

November 27, 2020

To the Standing Committee on Justice and Human Rights and interested Members of Parliament,

I am writing regarding Bill C-6 *An Act to amend the Criminal Code (conversion therapy)*. I have reviewed Bill C6 and I agree that it's important to protect against coercive, degrading, and harmful treatments. However, I am concerned that the current wording of Bill C6 goes well beyond this and risks banning respectful conversations related to sexuality, legitimate advice and counselling, and risks doing so in a manner that could be discriminatory to the very people the bill is trying to help protect. I presume that this is not the intent of the bill and request that the bill be modified. Some specific concerns are outlined below.

Defining “conversion therapy” as including “practices and treatments designed to” “repress or reduce non-heterosexual attraction or sexual behavior” is overbroad and risks being discriminatory.

A person - heterosexual or homosexual – can have legitimate reasons to attempt to reduce their attractions or sexual behaviors. For example – a person in a committed relationship attracted to people other than their partner may wish to control or reduce those attractions; a person may decide reasons that they wish to reduce their sexual behaviors for a time (e.g. as a way to avoid pregnancy, to focus intensely on another personal cause, as a pause between relationships, as part of a religious fasting period or a religious practice, or for other personal reasons); a person struggles with “cheating” on a partner may want to reduce those sexual behaviors; etc.. This is true for both heterosexual and homosexual individuals. Practices, treatments or services that help with developing such self-mastery (regardless of how effective a given practice may or may not be in an individual case) are reasonable. The existing wording of the Bill would seem to criminalize such practices, treatments, or services. Furthermore, the wording would criminalize practices related to sexual self-mastery ONLY related to non-heterosexual sexual attraction or sexual behavior – heterosexual individuals could still receive advice and treatment but those who are homosexual could not; this would be discriminatory.

If the exemption of practices related to “a person’s exploration of their identity or to its development” (Bill C-6. 320.101(b)) from the definition of conversion therapy is meant to permit voluntary practices related to sexual self-mastery – this is not clear in the wording used in bill.

I propose that the definition of conversion therapy be amended by striking out the section including practices that “repress or reduce non-heterosexual attraction or sexual behavior” from the definition.

The term “identity” in the clarification section of the definition of conversion therapy is unclear.

The current proposed definition of conversion therapy “does not include a practice, treatment or service that relates” “b) to a person’s exploration of their identity or to its development” (Bill C6. 320.101(b)).

However, the term “identity” in the context of the bill could be considered vague – it may mean a person’s overall identity and self-understanding or, given the context of the bill, could be interpreted to simply imply “sexual identity”. There is a risk that the definition could be open to various legal and philosophical interpretations. This term should be clarified.

I support defining or clarifying “identity” broadly to include a person’s overall identity and self-understanding. A person’s identity and self-understanding can include many facets: their experiences, sexuality, feelings, value-system, philosophical and religious beliefs, culture, familial status, marital status, etc.). A person should be able to explore and develop all aspects this identity and develop, explore, and integrate their sexuality within this broader context. I strongly oppose restricting “identity” to mean just “sexual identity”.

I propose that the preamble be amended and/or that it be clarified that identity in section 320.101(b) means a person’s overall identity and self-understanding. I propose the following wording for an amendment to the preamble as a starting point for consideration:

And, whereas parliament recognizes and affirms each person’s ability to explore and develop their overall identity and self-understanding in all its facets, and affirms that they should be able to explore and integrate their sexuality within the context of and in relationship to this broader identity and self-understanding

I propose the following wording for a clarification within the bill and within the Criminal Code.

For further clarity, identity in the context of 320.101(b) means a person’s overall identity and self-understanding in all its facets.

Lack of an exemption or clarification related to research into sexuality.

I am concerned that the bill, as written and given the broad definition currently proposed, could hamper future research into our understanding of sexuality, factors that affect sexuality, and – to the degree that may be possible in individual cases – to shape or control one’s own sexuality. It is important to be able to freely research sexuality, as long as it is done in an ethical manner.

Furthermore, though today it may not be possible to for an individual person to shape their sexual orientation or whether they are transgendered, it does not mean that it will never be possible or that research into this question should be banned. I remind the Committee that our ability to conduct gender affirming surgeries and to better understand sexuality is, in a large part, because of scientific research and development. By banning ANY “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 behavior” would close off even ethically conducted, well intentioned research into sexuality and the degree to which a person – in their individual case – can control and shape their own sexuality or gender identity.

I understand that there are broader philosophical questions, such as a) whether this is something that could ever be changed even in principle, b) whether a person should consider the possibility that sexual orientation could be changed or that a person could possibly change from transgender to cisgender, c)

whether or not an individual should change even if it were possible, and d) whether research could be done in an ethical manner. However, if one considers personal autonomy, respect of differing values/opinions, and exploration of these matters important – freedom should be given to individuals to consider, propose, and (if it can be done ethically) conduct and participate in research in the areas outlined above. Of course, such research would need to be done ethically and in a manner that respects an individual's free choices.

I propose that an exemption be added to the bill for ethically conducted research into the areas of sexuality, sexual orientation, sexual expression, gender identity, gender transition, and –to the degree possible in individual cases – the consensual shaping of sexual orientation and gender identity. To prevent abuse, limitations should be placed on the exemption, such as requiring it be conducted at an institute of higher learning in accordance with its ethical policies or requiring approval by an organization that reviews research proposals for funding – such as the Tri-Agency (CIHR, NSERC, SSHRC). The government may also wish to establish a regulation whereby certain institutions or individuals can be excluded if they conduct unethical research.

Proposed wording for consideration:

For further clarification, research into areas of sexuality, sexual orientation, sexual expression, gender identity, gender transition, and –to the degree possible in individual cases – the consensual shaping of sexual orientation and gender identity are exempt provided that:

- 1. It is conducted under the auspices of or in partnership with an institute of higher learning (a college, university or école polytechnique).*
- 2. It is conducted in accordance with the ethical policies of the institute.*
- 3. It is conducted with the consent of any individuals participating in such research.*
- 4. It is not conducted at an institution on a list of excluded institutions nor conducted by a researcher on a list of excluded researchers established in regulation by the Governor in Council*

Summary of Proposed Changes

The following is a summary of proposed changes to the bill. An explanation of the rationale behind the proposals is provided above.

1. I propose that the definition of conversion therapy be amended by striking out the section stating “repress or reduce non-heterosexual attraction or sexual behavior” from the definition given that this wording is overbroad and may selectively criminalize legitimate practices related to sexual self-mastery for non-heterosexual individuals.
2. I propose that the preamble be amended and/or that it be clarified that identity in section 320.101(b) means a person's overall identity and self-understanding in all its facets.

I propose the following wording for an amendment to the preamble as a starting point for consideration:

And, whereas parliament recognizes and affirms each person's ability to explore and develop their overall identity and self-understanding in all its facets, and affirms that they should be able to explore and integrate their sexuality within the context of and in relationship to this broader identity and self-understanding

I propose the following wording for a clarification within the bill and within the Criminal Code:

For further clarity, identity in the context of 320.101(b) means a person's overall identity and self-understanding in all its facets.

3. I propose that an exemption be added to the bill for ethically conducted research into the areas of sexuality, sexual orientation, sexual expression, gender identity, gender transition, and –to the degree possible in individual cases – the consensual shaping of sexual orientation and gender identity. To prevent abuse, limitations should be placed on the exemption, such as requiring it be conducted at an institute of higher learning in accordance with the institute's ethical policies or requiring approval by an organization that reviews research proposals for funding – such as the Tri-Agency (CIHR, NSERC, SSHRC). The government may also wish to establish a regulation whereby certain institutions or individuals can be excluded if they conduct unethical research.

Proposed wording for consideration:

For further clarification, research into areas of sexuality, sexual orientation, sexual expression, gender identity, gender transition, and –to the degree possible in individual cases – the consensual shaping of sexual orientation and gender identity are exempt provided that:

1. It is conducted at or in partnership with an institute of higher learning (specifically a college, university or école polytechnique),
2. It is conducted in accordance with the ethical policies of the institute,
3. It is conducted with the consent of any individuals participating in such research,
4. It is not conducted at an institution on a list of excluded institutions established in regulation by the Governor in Council, and
5. It is not conducted by a researcher on a list of excluded researchers established in regulation by the Governor in Council

Sincerely,



Mark Spanjers