Justice Centre
for Constitutional Freedoms

Unconscionable and Unconstitutional

Bill C-6's Attempt to Dictate Choices Concerning Sexuality and Gender

Submissions on *Bill C-6: An Act to amend the Criminal Code (conversion therapy)*

Brief to the Standing Committee on Justice and Human Rights

November 10, 2020

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Executive Summary

This submission focusses on the implications of *Bill C-6, An Act to amend the Criminal Code (conversion therapy)* ("Bill C-6") to the rights and freedoms of Canadians guaranteed under the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

While we agree that the *Criminal Code* should prohibit force, coercion and abuse in relation to attempts to change a person's sexual orientation or gender identity, Bill C-6 is overbroad and dangerous and will likely cause children, adolescents and adults irreparable harm.

Bill C-6 purports to create five *Criminal Code* offences related to "conversion therapy." Consequently, its definition of "conversion therapy" is extremely important, driving concerns about whether Bill C-6 complies with the *Charter*. Unfortunately, Bill C-6's definition of "conversion therapy" does not specifically target abusive and coercive practices that Canadians would associate with that term. Rather, Bill C-6 contains a dangerously expansive definition of "conversion therapy," resulting in criminalizing legitimate medical, psychological and spiritual supports for people concerning their sexuality, their gender identity, or both.

Bill C-6 should be opposed for the following reasons:

1. Bill C-6's expansive definition of "conversion therapy" results in imposing a narrow ideological view of sexuality and gender, rather than seeking to prohibit harmful practices. This impinges on the fundamental freedom of Canadians to have their own thoughts, beliefs and opinions concerning sexuality and gender.
2. Bill C-6 discriminates against LGBTQ persons by denying their equal right to receive the support or therapy of their own choice concerning their sexuality, gender identity, sexual addictions and sexual behaviour. This violates section 15(1) of the *Charter*.
3. Bill C-6 removes the ability of health professionals and parents to determine treatments in the best interests of children who are experiencing gender distress. Bill C-6 instead imposes a one-size-fits-all treatment of social, hormonal and surgical gender transition. This is unreasonable state interference with children's and parents' section 7 *Charter* rights to life, liberty and security of the person.
4. Bill C-6 interferes severely with the teaching and practice of religious beliefs regarding sexuality and gender identity, and prevents religious LGBTQ persons from receiving support in accordance with their own religious faith. This violates Canadians' right to freedom of religion and conscience.

The amendments to the *Criminal Code* contained in Bill 6 propose prison terms of up to two or five years to enforce these unconscionable—and unconstitutional—restrictions on Canadians' rights and freedoms.

Given Bill C-6's far-reaching impacts on Canadians' fundamental rights and its substantial interference in the voluntary choices of individuals concerning their own sexuality and gender, such a law cannot be justified in Canada's free and democratic society. Bill C-6 is an overbroad, arbitrary and discriminatory violation of Canadians' human rights and constitutional freedoms. Bill C-6 should be opposed in its entirety or amended to be *Charter*-compliant.

I. *Bill C-6: An Act to Amend the Criminal Code (conversion therapy)*

Bill C-6 purports to create the following *Criminal Code* offences related to "conversion therapy":

(a) causing a person to undergo conversion therapy against the person's will;
(b) causing a child to undergo conversion therapy;
(c) doing anything for the purpose of removing a child from Canada with the intention that the child undergo conversion therapy outside Canada;
(d) advertising an offer to provide conversion therapy; and
(e) receiving a financial or other material benefit from the provision of conversion therapy.[1]

All of these offences pertain to and utilize the term "conversion therapy." How "conversion therapy" is defined in Bill C-6 is therefore of paramount significance, and unsurprisingly is the foundation for broad public concern regarding Bill C-6.

A. An overly broad definition of "conversion therapy"

Bill C-6 does not specifically target abusive and coercive practices that Canadians would associate with the term "conversion therapy." Instead, Bill C-6 proposes a remarkably expansive and encompassing definition of "conversion therapy" that will categorically prohibit a broad range of medical, psychological and spiritual supports that individuals currently and voluntarily choose to receive in relation to their sexuality, gender, sexual behaviour or addictions.

Bill C-6 defines conversion therapy as:

> **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.

Several points are notable about this definition of "conversion therapy":

1. Its potential scope is overly broad, particularly by virtue of its inclusion of the term "practice", causing concerns that it would be applied to conversations between family members and friends. Government statements to the contrary,[2] unless included in the Bill itself, will not prevent Bill C-6 from unjustifiably violating the rights and freedoms of Canadians.

2. It discriminates on the basis of sexual orientation by prohibiting services to "reduce non-heterosexual … sexual behaviour", while still allowing services to reduce heterosexual

[1] Bill C-6, *An Act to amend the Criminal Code (conversion therapy)*, Second Session, Forty-third Parliament, 69 Elizabeth II, 2020, Summary [*Bill C-6*].
[2] See e.g. https://www.justice.gc.ca/eng/csj-sjc/pl/ct-tc/index.html: "These new offences would not criminalise private conversations in which personal views on sexual orientation, sexual feelings or gender identity are expressed such as where teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members provide affirming support to persons struggling with their sexual orientation, sexual feelings, or gender identity."

sexual behaviour;

3. It discriminates on the basis of gender identity by prohibiting services to assist an individual to regain comfort with natal gender identity while expressly allowing "gender transition" away from one's natal gender; and

4. It imposes only one option for people dealing with gender identity issues, by effectively prohibiting the affirmation of natal gender identity and allowing only practices, treatments and services for a "person's gender transition", which may include irreversible and potentially harmful treatments such as puberty blockers, cross-sex hormones, mastectomies and/or other radical surgeries.

B. Bill C-6 imposes an ideological view of sexuality and gender

Canadians rightly expect their government to adopt laws based on evidence rather than ideology. This is particularly so regarding the *Criminal Code*, which sets out our society's most basic requirements with which all citizens must comply on pain of criminal punishment. Bill C-6, however, is expressly premised on ideological views of sexuality and gender, which it then seeks to enforce with the threat of imprisonment.

Bill C-6's Preamble states that it seeks to target "myths and stereotypes about sexual orientation and gender identity." These "myths" and "stereotypes" are not specifically described or defined, with the exception that the Preamble references the "myth that a person's sexual orientation and gender identity can and ought to be changed".

In targeting this "myth," it is apparent Bill C-6 is imposing the belief that people's sexual orientation and gender identity cannot and should not be changed. This contention is contradicted by the concept of "gender fluidity" commonly taught to school children across the country and defined in online government materials,[3] which suggests one's gender identity can and does sometimes change or shift along the gender spectrum. Further, it is scientific fact that some individuals do experience changes in their sexual orientation or their gender identity.[4]

The issue of whether sexual orientation or gender identity *ought* to change is not a question of myth or fact, but rather a subject of intensely personal reflection. Most significantly, when individuals experience or express a change in their sexual orientation or gender identity, it is a personal matter of the most intimate nature.

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[3] See FAQs about the Self Identification Questionnaire: https://www.ic.gc.ca/eic/site/063.nsf/eng/h_97737.html.

[4] See Stewart et al, "Developmental patterns of sexual identity, romantic attraction, and sexual behavior among adolescents over three years" (2019) 77 Journal of Adolescence, 90-97, available at https://www.sciencedirect.com/science/article/abs/pii/S0140197119301745?via%3Dihub; J Berona , SD Stepp, AE Hipwell, & KE Keenan, "Trajectories of Sexual Orientation from Adolescence to Young Adulthood: Results from a Community-Based Urban Sample of Girls" (July 2018) 63:1 J Adolesc Health 57–61, available at https://doi.org/10.1016/j.jadohealth.2018.01.015; L.M. Diamond, J.A. Dickenson, & K.L. Blair, "Stability of Sexual Attractions Across Different Timescales: The Roles of Bisexuality and Gender" (2017) 46 *Arch Sex Behav* 193–204 available at https://doi.org/10.1007/s10508-016-0860-x; S. L. Katz-Wise, "Sexual fluidity in young adult women and men: Associations with sexual orientation and sexual identity development" (2015) 6:2 Psychology & Sexuality 189–208, available at https://doi.org/10.1080/19419899.2013.876445; Devita Singh , "A follow-up study of boys with gender identity disorder" (Doctor of Philosophy, University of Toronto, 2012) [Unpublished doctoral dissertation] at pp 168-69 available at https://images.nymag.com/images/2/daily/2016/01/SINGH-DISSERTATION.pdf; Kelley D Drummond, Susan J Bradley, Michele Peterson-Badali, & Kenneth Zucker, "A Follow-Up Study of Girls With Gender Identity Disorder" (2008) 44:1 Developmental Psychology 34-45 available at: https://doi.apa.org/doi/10.1037/0012-1649.44.1.34 at pp 34, 39.

Yet, in effect,[5] Bill C-6 prohibits practices, treatments or services that individuals may **voluntarily** choose to receive in relation to their sexuality and gender, if these services "change a person's sexual orientation to heterosexual or gender identity to cisgender" or "reduce non-heterosexual attraction or sexual behaviour."[6] Bill C-6 imposes its restrictive ideological view on all Canadians and limits their personal choices.

Consequently, Bill C-6 criminalizes a broad range of practices, treatments and services, including the following:

1. Paid counselling support, provided by a psychologist or other trained professional, to an individual seeking treatment for a sexual addiction (e.g. pornography, sexual promiscuity) if the addiction involves non-heterosexual sexual behaviour;
2. Advertising by a faith-based support group that helps people to address sexual and gender identity issues in their own personal lives and which also embraces traditional beliefs about sexuality and gender;
3. Advertising by a secular 12-step program that helps people address sexual issues in their own personal lives;
4. Medical treatments and psychological therapy (unless provided by unpaid health professionals) for individuals seeking to detransition to their natal gender, and for individuals who choose to address their gender dysphoria by seeking to accept their natal gender;
5. Counselling offered to help a child below the age of consent stop engaging in sexual behaviour, to the extent it involves the same sex; and
6. Any therapy designed to help a child with gender dysphoria regain comfort with her or his natal gender.

II. Bill C-6 Restricts Health Professionals' Ability to Treat Children's Gender Distress without Transition and Medicalization

Bill C-6's prohibition on therapies to change an individual's gender identity, other than to pursue "gender transition", essentially imposes a one-way, one-size-fits-all treatment option for helping children and adolescents who are experiencing gender dysphoria or who have other social, neurological or psychological reasons leading them to question their gender identity.

Despite ongoing medical and scientific debate about the best treatments for children with gender distress,[7] Bill C-6 ties the hands of caring parents, doctors, psychologists, counsellors and other medical professionals.

While Bill C-6 permits services related to the "exploration" of one's "identity or its development", the risk of being criminally charged and imprisoned for up to five years if a therapy or counseling service is deemed to have the purpose of "changing" a person's gender identity (when gender

[5] By prohibiting the advertising of "conversion therapy" and receipt of any material benefit from the provision of "conversion therapy", Bill C-6 effectively prohibits any practice, treatment or service captured under its expansive definition of "conversion therapy" unless it is both provided for free and not advertised.
[6] *Bill C-6*, proposed *Criminal Code* section 320.101.
[7] See Appendix B for a discussion of the danger of political interference in the medical and scientific debate about the treatment of gender distress.

identity may be in flux) will undoubtedly deter most practitioners from offering treatment for gender identity issues at all, regardless of what may be in the best interests of a particular child.

Bill C-6 creates a serious risk of funneling children with gender dysphoria down a medicalized path toward "gender transition", which often involves puberty blockers, cross-sex hormones and surgical interventions. The potential long-term health effects of such medical measures on children and youth, including sterility, is largely unstudied.[8]

Furthermore, in light of the growing number of "detransitioners" (individuals who transitioned as adolescents to the opposite gender, have come to regret their decision, and are seeking to return to their natal gender),[9] this legislation may effectively result in a ban on counselling or assisting detransitioners to return to their natal gender (to become "cisgender", which Bill C-6 prohibits).

An initial request by a child or adolescent seeking medical intervention to change her or his gender identity does not mean that this will be a permanent request. For instance, a 2019 peer reviewed article published in *Clinical Child Psychology and Psychiatry*, described the experience of some adolescents with gender dysphoria who initially wanted medical intervention, but "[o]ver the course of the psychosocial assessment, they came to understand their distress and its alleviation (at that particular point in time) differently and eventually chose not [sic] take a medical (hormonal) pathway and/or identified their gender identity as broadly aligned with their biological sex."[10] Bill C-6 does not allow for this flexibility in treatment options—it expressly prohibits it.

III. Bill C-6's Violation of the *Charter* Rights of Children and Parents

Children have a *Charter* right to the care and protection of their own parents.[11]

Likewise, parents have the responsibility and corresponding *Charter* right to care for and make fundamental decisions for their young children. In this regard, Justice LaForest stated in *B(R) v Children's Aid Society of Metropolitan Toronto*, that "the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent."[12]

The Supreme Court of Canada has held that the vital link between parent and child may only be interfered with on a case-by-case basis when "necessity" is demonstrated and there is a sufficient justification for doing so.[13] Necessity must be demonstrated; it cannot merely be theorized.

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[8] See BMJ EBM Spotlight, "Gender affirming hormone in children and adolescents", February 25, 2019, available at https://blogs.bmj.com/bmjebmspotlight/2019/02/25/gender-affirming-hormone-in-children-and-adolescents-evidence-review/.

[9] From trans to detransitioner – what can we learn from this growing trend?, available at: https://genderreport.ca/detransitioners-what-can-we-learn/.

[10] Anna Churcher Clarke & Anastassis Spiliadis, "'Taking the lid off the box': The value of extended clinical assessment for adolescents presenting with gender identity difficulties" (2019) 4(2) Clinical Child Psychology and Psychiatry 338–352 at p 349, available at: https://doi.org/10.1177/1359104518825288.

[11] See *CPL, Re*, 1988 CanLII 5490 (NL SC), [1988] NJ No 137 (QL) at para 77: "The right that an infant child has, which is important to this case, is a right to be cared for by its parents. This is a right which I find is a right enshrined in the Charter under section 7. The right to security of the person. This is a right which a person is not to be deprived of except in accordance with principles of fundamental justice. The right of the state or the Crown to interfere with the right of security of the person can only be exercised if it is in accordance with the principles of fundamental justice."

[12] *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] SCR 315 at 370, 1995 CanLII 115 (SCC).

[13] *Ibid* at para 371.

Bill C-6 directly jeopardizes the child-parent relationship by threatening parents with up to five years in jail if they are deemed to have caused their own children to go through "conversion therapy." If "conversion therapy" was defined in the manner that most Canadians understand the term—abusive practices, even torture, in order to rid a person of same-sex attractions—there would be compelling grounds to justify the interference with the child-parent relationship.

However, due to Bill C-6's broad definition of "conversion therapy," its impact on the child-parent relationship will be much more pervasive and far-reaching. Some families, for example, adhere to cultural or religious practices restricting their unmarried adolescent children from sexual behaviour. Under Bill C-6, parents upholding this practice equally to their straight and gay children could be accused of causing their gay children to undergo "conversion therapy".[14]

Consider another scenario which numerous parents have faced.[15] An autistic girl with learning disabilities informs her parents that she learned in school that she is actually a boy. Her parents proceed to spend time with their child, helping her to process what she is feeling. They encourage her, telling her that it is perfectly fine that she does not enjoy stereotypically "girly" things, and that she is still biologically a girl. The parents proceed to take their child to a counsellor, and eventually their daughter regains comfort in identifying as a girl. Under Bill C-6, these parents would be at risk of criminal prosecution and imprisonment for causing a child to undergo "conversion therapy," which Bill C-6 defines to include "a practice, treatment or service designed to change a person's…gender identity to cisgender". The child in this situation regained comfort with her natal gender and is no longer is dysphoric. Bill C-6, however, would mandate that this child, and many like her, be forced to receive counselling encouraging gender transition.

IV. Bill C-6 Attacks Freedom of Conscience and the Core Tenets of Religious Faiths

Freedom of conscience and religion, enshrined in section 2(a) of the *Charter*, protects each and every Canadian, including atheists and agnostics, from government coercion in their beliefs and personal choices.

Bill C-6—rather than expressly prohibiting coercive and abusive practices—itself coercively limits Canadians' personal choices contrary to their *Charter*-protected freedom:

> Freedom can primarily be characterized by the absence of coercion or constraint. **If a person is compelled by the state** or the will of another **to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free**. **One of the major purposes of the *Charter* is to protect, within reason, from compulsion or restraint.** Coercion includes not only such blatant forms of compulsion as direct commands to act or

[14] *Bill C-6*, proposed *Criminal Code* section 320.101and 320.103.

[15] See Affidavit of PT, sworn April 4, 2018, available at https://www.jccf.ca/wp-content/uploads/2019/10/Filed-Affidavit-of-Parent-of-Autistic-Student-re-GSA-and-Transitioning.pdf; Affidavit of AA, sworn January 18, 2019, available at https://www.jccf.ca/wp-content/uploads/2019/05/Filed-Affidavit-of-Autistic-Student-re-GSA-and-Transitioning.pdf; Affidavit of JP, sworn May 23, 2018, available at https://www.jccf.ca/wp-content/uploads/2018/12/Filed-Affidavit-of-JP_Redacted.pdf; Affidavit of DD, sworn July 15, 2019, available at https://www.jccf.ca/wp-content/uploads/2019/07/Filed-Affidavit-of-parent-re-harm-of-GSA-to-autistic-child.pdf; Affidavit of JJ, sworn June 26, 2019, available at https://www.jccf.ca/wp-content/uploads/2019/07/Filed-Affidavit-of-autistic-student-re-fYrefly-school-presentation.pdf; Affidavit of KK, sworn June 26, 2019, available at https://www.jccf.ca/wp-content/uploads/2019/07/Filed-Affidavit-of-parent-re-harm-of-fYrefly-presentation-to-autistic-child.pdf.

> refrain from acting on pain of sanction, **coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others**. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices.[16]

Bill C-6 imposes one ideological view of sexuality and gender by means of the blunt and threatening instrument of the *Criminal Code*. In doing so, Bill C-6 directly attacks the central tenets of many religious communities, and therefore the very personal choices of religious Canadians concerning their sexuality and gender.

Many faith traditions believe that the only permissible expression of sexual intimacy is between a man and a woman who are married to each other. This belief is taught to young people within these religious communities, with the objective of encouraging young people to abstain from any and all sexual behaviour outside of that context, including "non-heterosexual . . . sexual behaviour." Under Bill C-6's definition of "conversion therapy," such teaching would be "causing a child to undergo conversion therapy", punishable by imprisonment for up to five years.[17]

Many people, religious and non-religious, also hold traditional beliefs about gender, including the view that humans are immutably either female or male. If they advocate against gender transition and encourage minors to find peace and wholeness by remaining in, or returning to, their natal gender identity, this too could be deemed to be "causing a child to undergo conversion therapy" and punished by up to five years in prison.

In this manner, Bill C-6 violates section 2(a), 2(b) and 15 *Charter* protections. If enacted as currently framed, Bill C-6 will *prima facie* conflict with the constitutional rights of Canadians.

A. Restriction of LGBTQ persons' access to support consistent with their beliefs

LGBTQ persons are not monolithic and should not be treated as if each LGBTQ person has the same beliefs and makes the same choices.

For example, many individuals with same-sex attraction also choose to follow a religious path and abstain from same-sex behaviour. [18] A law that prohibits advertising or receiving material benefit from any service to help "reduce non-heterosexual . . . sexual behaviour" may force a faith-based counselling service to actually discriminate against LGBTQ individuals who seek its service. In other words, counselling services available for heterosexual individuals would be illegal for gays and lesbians, even if they actively sought out such services. Therefore, Bill C-6 infringes the freedoms of individual LGBTQ Canadians, because it severely limits their ability to receive the support they might choose to help them reduce their unwanted sexual behaviour or to detransition back to cisgender.

All major religious faiths provide guidance as to the moral code by which individuals should lead their lives, including their sexual behaviour. If a faith community advertises a study or course that includes traditional teaching proscribing sexual activity outside of marriage, including "non-

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[16] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at para 945 Dickson J (as he then was), 1985 CanLII 69 (SCC) [emphasis added] [*Big M Drug Mart*].

[17] *Bill C-6*, proposed *Criminal Code* s 320.103. See further discussion Bill C-6's violation of the

[18] See public submissions to Calgary City Council opposing its broadly-worded proposed bylaw banning "conversion therapy", available at https://pub-calgary.escribemeetings.com/FileStream.ashx?DocumentId=130642, Letter 5a (pp 153-154), Letter 10a (pp 164-165), Letter 23a (p 207), Letter 27a (p 222), Letter 30a (pp 230-231), Letter 36a (pp 241-272), Letter 53a (pp 342-367), Letter 54a (pp 369-370).

heterosexual . . . sexual behaviour", this advertising would be subject to criminal prosecution for "advertising conversion therapy". LGBTQ individuals seeking to participate in such a study or course could be deprived of the opportunity, due to the prohibition against advertising it.

Further, even if a faith community does not advertise its moral teachings, Bill C-6 requires faith communities with traditional moral beliefs to discriminate against LGBTQ persons under 18 years of age who personally seek to follow those moral beliefs, since supporting them in that goal is "conversion therapy" under Bill C-6.

V. Bill C-6 Violates the Liberty and Human Rights of LGBTQ Canadians

Good laws and good policies, by definition, cannot be vague. Expansive criminal provisions that generally prohibit the personal choices of Canadians, without serious consideration as to whether those personal choices actually cause harm, cannot be "demonstrably justified in a free and democratic society" as required by section 1 of the *Charter*.

A. An overbroad and arbitrary interference with LGBTQ persons' personal choices

Canadians have the freedom to make their own choices concerning their sexuality and gender. Section 7 of the *Charter* protects Canadians' right to liberty. Canadians have a "right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference."[19] The *Charter* protects our liberty when it comes to matters that are "fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence."[20]

Individuals' choices concerning their sexuality and gender are quintessentially and inherently private choices, going to the core of their individual dignity and independence. The *Charter* (and common sense) thus require that individuals' choices concerning their sexuality and gender should be "free from state interference."

The personal choices of Canadians related to their sexuality and gender cannot be neatly confined to government-defined boxes. Some Canadians, including LGBTQ Canadians, choose monogamy; other Canadians have multiple sexual partners. Some Canadians choose to limit their sexual behaviour for any number of reasons, ranging from religious convictions to relationship expectations.

Some Canadians who experience gender incongruence take active steps to transition away from their natal gender. Others actively seek to acquire peace and contentment with their natal gender. Still other Canadians choose to "detransition" back to their natal gender. Regardless of what each individual decides, the *Charter* empowers each person to decide for themselves.

The liberty of individuals can only be infringed "in accordance with the principles of fundamental justice."[21] A government prohibition that is arbitrary, overbroad or disproportionate does not accord with the principles of fundamental justice,[22] and will be struck down by a court as an unjustifiable violation of a *Charter* right. This holds true even if a government measure has an

[19] *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 66, 1997 CanLII 335 (SCC).
[20] *Ibid*.
[21] *Charter*, s 7.
[22] *See Canada (Attorney General) v Bedford*, 2013 SCC 72 at paras 96-97 [*Bedford*].

arbitrary, overbroad or disproportionate effect on just one person.[23]

Bill C-6 is an *overbroad* infringement of Canadians' liberty. It goes much farther than banning coercive and harmful practices that are justly condemned. Rather, under its expansive definition of "conversion therapy," Bill C-6 prohibits advertising, or receiving material benefit from, a broad range of medical, psychological and spiritual supports that individuals may choose to receive in relation to their sexuality and gender. In so doing, many Canadians will lose the freedom to be able to access the services of their choice.

Bill C-6 is also an *arbitrary* violation of Canadians' liberty. It allows medical support for individuals seeking "gender transition", but clearly and directly prohibits medical support for individuals seeking to detransition back to their natal gender ("cisgender"). There is no rational basis for this prohibition, if the state is to respect the personal choices of Canadians.

Likewise, Bill C-6 places no restrictions on opposite-sex attracted individuals receiving counselling advertisements and hiring the most suitable counsellor to help them address unwanted sexual addictions or behaviours as they themselves deem best. In contrast, Bill C-6 restricts same-sex attracted individuals from accessing information about counsellors who have experience helping address unwanted sexual addictions or behaviours. Further, even if same-sex attracted individuals are able to locate a suitable counsellor with the relevant experience by word of mouth and not advertisement, they are prevented from hiring him or her, since doing so could lead to imprisonment for the counsellor. However, if the services were not advertised and offered for free, the counselor would not be subject to criminal penalty—another example of the arbitrariness of this Bill.

These limitations on the ability of LGBTQ individuals to access services on the basis of their sexual orientation or gender identity are not only arbitrary, they are also discriminatory.

B. Restricting access to services on the basis of persons' sexual orientation and gender identity

The *Canadian Human Rights Act* prohibits discriminating against people on the basis of their sexual orientation, religion, gender identity, gender expression and other grounds.[24] Similarly, section 15(1) of the *Charter* guarantees "equal protection and equal benefit of the law without discrimination" based on individuals' personal characteristics. Restricting personal choices about one's sexuality and gender based on these factors is discrimination.

A law that allows opposite-sex attracted Canadians to receive advertisements, and pay for supports to reduce unwanted sexual addictions or behaviours, but bars same-sex attracted Canadians from doing the same, is indisputable discrimination on the basis of sexual orientation. Similarly, allowing medical, psychological and other therapeutic interventions to help individuals transition away from their natal gender, while prohibiting such help for individuals seeking to detransition, is likewise discriminatory.

Bill C-6 discriminates from two different angles. First, it discriminates by preventing individuals from being informed of and paying for desired services and supports. Second, it requires service providers, including religious organizations, to discriminate against individuals on the basis of their sexual orientation and gender identity.

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[23] *Bedford* at para 123.
[24] See *Canadian Human Rights Act*, RSC 1985, c H-6, ss 3(1), 5.

A law that forces service providers to choose between violating individuals' human rights or facing imprisonment deserves to be rejected. The *Charter* prohibits government from imposing this quandary on service providers. The *Charter* likewise prohibits governments from delegating this prohibited discrimination to others, such as those providing psychological and other medical support. The government cannot escape *Charter* scrutiny by delegating discrimination to others.

Bill C-6 will effectively eliminate options and personal choices for LGBTQ Canadians. Should the government pass Bill C-6, it can expect LGBTQ Canadians to file human rights complaints against the government for causing illegal discrimination against them. Further, in the event Bill C-6 is criminally enforced, it will likely be overturned by a court as an unjustified and discriminatory violation of section 15(1) of the *Charter*.

VI. Conclusion and Recommendations

Bill C-6 is proposed ostensibly to prohibit "conversion therapy," but it fails to target coercive and harmful practices. Rather, using an overbroad and discriminatory definition of "conversion therapy", Bill C-6 imposes broad criminal prohibitions that violate Canadians' human rights and constitutional freedoms, including their *Charter* rights to liberty and security of the person under section 7, freedom of thought, belief, opinion and expression under section 2(b), freedom of conscience and religion under section 2(a), and the right to equality under section 15(1). These violations are not justified in a free and democratic society.

Bill C-6 should be amended to:

1. Ensure that the definition of "conversion therapy" targets sexual orientation and gender identity change efforts that cause objective harm.[25]
2. Respect the right of adult individuals to choose the supports they desire concerning their sexual attractions and behaviour by removing from the definition of "conversion therapy" the prohibition on services to "reduce non-heterosexual attraction or sexual behaviour."
3. Ensure that Bill C-6 does not apply to conversations between friends and family members, by restricting the definition of "conversion therapy" to "professional treatments or services".
4. Protect the rights of children experiencing gender distress by clarifying that a treatment or service deemed to be in the best interest of a child by his or her parents and a regulated professional is not prohibited as "conversion therapy".
5. Prevent violations of religious freedom and the ability of LGBTQ persons to receive support in accordance with their personal beliefs by exempting the teaching and practice of religious beliefs from the definition of "conversion therapy".

Unamended, Bill C-6 places ideological and discriminatory restrictions on Canadians' access to services related to sexuality and gender and is an afront to the basic principles of the *Charter*.

[25] See *Criminal Code*, section 2, which defines "bodily harm" to include "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature".

Appendix A

About the Justice Centre

Founded in 2010 as a voice for freedom in Canada's courtrooms, the Justice Centre for Constitutional Freedoms defends the constitutional freedoms of Canadians through litigation and education.

The Justice Centre's vision is for a Canada where:

- each and every Canadian is treated equally by governments and by the courts, regardless of race, ancestry, ethnicity, age, gender, beliefs, or other personal characteristics;
- all Canadians are free to express peacefully their thoughts, opinions and beliefs without fear of persecution or oppression;
- every person has the knowledge and the perseverance to control his or her own destiny as a free and responsible member of our society;
- every Canadian has the understanding and determination to recognize, protect and preserve their human rights and constitutional freedoms; and
- people can enjoy individual freedom as responsible members of a free society.

About the Authors

Lisa Bildy – Lisa Bildy graduated from Western Law school in 1993, and was called to the Ontario bar in 1995. She practiced for a number of years with a small litigation firm, where she did considerable trial work (including jury), primarily in the areas of family and personal injury law. Lisa then stepped back from active practice for a number of years to raise and homeschool her two sons, maintaining a connection to the law through contract work. She joined the Justice Centre in 2019 and also maintains a private litigation practice in London, Ontario, known as Libertas Law.

Marty Moore – Marty Moore has served as a staff lawyer with the Justice Centre for the past five years. He has defended the Canadians' constitutional freedoms before courts and tribunals across Canada from British Columbia to Newfoundland and Labrador. Marty was called to the bar in California in 2011. He then practiced law in the Chicago area, where he litigated before both the trial and appellate courts. In 2013, Marty returned to Canada and attended the University of Saskatchewan College of Law, obtaining his Canadian legal equivalency. Marty completed his articles with the Justice Centre and was called to the bar in Alberta in 2015.

Jocelyn Gerke – Jocelyn Gerke articled with the Justice Centre and was called to the Alberta Bar in 2020. After receiving her Juris Doctor from the University of Calgary in June 2019, she volunteered as a summer legal intern with an international anti-slavery NGO. She also holds a Master of Public Policy and a Bachelor of Commerce with a minor in Political Science from the University of Calgary. Jocelyn is passionate about defending individual rights and being a voice for those who struggle to be heard.

Appendix B

Political interference with medical and scientific debate limits healthcare options

The most beneficial and appropriate treatments, therapies and services for addressing gender dysphoria are a subject of ongoing and continued medical and scientific debate. Some will point to studies that have found high desistence rates in youth who experienced gender dysphoria, meaning the vast majority, roughly 80% of youth, regained or acquired comfort with their natal gender by the time they reach adulthood.[26] Others will argue the acknowledged fact that socially transitioning children significantly increases the persistence rates of a continued transgender identity.[27] Among researchers and clinicians, as well as activists, there is continuing, even heated, debate.[28]

It is wrong to assume that there is a medical consensus on this issue, and no government should seek to impose one, thereby ending vitally necessary debate and undermining efforts at objective research. What Bill C-6 seeks to expressly permit (gender transition of children), the United Kingdom is currently seeking to prohibit.[29]

In a free and democratic society, medical and scientific debates should not be settled by political dictates and the coercive force of law. Rather, uncensored scientific inquiry and debate, and also continued medical research, are critical to medical and scientific progress, particularly in the developing, though controversial,[30] field of treating children with gender dysphoria.

Legal and political interference should not censor medical debate and scientific inquiry, which is what Bill C-6 does on a practical level, by criminalizing medical and therapeutic approaches which some deem "wrong". Likewise, government should not interfere with the personal choices of

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[26] Kelley D Drummond, Susan J Bradley, Michele Peterson-Badali, & Kenneth Zucker, "A Follow-Up Study of Girls With Gender Identity Disorder" (2008) 44:1 Developmental Psychology 34-45 available at: https://doi.org/10.1037/0012-1649.44.1.34; Devita Singh , "A follow-up study of boys with gender identity disorder" (Doctor of Philosophy, University of Toronto, 2012) [Unpublished doctoral dissertation] available at https://images.nymag.com/images/2/daily/2016/01/SINGH-DISSERTATION.pdf; Thomas D. Steensma, Jenifer K. McGuire, Baudewijntje P. C. Kreukels, Anneke J. Beekman, & Peggy T. Cohen-Kettenis, "Factors associated with desistence and persistence of childhood gender dysphoria: A quantitative follow-up study" (2013) 52(6) *Journal of the American Academy of Child and Adolescent Psychiatry* 582–590 available at: https://doi.org/10.1016/j.jaac.2013.03.016; Jiska Ristori & Thomas D. Steensma, "Gender dysphoria in childhood" (2016) 28:1 *International Review of Psychiatry*, 13-20 available at: https://doi.org/10.3109/09540261.2015.1115754.

[27] See e.g. Julia Temple Newhook et. al "A critical commentary on follow-up studies and "desistance" theories about transgender and gender non-conforming children" (2018) International Journal of Transgenderism 19(2) available at: https://doi.org/10.1080/15532739.2018.1456390.

[28] See Kenneth J. Zucker, "The myth of persistence: Response to "A critical commentary on follow-up studies and 'desistance' theories about transgender and gender nonconforming children" by Temple Newhook et al. (2018), 19:2 International Journal of Transgenderism 231-245 available at https://doi.org/10.1080/15532739.2018.1468293.

[29] See *Daily Mail* article, "Under-18s will be blocked from having gender reassignment surgery in proposals to be published this summer" April 22, 2020 available at https://www.dailymail.co.uk/news/article-8247599/Under-18s-blocked-having-gender-reassignment-surgery.html: "Under-18s will be banned from having gender reassignment surgery, equalities minister Liz Truss said yesterday. While children are developing their decision-making capabilities, they should not be able to make irreversible choices, she said."

[30] See e.g. *The Chronicle of Higher Education* article, "Journal Issues Revised Version of Controversial Paper That Questioned Why Some Teens Identify as Transgender" March 19, 2019 available at https://www.chronicle.com/article/journal-issues-revised-version-of-controversial-paper-that-questioned-why-some-teens-identify-as-transgender/.

Canadians, and the ability of regulated health professionals to establish and assess the best course of treatment and what is in the best interests of a specific child.

When a government limits options for individuals experiencing personal and complex issues, and embeds ideological assumptions within legislation, this limits Canadians' freedoms in an unconstitutional manner.

Political interference in medical and scientific advancement, whether by ill-crafted legislation or activists, is destructive to having options available and allowing the medical and scientific community to complete much-needed research. A recent Canadian example is when in 2015 Dr. Kenneth Zucker, a world-renowned expert in the treatment of gender dysphoria, was accused of practicing "conversion therapy" and fired from his position as head of the Family Gender Identity Clinic of the Centre for Addiction and Mental Health (CAMH) in Toronto.[31] Dr. Zucker had held his position for more than 30 years before being fired. Over 500 clinicians and researchers signed a petition in Dr. Zucker's defence.[32] He was eventually vindicated,[33] but this incident resulted in the permanent closure of the gender identity clinic he led, which had provided treatment to many gender dysphoric children and youth and had produced leading research in the field.

Speaking to the availability of treatment options for gender dysphoric children and youth and the impact of politicizing the issue, Dr. Zucker's assessment following his experience deserves consideration:

> In Dr. Zucker's view, it sparked a fear that the field of gender dysphoria – where he says there remains many urgent and unanswered clinical and theoretical questions – has been "poisoned by politics."
>
> "I think that conflation with politics has made it very difficult for many people in the field to say what they really think," he said. "And I think that's really sad, that in a field where there are so many important issues to discuss and work on, that really bright people feel intimidated."[34]

Bill C-6 further politicizes the treating of children and adolescents with gender dysphoria by its overbroad definition of "conversation therapy" and its ideological imposition of a one-size-fits-all treatment option for children and youth.

Bill C-6's attempt to criminalize a broad range of practices, treatments and services as "conversion therapy" could cause a serious chilling effect throughout the health professions, resulting in a further lack of access to care for issues related to individuals' sexuality or gender. Children experiencing gender dysphoria will be particularly victimized, as Bill C-6 would see politicians who lack relevant qualifications and expertise usurp determinations rightly left to science, experienced medical experts, and caring parents.

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[31] See *Globe and Mail* article, "Doctor fired from gender identity clinic says he feels 'vindicated' after CAMH apology, settlement" October 7, 2018available at: https://www.theglobeandmail.com/canada/toronto/article-doctor-fired-from-gender-identity-clinic-says-he-feels-vindicated/ [*Globe* article].

[32] See *Globe* article.

[33] *CBC News* article, "CAMH reaches settlement with former head of gender identity clinic" October 7, 2018 available at: https://www.cbc.ca/news/canada/toronto/camh-settlement-former-head-gender-identity-clinic-1.4854015.

[34] See *Globe* article.