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I have read and understand the above statement.

## ENDORSEMENT STATEMENT ON TRUTH AND RECONCILIATION, ANTI-RACISM, EQUITY, DIVERSITY, INCLUSION AND BELONGING

The purpose of The City of Calgary is to make life better every day. To fully realize our purpose, we are committed to addressing racism and other forms of discrimination within our programs, policies, and services and eliminating barriers that impact the lives of Indigenous, Racialized, and other marginalized people. It is expected that participants will behave respectfully and treat everyone with dignity and respect to allow for conversations free from bias and prejudice.

I have read and understand the above statement.

First name (required) Joyce

Last name (required) Arthur

Are you speaking on behalf of a group or Community Association? (required) Yes

What is the group that you represent? Abortion Rights Coalition of Canada

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What do you wish to do?  
(required)

Submit a comment

How do you wish to attend?

You may bring a support person should you require language or translator services. Do you plan on bringing a support person?

What meeting do you wish to attend or speak to? (required)

Standing Policy Committee on Community Development

Date of meeting (required)

Apr 27, 2023

What agenda item do you wish to comment on? (Refer to the Council or Committee agenda published [here](#).)

(required - max 75 characters)

Regulation of graphic flyers to homes - "viewer discretion" bylaw

Are you in favour or opposition of the issue? (required)

In favour

If you are submitting a comment or wish to bring a presentation or any additional materials to Council, please insert below. Maximum of 15 MB per submission (5 attachments, 3 MB per pdf document, image, video)  
If you have additional files to attach, email them to [publicsubmissions@calgary.ca](mailto:publicsubmissions@calgary.ca)

Comments - please refrain from providing personal information in this field (maximum 2500 characters)



**Abortion Rights  
Coalition of Canada**

*Your Voice for Choice*

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

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April 20, 2023

## **Regulation of Graphic Flyers Delivered to Residences**

Dear Community Development Committee,

May I please provide the following information to aid the Committee at its April 27 meeting, in relation to the agenda item for the bylaw to regulate graphic flyers of aborted fetuses? Thank you for this opportunity.

The Abortion Rights Coalition of Canada (ARCC) strongly supports the passage of a “viewer discretion” bylaw similar to London’s that was passed in May 2022, which required such flyers to be enclosed in a wrapper or envelope with a warning and identifying information on the outside. To our knowledge, there has been no legal action in London by the anti-abortion group who had been delivering the flyers, as well as no further delivery of the flyers there. It is possible that the extra expense of the envelope/wrapper may be a strong deterrent.

Therefore, we are encouraging cities and municipalities to adopt the same kind of bylaw, keeping the wording as similar as possible to London’s. We recently made a submission to the City of Woodstock which successfully passed a viewer discretion bylaw on February 16 (not yet available on city’s website). Also we are assisting a City Councillor in St. Catharines to [pass a similar bylaw](#).

This letter provides arguments to support the passage of a viewer discretion bylaw. These factors have been informed by legal advice ARCC has received as well as existing jurisprudence (please note that I am not a lawyer).

## **Harms of Graphic Flyers of Aborted Fetuses**

The flyers create an unacceptable invasion of privacy into peoples’ lives because they are delivered directly to homes without permission from residents. Citizens have a common-law right to peaceful enjoyment of their homes. Further, free speech rights do not extend to forcing oneself on a captive audience, which must have the [equal freedom to avoid the message](#). This is made impossible with the graphic flyer delivery.

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 are considering or 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.

Here is just one recent example. A resident of Niagara Falls complained to the Mayor about receiving a graphic flyer on April 8, and shared her letter with us (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.”

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](#), [funeral industry workers](#) and [medical examiners](#), [journalists](#), and [social media content moderators](#). Here are excerpts from a March 27 [Hamilton Spectator article](#) (behind a paywall) that quotes military veterans and first responders about the images of aborted fetuses they were subjected to in St. Catharines:

Imagine going to your mailbox, and being struck with flashbacks to the worst moments of your life. That's what Ken Beaudette said happens to him when he gets home from work and finds graphic images of aborted fetuses hanging out of his mailbox. Beaudette is a veteran of six years, having served as a medic in the army. He is also a paramedic of 24 years. Currently, he is off work with his post traumatic stress disorder (PTSD).

When he sees these images, he said, he's brought right back to some of the worst calls he's had to answer. “They're not memories that I want to remember,” he said. “It just brings waves of those back, and they're not wanted, and they're basically forced upon me.”

... Shawn Bennett is a founder of the Niagara-based Valhalla Project, a non-profit organization aimed to help first responders who living with PTSD. Bennett, who lives in St. Catharines, was a firefighter for 31 years and knows the trauma of living with PTSD firsthand.

“Every shift, you're doing CPR on somebody most of the time, and then you just add the other stuff,” he said. He said every time he sees the flyers, or the protesters with the graphic signs, it brings him right back to times when he had to perform CPR on children and babies.

A particularly horrific incident, he said, happened a few months ago when he came home from a retreat with the Valhalla Project. Hanging out of his mailbox on the front of his house were graphic images of mutilated fetuses. “It was a pamphlet that folds over so you can see all the pictures,” he said. “I saw that immediately, and my anxiety boomed.”

Having served as a firefighter in the city, Bennett said, he gets triggered everywhere he goes, remembering times he’s tried to save people from terrible accidents. “The one place that I had that was safe was my home,” he said. “It's been invaded now. I look at my mailbox every single time I walk in and out of my front gate, I look in the mail, I can't help it. I don't feel safe here. I don't feel safe anywhere now.”

### **The city has a robust Section 1 defence to infringe freedom of expression**

The city would be on strong legal grounds in terms of the *Charter of Rights and Freedoms*, because cities need to consider a range of objectives and rights. While a viewer discretion bylaw would violate freedom of expression rights under Section 2(b) of the Charter, this can be saved under a Section 1 defence, which allows justifiable limits on rights to protect other competing rights and objectives.

Courts prefer that a Section 1 restriction on freedom of expression be as limited as possible, so it is not overbroad or disproportionate. In this case, the people delivering the flyers are not prevented from doing so – they must simply make a reasonable accommodation to reduce the harms of the flyers to residents. They also have other ways of delivering their message, with or without the graphic images.

Therefore, the bylaw strikes a reasonable balance between the rights of the anti-abortion activists, the rights of residents, and the city’s statutory objectives; and would more likely meet the minimal impairment test in a Section 1 analysis.

Considerable case law supports justified limits to freedom of expression to protect the Charter rights of others, relying on the Doré case and/or the earlier Oakes case. In addition to several Supreme Court cases ([R. v. Keegstra](#) on hate speech, [R. v. Butler](#) on obscenity, and [R. v. Sharpe](#) on child pornography), the following provincial cases may be of interest:

- [R. v. Spratt](#) (2008 BCCA 340) allowed the infringement of anti-abortion protesters’ freedom of expression around abortion clinics, in order to ensure the safety, privacy and dignity of women accessing abortion care.
- [American Freedom Defence Initiative v. Edmonton](#) (2016 ABQB 555) upheld the city’s removal of a prejudicial bus ad about honour killings of Muslim women, because the City’s objective of providing a safe and welcoming transit system outweighed the

limitation on freedom of expression caused by the refusal to run an offensive and discriminatory ad.

- [Guelph and Area Right to Life v. City of Guelph](#) (2022 ONSC 43) granted a judicial application to an anti-choice group who sued over its bus ads being refused – however, the court did not require the City to post the ads, instead remitting the decision back to the City to reconsider and carry out a Charter balancing exercise. The court instructed the city to weigh the anti-choice group's freedom of expression against the city's statutory objectives and competing Charter rights, including gender equality rights as the intervenor ARCC had argued (Para 91).

Indeed, the graphic flyers can be seen to undermine gender equality rights, which are protected under Section 15 of the Charter. Not only do the flyers specifically target and cause harm and trauma to ciswomen and gender-diverse people who can get pregnant, they also target their legal rights and essential health needs, thereby seeking to undermine their Charter rights to bodily autonomy, life, conscience, and equality, as well as the right to be free from discrimination under human rights codes.

### **Courts respect Ad Standards decisions and Advertising Code**

Eight court decisions so far have [endorsed cities' use](#) of the [Canadian Code of Advertising Standards](#) (“the Code”), which is a voluntary code administered by Ad Standards on behalf of the advertising industry. The Code has no authority or legal standing on its own, but is widely endorsed by advertisers, advertising agencies, media, and consumers. At least 74 local governments already [cite the Code in their bylaws or policies](#) related to public messaging.

The graphic imagery of aborted fetuses – both in the form of flyers delivered to homes and signage on streets – has been deemed [four times](#) by Ad Standards to violate the Code:

- In three separate decisions in 2014, 2015, and 2017, Ad Standards Council ruled that graphic flyers depicting aborted fetuses contravened Clause 14 (d) of the Code: “Council concluded that by its use of highly graphic and disturbing images, the advertiser displayed obvious indifference to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population.” In all 3 cases, the flyers were delivered by and/or produced by the Canadian Centre for Bio-ethical Reform (CCBR).
- In a 2009 decision, Ad Standards Council ruled that a large image of an aborted fetus on the side of a moving truck contravened Clauses 14(c) and (d) of the Code: “Council...concluded that the advertising using the image of an aborted embryo in this medium and in this way, displayed obvious indifference to conduct or attitudes that offend the standards of public decency prevailing among a significant segment of the population. Council also concluded that the imagery, when combined with the words ‘unmasking choice’, denigrated women who have chosen to have an abortion.” The truck with billboards was operated by the CCBR.

Courts have emphasized that the Advertising Code and Ad Standards decisions cannot be the only factor that cities rely on. But since courts have consistently supported cities' use of the Code, this gives added authority to cities to regulate the graphic flyers by taking into account the decisions and the Code as one part of a Charter balancing exercise.

### **Municipalities have broad authority to protect public safety**

Local governments can pass bylaws to protect public safety and well-being, ensure a safe and welcoming transit system, and fulfill other statutory objectives on behalf of their communities. Such laws can even [overlap with provincial laws](#) or jurisdiction provided there is no conflict – i.e., it is not the case that municipalities cannot legislate in this area.

The [same court decisions](#) that support cities' use of the Advertising Code also recognize municipal authority in upholding their statutory objectives, and indeed, expect cities to include these in a Charter balancing exercise of competing rights.

Further, if the City of Calgary has received complaints from the public in relation to the graphic flyers, they can be preserved as evidence to show harm to the community, including descriptions of emotional upset, rage, fear, and traumatic responses and aftereffects. As mentioned previously, these may especially occur amongst children, people who have had miscarriages or abortions, and those who have heightened sensitivity to graphic imagery or shock tactics such as military veterans. It is not the case that the graphic images may only *potentially* trigger a negative reaction, as ARCC has seen numerous accounts from across the country attesting to the very negative impact of seeing these flyers. Indeed, it is difficult to imagine anyone not being disturbed when confronted with these images unexpectedly.

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To conclude, ARCC asks Calgary's Community Development Committee to present pass a bylaw to City Council that is similar to London's bylaw, taking into account the above factors and objectives that would justify the regulation of these flyers under Section 1 of the Charter and make the bylaw defensible if challenged in court. Finally, please note that none of these factors are about the pro-choice/pro-life debate on abortion, as passing this bylaw is not about censoring one viewpoint while advancing another – it is simply about protecting the rights, safety, and privacy of residents.

Thank you very much for this opportunity.



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