



July 12, 2021

Christian Legal Fellowship

Benjamin J. Ferland, J.D.

Associate Legal Counsel

10060 Jasper Ave, Tower 1, Suite 2020

Edmonton, AB T5J 3R8

bferland@christianlegalfellowship.org

Mayor & Council
Queen Elizabeth II Court
2476 Victoria Avenue
PO Box 1790
Regina, SK
S4P 3C8

Dear Mayor Masters and City Council of Regina:

RE: Proposed bylaw banning “conversion therapy” in Regina

Christian Legal Fellowship (“CLF”) is a national association of over 700 law students, lawyers, retired judges and law professors with members in eleven provinces/territories (including in Regina) from more than 40 Christian denominations. CLF is also a Non-Governmental Organization in Special Consultative Status with the Economic and Social Council of the United Nations. We appear regularly before Parliamentary committees, provincial governments and regulators, and municipal bodies on issues of religion and conscience. Our expertise focuses on the *Charter of Rights and Freedoms* (the *Charter*), as well as human rights and other matters affecting the accommodation of religious minorities in a pluralistic society. CLF has spoken to these issues as an intervener in more than 40 cases at all levels of court in several provinces and at the Supreme Court of Canada. Our members and staff have also published numerous peer-reviewed, scholarly articles on these subjects in the *Supreme Court Law Review* and elsewhere.

CLF is an active participant in the ongoing public dialogue around conversion therapy bans both locally and federally. We are well-acquainted with the challenges Council faces in attempting to address this issue. No one should be coerced or manipulated into suffering abusive or fraudulent treatments under the guise of “conversion therapy”. To the extent that such abuses are not already captured by existing civil and criminal law measures, governments should respond appropriately within their jurisdictions to stop them.

However, as creatures of the provinces, municipalities are limited to the authorities stipulated in their enabling statutes, which must themselves be interpreted within the confines of provincial authority under section 92 of the *Constitution Act, 1867*. CLF believes express and outright prohibitions on “conversion therapy” (especially when vaguely and broadly defined) strays into criminal law and beyond the statutory and constitutionally defined jurisdiction of Regina and other municipalities.

Going beyond the jurisdictional issues, it has become apparent that some who support broadly worded “conversion therapy” bans consider the mere existence of traditional beliefs on sexuality and gender as harmful in themselves. Some consider the expression of such beliefs, such as through religious education, sermons, and prayer, to be “conversion therapy” in certain contexts. Accordingly, this issue touches not only on citizens’ sincere beliefs concerning the meaning of sexuality and gender, but also their fundamental freedoms to openly express, recommend and live according to their beliefs.

CLF supports Council’s desire to protect vulnerable persons from coercive, harmful or fraudulent treatments commonly denoted by the term “conversion therapy”. However, we strongly urge against adopting unnecessarily broad and ambiguous wording, as some other municipalities have done (discussed below). For the reasons that follow, we urge you to reconsider both the nature of the specific harms you intend to address and the means which are necessary and appropriate to do so in light of *all* the minority interests and constitutional duties engaged here.

We understand Council is considering Saskatoon’s *The Prohibited Businesses Bylaw, 2021* as a model for the proposed Regina ban. CLF has reviewed Saskatoon’s ban, as well as those recently enacted in Edmonton, Calgary, Lethbridge and elsewhere—none of which have yet been subject to judicial scrutiny. Each of these bylaws employs a vague and overly broad definition of “conversion therapy” that creates considerable uncertainty as to precisely which conduct is prohibited. Our concern is that these definitions invite inequitable and unconstitutional applications. More specifically, they may be read to capture not only coercive and abusive conversion therapies, but also legitimate, responsible and caring forms of support that competent individuals may freely seek out to live according to their own beliefs and convictions. We are also concerned that these bylaws undermine state neutrality by endorsing and institutionalizing one perspective on human sexuality and identity, and expressly discriminating against and alienating others.

First, definitions of “conversion therapy” such as Saskatoon’s appear to capture *any* activity voluntarily sought by individuals who desire to address self-identified unwanted sexual attractions or gender perceptions, which could include activities such as:

- **religious education** concerning human sexuality and identity in churches and other faith communities;
- **voluntary counselling and/or support groups** intended to assist participants in achieving their own self-identified goals, such as modifying or abstaining from sexual behaviour or embracing their biological sex in accordance with personally held conscientious or religious beliefs;
- **pastoral care and spiritual support** within religious communities, including voluntary prayer; and
- **medical treatment** necessary to assist those who desire to reverse the effects of a previous decision to undergo social, pharmaceutical or surgical change efforts to present as a member of the opposite sex.

Each of these activities involves the legitimate and constitutionally protected exercise of fundamental freedoms of religion, conscience, thought, belief, opinion, and expression, as well as the rights to liberty and equality, guaranteed to Canadians by the *Charter of Rights and Freedoms*. If Council intends to exclude these activities from its proposed ban, we strongly urge Council to clarify that intention by *expressly* identifying these activities in exclusionary clauses (see suggested wording attached, drawn from the Coalition of Conscience and Expression's submissions to Parliament on Bill C-6).¹

Ambiguously defined offenses lend themselves to arbitrary enforcement. The people of Regina should not have to endure the expense and distress of litigation to prove the legitimacy of their constitutionally protected beliefs, expression and conduct.

Second, the conversion therapy bylaws in Saskatoon and elsewhere inherently discriminate against persons who hold traditional or religiously informed views of sexuality, marriage, and/or gender. This is extremely problematic from the standpoint of a multicultural and multireligious society. Government actors in Canada, including this honourable Council, are constitutionally bound to remain neutral in matters of belief. As stated by the Supreme Court of Canada, the duty of "state neutrality requires that the state *neither* favour nor hinder any particular belief [...] It requires that the state abstain from taking any position and thus avoid adhering to a particular belief"².

In the context of banning conversion therapy, the City of Regina's duty of neutrality prevents Council from legislating from the perspective that one's personal desire to voluntarily *reduce* certain behaviours or perceptions on the basis of fundamental beliefs is less worthy than another's personal desire to *affirm* any or all of those same behaviours or perceptions. To do so would, in effect, be a statement of the State's preference for certain beliefs over others.

And yet, this is precisely what Saskatoon's bylaw and other municipal bylaws appear to be doing. These bylaws imply that traditional or religiously prescribed understandings of sexuality and gender, and those who hold and recommend them to others – representing a great many Canadians – are a threat to society. CLF believes these bylaws are a clear breach of a municipality's duty to remain neutral as to religious or ideological commitments on the meaning and morality of human sexuality and identity.

The discriminatory effects of such breaches have practical consequences. It is well known that sexual minorities and persons with gender dysphoria face disproportionate risks of social isolation, depression, addiction, and suicide. Overly broad and discriminatory conversion therapy bylaws may exacerbate these risks by preventing or hindering persons from choosing voluntary access to legitimate and potentially beneficial supports, including those intended to assist persons experiencing gender dysphoria and those seeking to *de-transition* to their biological sex. The effect of this bylaw would be to endanger the health and safety of such persons by hindering them from pursuing reasonable and *legal* ends. Absent bias against traditional or religious sexual ethics, there is simply no rational justification for hindering such pursuits and the benefits they may yield for those who seek them.

¹ Available online: <<https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR11007379/br-external/CoalitionForConscienceAndExpression-e.pdf>>.

² *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3, para 72 (emphasis added).

The people of Regina, like all Canadians, hold diverse and, at times, diverging, beliefs concerning human sexuality and gender, all of which are variously rooted in biology, culture, philosophy, anthropology, religion, conscience, or some combination thereof. The legitimacy of these differences and their public expression is clearly and firmly enshrined in the protections set out in the *Charter* and the *Civil Marriage Act*. Canadian law does not seek to resolve such incommensurability or to homogenize these differences, but only to create and maintain conditions that allow all individuals, families, and communities to flourish in the midst of this diversity.

Bylaws such as the City of Saskatoon's discriminate against those who hold traditional or religiously based beliefs on sexuality and gender, and who desire to live in accordance with those beliefs. It is also discriminatory against those individuals and communities who seek to assist them to do so. Proclamation of such bylaws risks not only alienating thousands of Regina's for their legitimate beliefs, but also preventing the especially vulnerable among them from obtaining the safe, credible, and potentially life-saving assistance they are seeking. However, all of these issues are avoidable through a neutrally worded definition of "conversion therapy" that expressly excludes such activities.

While CLF reaffirms its support for ordinances targeting coercive and abusive practices, we do not believe the municipal bylaws enacted by the City of Saskatoon and others are appropriately tailored to that end. Nor do we believe that these ordinances respect the rights and freedoms guaranteed by the *Charter*. Therefore, we strongly urge Council's reconsideration of the purposes underlying the bylaw and the means necessary to achieve them. In particular, we urge the City to craft a definition of "conversion therapy" that reflects the reality and legitimacy of diverse beliefs concerning human sexuality and gender, as well every person's constitutionally protected right to exercise those beliefs publicly and live in accordance with them with the assistance of others.

We welcome any questions or requests for clarifications Council may have and would be happy to assist in drafting or reviewing any proposed amendments as described above.

Yours very truly,



Benjamin Ferland, J.D.
CLF Associate Legal Counsel
Barrister & Solicitor

APPENDIX:

Proposed amendments to bylaw (additions underlined)

Business	Definition of Prohibited Activity
Conversion Therapy	<p>“Conversion Therapy” means the following when used for the purpose of changing a person’s sexual orientation, gender identity or gender expression, or for the purpose of repressing or reducing non heterosexual attraction or non heterosexual sexual behaviour:</p> <ul style="list-style-type: none"> (a) the offering or provision of counselling or behaviour modification techniques; (b) any other purported treatment, service, practice or the offering or sale of any goods; <p>but does not include those that relate to:</p> <ul style="list-style-type: none"> (a) a person’s exploration and development of an integrated personal identity without favouring any particular sexual orientation, gender identity or gender expression; or (b) repressing or reducing sexual attraction or behavior for any purpose unrelated to a desire to be heterosexual, including for the purpose of managing sexual addiction or maintaining celibacy; or; (c) <u>the expression of religious doctrine, teachings, or beliefs, or the expression of views on sexual orientation, sexual feelings or gender identity or expression, including the provision of support to a person questioning their sexual orientation, sexual feelings or gender identity or expression by teachers, school counsellors, faith leaders, health care professionals, friends or family members.</u>