



**Justice Centre**  
for Constitutional Freedoms

**City of Calgary’s Proposed “Conversion Therapy” Bylaw:**  
*An Overbroad and Arbitrary Violation of  
Calgarians’ Individual Liberties*

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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.”<sup>1</sup> However, the City of Calgary is currently considering adopting a bylaw that would bring state interference into private conversations Calgarians may choose to have about their sexuality and gender. The bylaw is proposed on the premise of condemning discredited practices of “conversion therapy”,<sup>2</sup> such as electric shock therapy.<sup>3</sup> Harmful and abusive practices are already banned by various provincial bodies that regulate doctors, counsellors, psychologists and therapists, and in some cases, these practices are also prohibited by the *Criminal Code*.

The City of Calgary proposes, however, to expansively define “conversion therapy” to include an enormous range of medical, psychological or spiritual supports individuals may choose concerning their sexuality or gender.<sup>4</sup> Under this bylaw, supports to reduce same-sex sexual behaviour or to help individuals regain comfort with their natal gender are prohibited by a \$10,000 fine or possible imprisonment for one year.<sup>5</sup>

The City of Calgary does not have 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.<sup>6</sup> While the City of Calgary can regulate businesses, an outright prohibition is *ultra vires*, beyond the powers of the City of Calgary.

Further, the personal choices of Calgarians related to their sexuality and gender cannot be neatly confined to government-defined boxes.

Some Calgarians, including LGBTQ Calgarians, choose monogamy; other Calgarians have multiple sexual partners. Some Calgarians choose to limit their sexual behaviour for any number of reasons, ranging from religious convictions to relationship expectations. A growing number of Calgarians are identifying as transgender, with many, but not all, taking active steps to transition

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<sup>1</sup> 1967 statement of then-Justice Minister Pierre Trudeau when introducing a bill decriminalizing homosexual acts.

<sup>2</sup> See Notice of Motion re Banning Conversion Therapy, January 14, 2020, available at <https://pub-calgary.escrimeetings.com/filestream.ashx?DocumentId=122071>; Notice of Motion – Banning Conversion Therapy, January 21, 2020, available at <https://pub-calgary.escrimeetings.com/filestream.ashx?DocumentId=122070>; and Notice of Motion – Banning Conversion Therapy, Confirmed Minutes 2020 February 03, page 35, available at <https://pub-calgary.escrimeetings.com/FileStream.ashx?DocumentId=124900>

<sup>3</sup> See eg comments of Councillor Evan Woolley introducing the motion to ban conversion therapy, February 3, 2020, [https://pub-calgary.escrimeetings.com/Players/ISISStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement\\_Combined%20Meeting%20of%20Council\\_2020-02-03-11-18.mp4](https://pub-calgary.escrimeetings.com/Players/ISISStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement_Combined%20Meeting%20of%20Council_2020-02-03-11-18.mp4) at 58:30-59:02.

<sup>4</sup> *Proposed Prohibited Business Bylaw* (“*Proposed Bylaw*”), available at <https://pub-calgary.escrimeetings.com/filestream.ashx?DocumentId=130623>.

<sup>5</sup> *Proposed Bylaw* sections 5 and 6.

<sup>6</sup> See *Constitutional Act*, 1867, section 91(27)

away from their natal gender. At the same time, there are other Calgarians who have chosen to “detransition” back to their natal gender.<sup>7</sup>

Calgarians have the freedom to make their own choices concerning their sexuality and gender. The City of Calgary and its bylaws should not discriminate against Calgarians on the basis of their sexual orientation, their gender identity or their religious or other personal choices.

The City of Calgary needs to respect the rights and freedoms of all Calgarians, including LGBTQ Calgarians, 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 the City of Calgary fails to do so, it may expect to find itself the subject of human rights complaints and a court challenge for violating human rights and *Charter* freedoms.

### **The City of Calgary’s proposed ban on “conversion therapy”**

Desiring to condemn specific harmful practices does not justify Calgary City Council imposing a broad restriction on individuals’ personal choices concerning their own sexuality and gender. Specific harm needs to be identified and then prohibited. An expansive bylaw that generally prohibits the personal choices of Canadians without regard to whether those choices cause any harm 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 and the infliction of bodily harm.

However, the bylaw proposed to Calgary City Council does not focus on harmful and abusive practices. Rather, it categorically prohibits 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 addiction.

On February 12, 2020, Engage Calgary sent an email to a very limited number of people and organizations with the subject, “Stakeholder Input: The City of Calgary – Prohibited Business Bylaw”. The definition of “conversion therapy” provided for consultation was identical to that adopted in the City of St. Albert and the City of Edmonton<sup>8</sup> (enclosed as Appendix “A”).

In early May 2020, the City of Calgary released a “Proposed Prohibited Business Bylaw” (referred to hereinafter as the “Proposed Bylaw” and enclosed as Appendix “B”).<sup>9</sup> The Proposed Bylaw offered a similarly expansive but reworded definition of “conversion therapy”. The most significant difference between, for example, the Edmonton bylaw and the Proposed Bylaw is that

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<sup>7</sup> See eg <https://www.reddit.com/r/detrans/>, where many persons describe their experience as “detransitioning”.

<sup>8</sup> City of St. Albert Bylaw 44/2019, sections 2(f) (available at [https://stalbert.ca/site/assets/files/9209/2019-44\\_conversion\\_therapy\\_prohibition\\_bylaw.pdf](https://stalbert.ca/site/assets/files/9209/2019-44_conversion_therapy_prohibition_bylaw.pdf)); City of Edmonton Bylaw 19061, Schedule A – Prohibited Business Activity (available at <https://www.edmonton.ca/documents/Bylaws/BL19061.pdf>).

<sup>9</sup> *Proposed Prohibited Business Bylaw* (“Proposed Bylaw”) available at <https://pub-calgary.escribemeetings.com/filestream.ashx?DocumentId=130623>.

the Proposed Bylaw would only permit exploration of a person's identity that is "non-judgmental" and gives "acceptance of their identity". Thus, the Proposed Bylaw narrows this exception to "conversion therapy" and renders its interpretation subjective and vague.

The Proposed Bylaw defines "conversion therapy" as follows:

"Conversion therapy" means a practice, treatment, or service designed to change, repress, or discourage a person's sexual orientation, gender identity, or gender expression, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment, or service that relates

- (a) to a person's social, medical, or legal gender transition; or
- (b) to a person's non-judgmental exploration and acceptance of their identity or development

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 practices to "reduce non-heterosexual ... 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 treatment option for people dealing with gender identity issues, by effectively prohibiting the affirmation of natal gender identity and allowing only "a person's social, medical, or legal gender transition".

Utilizing this definition, coupled with an expansive definition of "business" (discussed below), Calgary's Proposed Bylaw would prohibit the following as "conversion therapy":

1. An individual voluntarily receiving counselling support to treat a sexual addiction (if it involves same-sex sexual behaviour);
2. A faith-based support group assisting people in addressing sexual and gender identity issues which also encourages adherence to traditional religious beliefs about sexuality and gender;
3. Medical and psychological support for individuals seeking to detransition to 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. A therapy designed to help a child with gender dysphoria regain comfort with her or his natal gender.

The Proposed Bylaw would punish anyone providing "conversion therapy," as well as landlords, employers, and affiliated persons who "acquiesced," with a \$10,000 fine or one year in prison.<sup>10</sup>

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<sup>10</sup> *Proposed Bylaw*, sections 5-6.

## **Proposed Bylaw's 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.”<sup>11</sup> The City of Calgary's Proposed Bylaw is a contemplated infringement of 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.”<sup>12</sup> 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” are protected by the *Charter*'s guarantee of liberty.<sup>13</sup>

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.”

Individuals' liberty can only be infringed “in accordance with the principles of fundamental justice.”<sup>14</sup> A government prohibition that is arbitrary, overbroad or disproportionate does not accord with the principles of fundamental justice. Even if a government measure has an arbitrary, overbroad or disproportionate effect on one person, a breach of the *Charter* right to liberty will be established.

Council's Proposed Bylaw is an overbroad infringement of Calgaryans' liberty. It goes much farther than banning coercive and harmful practices justly condemned, and rather prohibits, under its expansive definition of “conversion therapy”, a broad range of medical, psychological and spiritual supports individuals may choose to receive in relation to their sexuality and gender.

The Proposed Bylaw is also an arbitrary violation of individuals' liberty. It allows medical support for individuals seeking to transition genders, but prohibits medical support for individuals seeking to detransition back to their natal gender identity. Likewise, Calgary's Proposed Bylaw allows opposite-sex attracted individuals to receive counseling or spiritual support to reduce unwanted sexual behaviour or sexual addictions, but prohibits same-sex attracted individuals from receiving such 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.

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<sup>11</sup> *Charter*, section 1: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

<sup>12</sup> *Godbout v. Longueuil (City)*, [1997] 3 SCR 844 at para 66.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Charter*, section 7.

## **Violating the human rights of LGBTQ Canadians**

The *Alberta Human Rights Act* prohibits discriminating against people on the basis of their sexual orientation, religion, gender identity or expression.<sup>15</sup>

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 detransition, is likewise discriminatory.

The Proposed Bylaw would discriminate against individuals, but would also require all service providers, including religious organizations, to discriminate against individuals on the basis of their sexual orientation, gender identity and gender expression. Service providers would be directly and deliberately prevented from providing LGBTQ citizens 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 Calgary City Council's swift rejection.

The *Charter* prohibits government from imposing restrictions on personal autonomy of this nature. Rather, the *Charter* requires governments to treat Canadians equally and not discriminate based on such prohibited personal characteristics.<sup>16</sup> It likewise prohibits governments from delegating this prohibited discrimination to others.

If Calgary City Council adopts the proposed, or a similarly discriminatory, bylaw, it should expect LGBTQ Calgaryans to file human rights complaints for discrimination against the City of Calgary to the Alberta Human Rights Commission. Should the City of Calgary 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*.

## **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, and this includes a person's sexual behaviour. Calgary's Proposed Bylaw that prohibits any service to help "reduce non-heterosexual . . . sexual behaviour" will require many faith communities to discriminate against their LGBTQ members who seek to pursue celibacy. Further, it attacks the central tenets of many religious communities concerning sexuality.

Many faith traditions maintain the belief 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 who seek to reduce non-heterosexual sexual behaviour.

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<sup>15</sup> See *Alberta Human Rights Act*, section 4; *Canadian Human Rights Act*, sections 3 and 5.

<sup>16</sup> See *Charter* section 15(1).

Lacking respect for the diverse religious communities which make up Canadian society, the Proposed Bylaw seeks to prohibit community members from seeking this integrity. While the bylaw is advanced under the emotion-laden label of banning “conversion therapy”, the Proposed Bylaw in fact directly attacks and prohibits the teaching and practice of religious beliefs about sexuality contrary to the *Charter*, which protects diversity of belief and practice.

Religious faiths also hold beliefs about gender, including the concept that humans are created either female or male.<sup>17</sup> If a faith community teaches against gender transition and encourages members to remain in, or return to, their natal gender identity, the faith community runs the risk that their actions will be deemed to have the objective of changing a person’s “gender identity”, which is prohibited and subject to steep fines and possible imprisonment as part of the ban on “conversion therapy.” This interpretation of the City of Calgary’s Proposed Bylaw would prohibit religious communities from teaching and maintaining their beliefs related to gender, unless those beliefs affirm gender transitions.

Calgary’s Proposed Bylaw goes even further than Edmonton’s bylaw, and requires that the discussion of issues of sexuality and gender be “non-judgmental.” This highly subjective determination by the City of Calgary would become a key issue in whether to fine, and potentially imprison, clergy and other religious persons who provide counselling concerning sexuality or gender. Councillor Gian-Carlo Carra explained:

**Councillor Carra:** The issue is whether the advice and therapy and consultation offered is judgmental or non-judgmental. Churches are allowed to preach their beliefs; but when they advertise and transact with any individual regarding their sexual preference or gender identity, and if they do so in a judgmental way, then they are potentially in violation of this bylaw. There needs to be a complaint filed; there needs to be an investigation that proves that happened before anything happens, but the issue is not whether they can counsel or not; it’s whether they can counsel from a judgmental perspective or not.

**Councillor Chu:** OK, that is more clear, but again non-judgmental or judgmental, is a very much subjective, so how we’re going to deal with that, that’s the issue.<sup>18</sup>

Government scrutiny of—and potential fines or imprisonment for—simply teaching religious views deemed “judgmental” is 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**

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<sup>17</sup> See eg Genesis 1:27.

<sup>18</sup> See recorded comments of Councillor Gian-Carlo Carra and Councillor Sean Chu at SPC on Community and Protective Services, May 14, 2020, available at <https://pub-calgary.escribemeetings.com/Meeting.aspx?Id=25e7a1a5-22d3-4c18-97d5-1d019a336937&Agenda=Merged&lang=English&Item=20> at 26:13:00 – 26:14:10.



**and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.**<sup>19</sup>

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 majoritarian or empowered opinions disagree.

Individual LGBTQ Canadians who follow a religious path will also find their freedoms infringed by the Proposed Bylaw that would limit their ability to receive the support they want if they choose to reduce their sexual behaviour or choose to detransition. The City of Calgary's Proposed Bylaw—in contrast to a bylaw which expressly prohibits coercive and abusive practices—would act as a coercive force that limits an individual's own 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.<sup>20</sup>

### **Bylaw's definition of "business" includes houses of worship and religious groups**

Members of Calgary City Council have responded to Calgarians concerns that the Proposed Bylaws would violate their religious freedom by assuring them that the bylaws will apply only to businesses. This response is a disingenuous dismissal of religious Calgarians' legitimate concerns.

The definition of "business" in the City of Calgary's Proposed Bylaw is incredibly broad:

(2) In this bylaw:

(a) "**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;<sup>21</sup>

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<sup>19</sup> *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, Dickson J (as he then was) [emphasis added].

<sup>20</sup> *Ibid.*

<sup>21</sup> City of Edmonton Bylaw 19061, section 2; this is the same definition of business stated in the *Municipal Government Act*, RSA 2000, c M-26, section 1(1)(a.1).

One could hardly image language more broadly encompassing than defining “business” to include a “not for profit” and an “association of persons”. This definition automatically includes all gurdwaras, churches, synagogues, mosques and temples. This fact has been admitted by the City of Calgary’s law department.<sup>22</sup> Serving one’s religious community as a rabbi, pastor, imam or priest qualifies as a “profession, trade, occupation, calling or employment.” Religious leaders who provide counselling, which is an integral part of their work responsibility, are providing a “service.” The City of Calgary’s Proposed Bylaw would likely also apply to individuals engaged in various religious callings, whether they are formally ordained or not, even if they are not charging for their services because the definition of “business” expressly includes “calling”.

While “business” would normally involve a fee or exchange of benefits, the Proposed Bylaw does not require that “conversion therapy” be provided for a fee or exchange of benefits; rather, any practice deemed “conversion therapy” is prohibited outright. In order to be fined and possibly imprisoned practicing “conversion therapy”, all that is required is proof of “one transaction” in “conversion therapy” or that “conversion therapy” has been “advertised”.<sup>23</sup>

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 parents.<sup>24</sup>

Calgary’s Proposed Bylaw appears to be entirely blind to the impact on minor children. The prohibition on helping reduce sexual behaviour is not limited to the sexual behaviour of adults: it applies equally to children below the age of consent, who are legally prohibited from engaging in sexual behaviour with others.

The prohibition on therapies to change an individual’s gender identity, other than to pursue transition to the opposite gender, imposes a one-way ideological street in relation to the treatment of children experiencing gender dysphoria. While there is an exception to provide “non-judgmental exploration and acceptance of their identity”, this exception is highly subjective and vague. It depends on the subjective determination by a bylaw officer of whether a particular practice, treatment or service is sufficiently “non-judgmental” and gives “acceptance” to a person’s identity.

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<sup>22</sup> Comments of Calgary City senior lawyer Sasha Russell at February 3, 2020 Council Meeting: “We can catch church organizations within a bylaw that would be crafted for business activities but we would have to restrict it to the carrying on of the business”, available at <https://pub-calgary.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement%20Combined%20Meeting%20of%20Council%202020-02-03-11-18.mp4>, 1:02:45-59.

<sup>23</sup> *Proposed Bylaw*, sections 3-4 and Schedule A.

<sup>24</sup> See *C.P.L., Re*, 1988 CanLII 5490 (NL SC) [C.P.L.], 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 effect of Calgary’s Proposed Bylaw, which carries a \$10,000 punitive fine and possible jail time, will likely limit the therapies or treatments offered by practitioners for gender dysphoria that may be in the best interests of particular children.

The rights of children are violated by government actions that:

1. Prohibit parents from obtaining help for their young child to combat sexual addictions or otherwise reduce sexual behaviour (if such sexual behaviour involves non-heterosexual sexual behaviour); and
2. Place a chilling effect on practitioners’ ability to use their professional judgment, training, education and expertise to provide treatments and therapies in the best interest of children with gender dysphoria.

Likewise, the rights of parents are violated by such measures 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*:

I would have thought it plain that 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.<sup>25</sup>

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.<sup>26</sup>

Calgary City Council has no expertise or justification to interfere with the work of health professionals and other service providers, such as counsellors, when it comes to recommending courses of action to parents in the best interests of their children experiencing gender dysphoria.

### **Calgary City Council does not have jurisdiction to enact a “conversion therapy” ban**

Municipalities are granted limited jurisdiction by provincial governments. The scope of the jurisdiction of municipalities is directed to the development and maintenance of safe and viable communities.<sup>27</sup> Thus, while a municipality has powers to pass bylaws for protecting “safety, health and welfare of people” and dealing with “businesses, business activates and persons engaged in business, those bylaws must be “for municipal purposes”.<sup>28</sup>

It is not a municipal purpose to express moral disapproval of actions or activities, which falls within the exclusive domain of Parliament’s criminal law jurisdiction.<sup>29</sup>

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<sup>25</sup> *B (R) v Children’s Aid Society of Metropolitan Toronto*, [1995] SCR 315 at 370

<sup>26</sup> *B (R)* at para 371.

<sup>27</sup> *Municipal Government Act*, RSA 2000, c M-26 [*MGA*] section 3(b): The purposes of a municipality are ... (c) to develop and maintain safe and viable communities”.

<sup>28</sup> *MGA* section 7.

<sup>29</sup> See *Westendorp v. The Queen*, [1983] 1 S.C.R. 43, at para 21-22; *Re Wendy and Town of Markham*, 1984 CanLII 2113 (ON CA) 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” (para 6).

Apparently in response to the demands of activists,<sup>30</sup> the City of Calgary is proposing outright *prohibitions*—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”: regulating businesses is within municipal jurisdiction, while an “outright prohibition” is in the realm of the federal government’s criminal law power.<sup>31</sup>

Considering the statements of Calgary City Councillors,<sup>32</sup> it is quite clear that the “dominant purpose” of the Proposed Bylaws is “express moral disapproval” of practices deemed “conversion therapy”. As such, these bylaws are likely to be found *ultra vires* municipalities as being within “Parliament’s exclusive authority to legislate criminal law.”<sup>33</sup>

## Conclusion

The bylaw proposed before Calgary City Council, ostensibly to prohibit “conversion therapy,” fails to target coercive and harmful practices, but rather makes sweeping prohibitions that would violate Calgarians’ human rights and constitutional freedoms.

Government interference in individuals’ voluntary choices concerning their sexuality and gender, particularly where government discriminates against individuals on the basis of their sexual orientation and gender identity, is unlikely to be justified in Canada’s free and democratic society, unless such prohibitions are narrowly targeted to addressing specific and demonstrated harm. Even then, it is quite likely that a “conversion therapy” ban would be struck down as *ultra vires* the City of Calgary’s jurisdiction.

Far from being narrowly tailored, Calgary’s Proposed Bylaw uses an expansive definition of “conversion therapy” to prohibit a wide range of supports related to individuals’ sexuality and gender. If passed, the Proposed Bylaw will be an overbroad, arbitrary and discriminatory violation of Calgarians’ individual liberties.

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<sup>30</sup> See eg Wells, K. (2019), *Conversion therapy in Canada: The roles and responsibilities of municipalities*. Edmonton, AB: MacEwan University.

<sup>31</sup> See *Smith v St. Albert (City)*, 2014 ABCA 76 at paras 29, 32, 48-51.

<sup>32</sup> See recording of February 3, 2020 City Council Meeting, available at [https://pub-calgary.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement\\_Combined%20Meeting%20of%20Council\\_2020-02-03-11-18.mp4](https://pub-calgary.escribemeetings.com/Players/ISISStandAlonePlayer.aspx?ClientId=calgary&FileName=primary%20replacement_Combined%20Meeting%20of%20Council_2020-02-03-11-18.mp4), starting at approximately 54:00.

<sup>33</sup> 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]

## Appendix “A”

### *Text of February 12, 2020 Calgary Survey*

We want to make sure that our purpose statement is clear. Is the statement clear to you? If not, please provide details on what is unclear to you.

**Type your response in the box below**

**Purpose:** The purpose of this bylaw is to prohibit certain businesses and business activities.

We want to make sure that the definitions used in the bylaw are clear and easy to understand to those directly impacted. Below you will find two definitions. Are they clear and easy to understand? If not, please tell us what is unclear and why.

#### **Definitions**

“ **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;

#### **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.

Finally, we want your feedback about the clarity of the Proposed Bylaw if it is violated. The two sections below are about fines and tickets. Are they clear? If not, tell us what is unclear and why.

**Type your response in the box below**

#### **Fines**

A person found guilty of an offence under this bylaw is liable to a fine of an amount not less than \$10,000.

**Violation Ticket**

If a violation ticket is issued for an offence under this bylaw, the violation ticket may:

- (a) specify the fine amount established by this bylaw for the offence; or
- (b) require a person to appear in court without the alternative of making a voluntary payment. A person who commits an offence may, if a violation ticket is issued specifying the fine amount established by this bylaw for the offence, make a voluntary payment equal to the specified fine amount.

**Optional, please select from the following list of options:**

- I am answering on behalf of a faith organization
- I am answering on behalf of a LGBTQ2S+ organization
- I am answering for myself
- I identify as LGBTQ2S+
- I am answering as an individual of a faith group

**Appendix “B”**

***Calgary’s “Proposed Prohibited Business Bylaw”***

## **Proposed Prohibited Businesses Bylaw**

### ***Proposed Text of a Bylaw to Prohibit Certain Businesses***

**WHEREAS** under the section 3(c) of the *Municipal Government Act*, RSA 2000, c. M-26, the purposes of a municipality are to develop and maintain safe and viable communities;

**AND WHEREAS** Council of the City of Calgary may pass bylaws respecting the safety, health and welfare of people;

**AND WHEREAS** Council of The City of Calgary may, in passing a bylaw, regulate or prohibit, or provide for a system of licenses, permits or approvals, for any development, activity, industry, business or thing, until a license, permit or approval has been granted, which can include terms and conditions, and fines and penalties;

**AND WHEREAS** Council deems it necessary to provide for the regulation and licensing of all businesses carried on within the municipality;

**AND WHEREAS** the practice of conversion therapy is opposed by the Canadian Psychological Association and the College of Alberta Psychologists;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF CALGARY ENACTS AS FOLLOWS:**

### **PART I**

### **GENERAL**

#### **SHORT TITLE**

1. This Bylaw may be cited as the "Prohibited Businesses Bylaw".

#### **INTERPRETATION AND DEFINITIONS**

2. (1) Unless otherwise specified, words used in this Bylaw have the same meaning as defined in the *Municipal Government Act*.
- (2) In this Bylaw:
  - (a) "*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;



- (b) “*City*” means The City of Calgary;
  - (c) “*City Manager*” means the City’s chief administrative officer or delegate;
  - (d) “*officer*” means a bylaw enforcement officer appointed pursuant to Bylaw 60M86, a peace officer appointed pursuant to the *Peace Officer Act*, SA 2006, C. P-3.5, or a member of the Calgary Police Service;
  - (e) “*person*” means an individual human being or a corporation and includes a partnership, an association or group of persons acting in concert unless the context explicitly or by necessary implication otherwise requires;
- (3) Nothing in this Bylaw relieves a *person* from complying with any Federal or Provincial law or regulation, other bylaw or any requirement of any lawful permit, order or license.
  - (4) Any headings or subheading in this Bylaw are included for guidance purposes and convenience only, and shall not form part of this Bylaw.
  - (5) All Schedules attached to this Bylaw shall form part of this Bylaw.
  - (6) Specific references to laws in this Bylaw are meant to refer to the current laws applicable within the Province of Alberta as at the time this Bylaw was enacted and as they are amended from time to time, including successor legislation.

## PART II

### PROHIBITED BUSINESSES

#### PROHIBITED BUSINESSES

- 3. A *person* must not engage in or operate a business listed in Schedule A.

#### ADVERTISING

- 4. In a prosecution for a contravention of this Bylaw, proof of one transaction in the business or that the business has been advertised is sufficient to establish that a *person* is engaged in or operates the business.

#### SUMMARY CONVICTION OFFENCE

- 5. (1) Any *person* who contravenes any provision of this Bylaw by doing any act or thing which the *person* is prohibited from doing, or by failing to do any act or thing the *person* is required to do, is guilty of an offence pursuant to this Bylaw.
- (2) The owner of real property, who is registered on title at the Land Titles Office, shall be responsible for any act of a *person* carrying on business on the premises located on the property that constitutes an offence under this Bylaw, in the same manner and to the same extent as though the act were done by the owner.

- (3) For the purposes of this Bylaw, an act by an employee or agent of a *person* is deemed to be an act of the *person* if the act occurred in the course of the employee's employment or agency relationship with the *person*.
- (4) If a corporation commits an offence under this Bylaw, every principal, director, manager, officer, employee, or agent of the corporation who authorized, assented to, acquiesced, or participated in the act that constitutes the offence is guilty of the offence whether or not the corporation has been prosecuted for the offence.
- (5) If a partner in a partnership is guilty of an offence under this Bylaw, each partner in the partnership who authorized, assented to, acquiesced, or participated in the act that constitutes the offence is guilty of the offence.
- (6) Any *person* who is convicted of an offence pursuant to subsection (1) is liable on summary conviction to a fine not exceeding TEN THOUSAND (\$10,000.00) DOLLARS and in default of payment of any fine imposed, to a period of imprisonment not exceeding ONE (1) YEAR.

### **SPECIFIED PENALTIES**

6. The specified penalty applicable for an offence under this Bylaw is TEN THOUSAND (\$10,000.00) DOLLARS.

### **ENFORCEMENT**

7. (1) Where an *officer* believes that a *person* has contravened any provision of this Bylaw, the *officer* may commence proceedings against the person by issuing a violation ticket in accordance with the *Provincial Offences Procedure Act*, RSA 200, c. P-34.
- (2) This section shall not prevent an *officer* from issuing a violation ticket requiring a court appearance of the defendant, pursuant to the provisions of the *Provincial Offences Procedures Act*, or from laying an information in lieu of issuing a violation ticket.

### **COMMENCEMENT OF BYLAW**

8. This Bylaw comes into force on the day it is passed.

**SCHEDULE A**  
**PROHIBITED BUSINESSES**

<b>BUSINESS</b>	<b>PROHIBITED BUSINESS ACTIVITY</b>
Conversion Therapy	<p>“Conversion therapy” means a practice, treatment, or service designed to change, repress, or discourage a person’s sexual orientation, gender identity, or gender expression, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment, or service that relates</p> <ul style="list-style-type: none"><li>(a) to a person’s social, medical, or legal gender transition; or</li><li>(b) to a person’s non-judgmental exploration and acceptance of their identity or development</li></ul>