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• (1530)

[*English*]

The Chair (Hon. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Sœurs, Lib.)): Good afternoon, everyone. I call this meeting to order.

Welcome to meeting number 7 of the House of Common Standing Committee on Justice and Human Rights.

Pursuant to the order of reference that you're all familiar with and the motion adopted on October 7, the committee is meeting to study Bill C-9, an act to amend the Criminal Code with respect to hate propaganda, hate crime and access to religious or cultural places.

Today's meeting is taking place in a hybrid format—with, notably, MP Idlout joining us online—pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application.

[*Translation*]

Before we continue, as always, I would ask all in-person participants to consult the guidelines written on the cards in front of them on the table. These measures are in place to help prevent audio and feedback incidents, and to protect the health and safety of all participants, including the interpreters.

You will notice a QR code on the card in front of you which links to a short awareness video.

[*English*]

I want to make a few comments for benefits of the witnesses and the members.

Please wait until I recognize you by name before speaking. Those participating by video conference, in this case MP Idlout, click on the microphone icon to activate your mic, and please mute yourself when you're not speaking. For those on Zoom, at the bottom of your screen you can find a selection tab for the appropriate channel for the interpretation: floor, English or French. Those in the room can use the earpiece and select the desired channel.

I will remind you that all comments should be directed through me, the chair.

[*Translation*]

For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the “raise hand” function.

The committee clerk and I will do our best to maintain the order of speaking. We thank you in advance for your patience and understanding in this regard.

[*English*]

On that last note, the committee has graciously agreed to allow a couple of questions from MP Idlout at the end. We're at 3:30. We'll go to 4:35 and then just hold the rest for the next panel of officials that I'll introduce then.

Welcome, Minister.

Welcome, guests.

Appearing today, we have with us the Minister of Justice, the Honourable Sean Fraser.

[*Translation*]

He is joined by Shalene Curtis-Micallef, deputy minister and deputy attorney general of Canada, and Owen Ripley, senior assistant deputy minister.

[*English*]

I will introduce the second hour's witnesses at the second hour.

I will remind you that for the presentation today, Minister, you have five minutes to present. Without further ado, I turn the floor over to you.

Welcome.

Hon. Sean Fraser (Minister of Justice and Attorney General of Canada): Thank you very much, Mr. Chair.

Members, it's a pleasure to be here with you today to discuss the combatting hate act, Bill C-9.

Just to set the table.... One of the things I think we need to reflect upon as Canadians is that it's a great promise of this country that we have the ability to live freely, regardless of the colour of our skin, the god we pray to or the person we love. Sadly, too many Canadians are robbed of these basic freedoms, not necessarily by operation of law but, too often, by virtue of being subjected to hate in their communities.

[*Translation*]

One of the great promises we made as a country is that we would allow the citizens of Canada to live their lives freely. Unfortunately, many people face discrimination and hate.

[English]

This is a problem in Canada that's worsened, particularly since the end of the COVID-19 pandemic, and it manifests itself in very painful and very human ways.

When you have the opportunity to talk to people who face discrimination.... Let's be specific; it's not just discrimination. There are firebombs on our synagogues. There are desecrations of our National Holocaust Monument. We have seen far too many people feel unsafe to practise their faith.

Although we've seen a troubling rise in anti-Semitism, it's not limited to any one particular faith. I have had the opportunity to speak with members of the Muslim community, the Christian community, the Hindu community and the Sikh community, who tell me the great pain they go through when they're unable to live their lives freely, be who they are and practise their faith in public.

It doesn't take long, when you start to have conversations with communities who are subjected to hate, to realize that it's not restricted to the religious context. When I talk to members of the queer community, they tell me that, of course, it's painful if they personally have been subjected to hate.

[Translation]

However, when we read the newspapers, we see that there is a lot of concern out there.

[English]

There are people who shared with me that they fear to even hold their loved one's hand for fear they may be subjected to violence in their communities.

It's important that we do more than offer our words, thoughts and prayers to people who have been subjected to hate, often violent acts of hate. That brings us to Bill C-9. We, of course, in the recent federal election campaign, made a commitment to add new offences to the Criminal Code, specifically to protect the ability, primarily, for people to participate in activities at their religious institutions—the buildings, churches, mosques, synagogues and mandirs.

● (1535)

It's important that we realize that hate is not limited to the doorsteps of our religious institutions. Though this bill includes the criminalization of intimidation and obstruction of those who would attend the buildings or structures designed for identifiable groups, we've decided to go beyond that initial commitment and introduce a stand-alone crime of hate. This is meant to recognize that hate is throughout our communities—in our parks, in our streets, on our university campuses and in our grocery stores.

As to the way this particular charge will operate, it will lay over existing criminal offences to recognize that there is an enhanced moral culpability when you commit a crime against a person on the basis of who they are. It also recognizes that it is not just the individual victim who suffers consequences when they face an act of hate. The impact reverberates throughout the entirety of a particular community, causing people to have extraordinarily difficult and

traumatic experiences on the basis of the immutable characteristics with which they were born.

In addition to the intimidation and obstruction offence and this new stand-alone crime of hate, we've established an additional criminal offence—the wilful promotion of hate through the use of hate symbols. Of course, the wilful promotion of hate is an existing crime today, but this recognizes that sometimes the tool you use to commit a crime worsens the impact on the victim and, in this instance, on the entirety of a given community.

Beyond the specific measures we included among these new offences, we also heard loud and clear from law enforcement and from communities who have been subjected to hate that charges are not often laid. We know that there were just shy of 5,000 hate crimes reported in 2023, the last year for which I've seen complete data. We expect that the number is much, much larger.

We've heard very clearly that there are difficulties when it comes to understanding clarity in the definition and also with the administrative process. For that reason, we've added clarifying language to codify the definition of hate and remove the requirement for the consent of the attorney general.

[Translation]

I do not have much time to continue the conversation, but I do hope that you will have the opportunity to commit to studying Bill C-9, which is very important for protecting minority communities and allowing all Canadians to live their lives freely in every community across our country.

Thank you, Mr. Chair.

The Chair: Thank you, Minister.

We will at least have time for two nearly complete rounds of questions, and perhaps even a third.

The speaking order is as follows: Mr. Brock, who will have six minutes and, I understand, will share some of his time with Mr. Gill. Then it will be Mr. Housefather, followed by Mr. Fortin. They will have six minutes each.

Go ahead, Mr. Brock.

[English]

Larry Brock (Brantford—Brant South—Six Nations, CPC): Thank you, Chair.

Minister Fraser and officials, welcome to the justice committee.

Minister, since your government took office in 2015, crime in this country has been spiralling out of control, with violent crime up 55%, homicide up 30%, sex assault up 76%, gun crime up 130%, and extortion, shockingly, up 330%. However, over the last 570 days, your government has introduced only two justice bills, Bill C-63 and Bill C-9, neither of which does anything to address the revolving door for violent repeat offenders.

Why, Minister, after a year and a half, is your first legislative priority a bill that restricts free speech instead of protecting Canadians from violent repeat offenders?

Hon. Sean Fraser: Mr. Chair, with enormous respect to my colleague, I view the question as diminishing the importance of the legislation we're here to discuss today. Treating hate crimes as something less than urgent, when members of affected communities are experiencing painful realities as a result of the hate that is lobbed upon them, is not, in my view, the appropriate way to engage in this conversation.

For the member's information, as we've discussed privately, we expect that this fall.... Granted, I've been in this position for a matter of a few months, most of which the House wasn't sitting. We have tabled the legislation we're here to discuss today. This fall, within a matter of weeks, we will have one of the most comprehensive sets of reforms, when it comes to the bail system and tougher sentences, that our country has seen in many years. We will have a third bill before Christmas regarding intimate partner violence, sexual offences and the role of victims in this process.

• (1540)

Larry Brock: Thank you, Minister. I'm taking back my time.

The Chair: Mr. Brock, I understand that the minister should be succinct in his answers, but let him finish his thoughts. I'll cut him off if need be.

Larry Brock: I'm taking a look at the time it took me to pose the question, sir, and I've given him an extra 10 seconds to respond.

The Chair: Go ahead.

Larry Brock: Do I have my time?

The Chair: Go ahead.

Larry Brock: Thank you.

Minister, in 2015, there were 382,000 incidents of violent crime. In 2024, there were almost 592,000. That's a 55% increase. Any way you slice it, it's an objective fact that crime is worse now than it was in 2015.

Are you willing to accept reality, or are you going to choose to remain oblivious to what's happening in this country?

Hon. Sean Fraser: I can recognize that crime and violent crime are problems in Canada. That's why we are moving forward with an ambitious legislative agenda that's going to toughen the criminal justice system.

However, it's important that we realize there are additional solutions. In addition to our changes to the bail and sentencing regime that you'll see in a matter of weeks, you're also going to see investments on the front line, with 1,000 new RCMP officers, 1,000 new border officials and more prosecutors. We also have a view of the long-term need to prevent crime by making investments upstream that will tackle opportunities to pull at-risk youth out of the system, to invest in supportive housing and to deal with mental health and addictions.

I think it's clear that we need to take action to toughen Canada's criminal laws and punish people who commit serious crimes.

Larry Brock: Minister, Conservatives have introduced nearly 20 justice and public safety bills in this Parliament alone—on bail reform, sexual assault, intimate partner violence and organized crime, among others—while your government has tabled just two.

Are you going to support any private member's bills introduced by the Conservative Party?

Hon. Sean Fraser: We don't have a blanket rule on supporting or rejecting bills based on the source of those proposed legal changes. We instead consider, independently, each of the measures brought forward by members, regardless of which party they may come from. I've had productive conversations with you as my critic, Mr. Brock, and with our colleague Mr. Caputo. I'm willing to work in good faith.

If there are certain challenges that cause us to believe the proposed reforms will not make communities safe or would be blatantly unconstitutional, I will have challenges.

Larry Brock: Thank you, Minister.

Will you commit today to repealing the principle of restraint under section 493.1 of the Criminal Code to stop repeat violent offenders from being released back onto our streets? Yes or no?

Hon. Sean Fraser: You should expect to see changes to the way the principle of restraint is codified in the Criminal Code. I would point out that a repeal of the principle is not necessarily the appropriate language, given that the principle of restraint is recognized in common law and upheld by the Supreme Court of Canada.

There are challenges with it, and we will be making changes.

Larry Brock: I'll take that as a no. Thank you, Minister.

Last month, in response to the Conservative announcement of the "stand on guard" policy, you tweeted, "This isn't the Wild West. It's Canada."

Around the same time you tweeted out this tone-deaf statement, in Hamilton alone, more than 80 shots rang out at bars after they were closing, leaving three injured. In Toronto, a 19-year-old was shot and killed in a mall bathroom. Two 17-year-olds were charged. In Ottawa, a Jewish woman in her 70s was stabbed and sent to hospital just for being Jewish. In Calling Lake, Alberta, a man wanted on a Canada-wide arrest warrant was charged in a violent home invasion in which the homeowner was shot and killed.

If these and thousands of other crime stories happening around this country on a weekly basis aren't indicative of the Wild West, what would meet your definition, sir?

Hon. Sean Fraser: This is an important conversation. Canadians should know that they have the right to defend themselves in their homes under the law if they are faced with such circumstances as you've described. They have the ability to use force to do so when it is reasonably necessary.

Jurisdictions that have adopted the proposal you've suggested have not become more safe and have created new dangers. Just a few weeks ago, in Texas, a 12-year-old boy was killed by someone who thought he might have been an invader when he was playing nicky nicky nine doors. You hear stories about people mistaken for invaders while delivering packages. We're saying that where there is a set of circumstances that make this unreasonable, the police should be able to make an independent decision.

The law was put in place by Stephen Harper, and it's a law that I actually support. You have the right to defend yourself in your home.

I would remind colleagues that we have an opportunity to discuss the hate legislation we brought forward. I hope subsequent questioners will take that issue as seriously as the government does.

• (1545)

The Chair: Thank you, Minister.

MP Housefather, the floor is yours.

Anthony Housefather (Mount Royal, Lib.): I believe Ms. Dhillon wanted to go first, so I'll give her the time.

Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): No, that's fine. Go ahead.

Anthony Housefather: Are you sure? Okay.

Thank you, Minister, for coming here.

I was a bit surprised and a bit disappointed to hear Mr. Brock categorize this legislation as something that restricts free speech and that minimizes its importance. This is legislation that comes forward after a shocking rise in anti-Semitism in Canada over the last two years that has led many in the Jewish community to feel very unsafe in the country. Last year, at my request, this committee did a study, and Mr. Brock was there at the time.

[Translation]

Mr. Fortin was there as well.

[English]

It was called "Heightened Antisemitism in Canada and How to Confront It". It came forward with many recommendations, some of which are included in the bill. For example, Minister, are you aware of the study on anti-Semitism that the justice committee did last year?

Hon. Sean Fraser: Yes, I am.

Anthony Housefather: Recommendation 10 states, "That the federal Parliament consider creating a new intimidation offence under the Criminal Code to more clearly and directly protect entrance to and exit from community buildings...places of worship and community centers, in addition to existing offences that may apply in situations where such buildings are being blocked."

Minister, is that in the bill?

Hon. Sean Fraser: It is, and I would note that the recommendation had multipartisan support, including from the Conservative Party.

Anthony Housefather: You've also added an obstruction offence, in addition to the intimidation offence that the committee had recommended. Recommendation 15 states, "That the Government of Canada consider removing the requirement to obtain the consent of the provincial attorney general in order to prosecute certain hate crimes."

Minister, is that in the bill?

Hon. Sean Fraser: Yes. Again, that recommendation was supported by multiple parties, including both the Liberal and the Conservative parties.

Anthony Housefather: Recommendation 16 states, "That the Government of Canada take steps to ban the display of symbols of terrorist organizations that are listed under the Criminal Code."

Minister, is that in the bill?

Hon. Sean Fraser: At the risk of repeating myself, it's in the bill, and again, I reviewed the recommendation with sincerity and realized it had multipartisan support at the time. I'm disappointed to see the tune has changed.

Anthony Housefather: Recommendation 17 states, "That the Government of Canada work with police forces across the country to develop a standardized definition of 'hate crime' and 'hate incident.'"

The standardized definition of "hate" that was referred to in that recommendation, essentially, is in the bill as well. Is it not coming from Supreme Court jurisprudence?

Hon. Sean Fraser: Absolutely.

Anthony Housefather: Let's look at the fact that, for the last period of time, there have been a lot of people, myself included, who have criticized the words that have come out and the failure to act. Is this bill, then, not exactly what has been requested, in terms of actually acting in respect of what the federal government can do within its own jurisdiction to respond to the incredible rise in anti-Semitism and other forms of hate in the country?

Hon. Sean Fraser: Certainly. That was a major motivator to take action in the first place. I should say, Mr. Housefather, thank you for your work on the committee and more broadly to advance measures that would combat hate in our communities.

The process of developing this legislation relied heavily upon the work of parliamentarians from different parties to inform the final version of the bill. We did not seek to turn this into a partisan affair. My hope was that this would cruise through the parliamentary process with the support of all parties in the House. I still hope we can get to a place where that remains the case.

Anthony Housefather: I certainly do, too.

Minister, I want to ask you about something that's part of the bill but a bit auxiliary to it. In this country, there are different jurisdictional issues, which the committee ran into when we were doing this report.

[*Translation*]

The Bloc Québécois has raised the issue of provincial jurisdiction a number of times.

[*English*]

Many of the issues that have preoccupied people, and the demonstrations that have happened, including demonstrations on October 7 in Toronto and Montreal, shutting down Concordia University, involved what many believe to be disrespectful actions versus necessarily illegal ones. You said something very, I thought, apropos at your press conference, about setting a tone from the top on what this country expects versus what is illegal, but politicians have to set a tone on what we don't think is Canadian as our values. Could you repeat a bit of what you said at that press conference?

Hon. Sean Fraser: Certainly. Canadians want to see leadership when it comes to treating one another equally. Canadians want to see leadership when it comes to combatting hate in our communities. We wanted to play a leadership role by introducing legislation that would criminalize behaviour that crosses a high degree of moral culpability, that threshold to bring something into the criminal context.

However, we should, similarly, recognize that there are many acts that we may find offensive that do not constitute hate for the purposes of the Criminal Code. We should nevertheless endeavour to condemn those acts, because the impact of the failure to speak out against hate in our communities is still a negative impact that our fellow Canadians feel. We need to demonstrate leadership, not only through our legislative action, but also in our words and deeds when it comes to condemning acts of hate or discrimination, whenever they take place. I think it's incumbent upon all of us, regardless of party, to speak out and to advance measures formally and informally that will have that impact, demonstrating that all Canadians belong in this country.

Anthony Housefather: I think one of the frustrations has been that existing laws have not been enforced by municipal police, by those authorities on the ground. The point has been made that while the federal government should tell them to enforce the existing law, of course the federal government has no power or jurisdiction to tell local police how to operate, operationally, on the ground in our cities, whether it's Toronto or Montreal or elsewhere.

Do you not believe that this law is sending a signal to provinces and municipalities and police as to what the federal government is expecting in terms of a tone from the top and in terms of enforcing the law?

• (1550)

Hon. Sean Fraser: It does two things. It sets the tone, as you've indicated, but it also makes it technically easier for police to do their job when it comes to laying charges by providing clarity in the definition and removing the procedural step of requiring the consent of the provincial attorney general, both of which will add to

the tone-setting exercise the bill may represent by making it technically easier to lay charges in the real world.

Anthony Housefather: Thank you so much.

[*Translation*]

The Chair: Thank you, Mr. Housefather.

Mr. Fortin, you have the floor for six minutes.

Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Mr. Chair.

Good afternoon, Minister. Thank you for being with us today.

I would like to discuss certain aspects of Bill C-9 with you, but I will begin with something that stands out to me. It seems that the provisions in Bill C-9 to combat hate and anti-Semitism, and so forth, already exist in the Criminal Code. I know it is not worded exactly the same, but there is already a provision that makes it a criminal offence for anyone to advocate or promote genocide, for example. It is in section 318. Subsection 319(2.1) deals with inciting hatred, promoting hatred, as well as anti-Semitism. There is also a section 430 offence for crimes motivated by bias, prejudice or hate. I will not list them all, but most of the situations that Bill C-9 seeks to legislate already exist.

Can you tell me why you felt it necessary to introduce a bill that essentially takes these same situations and makes them crimes by giving them different wording and a different section number?

Hon. Sean Fraser: I understand what you are saying, but I disagree. There are new intimidation and obstruction offences, for example.

It is essential to understand that when a new hate-crime offence is created, the penalties change. When an offence is motivated by hate based on skin colour, for example, serious penalties are needed. We must also recognize that this affects not only individuals, but also the entire community.

I would also like to talk about the new offence of wilful promotion of hatred.

[*English*]

Maybe I'll say it in English, because I have limited time and I don't want to take yours.

We wanted to recognize that sometimes the tool you use to commit a crime makes it more serious. You can think of assault and assault with a weapon. It still would have been criminal before you used a weapon, but it recognizes that the harm can be greater with the tool that you use.

[*Translation*]

Rhéal Éloi Fortin: Does that mean that the existing Criminal Code offences were not already sufficient?

For example, the promotion of hatred is already a criminal offence, and there is a penalty for that. You can say that you are adding six months or removing one month, but this will not change much.

However, you will no doubt recall that during the last Parliament, the Bloc Québécois introduced a bill to eliminate the religious exemption defences in subsections 319(3) and 319(3.1) of the Criminal Code. Anyone charged with promoting hatred or anti-Semitism can claim to have a good defence if they spoke in good faith about a religious text that they believe in.

Does that not seem more useful to you? I do not see it in Bill C-9.

• (1555)

Hon. Sean Fraser: That is possible. I invite the committee to hear from witnesses on that, and if the majority of members agree to make this change, I see no problem with it. However, when I looked at the current exemption, I understood that it requires someone to speak in good faith in order to invoke it. However, when a person invokes religious reasons to justify incitement to murder, they cannot be acting in good faith.

That said, I am open to recommendations from the committee, which may propose amendments to the bill.

Rhéal Éloi Fortin: Thank you, Minister, but I would have liked to see this in the bill, because it seems obvious to me, and we could have avoided spending part of what little time we have in committee to revisit something that is obvious.

I will read paragraph (b) of subsection 319(3) of the Criminal Code:

(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;

It seems clear to me that this defence has no place in the Criminal Code in 2025. I would have hoped that this would be your view as well.

At a press conference, I believe that you said there were about 5,000 hate crimes a year. Do you know how many prosecutions were brought for these?

[English]

Hon. Sean Fraser: I don't have the numbers of prosecutions in front of me. We'd be happy to provide that information on the back end or perhaps with officials in the second half.

[Translation]

Rhéal Éloi Fortin: In your opinion, Minister, were as many prosecutions brought as there were hate crimes committed?

[English]

Hon. Sean Fraser: I expect not.

Rhéal Éloi Fortin: I expect not, too.

[Translation]

I wonder if the religious exemption defence has anything to do with the fact that there have not been as many prosecutions as crimes committed. The Crown prosecutor, who has to decide whether or not to institute proceedings, must surely wonder whether their client will have a reasonable defence or not.

I suggest that you consider the issue of the religious exemption defence. That would be a good idea for the future.

I do not have much time left, so I would ask you to answer quickly. Do you think that the Criminal Code definition of the word "hate" proposed in Bill C-9 is justifiable, too broad or too narrow?

[English]

Hon. Sean Fraser: I think that the definition we're proposing strikes the right balance.

We wanted to respond to calls from law enforcement for the need for clarity, but this was not an attempt to change the definition that existed from the jurisprudence that came from the Supreme Court of Canada. It was designed instead to provide clarity to those who are actually enforcing the law on the ground based upon the existing body of case law.

[Translation]

The Chair: Your time is up.

Rhéal Éloi Fortin: Thank you.

The Chair: That completes the first round of questions.

[English]

In the second round, we have five speakers. We'll have Mr. Baber first for five minutes and then Mr. Chang for five.

[Translation]

As planned, Mr. Fortin will have two and a half minutes.

[English]

We'll then have Mr. Lawton for five minutes and then MP Dhillon.

Mr. Baber, the floor is yours.

Roman Baber (York Centre, CPC): Minister, I represent one of the larger Jewish communities in the country. It's a community to which I also belong. Over the last decade of Liberal government, hate crimes against the Jewish community have more than quadrupled. I believe that your appearance today is evidence of your government's failure to protect the Jewish community. To add betrayal to injury, the Prime Minister rewarded the worst terrorist attack in our lifetime with the recognition of a terrorist state, so please don't pretend that you're doing us any favours.

What I am seeing is that unless Bill C-9 is amended, it will criminalize and prosecute speech that isn't criminal right now.

Let's get into it.

For 35 years, we used the Supreme Court's definition of hatred from a case named Keegstra. It is an "emotion of an intense and extreme nature that is clearly associated with vilification and detestation."

You say that you're trying to codify the Supreme Court jurisprudence, but the definition that you propose in Bill C-9 is "the emotion that involves detestation or vilification and that is stronger than disdain or dislike". You removed the words "intense and extreme nature" from the Supreme Court's definition.

Why are you trying to lower the bar to charge and convict people of hate speech? Is it to criminalize speech that Liberals don't like?

• (1600)

Hon. Sean Fraser: No.

I'm just curious. In the preamble to your question, you indicated that there is additional hate speech that may not be criminal. Are there are certain examples of hate speech that you think should not be criminal?

Roman Baber: No. I'm saying that we have a clear definition of hate speech from the Supreme Court. It's a definition that your government is trying to dilute through Bill C-9.

Why are you diluting this definition by eliminating the words “of an intense and extreme nature”?

Hon. Sean Fraser: When I review the definition of hatred, not just in the Keegstra decision, but in the Whatcott decision as well, it's clear to me that vilification and detestation are extreme manifestations. To the extent that you have a different interpretation, know that the intent of the legislation was in fact to codify not only those specific sentences in the decisions but also the different factors that the courts would have used over the years to identify.

Should the committee feel that the legislation would benefit from a different reflection of the test that the Supreme Court has laid out, do know that this would not be a deal breaker for me, particularly if it would earn bipartisan support and send a signal to Canadians that all parliamentarians want to combat hate in their communities.

This was not an attempt to dilute the definition. It was an attempt to make good on the spirit of that definition and provide clarity to law enforcement.

Roman Baber: It is doing exactly that. In fact, the court in Whatcott has referred and reaffirmed the definition of Keegstra. I'm scared that you're going to use your proposed definition against Canadians and against members of the Jewish community. Your proposed definition is so broad and ill-considered by the courts that it's probably unconstitutional. Should Canadians expect, like in the videos we're seeing out of the U.K., that police are going to be knocking on their doors in the middle of the night for a Facebook comment?

Hon. Sean Fraser: Absolutely not, and I think the suggestion is patently far-fetched on the face of it.

Roman Baber: All right.

Bill C-9 will remove the requirement for the consent of the provincial attorney general to prosecute hate speech. The previous attorney general said that that consent is a required safeguard. I heard your position during debate, that in the future you may have a political attorney general who will withhold consent to lay hate charges. However, if the attorney general can be political, then certainly a Crown attorney can also be political, and a police officer can be political, and their judgment could be clouded, politically. They can potentially bring hate charges when it isn't appropriate and ruin someone's life. Have you considered that?

Hon. Sean Fraser: I've considered many aspects of this. I'd like to start with the problem that we're trying to solve. We heard loud and clear from affected communities that charges were not being

laid and justice was not being served. Stakeholders and, in fact, the justice committee—including bipartisan support, including from your party—have supported this particular change.

In addition to the argument you've put in place, I also hold the view, with the extensive body of case law that has emerged over decades and informed the actions of law enforcement, that the additional safeguard that the AG consent once provided is not as necessary today as it would have been back then. We wanted to solve the problem to ensure it was easier to lay charges, so law enforcement can apply the law independently when they see hate in their communities, in an effort to stamp it out everywhere.

Roman Baber: It will be especially easier with your diluting the definition of “hatred”, but what's even more scary is that private prosecutions will also be exempt from attorney general consent. Now, yes, the Crown may withdraw or stay charges, but the complainant could appeal either the Justice of the Peace's or the Crown's decision to stay the charges and drag an innocent person into divisional court on judicial review. Do you really fail to see how allowing private prosecutions for hate offences without the attorney general's consent could be weaponized against innocent Canadians, including members of the Jewish community?

The Chair: Mr. Baber, the time's up. Perhaps one of your members can pick that question up later.

Thank you.

Mr. Chang.

Wade Chang (Burnaby Central, Lib.): Thank you, Chair.

Minister, Burnaby Central is one of the most diverse communities in Canada. In 2022, someone shouted at me at the Metrotown SkyTrain Station. He said, “What are you looking at, Asian? If you want to F-word, go to Davie Street.” As someone who has personal experience with discrimination based on my ethnic background and sexual orientation, I'm deeply concerned about the rise in hate crimes. However, I believe it is equally important to ensure that Bill C-9 upholds and respects our charter rights.

Minister, we have seen a troubling rise in hate-motivated incidents across Canada. Could you explain how Bill C-9 directly addresses the growing threat and why now is the right time for this piece of legislation?

Hon. Sean Fraser: Thank you. I too take very seriously the need to protect the rights of Canadians, but I take a broader view of what that includes. In my view, it should include the right to actually live freely in your community, not just to have rights ascribed to you on paper. When we see hate take place in our communities and choose not to take action, we are complicit in hate's continuous fomentation. I, for one, don't think that's acceptable.

The changes that we're making to the criminal law are going to add real protections for communities of faith going to their places of worship, their community centres and their schools. For people more broadly, they are going to know there will be additional charges for specific crimes of hate if they are in fact targeted on the basis of their race or their sexual orientation, and that there will actually be changes made to the law so they are not a paper victory but are likely to lead to more charges. In turn, that deterrent effect will mean that fewer instances of hate play out in their communities.

This is about changing the real-world experience of people who should not be subjected to hate in this country. I think it's incumbent on all of us to actually have that frame when we're adopting laws or considering what amendments we may propose to them.

• (1605)

Wade Chang: Thank you, Minister.

Minister, we know that schools and youth spaces have increasingly become targets of hate-related incidences. How will Bill C-9 help ensure that students, educators and teachers are protected from intimidation and hate?

Hon. Sean Fraser: It's really important. Although this conversation has largely played out around themes of protection of religious minorities, it has a much broader application. Schools that are designed for a particular identifiable group in Canada would certainly benefit from protection on the intimidation and obstruction offences, but we also wanted to make sure that we capture hate more broadly, so that if someone is targeted—regardless of whether it is a school or a particular religious community, a particular community of interest—they would nevertheless have the protection of the law where a criminal act is committed against them on the basis of some immutable characteristic belonging to an entire group of people.

This additional protection, whether it's in our schools, in our grocery stores or on our university campuses, is going to heighten the degree of protection that Canadians actually enjoy in their communities, no matter where they find themselves.

The Chair: Thank you.

[Translation]

Mr. Fortin, you have the floor for two and a half minutes.

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Minister, the Criminal Code currently requires the Attorney General's consent before prosecuting hate propaganda violations. Bill C-9 proposes to remove this prior consent.

I would like you to explain to me what this prior consent is used for, in your opinion.

Also, why do you want to eliminate it?

[English]

Hon. Sean Fraser: At the time that the hate provisions were put in place, there were arguments made that formed their way into law that offered an additional degree of protection. The argument would have been to ensure that crimes had that second layer of approval before charges were laid.

In my view, given the fact that the world has changed, that the law has become clearer over the many decades since the Keegstra decision in particular, and that law enforcement has gained experience, you no longer have that same need. As a result of the rising prevalence of hate crimes in our communities, we've heard from communities more frequently that this is a problem that's getting in the way of charges being laid.

I would make one final point—not to eat up your time, and if I need to extend by 30 seconds, I will—it's important to understand that provinces maintain the ability to implement precharge screening at their discretion, should they wish. British Columbia, for example, does that for efficiency purposes. Other provinces could have the ability to do the same.

[Translation]

Rhéal Éloi Fortin: Thank you, Minister.

I am not the only one who sees this prior consent as a way to guarantee seriousness, if you will, when it comes to prosecutions of hate propaganda.

If it were removed, would that not then allow an individual to bring multiple—I would not necessarily say “frivolous”—actions that the Attorney General would not have consented to had prior consent been required?

[English]

Hon. Sean Fraser: I think this touches on a question that one of the previous questioners put forward. It's important to keep in mind as well the difference between public Crown prosecutions and private prosecutions.

There's a judicial screening process that will be in place to prevent the kind of frivolous or vexatious litigation that may exist, but when it comes to the Crown's application of the law, the law enforcement's application of the law in communities, I believe that they have the ability, based on the extensive body of case law, based on decades of experience and based on training supports that are made available, to effectively police the laws as they're written on paper, so that the outcomes we're seeking in communities can be fully realized by Canadians.

[Translation]

The Chair: That is your time, Mr. Fortin.

• (1610)

Rhéal Éloi Fortin: So I understand that there is no good reason to remove it; it was useful.

Hon. Sean Fraser: I have a different point of view, but okay.

[English]

The Chair: MP Lawton, you have the floor.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Minister, thank you for being with us today.

Bill C-9 makes reference, specifically with hate symbols, to public spaces. Does that include the Internet?

Hon. Sean Fraser: Generally speaking, the law will apply equally online and in real communities.

Andrew Lawton: The bill will affect what people can say and write on the Internet.

Hon. Sean Fraser: It will, in the limited circumstances where there is the wilful promotion of hatred against someone.

Andrew Lawton: It will apply to the Internet. The Internet is within the jurisdiction of—

Hon. Sean Fraser: It would be possible that someone could commit a hate crime on the Internet, certainly.

Andrew Lawton: Building off Mr. Baber's points about the lower threshold for the definition of hate speech, there is under this law, assuming Bill C-9 passes, something that might not be legal to say today on the Internet, or it might be legal to say on the Internet now but could be illegal in the future under Bill C-9, could it not?

Hon. Sean Fraser: No, that's entirely inaccurate, and I say that with no judgment on your perspective, but let me explain.

The only circumstance in which you could imagine some online comment attracting scrutiny under this law would attach to behaviour that is criminal today but would be punished less severely.

The symbols piece that you pointed to, for example, is attached only to the wilful promotion of hate. This is not a blanket symbols ban. The wilful promotion of hate is a crime today, but we want to recognize a distinct charge where that same behaviour uses certain symbols of hate to bring a higher degree of culpability, so there is no new human behaviour that would attract the scrutiny you're talking about.

Andrew Lawton: I understand, but I'm building off the discussion earlier on the definition.

Is it your view that the change in wording—and there was a change in wording; you made a deliberate decision to change the definition that was spelled out in Keegstra and reaffirmed in Whatcott—will not capture anything beyond what is currently captured right now by the hate definition?

Hon. Sean Fraser: The definition was an attempt to codify, and the reason that there was a—

Andrew Lawton: This is a yes-or-no question, Minister. Is there at all a lower threshold or a broader net on hate in Canada after Bill C-9, if it passes?

Hon. Sean Fraser: My view on the definition question—because I would give a different answer to you on the offences—is that it codifies the same behaviour that is there today, and it was meant to provide clearer guidance to law enforcement, in the Criminal Code, to apply the existing standard that has been recognized by the Supreme Court.

Andrew Lawton: The same arguments that are being used by you and your government to push Bill C-9 to protect people against hate—which on the surface sounds incredibly noble—are the same arguments that have led to the United Kingdom having police liter-

ally knocking on people's doors over their tweets, so what guarantee can you give Canadians that we are not headed down that very road, especially in the context of other priority areas identified by you and your government, such as the online harms act, which was introduced twice, actually, in the last two Parliaments?

Hon. Sean Fraser: This legislation is not identical in kind to the reforms that have been put in place in the U.K. We've actually looked at their experience and seen that there are real challenges with how it has played out.

For example, we have a different approach, whereas some jurisdictions around the world have adopted a more blanket “glorification” that could attract the scrutiny of liking a Facebook post, for example. We chose a different path. We instead tried to be very clear that we would not interfere with the charter rights of Canadians to freely express themselves but at the same time would make it easier to lay charges where hate crimes are committed today.

To the extent that you think there is a better way to clarify and codify the existing definition, do know that I believe in Parliament, and I don't care which party comes forward with these amendments if it creates bipartisan buy-in to codify the test. That's okay by me.

Andrew Lawton: Can you guarantee that if Bill C-9 passes, no Canadian will end up being charged because of something they've posted on Twitter or Facebook?

Hon. Sean Fraser: Well, if they commit the crime of wilfully promoting hatred against another person—

Andrew Lawton: A crime with a definition that you're changing....

Hon. Sean Fraser: —it's possible that they could be convicted for wilfully promoting hate online today, so certainly I would hope that if someone commits a crime in the real world or online they would face the appropriate criminal penalty if in fact it's captured by the code.

Andrew Lawton: We had in my riding a very disturbing case a few weeks ago, where someone had mowed a *hakenkreuz* into their lawn and was charged under the existing Criminal Code definition. They displayed a symbol, and it was found to be wilfully promoting hate.

Law enforcement and the Crown agreed that they could lay that charge. Why is your bill at all necessary, when we already have existing powers which, to Mr. Housefather's earlier point, are simply not being enforced as often as they could be?

Hon. Sean Fraser: This is an important question that I'll answer very quickly.

When you have the wilful promotion of hate, a person who is convicted of that could still be convicted but also be convicted of a second charge—the wilful promotion of hate using hate symbols—which would attract a greater degree of culpability and potentially a greater penalty, recognizing that the use of hate symbols, when you're wilfully promoting hate, can cause greater damage to both the individual and the entirety of the community.

I don't find these points to be inconsistent with one another, but instead that behaviour could potentially face an additional charge with a more serious penalty, because of the manner in which a person chose to promote hate to cause more damage to an affected community.

• (1615)

The Chair: Thank you.

Ms. Dhillon.

Anju Dhillon: Thank you, Minister, for being here today.

In recent times, we've seen attacks on religious institutions, places that are sacred to people of faith who worship somewhere where they are supposed to feel safe and secure. They often do not.

You have spoken about them being able to safely access these places of worship and community centres as well. How will the new intimidation and obstruction offences make that a reality?

Hon. Sean Fraser: Part of ensuring Canadians are able to be who they are and to live freely as citizens of this country is ensuring that they can make choices about how they live their lives day-to-day, including how they practise their faith or participate in their community. A big part of that is how we gather, celebrate special occasions and share cultures and traditions with one another.

We have seen real-world challenges where groups who may have started out as innocent protesters have escalated their behaviour over time, where they in fact may physically block people from attending the institutions that allow them to be part of their community or conduct themselves in a way that is specifically designed to threaten another person taking part in the activities that take place within those spaces.

The spaces in which we gather in a country as diverse and as multicultural as Canada are a big part of our cultural identity as a nation. We believe that the spaces that allow communities to fully celebrate their cultures and traditions deserve a degree of protection, and we have found, in my view, an elegant solution that allows us to use the federal tools at our disposal to offer protections that allow Canadians to choose for themselves how they spend their days.

Anju Dhillon: Perhaps you could provide some clarification, please, because there has been misinformation on this bill, that it bans protests near religious or cultural sites. Can you tell us what this bill can do to protect the right to peaceful protest? There has to be a balance.

Hon. Sean Fraser: Certainly. I find some of the previous questions ironic in this regard. In fact, the argument is somewhat self-defeating. On the one hand, there is a suggestion that free speech is somehow impacted, and in the next breath, you hear a question sug-

gest that in fact it doesn't represent a change in the law. These two positions cannot possibly be reconciled.

When we developed these pieces of legislation, it was a priority to ensure that they didn't have a negative impact on the ability of Canadians to fully enjoy the rights protected by the Constitution, including the right to free expression. That's why, for example, when we wanted to deal with symbols of hate, we didn't use a blanket symbols ban but instead attracted it to the criminal behaviour of wilfully promoting hatred against another Canadian. There's a difference, in my view, between protesting a cause against some initiative or something that's happening in the world that you fundamentally disagree with and showing up to intimidate a person from practising their faith or physically obstructing them from attending their community centre or school or place of worship. Understanding where that line exists, as between sharing an opinion, broadcasting information, and causing harm, sometimes violent harm, to your fellow Canadians, is an important distinction.

I think this bill does a good job of scoping in behaviour that I believe should be criminal, and it will offer a greater degree of protections to Canadians to be themselves without infringing on the protections of the ability to express yourself freely.

Anju Dhillon: We need a good balance between freedom of expression and hatred, so I have this question for you on your choice to have a clear definition of the word "hatred". Why was it necessary to include this in the Criminal Code?

• (1620)

Hon. Sean Fraser: Law enforcement shared with me that a clear definition in the Criminal Code would help them actually lay charges when they see it. Eliminating ambiguity in the code can change how the laws are applied on the ground, even where they don't necessarily change the substance of the law that underlies the proposed amendments to the code that we're talking about now.

In addition, I think it's essential that we recognize that this cultural impact within law enforcement has a real-world effect on the ability of Canadians to seek justice when they are subjected to hate, not just on behalf of themselves but also on behalf of an entire community. By codifying the principles that were recognized in the Keegstra and Whatcott decisions, we have an opportunity to send a clear signal to law enforcement that you can, in fact, actually enforce these crimes when you see them. It gives victims of hate crimes a sense that justice will prevail at the end of the day.

The Chair: Thank you, Ms. Dhillon and Mr. Fraser.

We have time for Mr. Baber and Mr. Gill, who will be splitting some time. Then it's Ms. Lattanzio, and then MP Idlout.

The floor is yours.

Amarjeet Gill (Brampton West, CPC): Thank you, Chair.

Minister, you have said that Canada is not “the Wild West”. Meanwhile, violent crime is up 55%, sexual assaults are up 76% and extortion has surged by 330%. How bad does it have to get before you admit that Canada currently appears lawless?

Hon. Sean Fraser: When I look at some of the proposals we've seen put forward by your party in the House of Commons, it becomes clear that copying and pasting the American approach to criminal laws or to guns would not enhance public safety. The Conservative policy of wanting to legalize assault-style weapons, I think, would make Canada a more dangerous place. The repeated introduction of reforms that certainly violate the Constitution would not make Canada a safer place. The example given earlier has led to a whole series of behaviours, including recently in the state of Texas, with the accidental death by gun violence of a child who was ringing doorbells.

It's obvious, when you look at some of the proposals that have come forward, that we need to have evidence-based policies. That's what you'll see with the bill we put forward in a number of weeks to help change Canada's criminal laws to make our country a safer place.

Amarjeet Gill: Minister, many of the offences in Bill C-9 restate conduct already captured by existing Criminal Code provisions, such as section 423.1 on intimidation, section 319 on public incitement of hatred, and section 264 on harassment.

Would you agree that the core problem today is the uneven enforcement of current laws and not the lack of legislation? What evidence did the department rely on to conclude that additional offences were needed rather than improved enforcement?

Hon. Sean Fraser: I think both are needed. I take your point that enforcement can be improved. Sometimes that will be with more officers on the ground, and sometimes it will be with enhanced training, but I do think we could have better and more equal enforcement of the laws that exist on the books.

I also think, based on the feedback we've had, not just from law enforcement but from affected communities, that these changes are necessary. You can recognize the significant difference when a person may assault someone because they have a disagreement that goes sideways versus specifically targeting someone on the basis of their religion or the colour of their skin, which doesn't just impact the individual victim but the entirety of a community. We believe that warrants.... Although it may be the same behaviour in the instant, the effect is not the same. We think that greater harm that falls on a community demands a new charge with increased penalties to recognize the severity of the impact of hate crimes on affected communities.

Amarjeet Gill: I cede my time to Mr. Baber now.

Roman Baber: Thank you.

Minister, do you really fail to see how allowing private prosecutions for hate offences without the consent of the attorney general could be weaponized against innocent Canadians by vexatious litigants or political opponents?

Hon. Sean Fraser: I have a lot of faith in the ability of courts to police frivolous and vexatious litigation. You see the opportunity

for courts to screen out those kinds of complaints with great frequency.

If the committee wishes to take evidence from experts in the space to understand the protections that do exist and where they can be improved, do know that I don't come into this with some preordained outcome. I believe in the work of Parliament. I believe in the ability to take evidence from witnesses and to propose amendments, and we would consider each of them in good faith should you wish to move forward with some.

Roman Baber: Thank you.

I also have a lot of faith in the courts. The problem is that by the time you get through due process—you may be taken through a litigation—your reputation may be ruined, and you may incur a lot of legal fees, so this is a major concern for me.

With respect to the new proposed hate offence, the new criminal hate offence could be laid on top of any offence under any federal law.

Is that correct, yes or no?

• (1625)

Hon. Sean Fraser: Yes.

Roman Baber: An offence under the Canada Elections Act or an offence under the Canada Labour Code may attract criminal prosecution. Someone, for instance, could be charged criminally for non-payment of wages under the Canada Labour Code.

Is that not correct?

Hon. Sean Fraser: I have a hard time understanding how non-payment of.... If there's a motivation of hatred toward another individual and you commit a crime against that individual because of who they are, it could attach to virtually any charge. The likelihood it would come up in that set of circumstances, I think, would be quite small.

Roman Baber: You're basically talking about tacking criminal charges on what is otherwise civil, non-criminal behaviour. This is very concerning. You may have unintended consequences when you combine that with dilution of the definition of hatred, as you're doing, and the possibility for private prosecutions without attorney general consent. This is a very concerning piece of legislation, Minister.

The Chair: Time's up.

Perhaps Mr. Housefather can let him continue.

Either way, it's over to you, Anthony, for five minutes.

Anthony Housefather: Thank you so much.

Minister, I don't know if you had a chance to read the Conservative Party's dissenting opinion in the anti-Semitism study.

Hon. Sean Fraser: Yes.

Anthony Housefather: Did you notice that the party didn't dissent on the issue of removing the consent of the attorney general for prosecutions for hate crimes?

Hon. Sean Fraser: Specifically, when we were discussing which measures to include, the fact that there was multipartisan support, not just on that item but on some of the others you referenced, made it clear there was an appetite among parliamentarians in Canada to effect these very specific changes. It seems the Conservative Party has now shifted its position when it comes to those measures that were designed to combat anti-Semitism after the recommendations came out of that report.

Anthony Housefather: Yes. It's exceptionally surprising to me, in fact.

One of the things pointed out is the two defences that have been added for the display of hate symbols and creating hate through the display of hate symbols against an identifiable group. Why are those two defences that, I think, are in proposed paragraphs 319(3.2)(a) and 319(3.2)(b) necessary, Minister?

Some people just believe that if a hate symbol is put up, you automatically need to prosecute. Why have you looked at that and found that these defences are necessary?

Hon. Sean Fraser: Which defences, Anthony?

Anthony Housefather: I mean defences, for example, related to times that you could display a hate symbol publicly without necessarily being charged with an offence.

Hon. Sean Fraser: There are many reasons you may wish to pull out certain uses of these hate symbols. Think of journalistic and academic purposes, but also to prevent free expression.... It's really important that we understand at this committee that this is not a blanket symbols ban but is instead a crime of wilfully promoting hate against an identifiable group through the use of hate symbols. This is a very high standard that does not trample on people's free expression rights but recognizes specific learning or public interest opportunities, where we can openly discuss where these symbols have been used over the course of our history.

Anthony Housefather: Exactly. It would be context specific.

Exactly. It would be context specific.

Hon. Sean Fraser: Absolutely.

Anthony Housefather: For example, somebody yelling and screaming slogans such as “globalize the intifada” and carrying terrorist symbols of an organization like Hamas that say “globalize the intifada”, would be one thing, versus somebody simply putting a symbol in a museum or somebody putting a symbol somewhere to teach somebody about that. I understand you can't pronounce on any of this—nor can any of us, because it's all context specific—but there is a reason these exceptions are there.

Hon. Sean Fraser: Absolutely, and the circumstance you gave would obviously be differentiated from, for example, teaching kids in our schools about the Holocaust, where they learn about the impact that these symbols had that caused an entire nation to turn against an entire group of people, leading to millions of Jews being murdered during the Holocaust. These are important parts of our history to understand, but they are not important in terms of protecting the ability to use them to foment hate against others.

Anthony Housefather: I totally agree.

Minister, there was something else in public comments you had made—I believe it was at a press conference—about the idea of how the intimidation and obstruction offences that we can put into the Criminal Code are different from the things municipalities and provinces can do in terms of having bubbles around these types of buildings, because they have zoning powers that we do not have. You had also said that you might be reaching out to municipalities to inform them of what their powers are, such as through the Federation of Canadian Municipalities, which represents municipalities. Is that something you plan on doing?

• (1630)

Hon. Sean Fraser: In fact we've had significant engagement leading up to the tabling of this legislation, but we have a continuing conversation with municipalities, through FCM and other channels, to ensure that they understand where their authorities lie to regulate what behaviours may take place in the space. We have a rather blunt instrument in that regard—in this instance, the Criminal Code—but we still think it could be deployed to touch hateful criminal behaviour, no matter where it takes place, including around our religious institutions and, more broadly, in our communities.

Anthony Housefather: I will just finish off by saying, Minister, that I think this legislation sets an example by the federal government and will make Canadians safer by giving additional tools in the tool box to police and prosecutors that they've requested. Not only that, but it also sends a message to provinces, municipalities, police and universities that we believe they should be enforcing their rules and the law.

I thank you for being here today; thank you for your comments.

Hon. Sean Fraser: It's my pleasure. Obviously it goes without saying that there's no one level of government that's responsible for combatting hate. Federal governments, provincial governments, municipalities and Canadians more broadly have a responsibility to be better neighbours. We cannot fail one another in this country and expect to overcome the challenges we're facing. It's time that we change our approaches and recognize that we have to speak up to end hate in our communities at every level of society.

The Chair: Thank you, Minister.

As agreed, we have MP Idlout online, and she has five minutes.

The floor is yours, Lori.

Lori Idlout (Nunavut, NDP): [*Member spoke in Inuktitut*]

[*English*]

Thank you, Chair, and thank you to the committee for including me on this important study.

I will be asking three sets of questions in three different topic areas.

I first want to say that I very much appreciate that Canada is such a diverse country. We have great diversity. This diversity is from a country that was founded from stealing and taking from indigenous people. Indigenous people were on these lands before Canada became a country and decision-making and governance were taken from us.

My first question is very much related to the treatment of indigenous peoples.

Just so you know, Minister, I am going to ask all my topical questions in one statement, just to ensure that I get all my questions on the record. If you don't have enough time to answer my questions, I hope that the committee allows you to provide the rest of your responses to the committee in a written format.

My first topic is on trusting police to not abuse their power. New Democrats are concerned with giving police more subjective power to lay hate crime charges. Our main concern is about trust.

On a separate but related issue, Wet'suwet'en land defenders were criminalized. Nunavut land defenders were on the verge of being criminalized. Why? It was because they were protesting government decisions. These are examples of the deep levels of distrust of police forces in indigenous communities.

You will recall that about a year ago at this time, the Speaker granted my request for an emergency debate on law enforcement, because the RCMP had enforced colonial and genocidal policies to oppress indigenous people for decades.

In about a week in 2024, between August 29 and September 8, Canadian police killed six first nations people. Racialized people in this country have a similar experience with law enforcement. This bill requires that Canadians trust that the police will know when an action is motivated by hate and when it is not.

Could the minister respond by sharing what safeguards protesters will have that ensure that law enforcement does not use these new powers to criminalize protesters?

• (1635)

On the second topic, the stigma related to being charged with a hate crime, hate is already an aggravating factor under the Criminal Code. This bill lengthens existing Criminal Code violations based on hate. In addition, the new offence puts the consequences of hatred at the beginning of the judicial process instead of at the end, when the sentencing judge has all the evidence and the accused has received due process. Being charged creates stigma as it is. This bill has the potential to create more stigma, which is troubling, especially when charges are dropped.

Does the minister agree that keeping the attorney general's consent in the process is an important safeguard to ensure that the justice system does not get flooded with increased charges in the already overburdened justice system? Does the minister agree that we do not need to create more stigma and more hate in Canada?

On the final topic, vague language, New Democrats are concerned about vagueness in this bill. We know that once broad definitions are codified, they can easily be weaponized against groups. For example, how will intimidating behaviours be interpreted by

the police? In its current form, this bill has the potential to criminalize peaceful protesters and legitimate dissent.

We remain disappointed that this bill does not address the violent activities of the growing white nationalist movement. The failure to include this aspect in the bill leaves racialized communities, indigenous communities and the 2SLGBTQIA+ community without the necessary tools to combat the largest source of hatred in Canada.

This bill seems to be more about criminalizing people who speak out than it is about addressing the growing racism against racialized people. Can the minister explain why this bill does not address the threat of the growing white nationalist movement in Canada?

Qujannamiik, Iksivautaq.

The Chair: Thank you, MP Idlout.

Minister Fraser, you won't have any time to respond to this, much less in a meaningful way, but you could undertake to provide written answers.

Hon. Sean Fraser: Certainly. I'm willing to answer now, if you would like, or I can comply with the request to provide written answers.

The Chair: It isn't up to me. It's really up to the committee to decide.

Some hon. members: No.

Hon. Sean Fraser: Should I answer in writing, then?

The Chair: I think the preference is to get that in writing.

Hon. Sean Fraser: Lori, thank you for your questions. The committee has requested, due to time, that I respond in writing rather than in person. I'll be happy to offer my thoughts on your very specific questions.

It's good to see you, as always.

Larry Brock: Mr. Chair?

• (1640)

The Chair: We'll let the minister go and—

Larry Brock: I want the minister to hear this.

The Chair: Is it a point of order?

Larry Brock: It's a procedural point of order, yes.

Thank you, Chair.

We are concerned about the minister's earlier testimony to Mr. Housefather. He seemed to relay testimony that would have been given in camera. Unless the minister can provide any basis for that testimony right now, I would reserve the right to come back on this issue as a matter of privilege.

I'll give you an example. We have a transcript of the proceedings. Very early on, Mr. Housefather asked a question of the minister. He said:

Recommendation 10 states, "That the federal Parliament consider creating a new intimidation offence under the Criminal Code to more clearly and directly protect entrance to and exit from community buildings...places of worship and community centers, in addition to existing offences that may apply in situations where such buildings are being blocked."

Minister, is that in the bill?

The minister responded:

It is, and I would note that the recommendation had bipartisan support, including from the Conservative Party.

The minister was not part of the justice committee and would not have been privy to this confidential information unless it had been shared directly by a member of the justice committee. This is a serious breach of privilege. It is a serious breach of confidentiality.

It is extremely misleading for both Mr. Housefather and the Minister of Justice to conclude—this is just one example of many examples where the conclusion has been drawn—that this had the full support of the Conservative Party. No one mentioned that the Conservative Party filed a dissenting report. In the dissenting report, there was a strong statement that while the Conservatives supported most of the recommendations, there were other recommendations we did not agree with, hence the basis of the dissenting report.

On the issue of this breach of confidential information that was taken in camera, I'd like to hear from the minister how he acquired that information.

The Chair: Thank you, MP Brock.

It isn't up to the minister to respond, unless he wants to right now. I am more than willing to take this under advisement and review the blues. As you well know, the report was submitted to the House—with your dissent, I suspect, as is customary—but I am willing to review it.

You raised a point of order, not a question of privilege, but you obviously reserve the right, in your discussion, to raise that question of privilege at any point in committee and to do so at a later date. After we've reviewed the evidence, unless anyone else wants to speak on this point of order, I'll take it under advisement and refer it to the committee.

Anthony Housefather: I will—

Andrew Lawton: I have a point of order.

The Chair: He's speaking on the point of order.

Andrew Lawton: The minister was raising his hand to respond directly, and I didn't think you saw it. That's why I was pointing it out, Chair.

The Chair: It's up to you, Minister, but I saw Mr. Housefather.

Hon. Sean Fraser: Far be it from me to guess procedure. We had a member who was in the middle of an intervention. I don't want to interrupt.

Anthony Housefather: I defer to you, Minister.

The Chair: It's up to you, Minister.

Hon. Sean Fraser: The information we had was based on the public report. There was a dissenting report, which didn't flag opposition to the specific recommendations we had gone over.

For what it's worth, I've not discussed who voted which way with Mr. Housefather, if that was the implication.

The Chair: MP Housefather.

Anthony Housefather: I'll say the same thing. I specifically referred in my second question to the Conservative Party's dissenting report, in which the Conservative Party dissented on DEI. I noted that this was not a recommendation the Conservatives said they dissented on in their report. I think that is public information, because it was in the report.

Thank you.

The Chair: Thank you.

Larry Brock: Mr. Chair, I have the transcript right in front of me. With all due respect to Mr. Housefather, the second question he put to the minister made—

Anthony Housefather: I meant my second round of questions, Mr. Brock.

Larry Brock: Okay. I thought you said the second question.

Anthony Housefather: No, it should be the second round of questions.

Larry Brock: Okay. I don't have that transcript in front of me.

The Chair: Perhaps we can take the time to review it. The clerk will get back to you with his review of the blues. You're free to look at them yourself.

Mr. Fraser.

Hon. Sean Fraser: For clarity, I have not had any discussions with any members of the previous committee that generated this report about which parties voted which way. My comments were a reflection on the fact that the dissenting report did not include opposition to some of these measures. I have not had a single conversation about which parties voted on specific recommendations in the report we're discussing today.

I want to make that absolutely clear.

The Chair: It's well noted.

Hon. Sean Fraser: Thank you, everyone.

The Chair: Thank you, Minister.

We'll suspend for a few minutes and come back with the second round of officials.

Thank you.

• (1640) _____ (Pause) _____

• (1645)

[Translation]

The Chair: Time is running out. I call the meeting back to order.

As agreed, in the second hour of the meeting, we have back with us three witnesses from the Department of Justice, who testified in the first hour: Owen Ripley, senior assistant deputy minister; Joanna Wells, senior counsel, criminal law policy section; and Marianne Breese, counsel, criminal law policy section.

[English]

I assume you don't have a statement, as is customary. If you do, we will limit it to five minutes.

I see you shaking your heads emphatically, so we will go directly to questions. We have, for the first six-minute slot, MP Gill and MP Brock splitting their time, then MP Dhillon followed by six minutes for the Bloc Québécois. I'll announce the second round as it arises.

Mr. Gill or Mr. Brock, it's over to you.

Amarjeet Gill: Thank you, Chair.

My first question is regarding the proposed intimidation offence, which includes a subjective test of intent and a relatively low harm threshold.

Is that threshold strong enough to capture generally threatening conduct, or could it unintentionally criminalize speech or protest activity already covered by subsection 423.1(1)? Was any consultation conducted with prosecutors or police to assess whether this new offence provides tougher penalties or merely duplicates existing tools?

Owen Ripley (Senior Assistant Deputy Minister, Department of Justice): Thank you very much, Chair.

With regard to the question about the intimidation offence, what will be important in that situation is that police see evidence of an intention to cause a state of fear in another person. In order for somebody to be charged with that intimidation offence, their motivation has to be to cause a state of fear. It's not a question of whether the individual trying to access a place of worship or cultural centre is afraid. We recognize that we all have different kinds of reactions of fear to different circumstances. What will be important is that prosecutors and police see evidence that the intention on the part of that person was to cause a state of fear to prevent that other person from accessing that place.

• (1650)

Amarjeet Gill: May I ask Ms. Wells to comment on that?

Joanna Wells (Senior Counsel, Criminal Law Policy Section, Department of Justice): Mr. Chair, if I may inquire, is there a specific element that the member requires more clarification on? I would adopt Mr. Ripley's answer.

Amarjeet Gill: I'll take that. I'll ask the next question.

Historically, the AG's consent provided a supervisory safeguard, ensuring that hate propagation charges met the public interest and reasonable prospect test. Why was that safeguard removed in Bill C-9? What mechanism now replaces that oversight? Did provincial attorneys general express support for removing this? If so, in which jurisdiction was that?

Without the AG's consent, how will the department prevent inconsistent or politically influenced prosecution at the municipal or police service level?

Owen Ripley: It is important to recognize that the requirement to seek the AG's consent is, generally speaking, an exception condition in the Criminal Code. Most offences can be laid without the AG's consent. As the minister highlighted in his testimony, there are concerns that this requirement has been acting as a barrier in some circumstances to police laying charges with respect to the existing hate propaganda offences.

That being said, there are still safeguards in place to ensure that there won't be abuse of that power. For example, provinces do, as you highlighted, have a degree of discretion to put in place appropriate criminal procedures within their jurisdictions. There are provinces that do that to require precharge screening in all cases. That's their prerogative. Provinces, to the extent that they feel safeguards are needed, could put those procedures in place.

When I was listening to the exchanges earlier... With respect to the issue of private prosecutions, there is a safeguard or a mechanism in place to ensure that, if a private prosecution is coming forward, there is a screening that this private prosecution isn't frivolous or vexatious. There's an ability for a judge to make that assessment. If it was being brought forward in bad faith because it's frivolous or vexatious, they could ensure that this situation is dealt with.

Amarjeet Gill: Thank you, Mr. Ripley.

I cede my time to Mr. Brock now.

Larry Brock: Thank you, officials.

This question can be answered by any particular official.

I like clarity when it comes to criminal law, jurisprudence and interpretation, and I'm troubled by a couple of aspects of this bill.

On the issue of symbols, you have indicated proposed paragraph 319(2.2)(c), "a symbol that so nearly resembles a symbol described in paragraph (a) or (b) that it is likely to be confused with that symbol." That is just fraught with subjective interpretations. It's going to be a minefield in litigation, leaving aside the confusion for police officials to determine whether or not, in their view, it is a symbol closely resembling a symbol that is tied to "a listed entity".

Why did you use that language, and was that directed by any particular group that you consulted with?

Owen Ripley: Just briefly, before I address your specific question, MP Brock, I would highlight that the objective of listing those symbols—the symbols associated with a terrorist entity or the Nazi symbols that are listed—recognizes that there is often a nexus of hate associated with those symbols and the way that they can be used in certain situations. As I imagine you are aware, and as the minister highlighted, it's not a simple public-display offence in this case. There are a variety of offences—

• (1655)

Larry Brock: No, I get that, but—

The Chair: The time's up. I'm just hoping he can finish his thought quickly.

Larry Brock: I'd like him to answer the question that was put to him.

Owen Ripley: Specifically, proposed paragraph 319(2.2)(c), Mr. Brock, recognizes the element of offence of the symbol. If there is simply a minor modification to the swastika, or the *hakenkreuz*, for example, that should not necessarily exempt that activity.

Larry Brock: Who interprets that?

The Chair: Mr. Ripley, thank you. The time's up.

MP Dhillon, go ahead.

Anju Dhillon: Thank you, Chair.

Can you explain how the new hate crime offence would apply to existing Criminal Code offences? The minister explained about...hatred, and how it's different from treating hate as an aggravating factor during sentencing.

Owen Ripley: The objective of creating a stand-alone hate offence is to denounce all hate-motivated crime. Therefore, it recognizes that it would be open to police and prosecutors, at the beginning of an investigation, to charge somebody with any kind of hate-motivated crime. For example, if you had the crime of uttering threats or violence, and if there were evidence to suggest that it was hate motivated against an identifiable group, they could charge that crime as hate motivated. Again, the objective there is to denounce what is "enhanced moral culpability", as the minister put it, associated with those crimes when they are hate motivated. That is done at the front end.

When they do that, it could, if the prosecution were proceeding with indictment, open up a higher range of sentencing that is available at the back end, if they were able to make out the offence as hate motivated. That is different from an aggravating factor, which is considered only at the end of an investigation and prosecution, at the sentencing stage. Again, the objective there is to recognize, from the very get-go, situations in which there may be a hate-motivated crime, and to prosecute them as such.

Anju Dhillon: From now on, right at the outset it would be considered hate, the word "hatred", when filing charges.

This is another question I have: The attorney general's consent is removed. Can you talk to us a bit about that? There seems to be a lot of confusion around it. What is the purpose behind this?

Owen Ripley: As I indicated to some of your colleagues, the concern around AG consent is that it was potentially acting as a barrier, in certain circumstances, to police laying charges. The objective in removing it from the existing hate propaganda offences—and it's not proposed alongside any of the new offences either—is to remove that barrier and provide police the ability to lay those charges without seeking that AG consent.

I've been listening, again, to the exchanges, and I heard some of the concerns that may come up in that space, including private prosecutions as well as discretion for provinces to put in place their own criminal procedures. Again, there remains sufficient flexibility

for provinces to do that, and there are safeguards in place to deal with vexatious or frivolous private prosecutions.

Anju Dhillon: That is going to be my next question to you...about jurisdiction. From an implementation standpoint, how would they navigate this, and what guidance or coordination would be needed with provinces, territories and municipalities to proceed with a consistent application of the law under this bill?

Owen Ripley: The government recognizes that there are important considerations at play when it comes to implementing Criminal Code offences, and it's critically important that police and frontline officers understand the elements of the offence and how to identify them, so that will remain.

The government and other bodies have been doing a lot of work in this space. What comes to mind, for example, is the work of the Race Relations Foundation. It has been doing a lot of work with police of jurisdiction across the country to better equip police forces to identify the various elements of hate crime, to improve community trust in reporting hate crime, and to ensure that, when police do receive complaints, they take them seriously. All of those efforts will remain important because, again, the government recognizes that offences on the book are only as good, at the end of the day, as the people who apply them in a fair and consistent manner.

• (1700)

Anju Dhillon: Can you please walk the committee through the differences between what already exists in the Criminal Code regarding hatred and hate crimes and what's in the bill?

Owen Ripley: I heard the exchange about whether these changes are necessary and whether there are existing tools, and I'll maybe deal with it in a couple of parts.

With respect to the new intimidation and obstruction offences, they are clearly responsive to an issue that is top of mind for Canadians right now, which is the way that certain places of religious worship and cultural centres are being targeted, such as Jewish synagogues and Muslim mosques.

I think we have all seen the evidence of that in the news stories, so those offences are a response to that and—at the end of the day, if Parliament passes the bill—a recognition that this kind of behaviour is serious and needs to be responded to in that manner by police and prosecution.

The Chair: Thank you, Mr. Ripley.

Anju Dhillon: Thank you so much.

[*Translation*]

The Chair: Mr. Fortin, you have the floor for six minutes.

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Ripley, earlier I asked the minister a question about the number of hate crimes that there may have been in the past year, as well as the number of prosecutions, and he did not have the figures.

Are you able to answer that question?

Owen Ripley: Thank you for your question, Mr. Fortin.

Unfortunately, I do not have those figures with me.

As the minister mentioned, there is data on the rise in hate crimes.

We have noted that you wish to know whether there are any figures on the number of prosecutions that have been initiated. We will see if we can provide a written response to that question.

I imagine you are aware that one of the challenges we face in this area is that it is an area of provincial and territorial jurisdiction. However, we will see whether we can provide you with an answer.

Rhéal Éloi Fortin: Thank you.

Mr. Ripley, I would like you to provide me with details on how things work on the ground.

Right now, when the police deal with a case of incitement to hatred, for example, whether it be an anti-Semitic statement or something else, they approach the Crown prosecutor and ask whether they can prosecute the individual in question. The prosecutor considers all of that, takes a number of factors into account and decides whether there is a case to prosecute, depending on whether or not there is an effective defence or something like that.

In your opinion, in the case of an anti-Semitic crime or hate crime, can the religious exemption defence currently mentioned in subsection 319(1) of the Criminal Code play a role in the decision to prosecute or not?

Owen Ripley: Thank you for your question.

Generally speaking, when considering prosecution, we look at whether there is a reasonable possibility that the offence in question is punishable on summary conviction. This rule is applied across the country.

In conducting such an analysis, prosecutors will determine the elements of the offence that must be proven and whether it is possible for a person to raise such a defence.

• (1705)

Rhéal Éloi Fortin: You are probably aware of the events that took place about a year ago, when an individual named Adil Charkaoui gave a speech in Montreal inciting hatred against Jews and calling for the extermination of every last one of them, and so forth.

I cannot recall the exact words that he used, and I do not want to put words in his mouth, but it was a speech that everyone I know considered hateful and unacceptable. Everyone was convinced that this individual would eventually be prosecuted and found guilty. However, the Crown prosecutor decided not to prosecute.

In your opinion, could the religious defence provision currently in the Criminal Code have played a role in the Crown prosecutor's decision?

Owen Ripley: I will say that I am not in a position to tell you what was part—

Rhéal Éloi Fortin: I was asking your opinion. I realize you're not the one who made that decision.

In your opinion, did that Criminal Code provision influence the decision to proceed with charges in that case?

Owen Ripley: It's not up to the federal government to make that determination. We certainly encourage the government to create criminal offences.

Yes, I've read journal articles about this situation. As I said earlier, the situation was analyzed. I imagine the goal was to determine whether the elements—

Rhéal Éloi Fortin: Sorry to interrupt you, but I only have the floor for a few more seconds.

What I'm understanding is that you don't know and you don't really have an opinion.

Ms. Wells, do you have an opinion about this?

[*English*]

Joanna Wells: Thank you, Mr. Fortin, through the chair.

Our role here, as you know, is to support the government and to share information about what Bill C-9 would do. We are not well placed, as Mr. Ripley said, to opine on prosecutorial decisions that have been made or might have been made in other cases.

[*Translation*]

Rhéal Éloi Fortin: Thank you.

The Chair: We'll start the second round of questions.

We'll start with Mr. Lawton for five minutes, then go to Ms. Lattanzio for five minutes as well. Mr. Fortin will have two and a half minutes, and Mr. Baber will have five minutes. If we stay on track, Mr. Chang will have five minutes too.

Mr. Lawton, you have the floor.

[*English*]

Andrew Lawton: Thank you, officials, for being here.

Mr. Ripley, I'm assuming you're aware that the Liberal government has agreed to recognize the state of Palestine. Now, we know that Hamas, which is the de facto government in Gaza, waged the brutal October 7 attack on Israel. We know that in the West Bank, the Palestinian Authority regularly gives financial contributions to the families of terrorists.

Now, really, by the Canadian government's definition of a state sponsor of terrorism, could someone be charged under Bill C-9 for waving a Palestinian flag under the symbols ban?

Owen Ripley: With respect to the offence related to symbols, what it would be necessary to show is that it is a listed terrorist entity. In this case, for example, Hamas is a listed terrorist entity, and the symbol in question would have to be associated with that terrorist entity. For example, the flag of Hamas would be such a symbol.

The flag of Palestine, for example, though, is not a symbol that would be likely to meet that threshold.

• (1710)

Andrew Lawton: It would not be likely, but it could, for example, if the government designated it a state sponsor of terrorism.

Owen Ripley: Maybe just to take a step back—

Andrew Lawton: It's okay. I'll move on and reclaim my time, but I appreciate that.

Ms. Wells, I understand you're a senior counsel in the criminal law policy section. How many people are in the department's criminal law policy section?

Joanna Wells: I don't have the exact number, but there are a number of lawyers.

Andrew Lawton: How many, as a rough percentage, were involved in Bill C-9?

Joanna Wells: I think we have a core team of four lawyers with some support from some other counsel, paralegals and analysts.

Andrew Lawton: Were you working on Bill C-9 full time for the last several weeks and months?

Joanna Wells: We had varying responsibilities, but it has taken a fair bit of time.

Andrew Lawton: Was it more than dealing with bail...?

Joanna Wells: I don't deal with bail, so my time hasn't been spent dealing with bail. It's not my area of expertise. For my colleagues who deal with bail, it's also, as you can imagine, a very busy area of policy development.

Andrew Lawton: Would you say that Bill C-9 has taken up more of your department's or your section's resources than dealing with reforming or fixing the broken bail system?

Joanna Wells: In my position, I don't have the data around hours spent on various files.

I don't know if Mr. Ripley would like to take that.

Andrew Lawton: It hasn't been a priority that has come to you as a government priority.

Joanna Wells: I would defer to Mr. Ripley as the senior associate deputy minister.

Andrew Lawton: Mr. Ripley.

Owen Ripley: I am responsible for the criminal law section. As the Prime Minister or as the minister has indicated, there is a lot of work ongoing in the space of criminal law reform right now, including with respect to bail and sentencing. The section has been investing a lot of resources in advancing that work, in addition to Bill C-9, which is before us today.

Andrew Lawton: Which has taken more resources?

Owen Ripley: The way I would put it, MP Lawton, is that the section is working full out currently to advance the government's criminal law reform efforts, which, again, as the minister has indicated, are going to touch on bail and sentencing, gender-based violence, children's protection, victims' measures and delays, as you have heard the minister set out. He set out a number of issues, and we are working very hard to support the minister and the government more broadly bringing this forward.

Andrew Lawton: It's a very simple question, Mr. Ripley.

When did your work on Bill C-9 start, and when did your work on bail start?

Owen Ripley: I would characterize it like this: Once the government was elected, we worked with the government and the minister to understand—

Andrew Lawton: Which started first?

Owen Ripley: The starting point after any election is looking at a government's platform commitments and—

Andrew Lawton: Please don't run the clock, Mr. Ripley.

I'm asking you which you started on first. Was it Bill C-9 or working on fixing the broken bail system?

Owen Ripley: What I'm trying to communicate to you, and I apologize if I'm not doing it clearly, is that there are platform commitments that touch on both. That work started simultaneously in both cases to understand—

Andrew Lawton: Okay. At the same moment, you started both. Did—

The Chair: Time's up.

Ms. Lattanzio, go ahead.

Patricia Lattanzio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chair.

Thank you, officials, for being here today and for all the work you've been doing and are going to be doing.

I want to come back to a point that was raised earlier, and it's a point of clarification with regard to attaching the offence of hatred onto a civil offence.

Can you explain to me how that would work? My understanding is that the offence would have to be of a federal nature. I'm not too sure I understand how that would work. Can you clarify that for me?

Owen Ripley: The stand-alone hate crime offence would apply to any federal criminal offence. That applies, obviously, to the offences set out in the Criminal Code, but to the extent that Parliament has recognized other federal offences in other pieces of legislation—I believe the Elections Act was cited earlier, and you have the Immigration and Refugee Protection Act and the Controlled Drugs and Substances Act—if there is a penalty of a period of imprisonment associated with that, for example, that is inherently a criminal offence.

Therefore, when there is an offence in another statute where the situation is that it could be hate motivated, it would be open for that offence to be charged under the new stand-alone hate offence. There is no situation in which a civil claim or something like that would be in play in this kind of situation. It is really restricted to federal offences in the Criminal Code or other federal statutes that fall under the government's criminal law head of power from a constitutional perspective.

• (1715)

Patricia Lattanzio: Thank you.

What are the key criteria or tests that law enforcement or prosecutors would use to determine what is displayed in terms of the symbols that fall within the scope of the proposed hate propaganda bill?

Owen Ripley: Thanks very much.

I might turn to my colleague Marianne.

Marianne, I might suggest walking through the various elements of the offence and what would have to be shown in terms of the symbols offence.

Marianne Breese (Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Ripley. As a caveat, to begin with, I would say that every case would depend on the facts; again, it would be up to police and prosecutors to make this determination. We would expect consideration to be given, for example, if we start with the offence, to whether a symbol is captured by the offence. If we're looking at terrorism symbols, we would ask if it's a symbol that is primarily used by or associated with a listed entity. That suggests that it needs to be publicly available. That list is public, and there has to be a close nexus to that entity.

If that is met, then we would look at whether it is in a public place. Is it displayed in the street, is it in a park, or is it on a website that is publicly available? If those elements are met, then we'd have to look at whether it's being displayed intentionally to promote hatred against an identifiable group. "Identifiable group" is a defined term in law. It means a specific section of society, a population that is distinguished by certain factors, such as race, religion and so forth.

Then we would look at the promotion of hatred. We've been discussing how there's a definition of hatred centred on the concepts of vilification and detestation, and the courts have provided guidance on what that means operationally. Prosecutors would turn to the case law and look at, for example, what the hallmarks of hatred would be. An example would be whether the targeted group is being portrayed as inherently evil or dangerous.

As a next step, you would look at what's happening on the ground, look at the facts. Law enforcement would look, for example, at whether the display is being done on a street. Are there chants associated with it? Are there calls for the elimination of the target group at the same time as the symbol is displayed? Again, this brings us back to the situation that the symbol itself... There's not a ban on the symbol, and the mere display of the symbol is not criminalized. It has to be situated within the broader elements of the offence.

The Chair: Thank you, Ms. Breese.

[*Translation*]

Mr. Fortin, you have the floor for two and a half minutes.

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Regarding the religious exemption, you told us there's no information about its impact on the number of charges laid or not laid.

What groups did you consult before deciding to exclude it from Bill C-9?

Owen Ripley: Thank you for the question.

Some consultations took place, and commitments were made over the years. This subject was discussed with the provinces and territories during the routine meetings we held with them. In addition, consultations took place in 2020, if I remember correctly. At the time, the Parliamentary Secretary to the Minister of Justice committed to certain things with respect to hate. It was a subject—

• (1720)

Rhéal Éloi Fortin: Sorry to interrupt you, Mr. Ripley. I don't want to rush you, but the clock is ticking. Who did you consult in 2020?

Owen Ripley: We consulted several groups at the time, including religious groups, community organizations and civil society organizations.

Rhéal Éloi Fortin: Would you be able to send us the list of organizations that were consulted and tell us when they were consulted?

Owen Ripley: Yes.

Rhéal Éloi Fortin: Thank you, Mr. Ripley.

Regarding the study of Bill C-9, can you tell us if you remember that being taken into consideration recently? If so, who did you meet with?

Owen Ripley: Work on Bill C-9 was based on commitments made during the previous consultations. As I said, we always have the option to consult our provincial and territorial colleagues.

Rhéal Éloi Fortin: Were the provinces and territories consulted about this in 2025?

The Chair: I think your time is up, Mr. Fortin. Unfortunately, I'm not in charge of time.

Rhéal Éloi Fortin: Thank you, Mr. Ripley.

The Chair: We'll end this round with Mr. Baber, followed by Mr. Chang.

Mr. Baber, you have five minutes.

[*English*]

Roman Baber: Ms. Wells, in advance of drafting Bill C-9, did you review the Supreme Court's definition of the term "hatred"?

Joanna Wells: I'll defer that question to either Mr. Ripley or Ms. Breese, who have more expertise in the area of hatred than I do.

Roman Baber: Ms. Breese, did you review, yes or no, the Supreme Court's definition of the term "hatred" in advance of drafting Bill C-9?

Marianne Breese: Yes.

Roman Baber: The Supreme Court's definition of hatred includes the words "emotion of an intense and extreme nature". Why have you dropped those words from your proposed definition in Bill C-9?

Marianne Breese: The definition captures the body of the Supreme Court of Canada's jurisprudence on the definition of hatred. The "intense and extreme" description is captured by the words "detestation or vilification", as the minister pointed out earlier. It is also clear that it is stronger than disdain or dislike.

The intent is to capture the Supreme Court of Canada's jurisprudence by indicating the high threshold of what is hatred and the narrow scope of it.

Roman Baber: I don't agree with you. You can have disdain or dislike that not's necessarily extreme in nature, or not intense in nature. I also note that the definition is conjunctive. It's intense "and" extreme, something that the Supreme Court has clearly articulated and is still good case law today.

Were you instructed by the minister or any political staff to drop the words "intense and extreme nature" from the definition?

Owen Ripley: MP Baber, we want to be very clear on what the government's perspective is.

Roman Baber: Please go ahead.

Owen Ripley: Certainly, we have heard the concerns you've expressed—

Roman Baber: The question was this: Have you been instructed by the minister or any of his staff to drop the words "intense and extreme nature" from the definition?

Owen Ripley: No. The government's position, in what it is advancing in the definition, is intended to reflect the Supreme Court's jurisprudence. That is what we are seeking to do.

Roman Baber: You can have an intense and extreme nature for a positive emotion. You could be happy in a very intense and extreme nature. You could love a loved one intensely. I would not necessarily say that just because you use two different words, including disdain, you necessarily meet the high threshold articulated by the Supreme Court.

I'd like to go back to your point, Mr. Ripley, with respect to the screening process in private prosecutions. I agree with you that, yes, you would have a *pré-enquête* hearing where a judicial officer, a magistrate or a justice of the peace would either green-light the process to issue on private prosecutions or not. However, in almost all cases, the informant or the complainant would have an ability to appeal that decision to judicial review and take that to divisional court. The accused is typically an invited party to such a proceeding, so even though there may be no cause for criminal charges to be instigated, the accused would be dragged before the divisional court, would have to incur legal fees and would have to suffer reputational risks and time inconvenience if accused of a criminal charge.

Don't you see how this potentially opens itself up to abuse to ruin the lives of ordinary Canadians who should not be before a criminal court?

• (1725)

Owen Ripley: As we've highlighted, there are mechanisms to safeguard against those frivolous private prosecutions while acknowledging that, in that kind of situation, it can still have an impact on the accused. I think you heard the minister express an openness to hearing the committee's views on that point if—

Roman Baber: You understand that there's no safeguard against the appeal of the justice of peace's decision—the appeal for judicial review and divisional court. There's no safeguard for that, sir.

Owen Ripley: I hear what you are saying, that if an individual accused finds themselves in that position, yes, there is an impact for that person.

The Chair: Thank you.

Finally, we have MP Chang for five minutes.

Wade Chang: Thank you, Chair.

Thank you, all, for your time.

I'm wondering, if Bill C-9 is enacted, how your department will monitor and evaluate its impact, both to measure how effectively it addresses hate-motivated crime or hate-motivated offences and to ensure that it's fully consistent with our Charter of Rights and Freedoms?

Owen Ripley: On charter compliance, the government is bringing forward a bill that it feels can be solidly defended—it believes it strikes that right balance between charter rights and denouncing hate-motivated crimes. Of course, in any circumstance, it is always open to an accused to ensure that the law is being applied in a charter-respecting way, and nothing in this bill takes away from those safeguards.

One of the benefits of the bill, if it were to pass, is that, moving forward, there will be better evidence in terms of the hate-motivated crimes, because, again, it would allow police and prosecutors at the front end to make that assessment about where they believe the elements of hate motivation are present and to charge it as such. Again, in situations where you may have threats, threats of violence or those kinds of things, where there's clear evidence that it's hate motivated, it will allow Canada and Parliament to have a better understanding of that kind of criminal conduct over time.

Wade Chang: Thank you.

Internally, do you have any mechanisms to monitor its impact?

Owen Ripley: As I was mentioning to MP Fortin, one of the challenges is that it's provinces and territories that are responsible, generally speaking, for the administration of justice, so they often have the specific data holdings. There is a lot of work going on right now with our colleagues in the provinces and territories to improve our national understanding of what is happening in the criminal justice system and, yes, those activities will continue, including in relation to hate crime.

Wade Chang: Thank you.

Can any of you please outline what each of the new proposed offences would address and how they differ from the current offences under the Criminal Code?

Owen Ripley: Yes, so in response to MP Dhillon earlier, I think I was talking about intimidation and obstruction and how that's very top of mind for Canadians. We ran out of time, so I didn't get to the stand-alone hate-motivated crime.

That one is a new offence and, again, the objective on that one is to recognize and denounce all hate-motivated crime. That is an important change, because it would allow that element of hate motivation to be brought to any charge or prosecution right from the get-go.

Then, finally, with respect to the proposed symbols offence, I described it earlier as recognizing the nexus that those symbols have and the impact they have on certain communities. It recognizes that nexus with hateful conduct, acknowledging the other elements—and my colleague Marianne did a good job of walking through all the elements that you'd have to make out—and that you'd still have to make out all the elements of the offence.

• (1730)

Wade Chang: Thank you. I have no further questions.

The Chair: There's a minute left if you want to use the minute.

Wade Chang: What specific guidelines, guidance or prosecutorial discretion will be provided under Bill C-9 to ensure that proportionality or proportional and consistent application across provinces?

Owen Ripley: There are certain steps that are being proposed in the bill, including—and we've talked a lot about the definition of hatred—putting in place that consistent definition that would apply. We've had some exchanges about the notion of detestation or vilification.

I would highlight, because it didn't come up a lot, that there is a “for greater certainty” clarification clause associated with the definition. It is very clear that it does not amount to hatred solely because it discredits, humiliates, hurts or offends. Part of what the

government is seeking to do with the definition of hatred is ensure that there is a clear understanding and a clear threshold of when something passes into that kind of extreme manifestation or extreme emotion, and the way the government has characterized that is through the concept of detestation and vilification.

Wade Chang: Thank you.

The Chair: Thank you, MP Chang.

We're at time, so I just want to take a moment to thank officials for coming here, patiently taking questions and answering them to the best of their ability. Thank you for that.

We're sort of around overtime. I don't have a tremendous amount to add to what we agreed to, other than happy Thanksgiving to everyone.

One point that we would like to emphasize is that the witnesses for Bill C-9 are very much welcome for the next round. Please get them to us by the middle of next week. We're complete on the witnesses for bail and sentencing. That's done, but we do need witnesses from all sides on Bill C-9.

Thank you, and have a great—

Patricia Lattanzio: When is the—

Larry Brock: The Tuesday after the break week we are on bail.

Patricia Lattanzio: On Thursday, we're back to this.

Is there a deadline for when we have to submit?

The Chair: Do it by Wednesday of next week.

Andrew Lawton: Chair, I have one quick question.

Will our mandate and priority for Minister Fraser be scheduled before studies have concluded or after?

The Chair: We'll have to ask the ministers.

Andrew Lawton: Could that pre-empt...?

The Chair: It could.

Thank you.

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