

February 14, 2020

Dear Councillor _____,

Re: Conversion Therapy Bylaw (Report Number: PFC2020-0116)

The Council of Christian Charities (CCCC) has sent a letter to Calgary Mayor Naheed Nenshi concerning the proposed bylaw intended to ban “conversion therapy.” As a member of the CCCC, Centre Street Church has received permission from the organization to forward the concerns expressed in the letter to all city council members.

Because Centre Street Church has members and attendees living in all areas of the City of Calgary, we want you to be aware of the concerns expressed below and request that the city engage with the public and various stakeholders to obtain input into the development of the proposed bylaw. We are aware that the Engage Calgary branch of the city administration has begun a process to gather input on the proposed bylaw, and our church would like to be a part of this process.

All levels of government in Canada – federal, provincial, and municipal – have implemented or are considering the implementation of bans on ‘conversion therapy.’ The news 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 that we are opposed to any form of forced treatment that seeks to change someone’s sexual attraction or orientation. 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, including through unwarranted treatments, another person due to their sexual attraction or orientation.

Among the human rights protections at issue in this situation are those of the religious communities falsely accused of being involved in abusive behaviour when they are not. It is extremely important that when writing bylaws, such as the conversion therapy ban requested by city council, that careful attention is made to ensure 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 city council 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 providing insight on religious texts. In Fort McMurray, Councillor Keith McGrath was off base when he 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* – an overly broad definition of conversion therapy would compel an individual to express himself or herself in a particular manner, and to prioritize particular desires over others. Should an individual wish to prioritize (for example) faith over all other desires (personal, sexual, professional) and therefore adopt a lifestyle in alignment with his or her religious teachings, blanket prohibitions such as Edmonton’s By-Law 19061 would deny that individual from receiving assistance as it relates to his or her sexuality, despite the individual wanting help. 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 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.

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.

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)

- *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 address 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 the concerns expressed in this letter will provide city council with some constructive recommendations in drafting the proposed ban, so the freedoms of all Calgarians will be upheld and religious communities not be adversely affected.

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

Kent Priebe
Senior Executive Pastor
Centre Street Church

cc:	Mayor Naheed Nenshi Councillor Joe Magliocca Councillor Sean Chu Councillor Jeff Davison Councillor Evan Woolley Councillor Ray Jones Councillor Shane Keating Councillor Peter Demong	Councillor Ward Sutherland Councillor Jyoti Gondek Councillor George Chahal Councillor Druh Farrell Councillor Gian-Carlo Carra Councillor Jeromy Farkas Councillor Dian Colley-Urquhart
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³ According to *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 (CanLII), [2013] 1 SCR 467, par.a 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.