

Executive Summary

April 22, 2020

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The Federal Government introduced [Bill C-8](#) on March 9, 2020, amending the *Criminal Code* to ban conversion therapy. This bill defines conversion therapy broadly, including not just efforts to change a person's sexual orientation, but also practices to reduce sexual behaviour. It creates five new criminal offences, including causing a minor to undergo conversion therapy, causing any person to undergo conversion therapy against their will, advertising for conversion therapy and receiving a financial benefit from providing conversion therapy.

Undoubtedly, coercive or involuntary efforts to change sexual orientation or gender identity have no place in our communities. However, we have serious concerns with the legislation as worded. A key concern is that the definition of conversion therapy includes efforts to repress or reduce sexual behaviour. The EFC is seeking assurances that religious instruction, parental guidance and supportive services for individuals wishing to order their sexual lives in accordance with their religious conscience, faith identity and personal convictions will not be captured.

Background

Discussions of conversion therapy often reference a regrettable history of coercive and abusive practices, such as aversion or electric shock therapy and the use of psychotropic drugs. Thankfully, such physical and chemical efforts to change a person's sexual orientation no longer take place in Canada.

In 2015, the Canadian Psychological Association defined conversion therapy, or reparative therapy, as "any formal or therapeutic attempt to change the sexual orientation of bisexual, gay or lesbian individuals to heterosexual...."

Generally, conversion therapy has been understood to be a medical or therapeutic effort to change a person's sexual orientation or gender identity.

Increasingly though, conversion therapy is discussed in much broader terms than medical or therapeutic treatment; it extends to voluntary attempts to reduce sexual behaviour, and often refers to pastoral care or informal support groups in religious settings.

Conversion therapy bans are being passed or proposed at all levels of government across Canada. We recognize that these initiatives are motivated by a desire to protect Canadians.

However, the definition of conversion therapy in these bans is often very broad, and expands beyond discredited practices in ways that could limit freedom of expression and religion.

Definition of conversion therapy in Bill C-8

Bill C-8 defines conversion therapy 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. 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.

This definition is very broadly worded and, of particular concern, goes beyond coercive change efforts to include efforts to modify or limit sexual behaviour. Consider the implications of these specific terms and phrases:

- *"a practice, treatment or service"* The term 'treatment' implies a medical or therapeutic context, but 'practice' could include almost any activity.
- *"designed to change a person's sexual orientation to heterosexual or gender identity to cisgender"* The definition only prohibits change in one direction. It does not prohibit undertaking actions designed to change a person's sexual orientation or gender identity, only a change to heterosexual or to "cisgender." This risks infringing on the ability of individuals to order their sexual lives or gender identity in accordance with their personal convictions and beliefs, as well as on the ability of medical professionals to support them as they request.
- *"cisgender"* is not a term that has been used in the *Criminal Code*. It is a relatively new social construct used primarily to label individuals who are not transgender. However, this label is highly divisive, and should not be imposed on individuals. The *Criminal Code* wording should describe what is meant, such as "designed to change a person's ... gender identity to the gender aligned with the person's biological sex at birth."

- “to repress or reduce non-heterosexual attraction or sexual behaviour” It is very troubling that the definition of conversion therapy includes reducing sexual behaviour.

Most religions have teaching on how to order one’s sexual life according to one’s beliefs and faith identity. This religious instruction is based on sacred texts, with understandings that have been passed down by adherents through history. It is a key element of religious life and practice to learn and to share the teachings of scriptures as they relate to all areas of life, including sexual behaviour.

As the 2019 *Canadian Guidelines for Sexual Health Education* note, “Many people in Canada look to religious institutions (e.g., churches, mosques, synagogues, temples) to inform their values and seek guidance from their religious leaders related to sexuality.”¹

Christianity, for example, teaches that the biblical norm is abstinence until the marriage of one man and one woman. Guidance to abstain from sexual activity outside of heterosexual marriage could be considered teaching to repress or reduce sexual behaviour under this broad definition. Bill C-8 creates a criminal offence of causing a minor to undergo conversion therapy, as it is defined in the bill, as well as forced conversion therapy for any person. By the proposed definition, then, sharing biblical teaching on heterosexual marriage and/or encouraging youth to abstain from sexual activity in a conversation or through a sermon could be considered as “a practice ... designed to ... reduce non-heterosexual attraction or sexual behaviour.”

The broader Canadian society may or may not agree with the teachings of religious scriptures on sexuality, but the freedom to hold, practise and express those beliefs is protected by the *Charter*. We are very concerned that this bill creates a criminal offence with a penalty of imprisonment which could apply to the sharing of religious instruction.

There is also concern about how this definition could impact the ability of parents to offer guidance or share beliefs on matters of gender or sexuality. The family is the natural environment for the growth and well-being of children, and parents are the protectors and advocates for the best interests of their children. Any definition of conversion therapy must “respect the fundamental right to family integrity, including the autonomy of families to live according to their own religious and moral beliefs and to freely share them between generations without state interference.”²

¹ *Canadian Guidelines for Sexual Health Education*, p. 78, <http://sieccan.org/sexual-health-education/>

² *Church Guidance: Conversion Therapy*, Canadian Council of Christian Charities, Christian Legal Fellowship and The Evangelical Fellowship of Canada, March 6, 2020, <https://www.evangelicalfellowship.ca/Resources/Documents/Church-Guidance-Conversion-Therapy>

As the 2019 *Canadian Guidelines for Sexual Health Education* states: “Parents and guardians play a pivotal and complementary role in the sexual health education of their children. They provide guidance, communicate their values, and set behavioural expectations for their children related to sexuality.”³

As currently worded, this legislation could capture parents’ guidance on sexual activity offered to their minor child as a practice designed to reduce sexual behaviour.

Exceptions

The proposed definition in Bill C-8 includes this qualification:

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.

The definition clarifies two areas that are not to be considered conversion therapy. The first exception is for practices related to a person’s gender transition.

At a press conference on March 9, the Justice Minister said the bill would not affect medical professionals’ conversations with and diagnoses of patients, in response to a media question that mentioned a wait-and-see approach to gender dysphoria. However, the legislation, as written, does not clearly exempt these kinds of medical or therapeutic conversations. It simply provides an exemption for a practice, treatment or service related to gender transition.

Does this exemption allow only treatment in one direction toward a particular outcome, rather than allowing medical professionals to treat each unique patient before them? Or does the exemption mean any service related to gender transition, regardless of whether it results in the patient’s transition? It must be clarified whether this exception allows only efforts to assist an individual in transitioning, or whether it permits a wait-and-see approach to transition, as well as assistance to individuals wishing to detransition.

The second exception references a person’s exploration of their identity or to its development.

The Department of Justice release on the proposed changes to the *Criminal Code* relating to conversion therapy (i.e., the changes proposed by Bill C-8) states:

³ *Canadian Guidelines for Sexual Health Education*, p. 71, <https://sieccan.org/sexual-health-education/>

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

However, the legislation as written doesn't include any such exceptions for private conversations or the expressions of personal views, let alone public expression of views. The legislation will be enforced according to the provisions that are set out within it. It is not at all clear in the current wording what this exception is meant to protect.

If this exception included “the exploration of a person’s *sexual, gender or religious identity* and its development,” it would recognize that these elements shape a person’s decisions and practices, and that these elements interact with one another. Canadians must remain free to order their sexual lives according to their beliefs, faith identity and personal convictions.

It seems likely that these two exemptions, as currently worded, may apply to some medical or therapeutic situations, but not all. For example, if a 12-year-old patient with rapid onset gender dysphoria requests puberty-blocking medication and surgery, they are not coming to a medical professional for identity exploration. Does the medical professional have the ability to take time to assess the patient and offer their best professional advice for the patient? The exemption in the legislation is only for a practice, treatment or service that relates to gender transition. Would this exemption cover a medical professional’s opinion that the patient should not transition at this time? The exemption needs clarification as to which practice, treatment and service may result in criminal charges, and which will not.

Bill C-8 should reduce the risk of infringing on freedom of expression by clarifying in the definition that the following will not be considered conversion therapy:

- parental guidance on matters of gender or sexuality
- religious instruction on matters of gender or sexuality, whether private or public
- the private or public expression of sincerely-held beliefs or views
- therapeutic or medical care offered to individuals voluntary seeking support

New offences

The bill creates five new criminal offences related to conversion therapy:

⁴ Available online at <https://www.justice.gc.ca/eng/csj-sjc/pl/ct-tc/index.html>

1. Causing a person to undergo conversion therapy against the person's will
2. Causing a minor to undergo conversion therapy
3. Removing a minor from Canada to undergo conversion therapy
4. Advertising an offer to provide conversion therapy
5. Receiving a financial or other material benefit from the provision of conversion therapy

1. Forced conversion therapy

s. 320.102 Everyone who knowingly causes a person to undergo conversion therapy against the person's will is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) guilty of an offence punishable on summary conviction.

Few, if any, Canadians would support compelled or coerced change efforts. Coercive or involuntary efforts to change an individual's sexual orientation have no place in our communities.

However, given the broad definition of conversion therapy in Bill C-8, even this provision could have a wider scope than intended. If conversion therapy is defined as "a practice... designed to... reduce... sexual behaviour," could delivering a sermon on sexual practice that a listening adult disagrees with be considered conversion therapy against a person's will? Clearly this is not what is intended, but this is one of the concerns with what the current wording of the legislation might capture.

2. Causing a minor to undergo conversion therapy

s. 320.103 (1) Everyone who knowingly causes a person who is under the age of 18 years to undergo conversion therapy is

- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) guilty of an offence punishable on summary conviction.

(2) It is not a defence to a charge under subsection (1) that the accused believed that the person was 18 years of age or older, unless the accused took reasonable steps to ascertain the person's age.

Again, the concern here is what might be captured, given the broad definition of conversion therapy in the bill. For example, could religious instruction in the form of pastoral advice or sermons on sexuality be captured? What about written resources, such as courses of study or

books on Biblical sexuality, or Bible studies for youth on sexuality? What about parental guidance on sexuality?

3. Removing a minor to undergo conversion therapy

“with the intention that an act be committed outside Canada that if it were committed in Canada would be an offence against ... s. 320.103 in respect of that person;”

4. Advertising an offer to provide conversion therapy

s. 320.104 Everyone who knowingly advertises an offer to provide conversion therapy is
(a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
(b) guilty of an offence punishable on summary conviction.

s. 164(8) advertisement for conversion therapy means any material – including a photographic, film, video, audio or other recording, made by any means, a visual representation or any written material – that is used to advertise an offer to provide conversion therapy contrary to s. 320.104

The advertising offence is not limited to advertising conversion therapy for minors. It prohibits advertising for conversion therapy, period, and as such could extend to advertising for what is otherwise a legal activity. A similar criminal offence exists for advertising the sale of someone else’s sexual services, but in that case, the purchase of sexual services is illegal. With respect to conversion therapy, there is no criminal offence related to *voluntary* conversion therapy for adults.

Given the broad definition of conversion therapy, this advertising offence could be broadly applied. Could it apply to raising awareness of support groups that a person may voluntarily attend for support in ordering their sexual life according to their faith identity or personal convictions? Or advertising for books or Bible studies of biblical teaching on sexual activity.

5. Receiving a financial or other material benefit from the provision of conversion therapy

320.105 Everyone who receives a financial or other material benefit, knowing that it is obtained or derived directly or indirectly from the provision of conversion therapy, is
(a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
(b) guilty of an offence punishable on summary conviction.

There are two main phrases of concern in this fifth offence.

- *“financial or other material benefit”* This provision echoes the prostitution offences introduced in Bill C-36, currently s. 286.2 of the *Criminal Code*. The prostitution provisions include exceptions to narrow the scope, which are disallowed if there are exploitive circumstances or threats of violence, etc. The material benefit provision in the prostitution law is intended to cover a wide scope of activity in order to catch incidents of human trafficking, which may otherwise be difficult to establish given the vulnerability of victims in extremely exploitative circumstances. Bill C-8, however, uses the same language for the offence without the exceptions that narrow the scope. As such, unlike the prostitution offence which addresses illegal activity, this provision would create a criminal offence for carrying out a legal activity, i.e. voluntary conversion therapy for adults.
- *“derived directly or indirectly”* This provision is also modeled after the prostitution provisions, including the word ‘indirectly’ to intentionally capture other forms of material benefit than financial. In this context though, what would an indirectly derived benefit look like? Given the broad definition of conversion therapy, it seems that this offence could be applied very broadly. If a pastor speaks about biblical teaching on sexuality, would their salary from the church be a financial benefit that is derived indirectly? Bill C-8 must be amended so that it is clearly focused on the activities it intends to ban or it may have significant unintended consequences.

Conclusion

Many of the concerns with Bill C-8 could be alleviated by:

- deleting the final clause in the definition of conversion therapy, “to repress or reduce non-heterosexual attraction or sexual behaviour”
- clarifying in the exemptions that the following will not be considered conversion therapy:
 - parental guidance on matters of gender or sexuality
 - religious instruction on matters of gender or sexuality
 - the private or public expression of sincerely-held beliefs or views
 - therapeutic or medical care offered to individuals voluntarily seeking support.