

**Brief on Bill C-6, Prohibiting Conversion Therapy**  
*Florence Ashley, BCL/LLB, LLM (Bioeth)*

Dear Standing Committee on Justice and Human Rights,

I submit this brief as a jurist and bioethicist specialized on the question of conversion practices. I am currently a doctoral student at the University of Toronto Faculty of Law and Joint Centre for Bioethics, where my work focuses on the law and ethics surrounding care for transgender youth. Prior to my doctorate, I completed a master's at the McGill University Faculty of Law and Biomedical Ethics Unit, writing my thesis under the supervision of Dean Robert Leckey. I have authored a book on the legal regulation of conversion practices, titled *Torture Isn't Therapy: Banning Conversion Practices Targeting Transgender People*, which is under contract at UBC Press. My work on conversion practices has been cited by UN Independent Expert Victor Madrigal-Borloz in his report on conversion therapy. In addition to my book, I have authored over 14 refereed articles as well as numerous texts in U.S. law reviews and prestigious university press books. Multiple of my articles bear on conversion practices and their theoretical premises.

The present brief begins with a discussion of the importance of protecting trans communities (p. 1), followed by recommendations for improving Bill C-6 (p. 3), and concludes with a call to action regard unethical practices against intersex and autistic youth (p. 5). I make myself available to you by email should you desire more details or guidance in relation to any of my recommendations. I would also gladly share a pre-publication copy of my book with members of the Standing Committee upon request.

**The importance of protecting trans communities**

Having heard testimonies and read briefs submitted to the Standing Committee, I wish to express deep concern over the suggestion that Bill C-6 should not include practices targeting gender identity. The eloquent testimony of Erika Muse made the harm of such practices clear: "Conversion therapy almost broke me, and I still live with its physical and emotional scars to this day." Scientific studies confirm the harm of conversion practices targeting trans people. Trans people who have experienced attempts to change, discourage, or repress their gender being 127% more likely to attempt suicide and 56% more likely to have experienced severe psychological distress in the

last month.<sup>1</sup> The view of Dr. Kenneth Zucker that the “prevention of transsexualism in adulthood [is] so obviously clinically valid and consistent with the ethics of our time that they constitute sufficient justification for therapeutic intervention” simply cannot be accepted in our society.<sup>2</sup> Respect for minorities is not a luxury. It is a fundamental principle of our Constitution.

Some briefs to the committee alleged a social contagion of transgender identity among teens, motivated by prior to trauma and/or internalized homophobia. This hypothesis is not grounded in evidence and has been thoroughly discredited in the scientific literature.<sup>3</sup> The World Professional Association for Transgender Health warned against the deployment of such theories, stating that:

it is both premature and inappropriate to employ official-sounding labels that lead clinicians, community members, and scientists to form absolute conclusions about adolescent gender identity development and the factors that may potentially influence the timing of an adolescent’s declaration as a different gender from birth-assigned sex.

[...]

We acknowledge [...] that all persons—especially adolescents—are deserving of gender-affirmative

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<sup>1</sup> Jack L Turban et al, “Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults” (2020) 77:1 *JAMA Psychiatry* 68-76.

<sup>2</sup> Kenneth J Zucker & Susan J Bradley, *Gender identity disorder and psychosexual problems in children and adolescents* (New York: Guilford Press, 1995) at 269; see also Kenneth J Zucker & Andrew G Epstein, “Prevention of Homosexuality in Adulthood”, (30 March 2006), online: Health.am <[http://www.health.am/sex/more/prevention\\_of\\_homosexuality\\_in\\_adulthood/](http://www.health.am/sex/more/prevention_of_homosexuality_in_adulthood/)>;

Kenneth J Zucker et al, “A Developmental, Biopsychosocial Model for the Treatment of Children with Gender Identity Disorder” (2012) 59:3 *Journal of Homosexuality* 369–397.

<sup>3</sup> Florence Ashley, “A critical commentary on ‘rapid-onset gender dysphoria’” (2020) 68:4 *The Sociological Review* 779–799; Florence Ashley, “Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach” (2020) 17:4 *Journal of LGBT Youth* 361–383; Arjee Javenalla Restar, “Methodological Critique of Littman’s (2018) Parental-Respondents Accounts of ‘Rapid-Onset Gender Dysphoria’” (2020) 49 *Archives of Sexual Behavior* 61–66; Natacha Kennedy, “Deferral: The sociology of trans People’s epiphanies and coming out” (2020) *Journal of LGBT Youth* (online first); Victoria Pitts-Taylor, “The untimeliness of trans youth: The temporal construction of a gender ‘disorder’” (2020) *Sexualities* (online first).

evidence-based care that adheres to the latest standards of care and clinical guidelines.<sup>4</sup>

Members of the Standing Committee should reject attempts to tidily distinguish conversion practices targeting gender identity and conversion practices targeting sexual orientation. Authors like Richard Green, John Money, George Rekers, and O. Ivar Loovas promoted conversion practices on gender non-conforming youth under the belief that being gender non-conforming might lead them to grow up trans or gay.<sup>5</sup> Today, many practitioners have abandoned the goal of preventing adult sexual orientation while maintaining the goal of preventing gender non-conforming children from growing up trans. However, the practices are no less harmful for youth who grow up gay and cisgender (i.e. not trans) because they still teach them that there is something wrong with their gender non-conformity, with just being who they are.<sup>6</sup> Although these practitioners may no longer profess to target sexual orientation, they still target gender non-conformity, disproportionately harming to sexual minority youth.

The Standing Committee on Justice and Human Rights should reject any attempt to separate trans conversion practices from gay conversion practices. These practices share a history and significantly overlap in their contemporary forms. Neither trans nor cisgender LGBTQ can be adequately protected without fully protecting the other.

### **Recommendations regarding Bill C-6**

At the outset, I express my full endorsement of the recommendations and testimony of Erika Muse and Travis Salway, whose expertise on conversion practices is incontrovertible. My endorsement extends to the recommendations of the Centre for Gender & Sexual Health Equity, to which

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<sup>4</sup> “WPATH Position Statement on ‘Rapid-Onset Gender Dysphoria (ROGD)’”, online: <<https://www.wpath.org/policies>>.

<sup>5</sup> Florence Ashley, “Homophobia, conversion therapy, and care models for trans youth: defending the gender-affirmative approach” (2020) 17:4 *Journal of LGBT Youth* 361–383; Karl Bryant, “Making gender identity disorder of childhood: Historical lessons for contemporary debates” (2006) 3:3 *Sexuality Research and Social Policy* 23–39; Jake Pyne, “The governance of gender non-conforming children: A dangerous enclosure” (2014) 11 *Annual Review of Critical Psychology* 79–96.

<sup>6</sup> Beth Schwartzapfel, “Born This Way?”, *The American Prospect* (14 March 2013), online: <<https://prospect.org/power/born-way/>>; Robert Wallace & Hershel Russell, “Attachment and Shame in Gender-Nonconforming Children and Their Families: Toward a Theoretical Framework for Evaluating Clinical Interventions” (2013) 14:3 *International Journal of Transgenderism* 113-126.

Erika Muse and Travis Salway as well as myself contributed.<sup>7</sup> My recommendations are intended to supplement theirs.

I recommend the following:

- (1) The ban must be amended to fully protect trans people:
  - (i) The ban must **include the language of ‘discourage or repress’**, as conversion practices do not only seek to ‘change’ trans people, but also discourage transition and repress their identity
  - (ii) The ban must **include desired gender expression** within the definition of the ban, as conversion practices often target gender non-conformity;
  - (iii) The ban must **extend to adults** regardless of consent, as consent cannot justify the risks of serious harm that result from demeaning practices;
  - (iv) The ban must be amended to **close the loopholes** created by the overly broad language of ‘relates [...] to a person’s gender transition; or to a person’s exploration of their identity or to its development’;
- (2) The ban must procedurally empower survivors:
  - (i) The law or relevant guidelines should require the ongoing **consent** of the survivor(s) **to charge with and prosecute conversion practices**;
  - (ii) The law or relevant guidelines should require the ongoing **consent** of the survivor(s) **to call and subpoena witnesses**;
  - (iii) The law or relevant guidelines should require the **active participation and consent** of the survivor(s) in **offering plea deals**;
  - (iv) The law or relevant guidelines should require the **active participation and consent** of the survivor(s) in **making sentence recommendations**;
- (3) The federal government must discourage conversion practices beyond merely banning them:

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<sup>7</sup> Available online: <<http://cgshe.ca/open-letter-bill-c-8-excludes-conversion-therapy-practices-that-target-trans-people/>>.

- (i) The law must include effective means of **taking down advertisements** of conversion practices without having to go through a lengthy trial;
- (ii) The law must empower the Canada Revenue Agency to **withhold tax-exempt status** from non-profit organizations and charities that facilitate conversion practices;
- (iii) The law must empower judges to **seize the property of and dissolve federally incorporated entities** who are in the business of offering conversion practices;
- (iv) The federal government must **actively encourage provinces and municipalities to pass detailed regulation of conversion practices**, as many of the most effective means of discouraging conversion practices lie at the provincial and municipal levels;
- (v) The federal government must **dedicate financial resources** to mental healthcare services, peer-support organizations, and advocacy organizations **by and for survivors of conversion practices**.

The federal government should closely consult with survivor and scholarly experts in drafting these amendments to Bill C-6. Survivor communities have been insufficiently consulted during the drafting of the current Bill, and their knowledge and experiences must be firmly centred going forward.

### **Call to action: protecting intersex and autistic people**

In addition to these recommendations, the government should meet with intersex and autistic communities to develop a plan for addressing practices that are deeply philosophically similar to trans and gay conversion practices, but instead target intersex and autistic communities.

Our Criminal Code expressly permits non-consensual genital surgeries on intersex newborns with the goal of achieving a ‘normal sexual appearance or function’, despite these practices often causing loss of reproductive function and genital sensation and being experienced as a sexual assault.<sup>8</sup> These non-

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<sup>8</sup> Janik Bastien-Charlebois, “The Medical Treatment of intersex bodies and voices” (2015) (Sanctioned sex(ualiti)es, ILGA International World Congress); Morgan Holmes, “Rethinking the Meaning and Management of Intersexuality” (2002) 5:2 Sexualities 159–180; Tiffany Jones et al, *Intersex: Stories and Statistics from Australia* (Cambridge: Open Book Publishers, 2016) at 99ff.

consensual practices are deeply harmful to intersex people, denying their dignity and bodily autonomy. The Malta Declaration, adopted at the Third International Intersex Forum in 2013, calls for the abolition of these non-consensual surgeries, emphasizing that “[i]ntersex people must be empowered to make their own decisions affecting own bodily integrity, physical autonomy and self-determination.”<sup>9</sup>

Autistic experts and scholars have drawn attention to the logic of conversion that underpins Applied Behavioural Therapy (ABA).<sup>10</sup> ABA seeks to ‘cure’ autistic youth through behavioural conditioning techniques, forcing them to act like allistic (non-autistic) people with little to no regard for their own goals and desires as well as diminishing and disregarding the long-term mental health impacts of the practices.<sup>11</sup> The philosophical similarities between ABA and LGBT conversion therapy is not accidental, O. Ivar Loovas having been a central figure in the development of both—though his proposed approach to autistic youth was “markedly more brutal”.<sup>12</sup> ABA is often the only intervention available to autistic youths and adults who seek psychosocial support, even though it has been linked to PTSD and psychological harm.<sup>13</sup>

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<sup>9</sup> Malta Declaration, *OII Europe* (1 December 2013), online: <<https://oiieurope.org/malta-declaration>>. See also Surgeons General of the United States M Joycelyn Elders, David Satcher & Richard Carmona, *Re-Thinking Genital Surgeries on Intersex Infants* (Palm Center, 2017).

<sup>10</sup> Amy Sequenzia, “Autistic Conversion Therapy,” *Autistic Women & Non-Binary Network* (blog), 2015, <<https://awnnetwork.org/autistic-conversion-therapy/>>; Daniel A. Wilkenfeld & Allison M. McCarthy, “Ethical Concerns with Applied Behavior Analysis for Autism Spectrum ‘Disorder’” (2020) 30:1 *Kennedy Institute of Ethics Journal* 31–69.

<sup>11</sup> Michelle Dawson, “The Misbehaviour of Behaviourists: Ethical Challenges to the Autism-ABA Industry,” *No Autistics Allowed: Autism Society Canada Speaks For Itself* (18 January 2004), online: <[http://www.sentex.net/~nexus23/naa\\_aba.html](http://www.sentex.net/~nexus23/naa_aba.html)>; Finn Gardiner, *First-Hand Perspectives on Behavioral Interventions for Autistic People and People with Other Developmental Disabilities* (San Francisco: Autistic Self Advocacy Network & UCSF Department of Family and Community Medicine, 2017); Aileen Herlinda Sandoval-Norton and Gary Shkedy, “How Much Compliance Is Too Much Compliance: Is Long-Term ABA Therapy Abuse?” (2019) 6:1 *Cogent Psychology* 1641258.

<sup>12</sup> Jake Pyne, “‘Building a Person’: Legal and Clinical Personhood for Autistic and Trans Children in Ontario” (2020) 35:2 *Canadian Journal of Law and Society* 341–365 at 342; Margaret F. Gibson and Patty Douglas, “Disturbing Behaviours: Ole Ivar Lovaas and the Queer History of Autism Science” (2018) 4:2 *Catalyst: Feminism, Theory, Technoscience* 1–28.

<sup>13</sup> Henny Kupferstein, “Evidence of Increased PTSD Symptoms in Autistics Exposed to Applied Behavior Analysis” (2018) 4:1 *Advances in Autism* 19–29; see also Jake Pyne, “‘Building a Person’: Legal and Clinical Personhood for Autistic and Trans Children in Ontario” (2020) 35:2 *Canadian Journal of Law and Society* 341–365.

Canadian society simply cannot condemn trans and gay conversion practices on one hand yet allow the same to occur on intersex and autistic youth. As the federal government moves towards prohibiting LGBT conversion therapy, so too must it act against deeply harmful and degrading attacks on intersex and autistic youth.

All of which is respectfully submitted,

Florence Ashley  
*BCL/LLB, LLM (Bioeth)*