



**Canadian Centre for
Christian Charities**

Supporting ministries in a complex world

Canadian Centre for Christian Charities

**Submissions to the Standing Committee on Justice and Human Rights
Re: Bill C-6, An Act to Amend the Criminal Code (conversion therapy)**

December 6, 2020

Introduction & Overview

The Canadian Centre for Christian Charities (CCCC) affirms that all people are created in God's image and have equal dignity and worth. As people of faith we are called to first love God and then to love all our neighbours as ourselves.

We therefore absolutely reject coercive or abusive practices to change sexual orientation; such practices do not have any place within our communities. On this point of prohibiting coercive and abusive practices we would support the proposed legislation.

Nonetheless, we have concerns about the broad scope of Bill C-6 as drafted. When government's criminal power is expanded, extreme care must be exercised to ensure that neither collective nor individual freedoms are infringed.

The promise of a free and democratic society recognizes individual freedom. A free and democratic society protects the individual as she undertakes her search for meaning and identity. A free and democratic society does not prescribe that the whole of a person's identity must be subsumed by any one factor – no matter how significant – let alone by applying the heavy hand of the criminal law.

“If... compelled by the state or the will of another to a course of action or inaction which he would not have otherwise chosen, he is not acting of his own volition and he cannot be said to be truly free.”¹

Though commendable in its attempt to prohibit certain coercive and abusive practices, this bill has the potential to become coercive in itself. Without amendment, this bill exercises bare power, trampling “expressions of the heart and mind.”²

CCCC therefore urges this Committee to amend Bill C-6 to provide clarity, preserve freedom, and promote individual and communal autonomy guaranteeing national flourishing.

¹ [R v Big M Drug Mart](#), [1985] 1 SCR 295 at para 95 [“Big M Drug Mart”]

² [Irwin Toy Ltd. v Quebec \(Attorney General\)](#), [1989] 1 SCR 927 at 968 [“Irwin Toy”]

Concerns

1. It lacks precision & clarity

The bill has an overly broad definition of conversion therapy that leads to a lack of clarity. It defines conversion therapy 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. 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.

“Practice,” “treatment,” or “service” are not further defined, leaving Canadians uncertain as to what is meant.³ As drafted, the definition could include conversations with parents or friends; good-faith expressions of religious beliefs and teachings; or even appropriate means of addressing harmful sexual behaviours.

That the definition has broad scope was affirmed in the House of Commons debate at second reading. There, conversion therapy [was described as](#) taking “many forms, including counselling, behavioural modification and talk therapy, and may be offered by professionals, religious officials or laypersons.” And while religious leaders [were told](#) they’re “not prohibited from having discussions on the topic” they were, at the same time, told that the bill prohibits them “from trying to influence parishioners.” This poses difficulties for faith leaders who see themselves as responsible for guiding their congregations toward a certain understanding of truth and fulfilment.

An engaged citizen would come away from the Commons debate with nothing but confusion. Consider the following summary of various statements:

Discussions are ok. Influence is not. Legitimate exploratory conversations are ok.
Conversations deemed “harmful” are not. Helping people better understand themselves is ok.
Talk therapy is not. Thoughts and opinions are ok. Acting on those thoughts and opinions is not.
Support and acceptance is ok. Supporting and accepting change is not ok. Except that sometimes it is ok. It depends on how the person wants to change.

The public is left to disentangle the hopelessly incoherent: a virtually impossible task. At best, the Bill is ambiguous. If political leaders or proponents of the bill are unable to draw the line and accurately convey the parameters, how can the public, police, prosecutors or judges?

³ Provincial legislation that includes similar terms is less ambiguous because it is written in the context of health care acts. For example, Prince Edward Island Bill No. 24 had, in its very name, the context: [Sexual Orientation and Gender Identity Protection in Health Care Act](#). That Act amended only health care related statutes. (1st Session, 66th General Assembly, 2019 (assented to 29 November 2019) [emphasis added]

Dictionary definitions do not provide sufficient clarity. For example, if a “practice” is “a repeated or customary action,”⁴ that still fails to answer whether repeated good-faith expressions of religious beliefs fall within its ambit.

Other sections of the *Criminal Code* also fail to provide sufficient clarity. “Service” is used in s 279.04 to describe how one person exploits another by coercing them, through threats to personal safety, to provide a service. “Treatment” is used in s 672.59 but is qualified to refer to “psychiatric treatment and any other related medical treatment.” “Practice” is used in s 203 in reference to the specific “practice of placing or agreeing to place bets on behalf of other persons”; likewise in s 445, the “practice” is liberating captive birds for the purpose of shooting them. None of these are defined as standalone terms apart from their relevant sections. None of these provide any clarity to the meaning of the terms in the context of conversion therapy.

Further, if it is meant to refer to an “established or formalized intervention”⁵ offered to the public, that must be made explicit. It must also be made explicit how that differs from good-faith, established teachings conveyed in a formalized setting, such as a services and programs as may be offered in a mosque, church, synagogue, temple or other place of worship.

When the government undertakes initiatives to prohibit activity through the use of its criminal powers,⁶ it must be narrowly focused on the specific harmful activity. It should not overreach. If, indeed, it is true that the bill targets “coercive and systematic efforts”, “forced and coordinated efforts,”⁷ this is appropriate. As a faith-based organization, we wholeheartedly agree that coercion or constraint⁸ are never appropriate, let alone to effect any purported change; however, the focus on abusive and coercive practices must be made explicit in the definition.

2. It lacks *Charter* compliance: fundamental freedoms of expression, conscience and religion

Freedom of expression

The *Charter* affords everyone “freedom of thought, belief, opinion and expression.”⁹ Its three core purposes are to promote democratic discourse, truth-finding and self-fulfillment.¹⁰ In a free, pluralistic

⁴ *Merriam-Webster*, sub verbo “practice”, online: <https://www.merriam-webster.com/dictionary/practice>; note that “repeated or customary action” is one of eight meanings for the noun form of the word “practice” and that there are an additional eleven meanings for the verb form of the word

⁵ House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 43-2, No 40 (1 December 2020), at 11:18 (Minister Lametti)

⁶ *Constitution Act, 1867 (UK)*, 30 & 31 Victoria, c 3, s 91.27

⁷ House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 43-2, No 40 (1 December 2020), at 11:10 (Minister Chagger)

⁸ Indeed, these are also a fundamental part of religious freedom: “freedom in a broad sense embraces both the absence of coercion and constraint and the right to manifest beliefs and practice,” *Big M Drug Mart* at 336

⁹ *Canadian Charter of Rights and Freedoms*, s 2(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11

¹⁰ *Grant v Torstar Corp.*, 2009 SCC 61 at para 47 [“Torstar”]

and democratic society, expression is fundamental; “we prize a diversity of ideas and opinions for their inherent value both to the community and to the individual.”¹¹

Expression promotes truth-finding “through the open exchange of ideas.”¹² This is only accomplished when there is space for “all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”¹³ Indeed, as one literary giant of the last century put it, “if liberty means anything at all, it means the right to tell people what they do not want to hear.”¹⁴

Expression promotes “individual self-fulfillment and personal autonomy”¹⁵ and has “intrinsic value as an aspect of self-realization.” Indeed, the diverse forms of “individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment.”¹⁶

Bill C-6 infringes freedom of expression

In contrast, Bill C-6 creates a limited, unwelcoming environment with criminal consequences. It compels an individual to express himself or herself in a particular manner.

The bill limits self-fulfilment because it effectively prevents individuals from freely accessing the help and support they *voluntarily* seek so that they can live out their personal identity, including the application and *practice* of Christian – or other faith – beliefs regarding gender and sexuality. Canadians must remain autonomous and free to order their sexual lives in accordance with their religious conscience, faith identity and personal convictions.

Furthermore, the bill limits the search for truth, by [defining it one way](#), which is to suggest that only full affirmation for a person’s self-definition, even where that person is a child, is permissible.

Freedom of conscience and religion

Religious freedom means a person has the right to:

- Entertain beliefs as she chooses
- Declare beliefs openly – without fear of hindrance, reprisal, or criminal prosecution
- Manifest beliefs through:
 - Worship
 - Practices
 - Teaching
 - Dissemination¹⁷

Religion is not mere thought or opinion, it is action – action that includes “one’s conduct and practices.”¹⁸ The point of protecting religious freedom is to ensure that profoundly personal beliefs

¹¹ *Irwin Toy* at 968; As noted by Justice Rand, free expression “is little less vital to man’s mind and spirit than breathing is to his physical existence.”

¹² [R v Sharpe](#), 2001 SCC 2 at para 23

¹³ *Irwin Toy* at 968

¹⁴ George Orwell, Proposed preface to *Animal Farm*, first published in the *Times Literary Supplement* (15 September 1972)

¹⁵ [Ford v Quebec \(Attorney General\)](#) [1988], 2 SCR 712 at para 59

¹⁶ *Torstar* at para 50

¹⁷ *Big M Drug Mart* at 336-337

¹⁸ [R v Edwards Books and Art Ltd.](#), [1986] 2 SCR 713 at para 97

“that govern one’s perception of oneself [and] human nature”¹⁹ are not interfered with by society and to safeguard religious minorities.²⁰

Bill C-6 infringes freedom of conscience and religion

Bill C-6 adopts the language of “practice” which – perhaps unintentionally – seems to encompass religious practices since C-6 does not currently limit “practice” to a medical, therapeutic or other professional, clinical setting.

This bill will therefore limit – if not prohibit – those within churches and faith-based communities from engaging in religious instruction, discipleship, and perhaps even prayer concerning human sexuality, and from offering pastoral care to those who voluntarily seek support in ordering their sexual lives in accordance with their faith.

Additionally, without amendment, clergy and others who practice their beliefs, who influence their parishioners through teaching, prayer, discipleship, classes, and other programs, could be readily captured through the material benefit clause. This clause provides that everyone who “receives a financial or other material benefit” is guilty of an offence.²¹ Why is this a potential problem? Because in churches, parachurch ministries and other places of worship, leaders are often in paid positions. It is therefore important that those persons are not captured by the “material benefit” simply by virtue of expressing religious beliefs or providing guidance to those who seek it.

3. It lacks *Charter* compliance: right to life, liberty and security of the person

Right to life, liberty and security of the person

Underlying these rights “is a concern for the protection of individual autonomy and dignity.”²² Liberty protects “the right to make fundamental personal choices free from state interference.”²³ The right is engaged where “state compulsions **or prohibitions** affect important and fundamental life choices.”²⁴

Security of the person encompasses “a notion of personal autonomy involving, at the very least, **control over one’s bodily integrity free from state interference** and freedom from state-imposed psychological and emotional stress.”²⁵

A prohibition that leaves individuals to suffer physical or psychological pain and imposes stress due to the unavailability of desired personal support impinges the person’s security. It denies individuals the “opportunity to make a choice that may be very important to their sense of dignity and personal integrity” and that is “consistent with their lifelong values.”²⁶

¹⁹ *Ibid*

²⁰ *Big M Drug Mart* at 337

²¹ Clause 5 of Bill C-6; proposed new *Criminal Code* section 320.105

²² *Carter v Canada*, 2015 SCC 5 at para 64 [“*Carter*”]

²³ *Ibid* at para 64; The right to life is engaged where “the law or state action imposes death or an increased risk of death on a person, either directly or indirectly” (see para 62). Given that the law has not yet passed, the impact of prohibiting a person from voluntarily seeking counsel of their choosing is yet unknown.

²⁴ *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 49 [emphasis added]

²⁵ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at 122 [“*Chaoulli*”; emphasis added]

²⁶ *Carter* at para 65

Bill C-6 infringes the right to life, liberty and security of the person

The application of this principle to conversion therapy is very straightforward. There have been, are, and will be people who struggle with gender dysphoria and who want to make a choice that is consistent with their lifelong principles. Those principles could include reducing sexual behaviour and pursuing gender identity that aligns with sex at birth. But C-6 criminalizes the ability to make that choice, even where it is “very important to their sense of dignity,” personal integrity and lifelong values. The state is deemed to know better than the free individual.

On its face, then, C-6 violates the substantive protections of s. 7.

Principles of fundamental justice

Section 7 of the *Charter* also requires that all laws be enacted in accordance with the principles of fundamental justice to protect life, liberty and security of the person. To fall within the principles of fundamental justice, a law cannot be arbitrary, overly broad or grossly disproportionate. The state is not entitled to “arbitrarily limit its citizens’ rights to life, liberty and security of the person.” A law is arbitrary “where ‘it bears no relation to, or is inconsistent with, the objective that lies behind [it].’”²⁷ Similarly, laws cannot be vague.

That means the law must “sufficiently delineate an area of risk to allow for substantive notice to citizens” that “certain conduct is the subject of legal restrictions.”²⁸ Vague laws prevent people from “realizing when [they are] entering an area of risk for criminal sanction.”²⁹

Laws must “set an intelligible standard” for both citizens who are governed by them and officials who enforce them. Setting intelligible standards means that the “dangers of arbitrary and discriminatory application” of the law are avoided.³⁰

Bill C-6 does not satisfy the principles of fundamental justice

Bill C-6 fails to set an intelligible standard.

When does a conversation become harmful? When does a discussion move from “exploratory” to “exerting influence”? What transforms an “open ended” statement to a “pre-determined outcome”? And what standard is applied to make that determination? Is it subjective? Whose subjective view prevails? Is it objective? Based on what objective determinants?³¹

Imprecise language will impact the ability of Canadians to live in accordance with their personal convictions (whether faith-based or otherwise), prevent people from freely accessing support they *voluntarily* seek to order their sexual lives as they see fit, prohibit discipleship and religious instruction concerning human sexuality, and restrict the diagnosis and treatment offered by medical professionals.

This Bill is vague. A vague law readily captures more than is intended. Bill C-6 leaves too much uncertainty for Canadians who won’t know whether their expression is punishable.

²⁷ *Chaouilli* as cited in *AC v Manitoba*, 2009 SCC 30 at para 103.

²⁸ *R v Nova Scotia Pharmaceutical Society* [1992], 2 SCR 606 at 639, 635

²⁹ *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at para 16

³⁰ *Ibid.*

³¹ These terms have been used variously in debate, news conferences and press releases to describe the parameters of the prohibition.

Recommendations

1. Amend definition

CCCC strongly recommends amending the definition of conversion therapy to provide clarity as to what is criminalized and what is permissible. Specifically, and at minimum, CCCC endorses the amendment proposed by the Coalition for Conscience and Expression, of which CCCC is a member.

For ease of reference, the amendment is reproduced here:

Definition of *conversion therapy*

320.101 In sections 320.102 to 320.106, ***conversion therapy*** means a therapeutic 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 non-heterosexual³² sexual behaviour. For greater certainty, this definition does not include a practice, treatment or service that ~~relates~~

- (a) relates to a person's gender transition; or
- (b) relates to a person's exploration of their identity or to its development;
- (c) does not seek to change a person's sexual orientation or gender identity;
- (d) constitutes the promulgation or expression of religious doctrine, teachings, or beliefs by a religious organization or a faith leader; or
- (e) constitutes 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.³³

2. Amend definition: an alternative

CCCC remains of the view that our first proposed amendment is the best way to provide clarity as to what is criminalized and what is permissible. Alternatively, we suggest that many of the concerns related to the definition can be addressed by incorporating the language used by Ministers presenting before this Committee.

Specifically, the terms "coercive" and "therapeutic" should be added to the definition of "practice, treatment or service."

³² Note from the Coalition: Repeating the modifier "non-heterosexual" here makes it clear that the definition does not apply to attempts to reduce sexual behaviour, *per se*, such as suggesting refraining from sexual activity until marriage.

³³ Note from the Coalition: The addition of "therapeutic" in the first sentence clarifies that the bill's intent is to address conversion "therapy." The addition of (c) is to ensure that the bill does not inadvertently criminalize or chill practices, treatments or services that are not efforts to change sexual orientation or gender identity. The language in (d) 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. The language in (e) is largely taken from assurances by the Minister of Justice and the Department of Justice that Bill C-6 would not criminalize ordinary conversations. (See <https://www.justice.gc.ca/eng/csj-sjc/pl/ct-tc/index.html>)

3. Amend “material benefit”

In churches and other places of worship, the faith leader is often a paid position. While there are sometimes volunteers in those roles (depending on the particular faith tradition), it is equally – if not more – likely that the leader is remunerated for his or her services.³⁴ It is therefore important that those persons are not captured by the “material benefit” simply by virtue of expressing religious beliefs or providing guidance as to holy texts.

CCCC therefore recommends the following amendment:

Material benefit from conversion therapy

320.104 Everyone who received a financial or other material benefit, knowing that it is obtained or derived directly or indirectly from the provision of conversion therapy, is

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

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

320.105 For greater certainty, “financial or other material benefit” excludes remuneration and other benefits paid or granted to a member of the clergy or an employee of a registered charity with objects that include the advancement of religion, who, in that capacity and in relation to sexuality and gender, exercises good-faith expressions of freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*.

4. Related *ITA* amendment

As with the 2005 definition of civil marriage,³⁵ which affirmed that “it is not against the public interest to hold and publicly express diverse views on marriage”³⁶ it is similarly not against the public interest to hold and publicly express diverse views on the definition, meaning, outworking and nature of human sexuality and gender.

CCCC therefore recommends the *ITA* be amended as follows:

Section 149.1 of the Act is amended by adding the following after subsection (6.21):

Conscience in matters of sexuality

(6.22) For greater certainty, subject to sections (6.1) and (6.2), a registered charity with stated purposes that include the advancement of religion shall not have its registration revoked or be subject to any other penalty under Part V solely because it or any of its members, officials, supporters or adherents exercises, in relation to sexuality and gender, the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms*.

³⁴ Note here that “service” is part of the definition of conversion therapy; in many Christian traditions, it is common to describe a pastor as “serving” the church in his or her capacity as leader.

³⁵ Bill C-38, [An Act respecting certain aspects of legal capacity for marriage for civil purposes](#), 1st Sess., 38th Parl, 2005 (Royal Assent), s 11.1

³⁶ [Civil Marriage Act](#), SC 2005 c 33, preamble

About CCCC

Founded in 1972, CCCC is a Canadian registered charity that exists solely to support Christian ministries on their journey to becoming ever more exemplary, healthy and effective. CCCC's 3,300+ members are a diverse group of ministries from all across Canada and include churches, overseas missions, relief and development charities, summer camps, denominational offices, education centres, higher education institutions, foundations, fundraising organizations and many others.

Expert in Canadian charity law and issues that affect religious charities across Canada, CCCC is evangelical in identity and ecumenical in service, meaning that while it self-identifies as evangelical, it makes its services available to the broader public.

CCCC focuses on charity management and advocates for a favourable legal and regulatory framework in which its members may operate. We help support and equip charities by integrating the spiritual concerns of ministry with the practical aspects of management, stewardship, and accountability, which includes fiscal, tax, accounting, and legal compliance.