Combatting Hate in Canada

Submission from the Association for Reformed Political Action (ARPA) Canada

to

the Standing Committee on Justice and Human Rights

regarding

Bill C-9: An Act to Amend the Criminal Code (Hate Propaganda, Hate Crime and Access to Religious or Cultural Places)

October 27, 2025

The Association for Reformed Political Action (ARPA) Canada is a public policy advocacy organization rooted in the Reformed Christian theological and philosophical tradition. ARPA believes in the inherent dignity and equality of all persons as image bearers of God. ARPA is troubled by the rise in hate crimes and hate-motivated incidents reported in Canada.

The Heidelberg Catechism (1563), a historic statement of Reformed Christian doctrine, explains what is required by the commandment, "You shall not give false testimony against your neighbour":

Q. What is required in the ninth commandment?	A. I must not give false testimony against anyone, twist no one's words, not gossip or slander, nor condemn or join in condemning anyone rashly and unheard. Rather, I must avoid all lying and deceit as the devil's own works under penalty of God's wrath. In court and everywhere else, I must love the truth, speak and confess it honestly, and do what I can to defend and promote my neighbour's honour and reputation.

Textbook examples of hate propaganda involve egregious, malicious false testimony against an identifiable group – for example, presenting all members of a certain religion as terrorists or supporters of terrorism, or as grave threats to children, or something comparably vile. For this reason, hate speech has elsewhere been called "group libel," and some scholars suggest that keeping this group libel concept in mind can help to guard against applying hate speech laws to censor ideas or opinions that shock, offend, or challenge prevailing views.[1]

For example, strongly condemning or even mocking religious beliefs or practices is not the same as libelling religious persons. Someone might contend that teaching children a particular religion as true from a young age is child abuse or that religious people abuse children insofar as they do so. That is a moral view, offensive or mistaken though it may be. But it is different in kind from claiming that members of a certain religious group are child abusers, full stop, and

[1] See e.g. Ronda Bessner, "Constitutionality of the Group Libel Offences in the Canadian Criminal Code" (1988) 17 Man. L.J. 183. And Jeremy Waldron, The Harm in Hate Speech, (Cambridge (Mass): Harvard University Press, 2012), at ch. 3, "Why Call Hate Speech Group Libel".

intentionally leaving listeners to assume the worst. The intention with the latter is not (simply) to share one's opinion, but to deceive others into believing something terrible about the identifiable group and, potentially, hate them because of it.

ARPA recognizes the evil of hate speech, properly defined, but also the challenges of defining and policing it without unduly interfering with free expression, which is foundational to what the Charter of Rights and Freedoms calls our "free and democratic society."

Canada's existing prohibition on promoting hatred in s. 319(2) and (2.1)

Canada's existing prohibition on wilfully promoting hatred requires police, prosecutors, the Attorney General, and judges to discern the type and intensity of emotion (hatred) that someone may have intended his statement to generate in unspecified others towards unspecified members of an identifiable group. This makes it challenging to apply the offence in a manner consistent with the rule of law, which requires that laws be sufficiently clear and predictable so that people can understand how they apply and conduct themselves accordingly.

With other offences, such as criminal harassment, there are specific victims directly affected who can testify as to whether the accused's conduct caused them to feel fear, though the accused cannot be convicted unless he both intended to make the victim feel fear (or was reckless in that regard) and it was reasonable for the victim to feel fear in the circumstances.[2]

The Supreme Court of Canada narrowly upheld (4 Justices to 3) Canada's existing criminal prohibition on promoting hatred (s. 319(2)) in R. v. Keegstra, 1990. The dissenting opinion, written by Justice McLachlin, raised concerns about the apparent subjectivity of s. 319(2), and considered it a threat to the "very essence of the value of freedom of expression," which protects the freedom to challenge ideas and ideals that everyone holds dear.

The majority took these and other concerns into account in upholding s. 319(2) and tried to narrow its scope and to explain how the section could be applied objectively, so as not to censor ideas, beliefs, or opinions. The Court insisted (a) that "hatred" refers only to an intense and extreme emotion, and (b) the law is concerned only with proscribing the effect of promoting hatred in others towards an identifiable group, not with regulating ideas or opinions. The Court further elaborates on both points in Saskatchewan v. Whatcott, 2013 SCC 11.

Pitfall	Supreme Court of Canada commentary (from Keegstra majority or Whatcott decisions)
Focusing on the nature of ideas expressed	"The danger that a trier will improperly infer hatred from statements he or she personally finds offensive cannot be dismissed lightly…" *Keegstra*, para 118. "A separate but related conceptual challenge […] is a mistaken propensity to focus on the nature of the ideas expressed, rather than on the likely effects of the expression. The repugnant content of expression may sidetrack litigants […]." (*Whatcott*, para 49) "Hate speech legislation is not aimed at discouraging repugnant or offensive ideas. […] It does not target the ideas, but their mode of

[2] Criminal.Code, s. 264.

	expression in public and the effect that this mode of expression may have." (*Whatcott*, para 51) "The focus of the prohibition against hate propaganda […] is 'solely upon [its] likely effects." *Whatcott*, para 54, quoting *R. v. Taylor*.
Focusing on the feelings of the speaker or the victim group	"the outcome does not depend on the subjective views of the publisher or of the victim… but rather on an objective application of the test" (*Whatcott*, para 35). "Societal harm flowing from hate speech must be assessed as objectively as possible. The feelings of the publisher or victim are not the test." (*Whatcott*, para 82) "Instead, the focus must be on the likely effect of the hate speech on how individuals external to the group might reconsider the social standing of the group." (*Whatcott*, para 82)

Bill C-9's definition of hatred, clarification, and the pitfalls of policing hate speech

The government insists that it has no intention of changing the common law meaning of "hatred" as defined by the Supreme Court in Keegstra and Whatcott.

The Supreme Court has repeatedly held that, unless there is a clear indication that Parliament intended to overturn the common law, the common law continues to apply.[3]

In light of the government's stated intentions not to displace the common law with Bill C-9, it is unlikely that judges hearing a s. 319(2) or (2.1) case will consider themselves bound only to the text of the bill and not to earlier jurisprudence. Still, the most important signal of Parliament's intention is the text of the bill itself, and it would be best to avoid any ambiguity here.

However, the Minister also told the Committee that one goal of Bill C-9 is to make it easier to lay hate propaganda (s. 319(2) and (2.1)) charges – not only by removing AG consent, but also by providing a definition of "hatred" in the Criminal Code.

So, even if courts hearing s. 319(2) cases in a post-Bill C-9 future will continue to apply Keegstra and Whatcott, there is still a legitimate concern over whether Bill C-9 will give appropriate guidance to police and prosecutors regarding the bar those precedents set. By signalling (intentionally or not) that the bar is lower than that set by leading jurisprudence, the result may be that charges are laid too easily, resulting in a chilling effect on expression and public debate – even if charges are subsequently dropped or the accused is later acquitted.

***R v. Keegstra* (SCC 1990)**	**"hatred"**	**Bill C-9**
"emotion of an intense and extreme nature that is clearly associated with vilification and detestation"		"emotion that involves detestation or vilification and that is stronger than disdain or dislike"

[3] R¡.v¡.Basque?2023 SCC 18, at para 49; Kosicki.v¡.Toronto.(City)?2025 SCC 28, at para 28.

Bill C-9 also risks steering police and prosecutors into the pitfalls that the Court identified in Keegstra and Whatcott (noted in the chart above, on p. 2-3), for several reasons:

1. Bill C-9 uses "hatred" both in reference to the feelings the accused intended to promote in others and in reference to the accused's own feeling or motivation.
2. Bill C-9's clarification clause, which applies to both s. 319 and s. 320.1001 offences, obscures whether the trier of fact should be looking to the (anticipated or actual) feelings of members of the victim group at all.

Recall the Supreme Court's key point that the feelings or subjective reaction of the victim group is not the test. Nor is the feeling or motivation of the speaker the test – that is, a person cannot be convicted of wilfully promoting hatred for making a merely offensive or insulting statement, even if that statement is motivated by hatred.

Bill C-9's clarification clause says that an offence is not committed "solely" because the communication in question "discredits, humiliates, hurts, or offends." The term "solely" may imply that whether the statement humiliates, hurts, or offends is a relevant / contributing factor in deciding whether the statement was criminal. Also, while the term "discredit" seems to point to how people external to the victim group feel toward the group, the terms "humiliate, hurt, or offend" point to the feelings of the victim group, thus potentially obscuring the legal test. While the Court notes in Whatcott that hate speech (in a provincial statute, in that case) "goes far beyond merely discrediting, humiliating, or offending the victims," two points must be kept in mind. First, under provincial human rights legislation, compensating victims is a statutory objective. Second, the Court's points about the objective nature of the test for whether a statement "promotes hatred" remain crucial. Parliament should not cherry-pick a phrase from Whatcott, as Bill C-9's clarification clause appears to do, that risks obscuring the objective nature of the test, especially in a criminal law context.

This apparent tension with the key jurisprudential points noted above, which limit the scope and subjectivity of the hate propaganda offence, threatens to sow further confusion in an area of law already prone to it. For most crimes, the nature of the actus reus is fairly clear – something was stolen, someone was assaulted, etc. Even for offences involving speech, such as uttering threats, the nature of the speech prohibited is much more distinct. Hate speech prohibitions, conversely, are prone to subjective and ideologically biased interpretations.

C-9 Clarification	Common law clarifications (in addition to those in the chart on p. 2-3)
"For greater certainty, the communication of a statement does not incite or promote hatred, for the purposes of this section, solely because it discredits,	"To promote hatred is to instil detestation, enmity, ill-will, and malevolence in another." (*R. v. Andrews*, quoted in *Keegstra* at para 116). "Hatred in this sense is a most extreme emotion that belies reason, an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation." (*Keegstra*, para 116)

humiliates, hurts or offends"	"Recognizing the need to circumscribe the definition of 'hatred' in the manner referred to above, a judge should direct the jury (or him or herself) regarding the nature of the term as it exists in s. 319(2). Such a direction should include express mention of the need to avoid finding that the accused intended to promote hatred merely because the expression is distasteful." (*Keegstra*, para 118) "Representations that expose a target group to detestation tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims." (*Whatcott,* para 41)

Recommendation 1: Amend Bill C-9 to either:

(a) remove the definition of hatred and the accompanying clarification provision, signalling a clear intention to continue to rely on the common law, OR

(b) ensure that the definition and clarification better reflect the high bar and objective test set by leading jurisprudence:

> The definition of "hatred" could be improved by adopting the Court's phrasing from R. v. Keegstra. An improved statutory definition that more adequately and accurately captures the jurisprudential standard would be:
>
> > hatred means the emotion of an intense and extreme nature that belies reason and is clearly associated with vilification and detestation that is stronger than disdain or dislike
>
> Bill C-9's clarification provision could be improved by adding "or because it is offensive, repugnant, or distasteful," as clarified in Keegsta and Whatcott.

Recommendation 2: Maintain the requirement for AG approval for instituting a proceeding under s. 319(2) or (2.1) or the proposed (2.2), if passed, given the existing interpretive challenges and pitfalls with s. 319(2) discussed above, which Bill C-9 may exacerbate.

Prohibiting hate and (more) hate speech to reduce hate crimes?

One argument for hate speech laws is that hate-motivated crimes are downstream from hate rhetoric. Doubtless, there is a connection. But we generally do not criminalize one thing because it might lead to another. There must be a clear and immediate connection, such as where someone counsels a specific person to commit a particular crime.

One example is s. 318 of the Criminal Code, in which the scope of the offence of inciting hatred is limited by the phrase "likely to lead to a breach of the peace". The context in which the

alleged hatred-inciting speech occurs is crucial to determining whether it is likely to lead to a breach of the peace.

The more remote the causal connection between the speech and the potential (other) criminal conduct, the more challenging it is to draw a sufficiently clear line, and the more caution is called for. Strong but legitimate criticism of the beliefs or practices associated with a given identifiable group could conceivably lead some persons who hear that criticism to hate members of that group. But the "hater" bears responsibility for his own heart and mind. How much more so does the person who acts on his hate?

Prosecutions for wilfully promoting hatred under s. 319(2) are rare. This makes sense, given the uniqueness of the offence, the difficulty in distinguishing between offensive or even angry, prejudiced speech and speech designed to promote hatred within the meaning of the Code.

Bill C-9 appears to be based on the theory that the problem of weak enforcement of laws against "downstream" physical hate crimes (like mischief, intimidation, and assault) can be solved by strengthening Canada's criminal prohibitions on what is considered an "upstream" cause of such crimes, namely hate speech.

Even if broader and stricter "upstream" prohibitions on hate speech might help reduce the crimes that are believed to be downstream from it, this policy approach comes at a cost. It narrows the boundaries of free speech and could have a chilling effect on open and robust public debate. People who are convinced that beliefs or practices associated with an identifiable group deserve criticism or condemnation may hold back and self-censor for fear of being accused of trying to promote hatred against that group.

Targeting (hate) crimes directly

A more effective solution, in ARPA's view, is to ensure existing criminal prohibitions are robustly enforced. The more people get away with hate-motivated crimes like mischief, intimidation, uttering threats, assault, etc., the more likely they and others are to be emboldened in both their physical conduct and in their rhetoric. The law cannot change people's hearts, but it can deter people from acting out on their worst impulses.

As Ecclesiastes 8:11 says:

> When the sentence for a crime is not quickly carried out,
> people's hearts are filled with schemes to do wrong.

Notably, the vast majority of the hate incidents noted by Statistics Canada involved actions that are already illegal under the Criminal Code:

> Most of the violations typically associated with hate crimes increased in 2023 when compared to the previous year, including public incitement of hatred (+65%, to 150 incidents), uttering threats (+53%, to 684 incidents), general mischief (+34%, to 1,826 incidents) and assaults (+20%, to 939 incidents).[4]

[4] Police-reported hate crime in Canada, 2023" online: https://www150.statcan.gc.ca/n1/daily-quotidien/250325/dq250325a-eng.htm

Canada's existing criminal prohibitions against intimidation, mischief, criminal harassment, uttering threats, assault, advocating genocide, inciting hatred, wilfully promoting hatred or antisemitism, and others, provide a considerable range of criminal law tools to protect people and minority groups from mistreatment.

Also, as Statistics Canada noted, "About half of those accused in an incident involving a hate crime had prior contact with police, and more than half had police contact afterward."[5] Strikingly, StatsCan also noted that, "Similarly, 54% of the individuals accused of a hate crime encountered police again within the three years following their initial hate crime violation. Among this cohort, 27% were accused in one subsequent incident, 39% were accused in two to five subsequent incidents, and 34% in six or more subsequent incidents."

Recommendation 3: Parliament should further investigate how many hate crimes are committed by repeat offenders and consider legislative solutions that prevent reoffending. This may include sentencing and bail reform, but also incorporating restorative justice practices, with a view to reconciling the offender with the victim and community.[6]

Instead of applying the age-old wisdom of ensuring that laws are effectively enforced, the approach of Bill C-9 is to strongly condemn hatred (as an emotion) in all of its illegal manifestations, threatening would-be offenders with the possibility of also being charged (if they are charged at all) with a novel "hate crime", the actus reus of which captures anything that would constitute an offence under the Criminal Code or any act of Parliament.

The Criminal Code already takes into account the motivation of bias, prejudice, or hate as a factor in sentencing generally (s. 718.2(a)(i)). The Code also takes this into account in its provisions on mischief and tailors that offence in relation to various forms of property used by religious and other identifiable groups (s. 430(4.1) - (4.2)). Also, judges generally have discretion to consider evidence of the accused's motivation for committing an offence when sentencing.

Recommendation 4: Remove the proposed s. 320.1001 general hate crime.

The proposed new intimidation offence

The Criminal Code has a general intimidation offence, which could be used to capture much of the conduct that is causing members of identifiable groups to feel unsafe. Section 423 of the Code prohibits "compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing" by:

- threatening violence against the person or a family member
- threatening the destruction of property
- persistently following a person
- hiding a person's property or hindering him from using it
- following someone on a highway, with another person, in a disorderly manner
- besetting or watching the place where a person lives, works, or "happens to be"
- blocking or obstructing a highway

[5] "Ibid.

[6] See ARPA Canada's policy report on Restorative Justice, online: https://arpacanada.ca/wp-content/uploads/2016/11/ARPA-RespSub-RestorativeJustice-2022.pdf

Section 423 also includes an exception in subsection (2), "A person who attends at or near or approaches a dwelling-house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section." Section 430 of the Code (on mischief) includes a similar exception.

Notably, Bill C-9 both (a) broadens the existing intimidation offence to include "any conduct [intended] to provide a state of fear" and (b) excludes the exception noted above in s. 423(2) - though it does include this exception for the proposed new obstruction offence in s. 423.3(2).

It is also already offence to obstruct, interfere with, or interrupt "any person in the lawful use, enjoyment or operation of property" under s. 430 (mischief). This offence of mischief can apply broadly, but the Criminal Code also already clarifies that it applies to obstructing access to a building used for religious worship, or a building used by an identifiable group for various activities, events, or as a residence. Bill C-9 would remove the mischief offence as it relates to religious property and other cultural institutions and would instead create an offence for intimidation and obstructing access to such places.

This change appears unnecessary. The main problem, in ARPA's view, is not that religious and cultural institutions are not protected by law, but that the law needs to be better enforced.

Recommendation 5: Do not replace ss. 420(4.1) and (4.101) with the new proposed s. 423.3. Alternatively, make the exception in the proposed s. 423.3(4) (re. attending at or near a place to communicate or obtain information) apply to the offences in both subsection (1) (intimidation) and (2) (obstruction or interference with access).

The defence of good-faith religious opinion

ARPA understands the concern that the defence in paragraph (b) of s. 319(3) and (3.1) might allow the wilful promotion of hatred under the guise of sharing one's religious belief or opinion.

Notably, this defence (like the others in s. 319(3) and (3.1)) does not apply to an offence under s. 319(1): public incitement of hatred likely to lead to a breach of the peace. Nor is there any such defence to a charge of advocating genocide under s. 318.

The defence is limited by the requirement that the opinion be proffered in good faith. That is, the person making the statement must sincerely believe that they are trying to discern and articulate a religious truth.

Where a person's real motive is simply to promote hatred against an identifiable group and they try to mask this motive with religious language, the defence is not available. In fact, there are several cases in which the accused made hate-promoting statements alongside religious ones and tried unsuccessfully to rely on the defence because the defamatory, hate-promoting statements were distinguishable from the statements of religious belief.[7] There are no reported cases where the defence was successfully relied on.

Nevertheless, the defence is an important safeguard against the overextension of the hate propaganda offence. It represents a balance between the legitimate and pressing objective of preventing the promotion of hatred and the freedom of each individual to wrestle with religious

[7] See R¡.v¡.Harding, 57 O.R. (3d) 333, ONCA 2001; R¡.v¡.Brazau, 2014 O.J. No. 1117 (ONCJ); and R¡.v¡. Popescu, 2020 ONCJ 427.

questions and religious texts and share and debate religious opinions. And since courts are not arbiters of religious truth, the truth defence would not apply here.

Religious Canadians, including Reformed Christians, often find their beliefs regarding such matters as the sanctity of preborn human lives, the ethics of certain forms of assisted human reproduction, sexual morality and sexual identity, marriage, and more labeled "hateful".

In fact, ARPA's position that Canada should follow other countries' lead in putting the brakes on medical gender transition for minors was recently called "hateful" and grouped with "hate-related incidents" by the mayor of Hamilton and others. One of ARPA's core principles is to share the truth with grace. ARPA avoids inflammatory rhetoric, crude or insulting language, and causing offence needlessly, but the accusations of hate come anyway. Indeed, the tactic of labelling as "hatred" any opinions or policy positions that conflict with progressive political orthodoxies appears to be troublingly prevalent in public discourse today.

In an increasingly secular climate, in which both misunderstanding of and antipathy towards religious beliefs and communities appear to be on the rise, ARPA is not content to rely on courts to find that publicly stating religious opinions is in the public interest (under s. 319(3)(c)).

Finally, the religious defence also ensures that people remain free to boldly confront and criticize teachings within their own or other faith traditions from a religious perspective.

Recommendation 6: Do not remove the good faith religious defence from s. 319.

All of ARPA's recommendations are restated on page 10, below, for ease of reference.

The foregoing is respectfully submitted on behalf of the Association for Reformed Political Action (ARPA) Canada.

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