

DATE OF MEETING JANUARY 17, 2022

AUTHORED BY KAREN ROBERTSON, DEPUTY CITY CLERK

SUBJECT OPTIONS TO BAN CONVERSION THERAPY

OVERVIEW

Purpose of Report

To provide Council with an update on the passing of Bill C-4 which makes it a criminal offence to force a person to undergo the practice of conversion therapy and how this relates to the options available for municipalities to also regulate and prohibit conversion therapy.

Recommendation

That Council receive for information the January 17, 2022 report by the Deputy City Clerk regarding options to ban conversion therapy.

BACKGROUND

On February 24, 2021, the Advisory Committee on Accessibility and Inclusiveness (ACAI) passed a motion requesting that Council immediately ban conversion therapy within the City of Nanaimo.

The Committee's motion was then forwarded to the May 15, 2021 Council meeting for consideration; however, Council wanted more information from staff prior to considering the Committee's recommendation and passed a motion directing staff to prepare a report outlining options to ban conversion therapy in the City of Nanaimo.

In exploring what options are available to the City, one must look to where the authority comes from to regulate or prohibit conversation therapy and whether any municipal regulations conflict with the jurisdictional responsibility of other levels of government. This report will outline the options and legal ramifications associated with each, as well as what steps the Federal government has taken to criminalize conversation therapy.

DISCUSSION

On October 20, 2020, Bill C-6 was introduced by the Federal government during the 43rd Parliament that proposed to criminalize conversion therapy through inclusion of new Criminal Code Offences to prohibit:

- Causing an individual to undergo conversion therapy against their will;
- Causing a child to undergo conversion therapy;
- Removing a child from Canada to undergo conversion therapy abroad;
- Receiving a financial or other material benefit from the provision of conversion therapy; and
- Advertising an offer to provide conversion therapy.

On February 24, 2021, the ACAI requested that Council pass a motion to ban conversion therapy in the City of Nanaimo and on May 15, 2021, Council asked staff for further information on what options were available.

While looking into what options may be available for the City, staff was following the progression of Bill C-6 through the summer as federal legislation does have an affect on what local governments can regulate. The Bill passed the House of Commons on June 22, 2021 and received second reading on June 2, 2021 at the Senate; however, it did not have the opportunity to clear the Senate prior to the federal election being called. As a result it died on the Order Paper when Parliament was dissolved on August 15, 2021. Having said that, a new Bill C-4 was introduced that expanded on the previously proposed Bill C-6 by protecting all Canadians – regardless of their age – from the harms of conversion therapy practices. Bill C-4 makes it illegal to:

- Cause another person to undergo conversion therapy
- Remove a minor from Canada to subject them to conversion therapy abroad
- Profit from providing conversion therapy; and
- Advertise or promoting conversion therapy.

The legislation also authorizes courts to order the seizure of conversion therapy advertisements or to order their removal from computer systems or the Internet. The Bill received Royal Assent on Wednesday, December 9, 2021.

In terms of what options are available for the City, municipalities generally have limited authority to regulate conversion therapy and any bylaw that considers prohibiting conversion therapy would be vulnerable to legal challenge given both administrative law principles and Constitutional limitations. Listed below is a general overview of the municipal authority to regulate and prohibit conversion therapy and the associated legal risks.

1. Outright Prohibition:

An outright ban of conversion therapy as requested by the Committee would likely exceed the City's authority under the *Community Charter* and *Local Government Act*. In particular, a municipal regulation cannot regulate criminal matters which are exclusively regulated by the Federal government.

Conversion therapy regulations also carry an aspect of health care regulations as it relates to negative physical and mental health outcomes for patients and healthcare is governed by the Province. Municipal bylaws that try to regulate conversion therapy as a form of therapeutic or medical treatment would also fall outside the scope of municipal legislation.

2. Business Regulations:

In June, 2018, the City of Vancouver passed a motion to include "the business of providing conversion therapy to minors" within its business prohibition bylaw. This prompted requests for other local governments to do the same. It should be noted that the reason this was an option for the City of Vancouver is because it is governed under its own Charter which expressly allows the City of Vancouver to prohibit a business by unanimous vote of Council.

In looking at whether this would be an option for the City of Nanaimo, one needs to look to the *Community Charter* which is the legislation that governs business licencing for municipalities in British Columbia (other than the City of Vancouver). While the *Community Charter* does grant broad municipal authority to regulate businesses, it does not give general power to prohibit a class of business, unless specified in the legislation. The *Charter* also defines businesses as follows:

“Business” means:

- (a) Carrying on a commercial or industrial activity or undertaking of any kind, and
- (b) providing professional, personal or other services for the purposes of gain or profit.

This would be problematic given that not all conversion therapy may occur in a business setting and religious or cultural groups may provide conversion therapy without remuneration.

3. Land Use Regulations:

Banning conversion therapy through the zoning bylaw (under the authority of the *Local Government Act*) was also explored. While the City has broad authority to zone land and prohibit “uses” within zones, it would be challenging to define “conversion therapy” as a land use. Also, at the time a land use regulation is adopted, under Section 528 of the *Local Government Act*, any existing uses would be considered lawful non-conforming uses which means any existing businesses would be grandfathered. To date, no local government in Canada has pursued this approach.

Conclusion:

Given municipalities have limited authority to regulate conversion therapy and now that Bill C-4 has passed making it a criminal offence to force a person to undergo the practice of conversion therapy, staff is providing this report for information only.

Submitted by:

Karen Robertson, Deputy City Clerk

Concurrence by:

Lynn Wark, Director, Recreation & Culture
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