, the flyers could be seen as discriminatory or even hateful (see page 46), as they are targeted to women and gender minorities who can get pregnant.

Cities can also encourage residents to use their province’s trespass legislation to prohibit those who deliver the graphic flyers from coming onto their property.¹⁸ See page 9, *Provincial Trespass Remedy for Graphic Flyers*.

¹⁶ The following local governments cite the Advertising Code in their sign bylaws: Strathcona County AB, North Bay ON, Windsor ON, and Whitchurch-Stouffville ON (transit properties only).

¹⁷ *Irwin Toy Ltd v Quebec (AG)* [1989] 1 S.C.R. 927. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/443/index.do>

¹⁸ ARCC’s Provincial Trespass Remedy, Aug 2019: <https://www.arcc-cdac.ca/trespass-remedy/>

Provinces as well as municipalities can pass laws requiring the graphic images to be placed in envelopes with a warning and identifying information on the outside. See page 8, under *Provincial Bill to Require Graphic Flyers to Be in Envelopes*.

Cities Have Greater Leeway to Reject Messaging They Are Seen to Endorse

Some cities have “sponsorship” policies that invite advertising messages that the city supports. When the city endorses a message, or is strongly perceived as endorsing it, the city has much greater control over what is allowed. All kinds of unacceptable messaging can be denied, making it much easier to meet the “reasonable limits” standard of Section 1 of the Charter – or even bypass the Charter entirely.

In November 2021, the Court of Queen’s Bench of Alberta ruled against an anti-choice group that had applied to light up the High Level Bridge in Edmonton Alberta.¹⁹ In 2014, the city had installed 60,000 lights on the bridge that could be illuminated in many colours, and invited applications from individuals and groups to have the bridge lit up to celebrate events, charitable causes, and prominent individuals.

Justice K.S. Feth ruled against the anti-choice group, stating that it was unable to prove the city infringed on their Charter rights and that the city was biased. Further, the judge noted that the applicants were able to express themselves in many ways other than lighting the city’s bridge.

The judge agreed with the city that lighting the bridge would be seen as the municipal government supporting the organization’s position in the abortion debate. “Turning the lighting platform into a personal advertising space, including to express one side’s views on controversial social and political issues, is incompatible with the purpose of communicating the city’s recognition or support.”

The judge also described three recognized *exclusions* from the protected sphere of free expression (para 33), including: violent expression, expression that imposes an obligation on government to provide the means of expression, and expression in a government-owned location where it conflicts with governmental functions and values.

Provincial and Federal Laws and Remedies

After obtaining legal advice and doing legal research on this issue since 2013, ARCC decided on municipal remedies as the most feasible solution, rather than provincial or federal. That’s mostly because municipalities have significantly more flexibility and authority to limit the images in particular contexts that would meet scrutiny under the *Charter of Right and Freedoms*. Dozens of municipal bylaws across the country already limit speech in specific ways, such as via noise bylaws or sign bylaws, and content restrictions that prohibit a variety of messages, such as those that are untruthful, obscene, in bad taste, demeaning, exploitive, etc. Further, cities can take quicker action than higher levels of government.

Amending the Federal Criminal Code Is Difficult

Amending the federal Criminal Code is a difficult and time-consuming process with uncertain prospects. It’s not clear that the graphic images are a matter that could be appropriately regulated by the federal government. Even if so, evidence of harm would be required, and while

¹⁹ <https://www.canlii.org/en/ab/abqb/doc/2021/2021abqb802/2021abqb802.html>

there is considerable anecdotal evidence of the harms caused by the graphic imagery (and some cities have received many complaints), no studies have yet been done.

Nonetheless, the innovative London-based organization Viewer Discretion Legislation Coalition²⁰ started an e-petition to the federal government in February 2022,²¹ asking for amendments to the Criminal Code as follows:

1. Amend the Criminal Code s.175 "Indecent Exhibition" to include indecent graphic displays;
2. Amend legislation setting out the limitations regarding what imagery and content can be used in a protest or demonstration that is subject to public viewing; and
3. Amend legislation regarding if, and how graphic imagery can be delivered to homes across the Country (i.e., putting such pamphlets in envelopes with a viewer discretion warning).

Finally, existing Criminal Code sections that might be applicable each have limitations in the context of the graphic images:

- **Obscene materials, s.163:** A charge under this section must be related to sex or at least have a sexual element, which means an amendment would be required to somehow incorporate the graphic imagery. However, this section is in the Part for "Offences tending to corrupt morals", which seems an inappropriate place for such an amendment, as it's unclear how it could be argued that the graphic images corrupt morals (the predominant effect is to inflict emotional harm).
- **Indecent act, s.173(1):** According to the leading case law on public indecency,²² evidence of the harm or risk of harm must be shown, and the standard to do so is high – the harm must consist of "serious and deeply offensive moral assaults" and must relate to constitutional or fundamental values such as liberty and equality. This might be applicable to the graphic imagery, but evidence would be needed to show that people were specifically avoiding areas where protesters were picketing because of the offensive content of the signs, or that the specific time and place of the graphic displays – such as outside schools during school hours – heightened the indecency.
- **Common nuisance, s.180:** This provision makes it an offence to "endanger...the comfort of the public", which could be promising in terms of the graphic images but requires that the conduct in question be an unlawful act. If the display or distribution of the graphic images became unlawful pursuant to a bylaw, it could open the door to a possible charge of nuisance under the Criminal Code.
- **Public incitement of hatred, s.319(1):** Hate speech prosecutions are infrequent and the standard to show hatred is high. Further, the speech must incite hatred against an identifiable group and be likely to lead to a breach of the peace. A reasonable argument can be made that the graphic images are hate speech against women and gender minorities (see *Appendix 5, Graphic Images May Be Hate Speech*). However, most of the

²⁰ <http://vdlclondon.ca/>

²¹ <https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-3852&>

²² *R v Labaye*: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2263/index.do?site_preference=normal. This case relates to the previous Criminal Code section 175(1) on public indecency, although there are basic similarities to the current clause 173(1) on indecent acts. See here: <https://mydefence.ca/toronto-indecent-act-defence-lawyer/>

graphic imagery has no words, and the hate speech argument would be stronger if there was text that could be seen as hateful.

Provincial Considerations and Possible Remedies

In the past, several municipalities in Ontario have asked the provincial or federal government to issue an injunction or legislate against the images, with no success. It is likely not feasible to ban the images outright under the Charter because of the freedom of expression guarantee in Section 2(b). The federal government cannot really do so with the blunt tool of the *Criminal Code*, and provincial governments cannot do so without being overbroad and disproportionate.

All governments must show that their limits on freedom of expression meet the Oakes test²³ and/or the Doré/Loyola test,²⁴ and it's hard to see how a provincial injunction or law banning the images outright could meet these tests. In 2017, the previous NDP government in Ontario declined to issue an injunction against the graphic signs due to the likely prospect of not winning in court.²⁵

However, provincial bills could be feasible in circumstances where the images are not being banned outright, such as a bill requiring graphic flyers to be enclosed in envelopes before distribution. (See next heading for more information on a private member's bill to this effect in Ontario.)

Provincially, people could complain to a provincial human rights tribunal²⁶ if they feel victimized by the graphic imagery. Such a complaint could utilize anti-discrimination clauses based on sex/gender that provinces have in their human rights codes, as well as the hate speech argument (see *Appendix 5, Graphic Images May Be Hate Speech*). Ironically, an anti-choice group filed a complaint with a tribunal due to one of its ads being refused, but lost its case.²⁷ (Details are on page 19.)

Provincial Bill to Require Graphic Flyers to Be In Envelopes

The CCBR has been particularly active in Ontario. The group Viewer Discretion Legislation Coalition (VDLC, based in London ON) worked with Ontario NDP MPP Terence Kernaghan to introduce private member bill 259²⁸ on March 8, 2021.

The bill would have regulated the images delivered to homes, and distributed on the street or other public locations, by requiring them to be put in envelopes. The exterior of the envelope

²³ The Oakes test (*R. v. Oakes*, [1986] 1 SCR 103) allows certain justifiable infringements under Section 1 of the Charter: <https://ccla.org/cclanewsites/wp-content/uploads/2018/07/Section-1-and-the-Acorn-Test.pdf>

²⁴ The Doré test (*Doré v Barreau du Québec*, [2012] SCC 12) requires an administrative decision-maker to balance Charter values with their agency's statutory objectives: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7998/index.do>.

In the Loyola case (*Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 (CanLII), [2015] 1 SCR 613) the Supreme Court clarified that the Doré test is meant to be a "robust" exercise and that Charter protected rights are to be "affected as little as reasonably possible":

<https://www.canlii.org/en/ca/scc/doc/2015/2015scc12/2015scc12.html>

²⁵ <http://councillorpaulafletcher.ca/update-on-stopping-graphic-images-used-by-canadian-centre-for-bio-ethical-reform/>

²⁶ <https://www.chrc-ccdp.gc.ca/eng/content/provincial-territorial-human-rights-agencies>

²⁷ <https://www.vancouverisawesome.com/highlights/bc-newspaper-wins-case-over-refusal-to-run-abortion-ads-7723655>

²⁸ <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-259>

would have to include a description of the contents and clearly identify the sender. If it had passed, the bill would have amended the provincial *Offences Act*. (Media coverage of the bill is [here](#), [here](#), and [here](#).)

As written, Bill 259 limited freedom of expression in only a narrow way, since the CCBR group could still deliver flyers and get their message across, but not in a way that harmed communities. Therefore, the bill would have likely met a Charter challenge under Section 1 that allows justifiable limits to rights. Bill 259 was cancelled with the proroguing of Ontario Parliament in November 2021, MPP Kernaghan planned to re-introduce the bill in the next session, but it was not re-introduced until 2023.

On March 21, 2023, private member bill 80, *Viewer Discretion Act (Images of Fetuses)*,²⁹ was introduced by Ontario NDP MPPs Terence Kernaghan and Jennie Stevens. The bill would require graphic images to be delivered in an opaque envelope with a warning label indicating the content and sender.

Notably, the MPs asked a military veteran and firefighter to speak on behalf of the bill. Shawn Bennett, director of The Valhalla Project, said: “Being a veteran with a 31-year firefighting career I can tell you that the stress from the job can lead to a long road for recovery from post-traumatic stress disorder. My home was a vital safe place, and now after seeing those graphic images I don’t even have that – action is required for veterans and frontline responders with PTSD, because this crosses a line”.³⁰

Provincial Trespass Remedy for Graphic Flyers

A coalition of Toronto councillors and MPPs sent a written warning to the CCBR in July 2018, warning the group that trespassing on private properties to deliver their flyers was not authorized under Ontario’s *Trespass to Property Act*.³¹ Toronto citizens were provided a trespassing notice³² to sign and send to the CCBR to give them advance notice that anyone affiliated with the CCBR was prohibited from coming onto their private property, and if they did, the citizen could ask police to lay charges.

At the time, ARCC confirmed that this trespassing notice could be used by any Ontario citizen simply by replacing “Toronto Police Service” with the name of their local police force. Since then, we have researched trespass legislation in other provinces. Most other provinces indeed have trespass legislation that allow the same actions as the Ontario law, except for New Brunswick, Newfoundland, and Quebec. To that end, we created a provincial Trespass Remedy³³ that can be used by any resident of the other seven provinces.

We strongly encourage cities to advise their residents of the availability of this [Trespass Remedy](#) (outside of NB, NL, and QC). The CCBR once indicated in a letter to London City Council that they obey these trespass notices. However, this remedy does require individual residents to act to protect themselves and is not a sufficient substitute for a city bylaw that would automatically protect all residents.

²⁹ <https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-80>

³⁰ <http://vdlclondon.ca/ndp-tables-viewer-discretion-act-to-protect-ontarians-from-graphic-images>

³¹ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM35.10>

³² <http://councillorpaulafletcher.ca/wp-content/uploads/2018/07/Trespass-to-Property-Notice-July-2018-Final.pdf>

³³ ARCC’s Provincial Trespass Remedy, Aug 2019: <https://www.arcc-cdac.ca/trespass-remedy/>

Canadian Code of Advertising Standards

Municipalities Should Cite the Code in Bylaws and Policies

Cities have significant control over messaging they approve themselves via transit advertising, sponsorship advertising, flags, proclamations, banners, and any other means, as well as messaging that accompanies city-permitted events. Courts have said that cities can evaluate whether such messaging is acceptable using the *Canadian Code of Advertising Standards* (“the Code”).

ARCC encourages local governments in Canadian towns, municipalities, and cities to use and cite the Code in their bylaws and policies. The Code is not limited to paid advertising but applies to any public messaging where the content is under the direct or indirect control of an entity, i.e., “the advertiser”.

The Code sets criteria for acceptable advertising that is “truthful, fair and accurate.” This would allow local governments to exercise a justified veto power over messages that would likely violate the Code, including inaccurate, discriminatory, hateful, or demeaning messaging. Of course, this power is *not* limited to anti-abortion messages but applies to any messaging that might contravene the Code.

The Code is administered by Ad Standards, which is a private watchdog agency with limited enforcement powers. The Code has no authority or legal standing on its own, but is widely endorsed by advertisers, advertising agencies, media, and consumers. In 2019, Ad Standards received 1,858 complaints,³⁴ slightly less than in 2018³⁵ but a 10% increase over 2017. This followed major spikes in 2015 and 2016 compared to previous years.³⁶ Further, at least 92 local governments already cite the Code in their bylaws or policies,³⁷ which attests to the Code’s growing influence. Citations of the Code in local government bylaws and policies give the Code more authority and the force of law, and can become one part of a city’s defence in a Section 1 Charter challenge over freedom of expression.³⁸ (Section 1 of the Charter allows fundamental rights to be justifiably limited to protect other rights, provided the infringement is reasonable and proportionate under the circumstances.)

A major benefit of including a citation to the Code in local government bylaws and policies is the elimination of personal bias or poor judgment by local governments, as well as insufficient reasoning or evidence when it comes to accepting or rejecting ads or permits. Local

³⁴ 2019 is the most recent year available (as of April 2022) <https://adstandards.ca/wp-content/uploads/Ad-Complaints-and-Disputes-Report-2019.pdf>

³⁵ <https://adstandards.ca/wp-content/uploads/2019/04/AdStandards-2019-Complaints-Report-EN.pdf>

³⁶ www.theglobeandmail.com/report-on-business/industry-news/marketing/canadas-ads-watchdog-sees-spike-in-complaints-from-unhappy-customers/article29613612/

³⁷ <https://www.arcc-cdac.ca/wp-content/uploads/2022/03/City-Search-Advertising-Code-Worksheet-all.pdf>

³⁸ Cities cannot rely *only* on the Code but may incorporate it as part of a Charter balancing exercise. Also note that Ad Standards says: “The Code is not intended to replace the many laws and guidelines designed to regulate advertising in Canada.” www.adstandards.com/en/standards/thecode.aspx

governments can rely on the Code's criteria to show they followed due process.³⁹ To help cities, we have created a *Quick Assessment Guide for Cities to Evaluate Public Messaging Requests*.⁴⁰

The Code also provides a strong rationale by which to respond to complaints from the public and advertisers, and reduces the risk of advertiser disputes and lawsuits. In addition, following the Code's guidelines helps to meet local community values that encourage inclusivity, diversity, accessibility, and a safe and welcoming environment for all.

The graphic imagery, as well as other anti-choice messaging, have already been found to violate the Code.⁴¹ Ad Standards has upheld at least four complaints against aborted fetus imagery in different contexts – flyers and moving billboards on a truck. (Please see Appendix 4 for details on all upheld complaints against anti-choice ads.)

Further, when a complaint is submitted about graphic images in any context, including signage on sidewalks, Ad Standards declines to take the complaint because they have already decided the issue. For this reason, it becomes the responsibility of local governments to take action against the images themselves – they should not advise residents to submit complaints to Ad Standards.

Using the Advertising Code by itself is not sufficient. Recent legal cases (see *Guelph case*, pg 17) have established that cities must also engage in a legal analysis using the Doré/Loyola framework.⁴² These two court decisions⁴³ 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, such as gender equality.

Many Local Governments Already Cite the Code

Local governments need not fear they are doing anything unusual or unwarranted by citing the Code in their bylaws and policies, because it is already common practice.

ARCC researched which cities/towns in Canada already cited the Code by searching their websites for their advertising policy and other policies/bylaws on flags, proclamations, signs, and banners.⁴⁴ We checked over 100 municipalities and cities across Canada, selected mostly on the basis of population size, but also whether the anti-abortion groups Canadian Centre for Bio-

³⁹ Several cities became involved in legal disputes after refusing or removing unacceptable ads because they had failed to provide sufficient reasoning, and/or follow due process or their own policies, and/or do a Charter analysis. These cities include Peterborough ON, Hinton AB, Vancouver BC (*Translink case* – see page 6), [Hamilton ON](#), and [Guelph ON](#) (the latter two cities lost their cases)

⁴⁰ <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/quick-assessment-guide-public-messaging.pdf>

⁴¹ www.adstandards.com/en/standards/thecode.aspx

⁴² <https://www.cba.org/Sections/Administrative-Law/Articles/2019/The-song-remains-the-same>

⁴³ Doré v. Barreau du Québec, 2012 SCC 12 (CanLII), [2012] 1 SCR 395:

<https://www.canlii.org/en/ca/scc/doc/2012/2012scc12/2012scc12.html>.

Loyola High School v. Quebec (Attorney General), 2015 SCC 12 (CanLII), [2015] 1 SCR 613:

<https://www.canlii.org/en/ca/scc/doc/2015/2015scc12/2015scc12.html>

⁴⁴ Full data on the cities/towns, including links to bylaws/policies that cite the Code:

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

Ethical Reform (CCBR)⁴⁵ or Show the Truth (STT)⁴⁶ had ever been active there, showing or distributing their graphic imagery of aborted fetuses. The latter criteria added about 20 smaller communities to the list. Some cities contract to advertising companies or transit companies, so we checked their advertising policies as well.

	Total	Previous CCBR/ STT activity	No known CCBR/ STT activity
Cities/towns researched	148	88 (59%)	60 (41%)
Cities/towns that cited Advertising Code in a policy/bylaw*	93 (63%)	65 (70% of citing gov'ts)	28 (30% of citing gov'ts)
* Including advertising, transit, sign, banner, flag, proclamation, and event policies or bylaws, and contracted company's policy where applicable. Most citations were in transit or ad policies.			

Note: Table is regularly updated to reflect new CCBR/STT activity.

Sixty-three percent of the cities/municipalities (93 in total) cited the Code in a relevant policy or bylaw – mostly transit-related (subway, buses, benches, shelters) or advertising related. We also noted a strong correlation between Code citations, and CCBR or STT being active there at some point. This may relate to the fact that many cities/towns contract to the same advertising company or transit company (thereby skewing the data), but in many cases, communities that have experienced the graphic imagery may have subsequently decided to include a Code citation.

Some examples of local government citations of the Code are included in Appendix 2.

Courts Have Endorsed Use of the Advertising Code

Nine court decisions and one human rights tribunal have supported use of the Code by local governments or companies – details below.

Two lawyers discuss some of these cases in relation to anti-abortion bus ads in their Sept 2018 blog article: *The Shrinking Space for Hateful Speech in the Public Square*.⁴⁷ They say:

- “For some time, it was unclear whether the courts would recognize the Code as setting an objective standard for acceptable speech, particularly within the advertising context. This question now appears to have been answered with some clarity in Alberta with the CCBR appeal decision [*Grande Prairie case #2 below*] and in British Columbia...” [*Translink case below*]

⁴⁵ CCBR’s website: <https://www.endthekilling.ca/> and Facebook page: www.facebook.com/canadiancbr/
Caution: Sites contain graphic images and hate speech.

⁴⁶ Show the Truth website: <http://www.showthetruth.org/index.html> and Facebook page: www.facebook.com/pages/category/Organization/Show-the-Truth-Canada-253235404812492/ *Caution: Facebook site contains graphic images.*

⁴⁷ <https://ablawg.ca/2018/09/13/the-shrinking-space-for-hateful-speech-in-the-public-square-the-alberta-court-of-appeals-decision-in-canadian-centre-for-bio-ethical-reform-v-the-city-of-grande-prairie-city-2018/>

GVTA case – *Greater Vancouver Transportation Authority v. Canadian Federation of Students, Supreme Court of Canada (2009 SCC 31)*:⁴⁸

The policy of TransLink and BC Transit (part of the GVTA) banned all “political” advertisements, causing them to refuse to run the student federation’s proposed election ads for buses. The Supreme Court held that this policy was a violation of and unjustified limit on freedom of speech because it was not limited to particular kinds of political expression that could jeopardize safety or make people feel unwelcome. Justice Deschamps found that the policies were a “blanket exclusion of a highly valued form of expression in a public location, and ruled that this restriction is not a minimal impairment of freedom of expression, so it cannot be justified under Section 1’s “reasonable limits”.

Since the court found the blanket ban to be overbroad and not minimal, this means that bans on specific types of advertising aimed at specific audiences might meet Section 1’s reasonable limits (under the *Charter of Rights and Freedoms*). Indeed, the court acknowledged that cities could use the Code as a guide to establish reasonable limits on advertising:

- “Thus, limits on advertising are contextual. Although we are not required to review the proposed standards, the Canadian Code of Advertising Standards, which is referred to in the transit authorities’ advertising policies, could be used as a guide to establish reasonable limits, including limits on discriminatory content or on ads which incite or condone violence or other unlawful behaviour. Given that the transit authorities did not raise s. 1, however, the above comment is intended merely to provide guidance on what may be justified, but the determination of what is justified will depend on the facts in the particular case.” (para 79)

AFDI case – *American Freedom Defence Initiative v Edmonton (City), Alberta Court of Queen’s Bench (2016 ABQB 555)*:⁴⁹

The American Freedom Defense Initiative sued the City of Edmonton for its removal of a bus ad about honour killings of Muslim women, which was seen as a “dog whistle” for anti-Muslim sentiment. Justice Gill held that the City’s objective of providing a safe and welcoming transit system far outweighed the negative effects of its refusal to run offensive or discriminatory ads on its buses.⁵⁰ Justice Gill ultimately concluded that the infringement upon AFDI’s freedom of expression was justified under Section 1 of the Charter.

The court discussed the reach and authority of the Code in Paras 65-71, and said the Code can form part of a Section 1 Charter analysis, in relation to whether ads can be rejected:

- Pattison Outdoor, an advertising company that many municipalities contract with, enforces a rule to adhere to the Code: “...I find the clear intent behind the agreement between the City and Pattison was that the City contractually bound Pattison to abide by the rules of Advertising Standards Canada, which are encompassed in the Canadian Code of Advertising Standards.” (para 65)
- “The result in this case does not turn on the Code, as the City relied on its discretion as described in the contractual documents. However, the Code informs the s. 1 analysis. The

⁴⁸ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7796/index.do>

⁴⁹ www.canlii.org/en/ab/abqb/doc/2016/2016abqb555/2016abqb555.html

⁵⁰ <https://ablawg.ca/2016/12/05/no-offence-but-i-hate-you-american-freedom-defence-initiative-v-edmonton-city/>

Supreme Court has long emphasized the importance of context on a s. 1 analysis ... In my view, the Court may take judicial notice of the Code in order to better understand the context of this case.” (para 69)

- “...it appears that the City in this case exercised its discretion to prohibit advertising which it found to be of an immoral or irreputable character, offensive to the moral standards of the community, or which it believed negatively reflected on the character, integrity or standing of any organization or individual. I note that these bases for the City’s discretion, described in different ways in the contractual documents, are in keeping with various standards contained in the Code, most notably s. 14.” (para 71)

Grande Prairie case #1 – Canadian Centre for Bio-Ethical Reform v City of Grande Prairie, Alberta Court of Queen’s Bench (2016 ABQB 734):⁵¹

The court ruled that the City of Grande Prairie’s decision to reject a proposed bus ad by the Canadian Centre for Bio-ethical Reform was reasonable. The judge agreed with the city that a proposed bus ad probably violated Section 14 of the Code, “Unacceptable Depictions and Portrayals”. (The ad depicted two panels of growing fetuses and a third panel with a smear of blood containing the caption “GONE”, and contained the words “Abortion kills children.”)

- “...the City was guided by the ASC Code, referenced in its contract with Bus Bench. ... The City’s discretionary decision-making in relation to bus advertising is informed by these standards [as expressed in Section 14 of the Advertising Code] so as to balance free expression with other, equally important values.” (para 75)
- “I find that on the facts of this case the City appropriately used the ASC Code, specifically clause 14, as a helpful tool in reaching the ultimate determination that the ad should not be accepted.” (para 96)

Note: The court also endorsed the “captive audience” doctrine, noting the petitioner “has no right to force his message upon an audience incapable of declining to receive it”, given the “right of the commuters to be free from forced intrusions on their privacy.”⁵²

Translink case – Canadian Centre for Bio-Ethical Reform v. South Coast British Columbia Transportation Authority, Supreme Court of BC (2017 BCSC 1388):⁵³

The respondent Translink refused to run a CCBR ad on its buses (the same ad as in the *Grande Prairie case #1*.) The court concluded the ad’s content could potentially cause psychological harm, particularly to children and women who have had abortions; therefore, the respondent’s decision was reasonable in the context of a proportionate balance between freedom of expression and Translink’s statutory mandate to provide an efficient, safe and welcoming transit system.⁵⁴

The respondent Translink argued that since the Code is in wide usage in the private sphere, it represents a limit on advertising that is saved by s. 1 of the Charter. The court concluded:

⁵¹ www.canlii.org/en/ab/abqb/doc/2016/2016abqb734/2016abqb734.html

⁵² <https://ablawg.ca/2017/01/19/lost-and-found-the-captive-audience-doctrine-returns/>

⁵³ www.courts.gov.bc.ca/jdb-txt/sc/17/13/2017BCSC1388cor1.htm

⁵⁴ <https://harpergrey.com/knowledge/transportation-authoritys-decision-refuse-anti-abortion-advertisement-buses-upheld-reasonable-proportionate-judicial-review/>

- "...I am in agreement with the respondent that this [the Code] represents an appropriate standard to use when filtering advertisements. This is because the *Code* was developed over an extended period of time in response to complaints about advertisements brought by members of the public by other advertisers and public interest groups. Similarly, ASC regularly deals with such complaints. As such, the use of the *Code*, as well as guidance from ASC regarding the *Code*, provides the respondent a means by which to render a decision on potential advertisements which is not merely subjective or arbitrary. Consequently, I find that the respondent acted reasonably in using the *Code* as a standard by which to measure the appropriateness of advertisements." (para 56)

Grande Prairie case #2 – The Canadian Centre for Bio-Ethical Reform v. City of Grande Prairie, Court of Appeal of Alberta (2018 ABCA 154)⁵⁵

This is the appeal of *Grande Prairie case #1*. The Court upheld the lower court's decision, ruling that the City's refusal of the anti-abortion bus ads by the CCBR was reasonable. The decision builds on and strengthens existing precedents around restriction of advertising, including supporting the use of the Code.

The Court accepted the use of the Code by cities without question. The decision refers frequently to the Code, which is given implicit deference:

- "However, it seems clear that objectively developed advertising standards [such as the Code] can provide guidance on the boundaries of permissible restrictions on political advertising." (para 52)
- Thus, whether or not the advertisement complies with the Canadian Code of Advertising Standards is a relevant consideration." [Judge then cites GVTA and Translink, the latter's finding of non-compliance with the Code, and how the first Grande Prairie decision had the same view.] "This is one factor that can be considered in deciding if the restraint on expression was reasonable and proportionate." (para 75)
- "The conclusion that the tendered advertisement would [under S.14 of the Code] demean, denigrate or disparage women who had procured a miscarriage, and would tend to undermine their human dignity, was well supported by the record." (para 76)

Hamilton case #1 – CHP v. City of Hamilton, Ontario Superior Court of Justice, Divisional Court, (2018 ONSC 3690)⁵⁶

The City of Hamilton had removed a transphobic ad by the Christian Heritage Party, but the court ruled against the city, finding that "The City failed to demonstrate that the process undertaken in making the decision was reasonable."

The court noted various deficiencies of the City's decision-making process, and gave credence to the Advertising Code, faulting the city for not checking with Ad Standards about the ad. In other words, the court saw the Code as a useful, even necessary, tool for municipalities to balance freedom of expression and its statutory objectives.

⁵⁵ www.canlii.org/en/ab/abca/doc/2018/2018abca154/2018abca154.html

⁵⁶ <https://www.canlii.org/en/on/onscdoc/doc/2018/2018onsc3690/2018onsc3690.html>

- As part of the Facts, the court noted that both the City and its advertising contractor, Outfront Media, had policies stating that advertising must comply with the Canadian Code of Advertising Standards. (paras 15, 16)
- “No one checked with the Canadian Advertisers Council [Ad Standards] to determine if the advertisements offended its Code.” (para 61)
- “Of note, however, nowhere in the materials or in submissions could counsel for the City point to how it was that the Advertisements contravened any law, Act, Code or other legal framework.” (para 24)

Lethbridge case – *Lethbridge and District Pro-Life Association v Lethbridge (City), Court of Queen’s Bench of Alberta (2020 ABQB 654)*⁵⁷

The local anti-choice group sued the City of Lethbridge for refusing five proposed ads for buses and bus benches/shelters. Justice M. David Gates said the city had placed “undue reliance” on the Code, such as by deciding on its own that all five ads contravened the Code despite obtaining an opinion from Ad Standards that three ads would likely contravene the Code, while one would not, and no opinion was given on the fifth ad. Further, the judge found no evidence that the city had conducted a Charter analysis in order to minimize infringement of the advertiser’s freedom of expression.⁵⁸

This case emphasizes the critical importance for cities to balance use of the Code with other considerations, including the advertiser’s freedom of expression and the city’s statutory objectives.⁵⁹)

The City of Lethbridge’s use of the Code was central to this case. It is notable, therefore, that Justice Gates *did not criticize the Code itself or cities’ use of it*, only that it cannot be the only consideration:

- “The City’s contractual relationship with Pattison for the exclusive sale of advertising space on Lethbridge buses and shelters included the requirement that all advertising comply with the ASC Code. I accept the City’s contention that whether or not the proposed advertising complies with the Code is a relevant consideration under the Doré/Loyola analytic framework: Greater Vancouver at para 79; Grande Prairie at para 75; South Coast at paras 35, 56. However, I would underscore the fact that this is one factor only. A decision-maker in circumstances such as those presented to the City in this instance cannot simply defer to an ASC opinion or Code non-compliance in conducting a Doré/Loyola proportionality analysis.” (para 179)
- “The City’s decision refers to the Code as a ‘clear and objective standard for appropriate advertising’. However, it could not be the only factor given the requirement to balance the City’s statutory objectives and the Applicant’s Charter right to freedom of expression.” (para 189)
- “As previously indicated, I accept the City’s contention that it was entitled to rely on the Code as a guide on permissible restrictions. However, for the reasons outlined above, I find

⁵⁷ <https://www.canlii.org/en/ab/abqb/doc/2020/2020abqb654/2020abqb654.html>

⁵⁸ Another key aspect was that the proposed ads in question were deemed by the judge to be qualitatively different from the ad in the Grande Prairie decisions, i.e., not as offensive or graphic.

⁵⁹ Also see our Quick Assessment Guide for Cities to Evaluate Public Messaging Requests: <https://www.arcc-cdac.ca/media/2020/09/cities-quick-assessment-guide-public-messaging.pdf>

that the City placed undue reliance on the Code provisions and, indeed, reached conclusions that were contrary to the opinion provided by ACS relative to at least some of the proposed advertisements.” (para 215)

Justice Gates did suggest that the city’s and even the Code’s interpretation of accuracy “may well have to yield to the Applicant’s right to freedom of expression” (para 195). However, this is debatable given that paid advertising may be subject to greater limits under the Charter compared to public speech in general (e.g., the Irwin Toy case⁶⁰; the Grande Prairie cases above). It is also significant that advertisers and host advertisers (media, cities, billboard companies, etc.) have been largely adhering to the Code since 1963, with no legal challenges to the Code itself or its use.

The judge also suggested that abortion-related ads should be deemed “political advertising” under the Code (see page 2 for definition), which would exempt them from compliance with the Code. **However, Ad Standards specifically excludes abortion-related ads from its definition of political advertising,**⁶¹ as well as other “controversial” advocacy ads, including on animal rights, climate change, discrimination issues, and public health (e.g., about vaccines). Moreover, although abortion is *politicized* due to people holding strong personal views against it and wanting to restrict it, it is not a partisan political issue in itself – ultimately, abortion is a human rights issue, a social issue, and a health issue.

Guelph case: *Guelph and Area Right to Life v. City of Guelph, Ontario Superior Court of Justice, Divisional Court (2022 ONSC 43)*⁶²

The city had 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 failed to do a Charter analysis according to the Doré/Loyola legal framework (in this case, weighing the anti-choice group’s freedom of expression rights against the City’s statutory objectives and competing Charter rights of women). The city relied only on the Advertising Code and Ad Standards decisions, which the court recognized as important and useful, but insufficient. Notably, the court said the city did not have to run the ads. The court remitted the decision back to the city for reconsideration, giving them a chance to again review (and reject) the ads using proper criteria.

Also, the court affirmed that cities can rely on the Advertising Code and Ad Standards decisions, but cities must go further and consider competing Charter rights, including the advertiser’s freedom of expression, and in this case also gender equality rights that may be undermined by ads. In this regard, the court said:

- “The intervenor Abortion Rights Coalition of Canada presented arguments in support of the City’s decisions, emphasizing the importance of protecting abortion rights and the deleterious effects of the applicant’s advertisements on the rights of women and people capable of pregnancy. There is obviously merit to these arguments. However, as reviewed above, it is not the court’s role at this stage to weigh in on an evaluation of the

⁶⁰ Irwin Toy Ltd. v. Quebec (Attorney General), [1989] 1 S.C.R. 927.

<https://www.canlii.org/en/ca/scc/doc/1989/1989canlii87/1989canlii87.html>

⁶¹ Interpretation Guideline #6: <https://adstandards.ca/code/interpretation-guidelines/>

⁶² <https://www.canlii.org/en/on/onscdc/doc/2022/2022onsc43/2022onsc43.html>

advertisements. Rather, it is first for the City to weigh the issues identified by the Coalition against the applicant’s right to freedom of expression.” (para 91)

The court recognized the value of the Advertising Code as follows:

- “We are not faulting Ad Standards for failing to embark on this exercise [of balancing Charter rights]. Rather, the point is that the City cannot simply rely on a ruling by Ad Standards that does not perform the necessary analysis. (para 84)
- “There is no doubt that the [City’s] Policy and [the Advertising] Code are a good starting point. Advertising standards that aim to ensure that advertisements are accurate and do not demean people based on gender or other characteristics are important, especially when dealing with advertisements that will be viewed broadly on public transportation. However, given the requirements of the Doré/Loyola analysis, reliance on a ruling by Ad Standards or a finding that an advertisement appears to be contrary to the Policy is not sufficient. The City must go one step further and engage in the requisite balancing of interests and rights.” (para 88)
- “...the City is entitled to obtain and rely on rulings made by Ad Standards in deciding whether to post advertisements. However, the City cannot rely on Ad Standards as the final arbiter of the decisions it must make. This is not so much due to a concern over fettering [the anti-choice group argued that the City fettered its decision-making by outsourcing it to Ad Standards] but rather because the exercise performed by Ad Standards is not the same exercise as the analysis the City is to perform under Doré/Loyola. If Ad Standards performed such an analysis and the City relied on the analysis without any independent review or consideration, this may or may not give rise to concerns that the City improperly fettered its discretion. However, this is not what happened here and not an issue that needs to be decided in this context.” (paras 96-97)

Hamilton case #2: *Association for Reformed Political Action Canada v. Hamilton (City of)*, 2023 ONSC 6443⁶³

Summary: The City of Hamilton refused to run an ad on city buses that was submitted by the anti-choice group Association for Reformed Political Action (ARPA) Canada. The ad opposed sex selection abortion and said: “We’re for women’s rights”, showing four photos of an adult woman, then two girls, and a fetus in utero. The photos were captioned respectively: “Hers. Hers. Hers. And Hers.” The ad was deemed to be inaccurate and in likely violation of the Advertising Code after the city sought an opinion from Ad Standards, which said the latter pronoun was factually incorrect because a fetus is not a person under Canadian law.

ARPA sued to have the ad posted, citing a violation of their freedom of expression. The court disagreed with much of ARPA’s reasoning, for example, declining to declare that the ad was accurate, that fetuses were persons, and that the ad was exempt from the Code because it qualified as “political advertising.” However, since the City of Hamilton had not undertaken a Doré/Loyola analysis, the court remitted the matter back to the city for reconsideration. This means the city is still free to refuse the ad, provided it can justify its decision using the Doré/Loyola framework and Section 1 arguments.

The court made no specific statements about the Code, other than noting that the City of Hamilton had relied on it for the initial decision against the ad. Instead, the court pointed back

⁶³ <https://www.canlii.org/en/on/onscdc/doc/2023/2023onsc6443/2023onsc6443.html>

to the Guelph decision (above), which stated that cities cannot rely on the Code alone but must do a Charter balancing exercise. This Hamilton decision therefore provides another affirmation from a court that cities may use the Code to help justify decisions, and that doing so can be an important factor in the decision-making process – just not the only one.

Finally, because the court declined to interfere in how Ad Standards makes decisions or defines its terms, the decision also underscored that courts do not have (or want) the jurisdiction to overrule Ad Standards' decisions or the Code itself.

BC Human Rights Tribunal: Nachbaur and another v. Black Press Media and others, 2023 BCHRT 160

Summary: In November 2018, the *Nelson Star* newspaper (owned by Black Press Media) refused to run an ad from the Nelson Right to Life Society. The Star had recently decided to stop accepting any abortion-related advertisements because of community backlash over a previous anti-choice Halloween ad that depicted a pregnant woman wearing a T-shirt of a baby skeleton below an adult rib cage. Local businesses had threatened to stop advertising and to stop carrying hardcopy issues of the newspaper.

The anti-choice society filed a complaint with the BC Human Rights Tribunal, claiming the paper's refusal was discrimination based on religion in violation of the *BC Human Rights Code*. At the tribunal, the company argued that the decision "to stop printing ads regarding abortion was justified by the local backlash, the impact of such ads on women, and advertising standards which prohibit ads that are misleading or deceptive, and which demean, denigrate or disparage a group of people."⁶⁴

In the October 2023 decision dismissing the complaint,⁶⁵ Tribunal vice-chair Devyn Cousineau said that the newspaper: "...made their decision in order to preserve their business interests and acceptance by the local community, which is rationally connected to their function as a local medium of news and communication which relies on revenue from ad sales." Cousineau noted the local context in which the community's tolerance for anti-choice images was changing. "This was manifest in a controversy around the same time about an anti-abortion street banner, which led the municipal council to end its program of allowing street banners altogether."

The Tribunal's decision strongly validated the newspaper's reliance on the Code and highlighted it as a key reason to refuse anti-abortion ads:

- "There were three main concerns raised by the public backlash to the Halloween ad: (1) the paper's business interests, (2) the impact of anti-abortion ads on women who have had or might have an induced abortion, and (3) compliance with the Canadian Code of Advertising Standards. Taken together, I am satisfied that the Respondents will prove that their decision was reasonably necessary to respond to these concerns, and that to be required to continue to publish the Complainants' ads would give rise to undue hardship." (para 23)
- "Finally, it is significant that the Society's Halloween ad, and others that they had submitted before and after the Respondents' decision to stop printing abortion ads, appear to violate the Canadian Code of Advertising Standards. This was raised by one of the readers

⁶⁴ <https://www.vancouverisawesome.com/highlights/bc-newspaper-wins-case-over-refusal-to-run-abortion-ads-7723655>

⁶⁵ <https://www.canlii.org/en/bc/bchrt/doc/2023/2023bchrt160/2023bchrt160.html>

complaining to the Respondents during the relevant time and was a consideration for the Respondents.” (para 28)

- “The Advertising Standards prohibit advertisements that are inaccurate or deceptive, or which demean, denigrate, or disparage identifiable groups of people: Clauses 1 and 14. The Ad Standards Council, which interprets and applies the Advertising Standards, has found that anti-abortion ads violate these clauses when they: imply that a fetus is human, imply that people who have an abortion kill or deprive a fetus of choice, and suggest that people routinely have late-term abortions (for example, by using images of visibly pregnant bodies). As one reader pointed out to the Respondents, the Society’s Halloween ad did all these things.” (para 29)
- “The Complainants argue that the Advertising Standards are not relevant because readers do not regulate advertising. This misses the point. The reader raised a legitimate consideration, which the Respondents responded to. In the Charter context, the Supreme Court of Canada has recognized that the Advertising Standards ‘could be used as a guide to establish reasonable limits’ on ads with discriminatory content: [*Greater Vancouver Transportation Authority v. Canadian Federation of Students - British Columbia Component, 2009 SCC 31 at para. 79.*] In the human rights context, I am satisfied that the Respondents are reasonably certain to prove that it would be undue hardship to require them to continue print the Complainants’ ads which appear to violate these standards. To reach this conclusion, it is not necessary for the Respondents to wait for a formal order or direction from Ad Standards Council. That would undermine the very purpose of those Standards: encouraging advertising in compliance with their terms.” (para 30)
- “The decision to stop publishing abortion ads was reasonably necessary to achieve their goal, and specifically respond to concerns about the potential impact of abortion-related ad content on their business interests, women, and compliance with Advertising Standards. These concerns align with the purposes of the Code. In this circumstance, the complaint has no reasonable prospect of success and is dismissed under s. 27(1)(c) of the Code.” (para 31c)

Regulatory Actions by Local Governments

Bylaws in Response to Graphic Imagery

In direct response to the graphic imagery or other anti-abortion messaging, several local governments in Canada have passed bylaws in recent years.

- Nine municipalities require graphic flyers to be placed in envelopes with identifying information on the outside before distribution
- Calgary prohibits large signs outside schools during school hours, **and** delivery of unwanted flyers to households, **and** banners on highway overpasses.
- Hamilton prohibits banners on highway overpasses.
- The Municipal District of Foothills in Alberta prohibits signs affixed to trailers on private land along highways in the County.

More information on these municipal bylaws is included either below or in *Appendix 3, Bylaws Against Unacceptable Public Messaging*.

Safe Zones Outside Schools

The City of Calgary passed a bylaw amendment⁶⁶ on Oct 5, 2020 to the *Temporary Signs on Highways* bylaw.⁶⁷ (See amended text in Appendix 3.) The amendment limits signs with advocacy messaging to just 5" x 3.5" within 150 metres of any Calgary school. The restriction applies from 7:30 am to 9 pm on days when students would normally be present, and does not apply on school-owned property or private property. Violators face a ticket and fine up to \$1,000. The city's law department believes the restriction is justifiable under the *Charter*. There has been no court challenge.

History: This effort began with a Notice of Motion in April 2019, directing the city's Administration to engage with Calgary school boards and districts to look at the impact that "harmful expression" has on the psychological integrity of students attending school, and to determine if the city had authority to respond to public concerns.⁶⁸ Earlier that year, an anti-choice group had displayed graphic signage of aborted fetuses outside several high schools and elementary schools.^{69, 70}

The precedent for establishing buffer zones outside schools is based on similar safe access zone laws for facilities and the homes/offices of healthcare workers that provide abortion.⁷¹

After engaging with each of the city's school boards and districts, Administration reported back to City Council in Dec 2019. It was found that third-party advocacy messaging positioned directly outside of schools created a captive audience of unwilling viewers who cannot avoid exposure and often had a distracting and harmful effect on the teaching and learning environment. Further, the city had authority via the *Municipal Government Act* to enact bylaws to protect people, property, and public spaces. Therefore, Administration recommended that a bylaw be developed to address the concerns.

City Council agreed and directed its Administration to draft a bylaw to restrict advocacy messaging by external interest groups on public property around schools. In Sept 2020, a Council committee approved the proposal to set up buffer zones around schools for some types of signs.⁷²

Banning Signs Affixed to Vehicles on Private Property Along Highways

In 2019, the Municipal District of Foothills in Alberta⁷³ passed a bylaw specifically banning vehicle signs along highways in the County.⁷⁴ Three separate parties challenged the rule's

⁶⁶ www.cbc.ca/news/canada/calgary/calgary-abortion-safe-zone-protest-bubble-school-1.5359050

⁶⁷ Layperson's summary: <https://www.calgary.ca/bylaws/signage.html>. Download bylaw:

<http://publicaccess.calgary.ca/ldm01/livelink.exe?func=ccpa.general&msgID=VyATqTTeT&msgAction=Download>

⁶⁸ <https://calgaryherald.com/news/local-news/council-oks-plan-to-explore-protest-buffer-zones-for-schools>

⁶⁹ www.thestar.com/calgary/2019/03/14/teens-confront-anti-abortion-protesters-outside-calgary-high-school.html

⁷⁰ www.cbc.ca/news/canada/calgary/calgary-abortion-safe-zone-protest-bubble-school-1.5359050

⁷¹ <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>

⁷² <https://www.cbc.ca/news/canada/calgary/city-council-sign-restrictions-schools-1.5717983>

⁷³ The County is a rural municipality located adjacent to and immediately south of the City of Calgary. It covers about 3,600 square kilometres and surrounds the Towns of Okotoks, High River, Turner Valley, and Black Diamond, the Village of Longview, and the Eden Valley Indian Reserve.

⁷⁴ Foothills County Land Use Bylaw, Section 9.24.10 (page 103):

<https://www.mdfoothills.com/media/files/upload/LUB%2060-2014%20Consolidated%20LUB%20Updated%20August%2020%202020.pdf>

constitutionality, including a couple who has allowed High River Pro-Life to post anti-abortion signage on a trailer on their property.

In September 2020, the city won its case.^{75,76} Justice Nick Devlin of the Court of Queen’s Bench of Alberta found the bylaw had a pressing and substantial objective required for legislation to infringe on a Charter right, and that the Municipal District of Foothills was acting within its jurisdiction when it passed the bylaw.⁷⁷ “Citizens have a right not to be visually ‘shouted at’ by signs at every turn,” he said. “Controlling the time, place and volume (in all its meanings) of advertising is a core quality-of-life issue.” Devlin noted the District found the presence of trailers with ads “dissonant, distracting and degrading to the rural aesthetics that are a social and economic cornerstone of their community.”

Use of Other Existing Bylaws or Policies

Many cities likely have existing bylaws that can be applied against unacceptable public messaging. For example, several cities have bylaws that generally prohibit unwanted flyers:⁷⁸⁾

- Ottawa’s By-law No. 2003-493, *Voluntary Admail Reduction Program*⁷⁹ (passed in 2003), allows residents to affix “No junk mail” stickers to their mail slot or mailbox, and prohibits distribution of unaddressed advertising material to homes with such a sticker clearly displayed. The bylaw **excludes** newspapers delivered to paid subscribers; community newspapers; material produced in the context of a campaign for elected office; or information circulars produced by governments or their agencies. However, the bylaw is voluntary with no penalties or enforcement by the city.
- Winnipeg’s *Neighbourhood Liveability Bylaw*⁸⁰ (passed in 2008) prohibits delivery of unwanted flyers, if a sign on the property states: “No handbills”, “No flyers”, “No trespassing”, “No pedlars or agents” or otherwise indicates that handbills are not wanted. (There are no exemptions for certain types of flyers, such as election flyers.) The bylaw also prohibits temporary signs adjacent to roadways in many circumstances. There are administrative penalties (fines)⁸¹ for violating the bylaw.
- Halifax’s bylaw F-400, *Respecting the Distribution of Flyers*⁸² (passed in 2019), prohibits unwanted flyers to homes where the resident has posted a sign or notice stating they do not wish to receive flyers. Exemptions are made for election and government-issued flyers, as well as for apartment buildings with six or more units. There are administrative penalties (fines) for violating the bylaw.

⁷⁵ <https://calgaryherald.com/news/local-news/judge-upholds-bylaw-banning-trailer-ads-which-blight-southern-albertas-landscapes>

⁷⁶ Court of Queen’s Bench of Alberta, *Top v Municipal District of Foothills No. 31*, 2020 ABQB 521: https://albertacourts.ca/docs/default-source/qb/top-v-municipal-district-of-foothills-no-31-2020-abqb-521---reasons-for-judgment.pdf?sfvrsn=f1479280_2

⁷⁷ Judge Devlin did a Charter analysis but did not touch on the Advertising Code, as the case did not relate to the content of trailer advertising.

⁷⁸ These cities are just examples – other municipalities have similar bylaws that allow residents to stop delivery of unwanted flyers, including St. John’s NL and Riverview NB (upcoming: [Rothesay NL](#)).

⁷⁹ <https://ottawa.ca/en/voluntary-admail-reduction-program-law-no-2003-493>

⁸⁰ <http://clkapps.winnipeg.ca/dmis/docext/viewdoc.asp?documenttypeid=1&docid=3996>

⁸¹ <https://clkapps.winnipeg.ca/DMIS/Documents/DocExt/BL/2016/2016.59.cons.pdf>

⁸² <https://www.halifax.ca/city-hall/legislation-by-laws/by-law-f-400>. News story about the bylaw, which was passed in Oct 2019: <https://globalnews.ca/news/5708299/halifax-no-flyer-bylaw/>

- Woodstock’s *Bylaw Respecting Flyer Distribution in the Town of Woodstock* was passed in Nov 2022.⁸³ It allows residents to post a notice that says “No Flyers.” The bylaw does not apply to election materials, newspapers, government information, or circulars from politicians. There are fines for violating the bylaw. (Woodstock also has a Viewer Discretion bylaw specifically for the graphic flyers – see page 24.)
- Okotok’s *Community Standards* bylaw⁸⁴ (amended Aug 2023) has a new flyer prohibition if the resident has a “No Flyers” or similar notice at their door (minimum \$750 fine for violations).

In addition, many cities have existing bylaws that could potentially be used to limit unacceptable messaging in public (see our worksheet⁸⁵ for details on individual bylaws). For example:

- Sign bylaws that regulate the size, appearance, and location of signs, or that require permits for signs. A few sign bylaws cite the Advertising Code⁸⁶
- Bylaws that pertain to roads or traffic, including to ensure that signs or activities adjacent to roadways don’t interfere with traffic flow or public safety
- Policies or bylaws for city-approved flags or proclamations, requiring that they cannot, for example, be “politically or religiously motivated”, or must not “espouse discrimination, hatred, violence or racism”

We encourage local governments to review their existing bylaws and policies to see what might be useful in terms of prohibiting flyer delivery, as well as ensuring the acceptability of messaging on signs, advertising, banners, flags, proclamations, and at city-permitted events.

If a current or amended bylaw would be effective against the images, local governments can also inform specific anti-choice groups in advance that their activities are illegal under the bylaw, and then charge them if they return.

City of London Actions Against Graphic Images

London was blanketed by the graphic signage as well as flyers delivered to homes from mid September through November 2020. At first, the city said they could do nothing due to “freedom of expression”, but pressure from ARCC, local pro-choice groups, and residents led to action by several councillors.

Councillor Jesse Helmer created a page on his website (no longer online) to encourage residents to take action against the graphic images. The page included a petition and a link to ARCC’s Trespass Remedy (see page 9).

Four councillors prepared a motion that was endorsed by the Community and Protective Services Committee (CPSC) on Nov 3, 2020 and passed by the Mayor and Council on Nov 10.⁸⁷

⁸³ https://www.pentictonherald.ca/spare_news/article_7f79f285-01b9-51a4-844e-e7619b035b48.html

⁸⁴ See Sections 14.1 to 14.4: <https://www.okotoks.ca/sites/default/files/2023-08/Bylaw%2031-23%20Community%20Standards.pdf>

⁸⁵ <https://www.arcc-cdac.ca/wp-content/uploads/2022/03/City-Search-Advertising-Code-Worksheet-all.pdf>

⁸⁶ Strathcona County AB, Prince Albert SK, North Bay ON, Windsor ON, and Whitchurch-Stouffville ON.

⁸⁷ Committee meeting: <https://pub-london.escribemeetings.com/filestream.ashx?DocumentId=75742>
Council passes motion: <https://globalnews.ca/news/7455057/city-council-london-graphic-flyers/>

"That Civic Administration be directed to investigate options to address community concerns around graphic unsolicited flyer deliveries to residential properties including but not limited to; steps taken by other municipalities and potential amendments to the existing municipal nuisance by-law or an introduction of a new by-law, and report back with options for counsel's consideration."⁸⁸

The report by the CPSC was issued in September 2021, recommending a voluntary bylaw banning flyer delivery from homes with a "no flyers" or "no junk mail" sign,⁸⁹ but with no enforcement measures or fines. Advocates and a few councillors disagreed with this approach. A committee meeting on Sep 21 resulted in the committee agreeing to look at a different approach of targeting the graphic flyers specifically.⁹⁰ At a Nov 2, 2021 Public Participation Meeting, oral submissions from advocates and the public were considered. A motion was passed to recommend that City council refer the draft bylaw back to staff to make it more targeted to graphic flyers, and to add penalties for violators.

The CPSC received two draft bylaws from city staff, one similar to the voluntary bylaw described above but with a monetary penalty of \$75 for an offence. The second bylaw draft prohibited graphic flyers specifically, with a monetary penalty of \$350 for an offence. The CPSC recommended the second bylaw approach to City Council, despite the risk of a lawsuit.⁹¹ But on March 22, 2022, City Council passed a motion for city staff to draft a third bylaw instead, requiring the graphic flyers to be enclosed in a wrap or envelope with identifying information on the outside.⁹²

This bylaw passed at City Council on May 3, 2022 and is called the *Graphic Image Delivery By-law - PW-14*.^{93, 94} It is the first bylaw in Canada that specifically limits graphic flyers, by requiring them to be concealed in an envelope – a Viewer Discretion bylaw. See *Appendix 3, Bylaws Against Unacceptable Public Messaging* for an excerpt of the bylaw.

The City of London is now debating whether it could prohibit graphic signage in public, including on signs, banners and billboards – an advocacy effort led by ARCC. More details are included in the later section on page 27, *Municipal Actions to Regulate Graphic Signage in Public*.

Viewer Discretion Bylaws in Other Cities to Regulate Graphic Flyers

(Note: the following bylaws are not excerpted in Appendix 3, but are similar to the London bylaw reproduced in Appendix 3. Consult footnotes below for other bylaws.)

City of Calgary

In September 2022, eight councillors and the Mayor sponsored a Notice of Motion calling for a new bylaw to address the issue of graphic flyers being delivered to homes.⁹⁵ Under the

⁸⁸ Note: Addressing the flyers is meant to be a first step, with an intention to address the street signage next.

⁸⁹ <https://lfpres.com/news/local-news/proposed-city-hall-bylaw-will-do-little-to-stop-graphic-anti-abortion-flyers>

⁹⁰ <https://london.ctvnews.ca/new-approach-pitched-to-stop-graphic-anti-abortion-flyers-1.5595513>

⁹¹ <https://london.ctvnews.ca/politicians-back-banning-graphic-flyers-despite-possible-legal-challenge-by-anti-abortion-group-1.5802036>

⁹² <https://www.cbc.ca/news/canada/london/city-looks-at-alternative-ways-to-restrict-graphic-anti-abortion-flyers-in-the-mail-1.6394129>

⁹³ <https://london.ca/by-laws/graphic-image-delivery-law-pw-14>

⁹⁴ <https://globalnews.ca/news/8808904/london-ontario-graphic-flyer-bylaw/>

⁹⁵ <https://calgary.citynews.ca/2022/09/26/calgary-proposed-bylaw-graphic-images-anti-abortion/>

proposed bylaw, graphic images on flyers will need to be concealed by either folding the pamphlet, taping it shut, or using an envelope. The motion was approved on Nov 2, 2022.⁹⁶

A report and draft bylaw was created by the Community Development Committee, which voted unanimously on April 27, 2023 to bring it forward to City Council.⁹⁷ On May 7, 2023, Calgary City Council passed the Viewer Discretion bylaw, called *Regulating the Unsolicited Distribution of Graphic Images Depicting a Fetus*.⁹⁸

City of Woodstock

On Feb 2, 2023, Woodstock City Council unanimously supported a motion directing staff to prepare a Viewer Discretion bylaw similar to the City of London's to regulate the distribution of flyers containing graphic images.⁹⁹ The draft bylaw was successfully passed at the Feb 16 Council meeting.^{100, 101}

Town of Ingersoll ON

On June 12, 2023, the Council for the Town of Ingersoll Ontario passed a Viewer Discretion bylaw to regulate graphic flyers.¹⁰² The initiative was reportedly led by Deputy Mayor Lindsay Wilson.

Town of Strathmore AB

On July 26, 2023, Strathmore quickly passed a Viewer Discretion bylaw, an amendment to its Community Standards Bylaw.¹⁰³ Strathmore had seen an influx of graphic flyer delivery at residents' homes in the last two months, causing them "to feel uncomfortable and fearful that their children might stumble upon these disturbing images."¹⁰⁴

Town of Okotoks AB

On August 21, 2023, the Town Council passed a revised *Community Standards* bylaw.¹⁰⁵ The amended bylaw incorporates both a general flyer prohibition if the resident has a "No Flyers" or similar notice at their door (minimum \$750 fine for violations), as well as a Viewer Discretion

⁹⁶ <https://globalnews.ca/news/9245341/calgary-city-council-graphic-anti-abortion-pamphlet-motion/>

⁹⁷ <https://pub-calgary.escribemeetings.com/Meeting.aspx?Id=2298eb2d-c5ab-4f1c-b55b-8bce8853c272&Agenda=Agenda&lang=English&Item=20&Tab=attachments>

⁹⁸ <https://calgary.ctvnews.ca/flyers-showing-graphic-images-of-fetuses-subject-to-new-safeguards-under-calgary-bylaw-amendment-1.6391471> AND <https://www.calgary.ca/bylaws/graphic-flyers.html>

⁹⁹ <https://lfpres.com/news/local-news/woodstock-eyes-copying-londons-bylaw-against-graphic-anti-abortion-flyers>

¹⁰⁰ See 14.g.1, Graphic Image Delivery By-law, page 19:

<https://calendar.cityofwoodstock.ca/council/Detail/2023-02-16-1900-Woodstock-City-Council-Meeting/a17afcfb-c17d-4c54-90d1-afb0010f1a1a>

¹⁰¹ Woodstock's bylaw is included in this report from Ingersoll Town Council, pg. 7:

<https://ingersoll.civicweb.net/document/22970/?splitscreen=true&attachmenturl=%2Fdocument%2F23105>

¹⁰² By-law 23-5268: "A bylaw to regulate the delivery of graphic images in the Town of Ingersoll." Scroll to "Consideration of Bylaws": [Regular Meeting of Council - 12 Jun 2023 - Agenda - Html \(civicweb.net\)](#).

AND staff report from Feb 2023:

<https://ingersoll.civicweb.net/document/22970/?splitscreen=true&attachmenturl=%2Fdocument%2F23105>

¹⁰³ <https://strathmore.ca/en/town-hall/resources/Documents/bylaws/23-27---Community-Standards-Amending-Bylaw-ID-74928.pdf>

¹⁰⁴ <https://strathmorenow.com/articles/town-pushes-through-anti-abortion-bylaw->

¹⁰⁵ See Sections 14.1 to 14.6: <https://www.okotoks.ca/sites/default/files/2023-08/Bylaw%2031-23%20Community%20Standards.pdf>

clause requiring graphic flyers to be put in envelopes with identifying info and a warning (minimum \$1000 fine for violations).

Further, graphic flyers as well as advertising must adhere to the *Canadian Code of Advertising Standards* (minimum fine of \$1000 for violations).

City of Airdrie AB

On September 5, 2023, Airdrie's city council unanimously approved bylaw amendments¹⁰⁶ to its Community Standards bylaw to regulate the distribution of flyers in Airdrie containing graphic images. The council had heard public concerns about flyers¹⁰⁷ delivered in May 2023 and a resident had gathered over 600 signatures on a petition.¹⁰⁸

City of St. Catharines

On September 25, 2023, the city Council passed a Viewer Discretion bylaw.¹⁰⁹ Councillor Kevin Townsend had requested a report in March 2023^{110,111} from the Legal and Clerks Services department that would examine what other municipalities had done.

City of Burlington

On March 19, 2024, City Council approved^{112,113} the *Graphic Image Delivery By-law* to regulate their distribution. The bylaw requires those who distribute graphic images in the City to enclose them in an envelope or package.

Bylaws not yet passed:

Town of Oakville ON

On June 19, 2023, Oakville's Town Council directed town staff to take another look at placing restrictions on graphic anti-abortion flyers *and* public displays.¹¹⁴ Staff were instructed to come back with recommendations before the end of fall. (Also see *Municipal Actions to Regulate Graphic Signage in Public* below for past Oakville actions.)

Note: Oakville's director of municipal enforcement, Jim Barry, raised the issue of enforcement problems with flyer bylaws.¹¹⁵ In fact, Viewer Discretion bylaws to regulate the flyers allows

¹⁰⁶ See page 18: <https://www.airdrie.ca/getDocument.cfm?ID=11184>

¹⁰⁷ <https://www.westernwheel.ca/beyond-local/new-bylaw-seeks-to-ensure-airdronians-cant-be-exposed-without-warning-to-offensive-or-graphic-images-7507493>

¹⁰⁸ <https://www.change.org/p/limit-abortion-flyer-door-drops-in-airdrie-ab>

¹⁰⁹ By-law 2023-150: "A By-law to regulate the Delivery of Graphic Images in the City of St. Catharines". See Section 7.3 of Council minutes, by-law not available on website yet: <https://stcatharines.civicweb.net/filepro/document/108621/Regular%20Council%20-%2025%20Sep%202023%20Minutes.html?widget=true>

¹¹⁰ <https://www.iheartradio.ca/610cktb/news/st-catharines-looks-into-restrictions-on-mail-containing-graphic-images-1.19335402>

¹¹¹ 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

¹¹² Report BL-03-24: <https://burlingtonpublishing.escribemeetings.com/Meeting.aspx?Id=cd8ed74f-2f94-4f46-9204-7e561863f241&Agenda=PostMinutes&lang=English&Item=71&Tab=attachments>

¹¹³ <https://www.inhalton.com/graphic-anti-abortion-images-will-now-have-to-be-covered-up-in-burlington/>

¹¹⁴ 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

¹¹⁵ Ibid (Inside Halton news article, June 27, 2023)

municipalities to lay charges against the responsible company or its officers (in this case, the CCBR), so the municipality does not need to identify and find the specific volunteer who delivered the flyer. Further, the CCBR is registered in Alberta and constitutes a corporate legal person under the law.

Township of Norwich ON

At the Norwich Town Council meeting on May 23, 2023, Councillor Alisha Stubbs reported that a highly graphic flyer had been circulating in the Village and Township. “Flyers are being placed in mailboxes, on cars and thrown on lawns. This is traumatizing residents and in order to protect children, consideration should be given to restrictions on circulation of these materials.”

Council passed a motion¹¹⁶ to request a staff report on how to address the matter. This will likely entail a Viewer Discretion bylaw because at a previous March meeting, the Town Council had received some correspondence about the Woodstock bylaw¹¹⁷ (see above).

Municipal Actions to Regulate Graphic Signage in Public

After Calgary passed its bylaw amendment in 2020 restricting signage outside schools, several other cities began looking at the feasibility of restricting the graphic signage shown in public:

- **Toronto:** On July 10, 2023, City Council passed a motion and directed the Municipal Licensing and Standards department to report to the April 2024 meeting of the Economic and Community Development Committee on the feasibility of prohibiting advocacy signs in public that display graphic images (as well as regulating graphic flyers).¹¹⁸ See the later section City of Toronto Actions Against Graphic Images for more information.
- **London:** In July 2022,¹¹⁹ the Community and Protective Services Committee supported a motion by Councillor Mariam Hamou, which directed staff to prepare a report about potentially expanding the graphic flyer bylaw to also prohibit graphic images in public. A report was prepared for the Feb 20, 2024 meeting of the Community and Protective Services Committee.¹²⁰ The recommendation was to not amend the *Signs Bylaw*, but 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. However, 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.¹²¹ City Council supported this move at their March 5, 2024 meeting. The report is expected by Summer 2024.

¹¹⁶ Section 10.9.1 <https://www.norwich.ca/en/resources/Images/Council-Minutes/Minutes---May-23-23--A.pdf>

¹¹⁷ <https://www.norwich.ca/en/resources/Images/Minutes---March-14-23-A.pdf>

¹¹⁸ <https://secure.toronto.ca/council/agenda-item.do?item=2023.EX6.23>

¹¹⁹ <https://london.ctvnews.ca/graphic-roadside-anti-abortion-signs-could-be-target-of-stricter-sign-bylaw-1.6008250>

¹²⁰ <https://pub-london.escribemeetings.com/Meeting.aspx?Id=c0c6d189-3bb6-49b1-bfaa-a74dca63495a&Agenda=Agenda&lang=English>

¹²¹ <https://london.ctvnews.ca/debate-to-ban-graphic-anti-abortion-signs-in-london-might-be-delayed-until-summer-1.6776989>

- **Oakville:** On June 19, 2023, Town Council directed staff to look again at placing restrictions on graphic public displays (as well as graphic flyers).¹²² 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. One councillor separately said the recommendations could come in early 2024.
- **Hamilton:** On November 8, 2023, City Council passed a motion¹²³ 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 adopting and enforcing a by-law to regulate the distribution and display of graphic images).

As noted previously, the cities of Calgary and Hamilton have both passed bylaw amendments to prohibit banners being hung from or held from overpasses (see Appendix 3 for bylaw text and links).

Years ago, several cities passed resolutions that sought to regulate the graphic imagery of aborted fetuses:

- **Hamilton** passed a resolution in June 2014 against banners on overpasses, asking the federal and provincial government to pass laws/regulations to control the images. The resolution was forwarded to the Association of Municipalities of Ontario (AMO).¹²⁴
- **Oshawa** passed a resolution on June 11, 2018¹²⁵ to request advice on the Charter of Rights and Freedoms from the Minister of Justice and Attorney General of Canada, and Attorney General of Ontario, on the issue of how to develop a bylaw to prohibit graphic signage. The motion also stated that the communications received by council members and staff would be forwarded to the Department of Justice Canada and the Ministry of the Attorney General for inclusion in Charter discussions.
- **Oakville** passed a resolution on Aug 13, 2018 (copied to the AMO) in response to ARCC’s letters as well as complaints from citizens. The letter asked its Director of Municipal Enforcement and Town Solicitor to assess options to regulate the display and distribution of the images (report was expected in 2019 but nothing materialized), asked the Province of Ontario to limit and regulate the images, and asked the Minister of Justice of Canada to consider amending Section 163(8) of the *Canadian Criminal Code*, *Obscene Publication*.¹²⁶

The measures directed to the provincial and federal governments had no known effect. For more information, see page 8, *Provincial Considerations and Possible Remedies*.

¹²² 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

¹²³ Pg 11, Council minutes: <https://pub-hamilton.escrimemeetings.com/FileStream.ashx?DocumentId=387338>

¹²⁴ <http://terrywhitehead.ca/ban-graphic-advertising/>

¹²⁵ http://app.oshawa.ca/agendas/city_council/2018/06-11/minutes_2018-06-11_council.pdf

¹²⁶ Letter to AG Caroline Mulroney: <https://nhuron-pub.escrimemeetings.com/filestream.ashx?DocumentId=17826>

City of Toronto Actions Against Graphic Images

In Toronto, efforts by city councillors to regulate graphic flyers and signage have been ongoing since 2017 but no meaningful progress has been made. The Council depends on the city's Municipal Licensing and Standards department (MLS) to research and advise and recommend on the issue; however, MLS has consistently delayed and stonewalled, and generally failed to provide full or accurate information to Council, making it impossible for them to make an informed decision on the matter. The saga is described below.

A coalition of city councillors and Toronto-area MPPs joined forces in summer 2017 to fight CCBR's graphic imagery and flyer distribution in Toronto, after much public uproar. They initially asked the Ontario Attorney General for an emergency injunction to stop the displays, but this was unsuccessful as the AG (then Yasir Naqvi) did not feel he could succeed in court.¹²⁷

City Council passed a motion¹²⁸ in December 2017 that requested from the City an assessment of legislative and private options to regulate the signage and flyer delivery. A second motion¹²⁹ was passed in July 2018 to review sidewalk bylaws and consider enforcement options available. This resulted in a review of the city's Temporary signs bylaw (Chapter 693, Signs¹³⁰) by the Municipal Licensing and Standards to see if the bylaw could be amended to address the graphic imagery on streets. (A history of the review is available.¹³¹)

The review was issued on Sept 30, 2019.¹³² Pages 23 and 24 of the review address the graphic signage. Municipal Licensing and Standards recommended that the City:

- Enforce Chapter 743-9¹³³ where feasible, which states that no person "shall obstruct, encumber, damage, foul, or cause or permit the obstructing, encumbering, damaging or fouling of any street, or install or place any unauthorized encroachment, object, article or thing, on, over, along, across, under, or in a street except as permitted under Chapter 743 or any other City By-law." (Note: Chapter 743-9 has little relevance to the issue of people holding signs in public.)
- Amend Chapter 693 to establish a new temporary sign type, called "Advocacy Signs",¹³⁴ which would not require a permit and be restricted to private property. (Note: This amendment neither prohibits nor addresses temporary signage displayed in public.)

In terms of regulating temporary sign content, Municipal Licensing & Standards said:

"Staff have begun to assess options to regulate temporary sign content. Through the consultation process, staff received a considerable amount of feedback related to sign content. This includes over 800 emails regarding signs that contain either graphic images

¹²⁷ <http://councillorpaulafletcher.ca/update-on-stopping-graphic-images-used-by-canadian-centre-for-bio-ethical-reform/>

¹²⁸ MM35.10 – Distribution and Display of Graphic Images:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.MM35.10>

¹²⁹ MM44.35 – Use of the Public Right of Way for Display of Graphic Images:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM44.35>

¹³⁰ Chapter 693, Signs: www.toronto.ca/legdocs/municode/1184_693.pdf

¹³¹ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH9.3>

¹³² Temporary Signs By-law Review, Sept 30, 2019:
www.toronto.ca/legdocs/mmis/2019/ph/bgrd/backgroundfile-138764.pdf

¹³³ Chapter 743, Streets and Sidewalks, Use Of www.toronto.ca/legdocs/municode/1184_743.pdf

¹³⁴ City of Toronto Act, 2006 Public Notice, Temporary Signs By-law Review, PH9.3:
www.toronto.ca/legdocs/mmis/2019/ph/bgrd/backgroundfile-138420.pdf

or may contain inaccurate or misleading information. Some of those emails supported signs containing graphic images while some indicated concern about these signs and/or signs containing inaccurate or misleading information. Further work needs to be done to review these emails and evaluate recent developments in Canada with respect to the display of graphic images and inaccurate/misleading information in the public realm. It is expected that staff will be in a position to report back to the appropriate committee in the second quarter of 2020.”

However, the pandemic and other priorities delayed things; see update notes below.

In July 2020, the City of Toronto advised ARCC that the report on graphic signage will be delayed until at least early 2021 because of the COVID-19 pandemic, cautioning that it “may require additional time for research, consultation, and legal analysis.”

In July 2021, the City advised ARCC that the report would be further delayed due to pandemic priorities, stating: “We are currently reviewing our reporting schedule and hope to have a better sense of timing in the fall.”

In March 2022, the City advised ARCC: “We do not have a firm date for the report back on this directive, but are aiming to bring a report in 2023.”

In June 2023, ARCC was told by a Councillor staff member that staff have delayed the report about graphic signage in public to 2024, from their initial schedule of the second quarter of 2020.

Municipal Licensing and Standards further noted in its Sept 2019 review that while the city does not regulate the content or distribution of print materials to private residences, “various groups and individuals have encouraged property owners to use trespass notices to address this issue, prohibiting organizations from entering on their property to deliver unwanted print materials.” (Note: This refers to ARCC’s Trespass Remedy, see page 9, which while valuable, is not a sufficient substitute for the city acting to protect residents more broadly via a bylaw.)

In June 2022, Councillor Mike Layton (Ward 11, University-Rosedale) attempted to speed things up by having a new motion (MM-45.22) adopted by City Council.¹³⁵ The motion asked Municipal Licensing and Standards, and Transportation Services, to explore options for prohibiting graphic images on flyers, as well as prohibiting and regulating graphic signage in public, and to report back to Council.¹³⁶

Toronto had never before tried to address the graphic flyers, but Layton indicated (pers. comm June 16, 2022) that he had the support of several other councillors for a bylaw modelled after London’s (see next section). However, Councillor Layton did not run for re-election last year and no report was ever issued by MLS or Transportation Services.

On June 14, 2023, Councillor Dianne Saxe presented a motion to City Council (MM7.17 - Graphic Image Delivery¹³⁷), asking Council to draft a London-style Viewer Discretion bylaw for the graphic flyers. The motion also asked City Council to take action against graphic images in public. The motion noted the three separate past motions requesting MLS to develop regulations for

¹³⁵ <https://www.cbc.ca/news/canada/toronto/toronto-anti-abortion-group-door-to-door-tactics-1.6488814>

¹³⁶ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.MM45.22>

¹³⁷ <https://secure.toronto.ca/council/agenda-item.do?item=2023.MM7.17>

the graphic public signage but that no such work had been done.¹³⁸ Council referred the motion to the city's Executive Council, which adopted it (with an amendment) on July 10 and sent it to City Council.

On July 10, City Council adopted Councillor Saxe's motion, and directed MLS to report to the April 2024 meeting of the Economic and Community Development Committee on how to regulate the unsolicited delivery of graphic images to residences in a similar manner as in London, as well as to report on the feasibility of prohibiting advocacy signs in public that display graphic images.¹³⁹ However, at the April 30 meeting, MLS presented a brief report that did not properly review the issue and which recommended no action on the flyers or signs. ARCC and several Toronto residents intervened to condemn the report and request that the matter be removed from MLS authority and given to Legal Services. While the latter did not happen, Councillor Saxe and Councillor Fletcher rejected the MLS recommendation to do nothing and sent the matter back to them for more work. A motion was passed stating:

"That the Economic and Community Development Committee refer the item back to the Executive Director, Municipal Licensing and Standards with the request to: a. Decouple the matter of graphic images from placement of advocacy signs. b. Update the report to include a list of all cities that have passed by-laws related to graphic images and the content and status of their by-laws and of those currently contemplating by-laws."¹⁴⁰

Conclusion

ARCC encourages all municipalities, towns, cities, and provinces to cite the *Canadian Code of Advertising Standards* in their policies and bylaws related to advertising, signage, and City-approved transit ads, flags, banners, proclamations, and events. This would allow local governments to appropriately regulate public messaging. Reasons and benefits include:

- Several courts have signalled in recent years that the Code is an acceptable tool by which to approve or reject public messaging.
- Dozens of cities already cite the Code and there have been no adverse legal repercussions.
- Citing the Code removes the subjective decision-making burden from local governments and helps ensure more reasoned and justifiable decisions that will stand up in court.
- An increase in the Code's citation would lend it additional legal weight and provide further protection to local governments for any refused messaging.
- The Code is a valuable tool to manage citizen or advertiser complaints around public messaging.
- Regulating public messaging via the Code would help fulfil local community values that encourage inclusivity, diversity, accessibility, and a safe and welcoming environment for all.

¹³⁸ These past motions include: December 5, 2017: MM35.10 Distribution and Display of Graphic Images. July 23, 2018: MM44.35 Use of the Public Right of Way for Display of Graphic Images. June 15, 2022: MM45.22 Prohibition and Regulation of Graphic Imagery Distributed to Private Residences and Displayed in the Public Realm.

¹³⁹ <https://secure.toronto.ca/council/agenda-item.do?item=2023.EX6.23>

¹⁴⁰ <https://secure.toronto.ca/council/agenda-item.do?item=2024.EC12.7>

Further, local governments in Canada can implement various other remedies to address graphic signage or other unacceptable messaging, including:

- Passing a bylaw to prohibit flyers delivered to homes that have a “No Flyer” notice
- Reviewing existing bylaws to see if any can be applied against the graphic imagery
- Informing specific anti-choice groups in advance that their activities are illegal under a bylaw, and then charging them if they return
- Informing residents about the provincial [Trespass Remedy](#)
- Passing a buffer zone bylaw or zoning bylaw to protect schools and medical facilities from “harmful expression”
- Passing a bylaw to prohibit banners hung from roadway overpasses
- Passing a bylaw to ban trailer ads on private property alongside highways

Please contact us for help or any further information: info@arcc-cdac.ca.

Appendix 1, Complaints Against Graphic Anti-Choice Imagery

Following are representative examples of the outrage caused by graphic imagery of aborted fetuses (Examples 1 - 10) and anti-choice advertising (Examples 11 - 13).

Complaints Against Graphic Images

1

July 2023, Victoria BC: Two news articles reported on the “very disturbing” graphic flyers being delivered in the Capital Regional District of Vancouver Island:

Jessica Duncan looks at her mailbox every day in her quiet Victoria neighbourhood. In early July, however, the Fernwood resident did not expect to find a graphic anti-abortion leaflet sitting in there displaying explicit images. “You know those cigarette packets – it was like that, but 10 times worse and gross and horrible. Very, very disturbing,” says Duncan.

“It’s really vile. That should not be allowed in anybody’s mailbox. It’s bad.”

Duncan is also worried about the “misinformation about abortion” she said the leaflet contains and who might see it. “My neighbour has small children and she found it fortunately before her kids did,” said Duncan. “I’m not easily shaken up, but this one was really disturbing. I feel like it’s a dangerous piece of literature going out.”

<https://www.vancouverislandfreedaily.com/local-news/very-disturbing-greater-victoria-residents-disgusted-by-anti-abortion-flyers/> AND <https://www.capitaldaily.ca/news/greater-victoria-residents-upset-after-graphic-anti-abortion-mail-sent-homes>

2

May 2023, Airdrie AB: Residents across several neighbourhoods discovered graphic images in anti-abortion pamphlets that were left at their doors, and called on the city to pass a bylaw limiting the flyers from being distributed without any kind of disclaimer:

Airdronian Elizabeth Jarman said that the issue is not new to her, as in 2019, she had started an online petition after the pamphlets had also begun circulating in Airdrie neighbourhoods. At that time, the flyer was tucked into the door and her six-year-old son had gotten a hold of it: “When he came home from school from his bus stop, sure enough, he got a hold of this flyer and then of course, started asking questions and that’s not [a conversation] a mother wants to have with a six-year-old; let alone any child to be honest, “It kind of died off for a bit and I noticed and it wasn’t as apparent and then recently it just seemed to be popping up more and more frequently.”

The issue of smaller children finding the adverts was something dozens of residents across several social media groups on Facebook highlighted, with many vehemently criticizing the distributors of the flyers, saying that those who distribute the ads may be traumatizing not only kids but also adults who have gone through traumatizing events such as miscarriages, processing the death of their infants due to chronic medical illnesses or due to Sudden Infant Death (SID) syndrome, sexual assaults, or otherwise.

<https://www.discoverairdrie.com/articles/concern-grows-as-graphic-flyers-resurface-in-airdrie>

3

April 2023, Niagara Falls, ON: A resident complained to the Mayor about receiving a graphic flyer (excerpts shared with permission):

“On Saturday, I asked our 13 year old to check the mailbox as I could see something was left in it. He brought back a flyer - It was a very graphic flyer from a pro-life organization in Niagara, who I can see is called Help and Healing (289-805-8298). The child was visibly shook, and had a lot of questions. Being 13, he is not unfamiliar with the issue, but the pictures on the flyer are horrifyingly graphic. As a family, it was a difficult conversation and we were all very upset by the literature left in our mailbox (that we did not ask for).

“I was shocked to learn that this type of literature was allowed to be displayed or put in anyone's mailbox for anyone to find, particularly children of any age, in Niagara Falls. Seeing these images could cause significant harm to children, who absolutely do not need to be involved in the conversation surrounding pro-choice v pro-life, particularly having it brought to their literal doorstep. The group producing and delivering these flyers have no right to impose this conversation, belief, or mental distress on my household.”

Also see further reactions compiled by Niagara Reproductive Justice:

<https://niagarareproductivejustice.com/2023/02/28/support-the-motion-to-restrict-graphic-anti-abortion-leaflets-in-niagara/>

4

July 2022, Burnaby, BC: July 2022, Burnaby BC. This impact statement was sent to ARCC by “Tina”, shared with permission:

“I was outside of my home cutting my grass when a young girl walked past me and put a flyer in my mailbox. I kept on with my work for another 15 minutes or so, and then went to check what she left, I was instantly shocked and angry and decided to hop on my bike. I looked for her and couldn't find her anywhere, but my neighbour was able to very quickly provide me with video screenshot photo evidence that this young lady was actually with two adult men, all walking together, split up on either side of the street going door to door. I hadn't noticed the men as I was too distracted by my work. I went to my neighbours' houses to make sure that nobody else had to see them either.

“I made a posting on Next Door to tell the community about how I felt, and have received a lot of support. I was very upset and emotionally worked up for hours afterwards.”

5

June 2022, Montreal QC: (*translated*) Two citizens of the Plateau-Mont-Royal reported to Metro that they found anti-abortion flyers with shocking images in their mailboxes over the weekend.

Margot Blondin lives in the Plateau-Mont-Royal. She found a pamphlet in her mailbox last Friday when she came home from work. "Exactly on the day that Roe v. Wade was overturned in the United States," she says. Upon finding it, she was in shock. "It really scared me to know that someone had come up to my door. Someone who believes this." Having received the flyer was scary, Ms. Blondin tells us. "It was really shocking. It was pictures of aborted fetuses. [...] Already, it was a weird day in relation to that." She says she spent the day worrying and then reassuring herself with a colleague.

Philippe*, who asked to use a false name to remain anonymous, received a similar flyer. He found it on Saturday afternoon when he returned from a walk with his wife. She was the one who took the flyer out of the mailbox. "Don't open that," Philippe said, as soon as he realized what it was. Too late. "The picture is really horrible. My wife was in shock," he recalls.

<https://journalmetro.com/actualites/montreal/2851662/depliant-anti-avortement-distribues-montreal/>

6

Feb 2022, Burnaby, BC: A Burnaby mother is speaking out after her young child was given an anti-abortion flyer filled with "disgusting" images. Burnaby residents have complained for years about people coming onto their private properties to leave these flyers at their homes – with the chance of children being exposed to the graphic images plastered on them.

"My son is six and was playing in the driveway on the weekend because it was finally sunny out," Tina said. "He said a woman came up the driveway and handed him the pamphlet. He came running up to me looking all in a panic because he had looked at it. I went running out trying to find this awful person but they were gone. Let's just say she is lucky I didn't find her."

<https://www.burnabynow.com/local-news/burnaby-mom-furious-after-young-child-given-disgusting-flyer-in-driveway-5075319>

7

January 2020, New Westminister, BC: Rebecca Ninkovic of New Westminister tearfully asked city council to take action to prevent anti-abortion groups from exposing people to graphic images on city streets. She was waiting to cross the street at Eighth and Carnarvon streets when she was confronted by a giant poster showing graphic imagery of an aborted fetus. She was unable to get past the large poster on the sidewalk. "It was only inches from my face. I was instantly triggered. I struggle with mental health, and I have complex PTSD. I have been working very hard on my recovery. This encounter instantly interrupted my personal sphere and forced me to look at a highly disturbing image that I would have chosen to avoid had I been given the choice."

"The protesters proclaimed freedom of speech and human rights rhetoric when I engaged with them regarding the damaging images they were using," she said. "I was deeply disturbed even further when a little girl around the age of my own seven-year-old daughter was staring in horror and disbelief at the image. I quickly jumped in front of her gaze and told her to guard her eyes and look away."

continued next page...

Ninkovic said it was traumatizing for her to view the graphic poster, as she was forced to view similar images as part of her own fundamentalist religious upbringing in the pro-life movement. “From a young age, I was exposed to these images,” she said. “It took many years of therapy to undo the damaging effects of these unwanted images that cause severe psychological distress. Scientific studies show how these negative images affect our brains.” ... “I believe this is a public health and safety issue.”

www.newwestrecord.ca/news/woman-urges-new-west-to-tackle-graphic-anti-abortion-images-1.24052506

8

July 2019, Brampton ON: Marcus Rochefort and his girlfriend Kate Webb were outraged after receiving a flyer in their mailbox with graphic images of unborn fetuses. It was delivered by volunteers with the Canadian Centre for Bio-Ethical Reform (CCBR). Rochefort said: “Usually you see these graphic pictures on posters in downtown Toronto, but now they’re infiltrating our homes with these pamphlets. I take pride in being open and honest with my son, but this is the first time I’ve ever had to consciously hide something from him because I didn’t know how to approach the situation.”

Resident Jeff Young of the Peel Village area said he noticed the pamphlets when he was driving home earlier this month. “I could see these young women delivering flyers to every house on my street. Half of the pamphlet was deliberately hanging out my mailbox so you couldn’t miss the pictures of the fetus. Once you open it up, the photos are pretty gruesome,” Young said. “I don’t think trying to frighten or manipulate people is the best way to get them to support your cause.”

www.bramptonguardian.com/news-story/9478462-graphic-anti-abortion-pamphlets-draw-outrage-in-brampton/

9

June 2020, Burnaby BC: Dustin, a Burnaby resident and father of two children received graphic flyers in his mailbox, but his children saw them before he did. “My kids went to get my neighbours mail as they were away,” Dustin said. “I found our 7 and 4 year olds sitting on my neighbour’s front lawn looking at that disgusting anti-abortion pamphlet. My 4-year-old ran to his room screaming. I phoned the RCMP and they said they would call the company to suggest they don’t distribute them that way. They didn’t care to find the person distributing them.”

Keith is another Burnaby resident with two young children who enjoy grabbing the daily mail from the box outside his home. He’s glad his kids weren’t home on June 22 because that’s when Keith and the rest of his Burnaby neighbourhood received “graphic” and “explicit” anti-abortion flyers. “(They) would have been greeted by very explicit images that should not be shown to kids,” said Keith. “As the pamphlets are not delivered in a sealed envelope, they often end up in the hands of children. ... Distributing graphic images like these, which easily end up being viewed by children, should be illegal. Movies, books and games all have a rating system and packaging must be made appropriate. These images are worse, and should be provided only with a warning.”

www.burnabynow.com/opinion/blogs/opinion-disgusting-pamphlets-blanket-more-burnaby-homes-1.24164045

10

June 2019, Regina SK: When Stephanie Bobetsis brought in the mail one Saturday morning, she caught a disturbing glimpse of graphic imagery. It was meant to shock her. She'd picked up an anti-abortion flyer that featured what were described as before-and-after images of terminated pregnancies. She tore up the flyer. Her husband, Logan, recalls her using the word "ridiculous." Their three-year-old daughter likes to pick up the mail at their home in Regina's southeast. They worried she may have been the one to see the flyer. "It was very, very graphic, very bloody, not appropriate for children," Logan said. "For that matter, it could be triggering for anyone who's had a miscarriage. Nobody needs anything this graphic delivered to their house."

<https://leaderpost.com/news/saskatchewan/graphic-anti-abortion-images-come-to-regina-schools-and-mailboxes>

Complaints Against Anti-choice Advertisements

11

April 2019 / January 2020, Kitchener-Waterloo ON: In April 2019, the Region of Waterloo immediately removed ads about abortion placed on Grand River Transit buses after a complaint from a sexual health clinic. The ads falsely claimed abortion is linked to suicide, depression, substance abuse, infertility, and breast cancer. Lyndsey Butcher of the SHORE Centre said: "In effect, this ad is lying to members of our community," and called the ads "dangerously misleading." She said: "I was quite surprised to see outright lies contained in their most recent ad buy" (by KW Right to Life).

Grand River Transit officials said the ads were put up in contravention of their policy, as the "The contractor is obligated to adhere to the Canadian Code of Advertising Standards," but they did not follow the policy in this case.

Despite this, Grand River Transit ran another inaccurate anti-choice ad in January 2020. The ad read, "Regret taking the abortion pill?" and directed people to an American website and to call the number provided. The ad made false claims that an abortion can be reversed in mid progress. In fact, so-called "abortion reversal" is entirely unproven, and when a legitimate study tried to investigate it in late 2010, it was halted almost immediately after several patients experienced dangerous hemorrhaging.

www.cbc.ca/news/canada/kitchener-waterloo/right-to-life-bus-ads-removed-grand-river-transit-1.5084619
www.kitchenertoday.com/local-news/grt-removes-controversial-abortion-reversal-pill-ad-2010721
www.sciencealert.com/abortion-reversal-treatments-are-so-dangerous-a-study-on-them-had-to-be-halted

12

April 2018, Lethbridge Alberta: The city removed anti-choice ads from buses after receiving over 100 complaints about the ads and numerous social media messages, with many saying the ad was inaccurate as well as upsetting to children and women who have had miscarriages or abortions. (The ad showed a late-term fetus with the words “Preborn Babies Feel Pain. Say NO to Abortion.”) A sample of complaints from media reports and the City’s Twitter page:

“I’m emotionally harmed, this brings up trauma in my past.” ... “Did you know that the medical term for a miscarriage is “spontaneous abortion”? So thanks @LethbridgeCity bus ads. Really appreciate you reminding me of my three spontaneous abortions, AND implying that those three lost hopes felt pain.”

“Are you kidding me? Those ads are disgusting and don’t need to be paraded around for younger children to see.”

“Do you not think that advertising in public spaces should be truthful? It’s not about people being uncomfortable with opinions. It’s about the misinformation that was being spread by these ads. I am not comfortable with public ads that contain lies.”

<https://twitter.com/LethbridgeCity/status/981608706088620032>
www.ctvnews.ca/canada/anti-abortion-ads-ordered-off-buses-in-lethbridge-alta-1.3871448
www.cbc.ca/news/canada/calgary/anti-abortion-ads-lethbridge-buses-traumatic-1.4597951

13

February 2020, City of Guelph: A controversial anti-abortion advertisement running on Guelph Transit buses was removed by the City after a complaint by a resident. Fiona Douglas said: “I have seen these ads on buses since I was a little kid and it was very formative for me. I went to Catholic school, so that was the message I was getting at school as well. To see it on a bus would make me think that is the correct opinion because my city is telling me that and my school is telling me that.”

In 2017, Douglas began complaining to the City about the ad, which she said could be triggering from someone who has had an abortion or is thinking about having one, as well as for people who believe in a woman’s right to choose. An ad seen on a Guelph Transit bus in February 2020 showed a pregnant woman holding her stomach on one side and a woman in the same dress holding a baby on the other with the caption, ‘Human rights should not depend on where you are. Say no to abortion.’ “It’s triggering for me as someone who has never had an abortion. It upsets me that people are able to make other people question what is right for them and their health care through the lens of human rights,” said Douglas.

Monica, another resident of Guelph, has received hate mail and threats as a result of her social media posts against the Guelph transit ads, and said it's harmful to keep these anti-abortion messages up. She said many people feel the same anger as her and feel degraded for having their rights publicly shamed in front of them. She highlighted that many women have abortions due to medical reasons that are beyond their control. “No one is happy to have to terminate a pregnancy, it is a difficult and legal choice that they will always remember.” She also said that many have pointed out the confusion and discomfort of being stuck behind one of the buses and having to explain these ads to their children. She believes these ads conflict with the *Canadian Code of Advertising Standards*.

www.guelphtoday.com/local-news/public-complaint-leads-to-removal-of-anti-abortion-ad-from-guelph-transit-buses-2103063
<https://kitchener.ctvnews.ca/anti-abortion-group-defends-their-ads-on-transit-buses-despite-outrage-1.4680627>

Appendix 2, Local Government Citations of the Advertising Code in Bylaws and Policies

The following are examples of citations of the Code by local governments. About 93 cities/towns across Canada currently cite the Code in a relevant policy or bylaw.¹⁴¹

Pattison Outdoor manages some of the advertising for at least 17 of the 148 cities that ARCC has studied. Pattison’s advertising policy specifically mentions the *Canadian Code of Advertising Standards* and advocacy advertising for controversial issues in relation to transit, benches, and shelters:

All advertising must comply with and not contravene the Canadian Code; and in particular, must not:

- Condone any form of personal discrimination, including that based upon race, national origin, religion, sex or age;
- Appear in a realistic manner to exploit, condone or incite violence; nor appear to condone, or directly encourage, bullying; nor directly encourage, or exhibit obvious indifference to, unlawful behaviour;
- Demean, denigrate or disparage one or more identifiable persons, group of persons, firms, organizations, industrial or commercial activities, professions, entities, products or services, or attempt to bring it or them into public contempt or ridicule;
- Undermine human dignity; or display obvious indifference to, or encourage, gratuitously and without merit, conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.

www.pattisonoutdoor.com/advertisingcontentguidelines/

Note: Cities should be aware that Pattison Outdoor appears to just accept and run ads that might violate the Code, then puts the onus on citizens to complain to Ad Standards. Although Pattison will later remove or refuse ads that have been found to violate the Code, by the time Ad Standards decides against an ad, that ad will have usually run its course. Examples:

- Since 2018, Pattison has placed anti-abortion ads in Lethbridge Alberta (alleging “fetal pain”) and across Canada (“We need a law”), which President Randy Otto refused to remove despite them likely violating the Code – indeed, both ads were later found to contravene the Code.
- Pattison placed other anti-abortion ads in Regina in August 2018 (“I regret my abortion”) and in July 2019 in Edmonton for a “crisis pregnancy centre” that deceives and misinforms clients.

¹⁴¹ For a full list of Code citations by local governments, see <https://www.arcc-cdac.ca/wp-content/uploads/2022/03/City-Search-Advertising-Code-Worksheet-all.pdf>

The **City of Grande Prairie in Alberta** cites the Code in relation to an advertising policy for city buses and transit property:

The content of all Advertisements on City Buses and Transit Property shall comply with the Canadian Code of Advertising Standards. ...

(b) No Advertisement will be accepted which the City, in the exercise of its sole discretion, considers:

- i. to be of questionable taste or in any way offensive in the style, content or method of presentation to the general public, or
- ii. does not comply with the Canadian Code of Advertising Standards;

www.cityofgp.com/city-government/bylaws-policies-procedures/policies-procedures/advertising-city-buses-and-transit

Strathcona County in Alberta cites the Code in relation to signs in its *Land Use Bylaw 6-2015*:

The Development Authority shall not permit a sign or portion thereof that:

- m) promotes or influences hatred or ridicule of any race, religion or other segment of society;
- n) features nudity;
- o) violates the Canadian Code of Advertising Standards or the laws of the Government of Canada or the Province of Alberta;

www.strathcona.ca/files/files/at-pds-part_5_signs-nov.pdf

The City of Kelowna BC cites the Code in relation in its Flag policy 361 and Flag Guidelines 362:

B.3.d): The City reserves the right to reject any application Land/or flag that does not comply with City of Kelowna policies or bylaws; espouse racism, personal discrimination, violence or hatred. Flags shall not promote a point of view or organization of a political, ethical, religious nature or directly encourage, or exhibit, obvious indifference to unlawful behaviour. All events must meet guidelines in section 14 of The Canadian Code of Advertising Standards (Unacceptable Depictions and Portrayals).

<http://apps.kelowna.ca/CityPage/Docs/PDFs%5CCouncil%5CMeetings%5CCouncil%20Meetings%202011%5C2011-06-20%5CItem%2008.03%20-%20Flag%20Policy.pdf?t=011146147>

The City of Kitchener Ontario cites the Code in its advertising policy:

All advertisements must meet the city's advertising standards and principles, which is guided by the Canadian Code of Advertising Standards (CCAS). The city will not accept advertising whose reputation, products, services or message could negatively impact the city's public image or reputation.

www.kitchener.ca/en/city-services/advertising-opportunities.aspx

Appendix 3, Bylaws Against Unacceptable Public Messaging

(Note: this Appendix does not include excerpts from Viewer Discretion bylaws similar to the London bylaw passed May 3, 2022, which is reproduced below.)

Existing Bylaws Against Unacceptable Public Messaging

The following city bylaws were amended or passed in direct response to displays of aborted fetus imagery (or other anti-abortion messaging in the case of Municipal District of Foothills).

The shaded boxes contain relevant excerpts of the bylaw; please go to the link for the full text.

The **City of London** passed a bylaw on May 3, 2022 requiring graphic flyers depicting fetuses to be enclosed in a sealed wrap or envelope (*Graphic Image Delivery By-law - PW-14*):

Regulation of Deliveries:

4.1 No person shall Deliver or participate in the Delivery of a Graphic Image to any Residence, unless:

(a) the Graphic Image is fully concealed within a sealed envelope or package, and
(b) the sealed envelope or package containing the Graphic Image is marked with the following notice and information:

- (i) the name and address of the person who is responsible for Delivery of the Graphic Image, and
- (ii) a warning that the envelope or package “contains a Graphic Image that may be offensive or disturbing to some people”.

5.4 A person convicted under this by-law is liable to a maximum fine of \$5,000.00.

Error! Hyperlink reference not valid. <https://london.ca/by-laws/graphic-image-delivery-law-pw-14>

The **City of Calgary** amended its *Temporary Signs on Highways Bylaw 29M97* in October 2020 to limit large signage outside schools.

2. (a.1) “Advocacy Messaging” means messaging that publicly expresses an opinion on an issue or cause;

3.3.1 (a) No person shall display or carry a Sign with Advocacy Messaging larger than 3.5 inches x 5 inches within 150 meters of the boundary of School Grounds on a School Day.

The minimum penalty is \$500, and the “specified penalty is \$1000.

<https://publicaccess.calgary.ca/lldm01/livelink.exe?func=ccpa.general&msgID=VyATqqTTeT&msgAction=Download>

The **Municipal District of Foothills** in Alberta passed a bylaw in 2019 specifically banning vehicle signs along highways in the County. (*Foothills County Land Use Bylaw*, Section 9.24.10, pg 103):

Prohibited Signs:

9.24.10 The following signs are prohibited in the County:

a. Vehicle Signs, except for signs exclusively advertising the business for which the vehicle is used, where the vehicle:

- i. is a motor vehicle or trailer;
- ii. is registered and operational; and
- iii. used on a regular basis to transport personnel, equipment or goods as part of the normal operations of that business.

b. Signs that are prohibited in accordance with the Dark Sky Bylaw included as Appendix E of this bylaw;

c. Signs that display intermittent, flashing or rotating lights;

d. Signs using a red or yellow background;

e. Signs that incorporate moving parts; and

f. Signs on hay and/or straw bales.

<https://www.mdfoothills.com/media/files/upload/LUB%2060-2014%20Consolidated%20LUB%20Updated%20August%2020%202020.pdf>

A **City of Calgary** bylaw bans signs on overpasses and pedestrian walkways. An amendment was passed on May 29, 2017 to the *Temporary Signs on Highways Bylaw 29M97*.

Section 7.1, Signs on Overpasses and Pedestrian Walkways:

(2) A Person must not place a Sign over a Highway or on or within a pedestrian walkway or any other overpass without a valid and subsisting permit issued by the Traffic Engineer.

(3) Despite subsection 10(1)(b), a Person must not hold or display a Sign over a Highway or on or within a pedestrian walkway or any other overpass.

<http://publicaccess.calgary.ca/lldm01/livelink.exe?func=ccpa.general&msgID=VyATqqTTeT&msgAction=Download>

The **City of Calgary's** Community Standards Bylaw (5M2004) prohibits the distribution of non-government and non-election-related flyers to households, and provides for penalties to be paid for violating the bylaw. The December 14, 2016 amendment (51M2016) states:

Flyers and Debris:

44 (3) No Person shall deposit a Flyer at or on a Premises where a sign or notice has been posted and which is clearly visible at the entrance of a dwelling unit indicating that such Flyers are not wanted.

(4) No Distributor shall distribute or cause to be distributed Flyers for the purpose of depositing them at or on a Premises where a sign or notice has been posted and which is clearly visible at the entrance of a dwelling unit indicating that such Flyers are not wanted.

[The amendment excludes election advertising material permitted according to legislation, newspapers to paid subscribers, community association newsletters or newspapers, and information circulars from the government or an elected government official.]

<https://www.calgary.ca/CA/city-clerks/Documents/Legislative-services/Bylaws/5M2004-CommunityStandards.pdf?noredirect=1>

The **City of Hamilton's By-law to Regulate Traffic** (# 01-215, amendment #14-131) bans signs and banners displayed on overpasses.¹⁴² It passed on May 28, 2014.

Section 62.1(a):

No person shall display above, on or under a City bridge over a highway any sign or similar device.

<https://d3fpllf1m7bbt3.cloudfront.net/sites/default/files/media/browser/2016-08-31/01-215-traffic-by-law-office-consolidation.pdf>

ARCC's Model "Adult Content Sign" Bylaw

In 2013, ARCC developed a model "Adult Content Sign" bylaw¹⁴³ based on zoning restrictions to protect children. Zoning is a key municipal power, and many municipalities already have zoning restrictions to separate uses that are considered incompatible with other uses, such as for school grounds, medical facilities, or adult entertainment venues.

ARCC's model bylaw is accompanied by a detailed legal analysis of constitutional issues and additional considered solutions (written by law students under supervision by ARCC's lawyer).

Summary of Charter Arguments

- Freedom of expression as guaranteed in the Charter protects both hate speech and advertising, but these forms of freedom of expression are not considered to be at the 'core' of freedom of expression (as described in Butler).
 - Expression which engages the 'core' of freedom of expression is the most protected.
 - This is likely considered political speech, which would engage the 'core'.
- The street is a location where one would expect freedom of expression, but there is precedent to limit expression there.

¹⁴² Both the Hamilton and Calgary bylaws prohibiting banners on highway overpasses were enacted after traffic accidents occurred during the banner displays:

- *Hamilton*: www.thespec.com/news-story/4192077-motorist-blames-graphic-banner-for-rush-hour-crash-on-linc/
- *Calgary*: Jun 3, 2013: <https://edmontonsun.com/2013/06/03/anti-abortion-protesters-dangle-graphic-depictions-of-aborted-fetuses-over-rush-hour-arteries>. An accident occurred on June 17: <https://www.reddit.com/r/Calgary/comments/28i25s/prolife-abortion-banner-causes-accident-on/>

¹⁴³ ARCC's *Proposed By-law and Legal Justifications for Limiting the Display of Aborted Fetus Pictures in Public* (2012): <https://www.arcc-cdac.ca/wp-content/uploads/2020/08/Proposed-by-law-limiting-aborted-fetus-pictures.pdf>

- Case precedent allows for infringement on freedom of expression for a bylaw that was considered justified under Oakes, and there are similarities for the purpose of our proposed bylaw.
- The bylaw is not a complete ban. The anti-choice displays are allowed at all times of the day and are only restricted in certain locations – they must only follow the guidelines for similar adult subject matter. The signs are allowed throughout the municipality after the watershed, which coincides with pre-existing media standards.
- The limit of anti-choice signs still allows the groups to protest without the gory images at any time or place, and they can express their message in many ways without said images, such as through verbal communication. This speaks to minimal impairment. Further, there is no other means to infringe less on freedom of expression to protect children and the autonomy of Canadian families besides limiting the displays to certain locations within a municipality.
- Children have been found to be particularly affected by imagery, which is why Canada has a rating system for other forms of media such as film and television. Canada greatly respects a parent's right to decide when children will view images of certain subject matter.
- Anti-choice groups limit parents' ability to use and enjoy their communities, since they must avoid locations where the displays are present. This can fit with the bylaw by addressing a pressing and substantial concern, as most governments claim to be pro-family.

Appendix 4, Anti-choice Ads that Contravened the Code

Ad Standards has upheld 21 complaints against anti-choice ads since 2008. For a fuller description of decisions against anti-choice ads, visit the Ad Standards Complaints Reports page and search through the Archived Case Summaries¹⁴⁴ or view ARCC's compilation.¹⁴⁵

The following sections of the Code are pertinent to anti-choice ads, and we include a summary of previous violations found.

Section 1: Accuracy and Clarity

Anti-choice ads are considered advocacy ads. Many will run afoul of Section 1 of the Code, Accuracy and Clarity,¹⁴⁶ which is worded quite broadly to capture not only inaccuracies but also deceptive or misleading claims, omissions, and claims unsupported by evidence.

Previous examples of inaccuracies that *Ad Standards* found in anti-choice ads include:

- Implying that abortion is available until the 9th month of pregnancy
- Implying that full-term fetuses are routinely aborted
- Claiming that Canadian law allows abortion up to 9 months (there is no law)
- Implying that most abortions happen around 16 weeks or later, often by including pictures of later-term fetuses
- Implying that most abortions occur later in pregnancy by showing images of later-term fetuses
- Calling a fetus a “child” or a “person”
- Making unsupported statements, e.g., “up to 25% of your friends, neighbours and relatives are likely missing” due to abortion
- Using the word “committed” rather than “performed”, to imply that abortion is illegal
- Equating legal abortion with extreme child abuse
- Characterizing abortion as a procedure to be “performed at the patient’s request without a referral”
- Claiming that “Canada has no abortion laws” when the 1988 R.v. Morgentaler decision that legalized abortion stands as law as decreed by the Supreme Court, and abortion is regulated in other ways (such as through the *Canada Health Act*)
- Implying that fetuses at all stages of gestation will feel pain in an abortion
- Describing a fetus as “her” (in an ad saying “What about her choice?”), which created an impression of personhood when the fetus is not yet a human being under law. Also, misleadingly suggesting that a fetus has the capacity of choice.
- Implying that a fetus could have “human” rights by showing an ultrasound picture of a fetus in connection with the word “human”, thereby blurring the distinction between pre- and post- birth and creating a misleading general impression
- Using language (“kill her”) that misleads and mischaracterizes the distinction in law between murder of a person and abortion of a fetus
- Equating a 7 week old fetus with a full term baby that has fully formed limbs and the ability to kick a soccer ball

¹⁴⁴ <https://adstandards.ca/complaints/complaints-reporting/archived-case-summaries/>

¹⁴⁵ <https://www.arcc-cdac.ca/media/2020/06/Ad-Standards-decisions-on-anti-abortion-ads-Upheld.pdf>

¹⁴⁶ www.adstandards.com/en/standards/thecode.aspx

Section 14: Unacceptable Depictions and Portrayals

Anti-choice ads are often demeaning to women and transgender people, and arguably even discriminatory or hateful because they may imply they are murderers or that their Charter rights should be removed. Previous examples of Section 14¹⁴⁶ contraventions that *Ad Standards* found in anti-choice ads include:

- Using the word “committed” to suggest that abortion is illegal, which demeans or denigrates women who have abortions and brings them into public contempt
- Saying that “Abortion Kills Children”, which could seriously disturb children and therefore displays obvious indifference to conduct or attitudes that offend standards of public decency
- Displaying or distributing graphic and disturbing images of aborted fetuses, which displays obvious indifference to conduct or attitudes that offend standards of public decency
- Saying “This is a Child. Not a Choice. Why abortion when there are alternatives?”, which demeans and denigrates women who make the careful choice to have an abortion
- Showing a long line of women who had abortions who all appear seriously troubled, saddened, disconsolate, and in a state of remorse and regret, which denigrates all women who had or may have an abortion
- Equating abortion with extreme child abuse, which demeans and disparages women who have abortions and brings them into public contempt
- Implying that women who decide to terminate their pregnancy intentionally inflict pain on their unborn fetus, which demeans and disparages women who had or may have an abortion
- Implying that women in late stages of pregnancy routinely have abortions, which is demeaning, denigrating, and disparaging to women
- Implying that a fetus has the capacity of choice, which in turn suggests that the fetus’s choice is taken away by a woman who chooses to have an abortion, thereby demeaning or disparaging women who had or may have an abortion
- Blurring the distinction in law between the murder of a person and abortion of a fetus, which demeans or disparages women who have had or are contemplating an abortion
- Disparaging and denigrating individuals who have an abortion via a picture of a pregnant teenager saying “My mom is going to kill me!” and the caption “My mom really is going to kill me!” with an arrow pointed to the woman’s stomach.

Other Code Sections that May Apply to Anti-choice Ads

Section 8: Professional or Scientific Claims – Only one anti-choice ad, in 2010, has been found in contravention of this section. *Ad Standards* said the ad had made unwarranted extrapolations of abortion and birth data from Statistics Canada. In particular, it claimed that “up to 25% of your friends, neighbours and relatives are likely missing,” based on if aborted fetuses had been born to survive into adulthood, marry and have children themselves.

Section 11: Superstition and Fears — Only one anti-choice ad, in 2014, has been found in contravention of this section. The ad said: “This is a Child. Not a Choice. Why abortion when there are alternatives?” *Ad Standards* said this statement played upon women’s fears in order to mislead them about abortion.

Appendix 5, Graphic Images May Be Hate Speech

The Criminal Code's Section 319 on hate speech¹⁴⁷ arguably would encompass the graphic images, and one court decision has already said that an anti-abortion ad – not showing aborted fetuses – is likely hate speech (more info below).

To be hate speech, a message must be likely to incite hatred against a vulnerable group and lead to a breach of the peace. Following is our argument that the display and distribution of graphic images meet these criteria.

Only women and some transgender people have abortions, so the message of the offensive images is that women are murderers and their right to abortion should be taken away. This makes the flyers and signage discriminatory on the basis of sex/gender/sexual identity.

Anti-choice groups such as the CCBR deliberately display these grisly images on signs to generate public shock and outrage, sometimes provoking people to vandalize the signs, or engage in other activities that lead CCBR to call the police and seek arrest.¹⁴⁸

This means that the imagery appears to violate the Criminal Code hate speech law: Women and transgender people are both identifiable groups protected from discrimination, the signage incites hatred against them, and the incitement is likely to lead to a breach of the peace.

Further, the defences under Section 319(3) would not apply because the implied statements that abortion is murder and women are murderers are false, not based on religious belief (for the CCBR at least), and do not meet the reasonable or public benefit criteria.

One caveat is that the graphic signs on streets usually do not have words – although the graphic flyers do. Since the standard to show hatred is high, the hate speech argument is stronger when there is text that could be seen as hateful, rather than just the implication of the images. In that regard, the Alberta Court of Appeal said in 2018 that an anti-choice bus ad was likely hate speech under section 319(2) of the Criminal Code. Note this ad did not show aborted fetuses – it showed embryos/fetuses in the womb with the words “Abortion kills children. End the killing”.¹⁴⁹ Grande Prairie's lawyer had argued that the ad was hate speech and the judge seemed to agree, saying:

“...The advertisement clearly portrays women who terminate pregnancies, and medical professional and facilities that assist, as ‘killers of children’. On any reasonable view, the advertisement is likely to promote hatred against identifiable groups of ‘women’ and their doctors.” (*Grande Prairie case #2*¹⁵⁰)

¹⁴⁷ <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-319.html>

¹⁴⁸ Three examples: <https://www.cbc.ca/news/canada/thunder-bay/man-in-chocolate-milk-assault-pleads-guilty-1.1304969>; and <https://www.ubyssey.ca/news/ubc-lifeline-display-vandalized-by-knife-wielding-activist/>; and <https://london.ctvnews.ca/london-man-detained-after-following-recording-pair-distributing-anti-abortion-flyers-1.5130881>. Also, CCBR mentions “occasional vandalism” of their signs here: <https://www.endthekilling.ca/blog/2018/07/09/ignorance-is-bliss/>

¹⁴⁹ Bus ad shown here: <https://kawarthanow.com/2016/02/25/pro-life-ad-peterborough-transit/>

¹⁵⁰ CCBR v. Grande Prairie, 2018 ABCA 154 at para 71: www.canlii.org/en/ab/abca/doc/2018/2018abca154/2018abca154.html

We obtained an unofficial opinion from BC lawyer Don Crane (now retired) about the Alberta Court of Appeal decision and its statement about the ad promoting hatred:

“This conclusion is one which should have significant consequences for other legal proceedings, and for public policy. The court did not comment on whether the advertisements contravened s. 319 of the Criminal Code, but the finding that the advertising was ‘likely to promote hatred’ should carry significant weight ... [and] should have powerful implications for civic transportation policy in all parts of Canada. It should also be of assistance in an effort to persuade a provincial attorney general to initiate a prosecution in a suitable case, and it would certainly be helpful in the case of a human rights code complaint.”