

UNI-T A VOICE FOR CHRISTIAN VALUES
UNI-T VOIX POUR LES VALEURS CHRÉTIENNES

BRIEF FROM

THE UVVC ASSOCIATION: UNI-T A VOICE FOR CHRISTIAN VALUES

REGARDING BILL C-6: AN ACT TO AMEND THE CRIMINAL CODE
(CONVERSION THERAPY)

Presented by the Minister of Justice, David Lametti
Introduced at First Reading in the House of Commons on October 1, 2020

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BRIEF PRESENTING THE POSITION OF UNI-T: A VOICE FOR CHRISTIAN VALUES

I. PREFACE

Uni-T: A Voice for Christian Values (UVVC) is a young and growing organization established in early 2017. Its message is increasingly being echoed in homes across Quebec. **The UVVC currently represents several thousand people** (Christian churches and their members, and citizens who do not belong to any specific church but believe in the UVVC's values) **who want to promote and protect the values and heritage that shaped Quebec.**

We believe in the values protected by the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms*.

As such, we believe that **freedom of religion, freedom of the press, freedom of expression, freedom of assembly and freedom of conscience** must not only be protected, but also respected.

We also believe in the **fundamental institution of marriage, the family, the rights of parents, the rights of children, and the protection of the most vulnerable**. In keeping with these fundamental beliefs, we are submitting our opinions, thoughts and recommendations regarding the bill on conversion therapy.

II. INTRODUCTION

We would like to thank the Government of Canada and the members of the Senate who make it their duty to protect minors, human dignity and the equality of all Canadians. They share our values and concerns.

We would like to make clear from the outset our belief that no therapy that is forced upon an individual or that violates physical or psychological integrity should be tolerated in Canada.

On the other hand, we cannot agree with the conversion therapy bill, for many reasons.

1. It is essential that we distinguish between individuals, therapists, and other caregivers who wish to offer their paid services to assist people seeking help to make informed decisions with regard to their sexual identity or orientation, and “fanatics” or “dictators” who seek to impose their ideologies on people who need help.

2. This bill, as worded, will deter all therapists and other professional, community, school and pastoral workers from offering their services or assistance for fear of criminal reprisals. This will leave our young people without help. The State must remain neutral and allow individuals to choose to receive the help they need.

3. This bill will have unhealthy and dangerous consequences because it could criminalize simple conversations about identity between parents and children, adults and therapists, adults and pastoral counsellors, etc., and conversely will legalize and encourage the abuse of children through the transformation of the human being.

4. Before legislating in a given area, the State should determine whether there is a substantive and pressing need for legislation. We respectfully submit that there is no need for this bill.

For, **if the objective of the bill is to protect minors from “dangerous therapy,” this protection is already offered by various laws**, including those governing professional orders and health and social services, the *Youth Protection Act* and the *Criminal Code*.

Furthermore, we seriously question **the actual number of cases in Canada that are targeted by the bill**, because there are **few statistics** on the subject, as stated by federal MP Randy Boissonnault, a gay activist, (*“Des chiffres on n’en a pas”*¹) as well as **very few non-partisan Canadian studies on the subject**. Moreover, those studies that do exist are based on only a small sample of individuals, a fact that will be discussed in more detail in Section 6 of this brief. At the same time, there are many more pressing realities in Canada, such as spousal violence, and no specific law or provisions have been enacted on that front, as it is proscribed by the *Criminal Code*. We believe that the same legal logic should be applied to conversion therapies.

¹ La Presse, [Ottawa envisage de criminaliser les thérapies de conversion](#), July 9, 2019.

5. We would like to respond to the main argument of the proponents of this bill to the effect that there is international consensus that conversion therapy is not scientifically based and does not work. With respect, there are studies and several cases where the therapies have been successful, and we provide concrete examples in this brief (Section 6, pages 17–18). Many things in this world have not been scientifically proven, and yet we still choose to try them. This includes some medical treatments for which there is no scientific certainty of success, yet people still decide to use them; or couples therapies, many of which fail. It is people’s decision to use such therapies that constitutes the fundamental right of freedom. Consequently, **the State should not legislate every time something is being studied or is in the news, but only when there is an urgent need to act.**

6. **This bill is a serious infringement on fundamental rights and protections guaranteed by the Canadian Charter.** This includes infringing on the right to freedom of conscience and religion, the rights of minors (among others, their right to consent) and the right to freedom of expression and opinion. Furthermore, **these infringements can in no way be justified by section 1 of the Charter**, i.e., the test established by the Supreme Court of Canada in *Oakes*.

7. Legislation pertaining to conversion therapies, i.e., the conduct of therapists, social services or psychological assistance, is a matter of **provincial, not federal, constitutional jurisdiction.**

8. The Minister of Justice commented on October 1 that [TRANSLATION] *“the proposed offences would not criminalize conversations in which personal views about sexual orientation or gender identity”*

The Government of Canada also stated in its October 1, 2020, press release that “[t]hese new offences 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),” all of which appears on the Government of Canada website. If the government does not reconsider its intention to proceed with this bill, despite all the risks described in this brief, then at a minimum, **these exceptions must be included in the text of the law.** These exceptions are crucial and must be included in the bill to prevent innocent people from being convicted.

III. SUMMARY

(1) The bill criminalizes religious beliefs and infringes on the right to freedom of conscience and religion

The bill, which seeks to criminalize practices, treatments or services “designed to change a person’s sexual orientation,” will have the effect of criminalizing religious beliefs and services provided in pastoral care settings or sharing groups.

The **definition of “conversion therapy” is far too broad.** “Conversion therapy” means a practice, treatment or service designed to

This definition could be interpreted as criminalizing any therapy, service or practice with respect to a minor where there is discussion surrounding the questioning of sexual orientation or gender identity. As worded, this bill could prevent almost any form of paid (or gifted) assistance to minors who are undecided, pondering or uncomfortable about their sexual orientation, or searching for their identity, since such discussions could be construed as seeking to change sexual orientation. Such criminalization of discussions about sexual orientation and gender identity would constitute direct State interference with freedom of religion or conscience in therapeutic or pastoral discussions. The bill could have the effect of preventing therapists or caregivers, and even parents, from discussing sexual orientation or gender identity, as they could be accused of trying to change sexual orientation.

However, if the purpose of the bill is to regulate therapies, such protection is already provided by provincial legislation. If the purpose of the bill is to regulate dangerous therapies or practices, the *Criminal Code* already provides this protection through existing criminal offences. We can therefore conclude that the sole purpose of this bill is to criminalize religious beliefs that do not subscribe to the LGBTQ ideology.

(2) Criminalizing conversion therapy for minors infringes on their right to freedom of religion and conscience, their right to obtain the care of their choice and their right to question their sexual orientation or gender identity

We feel that the bill would discriminate against minors, who have the right to freedom of religion, conscience and opinion in the context of therapy or support services, as well as the right to question their sexual or gender orientation. This right is protected by section 3 of the *Quebec Charter of Human Rights and Freedoms* and subsection 2(a) of the *Canadian Charter of Rights and Freedoms*.

(3) Criminalizing conversion therapy advertisements infringes on the right to freedom of expression and opinion

Clause 2 of the bill infringes on freedom of expression by preventing all forms of advertising, thereby infringing on the right to be informed of the existence of services and resources in a given environment.

- (4) The bill, which restricts the right to religious belief, freedom of conscience (choice) and freedom of expression, cannot be justified under section 1 of the Canadian Charter (Supreme Court of Canada's *Oakes* test)²**

Section 1 of the *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In order to meet the fundamental criteria of section 1 of the Charter:

- (1) an objective must be demonstrated that is sufficiently important to warrant overriding a right;
- (2) the concerns of the legislator must be **pressing and substantial**;
- (3) the measures used to achieve that objective must be reasonable: they must not be arbitrary, unfair or irrational;
- (4) the measures used must **impair rights and freedoms as little as possible (minimal impairment)**;
- (5) finally, there must be proportionality between the effects of the measures employed and the objective that has been identified as being sufficiently important.

In our view, the bill does not meet the *Oakes* criteria for justifying an infringement on a fundamental right. Our reasoning is set out in the following sections.

- (5) Do the measures used impair rights and freedoms as little as possible? (minimal impairment)**
Dangerous Therapies: Protection already available in the *Criminal Code*.

As the law currently stands, the therapies covered by this bill could be proscribed through existing sections of the *Criminal Code*. Therefore, protecting minors through existing sections of the *Criminal Code* and laws governing professional practices and social services would meet the objectives of **minimal impairment** and proportionality established by the Supreme Court of Canada in *Oakes*.

This rationale for addressing the safety of conversion therapies was proposed by the federal government in March 2019:

[TRANSLATION]

The federal government maintains that the regulation of conversion therapies is primarily a provincial and territorial responsibility, as these therapies are sometimes provided by healthcare professionals. Ottawa adds, however, that parts of the Criminal Code may apply to these practices.

² *R v. Oakes*, [1986] 1 SCR 103.

“Certain Criminal Code offences may apply to situations involving conversion therapy, depending upon the circumstances,” says a written statement from the federal government.

“For example, Criminal Code offences such as kidnapping, forcible confinement and assault may apply where a person is forcibly compelled to undergo conversion therapy. . . . We continue to work with provincial and territorial governments to address these practices.”³

This rationale that we are proposing is also applied to domestic violence. There is no specific section in the *Criminal Code of Canada* to criminalize domestic violence. Criminalization occurs through other sections of the *Criminal Code* and through aggravating factors. Yet the issue of domestic violence and “femicide” is a substantial and pressing problem: according to the *Canadian Women’s Foundation*, every six days in Canada, a woman is killed by her intimate partner. The existence of this social problem is also substantiated by statistics and non-partisan studies. That is not the case, in our opinion, with studies on conversion therapy.

(6) Is this objective sufficiently important to warrant overriding a right, and are the concerns of the legislator pressing and substantial? Are the measures in this bill arbitrary, unfair, irrational?

It would be very worrisome if this were considered a pressing and substantial problem, given the paucity of statistics and the few non-partisan studies that have been conducted in Canada on the subject. As Randy Boissonnault, an openly gay activist MP from Alberta, has pointed out, it is difficult to quantify in Canada: “Des chiffres, on n’en a pas.”⁴

Contemporary news articles referring to conversion therapies mention *electroshock* practices, which arouses public indignation. Yet no one mentions the source of this information. Where in Canada have such practices occurred, and when? It should be remembered that until 1973, the American Psychiatric Association considered homosexuality to be a mental illness and included it in the DSM. As a result, anyone responding to a survey on conversion therapies who mentions treatment received prior to the 1970s may have received electroshock treatment from psychiatrists, which no longer occurs.

Moreover, the demographic profile of the United States, or other countries where homosexuality is still criminalized, differs significantly from that of Canada. Data collected or studies conducted on the reality of these other countries can therefore not be considered to reflect reality in Canada. Before justifying overriding a Charter right, it would be wise for the government to ensure that **non-partisan** studies are conducted in Canada in order to assess the scope of the problem.

As such, the bill, which is presented with reference to past experience (electroshock) or other countries, rather than contemporary reality, cannot justify infringing on a right guaranteed by

³ Radio Canada, [Ottawa refuse de bannir officiellement les thérapies de conversion](#), March 23, 2019.

⁴ La Presse, [Ottawa envisage de criminaliser les thérapies de conversion](#), July 9, 2019.

the Charter. Furthermore, **there is no quantitative and non-partisan study conducted in Canada** that assesses the contemporary problem. We might therefore conclude that the bill is founded on arbitrary and irrational information, a criterion that is assessed under the *Oakes* test.

(7) Regulation of conversion therapies: Provincial constitutional jurisdiction

As noted by the Prime Minister of Canada on March 23, the issue of legislating the conduct of therapists, social services or the provision of psychological assistance is a matter of provincial constitutional jurisdiction. This bill encroaches on that provincial jurisdiction.

IV. ARGUMENT

1. The bill criminalizes religious beliefs and infringes on the right to freedom of conscience and religion

As worded, the bill, which seeks to criminalize a “practice, treatment or service designed to change sexual orientation . . . or gender identity,” could be interpreted as **criminalizing religious beliefs** and services provided in the context of pastoral care or sharing groups. What will be covered by the term “*practice*”?⁵ How will it be interpreted? Could faith practices such as teaching or praying with a person be considered a conversion therapy “practice”? Will the term “*service*” or “*treatment*” refer to a service provided by a therapist or sex therapist who provides a service to assist a homosexual or transgender person with their sexual orientation? The definition of conversion therapy is far too broad and could be interpreted as criminalizing any therapy, service or practice with respect to a minor where there is discussion surrounding the questioning of sexual orientation or gender identity, as those involved could be accused of attempting to change sexual orientation. This will have the effect of restricting religious beliefs in private conversations with therapists or pastoral caregivers, who may no longer dare to discuss sexual orientation or gender identity with a minor.

We are also concerned that a religious practice could be criminalized as a result of clause 3 of the bill, where any “material benefit” “derived . . . indirectly” could be interpreted to include gifts, which are the preferred means of remuneration for religious groups.

It is important to note that in *Mouvement laïque v. Saguenay*,⁶ the Supreme Court of Canada ordered State neutrality and non-interference with religious beliefs:

⁵ The Larousse dictionary defines practice as [TRANSLATION]: involving or relating to the application of a discipline or **knowledge**, or aimed directly at concrete action, as opposed to theoretical.

⁶ *Mouvement laïque Québécois v. Saguenay (City)*.

[1] The state is required to act in a manner that is respectful of every person's freedom of conscience and religion. This is a fundamental right that is protected by the Quebec *Charter of human rights and freedoms*, CQLR, c. C-12 ("Quebec Charter"), and the [Canadian Charter of Rights and Freedoms](#) ("[Canadian Charter](#)"). Its corollary is that the state must remain neutral in matters involving this freedom. The interplay between freedom of conscience and religion, on the one hand, and this duty of neutrality, on the other, is sometimes a delicate one.

...

[72] As LeBel J. noted, the evolution of Canadian society has given rise to a concept of neutrality according to which the state must not interfere in religion and beliefs. The state must instead remain neutral in this regard. This neutrality requires that the state neither favour nor hinder any particular belief, and the same holds true for non-belief (*S.L.*, at para. 32). It requires that the state abstain from taking any position and thus avoid adhering to a particular belief.

[73] In "Freedom of Religion Under the [Charter of Rights](#): The Limits of State Neutrality" (2012), 45 *U.B.C. L. Rev.* 497, at p. 507, Professor R. Moon **points out that a religious belief is more than an opinion**. It is the lens through which people perceive and explain the world in which they live. It defines the moral framework that guides their conduct. Religion is an integral part of each person's identity. When the state adheres to a belief, it is not merely expressing an opinion on the subject. It is creating a hierarchy of beliefs and casting doubt on the value of those it does not share. It is also ranking the individuals who hold such beliefs:

If religion is an aspect of the individual's identity, then when the state treats his or her religious practices or beliefs as less important or less true than the practices of others, or when it marginalizes her or his religious community in some way, it is not simply rejecting the individual's views and values, it is denying her or his equal worth. [Emphasis added; p. 507.]

[Bolding added]

As worded, this bill could have the effect of preventing both minors and their caregivers from acting in accordance with their religious values. The Supreme Court has also indicated what constitutes a religious belief that is protected by paragraph 2(a) of the Charter:⁷

[155] An infringement of [s. 2\(a\)](#) of the [Charter](#) will be established where: (1) the claimant sincerely holds a belief or practice that has a nexus with religion; and (2) the provision at issue interferes with the claimant's ability to act in accordance with his or her religious beliefs: *Hutterian Brethren of Wilson Colony*, at para. 32; *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551, at paras. 46 and 56-59; and *Multani*, at para. 34. The

⁷ *Saskatchewan (Human Rights Commission) v. Whatcott*, [2013] SCC 11.

interference must be more than trivial or insubstantial, so that it threatens actual religious beliefs or conduct.

...

[159] Preaching and the dissemination of religious beliefs is an important aspect of some religions. As stated by Dickson J. in *Big M Drug Mart*, at p. 336, “[t]he essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination” (emphasis added). Section 4 of the *Code* confirms that every person enjoys the right to “freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship”.

It is therefore important that the State remain neutral in the face of these emerging concepts, particularly in areas as sensitive as sexual and gender identity, which are closely tied to individuals’ values and integrity. The State must maintain a neutral approach, allowing for the provision of care and assistance covering all the needs of the population, without any bias or personal opinion, and it must remain objective on this issue.

2. Criminalizing conversion therapy for minors infringes on their right to freedom of religion and conscience, their right to obtain the care of their choice and their right to question their sexual orientation or gender identity

The passage of this bill as drafted will virtually eliminate paid assistance that minors might receive to help make an informed decision about their sexual identity or sexual orientation. In other words, professionals and other caregivers will be afraid to offer paid help and guidance or therapies relating to sexual orientation under threat of criminalization. As a result, young people who are questioning their own identity or orientation will be left to their own devices and will no longer have this choice.

The bill does not take into account minors’ freedom of conscience and choice. Each person should be free to choose their therapist and the approach that therapist advocates, as well as psychosocial care.⁸ This right is protected by section 3⁹ of the *Quebec Charter of Human Rights and Freedoms* and section 2 (a) of the *Canadian Charter of Rights and Freedoms*.

It is completely illogical for the bill to essentially eliminate minors’ ability to obtain therapeutic care to question their sexual orientation or gender identity, given that from the age of 14, minors can consent alone to an abortion,¹⁰ to give a child up for adoption, to take oral

⁸ Section 6, *Quebec Act respecting health services and social services*, S-4.2, “Every person is entitled to choose the professional or the institution from whom or which he wishes to receive health services or social services.”

⁹ Section 3: Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

¹⁰ Article 17 of the *Civil Code of Quebec*: A minor 14 years of age or over may give his consent alone to care not required by the state of his health; however, the consent of the person having parental authority or of the tutor is required if the care entails a serious risk for the health of the minor and may cause him grave and permanent effects.

contraceptives or even to undertake a process of gender reassignment. In our opinion, such an approach speaks to a lack of objectivity.

If we allow minors aged 14 or over to make a decision as important as whether to terminate an unwanted pregnancy or even whether to take puberty inhibitors during gender transformation, why would we not allow minors aged 14 or over to receive therapy that could shed light on their sexual and/or gender identity or on the foundations that govern their values and beliefs?

For young people in search of their identity and fulfilling sexuality, the postmodern model currently imposed by our society can be confusing and confounding. At school they are told about many forms of sexuality, on television they are exposed to various types of couples. From bisexuality to transgender, any young person may well be exposed to the experience of different forms of sexuality or to pressure to adjust themselves in response to the influences around them.

This is a topical issue, as seen through a recent investigative report by Radio-Canada entitled “*Je pensais que j’étais transgenre*,”¹¹ which presented testimonials from young people who had questioned their sexual identity to the point of wanting to change genders, but who finally decided to remain with the sex they were assigned at birth. Florence’s parents, who are increasingly uncomfortable with the social pressure, describe their situation: [TRANSLATION] “If you express doubts, you are automatically anti-transgender, and questioning the medical transition is perceived as being in favour of conversion therapy for homosexuals”¹² The report refers to a study published by the scientific journal *Clinical Child Psychology and Psychiatry* in January 2019, dealing with similar cases of minors who changed their minds. That study noted that an increasing number of young people who originally exhibited all the characteristics of gender dysphoria and who sought medical intervention, changed their minds over the course of their clinic sessions. **According to the same investigative report, a dozen studies have been carried out around the world with similar results: the majority of children who experience gender dysphoria are reconciled with their biological sex at puberty.**

The following are some of the testimonials that emerged from this survey:

[TRANSLATION]

“You say you’re trans and its taken for granted,” Jesse tells me. “It’s very quick. And as much as I believe the trans movement originally tried, in good faith, to help people who were having difficulty, I believe that this attitude can be dangerous. Look at us,” she says, referring to Helena, Dagne and herself, “we were anxious, insecure teenagers. The transition caused extreme distress for all of us. I’ve never been as suicidal as when I was going through the sex change.

“I was traumatized as a child and thought that a sex change could be an escape from my life. All my anxiety was channeled into that. Becoming a man became a positive change, an opportunity to be reincarnated.

¹¹ Radio Canada, [Je pensais que j’étais transgenre](#).

¹² Ibid.

“My trans friends and I were encouraged to speak out against anything that could be perceived as discrimination, to attack those who used the wrong pronoun, to call anyone who asked questions ‘transphobic.’ Ironically, I am now part of what they see as an enemy to the cause.”

Being able to access therapy that takes the time to question and possibly validate sexual orientation would better equip young people in their decision making.

3. Criminalizing conversion therapy advertisements infringes on the right to freedom of expression and opinion

Paragraph 2 of the bill infringes on freedom of expression, as it prevents all forms of advertising, thus violating the right to be informed of the existence of services and resources in a given environment.

We note in our association that some people in society who do not belong to a congregation or religious group may have values akin to Christian values. These same people may seek conversion therapy in order to discuss their sexuality. So if advertising this therapy, which is usually for profit, is punishable by criminal law, no one will offer their services and this goes against the freedom of expression protected by subsection 2(b) of the Canadian Charter, thus hindering participation in social and political decision making, the pursuit of truth and individual self-fulfillment and human flourishing.¹³

Moreover, it is quite surprising to note that subclauses 2 and 3 of the bill have been cut and pasted from the sections of the *Criminal Code* dealing with the offences of commodification of sexual activity, namely sections 286.2 (1) and 286.4. However, among other things, in subsection 286.5 (1), the *Criminal Code* provides immunity for the person offering these sexual services, which is not at all available to a therapist acting in good faith.

Thus, we believe that subclause 2 should be removed from the bill altogether.

4. The bill, which restricts the right to religious belief, freedom of conscience (choice) and freedom of expression, cannot be justified under section 1 of the Canadian Charter. (*Oakes* test)

Section 1 of the *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The Supreme Court of Canada has interpreted the wording of section 1 and established the legal framework for its application. This two-step legal test, known as the “*Oakes* test,” is applied

¹³ *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927, page 976, which sets out the principles for application of subsection 2(b).

whenever the court seeks to determine whether a law that is found to infringe on a Charter right can be justified under section 1 of the Charter. The legal framework is as follows:

In order to meet the fundamental criteria of section 1 of the Charter:

- (1) an objective must be demonstrated that is sufficiently important to warrant overriding a right;
- (2) the concerns of the legislator must be pressing and substantial;
- (3) the measures used to achieve that objective must be reasonable: they must not be arbitrary, unfair or irrational;
- (4) the measures used must impair rights and freedoms as little as possible (minimal impairment);
- (5) finally, there must be proportionality between the effects of the measures used and the objective that has been identified as being sufficiently important.

In our view, several criteria set out in the *Oakes* test are not satisfied and there is therefore no justification for infringing on religious beliefs and the freedom of conscience protected by subsections 2(a) and 2(b) of the Charter and teenagers' choice to explore questioning of their sexuality.

5. Do the measures used impair rights and freedoms as little as possible? (minimal impairment) Dangerous Therapies—Protection already available in the *Criminal Code*.

If the objective of the bill is to protect minors from “dangerous therapy,” this protection is already available through laws governing professions and professional orders, through legislation respecting health and social services and the *Youth Protection Act*, or even through the possibility of a civil liability lawsuit.

The Supreme Court has reiterated the criteria from *Oakes*:

The limit must not impair the right or freedom more than is reasonably necessary to achieve the objective. The government is required to prove the absence of less drastic means of achieving the objective “in a real and substantial manner”.¹⁴

In determining whether the alternative is less effective, the government may demonstrate that the objective could not be achieved by other less drastic means in a real and substantial manner.¹⁵

While the desire to **protect minors from therapy involving criminal elements is a primary objective, this protection is already provided through existing provisions of the *Criminal***

¹⁴ *Carter v. Canada (Attorney General)* [2015] 1 SCR 331, para 102.

¹⁵ *Alberta v. Hutterian Brethren of Wilson Colony* [2009] 2 SCR 567, para 55; *Carter* [2015] 1 SCR 331, paras 102 and 118; *R. v. K.R.J.* 2016 SCC 31, para 70.

Code.¹⁶ This approach would allow for the “minimal impairment” of Charter rights. Such logic is applied to the issue of domestic violence. There is no specific section in the *Criminal Code of Canada* to criminalize **spousal violence**. **Criminalization arises through other sections of the *Criminal Code*** and through aggravating factors. **Yet the issue of spousal violence and “femicide” is a substantial and pressing problem:** according to the Canadian Women’s Foundation, every six days in Canada, a woman is killed by her intimate partner.¹⁷ **This social problem has also been substantiated through statistics¹⁸ and non-partisan studies. This is not the case, in our view, with studies of conversion therapy.**

6. Is this objective sufficiently important to warrant overriding a right, and are the concerns of the legislator pressing and substantial? Are the measures in this bill arbitrary, unfair, irrational?

Criminalizing therapies involving criminal elements is an important goal, particularly when dealing with minors. However, as we have explained, such behaviour should be addressed through existing provisions of the *Criminal Code*. Moreover, it would be worrisome if this were considered a pressing and substantial problem given the paucity of statistics¹⁹ and the few non-partisan studies that have been conducted **in Canada** on the subject. The demographic profile of the United States or other countries where homosexuality is still criminalized differs significantly from that of Canada. Thus, data collected in this other country could not be considered the reality in Canada. Before justifying overriding a Charter right, it would be wise for the government to ensure that non-partisan studies are conducted on the subject in order to evaluate the scope of the problem.

How many practices, services or treatments have been provided in Canada to homosexual or transgender people that have resulted in physical or psychological harm? Contemporary news articles referring to conversion therapies mention electroshock practices, which arouses public indignation. Yet no one indicates the source of this information. Where in Canada have such practices occurred, and when? It should be borne in mind that until 1973, the American

¹⁶ The *Criminal Code* already contains provisions to address all practices deemed abusive, such as assault (sections 265–269), torture (section 269.1), assault (subsection 272(1), etc.

¹⁷ Canadian Women’s Foundation, [The Facts about Gender-Based Violence](#).

¹⁸ Statistics Canada, (2013), [Measuring violence against women: Statistical trends](#).

¹⁹ For example, MP Randy Boissonnault acknowledges that statistics have not been compiled. [TRANSLATION] He cites the example of Saint-Albert, a city northwest of Edmonton, where the city council voted unanimously on Monday to ban the practice. The provinces, meanwhile, have other powers under their health jurisdiction, he notes. The extent of these therapies, which may involve administering electroshock or prescribing psychotropic drugs to “cure” same-sex attraction, is difficult to quantify in Canada. [“Des chiffres, on n’en a pas,” reconnaît le député fédéral ouvertement homosexuel de l’Alberta](#). La Presse, July 9, 2019.

Radio-Canada, [Homosexualité : les conséquences des thérapies de conversion](#), May 17, 2018, [TRANSLATION] L’Alliance Arc-en-ciel has published a brief (based on the experience of 7 people) on sexual reorientation practices in Quebec and the consequences for those who follow them . . . According to the Alliance, sexual reorientation therapies are very much a reality in Quebec. However, **it is difficult to determine the extent of this phenomenon**, says Executive Director Louis-Filip Tremblay.

Psychiatric Association considered homosexuality to be a mental illness, and included it in the DSM. As a result, anyone responding to a survey on conversion therapies who mentions treatment received prior to or during the 1970s may have received electroshock treatment from psychiatrists, **which no longer occurs**.

One of the studies reported by proponents of the bill, the brief prepared by the Alliance Arc-en-ciel, acknowledges that electroshock therapy was used [TRANSLATION] “in the early 20th century and into the 1970s,”²⁰ but is no longer the reality today.

The Prime Minister of Canada himself commented on the subject, on November 28, 2019, in the context of his apology to the LGBTQ2 community for the discrimination that some people experienced in the **1950s and 1960s**.²¹

The discourse of LGBTQ2 activists and politicians who support the bill is based on only two Canadian studies and one international report, *namely*:

- i. a study conducted in Quebec by the organization Arc-en-ciel,²² with a sample of only seven respondents, including only three participants;
- ii. a Canadian study published by “Sex Now”²³ based on a sample of 7,200 sexual minority men, over a short period of time, from November 1, 2019, to January 18, 2020. Only 8% of participants had undergone conversion therapy;
- iii. and a report by LGBT activists²⁴ outlining their arguments. This report cannot constitute a study, as it is by no means independent and unbiased, but clearly partisan.

The “Sex Now” study²⁵ is the one most often cited by politicians who support the bill, and it is where we find the number “47,000,” which is systematically repeated by journalists, without explanation. The figure of 47,000 is an extrapolation of the 8% of the sample of 7,200 sexual minority men and is by no means an actual statistic. Furthermore, of these 7,200 respondents, or the extrapolated 47,000, how many underwent this practice in recent years? This sample does not indicate the years in which the practice occurred, which would be necessary to demonstrate the contemporaneity of the problem.

And we quote:

²⁰ Alliance Arc-en-ciel, [Qui veut guérir l’homosexualité?](#)

²¹ [Speech by Senator Serge Joyal at second reading of Bill S-260](#), May 7, 2019.

²² Alliance Arc-en-ciel, [Qui veut guérir l’homosexualité?](#)

²³ The Province, [Thousands of Canadians still experience conversion therapy despite bans: report.](#)

²⁴ ilga world, [Curbing Deception: A world survey on legal regulation of so-called “conversion therapies.”](#)

²⁵ The Province, [Thousands of Canadians still experience conversion therapy despite bans: report.](#)

“The Sex Now Survey, published today by the Community-Based Research Centre, reviewed findings from more than 7,200 sexual minority men (gay, bisexual, trans, Two-spirit and queer, or GBT2Q) from Nov. 1 to Jan. 18.

It shows that eight per cent of Canadian GBT2Q men (or an estimated 47,000 men) have experienced conversion therapy in Canada”

The study does not mention whether the conversion therapies were positive or negative.

In addition, these studies were conducted online on gay or LGBTQ2 sites. This, in our opinion, biases the results because the participants therefore fall into the category of LGBTQ2 people, and not former homosexuals for whom conversion therapy was successful, since such individuals would no longer have any interest in consulting these sites.

In addition, these two studies and the report, cited by advocates of the bill, ignore psychiatric reports and studies indicating the benefits of conversion therapies, such as those developed by Dr. Charles W. Socarides²⁶ and Dr. Joseph Nicolisi,²⁷ and the study “Effects of Therapy on Religious Men Who Have Unwanted Same-Sex Attraction.”²⁸

The study . . . finds that sexual orientation change efforts (SOCE), often derisively called “conversion therapy,” improves the mental health of participants.

. . .

Nearly 70 percent of respondents self-reported a “some to much” reduction in their same-sex attraction and behavior and an increase in their opposite-sex attraction and behavior.

The study counters the assertions and recommendations of the APA that efforts aimed at reducing same-sex attractions are unsafe and damaging to mental health and well-being.

. . .

Survey participants also reported improvements “in self-esteem and social functioning, and similarly decreases in suicidality, substance abuse, depression, and self-harm. Before therapy, they had experienced an average of three of these problems.”²⁹

²⁶ Wikipedia, [Charles W. Socarides](#).

²⁷ [Joseph Nicolisi](#).

²⁸ Catholic Medical Association, [Effects of Therapy on Religious Men Who Have Unwanted Same-Sex Attraction](#).

²⁹ The Christian Post, [Therapies for Unwanted Same-Sex Attraction Are Effective, Study Finds](#).

In addition, we have catalogued testimonials from former homosexuals for whom conversion therapy was successful on the website of the late Dr. Joseph Nicolosi, psychologist and founder of the National Association for Research and Therapy of Homosexuality.³⁰

Finally, a caselaw search using the keywords “conversion therapy” in the Canadian CanLII database identified only two cases: a decision involving an Afghan refugee claimant who was a practising Muslim who had undergone successful conversion therapy,³¹ and another decision that compromised said therapy. Moreover, it does not appear to be an endemic issue, as there are no decisions of a criminal court or professional order on the subject.

Moreover, we are casting doubt on definitive statements to the effect that sexual orientation is unchangeable.

As such, the bill, which is presented with reference to past experience (electroshock) or other countries, rather than contemporary reality, cannot justify infringing on a right guaranteed by the Charter. Furthermore, there is no quantitative and non-partisan study conducted in Canada that assesses the contemporary problem. We might therefore conclude that the bill is founded on arbitrary and irrational information, a criterion that is assessed under the *Oakes* test.

6(b) Is there proportionality between the effects of the measures employed and the objective recognized as sufficiently important?

If the bill is approved, we submit to you as an alternative that there be amendments to preserve the right to religious beliefs and freedom of conscience, which would create proportionality between the effects of the measures employed and the objective recognized as being sufficiently important.

7. Regulation of conversion therapies: Provincial constitutional jurisdiction

We do not believe that this bill is necessary, because if the objective of the bill is to protect minors from “dangerous therapy,” this protection is already offered through professional orders and legislation on health and social services, as well as the *Youth Protection Act*. In our opinion, legislation governing the conduct of therapists, social services or the provision of psychological

³⁰ [Joseph Nicolosi](#).

³¹ A recent decision by the Immigration and Refugee Board of Canada, 2013 CanLII 87220 (IAD File No. TB0-06715), demonstrates and proves that therapeutic assistance can bring very positive benefits to a person’s life. The applicant was a 30-year-old practising Muslim from Afghanistan. He had known the appellant for a long time and after two years of personal correspondence with her, decided to propose marriage. The applicant had been homosexual for part of his life, but underwent conversion therapy after being granted refugee status in England and beginning his relationship with the appellant. Dr. K. J. Rai monitored the applicant and offered his expert opinion to the Board, informing the decision makers about the mistreatment the applicant had suffered in Afghanistan, where his contact with the female population had been very limited.

Although the decision does not attempt to establish the reliability of conversion therapy, it does show that the applicant did not suffer any trauma as a result of his therapy; on the contrary, the therapy allowed him to identify the source of some of his pain and identity problems. His desire for therapy resulted from meeting a woman and engaging in introspection. As a result, he was able to live as part of a couple with the appellant, and to have three children. Parentage was proven and the Board recognized the marriage as valid.

assistance is a provincial constitutional responsibility. This bill encroaches on that provincial jurisdiction.³²

V. REQUESTS AND RECOMMENDATION

Therefore, for the many reasons outlined above, we are asking the government not to pass this bill.

Alternatively, if the bill is approved despite the many disincentives, we ask that the **terms “practices” and “services” be removed** from the definition of conversion therapy, both in the text of the bill and in the preamble, so as to exclude professional, pastoral and faith services.

In addition, we ask that the following be added to the text of the bill in order to clarify the definition of **conversion therapy**:

“In this section, **conversion therapy** means treatment designed to change a person’s sexual orientation or gender identity or to eliminate or reduce sexual attraction or sexual behaviour between persons of the same sex; **and**

- that harms the physical or psychological integrity of the person;
- that is undertaken without the free and informed consent of the person;
- that does not respect the person’s rhythm;
- that does not respect the person’s expressed desire to terminate the therapy; or
- that involves violence.

We feel that clause 2 (advertising conversion therapy) should be deleted completely.

³² *Constitution Act, 1867* and incorporated into the *Constitution Act, 1982*. Section 92, subsection 7 accords provinces exclusive jurisdiction for, among other things, the administration of health care, social services, and civil justice.

VI. CONCLUSION

In conclusion, we completely disagree with the conversion therapy bill, which **violates the rights of conscience and religion** advanced by the Canadian Charter, **as well as the rights of minors**—who require guidance much the same as adults, specifically with regard to their sexual identity and/or sexual orientation—and deprives them of the help they could receive through counselling or conversion therapy.

This bill will deprive young people and adults of important resources in their search for identity, because therapists and other professional, school, community and pastoral workers will not be able to offer their support out of fear of criminal reprisals. This means abandoning our young people.

In addition, through this bill, **some parents could face criminal charges for discussing sexual identity with their own children.**

As well, this bill infringes on **freedom of expression and opinion.**

These **infringements on fundamental rights guaranteed by the Canadian Charter cannot be justified under section 1 of the Charter**, i.e., the criteria established by the Supreme Court of Canada in *Oakes*, given that this bill:

- 1) does not demonstrate the existence of an objective that is sufficiently important to warrant overriding a right;
- 2) does not address pressing and substantial concerns on the part of the legislator;
- 3) uses measures to achieve that objective that are unreasonable, unfair and irrational;
- 4) uses measures that impair rights and freedoms;
- 5) does not ensure proportionality between the effects of the measures employed and the objective recognized as being sufficiently important.

Indeed, the concerns addressed by this bill are not substantial, as they deal with experiences of more than 50 years ago (electroshock) or from other countries, rather than contemporary reality, and are in no way based on quantitative and non-partisan studies carried out in Canada. Nor are these concerns pressing, because **if the objective of the bill is to protect minors from a “dangerous therapy,” this protection is already offered by various laws**, either through professional orders and legislation on health and social services, or the *Youth Protection Act* and the *Criminal Code*.

Finally, the issue of legislating conversion therapies, i.e., the conduct of therapists, social services or the provision of psychological assistance, is a matter of **provincial, not federal, constitutional jurisdiction.**

Furthermore, this bill unfortunately affects and stigmatizes therapists, churches, pastors, caregivers and their representatives in their desire to help people in their spiritual and personal journey.

On the other hand, we recognize that the government must prevent abusive acts against homosexual, transgender and other people. Indeed, the government must ensure that their physical and psychological integrity is safeguarded just as that of any other citizens of Canada. With this concern for protection, we encourage the government to remain **neutral**, as reiterated by the Supreme Court of Canada,³³ with regard to interventions pertaining to each person's sexual identity, rather than encouraging only one form of sexual conception. It must also be borne in mind that:

- 1) The majority of children who experience gender dysphoria reconcile with their biological sex at puberty or in adulthood;
- 2) Therapy promoting acceptance at any cost can have irrevocable and unfortunate repercussions that are far more serious than conversion therapies.
- 3) During the period before or during conversion, who will teenagers or adults turn to if they require help orienting themselves or stopping the process?

Finally, if the government intends to proceed with this bill despite all the serious elements we have outlined in this brief, we ask that it specifically stipulate in this bill that:

"The offences would not apply to those who provide support to persons questioning their sexual orientation or gender identity (such as teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members)."

This wording was provided by Mr. Lametti when the bill was introduced on October 1, and can be found on the Government of Canada website. **These exceptions are crucial and must be included in the bill to prevent innocent people from being convicted.**

³³ *Mouvement laïque Québécois v. Saguenay (City)*.

Thank you for your attention to this brief.

Respectfully submitted, on this 9th day of October, 2020

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