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BRIEF TO THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS ON BILL C-6

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EXECUTIVE SUMMARY

Campaign Life Coalition is a national pro-life organization working at all levels of government to secure full legal protection for all human beings, from the time of conception to natural death. We also advocate against any threats to the family. Campaign Life Coalition has requested the enclosed Legal Opinion on whether Bill C-6 is consistent with our *Canadian Charter of Rights and Freedoms* or would instead violate the *Charter*.

Campaign Life Coalition's interest in this matter emanates from its purpose to protect life and family and to lobby government on those issues. Our position is that this Bill represents an unprecedented assault on civil rights, religious freedom and Christianity itself. If passed, we believe that it may result in the violation of the rights of parents, religious leaders, and counsellors and others to provide guidance and to share expression in keeping with their beliefs, as well as the violation of the rights of other individuals to make choices free from state coercion and punishment. This Legal Opinion supports our view.

On behalf of Campaign Life Coalition, we enclose this Opinion, authored by Barrister and Solicitor Carol Crosson of Crosson Constitutional Law. We believe it supports our deep concerns about this Bill and the negative effect it will have should it become law.

President, Campaign Life Coalition

Jeff Gunnarson

PART I: INTRODUCTION AND SUMMARY

1. This Legal Opinion examines the constitutionality of Bill C-6 to consider whether it is consistent with the *Canadian Charter of Rights and Freedoms* ("*Charter*"). We conclude that Bill C-6 is not constitutional because it restricts speech and belief in a manner that is not reasonable in a free and democratic society.
2. This brief argues Bill C-6 restrictions are not reasonable because of the following:
   a) It has an unconstitutional purpose;
   b) It does not have a valid public purpose;
   c) It is impermissibly vague;
   d) Its effects are contrary to *Charter* sections 2(a), (b), and 7;
   e) Its effects are not rationally connected to the state's objective;
   f) Its effects are not minimally impairing;
   g) The ability to make fundamental choices is limited; and
   h) It infringes on the rights of parents and children.
3. Ultimately, Bill C-6 cannot be justified in a free and democratic society.
4. If passed, Bill C-6 threatens to violate the *Charter* rights of all individuals in Canada, including in particular pastors and counsellors, in sharing their beliefs and opinions in our free and democratic society. It also threatens to violate the rights of parents and children, as well as the rights of members of the LGBT community, who may seek to share and receive expression of the "non-state approved" message.

PART II. OVERVIEW

5. On October 1, 2020, Bill C-6 was introduced in the House of Commons by the Minister of Justice and Attorney General of Canada, the Honourable David Lametti, previously introduced as Bill C-8. On October 28, 2020, Bill C-8 passed second reading.

6. The relevant portions of the Bill are as follows:[1]

> BILL C-8
> An Act to amend the Criminal Code (conversion therapy)
>
> Preamble
>
> Whereas conversion therapy causes harm to the persons, and in particular the children, who are subjected to it;
>
> Whereas conversion therapy causes harm to society because, among other things, it is based on and propagates myths and stereotypes about sexual orientation and gender identity, including the myth that a person's sexual orientation and gender identity can and ought to be changed;
>
> And whereas, in light of those harms, it is important to discourage and denounce the provision of conversion therapy in order to protect the human dignity and equality of all Canadians…

7. The Definition of *conversion therapy* is stated as "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."[2]

8. The Department of Justice states that the bill would create five new *Criminal Code* offences relating to conversion therapy to prohibit the following:

- causing a minor to undergo conversion therapy (a hybrid offence with a maximum penalty of 5 years on indictment)
- removing a minor from Canada to undergo conversion therapy abroad (a hybrid offence with a maximum penalty of 5 years on indictment)
- causing a person to undergo conversion therapy against their will (a hybrid offence with a maximum penalty of 5 years on indictment)
- profiting from providing conversion therapy (a hybrid offence with a maximum penalty of 2 years on indictment)
- advertising an offer to provide conversion therapy (a hybrid offence with a maximum penalty of 2 years on indictment).[3]

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[1] https://parl.ca/DocumentViewer/en/43-2/bill/C-6/first-reading.
[2] https://parl.ca/DocumentViewer/en/43-2/bill/C-6/first-reading.
[3] https://www.justice.gc.ca/eng/csj-sjc/pl/ct-tc/index.html.

9. The Department of Justice has said the following about the implications of the Bill:

> The Department of Justice indicates that:
>
> > 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 support to persons struggling with their sexual orientation, sexual feelings, or gender identity.[4]

10. The text of the legislation does not actually contain any of these qualifiers.

11. There is a concern among the religious community and others about how far the Bill could extend, whether the definition of conversion therapy, "Service designed to change a person's sexual orientation or gender identity or to repress or reduce non-heterosexual attraction or sexual behaviour" would catch those who exercise their right to freedom of expression by sharing views not in keeping with the government's views, especially those who base their expression on their religious or conscientious beliefs on sexuality, whether they be clergy, counsellors, parents, or other individuals.

12. The text of the Bill does not dispel these serious concerns.

PART III. ARGUMENT

The *Charter* provides broad protection for freedom of religion and conscience; freedom of thought, belief, opinion and expression; and for life, liberty and security.

13. Freedom of thought, opinion, expression, religion, and conscience are boldly protected in the *Charter*. These freedoms entail the recognition that individuals are free to maintain the beliefs and opinions which they, as autonomous rational agents are convinced of their own free will to be true, and they are free to share and advocate on behalf of those beliefs. A corollary of these freedoms is the principle that the state may not coerce,

[4] https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C6E.

directly or indirectly, citizens and other private entities to adopt the views of the political majority on matters of religious or conscientious belief, or the free expression thereof.

14. Our *Charter* rights are enumerated as follows:

> CANADIAN CHARTER OF RIGHTS AND FREEDOMS
>
> Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:
>
> Guarantee of Rights and Freedoms
>
> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
>
> Fundamental Freedoms
>
> 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;
>
> (c) freedom of peaceful assembly; and
>
> *d*) freedom of association.
>
> Legal Rights
>
> 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.[5]

***Charter* section 2(a)**

15. In reference to the *Charter* right to religious freedom, section 2(a), the Supreme Court has laid down the basis for the right to freedom of religion in *R. v. Big M Drug Mart Ltd.*, where the Court held that freedom of religion includes the right to disseminate beliefs:

> A truly free society is one which can accommodate a wide variety of beliefs, diversity of tastes and pursuits, customs and codes of conduct…

[5] https://laws-lois.justice.gc.ca/eng/const/page-15.html.

> 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 refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others…
>
> What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority"[emphasis added].[6]

16. The Court held in *S.L. v. Commission scolaire des Chênes* that government should remain neutral in religious matters, especially as the multicultural nature of modern Canadian society evolves.[7] The state is not authorized to take a position in regard to religious belief. In *Mouvement laïque québécois v. Saguenay (City),* the Court held that the provision of a statute, of regulations or of a by-law will be inoperative if its purpose violates the state's duty of neutrality in respect of religious or conscientious belief.[8]

17. Even pre-*Charter* in *Saumur v. City of Quebec*, the Court held that a bylaw which prohibited members of the Jehovah's Witnesses from distributing pamphlets on city streets was an unconstitutional intrusion into freedom of worship, this freedom including the right to disseminate belief. [9]

***Charter* section 2(b)**

18. In reference to the *Charter* 2(b) right to freedom of expression, on behalf of the majority in *Dolphin Delivery*, McIntyre J explained the underlying values behind the *Charter*'s protection of freedom of expression in the following terms:

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[6] *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295. paras. 94-96 *[Big M.]*
[7] *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, [2012], paras. 17-21, 32, 54.
[8] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16.
[9] *Saumur v. City of Quebec*, [1953] 2 SCR 299.

The importance of freedom of expression has been recognized since early times: see John Milton, Areopagitica; A Speech for the Liberty of Unlicenc'd Printing, to the Parliament of England (1644) , and as well John Stuart Mill, "On Liberty" in On Liberty and considerations on Representative Government (Oxford 1946), at p. 14:

> If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.

And, after stating that "All silencing of discussion is an assumption of infallibility", he said at p. 16:

> Yet it is as evident in itself, as any amount of argument can make it, that ages are no more infallible than individuals; every age having held many opinions which subsequent ages have deemed not only false but absurd; and it is as certain that many opinions now general will be rejected by future ages, as it is that many, once general, are rejected by the present.

Nothing in the vast literature on this subject reduces the importance of Mill's words. The principle of freedom of speech and expression has been firmly accepted as a necessary feature of modern democracy.[10]

19. On the section 2(b) right to freedom of expression, Cory J.A., later of the Supreme Court, offered the following in *R. v. Kopyto*:

> ...it is difficult to imagine a more important guarantee of freedom to a democratic society than that of freedom of expression. A democracy cannot exist without the freedom to express new ideas and to put forward opinions about the functioning of public institutions. These opinions may be critical of existing practices in public institutions and of the institutions themselves. However, change for the better is dependent upon constructive criticism.
>
> Nor can it be expected that criticism will always be muted by restraint. Frustration with outmoded practices will often lead to vigorous and unpropitious complaints. Hyperbole and colourful, perhaps even disrespectful language, may be the necessary touchstone to fire the interest and imagination of the public, to the need for reform, and to suggest the manner in which that reform may be achieved.

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[10] *RWDSU v. Dolphin Delivery Ltd.*, 1986 CanLII 5 (SCC), [1986] 2 SCR 573, page 3-14.

> The concept of free and uninhibited speech permeates all truly democratic societies. Caustic and biting debate is, for example, often the hallmark of election campaigns, parliamentary debates and campaigns for the establishment of new public institutions or the reform of existing practices and institutions. The exchange of ideas on important issues is often framed in colourful and vitriolic language. So long as comments made on matters of public interest are neither obscene nor contrary to the laws of criminal libel, citizens of a democratic state should not have to worry unduly about the framing of their expression of ideas. The very lifeblood of democracy is the free exchange of ideas and opinions. If these exchanges are stifled, democratic government itself is threatened.[11]

20. Freedom of expression includes the right to communicate controversial and unpopular messages, extending to protecting "beliefs which the majority regard as wrong or false," frequently involving "a contest between the majoritarian view of what is true or right and an unpopular minority view" because "the view of the majority has no need of constitutional protection; it is tolerated in any event."[12] While in past, religious views may have represented the view of the "majority," this is not still the case, our society experiencing increased secularization.

21. Last, the right to freedom of expression applies to protect expression in advertising, the court saying, "there is no sound basis on which commercial expression can be excluded from the protection of s. 2 of the *Charter*." [13]

***Charter* section 7**

22. The Court has described the s. 7 right as follows:

> Rather, as I see it, the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as 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. [14]

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[11] *R. v. Kopyto*, 1987 CanLII 176 (ON CA).
[12] *R. v. Zundel* [1992] 2 SCR 731, para. 22.
[13] *Ford v. Quebec (Attorney General)*, [1988} 2 S.C.R. 712.
[14] *Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), para. 66

23. The right to liberty includes the freedom to make fundamental personal choices.[15]

24. In our society, individuals are entitled to make decisions of crucial importance free from state interference. This right is to be interpreted broadly and in accordance with the principles and values underlying the *Charter* as a whole and that it protects an individual's personal autonomy:

> . . . liberty does not mean mere freedom from physical restraint. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance.[16]

A. THE BILL HAS AN UNCONSTITUTIONAL PURPOSE

25. The preamble to the Bill states that its purpose is as follows:

> Whereas conversion therapy causes harm to the persons, and in particular the children, who are subjected to it;
>
> Whereas conversion therapy causes harm to society because, among other things, it is based on and propagates myths and stereotypes about sexual orientation and gender identity, including the myth that a person's sexual orientation and gender identity can and ought to be changed;
>
> And whereas, in light of those harms, it is important to discourage and denounce the provision of conversion therapy in order to protect the human dignity and equality of all Canadians…

26. The Bill defines *conversion therapy* as the following:

> 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.

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[15] *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at 49

[16] *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, 1995 CanLII 115 (SCC), [1995], at para. 80.

27. The Bill prohibits any expression which attempts to change another's sexual orientation or gender identity from homosexuality or to repress or reduce non-heterosexual attraction or sexual behaviour if that expression is in relation to a minor, or if that minor is taken out of Canada for this therapy; if the person is caused to undergo conversion therapy against their will; if those who share the message receive compensation, and if the message is advertised or promoted.

28. The marriage of the Preamble and definition of conversion therapy makes the government's aim clear: In order to prevent the purported harm of communicating what is described as the "myth" that sexual orientation and gender identity should be changed, the government is attempting to limit expression that is not "state-approved" expression on the issue of sexuality.

29. Let us be plain: The "therapy" the Bill refers to is not restricted to particular sinister medical treatments, but it refers to "non-state approved" *expression on the issue* of sexuality, nothing more or less. The government has conveyed its view on sexuality and the Bill's purpose is to affirm this view via criminal sanctions.

30. Where the actual purpose of governmental action is to use the coercive power of law to coerce citizens' beliefs, thoughts, opinions, or expression to align with that of the government of the day, it cannot constitute a pressing and substantial objective and is unconstitutional *per se*:

> If the acknowledged purpose of the *Lord's Day Act*, namely, the compulsion of sabbatical observance, offends freedom of religion, it is then unnecessary to consider the actual impact of Sunday closing upon religious freedom. Even if such effects were found inoffensive, as the Attorney General of Alberta urges, this could not save legislation whose purpose has been found to violate the *Charter*'s guarantees. In any event, I would find it difficult to conceive of legislation with an unconstitutional purpose, where the effects would not also be unconstitutional [emphasis added].[17]

[17] *Big M* para. 85; see also paras. 78-88; 80-81.

31. The "interpretive presumption of constitutionality" provides that the government "is presumed to intend to enact *Charter*-compliant legislation," and further, "it is impossible to interpret legislation conferring discretion as conferring a power to infringe the *Charter*, unless, of course, that power is expressly conferred or necessarily implied."[18]

32. However, this legislation has as its purpose to compel individuals to say and not to say what the government dictates on this issue, even if that violates the conscience of those whose religious and conscientious belief requires them to hold and even share opinions with which the government disagrees. The legislation does not allow any individual to share that they plan to help individuals by sharing their beliefs on sexuality, if those beliefs are not "state-approved." Further, they cannot profit in any way from sharing their non-state-approved views on sexuality. They are limited in their right to expression unless they adopt the state's view on sexuality.

33. This Bill tells individuals what they can and cannot say on issues of sexuality. The Bill allows freedom only to share the "state-*approved* message," otherwise you face restrictions. The non-state-approved message is limited.

34. No individual in Canada can be compelled under law to say or refuse to say what the state tells them; this is illegal under our *Charter*. [19]

35. The legislation therefore fails to be justified on the face of it, not needing to proceed to the next stage of *Charter* analysis.

36. It is especially egregious that the religious texts on which those of faith rely do not just obligate and adherent to simply *hold* certain beliefs based on their religious tenets, they also obligate adherents to *share* those beliefs with others, and not to recant them. In Christianity, this obligation is stated throughout Biblical text, this text being strewn with examples of those who refused to deny

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[18] *R. v. Conway*, 2010 SCC 22 at paras. 41-44; quoting *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, TAB 13; and *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241 at para. 3.
[19] *National Bank of Canada v. Retail Clerks' International Union et al.* [1984] 1 SCR 269.

their faith and instead "witnessed" to that faith by sharing their beliefs with others.

37. However, the Bill prevents those who hold beliefs on sexuality, beliefs that oppose the government's beliefs, from promoting their expression. They cannot tell those in the LGBT community, for example, that if they want to change their sexual orientation or adhere to their biological gender identity, that they can assist with sharing their beliefs and guidance on the issue.

38. This flies in the face of the basis of a religious individual's core belief, the belief that their faith compels them to act as a "witness," someone who is compelled to share their beliefs with others. An example of this principle of "witness" is found in Catholic doctrine, but is common to all religion:

> Moral conscience, present at the heart of the person, enjoins him at the appropriate moment to do good and to avoid evil. It also judges particular choices, approving those that are good and denouncing those that are evil. It bears witness to the authority of truth in reference to the supreme Good to which the human person is drawn, and it welcomes the commandments. When he listens to his conscience, the prudent man can hear God speaking. (§1777)
>
> Man has the right to act in conscience and in freedom so as personally to make moral decisions. He must not be forced to act contrary to his conscience. Nor must he be prevented from acting according to his conscience, especially in religious matters. (§1782)[20]

39. The Bill's unconstitutional purpose of compelling speech and belief renders it fatal on the face of it, it cannot be justified under our *Charter*.

B. THE BILL DOES NOT HAVE A VALID PUBLIC PURPOSE.

40. The preamble to the Bill states that its purpose is as follows:

> Whereas conversion therapy causes harm to the persons, and in particular the children, who are subjected to it;

[20] Catechism of the Catholic Church: https://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c1a6.htm.

> Whereas conversion therapy causes harm to society because, among other things, it is based on and propagates myths and stereotypes about sexual orientation and gender identity, including the myth that a person's sexual orientation and gender identity can and ought to be changed;
>
> And whereas, in light of those harms, it is important to discourage and denounce the provision of conversion therapy in order to protect the human dignity and equality of all Canadians…

41. In *R. v. Oakes*, Dickson C.J held the following on what constitutes a proper objective under constitutional law:

> To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a *Charter* right or freedom are designed to serve, must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom": *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352. The standard must be high in order to ensure that objectives which are trivial or discordant with the principles integral to a free and democratic society do not gain s. 1 protection. It is necessary, at a minimum, that an objective relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.[21]

42. Legislation absent a valid public purpose is arbitrary and capricious legislation.

43. The stated purpose of the Bill is to prohibit harm emanating from "myths and stereotypes" on sexuality, "including the myth that a person's sexual orientation and gender identity can and ought to be changed."

44. This purpose is not a valid public purpose. A valid public purpose cannot be based on erroneous assumptions,[22] but here the government has made the erroneous assumption that it is harmful to share the message that non-heterosexuality and gender identity can be changed.

45. Many religions hold tenets which provide guidance on sexuality, many of those tenets opposing non-heterosexuality. The government cannot prove that those religious tenets

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[21] 1986 CanLII 46 (SCC).
[22] *Bracken v. Fort Erie (Town)*, 2017 ONCA 668 (CanLII), para. 75 [*Bracken*]

are harmful on any viable basis.

46. The government has described conversion therapy in terms of barbaric therapeutic practices, (for example, electroshock therapy)[23], which the government alleges to have been proven as harmful.[24] However, the Bill is not directed at these practices.

47. The Bill is instead directed toward communications, not harmful practices, communications that promote the sharing of the message that non-heterosexuality and gender identity can and should be changed. The government has honed in on the views themselves, not barbaric practices, alleging that the views themselves are harmful. The actual text of the Bill demonstrates this, nothing the government has said in way of background cleanses it of its unconstitutional purpose on the text of the Bill.

48. In other words, it does not matter what the government says about its intentions and purpose, the text of the Bill says it clearly: The Bill is aimed at limiting speech that promotes or benefits from discouraging non-heterosexual conduct or biological identity.

49. The government may justify this purpose because it takes the position that such speech is harmful because it is unfavourable or objectionable expression. A view against non-heterosexuality or changeable gender identity can be seen as upsetting those who adopt the opposite view.

50. However, the courts have said that just because some may dislike expression or are upset by it does not provide a justification for limiting that expression.

51. In *Bracken v. Fort Erie (Town)*, the Town based its action of trespass on the "erroneous assumption" that the applicant, a citizen journalist, was harming others with the exercise of his right to freedom of expression because the expression was deemed "violent" because it was upsetting others. The Court of Appeal of Ontario ruled that in basing its restriction on the assumption that his speech was harmful because of upset, the state

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[23] 1.1.2.:https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C6E#txt38.

[24] https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C6E#txt38.

action was invalid.

52. The Bill is based on an erroneous assumption when it says that it is harmful to share a view against the state's view on sexuality because it is a "myth" that "sexual orientation and gender identity can and ought to be changed."

53. Many religions base their doctrine on religious texts that support the very idea that sexuality and gender *can be changed*. Individuals who share these beliefs do not count their beliefs as "myths" or as harmful, instead they adhere to them as truth.

54. Some individuals believe that sexual orientation and gender identity can be changed; others have the opposite idea, espousing the view that sexual orientation and gender identity is intransigent. Both sides believe their view is correct.

55. In a diverse and pluralistic society, many views cannot be proven as "correct" or "incorrect" but instead are worthy of debate and discussion:

> A society that does not admit of and accommodate differences cannot be a free and democratic society — one in which its citizens are free to think, to disagree, to debate and to challenge the accepted view without fear of reprisal. This case demonstrates that a well-intentioned majority acting in the name of tolerance and liberalism, can, if unchecked, impose its views on the minority in a manner that is in itself intolerant and illiberal.[25]

56. Debate and discussion have much merit:

> The very lifeblood of democracy is the free exchange of ideas and opinions. If these exchanges are stifled, democratic government itself is threatened. History has repeatedly demonstrated that the first step taken by totalitarian regimes is to muzzle the media and then the individual in order to prevent the dissemination of views and opinions that may be contrary to those of the government.[26]

57. Debate and discussion have merit because understanding the views of others helps us sharpen our own. As John Stuart Mill said, as cited at the Court of Queen's Bench of

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[25] *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423, para. 193.
[26] *R. v. Kopyto*, 1987 CanLII 176 (ON CA).

Alberta: "...he who knows only his side of the case, knows little of that."[27] Our viewpoints are strengthened as we expose them to criticism and debate; it is only then that we can grow in our understanding and knowledge.

58. The opposite view is that opinions which differ from our own are inherently harmful and upsetting and should be censored and/or punished. This view is not in harmony with our *Charter*, which protects expression and belief, whether it is liked or disliked.

59. This Bill is precisely an example of the unconstitutional view that opinions which differ from that of the state should be muzzled, even if these views are based on religious or conscientious belief. And further, the Bill promotes the idea that anything other than the state's view on an issue is harmful.

60. If the content of the Bill were restricted to certain specific practices which have been referred to in the creation of the Bill, that would be one thing, but it is not. Its language catches the simple dissemination of belief and opinion on this issue.

61. Censoring belief and opinion that the state believes is subjectively harmful and upsetting to those who hear it is not tenable under a functioning democracy. This is why the courts have been clear on this point: Restricting expression on the basis of upset is not justified under the *Charter*. Individuals exercising their right to freedom of expression are "not required to limit their upset in order to engage their constitutional right to engage in protest."[28]

62. The Court of Appeal in *Bracken* held that "upset" can never justify the infringement of a *Charter* right:

> The statutory obligation to promote workplace safety, and the "safe space" policies enacted pursuant to them, cannot be used to swallow whole *Charter* rights. In a free and democratic society, citizens are not to be handcuffed and removed from public space traditionally used for the expression of dissent because of the discomfort their protest causes.

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[27] *R v Whatcott*, 2012 ABQB 231, para.33.
[28] *Bracken*, Para. 51.

63. The courts have also ruled that individuals have the right to exercise their rights to freedom of expression and religion and conscience even if the state does not hold that those beliefs and opinions are accurate. The courts have repeatedly ruled that the state is not the arbiter of what is accurate or true.

64. The courts have also said the following in relation to the state prohibiting expression because the state said that those messages were not accurate:

> Even in matters pertaining to science, the ever-changing body of knowledge at our disposal means that what may be scientifically certain today, may not be so certain tomorrow. Let us not forget that it was once universally accepted that the world was flat and that the sun revolved around the earth. Absolute proof may well be an unattainable requirement for this or any other purpose" accepting that "the jurisprudence relative to the right to freedom of expression does not support the contention that the expression must be widely accepted, accurate or scientifically verifiable." [29]

65. In *R. v. Zundel*, in a case about an individual who made a false and repugnant denial of the holocaust, the Court said the following:

> The purpose of the guarantee is to permit free expression to the end of promoting truth, political or social participation, and self-fulfilment. That purpose extends to the protection of minority beliefs which the majority regard as wrong or false: Irwin Toy, supra, at p. 968. Tests of free expression frequently involve a contest between the majoritarian view of what is true or right and an unpopular minority view...Thus the guarantee of freedom of expression serves to protect the right of the minority to express its view, however unpopular it may be; adapted to this context, it serves to preclude the majority's perception of `truth' or `public interest' from smothering the minority's perception. The view of the majority has no need of constitutional protection; it is tolerated in any event. Viewed thus, a law which forbids expression of a minority or "false" view on pain of criminal prosecution and imprisonment, on its face, offends the purpose of the guarantee of free expression.[30]

66. Basing this legislation on the erroneous view that it is harmful to share the "myth" that

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[29] *Lethbridge and District Pro-Life Association v Lethbridge (City)*, 2020 ABQB 654, paras. 133, 135.
[30] *R. v. Zundel*, 1992 CanLII 75 (SCC), para.22.

sexual orientation and gender identity can be changed is not in keeping with a valid public purpose, so the Bill fails to be justified under the *Charter* on this basis.

C. THE BILL IS IMPERMISSABLY VAGUE

67. A law is unconstitutional if it is impermissibly vague because it is a fundamental principle of justice that the state cannot punish an individual on a law if that law is so vague that the individual could not have reasonably known that his or her conduct is illegal. [31]

68. In *Suresh v. Canada*, the court said the following:

> A vague law may be unconstitutional for either of two reasons: (1) because it fails to give those who might come within the ambit of the provision fair notice of the consequences of their conduct; or (2) because it fails to adequately limit law enforcement discretion: see *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 S.C.R. 606. In the same case, this Court held that "a law will be found unconstitutionally vague if it so lacks in precision as not to give sufficient guidance for legal debate" (p. 643).[32]

69. A law is vague if a citizen cannot know with any degree of precision that his or her conduct falls under it. It is also vague if the substance of the law is so vague that a conviction would ensue every time an individual is charged with it because its wording has no substance and it has no particular purpose. The result is that the law can be prosecuted with wide discretion.

70. Bill C-6 is vague because under the definition of conversion therapy it is impossible for individuals to know whether or not their conduct falls under it. The Bill could be applied against any individual who promotes the exercise of expression in relation to his or her non-state-approved religious and conscientious beliefs. It could be applied to anyone who promotes their ability to shares a message to "repress or reduce non-heterosexual attraction or sexual behaviour," even if the recipient of that message seeks and consents

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[31] *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC).
[32] *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (CanLII), para. 81.

to it.

71. A number of religions rely on religious texts which speak to sexuality, some of those texts opposing certain sexual practices. On the text of the Bill, it is so vague that it could apply against religious groups and individuals, including clergy, counsellors, and parents, who promote their beliefs on human sexuality, which beliefs emanate from their religious texts.

72. The Bill is vague because it 1) fails to give those who might come within the ambit of the provision fair notice of the consequences of their conduct; or (2) fails to adequately limit law enforcement discretion. This is dangerous to a functioning democracy because an unlimited use of power in prohibiting expression and belief have been deemed totalitarian by our courts:

> History has repeatedly demonstrated that the first step taken by totalitarian regimes is to muzzle the media and then the individual in order to prevent the dissemination of views and opinions that may be contrary to those of the government. The vital importance of freedom of expression cannot be over-emphasized. It is important in this context to note that s. 2(b) of the Charter is framed in absolute terms, which distinguishes it, for example, from s. 8 of the Charter, which guarantees the qualified right to be secure from unreasonable search. The rights entrenched in s. 2(b) should therefore only be restricted in the clearest of circumstances.[33]

D. ITS EFFECTS ARE CONTRARY TO *CHARTER* SECTIONS 2(a), (b) AND 7

73. The state is not authorized to take a position in regard to religious belief. In *Mouvement laïque québécois v. Saguenay (City),* the Court held that the provision of a statute, of regulations or of a by-law will be inoperative if its purpose violates the state's duty of neutrality in respect of religious or conscientious belief. [34] Dickson C.J. reiterated the

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[33] *R. v. Kopyto*, 1987 CanLII 176 (ON CA).

[34] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16.

importance of not imposing, by means of a legislative measure, religious values contrary to respect for the equality of all. [35]

74. In *Freitag*, the Court of Appeal for Ontario concluded similarly: "As the purpose of the practice of the Town Council in opening its meetings with the recitation of the Lord's Prayer is to impose a Christian moral tone and therefore the purpose itself infringes the appellant's *Charter* right, the practice cannot be justified under s. 1."[36]

75. Requiring individuals to carry out acts contrary to their religious beliefs or their conscience infringes the rights protected under section 2(a). Just as the state cannot compel action, it cannot compel an individual or group to adopt and/or articulate a particular belief.

76. In *Donald v. Hamilton Board of Education*, the Ontario Court of Appeal relied on the American cases of *West Virginia State Board of Education et al. v. Barnette, et al.* (1943), 319 U.S. 624 at 632 and *The People of the State of New York v. Sandstorm, et al.* (1939), 279 N.Y. 523 at 535 when it held that the state could not compel two school children to sing the national anthem, repeat the pledge of allegiance, and to salute the flag on the basis of their religious beliefs as Jehovah's Witnesses. [37]

77. *In West Virginia State Board*, the Court held that the First Amendment protects students from being forced to salute the American flag or say the Pledge of Allegiance in public school. The Court defended free speech and constitutional rights generally as being placed "beyond the reach of majorities and officials", also saying, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[38]

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[35] *Big M*, para. 97.
[36] *Freitag v. Penetanguishene (Town)*, 1999 CanLII 3786 (ON CA), para. 50.
[37] *Donald et al. v. The Board of Education for the City of Hamilton et al.*, 1945 CanLII 117 (ON CA).
[38] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), page 319.

78. In *Baars v. Children's Aid Society*, the Court found violations of ss. 2(a) and 2(b) when the state closed a foster home because the parents, on grounds of religious belief, refused the state's demand that they tell their foster child that the Easter bunny was real. The court quoted approvingly from *Big M.* that, "no one is to be forced to act in a way contrary to his beliefs or his conscience."[39]

79. On the section 2(b) right to freedom of expression, it was recognized very early in the life of the *Charter* that compelled speech is unconstitutional in Canada, as recognized in the seminal case on compelled speech *National Bank*, "These freedoms guarantee to every person the right to express the opinions he may have: *a fortiori* they must prohibit compelling anyone to utter opinions that are not his own." [40] There are very few cases of compelled speech in Canada precisely because our political tradition abhors governments forcing speech on its citizens.[41]

80. Mr. Justice Lamer (as he then was), writing with the majority on this issue in *Slaight* stated, "freedom of expression necessarily entails the right to say nothing or the right not to say certain things. Silence is in itself a form of expression which in some circumstances can express something more clearly than words can do." [42]

81. In *Lavigne*, Wilson J. held that if "the government's purpose was to put a particular message into the mouth of the plaintiff, as is metaphorically alleged to be the case here, the action giving effect to that purpose will run afoul of s. 2(*b*)." She approved of US jurisprudence which holds that compelled speech will amount to an infringement of s. 2(b) where a. there is state compulsion of the content of the message; b. there is public identification of the complainant with that message; and c. the complainant is not able to disavow belief in the

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[39] *Baars v. Children's Aid Society of Hamilton*, 2018 ONSC 1487, paras. 53 and 200-203.
[40] *National Bank of Canada v. Retail Clerks' International Union et al.*, 1984 CanLII 2 (SCC), page 296.
[41] *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC)[*Slaight*]; *Lavigne v. Ontario Public Services Employees Union et al.* [1991] 2 S.C.R. 211, [*Lavigne*].
[42] *Slaight.*

content of the message. She held that these three factors played a strong role in the decisions of both *National Bank* and *Slaight.*[43]

82. The three *Lavigne* factors are relevant to this Bill: in order to avoid criminal sanction, if individuals in Canada wish to promote the communication of their beliefs and opinions on the issue of sexual orientation and gender identity, they must communicate in keeping with the government's view and not oppose it. There is a. state compulsion, b. public identification of the complainant with that message on the basis of criminal charges, and c. the complainant cannot disavow the message because it emanates from his or her religious and conscientious belief.

83. As in *RJR-MacDonald,* Mr. Justice La Forest stated, "... if the effect of this provision is `to put a particular message into the mouth of the plaintiff, as is metaphorically alleged to be the case here', the section runs afoul of s. 2(b) of the *Charter*." [44]

84. Further, when the Bill prohibits advertising or "receiving a financial benefit" for expressing a non-state-approved message, the effect of a breach to this provision is drastic, carrying a potential penalty of imprisonment of up to two years.

85. The prohibitions on advertising and receiving compensation unduly limits the right to expression by restricting the ability of minority groups, mainly religious groups, from promoting their beliefs and being compensated for relevant services in relation to sharing their beliefs.

86. It is well and fine for the government to say that it is not prohibiting speech *per se*, but it is limiting speech when it a. prohibits the promotion of belief and b. prohibits compensation in relation to sharing those beliefs.

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[43] *Lavigne.*
[44] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, para. 113.

87. Pastors, clergy and counsellors usually receive some form of compensation for their services. There is nothing in the Bill which assures these individuals that they will not fall under the Bill in relation to sharing their services in the impugned manners.

88. This measure also opposes the courts' consistent jurisprudence that says that commercial expression is important to the 2(b) guarantee because it is not just fundamental to society that individuals exercise the right to freedom of expression, but it is also fundamental that the right to advertising is protected because the marketplace actually depends on this "abundant and diverse" information. [45]

89. By prohibiting the promotion of the expression, the government works a sinister limitation on the expression. While not a complete prohibition, the noose is tightened so that the non-state-approved message is effectively limited or squelched in favour of the state-approved message.

90. This Bill's effect is to compel individuals to express only the state-approved message while it limits or squelches the opposite. These effects infringe the 2(a) and 2(b) rights of all individuals in Canada.

E. ITS EFFECTS ARE NOT RATIONALLY CONNECTED TO THE STATE'S OBJECTIVE

91. In order to be justified under the *Charter*, Bill C-6 must be rationally connected to its objective. The government must demonstrate, on a balance of probabilities, that there is a causal link between the impugned measure and a valid public purpose or pressing and substantial objective.

92. Bill C-6 has been proposed in order to prohibit "harm" in reference to barbaric coercive and harmful practices. If it can be proved on evidence that the presence of these practices is true, these practices should be condemned. However, the language of this Bill does not target these practices, instead it uses an expansive definition of "conversion therapy" to

[45] *R. v. Guignard* {2002] 1 SCR 472, para. 21.

limit the exercise of *Charter rights*.

93. As demonstrated by its Preamble and definition of conversion therapy, the Bill is designed to address *all purported* "harm" that emanates from the "myth" that sexuality and gender can be changed.

94. It cannot be proved on evidence that it is harmful for individuals, especially when their beliefs emanate from their religion and conscience, to promote encouragement of heterosexuality or to receive compensation for sharing this encouragement. This view has been part of religious tenets for many years. Therefore, when the government criminally sanctions those who promote the expression of this belief or receive compensation in relation to expressing it, the government cannot demonstrate a connection between the purported harm it alleges and the impugned conduct, therefore the Bill fails to be rationally connected, failing under the *Charter*.

F. ITS EFFECTS ARE NOT MINIMALLY IMPAIRING.

95. The limit must impair the right "as little as possible" with the burden on the government to demonstrate that among the range of options, there are not other measure that achieve the state's objective which limits the right at issue less.[46]

96. The Department of Justice has said the following to assure the Canadian public that the application of the Bill is narrow and innocuous:

> 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 support to persons struggling with their sexual orientation, sexual feelings, or gender identity.[47]

97. However, on the reading of the text of the Bill, this cannot be farther from the truth. Many of the above individuals are at risk of being charged for this offence if they do not

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[46] *R. v. Oakes*, [1986] 1 S.C.R. 103, *R. v. K.R.J.*, 2016 SCC 31 at para. 70.

[47] https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C6E.

share the government's view on sexuality. Teachers and counsellors are at risk of prosecution if the exercise of their right to freedom of expression is deemed to cause a person underage to hear a "non-state condoned" message, if they have promoted their message, or if they have received compensation for sharing their message. Any one of these actions comes under the purview of the Bill.

98. Religious leaders and clergy may fall under the ire of the Bill if the prosecutors of this offence deem that they have "advertised" their services by promoting their beliefs, or if they receive compensation in way of either charging for a counselling session or being compensated generally for their work by the religious organizations who may employ them.

99. The Bill's implications are not minimal, they are anything but.

100. In its overbreadth, the Bill is not a minimal impairment because the Courts have said that overbroad laws, "if applied literally, [they] have the potential to catch more conduct than the government is constitutionally permitted in the pursuit of its legitimate goals."[48]

G. THE ABILITY TO MAKE FUNDAMENTAL CHOICES IS LIMITED

101. Section 7 of the *Charter* protects individual autonomy involving "inherently private choices" that go to the "core of what it means to enjoy individual dignity and independence."[49] The Court has said that the right to these choices is protected if "they implicate basic choices going to the core of what it means to enjoy individual dignity and independence." [50]

102. A limit on s. 7 is arbitrary if it "bears no relation to, or is inconsistent with, the objective that lies behind the legislation" [51] In *Chaoulli v. Quebec,* the Court said, "[t]he question in

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[48] *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606; *Committee for the Commonwealth of Canada v. Canada*, 1991 CanLII 119 (SCC), [1991] 1 SCR 139.

[49] *Godbout v Longueuil (City),* [1997] 3 SCR 844 at para 66.

[50] *Association of Justice Counsel v. Canada (Attorney General)*, 2017 SCC, para. 49, relying on *Godbout.*

[51] ***Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), [1993] 3 SCR 519**

every case is whether the measure is arbitrary in the sense of bearing no real relation to the goal and hence being manifestly unfair." [52] In order to determine whether a statute is arbitrary, the state has to prove that there is a relationship between the statute's objective and the statute. [53]

103. The law on informed consent reasonably ensures people are free to make choices free of undue pressure and with full understanding of the nature and risk of the choice.[54]

104. These protections work together to provide maximum autonomy and self-determination to individuals. They also guard against harm caused to individuals when they are prevented from either making desired choices or instead compelled to make undesired choices. The underlying principle is that individuals typically know what is best for themselves, if they are properly informed, and the benefits of personal autonomy and self-realization that flow from maximum choice far outweigh the risks of harm.

105. Bill C-6 limits the ability of those who wish to make fundamental and personal sexual choices. If they desire to modify their conduct to reflect a position in opposition to the government's view on sexuality, it will be difficult or impossible for them to receive help to do so.

106. This is because a. the Bill removes the ability of those who offer "non-state approved" messages to promote their expression and b. those offering are only able to share their expression if they receive no compensation for sharing it. This severely limits the ability of individuals to gain assistance in making their desired choices, especially the members of the LGBT community who may want help in receiving non-state-approved messages.

107. For example, if an individual experiencing non-heterosexual attraction wishes to seek help to support his or her objective to avoid acting on that attraction, it will be very difficult for them to find help, much less receive it. They will not know where to go for

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[52] *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, [2005] 1 S.C.R. 791, para. 131.
[53] *Rodriguez v. British Columbia (Attorney General)*, 1993 CanLII 75 (SCC), [1993] 3 SCR 519, p 594.
[54] *Cuthbertson v. Rasouli*, 2013 SCC 53 at para 18.

that assistance because counsellors will not be able to promote their services to the individual in need. Second, assistance will be limited to that individual because no one offering the sought-after service will be allowed to charge for it.

108. Similarly, if an individual experiencing gender dysphoria has the objective of accepting his or her biological gender and to receive counselling or therapy to help achieve that objective, Bill C-6 effectively foils that objective by limiting the ability of that individual to receive assistance.

109. The practical reality is that it will be impossible for those who offer counseling from a "non-state-approved" perspective to function, and impossible for those who seek that counseling to receive it.

110. This state intrusion infringes *Charter* s. 7 rights, making it impossible for individuals to freely exercise their choices. Bill C-6 effectively presumes individuals are not capable of deciding what is best for themselves in this area, replacing their choice with the choice of the state.

111. This "government knows best" approach is at odds with a society in which people are generally free. It is also inconsistent with the reality that, in Canada, people are permitted to make all kinds of choices that may pose a risk of harm, such as extreme or contact sports, the use of dangerous, addictive and/or mind-altering substances, doing inherently dangerous jobs, participating in experimental trials and undergoing inherently risky surgeries.

H. IT INFRINGES ON THE RIGHTS OF PARENTS AND CHILDREN

112. Parents have a constitutional right, protected by section 2(a) and 7 of the *Charter*, to raise their children in accordance with their own moral values and religious beliefs, which extends to matters of sexuality and gender.[55]

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

113. Children also have the right to receive guidance and nurture from their parents. Both of these rights are enumerated in the *Convention on the Rights of the Child* [56] as follows:

> Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,
>
> **Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,**
>
> Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,
>
> Article 3
>
> 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
>
> *Article 5*
>
> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.
>
> *Article 8*
>
> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

[56] Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49: https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. **States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.**

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 16

1. **No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.**

2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. [emphasis added.]

114. The rights of children and parents are not opposed to each other, or in conflict. Rather, they are symbiotic.[57] On this point, the court has cited a US case which held the following:

> Our cases have consistently followed that course; our constitutional, system long ago rejected any notion that a child is 'the mere creature of the State' and, on the contrary, asserted that parents generally 'have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations'.[58]

115. The recognition of the rights of parents and their children is based on a fundamental and immutable fact: It has always been, and always will be, parents who bring children into this world and care for them the most, not the state. With few exceptions, it is parents who raise their children, make countless sacrifices for them, are deeply invested in them, and who know and love them more than anybody else. It is not the state. The government is not capable of doing a better job than parents at determining and protecting the best interests of children.[59] According to the Supreme Court, the vital and sacred link between parent and child may only be interfered with by government on a case by case basis when "necessity" is demonstrated, and it is justified in doing so.[60]

116. The laws regarding the rights of parents and their children is summarized in the following statement by former Supreme Court Justice La Forest:

> I would have thought it plain 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. … The common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being. …the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society.
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> …
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> While acknowledging that parents bear responsibilities towards their children, it seems to me that they must enjoy correlative rights to exercise them. The contrary

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[57] *C.P.L., Re,* 1988 CanLII 5490 (NL SC), at para 77.
[58] *Ibid*, para. 100.
[59] See, for example, *K.V.W. v Alberta*, 2006 ABCA 404 at para 35.
[60] *R.B. v Children's Aid Society of Metropolitan Toronto*, [1995] SCR 315 at para 85.

> view would not recognize the fundamental importance of choice and personal autonomy in our society. As already stated, the common law has always, in the absence of demonstrated neglect or unsuitability, presumed that parents should make all significant choices affecting their children, and has afforded them a general liberty to do as they choose. ...our society is far from having repudiated the privileged role parents exercise in the upbringing of their children. This role translates into a protected sphere of parental decision-making which is rooted in the presumption that parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself. Moreover, individuals have a deep personal interest as parents in fostering the growth of their own children. This is not to say that the state cannot intervene when it considers it necessary to safeguard the child's autonomy or health. But such intervention must be justified. In other words, parental decision-making must receive the protection of the *Charter* in order for state interference to be properly monitored by the courts, and be permitted only when it conforms to the values underlying the *Charter.*[61]

117. The law recognizes that until children have sufficient decision-making capacity, parents play a required role in a child's decision-making. The Supreme Court has affirmed what every parent knows, that children and even adolescents may lack the psychological maturity required to make some decisions, they may be easily influenced.[62]

118. Bill C-6 amounts to the government usurping the discretion of parents to guide their children: It also threatens the right of children to receive that guidance. The Bill infringes these rights by criminalizing the expression of parents to share freely on crucial issues and for children to receive that expression.[63]

119. Under this Bill, parents could face jail time for choosing, for example, to provide their child with counseling and therapy to help their child to accept his or her body or abstain

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[61] *R.B. v Children's Aid Society of Metropolitan Toronto*, at paras 83-85. See also *Re Baby-Duffell Martin v. Duffell*, [1950] SCR 737, at page 747, per Rand J.

[62] *Irwin Toy Ltd v Quebec (Attorney General),* [1989] 1 SCR 927; *A.C. v. Manitoba (Director of Child and Family Services)* 2009 SCC 30 (CanLII), [2009] 2 SCR 181.

[63] "Everyone who knowingly causes a person who is under the age of 18 years to undergo conversion therapy is guilty of an indictable offence and liable to imprisonment for a term of not more than five years."

from certain sexual conduct. It would also prevent the ability of children to receive such assistance.

120. The arbitrary, inconsistent and ideological nature of Bill C-6 becomes obvious in the context of a family with cultural or moral beliefs that hold that children should not engage in any sort of sexual conduct prior to marriage. It would not be criminal for parents to have their opposite-sex attracted child receive counselling to abstain from opposite-sex sexual behaviour prior to marriage, but it would be criminal for parents to have their same-sex attracted child receive counselling to abstain from same-sex sexual behaviour prior to marriage. Similarly, it would not be criminal for parents to have their daughter receive counselling that she may in fact be a boy, or should consider attempting to become a boy, but it would be criminal for parents to have their daughter receive counselling that she is biologically a girl, cannot become a boy, and should consider embracing her female gender for what it is.

121. Bill C-6 directly and substantially interferes with the child-parent relationship, which is ultimately a threat on the right and responsibility of parents to do what is best for their children and a threat on the right children have to receive guidance and nurturing from their parents.

PART IV. CONCLUSION

122. Under this stage of the analysis, the benefits or salutary effects of the law are assessed against the its detriments or deleterious effects, to inspect whether the limit is justified. The more serious the deleterious impact on the rights at issue, the more important the objective must be.

123. The objective of the Bill is to limit speech that shares a non-state approved message on sexuality in order to prevent the purported harm of communicating the "myths" that sexual orientation and gender identity should be changed.

124. The Bill limits *Charter* section 2(a),(b), and section 7 rights in that individuals are limited in sharing their beliefs and opinions on sexuality, and those who seek expression on sexuality are limited in their ability to receive them.

125. The Bill represents a disproportionate limit on *Charter* freedoms because, at best, it accomplishes curbing what the government says, without evidence, are harmful messages, albeit the fact that the government is disingenuous in justifying this by equating expression in opposition to its views on sexuality with barbaric medical practices.

126. In reality, the government's measure is severely disproportionate to the extent that it reflects what the *Kopyto* court warned when it said, "the first step taken by totalitarian regimes is to muzzle the media and then the individual in order to prevent the dissemination of views and opinions that may be contrary to those of the government."[64] This disproportionate measure cannot be justified under the *Charter*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27 DAY OF NOVEMBER 2020.

Per: 

Carol Crosson
Barrister and Solicitor

[64] *Supra*, at note 11.