

CONVERSION THERAPY BANS

Enshrining a Contested View of Human Nature in Law

This article examines bans on “conversion therapy”, a broad term used to describe efforts or interventions to change or suppress the sexual orientation or gender identity of persons, which a growing number of jurisdictions have passed bans thereon. After examining the normative debate over such bans, the article considers conversion therapy against the framework of international human rights law, followed by a survey of conversion therapy bans (if any) in the US, UK, Canada, Australia and New Zealand. Finally, it discusses Singapore’s stance on conversion therapy and potential legal issues if a ban were passed. The article makes the case that, while coercive, violent or involuntary conduct associated with conversion therapy are violations of human rights and ought to be banned, conversion therapy bans in various jurisdictions are often overly wide and essentially enshrine in law a contested view of human nature, with consequences for various rights and freedoms.

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I. Introduction

1 “Conversion therapy” is a broad term used to describe efforts or interventions to change or suppress the sexual orientation or gender identity (“SOGI”) of persons, ranging from coercive and violent acts on one end, to talk therapy and prayer on the other. According to Independent Expert Victor Madrigal-Borloz appointed by the United Nations Human Rights Council, these interventions are consistently aimed at “effecting a change from non-heterosexual to heterosexual and from trans or gender diverse to cisgender”.²

1 The author would like to thank the anonymous reviewer from the Singapore Academy of Law Journal for the comments on this article. All errors remain the author’s alone.

2 Human Rights Council, *Practices of So-called “Conversion Therapy”: Report of the Independent Expert on Protection Against Violence and Discrimination Based* (cont’d on the next page)

2 Conversion therapy should be distinguished from client-centric approaches that support clients' identity exploration and development without an *a priori* treatment goal for how clients identify or live out their SOGI.³ Such approaches emphasise the therapist's role in assisting the client in attaining or aligning *the client's* personal goals, values and beliefs.⁴

3 A growing number of jurisdictions around the world have passed or have taken steps towards passing bans on conversion therapy. In his report, Madrigal-Borloz called for a global ban on conversion therapy.⁵

4 This article examines conversion therapy bans and makes the case that the scope of such bans is often overly wide and endorses by law a contested view of human nature, with consequences for various rights and freedoms.⁶ Part II⁷ of this article critiques the arguments "for" and "against" such bans, and argues that these bans impose public consequences notwithstanding the evidential and conceptual flux concerning SOGI. Part III⁸ discusses applicable principles under international human rights law, while Part IV⁹ surveys bans on conversion therapy (if any) in the US, the UK, Canada, Australia and New Zealand. Part V¹⁰ then discusses the position in Singapore relating to conversion therapy and critiques calls by activists for a conversion therapy ban against Singapore's legal framework, before concluding (Part VI).¹¹

on Sexual Orientation and Gender Identity UN Doc A/HRC/44/53 (1 May 2020) (hereinafter "Madrigal-Borloz, *Independent Expert Report*") at para 17.

3 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at pp 60–64.

4 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at pp 60–64; American Academy of Child and Adolescent Psychiatry, "Conversion Therapy" (February 2018) <https://www.aacap.org/aacap/policy_statements/2018/Conversion_Therapy.aspx> (accessed 3 March 2021) (hereinafter "AACAP, *Policy on Conversion Therapy*").

5 Madrigal-Borloz, *Independent Expert Report* at paras 83–88.

6 This article addresses conversion therapy bans from a legal perspective, and takes no position on whether conversion therapy is ethical or otherwise as a matter of professional conduct for mental health.

7 See paras 5–44 below.

8 See paras 45–64 below.

9 See paras 65–112 below.

10 See paras 113–134 below.

11 See paras 135–139 below.

II. The debate over conversion therapy

5 Conversion therapy emerged in the late 19th century at a time when the concepts of sexual orientation and transgenderism were developed within the medical field, although these were often pathologised as psychological or neurological disorders.¹² European and American physicians recommended questionable “cures” for homosexuality such as strenuous exercise or that males should engage in sex with female prostitutes.¹³ By contrast, the first reported sex reassignment surgeries were conducted in 1931, if not earlier.¹⁴

6 From the late 19th to mid-20th century, health professionals implemented a range of interventions in order to change individuals’ sexual desires and behaviours towards opposite-sex relations. These ranged from psychoanalysis to forms of aversion therapy aimed at inflicting physical pain whenever individuals experienced homoerotic stimuli, such as the administering of electric shocks, use of chemicals, water deprivation, and physical violence.¹⁵

7 On the other hand, approaches towards gender identity took a different path. In the US, the Johns Hopkins Gender Identity Clinic was established in 1966 and pioneered sex reassignment surgery (now known as “gender affirmation surgery” or “gender confirmation surgery”).¹⁶ Such surgery is aimed at “adjusting the body to the mind” to “achieve a body that more closely resembles [patients’] perceived gender”,¹⁷ rather than *vice versa*. Citing a lack of evidence of improvement in transgender

12 Jack Drescher, “Can Sexual Orientation Be Changed?” (2015) 19(1) J Gay Lesbian Ment Health 84 at 84–86.

13 *Gay Histories and Cultures: An Encyclopedia* (George E Haggerty ed) (New York: Garland Publishing Inc, 2000) at pp 1238–1239; see also Tiffany C Graham, “Conversion Therapy: A Brief Reflection on the History of the Practice and Contemporary Regulatory Efforts” (2019) 52 Creighton L Rev 419 at 421.

14 Tonia Poteat *et al*, “History and Prevalence of Gender Dysphoria” in *Transgender Medicine: A Multidisciplinary Approach* (Leonid Poretsky & Wylie C Hembree eds) (Switzerland: Humana Press, 2019) at p 5; see also Darryl B Hill, “Sexuality and Gender in Hirschfeld’s *Die Transvestiten*: A Case of the ‘Elusive Evidence of the Ordinary’” (2005) 14(3) J Hist Sex 316.

15 *Gay Histories and Cultures: An Encyclopedia* (George E Haggerty ed) (New York: Garland Publishing Inc, 2000) at p 1239; see also Madrigal-Borloz, *Independent Expert Report* at paras 37–54; Tommy Dickinson, “Curing Queers’: Mental Nurses and Their Patients” (Manchester: Manchester University Press, 2015).

16 Charalampos Siotos, MD, *et al*, “Origins of Gender Affirmation Surgery: The History of the First Gender Identity Clinic in the United States at Johns Hopkins” (2019) 83 Ann Plast Surg 132.

17 Mark Fisher *et al*, “Gender Confirmation Surgery” in *Transgender Medicine: A Multidisciplinary Approach* (Leonid Poretsky & Wylie C Hembree eds) (Switzerland: Humana Press, 2019) at p 195.

mental health, Dr Paul McHugh closed the clinic in 1979,¹⁸ but Johns Hopkins Medicine subsequently launched its new Center for Transgender Health in 2017.¹⁹

8 The American Psychiatric Association removed homosexuality from the second edition of the Diagnostic and Statistical Manual of Mental Disorders in 1973 and has opposed conversion therapy for sexual orientation since 1998.²⁰ In late 2018, it came to also oppose gender identity conversion even as gender dysphoria remains listed in the fifth edition of the Manual.²¹ The American Psychological Association has opposed conversion therapy for sexual orientation,²² and has been taking steps towards a new resolution on gender identity change efforts.²³

A. Arguments for and against conversion therapy bans

9 Arguments on either side of conversion therapy bans can broadly be categorised into *normative* (appeals to principle), *empirical* (appeals to evidence) and *methodological* (criticisms against particular methods of conversion therapy) arguments, which can and often do overlap.

(1) Arguments supporting conversion therapy bans

10 Normative arguments against conversion therapy are the most categorical in nature. On the one hand, it is argued that SOGI is a prohibited category of discrimination, and thus conversion therapy is a violation of the right to equality and non-discrimination.²⁴ On the

18 Paul McHugh, “Transgender Surgery Isn’t the Solution” *Wall Street Journal* (13 May 2016).

19 Sue De Pasquale, “Center for Transgender Health Launches” *Hopkins Medicine* (Spring/Summer 2017).

20 “American Psychiatric Association Rebukes Reparative Therapy” *EurekaAlert!* (14 December 1998) <https://www.eurekaalert.org/pub_releases/1998-12/APA-APAR-141298.php> (accessed 3 March 2021).

21 American Psychiatric Association, *Position Statement on Conversion Therapy and LGBTQ Patients* (December 2018).

22 American Psychological Association, *Resolution on “Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts”* (5 August 2009).

23 Kirsten Weir, “A Growing Number of States Ban Sexual Orientation Change Efforts” *American Psychological Association* (10 March 2020) <<https://www.apa.org/news/apa/2020/03/sexual-orientation-change>> (accessed 3 March 2021); see also American Psychological Association, *Report of the APA Task Force on Gender Identity and Gender Variance* (2009); American Psychological Association, *Resolution on “Transgender, Gender Identity, and Gender Expression Non-Discrimination”* (2008).

24 Madrigal-Borloz, *Independent Expert Report* at paras 59–74; OutRight Action International, “Harmful Treatment: The Global Reach of So-called Conversion Therapy” (2019) <https://outrightinternational.org/sites/default/files/Conversion_FINAL_1.pdf> (accessed 3 March 2021).

other hand, leading mental health institutions such as the American Psychiatric Association and American Psychological Association have rejected conversion therapy as being inconsistent with norms of medical ethics, including duties of non-discrimination and to “do no harm”.²⁵

11 To buttress the normative argument premised on the “harm principle”, empirical evidence is presented to show that efforts to change SOGI are not only ineffective, but also harmful. Supporters of bans on conversion therapy typically cite a wide-ranging 2009 study by the American Psychological Association Task Force concerning sexual orientation change efforts (“SOCE”).²⁶ While caveating that “early evidence” was “extremely limited”, the Task Force had concluded that “enduring change to an individual’s sexual orientation is uncommon”.²⁷ It reported that harms of SOCE include “feelings of distress, anxiety, depression, suicidal ideation, self-blame, guilt, and loss of hope among other negative feelings”.²⁸ Similar psychological consequences were referenced in the Madrigal-Borloz report in relation to conversion therapy for both sexual orientation and gender identity.²⁹

12 A final argument is directed at the methods used in conversion therapy. The International Lesbian, Gay, Bisexual, Trans and Intersex Association has listed a series of “dangerous and discredited practices” such as “electric shock, medication, psychotherapy or ‘faith healings’ and ‘casting-out demons’ in religious settings”, which it argued could amount to torture.³⁰ Madrigal-Borloz drew attention to other harmful acts including “beatings, rape, forced nudity, force-feeding or food

25 American Psychological Association, *Resolution on “Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts”* (5 August 2009); Florence Ashley, “Homophobia, Conversion Therapy, and Care Models for Trans Youth: Defending the Gender-affirmative Approach” (2020) 17(4) J LGBT Youth 361 at 374–377.

26 See, eg, Movement Advancement Project, “LGBT Policy Spotlight: Conversion Therapy Bans” (2017) <<https://www.lgbtmap.org/file/policy-spotlight-conversion-therapy-bans.pdf>> (accessed 3 March 2021).

27 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at p 83.

28 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at p 85.

29 Madrigal-Borloz, *Independent Expert Report* at paras 55–58.

30 International Lesbian, Gay, Bisexual, Trans and Intersex Association, *Submissions on “Draft Revised General Comment on the Implementation of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Context of Article 22”* (31 March 2017).

deprivation, isolation and confinement, forced medication, verbal abuse, humiliation and electrocution”.³¹

(2) *Arguments against conversion therapy bans*

13 Advocates who oppose bans on conversion therapy do not dispute the methodological objection to abusive or coercive conduct, but object to the overly wide scope of bans on conversion therapy on the basis of a distinction between coercive and voluntary forms of intervention.³²

14 The International Federation for Therapeutic and Counselling Choice (“IFTCC”) and the Alliance for Therapeutic Choice and Scientific Integrity (“ATCSI”), the latter formerly known as the National Association for Research and Therapy of Homosexuality (“NARTH”), have preferred the term “Sexual Attraction Fluidity Exploration in Therapy” (“SAFE-T”) to convey that “the therapist is not being coercive but merely assisting individuals in a client-centered examination of their sexual attractions”.³³ According to ATCSI, SAFE-T assists individuals to explore the “fluidity of their unwanted same-sex attractions and behavior”.³⁴ A similar approach is taken towards assisting clients with their “unwanted gender feelings or behaviours”.³⁵

15 Empirically, opponents of conversion therapy bans point to the lack of conclusive evidence that sexual orientation is genetic and thus,

31 Madrigal-Borloz, *Independent Expert Report* at para 55.

32 International Federation for Therapeutic and Counselling Choice, “Evidence of Serious Harmful Implications of Therapy Bans” (22 January 2020) <<https://iftcc.org/resource/evidence-of-serious-harmful-implications-of-therapy-bans/>> (accessed 3 March 2021) (hereinafter “IFTCC, *Harmful Implications Document*”).

33 Christopher Rosik, “Sexual Attraction Fluidity Exploration in Therapy (SAFE-T): Creating a Clearer Impression of Professional Therapies That Allow for Change” <https://a20ceadd-0fb7-4982-bbe2-099c8bc1e2ae.filesusr.com/ugd/ec16e9_1940a968273d47f5be4bdf9614d2dd0c.pdf> (accessed 3 March 2021); International Federation for Therapeutic and Counselling Choice, “Submission to Victor Madrigal-Borloz: Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity” (21 December 2019) <<https://d3uxejw946d7m5.cloudfront.net/wp-content/uploads/2019/12/IFTCC-to-UN-HRC-individual-Submission-to-Victor-Madrigal-FINAL-2019-12-21.pdf?x33930>> (accessed 3 March 2021) (hereinafter “IFTCC, *HRC Submission*”).

34 Alliance for Therapeutic Choice and Scientific Integrity, “Guidelines for the Practice of Sexual Attraction Fluidity Exploration in Therapy” <https://a20ceadd-0fb7-4982-bbe2-099c8bc1e2ae.filesusr.com/ugd/ec16e9_68b6f7d8e5bc4daab554c37ee9bcf29f.pdf> (accessed 3 March 2021).

35 International Federation for Therapeutic and Counselling Choice, “Declaration – 2019” (17 November 2019) <https://d3uxejw946d7m5.cloudfront.net/wp-content/uploads/2019/11/IFTCC_Postconference_Statement_2019_English.pdf?x33930> (accessed 3 March 2021) (hereinafter “IFTCC, *Declaration 2019*”).

at least for some persons, not immutable but fluid.³⁶ They highlight the benefits clients receive from SOGI change efforts, while critiquing the quality, objectivity and reliability of studies claiming that attempts to change SOGI are harmful or ineffective.³⁷ Instead, advocates point to various complex biological and environmental influences that lead to homosexual or transgender desires or behaviour.³⁸

16 Normatively, the core argument against conversion therapy bans is premised on autonomy or self-determination. The IFTCC has declared that “everyone should have the freedom and right to walk away from sexual experiences and practices they find unfulfilling, and have support to do so”, and to live in accordance with their values and beliefs.³⁹ To this end, they should be free to seek professional counselling or pastoral help without government interference.⁴⁰

17 Various arguments raised against the bans appeal to rights such as freedom of expression, association and conscience,⁴¹ the right to respect for private and family life, or even the right to marry of those seeking such therapy.⁴² As a direct reply to arguments relying on SOGI as a protected category, opponents argue that conversion therapy bans discriminate against persons who *formerly* identified as homosexual or

36 Christopher Rosik, “The Quiet Death of Sexual Orientation Immutability: How Science Loses When Political Advocacy Wins” *International Federation for Therapeutic and Counselling Choice* (3 August 2016) <<https://iftcc.org/resource/the-quiet-death-of-sexual-orientation-immutability-how-science-loses-when-political-advocacy-wins/>> (accessed 3 March 2021); Quentin Van Meter, “Transgender – A State of Mind in Search of Biology” *International Federation for Therapeutic and Counselling Choice* (17 October 2018) <<https://iftcc.org/resource/transgender-a-state-of-mind-in-search-of-biology/>> (accessed 3 March 2021).

37 IFTCC, *HRC Submission*; IFTCC, *Harmful Implications Document*.

38 IFTCC, *HRC Submission*; IFTCC, *Harmful Implications Document*.

39 IFTCC, *Declaration 2019*.

40 IFTCC, *Declaration 2019*; see also Alliance Defending Freedom, *Complaint in Dr David Schwartz v the City of New York* Case No 1:19-CV-463 (23 January 2019).

41 Alliance Defending Freedom, “Legal Analysis of Oregon HB 2307” (21 February 2015) <<https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/48396>> (accessed 3 March 2021).

42 International Federation for Therapeutic and Counselling Choice, “A Response to the UK Government’s Intended Ban on Therapeutic Choice” (12 October 2018) <https://d3uxejw946d7m5.cloudfront.net/wp-content/uploads/2018/10/IFTCC_Response_to_UK_Government_Ban_on_Therapeutic_Choice_v2.pdf?x3393> (accessed 3 March 2021) (hereinafter “IFTCC, *Response to the UK Government*”).

transgender.⁴³ Conversion therapy bans are criticised as a form of state-imposed “thought-control” and “political suppression”.⁴⁴

(3) *The special case of children*

18 The “do-no-harm” principle takes on a special emphasis in relation to children, in light of their special vulnerability and reduced capacity to make informed decisions, especially at younger ages. Many similar arguments, based on the inviolability or immutability of SOGI or otherwise, are raised in debates over the “best interests” of children, parental rights and responsibilities, and the extent to which the State ought to intervene through such conversion therapy bans.

19 Advocates who favour bans on conversion therapy essentially view conversion therapy as a form of child abuse. Due to the degree of influence that parents and religious groups have over the lives of children, children are additionally vulnerable to pressure and coercion from adults and religious communities on issues of SOGI.⁴⁵ Apart from criticisms that conversion therapy is humiliating, demeaning and discriminatory, advocates argue that it causes a significant loss of self-esteem and a sharp increase in suicidal or depressive tendencies, as well as a host of other self-destructive or high-risk behaviours that continue to persist even as children mature.⁴⁶

20 Whereas proponents of conversion therapy bans generally cite the worst examples of parental and religious abuse to justify the bans, opponents of these bans are concerned about an authoritarian State intruding into aspects of individual and group autonomy, including parent–child relations and religious freedom.⁴⁷ They point to the flaws

43 Elizabeth Woning, “The Short-Sighted Side of Conversion Therapy Bans” (23 April 2019) <<https://www.elizabethwoning.com/essays/2019/4/23/the-short-sided-side-of-conversion-therapy/>> (accessed 3 March 2021); see also IFTCC, *Declaration 2019*.

44 Campaign Life Coalition, *Stop the Ban* <<https://stoptheban.ca/>> (accessed 3 March 2021).

45 National Center for Lesbian Rights and Human Rights Campaign, “Just As They Are: Protecting Our Children from the Harms of Conversion Therapy” (September 2017) <<https://www.nclrights.org/get-help/resource/just-as-they-are-protecting-our-children-from-the-harms-of-conversion-therapy/>> (accessed 3 March 2021).

46 Independent Forensic Expert Group, “Statement on Conversion Therapy” (2020) 72 J Forensic Leg Med 101930; AACAP, *Policy on Conversion Therapy*.

47 Andrea Jones, “How ‘Conversion Therapy’ Bans Hurt Kids” *The Heritage Foundation* (18 February 2020); Evangelical Fellowship of Canada, “Concern over Bill C-6 on Conversion Therapy” (13 October 2020) <<https://www.evangelicalfellowship.ca/Communications/Outgoing-letters/October-2020/Concern-over-Bill-C-6-on-conversion-therapy/>> (accessed 3 March 2021).

in the research cited as evidence of harm, drawing a distinction between unethical practices and voluntary psychotherapy.⁴⁸

21 In addition, criticism is brought against “gender-affirmative” therapy (therapy seeking to affirm children’s sense of gender) for involving the use of pubertal suppression and cross-sex hormones or surgical interventions on children, thereby causing irreversible long-term physical damage, such as infertility.⁴⁹ Among the ranks of critics are a growing number of “de-transitioners” who regret these irreversible interventions later in life and consider that medical professionals should have more actively challenged their desires for transition.⁵⁰

B. Contest over the view of human nature endorsed by the State

22 As seen from the foregoing discussion, the real debates over conversion therapy bans centre on fundamental contestations over human nature on the normative and descriptive levels. These involve questions about what it means to be “human” and the rights and obligations these ought to entail, with implications for families, religious communities, society and the State. On careful examination, a number of normative and empirical flaws emerge in the arguments raised by advocates who support conversion therapy bans.

(1) Evidential and conceptual flux

23 Notwithstanding arguments made in favour of the immutability of sexual orientation, evidence for its biological determination is doubtful.⁵¹ In 2019, a large study of nearly half a million individuals found

48 American College of Pediatricians, “Psychotherapy for Unwanted Homosexual Attraction among Youth” (January 2016) <<https://acpeds.org/position-statements/psychotherapy-for-unwanted-homosexual-attraction-among-youth>> (accessed 3 March 2021); American College of Pediatricians, “Gender Dysphoria in Children” (November 2018) <<https://acpeds.org/position-statements/gender-dysphoria-in-children>> (accessed 3 March 2021).

49 Michelle A Cretella, “Gender Dysphoria in Children and Suppression of Debate” (2016) 21(2) *J Am Physicians Surg* 50; Ryan T Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019) at pp 126–129; “Feminist, Pro-Gay Mother of Trans Child Critiques Bans on ‘Conversion Therapy’” *The Federalist* (16 April 2019).

50 Keira Bell, “Protect Gender Dysphoric Children from the Affirmation Model” *Crowd Justice* (22 September 2020) <<https://www.crowdjustice.com/case/challenge-innate-gender/>> (accessed 3 March 2021); see also Hannah Barnes & Deborah Cohen, “How Do I Go Back to the Debbie I Was?” *BBC News* (26 November 2019).

51 See Lisa M Diamond & Clifford J Rosky, “Scrutinizing Immutability: Research on Sexual Orientation & US Legal Advocacy for Sexual Minorities” (2016) 53(4) *J Sex Res* 363.

that genetic variants could not be used to predict sexual orientation; the study's lead author concluded that "there is no 'gay gene'".⁵² On the other hand, the origins and development of gender identity are not well understood in research.⁵³ Data tends to show a significant degree of fluidity of SOGI among children and adolescents.⁵⁴

24 On a conceptual level, terms such as "sexual orientation" and "gender identity" have lacked precise definitions. The term "sexual orientation" has been variously used in literature to refer to short-term or long-term sexual attraction, one-off sexual encounters or long-term relationships, and inclinations or conduct; the same individual's sexual orientation may be classified differently under each of these definitions.⁵⁵ Whereas the term "gender identity" used to refer to "a sense of being masculine, feminine – or some variant of this";⁵⁶ it has evolved to be understood as a "person's self-concept of their gender (regardless of their biological sex)".⁵⁷

25 Both concepts are thus premised on different, even conflicting, assumptions.⁵⁸ While "sexual orientation" is premised on the existence of

52 Andrea Ganna *et al*, "Large-scale GWAS Reveals Insights into the Genetic Architecture of Same-sex Sexual Behavior" (2019) 365 *Science* 882; Jonathan Lambert, "No 'Gay Gene': Massive Study Homes in on Genetic Basis of Human Sexuality" *Nature* (29 August 2019).

53 Biff F Palmer & Deborah J Clegg, "A Universally Accepted Definition of Gender Will Positively Impact Societal Understanding, Acceptance, and Appropriateness of Health Care" (2020) 95(10) *Mayo Clin Proc* 2235; C E Roselli, "Neurobiology of Gender Identity and Sexual Orientation" (2018) 30 *J Neuroendocrinol* 12562.

54 J L Stewart *et al*, "Developmental Patterns of Sexual Identity, Romantic Attraction, and Sexual Behavior among Adolescents over Three Years" (2019) 77 *J Adolesc* 90; Jiska Ristori & Thomas D Steensma, "Gender Dysphoria in Childhood" (2016) 28(1) *Int'l Rev Psych* 13; Kenneth J Zucker, "The Myth of Persistence: Response to 'A Critical Commentary on Follow-up Studies and "Desistance" Theories about Transgender and Gender Nonconforming Children' by Temple Newhook *et al*" (2018) 19(2) *Int'l J Trans* 1 at 3.

55 Randall L Sell, "Defining and Measuring Sexual Orientation: A Review" (1997) 26(6) *Arch Sex Behav* 643; John M Finnis, "Law, Morality, and 'Sexual Orientation'" (1994) 69 *Notre Dame L Rev* 1049 at 1053–1054; Lisa M Diamond & Clifford J Rosky, "Scrutinizing Immutability: Research on Sexual Orientation & US Legal Advocacy for Sexual Minorities" (2016) 53(4) *J Sex Res* 363 at 365.

56 Natalie Shainess, "The Formation of Gender Identity" (1969) 5(2) *J Sex Res* 75 at 75.

57 Carla Moleiro & Nuno Pinto, "Sexual Orientation and Gender Identity: Review of Concepts, Controversies and their Relation to Psychopathology Classification Systems" (2015) 6 *Front Psychol* 1511.

58 For example, the London-based LGB Alliance has argued that "attempts to introduce confusion between biological sex and the notion of gender are harming LGB people" (LGB Alliance <<https://lgballiance.org.uk/>> (accessed 3 March 2021)). See also Olivia Petter, "'LGB Alliance' Group Faces Criticism for Being Transphobic" *The Independent* (24 October 2019).

binary biological sex (that is, same- or opposite-sex attraction or relations) and said by some advocates to be “immutable”, “gender identity” stresses the fluidity and spectrum of gender *regardless of biological sex*.⁵⁹

26 In a debate which highlights the differences between the two concepts, opponents of sexual orientation conversion have simultaneously accused “gender-affirmative” treatments as being motivated by homophobia,⁶⁰ an allegation that supporters of such treatments have denied.⁶¹ The Coalition of Activist Lesbians (Australia) similarly opposed the inclusion of “gender identity” in Queensland’s ban on conversion therapy on the basis that “harsh medical treatments are outlawed for sexual orientation conversion, while extreme surgery and dangerous hormones are condoned and supported for children, in the case of gender identity”.⁶²

27 Although many leading health institutions have disavowed sexual orientation conversion, the same cannot be said in relation to gender identity, where institutions remain divided.⁶³ The American Psychiatric Association only condemned gender identity conversion in 2018,⁶⁴ 20 years after it condemned conversion therapy for sexual orientation.⁶⁵

28 Perhaps the most compelling argument in the entire debate rests on the principle of individual autonomy, including rights such as privacy, freedom of conscience and freedom of expression; it is a principle that can be marshalled both “for” and “against” conversion therapy bans.

59 Gender activists have made mutually inconsistent and contradictory claims about the alleged immutability of gender identity on one hand, and gender fluidity on the other. For a discussion of the contradictions within such claims, see Ryan T Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019) at pp 45–48.

60 See, eg, Debra Soh, “The Unspoken Homophobia Propelling the Transgender Movement in Children” *Quillette* (23 October 2018).

61 Florence Ashley, “Homophobia, Conversion Therapy, and Care Models for Trans Youth: Defending the Gender-affirmative Approach” (2020) 17(4) *JLGBT Youth* 361.

62 Coalition of Activist Lesbians (Australia), *Submission to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee Health Legislation Amendment Bill 2019, Chapter 5B Conversion Therapies*, Health Legislation Amendment Bill 2019, Submission No 120 (6 January 2020) at p 3.

63 Only a number of position statements of public health institutions collated by the Human Rights Campaign mention “gender identity” in their statements condemning conversion therapy: Human Rights Campaign, “Policy and Position Statements on Conversion Therapy” <<https://www.hrc.org/resources/policy-and-position-statements-on-conversion-therapy>> (accessed 3 March 2021).

64 American Psychiatric Association, *Position Statement on Conversion Therapy and LGBTQ Patients* (December 2018).

65 American Psychiatric Association, *Position Statement on Psychiatric Treatment and Sexual Orientation* (11 December 1998).

The American Psychological Association has stated that “*most people* experience little or no sense of choice about their sexual orientation” [emphasis added],⁶⁶ leaving open the empirical possibility that *at least some people* may experience a sense of “choice” in such matters.

29 In fact, blanket bans on all forms of therapy to change SOGI effectively deprive persons from understanding or exercising choices to change SOGI, if they so desire. These bans promote a self-validating assumption about the alleged immutability of SOGI⁶⁷ by *a priori* declaring any change efforts impossible, unethical or illegal.

30 While SOGI remains conceptually problematic for the reasons discussed above, principles of equality and non-discrimination on the basis of SOGI – if and to the extent that they are invoked – likewise ought to be applied consistently to prohibit discrimination against people who identify as “ex-homosexual” or “ex-transgender”,⁶⁸ and who ought to be free from arbitrary interference by the State in their personal lives. As Orwell poignantly reminded, it is a contradiction in terms to speak of some people being “more equal than others”.⁶⁹

(2) *Harm not conclusively proven for voluntary non-coercive therapies*

31 Flowing from the principle of personal freedom and aspects thereof, it is clear that forms of conversion therapy involving violence or coercive or involuntary conduct ought to be banned. However, voluntary non-coercive forms of talk therapy or religious counselling or prayer addressing unwanted desires or behaviour are categorically different.

66 American Psychological Association, “Sexual Orientation & Homosexuality” <<https://www.apa.org/topics/lgbt/orientation>> (accessed 3 March 2021).

67 Anderson notes that gender activists’ claims about gender fluidity directly contradict their claims about the alleged immutability of gender identity (see Ryan T Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019) at pp 45–48). Gender identity conversion bans are a reflection of such contradiction.

68 In *Core Issues Trust, R (on the application of) v Transport For London* [2014] WLR(D) 35, the English Court of Appeal held that discrimination against a person because of his or her past actual or perceived sexual orientation, or because his or her sexual orientation has changed, was discrimination “because of ... sexual orientation” within the meaning of the Equality Act 2010 (c 15) (UK) (at [98]). For examples of some of these groups of former LGBTQ-identified people, see X-Out-Loud Europe <<https://www.xoutloud.com/>>; Voices of the Silenced <<https://www.voicesofthesilenced.com/>>; Courage International <<https://courage.org/>>.

69 George Orwell, *Animal Farm* (Essex: Pearson Education Ltd, 2001) at p 114.

32 Despite arguments to the contrary, the American Psychological Association Task Force was more equivocal than widely assumed on the alleged harm and ineffectiveness of SOCE. It had noted the diversity of client perceptions of their SOCE experiences, with both positive experiences of personal satisfaction, spiritual fulfilment and perceived improvements in mental health on the one hand, and negative experiences of self-loathing, depression and self-harm on the other.⁷⁰

33 The Task Force opined that there was a “dearth of scientifically sound research on the safety of SOCE”, and could not conclude how likely it was that harm would occur therefrom.⁷¹ It added that “nonaversive and recent approaches to SOCE have not been rigorously evaluated” for their efficacy and thus could not conclude whether “recent forms of SOCE are or are not effective”.⁷²

34 A 2019 *amicus* brief filed by the American Psychological Association has likewise merely asserted the “risk” of harm through SOCE, while noting that one scientifically-valid study has been published since 2009 which showed “significant reduction in psychological distress” from SOCE even as the Association sought to explain and reconcile the study’s findings with its own.⁷³ On the other hand, when changing its position to denounce gender identity conversion, the American Psychiatric Association had simply *refrained* from research on reparative therapy outcomes with gender diverse populations on the basis that “it would *likely be seen as unethical*” [emphasis added], due to the alleged “documented harm” regarding SOCE.⁷⁴

35 In light of these equivocal or bare assertions, it is far from conclusively proven that interventions such as talk therapy or prayer aimed at changing SOGI necessarily cause harm. In any event, acts causing physical or mental harm are already widely subject to criminal

70 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at p 42.

71 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at p 42.

72 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at p 43.

73 American Psychological Association, *Amicus Brief filed in Otto v City of Boca Raton* (17 June 2019). In the words of the United States Court of Appeals for the Eleventh Circuit, “these documents offer assertions rather than evidence”: *Otto v City of Boca Raton* No 19-10604 (11th Cir, 2020).

74 American Psychiatric Association, *Position Statement on Conversion Therapy and LGBTQ Patients* (December 2018).

and civil penalties and consequences across different jurisdictions, along with carefully balanced defences and due process requirements. These include relevant evidentiary thresholds in relation to causation and proof of harm, such that any allegations of harm ought to be specifically proven rather than presumed or assumed.

36 Similarly, it is an error to categorise as child abuse all forms of therapy for children and adolescents addressing unwanted sexual desires or behaviour. Young persons are at a formative stage of their lives, navigating the complexities of identity formation, sexual development and moral growth, shaped by complex factors involving the child's family, community and local customs. While they are physically, mentally and emotionally vulnerable and thus susceptible to coercion and abuse, they also suffer adversely if familial and community relationships are disrupted. Ultimately, a fact-specific inquiry, sensitive to the needs and special vulnerability of children, is necessary.⁷⁵

37 Conversely, conversion therapy bans potentially implicate public order, health and moral concerns due to the wide definitions of SOGI thereunder. As "sexual orientation" is often defined to extend beyond identities and attractions to include behaviours, conversion therapy bans may inadvertently deter therapists or other trusted persons from addressing and advising against illegal, immoral or unhealthy sexual conduct for fear of being accused of engaging in "conversion therapy".⁷⁶ Similarly, the inherent bias of these bans towards "gender-affirmative" treatments may unnecessarily deter professionals addressing gender dysphoria from adopting more cautious "wait-and-see" approaches or advising on health risks involved in treatments such as the use of cross-sex hormones and surgical interventions;⁷⁷ these difficulties are heightened

75 Sean Young, "Does 'Reparative' Therapy Really Constitute Child Abuse?: A Closer Look" (2006) 6 *Yale J Health Pol'y L & Ethics* 163 at 216–219.

76 Ryan T Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019) at pp 132–134 and 142–144. For example, the Coalition for Conscience and Expression criticised Canada's proposed ban on conversion therapy for inadvertently prohibiting "appropriate therapies and forms of support that are intended to address unsafe, underage, harmful, or destructive sexual behaviours": Coalition for Conscience and Expression, *Submission to the Standing Committee on Justice and Human Rights* (23 November 2020).

77 In its submissions to the Queensland Committee regarding the Health Legislation Amendment Bill 2019, Fair Go for Queensland Women wrote:

There is a dearth of evidence to prove that puberty blockers and cross sex hormones are safe or in keeping with the tenet 'first, do not harm.' Many would argue that transition related to gender identity may indeed be a conversion practice that is both harmful and damaging, which is what this amendment [purports] to address.

Fair Go for Queensland Women, Health Legislation Amendment Bill 2019, Submission No 108, 6 January 2020; see also LGB Alliance, *Brief to the House of* (cont'd on the next page)

in relation to children and young persons due to their reduced capacity to give informed consent.⁷⁸

(3) “Private” identities, public consequences

38 These considerations point to the fact that issues of SOGI involve broader ethical, moral and societal norms and policies; they can hardly be answered in purely psychological or psychiatric terms. It is fundamentally a debate over societal morality and the extent to which the law should enforce certain norms of “diversity” and “equality” relating to SOGI.

39 Bans on conversion therapy are often explicitly intended by activists and governments to marshal the instrumentation of the State to enshrine SOGI as an intrinsic aspect of human identity, and to prohibit and discredit attempts to change SOGI in any way.⁷⁹ Such bans mark a distinctly non-liberal turn in traditionally liberal States where the law-morality debate had previously been resolved in favour of decriminalising consensual acts which do not cause direct physical harm to others.⁸⁰

40 As one writer put it, legal prohibitions against conversion therapy have an “expressive power” to create a broad social norm against conversion therapy, and to ratify the inviolability or immutability of sexual orientation and emphasise the State’s role in protecting lesbian, gay, bisexual and transgender (“LGBT”) youth.⁸¹ It is “a radical reformulation of typical child protection arguments” which has “implications for debates over antidiscrimination laws, protections for sexual minority youth, and LGBT adoption and foster care rights.”⁸²

Commons Standing Committee on Justice and Human Rights Regarding Bill C-6 (November 2020).

78 See *R (on the application of) Quincy Bell and A v Tavistock and Portman NHS Trust* [2020] EWHC 3274 (Admin).

79 For example, the Australian Capital Territory’s Sexuality and Gender Identity Conversion Practices Act 2020 (Act No 49 of 2020) (ACT) expressly states that the Act’s objects are to affirm that all people “have characteristics of sexuality and gender identity” and “no combination of those characteristics constitutes a disorder, disease, illness, deficiency, disability or shortcoming”. It also seeks to “recognise and prevent the harm caused by sexuality and gender identity conversion practices” (s 6).

80 See, eg, United Kingdom, *Report of the Departmental Committee on Homosexual Offences and Prostitution* (Cmnd 247, 1957) and *Lawrence v Texas* 539 US 558 (2003). For the discussion on the law-morality debate, see also *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [162]–[169].

81 Marie-Amélie George, “Expressive Ends: Understanding Conversion Therapy Bans” (2017) 68 Ala L Rev 793 at 821–822.

82 Marie-Amélie George, “Expressive Ends: Understanding Conversion Therapy Bans” (2017) 68 Ala L Rev 793 at 821–822.

41 In so doing, conversion therapy bans enshrine in law a highly contested view of human nature. These are rooted in a philosophically dualist view of the body and self, where the “self” or “person” is viewed as being constituted in an inviolable spirit, mind or psyche, whereas the body is a merely material vehicle and thus irrelevant to one’s “true” identity, conduct or relationships.⁸³ Such bans enshrine a form of expressive individualism where a person’s subjective self-identification and expression on the basis of SOGI should be affirmed and supported, whereas disagreement with and attempts to change SOGI are not only frowned upon but also proscribed by law.⁸⁴

42 This dualist view of human nature is not universally shared, drawing dissent especially from classical religious or moral viewpoints which emphasise the integral roles of biology and the human body in relation to human nature and relationships.⁸⁵ Unlike the dualist view, the classical perspective stresses the *embodied* nature of the “self” or “person”, such that the body is not a mere extrinsic tool or instrument; instead, the physical human body and physiological differences of males and females are quintessential to human identity.⁸⁶

43 The objective differences between men and women implicate conduct and relationships, since marriage is more than a union of hearts or minds on this view, but a comprehensive conjugal union that is unitive and procreative, and intrinsically ordered towards family life and the raising of children.⁸⁷ Due to the emphasis on the integrity of *both* body *and* mind, the classical perspective rejects the notion that “transition” is the only solution for people with gender dysphoria.⁸⁸

83 Robert P George, “Gnostic Liberalism” *First Things* (December 2016) <<https://www.firstthings.com/article/2016/12/gnostic-liberalism>> (accessed 3 March 2021); see also Patrick Lee & Robert P George, *Body-Self Dualism in Contemporary Ethics and Politics* (New York: Cambridge University Press, 2008) at pp 176–217.

84 For example, one author wrote: “The well-documented attempts to change homosexuality are little more than thinly-veiled efforts to eliminate it by homophobic zealots who act under the shameless guise of beneficence and the flimsy aegis of professionalism. The law cannot tolerate this.” (Laura A Gans, “Inverts, Perverts, and Converts: Sexual Orientation Conversion Therapy and Liability” (1999) 8 BU Pub Int LJ 219 at 249).

85 Sherif Girgis, Ryan T Anderson & Robert P George, *What Is Marriage? Man and Woman: A Defense* (New York: Encounter Books, 2012) at pp 23–36.

86 Patrick Lee & Robert P George, *Body-Self Dualism in Contemporary Ethics and Politics* (New York: Cambridge University Press, 2008) at pp 4–49.

87 Sherif Girgis, Ryan T Anderson & Robert P George, *What Is Marriage? Man and Woman: A Defense* (New York: Encounter Books, 2012) at pp 24–32.

88 Ryan T Anderson, *When Harry Became Sally: Responding to the Transgender Moment* (New York: Encounter Books, 2019) at pp 211–217.

44 As proponents and opponents of conversion therapy bans both recognise, these contesting views of human nature carry numerous legal implications concerning private and public conduct, marriage, family and children's rights.⁸⁹ By enshrining the more subjective SOGI identities in law, conversion therapy bans potentially put at odds with the law individuals and groups who hold and wish to order their lives according to the classical emphasis on the value of biology to human identity. Thus, even though SOGI is considered "private", conversion therapy bans impose objective public consequences, impacting numerous rights, freedoms and other aspects of public policy.

III. Conversion therapy bans under international human rights law

45 International human rights law marks a distinct shift away from the state-centric focus of international law and a significant caveat on the classical principle that States are free to act unless otherwise prohibited by international law.⁹⁰ Depending on the scope of the right, human rights impose both negative and positive obligations on States, to refrain from violating and to take steps to protect from violations of human rights.⁹¹

46 Nevertheless, like any other area of law, the normative foundations, nature and content of human rights remain highly contested, and a distinction needs to be carefully drawn between human rights and political claims which are couched in terms of "rights".⁹²

A. *Sexual orientation, gender identity and the debate over human nature*

47 The categorical claim that *all forms of conversion therapy* violate human rights⁹³ is weak as a matter of international human rights law,

89 See, eg, Marie-Amélie George, "Expressive Ends: Understanding Conversion Therapy Bans" (2017) 68 Ala L Rev 793 and Core Issues Trust, "The Real Purpose of Therapy Bans: Maltese Christians Speak Out" <<https://www.core-issues.org/leading-stories-and-research/the-real-purpose-of-therapy-bans-maltese-christians-speak-out>> (accessed 3 March 2021).

90 *SS Lotus (France v Turkey)* PCIJ (ser A) No 10 (7 September 1927).

91 International Covenant on Civil and Political Rights (999 UNTS 171) (16 December 1966; entry into force 23 March 1976) (hereinafter "ICCPR") Art 2; Human Rights Committee, *General Comment No 31: The Nature of the General Obligation Imposed on States Parties to the Covenant* UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) at para 6.

92 See Thio Li-ann, "The Historical Origins and Contemporary Evolution of International Human Rights Law" (2009) 21 SAclJ 261 at 276–281.

93 Madrigal-Borloz, *Independent Expert Report* at para 1.

given that SOGI remains a contested category of non-discrimination under the right to equality. The prohibited grounds of discrimination under Art 26 of the International Covenant on Civil and Political Rights⁹⁴ (“ICCPR”) include “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, but make no explicit reference to SOGI.

48 In *Toonen v Australia*,⁹⁵ the Human Rights Committee controversially opined – without giving specific reasons – that “sex” under the ICCPR included “sexual orientation”.⁹⁶ Its views, which are non-binding even on States Parties, notably departed from the generally-accepted interpretation of “sex” in anti-discrimination law.⁹⁷ The Committee has continued to maintain “sexual orientation” as a prohibited ground of discrimination under Art 26, albeit as “other status”.⁹⁸

49 Yet, to date, States continue to differ widely about the status of SOGI, thereby calling into doubt whether SOGI is a prohibited ground of discrimination within the ordinary meaning of the ICCPR in light of its context, object and purpose,⁹⁹ let alone under customary international law (“CIL”).¹⁰⁰ For example, many States from Africa and Asia,¹⁰¹ as well as the Organization of Islamic Cooperation – which has 57 Member States – have consistently rejected attempts to include SOGI as a category under human rights law.¹⁰²

94 999 UNTS 171 (16 December 1966; entry into force 23 March 1976).

95 Communication No 488/1992 (UN Doc CCPR/C/50/D/488/1992) (31 March 1994).

96 Human Rights Committee, *Toonen v Australia*, Communication No 488/1992 (UN Doc CCPR/C/50/D/488/1992) (31 March 1994) at para 8.7. Australia had conceded that sexual orientation could be included in “other status”.

97 *Grant v South West Trains Ltd* [1998] EUECJ C-249/96 (17 February 1998) at para 46; see also Human Rights Committee, *General Comment No 33: Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* UN Doc CCPR/C/GC/33 (25 June 2009) at para 11.

98 Human Rights Committee, *X v Colombia*, Communication No 1361/2005 (UN Doc CCPR/C/89/D/1361/2005) (30 March 2007); *Young v Australia*, Communication No 941/2000 (UN Doc CCPR/C/78/D/941/2000) (18 September 2003).

99 See the general rule of treaty interpretation under Art 31 of the Vienna Convention on the Law of Treaties (1155 UNTS 331) (23 May 1969; entry into force 27 January 1980).

100 Thio Li-ann, “At Level of International Law, There is No Established Human Right to ‘Sexual Orientation’” *Today* (25 September 2018); Dominic McGoldrick, “The Development and Status of Sexual Orientation Discrimination under International Human Rights Law” (2016) 16 *Hum Rts L Rev* 613 at 614 and 657–658; A Rudman, “The Value of the Persistent Objector Doctrine in International Human Rights Law” (2019) 22 *PER / PELJ* 1.

101 See M Joel Voss, “Contesting Sexual Orientation and Gender Identity at the UN Human Rights Council” (2018) 19 *Hum Rts Rev* 1.

102 Organization of Islamic Cooperation, Resolution 3/1-F on “Welcoming Resolution 4/43-C of the Conference of Foreign Ministers on Rejection of the Human Rights
(cont'd on the next page)

50 The status of SOGI under international law stands in contrast with the wide consensus against torture, where the prohibition thereof is accepted as part of CIL and a peremptory norm (*jus cogens*),¹⁰³ overriding all other treaty obligations.¹⁰⁴ The prohibition under Art 7 of the ICCPR that “[no] one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” includes acts that cause both physical and mental pain and suffering.¹⁰⁵ However, since the term “torture” carries a special stigma, it is reserved for the most severe forms of ill-treatment.¹⁰⁶

51 There is no doubt that certain coercive, violent and involuntary *methods* used in conversion therapy – such as beatings, rape, forced nudity or prolonged involuntary isolation and confinement¹⁰⁷ – could amount to torture or, at least, cruel, inhuman or degrading treatment or punishment. However, this is far from saying that *all* methods used in conversion therapy rise to such a level of severity in pain and suffering as to fall foul of the prohibition.¹⁰⁸

B. Protection of individual and group autonomy under international law

52 The foregoing analysis shows that international human rights law does not mandate a categorical norm against *all* forms of conversion therapy. Instead, human rights law requires a careful balance of various

Council Resolution on Sexual Orientation” OIC/-FamilyMC/2017/RES./FINAL (9 February 2017); Organization of Islamic Cooperation, Independent Permanent Human Rights Commission, “Study on Sexual Orientation and Gender Identity in the light of Islamic Interpretations and International Human Rights Framework” (May 2017).

103 *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* ICJ Reports 2012 at p 422 at [99]; *Al-Adsani v United Kingdom* [2001] ECHR 761 at [61]; see also *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [27].

104 Vienna Convention on the Law of Treaties 1155 UNTS 331 (23 May 1969; entry into force 27 January 1980) Arts 53, 64 and 71.

105 Human Rights Committee, *General Comment No 20* UN Doc HRI/GEN/1/Rev.9 (Vol I) (10 March 1992).

106 *Ireland v United Kingdom* [1978] ECHR 1 at [167]; *Gäfgen v Germany* [2010] ECHR 759 at [87]–[108]; see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1465 UNTS 85) (4 February 1985; entry into force 26 June 1987) Arts 1 and 16. The Convention limits its definition of “torture” to such acts “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Art 1(1)).

107 See Madrigal-Borloz, *Independent Expert Report* at para 55.

108 Consensual medical or scientific experimentation is expressly excluded from the prohibition under Art 7 of the ICCPR.

rights and freedoms, including personal autonomy and the relevance of human rights that protect facets thereof.

53 Matters concerning sexuality and gender,¹⁰⁹ as well as values and beliefs,¹¹⁰ are highly personal, sensitive and intimate matters. These variously attract rights protections such as privacy, or freedom of opinion and expression, and of thought, conscience and religion.¹¹¹ Coercive or involuntary forms of conversion therapy, including where consent is obtained through deception, amount to violations or abuses of these rights.¹¹²

54 On the other hand, the right to privacy includes “the right for each individual to approach others in order to establish and develop relationships with them and with the outside world”.¹¹³ Freedom of religion, association and expression likewise protect the rights of individuals to associate with others, manifest their religion or beliefs,¹¹⁴ and to seek, receive and impart information and ideas of all kinds, regardless of frontiers.¹¹⁵

55 A ban that extends even to consensual talk therapy between an adult client and a therapist, counsellor or religious minister infringes upon these immensely personal aspects of human identity and relationships. In appropriate cases, these may also engage minority rights under Art 27 of the ICCPR.¹¹⁶ It would be immensely difficult, if not impossible, for any State to justify the necessity and proportionality of bans which extend

109 ICCPR Art 17. See, eg, *Dudgeon v United Kingdom* [1981] ECHR 5; *Goodwin v United Kingdom* [2002] ECHR 588; and Human Rights Committee, *Toonen v Australia*, Communication No 488/1992 (UN Doc CCPR/C/50/D/488/1992) (31 March 1994) at paras 8.1–8.6.

110 ICCPR Art 18; *Eweida v United Kingdom* [2013] ECHR 37 at [79]–[82] and [102]–[104].

111 ICCPR Arts 17, 18 and 19.

112 See *Vilnes v Norway* [2013] ECHR 1240 at [244] and *Ivanova v Bulgaria* [2007] ECHR 679 at [79].

113 In *Altay v Turkey (No 2)* [2019] ECHR 276, the European Court of Human Rights held that the lawyer-client relationship was protected by the right to private life, since the right “may include professional activities or activities taking place in a public context” (at [49]).

114 *Hasan and Chaush v Bulgaria* [2000] ECHR 509 at [62].

115 ICCPR Arts 18(1), 19(2) and 22. See also Human Rights Committee, *General Comment No 34* UN Doc CCPR/C/GC/34 (12 September 2011) at para 11.

116 ICCPR Art 27. The protection of minority rights is “directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole” (Human Rights Committee, *General Comment No 23* UN Doc CCPR/C/21/Rev.1/Add.5 (8 April 1994) at para 9).

thereto, due to the lack of conclusive evidence of harm to the recipient, let alone any harm to the rights and freedoms of others.¹¹⁷

56 By contrast, arguments favouring bans on conversion therapy that appeal to the right to health are less persuasive. Article 12 of the International Covenant on Economic, Social and Cultural Rights¹¹⁸ requires States Parties to take steps towards the full realisation of everyone to “the enjoyment of the highest attainable standard of physical and mental health”.¹¹⁹ Where consent and objective medical evidence are absent, there is no doubt that state-imposed mandatory “cures” of lesbian, gay, bisexual transgender and intersex persons would amount to a violation of their right to health.¹²⁰

57 However, consensual conduct lies in a different category. The right to health encompasses the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation thereof.¹²¹ Given the lack of conclusive evidence of harm and that *at least some people* receive or perceive a benefit from voluntary participation in talk therapy,¹²² a ban which limits individuals’ choices of voluntary therapy options cannot be easily justified thereto.

58 Least persuasive by far are arguments raised by opponents of conversion therapy bans appealing to the right to marry, which claim that conversion therapy bans interfere with the rights of people who seek therapy to pursue personal life-goals of heterosexual marriage.¹²³ While the human right to marry under Art 23(2) of the ICCPR is well established as referring to “the union between a man and a woman wishing to marry

117 *Dudgeon v United Kingdom* [1981] ECHR 5 at [60].

118 993 UNTS 3 (16 December 1966; entry into force 3 January 1976).

119 International Covenant on Economic, Social and Cultural Rights (993 UNTS 3) (16 December 1966; entry into force 3 January 1976) Art 12; see Madrigal-Borloz, *Independent Expert Report* at paras 60–61.

120 See Committee on Economic, Social and Cultural Rights, *General Comment No 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)* UN Doc E/C.12/GC/22 (2 May 2016) at para 23.

121 Committee on Economic, Social and Cultural Rights, *General Comment No 14 (2000) on the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)* UN Doc E/C.12/2000/4 (11 August 2000) at para 9.

122 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at pp 42–43.

123 See, eg, IFTCC, *Response to the UK Government*.

each other”¹²⁴ it is open to States to extend recognition to other forms of unions, including same-sex marriage.¹²⁵ More significantly, participation in the institution of marriage is a voluntary choice made by individuals, which a ban on conversion therapy neither compels nor restricts.

C. Children’s rights

59 A similar carefully tailored approach towards conversion therapy bans is required under the Convention on the Rights of the Child¹²⁶ (“CRC”), which is the most widely ratified international human rights instrument to date. The CRC embodies an understanding of both the vulnerability and evolving maturity of children, whose identities are shaped by complex factors involving the child’s family, community and local customs.¹²⁷ A “child” is defined under the CRC as a human being below the age of 18 years, unless majority is attained earlier under the law applicable to the child.¹²⁸ In all actions concerning children, the best interests of children shall be a primary consideration for States Parties, which is a complex fact-specific inquiry to be addressed on a case-by-case basis.¹²⁹

60 SOGI is not expressly recognised as part of a child’s identity, although the CRC defines “identity” non-exhaustively to expressly include the child’s “nationality, name and family relations”.¹³⁰ Given the lack of consensus among States as to the status of SOGI as a protected category under treaty law or CIL as per the discussion above, it is doubtful that the concept of “identity” within the CRC encompasses

124 Human Rights Committee, *Juliet Joslin et al v New Zealand*, Communication No 902/1999 (UN Doc A/57/40) (17 July 2002) at para 8.2; see also *Hämäläinen v Finland* [2014] ECHR 787.

125 See, eg, Human Rights Committee, *C v Australia*, Communication No 2216/2012 (UN Doc CCPR/C/119/D/2216/2012) (3 August 2017).

126 Convention on the Rights of the Child (1577 UNTS 3) (20 November 1989; entry into force 2 September 1990) (hereinafter “Convention on the Rights of the Child”). See the status of the Convention at United Nations Treaty Collection <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en>.

127 See Art 5 of the Convention on the Rights of the Child.

128 Convention on the Rights of the Child Art 1.

129 Convention on the Rights of the Child Art 3. Committee on the Rights of the Child, *General Comment No 14 (2013) on the Right of the Child to Have His Or Her Best Interests Taken As a Primary Consideration (Art 3, Para 1)* UN Doc CRC/C/GC/14 (29 May 2013) (“hereinafter “CRC, General Comment No 14”) at p 5

130 Convention on the Rights of the Child Art 8(1). Contrast *General Comment No 14*, where the Committee defined a child’s identity as including “sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality”, but omitting the explicit references to “nationality, name and family relations” under Art 8(1) (CRC, *General Comment No 14* at p 7).

SOGI. Instead, matters of sexuality and gender, as well as values and beliefs thereto, should properly be considered within children's rights to privacy, freedom of expression, association, and of thought, conscience and religion under Arts 13 to 16 of the CRC, which include children's rights to engage in private conversations on these matters.¹³¹

61 The concept of autonomy within the framework of the CRC does not take the absolute position that children are either fully capable or incapable of consent, but rather takes into account the evolving capacities of the child and the shifting balance in relation to the rights and duties of parents and legal guardians as the child matures. Article 12(1) of the CRC provides that the views of children ought to be given due weight in accordance with the age and maturity of the child.¹³² In recognition of their primary responsibility for the upbringing and development of children, the CRC recognises the rights and duties of parents and legal guardians to provide direction to children in the exercise of their rights to freedom of thought, conscience and religion.¹³³

62 Thus, the non-binding views of the Committee on the Rights of the Child condemning the “*imposition* of so-called ‘treatments’ to try to change sexual orientation and *forced* surgeries or treatments on intersex adolescents” [emphasis added]¹³⁴ cannot be accepted without some important caveats. If forcibly imposed by the State, such “treatments” amount to violations of children's and parents' rights, or both, *a fortiori* due to the lack of consent, apart from physical or mental harm (if any).

63 However, where persons having care of the child are concerned, the State must carefully balance the primary responsibilities of parents and legal guardians for children's upbringing and development against the duty of the State to protect children from “physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”.¹³⁵

64 Due to the lack of conclusive proof of harm in relation to talk therapy or spiritual interventions like prayer, blanket bans extending

131 See Committee on the Rights of the Child, *General Comment No 4 (2003) on Adolescent Health and Development in the Context of the Convention on the Rights of the Child* UN Doc CRC/GC/2003/4 (1 July 2003) at para 11.

132 Convention on the Rights of the Child Art 12(1).

133 Convention on the Rights of the Child Arts 14(1) and 18(1).

134 See Committee on the Rights of the Child, *General Comment No 20 (2016) on the Implementation of the Rights of the Child During Adolescence* UN Doc CRC/C/GC/20 (6 December 2016) at paras 34 and 43.

135 Convention on the Rights of the Child (20 November 1989, 1577 UNTS 3) Arts 18 and 19.

to these forms of intervention for children are unlikely to fulfil such a balance. Physical or mental harm should instead be specifically proven in each case, with due weight given to the consent of the child and of parents or legal guardians to the interventions, in light of the child's progressive maturation and acquisition of knowledge, competencies and understanding of one's identity and rights.¹³⁶

IV. Conversion therapy bans in various jurisdictions

65 Conversion therapy bans have taken various forms across jurisdictions and exist on a spectrum. On the mildest end are policy statements, such as the Manitoba Government's position that conversion therapy can have "no place" in the Canadian province's public healthcare system.¹³⁷ Further in intensity are healthcare and business regulations, designating conversion therapy as unprofessional conduct or prohibited activities. The strictest are generally applicable criminal sanctions, extending to religious individuals and groups. Depending on the jurisdictions, the measures may overlap, with different bans adopted at the federal, state or municipal levels according to their respective competencies.

66 Regardless of their specific forms, all bans elevate into law a perceived consensus of leading mental health institutions regarding conversion therapy, thereby extending such professional ethical standards to society writ large or parts thereof. Due to the wide definition of "conversion therapy" drawn from policy papers of these institutions with minimal modification, most bans omit to draw basic legal distinctions between the different forms of conduct associated with conversion therapy or degrees of physical and psychological harm (if any), or the element of consent. Despite the lack of conclusive proof in relation to non-aversive or voluntary interventions, harm and causation thereof are often presumed or assumed by legislatures when passing such legislation.

67 The experiences of the US, the UK, Canada, Australia and New Zealand thus demonstrate these flaws of conversion therapy legislation, along with their potential impact on various rights and freedoms, including aspects of individual and group autonomy.

136 See Committee on the Rights of the Child, *General Comment No 7 (2005) on Implementing Child Rights in Early Childhood* UN Doc CRC/C/GC/7/Rev.1 (20 September 2006) at para 17.

137 Government of Manitoba, "Position on Conversion Therapy" <https://www.gov.mb.ca/health/conversion_therapy.html> (accessed 3 March 2021).

A. US

68 California was the first state in the US to prohibit conversion therapy, which it referred to as “SOCE”. Passed in September 2012 as an amendment to the Business and Professions Code,¹³⁸ Senate Bill No 1172¹³⁹ (“SB1172”) prohibited mental health providers – defined to include licensed or registered marriage and family therapists – from engaging in SOCE with a patient under 18 years of age, designating SOCE as “unprofessional conduct”.

69 SOCE was defined under SB1172 as “any practices by mental health providers that seek to change an individual’s sexual orientation”, including “efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex”.¹⁴⁰ Mental health providers who do so would be subject to discipline by the licensing entity for that mental health provider.¹⁴¹

70 New Jersey followed around a year later by enacting a similar ban under Assembly Bill No 3371¹⁴² (“A3371”). Oregon’s ban in 2015 was the first to use the term “conversion therapy” in its House Bill No 2307¹⁴³ (“HB2307”). HB2307 explicitly included “gender identity” within the definition, while simultaneously permitting gender transition by excluding from the ban counselling that assists a client who is seeking to undergo a gender transition or in the process thereof.

71 To date, 20 states have passed state-wide bans on conversion therapy for minors, along with many other municipal bans.¹⁴⁴ Since 2015,¹⁴⁵ congressional bills had been introduced in the House of

138 Stats 1937, ch 399 (California).

139 Cap 835 (California).

140 California Business and Professions Code (Stats 1937, ch 399) § 865. However, excluded from the definition of “SOCE” were psychotherapies that (a) provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (b) do not seek to change sexual orientation.

141 California Business and Professions Code (Stats 1937, ch 399) § 865.2.

142 PL2013, Cap 150 (New Jersey).

143 Cap 79 (Oregon).

144 Movement Advancement Project, “Conversion ‘Therapy’ Laws” <https://www.lgbtmap.org/equality-maps/conversion_therapy> (accessed 3 March 2021).

145 HR2450 – 114th Congress (2015–2016): Therapeutic Fraud Prevention Act.

Representatives and the Senate,¹⁴⁶ but these have not passed into law and there is no federal ban on conversion therapy as of the time of writing.

(1) *Pre-NIFLA constitutional challenges against conversion therapy bans*

72 SB1172 and A3371 were challenged and upheld by the Ninth and Third Circuit Courts of Appeals in the leading cases of *Pickup v Brown*¹⁴⁷ (“*Pickup*”) and *King v Governor of the State of New Jersey*¹⁴⁸ (“*King*”) respectively. Brought by individuals and organisations that provided talk therapy, as well as minor patients and their parents in the case of *Pickup*, their primary arguments were based on the rights to freedom of speech, association and religion under the First Amendment to the Constitution of the United States.

73 In both cases, the courts opined that First Amendment rights of professionals existed on a “continuum”, which was “somewhat diminished” within the confines of a professional relationship.¹⁴⁹ While the court in *Pickup* characterised SB1172 as regulating “conduct” instead of “speech”, even in cases of talk therapy,¹⁵⁰ a contrary conclusion was reached in *King*, where the latter court considered that the enterprise of characterising verbal and written communications as “conduct” was unprincipled and susceptible to manipulation.¹⁵¹

74 Having declined to apply strict scrutiny to the laws, both courts deferred to the judgment of the state legislatures in their conclusions that SOCE was harmful and ineffective, in reliance on opinions of various professional organisations such as the American Psychological Association.¹⁵² The court in *King* was relatively more circumspect regarding the matter, noting the “limited amount of methodologically sound research” on SOCE counselling.¹⁵³ Despite its doubts, the court opined – without evidence – that sexual orientation was a “fundamental aspect” of a minor client’s identity and thus the Legislature’s empirical judgment that the child might suffer psychological harm if repeatedly

146 See, eg, HR 3570 – 116th Congress (2019–2020): Therapeutic Fraud Prevention Act of 2019; HR 1981 – 116th Congress (2019–2020): Prohibition of Medicaid Funding for Conversion Therapy Act; HR 5 – 116th Congress (2019–2020): Equality Act.

147 728 F 3d 1042 (9th Cir, 2013).

148 767 F 3d 216 (3rd Cir, 2014).

149 *Pickup v Brown* 728 F 3d 1042 at 1225–1229 (9th Cir, 2013); *King v New Jersey* 767 F 3d 216 at 231–233 (3rd Cir, 2014).

150 *Pickup v Brown* 728 F 3d 1042 at 1229 (9th Cir, 2013).

151 *King v New Jersey* 767 F 3d 216 at 228 (3rd Cir, 2014).

152 *Pickup v Brown* 728 F 3d 1042 at 1231–1232 (9th Cir, 2013); *King v New Jersey* 767 F 3d 216 at 238–239 (3rd Cir, 2014).

153 *King v New Jersey* 767 F 3d 216 at 239 (3rd Cir, 2014).

told by an authority figure that her sexual orientation was “an undesirable condition” was “highly plausible”.¹⁵⁴

75 With regard to challenges brought by minors and their parents, the jurisprudence was likewise highly statist and paternalistic, holding that parental rights “do not include the right to choose a specific type of provider for a specific medical or mental health treatment that *the state* has reasonably deemed harmful” [emphasis added].¹⁵⁵

76 Arguments on the basis of freedom of association and religion failed before the courts in *Pickup* and *King*. The former excluded the therapist–client relationship from the scope of freedom of association protections,¹⁵⁶ while the latter held that the law did not violate freedom of religion as it was neutral and generally applicable.¹⁵⁷ Courts have consistently denied the standing of therapists to bring claims on behalf of their clients.¹⁵⁸

(2) *Post-NIFLA turn against conversion therapy bans*

77 The Supreme Court had twice declined to hear appeals regarding conversion therapy bans.¹⁵⁹ However, the court’s reasoning in *National Institute of Family and Life Advocates v Becerra*¹⁶⁰ (“NIFLA”) marked a turning point in American jurisprudence on such bans, where the Supreme Court had by majority expressly rejected the reasoning in *Pickup* and *King* that classified “professional speech” as a separate category under the First Amendment.

78 Post-NIFLA court decisions have since turned against conversion therapy bans. In *Vazzo v City of Tampa*,¹⁶¹ the District Court considered that *Pickup* and *King* were “possibly abrogated” on First Amendment grounds. However, the court granted summary judgment against Tampa Ordinance 2017-47 on another basis, namely that the municipal Ordinance was pre-empted by the comprehensive Florida regulatory scheme for healthcare regulation and discipline.¹⁶² Part of the ruling

154 *King v New Jersey* 767 F 3d 216 at 239 (3rd Cir, 2014).

155 *Pickup v Brown* 728 F 3d 1042 at 1236 (9th Cir, 2013); *John Doe v Christie* 33 F Supp 3d 518 at 530 (DNJ, 2014).

156 *Pickup v Brown* 728 F 3d 1042 at 1233 (9th Cir, 2013).

157 *King v New Jersey* 767 F 3d 216 at 241–243 (3rd Cir, 2014).

158 See *King v New Jersey* 767 F 3d 216 at 243–244 (3rd Cir, 2014) and *King v Christie* 981 F Supp 2d 296 at 311–312 (DNJ, 2013).

159 Andrew Chung, “US Top Court Rejects ‘Gay Conversion’ Therapy Ban Challenge” *Reuters* (1 May 2017).

160 138 S Ct 2361 at 2371–2372 (2018).

161 *Vazzo v City of Tampa* 415 F Supp 3d 1087 at 1091 (MD Fla, 2019).

162 *Vazzo v City of Tampa* 415 F Supp 3d 1087 at 1107 (MD Fla, 2019).

turned on Florida's right of privacy, where District Judge William F Jung declared: "Nothing is more intimate, more private, and more sensitive, than a growing young man or woman talking to a mental health therapist about sex, gender, preferences, and conflicting feelings."¹⁶³

79 While a preliminary injunction against the conversion therapy ban in Palm Beach County and the City of Boca Raton was denied at first instance in *Otto v City of Boca Raton*¹⁶⁴ ("Otto"), the Eleventh Circuit Court of Appeals overturned the District Judge's decision by a two-one majority. The court considered that the ban was a non-content-neutral restriction that failed the test of strict scrutiny under the First Amendment, due to the lack of evidence of harm in relation to speech or non-aversive therapy.¹⁶⁵ In the words of the court, the documents cited in support of alleged harm "offer assertions rather than evidence."¹⁶⁶

80 In contrast with the statist approach of *Pickup* and *King*, the majority's reasoning in *Otto* was premised on a rejection of government paternalism in policing diverse viewpoints. Judge Grant opined on behalf of the court that "the First Amendment does not allow communities to determine how their neighbors may be counseled about matters of sexual orientation or gender."¹⁶⁷

81 On the other hand, New York City provided an example of a Legislature which acted pre-emptively to stave off potentially unfavourable court rulings. Noting the leanings of the courts, the City repealed its conversion therapy ban in October 2019 and later reached a settlement with Orthodox Jewish therapist Dovid Schwartz when Alliance Defending Freedom brought a challenge on his behalf.¹⁶⁸

163 *Vazzo v City of Tampa* 415 F Supp 3d 1087 at 1097 (MD Fla, 2019).

164 *Otto v City of Boca Raton* 353 F Supp 3d 1237 (SD Fla, 2019).

165 *Otto v City of Boca Raton* No 19-10604 (11th Cir, 2020).

166 *Otto v City of Boca Raton* No 19-10604 (11th Cir, 2020).

167 *Otto v City of Boca Raton* No 19-10604 (11th Cir, 2020). In her dissent, Judge Martin considered that "the Localities' narrow regulation of a harmful medical practice affecting vulnerable minors falls within the narrow band of permissibility".

168 Mary Anne Pazanowski, "New York Therapist, City Settle Suit over Gay Conversion Law" *Bloomberg* (13 July 2020). See the settlement agreement on the Alliance Defending Freedom website <<http://www.adfmedia.org/files/SchwartzSettlement.pdf>> (accessed 3 March 2021).

(3) *The Utah compromise*

82 By contrast, Utah adopted a legislative compromise which sought to balance the competing rights and interests at hand, which was ultimately accepted by the Latter-Day Saints (“LDS”) Church.¹⁶⁹

83 An original Bill seeking to ban conversion therapy, modelled on similar bans in other states, failed in 2019 after amendments were proposed to the Bill that watered down the scope of the ban.¹⁷⁰ Although the LDS Church maintained its opposition to conversion therapy and that its therapists do not practise it, it had rejected the proposed rules as “ambiguous” and “overbroad”.¹⁷¹

84 However, pursuant to a compromise between the LDS Church and activists, an amended Bill passed in January 2020, providing a wider scope for exploration and discussions of morality or religion. Exempted from the definition of “conversion therapy” are, among other things, practices or treatments which are “neutral” with respect to SOGI, address unlawful, unsafe, premarital or extramarital sexual activities, or discuss the patient or client’s moral or religious beliefs or practices with them.¹⁷² In deference to religious or family relationships, the prohibition against provision of conversion therapy to minors does not apply to clergy members, religious counsellors, parents and grandparents who are acting substantially in those capacities.¹⁷³

85 Other states have sought to emulate Utah’s model, with similar Bills on conversion therapy proposed in states such as Arizona¹⁷⁴ and Iowa,¹⁷⁵ but with limited success.

169 Tara Law, “Why the LDS Church Joined LGBTQ Advocates in Supporting Utah’s Conversion Therapy Ban” *Time* (29 November 2019).

170 House Bill 399, 21 February 2019 (Utah); House Bill 399, 5th Sub (Salmon), 5 March 2019 (Utah).

171 Church of Jesus Christ of the Latter-Day Saints Family Services, “Comments on Proposed Amendments to the Psychologist Licensing Act Rule (DAR file no 44032) & Proposed Amendments to the Mental Health Professional Practice Act Rule (DAR file no 44031)” (15 October 2019) <<https://newsroom.churchofjesuschrist.org/multimedia/file/Proposed-Amendments-to-the-Psychologist-Licensing-Act-Rule-and-to-the-Mental-Health-Professional-Practice-Act-Rule.pdf>> (accessed 3 March 2021).

172 Utah Administrative Code §156-60-102(3)(b).

173 Utah Administrative Code §156-60-502(2).

174 Senate Bill 1545, 8 May 2020 (Arizona).

175 House Study Bill 698, 18 February 2020 (Iowa).

B. UK

86 Unlike various states in the US, the UK does not at present have any legislation specifically prohibiting conversion therapy. However, there is a consensus among leading mental health and counselling organisations pursuant to a memorandum of understanding (“MOU”) first signed in 2015,¹⁷⁶ and which has a growing number of signatories.¹⁷⁷ In 2017, the Church of England endorsed the MOU and called upon the Government to ban conversion therapy.¹⁷⁸

87 A Private Member’s Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill had been presented in the House of Commons in July 2018.¹⁷⁹ In contrast with healthcare regulations in the US, the Bill proposed an offence for any person to practise or offer to practise conversion therapy, on pain of a fine up to £5,000.¹⁸⁰ The Bill defined “conversion therapy”, in terms mirroring the MOU, as any form of therapy which demonstrates “an assumption that any sexual orientation or gender identity is inherently preferable to any other” and attempts to change a person’s SOGI or suppress expression thereof.¹⁸¹

88 The Bill neither contained any express exceptions for exploratory forms of therapy, nor was it confined to conversion therapy on minors under the age of 18. It extended beyond regulation of conduct of registered therapists, making it an offence for unregistered persons to “pretend” to be counsellors or psychotherapists.¹⁸²

89 Due to the lack of nuance, the Bill drew criticism for its consequences even on practitioners who do not practise conversion

176 *Memorandum of Understanding on Conversion Therapy in the UK* (November 2015) at UK Council for Psychotherapy <<https://www.psychotherapy.org.uk/wp-content/uploads/2016/09/Memorandum-of-understanding-on-conversion-therapy.pdf>> (accessed 3 March 2021).

177 *Memorandum of Understanding on Conversion Therapy in the UK*, v 2, rev A (3 July 2019) at College of Sexual and Relationship Therapists <<https://www.cosrt.org.uk/wp-content/uploads/2019/08/MoU2-Revision-3-7-19.pdf>> (accessed 3 March 2021).

178 The Church of England, “General Synod Backs Ban on Conversion Therapy” (8 July 2017) <<https://www.churchofengland.org/more/media-centre/news/general-synod-backs-ban-conversion-therapy>> (accessed 3 March 2021).

179 Bill 252, Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill (2017–19 Sess, 2018).

180 Bill 252, Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill (2017–19 Sess, 2018) s 2, read with Criminal Justice Act 1982 (c 48) (UK) s 37.

181 Bill 252, Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill (2017–19 Sess, 2018) s 2(2).

182 Bill 252, Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill (2017–19 Sess, 2018) s 4.

therapy or countenance its use, and for sending the signal that “the sufferer is prohibited from seeking help”.¹⁸³ Concerns were also raised about the inclusion of “gender identity” in the Bill for hindering “good psychological support” to those considering “transition”.¹⁸⁴ The Bill did not progress beyond the first reading due to the lack of parliamentary time.¹⁸⁵

90 Successive Prime Ministers of the UK have nevertheless condemned the practice of conversion therapy,¹⁸⁶ and the Government’s 2018 LGBT Action Plan promised to “fully consider” all legislative and non-legislative options to prohibit “promoting, offering or conducting conversion therapy”.¹⁸⁷

91 Despite its general commitment to ban conversion therapy, the Government has wrestled with the specific details of the legislative or non-legislative measures to be taken.¹⁸⁸ While the Government has signalled that the ban will extend to religious settings, it was concerned about balancing aspects of religious freedom and individual autonomy.¹⁸⁹ It did not wish to shut down “completely legitimate and needed psychological support and other therapies” intended to explore SOGI.¹⁹⁰ The Minister for Women and Equalities highlighted that the key questions related to

183 Julia Evans, “Opposing the Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill” *Lacanian Works* (23 August 2018) <<https://www.lacanianworks.net/?p=12261>> (accessed 3 March 2021).

184 Labour Women’s Declaration, “Govt Commitment to Women’s Sex-based Rights Welcomed” (14 June 2020) <<http://labourwomensdeclaration.org.uk/news/govt-commitment-to-womens-sex-based-rights-welcomed/>> (accessed 3 March 2021).

185 Parliament of the United Kingdom, *Counsellors and Psychotherapists (Regulation) and Conversion Therapy Bill 2017-19: Progress of the Bill* <<https://services.parliament.uk/Bills/2017-19/counsellorsandpsychotherapistsregulationandconversiontherapy.html>> (accessed 3 March 2021).

186 Peter Walker, “UK to Ban Discredited ‘Gay Cure’ Therapies under LGBT Action Plan” *The Guardian* (3 July 2018); “Boris Johnson Pledges Ban on ‘Gay Conversion Therapy’” *BBC News* (20 July 2020).

187 Government Equalities Office, *LGBT Action Plan: Improving the Lives of Lesbian, Gay, Bisexual and Transgender People* (July 2018) at p 15.

188 UK Government and Parliament Petitions, *Petition: Make LGBT Conversion Therapy Illegal in the UK* (13 September 2020) <<https://petition.parliament.uk/petitions/300976>> (accessed 3 March 2021); “Calls to Ban LGBT ‘Conversion Therapy’ in UK” *BBC News* (5 June 2020).

189 United Kingdom, House of Commons, *Parliamentary Debates* (3 July 2018) vol 644 (Penny Mordaunt).

190 United Kingdom, House of Commons, *Parliamentary Debates* (3 July 2018) vol 644 (Penny Mordaunt); see also United Kingdom, House of Lords, *Parliamentary Debates* (3 July 2018) vol 792 (Baroness Williams of Trafford).

“how best to define conversion therapy, the scale of the issue, where it is happening and who it is happening to”.¹⁹¹

C. Canada

92 Canada tabled in 2020 a wide-ranging Bill to criminalise and punish forced conversion therapy (defined as conversion therapy “against the person’s will”), conversion therapy on persons under the age of 18 whether in Canada or overseas, and advertisement and the receipt of financial or other benefit from conversion therapy. These attract fines or imprisonment, including imprisonment of up to five years where the recipient was forced or under the age of 18.¹⁹²

93 First introduced as Bill C-8 in March 2020,¹⁹³ it was re-tabled in October 2020 as Bill C-6 after the original Bill lapsed at the prorogation of Parliament.¹⁹⁴ By doing so, the federal government reversed course from an earlier statement in March 2019 that conversion therapy was a matter for provincial and territorial governments.¹⁹⁵

94 Bill C-6 was distinctly non-libertarian in orientation, premised on enforcing “Canadian values” of equality and diversity and the intention to protect what the Government viewed as a “marginalised group” in Canadian society.¹⁹⁶ Unlike the definitions of “conversion therapy” in other jurisdictions, the definition was targeted unidirectionally at practices, treatments or services 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” [emphasis added],¹⁹⁷ but not *vice versa*. Conversion therapy conducted on heterosexual or cisgender persons thus fell outside the scope of the Bill. However, consistent with the recommendation of the American

191 United Kingdom, House of Commons, *Parliamentary Debates* (22 July 2020) vol 678 (Elizabeth Truss).

192 Bill C-6, *An Act to Amend the Criminal Code (Conversion Therapy)* (2nd Sess, 43rd Parl, 2020) cll 4 and 5.

193 Bill C-8, *An Act to Amend the Criminal Code (Conversion Therapy)* (1st Sess, 43rd Parl, 2020).

194 Bill C-6, *An Act to Amend the Criminal Code (Conversion Therapy)* (2nd Sess, 43rd Parl, 2020).

195 House of Commons, *Response to Petition No 421-03168: Conversion Therapy* (18 March 2019) (Hon David Lametti).

196 Canada, *House of Commons Debates* (26 October 2020) vol 150 at cols 1200–1220 (Hon David Lametti).

197 Bill C-6, *An Act to Amend the Criminal Code (Conversion Therapy)* (2nd Sess, 43rd Parl, 2020) s 5, para 320.101.

Psychological Association,¹⁹⁸ Bill C-6 did not apply to practices, treatment or services relating to gender transition or a person's exploration of identity or development.¹⁹⁹

95 In the Government's view, the societal benefits of avoiding psychological and dignitarian harm to individuals and LGBTQ2 ("Q" referring to "Queer" and "2" referring to "Two Spirit") people were considered to outweigh "considerations of individual autonomy" and the ability to advertise and profit from conversion therapy.²⁰⁰ Thus, the Justice Minister considered it justified to limit the choices of "mature minors" and to prevent profit even where consenting adults are involved.²⁰¹

96 Although the Department of Justice stated that the new offences will not criminalise "private conversations" in which "personal views on sexual orientation, sexual feelings or gender identity are expressed",²⁰² there was no clear language within the Bill creating such exceptions, prompting concerns from religious groups such as evangelicals and Catholics about the impact on religious teaching and practice,²⁰³ as well as a number of parents about the impact on parental rights.²⁰⁴ However, calls to clarify the Bill by amendment were rebuffed as "red herrings" in the House of Commons, with some members considering that language

198 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at pp 60–64.

199 Bill C-6, *An Act to Amend the Criminal Code (Conversion Therapy)* (2nd Sess, 43rd Parl, 2020) s 5, para 320.101.

200 Department of Justice, *Charter Statement: Bill C-6: An Act to Amend the Criminal Code (Conversion Therapy)* (28 October 2020) <<https://www.justice.gc.ca/eng/csjsjc/pl/charter-charte/c6b.html>> (accessed 3 March 2021).

201 Canada, *House of Commons Debates* (26 October 2020) vol 150 at col 1215 (Hon David Lametti).

202 Furthermore, examples of such "personal views" given by the Department canvass only a narrow range of views where teachers, school counsellors, pastoral counsellors, faith leaders, doctors, mental health professionals, friends or family members provide "affirming support" to persons "struggling" with their sexual orientation, sexual feelings, or gender identity (Canada, Department of Justice, *Proposed Changes to Canada's Criminal Code Relating to Conversion Therapy* (1 October 2020)).

203 Evangelical Fellowship of Canada, "Concern over Bill C-6 on Conversion Therapy" (13 October 2020) <<https://www.evangelicalfellowship.ca/Communications/Outgoing-letters/October-2020/Concern-over-Bill-C-6-on-conversion-therapy>> (accessed 3 March 2021); Canadian Conference of Catholic Bishops, "Statement by the Canadian Conference of Catholic Bishops on Bill C-6, 'An Act to Amend the Criminal Code (Conversion Therapy)'" (7 October 2020) <<https://www.cccb.ca/wp-content/uploads/2020/10/CCCB-statement-on-Bill-C-6-conversion-therapy-EN.pdf>> (accessed 3 March 2021).

204 Parents As First Educators, "Stop Bill C-6!" <<https://www.pafe.ca/stopbillc6>> (accessed 3 March 2021).

referring to “practice, treatment or services” was sufficient to protect religious teachings.²⁰⁵

97 At the time of writing, Bill C-6 passed its second reading with overwhelming support of 305–7 and the Standing Committee on Justice and Human Rights approved the Bill with minimal amendments.²⁰⁶ If passed and royal assent is received, it will criminalise therapy throughout Canada, going beyond provincial and territorial healthcare regulations such as those in Ontario,²⁰⁷ Nova Scotia,²⁰⁸ Prince Edward Island²⁰⁹ and Yukon,²¹⁰ and municipal by-laws prohibiting businesses from practising conversion therapy.²¹¹

D. *Australia*

98 Australia does not have a national ban on conversion therapy. Although Prime Minister Scott Morrison has condemned it, he considered it a matter to be ultimately addressed by the states.²¹² In August 2020, Queensland and the Australian Capital Territory (“ACT”) enacted the country’s first two bans on conversion therapy, criminalising conversion therapy (or, in ACT, “conversion practices”),²¹³ with Victoria taking similar steps at the end of 2020.²¹⁴

99 Instrumental towards the passage of the bans was a 2018 report jointly prepared by La Trobe University, the Gay and Lesbian Health Victorians and the Human Rights Law Centre, which estimated that up to 10% of LGBT Australians were vulnerable to conversion therapy

205 See, eg, Canada, *House of Commons Debates* (26 October 2020) vol 150 at col 1330 (Randall Garrison); Canada, *House of Commons Debates* (26 October 2020) vol 150 at col 1925 (Garnett Genuis).

206 House of Commons, Journal No 12 (2nd Sess, 43rd Parl, 2020, 28 October 2020); Standing Committee on Justice and Human Rights, Fifth Report (2nd Sess, 43rd Parl, 2020, 10 December 2020) <<https://www.ourcommons.ca/DocumentViewer/en/43-2/JUST/report-5/>> (accessed 3 March 2021).

207 Affirming Sexual Orientation and Gender Identity Act, 2015 (SO 2015, c 18).

208 An Act Respecting Sexual Orientation and Gender Identity Protection (SNS 2018, c 28).

209 Sexual Orientation and Gender Identity Protection in Health Care Act (PEI 2019, c 33).

210 Sexual Orientation and Gender Identity Protection Act (SY 2020, c 7).

211 See, eg, Prohibited Businesses (By-law No 20M2020, 25 May 2020) (City of Calgary); A By-law to Amend Business Prohibition By-law No 5156 Regarding Conversion Therapy (By-law No 12147, 19 June 2018) (City of Vancouver).

212 Australian Associated Press, “Gay Conversion Therapy a State Issue: PM” *The Canberra Times* (23 April 2019).

213 Health Legislation Amendment Act 2020 (Qld); Sexuality and Gender Identity Conversion Practices Act 2020 (ACT).

214 Change or Suppression (Conversion) Practices Prohibition Bill 2020.

practices, and that these were being mainstreamed within particular Christian churches.²¹⁵

100 The Queensland and ACT bans differed in their scope even as they attracted fines and imprisonment of up to 18 months (in Queensland) and 12 months (in ACT).²¹⁶ While the Queensland legislation amended the Public Health Act 2005 and applied only to “health service providers”, it covered the conduct of conversion therapy on all recipients regardless of age.²¹⁷ On the other hand, ACT criminalised conduct of all persons but only in relation to recipients who are children or whose decision-making abilities are impaired.²¹⁸

101 Queensland’s legislation was much narrower in various respects. In light of concerns expressed about the potential incongruence with the legislation and professional standards regarding treatments for gender dysphoria,²¹⁹ the original Bill was amended to exclude from the definition of “conversion therapy” practices that are part of clinically appropriate assessment, diagnosis, treatment or support, safely and appropriately provide health services, or are necessary to comply with the provider’s legal or professional obligations.²²⁰ Exceptions for exploratory or other practices to assist people in relation to SOGI were also stated to be non-exhaustive, with stronger protections for health professionals giving advice on potential side effects of sex-hormonal drugs or the risks of having, or not having, surgical procedures.²²¹

102 By contrast, the ACT government was much less amenable to concerns raised by the Scrutiny Committee over the breadth and severity of penalties under the Sexuality and Gender Identity Conversion Practices Act 2020. Despite the Committee having twice requested the Legislative Assembly to consider alternative options to ban conversion

215 Timothy W Jones *et al*, “Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia. Melbourne” (GLHV@ARCSHS, La Trobe University and Human Rights Law Centre, 2018).

216 Health Legislation Amendment Act 2020 (Qld); Sexuality and Gender Identity Conversion Practices Act 2020 (ACT).

217 Public Health Act 2005 (Qld) s 213H.

218 Sexuality and Gender Identity Conversion Practices Act 2020 (ACT) s 8.

219 Australia, Queensland, Parliament, *Parliamentary Debates* (13 August 2020) at p 2077 (Hon S J Miles); Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Health Legislation Amendment Bill 2019* (Report No 32, 56th Parliament) (February 2020) at p 33.

220 Public Health Act 2005 (Qld) s 213F(2).

221 Public Health Act 2005 (Qld) s 213F(3).

practices due to the implications on religious freedom and autonomy,²²² the Chief Minister justified the Government's position by citing the goal of preventing "harm".²²³

103 Only two minor amendments were made to the original Sexuality and Gender Identity Conversion Practices Bill 2020. The first was a note exempting "support for a person exploring and expressing their sexuality" from the ban.²²⁴ The second referenced the right to freedom of thought, conscience and religion under the Human Rights Act 2004,²²⁵ and added that the ACT law did not intend "a mere expression of a religious tenet or belief" to constitute a "conversion practice".²²⁶

104 The ACT law also provided a civil mechanism empowering the ACT Human Rights Commission to entertain complaints about conversion practices (conducted on any recipient) at the first instance, and refer them to the ACT Civil and Administrative Tribunal ("ACAT") if not successfully conciliated.²²⁷ Considering that consent was a "complex concept", the Government preferred to leave the consideration of consent to ACAT's discretion rather than explicitly mandating by law the consideration of consent.²²⁸

105 Victoria's Change or Suppression (Conversion) Practices Prohibition Bill 2020, tabled in November 2020, combined elements from both the Queensland and ACT bans and applied to all persons who carried out or received "change or suppression practices". It avoided the term "conversion therapy" because of its religious significance and the implicit suggestion that these practices had a basis in medicine.²²⁹ The Bill passed into law in February 2021.

222 Standing Committee on Justice and Community Safety, *Scrutiny Report 49* (18 August 2020) at pp 2–4; Standing Committee on Justice and Community Safety, *Scrutiny Report 50* (25 August 2020) at pp 6–8.

223 Andrew Barr, *Government's Response to Scrutiny Committee Report* (24 August 2020); Andrew Barr, *Government's Further Response to Scrutiny Committee Report* (27 August 2020).

224 Australia, Australian Capital Territory, Legislative Assembly, *Minutes of Proceedings*, No 139 (27 August 2020) at p 2170.

225 Human Rights Act 2004 (ACT).

226 Australia, Australian Capital Territory, Legislative Assembly, *Minutes of Proceedings*, No 139 (27 August 2020) at p 2170; Australia, Australian Capital Territory, Legislative Assembly, *Parliamentary Debates* (27 August 2020) at pp 2260–2261 (Andrew Barr).

227 Sexuality and Gender Identity Conversion Practices Act 2020 (ACT) Schedule 1.

228 Andrew Barr, *Government's Further Response to Scrutiny Committee Report* (27 August 2020).

229 Australia, Victoria, Legislative Assembly, *Parliamentary Debates* (26 November 2020) at p 3723 (Hon J Hennessy); see also Australia, Victoria, Legislative Assembly, *Parliamentary Debates* (10 December 2020) at p 4692 (Hon I Stitt).

106 Unlike Queensland and ACT, Victoria's Act explicitly targeted religious groups, defining the proscribed conduct to include religious practices such as prayer, "deliverance" or "exorcism";²³⁰ and was intended to cover religious leaders who advised persons with same-sex attraction that they were "broken" and "should live a celibate life".²³¹ Consent was also explicitly made irrelevant, citing the "insidious" and "coercive" nature of such practices.²³²

107 All change and suppression practices attracted the civil jurisdiction of the Victorian Equal Opportunity and Human Rights Commission,²³³ although the Act uniquely attaches criminal sanctions of fines and imprisonment of up to five or ten years only to practices that cause injury or serious injury respectively (including harm to mental health),²³⁴ thereby requiring proof of – rather than assuming – causation and harm.

E. New Zealand

108 New Zealand does not presently have any ban on conversion therapy. A Labour Party member's Prohibition of Conversion Therapy Bill had been introduced in October 2018,²³⁵ but lapsed when it was not selected from the member bills ballot before the dissolution of Parliament in September 2020.

109 The definition of "conversion therapy" under the Bill and exclusions therefrom concerning exploratory or other conduct closely resembled those used in the American bans,²³⁶ and sought to criminalise the act of performing, offering or advertising the performance of conversion therapy, punishable by up to six months imprisonment, \$5,000, or both.²³⁷ The penalty was double for removing a person from New Zealand for conversion therapy, and for health practitioners,

230 Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic) s 5(3)(b).

231 Australia, Victoria, Legislative Assembly, *Parliamentary Debates* (26 November 2020) at p 3723 (Hon J Hennessy).

232 Australia, Victoria, Legislative Assembly, *Parliamentary Debates* (26 November 2020) at p 3724 (Hon J Hennessy).

233 Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic) ss 17–49.

234 Change or Suppression (Conversion) Practices Prohibition Act 2021 (Vic) ss 10–12; Crimes Act 1958 (Vic) s 15.

235 Marja Lubeck Labour List MP, *Facebook post at 10:02* (31 October 2018) <<https://www.facebook.com/MarjaLubeck/posts/today-i-lodged-a-bill-to-prohibit-the-practice-of-conversion-therapy-in-new-zeal/475460002945659/>> (accessed 3 March 2021).

236 Prohibition of Conversion Therapy Bill (New Zealand) cl 5.

237 Marja Lubeck Labour List MP, *Facebook post at 10:02* (31 October 2018) <<https://www.facebook.com/MarjaLubeck/posts/today-i-lodged-a-bill-to-prohibit-the-practice-of-conversion-therapy-in-new-zeal/475460002945659/>> (cont'd on the next page)

teachers and social workers who performed, offered or referred a person for conversion therapy.²³⁸ Neither age nor consent were relevant factors under the Bill.

110 Separately, the Justice Committee in October 2019 responded to two petitions calling for a ban, opining that “more work needs to be done” before taking a decision to ban conversion therapy.²³⁹ The Committee agreed that conversion therapy was harmful and noted that the Aotearoa Association of Social Workers and the New Zealand Association of Counsellors supported a ban.²⁴⁰

111 However, the Justice Committee was concerned about the potential conflict with rights such as freedom of thought, conscience and religion, expression and association under the Bill of Rights Act,²⁴¹ and the need to balance harm reduction against those who seek and offer conversion therapy because of their personal beliefs.²⁴² In a response similar to that of the UK Government, the Committee considered that “thought must be given to how to define conversion therapy, who the ban would apply to, and how to ensure that rights relating to freedom of expression and religion were maintained”.²⁴³

112 However, it is foreseeable that a ban on conversion therapy will be introduced in the near future, given the ruling majority of the Labour Party led by Prime Minister Jacinda Ardern after the 2020 elections,²⁴⁴ which was further strengthened by forming a coalition with the Green Party.²⁴⁵ Both parties promised to make “practising, performing or enabling conversion therapy” a crime in their 2020 election campaign,²⁴⁶

practice-of-conversion-therapy-in-new-zeal/475460002945659/> (accessed 3 March 2021); Prohibition of Conversion Therapy Bill (New Zealand) cl 6.

238 Prohibition of Conversion Therapy Bill (New Zealand) cl 7 and 8.

239 Justice Committee, *Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy and Petition of Amanda Ashley: Ban Conversion Therapy in New Zealand* (October 2019) (hereinafter “Justice Committee Report”).

240 *Justice Committee Report* at pp 3 and 5.

241 Bill of Rights Act 1990 (Public Act 1990 No 109) (New Zealand).

242 *Justice Committee Report* at p 4.

243 *Justice Committee Report* at p 5.

244 Electoral Commission, “2020 General Election and Referendums – Official Result” <https://electionresults.govt.nz/electionresults_2020/> (accessed 3 March 2021).

245 “New Zealand’s Ardern Forms Government with Greens” *Reuters* (1 November 2020).

246 Labour Party, “Rainbow: Labour’s 2020 Campaign Policies” <<https://www.labour.org.nz/rainbow>> (accessed 3 March 2021); Gay Express, “Exclusive: Jacinda Ardern Commits to Banning Conversion Therapy in New Zealand” (5 October 2020) <<https://gayexpress.co.nz/2020/10/exclusive-jacinda-ardern-commits-to-banning-conversion-therapy-in-new-zealand/>> (accessed 3 March 2021); Jan Logie, “Greens Welcome Labour’s Commitment to Ban Conversion Therapy, But Want Office for Rainbow Communities” *Green Party* (5 October 2020) <<https://www.greens.org.nz/>> (cont’d on the next page)

and Prime Minister Ardern hoped to have a bill before Parliament by the end of 2021.²⁴⁷

V. Singapore and conversion therapy

113 Unlike the jurisdictions surveyed above, Singapore remains a largely conservative society where a majority of Singaporeans, especially Christians and Muslims, disapprove of homosexual relations and same-sex marriage.²⁴⁸ Singapore is a non-liberal democracy where societal or community interests are prioritised over the individual,²⁴⁹ and the constitutional culture stresses that individual liberties remain subject to wider public interests.²⁵⁰

114 Section 377A of the Penal Code,²⁵¹ which criminalises acts of “gross indecency” between male persons, remains on the books to reflect “traditional, heterosexual family values” but without proactive enforcement.²⁵² The rationale for its retention embodies the “symbolic” effect of the law,²⁵³ where criminal law is seen as the public’s expression of communitarian values to be promoted, defended and preserved.²⁵⁴

115 On the other hand, sex reassignment surgery has been allowed in Singapore since 1971, and persons who completed such procedures were legally recognised as the opposite sex under their identity cards.²⁵⁵ The High Court’s 1991 decision invalidating a marriage involving a post-operative transsexual²⁵⁶ was legislatively overruled by the Government

greens_welcome_labour_s_commitment_to_ban_conversion_therapy_but_want_office_for_rainbow_communities> (accessed 3 March 2021).

247 Jason Walls & Michael Neilson, “‘We Have an Obligation’: Ardern Wants Conversion Therapy Ban Bill before MPs This Year” *NZ Herald* (5 February 2021).

248 Mathew Mathews, Leonard Lim & Shanthini Selvarajan, “Religion, Morality and Conservatism in Singapore” (IPS Working Papers No 34, May 2019) at pp 61–72.

249 *White Paper on Shared Values* (Paper Cmd No 1 of 1991) at para 52.

250 See, eg, *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [42].

251 Penal Code (Cap 224, 2008 Rev Ed) s 377A.

252 *Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 at cols 2397–2403 (Lee Hsien Loong, Prime Minister); see also *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26.

253 Compare, in this regard, Marie-Amélie George, “Expressive Ends: Understanding Conversion Therapy Bans” (2017) 68 *Ala L Rev* 793 at 825–830.

254 *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684 at [17]; *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [162]–[174].

255 *Singapore Parliamentary Debates, Official Report* (2 May 1996) vol 66 at col 64 (Abdullah Tarmugi, Minister for Community Development).

256 *Lim Ying v Hiok Kian Ming Eric* [1991] 2 SLR(R) 525.

through an amendment in the Women's Charter²⁵⁷ in 1996, in order to permit such marriages.²⁵⁸

116 Nevertheless, issues concerning SOGI remain highly controversial and contested, including debates over conversion therapy. In 2006, as a result of harassment and pressure from gay rights activists, the now-defunct Liberty League – an organisation which sought to help people who wished to overcome, *inter alia*, “same-sex attractions” – returned funding that it had received from the Government.²⁵⁹ Liberty League founder Leslie Lung had himself lived as a woman for a time.²⁶⁰

117 More recently, accusations of conversion therapy have been brought against various religious groups including Choices ministry from Church of Our Saviour and against TrueLove.Is, a ministry of 3:16 Church.²⁶¹ The former seeks to “help people recover their God-intended sexual identity”,²⁶² while the latter shares “real life stories of individuals who have come out and come home”.²⁶³ Both have denied such allegations.²⁶⁴ 3:16 Church pastor Ian Toh clarified that TrueLove.Is was “not out to change anyone’s sexual orientation”, but instead that they “have not shied away from documenting such changes when they are the real experiences of some story-sharers, none of whom have been coerced

257 Cap 353, 2009 Rev Ed.

258 Women's Charter (Cap 353, 2009 Rev Ed) s 12; *Singapore Parliamentary Debates, Official Report* (2 May 1996) vol 66 at cols 63–65 (Abdullah Tarmugi, Minister for Community Development).

259 See Sylvia Tan, “Singapore Government Awards S\$100,000 Grant to Group with Ex-gay Affiliation” *Fridae* (17 January 2006) <<https://www.fridae.asia/gay-news/2006/01/17/1559.singapore-government-awards-s-100000-grant-to-group-with-ex-gay-affiliation>> (accessed 3 March 2021); “Singapore Group Offers ‘Liberty’ from Same-sex Attraction” *AsiaOne* (31 December 2010).

260 For an account of the incident from the founder of Liberty League, see Leslie Lung, *Life: As Man, Woman ... & Man Again* (Singapore: Leslie Lung, 2014) at pp 109–112.

261 For some of the latest allegations, see Heckin' Unicorn, “The Reality of ‘Conversion Therapy’ Practices in Singapore // LGBT Rights in Singapore” (16 December 2020) <<https://heckinunicorn.com/blogs/heckin-unicorn-blog/the-reality-of-conversion-therapy-in-singapore-lgbt-rights-in-singapore>> (accessed 3 March 2021).

262 Church of Our Saviour, “Choices” <<https://www.coos.org.sg/church-life/choices/>> (accessed 3 March 2021).

263 TrueLove.Is, “What Is TrueLove.Is” <<https://truelove.is/about/>> (accessed 3 March 2021).

264 See the comments of Church of Our Saviour senior pastor Daniel Wee in a video posted by TrueLove.Is at 10.00am on 28 November 2020 on Facebook <<https://www.facebook.com/truelove.is.sg/posts/672989770075858>> (accessed 3 March 2021).

to change”²⁶⁵ Various LGBT rights organisations have issued calls to ban conversion therapy in Singapore.²⁶⁶

A. *Singapore government’s stance on conversion therapy*

118 In May 2020, the Singapore government for the first time stated an official stance against conversion therapy, when Health Minister Gan Kim Yong responded in writing to a question from Nominated Member of Parliament (“NMP”) Anthea Ong regarding the Government’s stance on conversion therapy, which she defined as “the practice of changing one’s sexual orientation through psychological and spiritual means”²⁶⁷ The NMP had in a previous sitting of Parliament characterised a psychologist’s recommendation to send children for “conversion therapy” during a talk at a mosque as an instance of religious abuse.²⁶⁸

119 In her question, NMP Ong asked the Health Ministry to consider stating an official position against conversion therapy, disseminating guidelines, establishing complaint mechanisms and pursuing disciplinary action for mental healthcare professionals who practise or refer patients to conversion therapy.²⁶⁹

120 With reference to the tenth revision of the International Statistical Classification of Diseases and Related Health Problems, as well as the positions of the American Psychiatric Association and World Health Organization, the Minister stated that “sexual orientation alone is not to be regarded as a clinical disorder that needs to be cured”²⁷⁰ Being a ministerial statement made in an official capacity, it was an authoritative statement of the Singapore government’s policy on the matter.²⁷¹

121 Significantly, the Government considered the issue of conversion therapy to be a matter of ethical conduct within the purview of the Ministry of Health (“MOH”) and the Singapore Medical Council

265 TrueLove.Is, “Response To Heckin’ Unicorn” (8 January 2021) <<https://truelove.is/special-report/response-to-heckin-unicorn/>> (accessed 3 March 2021).

266 See, eg, Sayoni, *NGO Report on Violence and Discrimination against LGBTQ Children in Singapore: Additional Submission to the Committee on the Rights of the Child for the 81st Session (13–31 May 2019)*.

267 *Singapore Parliamentary Debates, Official Report* (4 May 2020) vol 94 (Anthea Ong, Nominated Member of Parliament).

268 *Singapore Parliamentary Debates, Official Report* (7 October 2019) vol 94 (Anthea Ong, Nominated Member of Parliament).

269 *Singapore Parliamentary Debates, Official Report* (4 May 2020) vol 94 (Anthea Ong, Nominated Member of Parliament).

270 *Singapore Parliamentary Debates, Official Report* (4 May 2020) vol 94 (Gan Kim Yong, Minister for Health).

271 See *UKM v Attorney-General* [2019] 3 SLR 874 at [138]–[143].

(“SMC”), a statutory board under MOH.²⁷² The Minister laid down the expectation that healthcare professionals would practise according to evidence-based best practice and clinical ethics, and “to consider and respect patients’ preferences and circumstances (including sexual orientation) when providing care”.²⁷³ For individuals who seek care with a desire to change one’s sexual orientation through clinical means, healthcare professionals “should care for and support these individuals with empathy and sensitivity”,²⁷⁴ a term which presumably includes client-centric and exploratory approaches.²⁷⁵

122 Conduct contrary to these expectations amounted to unethical or inappropriate treatment, and which attracted the jurisdiction of existing complaint and disciplinary mechanisms within the SMC.²⁷⁶ However, in a separate statement, the Health Minister added that MOH had not received any complaints against psychiatrists, psychologists and counsellors from self-declared LGBTQ patients in the past three years.²⁷⁷

B. Potential legal issues with a ban on conversion therapy

123 Nevertheless, activists have called for more intense bans on conversion therapy. For example, LGBTQ+ group Heckin’ Unicorn has called for the Government to “outlaw ‘conversion therapy’ practices” and designate conversion therapy as a form of domestic or child abuse, among other things.²⁷⁸ However, such a legal ban raises potential constitutional and other legal issues, especially in a multiracial and multireligious society like Singapore.

272 Medical Registration Act (Cap 174, 2014 Rev Ed) s 3.

273 *Singapore Parliamentary Debates, Official Report* (4 May 2020) vol 94 (Gan Kim Yong, Minister for Health).

274 *Singapore Parliamentary Debates, Official Report* (4 May 2020) vol 94 (Gan Kim Yong, Minister for Health).

275 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at pp 60–64.

276 *Singapore Parliamentary Debates, Official Report* (4 May 2020) vol 94 (Gan Kim Yong, Minister for Health); see also ss 38–59I of the Medical Registration Act (Cap 174, 2014 Rev Ed).

277 *Singapore Parliamentary Debates, Official Report* (5 May 2020) vol 94 (Gan Kim Yong, Minister for Health). This was a response to a question posed by NMP Anthea Ong.

278 Heckin’ Unicorn, “The Reality of ‘Conversion Therapy’ Practices in Singapore // LGBT Rights in Singapore” (16 December 2020) <<https://heckinunicorn.com/blogs/heckin-unicorn-blog/the-reality-of-conversion-therapy-in-singapore-lgbt-rights-in-singapore>> (accessed 3 March 2021); see also Sayoni, *NGO Report on Violence and Discrimination against LGBTQ Children in Singapore: Additional Submission to the Committee on the Rights of the Child for the 81st Session (13–31 May 2019)* at pp 14–15.

(1) *Absence of international or constitutional obligations regarding sexual orientation or gender identity*

124 Singapore is a party to a number of human rights treaties,²⁷⁹ none of which impose any binding international obligation prohibiting discrimination on the basis of SOGI. Even if it were, it may be necessary for Parliament to enact legislation in order to implement these obligations domestically, since Singapore has a dualist system which regards international law as a separate legal system from domestic law.²⁸⁰

125 While the Government has stated in a report to the Committee on the Elimination of Discrimination against Women that the Constitution of the Republic of Singapore²⁸¹ (“Singapore Constitution”) enshrines equality of all persons before the law, “regardless of gender, sexual orientation and gender identity”,²⁸² this was apparently a reference only to the formal equality guarantee under Art 12(1).²⁸³ By contrast, the only substantive grounds of prohibited discrimination are “religion, race, descent or place of birth” under Art 12(2), a position which the Court of Appeal has considered to be a reflection of the social mores of Singapore society.²⁸⁴ Accordingly, the absence of SOGI as a category under the Singapore Constitution may foreclose legal arguments that rely on alleged SOGI protections to support such bans.

126 On the other hand, there is a binding *international* (as opposed to domestic) obligation upon the Singapore government to take effective measures against certain coercive *methods* of conversion therapy that amount to torture or cruel, inhuman or degrading treatment or punishment. This is pursuant to CIL (*jus cogens*) and Art 15 of the

279 Singapore is a party to the following treaties: (a) Convention on the Elimination of All Forms of Discrimination against Women (1249 UNTS 13) (18 December 1979; entry into force 3 September 1981); (b) Convention on the Rights of the Child; (c) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2173 UNTS 222) (25 May 2000; entry into force 12 February 2002); (d) Convention on the Rights of Persons with Disabilities (2515 UNTS 3) (13 December 2006; entry into force 3 May 2008); and (e) International Convention on the Elimination of All Forms of Racial Discrimination (660 UNTS 195) (7 March 1966; entry into force 4 January 1969).

280 *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [59]; *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [188].

281 1999 Reprint.

282 Committee on the Elimination of Discrimination against Women, *Responses to the List of Issues and Questions with Regard to the Consideration of the Fourth Periodic Report: Singapore* UN Doc CEDAW/C/SGP/Q/4/Add.1 (18 May 2011) at para 113.

283 *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [187].

284 *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [92] and [182].

Convention on the Rights of Persons with Disabilities,²⁸⁵ which contains a prohibition of general application.²⁸⁶

127 Nevertheless, this obligation may already be fulfilled through existing Singapore law.²⁸⁷ For instance, various criminal provisions apply to coercive or abusive acts commonly said to be associated with conversion therapy, such as offences of causing hurt or grievous hurt,²⁸⁸ wrongful confinement,²⁸⁹ or the ill-treatment of children or young persons.²⁹⁰ The common law also imposes duties of care on religious groups and other duties when carrying out interventions, including those of a spiritual nature such as exorcisms, although factors such as consent and reasonable application of physical force to prevent harm to oneself or others may be relevant defences.²⁹¹

(2) *Potential conflict with aspects of autonomy*

128 Although there is no constitutional right to privacy or autonomy *per se*,²⁹² these considerations are potentially relevant in the context of constitutional liberties such as religious freedom under Arts 15 and 16 of the Singapore Constitution, which are premised on “removing restrictions to one’s choice of religious belief” in an accommodative secular system.²⁹³ Article 12 guarantees the equality of all persons in relation to these rights and the courts are additionally obliged, as far as possible, to interpret these rights consistently with Singapore’s obligations under its treaties in relation to non-discrimination on the grounds of sex, race or disability,²⁹⁴ and to extend such protections to children in

285 2515 UNTS 3 (13 December 2006; entry into force 3 May 2008).

286 Convention on the Rights of Persons with Disabilities (2515 UNTS 3) (13 December 2006; entry into force 3 May 2008) Art 15; *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [40]–[44].

287 In *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489, the Court of Appeal noted that no domestic law permits torture, and that torture is already criminalised under the Penal Code (Cap 224, 2008 Rev Ed) (at [75]).

288 Penal Code (Cap 224, 2008 Rev Ed) ss 321 and 322.

289 Penal Code (Cap 224, 2008 Rev Ed) s 340.

290 Children and Young Persons Act (Cap 38, 2001 Rev Ed) s 5.

291 See *Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore* [2009] 2 SLR(R) 1091.

292 *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [44]–[47].

293 *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR(R) 529 at [21] and [28].

294 Convention on the Elimination of All Forms of Discrimination against Women (1249 UNTS 13) (18 December 1979; entry into force 3 September 1981); International Convention on the Elimination of All Forms of Racial Discrimination (660 UNTS 195) (7 March 1966; entry into force 4 January 1969) and Convention on the Rights of Persons with Disabilities (13 December 2006, 2515 UNTS 3); see *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 at [59].

accordance with their evolving capacities as *per* the CRC.²⁹⁵ Aspects of individual and group autonomy, such as freedom of religion and speech, thus form the most compelling argument against a far-reaching categorical ban on conversion therapy which extends to consensual talk therapy or religious interventions.

129 Article 15(1) of the Singapore Constitution guarantees the right to every person to profess, practise and propagate his or her religion, covering the religious views and practices of even a small minority of individuals.²⁹⁶ On the other hand, Art 15(3) protects religious group rights in terms similar to minority protection treaties in the post-First World War period which sought to seek to protect racial, religious or linguistic minorities from discrimination “in law and in fact”, the latter involving the necessity of different treatment in order to attain an equilibrium of result.²⁹⁷ A wide-reaching legal ban on conversion therapy potentially conflicts with the right of religious groups to manage their own religious affairs under Art 15(3)(a) and the (arguably non-justiciable) duty of the Government to care for the interests of racial and religious minorities under Art 152 respectively.

130 Like other liberties under the Singapore Constitution, religious practice and propagation are not absolute; they are subject to the “general law relating to public order, public health or morality” under Art 15(4), which permits the curtailment of religious manifestation beyond circumstances of clear and immediate danger.²⁹⁸ However, courts have rejected purely categorical approaches and increasingly emphasised the importance of balancing rights against permissible derogations and of taking calibrated approaches towards restrictions on fundamental liberties.²⁹⁹ Thus, to the extent that the putative ban applies to voluntary

295 See, for example, *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 at [26] where the Court of Appeal referred to the Convention on the Rights of the Child in relation to the principle of joint parental responsibility.

296 *Vijaya Kumar s/o Rajendran v Attorney-General* [2015] SGHC 244 at [30].

297 *Minority Schools in Albania*, Advisory Opinion, 1935 PCIJ (ser A/B) No 64 (6 April) at para 64. The case concerned a declaration by Albania before the Council of the League of Nations dated 2 October 1921, Art 5 of which read:

Albanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular they shall have an equal right to maintain, manage and control at their own expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

298 *Chan Hiang Leng Colin v Public Prosecutor* [1994] 3 SLR(R) 209 at [59]; *Vijaya Kumar s/o Rajendran v Attorney-General* [2015] SGHC 244 at [31]–[35].

299 See *Vijaya Kumar s/o Rajendran v Attorney-General* [2015] SGHC 244 at [33]–[38]; see also *Wham Kwok Han Jolovan v Public Prosecutor* [2020] SGCA 111 at [33].

counselling or religious interventions such as prayer over matters of sexuality or gender, it is difficult to justify such a ban under Art 15(4) due to the lack of clear evidence of physical or psychological harm.³⁰⁰

131 Furthermore, purely speech-based therapy carried out by Singapore citizens attracts free speech protections under Art 14(1)(a),³⁰¹ while the counselling or pastoral relationship may involve freedom of association under Art 14(1)(c). Article 14(2) of the Singapore Constitution, which permits a prophylactic approach,³⁰² vests Parliament with the primary decision-making power regarding whether derogations from rights to freedom of speech, assembly and association are “necessary or expedient”.³⁰³

132 Nevertheless, a ban which restricts the right of Singaporean mental health practitioners, therapists, counsellors or religious leaders from carrying out therapy for unwanted sexual desires or behaviour would only pass constitutional muster if the law, firstly, has a nexus to the actual or potential harm caused to constitutionally permitted grounds of derogation under Art 14(2) such as “public order” and “morality” (“public health” is ostensibly absent); and, secondly, demonstrates a balance between the right and the derogations therefrom.³⁰⁴ Both elements would be difficult to show given the lack of clear evidence of harm caused by speech-only forms of therapy.

(3) *Rights of parents and guardians*

133 Singapore’s international obligations under the CRC may prohibit the Government from arbitrarily interfering with private conversations of children with caregivers, therapists, counsellors or religious leaders on intimate matters such as sexuality and gender, or values and beliefs.³⁰⁵ Having regard to the primary responsibilities of parents and guardians over children, a balanced approach requires the Government to intervene only in cases where children are at risk of demonstrable physical or

300 American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) at p 42.

301 *Ong Ming Johnson v Attorney-General* [2020] SGHC 63 at [242]–[255]; see also *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [129]–[130].

302 *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [50]; *Wham Kwok Han Jolovan v Public Prosecutor* [2020] SGCA 111 at [41]–[53].

303 Constitution of the Republic of Singapore (1999 Reprint) Art 14(2); *Wham Kwok Han Jolovan v Public Prosecutor* [2020] SGCA 111 at [24].

304 *Wham Kwok Han Jolovan v Public Prosecutor* [2020] SGCA 111 at [32]–[33].

305 These include, *inter alia*, Arts 12, 13, 14 and 16 of the Convention on the Rights of the Child.

mental harm,³⁰⁶ which would not include private conversations on these matters where harm is absent.

134 Domestically, the position is less clear, especially since the Singapore courts have eschewed expansive interpretations of constitutional rights.³⁰⁷ The right of parents and guardians over children relates only to the religion of a person under the age of 18 years under Art 16(4) of the Singapore Constitution.³⁰⁸ Read together, Arts 16(3) and 16(4) permit parents and guardians to object to the child's participation in religious instruction, ceremony or worship other than in a religion decided by them. Accordingly, a ban on conversion therapy is unlikely to violate the rights of parents or guardians under the said Articles, since such a ban neither requires nor compels participation in any conduct, nor constitutes any religious instruction, ceremony or worship.³⁰⁹

VI. Conclusion

135 The ignominious history of “conversion therapy” is a black page in the history of mental health practice, where various coercive or violent acts were used to change individuals' sexual desires and behaviours. Although these mental health institutions have since reversed their professional consensus on the matter, it would likewise be an error to rush to embrace their new professional consensus or to impose these newfound standards of ethical conduct relating to SOGI on society at large, particularly since harm is not conclusively proven in relation to non-aversive interventions.³¹⁰

306 Convention on the Rights of the Child Arts 18 and 19.

307 In *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129, the Court of Appeal held that, where a right cannot be found in the Constitution (whether expressly or by necessary implication), the courts “do not have the power to create such a right out of whole cloth” (at [73]). See also *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at [45]–[49].

308 In *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR(R) 529, the Court of Appeal opined that the purpose of Art 16(4) is “to protect the position of those under 18 years of age, in respect of their choice of religion” (at [21]). Commenting on the Malaysian equivalent, Lee Swee Seng JC opined: “[i]t is the ‘parent’ and not the maid or the teacher or the kadhi or the temple priest or the pastor” (*Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak* [2013] 5 MLJ 552 at [31]).

309 See *Nappalli Peter Williams v Institute of Technical Education* [1999] 2 SLR(R) 529 at [22]–[28], where the National Pledge and National Anthem ceremony were held to be secular, and not religious in nature.

310 In *Otto v City of Boca Raton* No 19-10604 (11th Cir, 2020), the majority took cognisance of the delisting of homosexuality as a disorder from the Diagnostic and Statistical Manual of Mental Disorders, and considered that the change “shows why we cannot rely on professional organizations' judgments”, adding “it would have

136 Questions of SOGI are not purely psychological or psychiatric matters but implicate wider ethical, moral and societal considerations. Fundamentally, at the heart of the dispute over conversion therapy is a “clash of orthodoxies” concerning human nature, the relationship between body and mind (or spirit or psyche), sex and gender, and the roles of institutions such as families, religious communities and the State.³¹¹

137 On an individual level, sexuality and gender – as well as philosophical or religious values and beliefs thereto – are issues of profound or even transcendental significance,³¹² and there is deep disagreement between individuals and groups within society on such matters. Individuals ought to be free to approach others for assistance as part of their personal development and growth, either individually or in community, and which the Government should neither dictate nor intrude upon save in clear instances of proven harm.

138 Bans on conversion therapy across various jurisdictions thus infringe upon numerous aspects of individual or group autonomy by elevating the perceived consensus and standards among mental health institutions into law, which often lack careful distinction between gradations and proof of physical or psychological harm. They also paper over the deep differences between the concepts of “sexual orientation” and “gender identity”, including debates over the proper professional treatment for gender dysphoria.

139 Ultimately, conversion therapy bans enshrine and impose by law a fundamentally contested view of human nature, requiring society to accept SOGI as an inviolable aspect of human personality and identity, notwithstanding the conceptual and evidential flux within these concepts.

been horribly wrong to allow the old professional consensus against homosexuality to justify a ban on counseling that affirmed it”.

311 See Robert P George, *The Clash of Orthodoxies: Law, Religion and Morality in Crisis* (Wilmington: ISI Books, 2001) at pp 3–38.

312 For example, TrueLove.Is wrote about the individuals whose stories were featured on its site: “These Christians who seek to live faithfully to God have not suppressed themselves or their desires, but have chosen to express their sexuality in a different way (singleness or opposite-sex marriage) in living out their true, authentic self.” (TrueLove.Is, “Response to Heckin’ Unicorn” (8 January 2021) <<https://truelove.is/special-report/response-to-heckin-unicorn/>> (accessed 3 March 2021)).