



CANADIAN COUNCIL of CHRISTIAN CHARITIES
ADVANCING MINISTRY TOGETHER

January 28, 2020

Mayor Naheed Nenshi

Office of the Mayor,
The City of Calgary
P.O. Box 2100, Station M
Calgary, AB, T2P 2M5

BY EMAIL: themayor@calgary.ca

Dear Sir,

Re: Conversion Therapy

The Canadian Council of Christian Charities is a charitable organization that assists its 3,400 members in accessing the necessary information to effectively operate in the charitable sector. In Alberta we represent 553 members; many are churches, but our membership also includes dozens of schools (including universities, colleges, and seminaries) as well as humanitarian agencies, theatre programs, summer camps, homeless shelters, community development organisations, media and broadcasting companies, and medical associations. As part of our mandate, we write to you to express our growing concern about the “conversion therapy bans” that are being passed by various legislatures and municipal councils across Canada.

Media reports indicate that the federal government has called upon provincial and municipal governments to implement bans against “conversion therapy.” The media and many politicians are using the term “conversion therapy” very broadly, not only in reference to dubious psychological treatments undertaken by professionals, but also in regards to religious groups that hold traditional moral views on sexuality. It would appear that the current bans already passed by a number of municipalities and provinces may pose significant legal problems. We are concerned that Calgary may follow with similarly problematic language.

We wish to clarify, first, that we are opposed to any forced treatment that seeks to change someone’s sexual attraction against their will. Canada has been a beacon of light in the field of human rights to ensure that everyone’s human dignity is respected. There can be no tolerance for those who intentionally harm another person due to their sexual attraction.



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Secondly, among the human rights protections at issue are those of the religious communities who are being falsely accused of being involved in abusive behaviour when they are not. It is extremely important that when writing by-laws such as the conversion therapy ban being proposed by your council, that careful attention is made to ensure that there are no unintended negative effects on law-abiding religious communities.

With that in mind, we wish to make you aware of our concerns with the conversion therapy bans we have seen to date, and which we are concerned you may implement in Calgary:

- *Overbroad language* – from the bans already in force, as for example in Edmonton, Fort McMurray, and the province of Nova Scotia, we see language that is so broad that it would include religious communities expressing opinions on religious texts. In Fort McMurray, councillor Keith McGrath stated, “[s]ome parts of the bible need to be revisited and renewed.”¹
- *Lack of Consultation* – the full impact of these bans has not been properly vetted by the public. There is a sense of urgency that governments pass these bans but there has been very little opportunity for the public to understand and appreciate the potential implications.
- *Potential Charter Violation: Section 2(b) freedom of expression / coerced expression* – the ban compels an individual to express himself or herself in a particular manner, prioritizing particular desires over others, and precluding an individual from expression that differs from the prescribed norms in the proposed bylaw. Should an individual choose to prioritize (for example) faith over all other desires -- personal, sexual, professional – blanket prohibitions such as Edmonton’s By-Law 19061 deny an individual from having assistance in so doing as it relates to sexuality, even if there is consent. Section 2 of the *Charter* guarantees freedom of expression; this limit unjustifiably infringes that right.
- *Potential Charter Violation: Section 7 right to life, liberty and security of the person* – the *Charter* requires that laws be enacted in accordance with the principles of fundamental justice. One of those principles is that a law cannot be arbitrary.² That is, there must be

¹ As quoted by Brandon Piper, “Council Officially Bans Conversion Therapy Throughout RMWB,” MIX 103.7, January 14, 2020 08:41 pm, online: <https://www.mix1037fm.com/2020/01/14/81467/>

² *AC v Manitoba*, 2009 SCC 30 at para 103 cites *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 on arbitrariness: As the Chief Justice and Major J. explained in *Chaoulli*: “The state is not entitled to arbitrarily limit its citizens’ rights to life, liberty and security of the person” (para. 129). A law will be arbitrary where “it bears no relation to, or is inconsistent with, the objective that lies behind [it]”. To determine whether this is the case, it is necessary to consider the state interest and societal concerns that the provision is meant to reflect: Rodriguez, at pp. 594 95.



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more than a “theoretical connection” between the limit on *Charter* rights and the legislative goal. A number of politicians seem to suggest the ban is merely symbolic, which means there is only a theoretical connection between the limit and the legislative goal, particularly where there are no consent exceptions.

- *Overstepping Jurisdiction: ultra vires the municipality* – when a municipality is dealing with matters of public morals it is no longer dealing with matters of property and civil rights but of the federal criminal law power in the constitution.
- *Potential Charter Violation: Section 15 equality rights* – The proposed legislation distinguishes between same-sex sexual attraction and opposite-sex sexual attraction, permitting an opposite-sex attracted person to undergo counseling or other treatment to reduce sexual attraction or behaviour, but not for a same-sex attracted person. This differential treatment would violate their right to equality under the law. Consider, for instance, how an overly broad ban might affect someone who does not want to change their sexual orientation but who may wish to exercise more control over their sexual desires or behaviours.
- *Potential Charter Violation: Section 2(a) religious freedom and 2(b) freedom of expression* – The Supreme Court of Canada in the *Whatcott* case, which was decided in the context of human rights legislation (not criminal law), said that Canadians have the freedom to express their views on sexual morality.³

We are hopeful that this letter will provide city council with some constructive recommendations in drafting the proposed ban, so as to avoid any future legal challenges should religious communities be adversely affected.

In order not to be arbitrary, the limit on life, liberty and security requires not only a theoretical connection between the limit and the legislative goal, but a real connection on the facts. The onus of showing lack of connection in this sense rests with the claimant. The question in every case is whether the measure is arbitrary in the sense of bearing no real relation to the goal and hence being manifestly unfair. The more serious the impingement on the person’s liberty and security, the more clear must be the connection. Where the individual’s very life may be at stake, the reasonable person would expect a clear connection, in theory and in fact, between the measure that puts life at risk and the legislative goals. (emphasis in AC)

³ According to *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 (CanLII), [2013] 1 SCR 467, para. 163, <http://canlii.ca/t/fw8x4#par163>.: Canadians are:

are free to preach against same-sex activities, to urge its censorship from the public school curriculum and to seek to convert others to their point of view. Their freedom to express those views is unlimited, except by the narrow requirement that they not be conveyed through hate speech.



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We thank you for your kind attention to these important matters.

Sincerely,

Barry W. Bussey, PhD., Director Legal Affairs, and Legal Counsel

Deina M. Warren, LL.M., Associate Legal Counsel