

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

ASSOCIATION FOR REFORMED POLITICAL ACTION (ARPA) CANADA

Applicant

- and -

CITY OF LONDON

Respondent

APPLICATION PURSUANT to Rules 14.05(3)(d), 14.05(3)(g.1) and 14.05(3)(h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Section 2(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, and Section 52 of *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, c. 11, s. 91(24)

FACTUM OF THE APPLICANT

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I. OVERVIEW

1. The Applicant, the Association for Reformed Political Action (ARPA) Canada (“**ARPA**”), is a Reformed Christian non-profit that advocates for the adoption of moderate pro-life federal laws, including restrictions on sex-selective abortion and protections for preborn victims of crime. ARPA’s pro-life flyers use non-graphic images of preborn children.

2. On this application, ARPA seeks judicial review of a by-law adopted in 2022 by the Respondent, the City of London (the “**City**”), which restricts the door-to-door delivery of pro-life literature depicting fetuses. This so-called “Graphic Image Delivery By-law”, adopted as By-law PW-14, purports to combat the harm caused by the unregulated delivery of “Graphic Images” to local residences (the subject “**Fetal Image By-law**”, hereafter more fully described).

3. ARPA contends that the Fetal Image By-law is, contrary to its stated purpose, a thinly veiled effort to censor local pro-life advocates. The Fetal Image By-law applies exclusively to the delivery of literature which contains any image or photograph that depicts (or purports to depict) a “fetus or any part of a fetus”. Individuals delivering “Graphic Images”, so defined, must conceal said literature in an envelope or package marked with: i) their name and address; and ii) a content warning that it “contains a Graphic Image that may be offensive or disturbing to some people”.

4. Both the intent and effect of the Fetal Image By-law are to deter pro-life organizations such as ARPA and their local volunteers from distributing pro-life literature in London. Indeed, by requiring objectively non-graphic images such as ultrasound photographs to be concealed behind a misleading content warning before they can be delivered, the Fetal Image By-law compels ARPA and its local volunteers to express something which is objectively untrue. The City has thus deprived ARPA of one of its most traditional and important tools for engaging Canadians on important issues of concern to Reformed Christians.

5. For these and the reasons that follow, ARPA contends that the Fetal Image By-law: i) is *ultra vires* the City's authority under the *Municipal Act, 2001*; and ii) severely and unjustifiably restricts freedom of thought, belief, opinion, and expression, as constitutionally guaranteed by the *Canadian Charter of Rights and Freedoms* (hereafter "**Freedom of Expression**").¹ The Fetal Image By-law must accordingly be quashed.

II. BACKGROUND AND FACTS

i. The Parties

6. ARPA is a grassroots Christian civil society organization incorporated pursuant to the *Canada Not-for-Profit Corporations Act*.² The mission of ARPA is to educate, equip, and encourage Reformed Christians across Canada to political action.

7. ARPA advocates on multiple issues of concern to Reformed Christians. Such campaigns include *We Need a Law* and its sub-campaigns (namely, *Defend Girls* and *There Were Two*, described below) which promote the adoption of moderate pro-life legislation in Canada. ARPA has additionally intervened as *amicus curiae* before all levels of court in Canada to make submissions on the scope of the fundamental freedoms guaranteed by the Charter, including Freedom of Expression.

8. ARPA advances its mission through the efforts of paid staff and unpaid supporters. This latter category consists of both donors and volunteers who serve as part of local unincorporated chapters which have entered affiliation agreements with ARPA.

¹ [Municipal Act, 2001](#), S.O. 2001, c. 25 [the "**Municipal Act**"]; *Canadian Charter of Rights and Freedoms* [the "**Charter**"], s. 2(b), Part I of the [Constitution Act, 1982](#), being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

² S.C. 2009, c. 23

9. ARPA's volunteer chapter in London, Ontario was revived in 2024 after falling dormant in 2020 following the onset of the COVID-19 pandemic.³

10. The City is a single-tier municipality incorporated in 1855 and continued pursuant to the Municipal Act.⁴

11. The City's municipal council is comprised of fourteen councillors and the mayor ("**Council**"). Among other things, the statutory role of Council is to represent the public and to consider the well-being and interests of the municipality.⁵

12. The City's Community and Protective Services Committee is a standing committee comprised of certain members of Council (the "**Committee**"). The Committee's mandate encompasses matters such as community services, anti-racism and anti-oppression, culture, housing and homelessness, parks and recreation, waste management, emergency services, and public safety.⁶

ii. The We Need a Law Campaign

13. The *We Need a Law* campaign is a moderate pro-life campaign launched by ARPA in 2012 ("**WNAL**"). Its primary mission is to advocate for legislative protections for pre-born children by equipping supporters with tools and resources to engage in pro-life political advocacy.⁷

³ Affidavit of Marian Meinen at para 23; Affidavit of Ryan Mans at para 10.

⁴ *Municipal Act, 2001*, S.O. 2001, c. 25, [s. 455\(2\)](#).

⁵ *Municipal Act, 2001*, S.O. 2001, c. 25, [s. 224](#).

⁶ Affidavit of Lydia Hrkach at para. 2, Exhibit "A".

⁷ Affidavit of Anna Nienhuis at para. 5.

14. The WNAL campaign seeks to connect with all Canadians by advocating for laws that the public is most likely to support. WNAL encourages grassroots advocacy through practical resources including flyers, branded materials, and community campaigns.⁸

15. Two key sub-campaigns under the WNAL umbrella are *Defend Girls* and *There Were Two*. *Defend Girls*, launched in 2016, tackles the issue of sex-selective abortion, arguing that terminating pregnancies based on sex — typically targeting girls — is discriminatory and undermines Canada’s commitment to gender equality.⁹

16. *There Were Two*, introduced in 2022, focuses on the legal void regarding pre-born victims of crime. It advocates for laws that recognize a pre-born child as a second victim when a pregnant woman is violently attacked. The campaign stresses the increased vulnerability of pregnant women to intimate partner violence.¹⁰

17. Both of these WNAL sub-campaigns, as part of ARPA’s grassroots advocacy, distribute flyers containing ultrasound photographs via door-to-door delivery.¹¹

iii. The Legislative History of the Fetal Image By-law

18. At a meeting on 3 November 2020, the Committee received and considered a letter submitted by Deanna Ronson on behalf of the advocacy group Pro-Choice London and supported by several members of Council (the “**PCL Letter**”). Based on a keyword search of meetings of Council and the Committee, this was first time the issue of “graphic images” was discussed.¹²

⁸ Affidavit of Anna Nienhuis at paras. 6-11.

⁹ *Ibid* at paras. 21-34.

¹⁰ *Ibid* at paras. 35-39.

¹¹ *Ibid* at paras. 12, 17.

¹² Affidavit of Lydia Hrkach at para 3.

19. Ms. Ronson has noted on her LinkedIn page that her advocacy for the City's Fetal Image By-law was conducted in conjunction with the Abortion Rights Coalition of Canada:

From Oct. 2020, I have worked closely with the Executive Director of the Abortion Rights Coalition of Canada as I led a city-wide social media campaign calling on Londoners to email/call the Mayor and Council members to voice outrage over graphic anti-abortion images being delivered as flyers and displayed as large public signs.

Instrumental in push London City Council to pass a flyer by-law that would regulate the delivery of graphic anti-abortion flyers. Those flyers must now be delivered in an opaque envelope with a warning sticker on the outside noting that graphic material is enclosed.

Became London's media spokesperson for pro-choice topics.¹³

20. Since 2022, Ms. Ronson has also served as a board member of the Abortion Rights Coalition of Canada ("**ARCC**"). ARCC describes itself as Canada's "only national political pro-choice group devoted to ensuring abortion rights and access."¹⁴ ARCC has stated that its advocacy for what it calls municipal "graphic flyer bans" is one way that it defends abortion rights from being "undermined" by "anti-choice activists and Conservative politicians."¹⁵ Marian Meinen, as an ARPA chapter member and former Conservative Party of Canada candidate and staffer, notably fits both of ARCC's categories of people for whom the Fetal Image By-law is needed.

21. Among other things, the PCL Letter sent by Ms. Ronson called on the City "[t]o investigate whether the distribution and display of [graphic anti-abortion] images" constitutes hate propaganda and/or the public/wilful promotion of hatred contrary the *Criminal Code*.¹⁶ The PCL Letter stated that "[t]he identifiable group being targeted with hatred [is] women".¹⁷

¹³ Affidavit of Anna Nienhuis at para. 47 and Exhibit "P": Deanna Ronson's LinkedIn Profile.

¹⁴ *Ibid* at Exhibit "O": ARCC position paper.

¹⁵ *Ibid* at para. 48 and Exhibit "Q": ARCC Facebook Post.

¹⁶ *Criminal Code*, R.S.C., 1985, c. C-46, [the "**Criminal Code**"], [s. 319](#).

¹⁷ Affidavit of Lydia Hrkach at para. 3 and Exhibit "B": Pro-Choice London Letter dated October 16, 2020.

22. Further to the PCL Letter, the Committee adopted a recommended motion for City staff “to investigate options to address community concerns around graphic, unsolicited flyer delivers to residential properties” (the “**Graphic Image Motion**”).¹⁸

23. At this same meeting, the Committee also received and considered communications from other advocacy groups, including then-legal counsel for ARPA’s *We Need a Law* campaign and the London Area Right to Life, who warned that the Graphic Image Motion could result in censorious by-laws that violate Freedom of Expression.¹⁹

24. At a meeting on 10 November 2020, Council received and considered a letter from ARCC, which urged the City to adopt a by-law banning the circulation of “unacceptable public messaging” such as pro-life literature (the “**ARCC Letter**”). Council referred the ARCC Letter to the Committee further to the Graphic Image Motion.²⁰

25. At a meeting of the Committee on 21 September 2021, City staff submitted a report that included several recommendations further to the Graphic Image Motion (the “**2021 Report**”). The 2021 Report highlighted efforts by other municipalities to regulate flyer deliver in a content-neutral manner and appended a similar draft by-law (the “**Flyer Delivery By-law**”).²¹

26. At a meeting on 16 November 2021, Council debated and adopted a motion for City staff to draft two alternative by-laws further to the 2021 Report: a revised version of the Flyer Delivery By-law to include additional provisions on non-compliance; and a new alternative by-law that

¹⁸ Affidavit of Lydia Hrkach at para 4.

¹⁹ *Ibid* at paras 3-4 and Exhibit “B”: We Need a Law Letter dated November 2, 2020, and London Area Right to Life Letter dated November 1, 2020.

²⁰ *Ibid* at para 5 and Exhibit “D”: ARCC Letter dated November 5, 2020.

²¹ *Ibid* at para 6 and Exhibit “H”: 2021 Report.

would “specifically regulate flyers containing graphic images of dismembered human beings and aborted fetuses”.²²

27. At a meeting of the Committee on 1 March 2022, City staff submitted a follow-up report to the 2021 Report (the “**2022 Report**”). The 2022 Report appended Council’s requested alternative draft by-laws for the Committee’s consideration:

- a. a revised version of the Flyer Delivery By-law that would require London residents who so wished to put up signs refusing to accept flyers; and
- b. a by-law that would prohibit the delivery of “graphic images” (the original “**Graphic Image By-law**”, described in further detail below).²³

28. More specifically, the Graphic Image By-law defined “graphic images” as “a detailed pictorial image or series of images, containing potentially sensitive content that may cause or trigger a negative reaction to the health and wellbeing of any person at any scale”, an example of which “may included, but is not limited to, dismembered human beings or aborted fetuses”.²⁴

29. The Committee ultimately voted in support of introducing the Graphic Image By-law at a forthcoming meeting of Council. During the Committee’s debate concerning the Graphic Image By-law, several councillors spoke to the perceived public harms arising from the unrestricted circulation of certain anti-abortion literature in London. Other councillors, however, expressed concern that the Graphic Image By-law would restrict Freedom of Expression.²⁵

30. At a meeting on 22 March 2022, Council debated a motion to adopt the Graphic Image By-law. During this debate, Council adopted a motion requesting that City staff explore further

²² Affidavit of Lydia Hrkach at para 7.

²³ *Ibid* at para 8.

²⁴ *Ibid* at para 8 and Exhibit “M”: 2022 Staff Report.

²⁵ *Ibid* at Exhibit “L”: Link to Video Recording of the Meeting of the Committee on 1 March 2022.

amendments to the Graphic Image By-law to, *inter alia*, require that graphic images delivered to London residences include a content warning or outer cover to hide the contents of said literature.²⁶

31. At a meeting of the Committee on 20 April 2022, City staff submitted a report appending a draft by-law prohibiting the delivery of unconcealed “Graphic Images” to London residents (the subject “**Fetal Image By-law**”). The Committee voted to refer the Fetal Image By-law to Council at a forthcoming meeting.²⁷

32. At a meeting on 3 May 2022, Council voted to adopt the Fetal Image By-law by a margin of thirteen (13) to one (1). The key provisions of the Fetal Image By-law as adopted by Council are as follows:

- a. the stated purpose of the by-law is “to regulate the unsolicited Delivery of Graphic Images to Residence, so that recipients have an opportunity to choose whether they wish to view such images”;
- b. “Graphic Image” is defined exclusively as “an image or photograph showing, or purporting to show, a fetus or any part of a fetus”;
- c. “Deliver” is defined as “to leave a Graphic Image anywhere on the property or mailbox associated with a Residence, whether or not the Graphic Image is handed to a person”;
- d. “Residence” is defined as a “property or address that is not clearly identified from the abutting roadway as the location of a business”;
- e. the by-law states that “[n]o person shall Deliver or participate in the Delivery of a Graphic Image to any Residence” unless said image is “fully concealed within a sealed

²⁶ Affidavit of Lydia Hrkach at para 9.

²⁷ *Ibid* at para 10.

envelope or package” that states: i) “the name and address of the person who is responsible for Delivery of the Graphic Image”; and ii) “a warning that the envelope or package ‘contains a Graphic Image that may be offensive or disturbing to some people’”; and

- f. contraventions of the by-law carry a maximum penalty of \$5,000.00.²⁸

III. ISSUES

A. STATUTORY FRAMEWORK AND STANDARD OF REVIEW

i. This Application Must Proceed Notwithstanding Any Limitation Period

33. In cases where the strict one-year limitation period set by section 273(5) of the Municipal Act has expired, municipal by-laws may alternatively be quashed on an application for judicial review to this Honourable Court pursuant to the *Judicial Review Procedure Act*.²⁹

34. Section 5(1) of the JRPA sets a 30-day limitation period on applications for judicial review.³⁰ However, this Honourable Court retains the discretion under section 5(2) of the JRPA to extend the time for making such an application “if it is satisfied that there are apparent grounds for relief and that no substantial prejudice or hardship will return to any person affect by reason of the delay”.³¹

²⁸ Affidavit of Lydia Hrkach at para 11 and Exhibit “U”: Fetal Image Bylaw.

²⁹ *Municipal Act, 2001*, S.O. 2001, c. 25, [s. 273\(5\)](#); *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 [the “JRPA”], ss. [2\(1\)](#), [6\(1\)](#). See *John Bruce Robinson Construction Limited v. Hamilton (City)*, 2022 ONSC 911 at [para 6](#).

³⁰ *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, [s. 5\(1\)](#).

³¹ *Ibid*, [s. 5\(2\)](#).

35. Insofar as the extent of and reason for an application's delay are also relevant factors in an analysis under section 5(2) of the JRPA, ARPA submits that it satisfies these criteria.³²

36. First, the "apparent grounds for relief" in this case are self-evident. This Honourable Court unquestionably retains the authority to review and issue declarations concerning municipal by-laws pursuant to the Rules of Civil Procedure.³³ The further issuance of an order in the nature of *certiorari* pursuant to section 2(1) of the JRPA (*i.e.*, to quash a by-law as an unlawful exercise of a statutory power) is one of several "mechanisms that have been used by the courts to ensure that public decision-makers observe the principles and rules of public or administrative law by which they must function".³⁴ The practical benefit of such an order is no less potent than it would have been immediately following the Fetal Image By-law's adoption.

37. Second, the City will suffer no prejudice if an application for judicial review of the Fetal Image By-law is permitted to proceed. To date, there are no known contraventions of or prosecutions under the Fetal Image By-law.³⁵ As such, the City would suffer no greater administrative inconvenience if this application were to proceed now than if it had otherwise been issued within the normal 30-day limitation period.

38. Third, the extent of and reason for ARPA's delay in issuing this application are justified. When the Fetal Image By-law was first adopted, ARPA's volunteer chapter in London was dormant. This local chapter was ultimately not revived until 2024.³⁶ As such, there was no

³² See *Unifor and its Local 303 v. Scepter Canada Inc.*, 2022 ONSC 5683 at [paras. 16-17](#).

³³ R.R.O. 1990, Reg. 194: RULES OF CIVIL PROCEDURE, [Rule 14.05\(3\)\(d\)](#).

³⁴ *Danbrook v. Georgina (Town of)*, 2023 ONSC 1201 at [para. 36](#), quoting *Setia v. Appleby College*, 2013 ONCA 753 at [para. 20](#). See also: *Copeland & Soucie v. H.M.Q.*, 2014 ONSC 620 at [paras. 10-12](#); and *Di Cienzo v. Attorney General of Ontario*, 2017 ONSC 1351 at [para. 3](#), in which Belobaba J. described an application for judicial review pursuant to JRPA as a "possible parallel route" to a Rule 14.05 application under the Rules of Civil Procedure for a determination of Charter rights.

³⁵ Affidavit of Ryan Mans at para. 31.

³⁶ Affidavit of Marian Meinen at para. 23.

immediate need for ARPA to expend resources on a constitutional challenge to the Respondent's Fetal Image By-law following its adoption.

39. Indeed, with the recent revival of ARPA's London chapter and the high probability of new private member's bills concerning pro-life issues being introduced in Parliament following the 2025 general federal election, ARPA and its volunteers are more likely to engage in advocacy regulated by the Fetal Image By-law now than at the time of its adoption.³⁷

40. In any event, ARPA submits that it is settled as a matter of law that a statutory limitation period cannot prevent this Honourable Court, as a guardian of the Constitution, from reviewing and issuing declarations on the constitutionality of legislation.³⁸

41. As Judson J. held in *Thorson v. Canada (Attorney General)*, "it would be strange and, indeed, alarming, if there was no way in which a question of alleged excess of legislative power, a matter traditionally within the scope of the judicial process, could be made the subject of adjudication".³⁹ Such adjudication (as further explained below) also extends to subordinate legislation such as the Fetal Image By-law. As such, this application must be permitted to proceed irrespective of the normal 30-day limitation period imposed by section 5(2) of the JRPA.

ii. The Standard of Review on this Application is Correctness

42. The Supreme Court of Canada (the "**Supreme Court**") recently clarified in *Auer v. Auer* that judicial review of subordinate legislation – which includes the review of municipal by-laws –

³⁷ Affidavit of Marian Meinen at paras. 31-35.

³⁸ *Manitoba Metis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14 at [paras. 134-135](#).

³⁹ *Thorson v. Canada (Attorney General)*, [1975] 1 S.C.R. 138 at [145](#).

must be conducted within the framework established in *Canada (Minister of Citizenship and Immigration) v. Vavilov*.⁴⁰

43. *Auer* confirmed that the principles articulated in *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)* continue to apply in such applications for judicial review. However, the Supreme Court further held that *Vavilov* removed the requirement from *Katz Group* that subordinate legislation must be “irrelevant”, “extraneous”, or “completely unrelated” to its statutory purpose if it is to be found *ultra vires*.⁴¹

44. In accordance with *Katz Group*, subordinate legislation is: i) presumed valid; ii) must be consistent with the specific provisions and overriding purpose or object of its enabling statute; iii) subject to a broad and purposive interpretation; and iv) is normally subject to review on a reasonableness standard. Nevertheless, per *Vavilov*, a correctness standard of review will apply on “constitutional questions that require a final and determinate answer from the courts”.⁴² Such is the case here.

45. The below grounds on which ARPA seeks judicial review of the Fetal Image By-law both engage questions of constitutional interpretation. The latter of these contentions, namely that the Fetal Image By-law unjustifiably limits the Charter’s guarantee of Freedom of Expression, raises an explicit constitutional issue and is therefore subject to review on a correctness standard per *Vavilov* and *Auer*.

46. Likewise, as further explained below, ARPA’s threshold contention that the Fetal Image By-law is *ultra vires* the City’s authority under the Municipal Act necessarily engages questions of

⁴⁰ *Auer v. Auer*, 2024 SCC 36 [*Auer*] at [paras. 21-23](#), citing generally [Canada \(Minister of Citizenship and Immigration\) v. Vavilov](#) 2019 SCC 65 [*Vavilov*].

⁴¹ *Auer v. Auer*, 2023 SCC 36 at [para. 32](#), citing generally *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64 [*Katz Group*].

⁴² *Auer v. Auer*, 2024 SCC 36 at [para 24](#).

constitutional interpretation. Specifically, if the provincial legislature lacks the authority under section 92 of the *Constitution Act, 1867* to adopt laws that censor or seek to regulate the content of expression *qua* expression, then the municipalities that it creates also lack the authority to adopt such laws.⁴³

47. Consequently, as a matter of statutory interpretation, the Municipal Act does not grant authority to the City to adopt by-laws (such as the Fetal Image By-law) which exceed the province's authority under section 92 of the 1867 Act. This interpretive question is thus also subject to review on a correctness standard.

48. The robust standard of review adopted in *Vavilov* and affirmed in *Auer* is consistent with jurisprudence specifically concerning the judicial review of municipal by-laws. The law is clear that the *vires* of a municipal by-law is a question of law reviewed on a standard correctness.⁴⁴

49. Concerning the legality of their by-laws, "municipalities do not possess any greater institutional expertise than the courts".⁴⁵ Indeed, when assessing a by-law's legality, "courts must be vigilant in ensuring that municipalities do not impinge upon the civil or common law rights of citizens in passing ultra vires by-laws", as ARPA contends is the case here.⁴⁶

⁴³ [Constitution Act, 1867](#) (UK), 30 & 31 Vict., c. 3 ["**1867 Act**"], s. 92, reprinted in R.S.C. 1985, Appendix II, No. 5.

⁴⁴ *Clublink Corporation ULC v. Oakville (Town)*, 2019 ONCA 827 at [para. 39](#), citing *Friends of Lansdowne*, 2012 ONCA 273 at para. 14, followed in *Singh v. Corporation of the City of Brampton*, 2022 ONSC 4059 at [para 22](#).

⁴⁵ *RSJ Holdings Inc. v London (City)*, 2007 SCC 29 at [para. 37](#), affirmed in *Friends of Lansdowne*, 2012 ONCA 273 at [para. 12](#) and *Singh v. Corporation of the City of Brampton*, 2022 ONSC 4059 at para. 20. See also *Bertrand v. Township of Ramara*, 2024 ONSC 7291 at [para. 150](#).

⁴⁶ *R. v. Greenbaum*, [1993] 1 S.C.R. 674 at [689](#).

B. THE FETAL IMAGE BY-LAW IS *ULTRA VIRES* THE CITY'S STATUTORY AUTHORITY

i. The Fetal Image By-law Was Not Adopted Pursuant to a Valid Municipal Purpose

50. Municipalities are created by – or, in the case municipalities such as the City, continued pursuant to – provincial legislation.⁴⁷ As such, municipalities have no jurisdiction to adopt by-laws that are inconsistent with their governing legislation (in this case, the Municipal Act).⁴⁸

51. In *Bracken v. Fort Erie (Town)*, the Court of Appeal accordingly held that the issue of whether a town's censorious trespass order was legally authorized should be considered prior to the applicant's Charter arguments concerning Freedom of Expression.⁴⁹ The same is true in this case. If this Honourable Court finds that the Fetal Image By-law is not supported by a valid municipal law purpose – or, indeed, is in any way *ultra vires* the Municipal Act – then the relief sought by ARPA must be granted irrespective of the Charter.

52. The Municipal Act does not confer any explicit authority on the City to adopt by-laws such as the Fetal Image By-law (*i.e.*, to regulate the delivery of ostensibly graphic and/or fetal images). Consequently, if it is to be found *intra vires*, then the Fetal Image By-law's true purpose must impliedly fall within the scope of one of the matters listed in section 11(2) of the Municipal Act.⁵⁰

53. As the Supreme Court explained *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, a by-law passed for the general welfare of the city does not allow the municipality to exercise powers "outside the traditional area of municipal interests."⁵¹ In *Shell Canada*, the Court likewise held that broad grants of municipal authority "must be construed subject to the

⁴⁷ *Singh v. Corporation of the City of Brampton*, 2022 ONSC 4059 at [para. 22](#), citing *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34 at [para. 2](#).

⁴⁸ *Friends of Lansdowne Inc. v. Ottawa (City)*, 2012 ONCA 273 at [para. 12](#), citing *London (City) v. RSJ Holdings Inc.*, 2007 SCC 29 at [para. 37](#).

⁴⁹ *Bracken v. Fort Erie (Town)*, 2017 ONCA 668 at [para. 24](#).

⁵⁰ *Municipal Act, 2001*, S.O. 2001, c. 25, [s. 11\(2\)](#).

⁵¹ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)* 2001 SCC 40 at [para. 53](#).

limitations imposed by the purpose of the statute as a whole” and that “[a]ny powers implied from their general language must be restricted to municipal purposes.”⁵² The Ontario Superior Court in *Eng v Toronto* further concluded that “the powers delegated to the City under the [Municipal Act] are limited to municipal issues.”⁵³

54. The Fetal Image By-law pursues a colourable censorious purpose that exceeds any explicit or implicit authority conferred by the Municipal Act. The stated purpose of the Fetal Image By-law is “to regulate the unsolicited Delivery of Graphic Images to Residences, so that recipients have an opportunity to choose whether they wish to view such images”.⁵⁴

55. Like its official title, the stated purpose of the Fetal Image By-law is misleading, since the by-law regulates fetal rather than graphic images. If regulating the delivery graphic images was the true purpose of the Fetal Image By-law, then its definition of “Graphic Images” would not have been restricted to “an image or photograph showing, or purporting to show, a fetus or any part of a fetus”.⁵⁵

56. Notably, one of the earlier drafts of the Fetal Image By-law considered by Council included a more facially objective definition of “Graphic Images”, namely “a detailed pictorial image or series of images, containing potentially sensitive content that may cause or trigger a negative reaction to the health and wellbeing of any person at any scale”, an example of which “may include, but is not limited to, dismembered human beings or aborted fetuses”.⁵⁶

57. The Fetal Image By-law replaced this earlier definition with one that exclusively captures all images “showing, or purporting to show, a fetus or any part of a fetus”, irrespective of whether

⁵² *Shell Canada Products Ltd. v. Vancouver (City)* [1994] 1 SCR 231 at [253-254](#).

⁵³ *Eng v. Toronto (City)*, 2012 ONSC 6818 at [para 20](#).

⁵⁴ Affidavit of Lydia Hrkach at para. 10 and Exhibit “R”: Draft Fetal Image By-law.

⁵⁵ *Ibid.*

⁵⁶ Affidavit of Lydia Hrkach at para. 8 and Exhibit “M”: Graphic Image Bylaw.

the fetuses shown are “dismembered” or “aborted”. Pro-life advocates are far more likely to utilize fetal images in their campaigns than pro-choice advocates (if, indeed, pro-choice advocates would ever use such images). In adopting such a conspicuously narrow definition of “Graphic Image”, Council thus abandoned the pretense that the Fetal Image By-law is intended to regulate images which could be objectively described as graphic or likely to traumatize recipients.

58. Consequently, the Fetal Image By-law does not fall within the City’s cited statutory authority under the Municipal Act to adopt by-laws “respecting health, safety, or wellbeing of persons” or “respecting the protection of property or persons, including consumer protection”.⁵⁷ These are the only two municipal law purposes that the Fetal Image By-law explicitly cites.⁵⁸

59. Images which merely show “a fetus or any part of a fetus” are not a threat to health, safety, persons, or property, as the Fetal Image By-law’s preamble falsely suggests. To the contrary, ARPA’s *We Need a Law* flyers are designed to attract their recipient’s attention by using non-graphic images (e.g., ultrasound photographs of fetuses) which respectfully display preborn human life. ARPA thus seeks to engage Canadians on pro-life issues without causing offence or trauma.

60. The Fetal Image By-law stymies any such efforts at moderate or tasteful pro-life advocacy. Recipients are generally less likely to open an envelope which has been marked with a “graphic” or “offensive” content warning. In this way, the Fetal Image By-law decreases the likelihood that pro-life flyers such as those circulated by ARPA will be viewed by London residents – even though the circulation of such materials is not categorically prohibited.⁵⁹

⁵⁷ *Municipal Act, 2001*, S.O. 2001, c. 25, [s. 11\(2\)](#).

⁵⁸ Nevertheless, APRA further contends that the Fetal Image By-law exceeds the City’s authority to adopt by-laws respecting the “[e]conomic, social and environmental well-being of the municipality”, as well as by-laws respecting “public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances”: *ibid*, [ss. 11\(2\), 128\(1\)](#).

⁵⁹ Affidavit of Marian Meinen at para. 40.

61. ARPA submits that the true purpose of the Fetal Image By-law is thus to censor and restrict the delivery of pro-life literature in London, regardless of whether such literature contains any images or photographs which are objectively graphic. Targeted censorship of political expression of which the City disapproves exceeds the municipal law purposes authorized by the Municipal Act. The Fetal Image By-law must accordingly be quashed.

iii. The Fetal Image By-law is Ultra Vires Section 92 of the 1867 Act

62. Additionally, or alternatively, it is axiomatic that municipalities such as the City have no authority (impliedly or otherwise) to adopt by-laws which the provincial legislature could not itself adopt within the scope of its constitutional authority. Thus, if the provincial legislature lacks certain legislative authority under section 92 of the 1867 Act, then it cannot – as a question of statutory interpretation – delegate similar authorities or powers to the municipalities it creates.⁶⁰

63. Neither municipalities nor the provincial legislatures which create them are empowered to determine the boundaries of what constitutes acceptable expression. To allow otherwise would be to grant these section 92 bodies authority over what Duff C.J.C. described in the *Reference re Alberta Legislation* as the “right of public discussion” itself. As the Chief Justice held in this landmark (though often forgotten) ruling:

Any attempt to abrogate this right of public debate or to suppress the traditional forms of the exercise of the right (in public meeting and through the press) would, in our opinion, be incompetent to the legislatures of the provinces, or the to the legislature of any one of the provinces, as repugnant to the provisions of the *British North America Act* ... The subject matter of such legislation could not be described as a provincial matter purely; as in substance exclusively a matter of property and civil rights within the province, or a matter private or local within the province.⁶¹

64. In other words, even though section 92 confers general authority over private and local matters (including matters concerning property and civil rights) the right to publicly engage in

⁶⁰ See *R. v. Westendorp*, [1983] 1 SCR 43 at [paras. 7, 17, and 22](#).

⁶¹ *Reference re Alberta Legislation*, [1938] S.C.R. 100 at [134](#).

debate on issues of national importance cannot be subject to local censorship. To impose such restrictions on the content of expression *qua expression* are thus by definition *ultra vires* the statutory authority of municipalities

65. ARPA's grassroots advocacy is strategically coordinated with ARPA's parliamentary relations efforts to support moderate pro-life bills in Parliament.⁶² While Parliamentarians often seek to avoid taking a stance on these issues, ARPA believes that ordinary Canadians support moderate pro-life policy proposals.

66. It is thus vital that Members of Parliament ("**MPs**") hear from their constituents on pro-life issues. This is why ARPA seeks to bring such issues directly to the attention of Canadian via traditional advocacy tools like flyers. These flyers point people to the *We Need a Law* website, which contains further information on the pro-life cause and encourages constituents to contact their respective MPs on these issues.

67. As in the *Reference re Alberta Legislation*, the City has exceeded its authority by censoring what certain pro-choice activists have deemed "unacceptable public messaging".⁶³ Under the conspicuously narrow definition adopted in the Fetal Image By-law, such messaging includes the sort of pro-life flyers that ARPA distributes as part of its *We Need a Law* campaign.

68. To be clear, ARPA does not deny that municipalities may impose certain restrictions on the time, place, and manner of expressive activities. This includes by-laws adopted according to valid law municipal purposes such as health, safety, and nuisance.⁶⁴ But politically targeted censorship is beyond the City's authority. It is also incompatible with the nature of a national

⁶² Affidavit of Ryan Mans at paras 16 and 28.

⁶³ Affidavit of Lydia Hrkach at para 5 and Exhibit "D": ARCC Letter dated November 5, 2020.

⁶⁴ *Municipal Act, 2001*, S.O. 2001, c. 25, [ss. 11\(2\)](#), [128\(1\)](#).

Parliamentary democracy, which requires free public discussion across the nation, not just in less censorious provinces and towns.⁶⁵

69. Such was the opinion of Abbot J. in *Switzman v. Elbling*, another pre-Charter ruling concerning the constitutionality of provincial legislation censoring the distribution of “communistic propaganda”.⁶⁶ In finding such legislation to be necessarily *ultra vires* the provincial legislature, Abbot J. adopted Chief Justice Duff’s description of the “right of public debate” from the *Reference re Alberta Legislation*:

This right cannot be abrogated by a Provincial Legislature, and the power of such Legislature to limit it, is restricted to what may be necessarily to protect [sic] purely private rights, such as for example provincial laws on defamation. It is obvious that the impugned statute does not fall within that category. It does not, in substance, deal with matters of property and civil rights or with a local or private matter within the Province and in my opinion is clearly *ultra vires*.⁶⁷

70. For these reasons, ARPA submits that the Fetal Image By-law exceeds provincial legislative authority under section 92 of the 1867. Consequently, the Municipal Act cannot be interpreted as implicitly conferring authority on the City to adopt by-laws (such as the Fetal Image By-law) that censor the boundaries of acceptable expression on issues of national importance.

⁶⁵ See *Reference re Alberta Legislation*, [1938] S.C.R. 100 at [134-135](#), per Duff C.J.C: “Indeed, there is a very wide field in which the provinces undoubtedly are invested with legislative authority over newspapers; but the limit, in our opinion, is reached when the legislation effects such a curtailment of the exercise of the right of public discussion as substantially to interfere with the working of the parliamentary institutions of Canada as contemplated by the provisions of The British North America Act and the statutes of the Dominion of Canada”. This passage was cited favourably by Locke J. in *Saumur v. Quebec (City)*, [1953] 2 S.C.R. 229 at [374](#)

⁶⁶ *Switzman v. Elbling*, [\[1957\] S.C.R. 285](#).

⁶⁷ *Ibid* at [324](#).

C. THE FETAL IMAGE BY-LAW LIMITS FREEDOM OF EXPRESSION

i. ARPA's Flyers are Protected Forms of Expression

71. The Charter's guarantee of Freedom of Expression protects "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication".⁶⁸

72. ARPA's *We Need a Law* flyers plainly constitute expressive content that conveys meaning.⁶⁹ Beyond their printed text, the imagery of these flyers consists of ultrasound photographs which also convey meaning. Such fetal imagery, in ARPA's view, implicitly conveys the message that preborn children are persons deserving of legal protection.⁷⁰

73. The freedom not to engage in expression is also protected by the Charter.⁷¹ The Fetal Image By-law requires ARPA volunteers to seal flyers containing fetal images in an envelope containing a misleading "Graphic Image" content warning, along with their name and address. Such compelled expression is itself a *prima facie* limit on Freedom of Expression.⁷²

ii. ARPA's Flyers Advance the Core Purposes of Freedom of Expression

74. ARPA's *We Need a Law* flyers advance the core constitutional purposes of Freedom of Expression, namely political participation, truth-seeking, and self-fulfillment.⁷³

⁶⁸ *Canadian Charter of Rights and Freedoms*, [s. 2\(b\)](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

⁶⁹ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at [969](#), affirmed in *Bracken v. Niagara Parks Police*, 2018 ONCA 261 at [para. 35](#).

⁷⁰ Affidavit of Anna Nienhuis at paras. 13-15.

⁷¹ *RJR-MacDonald v. Canada*, [1995] 3 S.C.R. 119 at [348-349](#).

⁷² See *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at [1060](#), citing *National Bank of Canada v. R.C.I.U.*, [1984] 1 S.C.R. 269 at [296](#).

⁷³ *R. v. Zundel*, [1992] 2 S.C.R. 731 at [752](#).

75. First, these flyers are plainly a form of political speech and political participation, which lie at the core of Freedom of Expression.⁷⁴ The *Defend Girls* flyers argue that permitting sex-selective abortion is inconsistent with Canada's commitment to sexual equality and with our current law against sex-selection of embryos in vitro. The *There Were Two* flyers likewise advocate for amendments to the Criminal Code. Both campaigns have supported pro-life private member's bills in Parliament. ARPA expects similar bills to be reintroduced in the current 45th Parliament.⁷⁵

76. Second, these flyers advance truth-seeking by raising public awareness of issues such as sex-selective abortion and pre-born victims of violent crimes. The flyers present ARPA's view that these are injustices worth remedying and deserving of Parliament's attention. As with all such forms of expression, recipients of ARPA's flyers are free to consider, contest, ignore, or support these views.

77. Third, distributing ARPA's flyers also advances the purpose of self-fulfillment for people who sincerely believe (whether for conscientious or religious reasons) that they should advocate for vulnerable pre-born children. These flyers concern weighty matters on which Canadians have sincerely and deeply held beliefs and opinions, which they should be free to share with others.

vi. *Flyers are a Quintessential Form of Charter-Protected Expression*

78. Distributing a printed flyer or pamphlet to express one's political views is a quintessential form of expression protected by the Charter. In *R. v. Guignard*, the Supreme Court described the "simple means of expression such as posting signs or distributing leaflets" as "the optimum means of communication for discontented consumers."⁷⁶ In this case, flyers allow ARPA and their volunteers to express discontentment with the lack of legal protection for preborn children.

⁷⁴ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at [976](#).

⁷⁵ Affidavit of Anna Nienhuis at para 142; Affidavit of Marian Meinen at para 34.

⁷⁶ *R. v. Guignard*, 2002 SCC 14 at [para. 25](#).

79. In *Ramsden v. Peterborough*, the Supreme Court similarly noted that “[p]ostering has historically been an effective and relatively inexpensive means of communication. Posters have communicated political, cultural and social information for centuries.”⁷⁷ On this point, the Court cited *Committee for the Commonwealth of Canada*:

If members of the public had no right whatsoever to distribute leaflets or engage in other expressive activity on government-owned property (except with permission), then there would be little if any opportunity to exercise their rights of freedom of expression. Only those with enough wealth to own land, or mass media facilities (whose ownership is largely concentrated), would be able to engage in free expression. This would subvert achievement of the *Charter’s* basic purpose as identified by this Court, i.e., the free exchange of ideas, open debate of public affairs, the effective working of democratic institutions and the pursuit of knowledge and truth. These eminent goals would be frustrated if for practical purposes, only the favoured few have any avenue to communicate with the public.⁷⁸

80. Accordingly, the delivery of flyers to residences is an affordable, accessible, and important feature of democratic life and political advocacy.

vii. The Fetal Image By-law Censors Pro-Life Expression

81. Images are an important tool for conveying messages – such as those conveyed in ARPA’s *We Need a Law* flyers – quickly, clearly, and powerfully. As such, imposing a blanket requirement on ARPA and its volunteers to conceal flyers which contain fetal images is a form of censorship.

82. The Fetal Image By-law requires that ARPA’s *We Need a Law* flyers be completely concealed before they can be delivered. Additionally, the Fetal image By-law compels certain statements to be printed on any such envelope or package, namely: i) the name and address of

⁷⁷ *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084 at [1097](#).

⁷⁸ *Ibid* at [1097](#), citing *Committee for the Commonwealth of Canada v. Canada*, , [1991] 1 S.C.R. 139 at [198](#).

the person responsible for said delivery; and ii) a warning that the flyer within “contains a Graphic Image that may be offensive or disturbing to some people”.

83. A warning that a concealed envelope or package contains “Graphic Images” discourages recipients from viewing such material. Consequently, many London residents will be disinclined to open and view ARPA’s *We Need a Law* flyers so concealed according to the Fetal Image By-law. The political effectiveness of these materials (which have been professionally designed to include vivid images, bright colours, and bold graphic designs) is thereby mitigated.

84. Furthermore, the Fetal Image By-law threatens both ARPA (including its directors and officers) and local volunteers like Marian Meinen with fines of up to \$5,000 per person per contravention. The threat of such penalties will significantly deter the distribution of *We Need a Law* flyers in London.⁷⁹

viii. *The Fetal Image By-law Imposes Prior Restraints on Expression*

85. Given the foregoing, ARPA submits that the Fetal Image By-law imposes prior restraints on pro-life political expression. A prior restraint on expression will arise where a state actor seeks to prohibit purportedly harmful expression based on its content rather than on its objective effects. As William Blackstone summarized this doctrine: “Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.”⁸⁰

86. In his dissent (though not on this point) in *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, Iacobucci J. noted that, in contrast to prior restraints, “subsequent

⁷⁹ Affidavit of Marian Meinen at paras. 39-41; Affidavit of Anna Nienhuis at paras. 49-51.

⁸⁰ William Blackstone, *Commentaries on the Laws of England, Book IV: Of Public Wrongs* (Oxford: Oxford University Press, 2016) at 153.

prohibitions [on expression] depend ‘not on prior censorship, but on subsequent criminal prosecutions and on their *in terrorem* effect’.⁸¹ Justice Iacobucci thus concluded that, as “particularly severe restrictions on speech”, state actors imposing prior restraints bear the onus of proving that said restraint was imposed “only when it was necessary, and when it was as narrowly tailored as possible”.⁸²

87. As the City’s records confirm, Council substituted a facially objective definition of “Graphic Images” in the Fetal Image By-law for one that singles out pro-life expression for censorship – not based on the *in terrorem* effects of this expression but rather its effective political content. For the reasons that follow, such a severe restriction on Freedom of Expression cannot be demonstrably justified in a free and democratic society.

D. THE LIMITATION ON FREE EXPRESSION IS NOT JUSTIFIED

i. The Oakes Test Applies

88. Under section 1 of the Charter, the City bears the onus of demonstrably justifying the foregoing limitations on Freedom of Expression.⁸³

89. The Supreme Court’s test from *R v. Oakes* for assessing limitations on Charter rights and freedoms applies to rules of general application such as municipal by-laws.⁸⁴ To satisfy section 1’s standard of demonstrable justification, the City must demonstrate that the Fetal Image By-law:

- i) pursues a pressing and substantial objective; ii) is rationally connected to this objective; iii)

⁸¹ *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 at [para. 232](#)

⁸² *Ibid* at [paras. 232, 235](#).

⁸³ *Canadian Charter of Rights and Freedoms*, [s. 1](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.

⁸⁴ *R v. Oakes*, [1986] 1 S.C.R. 103; *Charles Frederick Armstrong v. The Township of Russell*, 2025 ONSC 3790 at [para. 33](#). See *Doré v Barreau du Québec*, 2012 SCC 12 [Doré] at [paras. 36-37](#). See also *Christian Medical and Dental Society v College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 at [para. 62](#), in which it was held, in any event, that the application of either the *Oakes* or *Doré* tests should lead to the same substantive outcome.

minimally impairs freedom of expression in pursuit of this objective; and iv) achieves proportionality between its salutary benefits and deleterious effects.⁸⁵

90. *Oakes* thus requires that limits on Freedom of Expression meet the standard of demonstrable justification in a “free and democratic society”.⁸⁶ As the Supreme Court explained in *Dolphin Delivery*, “[t]he principle of freedom of speech and expression has been firmly accepted as a necessary feature of modern democracy.”⁸⁷ Likewise, in the *Reference re. Secession of Quebec*, the Court held:

The Constitution mandates government by democratic legislatures, and an executive accountable to them, “resting ultimately on public opinion reached by discussion and the interplay of ideas” (*Saumur v. City of Quebec* [...]). [...] No one has a monopoly on truth, and our system is predicated on the faith that in the marketplace of ideas, the best solutions to public problems will rise to the top. Inevitably, there will be dissenting voices. A democratic system of government is committed to considering those dissenting voices [...].⁸⁸

91. The Fetal Image By-law was adopted at the behest of organized pro-choice activists who urged the City to target pro-choice organizations (such as ARPA) for their “unacceptable public messaging”. Such content-specific censorship of political expression creates arbitrary standards for democratic participation that cannot be demonstrably justified in a free and democratic society.

ii. The Fetal Image By-law Does Not Pursue a Pressing and Substantial Objective

92. Under the first stage of the *Oakes* test, a “pressing and substantial objective” is one that is “sufficiently important” to justify limiting a Charter right or freedom.⁸⁹ This purported objective, as Guy Régimbald and Dwight Newman note, “need not be taken at face value but is subject to

⁸⁵ *R v. Oakes*, [1986] 1 S.C.R. 103 at [paras. 69-71](#).

⁸⁶ *Canadian Charter of Rights and Freedoms*, [s. 1](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.

⁸⁷ *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 at [para 14](#).

⁸⁸ *Reference re Secession of Quebec*, [1998] 2 SCR 217 at [para 68](#).

⁸⁹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at 352.

further inquiry”.⁹⁰ Such inquiry, in this case, demonstrates that the true purpose Fetal Image By-law – as opposed to its stated purpose – is neither pressing nor substantial.

93. “Graphic Image” is a defined term in the Fetal Image By-law that applies exclusively to images that “[show] or [purport] to show, a fetus or any part of a fetus”. Thus, the true purpose of the Fetal Image By-law is “to regulate the unsolicited Delivery of [fetal images] to Residences, so that recipients have an opportunity to choose whether they wish to view such images” – regardless of whether those fetal images are objectively graphic.

94. ARPA does not deny that the Fetal Image By-law could discourage the delivery of graphic images (including graphic images of aborted or dismembered fetuses) to London residences. However, ARPA further submits that fetal images – such as those commonly depicted in ultrasound photographs – are not inherently graphic, disturbing, or offensive.⁹¹ Accordingly, these images pose no threat to public health.

95. Furthermore, the Fetal Image By-law’s definition of “Graphic Image” does not apply to images depicting gore, violence, war, hunger, disease, natural disasters, accidents, weapons, human rights abuses, animal cruelty, *etc.* In other words, notwithstanding its stated purpose, the Fetal Image By-law does nothing to curtail the delivery of many types of graphic or potentially trauma-inducing images.

96. Preventing London residents from seeing an ordinary, non-graphic image of a preborn child (such as, *e.g.*, in an ultrasound photograph) serves no legitimate or pressing purpose. This would be true regardless of whether said fetus were depicted in a pro-life pamphlet, a pregnancy announcement, an ad for an ultrasound clinic, or any other publication.

⁹⁰ Guy Régimbald and Dwight Newman, *The Law of the Canadian Constitution*, 2nd ed. (Toronto: LexisNexis, 2017) at 592, citing *Harper v. Canada (Attorney General)*, 2004 SCC 33 at [paras. 25-26](#).

⁹¹ Affidavit of Anna Nienhuis at para. 14; Affidavit of Marian Meinen at para. 38.

97. The legitimacy of the Fetal Image By-law's purpose is made all the more suspect due to the fact that its adoption appears, based on the City's official records, to have been motivated in large part by bias against the expression of pro-life advocates. Indeed, pro-life advocates are, incontrovertibly, more likely to utilize fetal images than pro-choice advocates. In a free and democratic society, such overt and partisan restraints on expression cannot be tolerated.

iii. The Fetal Image By-law Is Not Rationally Connected to its Stated Objective

98. Even if this Honourable Court were to find that the Fetal Image By-law's true purpose is to regulate the delivery of objectively graphic images, ARPA submits that the ensuing limit on Freedom of Expression still lacks a rational connection to this purpose, as required by the second stage of the *Oakes* test.

99. As noted, the Fetal Image By-law does not regulate the delivery of graphic images generally: objectively graphic images (e.g., those depicting slaughtered animals or scenes of war) can still be delivered in London without any sort of covering or content warning so long as those images do not depict a "fetus or any part of a fetus". Conversely, the Fetal Image By-law regulates fetal images (e.g., ultrasound photographs) even where such images cannot be objectively described as graphic or disturbing.

100. To demonstrate a rational connection with a pressing and substantial objective, the City "must show a causal connection between the infringement and the benefit sought on the basis of reason or logic".⁹² Requiring a misleading "Graphic Image" content warning for any and all fetal images – while simultaneously exempting many types of objectively graphic images – is neither

⁹² *RJR-MacDonald Inc. v. Canada (AG)*, [1995] 3 S.C.R 199 at 339; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at [para. 48](#).

logically nor causally connected to legitimate, non-partisan, municipal law purpose such as health, safety, or nuisance.

iv. *The Fetal Image By-law Does Not Minimally Impair Freedom of Expression*

101. At the third stage of the *Oakes* test, the City must do more than simply assert that its chosen means of pursuing the Fetal Image By-law's stated objective is minimally impairing. The City must provide "provide evidence of a search for a minimally impairing solution to the problem it sought to address".⁹³ As such, the legislative history of the Fetal Image By-law (including consultation with stakeholders groups) must be assessed to determine whether the City adequately considered other, less freedom-impairing alternatives.⁹⁴

102. The City's records (namely, the minutes of the Committee and Council) confirm that the Council did, in fact, consider alternatives to the Fetal Image By-law that would have imposed fewer restrictions on pro-life expression. However, rather than adopting one of these alternatives, Council made the conspicuous decision at the eleventh hour to abandon a more facially objective definition of "Graphic Image" for one that exclusively targets the delivery of all fetal images – graphic or otherwise.

103. The City was thus presented with viable alternatives to the Fetal Image By-law that would have protected Londoners from receiving unsolicited graphic literature, but instead chose to restrict the delivery of images (*i.e.*, fetal images) that are almost exclusively used by pro-life advocates such as ARPA. While such targeted censorship may serve a partisan or political purpose, it necessarily exceeds the municipal law purposes invoked by the Fetal Image By-law.

⁹³ *Charles Frederick Armstrong v. The Township of Russell*, 2025 ONSC 3790 at [paras. 35-36](#), citing *Health Services and Support - Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at [para 151](#).

⁹⁴ *Galganov v. Russell (Township)*, 2012 ONCA 409 at [para. 81](#). See also: *Gammie v. Town of South Bruce Peninsula*, 2014 ONSC 6209 at [paras. 102-103](#); and *Bracken v. Fort Erie (Town)*, 2017 ONCA 66 at [para. 79](#).

104. Furthermore, the Fetal Image By-law's broad applications to any image depicting (or purporting to depict) "a fetus or any part of a fetus" further demonstrates that the City has failed to minimally impair the freedom of ARPA and other pro-life advocates. Blanket prohibitions on modes of political expression that are "peaceful yet effective and meaningful" (e.g., signs or, in this case, flyers) are not minimally impairing.⁹⁵

105. By broadly targeting all fetal images – rather than images of "dismembered human beings and aborted fetuses", as the draft Graphic Image By-law would have done – the Fetal Image By-law thus overshoots its stated objective of "[regulating] the unsolicited Delivery of Graphic Images to Residences, so that recipients have an opportunity to choose whether they wish to view such images".

v. *The Fetal Image By-law's Deleterious Effects Outweigh its Salutory Benefits*

106. Additionally, or alternatively, the deleterious effects of the Fetal Image By-law outweigh its salutary benefits.

107. The Fetal Image By-law requires ARPA and its volunteers to engage in compelled and misleading expression by warning that *We Need a Law* flyers contains "Graphic Images that may be offensive or disturbing to some people" – even though these flyers contain no such images. ARPA's flyers are designed to be visually attractive and compelling. ARPA deliberately avoids using language or images that would disturb or offend.⁹⁶

⁹⁵ *Detlor v. Brantford (City)*, 2013 ONCA 560 at para. 82. See also *Osborne v. Canada (Treasury Board)*, [1991] 2 S.C.R. 69 at 91.

⁹⁶ Affidavit of Anna Nienhuis at paras. 12-15.

108. The Fetal Image By-law further threatens both ARPA and the members of its affiliated chapters with significant fines should they contravene the Fetal Image By-law's onerous and misleading requirements for distributing flyer containing fetal images.

109. Additionally, the Fetal Image By-law requires that "the person who is responsible for the Delivery of a Graphic Image" must affix their name and address to the envelop or package in which said "Graphic Image" is delivered. This provision requires individual volunteers to list their name and address alongside any fetal images that they deliver on behalf of ARPA, thus increasing the risk that they will face acts of reprisal or doxxing from political opponents.⁹⁷

110. The Fetal Image By-law thus undermines the core purposes of Freedom of Expression, namely truth-seeking, political participation, and self-fulfillment. This strikes at the foundation of what it means to belong to a free and democratic society.

111. As the Court of Appeal recently held in *30 Days for Life v. Dietrich*, "[a] free and democratic society is one that is committed to permitting everyone to speak what they understand to be the truth about the most profound questions of being and flourishing, and to advocate for laws and policies that reflect this."⁹⁸ In that case, the profound question so raised was the lack of legal protection that preborn children enjoy in Canada. That same question is raised in this case.

112. Conversely, the Fetal Image By-law's salutary benefits are inherently speculative. Although the Fetal Image By-law may prevent graphic fetal images from being delivered to London residences, it will do nothing to prevent graphic images which do not depict a fetus from being delivered. There is no evidence that such imbalanced restrictions on the delivery off ostensibly graphic images will safeguard the health and wellbeing of Londoners.

⁹⁷ Affidavit of Marian Meinen at para 39; Affidavit of Anna Nienhuis at paras. 49-50.

⁹⁸ *40 Days for Life v. Dietrich*, 2024 ONCA 599 at [para 89](#).

IV. RELIEF SOUGHT AND CERTIFICATIONS

113. For the foregoing reasons, ARPA requests that this Honourable Court issue an order in the nature of *certiorari* quashing the Fetal Image By-law.

114. Additionally, or alternatively, ARPA requests that this Honourable Court issue a declaration that the Fetal Image By-law unjustifiably limits Freedom of Expression contrary to sections 1 and 2(b) of the Charter and is therefore of no force and effect.

115. ARPA further requests that no costs be awarded on this application, given the public interest in having this Honourable Court adjudicate the constitutional issues raised therein.

116. The undersigned counsel certify that they are satisfied as to the authenticity of every authority cited herein.

117. The undersigned counsel certify that the Applicant will require two hours for oral submissions, not including reply.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF JULY 2025.



Jonathan R. Sikkema (LSO # 67933W)



Kristopher E.G. Kinsinger (LSO # 80031L)

SCHEDULE A – LIST OF AUTHORITIES

114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), 2001 SCC 40.

40 Days for Life v. Dietrich, 2024 ONCA 599.

Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37.

Auer v. Auer, 2024 SCC 36.

Bertrand v. Township of Ramara, 2024 ONSC 7291.

Bracken v. Fort Erie (Town), 2017 ONCA 668.

Bracken v. Niagara Parks Police, 2018 ONCA 261.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65.

Charles Frederick Armstrong v. The Township of Russell, 2025 ONSC 3790.

Christian Medical and Dental Society v College of Physicians and Surgeons of Ontario, 2018 ONSC 579.

Clublink Corporation ULC v. Oakville (Town), 2019 ONCA 827.

Committee for the Commonwealth of Canada v. Canada, [1991] 1 S.C.R. 139.

Copeland & Soucie v. H.M.Q., 2014 ONSC 620.

Danbrook v. Georgina (Town of), 2023 ONSC 1201.

Detlor v. Brantford (City), 2013 ONCA 560.

Di Cienzo v. Attorney General of Ontario, 2017 ONSC 1351.

Doré v Barreau du Québec, 2012 SCC 12.

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Friends of Lansdowne, 2012 ONCA 273.

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[R. v. Big M Drug Mart Ltd.](#), [1985] 1 S.C.R. 295 at 352.

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[Ramsden v. Peterborough \(City\)](#), 1993 CarswellOnt 117 [1993] 2 S.C.R. 1084.

[Reference re Alberta Legislation](#), 1938 CarswellAlta 88.

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[RJR-MacDonald v. Canada](#), 1995 CarswellQue 119 [1995] 3 S.C.R. 199.

[RWDSU v. Dolphin Delivery Ltd.](#), 1986 CanLII 5 (SCC).

[Saumur v. Quebec \(City\)](#), 1953 CarswellQue 41.

[Setia v. Appleby College](#), 2013 ONCA 753.

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[Singh v. Corporation of the City of Brampton](#), 2022 ONSC 4059.

[Slaight Communications Inc. v. Davidson](#), 1989 CarswellNat 193, [1989] 1 S.C.R. 1038.

[Switzman v. Elbling](#), 1957 CarswellQue 39, [1957] S.C.R. 285.

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[Thorson v. Canada \(Attorney General\)](#), [1974] 1 S.C.R. 138.

[Unifor and its Local 303 v. Scepter Canada Inc.](#), 2022 ONSC 5683.

SCHEDULE B - SECONDARY SOURCES

Guy Régimbald and Dwight Newman, *The Law of the Canadian Constitution*, 2nd ed.
(Toronto: LexisNexis, 2017)

William Blackstone, *Commentaries on the Laws of England, Book IV: Of Public Wrongs*
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SCHEDULE C – RELEVANT STATUTE

Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23

Canadian Charter of Rights and Freedoms, s. 1, *Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, 1982, c. 11.

Constitution Act, 1867, 30 & 31 Vict., c. 3.

Constitution Act, 1982, being Schedule B to the *Canada Act 1982 (UK)*, c. 11, s. 52.

Criminal Code, R.S.C., 1985, c. C-46.

Judicial Review Procedure Act, R.S.O. 1990, c. J.1.

Municipal Act, 2001, S.O. 2001, c. 25.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Bill No. 188
2022

By-law No. PW-_____

A by-law to regulate the delivery of graphic
images in the City of London.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended ("*Municipal Act, 2001*") provides that a municipal power shall be exercised by by-law;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting the "Health, safety and well-being of persons" as well as by-laws for the "Protection of persons and property, including consumer protection";

AND WHEREAS the Council is satisfied that the unregulated Delivery of Graphic Images to residences does cause harm;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

Short Title

The short title of this by-law is the Graphic Image Delivery By-law.

Purpose

2.1 The purpose of this by-law is to regulate the unsolicited Delivery of Graphic Images to Residences, so that recipients have an opportunity to choose whether they wish to view such images.

Definitions

3.1 For the purpose of this By-law:

"**Deliver**" means to leave the Graphic Image anywhere on the property or mailbox associated with a Residence, whether or not the Graphic Image is handed to a person, and the noun "Delivery" has a corresponding meaning;

"**Graphic Image**" means an image or photograph showing, or purporting to show, a fetus or any part of a fetus;

"**Residence**" means any property or address that is not clearly identified from the abutting roadway as the location of a business;

Regulation of Deliveries

4.1 No person shall Deliver or participate in the Delivery of a Graphic Image to any Residence, unless:

- (a) the Graphic Image is fully concealed within a sealed envelope or package, and
- (b) the sealed envelope or package containing the Graphic Image is marked with the following notice and information:
 - (i) the name and address of the person who is responsible for Delivery of the Graphic Image, and
 - (ii) a warning that the envelope or package "contains a Graphic Image that may be offensive or disturbing to some people".

4.2 This By-law does not apply to:

- (a) mail that is Delivered to a Residence by Canada Post,
- (b) material that is Delivered to the Residence at the request or with the consent of the addressee.

Enforcement

- 5.1 Any person who contravenes a provision of this By-law is guilty of an offence.
- 5.2 A director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law is guilty of an offence.
- 5.3 Each person who contravenes a provision of this By-law shall, upon issuance of a penalty notice in accordance with the Administrative Monetary Penalty System By-law A-54, be liable to pay the Corporation of the City of London an Administrative Monetary Penalty.
- 5.4 A person convicted under this by-law is liable to a maximum fine of \$5,000.00.
- 5.5 This By-law shall come into force and effect on the day it is passed.

PASSED in Open Council on May 3, 2022.

Ed Holder
Mayor

Michael Schulthess
City Clerk

First Reading – May 3, 2022
Second Reading – May 3, 2022
Third Reading – May 3, 2022