

Pilon, Janet

Subject: Further information on bylaws to regulate graphic flyers showing aborted fetuses

From: joyce@arcc-cdac.ca <joyce@arcc-cdac.ca>

Sent: Thursday, September 5, 2024 4:10 PM

To: Office of the Mayor <Officeofthe.Mayor@hamilton.ca>; clerk@hamilton.ca; Brailsford, Grant <Grant.Brailsford@hamilton.ca>; Ward 1 Office <ward1@hamilton.ca>

Subject: Further information on bylaws to regulate graphic flyers showing aborted fetuses

Dear Mayor Andrea Horwath, Councillor Maureen Wilson, and Grant Brailsford, Legal and Risk Management Services:

I wrote the city on November 5, 2023 with information to help you prepare a “viewer discretion” type bylaw for Hamilton that would require graphic flyers depicting alleged aborted fetuses to be enclosed in envelopes before they can be delivered to homes. My letter was referenced in the [Council Minutes](#) for Nov 8, 2023, at which a motion was passed to have staff look into developing a bylaw to regulate these flyers, similar to the bylaws in other cities such as London. The Planning Committee was due to receive the staff report [by Q2 2024 latest](#), but I checked past Committee minutes up to August 2024 and did not see any mention of the report.

Could I please follow up to ask when this issue will reach the agenda of the Planning Committee and the Council?

Further, my attached letter provides additional information pertaining to a recent lawsuit in St. Catharines, leading the city to repeal its graphic flyer bylaw. The problem was that the definition of “graphic image” was too broad and it unintentionally captured flyers with ultrasound photos, which a different anti-abortion group wanted to distribute. My letter suggests wording the bylaw to be specific to aborted fetus images, and including an organization in the definition of Person/Distributor in order to enable enforcement of the bylaw. The letter also contains impact stories from Hamilton residents who were harmed by the graphic flyers.

Thank you very much for your time and attention.

Kind regards,

Joyce Arthur (she/her)
Executive Director
Abortion Rights Coalition of Canada (ARCC)
POB 2663, Station Main
Vancouver, BC, V6B 3W3
joyce@arcc-cdac.ca
www.arcc-cdac.ca
Cell: 604-351-0867



Abortion Rights
Coalition of Canada

Your Voice for Choice

Canada's only national political pro-choice advocacy group

POB 2663, Station Main, Vancouver, BC, V6B 3W3 • info@arcc-cdac.ca • www.arcc-cdac.ca

September 5, 2024

Information on St. Catharines lawsuit and suggested wording of graphic flyer bylaw in Hamilton

Dear Mayor Andrea Horwath, Councillor Maureen Wilson, and Grant Brailsford, Legal and Risk Management Services:

We are a national grassroots advocacy group for abortion rights and access, which has an ongoing project since 2017 to combat harmful anti-choice messaging. We've communicated with about 100 municipalities, as well as provincial and federal officials and have created a [comprehensive report](#) on how local governments can regulate unacceptable public messaging. ARCC has also intervened in two court cases related to anti-choice bus advertising.

As you may know, nine municipalities have passed a Viewer Discretion bylaw that requires graphic flyers depicting alleged aborted fetuses to be enclosed in envelopes before they can be delivered to homes. The sender's name and address and a trigger warning must be on the outside of the envelope. The nine cities are: London in [May 2022](#), then Woodstock ([Feb 2023](#), pg 7), Calgary ([May 2023](#)), Ingersoll ([June 2023](#)), Strathmore AB ([July 2023](#)), Okotoks AB ([Aug 2023](#)), Airdrie AB ([Sept 2023](#), pg 18), St. Catharines ([Sept 2023](#), Report LCS-110), and Burlington ([March 2024](#)).

Unfortunately, the City of St. Catharines was sued over its bylaw in February 2024 – not by the group that delivers the flyers (Canadian Centre for Bio-Ethical Reform, CCBR) – but by an unrelated anti-abortion group, [ARPA Canada](#), which wanted to distribute its own flyers with ultrasound photos of a fetus. Because the bylaw definition of graphic image was "*an image... showing, or purporting to show, a fetus or any part of a fetus,*" this meant that ultrasound photos were unintentionally captured by the bylaw. However, St. Catharines had no specific evidence to show that delivery of ultrasound photos was harmful, so its City Council repealed the bylaw on August 12 with the intent to develop a new one that would better meet Charter scrutiny. Council passed a motion instructing staff to gather empirical evidence, social science studies, and statistics about the impacts of graphic images on residents.

Below I offer suggested wording fixes to ensure a more robust bylaw. The following is based on my experience with this issue, including the St. Catharines lawsuit, but I am not a lawyer, so of course this should be subject to careful consideration by your legal counsel.

ARCC had applied to intervene in the St. Catharines court case before the city repealed its bylaw. As part of our research, I created a compilation of all nine flyer bylaws to compare them. Two key differences emerged:

Graphic image definition: All bylaws except Okotoks have the same definition of “graphic image”: “*an image... showing, or purporting to show, a fetus or any part of a fetus.*” Because this definition has been shown to be overbroad, I recommend a **bylaw that is specific to aborted fetuses**. One legal question to consider is whether courts would see that as too narrow or as targeting a particular viewpoint. However, anything more general could unintentionally capture other images and be seen as overbroad.

Name and address on envelope: The St. Catharines bylaw as well as those in London, Woodstock, Ingersoll, and Strathmore required the outside of the envelope to bear “*the name and address of the person who is responsible for Delivery of the Graphic Image.*” However, none of them define “Person,” which means they seem to require the name and address of the *person who actually delivered* the flyer to be on the envelope. Unfortunately, this is not practical or justifiable because the CCBR uses an ever-changing army of volunteers to deliver them. It needs to be the organization’s name and address on the envelope.

Fortunately, the bylaws passed by Calgary, Okotoks, Airdrie, and Burlington serve as a good model that municipalities could adopt going forward: they define a Person and/or a Distributor as an organization or corporation, which would allow the latter to use their company address on the envelope. This also makes enforcement possible since we know the graphic flyers are the responsibility of the CCBR or its affiliates. The CCBR is a registered corporation in Alberta and the flyers have identifying information (website URLs and a phone number) that can be directly linked to the CCBR.

Therefore, municipalities should **define the words Person and Distributor to include an organization**. Further, the clause referring to delivery/distribution of the flyers should refer to “Person or Distributor.”(Please see the Calgary bylaw for a good example.)

Referring to evidence in bylaw: To help justify the bylaw, it should include a “Whereas” clause referring to the evidence that the municipality has that attests to the flyer harms, such as complaints from residents. For example, Burlington’s bylaw states: “*Whereas the Council of the Corporation of the City of Burlington is satisfied that the unregulated Delivery of Graphic Images to residences impacts the economic, social and environmental well-being of the municipality; the health, safety and well-being of persons; and the protection of property;*”

Complaints from Hamilton Residents

Below are impact stories we have received from Hamilton residents recently, which you are free to use as evidence for the harms of the flyers. The named persons gave us permission to use their names.

Brent Whetstone, June 17, 2024, Rosedale

"[Flyer] Found in my mailbox. My wife and I had four miscarriages with first one reaching 15 weeks gestation. It happened at home and my wife and I dealt with our fetus ourselves. It looked exactly like the 15 week picture in the flyer and brought back the trauma of that day. I am happy it was me that checked the mail today as it would have had a far more severe impact on my wife."

Sarah Harvie, June 15, 2024, Bartonville, east Hamilton, ward 4

"I came home from a walk with my dog to a flyer in my mailbox. I didn't see the delivery person, but luckily I had been visiting the ARCC website last week and knew I could report it to try to get this hateful propaganda restricted.

"It makes me angry that strangers can invade my space and push this false rhetoric with no impunity and no consideration for the impact it may have on those receiving the images.

Anonymous, June 13, 2024, L8K 4Y4 area

"My six year old found the flyer. I have had many friends and family members who have had miscarriages and have pregnancies end that they very much wanted. What a horrible traumatic thing for them to see. I have also had friends and family members choose to terminate pregnancies for a variety of complicated reasons. How dare someone trigger people with that kind of thing in mailboxes?!"

Anonymous, Fall 2020, Ward 3 Hamilton

"Earlier that fall I had an abortion, it was a hard decision for me to make and weighed on me and approx. a week later I see these two young girls, they didn't look more than 18, walking from house to house putting something in everyones mailbox. I went out to check it out after they had left the street and found the very graphic pro-life pamphlet they had dropped into my mailbox. Making the decision to have an abortion doesn't always come easy and to be confronted with this horrible imagery put me right back to the day and I broke down right on my front porch.

"It was such a trigger for me in that moment, it took me back to being in the hospital. It made me feel angry that people still have these views in 2020 and the lengths they will go to."

Thank you very much for your consideration, and I look forward to hearing from you.



Joyce Arthur (she/her)

Executive Director

joyce@arcc-cdac.ca

Cell: 604-351-0867