



# Memo

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.

## 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.

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.

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.

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.

**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.

**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.

**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.

**"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.

**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”.

**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.

**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 Professionals 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.

**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

### **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”.

### **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.

### **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*.

## 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.

### **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.

## 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.

## 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   |
|---|---|
| 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. | “Conversion therapy” means a practice, treatment, or service designed to change, <b>repress, or discourage</b> a person’s sexual orientation, gender identity, or <b>gender expression</b> , 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   | For greater certainty, this definition does not include a practice, treatment, or service that relates  |
| (a) to a person’s gender transition; or   | (a) to a person’s <b>social, medical, or legal</b> gender transition; or  |
| (b) to a person’s exploration of their identity or to its development.  | (b) to a person’s <b>non-judgmental</b> exploration and <b>acceptance</b> 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