

BRIEF SUBMITTED IN REFERENCE TO:
BILL C-6 AN ACT TO AMEND THE CRIMINAL CODE (CONVERSION THERAPY)
STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

December 2, 2020.

The Honourable Iqra Khalid, MP
Chair
Standing Committee on Justice and Human Rights
House of Commons
Ottawa, Ontario K1A 0A6

Dear Ms. Khalid:

Grace and peace to you.

I am the President of the Canadian Association of Lutheran Congregations (CALC). The purpose of this correspondence is to express grave concerns with regard to key provisions of “Bill C-6 - An Act to Amend the Criminal Code (conversion therapy)” hereinafter referred to as “Bill C-6.” These concerns and suggested remedies are set forth below.

The term “conversion therapy” causes many Canadians to bristle. It brings to mind draconian medical procedures, including, electroshock therapy, the administration of psychotropic drugs, and aversion therapy. The term has become synonymous with bizarre therapeutic techniques, shaming, ostracism, shunning and even physical abuse. These practices should be illegal. However, as will be outlined below, not all “conversion therapy” is draconian, invasive, violent and/or demeaning. All techniques labeled “conversion therapy” cannot be painted with one brush.

1. Defects in the definition of “conversion therapy.”

Bill C-6 defines “conversion therapy” as follows: “*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 behavior. 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.*” (Section 320.101 of Bill C-6)

The Charter Statement issued under Section 4.2 of the Department of Justice Act for Bill C-6 (the “C-6 Statement”) makes the following statement with respect to the definition of conversion therapy. “*The proposed offences would be limited to practices, services or treatment and would therefore exclude purely private discussions between an individual struggling with their sexual orientation or gender identity and those seeking to support that individual, such as teachers, school counsellors, faith leaders, family members and friends*”

Under Canadian law, a suspect cannot be charged, convicted or punished for an offence created by the criminal code unless the relevant code provision clearly and unambiguously defines the conduct which constitutes the offense. The mere fact that the C-6 Statement singled out an exemption for conversations with teachers, school counsellors, faith leaders, family members and friends, is prima facie evidence that the definition of conversion therapy as written in Bill C-6 is unclear. It would thus be unconscionable for Bill C-6 to proceed without an amendment to the definition which preserves an exemption articulated in a document published by the Department of Justice.

If the above statement from the C-6 Charter Statement is indeed the government’s intent, then the following subsection (c) should be added to Section 320.101: ***or, (c) purely private discussions between an individual struggling with his/her sexual orientation or gender identity and those seeking to support that individual, such as teachers, school counsellors, faith leaders, family members and friends.*** The addition of this subsection would make it clear that perpetrators under Bill C-6 do not include a class of individuals who represent sources of great comfort and support to an individual struggling with sexual orientation or gender dysphoria.

2. Bill C-6 engages the Canadian Charter of Rights and Freedoms (“Charter”):

The Bill C-6 Statement provides that the following sections of the Charter are engaged by the bill.

Section 2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; and (d) freedom of association.

Section 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

The Justice Minister's interpretation of Bill C-6 permits a faith leader, which would include a Christian pastor, to engage in general discussions with a person struggling with gender dysphoria or non-heterosexual attraction. The pastor may even be able to assert that the Holy Bible clearly and unambiguously declares that it is God's most passionate desire is for that person to identify as heterosexual and cisgender. However, what would happen if the pastor went beyond general doctrinal statements and declared that God could work a change in that person's heart, soul, and mind so that he/she could identify their sexual orientation as heterosexual or gender identity as cisgender? What if the pastor engaged the struggling person in Bible study, pastoral counselling and prayer? What if the struggling person, at the pastor's invitation, participated in a service of healing which incorporated the laying on of hands and anointing with oil? As Bill C-6 is currently constituted, the pastor could be indicted under Bill C-6, even if the struggling person consented.

- The pastor's engagement of the struggling person in Bible study, pastoral counselling, prayer, and Christian rites and services would most certainly be considered a practice, treatment or service amounting to "conversion therapy" under Section 320.101 of Bill C-6.
- The pastor's declaration that God could use scripture, pastoral counselling, prayer, rites and sacraments to change a person's sexual orientation to heterosexual or gender identity to cisgender, would most likely be considered the advertisement of "conversion therapy" in violation of Section 320.104 of Bill C-6 (an indictable offence and if convicted subject to imprisonment for a term of not more than two years).
- If the pastor served in a paid position, he/she would be in violation of Section 320.105 of Bill C-6. Section 302.105 states that everyone who receives a financial or other material benefit, knowing that it is obtained or derived directly or indirectly from the provision of conversion therapy, is guilty of an indictable offence and liable to imprisonment for a term of not more than two years.

The C-6 Statement clearly states that the provisions of Bill C-6 infringe on the Section 2(a) and (b) Charter freedoms of both the pastor and the person struggling with sexual orientation or gender dysphoria. Pastors are called to comfort the mourning, to console the distressed and to bring the promise of redemption to those who seek redemption. The pastor risks arrest, trial and incarceration for the practice or expression of his/her faith in response to a parishioner struggling with his/her sexual orientation or gender dysphoria. The person struggling with sexual orientation or gender dysphoria puts his/her pastor at risk of arrest, trial and incarceration by reaching out to the pastor and engaging in the practice and expression of their common faith. The C-6 Statement clearly states that Section 7 is engaged because a person who is capable of making their own treatment decisions and who wishes to obtain conversion therapy, is prevented from doing so because of the prohibitions in the law (prohibition against advertising and receiving a benefit from conversion therapy). Section 2(d) is engaged by reason of the Bill C-6's bar on the freedom of the pastor and the struggling person to gather together for the purpose of practicing and expressing their common faith as guaranteed by Sections 2(a) and 2(b) of the Charter.

The C-6 Statement justifies Bill C-6's infringement on the rights and freedoms under Section 2(a), (b) & (d), and Section 7 for three main reasons:

- I. Medical professionals denounce conversion therapy as ineffective and a source of potential harm;
- II. The administration of conversion therapy can result in distress, anxiety, negative self image, suicidal thoughts and sexual dysfunction; and
- III. Conversion therapy perpetuates myths and stereotypes *that the sexual orientation or gender identity of LGBTQ2 people is undesirable and can and should be changed.*

These considerations are deemed to supersede and eclipse the freedoms of religion, free expression and free assembly. Bill C-6 exempts from the term conversion therapy any and all discussions, practices, treatments and services regarding a person's gender transition; or to a person's exploration of their identity or to its development. These considerations compel our federal government to adopt, as official policy, that gender reassignment surgery or the embrace of a non-heterosexual lifestyle is the preferred outcome for those struggling with gender dysphoria or sexual orientation. The federal government's rationale must be challenged.

There are medical professionals who denounce hormonal therapy and gender reassignment surgery as ineffective and a source of potential harm. The patient struggling with gender dysphoria wants to become a member of the opposite sex. Gender reassignment surgery is merely cosmetic. The male patient receiving gender reassignment surgery does

not receive fully functioning female genitalia. The male patient is not transformed into a biological woman. In the same way, the female patient receiving gender reassignment surgery does not receive fully functioning male genitalia. The female patient is not transformed into a biological man. Hormonal therapy that accompanies reassignment surgery can cause sterility and gender reassignment surgery irreversibly deprives the patient of their cisgender genitalia. Medical professionals testify that the administration of hormone therapy and gender reassignment surgery has in many cases left patients deeply depressed and contemplating suicide. Survivors of gender reassignment surgery report that their suicidal feelings were a consequence of their realization that despite all the therapy, tests, hormone injections and surgeries they had not really become a member of the opposite sex.

The C-6 Statement relegates the beliefs and practices of the Christian faith to the status of a myth that perpetuates stereotypes. The preamble to the Charter of Rights and Freedoms asserts that Canada is founded upon principles that recognize the supremacy of God and the rule of law. As a constitutional monarchy, Her Majesty Queen Elizabeth II is the Queen of Canada and Canada's Head of State. Queen Elizabeth is also the defender of the faith, the Christian faith. Canada's laws are based on the Common Law. The Common Law was derived from the Holy Bible.

These same scriptures declare that among first century Christian congregations were those who had once identified themselves as non-heterosexual in orientation. (1 Corinthians 6:9-11). These verses further declare that their conversion to a heterosexual identity was wrought through justification and sanctification. The term justification means that they had been baptized. The term sanctification means that they had participated in worship, received Holy Communion, had studied scripture and been prayed over. It is true that the scriptures decry same gender attraction and sexual expression, together with adultery and fornication. The scriptures also set boundaries on sexual relations between heterosexual couples (Leviticus 18 bans marriage and sexual relations between close relatives). These prohibitions are in full force and effect today. Scriptures' sexual prohibitions have a twofold purpose. First, to declare God's will for humanity with respect to the expression of human sexuality; and second, to convict people of their sin and thereby cause contrition and repentance in the sinner, together with a desire to submit to God's will. The same scriptures declare that God provided for the forgiveness of sin through the innocent suffering and death of his Son, Jesus Christ. The scriptures testify that when a person is baptized, they receive the remission of sin and receive God's presence through the Holy Spirit. Scripture further declares that through the Word of God preached and the administration of Holy Communion, the Holy Spirit can work a transformation in a person's life, miraculously changing a person's sexual orientation to heterosexual or causing a struggling person to embrace and live out their cisgender.

Bill C-6 represents federal legislation designed to simultaneously ban draconian practices, suppress certain understandings of and attitudes toward those experiencing gender dysphoria and struggling with non-heterosexual attraction and pave the way for the resolution of gender dysphoria and sexual identity issues through reassignment surgery or the embrace of non-heterosexual attraction. It is important that government protect citizens from malevolent medical treatments, and to fight discrimination. However, the right of life, liberty and security of the person protected by Section 7 of the Charter, must necessarily include the protection of certain inherently private choices that go to the very core of one's life and being, including, who one loves and how one expresses that love, together with the individual dignity and independence necessary to make those choices. Section 7 demands that individuals challenged by gender dysphoria or non-heterosexual attraction have the right to make informed choices. An informed choice requires that the person's gender dysphoria and confusion with respect to sexual attraction be addressed and the risks and benefits of any practice, treatment service to change the same be disclosed. An informed choice requires unfettered access to trusted advisors, including, doctors, therapists, social workers and faith leaders. This access is preserved by adding the following section to Bill C-6. **Consent to Conversion Therapy. 320.106. The provisions of Sections 320.101 to 320.105, inclusive, notwithstanding, a competent adult may consent to a practice, treatment or service designed to change that person's sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour. The person rendering said practice, treatment or service may advertise the same and may receive compensation for providing the same.**

3. Section 15 of the Charter of Rights and Freedoms – Equal Protection.

Section 15. (1) of the Canadian Charter of Rights and Freedoms declares: *“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”*

The C-6 Charter Statement provides: *Section 15 equality rights are potentially engaged with respect to individuals who are under the age of 18 but who are nevertheless capable of making their own treatment decisions (“mature minors”). Such individuals may wish to obtain conversion therapy but would be prevented from doing so.* The Bill C-6 Charter Statement clearly, unequivocally and unambiguously states that a mature minor's constitutional rights and freedoms are being impinged upon. It would be unconscionable for Bill C-6 to go forward without the addition of Subsection

320.103(3) which would read as follows: **Section 320.103(3). The provisions of Section 320.103(1), notwithstanding, individuals who are under the age of 18 but who are nevertheless capable of making their own treatment decisions (defined as “mature minors”), may consent to a practice, treatment or service designed to change that person’s sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behavior. The person rendering said practice, treatment or service may advertise the same and may receive compensation for providing the same.**

4. Section 15 of the Charter of Rights and Freedoms – Equal Protection – Parental Rights.

Bill C-6 addresses the issue of minors and conversion therapy, specifically, Section 320.103(1) subjects anyone who causes a minor child to undergo conversion therapy, if convicted, can be incarcerated for up to five years. The government says little about the impingement of Bill C-6 on parental rights and responsibilities, yet, Bill C-6 potentially discriminates between the parents of a minor in violation of Section 15. Specifically, as will be demonstrated below, Bill C-6 potentially gives a parent rights over a child in contravention of established legal precedent and takes the right of a parent to protect the child away.

Canadian parents have custody of and are solely responsible for the care, nurture, health, travel, and education of their minor children. This responsibility typically ends when the minor reaches the age of 18. Canadian law allows certain minors to engage in adult behaviors with parental consent but are barred without that consent. The Canadian Civil Marriage Act prohibits marriage before the age of 16 years, yet, 16 and 17-year-olds can legally marry with parental consent. A 17-year-old can enlist in the military with parental consent. A 16-year-old can enlist for paid educational courses in the military with parental consent. A minor cannot get a tattoo unless they get parental consent. Parental consent is required before the administration of medical practices, procedures and services. Parental consent is required for these activities because their minor children are deemed incapable of making these decisions on their own. Canadian Society has deemed that parents know their children, are able to counsel them and can make the determination that their mature minor is capable of taking an adult step.

Under Canadian Laws, a parent’s right to consent to treatment or withhold medical treatment is generally only taken away by the courts when the parent’s choice will materially restrict the child or young person’s future options. By way of example, Jehovah’s Witnesses refuse to receive blood transfusions based on deeply held religious convictions. The conviction runs so deep that parents who are practicing Jehovah’s Witnesses will withhold blood transfusions for their minor children. Canadian courts have overridden the will of these parents and ordered transfusions for their minor children on grounds that the blood transfusion will give the child life and will open up future options for the child.

Bill C-6 affirms and protects the rights of a parent who wants their child to engage in gender transition or embrace their non-heterosexual identity. With parental consent, the minor child is able to engage the services of physicians, surgeons, psychiatrists, counsellors who will work together as a team to help and encourage the child to embrace a non-heterosexual identity or embrace gender reassignment surgery as the only way forward. This team can prescribe and perform hormone therapy (that can render the minor impotent) and surgery (which will permanently mar the minor’s body). The same Bill C-6, prevents that child’s other parent from engaging the services of a priest, pastor, counselor, therapist, psychiatrist, or medical doctor for the purpose of: informing and assuring the child that in most cases their confusion is resolved by early adulthood; confronting the child’s naive understanding of the process of and outcome of gender reassignment surgery (that the surgeon cannot really make a girl into a boy with a skin graft or a boy into a girl by a series of resections); and assuring the child that God has the power to take away their confusion, unwanted attractions and gender dysphoria. This parental right has been taken away in an egregious way, inasmuch as the law punishes a parent opting for conversion therapy when that parent actually protects the minor’s options for the future. The way the Bill C-6 is currently written, a parent who disagrees with gender reassignment may not be able to protect their child from genital mutilation and chemical assaults on their hormonal system.

The Canadian government has rightly decried the genital mutilation of girls for religious purposes in foreign lands. Yet, the same Canadian government now endorses and encourages parents and medical professionals to perform invasive procedures and surgeries on minors that will impact their physical and reproductive health for the rest of their lives in, all in the name of youthful gender dysphoria. This is wrong. Section 320.103(1) should be changed as follows:

320.103 (1) Everyone who knowingly causes a person who is under the age of 18 years to undergo conversion therapy, without informed parental consent, is (a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or (b) guilty of an offence punishable on summary conviction.

The C-6 Statement concludes with these words: *The proposed offences aim to deter those who would profit from conversion therapy and who would subject children and non-consenting adults to it. The Bill would thus realize significant individual and social benefits in avoiding psychological harm to individuals and harm to the dignity of LGBTQ2 people. Avoiding these harms outweighs considerations of individual autonomy and outweighs the ability to*

advertise and profit from an ineffective service that is harmful to the dignity of all LGBTQ2 people. I would respectfully challenge these overarching statements.

There are already laws that protect individuals from therapeutic techniques, of any kind, applied to an adult against his/her will, or to a child without parental consent. The one rendering the therapy, and all who conspired with him or her, could be found guilty of kidnapping, unlawful confinement, trespass, assault and battery. They could also be held liable for the Tort of intentional infliction of emotional distress. If the accused is a licensed professional, a complaint for discipline could be filed with the agency regulating the accused's profession. The stated public purpose of Bill C-6 is to create an environment that eliminates any voice that would either challenge the unconditional acceptance of non-heterosexual orientation and behaviors; or challenge a person experiencing gender dysphoria to embrace their cisgender. This begs an important question: "How far will the provisions of Bill C-6 go in the pursuit of silencing contrary voices?" What if, during a public worship service, which may also have been published online, a pastor declares that for more than 2,000 years God has used His church to change the sexual orientation of non-heterosexual people to heterosexual and resolve gender dysphoria in favor of cisgender and then invites anyone and everyone to come to his/her church? Does this proclamation constitute the advertisement of conversion therapy under Bill C-6? If that message is considered prohibited advertising, Canadian Christians will not be able to fully and freely engage in discussions around sexual orientation and gender dysphoria for fear that they may cross a line and be found guilty of advertising conversion therapy. Christians may shy away from praying with a person struggling with issues of sexual orientation or gender dysphoria if the prayer asks God to resolve their struggles with sexual orientation to heterosexual or gender dysphoria to acceptance of their cisgender. Anyone overhearing that prayer could allege the Christian was engaged in conversion therapy and advertising the same. Without the suggested amendments, the Canadian Government can arbitrarily deprive Canadian citizens of their freedom of speech, freedom to practice their faith, freedom of association, and life, liberty and security of the person. Is this restraint on speech, expression, the practice of religion and security of the person justified in a free and democratic society? It is not! Please amend Bill C-6.

In Christ's Service,

Pastor Edward P. Skutshek, President

cc: The Right Honourable Justin Trudeau, Prime Minister of Canada
The Honourable David Lametti, MP, Minister of Justice and Attorney General of Canada,