

**BILL C-6: Conversion “therapy” *Charter*  
compliance and transgender rights**

**PROJETS DE LOI C-6 : « thérapie » de  
conversion, conformité avec la *Chartre*, et les  
droits des personnes transgenres**

SUBMISSION TO THE STANDING COMMITTEE ON JUSTICE  
AND HUMAN RIGHTS (JUST)

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MÉMOIRE A LA COMITÉ PERMANENT DE LA JUSTICE ET DES  
DROITES DE LA PERSONNE (JUST)

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## OVERVIEW

Bill C-6 would prohibit, by criminal sanctions, practices which seek to convert queer and trans people by force or coercion. Having listened carefully to debate and other witnesses, I have three main recommendations on how to improve the bill. These are:

- Amend the definition to harmonise with other Canadian laws;
- *Charter* compliance and an adult prohibition (no consent possible);
- The necessity to include trans people in the protection which is sought.

I have included draft amended wording of section 5 of the bill at the end of this brief.

## PART 1 DEFINITION

All parties have expressed their will to stop harmful conversion “therapy”. This bill would end coercive programs that seek to change or undermine the sexual orientation, gender identity or expression of two spirit, non-binary, queer, and trans people. The proposed prohibition captures practice which are abusive and fraudulent, and which have been denounced by medical and psychological professionals as being ineffective and the source of harm. Conversion programs are tantamount to torture and abuse.

The target of the prohibition is defined thus:

### **Definition of *conversion therapy***

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a practice, treatment or service designed to change a person’s sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

- (a) to a person’s gender transition; or
- (b) to a person’s exploration of their identity or to its development.

As drafted, the bill will not unduly limit parental rights (for example having conversations about house rules about sex and relationships for young people) *unless those conversations seek to undermine the personal autonomy of queer and trans people by forcing degrading conversion*. Similarly, there is no proposed restriction on religious guidance *unless that guidance seeks by force to convert*- in which case these activities should be prohibited. Because much of what constitutes conversion therapy happens in private, an exemption for private conduct (such as the one in place for hate speech) is not appropriate.

Nor does bill restrict any member of the public from seeking necessary and beneficial spiritual, medical, or counselling assistance. It will not put a chill on providers of these services.

Similarly, the bill does not prohibit legitimate medically accepted gender-affirming social, medical, and surgical care for queer and trans folks. The conversion therapy perpetrated against queer and trans people bears no resemblance to medically appropriate and life-saving gender-affirming care related to transition for transgender and non-binary people. Efforts to conflate the two before this committee are in my view motivated by an anti-trans animus.

However, the committee has received numerous requests to provide greater certainty about the scope of the practice parliament seeks to restrict. I recommend that if any clarification is required, that the language gender identity or expression added by bill C-16 *An Act to amend the Canadian Human Rights Act and the Criminal Code SC 2017, c.13* to the *Criminal* and the *Canadian Human Rights Act* be inserted into the definition. The committee may also wish to define the mischief it seeks to restrict in terms of harm, which would clearly exclude well-intentioned and unharmed expressions of faith, or beneficial medical or counselling care from the criminal sanction.

### **Recommended amendment for the definition**

An appropriately amended definition would read thus:

#### **Definition of *conversion therapy***

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a harmful practice, treatment or service designed to change a person's sexual orientation sexual orientation or gender identity or expression to heterosexual or ~~gender identity~~ to-cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

- (a) to a person's gender transition; or
- (b) to a person's exploration of their identity or to its development.

## PART 2 CHARTER COMPLIANCE and EXPANDED SCOPE

This bill as drafted is compliant with the *Canadian Charter of Rights and Freedoms*.

There is no impediment to Parliament prohibiting conversion “therapy”. The *Constitution Act 1867* divides federal and provincial powers. The proposed amendment to the *Criminal Code* is a valid exercise of the federal criminal law power which is not in conflict with any provincial power over healthcare, (Quebec’s *Civil Code* or British Columbia’s *Infants Act* which deal with the rights of young people to consent to health care) because the provinces do not recognize coercive conversion therapy as legitimate health care.

Further the bill is tailored to capture clearly understood and generally abhorred harm. It only minimally infringes on *Charter* protection for expressive or religious practice which may sanction this type of abuse. *Charter* rights are not unlimited. They are checked by section 1 which guarantees the rights and freedoms set out, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The *Criminal Code* already lawfully restricts many types of expression, such as uttering threats and hate speech. It prohibits harmful activities such as assault and sexual assault and sexual interference. Activities or programs which seek to undermine the dignity and autonomy of queer and trans people should and can be similarly prohibited. The protection of people standing farthest from justice is a reasonable limit on the *Charter* rights of those who would seek to convert; and a necessary protection for the section 7 right to life, liberty and security of the person of queer and trans people. Much harmful conduct against this group is recognized and protected federal and provincial human rights legislation.

However, a loophole in the bill would allow coercive conversion activities when they are committed against adults who consent. This is an oversight. No person of any age can consent to abuse. The loophole is a problem for three reasons. It prevents parliament from protecting mature minors and adults who may be coerced into giving consent. It fails to clearly express parliament’s denunciation for conversion programs of abuse. And an incomplete prohibition would allow a legitimate industry to exist- the sole purpose of which is to commit harm.

Such a prohibition on an adult’s ability to be subjected to a program that undermines their sexual orientation or gender identity would not run afoul of the *Charter*. Sound medically recognized counselling and supportive healthcare to meet people where they are at anywhere in their gender journey would still exist- care which is not predicated on harm. A prohibition on the ability to offer consent for this universally recognized coercive practice is reasonably justified.

## Recommended amendment for adult prohibition

An adult prohibition would need to be explicitly added to the bill. This could be achieved by the inclusion of the words “of any age” to the definition. At the same time the word voluntary should be inserted into references to gender transition and exploration.

### **Definition of *conversion therapy***

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a practice, treatment or service designed to change a person of any age’s sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

- (a) to a person’s voluntary gender transition; or
- (b) to a person’s voluntary exploration of their identity or to its development.

Or, read in conjunction with my previously proposed amendment:

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a harmful practice, treatment or service designed to change a person of any age’s sexual orientation sexual orientation or gender identity or expression to heterosexual or ~~gender identity to~~ cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

- (a) to a person’s voluntary gender transition; or
- (b) to a person’s voluntary exploration of their identity or to its development.

A consequential amendment striking the term “against a person’s will” at proposed s 320.102 will be required.

### **Forced conversion therapy**

**320.102** Everyone who knowingly causes a person to undergo conversion therapy ~~against the person’s will is~~

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) guilty of an offence punishable on summary conviction.

## PART 3 TRANSGENDER RIGHTS

Two spirit, non-binary and trans people must be included in the protection of this bill.

Homophobia and transphobia are different, and conversion therapy is propelled by both. Oppression is intersectional, and these forms of hate are deeply intertwined with transmisogyny, the criminalisation of sex work, unrestrained contempt for racialized people, drug users, the homeless and the poor. Genderqueer disproportionately experience discrimination, exclusion, and violence, on these grounds. Compounded by the devastation of the global pandemic and white supremacy, hate against our community is real, and it is fatal. When being heterosexual and cisgender are enforced as norms with violence, members of our community die.

A certain rhetorical acrobatics is required to make sense of trans-exclusionary arguments which punch down and seek to exclude us. In order to comprehend the logic which propels conversion therapy and other efforts to marginalize, correct, re-integrate, undermine, punish and exclude trans people, it would be necessary to believe that all sexual orientations and gender identities are neutral and equally desirable, and equally honoured. Of course this is not the case. Such a position ignores the fatal truth of our marginalization and of our resilience. I invite the committee not to embrace this view.

Do not be swayed by opponents of our survival. Some, speaking from a concerted narrative to undermine our dignity, would urge you to peel back protection for trans and non-binary people. Some mobilise aggressive language suggesting that our genders are a diagnosis, for which psychiatric care is required. Some would deprive trans people of our self-determination with respect to gender identity, especially if we have a concurrent diagnosis.

They have voiced concern about the wording of the bill with far-fetched hypotheticals. Many express fears for the integrity of faith and expression; with concern that the gender binary is somehow threatened by our existence. Others seek to pit cis women against trans people generally, and trans feminine people specifically, by suggesting that the category or rights of cisgender women are somehow threatened by our inclusion and our survival. To be clear- many of these arguments, once unmasked of artifice, deny the inherent dignity of queer and trans people. The volume and vigor of these arguments indicate how widespread transphobic views are - which reflects the extent to which queer and trans people of all ages need conversion therapy banned.

You have heard some anecdotal evidence about de-transition. In my experience people employing this language seek to restrict access to trans healthcare. They would conflate the form of abuse you seek to restrict in Bill C-6 with life-saving counselling and healthcare trans people need. These modalities are worlds apart. Speakers from this position seek to draw parliament and this committee into a debate about the merits of gender affirming healthcare. This question is not before you. This is a settled area of

peer-reviewed social and medical science, over which providers have reached a consensus: gender-affirming transition-related care is beneficial, safe, and lifesaving. What is before you is the question of whether you think that coercive conversion programs should be allowed to be employed against two spirit, non-binary and transgender Canadians.

There is no legitimate reason to leave trans people outside the frame of protection against conversion therapy.

I adopt the open letter of Centre for Gender and Sexual Health Equity on the need to protect trans people, which is available here. the <http://cgshe.ca/open-letter-bill-c-8-excludes-conversion-therapy-practices-that-target-trans-people/> which urges the bill be amended to “include conversion therapy targeting gender expression; more clearly define conversion therapy as including practices that regard a gender identity not assigned at birth as disordered or less desirable; and assert that consent is not valid, if risks associated with conversion therapy are not clearly explained to the patient.”

As a result, it is appropriate to capture the mischief and the damage of forced and coercive programs that seek to alter both sexual orientation, and gender identity, in a way which acknowledges the context of our oppression.

### **Recommended amendment for transgender protection**

In order to solidify protection for trans people I believe the clarifications I made above with respect to the wording of the definition, and the prohibition on abusive conversion for adults are required. As a result, my compound amendment addresses these joint concerns:

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a harmful practice, treatment or service designed to change a person of any age's sexual orientation sexual orientation or gender identity or expression to heterosexual or ~~gender identity to cisgender~~, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

- (a) to a person's voluntary gender transition; or
- (b) to a person's voluntary exploration of their identity or to its development.

I recommend again the loophole allowing conversion therapy for adults, which in conditions of constrained choice may look like consent:

### **Forced conversion therapy**

**320.102** Everyone who knowingly causes a person to undergo conversion therapy ~~against the person's will~~ is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or



(b) guilty of an offence punishable on summary conviction.

I commend the members of this house for finally seeking to restrict this inexcusable attack on the personal and physical integrity of queer and trans Canadians.

## SUMMARY OF RECOMMENDATIONS

1. amend the definition to include the words harmful, and the words sexual orientation or gender identity or expression
2. amend the bill to include a prohibition on conversion therapy for Canadian of all ages.
3. Ensure the explicit protection of two spirit, transgender and non-binary Canadians.

The following amendment captures all three of these recommendations.

### **Definition of *conversion therapy***

**320.101** In sections 320.102 to 320.106, *conversion therapy* means a harmful practice, treatment or service designed to change a person of any age's sexual orientation sexual orientation or gender identity or expression to heterosexual or ~~gender identity to cisgender~~, or to repress or reduce non-heterosexual attraction or sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that relates

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## WHO WE ARE

**Adrienne Smith Law** is a social-justice law firm in Vancouver BC on the ancestral, unceded, and occupied territories of the *xʷməθkwəy̓əm* (Musqueam), *səlilwətaʔ* (Tsleil-Waututh), and *Skwxwú7mesh* (Squamish), Nations of the Coast Salish People - whose relationship with the land is ancient, primary, and enduring. Because we work in occupation on stolen land, we commit to a decolonizing which includes reparations and the return of land. We represent transgender people, sex workers, people who use drugs, those who experience police violence, and workers.

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