



## CANADIAN CRIMINAL JUSTICE ASSOCIATION

### BRIEF

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

**43rd Parliament, 2nd Session**

**June 2021**

#### **Background of the Canadian Criminal Justice Association (CCJA)**

The CCJA is a non-governmental organization engaging in all Canadian Criminal Justice system elements to promote improved programs, policies, and legislation. Since 1919 the organization has testified before various Parliamentary committees. It organizes and hosts the Canadian Congress on Criminal Justice every two years and publishes the Canadian Journal of Criminology and Criminal Justice and the Justice Report.

#### **Purpose of Brief**

We appreciate the opportunity to provide comments on the proposals set out in Bill C-6.

#### **Description of the Bill**

Bill C-6 proposes amendments to the *Criminal Code* to create five new offences relating to practices defined as “conversion therapy”. The Minister of Justice introduced Bill C-6 on October 1, 2020. On December 11, 2020, the House of Commons Standing Committee on Justice and Human Rights reported the Bill with Amendments to the House. The Bill was first introduced in a previous parliamentary session as Bill C-8 (43<sup>rd</sup> Parliament, 1<sup>st</sup> Session). C-6 is currently being debated at 3<sup>rd</sup> Reading in the House.

Bill C-6 proposes to amend the *Criminal Code* to create the offences of:

1. Causing a person to undergo conversion therapy without the person's consent
2. Causing a child to undergo conversion therapy
3. Acting for the purpose of removing a child from Canada with the intention they undergo conversion therapy outside of Canada.
4. Promoting or advertising an offer to provide conversion therapy, and

## 5. Receiving a financial or other material benefit from the provision of conversion therapy

Bill C-6 defines “conversion therapy” as (see proposed section 320.101)

“... a practice, treatment, or service designed to change a person's sexual orientation to heterosexual, to change a person's gender identity or gender expression to cisgender or to repress or reduce non-heterosexual attraction or sexual behaviour or non-cisgender gender expression. For greater certainty, this definition does not include a practice, treatment or service that relates to the exploration and development of an integrated personal identity without favouring any particular sexual orientation, gender identity or gender expression.”<sup>1</sup>

### Strengths and Weaknesses of the Bill

The CCJA supports and recommends the speedy passage of this Bill. There is widespread consensus among experts and the research literature that conversion therapy is ineffective and fundamentally harmful to the individuals subjected to it (see References at the end of this Brief).

For example, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity reports that conversion therapy practices are harmful, inhumane and linked to psychological and physical damage, globally.<sup>2</sup> His recent report made several recommendations, including a call for states to enact bans on “conversion therapy.”

Bill C-6 would partially<sup>3</sup> criminalize “conversion therapy” across Canada, bringing it into line with similar human rights legislation passed in numerous provinces and territories, including Ontario, Nova Scotia, Prince Edward Island, Yukon, and Quebec. Local by-laws restricting the practice have passed in Vancouver and municipalities across Alberta, as well as in Saskatoon. The province of Manitoba has issued an official position in opposition to “conversion therapy.”<sup>4</sup>

The partial ban proposed in Bill C-6 is broadly supported by experts and professional associations in Canada, with almost all leading health, medical, and professional

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<sup>1</sup> Clause 5, Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 2020.

<sup>2</sup> Victor Madrigal-Borloz. “Practices of so-called “conversion-therapy” (A/HRC/44/53). (Report of the Independent Expert on protection against violence discrimination based on sexual orientation and gender identity, Geneva: United Nations, 2020). 1-22. Accessed at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/108/68/PDF/G2010868.pdf?OpenElement>

<sup>3</sup> “Conversion therapy” provided to a consenting adult would not be criminalized.

<sup>4</sup> Kristopher Wells. “*Legislative Map*” (2020). Accessed at: <https://www.noconversioncanada.com/legislation-map>

associations, including the Canadian Psychological Association, denouncing conversion therapy as a harmful and ineffective practice.<sup>5</sup>

Bill C-6 is also widely supported by LGBTQ2S+ community organizations, individuals, and survivors of “conversion therapy”, aside from concerns that the Bill does not go far enough to eliminate the practice.<sup>6</sup>

The recent report of the UN Independent Expert on Violence and Discrimination based on Sexual Orientation and Gender Identity urged states to consider the special protection of minors at increased risk of suffering harm due to conversion therapy.<sup>7</sup> We are therefore pleased to see that Bill C-6 includes specific protections related to minors.

Based on this widespread support by experts and advocates, and the documented harm caused by the practice, the CCJA fully supports efforts to end the harmful practice of conversion therapy.

### **Criminalization**

The CCJA maintains a longstanding hesitancy towards expanding criminalization and we are particularly wary of any proposed legislation that seeks to address a social problem by expanding the net of criminalization and state punishment. This is based on extensive evidence both that criminal justice sanctions have poor general deterrence value and that the criminal justice system tends to have discriminatory impacts, such as harsher treatment of racialized and marginalized people. Further, goals of ending discriminatory practices, such as conversion therapy, are generally more effectively met through social policies that educate, promote, fund and regulate.

However, the CCJA fully supports the proposed additions to the *Criminal Code* in this case as they appear to be justified by the goal of ending the homophobic and transphobic harm of “conversion therapy”. We have seen no evidence that this legislation would have disproportionate or discriminatory effects on any marginalized groups.

### **Discussion of Critiques of the Bill**

Our first concern is the ambiguity of the definition of “conversion therapy” in Bill C-6, as it relates to private conversations and personal beliefs, with some calling for a clear list of positions and professions excluded from prosecution. However the justification that drafting a complete list of exemptions is impossible, appears to us valid.

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<sup>5</sup> Canadian Psychological Association, “*CPA Policy Statement on Conversion/Reparative Therapy for Sexual Orientation*”, (2015). Accessed at: <https://cpa.ca/docs/File/Position/SOGII%20Policy%20Statement%20-%20LGB%20Conversion%20Therapy%20FINALAPPROVED2015.pdf>

<sup>6</sup> Ross Wicks, “Bill C-6 an act to amend the Criminal Code (conversion therapy)” (Pflag Canada, 2020).

<sup>7</sup> Madrigal-Borloz. “Practices of so-called “conversion-therapy”” (2020).

Bill C-6 specifically criminalizes treatments, practices, and services intended to *change* sexual orientation, gender identity or expression. The Bill includes the exemption that practices that rather involve the exploration and development of personal identity, which does not condemn or favour a particular sexual orientation, gender identity, or gender expression, will not be criminalized under Bill C-6.

Definitions and language used in provincial and territorial legislation are similar to Bill C-6, apart from the language used to accept and support their outlined exclusions. For example, the Sexual Orientation and Gender Identity Protection in Health Care Act of Prince Edward Island states:<sup>8</sup>

"conversion therapy" means any practice, treatment or service provided for the purpose of changing a person's sexual orientation or gender identity,

but does not include

(i) a practice, treatment or service providing acceptance, understanding or support to a person or assisting a person with identity exploration or development, or

(ii) gender-confirming surgery or a practice, treatment or service related to gender-confirming surgery

Amendments to the language of exclusions in the Bill similar to those used in provincial and territorial legislation may further strengthen Bill C-6.

Second, some argue that Bill C-6 does not go far enough to eliminate conversion therapy. The Bill has been critiqued for failing to 'ban' conversion therapy completely, and for not acknowledging that conversion therapy's very nature, and its associated psychological and physical harms, make informed consent for treatment impossible. However, the Ministers sponsoring this Bill argued that the exclusion of 'consenting' adults from the ban is consistent with the *Canadian Charter of Rights and Freedoms*.<sup>9</sup> The CCJA understands this exclusion.

Finally, there has been significant debate regarding gender identity and gender expression related to children and minors. Bill C-6 is clear that exploring topics related to sexual orientation, gender identity, and gender expression in ways that are unbiased and supportive are not the target of this proposed legislation. Bill C-6 will not prevent health care professionals from discussing all health care options with patients and parents. Rather, Bill C-6 will protect members of the LGBTQ2S+ community from practices, services, and treatments that attempt to pathologize and invalidate their orientation, identity, and expression.

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<sup>8</sup> Bill No.24, *Sexual Orientation and Gender Identity Protection in Health Care Act, 1<sup>st</sup> Session, 66<sup>th</sup> General Assembly Province of Prince Edward Island, 2019*. <https://docs.assembly.pe.ca/download/dms?objectId=e1e1af98-2f81-4b3f-8bb2-11a596629e4a&fileName=bill-24.pdf>

## Conclusion

Given the extensive evidence regarding the harms of “conversion therapy,” efforts to eliminate this practice are a positive step towards protecting LGBTQ2S+ individuals and decreasing homophobic and transphobic discrimination. Therefore, the CCJA endorses the proposed amendments set out in Bill C-6.

We call on the federal government to pair the passing of Bill C-6 with ongoing, proactive social policy efforts to eliminate discrimination on the basis of sexual orientation or gender identity and expression.

## References

- Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*, 2<sup>nd</sup> Session, 43<sup>rd</sup> Parliament, 2020. [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/LegislativeSummaries/432C6E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C6E)
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- Canadian Psychological Association (Canada). “*CPA Policy Statement on Conversion/Reparative Therapy for Sexual Orientation*”. 2015. <https://cpa.ca/docs/File/Position/SOGII%20Policy%20Statement%20-%20LGB%20Conversion%20Therapy%20FINALAPPROVED2015.pdf>
- Ontario Human Rights Commission. *Policy on preventing discrimination because of gender identity and gender expression*. ISBN/ISSN: PDF:978-1-4606-3902-3. Toronto, ON: OHRC, 2014. PDF, <http://www.ohrc.on.ca/en/book/export/html/11169> (March 16, 2021)
- Victor Madrigal-Borloz, Independent Expert on sexual orientation and gender identity OHRCHR-UNOG. “*Practices of so-called ‘conversion-therapy’*”. Report of the Independent Expert on protection against violence and discriminations based on sexual orientation and gender identity on conversion therapy (A/HRC/44/53). May 1 2020.
- Wells, Kristopher. “*LEGISLATION MAP*”. Last modified 2020. <https://www.noconversioncanada.com/legislation-map>
- Wicks, Ross. “Bill C-6 an act to amend the Criminal Code (conversion therapy)”. Pflag Canada. Ottawa ON. 2020