

SUBMISSION OF THE COALITION FOR CONSCIENCE AND EXPRESSION

Justice and Human Rights Committee

November 23, 2020

Introduction

The Coalition for Conscience and Expression is an alliance of faith groups, with millions of members across Canada, that is united in opposition to all abusive and coercive practices, including those related to conversion therapy.¹ We therefore support the goal of Bill C-6 to end such practices. Abusive and coercive practices of any sort are contrary to our beliefs and ministries. Many of our communities provide supportive pastoral relationships to those who identify as LGBTQ2. We are called to love and respect them, whether they be parishioners, family members, or friends, and to defend and uphold their dignity. We also acknowledge that many have felt excluded or devalued and we seek to address that hurt with humility, respect, greater love, more effective ministry, and faith.

We are also united in our assessment, supported by the advice of legal counsel, that the definition of conversion therapy in Bill C-6 is too broad. The current definition may be interpreted to cover conversations with parents and friends, good-faith expressions of religious beliefs and teachings, and traditional pastoral counselling with respect to persons who are questioning their sexual orientation, sexual feelings, or gender identity. The definition may also inadvertently reach appropriate therapies and forms of support that are intended to address unsafe, underage, harmful, or destructive sexual behaviours. Based on its own public statements, such an over-broad definition is clearly not the government's intent.

Given the severe criminal penalties Bill C-6 would impose, it is critical that these ambiguities be eliminated from the bill itself and that the government's intent be made clear, rather than leaving the interpretation to the discretion of law enforcement officers and prosecutors and to the judgment of courts. Consistent

¹ The Coalition is made up of the following organizations: The Canadian Conference of Catholic Bishops, The Church of Jesus Christ of Latter-day Saints, the Evangelical Fellowship of Canada, the Canadian Centre for Christian Charities, and the Christian Legal Fellowship. Some members of the Coalition have additional concerns with Bill C-6 and are making further submissions; however, all of us share the concerns outlined in this brief and are united in supporting these proposed amendments.

with the government's own assurances, our proposed amendments resolve these ambiguities and help ensure that the laudable goals of Bill C-6 are realized.

Bill C-6's Definition of Conversion Therapy Fails to Uphold the Government's Public Assurances and Is Dangerously Overbroad

Bill C-6 was given Second Reading and referred to committee on October 28, 2020. It is sponsored by the Minister of Justice and would amend the *Criminal Code* to introduce five offences relating to conversion therapy with maximum penalties ranging from two to five years imprisonment. The definition of conversion therapy in Bill C-6 is as follows:

320.101 In sections 320.102 to 320.106, conversion therapy means 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.

On the most recent posting on the Justice Canada website (as of October 1, 2020), the Department of Justice Canada clarified its intent in respect to this definition:

These 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). (See <https://www.canada.ca/en/departement-justice/news/2020/09/federal-government-reintroduces-legislation-to-criminalize-conversion-therapy-related-conduct-in-canada.html>.)

Similar assurances were given by the Minister of Justice, David Lametti, on second reading of the bill in the House. See

<https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-19/hansard#Int-10970104> (approximately paragraph 1210: "This bill does not prohibit conversations about sexuality between an individual and their parents, family members, spiritual leaders or anyone else. The legislative measure we are

debating today does not prohibit these conversations, but criminalizes an odious practice that has no place in our country.”).

Unfortunately, as drafted, the actual terms of Bill C-6 remain vague and do not reflect the Justice Department’s past and present public assurances. The definition could inadvertently reach expression or conduct that cannot reasonably be understood as conversion therapy. Among our concerns are the following:

- *Bill C-6’s definition of conversion therapy is not limited to purported therapies.* Terms like “practice,” “treatment” and “service” could be broadly construed to include not only harmful professional or commercial practices but also discussions and activities with family members, friends, faith leaders and others—whether in the settings of worship or other “services” or as “practices” in families or group settings—that have nothing to do with the ordinary meaning of conversion therapy.

Moreover, the breadth of the terms “practice” and “service,” especially when coupled with severe criminal penalties, threatens to unduly inhibit or restrict the good-faith promulgation or expression of religious doctrines, teachings, and beliefs regarding sexuality by religious organizations and faith leaders.

- *Bill C-6’s definition may criminalize practices, treatments, and services designed to help adolescents avoid unsafe, premature, or destructive sexual practices.* By criminalizing any effort to “reduce non-heterosexual . . . sexual behaviour,” the bill would go far beyond its intent to prohibit efforts to change sexual orientation or gender identity. It could prevent responsible therapists, faith leaders, family members, friends and others from helping youth to avoid and overcome harmful sexual behaviours.

For example, the currently worded definition is sufficiently broad that it would criminalize counseling practices or services provided to a *non-heterosexual* youth who freely sought help to abstain from sexual relations, or to reduce harmful sexual behaviours such as promiscuity and the use of pornography, or to address sex addiction. These legitimate practices or services would be interpreted, without further clarification, as a criminal offence because they would be “designed” to reduce non-heterosexual “sexual behaviour.” And yet Bill C-6 would not criminalize the exact same counselling practices or services if provided to a *heterosexual* youth. This

would create a discriminatory double standard. Heterosexual youth would have access to counseling practices or services designed to address harmful sexual behaviours, while non-heterosexual youth would be denied such assistance. Surely the government does not intend to put counsellors, teachers, and pastors in prison for encouraging teenagers to practice abstinence or avoid harmful sexual behaviors.

These textual ambiguities and implications will threaten legitimate and appropriate professional, pastoral, and personal counseling as well as fundamental *Charter* freedoms of expression, conscience, and freedom of religion. This threat is very real indeed. What is at stake is not merely professional discipline, the loss of licensure, or the imposition of civil penalties, but rather criminal prosecution, imprisonment, and the stain of a criminal record. Matters of sexuality, orientation, gender identity, and related behaviours are inherently connected with the reality of our human experience. They involve a diverse array of social, cultural, religious and familial practices informed by profound philosophical, theological, moral, ethical, medical, and psychological considerations. These will always be matters of deep human significance, and sometimes contested beliefs, that all Canadians—professionals, clergypersons, and laypersons alike—have the right to discuss freely.

The threat of incarceration for engaging in discussions or providing counsel that supports a person who wishes to “reduce” some aspect of non-heterosexual “sexual behaviour” would be heavy-handed and unwarranted, especially in circumstances where there is no actual effort to change sexual orientation or gender identity.

Proposed Amendments to Strengthen Bill C-6 by Ensuring that the Government’s Stated Policy is Implemented and Fundamental Freedoms Protected

The Coalition for Conscience and Expression believes that Canadians deserve legislative precision and great care to address abusive and coercive practices without unintentionally abridging essential freedoms, such as legitimate expressions of concern and support, and without the threat of criminal sanction and imprisonment. We therefore urge this Committee to amend Bill C-6 to make clear and precise what the government has already publicly stated and to correct other unintentional consequences.

We appreciate the consultations and meetings we have had with the Prime Minister's Office, Officials from the Department of Justice and the Ministry of Diversity, Inclusion and Youth, and Members of Parliament. We have gratefully listened to the helpful comments and suggestions made in those meetings and, in response, have edited and streamlined the text of our proposed amendments. Accordingly, the Coalition proposes the following amendments (underlining indicates new text):

320.101 In sections 320.102 to 320.106, conversion therapy means a purported therapy 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 as part of an effort designed to change sexual orientation or gender identity. For greater certainty, this definition does not include a practice, treatment or service that ~~relates~~

(a) relates to a person's gender transition; or

(b) relates to a person's exploration of their identity or to its development;

(c) constitutes the promulgation or expression of religious doctrine, teachings, or beliefs by a religious organization or a faith leader, or the expression of views on sexual orientation, sexual feelings or gender identity, including the provision of support to a person questioning their sexual orientation, sexual feelings or gender identity by teachers, school counsellors, faith leaders, doctors, mental health professionals, friends or family members.

Each proposed amendment to the text is designed to correct specific problems with the definition:

- “purported therapy”—This clarifies that in banning “conversion therapy” Parliament is targeting practices and services that in fact fall within the ambit of the term “therapy,” rather than an array of personal and other activities and practices that have nothing to do with therapy. The term “therapy” provides that important clarification. The term “purported” also ensures that the term is not limited to professional practices. Those who hold themselves out as providing a therapy-like treatment, practice or service that is intended to change a person's sexual orientation or gender identity are specifically targeted.

- “as part of an effort designed to change sexual orientation or gender identity”—This ensures that the bill does not inadvertently criminalize or chill practices, treatments or services that are not designed to change sexual orientation or gender identity. The first part of the definition contains that clarity but the portion relating to behaviours does not. Under this amendment, practices or services to reduce non-heterosexual “sexual behaviour” would be banned when part of an effort to change sexual orientation or gender identity. By contrast, therapies designed merely to encourage or support non-heterosexual youth in their desire to abstain from sexual activity or to avoid harmful sexual behaviours would not be covered as “conversion therapy.”
- Paragraph (c)—The first two lines of (c) clarify that the bill does not reach the promulgation of a religious organization’s deeply held religious beliefs, such as through its official literature or teachings from the pulpit, even if such practices or services express traditional religious beliefs about marriage, sexuality or gender. The rest of (c) is largely taken from past and present assurances by the Minister of Justice and the Department of Justice that Bill C-6 would not criminalize ordinary conversations. (See <https://www.canada.ca/en/departement-justice/news/2020/09/federal-government-reintroduces-legislation-to-criminalize-conversion-therapy-related-conduct-in-canada.html>.) This vital assurance should not be left to statements on a website but rather included in the text of Bill C-6.

Summary and Conclusion

The Coalition for Conscience and Expression fully supports the government’s goal to ban abusive and coercive practices, including those related to conversion therapy. However, Bill C-6 is not yet drafted properly. It is vital that the bill’s definition of conversion therapy be amended to avoid unintended consequences that could harm vulnerable youth, severely punish those who are vital to their health and welfare, and violate fundamental *Charter* rights. The definition is currently too broad and imprecise. It inadvertently criminalizes practices and services that do not seek to change sexual orientation or gender identity—potentially including conversations, the expression of views, and mere discussions about sexuality and gender with parents, faith leaders, friends, and others. And it would ban essential practices and services designed to dissuade non-heterosexual youth from unsafe, underage, or harmful sexual behaviours.

We are convinced by the Department of Justice's public statements that these adverse effects are contrary to the government's intent in bringing Bill C-6 forward. Our proposed amendments incorporate the government's critical assurances and resolve other ambiguities so that the government's proper objectives can be fully realized. We appreciate the Committee's careful attention to this weighty issue and look forward to further opportunities to assist it in refining this important bill.