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

Pride Therapy Network of Montreal

December 6, 2020

The Pride Therapy Network of Montreal is a community-based association of mental health professionals, many with lived experience as members of LGBTQIA2S+ communities, offering affirmative therapy services to the LGBTQIA2S+ communities. We provide access to a wide range of highly trained and qualified mental health professionals including psychologists, psychotherapists, couples and family therapists, sexologists, guidance counsellors, and social workers, who are all trained and committed to providing culturally informed, accessible, and affirmative services to members of sexually and gender diverse communities. We provide bilingual access to therapists on a sliding scale, to make mental health care financially accessible to our communities which often lack resources due to homophobia, transphobia, and intersectional oppressions.

We are delighted to see the introduction of legislation aimed at eliminating the harmful, oppressive, unscientific, and unethical practice of conversion "therapies," which are attempts to stigmatize and eliminate sexual and gender diversity in society, and which have powerfully traumatic effects on those subjected to them, who are typically among the most vulnerable members of our communities.

We wish to provide some comments on specific details of the text of the bill, suggesting amendments which we believe will be helpful in making the bill as effective as possible in preventing conversion therapy.

Although we will use the commonly understood term conversion therapy in our brief, it is important to note that it is a misnomer. First, conversion therapy cannot actually effect conversion of one's deeply felt sexual orientation, gender identity, or drive for authentic gender expression; second, although it is couched in the language of mental health care, counselling, and similar helping professions, it is in no way therapeutic. All it can do is behaviourally inhibit the expressions of these aspects of the self by instilling traumatic fear and shame and reinforcing the internalization of societal homophobia and transphobia. None of this can have any therapeutic benefit and all of this is directly harmful to those subjected to it.

1) With regard to Section 320.101:

> ***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. …*

One important omission from the definition of conversion therapy here is therapy intended to reduce non-cis-normative gender expressions, i.e. gender expressions—including mannerisms,

ways of dress and grooming, preferences in toys, pastimes, or interests, ways of speaking, etc.—that are not considered stereotypically appropriate for a person's sex assigned at birth (or, in some cases, for their identified gender).

Especially in children, conversion therapy will often not take the form of direct attacks on the victim's sexual orientation or gender identity. Instead, it will consist in attempts to make the victim conform to a masculine or feminine norm, tarring their more intuitive and authentic ways of behaving as undesirable, ridiculous, or pathological (Ashley, 2019; Muse, 2020). Indeed, an unfortunate number of psychological professionals continue to believe that deviation from gender norms is pathological and that moving to a stereotypical gender presentation is an important therapeutic goal (Pyne, 2014).

We believe these types of conversion therapy cause grave harm (Ashley, 2019) and are very important to prevent, just as conversion therapy targeting sexual orientation or gender identity must be prevented.

2) Section **320.101**, continued:

> ***320.101*** *In sections 320.102 to 320.106,* ***conversion therapy*** *means a practice, treatment or service designed … to repress or reduce non-heterosexual attraction or sexual behaviour. …*

The need to target conversion therapies of this kind is obvious (Drescher et al., 2016). As it has become clearer and clearer that attempts to alter sexual orientation are both unethical and ineffective, purveyors of conversion therapy have pivoted to describe their practices as attempts not to alter sexual orientation—there may even be a superficial show of acceptance for the orientation itself—but "merely" to alter sexual attraction or behaviour that is "unwanted" because it involves persons of the same gender (FitzPatrick, 2019; Madrigal-Borloz, 2020).

However, we are concerned that the currently proposed wording could inadvertently capture certain kinds of treatments that are *not* conversion therapies. We are sometimes consulted by people who have difficulty with the scope or nature of their sexual behaviour: e.g. sexual compulsion, erotomania, or attachment difficulties, leading to sexual behaviour that fails to bring them subjective pleasure and fulfillment or is experienced as involuntary. If the clients are non-heterosexual, working with such clients to achieve attractional patterns or sexual habits they find healthier could be considered "reducing non-heterosexual attraction or sexual behaviour," even though the therapeutic goal does not (certainly, should not) have anything at all to do with the *fact that the attraction or behaviour is non-heterosexual*. In fact, such therapy often involves helping the person with increased self-acceptance of their non-heterosexual orientation.

On another front, in the case of sex offenders whose targets include persons of the same gender, treatment to reduce their non-consensual behaviours or impulses toward same would technically constitute "repressing or reducing non-heterosexual attraction or sexual behaviour." Clearly, that is not what is intended to be captured here; the therapeutic goals have nothing to do with the gender of the victims, but with the targeting of persons who do not or cannot consent.

We therefore suggest a wording such as "…repress or reduce a person's attraction or sexual behaviour <u>because the attraction or behaviour is non-heterosexual</u>."

3) With regard to subparagraph 320.101(a):

> ***320.101*** *… For greater certainty, this definition does not include a practice, treatment or service that relates*
> *(a) to a person's gender transition…*

We understand the purpose of this subparagraph, to ensure that transition-related care will not constitute conversion therapy only because, in the course of transition, a person who (for example) may previously have identified or been identified by others as a gay man may come to identify as a heterosexual woman. Clearly, as this is an authentic expression of her gender identity and sexuality, it would be quite inappropriate to treat this as an instance of converting someone from homosexuality to heterosexuality (and she would be the first to say so). This is important because there have been, over time, various transphobic attacks on trans people's access to transition-related care, in which such care has been tarred as "conversion therapy" in exactly this way (Ashley, 2019).

Moreover, as part of transition-related care, it can be legitimate to enquire into the client's thoughts about ways of moving forward that may involve non-transgender identities or forgoing medical transition – *provided* it is understood that a transgender identity and/or accessing medical transition are completely acceptable outcomes of such reflection. The focus is on presenting the wide range of possibilities that exist, and accompanying and affirming clients as they discover the ways of understanding and presenting themselves that best meet their authentic needs and desires—whatever those ways may prove to be.

The problem is that this means that *actual* conversion therapy that is couched in terms of someone's gender transition, or attempts to access transition-related care, will not be captured (Muse, 2020).

For example, trans people who identify as gay, lesbian, or bisexual have often been subjected to stigma and abuse in the course of accessing transition-related care, out of an outdated and heterosexist assumption that ultimately identifying as heterosexual is an important goal of transitioning (Waszkiewicz, 2006).

Others, when attempting to access transition-related care, have encountered strenuous efforts to discourage them from transitioning or identifying as trans positioned as a gatekeeping step, with access to transition-related medical care being framed as a "last resort," only for those who cannot be "dissuaded" from identifying as trans (or, rather, who are undeterred by trauma and forced by lack of other avenues of access to endure this treatment).

In still other cases, clinicians require trans people to conform to a gender presentation stereotypically associated with their identified gender, sometimes as a precondition to accessing transition-related care (Waszkiewicz, 2006).

All these practices are harmful, all the more harmful because they incorporate the harms of conversion therapy as a hurdle that has to be cleared in order to attain medically necessary transition-related care. Many trans people have been traumatized by practices of this nature (Ashley, 2019).

A more explicit wording could be something like:

> *(a) For greater certainty, a practice, treatment, or service relating to a person's consensual and desired gender transition does not constitute conversion therapy by reason only that the transition process may inherently entail a realignment in how the person's sexual orientation or gender identity or expression are understood. However, a practice, treatment, or service that aims to otherwise impose a heterosexual orientation, cisgender identity, or normative gender presentation as inherently more desirable than others is conversion therapy even when it occurs during transition-related care.*

4) With regard to subparagraph 320.101(b):

> ***320.101*** *… For greater certainty, this definition does not include a practice, treatment or service that relates…*
> *(b) to a person's exploration of their identity or to its development.*[1]

Again, we understand the usefulness of this section. For example, in the case of a client who identifies as a gay man and who is exploring recently emerged bisexual feelings, a clinician who compassionately and sensitively assists him in exploring and accepting those feelings should not be captured by the law, as though they were "converting" him from homosexuality to bisexuality.

However, we feel that this language is vague enough that a great deal of mischief could be shielded by it. For example, a young person who is questioning her sexual orientation might see

[1] A small point of structure, parenthetically: we believe that "to a person's exploration of their identity or to its development" was intended to be "to a person's exploration of their identity or ***of*** its development," i.e. "to a person's exploration… ***of*** [their identity's] development."

a counsellor who, to her dismay, urges her to stick to heterosexuality and suppress same-gender urges. We feel there is a risk that this could be defended as a "treatment… that relates… to a person's exploration of their identity."

Accordingly, as in the previous point, we suggest fleshing this exception out, for example:

> *(b) For greater certainty, a practice, treatment, or service relating to the exploration or development of a person's identity does not constitute conversion therapy except when it aims to impose a heterosexual orientation, cisgender identity, or normative gender expression as inherently more desirable than other orientations, identities, or expressions.*

5) Sections 320.102 and 320.103 create offences of performing conversion therapy upon, respectively, a person of full age against their will, or upon a person under 18 at all. This leaves out adults upon whom conversion therapy is performed other than "against their will."

We believe that conversion therapy should never be attempted, whether it is requested or not, because it is unethical. We understand that the exception for "consenting" adults is aimed at ensuring *Charter* compliance, but we believe that it is both desirable and constitutional to ban conversion therapy altogether.

To begin with, we believe that the notion of consenting—that is, to providing full, free, and *informed* consent—to conversion therapy is problematic, since conversion therapy is both ineffective and dangerous (Drescher et al., 2016). It is not inconceivable that someone could be fully informed of the ineffectiveness and danger of conversion therapy and nonetheless pursue it. However, we believe that in the vast majority of cases, practitioners of conversion therapy do not ever fully inform their potential victims of the futility and danger of what they propose. Indeed, they have been intentionally making the messaging surrounding conversion therapy sound more soft and friendly, framed in terms of freedom of choice (FitzPatrick, 2019). All of this makes *informed* consent—i.e. true consent—impossible. However, this lack of consent may not be captured by the language "against their will."

Beyond that, there are many situations in which the person may technically consent, but only in response to coercion (Muse, 2020). Importantly, among the most prominent sources of such coercion are individuals not involved in providing the conversion therapy, such as community members, religious leaders, and especially family (Adamson et al., 2020). A person's vulnerability to such coercion, especially when they are in a vulnerable psychosocial setting or subject to other marginalizations, does not end when they turn 18, nor is it made harmless because the victim signs a consent form. The language around performing conversion therapy "against the will" of the victim may not capture situations in which the coercion happens outside the therapy setting.

Furthermore, a physically or mentally disabled person seeking care, a homeless person seeking shelter, or others in similarly vulnerable situations could be required to undergo some kind of conversion therapy as a condition of access to those resources. This might not be explicit; for example, a person in such a setting (who might theoretically be free to leave or be removed from it, but at the risk of losing needed services) might be required to adopt gender-conforming behaviour or conceal same-sex interests, and be required to participate in "counselling" with a view to making them conform to such rules, or else be expelled. The unacceptable nature of such counselling is not reduced merely because the victim theoretically has a choice as to whether they want to be in that setting or not.

We would therefore continue to advocate for a bill in which the prohibitions in 320.102 and 320.103 are collapsed into a ban on providing conversion therapy at all. In the alternative, we would advise altering the wording "against their will" to "without freely given, fully informed, and uncoerced consent, or where the provision of any other services is made subject, or made to appear subject, to consenting to conversion therapy." We would also advise having the bill capture the act of coercing anyone into conversion therapy provided by a third party.

6) We would advocate for adding wording such as the following:

> *For greater certainty, a practice, treatment, or service may constitute conversion therapy notwithstanding the fact that it has a religious component.*

At this stage, a very large proportion of conversion therapy being practiced—including treatments that have the appearance of psychotherapy, medicine, counselling, or other scientific techniques—is being carried out in religious contexts (Madrigal-Borloz, 2020; Noël and Joycey, 2018; Romero, 2019). If there is, or is perceived to be, an exemption for religious-based practices, all that will happen is that conversion therapy practices that would violate this law will be moved into religious environments or otherwise given a religious fig-leaf. This cannot be allowed. Other serious criminal offences do not become lawful merely because they are performed in a religious context, a fact that we believe would survive *Charter* scrutiny (Madrigal-Borloz, 2020; Romero, 2019).

7) We agree with the presenters who mentioned the importance of capturing the removal of any person from Canada for the purposes of subjecting them to conversion therapy. We would add to this the importance of capturing conversion therapy delivered online from a location outside Canada. As conversion therapy becomes increasingly socially unacceptable in this country, and notably with the COVID-19 pandemic, we are aware of cases in which persons aiming to coerce others into undergoing conversion therapy are resorting to practitioners who communicate with the victims online. Those within the reach of Canadian criminal law should not be exempted because the actual practitioner may not be and because the victim is not physically transported out of the country.

8) Finally, we must make it clear that a ban will not be enough (FitzPatrick, 2019). In particular, traumatized and vulnerable LGBTQIA2S+ people often lack any realistic access to state means to assert the rights enshrined in legislation. All levels of government must move forward both with humanizing, fact-based messaging to delegitimize conversion therapy, and with initiatives aimed at insuring accessible care for the well-being of victims of homophobia and transphobia, including conversion therapy, and reinforcing the capacity of LGBTQIA2S+ communities to provide such care in a culturally relevant way.

Moreover, improvements in social supports, such as better access to housing and quality physical and mental health care, improved training of service providers, access to legal aid, and reduction in policing that targets marginalized communities, are crucial for providing LGBTQIA2S+ people with the means to avoid these kinds of coercion. In particular, conversion therapy is often provided for free or otherwise accessibly to people for whom legitimate psychotherapy or other supports may be inaccessible. This can lure vulnerable LGBTQIA2S+ persons with few resources who are looking for support with their identity or even for other issues such as trauma or addiction, with the conversion therapy practitioners promising that their services will help them with those issues (FitzPatrick, 2019). Simplified, free, and ample access to psychotherapy and other psychosocial supports offered by competent professionals trained to provide culturally relevant assistance to LGBTQIA2S+ individuals, notably through reinforcing the capacity of LGBTQIA2S+ community organizations working in this field, will be crucial in reducing the vulnerability of LGBTQIA2S+ persons to this kind of tactic.

Whether coercion means keeping someone in an abusive family, luring them into an exploitative relationship, forcing them into a homophobic or transphobic institutional environment, or subjecting them to conversion therapy, it thrives on the lack of other, readily accessible options for obtaining the necessaries of life. All such improvements would make LGBTQIA2S+ people—including racialized, migrant, impoverished, mentally or physically disabled, young, and elderly LGBTQIA2S+ people and those at the intersections of all these identities—much harder to coerce.

We also want to reiterate that, in working on the bill, it will be crucial to consult directly with survivors of conversion therapy, both orientation- and gender-related; and in particular, those who experienced conversion therapy in contexts that were entirely licit or even seen to be scientifically valid at the time, for example as a gatekeeping step to access transition-related care.

Thank you for your attention.

Pride Therapy Network of Montreal

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Description of organization:

The Pride Therapy Network of Montreal is a community-based association of mental health professionals, many with lived experience as members of LGBTQIA2S+ communities, offering affirmative therapy services to the LGBTQIA2S+ communities. We provide access to a wide range of highly trained and qualified mental health professionals including psychologists, psychotherapists, couples and family therapists, sexologists, guidance counsellors, and social workers, who are all trained and committed to providing culturally informed, accessible, and affirmative services to members of sexually and gender diverse communities. We provide bilingual access to therapists on a sliding scale, to make mental health care financially accessible to our communities which often lack resources due to homophobia, transphobia, and intersectional oppressions.

Summary of recommendations:

1) Include conversion therapy targeting gender expression within the scope of the bill.

2) Amend section 320.101 to specify: ***conversion therapy*** *means a practice, treatment or service designed … to repress or reduce* ~~*non-heterosexual*~~ *attraction or sexual behaviour* ***because it is non-heterosexual.***

3) Confirm the exclusion of treatments related to consensual and desired gender transition, but include actual conversion therapies inflicted within the framework of gender transition, with wording such as:

   (a) For greater certainty, a practice, treatment, or service relating to a person's consensual and desired gender transition does not constitute conversion therapy by reason only that the transition process may inherently entail a realignment in how the person's sexual orientation or gender identity or expression are understood. However, a practice, treatment, or service that aims to otherwise impose a heterosexual orientation, cisgender identity, or normative gender presentation as inherently more desirable than others is conversion therapy even when it occurs during transition-related care.

4) Protect against conversion therapy performed in the guise of identity exploration with language such as:

   (b) For greater certainty, a practice, treatment, or service relating to the exploration or development of a person's identity does not constitute conversion therapy except when it aims to impose a heterosexual orientation, cisgender identity, or normative gender expression as inherently more desirable than other orientations, identities, or expressions.

5)

a. Prohibit all conversion therapy, not only that performed on minors or non-consenting adults.
b. In the alternative, set strict requirements for the consent required from adults, such as:

without freely given, fully informed, and uncoerced consent, or where the provision of any other services is made subject, or made to appear subject, to consenting to conversion therapy.

c. Have the bill capture the act of coercing anyone into conversion therapy provided by a third party.

6) Provide that conversion therapy is captured by the legislation even when it has a religious component.

7) Provide for a prohibition on removing any person from Canada for the purpose of subjecting them to conversion therapy, and provide analogous measures regarding subjecting a person in Canada to conversion therapy delivered remotely from outside Canada.

8) Spread accurate information about conversion therapy to discredit it, and improve access to mental health care and social supports, including building the capacity of LGBTQIA2S+ communities to deliver such services in a culturally relevant way, to deal with the harms caused by conversion therapy and reduce the vulnerability of our communities to predation by conversion therapy practitioners.