



**Submission to the Standing Committee on
Justice and Human Rights respecting Bill C-6**

December 3, 2020

Contact:
comms@cgshe.ubc.ca

Bill C-6 excludes conversion therapy practices that target trans people

Bill C-6, “An Act to amend the Criminal Code (conversion therapy)”, offers an important opportunity to reflect on conversion therapy¹ practices that continue to adversely affect transgender, non-binary, Two-Spirit, queer, bisexual, lesbian, gay, and other gender and sexual diverse Canadians. We are heartened that the federal government is committed to addressing these traumatic practices; however, we are obliged to express our concerns about ways in which Bill C-6 fails to adequately define and prevent all forms of conversion therapy. **We are particularly concerned about the inequitable impact the current version of the bill will have on trans², non-binary, and gender-diverse Canadians.**

In its current form, Bill C-6 narrowly defines conversion therapy, excluding practitioners who insist that they are not intending to “change a person’s... gender identity” but whose goal is nevertheless to discourage or delay the adoption of gender identities not assigned at birth, as well as non-conforming gender expressions. We specifically call for amendments to sections 320.101 (“definition of conversion therapy”), 320.101 (a) and (b) (“exclusions”), and 320.102 (2) (“forced conversion therapy”), in order to: include conversion therapy targeting gender expression; more clearly define conversion therapy as including practices that regard a gender identity not assigned at birth as disordered or less desirable; and assert that consent is not valid, if risks associated with conversion therapy are not clearly explained to the patient.

We urgently request this bill to be reevaluated and the federal government address conversion therapy practices that trans Canadians experience. In addition, we ask the government to communicate other proactive strategies that will be used—beyond legislative changes to the Criminal Code—to ensure equitable access to trans-affirming information and supports for trans people of all ages (including youth), as well as their families, communities, and service and support workers, across the country.

Extensive research and advocacy by conversion therapy survivors and 2S/LGBTQ+ community organizations demonstrates the urgency of this issue and the importance of legislation that effectively targets all forms of conversion practices.³

- Results from the 2019 Trans Pulse national study indicate that 11% of trans and non-binary people in Canada have experienced conversion therapy in an attempt to change their gender identity or expression.
- A staggering 8% of transgender and non-binary people in Canada under the age of 25 have experienced conversion therapy, demonstrating that conversion therapy is an ongoing practice in this country.⁴
- Other studies—including the Sex Now national survey of gay and bisexual male-identified Canadians—suggest that between 4 and 8% of sexual minority men (including trans men) have experienced conversion therapy⁵.

- Data from the US provide comparable prevalence estimates for sexual minority women⁶. Current evidence suggests that trans communities are disproportionately impacted by conversion therapy in comparison to cisgender members of 2S/LGBTQ+ communities.

This appendix outlines the following observations and concerns:

1. Forms of conversion therapy that are included in the current text of Bill C-6;
2. Ongoing trans conversion therapy practices that are not included in the current text of Bill C-6;
3. Recommended amendments to Bill C-6 that will equitably affirm trans and gender-diverse identities and expressions, as well as LGBTQ sexual orientations.

(a) Forms of conversion therapy that are included in the current text of Bill C-6

In its current form, Bill C-6 defines conversion therapy as:

“... 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 non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates (a) to a person’s gender transition; or (b) to a person’s exploration of their identity or to its development.”

The first clause of this definition is unlikely to apply to the most common forms of conversion therapy operating in Canada today. This is because many conversion therapy practitioners deny that their services aim to “change” a person’s gender identity or sexual orientation. Instead they frame their services as helping with behavioural modifications (e.g., encouraging a particular form of gender expression or discouraging “self-perceptions” of gender identity).

The second clause overcomes this limitation by defining conversion therapy as including services that “repress or reduce non-heterosexual attraction or sexual behaviour.” This more aptly describes the form of conversion practices to which the majority of recently-outspoken Canadian conversion therapy survivors have been exposed⁸. This clause notably excludes any reference to conversion therapy targeting gender identity or gender expression, including some forms of conversion therapy that are branded as ‘transition treatment’, and specifically the types of practices that were being conducted at the CAMH Child Youth and Family Gender Identity Clinic, before it was closed in 2015.⁹

(b) Ongoing trans conversion therapy practices that are not included in the current text of Bill C-6

Legal scholar Florence Ashley notes that a more inclusive and accurate definition of conversion therapy accounts for the following basic premise of all forms of conversion

therapy: “[these treatments, practices, and sustained efforts...] proceed from the assumption, other than the patient’s, that certain sexual orientations, gender identities, gender modalities, and gender expressions are [disordered, pathological, less desirable than others, or otherwise modifiable]”. Accounting for this fundamental aspect of conversion therapy practices opens questions about forms (i.e., other than “counselling”) and targets (i.e., other than sexual attraction/behaviours, and inclusive of gender identity and gender expression) that are missing from the current iteration of Bill C-6.

More specifically, trans and gender-diverse individuals continue to experience treatments, practices, and efforts that impede the adoption of gender identities not assigned at birth, as well as non-conforming expressions. Very often these treatments, practices, and efforts occur in healthcare offices, where providers use a variety of approaches to discourage or delay “gender non-conforming behaviour.”¹⁰ These approaches have been previously described as the “corrective approach”—wherein “correction” alludes to the same basic premise that “conversion” alludes to, i.e., systematically favouring one gender identity or expression (or sexual orientation) over another.

This was, in fact, the kind of practice Erika Muse described in her testimony to the Ontario Legislative Assembly in 2015, leading that province to ban these practices, and in her story.¹¹ When these experiences were made public in turn deterred other trans people from seeking gender-affirming care, because of concerns that they would be put through the same practices.¹²

Conversion therapy practices that resist the affirmation of trans and other gender-diverse identities additionally prevent trans people from accessing gender-affirming (and often life-saving¹³) healthcare services.¹⁴ Unfortunately, none of the provincial or federal bills introduced in the subsequent 5 years (including Bill C-6) have accounted for these forms of conversion therapy (or conversion therapy-equivalent practices) that target gender identity or expression.

(c) Recommended amendments to Bill C-6 that will equitably affirm trans and gender-diverse identities and expressions, as well as LGBTQ sexual orientations.

Given this significant gap in the current text of Bill C-6, we propose the following amendments, to ensure that the bill will equitably affirm trans and gender-diverse identities and expressions.

Section of Act; Preamble

Proposed change	Rationale
<p>The preamble should include a sentence reiterating the need for provinces to pass regulatory laws in addition to the narrower and less detailed federal criminal law.</p>	<p>Federal and provincial legislation can act in complementary ways to stop conversion therapy practices.</p>

Section of Act; 320.101, "Definition of conversion therapy"

Proposed change	Rationale
<p>Add "gender expression"</p>	<p>Many individuals go to conversion therapy due to a gender expression (rather than identity) that differs from majority social norms/pressures. This language would also better align with the <i>Canada Human Rights Act</i>, RSC 1985, c. H-6, which includes both gender identity and expression in the prohibited grounds of discrimination.</p>
<p>Add "or to repress or reduce behaviours, traits, appearance, or expression perceived as associated with a gender, gender identity, or gender expression differing from the person's sex assigned at birth"</p>	<p>This will make the second clause trans-inclusive. Cultural understandings of sex/sex at birth, sex/gender congruence, gender expression/performance, etc. are likely to continue to shift. The proposed language is more flexible to allow for these unforeseen shifts, especially as the non-binary population continues to grow.</p>
<p>Add: "For greater certainty, conversion therapy includes practices, treatments, and sustained efforts that proceed from the assumption that certain sexual orientations, gender identities, or gender expressions are disordered, pathological, or less desirable than others, or that they are otherwise modifiable."</p>	<p>As currently written, conversion therapy providers will argue that they are not seeking to change or repress or reduce variant sexual orientation (SO)/gender identity (GI)/gender expression (GE). The key defining feature of conversion therapy is the premise that the non-heterosexual/cisgender SO/GI/GE is wrong, unwanted, more harmful to the individual than any other alternative given their cultural/religious context, or otherwise not aligned with their values.</p>

Section of Act: 320.101 (a), exclusions

Proposed change	Rationale
<p>Replace “that relates to a person’s gender transition” with “that are part of the person’s social or medical transition, as determined by the patient themselves, for example, prescribing hormone therapy and engaging in transition-related surgeries.”</p>	<p>As currently worded, these exclusions are not explicit enough to address many forms of conversion therapy.</p>

Section of Act: 320.101 (b), exclusions

Proposed change	Rationale
<p>Replace the full phrase with “that relates to the exploration and development of an integrated personal identity without favouring any particular sexual orientation, gender identity, or gender expression.”</p>	<p>As currently worded, these exclusions are not explicit enough to address many forms of conversion therapy.</p>

Section of Act: 320.102 (2), “Forced conversion therapy” (and matters of consent)

Proposed change	Rationale
<p>Add subsection (2), as follows: For the purpose of subsection (1), no consent is obtained if (a) the agreement is expressed by the words or conduct of a person other than the one who was caused to undergo conversion therapy; (b) the person is incapable of consenting to conversion therapy for any reason; (c) the person was not adequately informed of inefficacy and risks of conversion therapy; (d) the accused induces the person to consent by abusing a position of trust, power or authority; (e) the person is vulnerable to coercion, manipulation, or social pressure taking into consideration their age, maturity, physical and mental health, psychological and emotional state, and any other relevant condition including any situation of dependence; (f) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or (g) the complainant, having consented, expresses, by words or conduct, a lack of agreement to continue to engage in the practice, treatment, or sustained effort. (h) consent cannot be given to conversion therapy given as a prerequisite to social or medical transitioning.</p>	<p>Conversion therapy practices are abusive in all forms; therefore, the law should consider how informed consent is obtained, even from adults. These revisions are intended to strengthen the enforceability of the law for adults who are not given the full balance of evidence (including inefficacy and risks of conversion therapy practices).</p>

About the Centre for Gender and Sexual Health Equity:

The Centre for Gender and Sexual Health Equity (CGSHE) is an academic research centre hosted at Providence Health Care and affiliated with University of British Columbia and Simon Fraser University, and beyond. CGSHE has a strategic mandate to advance gender and sexual health equity among under-served populations in BC, Canada, and globally through three pillars: research, policy and practice. These pillars incorporate community-based, clinical and population health research, policy evaluation, implementation science and education.

References

¹“Conversion therapy” is a misnomer. Those who experience conversion therapy are not “converted”, and there is nothing therapeutic about it. We use this term because it is the language used in Bill C-6; however, we acknowledge that in practice, conversion therapy goes by a number of different names, including (but not limited to): reparative therapy/practices, reorientation therapy/practices, psychological attempts to change a person’s sexual orientation, gender identity, or gender expression change efforts (SOGIECE), and reintegrative therapy, etc. All of these practices share a common feature of starting from the assumption, that certain sexual orientations, gender identities, gender modalities, and gender expressions are mental illnesses or undesirable conditions.

²Hereafter, we use the term trans as meaning to include non-binary and other gender-diverse people.

³ [Canadian conversion therapy survivors call for actions: Report & Conversion Therapy & SOGIECE](#)

⁴ [QuickStat #1 – Conversion Therapy](#)

⁵ [Prevalence of Exposure to Sexual Orientation Change Efforts and Associated Sociodemographic Characteristics and Psychosocial Health Outcomes Among Canadian Sexual Minority Men & Sex Now Survey results reveal prevalence of change efforts](#)

⁶ [Conversion Therapy and LGBT Youth](#)

⁷ ['Modern' conversion therapy: What is it, and how hard will it be to ban?](#)

⁸ ['It's causing me to not want to live': LGBTQ2 community members recount time with Journey Canada programs & 'Like a double agent': A Saint Johner's fight against conversion therapy](#)

⁹ [CAMH to 'wind down' gender identity clinic after review of services](#)

¹⁰ [Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach](#)

¹¹ Legislative Assembly of Ontario, Standing Committee on Justice Policy, supra note 40 at JP-63.

¹² Affirming Sexual Orientation and Gender Identity Act, 2015 / Loi de 2015 sur l'affirmation de l'orientation sexuelle et de l'identité sexuelle

¹³ Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada

¹⁴ Factors Impacting Transgender Patients' Discomfort with Their Family Physicians: A Respondent-Driven Sampling Survey