



Abortion Rights
Coalition of Canada

Your Voice for Choice

Canada's only national political pro-choice advocacy group

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Please regulate the delivery of graphic flyers in New Westminster

Dear Mayor Patrick Johnstone, City Councillors, and Craig MacFarlane, Manager of Legal Services,

As the Executive Director of the Abortion Rights Coalition of Canada, may I please provide information that could be helpful to you in considering the regulation of the delivery of graphic flyers to homes? I understand that a motion will be coming forward at your Aug 26 Council meeting about this.

This letter describes why the City of New Westminster should pass a “Viewer Discretion” bylaw similar to the one passed by nine other municipalities across Canada. Although the previous New Westminster Council considered a flyer bylaw years ago, that one attempted to ban the flyers completely, while a “Viewer Discretion” bylaw regulates the flyers in a more Charter-compliant way. It allows the continued distribution of the flyers provided they are inside opaque envelopes with information on the outside with the sender’s name and address, and a warning about the contents. This measure balances the right to freedom of expression with the Charter and privacy rights of residents, and municipal obligations to ensure a safe and welcoming community free of harassment.

The City of London was the first in Canada to pass such a bylaw, in [May 2022](#). Eight more municipalities followed suit: 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](#)).

While no BC jurisdiction has yet passed a “Viewer Discretion” bylaw, New Westminster and Burnaby have been two of the worst affected cities in recent years. We are only aware of flyer delivery in those two cities as well as occasionally in Vancouver, North Vancouver, Surrey, Chilliwack, and Kelowna. Unfortunately, Burnaby refused to consider a bylaw claiming they had no complaints and had other priorities.

ARCC's report to cities on How Local Governments Can Regulate Public Messaging comprehensively covers all options available to cities to control graphic images and other unacceptable messages. It describes the harms caused by graphic images, what other municipalities are doing, and how to address constitutional issues related to freedom of expression. It contains Appendices with bylaw excerpts, stories of the harms of the graphic images, and a list of upheld complaints to Ad Standards – as the graphic images contravene the *Canadian Code of Advertising Standards*.

Please see the attached pages to this letter for more detailed info on:

- ARCC's interest and expertise in this issue
- Answers to objections to passing a flyer bylaw
- Lawsuit against St. Catharines, and bylaw wording suggestions
- Complaints from New Westminster residents

At your next Council meeting, would you please pass a motion directing your staff to draft a bylaw similar to the other nine municipalities? In the meantime, if Councillors receive complaints from their constituents about graphic flyers, they can encourage residents to use our Provincial Trespass Remedy to protect their homes from people delivering the graphic flyers, as well as encourage residents to submit impact reports on our website.

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



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About ARCC

The Abortion Rights Coalition of Canada is a national grassroots advocacy group for abortion rights and access. We have an ongoing project since 2017 that combats harmful anti-choice messaging, and have communicated with about 100 municipalities, as well as provincial and federal officials. We 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 advertising.

Although I am not a lawyer myself, the information and arguments we give to governments are based on legal advice.

Answers to Objections to Passing a Flyer Bylaw

Some City Councillors and city staff in other cities have raised objections to the flyer bylaws, which can be summarized and answered as follows:

- *“We cannot interfere with freedom of expression rights under the Charter.”*
Section 1 of the Charter allows rights to be justifiably infringed, and a “Viewer Discretion” bylaw strikes a good balance between the rights of residents and the rights of the anti-abortion group who delivers these flyers, the Canadian Centre for Bio-Ethical Reform (CCBR). This represents a proportional and minimal infringement of freedom of expression.
- *“This bylaw could invite a lawsuit that would be onerous and risky for the city.”*
The CCBR itself has never sued over this bylaw and appears to have stopped flyer delivery in the cities that have them. Further, cities have an obligation to safeguard citizens and should be willing to defend their bylaws.
- *“The bylaw would be challenging to enforce.”*
Some of the bylaws in other cities allow an organization to be charged, so it’s not necessary to identify the person who delivered the flyer (which otherwise is the main enforcement challenge). 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.
- *“This is not a municipal issue. We don’t have the authority to pass such a bylaw.”*
Cities in BC have broad regulatory powers under BC’s [Community Charter](#), including S.8(3)(i) that covers public health, as well as section (h) “the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [nuisances, disturbances and other objectionable situations];”

Further, the federal government cannot prohibit these graphic images via the Criminal Code because the obscenity clause requires a sexual element. While provinces could possibly do it, it’s very challenging to pass a private member bill. Therefore, municipalities are best placed to address the graphic images.

St. Catharines Lawsuit, and Bylaw Wording Considerations

The city of St. Catharines was sued in February 2024 not by the CCBR, but by an unrelated anti-abortion group, [ARPA Canada](#), which wanted to distribute flyers with ultrasound photos of a fetus.

Graphic image definition: The definition of “graphic image” in all the flyer bylaws (except for Okotoks AB) is *“an image... showing, or purporting to show, a fetus or any part of a fetus.”* However, St. Catharines had no specific evidence to show that delivery of ultrasound photos was harmful and believed it would likely lose if the case proceeded to court. Therefore, City Council repealed the bylaw on August 12 with the intent to pass a new one. Council passed a motion instructing staff to gather empirical evidence about the harms of the graphic images to ensure the next bylaw would better withstand Charter scrutiny.

ARCC had applied to intervene in the St. Catharines court case before the city repealed its bylaw. As part of our research, we created a [compilation of all nine flyer bylaws](#) to compare them and found a couple of key differences. First, all bylaws have the same definition of “graphic image” except one. Okotoks’s definition, which could be overbroad in my opinion, is: *“a visual image showing, or purporting to show any subject matter that is not in compliance with the Canadian Code of Advertising Standards and offends the standards of public decency prevailing among a significant segment of the population.”*

Therefore, other cities with these bylaws, and those considering passing such bylaws, may wish to consider amending or drafting the bylaw to be specific to the graphic flyers of aborted fetuses.

Name and address on envelope: Second, the St. Catharines bylaw required the outside of the envelope to bear *“the name and address of the person who is responsible for Delivery of the Graphic Image.”* The bylaws in London, Woodstock, Ingersoll, and Strathmore have this same requirement but none of them define “Person.” This would seem to require the name and address of the *person who actually delivered* the flyer to be on the outside of the envelope. However, this is not practical or justifiable because the CCBR uses an ever-changing army of volunteers to deliver them. It really 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 for all cities to 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, and also greatly eases enforcement since the CCBR can be charged directly as explained earlier.

Cities should therefore ensure that the words Person and Distributor are defined as including 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.)

Distribution of flyers: The motion before New Westminster Council on Aug 26 calls for a draft bylaw that would require *“print collateral delivered to any premises or **distributed** to the public that shows, or appear to show, a graphic image of a fetus be delivered in a sealed opaque envelope.”* (emphasis added).

The flyer bylaws in Calgary, Okotoks, and Airdrie also prohibit the distribution of graphic flyers unless they are in envelopes. With those precedents to rely on, New Westminster Council should feel comfortable including that element in its draft bylaw. While this won't affect graphic signage on the streets, it would curtail the distribution of flyers in public.

Referring to City evidence in bylaw: Finally, the draft bylaw should include a "Whereas" clause at the beginning that refers to the evidence that the city has that attests to the flyer harms, such as complaints from residents. This will help to justify the bylaw. For example, London's bylaw states: *"AND WHEREAS the Council is satisfied that the unregulated Delivery of Graphic Images to residences does cause harm;"*

Complaints from New Westminster residents

In addition to the experience recounted in 2020 by a New Westminster resident (see page 35 of our [report to local governments](#)), we have received the following recent complaints from residents, collected from [our callout](#) for impact stories. They have consented to give their names.

Lilith Arellano, Sapperton, July 2, 2024

I was home alone when a man walked up to the front door and rang the doorbell, I waited a second and when I came out he was already running halfway down the street. I saw a pamphlet on the floor, and realizing that it was covered with photos of ultrasounds and embryos, I got mad and stormed back inside. I went to tell my older sister, but unfortunately since I am only 15, I did not think that there would be anything worse inside the pamphlet. As soon as I opened it, there was an extremely graphic photo of what looked like a dismembered infant. I immediately dropped it to the floor in shock, and proceeded to call my parents. P.S. there was another person, looked to be a young girl, maybe mid-teens, dropping off the same flyer at houses across the street.

My family and I were all horrified, unfortunately my mom had to open the same pamphlet in order to make a report to the city. Since I have multiple long-term mental illnesses, graphic images like these can affect me greatly, or I guess more than it would other people. It was effectively traumatizing. Currently I nanny for a newborn infant, and it was horrifying to see something that looked so close to her cut up in an image. There are many young children who live on my street, including that infant that I Nanny, and so I went to their homes to warn their parents so that none of the children would pick it up by mistake. I shudder to think what could have happened if they did. Later when I went all the way to victory Heights to feed my friend's cat, I found the same pamphlet on their doorstep, and many on the stoops of other people's houses.

Christi Arellano, Sapperton, July 2, 2024

A man and woman were seen (on camera) delivering graphic (images of aborted fetuses) anti-choice flyers to my front door. This was deeply upsetting to my entire family. These images are graphic and abhorrent, and neither I nor my children and husband consented to view these images. Once the mail was collected, there was no way to avoid seeing these images, and they profoundly disturbed all of us.