A Brief to the Standing Committee on Justice and Human Rights (JUST Committee) regarding Bill C-6 – An Act to amend the Criminal Code (conversion therapy)

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Honourable Members of Parliament,

I write on my personal behalf in support of Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*. I support this legislation because it will have an undoubted effect of denunciation of the reprehensible practices of conversion therapy practices (CTP) and sexual orientation, gender identity, and gender expression change efforts (SOGIECE) [1] and its national effect in conveying a protection from CTP and SOGIECE where several provinces appear unlikely to adopt regulatory protections. This federal government and Parliament are to be commended for their efforts to respond, with Bill C-6, to the widespread harms of conversion therapy which have been extensively noted by the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,[2] the Report of the House of Commons Standing Committee on Health,[3] and survivors of CTP and SOGIECE in Canada through the ongoing research of Dr. Travis Salway and others into these negative social phenomena.

I do not, however, think that Bill C-6 as presently drafted optimizes its protective potential nor that criminal law protections, standalone, will sufficiently remedy the social ills caused by CTP and SOGIECE. Correspondingly, this submission will first outline some of my personal experiences with SOGIECE and as a human rights and constitutional law lawyer and 2SLGBTQI+ legal community leader, as well as my understanding of both CTP and SOGIECE, derived from conversations with survivors, activists, and researchers and review of leading research on CTP and SOGIECE. I will then canvas four key themes on the shortcomings of Bill C-6 and make corresponding recommendations to improve the legislations protective capability and reduce its negative unintended effects.

The four key themes include:

i) The under-inclusiveness of the current protections in Bill C-6;
ii) The constitutionality of Bill C-6;
iii) The need to mitigate negative consequences of the invocation of criminal law prohibitions in Bill C-6; and

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[1] See the Travis Salway research group submission to JUST Committee (submitted December 4, 2020) (Salway group submission), pg. 2, for the definition of CTP as "sustained and organized efforts to avoid the adoption or expression of lesbian, gay, bisexual, or queer (LGBQ) sexual orientations, gender identities that do not match one's sex assigned at birth, and/or non-conforming gender expressions" and of SOGIECE as "less well-delineated attempts to persuade and affirm rigid expectations of cisgender and heterosexual expressions and identities, noting that the distinction between SOGIECE and conversion therapy is not always clear, and SOGIECE often leads to more formalized CTP".

[2] "Practices of so-called 'conversion therapy'", Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to the United Nations Human Rights Council (June 15- July 3, 2020), available online:

[3] "The Health of LGBTQIA2 Communities in Canada", Report of the Standing Committee on Health (June 2019), available online: https://undocs.org/A/HRC/44/53 (UN report). https://www.ourcommons.ca/Content/Committee/421/HESA/Reports/RP10574595/hesarp28/hesarp28-e.pdf (Health Committee report).

iv) The shortcomings in Bill C-6 optimizing the enforceability and effectiveness of CTP and SOGIECE protections.

The recommendations that I make based on my review of these four themes, include:

a) That amendments be made following those proposed by the Centre for Gender & Sexual Health Equity's (CGSHE's) and anti-CTP conversion therapy Trans activist and survivor Erika Muse's proposed approaches;[4]
b) That an additional amendment be made to section 268(3)(a) of the *Criminal Code* to to prevent that section from being used as a defence for physicians performing genital normalizing surgeries on intersex minors who are too young to provide informed consent for those medical procedures and that further consultation with the intersex community and study of legislative reforms directly prohibiting such gender normalizing surgeries be undertaken; and
c) That Parliament further consider what other legislative means are available to it, or to recommend to the provinces and territories, to more comprehensibly ban CTP and SOGIECE.

Background to these submissions

I identify as a gay cisgender man. I am not a survivor of CTP, however, I have experienced SOGIECE from family members throughout my youth and in my young adulthood, both before and after I "came out" as gay. I grew up in rural farming community in Southern Alberta, with parents who have very traditional (and in my father's case often Conservative values). My grandparents and several other family members were religious Evangelicals and very critical of gay and lesbian identities (I doubt they fully comprehended the other identities within the 2SLGBTQI+ rainbow at that time and would have just considered them all gay or lesbian). My parents were begrudgingly forced into religion in their childhoods and were, correspondingly, not particularly religious nor did they make me attend church, however, they retained many of their parent's traditional, conservative, and rural community values. I remember countless derogatory and snide comments from my father about gays and lesbians. There was also nasty gossip about second cousins who were openly gay. I recall when the Paul Martin government passed marriage equality legislation in 2005 my father turned off the news in disgust. He also did this on several occasions when same sex couples began to be featured prominently in many television shows shortly thereafter.

In terms of my gender expression, I remember several threats made by my father when I attempted to alter my appearance in ways that are more conventionally seen as feminine. When I pierced my ear in my early university years, he threatened to rip it out. When I died my hair blond, once around age 13 and another time around age 19, he was similarly hostile towards me

[4] See the CGSHE submission to JUST Committee (submitted December 3, 2020) (CGSHE submission), pgs. 5-6 and the open letter of Erika Muse (dated June 25, 2020), available online: http://cgshe.ca/blog/op-ed/2020/06/a-personal-letter-from-erika-muse/.

and made threats to kick me out of the home. I was fortunate to have a strong-willed mother who shielded me from much of this abuse and my father eventually relented.

Despite this, I still was scared to officially come out to my father until I was self-sufficient and about to graduate law school in my mid-20s. I had wanted to live openly as a gay man fully for several years before but was scared to do so as I was to some extent dependant on my parents and was scared that if I came out earlier this would lead to familial estrangement and I would be unable to support myself. I feared that I might be subjected to CTP or further SOGIECE efforts and hid my true identity from some of the most important people to me, my parents until well into my adulthood. I even researched CTP for myself thinking that it might allow me to preserve a relationship with my family. I endured a significant amount of psychological trauma over this for several years until eventually "coming out". I still admittedly feel developmentally delayed when it comes to personal relationships and intimacy because of my internalized homophobia and the lingering trauma of the SOGIECE efforts I endured and the fear of potential familial estrangement I endured for many years, which also prevented me from dating and forming relationships until much later into adulthood.

Eventually, when I did "come out" around age 25, both of my parents did continue to support me. I now am fortunate to have a good relationship with both of them. I don't often speak with my father about his SOGIECE actions towards me, but I suspect he would likely be remorseful of his actions today. This after seeing that my being an openly gay man has not been detrimental to my professional success or is no longer detrimental to my happiness and self-confidence. It saddens me to say that many of my 2SLGBTQI+ friends have not had as positive of "coming out" experiences and have had total or partial familial estrangement, often with severe consequences for their development and ability to become financially self-supporting.

Though my dad was initially disgusted with marriage equality, I think seeing support for 2SLGBTQI+ rights become the law of the land did have a moderating effect on his beliefs and behavior over time. There is a symbolic value to legislating to advance human rights even if not everyone will practically benefit from the expansion of those rights. When acceptance is seen as the law of the land, most good-hearted and law-abiding people will in turn find acceptance in their personal hearts and minds.

This belief in the symbolic power of promoting human rights in law is the reason why I generally support a criminal conversion therapy ban. The symbolic protection through the criminal law will give aggressive parents, other persons in a position of trust, or CTP practitioners, pause before embarking on these actions both with the potential criminal penalties but also by the corresponding social pressure that will shift with CTP and SOGIECE practices becoming illegal.

My experience seeing the power of marriage equality change hearts and minds for many towards the 2SLGBTQ+ community, led to my own desire to eventually attend law school, qualify as a lawyer, and practice constitutional and human rights law. Through my legal practice and also my role as a 2SLGBTQ+ community leader as the Co-Chair of British Columbia's largest 2SLGBTQ+ lawyer's forum, the Canadian Bar Association British Columbia Sexual Orientation and Gender Identity Community section, where I have represented many different 2SLGBTQI+

and other minority groups in a variety of contexts, I have come to appreciate the struggles that some of the most marginalized in our communities, including trans, non-binary, and intersex individuals face, and there need for protections enshrined in the law. I have also come to appreciate the negative consequences of the often blunt instrument of criminal law prohibitions for already marginalized communities who are disproportionately and negatively impacted by the prohibitions. I have also had the opportunity to speak to several leading anti-CTP and SOGIECE activists (including CTP survivors), academics, as well as several legal colleagues, in forming my views on Bill C-6 and recommendations.[5]

With these reservations on Bill C-6's present form in mind, I hope that Parliament will amend it or consider subsequent legislation to amend the *Criminal Code* in order to maximize the potential protection for the whole 2SLGBTQI+ community and minimize the risk of any potential constitutional challenge to Bill C-6. Despite these reservations, I still think that ultimately were this legislation still in place 15 years ago when I was being subjected to SOGIECE efforts that it would have helped moderate and prevent several of those efforts and would have left a younger version of myself, whose in a province like Alberta where provincial protections for CTP and SOGIECE are less likely to be implemented, feeling more empowered to take pride in his sexual orientation and gender expression and to come out sooner and avoid much future psychological trauma and internalized homophobia.

I will now turn to the drawbacks of the current Bill C-6 that I hope will be addressed, so that all 2SLGBTQI+ individuals can enjoy equal protection from CTP and SOGIECE with reduced negative consequences from any legislative interventions.

<u>Under-inclusiveness of Bill C-6</u>

Bill C-6 is underinclusive for three reasons:

i) It does not fully protect those 2SLGBTQI+ persons above the age of majority from CTP and SOGIECE;
ii) It does not provide any protection for intersex individuals from CTP and SOGIECE such as non-consensual so-called "genital normalizing surgeries"; and
iii) It provides inadequate protection for Trans and non-binary individuals, by not including gender expression in the definition of conversion therapy, by constraining the definition so that it will not cover many harmful SOGIECE actions, and by providing too open-ended of an exclusion in the proposed s. 320.101 of the *Criminal Code* for "practice, treatment, or services" relating to "a person's gender transition" or "a person's exploration of their identity or to its development".

[5] I am especially grateful to Erika Muse, Travis Salway, Florence Ashley, Alexis Hunt, Nick Schiavo, Michael Kwag, Fae Johnstone, Kristopher Wells, Tony Paisana, Nicole Nussbaum, Nadia Sayed, Kareem Ibrahim, and others for discussing their views in helping me to solidify my opinions on Bill C-6. The views expressed in this submission, however, are the author's own and should not be taken to represent anyone else's viewpoint.

Further amendments to clarify the consent necessary for CTP or SOGIECE to be practiced on adults

The protection in the proposed *Criminal Code* s. 320.102 for "forced conversion therapy" is too narrow. Only "knowingly caus[ing] a person to undergo conversion therapy against the person's will" is conduct prohibited. This appears to capture some form of forced coercion into CTP or SOGIECE, however, it is unclear whether it would capture other actus reuses on mental states, inherent in circumstances such as treats, deception, or errors, that lead to CTP and SOGIECE. It is notable that the recently enacted German legislation prohibiting CTP in May 2020, bans not only coercion but also threats, deception, and error by the CTP practitioner or adults or other legal guardians with parental authority over a minor.[6]

The CGSHE submission's proposed definition of consent, on pg. 6,[7] to be added to the proposed *Criminal Code* s. 320.102 delineates a set of required practices to ensure that informed consent, free of threat, deception, and errors, is obtained. It also extends protection for adults that lack capacity to provide consent. Adopting this full amendment or, alternatively, including a specific mention of the need to obtain consent within s. 320.102 and a prosecutorial guideline that expands on the understanding of consent, better protects those vulnerable to CTP and SOGICE. Indeed, both the Salway group and Community Based Research Centre (CBRC) suggest that a significant number of adults remain subjected to conversion therapy.[8] Canada should follow Germany's example and maintain its status as a world leader on protecting 2SLGBTQI+ rights by similarly providing this more expansive protection to adults.

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[6] "Act to Protect against Conversion Treatments", Federal Ministry of Health News (May 7, 2020), online: https://www.bundesgesundheitsministerium.de/en/press/2020/conversion-treatments.html (German bill).

[7] That proposed amendment reads:

> "Add subsection (2), as follows:
> For the purpose of subsection (1), no consent is obtained if
> (a) the agreement is expressed by the words or conduct of a person other than the one who was caused to undergo conversion therapy;
> (b) the person is incapable of consenting to conversion therapy for any reason;
> (c) the person was not adequately informed of inefficacy and risks of conversion therapy;
> (d) the accused induces the person to consent by abusing a position of trust, power or authority;
> (e) the person is vulnerable to coercion, manipulation, or social pressure taking into consideration their age, maturity, physical and mental health, psychological and emotional state, and any other relevant condition including any situation of dependence;
> (f) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity;
> (g) the complainant, having consented, expresses, by words or conduct, a lack of agreement to continue to engage in the practice, treatment, or sustained effort; or
> (h) consent cannot be given to conversion therapy given as a prerequisite to social or medical transitioning".

[8] See the Salway group submission pg. 3 results of ongoing survey and recap of the CBRC's SexNow 2019-2020 survey results, available online: https://www.cbrc.net/sex_now_survey_results_reveal_prevalence_of_change_efforts. See also the CBRC submission to JUST Committee (submitted December 6, 2020) (CGSHE submission), pgs. 1-2 also calling for similar amendments.

Further Criminal Code amendments and study on legislative reforms to protect intersex Canadians

The Health Committee report, in Recommendation 22 calls for "consultations with intersex people and stakeholders on [s.] 268 of the Criminal Code, which allows for surgeries on intersex people, and consider the postponement of genital normalization surgeries on children until the child can meaningfully participate in the decision, except where there is immediate risk to the child's health and medical treatment cannot be delayed".[9] This followed submissions by both Egale Canada and the Canadian Bar Association that were critical of this continuing defense or exclusion of criminal liability where "a surgical procedure is performed, by a person duly qualified by provincial law to practice medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance of function" (see *Criminal Code* s. 268(3)(a)).[10] It is clear from the statutory construction of the whole of s. 268 and from the wider context in which it was enacted in 1997 was targeting the practice of female genital mutilation (FGM) (itself arguably a form of CTP for a person's sex-based characteristics).[11] The issue is the wording of "normal reproductive functions or normal sexual appearance of function". This exclusion was obviously intended to permit doctors to provide various surgeries to correct the negative effects of FGM. It is unfortunate that scope was not conveyed explicitly in the wording of the sub-section, as it has led to the view that doctor's might be using this to justify genital normalization surgeries on children and leading to unnecessary stigma towards intersex individuals by defending such medical practice.

It is clear the sub-sections exclusion is targeted only towards FGM as the previous clause in the sub-section only references "labia majora, labia minora or clitoris of a person" and if it was meant to protect doctor's performing genital normalization surgeries on intersex children it would further protect intersex surgeries for male genitals as well. The resulting effect of that would be a facial inequality where the genital normalization surgery received immunity from prohibition for those with female sex characteristics and not those with male characteristics, an odd equality to right into the law.

My recommendation would be to clarify the language of the exclusion in s. 268(3)(a) by amending this section and replacing the language of "for the purpose of that person having normal reproductive functions or normal sexual appearance of functions" to "to correct the negative consequences of female genital mutilation and to restore reproductive function or sexual appearance of functions to their appearance or function prior to the female genital mutilation". This would clearly convey that genital normalization surgery for intersex individuals is not caught and it could be left to medical practitioners to set standards for when such genital normalization surgery might be necessary due to physical health in rare cases. A study is not

[9] Health Committee report at pg. 7.
[10] Health Committee report at pgs. 28 and 39-40.
[11] See "FGM in Canada", Ontario Human Rights Commission, online: http://www.ohrc.on.ca/en/policy-female-genital-mutilation-fgm/4-fgm-canada#fn31 at section 4.2 and footnote 31.

necessary when the unintentional negative effect on intersex individuals, from imprecise drafting on what was intended to cure a genuine social ill of FGM, is readily apparent from the face of the sub-section. What is further recommended is that further consultation with the intersex community and of potential legislative reform efforts be undertaken with regard to the need for a prohibition in the *Criminal Code* on gender normalization surgeries of intersex youth generally. It is likely an omission to not include sex characteristics within the definition of CTPs, as gender normalization surgery (or other so-called normalization procedures like hormone treatments) on intersex minors without their informed consent is perhaps one of the most physically drastic, irreversible, and reprehensible forms of CTP practiced today. Canada has recently joined a statement by 36 nations to the UN Human Rights Counsel calling on governments to "protect the autonomy of intersex adults and children and their rights to health, and to physical and mental integrity so that they live free from violence and harmful practices" and to "investigate human rights violations and abuses against intersex people, ensure accountability, reverse discriminatory laws and provide victims with access to remedy".[12] Amendments to correct the negative consequences of the current *Criminal Code* s. 268(3)(a) and due consideration on adding criminal prohibitions to prevent so-called genital normalization procedures, or other actions to alter sex characteristics, should be undertaken.

Further amendments to protect Trans and non-binary individuals by adding gender expression to the CTP definition and to add behaviour related to gender expression and to narrow the scope of medical intervention exemption from the CTP ban

I further agree with the proposed amendments by both the CGSHE, CBRC, and Erika Muse, to better protect Trans and non-binary individuals. The addition of gender expression to the definition of conversion therapy in the proposed definition of conversion therapy in s. 320.101 is consistent with Canada's prior approach to add it as an independent marker of discrimination in both the *Canada Human Rights Act*, RSC 1985, c. H-6 and also advocating genocide and hate speech prohibitions of the *Criminal Code*. To omit its inclusion here would not only be an illogical omission, it is potentially constitutionally suspect and could be susceptible to a constitutional challenge seeking to read in gender expression in any event.[13] The proposed CTP definition in s. 320.101 only references attraction and sexual behavior, and needs to incorporate the suggested revisions of the CGSHE to the CTP definition to include other behaviors, traits, appearances, or forms of expression that might be targeted by CTP and SOGIECE.

Further, the exclusions found in s. 320.101 (a) and (b) of the proposed CTP definition are too vague and could unintentionally provide a wider scope of protection that allows CTP practitioners to engage in some forms of CTP or SOGIECE that they attempt to justify as part of a gender transition. The amended language suggested by the CGSHE better aligns with contemporary medical standards for gender transition and will better protect Trans and non-binary individuals seeking those specific recognized treatments. This Committee may also wish

[12] "Protect Intersex Persons' Rights, 36 States Tell The United Nations", ILGA Europe (October 1, 2020), online: https://ilga.org/protect-intersex-rights-33-States-tell-UN.

[13] Much like sexual orientation was successfully read into Alberta's human rights legislation by the Supreme Court of Canada in *Vriend v Alberta*, [1998] 1 SCR 493, 1998 CanLII 816 (SCC).

to consider the addition of some further language around other recognized medical conditions centered around problematic sexual preference behavior, similar to the German approach, which clarifies that treatments for conditions such as exhibitionism or paedophilia are specifically exempted from their CTP ban. Another DSM-V recognized condition that might be considered for exemption is hypersexual or compulsive sexual behavior. A situation like what has arisen in the intersex gender normalizing surgeries context, is ideally avoided here, where imprecise wording might lead to interpretations that allow certain non-recognized medical treatments or constrain legitimate medical treatments from occurring causing unintended negative consequences. The Salway group submission has recognized a large proportion of CTP and SOGIECE continue to occur in a medical setting, which necessitates further efforts to ensure the false notion that a practice is provided by a medical professional automatically means that it is not a harmful form of CTP or SOGIECE.[14]

Constitutionality of Bill C-6

It is difficult if not impossible to assess the full constitutionality of Bill C-6 absent a reference to a provincial appellate court or the Supreme Court of Canada or knowledge of the future factual matrix underpinning a future challenge in a typical criminal prosecution.

Once charges are laid, it appears likely that a *Charter* challenge will likely be brought, particularly if those charged are acting on a purported religious ground when conducting prohibited CTP or SOGIECE. Groups like the Association for Reformed Political Action Canada and the Justice Centre for Constitutional Freedoms have expressed concerns with potential violations of a variety of *Charter* rights. There is undeniably potential that expressive freedoms (s. 2(b)), religious freedoms (s. 2(a)), or rights to liberty and security of the person (s. 7) might be infringed at the first stage of a *Charter* analysis by Bill C-6. Liberty is *prima facie* infringed when potential incarceration is imposed, as is the case with C-6. Religious freedom *is prima facie* infringed when an individual's sincerity of belief is compromised. With the prohibition on advertising, freedom of expression might be challenged. If an adult individual wishes to seek treatment, they might allege a medical choice is foreclosed compromising liberty and security of the person, though that medical choice is arguably not reasonable when evidence overwhelmingly refutes any efficacy in conversion therapy. The advertising and material benefit prohibitions in other contexts have failed, namely in respect to sex work prohibitions,[15] however the difference in social and legislative context here likely means a different result in a potential *Charter* case.

Accused or complainants will have a difficult time showing justification by proving a principle of fundamental justice has been violated (pursuant to a s. 7 challenge). The government will very likely be able to show justification under a s. 1 analysis on the basis of their need to protect vulnerable 2SLGBTQI+ youth and adults from this extremely harmful practice with no real evidence of efficacy. Where rights violations have been found in contexts such as criminal hate

[14] The Salway group submission at pg. 5.
[15] *Canada (Attorney General) v Bedford*, 2013 SCC 72; *R v Anwar*, 2020 ONCJ 103.

speech prohibitions,[16] hate speech human rights legislation protections,[17] or in administrative approvals of institutions with discriminatory mandates,[18] the legislative context of government's genuine efforts to protect the equality rights and other rights (such as section 7 liberty and security of the person) of vulnerable individuals has aided them in successfully showing that the rights violations of complainants or accused were justified.

When assessing the countervailing importance of equality rights of 2SLGBTQI+ individuals which is motivating Bill C-6, the court will not likely view the fact that there are some individuals who claim that CTP or SOGIECE was effective in them "converting" their sexual orientation, gender identity, or gender expression. The evidence of CTP or SOGIECE effectiveness is widely discredited. Recent Supreme Court of Canada equality jurisprudence has also reaffirmed that the focus of equality rights inquiry is assessing disproportionate impacts on a group as a whole and contrary evidence from limited members of that group is not dispositive on whether disadvantages exist.[19]

Any Charter protections must be interpreted to provide a minimum floor of protection available under international law and the *UN Convention on the Rights of the Child* will likely inform the understanding of equality and liberty and security of the persons protections necessary to protect youth from CTP when those rights are assessed in any justification analysis. [20]

Where there is potentially greater risk for a constitutional challenge is if a prosecution was brought against a parent for normal or reasonable discussions within the parental role. In some instances it may be difficult to delineate when the line is crossed from critical parenting to SOGIECE. Courts are, however, unlikely to strike down legislation in such an instance but rather to interpret that legislation within the spirit of the Charter to ensure that any parent's Charter rights are appropriately navigated, much like the approach the BC Court of Appeal recently took when it dialed back provincial family law protection orders that prohibited a father from speaking to his Trans son about their desired gender affirming medical care. If there was evidence of abusive or violent behavior by a parent, there would likely not be the same cause for a court to read down such prohibitions.

I believe the proposed amendments mentioned above, specifically regarding consent requirements and the nature of the exclusion for medical treatment, will be important in clarifying the scope of the criminal prohibitions and making any potential Charter challenges success more unlikely, particularly if the potential for findings of overbreadth (under a s. 7 analysis) or minimal impairment (under s. 1 analysis) are extinguished by having clearly defined exceptions for legitimate medical conditions that may require some form of treatment that is not properly categorized as a CTP or SOGIECE. Given, that these Charter challenges are often a lightning rod for negative media coverage and the potential failure of some or all of Bill C-6 to

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[16] *R v Keegstra*, [1990] 3 SCR 697, 1990 CanLII 24 (SCC).
[17] *Canada (Human Rights Commission) v Taylor*, [1990] 3 SCR 892; 1990 CanLII 26 (SCC); *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11.
[18] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32.
[19] *Fraser v Canada (Attorney General)*, 2020 SCC 28.
[20] See the Wisdom2Action Consulting Ltd. Open letter submission to JUST Committee (submitted December 6, 2020) (W2A group submission), pg. 1; *R v Hape*, 2007 SCC 26.

pass *Charter* scrutiny would have a devastating demoralizing effect on the 2SLGBTQI+ community the proposed amendments buttressing constitutional arguments would be a welcome step to avoid any such negative potential court outcome.

Mitigating Negative Consequences of Criminalizing Conversion Therapy

It is undeniably strange to be talking about adding new criminal prohibitions in the era of the renewed calls for racial justice and decriminalization of actions that disproportionately target Indigenous, Black, and Person of Color (IBPOC) communities. The social context of conversion therapy is a rare exception and the passage of Bill C-6 should not be taken as a general understanding that more criminalization is beneficial to society at large. I have concerns that the application of the new criminal prohibition might similarly fall disproportionately on IBPOC communities and measures should be taken, most likely through prosecutorial guidelines and strict monitoring of charge and conviction outcomes to ensure that the pervasive racial injustice that pervades the criminal justice system does not also affect the CTP and SOGIECE prohibition scheme as well.

I also have concerns about parents being potentially criminalized and how this might impact both their ability to provide the essentials for their children and how it might lead to further familial estrangement. I don't know if in my circumstances I would have wanted the criminal justice to intervene with my family's affairs. Though the symbolic denunciation and general deterrence effects of the criminal law will likely prove beneficial in many cases at controlling negative CTP and SOGIECE behavior from parents. I think that careful prosecutorial guidelines are also called for where parents are the alleged perpetrators.

Finally, I also have some sympathy for the situation where a former victim of CPT or SOGIECE later continues those practices on others. However, the further perpetuation of harmful practices must stop, and the cycle of abuse needs to break somewhere. I do, however, think the fact that a person who may be convicted under the new criminal prohibitions was a former victim of CPT or SOGIECE might be an appropriate mitigating factor on sentencing and this potential factor's use in sentencing guidelines should be considered.

Further efforts required to maximize effectiveness and enforceability of protections from CTP and SOGIECE

It is unclear if the use of the criminal law alone is the most effective manner to target and remedy CTP and SOGIECE. Undoubtedly, it will provide needed protection in some provincial jurisdictions where comprehensive protection from the harmful practices are politically unlikely.

Legislation within provincial jurisdiction, such as child protection, tort law, healthcare or other professional regulation might be more nimble and better capable of addressing the harms of conversion therapy without the harsh consequences of the criminal law. Cooperation with the provinces to enact this complimentary legislation is therefore vital. The invocation of criminal law and a charge or conviction might indirectly implicate other provincial regimes, but there should be clear legislative considerations of CTP and SOGIECE directly adopted in each of those regimes as the criminal justice process is cumbersome and will not catch all the negative

CTP and SOGIECE activity. Indeed, criminalization in many contexts has the negative effect of forcing some activities underground which could allow harms to proliferate undetected.

One area where there seems to be a direct gap is with respect to the financing of CPT or SOGIECE. The Salway group submission appears to note that a significant portion of CPT is financed by third parties and recommends a prohibition be crafted to capture this conduct. Perhaps a provision that also criminalizes financing of CPT would be a necessary supplement. A model that could be used is terrorist financing criminal prohibitions (s. 83 of the *Criminal Code*). The federal government might also consider utilizing its taxation powers or corporate governance powers to revoke the charitable status or registration of entities engaging in CPT or SOGIECE directly without the need for criminal convictions. The academic work, including the draft bill of legal scholar Florence Ashley should be consulted for a wider range of potential legislative responses available.[21]

Thank you for your due attention to this important issue and consideration of these vital protections from CTP and SOGIECE that are essential to promote 2SLGBTQI+ substantive equality in Canada.

Sincerely,

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[21] Online, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3398402.