



THE CANADIAN CENTRE FOR
**GENDER+SEXUAL
DIVERSITY**



A flawed breach of justice: Bill C-66

Bill C-66, *An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts*, is a long-overdue effort by the Government of Canada to correct the historical, systemic oppression of gender and sexual minorities. In its current form, Bill C-66 is fundamentally flawed. This bill was drafted and passed by the House of Commons without consultation with LGBTQI2S+ communities—the very people it is ostensibly meant to assist. Despite warnings to this effect, the Senate seems determined to adopt this bill without proposing critical amendments.

When the Senate Standing Committee on Human Rights continues its review of the bill on Wednesday, May 2, we, the undersigned members and organizations of the LGBTQI2S+ community, urge the Senate to introduce the following amendments to the bill:

1. Add the common bawdy house offence to the list of offences eligible for expungement;
2. Delete Section 23(2), making it easier to add offences covered by the bill in the future;
3. Preserve all government records related to convictions and findings of guilt while preserving people's confidentiality; and
4. Amend Section 25(6) to equalize the age of consent so it is consistent with analogous heterosexual acts.

ADD BAWDY HOUSES TO THE LIST OF OFFENCES ELIGIBLE FOR EXPUNGEMENT

The offences covered by Bill C-66 grossly understate the laws that were historically used to unjustly persecute LGBTQI2S+ Canadians. The prime minister acknowledged this in his parliamentary apology when he noted the bawdy house law was used to charge men found in gay bathhouses. The prohibition on common bawdy house as it related to sex work, which the Supreme Court ruled unconstitutional, was also an instrument of state injustice. We urge the Senate to add the bawdy house offence for acts of indecency and sex work to the schedule of listed offences eligible for expungement, as this is in line with the stated objective of the bill.

DELETE SECTION 23(2)

In order for the government to add to the schedule of offences eligible for expungement, Section 23(2) of Bill C-66 requires the activity to no longer constitute an offence. Yet laws relating to indecent acts, obscenity, and vagrancy, among others, have been used to criminalize consensual same-sex activity and remain in the *Criminal Code*. Parliament has been reluctant to remove or reform these antiquated laws. Those who were charged with these offences will be forced to wait, despite suffering the same injustice as those covered by the bill. This is unacceptable. We therefore urge the Senate to remove Section 23(2) from Bill C-66 so that offences can be more easily added in the future.

PRESERVE RECORDS

Sections 17 and 19 of Bill C-66, which instruct the RCMP and federal departments and agencies to “destroy or remove any judicial record of the conviction to which the expungement order relates that is in its repositories or systems,” are antithetical to the broader process and intent of Bill C-66. Section 18 expands the expungement order to include court, police, and provincial records. While respecting confidentiality—including removing identifying information about individuals who request this—it is critical to preserve historical records of state abuse of LGBTQI2S+ Canadians as a matter of

accountability and protection. A country ignorant of its history is destined to repeat it. These sections must therefore be amended to respect the privacy of the unjustly convicted, while preventing the destruction of expunged documents.

AMEND SECTION 25(c) CONCERNING AGE OF CONSENT

Amend Section 25(c) of Bill C-66 so that the age of consent is consistent with analogous historical acts of heterosexual sex. The bill establishes 16 as the age of consent. However, until 2008, the age of consent for heterosexual sex was 14. The offences of gross indecency, buggery, and anal intercourse historically established a higher age of consent for homosexual sex. This injustice continues to be perpetuated by Bill C-66, which further offends a central principle of Canadian law by applying today's age of consent to yesterday's acts, rather than the age of consent at the time the acts took place. We urge the Senate to amend the bill so that there is a clear and consistent age of consent, one that reflects the historical standards of analogous acts of heterosexual sex.

Community Briefs on C-66:

[AIDS Action Now!, Queer Ontario, Queers Crash the Beat](#)

[Canadian Centre for Gender + Sexual Diversity](#)

[Canadian HIV/AIDS Legal Network, HIV & AIDS Legal Clinic Ontario](#)

[Canadian Lesbian and Gay Archives](#)

[Criminal Lawyers Association](#)

[Gay and Lesbian Historians](#)

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