

Affirming Sexual Orientation and Gender Identity Act

An Act to amend the Criminal Code and the Canada Health Act (efforts to change sexual orientation or gender identity) and to prohibit appropriation of public funds for related purposes

This enactment amends the *Criminal Code* to:

- (a) create an offence to prohibit providing any treatment that seeks to change the sexual orientation or gender identity of a young person;
- (b) create an offence to prohibit advertising of any prohibited treatments;
- (c) create an offence to encourage or coerce a young person person, or otherwise abuse their position of trust, power or authority so that the young person receives or is to receive any prohibited treatment; and
- (d) remove the offence of anal intercourse.

This enactment also amends the *Canada Health Act* to prevent Canada Health Transfer from being used to pay for any treatment that seeks to change the sexual orientation or gender identity of a person and deduct accordingly from transfers to provinces.

This enactments also prohibits any payment out of federal Consolidated Revenue Fund from being used for providing any treatment that seeks to change the sexual orientation or gender identity of a person.

WHEREAS the Parliament of Canada has repeatedly and expressly opposed prejudice and discrimination based on sexual orientation and gender identity through passage of laws protecting the rights, legal benefits and privileges of all people regardless of their sexual orientation, gender identity or gender expression,

WHEREAS the Canadian Psychological Association and the Canadian Psychiatric Association have adopted a firm position opposing so called “conversion or reparative therapy” attempting to change a person’s sexual orientation or gender identity,

WHEREAS scientific research does not support the efficacy of “conversion or reparative therapy”,

WHEREAS “conversion or reparative therapy” can result in negative outcomes such as distress, anxiety, depression, negative self-image, a feeling of personal failure, difficulty sustaining relationships, and sexual dysfunction, especially for children and youths,

WHEREAS sexual minority children and youth are especially vulnerable populations with unique developmental tasks who lack adequate legal protection from involuntary or coercive treatment,

AND WHEREAS it is not an objective of Canada's public health care policy to create or encourage an unwelcoming and disrespectful environment for sexual minorities,

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Affirming Sexual Orientation and Gender Identity Act*.

CRIMINAL CODE

2. The *Criminal Code* is amended by adding the following after section 218:

Sexual orientation and gender identity treatments

218.1 (1) Every one who provides any treatment that seeks to change the sexual orientation or gender identity of a person under 18 years of age is guilty of

- (a) an offence punishable on summary conviction; or
- (b) an indictable offence and liable to imprisonment for a term not exceeding two years.

Exception

- (2) For greater certainty, the treatments mentioned in subsection (1) do not include:
 - (a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and
 - (b) sex-reassignment surgery or any services related to sex-reassignment surgery.

Person may consent

- (3) Subsection (1) does not apply if the person is 16 years of age or more, is capable with respect to the treatment in the province where the treatment is provided and consents to the provision of the treatment, and the treatment is provided by a medical practitioner who is entitled to practise medicine, psychiatry or psychology under the laws of the province.

Substitute decision-maker cannot consent

- (4) Despite subsection (3) and any other Act, a substitute decision-maker, or anyone but the person themselves, may not give consent on a person's behalf to the provision of any treatment mentioned in subsection (1).

Person in authority

(5) Every one who is in a position of trust or authority towards a person under 18 years of age, or who is in a relationship of dependency with a person under 18 years of age, and who encourages or coerces the person, or otherwise abuses their position of trust, power or authority in relation to the person, so that the person receives or is to receive any treatment mentioned in subsection (1) is guilty of

- (a) an offence punishable on summary conviction; or
- (b) an indictable offence and liable to imprisonment for a term not exceeding two years.

Advertising

(6) Every one who advertises an offer to provide any treatment mentioned in subsection (1) is guilty of an offence punishable on summary conviction.

Mistake of age

(7) It is not a defence to a charge under subsection (1) or (5) that the accused believed that the complainant was 18 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.

Clarity in advertising

(8) It is not a defence to a charge under subsection (6) that the accused did not, or did not intend to, advertise an offer to provide any treatment to anyone under 18 years of age unless the accused took all reasonable steps to make it clear that the offer is not intended for anyone under 18 years of age and to make it so that the offer could not be construed on reasonable grounds to be appealing to a person under 18 years of age, or parents or guardians of the person.

3. Section 159 of the Act is repealed.

CANADA HEALTH ACT

4. The *Canada Health Act* is amended by adding the following after section 19:

Sexual orientation and gender identity treatments

19.1 (1) In order that a province may qualify for a full cash contribution referred to in section 5 for a fiscal year, any treatment that seeks to change the sexual orientation or gender identity of a person must not be payable by the health care insurance plan of the province.

Exception

- (2) For greater certainty, the treatments mentioned in subsection (1) do not include:
- (a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and
 - (b) sex-reassignment surgery or any services related to sex-reassignment surgery.

5. The Act is amended by adding the following after subsection 20(2):

Deduction for sexual orientation and gender identity treatments

(2.1) Where a province fails to comply with the condition set out in section 19.1, there shall be deducted from the cash contribution to the province for a fiscal year an amount that the Minister, on the basis of information provided in accordance with the regulations, determines to have been paid for the treatments mentioned in subsection 19.1(1) by the health care insurance plan of the province in that fiscal year or, where information is not provided in accordance with the regulations, an amount that the Minister estimates to have been so paid.

6. Subsections 20(3) to (5) of the Act is replaced by the following:

Consultation with province

(3) The Minister shall not estimate an amount under subsection (1), (2) or (2.1) without first undertaking to consult the minister responsible for health care in the province concerned.

Separate accounting in Public Accounts - subsection (1) or (2)

(4) Any amount deducted under subsection (1) or (2) from a cash contribution in any of the three consecutive fiscal years the first of which commences on April 1, 1984 shall be accounted for separately in respect of each province in the Public Accounts for each of those fiscal years in and after which the amount is deducted.

Separate accounting in Public Accounts - subsection (2.1)

(4.1) Any amount deducted under subsection (2.1) from a cash contribution in any of the two consecutive fiscal years the first of which is the first fiscal year commencing after this Act coming into force shall be accounted for separately in respect of each province in the Public Accounts for each of those fiscal years in and after which the amount is deducted.

Refund to province - subsection (4)

(5) Where, in any of the three fiscal years referred to in subsection (4), extra-billing or user charges have, in the opinion of the Minister, been eliminated in a province, the total amount deducted in respect of extra-billing or user charges, as the case may be, shall be paid to the province.

Refund to province - subsection (4.1)

(6) Where, in any of the two fiscal years referred to in subsection (4.1), payments for sexual orientation and gender identity treatments have, in the opinion of the Minister, been eliminated in a province, the total amount deducted in respect of payments for sexual orientation and gender identity treatments, as the case may be, shall be paid to the province.

7. The heading before section 18 ("Extra-billing and User Charges") of the Act is replaced by "Extra-billing, User Charges and Prohibitions"

CONSOLIDATED REVENUE FUND

Restriction on payment

8. (1) No payments may be made out of the Consolidated Revenue Fund to anyone, directly or indirectly, for the purpose of providing any treatment that seeks to change the sexual orientation or gender identity of a person.

Exception

- (2) For greater certainty, the treatments mentioned in subsection (1) do not include:
 - (a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and
 - (b) sex-reassignment surgery or any services related to sex-reassignment surgery.

COMING INTO FORCE

Coming into Force

9. This Act comes into force on the day it receives Royal Assent.