

Marty Moore

From: Marty Moore
Sent: May 23, 2020 3:29 PM
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Cc: 'cityclerk@calgary.ca'; 'Public Submissions'
Subject: Justice Centre response to inaccurate Administration memo re Banning Conversion Therapy CPS2020-0532 QA Summary
Attachments: Justice Centre response to Banning Conversion Therapy CPS2020-0532 QA Summary Memo 2020May20.pdf

Dear Mayor Nenshi and City Councillors,

We write to respond to legally inaccurate answers provided to you by Administration in its May 20, 2020 memo re Banning Conversion Therapy CPS2020-0532 – SPC on CPS Committee Q&A Summary.

For ease of reference, we provide our brief legal corrections and clarifications directly on the memo in different coloured font (please see attached).

The Justice Centre provided a written submission to the Standing Policy Committee on Community and Protective Services which was subsequently updated on May 20, 2020, available at <https://www.jccf.ca/wp-content/uploads/2020/04/City-of-Calgary%E2%80%99s-Proposed-Conversion-Therapy-Bylaw-An-Overbroad-and-Arbitrary-Violation-of-Calgarian%E2%80%99s-Individual-Liberties.pdf>.

Sincerely yours,

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"Defending the constitutional freedoms of Canadians"

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2020 May 20

ISC: Protected

To: Mayor Nenshi and Members of Council

From: Kay Choi, Strategic Services Manager, Calgary Community Standards

Re: Banning Conversion Therapy CPS2020-0532 – SPC on CPS Committee Q&A Summary

At the 2020 May 14 Standing Policy Committee on Community and Protective Services a request was made that Administration provide written answers to questions asked by Councillors.

Legal checks and clarifications are provided by the Justice Centre for Constitutional Freedoms to Administration's answers to questions 1-9, 11-17, and 19 in this font colour.

Bylaw Clarification

1. Does this proposed Prohibited Businesses Bylaw apply to teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members who support persons questioning their sexual orientation, sexual feelings, or gender identity?

No. This proposed Prohibited Businesses Bylaw would not apply to those who provide support to persons questioning their sexual orientation, sexual feelings or gender identity (such as teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members). Conversations that start from an open, non-judgemental, and unbiased perspective (ie *do not* start from a premise that the LGBTQ2S+ person needs to change) are supported under this bylaw.

Legal Check: Administration's Answer is Inaccurate

- The Bylaw would apply to teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals because all of these people work in a "profession, trade, occupation, calling or employment" and therefore qualify as "business" under section 2(1)(a)(ii) of the Bylaw.
- If any of these persons provides support to "reduce non-heterosexual...sexual behaviour" (definition in Schedule A), she or he will have violated the Bylaw's prohibition on "engag[ing] in...a business listed in Schedule A" (section 3) and will be subject to a \$10,000 fine or possible imprisonment (sections 5(6) and 6).
- An important rule for interpreting bylaws is that a general provision cannot be applied to override a more specific provision (see *ConocoPhillips Canada Resources Corp. v. Canada (Minister of National Revenue - M.N.R.)*, 2017 FCA 243, para 48). The Bylaw's specific prohibition on "a practice, treatment, or service . . . to repress or reduce non-heterosexual . . . sexual behaviour" cannot be overridden by a general and vague definition (in Schedule A) which states "for greater certainty" that "a practice, treatment, or service that relates . . . (b) to a person's non-judgmental exploration and acceptance of their identity or development" is permitted.
- Further, the determinations of what is "non-judgmental" (or an "open" and "unbiased" perspective, as added here by Administration) will necessarily be subjective based on the bylaw officers making that determination.

2. Would this bylaw prevent “same sex individuals” from seeking counselling regarding sex addition or efforts to reduce their sexual desires?

No. This proposed Prohibited Businesses Bylaw would not prevent a person from accessing professionals that provide a practice, treatment or service in these specific areas. Professionals have governing bodies that have already discredited “conversion therapy” and therefore focus on supporting people through acceptable practices, treatments and services.

Legal Check: Administration’s Answer is Inaccurate

- The Bylaw states expressly that if a counsellor, therapist or clergy provides a “practice, treatment, or service . . . to repress or reduce non-heterosexual attraction or sexual behaviour” (definition in Schedule A), she or he will have violated the Bylaw’s prohibition on “engag[ing] in . . . a business listed in Schedule A” (section 3) and will be subject to a \$10,000 fine or possible imprisonment (sections 5(6) and 6). These persons could help an individual reduce an addiction involving heterosexual behaviour, but the Bylaw expressly prohibits professionals from helping someone to overcome an addiction involving “non-heterosexual . . . sexual behaviour”.
- There is no exemption provision in the Bylaw permitting “[p]rofessionals [that] have governing bodies” to provide services deemed “conversion therapy” under the Bylaw.
- The Bylaw’s definition of “conversion therapy” is broader than the definition of “conversion therapy” used by professional bodies such as the Alberta College of Psychologists (*Standards of Practice*, section 5.3: “A psychologist shall not, in the course of providing a professional service, provide any treatment, counselling or behaviour modification technique with the objective of changing or modifying the sexual orientation, gender identity or gender expression of an individual.”).

3. Would this bylaw stop the work of any religious, non-judgmental spiritual consultation by any organization including; Mosques, Synagogue, Temple, or Church? Are there any unintended consequences?

No. This proposed Prohibited Businesses Bylaw does not prevent or restrict religious thoughts or beliefs, nor does it prevent the right to worship. The bylaw supports a non-judgmental and accepting approach to a person’s exploration of their identity or development.

Legal Check: Administration’s Answer is Inaccurate

- The Bylaw would apply to “services” offered by Mosques, Synagogues, Temples and Churches, since these are “associations of persons” which the Bylaw deems as “business” and the clergy or pastoral counsellors are also “business” since they are in a “profession, trade, occupation, calling or employment” (section 2(1)(a)(ii)).
- If any clergy or counsellor at these houses of worship provides support to help a congregant “reduce non-heterosexual . . . sexual behaviour” (definition in Schedule A), she or he will have violated Bylaw’s prohibition on “engag[ing] in . . . a business listed in Schedule A” (section 3) and will be subject to a \$10,000 or possible imprisonment (sections 5(6) and 6).
- An important rule for interpreting bylaws is that a general provision cannot be applied to override a more specific provision (see *ConocoPhillips Canada Resources Corp. v. Canada (Minister of National Revenue - M.N.R.)*, 2017 FCA 243, para 48). The Bylaw’s specific prohibition on “a practice, treatment, or service . . . to repress or reduce non-heterosexual . . . sexual behaviour” cannot be overridden by the Bylaw’s general and vague “for greater certainty” clause permitting “a practice, treatment, or service that relates . . . (b) to a person’s non-judgmental exploration and acceptance of their identity or development” (definition in Schedule A).

- Further, the Bylaw does not define the terms “non-judgmental” and “accepting” and any determinations of what is “non-judgmental” or “accepting” will necessarily be subjective, based entirely on the bylaw officer making that determination.

From a legal standpoint, the definition is specific enough and it does not intrude on any religious freedoms or rights. As such, it is very unlikely that there would be any unintended consequences. It would be at the discretion of the bylaw officer and prosecutor to respond to a complaint and proceed based on the facts of each case.

Legal Check: Administration’s Answer is Inaccurate

- The *Canadian Charter of Rights and Freedoms* guarantees much more than merely “religious thoughts and beliefs” or the “right to worship.” Rather, section 2(a) of the *Charter* protects “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” (*R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 94). The Bylaw directly restricts the “practice” and “teaching” of many religions that uphold sexual intimacy as appropriate only between a man and woman who are married to each other.
- The Bylaw’s stated consequences of a \$10,000 fine (and possible imprisonment) are not “unintended.” Rather, they are a deliberate deterrent which clearly threatens fundamental *Charter* freedoms even if bylaw officers and prosecutors have latitude to exercise discretion.

4. Does this bylaw allow churches to continue their regular practices of preaching and giving spiritual counselling to their followers?

Yes. This proposed Prohibited Businesses Bylaw does not prevent or restrict religious thoughts or beliefs, nor does it seek to prevent the right to worship. The Bylaw supports a non-judgmental and accepting approach to a person’s exploration of their identity or development.

Legal Check: Administration’s Answer is Inaccurate

- The Bylaw applies to “services” offered by churches and other houses of worship, since they are “associations of persons” which the Bylaw deems as “business” and their clergy or pastoral counsellors are also deemed in “business” since they are in a “profession, trade, occupation, calling or employment” (section 2(1)(a)(ii)).
- If any clergy or counsellor of these houses of worship provides support to help a congregant “reduce non-heterosexual...sexual behaviour” (definition in Schedule A), she or he will have violated the Bylaw’s prohibition on “engag[ing] in...a business listed in Schedule A” (section 3) and will be subject to a \$10,000 and possible imprisonment (sections 5(6) and 6).
- Since a general provision cannot be applied to override a more specific provision, the specific prohibition on “a practice, treatment, or service . . . to repress or reduce non-heterosexual . . . sexual behaviour” cannot be overridden by the Bylaw’s general and vague “for greater certainty” clause permitting “a practice, treatment, or service that relates ... (b) to a person’s non-judgmental exploration and acceptance of their identity or development” (definition in Schedule A).
- Further, the determination of what is “non-judgmental” or “accepting” will necessarily be subjective based on the bylaw officer making that determination.
- The *Canadian Charter of Rights and Freedoms* guarantees much more than merely “religious thoughts and beliefs” or the “right to worship.” Rather, section 2(a) of the *Charter* protects “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” (*R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 94). The Bylaw directly

restricts the “practice” and “teaching” of many religions that uphold sexual intimacy as appropriate only between a man and woman who are married to each other.

5. Can people still have conversations with each other? Does this bylaw allow for someone to have a conversation with their Pastor?

Yes, people can still have conversations, including with their Pastor. This proposed bylaw prohibits any business (as defined) from providing “conversion therapy” (as defined). Conversations that start from an open, non-judgemental, and unbiased perspective (ie *do not* start from a premise that the LGBTQ2S+ person needs to change) are supported under this bylaw.

Legal Check: Administration’s Answer is Partially Inaccurate

- The Bylaw does not prohibit conversations, but interferes with them by making “incorrect” conversations subject to a \$10,000 fine or imprisonment, when one of the persons is acting in a “profession, trade, occupation, calling or employment” which constitutes a “business” (section 2(1)(a)(ii)). The Bylaw expressly applies to a conversation with a pastor, teacher or counsellors, those individuals are engaged in a “profession, trade, occupation, calling or employment” and thus deemed in “business” by the Bylaw. A conversation with a friend or family member would not be affected.
- The Bylaw expressly states that if any clergy or counsellor provides support to help a congregant “reduce non-heterosexual...sexual behaviour” (definition in Schedule A), she or he will have violated the Bylaw’s prohibition on “engag[ing] in...a business listed in Schedule A” (section 3) and will be subject to a \$10,000 fine and possible imprisonment (sections 5(6) and 6).
- As mentioned, an important rule for interpreting bylaws is that a general provision cannot be applied to override a more specific provision. The Bylaw’s specific prohibition on “a practice, treatment, or service . . . to repress or reduce non-heterosexual . . . sexual behaviour” cannot be overridden by the Bylaw’s general and vague “for greater certainty” clause permitting “a practice, treatment, or service that relates . . . (b) to a person’s non-judgmental exploration and acceptance of their identity or development” (definition in Schedule A).
- The words “open” and “unbiased” are not in the Bylaw, but have been added here by Administration. Like the term “non-judgmental,” these terms are completely subjective and leave prosecutions (with possibilities of a \$10,000 fine and imprisonment) solely in the discretion of bylaw officers and prosecutors.

Business Definition

6. What constitutes a business? If you aren’t paying business taxes are you a business?

The City uses the *Municipal Government Act* definition of business in all bylaws when referencing business. It is a comprehensive definition and includes “...an activity providing goods or services, whether or not for profit and however organized or formed, including a co-operative or association of persons”.

Whether you pay business taxes is not the defining factor. The City recognizes businesses as those that are licensed or unlicensed and regardless of whether the business pays business taxes or not.

Legal Check: Administration’s Answer is Accurate

“Conversion Therapy” Definition

7. Why does the definition not explicitly identify coercion or infliction of bodily harm?

Coercion and infliction of bodily harm are only two specific forms of “conversion therapy”. It would be too lengthy to list all types or specific “conversion therapy” practices in the definition and would be inconsistent with other “conversion therapy” prohibition bylaws. Additionally, if legislation were to specifically include coercion or bodily harm in the definition, it would imply that other methods not listed would be acceptable.

Administration has recommended a comprehensive definition based on significant research, stakeholder engagement, and the federal definition.

Legal Check: Administration’s Answer is Misleading

- Administration’s answer demonstrates why municipal government exceeds its jurisdiction when it attempts to define or prohibit criminal behaviour (exclusively under federal jurisdiction, as per section 91 of the *Constitution Act, 1867*) or when it attempts to regulate what is and is not acceptable practice in the provision of medical, psychiatric, counselling and psychological services (under provincial regulatory bodies’ jurisdiction).

8. Who is going to be the judge on what is non-judgmental?

The term ‘non-judgmental’ is used to clarify that a practice, treatment, or service that avoids judgments or pre-determined outcomes must start from an open and unbiased perspective that supports individuals to explore their identity and development.

Bylaws typically are enforced on a complaint basis. To determine whether someone is in violation will be based on an investigation, which includes the unique situation and context of the complaint. For example, the evidence collected would need to support practices that align with what *is* included in the definition of “conversion therapy”, defined as “...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”.

Legal Clarification:

- As previously mentioned, a key rule of statutory interpretation is that a general provision cannot be applied to override a more specific provision. Thus, the Bylaw’s specific prohibition on “a practice, treatment, or service . . . to repress or reduce non-heterosexual . . . sexual behaviour” cannot be overridden by the Bylaw’s general and vague “for greater certainty” clause permitting “a practice, treatment, or service that relates . . . (b) to a person’s non-judgmental exploration and acceptance of their identity or development” (definition in Schedule A).
- The Bylaw’s existing wording makes it illegal for a psychologist, pastor or counsellor to assist a same-sex attracted person to confront and overcome an addiction or behaviour involving non-heterosexual sexual behaviour. Further, confronting an undesired behaviour is decidedly “judgmental.” The Bylaw exposes health professionals to the possibility of a \$10,000 fine or imprisonment if a bylaw enforcement officer, in her or his subjective discretion determines they offered or provided help to “reduce non-heterosexual . . . sexual behaviour” or if the treatment failed to be “non-judgmental.”

9. Many people during the public submissions used the term “de-transitioning”. Is this “de-transitioning” covered under this bylaw?

We can refer to transitioning or “de-transitioning” as simply – transitioning. This proposed Prohibited Businesses Bylaw is not focused on transitioning. Supporting a person transitioning is not “conversion therapy” because it’s not about changing their identity or having a pre-determined preference for an end goal, but rather about giving a person support for their existing self-determined identity.

Transition treatments/supports are covered in schedule A and are protected under this bylaw.

Legal Check: Administration’s Answer is Potentially Inaccurate

- While “gender transition” is commonly understood to be the process of conforming to a non-natal gender identity, desistance (of those with gender dysphoria) and detransition (of those who have had transitioning surgeries) are terms used when individuals reassume or seek to reassume their natal gender identity (see eg Danker, Sara; Narayan, Sasha K.; Bluebond-Langner, Rachel; Schechter, Loren S.; Berli, Jens U. (August 2018). "A Survey Study of Surgeons' Experience with Regret and/or Reversal of Gender-Confirmation Surgeries". *Plastic and Reconstructive Surgery – Global Open*. **6**: 189. doi:10.1097/01.GOX.0000547077.23299.00.ISSN 2169-7574 (referring to individuals who seek to “detransition”)).
- The Bylaw’s current wording is unclear as to its intention to include (or not) services for those who detransition and those who wish to pursue the goal of gaining comfort with their natal gender.
- By failing to make it clear that treatments or services individuals choose to help detransition are not prohibited by the Bylaw, the City of Calgary risks casting a chilling effect on health professionals and other services providers, who may stop offering those services entirely, to avoid the risk of receiving a \$10,000 fine or possible jail time if they are deemed to be providing a service to “change, repress, or discourage a person’s . . . gender identity, or gender expression.”
- The Bylaw could severely limit the availability of a diverse range of supports and services for those seeking to detransition, and for individualized treatments for children with gender dysphoria that do not relate to their “social, medical, or legal gender transition.”

10. How many cases of conversion therapy we have had in Calgary?

“Conversion therapy” is not formally tracked in Canada as it’s not yet a criminal offence under the Criminal Code. Report Attachment 2 references recent Canadian research where more than 47,000 sexual minority men reported experiencing “conversion therapy”. Exact types of “conversion therapy” are not known, which indicates that more research is required.

Municipal, Provincial and Federal Authorities

11. Could you clarify the difference between our jurisdiction versus the jurisdiction of the Federal and Provincial government where “conversion therapy” is concerned?

The Federal government’s jurisdiction would deal with the criminal component of “conversion therapy” and the provincial Health Professions Act allows the province to regulate self-governing health professions (such as the College of Alberta Psychologists). Five Canadian provinces have created their own provincial legislation prohibiting and/or restricting “conversion therapy”.

Through section 92 of the Constitution Act, the Federal government gives certain powers to the Provinces and the Provinces can then delegate certain powers to municipalities through the Municipal Government Act (MGA). Section 7 of the MGA allows Council to pass bylaws for the “safety, health and welfare of people” and “businesses, business activities and person engaged in business”. Section 8 of the MGA allows “Council to pass bylaws to regulate or prohibit those businesses”. These sections of the MGA allow Council the ability and jurisdiction to put this bylaw in place.

Legal Check: Administration’s Answer is Potentially Misleading

- While the City of Calgary has jurisdiction to pass bylaws for protecting “safety, health and welfare of people” and dealing with “businesses, business activities and persons engaged in business,” those bylaws must be “for municipal purposes” (MGA section 7). 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 (see *Westendorp v. The Queen*, [1983] 1 SCR 43, at para 21-22; see also *Re Wendy and Town of Markham*, 1984 CanLII 2113 (ON CA) striking down 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)).
- A municipal bylaw can regulate where certain professions and businesses can and cannot carry on their practice, and regulate other aspects like advertising, and hours of operation.
- This Bylaw is not merely a business *regulation*; rather it is essentially a prohibition on a wide swath of actions captured under its broad definition of “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 (see *Smith v St. Albert (City)*, 2014 ABCA 76 at paras 29, 32, 48-51).

12. If the federal government comes out with legislation, this will supersede municipal bylaws? Is this a waste of time?

Until the final reading of the federal Bill C-8 occurs, Administration won’t fully know the impact to this proposed Prohibited Businesses Bylaw. There is a possibility that the proposed bylaw could mirror the federal legislation and if this is the case, The City may look to make amendments to the bylaw. Administration will continue to monitor the federal government for progress.

Legal Clarification:

- Even if the City had jurisdiction to enact the Bylaw, upon the passage of federal *Criminal Code* provisions addressing “conversion therapy,” the doctrine of federal paramountcy would render the Bylaw inoperable to the extent of any conflict. See *British Columbia (Attorney General) v Lafarge Canada Inc.*, 2007 SCC 23 at para 112.

Legal

13. Have there been any legal challenges with the Edmonton or St. Albert bylaws?

To date, there have been no legal challenges with any similar Alberta municipal bylaws. Administration believes that there is no infringement on the *Charter of Rights and Freedoms* section 2 right (freedom of religion) as this bylaw does not limit the ability of anyone to practice their faith; instead it prohibits the business of conducting “conversion therapy”.

Legal Check: Administration’s Answer is Misleading

- As explained above, this Bylaw is a direct and serious violation of freedom of conscience and religion as protected by section 2(a) of the *Canadian Charter of Rights and Freedoms*, which the Supreme Court of Canada has interpreted as protecting the freedom to *teach* and *practice* one’s faith (and not merely to *believe* in it).

14. Does this proposed bylaw align well with the key requirements needed for legislation? How well are we in alignment to other bylaws that have been passed such as Edmonton’s?

This proposed bylaw meets key requirements for legislation and is mirrored from the Edmonton Prohibited Business Bylaw, so they are very similar. The proposed “conversion therapy” definition is aligned well to the federal definition and incorporates stakeholder feedback for greater clarity.

Legal Check: Administration’s Answer is Misleading

- Key requirements for a municipal bylaw are 1) that it be within the jurisdiction of the municipality, and 2) that it not violate the *Canadian Charter of Rights and Freedoms*.
- As mentioned above, this Bylaw is *ultra vires* the City of Calgary’s jurisdiction and will directly and unjustifiably violate the rights and freedoms of Calgarians protected in the *Charter*. see *City of Calgary’s Proposed “Conversion Therapy” Bylaw: An Overbroad and Arbitrary Violation of Calgarians’ Individual Liberties* (updated May 20, 2020), available at <https://www.jccf.ca/wp-content/uploads/2020/04/City-of-Calgary%E2%80%99s-Proposed-Conversion-Therapy-Bylaw-An-Overbroad-and-Arbitrary-Violation-of-Calgarian%E2%80%99s-Individual-Liberties.pdf>. Aligning with other bylaws that also violate Canadians’ *Charter* rights and freedoms is not helpful: see *Interfering with Liberty, Sexuality and Gender: Overbroad Municipal Bans on “Conversion Therapy”*, available at <https://www.jccf.ca/wp-content/uploads/2020/05/2020-05-04-Interfering-with-Liberty-Sexuality-and-Gender-Overbroad-Municipal-Bans-on-Conversion-Therapy.pdf>
- The goals of certain individuals for bylaws are not “key requirements” in any objective sense.

15. Do you think the definition of “conversion therapy” can withstand court challenges with respect to *Charter* rights?

Yes. There has been a thorough legal analysis and there are several legal tests that can be applied. We are confident that this bylaw, including the definition of “conversion therapy”, is legally defensible under the *Charter of Rights and Freedoms*.

Legal Check: Administration’s Answer is Potentially Inaccurate

- Since Administration has not provided any actual legal analysis in their response, it is difficult to put any faith on Administration’s claimed “thorough legal analysis” and conclusion that the Bylaw’s definition of “conversion therapy” is “legally defensible”.

- For clarity, it should be noted that the proper name of the *Charter* is “*Canadian Charter of Rights and Freedoms*” not “*Charter of Rights and Freedoms*” as Administration references. While the latter term is used frequently by bloggers and pundits, one would expect the use of correct legal terminology from those who claim to have conducted a thorough legal analysis.
- A thorough legal analysis of the Bylaw has been provided to the Mayor and all Councillors, as well as Administration: *City of Calgary’s Proposed “Conversion Therapy” Bylaw: An Overbroad and Arbitrary Violation of Calgarians’ Individual Liberties* (updated May 20, 2020), available at <https://www.jccf.ca/wp-content/uploads/2020/04/City-of-Calgary%E2%80%99s-Proposed-Conversion-Therapy-Bylaw-An-Overbroad-and-Arbitrary-Violation-of-Calgarian%E2%80%99s-Individual-Liberties.pdf>.
- Administration’s failure to provide its legal analysis and failure to address specifically and in detail the legal analysis that has been provided may provide an indication of how “thorough” Administration’s legal analysis has been.

Investigative Detail

16. Would a donation be considered a proof of transaction that could be used as evidence to show violation of this bylaw?

This would be considered proof of transaction and enough to show violation of this bylaw if the donation is provided in exchange for a practice, treatment or service that is 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.

Legal Clarification:

- The definition of “transaction” (see Bylaw section 4) does not necessarily require there to be a fee paid or donation provided. The Bylaw does not expressly require there to have been any payment in order for a conversation to be deemed a “transaction”.

17. What is meant by proof of advertising?

The Canadian Code of Advertising Standards defines advertising as “any message, the content of which message is controlled directly or indirectly by the advertiser expressed in any language and communicated in any medium with the intent to influence choice, opinion or behaviour”. For example, if a speaker organized and advertised an event that promoted “conversion therapy” (as defined), this would be in violation of the bylaw and be enough to show proof of advertising.

Legal Clarification:

- The Bylaw makes no requirement that an advertisement be published or written: even an oral conversation that offers to provide a service to help “reduce non-heterosexual . . . sexual behaviour” could be deemed sufficient to sustain a conviction for “conversion therapy” (sections 3-4) punishable by a \$10,000 fine or potential imprisonment (sections 5(6) and 6).

Stakeholder Engagement

18. How were stakeholders engaged?

An online survey to ensure clarity of the definitions of business, “conversion therapy”, fines and violation was provided to 58 organizations. Multilanguage options were not provided for this survey. The following organizations were engaged:

- 44 faith-based groups including organizations representing the Christian, Jewish, Islamic, Sikh, Hindu and Buddhist faiths
- 8 LGBTQ2S+ organizations
- 6 other organizations such as a mental health organization or an aboriginal student centre

In addition to the structured online survey, Administration received numerous letters and emails via Councillor offices.

19. Was the engagement process robust, thoughtful and deep enough?

Administration did not engage stakeholders on whether or not to produce a bylaw, but rather on input into the bylaw and definitions where the input gathered could be used by Administration and be insightful for Council.

Engagement at The City is defined as *“Purposeful dialogue between The City and citizens and stakeholders to gather information to influence decision making.”* It is not about reaching a certain number of people but rather those who are directly impacted and interested on a specific issue/topic or project to gather input for decision making. The engagement followed The City’s standard practice. Consideration was given to both the Multicultural Strategy for Communications & Engagement and the Inclusive Engagement Guide.

In addition to the input received in the preparation of the report, we subsequently heard 121 verbal public submissions over the course of the Standing Policy Committee on Community and Protective Services meeting and received 1800 pages of written submissions.

Legal Clarification:

- The Stand Policy Committee on Community and Protective Services meeting held on May 13-14, 2020, was conducted in a prejudiced and biased manner.
- Public presenters who opposed the broad definition of “conversion therapy” in the Bylaw were subject to numerous interruptions by “points of order” from Vice Chair and Councillor Woolley to express his “frustration”.
- Likewise, Chair and Councillor Carra took it upon himself to “fact-check” presenters by interrupting to interject his own perceptions of reality and requesting well-known activist Dr. Kris Wells to contradict the opinions and research provided by presenters.
- Most concerningly, Chair Carra stopped numerous presenters from giving their presentations when he deemed them incorrect or offensive, telling the presenters to change their presentations or move on to other points.
- Such overbearing and censorious interference with the democratic process of this Bylaw is an alarming violation of Calgarians’ freedom of expression (including their right to hear diverse opinions) protected by section 2(b) of the *Charter*.

20. What was revised/changed based on stakeholder input?

The definition provided to stakeholders was from the Edmonton Prohibited Business Bylaw. It is quite lengthy and detailed. Based on stakeholders’ clarifying questions and aligning with the federal government definition, Administration proposed a shorter and more concise “conversion therapy” definition.

The proposed definition is more robust than the federal definition. Below is a comparison of the two definitions. Highlights indicate additional clarification words Administration has included when comparing to the federal definition.

Federal Definition	Proposed Calgary Definition
<p>Conversion therapy means a practice, treatment or service designed to change a person’s sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce nonheterosexual attraction or sexual behaviour.</p> <p>For greater certainty, this definition does not include a practice, treatment or service that relates</p> <ul style="list-style-type: none"> (a) to a person’s gender transition; or (b) to a person’s exploration of their identity or to its development. 	<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.</p> <p>For greater certainty, this definition does not include a practice, treatment, or service that relates</p> <ul style="list-style-type: none"> (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

Thank you for the opportunity to provide a summary. Please let us know should you have any questions or concerns.

Sincerely,

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cc: Administrative Leadership Team