Justice Centre
for Constitutional Freedoms

Interfering with Liberty, Sexuality and Gender: Overbroad Bans on "Conversion Therapy"

May 4, 2020

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Summary

The *Canadian Charter of Rights and Freedoms* serves to protect all Canadians from government limitations on their inherently private choices. There can be no more inherently private choices than the choices individuals make concerning their own sexuality and gender identity.

In Canada, it has long been accepted that "there's no place for the state in the bedrooms of the nation."[1] However, recent bylaws proposed (and in some cases adopted) by Canadian municipalities bring state interference into private conversations Canadians may choose to have about their sexuality and gender. These bylaws are advanced on the premise of condemning discredited "conversion therapy" practices, such as electric shock therapy.[2] Harmful and abusive practices are already banned by the various provincial bodies that regulate doctors, counsellors, psychologists and therapists. In some cases, these practices are also prohibited by the *Criminal Code*.

Municipalities, however, are defining "conversion therapy" expansively to include a wide range of medical, psychological and spiritual supports individuals may need or choose, concerning their sexuality or gender. Under such bylaws, supports to reduce same-sex sexual behaviour, or to help individuals regain comfort with their natal gender, are prohibited and punished by fines, in some cases "not less than $10,000."[3]

Municipalities do not have the legal jurisdiction to enact bans for the purpose of expressing moral condemnation of certain activities: that power is within the exclusive criminal law jurisdiction of the federal government.[4] While a municipality can regulate businesses, an outright prohibition on defined activities is *ultra vires*: beyond the legal powers of a municipality. Municipalities also do not possess legal authority to govern or manage the practices of doctors, counsellors, psychologists and other professionals; this jurisdiction belongs to the provincial government alone, not municipal governments.

Further, the personal choices of Canadians related to their sexuality and gender cannot be neatly confined to government-defined boxes. Some Canadians, including LGBTQ Canadians, choose monogamy; other Canadians have multiple sexual partners. Some Canadians choose to limit their sexual behaviour for any number of reasons, ranging from religious convictions to relationship expectations.

A growing number of Canadians are identifying as transgender, with many, but not all, taking active steps to transition away from their natal gender. At the same time, there are other Canadians who have chosen to "de-transition" back to their natal gender and are doing so.

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[1] 1967 statement of then-Justice Minister Pierre Trudeau when introducing a bill decriminalizing homosexual acts.
[2] See eg comments of Councillor Evan Woolley introducing Calgary motion to ban conversion therapy, February 3, 2020, available at https://pub-calgary.escribemeetings.com/Players/ISIStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement_Combined%20Meeting%20of%20Council_2020-02-03-11-18.mp4 at 58:30-59:02.
[3] *Ibid*.
[4] *The Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3, s 91(27).

Canadians have the freedom to make their own choices concerning their sexuality and gender. Governments and their laws should not discriminate against Canadians on the basis of their sexual orientation, their gender identity or their religious or other personal choices.

Municipal governments need to respect the rights and freedoms of all Canadians, including LGBTQ Canadians, to receive the medical, counseling and religious support of their own choosing, without limitation and discrimination on the basis of their sexual orientation or gender identity. If municipalities fail to do so, they can expect to find themselves subject to human rights complaints as well as court challenges for violating human rights and *Charter* freedoms.

Municipal bans on "conversion therapy"

Desiring to condemn specific harmful practices is laudable. However, municipalities are not justified in imposing a broad restriction on individuals' personal choices concerning their own sexuality and gender. Specific harm needs to be identified and clearly defined, and then prohibited. Good laws and good policies, by definition, cannot be vague. Further, municipalities need to examine whether a particular matter falls within their legal jurisdiction to prohibit or regulate, or whether it falls within the exclusive jurisdiction of the federal or provincial government. Last, and certainly not least, expansive bylaws that generally prohibit the personal choices of Canadians, without regard to whether those choices actually cause harm or not, cannot be "demonstrably justified in a free and democratic society" as required by section 1 of the *Charter*.

The term "conversion therapy" naturally and rightfully repulses people, as it evokes abusive and coercive practices that sought to eliminate same-sex attractions, including electro-convulsive therapy, aversion therapy, hormonal therapy (chemical castration), sex therapy, confinement and the infliction of bodily harm.

Sadly, recent municipal bylaws across Canada, both proposed and adopted, do not focus on harmful and abusive practices. Rather, they categorically prohibit a broad range of medical, psychological and spiritual supports that individuals currently and voluntarily choose to receive in relation to their sexuality, gender, sexual behaviour or addictions.

The City of Edmonton's bylaw is representative of the "conversion therapy" bylaws that have been proposed (and in some cases, adopted) in several municipalities. It utilizes the following definition of "conversion therapy":

> **Conversion Therapy:**
>
> The offering or provision of counselling or behaviour modification techniques, administration or prescription of medication, or any other purported treatment, service, or tactic used for the objective of changing a person's sexual orientation, gender identity, gender expression, or gender preference, or eliminating or reducing sexual attraction or sexual behaviour between persons of the same sex, not including

(a) services that provide acceptance, support, or understanding of a person or that facilitate a person's coping, social support, or identity exploration or development, or
(b) gender-affirming surgery or any service related to gender-affirming surgery.[5]

Several things are notable about this definition of "conversion therapy":

1. It is not limited to coercive or abusive practices;
2. It does not respect the voluntary choices of individuals;
3. It moves beyond attempts to "change" sexual orientation and prohibits "reducing … sexual behaviour" as may be desired by people suffering from addictions or otherwise seeking help to change their own behaviour;
4. It joins or conflates the separate and distinct concepts of gender identity and sexual orientation; and
5. It imposes only one option for people dealing with gender identity issues, by effectively prohibiting the affirmation of natal gender identity and allowing only what it terms "gender-affirming surgery".

Utilizing this definition, coupled with an expansive definition of "business" (discussed below), municipal bylaws would prohibit the following as "conversion therapy":

1. An individual voluntarily receiving counselling support to treat a sexual addiction (if the addiction involves same-sex sexual behaviour);
2. A faith-based support group that helps people to address sexual and gender identity issues in their own personal lives and which also embraces traditional and/or religious beliefs about sexuality and gender;
3. Medical and psychological support for individuals seeking to de-transition to their natal gender, or choosing to address their own gender dysphoria by seeking to accept their natal gender;
4. Counseling offered to help a child below the age of consent to stop engaging in same-sex sexual activity; and
5. Any therapy designed to help a child with gender dysphoria regain comfort with her or his natal gender.

[5] City of Edmonton, Bylaw 19061, *Prohibited Businesses Bylaw*, Schedule A – Prohibited Businesses (available at https://www.edmonton.ca/documents/Bylaws/BL19061.pdf) [City of Edmonton, Bylaw 19061]; see also Town of Rocky Mountain House, Bylaw 2019/15V, *the Business License Bylaw*, section 2.G., available at https://townrockymountainhouse.allnetmeetings.com/pubs/download.aspx?__ty=ag&agid=B16BB8BA-37B4-445F-AAB8-3DD5A1F393F0&atid=83F334C1-42ED-455E-879E34F24882A54E [Rocky Mountain House Bylaw 2019/15V]: City of Spruce Grove, Bylaw C-1103-19, *Conversion Therapy Prohibition*, s 2.4, available at https://agenda.sprucegrove.org/docs/2020/RCM/20200414_519/3934_3912_C-1103-19%20Conversion%20Therapy%20Prohibition%20Bylaw%20Third%20Reading%20-%20Clean%20Version.pdf [Spruce Grove Bylaw C-1103-19]; City of St. Albert, Bylaw 44/2019, *Conversion Therapy Prohibition Bylaw*, s 2.f., available at https://stalbert.ca/site/assets/files/9209/2019-44_conversion_therapy_prohibition_bylaw.pdf [St. Albert Bylaw 44/2019].

Municipalities do not have jurisdiction to enact "conversion therapy" bans

Municipalities are granted limited jurisdiction by provincial governments. Municipal bylaws must be "for municipal purposes".[6] The legal scope of the jurisdiction of municipalities is directed to the development and maintenance of safe and viable communities,[7] but within municipal purposes. Thus, while a municipality has powers to pass bylaws for protecting the "safety, health and welfare of people" and dealing with "businesses, business activates and persons engaged in business," municipal bylaws must be "for municipal purposes"[8] and cannot be for federal or provincial purposes.

Expressing moral disapproval of actions or activities is not a municipal purpose; this falls within the exclusive domain of Parliament's criminal law jurisdiction.[9] Nor do municipalities have any legal jurisdiction to manage or regulate the professions practiced by doctors, psychologists, counsellors and others; this jurisdiction belongs to the provinces, not any municipality.

In response to the demands of some activists,[10] municipal councils are advancing outright *prohibitions*[11]—not merely business or zoning *regulations*—on a wide swath of actions they condemn as "conversion therapy". An "outright prohibition" stands in contrast to "a business licensing regime." [12] Regulating businesses is within municipal jurisdiction, while an "outright prohibition" is in the realm of the federal government's criminal law power.

Considering the statements of councillors pushing these bans,[13] it is quite clear that the "dominant purpose" of these bylaws is to "express moral disapproval" of practices deemed "conversion

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[6] *Municipal Government Act*, RSA 2000, c M-26, s 7 [*MGA*].

[7] *MGA* s 3(b): The purposes of a municipality are … (c) to develop and maintain safe and viable communities"; see also *Community Charter*, SBC 2003, c 26, ss 7-8; *The Municipalities Act*, SS 2005, c M-36.1, ss 4 and 8; *The Municipal Act*, CCSM c M225, ss 3 and 232; *Municipal Act, 2001*, SO 2001, c 25, s 11; *Municipal Powers Act*, SQ 2005, C-47.1, ss 4 and 6; *Local Governance Act*, SNB 2017, c 18, ss 5 and 10; *Municipal Government Act*, c M-12.1, ss 3 and 180; *Municipal Government Act*, SNS 1998, c 18, ss 9A and 172.

[8] See e.g. *MGA*, ss 3 and 7.

[9] See *Westendorp v The Queen*, [1983] 1 SCR 43 at para 21-22; *Re Wendy and Town of Markham*, 1984 CanLII 2113 (ON CA) at para 6 allowing a challenge to a bylaw prescribing clothing requirements for entertainers since the bylaw was "a clear attempt to regulate public morals and therefore is an attempt to legislate in the field of criminal law".

[10] See eg *Wells, K. (2019), Conversion therapy in Canada: The roles and responsibilities of municipalities. Edmonton, AB: MacEwan University.*

[11] See statement of city administration at December 10, 2019, Edmonton City Council Meeting, available at http://sirepub.edmonton.ca/sirepub/mtgviewer.aspx?meetid=2327&doctype=MINUTES, 2:12:17-42. "This isn't about licensing the practice in any way shape or form. This is about prohibiting a practice"; Mr. Wolanski's statement at February 10, 2020 Spruce Grove Council Meeting: "The option around a business or land use bylaw prohibition was presented as an option for council during the October 15th meeting, but council chose not to proceed with this course of direction, but rather an overall prohibition ban," available at https://www.sprucegrove.org/media/3905/february-10-2020.mp3 2:31:15-2:31:47.

[12] See *Smith v St. Albert (City)*, 2014 ABCA 76 at paras 29, 32, 48-51.

[13] See recording of February 3, 2020, Calgary City Council Meeting, available at https://pub-calgary.escribemeetings.com/Players/ISIStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement_Combined%20Meeting%20of%20Council_2020-02-03-11-18.mp4, starting at approximately 54:00; see also statement of Rob Miyashiro, February 10, 2020, City of Lethbridge Council Meeting, "We need to take a stand on some things, not just on a moral ground but moral if you think its legal and ethical. If its something that we want to stand against because its not legal and its not ethical, or we don't think it should be legal, those are things that we

therapy". As such, these bylaws are likely to be found *ultra vires* municipalities as being within "Parliament's exclusive authority to legislate criminal law."[14] These bylaws also depart from the authority given to municipalities by the province.

"Conversion therapy" bylaws' violation of *Charter* rights

The purpose of the *Canadian Charter of Rights and Freedoms* is to preserve the individual rights of each and every Canadian, and to preserve Canada as a "free and democratic" society. These municipal bylaws, once passed, violate the *Charter*.

Violating individuals' right to liberty concerning their sexuality and gender

Section 7 of the *Charter* protects Canadians' right to liberty. Canadians have a "right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference."[15] The *Charter* protects our liberty when it comes to matters that are "fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence."[16]

Individuals' choices concerning their sexuality and gender are quintessentially and inherently private choices, going to the core of their individual dignity and independence. The *Charter* (and common sense) thus require that individuals' choices concerning their sexuality and gender should be "free from state interference."[17]

The liberty of individuals can only be infringed "in accordance with the principles of fundamental justice."[18] A government prohibition that is arbitrary, overbroad or disproportionate does not accord with the principles of fundamental justice and will be struck down by a court as an unjustifiable violation of a *Charter* right. This holds true even if a government measure has an arbitrary, overbroad or disproportionate effect on just one person.

The municipal bylaws being proposed are *overbroad* infringements of Canadians' liberty. They go much farther than banning coercive and harmful practices that are justly condemned. Rather, under expansive definitions of "conversion therapy," these bylaws would ban a broad range of

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need to do as a Council….We need to speak out and say, 'we're not in favour of it.'… let's make a statement to the rest of the country," available at https://agendas.lethbridge.ca/AgendaOnline/Meetings/ViewMeeting?id=2607&doctype=1, 1:20:18-1:21:48.

[14] See *Siemens v Manitoba (Attorney General)*, 2003 SCC 3 at para 32, upholding legislation permitting municipalities to ban VLTs since the moral effect was only "incidental" to the overall regulatory scheme: "Although there is a possibility that local morality may affect which municipalities choose to ban VLTs through binding plebiscites, **the dominant purpose of the *VLT Act* is not to express moral disapproval of VLTs.** In as much as there is a moral aspect to the *VLT Act*, this effect is incidental to the overall regulatory scheme, and does not infringe on Parliament's exclusive authority to legislate criminal law." [Emphasis added]

[15] *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 66.

[16] *Ibid*.

[17] *Ibid*.

[18] *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 91(24)*, s 7.

medical, psychological and spiritual supports that individuals may choose to receive in relation to their sexuality and gender.

These municipal bylaws are also *arbitrary* violations of Canadians' liberty. They allow medical support for individuals seeking to transition genders, but prohibit medical support for individuals seeking to de-transition back to their natal gender identity. There is no rational basis for this prohibition if the state is to respect the personal choices of Canadians. Likewise, these bylaws allow opposite-sex attracted individuals to receive counseling or spiritual support to reduce unwanted sexual behaviour or address sexual addictions, but prohibit same-sex attracted individuals from receiving the same counselling or spiritual support. This categorical limitation of the services available to individuals on the basis of their sexual orientation or gender identity is not only arbitrary, it is also discriminatory.

Violating the human rights of LGBTQ Canadians

Human rights codes across Canada prohibit discriminating against people on the basis of their sexual orientation, religion, gender identity, gender expression and other grounds.[19] Similarly, section 15(1) of the *Charter* guarantees "equal protection and equal benefit of the law without discrimination" based on individuals' personal characteristics.

A bylaw that allows straight Canadians to access support to reduce unwanted sexual addictions or behaviours, but bars gay Canadians from doing so is indisputable discrimination on the basis of sexual orientation. Similarly, allowing medical, psychological and other therapeutic interventions to help an individual transition away from her or his natal gender, while prohibiting such help for individuals seeking to de-transition, is likewise discriminatory.

That these bylaws discriminate against individuals is bad enough. Worse, they would also require all service providers, including religious organizations, to discriminate against individuals on the same basis: their sexual orientation, gender identity and gender expression. The proposed (and in some cases adopted) bylaws directly and deliberately prohibited all service providers from providing LGBTQ citizens with the same access to supports that are available to other citizens. A bylaw that forces service providers to choose between violating individuals' human rights or receiving massive fines deserves to be swiftly rejected (or repealed).

The *Charter* prohibits government from imposing such a quandary on service providers and religious groups. The *Charter* likewise prohibits governments from delegating this prohibited discrimination to others.

A municipality that adopts this kind of bylaw may expect LGBTQ Canadians to file human rights complaints against it for illegally discriminating against them. Should a municipality attempt to enforce such a discriminatory bylaw, it should expect that its bylaw will be overturned by a court applying section 15(1) of the *Charter*.

[19] See *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 4.

Attacking the core tenets of religious faiths

All major religious faiths provide guidance as to the moral code by which individuals should lead their lives; this moral code includes a person's sexual behaviour. A municipal bylaw that prohibits any service to help "reduce . . . sexual behaviour between persons of the same-sex" will require many faith communities to discriminate against their LGBTQ members who seek to pursue celibacy. Further, such a bylaw also directly attacks the central tenets of many religious communities concerning sexuality, which is a government violation of a fundamental *Charter* freedom.

Many faith traditions believe that the only permissible expression of sexual intimacy is between a man and a woman who are married to each other. Encouraging individuals to live in integrity, by bringing their beliefs and practice in conformity with each other, is the faith community's way of helping members in all aspects of their lives, including their sexuality. Lacking respect for the diverse religious communities which form Canadian society, recent municipal bylaws prohibit community members from seeking this integrity. While these bylaws are advanced under the emotion-laden label of banning "conversion therapy", these bylaws directly attack the teaching of religious beliefs about sexuality.

Religious faiths also hold beliefs about gender, including the concept that humans are created either female or male.[20] If a faith community teaches against gender transition and encourages members to find peace and wholeness by remaining in, or returning to, their natal gender identity, the faith community will be in violation of the bylaws using the City of Edmonton's definition of "conversion therapy". The City of Edmonton's bylaw goes so far as to prohibit faith communities from teaching their view of gender "with the objective of changing a person's … gender identity," even if the individuals receiving the teaching have specifically requested it. The City of Edmonton's bylaw essentially prohibits religious communities from teaching and maintaining their beliefs related to gender, unless those beliefs affirm gender transition.

This is discriminatory as between different religious communities and directly contrary to the first fundamental freedom outlined in the *Charter*, the freedom of conscience and religion:

> The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, **the right to declare religious beliefs openly and without fear of hindrance or reprisal**, and **the right to manifest religious belief by** worship and **practice or by teaching and dissemination**.[21]

Freedom of conscience and religion protects every Canadian, including atheists and agnostics, from government coercion. Freedom of conscience and religion necessarily includes the active promotion and teaching of one's religious or non-religious beliefs, even when the majoritarian or the empowered opinions disagree.

Individual LGBTQ Canadians who follow a religious path will find their freedoms infringed by bylaws like the City of Edmonton's bylaw, because those bylaws would limit LGBTQ Canadians' ability to receive the support they want if they choose to reduce their sexual behaviour or choose

[20] See e.g. Genesis 1:27.
[21] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at 336, Dickson J (as he then was).

to de-transition. Such bylaws—rather than expressly prohibiting coercive and abusive practices that are already prohibited by federal and provincial laws—would coercively limit individuals' personal choices:

> Freedom can primarily be characterized by the absence of coercion or constraint. **If a person is compelled by the state** or the will of another **to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free**. One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, **coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others**. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices.[22]

The definition of "business" includes houses of worship and religious groups

Some politicians have responded to concerns that the proposed bylaws would violate their religious freedom with the assurance that these bylaws will apply only to businesses. This response is disingenuous because the definition of "business" utilized in these proposed bylaws is incredibly broad, and clearly includes religious communities. The following definition of "business" has been proposed or adopted in numerous municipalities:

> "**business**" means
>
> (i) a commercial, merchandising, or industrial activity or undertaking,
> (ii) a profession, trade, occupation, calling, or employment, or
> (iii) an activity providing goods or services,
>
> whether or not for profit and however organized or formed, including a co-operative or association of persons;[23]

Because this definition of "business" expressly includes "not for profit" entities and "associations of persons," this definition automatically includes all gurdwaras, churches, synagogues, mosques and temples. Serving one's religious community as a priest, pastor, rabbi or imam qualifies as a "profession, trade, occupation, calling or employment." Religious leaders who provide counselling and support, which is an integral part of their daily work responsibilities, are providing a "service" while practicing their occupation and calling. In addition to applying to formally ordained and officially qualified religious leaders, these bylaws would likely also apply to individuals engaged in various informal religious callings, whether the individuals are ordained or not, even if they are not charging for their services.

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[22] *Ibid* at 336-37 [emphasis added].

[23] City of Edmonton, Bylaw 19061, s 2; this is the same definition of business stated in the *Municipal Government Act*, RSA 2000, c M-26, s 1(1)(a.1); see also Rocky Mountain House Bylaw 2019/15V, s 2.C.; Spruce Grove Bylaw C-1103-19, s 2.2; St. Albert Bylaw 44/2019, s 2.c.

While "business" would normally involve transactions for a fee, these bylaws do not require that "conversion therapy" be provided for a fee; rather, any practice deemed "conversion therapy" is prohibited outright.

It is disingenuous to respond to concerns from religious constituents by asserting that the proposed bylaw will only regulate "businesses" when the definition of "business" in the bylaw clearly applies to houses of worship, clergy and non-profit religious groups.

Violating the *Charter* rights of children and parents

Children have a *Charter* right to the care and protection of their own parents.[24]

These municipal bylaws appear to be entirely blind to their harmful impact on minor children. Prohibiting services to help reduce same-sex sexual behaviour is not limited to the sexual behaviour of adults. The proposed and adopted bylaws do not differentiate between adults and children. The bylaws apply equally to children, including those below any age of consent: children who are legally incapable of consenting to any sexual behaviour with others.

Further, prohibiting therapies to change an individual's gender identity, other than to pursue transition to one's non-natal gender, imposes a one-way and one-size-fits-all ideological street for helping children who are experiencing gender dysphoria. This is almost certain to have a chilling effect on practitioners offering gender dysphoria therapy or treatments. While the bylaws do grant permission to support "identity exploration," steep punitive fines if a therapy or counseling is deemed to have the objective of changing a person's gender identity will likely cause many practitioners to stop offering gender dysphoria therapy or treatments entirely, regardless of what may be in the best interests of particular children.

The rights of children are violated by government action that:

1. Prohibits some parents from obtaining help for their young child to combat sexual addictions or otherwise reduce sexual behaviour (which these bylaws clearly do); and
2. Places a chilling effect on practitioners' ability to use their professional judgment, training, education and expertise to provide individualized treatments and therapies in the bests interest of each child with gender dysphoria.

Likewise, the rights of parents are violated by these bylaws, which interfere blatantly in their ability to care for and protect their own children. In this regard, Justice LaForest stated in *B(R) v Children's Aid Society of Metropolitan Toronto*:

[24] See *CPL, Re*, 1988 CanLII 5490 (NL SC), at para 77: "The right that an infant child has, which is important to this case, is a right to be cared for by its parents. This is a right which I find is a right enshrined in the Charter under section 7. The right to security of the person. This is a right which a person is not to be deprived of except in accordance with principles of fundamental justice. The right of the state or the Crown to interfere with the right of security of the person can only be exercised if it is in accordance with the principles of fundamental justice."

> … the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent.[25]

According to the Supreme Court of Canada, this vital link between parent and child may only be interfered with on a case-by-case basis when "necessity" is demonstrated, and there is a sufficient justification for doing so.[26] Necessity must be demonstrated; it cannot merely be alluded to or theorized.

Municipal politicians have no expertise or justification to interfere with the work of healthcare professionals and other service providers, such as counsellors, when it comes to recommending courses of action to parents that are in the best interests of their children experiencing gender dysphoria.

Conclusion

Bylaws recently proposed and adopted by municipalities, ostensibly to prohibit "conversion therapy", fail to target coercive and harmful practices, but rather impose sweeping prohibitions that violate Canadians' human rights and constitutional freedoms, protected by the *Charter*, including the right to liberty and security of the person under section 7, the right to equality under section 15(1), and the right to conscience and religion under section 2(a).

Municipal bylaws that interfere in individuals' voluntary choices concerning their sexuality and gender—particularly where the bylaw discriminates against individuals on the basis of their sexual orientation and gender identity—are unlikely to be upheld by a court as justified in Canada's free and democratic society. A "conversion therapy" bylaw would need to be narrowly targeted to addressing specific and demonstrated harm. Even then, a "conversion therapy" ban would be struck down as *ultra vires* the municipality's jurisdiction.

Far from being narrowly tailored, recent municipal bylaws that use an expansive definition of "conversion therapy" to prohibit supports related to sexuality and gender are overbroad, arbitrary and discriminatory violations of Canadians' liberty.

[25] *B (R) v Children's Aid Society of Metropolitan Toronto*, [1995] SCR 315 [*B (R)*] at 370.
[26] *B (R)* at 371.