



London Transit Commission Has Failed Its Residents

The London Transit Commission (LTC) caved into the demands of two anti-choice groups in Nov 2020 by settling an advertising lawsuit out of court. As a result, the LTC is now forced to run inaccurate and harmful anti-choice ads on buses and transit structures. Further, the two anti-choice groups apparently wield control over the LTC's public advertising policy, as the LTC seems to lack authority to revise it.

The LTC is a public agency with accountability to the public and to taxpayers, but it has showed zero accountability for their decision or the potential harms it creates to London residents and cities across Canada. The LTC has also refused to respond to our complaints. Therefore, we are publishing our correspondence with the LTC.

Background: What happened?

- In summer 2018, the London Transit Commission (LTC) ran bus ads by the right-wing group Association for Reformed Political Action Canada (ARPA Oxford). The ad claimed that "Canada has no abortion laws".
- Around the same time, 33 billboards with the same ad were displayed across Canada by the anti-choice group "We Need a Law."
- In Oct 2018, Ad Standards found the billboard ad to be inaccurate in contravention of Section 1 of the *Canadian Code of Advertising Standards*. The billboard ads had already run their course.
- Meanwhile, London activists fought to have the bus ads removed and the LTC took down the ads after the Ad Standards decision on the billboards.
- In Feb 2020, both anti-choice groups sued the LTC over its removal of the bus ads.
- On Nov 2, "We Need a Law" announced a settlement with LTC, which issued a joint statement with ARPA Oxford.
- The inaccurate ads ran again on London buses from November to mid-December 2020.
- The LTC issued a new Advertising Policy in Oct 2020 that enshrines the freedom of expression rights of advertisers over other factors. The policy makes no mention of the Code, thereby allowing false advertising.
- ARCC issued a press release on Dec 2, 2020, criticizing the LTC for caving into anti-choice demands at the expense of its citizens' rights, and for its lack of accountability and transparency.
- ARCC wrote to the LTC on Jan 25, 2021 and again on March 11 asking for revisions to its Advertising Policy to recognize the authority of the Advertising Code and the Charter rights of citizens to be free from discriminatory messages and related harms.
No-one ever responded. Our correspondence is below.

ARCC's correspondence with LTC

From: joyce@arcc-cdac.ca

Sent: Monday, January 25, 2021

To: croy@londontransit.ca; mgregor@londontransit.ca; kburns@londontransit.ca; cmorneau@londontransit.ca; dlronson@gmail.com

Subject: Please amend LTC Advertising Policy to protect Charter rights and follow industry advertising standards

Dear Caroline Roy and LTC Executive Staff,

Thank you very much for creating a new Advertising Policy [1] last year that responds to the need to uphold Charter rights, including freedom of expression. We're glad that the LTC has recognized the importance of ensuring that ads will respect all Charter rights.

After reviewing your new policy, however, we found it lacking in several crucial aspects. May we please request that you carefully consider our reasoning below, and amend the policy as soon as possible to better protect the Charter rights of London residents, and to properly adhere to industry advertising standards?

Charter Rights

Courts have recognized that no Charter right is absolute and no one right is more important than another [2]. This means the right to freedom of expression cannot supersede other rights. Equally important, for example, are equality rights under Section 15, which includes the right of vulnerable groups to be free from discrimination, and the right to security of the person under Section 7. As you may know, Canada's abortion law was struck down in 1988 by our Supreme Court because it violated the right to security of the person. In addition, Justice Bertha Wilson wrote that the abortion law also violated women's right to liberty and freedom of conscience [3]. Later jurisprudence after 1988 has helped to solidify abortion itself as a Charter right [4].

Your new policy mentions the need to uphold "all other constitutional rights", yet the anti-abortion ad you allowed back on London buses last fall ("Canada has no abortion laws") sought to challenge the legal right to a necessary healthcare procedure that only women and some transgender people need. That would clearly have discriminatory effects. In fact, both groups ARPA Oxford and 'We Need a Law' seek to re-criminalize abortion and thereby take away the right to security of the person, liberty, and conscience for women and gender minorities. Therefore, we feel that the LTC wrongly prioritized the freedom of expression of an anti-abortion group over *several* Charter rights of vulnerable groups.

When rights conflict, the LTC needs to balance rights, and you can in fact infringe freedom of expression in a narrow and reasonable manner. This means you could have refused to re-run the ARPA Oxford bus ad on the basis of protecting the Charter rights of women and other vulnerable groups who would be subjected to the ad.

It's also worth noting that paid advertising can properly be subject to greater limits under the Charter compared to public speech in general (see the Irwin Toy case [5] and the two Grande Prairie cases [6]). Further, messaging on transit in particular targets a captive audience who cannot avoid the message

because they rely on transit or are caught in traffic. The right to freedom of expression *never* includes the right to force one's message onto others.

Canadian Code of Advertising Standards

The new LTC Advertising Policy makes no mention of the *Canadian Code of Advertising Standards* ("the Code"). This is a problematic omission with potentially serious negative consequences for the City of London, its residents, and even other municipalities across Canada.

The Code sets criteria for acceptable advertising that is "truthful, fair and accurate." This allows local governments to exercise a justified veto power over messages that would likely violate the Code, including inaccurate, discriminatory, or demeaning messaging. Without the Code as a tool, and relying only on the Charter, the LTC may feel compelled to subject the public to false and objectionable messaging (that might be otherwise legal, strictly speaking).

At least six different court decisions, including a Supreme Court decision, have supported municipal use of the Code. About 75 municipalities across Canada cite the Code in their policies or bylaws. These two facts bring some legal authority to the Code. We refer you to our summary of the six court decisions and what the judges said specifically about the Code.[7] The summaries conclude by quoting two lawyers who wrote about some of these cases; they said: [8]

"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 and in British Columbia (see *The Canadian Centre for Bio-Ethical Reform v. South Coast British Columbia Transportation Authority*, 2017 BCSC 1388 (CanLII) at para 56).

While the Advertising Code is voluntary and administered by a private watchdog agency, it enjoys considerable influence and authority as an industry standard. Advertisers and host advertisers (media, cities, advertising companies) have been largely adhering to the Code since 1963 with no legal challenges to the Code itself or its use. The Code is also widely respected by advertisers and consumers. In 2019, Ad Standards received 1,858 complaints from the public [9]. And when Ad Standards issues decisions against particular ads, advertisers overwhelmingly honour the decisions.

A rare exception to this time-honoured system is anti-abortion groups, some of whom refuse to recognize Ad Standards decisions or who take legal action against cities who justifiably reject ads that violate the Code. The antipathy of anti-choice groups to the Code arises from the fact that a significant number of their ads run afoul of the Code's Section 1 (Accuracy and Clarity) and/or Section 14 (Unacceptable Depictions and Portrayals). Ad Standards has ruled against at least 18 anti-abortion ads since 2008 on the basis that they contained falsehoods, or were "demeaning, denigrating, and disparaging to women", or brought women into "public contempt", or displayed "obvious indifference to conduct or attitudes that offend standards of public decency."

We hope the LTC has not allowed anti-abortion groups' biased grievance against the Code to interfere with the City of London's statutory objective of ensuring a safe and welcoming community. Inaccurate and discriminatory ads often create real harm for vulnerable people who are subjected to them, including women and other people who have had an abortion or miscarriage. But as it stands, your new

Advertising Policy elevates the freedom of expression of advertisers over the Charter rights of your residents and departs from an important and widely-used industry standard. This sends the message to anti-choice groups that they are free to place their false and demeaning ads in London at least, if nowhere else. It may also send a chilling message to other municipalities, which could feel intimidated by the possibility of lawsuits from anti-choice groups, and so back down from their reliance on the Code to the detriment of their citizens.

In conclusion, we ask the LTC to please revise its Advertising Policy to prioritize the use of the *Canadian Code of Advertising Standards* to scrutinize proposed advertising, along with other considerations such as the Charter, laws, and the City of London's statutory objectives.

We also ask that your policy be revised to make it clear that freedom of expression does not take precedence over other Charter rights, and that the LTC will properly balance freedom of expression by taking very seriously its obligation to protect the rights of its citizens to equality, security of the person, liberty, conscience, and other Charter rights. This may require the infringement of freedom of expression, particularly for anti-choice ads that contravene the Code because they are false, demeaning, or offensive to public standards.

Thank you very much, we look forward to hearing from you.

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- [1] <http://www.londontransit.ca/policies/advertising-policy/>
- [2] <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>
- [3] <http://www.morgentalerdecision.ca/what-the-court-decided/reasons-of-wilson-j/>
- [4] <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/65-abortion-charter-right.pdf>
- [5] 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>
- [6] Canadian Centre for Bio-Ethical Reform v Grande Prairie (City), 2016 ABQB 734 (CanLII)
www.canlii.org/en/ab/abqb/doc/2016/2016abqb734/2016abqb734.html
And: Canadian Centre for Bio-Ethical Reform v Grande Prairie (City), 2018 ABCA 154 (CanLII)
www.canlii.org/en/ab/abca/doc/2018/2018abca154/2018abca154.html
- [7] <https://www.arcc-cdac.ca/wp-content/uploads/2021/03/courts-have-endorsed-use-of-advertising-code.pdf>
- [8] The Shrinking Space for Hateful Speech in the Public Square – The Alberta Court of Appeal's Decision in Canadian Centre for Bio-Ethical Reform v The City of Grande Prairie (City), 2018 ABCA 154.
<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/>
- [9] <https://adstandards.ca/wp-content/uploads/Ad-Complaints-and-Disputes-Report-2019.pdf>

From: <joyce@arcc-cdac.ca>
Sent: Thursday, March 11, 2021
To: croy@londontransit.ca; mgregor@londontransit.ca; kburns@londontransit.ca;
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Cc: dlronson@gmail.com; jesse@helmer.ca; psquire@london.ca
Subject: RE: Please amend LTC Advertising Policy to protect Charter rights and follow industry advertising standards

Dear Caroline Roy and LTC Executive Staff,

We are troubled by your non-response to our Jan 25 email about the urgent need to amend the LTC Advertising Policy. Could you please reply at your earliest convenience? We are very concerned about the possibility that the LTC has handed over control of its public policy on advertising to two private anti-abortion groups as part of its legal settlement in Nov 2020. Please let us know that this is not the case, and that you are able to independently revise your policy to reflect industry standards and Charter rights of residents, and not solely the freedom of expression right of advertisers.

As stated in our [press release of Dec 22](#), "As a publicly funded entity that receives money from the Provincial government as well as London's municipal government, the lack of response from the London Transit Commission and the LTC Board of Commissioners is deeply disappointing. What happened to transparency and public accountability?"

If we do not hear from you by March 18, we will publicize our Jan 25 letter.

Thank you very much,

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