



Abortion Rights
Coalition of Canada

Your Voice for Choice

Canada's only national political pro-choice advocacy group

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March 3, 2024

Re: Please pass a motion to examine how to restrict graphic imagery in public

Dear Corporate Services Committee – Niagara Region,

As the Executive Director of the Abortion Rights Coalition of Canada, I'm writing to support a motion being introduced at your March 6 committee meeting. The motion would propose that staff be tasked with determining how to restrict the display of graphic images in public. In recent years, these disturbing images have been seen in the Niagara Region, mostly in St. Catharines, but also in Niagara Falls, Beamsville, and possibly other areas.

This letter explains how these images are harmful to families and communities, and how several municipalities across Canada have taken action or are considering doing so based on their ability to impose limits on freedom of expression under the Charter.

We ask the Corporate Services Committee to please have your staff prepare a report that examines how the Niagara Region can best restrict this imagery, and if feasible to prepare a draft bylaw for Niagara Council to consider.

ARCC has an ongoing project since 2017 that combats harmful anti-choice messaging. We have communicated about 100 municipalities, as well as provincial and federal officials, and have intervened in two court cases related to anti-choice advertising. We have created a **comprehensive report** [REDACTED], on how local governments can regulate unacceptable public messaging. It contains detailed information on how municipalities can reject or limit anti-choice messaging, and how multiple jurisdictions have done so.

Harms of the graphic images

The display of graphic images of aborted fetuses happens across Canada, primarily on public streets and at universities. Everywhere they appear, the graphics cause a community disturbance or nuisance. Police, cities, and universities field numerous complaints from the public and students, and the issue often creates a controversy in the press.

The images can be devastating for children. Families with young kids are often infuriated, with many stories of children traumatized as a result of having seen the pictures, including having nightmares. The privacy rights of parents to instruct and raise their children as they see fit, and in a safe manner, are being co-opted by the tactics of anti-abortion groups without permission or warning.

The images are also extremely distressing 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 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. (Please see Appendix 1 of our report for examples of complaints.)

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,¹ funeral industry workers and medical examiners,² journalists³, and social media content moderators.⁴

The graphics also create an unacceptable invasion of privacy into peoples' lives because it is often difficult or impossible to avoid the pictures. When the imagery is shown on city streets, hapless pedestrians and drivers may pass by without warning, or drivers may be caught in traffic and cannot escape for several minutes. Free speech rights do not extend to forcing oneself on a captive audience, which must have the equal freedom to avoid the message without undue inconvenience or restriction of movement.⁵

Municipal actions to regulate graphic signage in public

The **City of Calgary** passed a bylaw amendment⁶ on Oct 5, 2020 to the *Temporary Signs on Highways* bylaw.⁷ The amendment limits signs with advocacy messaging to just 5" x 3.5" within 150 metres of any Calgary school. The restriction applies only during school hours and only on public land around the school. The city's law department believes the restriction is justifiable under the *Charter*, and there has been no court challenge.

After Calgary passed this bylaw amendment, several other cities began looking at the feasibility of restricting the graphic signage shown in public.

¹ <https://www.thespec.com/local-st-catharines/life/2023/03/27/i-don-t-feel-safe-anywhere-now-first-responders-with-ptsd-support-restriction-of-flyers-that-have-graphic-images.html>

² <https://dash.harvard.edu/bitstream/handle/1/37365094/MCCLANAHAN-DOCUMENT-2019.pdf> AND: <https://pubmed.ncbi.nlm.nih.gov/28981313/> Article: <https://blog.frontrunnerpro.com/mental-health-funeral-industry/>

³ <https://journals.sagepub.com/doi/full/10.1177/2054270414533323>

⁴ <https://topclassactions.com/lawsuit-settlements/employment-labor/facebook-class-action-says-graphic-images-caused-moderators-ptsd/> AND: www.theverge.com/2020/5/12/21255870/facebook-content-moderator-settlement-scola-ptsd-mental-health

⁵ <http://ablawg.ca/2017/01/19/lost-and-found-the-captive-audience-doctrine-returns/>

⁶ www.cbc.ca/news/canada/calgary/calgary-abortion-safe-zone-protest-bubble-school-1.5359050

⁷ Layperson's summary: <https://www.calgary.ca/bylaws/signage.html>. Download bylaw: <http://publicaccess.calgary.ca/ldm01/livelink.exe?func=ccpa.general&msgID=VyATqqTTeT&msgAction=Download>

Toronto: On July 10, 2023, City Council passed a motion and directed the Municipal Licensing and Standards department to report to the April 2024 meeting of the Economic and Community Development Committee on the feasibility of prohibiting advocacy signs in public that display graphic images (as well as regulating graphic flyers).⁸

London: In July 2022,⁹ the Community and Protective Services Committee supported a motion by Councillor Mariam Hamou, which directed staff to prepare a report about potentially expanding the graphic flyer bylaw to also prohibit graphic images in public. A report was prepared for the Feb 20, 2024 meeting of the Community and Protective Services Committee.¹⁰ The recommendation was to not amend the *Signs Bylaw*, but to ban the display of graphic signage of fetuses by defining them as violations under various clauses of the *Streets By-Law S-1*, such as sections on street obstructions, public nuisance, etc. However, the committee voted to send the staff report back with a directive to create a draft bylaw on regulating graphic images that would be more likely to withstand a Charter challenge.¹¹ The report is expected by end of June.

Oakville: On June 19, 2023, Town Council directed staff to look again at placing restrictions on graphic public displays (as well as graphic flyers).¹² Staff were instructed to come back with recommendations before the end of fall, to allow the matter to be discussed as part of a review of the town's licensing bylaw. (One councillor separately said the recommendations could come in early 2024.)

Hamilton: On November 8, 2023, City Council passed a motion¹³ that directed staff to prepare a report for the Planning Committee by Q2 2024 on the feasibility of regulating or prohibiting graphic imagery that is carried, held, or displayed in public spaces (as well as the feasibility of adopting and enforcing a by-law to regulate the distribution and display of graphic images).

Ability to restrict freedom of expression under the Charter

Despite the obligation of local governments in Canada to uphold Charter rights, municipalities in Canada have options to restrict the graphic images. For example, no public entity needs to allow hate speech as that goes beyond the bounds of freedom of expression. The graphic images are arguably hate speech.¹⁴ Similarly, if a message is being forced on people to the

⁸ <https://secure.toronto.ca/council/agenda-item.do?item=2023.EX6.23>

⁹ <https://london.ctvnews.ca/graphic-roadside-anti-abortion-signs-could-be-target-of-stricter-sign-bylaw-1.6008250>

¹⁰ <https://pub-london.escribemeetings.com/Meeting.aspx?Id=c0c6d189-3bb6-49b1-bfaa-a74dca63495a&Agenda=Agenda&lang=English>

¹¹ <https://london.ctvnews.ca/debate-to-ban-graphic-anti-abortion-signs-in-london-might-be-delayed-until-summer-1.6776989>

¹² https://www.insidehalton.com/news/oakville-council-directs-staff-to-take-another-look-at-restricting-graphic-anti-abortion-flyers-and/article_51de4b6d-92d8-5903-b97a-346e4208d935.html

¹³ Pg 11, Council minutes: <https://pub-hamilton.escribemeetings.com/FileStream.ashx?DocumentId=387338>

¹⁴ <https://www.cbc.ca/news/politics/summer-jobs-abortion-images-ccbr-1.4523255>

extent that it's difficult to avoid, which is often the case with these graphic images, then the captive audience doctrine comes into play, as mentioned above.

A crucial section of the *Charter of Rights and Freedoms* is Section 1, which allows justifiable limits on one right in order to protect another right,¹⁵ provided it's done in a narrow and proportionate manner.¹⁶ An important example of this in case law is the safe access zone laws in six provinces¹⁷ that protect abortion clinics and providers from anti-choice protests. These laws infringe freedom of expression, but the original BC law was upheld as constitutional¹⁸ because the interests of patient privacy, dignity, and safety overrode freedom of expression in this particular context.

In the case of graphic imagery in public, freedom of expression of anti-choice groups must be balanced against the rights of passersby who are subject to the images, and the rights of the former can be infringed to protect the latter.

There's some new case law relevant to this. ARCC intervened in two separate cases^{19, 20} over anti-choice bus advertising, where the cities of London and Hamilton had refused to run ads, and the anti-choice group sued. In both cases, the courts remitted the decision back to the cities to re-decide, as the cities had not properly considered the advertiser's freedom of expression rights or done a balancing exercise of rights. Importantly, the courts cited ARCC's arguments that the Charter rights of women, including gender equality and bodily autonomy, should be considered alongside city objectives such as ensuring a safe and welcoming community. On that basis, ads or public messaging that target certain communities in a demeaning or discriminatory manner can be restricted.

To conclude, we ask the Corporate Services Committee to determine the most feasible way to restrict harmful graphic imagery in the Niagara Region. Thank you very much for your time and consideration.



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¹⁵ https://ojen.ca/wp-content/uploads/In-Brief_STUDENT_Section-1-and-Oakes_0.pdf

¹⁶ <https://www.cba.org/Sections/Administrative-Law/Articles/2019/The-song-remains-the-same>

¹⁷ <https://www.arcc-cdac.ca/media/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>

¹⁸ <https://www.prochoicereactionnetwork-canada.org/articles/bubble-zone-case.html>

¹⁹ Guelph and Area Right to Life v. City of Guelph, Ontario Superior Court of Justice, Divisional Court, 2022 ONSC 43. <https://www.canlii.org/en/on/onscdc/doc/2022/2022onsc43/2022onsc43.html>

²⁰ Association for Reformed Political Action Canada v. Hamilton (City of), 2023 ONSC 644323. <https://www.canlii.org/en/on/onscdc/doc/2023/2023onsc6443/2023onsc6443.html>