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Canada Post Corporation
Legal Affairs



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VIA EMAIL: 

Dear Sirs/Mesdames:

RE: *Campaign Life Coalition Flyer Campaign*

We act for Campaign Life Coalition ("CLC"). Our client has instructed us to send you this correspondence, setting out its position regarding its flyer campaign currently taking place in New Brunswick (the "**Campaign**"). As you may be aware, CLC is conducting the Campaign using Canada Post's "Neighbourhood Mail" service.

The flyers being distributed during the Campaign are attached to this letter (the "**Flyers**").

As Canada Post is likely aware, the Campaign has garnered media attention.¹ Fredericton Councillor Ruth Breen, has called for complaints about the Flyers to be brought to Canada Post's attention.² We understand that the matter has even been brought to the attention of the Honourable Jean-Yves Duclos, Minister of Public Services and Procurement.³

In the face of such pressure being brought to bear on Canada Post in an apparent effort to censor CLC and prevent it from exercising the freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* (the "**Charter**"), the purpose of this letter is to remind Canada Post of its *Charter* obligations and to urge Canada Post to continue to deliver the Flyers.

Canada Post's Duties under the *Charter*

¹ See for example "[Anti-trans flyers just the start for lobbyist ahead of N.B. election](#)" by the Telegraph-Journal; "[Anti-abortion group sends flyers in support N.B.'s parental rights policies](#)" by the CBC; and "[Gender-affirming care: Concern over messages in flyers delivered to N.B. households](#)" by Global News.

² [Posted](#) to Councillor Breen's Facebook Page.

³ See "[Calls for Canada Post to stop 'hate mail' against gender care in New Brunswick](#)" by the Canadian Press.

Canada Post is a crown corporation established by the *Canada Post Corporation Act*.⁴ It is a government entity which is subject to the *Charter*.

Any decision made by Canada Post not to deliver the Flyers would constitute an infringement of CLC's right to freedom of expression as guaranteed by s. 2(b) of the *Charter* because 1) the Flyers contain expressive content; 2) a decision not to deliver the Flyers would limit that expression solely on the basis of its content; and 3) the Flyers are not excluded from s. 2(b) *Charter* protection.⁵

First, to have expressive content, something must merely convey a meaning. The Flyers clearly convey a meaning and are thus expression.⁶

Second, were Canada Post to decide against delivering the Flyers, their action would limit the freedom of expression by its purpose because it would be made to limit the content of CLC's message.⁷

Third, CLC's expression is not excluded from s. 2(b) protection by its method or location. It is not violent and is not encroaching on private government property. The Federal Court has found that mail is not exempted from s. 2(b) protection.⁸

Nor is this a "positive rights" claim. Canada Post provides a service available to all. It is "an existing platform" that CLC is "entitled to use...without undue state interference with the content of their expression."⁹

Therefore, any decision made not to deliver the Flyers would infringe CLC's *Charter*-protected right to freedom of expression.

The Flyers are Mailable Material

Moreover, the Flyers are valid mailable material under Canada Post's guidelines. They do not bear any illegal or prohibited messages, characteristics or markings. They do not contain sexually explicit material. The Flyers contain no graphic images, obscenity, or hateful expression. The Flyers merely make a comment on a policy enacted in the Province of New Brunswick. As such, they constitute political expression which lies at the core of the constitutional guarantee of free expression.¹⁰

Indeed, Canada Post's spokesman, Phil Legault, has confirmed that the Flyers did not meet the definition of "non-mailable matter."¹¹

⁴ R.S., 1985, c. C-10.

⁵ *Montréal (City) v. 2952-1366 Québec Inc.*, [2005 SCC 62](#) at para. 56.

⁶ *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 1 S.C.R. 927; [1989 CanLII 87](#).

⁷ *Ibid.*

⁸ *Sex Party v. Canada Post Corporation*, [2008 FC 41](#) at paras. 28-36.

⁹ *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, [2009 SCC 31](#) at para. 35.

¹⁰ *Irwin Toy*, *supra* note 5.

¹¹ "Canada Post confirmed it delivered the flyer, as it did not fall within its definition of "non-mailable matter," spokesperson Phil Legault said by email." [Reported](#) by the CBC.

Accordingly, any decision made at this point would be made outside of applicable regulations and would not constitute a valid basis prescribed by law that would justify a failure to deliver the Flyers.

Canada Post is Responsible for the Delivery of the Flyers

We further understand from our client that there may be postal delivery agents who are not delivering the Flyers. Media reports on this issue suggest that the Canadian Union of Postal Workers may have advised its members that they need not deliver the Flyers.¹²

CLC disagrees with any such position. Canada Post is free to determine how to accommodate individual employees; however, as a government body and Canada's national mail carrier, it is Canada Post's responsibility to ensure that CLC's freedom of expression is not unjustly curtailed. Canada Post must ensure that the Flyers are delivered pursuant to its contract with CLC for Neighbourhood Mail services.

Therefore, on behalf of our client, we urge Canada Post to respect its contractual obligations to CLC and/or its agents and continue to deliver the Flyers.

Please note that CLC expressly reserves all rights to take such further legal steps as may become necessary in connection with this matter.

Yours sincerely,

CHARTER ADVOCATES CANADA

Per:



Hatim Kheir
Staff Lawyer

¹² See comments quoted in the CBC [article](#).