

Submission to the House of Commons Standing Committee on Health for the study on LGBTQ2 Health in Canada on the Matter of Conversion Therapy

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Background:

Conversion therapy, which aims at changing a person's gender identity or sexual orientation, is unethical and harmful. It has been opposed by more than 49 professional associations¹ including the Canadian Association for Social Work Education, Canadian Association of Social Workers, Canadian Professional Association for Transgender Health, Canadian Psychiatric Association, College of Registered Psychotherapists of Ontario, Ordre des travailleurs sociaux et thérapeutes conjugaux et familiaux du Québec, and Ordre professionnel des sexologues du Québec. Most authoritatively, the latest *Standards of Care* of the World Professional Association for Transgender Health state that:

Treatment aimed at trying to change a person's gender identity and expression to become more congruent with sex assigned at birth has been attempted in the past without success [...], particularly in the long term [...]. Such treatment is no longer considered ethical.²

There is no evidence that gender identity and sexual orientation can be changed without harm to patients. Dr. Karl Bryant, a victim of conversion therapy, stated that it is "hard to overstate the harm" of these practices which made him feel that he was wrong at the core of who he was.³ Conversion therapy is associated with shame, which correlates with anxiety, depression, and suicidality.⁴

Concern for unethical and harmful practices such as conversion therapy falls within federal jurisdiction related to Peace, Order and Good Government (National Concern Doctrine), the Spending Power, the Criminal Law, and Human Rights in relation to areas under federal jurisdiction.

The federal government's interest in maintaining minimum healthcare standards is enshrined in the *Canada Health Act*. Amendments to the *Canada Health Act* to discourage the

¹ Florence Ashley, *List of professional organisations opposing reparative therapy targeting gender identity*, online: <<https://www.florenceashley.com/resources.html>>.

² Eli Coleman et al, "Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7" (2012) 13:4 *International Journal of Transgenderism* 165 at 175.

³ Beth Schwartzapfel, "Born This Way?", *The American Prospect* (14 March 2013), online: <<http://prospect.org/article/born-way>>.

⁴ Robert Wallace & Hershel Russell, "Attachment and Shame in Gender-Nonconforming Children and Their Families: Toward a Theoretical Framework for Evaluating Clinical Interventions" (2013) 14:3 *International Journal of Transgenderism* 113; Greta R Bauer et al, "Intervenable factors associated with suicide risk in transgender persons: a respondent driven sampling study in Ontario, Canada" (2015) 15:1 *BMC Public Health*.

provision of conversion therapy in Canada would be consistent with the objective of health care policy “to protect, promote and restore the physical and mental well-being of residents of Canada” (*Canada Health Act*, s. 3). The promotion of minimum healthcare standards should be done consistently with the commitment to equality enshrined in section 15 of the *Canadian Charter of Rights and Freedoms* and in the *Canadian Human Rights Act*.

Amending the *Canada Health Act* to declare that conversion therapy is an inappropriate healthcare practice and is excluded from insurance coverage would be consistent with the aforementioned federal government interests and powers, and further the government’s commitment to LGBTQ2+ health.

The criminalisation of conversion therapy is not incompatible with provincial jurisdiction over conversion therapy. The federal government’s jurisdiction over criminal law extends to the criminalisation of unethical and harmful practices. This jurisdiction is not contentious, despite overlap between the criminalisation of healthcare practices and provincial powers over healthcare. For instance, the *Criminal Code* explicitly includes excision under the definition of aggravated assault despite the practices simultaneously pertaining to the regulation of professional actions, which is enforced by bodies such as the College of Physicians and Surgeons of Ontario. The *Code* also criminalises fraud, to which conversion therapy is often compared, despite fraud also opening the door to civil liability under provincial laws.

Criminalising conversion therapy would be complementary to the regulation of conversion therapy as a healthcare practice under provincial law. Because criminal prohibitions are interpreted narrowly, it is crucial to define conversion therapy in sufficient detail to include all forms of conversion therapy within the scope of the prohibition.

Because the fight against conversion therapy is an ongoing one that cannot be solved solely through legislative action, the federal government should dedicate funding to initiatives seeking to discourage or eliminate conversion therapy. Furthermore, the LGBTQ2 Secretariat should create a working group tasked with identifying avenues of action for the discouragement and elimination of conversion therapy in Canada.

Eliminating conversion therapy is essential to the wellbeing of sexual and gender minorities. We hope that the federal government will take its responsibility seriously and undertake steps to oppose these unethical and harmful practices.

Recommendations:

I recommend that the federal government dedicate funding to community initiatives aimed at discouraging or eliminating the practice of conversion therapy.

I recommend that the federal LGBTQ2 Secretariat create a working group tasked with making recommendations on how to discourage and eliminate the practice of conversion

therapy in Canada. The working group should work to clearly define the practices which are considered conversion therapy, and which should be eliminated.

I recommend that the *Canada Health Act* be amended to declare conversion therapy an inappropriate healthcare practice and exclude conversion therapy from health insurance coverage.

I recommend that Bill S-260 be amended to criminalise the practice of conversion therapy and passed by the government of Canada.

We recommend that conversion therapy be defined in the *Canada Health Act* and in Bill S-260 as follows⁵:

1. (1) Conversion therapy refers to any treatment, practice, or sustained effort that aims to repress, discourage or change a person's sexual orientation, gender identity, gender modality, gender expression or any behaviours associated with a gender other than the person's gender assigned at birth.

(2) Conversion therapy includes:

- a. Practices that proceed from the assumption, other than the patient's, that certain sexual orientations, gender identities, gender modalities, and gender expressions are mental illnesses or conditions;
- b. Practices that seek to reduce cross-gender identification;
- c. Practices that have for primary aim the identification of factors which may have led to the person's sexual orientation, gender identity, gender modality, gender expression or behaviours associated with a gender other than the person's gender assigned at birth, unless in the context of research which has been approved by an institutional review board;
- d. Practices that direct parents or tutors to set limits on their dependents' gender non-conforming behaviour, impose peers of the same gender assigned at birth, or otherwise intervene in the naturalistic environment with the aim of repressing, discouraging, or changing the dependent's sexual orientation, gender identity, gender modality, gender expression or any behaviours associated with a gender other than the person's gender assigned at birth;
- e. Practices that proceed from the assumption that social or medical transition are undesirable or less desirable;
- f. Practices that delay or impede a person's desired social or medical transition without reasonable and non-judgemental clinical justification;

⁵ The following definition of conversion therapy is drawn from the work of Florence Ashley, B.C.L./LL.B. A working draft of the model law with explanatory notes is available upon request.

- g. Practices that knowingly fail to respect the name, pronouns, and gendered terms chosen or accepted by the person, except as required by law.

(3) Conversion therapy does not include:

- a. Practices that are part of the person's social or medical transition;
- b. Assessments and diagnoses of gender dysphoria or other comparable diagnostic category under the latest version of the DSM or ICD;
- c. Practices that provide non-judgemental acceptance and support of the person's expressed sexual orientation, gender identity, gender modality, gender expression, and behaviours associated with a gender other than the person's gender assigned at birth;
- d. Practices that teach individuals coping strategies to help resolve, endure, or diminish stressful life experiences linked to their sexual orientation, gender identity, gender modality, gender expression or behaviours associated with a gender other than the person's gender assigned at birth;
- e. Practices that aim at the development of an integrated personal identity by facilitating the exploration and self-assessment of components of personal identity without repressing, discouraging or changing a person's sexual orientation, gender identity, gender modality, gender expression or any behaviours associated with a gender other than the person's gender assigned at birth or seeking to do so;
- f. Comprehensive assessments which aim at facilitating the provision of services described in 1(3)(a)-(e).