CHRISTIAN LEGAL FELLOWSHIP

ALLIANCE DES CHRÉTIENS EN DROIT

Submissions of the

Christian Legal Fellowship

to the **Standing Committee on Justice and Human Rights**

regarding

Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*

November 30, 2020

Introduction

As a national community of Christian lawyers and law students,[1] CLF affirms the inherent dignity and inestimable worth of every person, without qualification, and advocates for the development of Canadian law in accordance with this fundamental truth.[2] CLF agrees that no one should be coerced or manipulated into abusive or harmful treatments of any kind, including any such form described as "conversion therapy". To the extent that any such abuses are not captured by existing criminal law measures, CLF recognizes the need for Parliament to respond appropriately within its jurisdiction. CLF therefore fully supports Bill C-6's goal of bringing coercive, harmful practices to an end.

At the same time, any expansion of the criminal law in this area must not "overshoot" its purpose, or inadvertently prohibit legitimate activities outside its scope. The criminal law must be carefully tailored to respect the deep diversity of belief among Canadians concerning the meaning of sexuality and gender, as well as Canada's constitutional commitments to freedom, equality, and pluralism.

CLF respectfully submits that Bill C-6, in its current form, falls short of these requirements. Without clarifying language, CLF is concerned that Bill C-6 would effectively condemn the expression of rationally defensible, sincerely-held beliefs, and limit the autonomy of Canadians to seek legitimate supports in living their lives in accordance with their personal goals and beliefs.

Accordingly, we strongly urge Parliament to revisit the wording of this Bill, as proposed below.

Executive Summary

CLF urges revisions to Bill C-6 because:

A. **In its current form, Bill C-6 undermines the state's duty of neutrality:** Taken together, the second preambular clause and the definition of "conversion therapy" undermine state neutrality and the fundamental freedoms of thought, belief, and opinion by establishing a sectarian, state-sponsored view of human identity, sexuality, and gender, and condemning contrary views as harmful "myths and stereotypes".

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[1] Christian Legal Fellowship ("CLF") is a national association of over 700 lawyers, law students, law professors, and others, with members in eleven provinces and territories from more than 30 Christian denominations. CLF is a non-governmental organization in Special Consultative Status with the Economic and Social Council of the United Nations and has intervened in over 30 cases involving the *Canadian Charter of Rights and Freedoms*. CLF has also appeared before Parliamentary committees, provincial governments and regulators to make submissions on religious freedom, human rights, and related issues.

[2] Genesis 1:26-27 states: "God created man in His own image, in the image of God He created him; male and female He created them" (English Standard Version). See also the United Nations' *Universal Declaration of Human Rights*, 1948, esp. Articles 1, 3, and 5, which state: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood…."

B. Without clarification, the current definition of "conversion therapy" invites unjustifiable limitations on the *Charter*'s s. 2 freedoms and s. 7 liberty guarantees: The current definition of "conversion therapy" is vague, overbroad, and fails to adequately account for the rights and freedoms of conscience and religion, expression, liberty, and security of the person guaranteed by sections 2 and 7 of the *Canadian Charter of Rights and Freedoms*.

C. Without amendments, Bill C-6 discriminates by denying equal treatment and support to individuals based on protected grounds: As drafted, the prohibitions may hinder some individuals from voluntarily seeking assistance in support of their personal goals, despite this same assistance being available to others. Clarification is needed to ensure that consenting, capable individuals have access to legitimate supports – as already provided, for example, in Ontario and Nova Scotia laws addressing conversion therapy – without fear of criminal sanction due to legislative ambiguity.

CLF believes these concerns are remediable through modest but necessary amendments to the Bill's preamble and definition of "conversion therapy". We present them below in a collaborative spirit, believing such amendments will not in any way diminish the Bill's effectiveness in prohibiting coercive, abusive conversion therapies. On the contrary, such amendments will bolster and unify the moral and legal authority of the proposed legislation by attracting the support of all Canadians opposed to such practices.

A. Bill C-6 undermines state neutrality

The constitutional duty of state neutrality prohibits governments from acting in such a way as to create a preferential public space that is favourable to certain groups and hostile to others based on their beliefs.[3] This is because the state's endorsement (or condemnation) of a particular conscientious and/or religious framework diminishes freedom, equality, and diversity by creating a hierarchy of beliefs that denies the equal worth of citizens whose beliefs the state does not share.[4]

To that end, the Supreme Court of Canada has ruled that state neutrality requires, as far as possible, that the state neither favour nor hinder any particular belief or non-belief, but rather "abstain from taking any position in matters of belief and thus avoid adhering to a particular belief."[5] More specifically, state neutrality means the state must neither encourage nor discourage any form of belief.[6]

When the state institutionalizes a preferential view of certain beliefs held by some of its citizens, it effectively establishes a state orthodoxy that alienates and stigmatizes those who do not conform.

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[3] *Mouvement Iaïque québécois v Saguenay (City)*, 2015 SCC 16 at paras 75, 78 [*Saguenay*].
[4] *Saguenay* at para 73.
[5] *Saguenay* at para 75.
[6] *Saguenay* at para 75.

Consequently, when a legislature acts with a religious or coercively ideological purpose, that act is unconstitutional, invalid, and of no force or effect.[7]

In the present context, state neutrality requires, at a minimum, that legislators refrain from disparaging minority and/or religious views on such foundational issues as human identity. In its current form, Bill C-6 fails in this regard. Intentionally or otherwise, Bill C-6 signals to Canadians that certain minority views on the meaning of human identity, sexuality, and gender are not only 'falsehoods', but inherently harmful to society.

While this may not be the intention of the legislation, these effects stem from the Bill's second preambular clause. This clause states that conversion therapies are harmful not only in themselves, but also due to their *basis in* and *propagation of* certain beliefs about sexuality, gender, and identity, which the Bill categorizes as harmful "myths and stereotypes".[8] Comments made by government officials seem to elaborate on what those "myths and stereotypes" are; for example, it has been asserted that Bill C-6 rejects the idea that there is a "right or wrong when it comes to who you are or who you love".[9] These comments may have been intended to be understood within a particular context; namely, that it is inappropriate to impose one's beliefs on others in a coercive, manipulative way. However, without clarification, they could also be interpreted to be condemning the belief, held by many Canadians, that there is such a thing as "right or wrong" within a religious understanding of sexual ethics.

This interpretation is further informed by the proposed definition of "conversion therapy", which, as currently written, only targets activities intended to reduce "*non-heterosexual*" behaviour or to affirm a "*cisgender*" identity.[10] Read in conjunction with the preamble, this definition appears to reinforce a state preference for one understanding of identity, sexuality, and gender, while rejecting a belief system that might (a) understand sexual intimacy as reserved for monogamous heterosexual marriage; and/or (b) understand gender as not a purely social construct and as not distinct from biological sex.

CLF is concerned that, in its current form, Bill C-6 can be read to establish a contrary view on these subjects as the official "state" view and, thus, the only legitimate viewpoint for Canadians to hold and publicly express. Government officials may vehemently disagree with certain beliefs,

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[7] Section 52(1) of the *Canadian Charter of Rights and Freedoms* states: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect." See also: *Saguenay* at para 81: "The legislative objective cannot be to impose or favour, or to express or profess, on belief to the exclusion of all others."

[8] The 2nd preambular clause states: "[C]onversion therapy causes harm to society because, among other things, it is based on and propagates myths and stereotypes about sexual orientation and gender identity, including the myth that a person's sexual orientation and gender identity can and ought to be changed" [emphasis added].

[9] See, e.g., the Department of Justice's infographic, "Proposed changes to Canada's *Criminal Code* relating to Conversion Therapy".

[10] Conversion therapy is defined 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" [emphasis added].

religious or otherwise, and consider them inherently "wrong" – but this does not permit the government as such to enact *criminal* sanctions designed to eradicate or silence them. A criminal law enacted for such a purpose would be unconstitutional, as would a law enacted to compel an *inverse* belief system. As the Supreme Court of Canada has stated:

> With the Charter, it has become the right of every Canadian to work out for himself or herself what his or her religious obligations, if any, should be and it is not for the state to dictate otherwise. The state shall not use the criminal sanctions at its disposal to achieve a religious purpose.[11]

In a free and democratic society, people will hold diverse and sometimes irreconcilable beliefs concerning the meaning of sexuality and identity, whether based in biology, anthropology, culture, philosophy, or religion.[12] For example, many religious communities believe that sexual intimacy is reserved for monogamous heterosexual marriage. For many Christians in particular, such beliefs are core tenets of their faith. While they may not be widely shared, they are "decent and honourable" beliefs, and no law should disparage them, nor the freedom to profess and live one's life in accordance with them.[13] The state's role is not to dictate the proper content of beliefs, but to ensure that Canadians have the freedom to hold and express their own beliefs, free from coercion. In the words of Supreme Court Justice Wilson:

> Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves […] These are all examples of the basic theory underlying the *Charter*, namely that **the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life**.[14]

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[11] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 135 [*Big M*]. See also *Otto v Boca Raton*, No 19-10604 (11th Cir. 2020), where the majority of the 11th Circuit Court of Appeals (U.S.) held that a similar ban on "sexual orientation change efforts" violated the First Amendment and was therefore unconstitutional: "This decision allows speech that many find concerning—even dangerous. But consider the alternative. **If the speech restrictions in these ordinances can stand, then so can their inverse.** Local communities could prevent therapists from validating a client's same-sex attractions if the city council deemed that message harmful. And the same goes for gender transition—counseling supporting a client's gender identification could be banned. It comes down to this: if the plaintiffs' perspective is not allowed here, then the defendants' perspective can be banned elsewhere. People have intense moral, religious, and spiritual views about these matters—on all sides." [emphasis added] Although a dissenting judge upheld the constitutionality of the ban, this was in part because it "exclud[ed] religious counsellors and clergy" from its scope (p. 44).

[12] Angus Reid Institute for Public Interest Research, "Spirituality in a changing world: Half say faith is important to how they consider society's problems", (May 17, 2017). This survey concluded, among other things, that non-believers, the spiritually uncertain, the privately faithful, and the religiously committed "diverge significantly in their opinions on questions of altruism and sexual morality, while differences are less pronounced on many other social questions."

[13] As the preamble to Canada's *Civil Marriage Act* states: "it is not against the public interest to hold and publicly express diverse views on marriage". See also *Obergefell v Hodges*, 576 U.S. 644 (2015) at 19

[14] *R v Morgentaler*, [1988] 1 SCR 30 at 166 [emphasis added].

These concerns within Bill C-6 are easily remediable through simple but necessary amendments that would not undermine the legitimate and broadly supported goal of preventing coercive and abusive practices. CLF recommends the removal of Bill C-6's second preambular clause. In its place, the government should clarify that it is not *condemning* any one's sincerely-held beliefs, but simply wanting to ensure that all individuals are free from coercion in living in accordance with their own beliefs, using language such as the following:

> *Whereas Canadians hold diverse views on gender and sexuality that are integral to their identity, and the freedom to hold and express such diverse views is to be encouraged for every person, free of coercion.*

Alternatively, or in addition, consideration should be given to including language mirroring that of the *Civil Marriage Act*'s preamble, which respects Canada's diversity of opinion and belief, such as the following:

> *Whereas nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs;*
>
> *Whereas it is not against the public interest to hold and publicly express diverse views on marriage, sexuality, and gender.*

Finally, we believe that many of these concerns can also be addressed through amendments to Bill C-6's definition of "conversion therapy", as discussed in the next section.

B. The current definition of "conversion therapy" is overbroad and invites limitations of the *Charter*'s s. 2 freedoms and s. 7 liberty guarantees

A criminal law must go no further than necessary to accomplish its legitimate purpose. As the Supreme Court of Canada has unanimously stated: "Criminal laws that restrict liberty more than is necessary to accomplish their goal violate principles of fundamental justice. Such laws are overbroad."[15]

CLF is concerned that the prohibitions in Bill C-6 restrict liberty far "more than is necessary" to accomplish its goal. We are concerned that, without further refining, the current definition of "conversion therapy" is broad enough to capture not only harmful and coercive practices (which are rightly prohibited), but also *legitimate* activities, including: religious teaching and pastoral care, spiritual support and prayer, conversations between parents and children, and voluntary counselling. We are aware that the government has publicly stated that such activities will not be affected by this legislation.[16] We also note that the Department of Justice's *Charter Statement*

[15] *R v Khawaja*, 2012 SCC 69 at para 35.

[16] For example, on October 1, 2020, the Department of Justice publicly stated that "[Bill C-6] 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 Department of Justice Canada, "Federal Government reintroduces legislation to criminalize conversion therapy-related conduct in Canada" (October 1, 2020).

contains similar assurances in its defence of the Bill's constitutionality.[17] While these informal assurances do not determine the scope of the prohibition at law, they show that the government did not intend to capture these activities, and should be willing to clarify its intent by incorporating such assurances into the Bill itself.

Section 2 of the *Charter* guarantees Canadians the freedom to hold diverse beliefs, the freedom to declare their lawful beliefs openly and without fear of hindrance or reprisal, and the freedom to meaningfully manifest these beliefs publicly in worship, practice, teaching, and dissemination.[18] The *Charter* prohibits the state from coercing or constraining Canadians from acting or refraining to act according to their beliefs, merely on the basis that such beliefs are not shared by—or may even be repugnant to—the majority or the influential in society.[19] In Canada, we are free to hold diverse views on sexuality, marriage, and gender, to communicate them openly, to share them with our children at home and through education and religious community, and to vigorously and publicly debate and recommend these beliefs to others. The threshold the state must meet to justify interfering with these freedoms is exceptionally high, as demonstrated, for example, in the case of hate speech legislation.[20]

While preventing the dissemination of unpopular *beliefs* on sexuality, marriage, and gender is not a valid legislative purpose in a free and democratic society, CLF agrees that protecting children and other vulnerable persons from coercive or abusive *practices* most certainly is. However, as noted above, section 7 of the *Charter* requires that criminal law provisions be properly tailored to that end. The criminal law and its application must also be sufficiently intelligible and certain to allow citizens to predict in advance whether their actions are unlawful. As the Supreme Court of Canada has unanimously affirmed: "it is a fundamental requirement of the rule of law that a person should be able to predict whether a particular act constitutes a crime."[21] The current definition of "conversion therapy" lacks such clarity and also invites unjustified state interference with constitutionally-protected, legitimate religious expression.

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[17] Department of Justice, "Charter Statement: *An Act to amend the Criminal Code (conversion therapy) (C-6)*", Tabled in the House of Commons, October 27, 2020.

[18] *Big M* at paras 94-95.

[19] *Big M* at paras 95-96. As stated by the Supreme Court of Canada in its seminal decision on this matter:

> "One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which limit alternative courses of conduct available to others. Freedom in the broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or conscience. What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of 'the tyranny of the majority'."

[20] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at para 97, [2013] 1 SCR 467: "Freedom of religious speech and the freedom to teach or share religious beliefs are unlimited, except by the discrete and narrow requirement that this not be conveyed through hate speech."

[21] *R v Mabior*, 2012 SCC 47 at para 14: "The rule of law requires that laws provide in advance what can and cannot be done […] Condemning people for conduct that they could not have reasonably known was criminal is Kafkaesque and anathema to our notions of justice."

The current definition creates further uncertainty for parents, teachers, religious communities, and professional counsellors by inviting law enforcement and prosecutors to make subjective determinations as to a person's motives, *religious or otherwise*, for engaging in a conversation, and whether the prohibition applies. The breadth of the definition makes it impossible for individuals to know in advance whether they may be criminally liable for engaging with a friend, patient, family member, or parishioner seeking support in matters related to sexuality and identity.

In the absence of an express statutory exemption, it is unclear how the enforcement of these provisions will account for good faith expressions, whether through religious instruction, pastoral care, or otherwise, on matters of morality, sexual ethics, human autonomy, and identity. It is also unclear whether ancillary effects of a practice would trigger the prohibition, even if the primary motivation is not to "change" a person's sexual orientation or gender identity. For example, does religious expression fall under such a ban if the primary motivation is to convert an individual to a religion, but the corollary of religious conversion is the voluntary adoption of that religion's sexual ethic?

As it stands, none of the aforementioned activities are expressly excluded from the definition of "conversion therapy", and each may be plausibly construed as a "practice", "treatment", and "service" and thus criminally banned. This is particularly a concern where there is no precedent in Canadian law for determining whether a given expression or activity is "designed to change a person's […] gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour".

Bill C-6 does not specify the types of conduct that would be included under the proposed exception for "exploration of their identity or to its development". The difference between a practice, treatment, or service that is designed to "change" versus one that is designed to "explore" is not clear. Such uncertainty creates difficulties for religious leaders, parents, and others attempting to adhere to and teach their foundational religious beliefs in accordance with the law.

The intended target of Bill C-6's prohibition is also complicated by the fact that coercive "treatments" are already illegal and covered by other provisions of the *Criminal Code*, such as prohibitions on forcible confinement, kidnapping, and assault.[22] Expansions of the criminal law should be justified based on evidence of existing harmful conduct that is not currently covered. Parliament must tailor the prohibition to specifically target that conduct, otherwise Bill C-6 risks violating the principles of fundamental justice and section 7 of the *Charter*.[23]

[22] The Honourable David Lametti, "Response to Petition" (February 1, 2019).
[23] *R v Khawaja*, 2012 SCC 69 at para 35.

To remedy these issues, CLF strongly recommends the definition of "conversion therapy" be revised to specify more clearly what conduct is being prohibited and what is not. Specifically, CLF endorses the amendment proposed by the Coalition for Conscience and Expression:[24]

> **Definition of *conversion therapy***
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> **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;
>
> (b) relates to a person's exploration of their identity or to its development; or
>
> (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.[25]

C. Respecting the autonomy of capable and consenting Canadians

Bill C-6 rightly prohibits harmful, intrusive practices seeking to coerce a change of one's orientation or identity. However, Bill C-6 seems to conflate those *coercive* practices—which have been historically discredited—with *voluntary* methods of therapy to support those struggling with, for example, gender dysphoria, which have not been discredited, nor even closely *studied*, in this context.[26] To the contrary, there is evidence to suggest that certain forms of voluntarily-sought therapies (such as talk therapy) are *beneficial* for individuals in various stages of development, as

[24] CLF has been a supporting member of the Coalition and, as previously conveyed to public officials, endorses this amendment as an essential clarification which would substantially address many of our concerns. This brief is submitted independently of the Coalition to further explain CLF's position and to highlight additional concerns/recommendations which have come to light based on our ongoing study and consultation on these issues.

[25] **Notes re the Coalition's proposed amendment:** The addition of "purported therapy" in the first sentence clarifies that the Bill's intent is to address conversion "therapy". The addition of "as part of an effort designed to change sexual orientation or gender identity" ensures that the Bill does not inadvertently criminalize or chill practices, treatments, or services that are not efforts designed to change sexual orientation or gender identity. The language in subsection (c) clarifies that the Bill does not reach promulgation of a religious organization's 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 remaining language in subsection (c) is largely taken from assurances by the Minister of Justice and the Department of Justice that Bill C-6 would not criminalize ordinary conversations.

[26] Dr. James Cantor, Associate Professor at the University of Toronto Faculty of Medicine, has noted "there are no studies of conversion therapy for gender identity" and "no evidence for generalizing from adult sexual orientation to childhood gender identity." James M Cantor, "American Academy of Pediatrics and trans- kids: Fact-checking Rafferty (2018)" (October 17, 2018).

issues pertaining to gender identity are complex and involve a variety of factors for consideration and exploration.[27]

It is not clear whether such supports will be hindered under Bill C-6, to the extent that they support consenting individuals seeking comfort in their body and may, for example, allow for a delay in sex reassignment during adolescence.[28] Feasibly, these should be permitted under the Bill's allowance for "exploration of [a person's] identity or to its development", though this needs to be made clear. For example, although Bill C-6 specifically permits treatments relating to "a person's gender transition" (presumably even a minor's), there is no reciprocal clarification permitting those in support of a person whose goal is to seek comfort in their body *without* transitioning.

A restriction on legitimate, voluntary supports in this context would raise constitutional concerns related to *Charter* rights and freedoms;[29] it would also ignore available evidence, which suggests that many children who experience gender dysphoria "will not continue to experience dysphoria into adolescence and adulthood".[30] Healthcare and support for adolescents[31] struggling with gender dysphoria remains an important area of ongoing and *emerging* study within the medical and scientific communities.[32] Healthcare professionals must not be restricted from offering reasonable supports voluntarily sought by their patients, within the appropriate standards of care, skill, and practice prescribed by their professions. Nor should there be any confusion or fear of criminal sanction for healthcare professionals or counsellors seeking to provide clinically appropriate support. The criminal law is not an instrument of prescriptive medicine. It should not

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[27] See, e.g., Kenneth J. Zucker, "Adolescents with Gender Dysphoria: Reflections on Some Contemporary Clinical and Research Issues" (2019) 48 Arch Sex Behav 1983, at 1988-1989.

[28] See Stewart L Adelson, "Practice Parameter of Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents" (2012) 51:9 Journal of the American Academy of Child & Adolescent Psychiatry 957: "In general, it is desirable to help adolescents who may be experiencing gender distress and dysphoria **to defer sex reassignment until adulthood,** or at least until the wish to change sex is unequivocal, consistent, and made with appropriate consent" [emphasis added].

[29] By hindering or prohibiting individuals from seeking care or support equivalent to that which is available to heterosexual Canadians seeking to modify behaviours, Bill C-6 raises serious concerns with respect to s. 15 (equality guarantee) of the Charter. See also the discussion above regarding state neutrality and ss. 2 and 7 of the *Charter*.

[30] See, for example, Thomas D Steensma et al, "Factors Associated With Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study" (2013) 52:6 Journal of the American Academy of Child & Adolescent Psychiatry 582; for a summary of additional studies on this point, see James M Cantor, "Do trans- kids stay trans- when they grow up?" Sexology Today! (January 11, 2016). Consideration should also be given to increasing reports of "de-transitioners" who regret their transition (and whose ability to find support to transition back seems unclear under Bill C-6, without further clarification). See, e.g., Émilie Dubreuil, "Je pensais que j'étais transgender" Radio Canada (May 13, 2019).

[31] The "mature minor" doctrine, as articulated by a majority of the Supreme Court of Canada in 2009, entitles children to consent to treatment, provided the child understands the information relevant to the treatment and appreciates its foreseeable consequences: *A.C. v Manitoba (Child and Family Services)*, [2009] 2 SCR at para 46.

[32] See National Health Service, "NHS announces independent review into gender identity services for children and young people" (22 September 2020). See also Ryan T Anderson, "Protect Good Medicine, Stop the Censorship of Good Counseling" Public Discourse (October 21, 2020): "The surge in gender dysphoria among minor children is a very recent phenomenon […] The United Kingdom, for example, has seen a 4,515 percent rise in gender dysphoria in girls over the past decade. Researchers have not had time to study the best therapeutic techniques for this modern form of gender dysphoria, let alone to say that the goal of helping a child feel comfortable with his or her bodily sex is always harmful and must be prohibited."

endorse specific treatments to the exclusion of others, nor should it prohibit supports – directly or indirectly – that may actually be helpful.

For these reasons, greater clarity is needed to ensure that capable, consenting Canadians will not be deprived of the ability to pursue legitimate options designed to support their autonomous decisions and healthcare goals. Bill C-6 should include language similar to that already contained in Ontario and Nova Scotia's conversion therapy laws[33] affirming this right:

> ***Person may consent***
> (1) For greater certainty, nothing in this section applies to any practice, treatment, or service provided by a social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional, with reasonable care and skill, to a person who is capable and has consented to the provision of the practice, treatment, or service.
>
> ***Substitute decision-maker cannot consent***
> (2) A substitute decision-maker may not give consent on a person's behalf to the provision of any practice, treatment, or service described in subsection (1).

Conclusion

Bill C-6, in its current form, is inconsistent with Canada's constitutional commitments to freedom, equality, and pluralism. Without textual clarification, this Bill is not limited to banning harmful, coercive and/or involuntary practices, but instead risks penalizing a broader scope of activities, such as voluntary counselling, spiritual/theological expression, pastoral care, and even familial conversations. Prohibiting discredited and harmful practices is a valid and laudable legislative objective; forcing medical professionals, parents, and other individuals to conform to certain (disputed) positions regarding human identity is not. Accordingly, we strongly urge Parliament to revisit the wording of this Bill's preamble and definition of "conversion therapy" and to explicitly protect the freedom to express diverse views, as well as the autonomy of individuals to seek legitimate supports.

These amendments are necessary to ensure the full inclusion of all Canadians and to respect their freedom of thought, belief, and opinion, and personal autonomy, without in any way reducing the Bill's effectiveness in advancing its laudable goal of preventing and discouraging coercive, abusive conversion therapies.

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[33] Bill 77, *Affirming Sexual Orientation and Gender Identity Act, 2015*, 1st Sess, 41st Leg, 2015, s. 2 (assented to 4 June 2015) ON 2015, c 18; Bill 16, *Sexual Orientation and Gender Identity Protection Act*, 2nd Sess, 63rd Leg, 2018 (assented to 11 October 2018) NS 2018, c 28, s. 6(2). See also Queensland's *Health Legislation Amendment Bill 2020*, 56th Parl, 2020, QLD 2020, which clarifies that conversion therapy "does not include a practice by a health service provider that, in the provider's reasonable professional judgment —(a) is part of the clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or (b) enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or (c) is necessary to comply with the provider's legal or professional obligations."