

Parliament of Canada

House of Commons Standing Committee on Justice and Human Rights

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

Submission from:

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Summary

This committee, the Parliament of Canada, and the government are encouraged to do what each says it does and desires to do. Listen to Canadians. Then, act accordingly within the constitutional authority of Parliament to provide leadership and good governance.

Canadians from a diversity of communities – including LGBT+, previously gender dysphoric, as well as religious and non-religious educators, lawyers, and parents – have expressed agreement with the stated objective for Bill C-6, to prohibit forced conversion therapy, and many have also requested that the bill be amended to clarify the scope of its declared intent.

The constitutional purpose of the federal Parliament is “to make laws for the Peace, Order, and good Government of Canada” (POGG).¹ This committee is encouraged to embrace that mandate on behalf of all citizens and recommend appropriate amendment to Bill C-6 that addresses the concerns expressed by a significant number of Canadians who discern that the legislation as currently worded engenders too wide a scope, easily interpreted by courts and culture to include conversations with parents, relatives, educators, counsellors, therapists, and healthcare professionals, as well as conversations with religious leaders about sincerely held beliefs and expectations conjoined with those beliefs.

Upon recommendation by this committee of a suitable amendment protecting good faith conversations, the government is urged to accept such amendment. Parliament, in turn, is encouraged to pass Bill C-6 only with the amendment included.

¹ *Constitution Act, 1867*, section 91

Introduction

Introduced for First Reading in the House of Commons in March 2020 as *Bill C-8, An Act to amend the Criminal Code (conversion therapy)*, following prorogation of Parliament in August the bill was reintroduced as *Bill C-6, An Act to amend the Criminal Code (conversion therapy)* in October 2020. Bill C-6 proposes a series of *Criminal Code* offences concerning “conversion therapy,” defined in the bill 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.”

Commensurate with each of the March and October introductions Minister of Justice David Lametti held a press conference. At both and subsequent media availabilities, and in his appearance before this committee, Minister Lametti sought to assure Canadians the bill protects “good faith conversations.” Ongoing repetition of this statement would not be required were there not genuinely held anxiety about the wording of the bill. That anxiety has been expressed by a diverse range of Canadians with otherwise seemingly dissimilar interests.

People from a diversity of communities have expressed support that Bill C-6 makes a horrendous practice, which has become commonly referred to as conversion therapy, its own crime, defined more explicitly and separately from component parts already in the *Criminal Code*. Many have also expressed concern that the definition proposed captures voluntary, good faith and non-harmful counsel of children and adults. Among those voices are: people who are LGBT+ in sexual orientation, gender expression and gender identity; people who were previously gender dysphoric; and, religious and non-religious educators, counsellors, therapists, healthcare professionals, lawyers, parents, relatives, and religious leaders.

Bill C-6 is validation that the government has heard the concerns of an important segment of Canadian society, listened, and then acted on identified concerns. It is equally important that concerns expressed by other valued segments of society be heard, listened to, and acted upon.

Addressing the Issue not Addressed in C-6

Minister Lametti's repeated assurances that Bill C-6 protects "good faith conversations" are not stated in C-6, and will bear little weight in a court of law or the court of public opinion.

Although the bill itself introduces new language to the *Criminal Code* intended to clarify a particular crime, the crime described might otherwise be prosecuted using other sections of the *Code*. In regard to potential amendment to the draft legislation, the minister stated before this committee that he is "not inclined to be open to amendments which are redundant," i.e. clarification he considers as already addressed in the *Criminal Code*. To many this sounds an echo of U.S. President Ronald Reagan's remark, "The nine most terrifying words in the English language are: I'm from the government and I'm here to help."²

It is not redundant to provide clarity. Although the crime of conversion therapy might be prosecuted using other sections of the *Criminal Code* it is not redundant but complementary to add section 320.101 and other amendments to the *Code*.

Providing clarity in the definition that good faith conversations are exempted from the crime as defined would not be redundant but complementary to existing defences found in the *Code*, and would obviate the use of court time, prosecutorial resources and the legal expense likely to be otherwise incurred by citizens to explore application of such defences in court.

Clarity of definition would also be helpful in other ways, which I will turn to next.

² Ronald Reagan, *The President's News Conference*, Chicago, Illinois, August 12, 1986, <https://www.reaganfoundation.org/media/128648/newsconference2.pdf>

Several provinces and one territory³ have banned conversion therapy as a health care practice. A number of Canadian municipalities, among them Calgary and Edmonton in Alberta and Vancouver in British Columbia, have also enacted by-laws banning conversion therapy. Whether those by-laws are within or outside the legal and constitutional jurisdiction of municipalities is not the issue before this committee. However, the understanding and interpretation of conversion therapy by the public, municipal workers, healthcare licensing and regulatory bodies, and the courts is a matter deserving the consideration and response of this committee. The definition passed by Parliament will have substantial influence on the standard definition to be used for conversion therapy in these several settings.

Public opinion, provincial governments, municipal governments, and the courts will not look to deliberations in Hansard, statements made by the Minister of Justice at any number of press conferences, or even the report of this committee in order to interpret the meaning of conversion therapy once it has been defined in the *Criminal Code*. They will look to section 320.101 and the amendments to the *Code* proposed in Bill C-6.

If the concerns of parents, relatives, educators, counsellors, therapists, healthcare professionals, lawyers, and religious leaders are not addressed in the legislation there will be a presumption by the courts that there is a reason why parental, familial, counselling, medical and religious “good faith conversations” were not exempted. The presumption will be that they were not intended to be exempted. It is a presumption that has already held sway in opinions publicly expressed by a number of municipal, provincial and federal politicians, as well as individuals and organizations that lobbied the government for this legislation. The Government of Canada

³ Manitoba, Nova Scotia, Ontario, Prince Edward Island, Yukon, legislation pending in Quebec

funded research report *Conversion Therapy in Canada: The Roles and Responsibilities of Municipalities*⁴ is endorsed by a number of self-described activists and activist organizations. That report states “individual talk therapy,” “group therapy” and “spiritual prayer” are encompassed within the scope of the definition for conversion therapy.

The *Constitution Act, 1867*, section 91, gives the federal government, with the advice and consent of Parliament, broad powers in regard to matters of national concern based on the provision to “make laws for the Peace, Order, and good Government of Canada” (POGG).

The governance concept of peace, order, and good government pre-dates our constitution, and is found in constitutions of former British colonies around the world (some with the alternative *welfare* in place of *order*). The POGG obligation has long been understood as vital for responsible government.

In his 1988 book *Foolishness to the Greeks*, Lesslie Newbigin, commenting on Augustine’s early fifth century A.D. Christian classic *The City of God*, summarizes thoughts about good government for a peaceful and ordered society:

But peace is only possible when there is order, and order depends on proper government; but government in which one is sub-ordinated to another is only right if the one who is called to govern does so for the sake of those he governs—as their servant.⁵

Good government requires providing sound structure to Canadian society, protection and support for individual Canadians and the institutions of society, and continual establishment of conditions for personal and societal flourishing. Wisdom and fairness are expected from our government and all parliamentarians, acting with regard for the well-being of all Canadians.

⁴ Kristopher Wells, *Conversion therapy in Canada: The roles and responsibilities of municipalities*. (Edmonton, AB: MacEwan University, 2019).

⁵ Lesslie Newbigin, *Foolishness to the Greeks: the Gospel and Western Culture*, (Grand Rapids, MI: Eerdmans, 1988).

The 19th century organizers of the new Confederation recognized the necessity for the federal government to function in a unifying capacity that would facilitate the success of each province, and subsequently each new province and territory, as well as for each and all Canadians through proper exercise of the responsibility “to make Laws for the Peace, Order, and good Government of Canada.”

Because of the government’s proposed definition in Bill C-6, this committee and Canada’s Parliament are now confronted with the responsibility to determine how to frame this legislation in a way that can be supported within the constitutional obligation for Parliament to provide good governance, peace and order for the benefit of all Canadians.

The differing definitions and actions of provincial, territorial and municipal governments signal that conversion therapy has become a matter of national concern. In criminalizing conversion therapy, Parliament, in order to provide peace, order and good government to all citizens, is to provide a balanced legislative definition to properly address that national concern. To establish that definition, this committee is encouraged to not only hear the witnesses who have presented before it but to listen to them, and act accordingly.

Witnesses before and submissions to this committee have raised concerns about being able to parent with confidence in the best interests of their children, and to provide supportive counselling and care to children. Pre-teen and teen years can be awkward times. The support of psychological, emotional, and/or spiritual counsellors has benefited many children and youths in sorting out sexual tensions and questions about sexual attraction that are common to adolescents.

Witnesses and submissions have also articulated concern about the impact of Bill C-6 on adults seeking counselling, and on the provision of spiritual guidance for those seeking to follow their religious beliefs.

In regard to children, the cardinal rule of POGG for parents and the state is *the best interests of the child*. Pertaining to adults, the *Canadian Charter of Rights and Freedoms* guarantees freedoms of conscience, religion, thought, belief, and opinion, all of which align with personal autonomy in seeking consultation or counsel, including clergy-parishioner and other confidential communications as endorsed by the Supreme Court of Canada in *R. v. Gruenke*. Section 320.101 as currently worded disregards these obligations to Canadians.

Reasonable proposals have been submitted to this committee that would provide greater certainty in the definition of the crime, and better direction to the courts and other levels of government legislating on the issue of conversion therapy within their respective constitutional or legislated jurisdictions. Implementation of a refined definition that reflects the statements that good faith conversations are not intended to be encompassed within the scope of the legislation will also alleviate the concerns of parents and others intimidated by the potential implications of the current wording, and the costs associated with legal defence should they be unfortunate enough to find themselves in a court of law seeking to prove the Minister's statements to be true.

Submissions from the Coalition for Conscience and Expression, Christian Legal Fellowship, and Centre for Israel and Jewish Affairs, among others, provide suggested language that might be considered/refined by this committee for effective amendment of the legislation.

Conclusion

The government is commended for hearing Canadians who have suffered as a result of forced and abusive conversion therapy, listening to them, and acting to legislate a readily ascertainable national criminal standard to better prohibit further such abuse.

This committee, Parliament, and the government have heard from a diversity of Canadians who are concerned that the definition of conversion therapy proposed in Bill C-6

encompasses too wide a scope of activities. This committee, Parliament, and the government are encouraged to listen to the people and organizations that have expressed those concerns and act accordingly by amending the definition.

Parents, prospective parents, educators, counsellors, therapists, healthcare professionals, religious leaders, and lawyers have expressed concern the definition captures a variety of otherwise good faith conversations with children.

Adults have shared personal testimony expressing concern, and lawyers have noted similar concern, that the definition captures good faith conversations initiated by adults who want help to sort out their personal sexual desires because their choice is to live a cisgender heterosexual life. The reasons a person might make such a decision are theirs alone.

Other levels of government in Canada are enacting legislation with varying definitions of conversion therapy which will be influenced and potentially amended to align with the definition that is established in the *Criminal Code*. Some might eliminate their legislation once *Criminal Code* sanctions are in place.

In the interest of bring peace of mind to those concerned about good faith conversations, order to the national understanding of what is and is not prohibited by the term *conversion therapy*, and good government that serves all Canadians by doing so, this committee, Parliament, and Canada's government are urged to amend Bill C-6 to state what is not intended to be captured in the vast net structured by the current proposed definition. This is readily accomplished by exempting those categories stated in submissions and by the Minister of Justice: good faith conversations between children and parents, relatives, educators, counsellors, therapists, healthcare professionals and religious leaders; and, good faith conversations between adults.