

BRITISH COLUMBIA HUMANIST ASSOCIATION

422 Richards St, Suite 170
Vancouver, BC V6B 2Z4

(604) 265-9298
bchumanist.ca
info@bchumanist.ca



CONVERSION THERAPY IS ABUSE

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

By Harish Raju, Research Volunteer, and Ian Bushfield, Executive Director

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INTRODUCTION

The BC Humanist Association (BCHA) supports efforts to ban all forms of conversion therapy and applauds the government's efforts to do so under Bill C-6. Such therapies (1) can potentially cause mental and physical harm, (2) infringe upon an individual's right to life, liberty and security of the person and (3) are not scientifically proven to be successful in changing sexual orientation. We welcome the amendments made by the House of Commons' Standing Committee on Justice and Human Rights to improve the bill. As all forms of conversion therapy practices are abusive, we urge Parliamentarians to continue to strengthen provisions that presume a reasonable adult could consent to the practice.

The BC Humanist Association has been providing a community and voice for Humanists, atheists, agnostics and the non-religious of British Columbia for over 30 years. We support the growth of Humanist communities across BC, provide Humanist ceremonies, and campaign for progressive and secular values.

This report was produced on the traditional and unceded territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), səlilwətaʔɬ/Selilwitulh (Tsleil-Waututh) and kʷikʷəƛ̓əm (Kwikwetlem) Nations.

THE HARMS OF CONVERSION THERAPY

As explained in *Conversion Therapy in Canada: A Guide for Legislative Action*, “conversion therapy is not a ‘therapy’ at all, but a fraudulent, deceptive and unscientific practice known to cause significant harm to vulnerable people.”¹ While conversion therapy goes by many names, these practices are based on systemic homophobia, biphobia and transphobia. It relies upon the bigoted assumption that people with non-traditional sexual orientations, gender identities or gender expressions suffer from mental disorders.

In 1973, homosexuality was removed from the Diagnostic Statistical Manual of Mental Disorders (DSM) by the American Psychiatric Association (APA), signalling that it was no longer considered a mental illness by the medical establishment.² Further, the most recent edition, DSM-5, explicitly states that “gender non-conformity is not in itself a mental disorder.”³ In other words, despite long-entrenched homophobia and transphobia, leading scientific and medical voices have accepted the ideas that it is normal for people to be attracted to members of the same sex and for people’s gender to not match the sex they were assigned at birth.

Despite this progress, practitioners of conversion therapy rely on techniques that reinforce the verbal harassment, physical mistreatment and microaggressions⁴ that lesbian, gay, bisexual, transgender, queer and two-spirit (LGBTQ2S+) people – and queer youth in particular – face on an everyday basis. Middle schools and high school settings are frequently unsupportive and unsafe for sexual minority youth.⁵ Non-conforming students are often bullied and subjected to hate speech. Conversion therapy only reinforces the harassment and abuse that LGBTQ2S+ youth were victims of in school.

Additionally, Canadian research has estimated that as many as one in five sexual minority men have experienced efforts to change their sexual orientation or gender identity.⁶ The harms of

¹ Wells, K. (2020). “Conversion therapy in Canada: A guide for legislative action.” (Revised Ed.). MacEwan University. Available at

https://www.cbrc.net/conversion_therapy_in_canada_a_guide_for_legislative_action (retrieved May 23, 2021), p.9.

² Taglienti, J. (2021). “Therapists behind bars: Criminalizing gay-to-straight conversion therapy.” *Family Court Review*, 59:1, 185-199.

³ American Psychiatric Association. (2013). Gender Dysphoria. In *Diagnostic and statistical manual of mental disorders* (5th ed.). <https://doi.org/10.1176/appi.books.9780890425596.dsm14>

⁴ Psychologist Derald W. Sue defines a microaggression as “The everyday slights, indignities, put downs and insults that people of color, women, LGBT populations or those who are marginalized experiences in their day-to-day interactions with people,” from Desmond-Harris, J. (2015, February 16). “What exactly is a microaggression?” Vox. Available at <https://www.vox.com/2015/2/16/8031073/what-are-microaggressions> (retrieved June 22, 2021).

⁵ Taglienti, J. (2021).

⁶ Community-Based Research Centre. (2020, February 24). “Sex Now survey results reveal prevalence of change efforts.” Available at https://www.cbrc.net/sex_now_survey_results_reveal_prevalence_of_change_efforts (retrieved May 23, 2021).

these practices are well documented and include minority stress, stigmatization, self-hatred, depression, post-traumatic stress disorder and suicide.

There are broader harms as well, as the sheer existence of practices like conversion therapy reinforce harmful stigmas and prejudices that continue to pervade our society and harm all people, but especially LGBTQ2S+ people. The very idea that a sexual orientation or gender identity could be something that can be 'cured' or changed through medical treatment has a number of broader harms. First, it suggests that certain sexual orientations or gender identities are wrong, unclean or immoral, and must therefore must be treated. Secondly, it medicalizes and pathologizes non-heterosexual and cisgendered people, treating these people as though they have something wrong with them, and that they as individuals are a problem to be solved through medical intervention, when it is in fact our society that is sick with bigotry.

Finally, there is no reputable scientific evidence that conversion therapy can suppress or change sexual orientation, gender identity or gender expression. There is, however, ample evidence that conversion therapy has harmful and dangerous effects instead.⁷ According to a 2009 task force of the APA, conversion therapy causes significant harm to LGBTQ2S+ people.⁸ These include anxiety, depression, substance abuse and suicidal thoughts and intentions.⁹ Conversion therapy may also include physical treatments where LGBTQ2S+ patients are subjected to physical pain through the use of heat, cold, or even electrocution.¹⁰ These patients are trained to associate

⁷ Romero, C. (2019). "Praying for torture: Why the United Kingdom should ban conversion therapy." *George Washington International Law Review*, 51:1, 201-230; Royal College of Psychiatrists. (2014, April). "Royal College of Psychiatrists' statement on sexual orientation." Position Statement PS02/2014. Available at https://www.rcpsych.ac.uk/pdf/PS02_2014.pdf (retrieved May 24, 2021).

⁸ American Psychological Association, Task Force on Appropriate Therapeutic Responses to Sexual Orientation. (2009). *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*. Retrieved from <http://www.apa.org/pi/lgbt/publications/therapeutic-resp.html>

⁹ Taglienti 2021; Turban, J.L., Beckwith, N., Reisner, S., & Keuroghlian, A.S. (2018). "4.10 exposure to conversion therapy for gender identity is associated with poor adult mental health outcomes among transgender people in the US." *Journal of the American Academy of Child and Adolescent Psychiatry*, 57:10, S208; and Cangany, W. (2021). "Extending Hoosier hospitality to LGBTQ youth: Why Indiana should pass a conversion therapy ban to protect and promote mental health outcomes for LGBTQ youth." *Indiana Health Law Review*, 18: 1, 155-188.

¹⁰ See *inter alia* Briton, S. (2019, January 24). "I was tortured in gay conversion therapy. And it's still legal in 41 states." *New York Times*. Available at <https://www.nytimes.com/2018/01/24/opinion/gay-conversion-therapy-torture.html> (retrieved May 23, 2021); United Nations General Assembly. (2020, May 1). "Practices of so-called 'conversion therapy' – Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity." *Human Rights Council*, A/HRC/44/53. Available at <https://undocs.org/A/HRC/44/53> (retrieved May 23, 2021); Jenkins, M. (2016, February 9). "Electric shocks, rape and submersion: 'gay cures' and the fight to end them." *The Guardian*. Available at <https://www.theguardian.com/global-development-professionals-network/2016/feb/09/electrocution-and-submersion-gay-cures-and-the-fight-to-end-them> (retrieved May 23, 2021).

pain with homosexual urges. Minors are five times more likely to attempt suicide than others, and those who are rejected by their families are eight times more likely to commit suicide.¹¹ These detrimental side effects are a result of making LGBTQ2S+ people feel ashamed and guilty of not being straight or cisgender.

THE NEED FOR AN EXPANSIVE DEFINITION OF CONVERSION THERAPY

As it stands, Bill C-6 defines conversion therapy as “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.”¹² The definition clarifies that it “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.”¹³

The objective of Bill C-6, as expressed in the bill’s preamble, is to ban all those actions that have, as their goal, the changing of a person’s sexual orientation, gender identity or gender expression. The preamble states that conversion therapy is “based on and propagates myths and stereotypes;” nevertheless, the practice continues to this day and is continually morphing in response to growing public scrutiny and disapproval.¹⁴ Given the vast spectrum of actions that the bill attempts to curtail, and the slippery and nefarious approach of many conversion therapy practitioners, the definition of conversion therapy in the bill is sufficiently broad and should be maintained.

If Parliament were to opt for a narrower definition of what constitutes conversion therapy, it would risk creating loopholes that will enable various individuals, groups and organizations to continue carry out forms of conversion therapy under different banners but with all the concomitant harms of these practices.

It is unsurprising that those communities where conversion therapy is most likely to still be tolerated and practiced – namely evangelical religious communities – are the ones most critical of the bill’s current definition. Knowing that the practice is intolerable to the overwhelming majority of Canadians, supporters of the practice are choosing to quibble over the bill’s fine print, rather than state their true beliefs and attempt to defend their bigotry.

Therefore, to achieve the admirable goal set out by Bill C-6, it is imperative that the bill cover all forms of “practice, treatment or service” that could potentially expose LGBTQ2S+ people to

¹¹ Taglienti 2021:187.

¹² Bill C-6: An act to amend the Criminal Code (Conversion Therapy). (2020). 2nd Reading, Dec. 11, 2020, 43rd Parliament, 2nd Session. Available at <https://parl.ca/DocumentViewer/en/43-2/bill/C-6/second-reading>, cl. 5.

¹³ *Ibid.* cl 5.

¹⁴ *Ibid.* preamble.

physical and mental abuse.¹⁵ As such, the definition in the current version of the bill should be maintained in its current form and adopted.

THE RIGHTS OF THE CHILD AND THE INDIVIDUAL

In a recent survey of sexual and gender minority men, 10% reported having experienced conversion therapy practices and of those an overwhelming majority (72%) of them said they were subjected to conversion therapy before the age of 20.¹⁶ In light of the disproportionate impact of conversion therapy practices on LGBTQ2S+ youth, Bill C-6 is consistent with the Government of Canada's human rights obligations under the *Charter of Rights and Freedoms* and international conventions to protect every individual's fundamental right to be themselves.

Canada's duty to protect its citizens is codified in Section 7 of the *Charter of Rights and Freedoms*, which guarantees of the right to life, liberty and security of the person.¹⁷ For Canadian children and youth, this duty is also codified in the *UN Convention on the Rights of the Child*, which Canada ratified on November 20, 1989.¹⁸ Articles 12 through 14 of the Convention encapsulate a child's right to form their "own views" and the "right to express those views freely," having the "right to freedom of expression" and the "freedom of thought, conscience and religion."¹⁹

The BCHA fully rejects the claim that freedom of religion includes the right to practice conversion therapy. The Supreme Court of Canada has ruled that freedom of religion is "the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practise or by teaching and dissemination."²⁰ To practice conversion therapy is to take a significant step beyond the manifestation, practice, teaching or dissemination of a sincerely-held (albeit erroneous) belief about human sexuality or gender and to infringe upon the autonomy of another rights-holder. The personal practice of religion has simply never included the right to intervene in another person's autonomy. Further, the Court has repeatedly ruled that

¹⁵ *Ibid.* cl 5.

¹⁶ Salway T., Juwono S., Klassen B., Ferlatte O., Ablona A., et al. (2021, June 3). "Experiences with sexual orientation and gender identity conversion therapy practices among sexual minority men in Canada, 2019-2020." *PLOS ONE* 16(6): e0252539. <https://doi.org/10.1371/journal.pone.0252539>

¹⁷ *Canadian Charter of Rights and Freedoms*, s 7, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c11.

¹⁸ Noël, J.-F. (2015, January 17). "The Convention on the Rights of the Child." *Government of Canada, Department of Justice*. Available at <https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/crc-crde/conv2a.html> (retrieved May 23, 2021).

¹⁹ United Nations General Assembly (1989, November 20). *Convention on the Rights of the Child*. United Nations, Treaty Series, vol. 1577, p. 3.

²⁰ R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, para. 94.

religious freedoms can be limited when they come into conflict with other fundamental rights.²¹ As such, the government is well within its authority to limit practices, religious or secular, that infringe upon another person's fundamental autonomy and the security of the person.

Over two-thirds (67%) of respondents to the 2019 Sex Now Survey indicated that they experienced conversion therapy in a religious or faith-based setting.²² While parents have the right to practice their preferred religion and its teachings, they cannot force those teachings upon their children in an attempt to change their sexual orientation, gender identity or gender expression. Doing so causes significant harm to those children, violating the children's right to life, liberty and security of person. In this way, allowing such practices is a direct violation of a child's autonomy and security of the person, as established in the *Convention on the Rights of the Child* and the *Charter*. Hence, the government has an imperative to prevent the forceful conversion of LGBTQ2S+ minors. The provisions of Bill C-6 that specifically offers protections to children and denies any express exemption for religious groups are necessary and commendable.

Supporters of conversion therapy have argued that, as adults, some people might voluntarily seek to 'become' straight or cisgender. Tamara Jansen, Conservative Member of Parliament for Cloverdale-Langley City, shared an example in the House of Commons of a woman named 'Charlotte' from Calgary who allegedly struggled with self-worth and depression and wanted to "discontinue with her lesbian activity."²³ Jansen was perhaps suggesting that the government should allow for some form of conversion therapy for people like Charlotte who wanted to become heterosexual.

We should interrogate why Charlotte devalued her self-worth and what caused her depression. It is entirely plausible that an LGBTQ2S+ person might feel depressed and have low self-worth because of the continued social stigma surrounding homosexuality, which is particularly present in many conservative religious traditions. Negative feelings about one's sexuality or gender identity can emerge when the community around them continually devalues and discriminates against their sexuality or identity. Here, the solution is not to change that person's sexual orientation or gender identity, but rather to tackle the real problem: the bigotry itself.

Misconceptions and bigotry persist despite a growing consensus about the acceptability of same-sex attraction and gender fluidity, as demonstrated by the legalization of same-sex

²¹ Charterpedia. (2021, January 25). "Section 2(a) – Freedom of religion." *Government of Canada, Department of Justice*. Available at <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/check/art2a.html> (retrieved May 23, 2021).

²² Salway (2021).

²³ Jansen, T. "Criminal Code." House of Commons. (2021, April 16). *Edited Hansard, Friday, April 16, 2021*. Vol. 150, No. 082, 2nd Session, 43rd Parl. Retrieved <https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-82/hansard> (available at May 23, 2021), at 1020.

marriage on July 25, 2005,²⁴ and amendments to human rights codes to protect gender identity and expression in 2017.²⁵ Rather than the reduce homophobia and bigotry, conversion therapy serve to reinforce harmful sentiments. Conversion therapy is a fundamentally devaluing practice and one that perpetuates a climate of bigotry, homophobia and transphobia.

Bill C-6 should be applauded for banning these practices, the advertisement of such practises, and the financial and material benefit conversion therapy offers. The bill ultimately serves to draw a line of protection around LGBTQ2S+ people. Bill C-6 continues the government's efforts to promote broader acceptance of LGBTQ2S+ people by outlawing one more method for this bigotry to manifest.

THE ILLUSION OF CONSENT

While Bill C-6 criminalizes practicing conversion therapy on “a person who is under the age of 18,” it still permits the practice being performed on ‘consenting’ adults.²⁶ Given the documented and serious harms posed by conversion therapy, and the lack of evidence for its efficacy, it’s worth interrogating the notion of consent for adults in this instance.

It may be impossible for a conversion therapy ‘patient’ to adequately provide informed consent. The Canadian Medical Protective Association details the nature of informed consent, noting that:

“For consent to treatment to be considered valid, it must be an ‘informed’ consent. The patient must have been given an adequate explanation about the nature of the proposed investigation or treatment and its anticipated outcome as well as the significant risks involved and alternatives available. The information must be such as will allow the patient to reach an informed decision.”²⁷

Because there is no scientific evidence that supports conversion therapy, let alone to explain how it works, how could a potential ‘patient’ be provided with the information necessary to make an informed choice of whether or not to partake in the ‘treatment’?

²⁴ Bill C-38: An Act respecting certain aspects of legal capacity for marriage for civil purposes. (2005). Royal Assent July 20, 2005, 38th Parliament, 1st Session. Available at <https://parl.ca/DocumentViewer/en/38-1/bill/C-38/royal-assent> (retrieved May 23, 2021); and CBS News. (2005, July 20). “Canada legalizes gay marriage.” Available at <https://www.cbsnews.com/news/canada-legalizes-gay-marriage/> (retrieved May 23, 2021).

²⁵ Bill C-16: An Act to amend the Canadian Human Rights Act and the Criminal Code. (2017). Royal Assent June 19, 2017, 42nd Parliament, 1st Session. Available at <https://www.parl.ca/DocumentViewer/en/42-1/bill/c-16/royal-assent> (retrieved May 23, 2021).

²⁶ Bill C-6 (2020): cl 5.

²⁷ Canadian Medical Protective Association. (2021, April). “Consent: A guide for Canadian physicians.” Available at <https://www.cmpa-acpm.ca/en/advice-publications/handbooks/consent-a-guide-for-canadian-physicians#informed%20consent> (retrieved May 24, 2021).

The importance of informed consent, and the challenges of providing it in relation to conversion therapy can be seen in the American Counselling Associations (ACA) *Code of Ethics*, which notes that:

[T]he ACA Ethics Committee strongly suggests that ethical professional counselors do not refer clients to someone who engages in conversion therapy or, if they do so, to proceed cautiously only when they are certain that the referral counselor fully informs clients of the unproven nature of the treatment and the potential risks and takes steps to minimize harm to clients... This information also must be included in written informed consent material by those counselors who offer conversion therapy despite ACA's position and the Ethics Committee's statement in opposition to the treatment. To do otherwise violates the spirit and specifics of the ACA Code of Ethics.²⁸

Conversion therapy practitioners cannot be trusted to provide informed consent. There are numerous documented examples of practitioners failing to adequately provide informed consent to 'patients.'²⁹ This is a practice in need of prohibition, not regulation.

Further, the Supreme Court of Canada has long held that some actions that cause bodily harm should be prosecuted as assault regardless of whether the injured party consented. The 1991 case of *R v Jobidon* dealt with a manslaughter charge resulting from a fist fight between two adults that resulted in one's death.³⁰ In his decision, Justice Gonthier wrote that the circumstances of the case "vitiates consent between adults intentionally to apply force causing serious hurt or non-trivial bodily harm to each other in the course of a fist fight or brawl."³¹ He contrasted fist fights with activities that "usually have a significant social value," such as sports.³² The intentional undermining of one's sexual orientation, gender identity or gender expression more closely mirrors the pointless and socially destructive violence of a fist fight than of a reputable medical procedure or sporting activity.

Given the utter lack of individual or societal value to conversion therapy and the documented harms that it causes, **Parliament should remove "without the person's consent" from section 320.102.**

²⁸ Whitman, J.S., Glosoff, H.L., Kocet, M.M., & Tarvydas, V. (2013, January 16). "Ethical issues related to conversion or reparative therapy." *American Counseling Association*. Available at <https://www.counseling.org/news/updates/2013/01/16/ethical-issues-related-to-conversion-or-reparative-therapy> (retrieved May 23, 2021); and see Human Rights Campaign. (n.d.) "The lies and dangers of efforts to change sexual orientation or gender identity." Available at <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy> (retrieved May 24, 2021).

²⁹ Schroeder, M., & Shidlo, A. (2008). "Ethical issues in sexual orientation conversion therapies: An empirical study of consumers." *Journal of Gay & Lesbian Psychotherapy*, 5, 3-4.

³⁰ R. v. Jobidon, [1991] 2 S.C.R. 714.

³¹ *Ibid.*

³² *Ibid.*

Alternatively, and at a bare minimum, Parliament should narrow the scope of what constitutes a full, prior, informed and continuing consent to practice conversion therapy. The BCHA supports the specific recommendations of the Centre for Gender and Sexual Health Equity, who wrote:

"Conversion therapy practices are abusive in all forms; therefore, the law should consider how informed consent is obtained, even from adults. These revisions are intended to strengthen the enforceability of the law for adults who are not given the full balance of evidence (including inefficacy and risks of conversion therapy practices)."³³

Specifically, the Bill should be amended to add a subsection (2) to Section 320.102 that reads:

- (2) For the purpose of subsection (1), no consent is obtained if
- (a) the agreement is expressed by the words or conduct of a person other than the one who was caused to undergo conversion therapy;
 - (b) the person is incapable of consenting to conversion therapy for any reason;
 - (c) the person was not adequately informed of the inefficacy and risks of conversion therapy;
 - (d) the accused induces the person to consent by abusing a position of trust, power or authority;
 - (e) the person is vulnerable to coercion, manipulation, or social pressure taking into consideration their age, maturity, physical and mental health, psychological and emotional state, and any other relevant condition including any situation of dependence;
 - (f) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
 - (g) the complainant, having consented, expresses, by words or conduct, a lack of agreement to continue to engage in the practice, treatment, or sustained effort.
 - (h) consent cannot be given to conversion therapy as a prerequisite to social or medical transitioning.

³³ Centre for Gender & Sexual Health Equity. (2020). "Open Letter: Bill C-6 excludes conversion therapy practices that target trans people." Available at <https://cgshe.ca/open-letter-bill-c-6-excludes-conversion-therapy-practices-that-target-trans-people/> (retrieved June 2, 2021), Appendix.

CONCLUSION

As the Hon. Bardish Chagger, Minister of Diversity and Inclusion and Youth, said when introducing Bill C-6 in the House of Commons: “There should be no place for the destructive, harmful and deadly practice of conversion therapy in Canada.”³⁴ This sentiment has been professed by members of every political party in the House and is one shared widely by Canadians. Bill C-6 is stronger having been reviewed by the House’s Justice Committee and we implore Parliamentarians to only build off this bill’s strengths and to ensure its swift passage into law.

³⁴ Chagger, B., “Conversion therapy.” House of Commons. (2020, October 1). *Edited Hansard, Thursday, October 1, 2020*. Vol. 150, No. 007, 2nd Session, 43rd Parl. Available at <https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-7/hansard> (retrieved May 23, 2021), at 1005.

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