Combating Hate and Protecting Religious Freedom in Canada

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

to

the Standing Senate Committee on Human Rights

regarding

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

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]

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."

The Good Faith Religious Defence

No Evidence Justifying Removal of Religious Defence

ARPA understands potential fears 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 masked in religious language, the defence is not available.

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.[2]

There are no reported cases where the defence was successfully relied on. Some argue that this means the defence is not needed. But what it really shows is that the defence is not being misused. The defence remains an important safeguard against overextending the hate propaganda offence. It represents a balance between the legitimate and pressing objective of preventing the promotion of hatred and the freedom to wrestle with religious questions and texts and to share and debate religious opinions. And since courts are not arbiters of religious truth, the truth defence would not apply here.

The oft-cited example of Imam Adil Charkaoui's words at a Quebec rally in 2023 also does not justify the removal of the religious defence. The decision by law enforcement not to charge Charkaoui in this case rested not on the religious defence, but on whether his statement amounted to wilfully promoting hatred.

Constitutionality of s. 319(3)(b)

[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".

[2] R. v. Harding, 57 O.R. (3d) 333, ONCA 2001; R. v. Brazau, 2014 ONSC 4761; and R. v. Popescu, 2020 ONCJ 427.

The good faith religious defence is a critical element of section 319. The Supreme Court confirmed this in *R v Keegstra*, writing:

> "These defences [319(3)(b)(c) and (d)] are hence intended to aid in making the scope of the wilful promotion of hatred more explicit; individuals engaging in the type of expression described are thus given a strong signal that their activity will not be swept into the ambit of the offence. The result is that what danger exists that s. 319(2) is overbroad or unduly vague, or will be perceived as such, is significantly reduced … The line between the rough and tumble of public debate and brutal, negative and damaging attacks upon identifiable groups is hence adjusted in order to give some leeway to freedom of expression."

Ultimately, the Court found that the religious defence, along with the other defences, was one reason why the prohibition on wilful promotion of hatred was not overly broad. That defence helps strike an appropriate balance which does not unnecessarily limit freedom of expression.

Clarifying Amendment

In response to a broad segment of religious and civil society groups criticizing the removal of the religious defence, the House of Commons Standing Committee on Justice and Human Rights added a clarifying amendment (clause 11.1), which stated that,

> "For greater certainty, nothing in subsection 319(2) (wilful promotion of hatred) shall be construed as prohibiting a person from communicating a statement on a matter of public interest including an educational, religious, political, or scientific statement made in the course of a discussion, publication, or debate, if they do not willfully promote hatred against an identifiable group by communicating the statement."

While this amendment indicates a desire to protect religious freedom, it is circular and therefore empty. It does not make up for removing the religious defence.

Of course, religious freedom remains protected under section 2(b) of the *Charter.* But by the same logic, the government could remove all defences to the crime of promoting hatred, since the *Charter* also protects freedom of expression. However, removing the religious defence signals to police, prosecutors, and judges that less weight should be given to religious freedom. The religious defence also provides clearer guidance to prosecutors to prevent unjustified charges.

Impact of Removing Good Faith Religious Defence

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 labelled "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.

Similarly, ARPA Canada was called hateful by members of the British Columbia legislature because we oppose medical transitions for minors and we support moderate pro-life laws.

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.

While Canadians may strongly disagree on such topics, they must be permitted to express their religious convictions in good faith without fear of prosecution.

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)). 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.

International Example

Päivi Räsänen has been a Member of Parliament in Finland for over three decades. She is also a member of the Finnish Lutheran Church. In 2019, Räsänen posted on Twitter (now X) questioning her church's involvement in an LGBT pride event. She posted this alongside Romans 1:24-27. Räsänen was arrested and charged with "agitation against a minority group" and interrogated for 13 hours. Additional charges were laid due to Räsänen voicing her opinion on marriage and sexuality in a 2004 booklet, as well as commenting on the topic on a radio show in 2019. Though acquitted for the 2019 tweet and radio show, the Finnish Supreme Court convicted Rasanen under their hate speech law for her part in the 2004 church booklet.[3]

In response to Rasanen's case, Finnish Justice Minister Leena Meri argued that the legislation is not sufficiently precise or predictable, making it hard for people to know what they can and cannot say.

Lack of Study and Clarity

The United Nations Human Rights Committee has noted that laws restricting freedom of speech must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public."[4]

Bill C-9 did not initially include a provision to remove the religious defence. That change occurred only *after* the Committee had heard from witnesses.

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[3] "Finnish Parliamentarian Convicted of "Insulting" a Group for 20-year-old Church Booklet to Appeal to European Court of Human Rights," *Alliance Defending Freedom International*, May 7, 2026.
[4] "General Comment No. 34, Article 19," *United Nations,* September 12, 2011.

Removing a longstanding criminal defence introduces new uncertainties in an already fraught area of law. This development may have a chilling effect on Canadians' speech, making them unsure about what they can and cannot say, especially when it comes to sincere religious convictions.

Recommendation 1: Delete clauses 4(1.1) and 4(1.2) (maintain the religious defence).

Recommendation 2: If Recommendation #1 is not implemented, amend clause 11.1(1) to read as follows: "For greater certainty, nothing in subsection 319(2) or (2.2) of the *Criminal Code* shall be construed as prohibiting a person from communicating a statement in good faith on a matter of public interest, including an educational, religious, political or scientific statement made in the course of a discussion, publication or debate, ~~if they do not wilfully promote hatred against an identifiable group by communicating the statement~~."

Similarly, amend clause 11.1(2) to read as follows: "For greater certainty, nothing in subsection 319(2.1) of the *Criminal Code* shall be construed as prohibiting a person from communicating a statement in good faith on a matter of public interest, including an educational, religious, political or scientific statement made in the course of a discussion, publication or debate, ~~if they do not wilfully promote antisemitism by condoning, denying or downplaying the Holocaust~~."

Additional Amendments

The Supreme Court of Canada, in *R v Keegstra* and *Saskatchewan v Whatcott,* insisted that section 319 of the *Criminal Code* is concerned with the effect of promoting hatred in others towards an identifiable group, not with regulating ideas or opinions.

The Court warned against two primary pitfalls. The first pitfall is to focus on the nature of the ideas expressed, i.e., whether they are offensive or repugnant. Rather, the prohibition is focused on the likely effects of what was said.[5] The second pitfall the Court cautioned against is to focus on the feelings of the speaker or the victim group. Again, the focus must be on the likely effect of the speech on others – whether it can be objectively assessed as likely to promote feelings of hatred (as defined in case law) in them toward the target group.[6]

Defining "hatred"

ARPA Canada is grateful that the House of Commons Standing Committee on Justice and Human Rights amended Bill C-9 to improve the definition of hatred and to reinstate Attorney General consent for hate speech proceedings. Both amendments help to maintain the high bar that courts have used in hate speech cases.

[5] *R v Keegstra,* [1990] 3 SCR 697, at para. 118, *Saskatchewan v Whatcott* [2013] 1 SCR 467*,* at paras. 49, 51, and 54.
[6] *Saskatchewan v Whatcott,* at paras. 35 and 82.

Nonetheless, the standard for what constitutes "hatred" in Bill C-9 could be further clarified to align more closely with the jurisprudential standard.

<u>Recommendation 3</u>: Bill C-9's clarification provision in clause 4(6) should be improved by adding "or because it is offensive, repugnant, or distasteful," as clarified in Keegstra and Whatcott.

General Hate Crime Offence

Most hate incidents noted by Statistics Canada involved actions that are already illegal under the *Criminal Code:*

> In 2023, police services in Canada recorded a sharp rise in hate crimes, with 4,777 incidents reported, up 32% from 3,612 incidents in 2022. [...]
>
> 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).[7]

Existing criminal prohibitions provide a considerable range of tools to protect people and minority groups from mistreatment. Statistics Canada also notes that "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."

Instead of ensuring that laws are effectively enforced, the approach in Bill C-9 is to threaten would-be offenders with the possibility of also being charged with a new "hate crime," 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.

<u>Recommendation 4</u>: Remove the proposed s. 320.1001 general hate crime.

Proposed New Intimidation Offence

Section 423 of the *Criminal 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

[7] "Police-reported hate crime in Canada, 2023" *Government of Canada,* March 25, 2025.

right to abstain from doing," including threatening violence, persistently following a person, besetting or watching where someone lives or works, or blocking or obstructing a highway.

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.

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

It is also already an 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 already clarifies that it applies to obstructing access to a building used for religious worship or to 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.

<u>Recommendation 5</u>: Do not replace ss. 430(4.1) and (4.101) with the new proposed s. 423.3. Alternatively, amend s. 423.3(4) (re. attending at or near a place to communicate or obtain information) so that the exception applies to the offences in both subsection (1) (intimidation) and (2) (obstruction or interference with access).

ARPA's five recommendations are restated on page 8, below, for ease of reference.

Respectfully submitted on behalf of the Association for Reformed Political Action (ARPA) Canada.

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Recommendations:

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Likewise, amend clause 11.1(2) to read as follows: "For greater certainty, nothing in subsection 319(2.1) of the *Criminal Code* shall be construed as prohibiting a person from communicating a statement in good faith on a matter of public interest, including an educational, religious, political or scientific statement made in the course of a discussion, publication or debate, ~~if they do not wilfully promote antisemitism by condoning, denying or downplaying the Holocaust~~."

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