



*Canada's only national political pro-choice advocacy group*

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## **Position Paper #84**

### **Cities Should Not Approve Anti-Choice Messaging**

Over the years, local governments in Canada have sometimes endorsed, accepted, or provided a platform for anti-choice groups to spread their message. This position paper argues that governments should not give official approval to any form of anti-choice rhetoric. Doing so is divisive and discriminatory, and cities have an obligation to promote a diverse, inclusive, accessible, safe, and welcoming environment for all citizens.

Examples of anti-choice messaging that city or municipal governments have approved in recent years include:

- Anti-choice ads on billboards, public transit vehicles, bus benches, etc.
- Permits for the annual “March for Life” and associated rallies
- “Pro-life” flags raised at City Hall
- Proclamations issued by mayors, such as for “Respect Life” week
- Permits to hold anti-choice events on the grounds of Parliament or City Hall, or on other public land such as parks
- Permits to hang banners over city streets

### **Anti-Choice Messaging Opposes Human Rights**

The anti-abortion narrative is controversial because it aims to recriminalize abortion and restrict the rights of women and transgender people. In 1988, the Supreme Court of Canada struck down the abortion law because it infringed women’s rights to bodily security, as well as life, liberty, conscience, and privacy, under the *Charter of Rights and Freedoms*. As a result, subsequent attempts to limit abortion or the rights of pregnant women have failed on the grounds that they would violate Charter rights.

Women are also protected against discrimination under provincial human rights legislation as well as the *Canadian Human Rights Code*, all of which include sex or gender as prohibited grounds for discrimination. Because only women get pregnant and some transgender people, city approvals of anti-choice messaging target people on the basis of gender. When cities allow such messaging, they are basically endorsing a discriminatory stance, making women and transgender citizens feel unwelcome and harassed in their own city.

Most Canadians are pro-choice, meaning that anti-abortion initiatives carried out in public tend to cause controversy and disturbance amongst communities, with many people lodging complaints with the city.<sup>1,2</sup> Indeed, these activities are seen as challenges to the constitutional rights of women and transgender people and are often experienced as discriminatory, patronizing, or emotionally triggering. Therefore, it becomes especially problematic if local governments are giving an official stamp of approval to such tactics by issuing permits or accepting advertising money on behalf of anti-choice groups.

While many may argue that anti-choice groups have the right to freedom of expression, Section 1 of the Charter allows rights to be balanced and sometimes limited to accommodate other fundamental rights. For example, anti-choice protesters cannot exercise their freedom of expression in front of abortion clinics because this compromises women's right to access a necessary health service in an atmosphere of safety, privacy, and dignity.<sup>3</sup> Likewise, anti-choice messaging is often discriminatory on the basis of sex/gender, so governments should therefore not approve it. This would constitute a narrow Section 1 restriction on freedom of expression, as anti-choice groups are free to promote their message in many other ways, such as through the media or via public demonstrations that don't involve city permits.

### **Cities Should Not Approve Anti-Choice Messaging or Events**

ARCC, along with other groups, has petitioned cities and municipalities across Canada to stop approving anti-choice messaging, particularly in the form of flags, banners, proclamations, or events on public land. (Some letters are available on our website.<sup>4,5,6,7,8</sup>)

Westcoast LEAF, a BC legal firm that takes women's equality cases, has also assisted with their 2012 letter<sup>9</sup> to Kelowna BC's mayor and council, in which they explain why cities should not "advance a cause that undermines women's equality rights and espouses a view that is directly

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<sup>1</sup> <https://www.ctvnews.ca/canada/anti-abortion-ads-ordered-off-buses-in-lethbridge-alta-1.3871448>

<sup>2</sup> <https://www.guelphtoday.com/local-news/public-complaint-leads-to-removal-of-anti-abortion-ad-from-guelph-transit-buses-2103063>

<sup>3</sup> <http://www.westcoastleaf.org/our-work/watson-v-r-spratt-v-r-2008/>

<sup>4</sup> Ottawa, 2017: [www.arcc-cdac.ca/wp-content/uploads/2020/06/Joint-letter-Ottawa-Mayor-Council.pdf](http://www.arcc-cdac.ca/wp-content/uploads/2020/06/Joint-letter-Ottawa-Mayor-Council.pdf)

<sup>5</sup> Prince Albert SK, 2016 and 2017: [www.arcc-cdac.ca/wp-content/uploads/2020/06/letter-prince-albert-mayor.pdf](http://www.arcc-cdac.ca/wp-content/uploads/2020/06/letter-prince-albert-mayor.pdf); and: [www.arcc-cdac.ca/wp-content/uploads/2020/06/April-2017-letter-prince-albert-mayor.pdf](http://www.arcc-cdac.ca/wp-content/uploads/2020/06/April-2017-letter-prince-albert-mayor.pdf).

<sup>6</sup> Kelowna BC, 2015: [www.arcc-cdac.ca/wp-content/uploads/2020/06/OK-Regional-District.pdf](http://www.arcc-cdac.ca/wp-content/uploads/2020/06/OK-Regional-District.pdf)

<sup>7</sup> Houston BC, 2017: [www.arcc-cdac.ca/wp-content/uploads/2020/06/Houston-ARCC-letter-anti-abortion-event.pdf](http://www.arcc-cdac.ca/wp-content/uploads/2020/06/Houston-ARCC-letter-anti-abortion-event.pdf)

<sup>8</sup> Williams Lake BC, 2015: [www.arcc-cdac.ca/wp-content/uploads/2020/06/Williams-Lake-2015.pdf](http://www.arcc-cdac.ca/wp-content/uploads/2020/06/Williams-Lake-2015.pdf)

<sup>9</sup> <http://www.westcoastleaf.org/wp-content/uploads/2014/11/2012-08-27-LETTER-TO-KELOWNA-CITY-HALL-RE-Proclamation-of-%E2%80%9CProtect-Human-Life-Week%E2%80%9D.pdf>

contrary to Canadian and international law”. As a result, Kelowna changed its guidelines and no longer approves anti-choice proclamations.<sup>10</sup>

A city’s decision to approve or reject an anti-choice message or event must also include an evaluation of the group behind the request. A telling example occurred in Regina in 2013.<sup>11</sup> The mayor approved a proclamation for the benign-sounding “European Heritage Week.” However, when he learned that a white supremacist group was behind the request, he immediately rescinded the proclamation. Similarly, Canada’s anti-abortion movement often uses progressive-sounding language, such as proclamations that “Celebrate Life” or “Respect Life.” However, a look at these groups’ websites often reveals their explicit religious and anti-choice basis, meaning that such proclamations are limited to “celebrating” or “respecting” the lives of embryos and fetuses, as well as denying the right to die with dignity – thereby denying the Charter rights of women and others.

### **Use of *Canadian Code of Advertising Standards***

To protect communities from anti-choice messaging, the Abortion Rights Coalition of Canada also urges local governments to cite and use the *Canadian Code of Advertising Standards* (“the Code”) in relevant bylaws and policies. Use of the Code permits screening and regulation of problematic messaging – not just anti-choice messages, and not just paid ads – allowing the local government to prohibit or remove any public message that would likely violate the Code, such as inaccurate, offensive, or discriminatory messages.

Although the Code has no legal authority and is administered by a private watchdog agency (Ad Standards), it is widely endorsed by advertisers, media, consumers, and local governments. At least 75 municipalities or cities cite the Code in policies or bylaws.<sup>12</sup> Since 2008, Ad Standards has issued over a dozen decisions against anti-choice advertisements (as well as graphic images of aborted fetuses) because they were inaccurate or demeaning to women.<sup>13</sup> Further, several court decisions have supported the use of the Code by local governments.<sup>14</sup>

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<sup>10</sup> [http://www.kelownadailycourier.ca/news/article\\_2456bb3c-32be-5347-865b-04736934c948.html](http://www.kelownadailycourier.ca/news/article_2456bb3c-32be-5347-865b-04736934c948.html)

<sup>11</sup> <https://nationalpost.com/news/canada/regina-fooled-by-white-supremacist-group-into-declaring-european-heritage-week>

<sup>12</sup> <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/City-Search-Advertising-Code-Worksheet-all.pdf>

<sup>13</sup> <https://adstandards.ca/complaints/complaints-reporting/>. Search through recent and archived case summaries to find examples of abortion-related ads that contravene the Code.

<sup>14</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7796/index.do>  
<https://www.canlii.org/en/ab/abqb/doc/2016/2016abqb555/2016abqb555.html>  
<https://www.canlii.org/en/ab/abqb/doc/2016/2016abqb734/2016abqb734.html>  
<http://www.courts.gov.bc.ca/jdb-txt/sc/17/13/2017BCSC1388cor1.htm>  
<https://www.canlii.org/en/ab/abca/doc/2018/2018abca154/2018abca154.html>  
<https://www.canlii.org/en/ab/abqb/doc/2020/2020abqb654/2020abqb654.html>

A major benefit of using the Code to scrutinize advertising 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. Local governments can rely on the Code's criteria to show they followed due process. To help cities, we created a *Quick Assessment Guide for Cities to Evaluate Public Messaging Requests*.<sup>15</sup>

The Code also provides a strong rationale by which to respond to complaints from the public, 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.

## **Conclusion**

All levels of government are obligated to uphold and comply with provincial and federal laws, including the Charter, the Criminal Code, and human rights codes that prohibit discrimination. Governments have a duty to uphold the rule of law by respecting women's legal right to abortion and their Charter rights and equality. Further, they should foster a community culture that respects women's rights and freedoms by not approving events or initiatives that directly oppose these values or work to undermine our democratic laws. In short, it is inappropriate for governments to give any form of official support to anti-choice groups because they are dedicated to removing the Charter rights of women and transgender people.

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<sup>15</sup> <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/quick-assessment-guide-public-messaging.pdf>