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Chair: Marc Miller



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• (1535)

[*English*]

The Chair (Hon. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Soeurs, Lib.)): This meeting is called to order.

Welcome to meeting number nine of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order of reference of October 1, the committee is meeting to continue its study on 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, like several of the previous ones, is being held in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application. I think most members are familiar with it now. We've done the sound tests and everything should be fine.

[*Translation*]

As there are acting members, I would like to remind all in-person participants to consult the guidelines written on the cards on the table in front of them. These measures are in place to help prevent audio and feedback incidents. Most importantly, they protect the health and safety of the interpreters.

You will also notice a QR code on the card for a short awareness video. You can take that card home and bring it back to the next meeting.

[*English*]

I will remind members and witnesses to please wait until I recognize you by name before speaking. There will be some flexibility there. This is informal enough for people to have a good dialogue back and forth, but do address your comments through the chair.

For those on Zoom, at the bottom of the screen you can select the appropriate language of floor, English, or French. For those in the room, use the earpiece if you need the interpretation.

[*Translation*]

For members in the room, please raise your hand if you wish to speak. For members online, please use the “raise hand” function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

[*English*]

I want to welcome our witnesses for the first panel. We have one witness in person and the rest are online.

In the room, we have the Canadian Civil Liberties Association.

[*Translation*]

We have Anaïs Bussièrès McNicoll, director, fundamental freedoms program.

As individuals, we have Professor Ryan Alford and Professor of Law Bruce Pardy from Queen's University. Both are joining us by video conference.

From the National Council of Canadian Muslims, we have Nussaiba Al-Azem, director of legal Affairs, who is joining us by video conference.

[*English*]

I will remind the witnesses that they have, at most, five minutes. I'll leave some flexibility at the end if you're finishing your thoughts, but otherwise I might have to cut you off. Please try to stay within that five-minute window.

We'll start with Ms. Bussièrès who is here in person. We'll then go online and receive testimony from Professor Alford, Professor Pardy and Ms. Al-Azem.

[*Translation*]

Ms. Bussièrès McNicoll, you have the floor.

Anaïs Bussièrès McNicoll (Director, Fundamental Freedoms Program, Canadian Civil Liberties Association): Thank you, Mr. Chair.

Good afternoon, distinguished committee members.

Thank you for giving me the opportunity to share the perspective of the Canadian Civil Liberties Association, the CCLA, on Bill C-9.

The CCLA is an independent, non-governmental, non-partisan national organization founded in 1964. Its mandate is to defend and foster the civil liberties, human rights and democratic freedoms of all people across Canada. The CCLA acknowledges that, while freedom of expression and peaceful assembly are vital to a democracy, they are not absolute and must sometimes be balanced with other rights and interests, including public safety and the right to worship safely, considerations that are already extensively protected under the Canadian Criminal Code.

However, criminal law is not the solution to every social challenge. On October 6, 37 civil society organizations representing members of Black, Arab, Muslim, Jewish and 2SLGBTQI communities, labour organizations, environmental activists and civil liberties groups signed a joint letter urging the federal government to reverse course on Bill C-9. A copy of this letter was sent to committee members and is attached to the CCLA's submission to the clerk.

The CCLA is here today to urge you to vote against Bill C-9 for five main reasons.

First, this bill removes the long-standing requirement that the Attorney General consent to the initiation of proceedings for hate propaganda offences. Removing this safeguard eliminates a key institutional check designed to promote a legally informed and proportionate assessment before proceeding with prosecutions in areas where freedom of expression and freedom of conscience are implicated. The requirement to obtain the consent of the Attorney General is also absent from the new offences introduced in Bill C-9, despite the clear risk that these new provisions will affect freedom of conscience, freedom of expression and freedom of peaceful assembly. We urge Parliament not to go down this path. There is simply no benefit to allowing police officers to file charges that the Attorney General would not have proceeded with in the first place.

Second, the new intimidation offence requires proof of intent to provoke a state of fear in another person in order to impede their access to one of tens of thousands of civic institutions linked to an identifiable group in Canada. The difference between the intent to express unpopular or disturbing opinions through a protest and the intent to provoke a state of fear is unclear. The Criminal Code already prohibits, among other things, participating in a riot, using violence, physically blocking access to property, uttering threats, inciting violence against an identifiable group, forcing people to abstain from doing anything to which they have a lawful right and harassing people by causing them to reasonably fear for their safety.

The question, then, is what other behaviours would now be prohibited. Would it be triggered when a protest is particularly loud? When hundreds of people are gathered in a public space? When some people chant unpleasant slogans that, while offensive, do not constitute hate propaganda? These disruptive elements could be seen by some as evidence of an intent to instill fear in others. However, these examples are forms of non-violent expression and peaceful assembly protected by the Charter. They should therefore not be criminalized in a democracy.

Third, the new provision relating to preventing or obstructing or interfering with access to a building is duplicative of existing Criminal Code provisions. It should therefore not be adopted.

Fourth, the new prohibition on wilful promotion of hatred through the public display of certain terrorism or hate symbols, at best, duplicates existing provisions and, at worst, paves the way to abuses that risk stigmatizing and criminalizing certain peaceful protesters.

Fifth, the new hate crime offence requires the police to opine on the motives of an accused person at the earliest stage of a criminal proceeding and without upstream prosecutorial oversight by the Attorney General. Maintaining the current practice of considering ha-

tred as an aggravating factor in sentencing avoids imposing a social stigma on a defendant who is still presumed—and may very well turn out to be—innocent. Furthermore, by drastically increasing the penalties applicable in cases of hate-motivated crimes without changing the parameters already set out in the Criminal Code, Bill C-9 risks resulting in excessive and disproportionate sentencing.

In conclusion, if Parliament decides to codify a definition of hate, despite the limited benefits this would bring from a legal standpoint, the proposed definition should adopt verbatim the Supreme Court of Canada's definition. The definition proposed in Bill C-9 could be interpreted as lowering the threshold set by the country's highest court.

Thank you for your attention, and I would be happy to answer any questions you may have.

• (1540)

The Chair: Thank you, Ms. Bussi eres McNicoll.

[English]

Professor Alford, go ahead for five minutes.

Ryan Alford (Professor, As an Individual): Thank you very much, distinguished members of the committee and guests.

My name is Ryan Alford, and I'm a professor at the Bora Laskin Faculty of Law. I have taught, as a tenured professor of constitutional law for over 10 years, the provisions related to freedom of expression.

I'll begin by saying that I can follow up the previous speaker by saying that, in my opinion, which is my expert opinion, this bill does indeed lower the threshold below what is constitutional for a limitation on the right to freedom of expression. However, just because some people will perhaps think that those who can't do, teach and will kind of assess my testimony on that basis, I would also point out that I've been before a parliamentary committee only once before, and that was in 2017. In that testimony, I told that parliamentary committee that a provision of a federal bill, which became a federal statute, was unconstitutional and would be struck down. It was, in fact, struck down in 2023 in an application which was brought by me. The appeal of that judgment ultimately will be decided by the Supreme Court of Canada, and that appeal will be heard in two weeks.

To tell you why I have some issues with the wording, in particular, of subsection 319(7) as proposed by Bill C-9, I'd like to begin by talking about the charter statement. The charter statement, to me, is quite problematic. On its face, I would note that this is being produced as an anonymous statement by someone in the Department of Justice, which reports, in this case, to the sponsoring minister of the bill. There's some kind of a perception here that there's a conflict in the background, and I think it's borne out by the fact that the charter statement really doesn't have any legal analysis of the pertinent issue in it. It's purely conclusory.

Let's take a look at the relevant section here. It says:

The proposed definition of "hatred" has the potential to engage freedom of expression in section 2(b) of the Charter.

That's completely insufficient because it is an infringement of the right to freedom of expression. There's no debate about that. The question is whether or not this is a reasonable limitation on freedom of expression. That's the pertinent issue here.

This is simply a codification. It says:

The proposed amendment would thus codify a definition settled in the leading jurisprudence of the Supreme Court of Canada.

As I said in my speaking notes, this is really drawing upon the imprimatur of the Supreme Court of Canada to suggest that this bill is constitutional. When you actually look—and this is also present in the preliminary legislative statement about Bill C-9—you see that it's really quite different. The Supreme Court, particularly in *Whatcott*, proposed something quite different.

I think the preliminary legislative summary produced by the Library of Parliament is quite good. It does have a good discussion of *Whatcott*. It just doesn't line up that definition in *Whatcott* against what's proposed in clause 4 of Bill C-9, which creates subsection 319(7).

If we look at what's in *Whatcott*—and this is reflected in the legislative summary—we see that this is the language from the majority opinion penned by Justice Rothstein in 2013 in *Whatcott*:

In my view, expression that “ridicules, belittles or otherwise affronts the dignity of” does not rise to the level of ardent and extreme feelings that were found essential to the constitutionality of s. 13(1) of the CHRA [Canadian Human Rights Act] in *Taylor*. Those words are not synonymous with “hatred” or “contempt”.

For there to be a reasonable limitation, the definition of “hatred” has to exclude not merely what it excludes now, but also, in particular, speech that “otherwise affronts the dignity of” persons or groups, and that's not what's currently in proposed subsection 319(7). Therefore, it is not a codification of the pertinent leading case that comprises what the Supreme Court of Canada had said is necessary for reasonable limitation to be constitutional under section 2(b) of the charter.

This is a very serious issue, and it needs to be addressed. This is just one point to be made about its constitutionality, in addition to others. I would just direct you not only to what was said previously by Ms. McNicoll but also to what's going to be said by Mark Sandler in the next session. He points to the fact that instead of the language found in *Whatcott* or *Keegstra*, you have language that talks about “detestation or vilification”. That's what the language says in the bill now, but the relevant jurisprudence says “and”. It is necessary that it be both “detestation and vilification”.

I'm not going to step on Mark Sandler's toes and deal with that in any detail. I'm just saying there are a number of constitutional infirmities with the definition of “hatred”, in addition to other parts of this bill. It's going to lead towards policy problems.

• (1545)

I don't understand. Some people might say that this is a paraphrase. Why are you paraphrasing rather than just putting in that language in the Supreme Court except if not to create that gap and except if not to say that this is constitutional, when in fact it is not?

There are going to be serious consequences for this. We see in the United Kingdom—

The Chair: Professor Alford, you're at your five minutes.

Could you please briefly wrap up? Thanks.

Ryan Alford: Yes. I just need 30 seconds, Mr. Miller.

In the United Kingdom right now, there are 30 arrests per day for what is on social media. Most of it comes precisely in that area of speech that is an affront to the dignity of individuals but is not “detestation or vilification”.

Unless we're trying to create the kind of regime that exists in the United Kingdom and permits those kinds of arrests, I suggest that we really need to revisit the language of 319(7).

Thank you, Mr. Miller.

The Chair: I think we'll have a chance to examine your thinking in detail in the next hour and a half, as well. My apologies for cutting you off; we just have to stick to the five-minute plan.

Professor Pardy, it's over to you.

Bruce Pardy (Professor of Law, Queen's University, As an Individual): Thank you, Mr. Chair.

I do agree with the comments of the previous two speakers.

In February 2022, *The Globe and Mail* published a column with the title, “It's time to end the sedition...by enforcing the law and following the money”. It said, “people have been terrorized for more than a week”. Seditious and terrorists: Who was the author talking about? This was in February 2022. Yes, of course, they were talking about the truckers. There was no violence, no weapons, no assault and no storming of Parliament, but there were parking violations, road hockey, dancing in the snow and unkind words about the government—seditious and terrorists. Who was the author of this column? Can you guess? It was one Mark Carney, now the Prime Minister.

In 1992, American political theorist Samuel Francis coined the term “anarcho-tyranny”. Anarcho-tyranny, he said, is a kind of government dysfunction. The dysfunction occurs when a government is simultaneously unable or unwilling to deal with serious crime, leading to a kind of anarchy while, at the same time, being ruthlessly oppressive in punishing minor transgressions of law-abiding people. The government allows violence, theft, political corruption and foreign interference while it is obsessed with controlling what ordinary people say, think and feel.

In Bill C-9, the government seeks to criminalize an emotion: “hatred means the emotion that involves detestation or vilification and that is stronger than disdain or dislike”. It is criminal to detest but legal to dislike, but to detest, of course, means to intensely dislike—that's the meaning of the word—so it will be legal to dislike but criminal to intensely dislike. Where is the line between dislike and intensely dislike? Of course, nobody knows that. The line will be drawn wherever the authorities want it to be drawn to punish speech that the government hates.

Bill C-9 also criminalizes protests that “provoke a state of fear”, but not the fear of violence, as we have offences for that already. No, Bill C-9 will prohibit protests that provoke a state of fear of offensive ideas.

That is what the truckers were accused of. That's why Mark Carney described them as seditionists and terrorists.

Bill C-9 will be used to prohibit peaceful protests—like that of the truckers—that the government hates.

In a free country—and I mean in a genuinely free country, which we once claimed to be—you are allowed to hate other people and you are allowed to say that you do.

Thank you very much.

• (1550)

The Chair: Thank you, Professor Pardy.

Ms. Al-Azem.

Nusaiba Al-Azem (Director of Legal Affairs, National Council of Canadian Muslims): Thank you, Mr. Chair and members of the committee.

My name is Nusaiba Al-Azem, and I serve as the legal director for the National Council of Canadian Muslims.

For over two decades, Muslim Canadians have watched as laws written in the name of public safety have crept quietly into the corners of our lives, into our mosques, our charities, our border crossings and sometimes even into the classroom. To be clear, public safety never seemed to apply to our communities. To my knowledge, no law was changed after the Quebec City mosque massacre, when a gunman opened fire on a congregation, leaving 17 children fatherless. To my knowledge, no law was changed after members of my own local community, our London family, were massacred by an Islamophobe, who took three generations with his vehicle in an instant. There have been more Muslims killed in hate-motivated murder than any other community in this nation. We as Muslims know what the cost of hate is.

Were Canadians consulted about the full contents of this bill? Sadly, the answer is a stark no. We're here today because this bill ostensibly attempts to take a stand against hate, but in its reach, it risks lowering the line between fighting hate and legitimate free speech.

Let me begin with what works in Bill C-9. The new hate-motivated offence provision, proposed section 320.1001 is something NCCM supports, generally. In fact, after the London terror attack, this was a clear recommendation by the Canadian Muslim community to legislate a stand-alone hate crime provision.

That said, the bill has many shortcomings that are alarming for our organization. Much of this bill looks like attacking the freedom of the 64% of Canadians who believe that Israel has committed a genocide in Gaza and have taken to the streets over the last two years to protest Canada's complicity. In practice, it will end up impacting every Canadian.

Proposed paragraph 319(2.2)(c), the clause criminalizing symbols resembling those set out in that section, is particularly con-

cerning. On paper, the language within that clause may sound tidy, but in practice it's dangerous. Who decides what “nearly resembles” means? Who decides what confusion looks like?

Let me tell you what that looks like from our side of things. It looks like a [*Technical difficulty—Editor*] flying a black flag with a [*Technical difficulty—Editor*], a simple declaration of [*Technical difficulty—Editor*] Muslims and someone calling [*Technical difficulty—Editor*].

It looks like a [*Technical difficulty—Editor*] police officer unsure that this flag might resemble something on a watch-list because [*Technical difficulty—Editor*] organizations like ISIS [*Technical difficulty—Editor*] in their imagery [*Technical difficulty—Editor*] sacred texts.

It looks like police receiving a phone call that a protester is wielding a terrorist flag, when in fact, the flag in question is the national flag of the state of Palestine, a state recognized by Canada. That's a true story, by the way, but because we didn't have a law like this on the books, the individual was merely detained at that time. With a law like this, that person would likely have been charged.

Suddenly, the burden of proof doesn't fall on the person making the accusation; it falls on the Muslim or Palestinian advocate who dared to be visible, as long as the officer is confused and thinks that they're trying to cause fear, including online. This clause would criminalize confusion, and this also means that things like the KKK hood remain entirely legal, as the KKK is not a listed terrorist entity.

We agree with those on this committee, including the Conservative members, who have said that these kinds of provisions are fundamentally dangerous. It is an undue restriction on free speech. For instance, if a Canadian wanted to suggest that a certain policy is oppressive by comparing it to a policy of the Taliban and wanted to make a visual representation of that using symbols on their Twitter account, suddenly, they're at risk of being charged. That is what is at stake here.

We've been here before. After 9/11, entire communities were surveilled in the name of security. Muslim charities were audited into oblivion. Families lost livelihoods. Mosques were raided. Children watched their parents humiliated at airports, all because fear had been legislated.

Each time it begins the same way with language that seems small, almost reasonable. Each time it was said that this law was only about them, about the extremists, the dangerous few. However, the line between them and us has always been easier to move than to defend. When the state starts legislating resemblance, when it criminalizes “looking like” or “sounding like”, it's no longer protecting Canadians.

Here's what we're asking this committee to do.

One, strike proposed paragraph 319(2.2)(c), and remove the “nearly resembles” language entirely.

Two, halt the passage of this bill until true consultation can take place with communities that have actually been massacred by hate.

Three, expand funding for education and prevention programs that counter hate before it becomes violent.

Let's make sure that the next generation learns that safety doesn't come from censorship but from understanding.

Thank you very much.

• (1555)

The Chair: Thank you, Ms. Al-Azem, and indeed to all the witnesses for your succinct presentations.

People are familiar with how these rounds work. The first round is six minutes per MP, and then there will be a second round, and we'll probably get into a third round. We're going until five o'clock with this set of witnesses, so we'll probably get deep into the third round.

We have MP Lawton going first for six minutes.

[*Translation*]

Mr. Lawton has the floor.

[*English*]

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Thank you, witnesses, for your time and analysis on this.

I'd like to start with you, Professor Pardy.

Because you are joining us virtually, you didn't have the privilege of seeing the Liberal members of this committee snickering as you were talking about the Liberal government's assaults on civil liberties in the past. However, I think that is important context for what we're seeing here, because in your opinion, these are not benign provisions. These are significant expansions of the power of the state to regulate thoughts, emotions and expressions. Is that correct?

Bruce Pardy: That's correct. Yes.

Andrew Lawton: I'll ask you this as well afterwards, Professor Alford.

First, Professor Pardy, in your analysis of legislation in the past and your knowledge of statutes, when words are omitted from jurisprudence, that is not what codification of jurisprudence is. Is that correct?

Bruce Pardy: That's correct. Yes.

Andrew Lawton: If you are a police officer who is doing an investigation or a judge weighing in on this, explain in practice how significant the omission of the words "extreme manifestation" is from the definition of hate that exists in the common law now to the one that Bill C-9 puts in law in the Criminal Code.

Bruce Pardy: This is really Professor Alford's point. You have a jurisprudential context. The Supreme Court of Canada, in the 2012 case of Whatcott, described what was a reasonable limit on freedom of expression. Let's just underline this. They said that this was a reasonable limit, but they also said that this was infringement of freedom of speech.

What you have to start with in Bill C-9 is an infringement of freedom of speech. This definition does infringe freedom of speech. That's what the Supreme Court says. This is an infringement from a government that claims to be a government of the charter and of rights, so we start there. Then if you fiddle with the wording, if you leave words out and if you make it "detestation or vilification", and not "and", for example, then you are downgrading the threshold above which you need to get in order to find that this is established.

It's a little bit of playing around with the words so as to appear as though you're doing exactly what the Supreme Court said, while you're not really doing that at all.

• (1600)

Andrew Lawton: I'll go to you on this, Professor Alford. I believe you reviewed the Minister of Justice's testimony on Bill C-9. I'll quote directly from what the minister remarked. When he was asked about the definition, he said:

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.

What is your view on the minister's characterization of his own bill, Professor Alford?

Ryan Alford: It's incorrect.

I would say the problem is that the courts are going to look at the decision to use this particular language that omits the language from Whatcott that I cited in my testimony and say that it's clearly an intentional decision, that you made the decision, seeing what was written in Whatcott, to leave this out.

The most ominous possibility here is what's going on behind the scenes, that the government is actually seeking a ruling from the Supreme Court in due course that would lower the threshold to what they're putting forward in this bill. They're saying that you said that in 2013, and if you uphold what we wrote into this bill, which intentionally left out some of the language that Justice Rothstein—since retired from the court, of course—included in that judgment, you will then say that this is a reasonable limitation on the freedom of speech. I think that's particularly dangerous.

Andrew Lawton: Professor, I realize that hate is inherently subjective, which is the problem we've been identifying with this, but explain to me—if you could—what the practical application would be, in your view. What would be captured by this new definition that isn't captured under the existing definition, just to demonstrate how this dilution and this lowering of threshold is actually happening, or is there no way to make such a prediction right now?

Ryan Alford: Well, I think there is, Mr. Lawton.

Look at what's happening in the United Kingdom right now. Remember, there's no entrenched right to freedom of expression in the United Kingdom. They don't have anything like the charter, which creates that right. There, you have speech that purportedly abrogates the dignity of individuals or groups. That's the basis for complaints to the police. Arrests are being made on that basis.

That's what the language in Whatcott, which is left out of the definition in proposed subsection 319(7), would allow. It's precisely that people can make complaints that what someone is saying is hated. The reason why it's hated is that it's an intentional attempt to infringe on their dignity as an individual or member of a protected group.

We've seen quite a lot of this in the United Kingdom, particularly with very charged issues, such as competing rights around what's called gender identity issues and women's rights. They have had many people who felt like they were engaging in good faith and are now the subject of visits from the police and arrested because of a complaint that what they said and the way they engaged on this issue is detrimental to the dignity of the people with whom they engage.

Andrew Lawton: It's a valid point, Professor. I know Minister Fraser mentioned to my colleague Mr. Baber that it is "far-fetched to imagine U.K.-style tweet policing in Canada. Then, moments later, he admitted that Bill C-9 will cover what people say on the Internet.

Very quickly, is that a legitimate concern for Canadians if Bill C-9 passes, Professor?

Ryan Alford: It's eminently legitimate, Mr. Lawton.

The Chair: You have 10 seconds.

Andrew Lawton: Thank you.

The Chair: MP Dhillon, it's over to you.

Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Chair.

I'm going to start with Professor Alford.

With police reporting over 2,200 crimes already this year, do you agree that Parliament has some duty to ensure the safety of people and to ensure that there is peace in our society?

Ryan Alford: Well, there is a hierarchy of responsibilities for the government.

I would say that, generally speaking, when people talk about a rule-of-law state, they're talking about a constitutional state in which the primary responsibility of the government is to observe the constitutional limits for anything that it might want to do. It would be very easy to address crime by rounding up suspects and executing them without trial, but we can't do that within our constitutional state because of the existing constitutional limitations. Observing those limitations is deemed to be of higher importance than addressing any problem, however pressing.

Anju Dhillon: You spoke about the possibility of parts of the bill being struck down, and that, in the past, you testified and something like this occurred.

What would you propose we do as parliamentarians and people who are here to protect society and make laws? What do you suggest, given all the hate and violence that's taking place these days?

• (1605)

Ryan Alford: My suggestion is that, when you want to create legislation, you have to understand it's only going to stand if it's indeed constitutional. There's no purpose in passing legislation that,

as soon as it encounters a constitutional challenge, will be struck down. If you want to address this issue of hate, you have to craft legislation that conforms to the existing limitations and jurisprudence of the Supreme Court of Canada.

In this case, I would just say that, at minimum, you have to go back to the definitions in the bill, particularly those found in proposed subsection 319(7), as proposed by clause 4, and have it reflect quite accurately what is said in the leading cases of the Supreme Court of Canada, particularly Whatcott—as I and Professor Pardy have highlighted.

Anju Dhillon: Thank you so much.

My next question is for Ms. Al-Azem.

We've seen a rise in hate-motivated threats and vandalism against mosques, synagogues and other religious institutions and cultural centres.

How meaningful is this legislation for those communities that simply want to gather and worship in peace?

Nusaiba Al-Azem: I very much appreciate your question.

Again, I can understand that the ambition behind this legislation may be very noble in attempting to address hate.

To Professor Alford's point, if you do it in a way that goes beyond what you're setting out to do and infringes upon people's free speech rights, that is a huge concern for all community members, including the community members we're purporting to protect.

I would also note that, as far as the Muslim community goes, I see, day in and day out, the cases that come across my desk. Just this past week, there was a violent assault on a Muslim woman in Toronto. She was viciously beaten on the streets of Toronto. Unfortunately, those kinds of obstruction provisions don't address a lot of the real-life cases that come across my desk. I think this is where it's very important to go back, have meaningful consultation and make sure we strike the balance and get the right type of legislation moved forward.

Anju Dhillon: It's all about balance, but if these consultations took place, what would you do differently? What would you suggest differently?

Nusaiba Al-Azem: For instance, 319(2.2)(c), the concerns there about confusion and resemblance, that should not make its way forward. You can't even train your way out of something like that. You can't train law enforcement out of something that is ambiguous in the way that it's even defined. It effectively criminalizes confusion. I would start by removing those very obvious concerning portions.

There should be real consultations with civil society community members, whether that means looking at the definition, making sure we get that right balance, or making sure that what we're proposing actually addresses the real causes we're seeing of hatred, and that we don't unduly restrict people's legitimate rights.

As the CCLA pointed out earlier, there should be legitimate rights to free speech, free expression and free assembly.

Anju Dhillon: Thank you so much.

I don't have any other questions.

The Chair: Thank you.

Mr. Fortin.

[*Translation*]

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

I am grateful to Ms. Bussièrès McNicoll and the other witnesses for being with us today.

Ms. Al-Azem, I would like to know what you think of the religious exemption. Bill C-367 was introduced to eliminate from the Criminal Code the two defence provisions in paragraphs 319(3)(b) and 319(3.1)(b), which allowed the wilful promotion of hatred or antisemitism if an opinion was based on a religious text.

Do you think these exemptions, these defences, should remain in the Code or be eliminated?

[*English*]

Nusaiba Al-Azem: If I understand your question correctly, you are asking about the defences for these types of hate-related issues. I really appreciate your question because I didn't get the opportunity to get into some of my concerns about the defence set out in this bill. It includes the defence for the display of symbols for a legitimate purpose, including a legitimate purpose related to journalism, religion, education or art, which is not contrary to the public interest.

• (1610)

[*Translation*]

Rhéal Éloi Fortin: I'd like us to focus only on the religious exemption for now, Ms. Al-Azem. Are you familiar with section 319 of the Criminal Code? If not, I'll change the subject or speak to a different witness.

[*English*]

Nusaiba Al-Azem: Yes.

[*Translation*]

Rhéal Éloi Fortin: Okay, so you know what I'm talking about. Briefly, what is your opinion on eliminating these defences from the Criminal Code? Do you think it's a good idea or a bad idea?

[*English*]

Nusaiba Al-Azem: I'm not going to have enough time to flesh out my points in the time I believe I have left, but in terms of defences, generally, they do need revisiting. The part whether it's contrary to public interest may address the concerns you're trying to raise. I would further state that there's no defence for academic interest, and there's no defence for political speech or protest—

[*Translation*]

Rhéal Éloi Fortin: Pardon me, Ms. Al-Azem. I don't want to be impolite, but I have to interrupt you because we don't have much time.

I would like to ask your opinion on the following. About two years ago, in the fall of 2023, in Montreal, Imam Adil Charkaoui

publicly stated: “Allah, do something about these Zionist aggressors. Allah, do something about the enemies of the people of Gaza. Allah, identify them all, then exterminate them, and spare none of them!”

I would like to know your thoughts on that kind of statement being allowed in Canada.

[*English*]

Nusaiba Al-Azem: I'm sorry. I didn't quite hear the end because of the translation. Could you please repeat?

[*Translation*]

Rhéal Éloi Fortin: Yes, I can repeat the quote, but the clock is ticking, and I don't want to repeat it many more times. In October 2023, Adil Charkaoui said: “Allah, do something about these Zionist aggressors. Allah, do something about the enemies of the people of Gaza. Allah, identify them all, then exterminate them, and spare none of them!”

Do you think such statements should be allowed in public in Canada?

[*English*]

Nusaiba Al-Azem: If I understand what you're saying, I believe the public interest piece does address what you're saying. Do I think that religious text should be criminalized? No. I think that's what you're trying to get at.

[*Translation*]

Rhéal Éloi Fortin: You don't think that should be a crime, and you think it should be allowed. Do I have that right?

[*English*]

Nusaiba Al-Azem: I don't believe that religious texts, including the Bible, the Torah and the Quran, should be criminalized, no.

[*Translation*]

Rhéal Éloi Fortin: Ms. Al-Azem, I'm not asking you if the Bible is a criminal text. My question was about the quote I read to you twice.

Do you think such statements are acceptable in public in Canada?

[*English*]

Nusaiba Al-Azem: I'm actually not familiar with that statement or the context of that statement, so I wouldn't be able to—

[*Translation*]

Rhéal Éloi Fortin: Ms. Al-Azem, I'm sorry, but the clock is ticking, and I have about two minutes left.

Ms. Bussièrès McNicoll, you heard my question. What are your thoughts?

Anaïs Bussièrès McNicoll: I'll go back to the religious exemption issue you mentioned earlier. That exemption applies only to the offence of wilfully promoting hatred. There are other offences—

Rhéal Éloi Fortin: There's an offence for hatred and another for antisemitism.

Anaïs Bussièrès McNicoll: Yes. Antisemitism is defined as holocaust denial. That is a precise definition, but it's not necessarily what people understand—

Rhéal Éloi Fortin: Are these defences legitimate, or should they be eliminated from the Criminal Code?

Anaïs Bussièrès McNicoll: I'll try to answer—

Rhéal Éloi Fortin: Would everyone else please stop talking because it's causing interference. Thank you.

Ms. Bussièrès McNicoll, go ahead with your answer.

Anaïs Bussièrès McNicoll: I want to clarify that making public statements likely to incite violence against an identifiable group is already an offence—

Rhéal Éloi Fortin: Sorry to interrupt, but I only have about a minute left. We already know the rules.

Here's my question. In your opinion, should these defences be eliminated from the Criminal Code or not?

Anaïs Bussièrès McNicoll: Currently, the Criminal Code states that incitement to hatred—

Rhéal Éloi Fortin: I'm sorry to interrupt you, Ms. Bussièrès McNicoll. We could talk about this for a long time, and I'm sure that would be nice, but I'm running out of time.

Should these defences be eliminated, yes or no?

Anaïs Bussièrès McNicoll: Given that the expression “wilful promotion of hatred” is likely to lead to abuse and that the definition set out by the Supreme Court of Canada is currently being challenged by Bill C-9, we do not support the elimination—

• (1615)

Rhéal Éloi Fortin: Okay, thank you.

I have a few seconds left.

Anaïs Bussièrès McNicoll: —of statutory defences.

Rhéal Éloi Fortin: Is Adil Charkaoui's statement, which I read, acceptable in the Canadian public space?

Anaïs Bussièrès McNicoll: That depends on the context. In this particular case, I honestly don't see why it wouldn't be covered by criminal charges other than wilfully promoting hatred, where there's a defence—

Rhéal Éloi Fortin: It would take more than a few seconds to decide what section charges could be laid under.

Anaïs Bussièrès McNicoll: It's actually very important.

Rhéal Éloi Fortin: Should making such statements be allowed?

Anaïs Bussièrès McNicoll: Sir, I've answered your question. I think that it could be covered by other criminal charges depending on the context.

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

Rhéal Éloi Fortin: Mr. Chair, interpretation problems cost some time, and people talking in the room also cost me precious seconds. I'd like you to be lenient.

The Chair: Mr. Fortin, you have been interrupting a lot of people. You might let them finish what they're saying.

[English]

To the people in the back, it's enough regulating this mess. You should keep it quiet or go outside and continue the conversation there.

Thank you.

We'll go over to Mr. Baber for five minutes.

Roman Baber (York Centre, CPC): Thank you.

Ms. Al-Azem, you're director of legal affairs for the National Council of Canadian Muslims. Is that correct?

Nusaiba Al-Azem: That's correct.

Roman Baber: I want to talk to you about section 319. Do you know what the word “intifada” means?

Nusaiba Al-Azem: Yes.

Roman Baber: What does it mean?

Nusaiba Al-Azem: Intifada is a form of revolution.

Roman Baber: It's a violent resistance, correct?

Nusaiba Al-Azem: There are a number of different intifadas. There was a bread intifada in Egypt that came in, which was about economic revolution—

Roman Baber: In the context of intifada against Jews in the State of Israel, intifada is violent resistance.

Are you going to suggest that it doesn't involve violence?

Nusaiba Al-Azem: I think it can involve violence, but it can also not involve.... Are we really having a discussion about Arabic translation right now?

I speak Arabic. Do you speak Arabic?

Roman Baber: I speak a little bit of Arabic.

Thank you for conceding that in that context, it involves violence.

The term “intifada” is shouted every day on Canada's streets, whether it's “viva viva intifada” or “globalize the intifada”, which means bring the intifada here to Canada.

In your view, when that is being chanted in a North York neighbourhood, is that incitement to violence or not?

Nusaiba Al-Azem: Let me be clear, this has always been the position of the National Council of Canadian Muslims: If anybody is espousing any form of hatred against any group, and that includes anti-Semitism, Islamophobia, any other identifiable group, that is incorrect and it's something we—

Roman Baber: I'm talking about the second subsection in 319. I'm not talking about hatred. I'm talking about incitement to violence, which is the other section.

My question for you again is, if you already concede that this is violence and it is shouted in Canadian streets, do you agree with me that the chant “globalize the intifada” or “viva intifada” is incitement to violence, yes or no?

Nusaiba Al-Azem: I think your question really belies a lot of the problems with bringing this bill forward, and I think it belies some of the, let's say, motivations behind bringing it up at this point.

I think Professor Pardy was referring to the convoy. We saw a number of hate slogans and hateful logos and symbols around the convoy. We saw a number of them.

There was no attempt to bring a bill like this forward, so I think, if anything, that your question is actually belying that this is meant to curb the civil liberties of the millions of Canadians who have taken to the streets peacefully to oppose genocide.

Roman Baber: I'm perplexed that a Canadian lawyer somehow could justify incitement to violence. I'm also a lawyer, and I'm very perplexed by your position.

Hamas is a listed terrorist entity in Canada. Do you think it should be legal to fly a Hamas flag on a Canadian street?

Nusaiba Al-Azem: To be clear, this bill goes much beyond that—

Roman Baber: Just answer my question, please.

Nusaiba Al-Azem: —and I'd like to articulate—

Roman Baber: I'm not asking beyond.... I'm just asking about the flag. Should it be lawful to fly a Hamas flag in North York?

Nusaiba Al-Azem: I think that it really depends on a lot of different things. What's the intention of the person flying it? Again, this is why something of this nature that impacts civil liberties does need to be examined very clearly.

I'd like to say that I did not concede that intifada is violent. I specifically did not concede that.

Roman Baber: All right.

If a person is chanting “intifada” and they're holding a flag of a terrorist entity like Hezbollah, should that be criminalized, in your view, or not?

Nusaiba Al-Azem: Again, my view is that this bill isn't even scratching that surface.

Let me give you an example of what we've seen and my concerns with this bill. Over the last year, we've seen members of the Muslim Shia community, every year, take to a procession, right...? It's called the Arbaeen. They take to the streets.

They took to the streets in Montreal wearing a green headband with Arabic calligraphy on it—

● (1620)

Roman Baber: I wasn't asking about symbols.

I'm sorry, but my time is short. I have only about 30 seconds.

Nusaiba Al-Azem: I think you were asking about symbols. You were asking—

Roman Baber: I refer you to the NCCM statement of October 8 in response to October 7. Why did the NCCM statement of October 8 fail to mention the word “Hamas”. A day after the October 7 attack, why did your organization in a statement that it issued not mention the word “Hamas” once?

Nusaiba Al-Azem: I don't know how that's even relevant to the provisions that we're discussing here, but let me just say—

Roman Baber: Why did your statement fail to condemn the October 7 attack?

Nusaiba Al-Azem: What?

Sorry, listen. With all due respect, I think my community has overseen the largest of attacks, deadly attacks, against an identifiable group in the G7 in the past few years.

I've had to attend the burial of my community members because of the hate—

Roman Baber: Do you condemn the October 7 attack?

Nusaiba Al-Azem: —that, frankly, the political class has allowed to fester, in part because of a lot of the rhetoric that we see online—

Roman Baber: Ms. Al-Azem, do you condemn the October 7 attack by Hamas? Do you condemn it?

Nusaiba Al-Azem: Do you condemn Israeli genocide?

Roman Baber: I'm asking the questions.

The Chair: Mr. Baber, the time's up.

Nusaiba Al-Azem: I condemn the death of any innocent life. Do you?

Roman Baber: Of course.

The Chair: Thank you, Ms. Al-Azem.

Thank you, Mr. Baber.

Now well go to MP Chang.

Wade Chang (Burnaby Central, Lib.): Professor Pardy, as the first openly gay member of this House, I'm very proud of my own identity.

In 2008, when I studied in Australia, somebody shouted at me and told me to go back to Asia when I walked down the street. More recently, in 2022, at Metrotown station, one of the busiest SkyTrain stations in Vancouver, someone shouted at me and said, “What are you looking at, Asian? If you want to 'F-word', go to Davie Street.”

You say it is okay to hate people in this country. Do you agree that what I was told is appropriate?

Bruce Pardy: No, I think it's very inappropriate, but that's not the question. The question is should it be illegal.

It's definitely inappropriate, but it should not be illegal. If people want to say stupid things and let everyone know that they're stupid people, they should be free to do so.

Wade Chang: Canada's charter protects freedom of expression, but it also protects the safety and dignity of every person. Do you believe it's ever acceptable in a democratic country to justify hate to others using the disguise of free speech?

Bruce Pardy: It's not a disguise.

Earlier, Ms. Dhillon asked, "What are we supposed to do otherwise?" The answer to that is, you're supposed to prosecute violence. Violence is supposed to be criminal. The failures we're experiencing are because violence is not being properly prosecuted and punished. Violence is the line. It's not language.

Wade Chang: Everyone agrees that hate-motivated violence has no place in Canada. Would you agree that the government has a responsibility to ensure that Canadians can live and worship safely, free from fear?

Bruce Pardy: Free from violence, yes. If you fear violence because of the threat of violence, then that should be criminal, yes. Assault, which is a threat of violence, is criminal already. It has nothing to do with Bill C-9. We already have provisions in the Criminal Code that prohibit violence and the threat of violence. That is appropriate. We're not talking about that. We are talking about trying to keep people safe from some other bogeyman when violence is absent, and that is the mistake.

Wade Chang: Thank you.

My next question is for Ms. Al-Azem.

Canada prides itself on diversity, inclusion and freedom of belief. Would you agree that protecting these values require more than words, that it demands action when hate strikes in our communities?

Nusaiba Al-Azem: I'm sorry. I think that was directed towards me.

Wade Chang: Yes. We have seen a troubling rise in hate-motivated strikes and vandalism targeting mosques and cultural centres. How significant is this legislation for your community?

Nusaiba Al-Azem: Again, this legislation can be potentially very significant. It's really important that we strike the right balance on it and make sure that we are protecting all minorities, all identifiable people and all Canadians in a way that does not unduly restrict our civil liberties.

• (1625)

Wade Chang: What message does it send when Parliament stands united against hate while upholding freedom of religion and expression?

Nusaiba Al-Azem: It certainly sends a very powerful message. Yes, it sends an extremely powerful message.

Wade Chang: Thank you.

I have nothing further.

[Translation]

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

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Professor Alford, I only have two and a half minutes, so I'm going to make this quick. If you don't want to answer a question, say so, and we'll move on.

I would like to ask you the same question I asked Ms. Al-Azem about the two religious exemptions in section 319 of the Criminal

Code, which allow the promotion of hatred and antisemitism based on a religious text. In your opinion, should these exemptions be removed from the Criminal Code or should they be maintained?

[English]

Ryan Alford: I believe they should be maintained. My reason for saying that is if prosecutions were initiated on the basis of religious speech, I think it might very well infringe upon the guarantees of religious freedom in the charter.

[Translation]

Rhéal Éloi Fortin: I'll ask you another question I asked earlier.

I'll quote the words spoken by Adil Charkaoui in Montreal in October 2023: "Allah, do something about these Zionist aggressors. Allah, do something about the enemies of the people of Gaza. Allah, identify them all, then exterminate them, and spare none of them!"

In your opinion, does that statement promote hatred? Should such a statement be allowed on Canadian soil?

[English]

Ryan Alford: I think it's certainly capable of inciting hatred. I'm not positive that you can restrict the speech phrased in the form of a prayer without running into the guarantees of the charter or freedom of religion.

[Translation]

Rhéal Éloi Fortin: Correct me if I'm wrong, but if I understand you correctly, such statements should be permitted under existing laws. Is that right?

[English]

Ryan Alford: I believe that, under the legislation in force, it would be allowed, and I think changing that would bring us into some difficult constitutional issues.

[Translation]

Rhéal Éloi Fortin: I have 30 seconds left, so I'll ask one last question.

Is it a good thing that the Attorney General's consent is required to institute proceedings for hate crimes? Should that requirement remain in place, or would it be better to remove it, as proposed in Bill C-9?

[English]

Ryan Alford: It's a bad idea to take out the requirement that the attorney general approved these prosecutions, because they are so particularly sensitive that there should be some political accountability for authorizing them.

[Translation]

Rhéal Éloi Fortin: Thank you, Professor Alford.

The Chair: Thank you.

Mr. Gunn, you have the floor for five minutes.

[English]

Aaron Gunn (North Island—Powell River, CPC): Professor Pardy, do you think lowering the threshold for what constitutes hate speech and the removal of the requirement for attorney general consent opens the way for potentially politically motivated prosecutions?

Bruce Pardy: Yes.

Aaron Gunn: Can you expand on how that might happen?

Bruce Pardy: Well, it's because you will have a criminal provision that is completely uncertain in its meaning. The people who are out there on the street will have no conception about where the line is between things that are okay and things that are not. You don't have a check on political decisions, as Professor Alford just alluded to. You basically have an open book.

If you have the political wherewithal or the means to direct certain outcomes, certain prosecutions or certain initiatives, then of course that's what you'll do. That is a poor way to construct the law. You are asking for trouble instead of trying to design the law so as to prevent the possibility of that kind of outcome.

Aaron Gunn: Professor Pardy, we had Bill C-11, Bill C-18 and Bill C-63 in the previous Parliament. Now we have Bill C-9. What do you think it is with this Liberal government, which has been in power for over 10 years now, and their general aversion to free expression and persistent attempts to restrict free speech in Canada?

Bruce Pardy: There does seem to be a determination to make sure that the government is the one supervising people's speech. I would like to emphasize a distinction that I alluded to earlier, which is that the proper restriction on speech, in my books, is one that distinguishes between violence and speech that is not violent. It's perfectly adequate to limit speech by saying that you cannot use speech to threaten violence. That makes sense. We have those laws already. We've had them for a long time. But all these legislative initiatives, especially Bill C-63, which for my money was the worst of the lot, including Bill C-9, are attempting to cross this threshold: Even if violence is not involved, even if you are not threatening violence, you're still not allowed to say certain things, because we don't like it.

That's where you get into dangerous territory with freedom of speech. That begins to mean that your guarantee, your constitutional guarantee, of free speech is not that at all. You can just compare the Canadian state on this with the situation in the United States. I mean, in both countries we have a constitutional guarantee of free speech. In the United States, the government is not allowed constitutionally to limit speech that here would be called hate speech. Hate speech is not a thing in the U.S., because the courts have said that it is protected speech. Yet here we've ended up in a situation, in the legislation you're alluding to, where the government is trying here, there and everywhere to try to limit how people talk.

• (1630)

Aaron Gunn: Professor, what do you foresee as the worst-case scenario of this bill should it pass? What is the slippery slope? Could we see people being arrested for anti-social media posts? Could we see political opponents?

I have to bring up this hate speech thing. We have Liberal members of Parliament who have accused Jordan Peterson of hate speech and who have accused the recently assassinated Charlie Kirk of hate speech. By making this accusation and then putting forward a bill like C-9, are they not essentially calling for their political opponents to be jailed?

Bruce Pardy: Yes—well, potentially, anyway. I mean, you wouldn't want to make that accusation without some concrete information, but essentially, yes, you could see happening in Canada the kind of thing that has been happening in the U.K., where the police are sent out on missions to crack down on people saying dangerous things online. That is not the situation you want in a country that claims to be free. You do not want a political role in determining what people can say. The Jordan Peterson case is an excellent example.

Aaron Gunn: Professor Alford, I have 30 seconds left for you.

You talked about the potential for this bill to violate the charter and to be struck down. I did a documentary on free speech a couple of years ago. There was a 5-4 decision that almost basically fined a comedian for telling a joke. How confident are you in the current makeup of Canada's Supreme Court to uphold free expression rights in Canada?

Ryan Alford: The Ward decision that you alluded to would have completely changed the framework for the evaluation of reasonable limitations on freedom of speech. It was extremely troubling to see that it was considered a close question by a number of the justices.

I would really have strong fears that, were this to come to the Supreme Court of Canada that they would re-evaluate that framework with the idea of balancing freedom of speech against some other compelling objective, it would really be fundamentally dangerous to the democratic accountability and legitimacy of the government, and indeed our constitutional state.

Aaron Gunn: Thank you.

The Chair: Mr. Housefather, you have five minutes.

Anthony Housefather (Mount Royal, Lib.): Thank you very much, Mr. Chair.

I want to jump in and say a couple of things before I ask some questions.

The first is that there's been a comment that there wasn't consultation. I know there has been substantial consultation on this bill that has been done not only by the current minister, but also by the previous minister of justice. There have been discussions with faith communities across the country, including the Muslim community. I'm not saying that there's always been sufficient consultation, but there certainly has been consultation.

I have also heard the argument about the United States. Of course, the United States, as I'm sure Professor Pardy would acknowledge, doesn't have section 1 of their charter that limits freedom of speech. The right in section 2 is limited in a way that it wouldn't be in the United States, and I think we would agree on that.

I'd also note a comment from some of the Conservatives. I think it's important to remember that last December this committee issued a report in which we recommended the significant majority of the things that are in this bill, and the Conservative Party issued a limited dissent that didn't dissent on any of these points. I just want to put things into context.

Professor Pardy, you mentioned that people should be allowed to hate and allowed to say that they do hate. In a way, as long as they don't encourage violence, I guess people can hate. As long as they don't incite, I guess they're allowed to say that they hate. I don't disagree with you. We can morally say that's wrong.

For example, one of the things you once said was:

Canadians have been sold a bill of goods. Many of them think that they have a right to equal treatment under the law. They think that discrimination is illegal. But nothing could be farther from the truth. In Canada, discrimination is lawful as long as it is committed against the right groups—and in particular against straight white men.

I think we can both agree that many people might disagree with what you said there, but I don't know that you would argue that this bill would allow anyone to decide that it would be hate speech, would you? You wouldn't imply that this bill is going so far as to criminalize that type of speech, are you?

• (1635)

Bruce Pardy: I'm sorry, to criminalize what kind of speech?

Anthony Housefather: The speech like you made. The speech where you declared that, for example, straight white men were the ones who were discriminated against in Canada. You're not arguing that this type of law would stop you from saying that, are you?

Bruce Pardy: I don't think I would go quite that far.

What you read from is a legal analysis. If we get to a place in this country where doing a legal analysis is criminal, then we're in really bad shape. I wouldn't have jumped to there, no.

Anthony Housefather: Okay.

Professor Alford, you talked, and rightly so, about there always being a balance. I agree. The charter statement should make clear that this is a clear violation of section 2, there is no doubt. The question is whether it's saved under section 1. There are restrictions on freedom of speech that can be saved under section 1, as Keegstra and other cases have said.

There must be a limit where, for example, my right to freedom of speech blocks someone else from exercising their right to freedom of speech. For example, if I intimidate or obstruct someone from entering into their place of worship so they no longer have a right to practise their religion freely, we can't say for sure how a court would rule, but it is a legitimate decision of the legislator to determine if that would be consistent with a section 1 limitation of section 2 rights.

Would you not agree, Professor Alford?

Ryan Alford: I do agree, and I would say the reason I agree is that there we're talking about what people label time, place and manner restrictions that don't talk about the content of the speech. Therefore, it's far more likely to say that it's legitimate restriction,

because we're not making this discrimination on the kind of speech that is involved.

I think what you're pointing to is the kind of thing that we should be crafting rather than talking about the particular types of speech or the intentions behind speech.

Anthony Housefather: That's totally understood, and I appreciate that discussion. I take note of your points under section 319 and the definition.

Ms. Al-Azem, I'm going to ask you a completely different type of question.

I don't think you understood the translation of what Monsieur Fortin said in French, and I just want to give you the context in English so that you could perhaps answer and put yourself on the record as you want. Maybe you want to leave what you said, but I'm not sure you would, because I'm not sure you exactly understood the translation.

Mr. Fortin and the Bloc Québécois have proposed a private member's bill to remove the religious exemption on hate speech. For example, if I make a speech and I claim that, in my good faith, my religion led me to this speech that would otherwise be hate speech, then it's okay.

Mr. Fortin was asking you whether you agreed with him that religious-based exemption should be removed from the bill, which is what he's proposing. That's what he was asking.

Nusaiba Al-Azem: Thank you, Mr. Housefather. I appreciate that you're giving me an opportunity to clarify. I appreciate the question. There are a few things I want to clarify.

The Chair: Ms. Al-Azem, you'll have to be extremely quick in your response, please.

Nusaiba Al-Azem: For the record, and just to be clear, the NC-CM has condemned the October 7 attacks by Hamas and, likewise, all violations of international law.

I also want to note that nobody else was asked these lines of questions on this panel. Again, it belies that there are real concerns about this type of legislation. I'm tired, frankly, of our communities being asked this, two and half years into genocide, and that there's always this proximity to terror and hate that's constantly associated with the Muslim community. I just did want to clarify that.

The Chair: Ms. Al-Azem, we are way over time. You can submit any clarification in writing, or someone else can follow up with you in the next round of questions. Thank you.

Nusaiba Al-Azem: I will be happy to do so.

Anthony Housefather: I would also just note I didn't ask those questions. I asked you only to clarify.

The Chair: Thank you, Mr. Housefather.

If we keep this next round tight, we'll get through everyone; otherwise it will cut into Mr. Baber's or Ms. Dhillon's time, so let's get going. We start off with Mr. Lawton, then Ms. Lattanzio, Mr. Fortin, Mr. Baber and Ms. Dhillon.

It's over to you, Andrew.

Andrew Lawton: Thank you very much.

Madam Bussi eres, I'd like to ask you about Bill C-9's approach to hate symbols. You would agree that, under the current law, someone who displays a hate symbol—and I'm using broadly the definition, let's say, that Bill C-9 uses—could be charged under section 319 right now. Is that correct?

• (1640)

[Translation]

Ana s Bussi eres McNicoll: Yes, certain provisions of the Criminal Code can be used and become relevant when hate or terrorist symbols are used. It depends on the context. That is why we're wondering if this new provision duplicates a legislative framework that already exists in Canada's Criminal Code.

[English]

Andrew Lawton: Do you believe that, as worded now, Bill C-9 would make the display of a symbol on its own a criminal offence, or do you believe that it is just part of the context that could lead to a hate charge?

[Translation]

Ana s Bussi eres McNicoll: This is interesting because there is tension between how we interpret the text and what the Minister of Justice presented. He clearly explained that this was not about completely prohibiting the public display of any hateful or terrorist symbols. Then, when you read the text, it's a little less clear. It seems to associate this act with an intention to deliberately promote hatred.

That said, the fact remains that there are already criminal consequences for displaying terrorist or hate symbols in Canada, but it all depends on the context.

[English]

Andrew Lawton: I'm grateful you shared that, Madam Bussi eres, because this is, as with the hate definition, another example of how the minister's description of the law actually differs from the law itself.

[Translation]

Ana s Bussi eres McNicoll: There is certainly tension. When the courts have to interpret this, they will refer to the text, the context and the purpose of the law. They will also refer to the intention of the legislator and what was said when the law was proposed. I don't want to give a definitive answer to this question, but when we read the text, it certainly raised questions.

[English]

Andrew Lawton: *Merci.*

Professor Pardy, I'd like to return to you on this.

Are you aware that the Ontario Human Rights Commission views misgendering someone, identifying them as the wrong gender, to be discrimination and against the law, the Ontario Human Rights Code?

Bruce Pardy: Yes.

Andrew Lawton: When we saw Bill C-16 in a previous Parliament, which was the bill that led Jordan Peterson to speak out so vocally on this, this was expanding Canadian human rights law to include gender identity and effectively embedding in Canadian human rights law the very similar provisions we have in various provincial human rights codes. Is that correct?

Bruce Pardy: That's correct.

Andrew Lawton: I realize that the Canadian Human Rights Act is no itself tied to the Criminal Code, but it does give a sense of where the government wants to go with this, especially by looking at Bill C-63, the online harms act, from the previous Parliament. Do you see misgendering as being something that could attract a hate charge, with the way that this government has viewed hate and the way that Bill C-9 is worded?

Bruce Pardy: Certainly, potentially.... Sure, there's no reason to think not.

Andrew Lawton: To go back to the U.K. case, that is precisely why a lot of people are finding themselves receiving a knock on the door from a British constable. It's their tweet of something that has weighed in on gender. Again, I do not take, for the purposes of our discussion on Bill C-9, the view that this committee needs to weigh in on this, but it is a live issue that people should be able to freely debate.

When the state is deciding what constitutes hate, my question is this: What are the implications on limiting the ability to hash out controversial subjects in society?

Bruce Pardy: They could be devastating, yes.

Back when Bill C-16 was being debated, I was a witness at one of the Senate committee meetings. One of the senators in that meeting said to me, "Look, I'm a free speech guy, but requiring people to use proper pronouns is just reasonable speech. It's reasonable speech and therefore it's reasonable legislation." That completely misconceives the whole idea.

The job of the government is not to legislate reasonable speech. If you had a statute which said that Canadians will be required to say hello, please and thank you because that's reasonable speech, that is totalitarian because speech is something that people decide for themselves. As long as the government thinks that its role is to make sure that people are speaking reasonably, then you're totally off on the wrong track.

People's speech is their own unless, for my money, they are threatening violence. If you're over that threshold you're going to get into potential for the kinds of problems that you are alluding to. That potential is very real.

• (1645)

The Chair: Appropriately, thank you.

I will go to Ms. Lattanzio now.

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

My question will be for Ms. Al-Azem.

In recent media articles, Stephen Brown, the chief executive officer of the National Council of Canadian Muslims, said he's generally supportive of Bill C-9, noting that his organization has "lingering concerns over how the law will be applied and whether law enforcement will properly distinguish between what does and does not count as a hate symbol".

Can you explain to us what is the scope of hate crime affecting the Muslim community in Canada, and to what extent is it linked to Islamophobia?

Nusaiba Al-Azem: It's certainly linked, and the scope is such that I didn't even know about that public statement because every day I'm busy dealing with the calls that we get day in and day out from Muslims across this country who have suffered from a variety of hate crimes, including just this week two assaults, again, a woman brutally beaten on the streets of Toronto. I think that's what your question was getting at.

Certainly, we see hate crimes that are unfortunately only gaining in numbers, and they don't seem to be letting up in all facets of life. Those Muslims are just participating in public life walking down the street, accessing a grocery store, driving out of a parking lot.

Patricia Lattanzio: To clarify the question, could you explain to us how it is directly linked to Islamophobia?

Nusaiba Al-Azem: Certainly, in terms of the crimes, I could draw some direct links. If somebody is punching you and saying something very viscerally anti-Muslim, then it's very clear that this culture and climate of Islamophobia enables and emboldens people to be able to behave in that way.

Patricia Lattanzio: You're with the legal department. Can you give us an idea of how many incidents you've received of this type of hate crime, or Islamophobia, over the last couple of months, or perhaps the last year?

Nusaiba Al-Azem: We've received well over 700 in the last year. We do a report annually. I don't have the numbers off of the top of my head. It is something I do revisit annually, but I just don't have it off the top of my head. I can tell you I get at least one call a day of these types of incidents.

Patricia Lattanzio: In your opening remarks, you spoke about wanting to be consulted.

Were you not aware that all communities, including the Muslim community, were consulted over the course of the summer with regard to the issue of Bill C-9? Were you not, or maybe your organization, consulted? I just want to be clear on that.

Nusaiba Al-Azem: I appreciate the opportunity. To clarify, I said to be consulted about the full contents. While we were consulted and we've had many consultations with governments about, for example, the free-standing hate provisions for many years, the part, for example, about section 319(2.2) is something that was completely a surprise.

There are lots of elements of the bill and that's why I said the full contents of the bill. It would have been nice, I think, to have proper consultation with all the communities that are impacted not just by the bill, but that the bill purports to protect.

Patricia Lattanzio: What parts of the bill were you consulted on during the course of the summer?

Nusaiba Al-Azem: I believe it was the free-standing hate crime provision and perhaps the obstruction offence. To be honest, I wasn't personally consulted, so I'd have to go back and check. It wasn't me who was in those consultations.

Patricia Lattanzio: Okay, but you do recognize that the Muslim community was consulted.

Nusaiba Al-Azem: Yes, the Muslim community was consulted on certain elements of it, but the elements we weren't consulted on are the elements that we have severe concerns with.

Patricia Lattanzio: That is section 2.2. Is that correct?

Nusaiba Al-Azem: Exactly.

Patricia Lattanzio: Can you share with the committee how Bill C-9, if passed, would affect the Canadian Muslim community?

Nusaiba Al-Azem: Sure.

I can give you the example of the Shia procession that I was trying to describe earlier of Shia Muslims who participate in the Arbaeen procession and walk with a green headband. That happened just last year, and a bunch of bigots took to the Internet posting photos of young children who were participating in that procession.

Again, it's not a political rally. There's no political speech involved. It's purely a religious observance, and a number of bigots took to the Internet posting photos of those children and saying that they were young Hamas or they were being trained and/or engaging in some kind of terrorist activity. This is where I get—

• (1650)

The Chair: Thank you, Ms. Al-Azem.

[*Translation*]

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

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Professor Parly, I am going to ask you a question that I have asked a few times. I am sure you have heard it before. It concerns what Adil Charkaoui said in October 2023, in Montreal. If you would like me to read the quote again, please let me know.

First, I would like to know whether, in your opinion, this type of speech should be allowed in Canada. You will probably say, as you did earlier, that it is not appropriate, but that it can be allowed. Second, section 319(3) of the Criminal Code provides a valid defence when hate speech is based on a religious text. Should this provision be removed from the Criminal Code?

[*English*]

Bruce Parly: Let me address the second question first, because it's more straightforward.

Those defences that you're referring to in section 319 are defences to hate speech. I don't think hate speech should be a crime, so yes, those defences should remain.

Let's just be clear: When we're talking about hate speech, we are not talking about an assault. That is a threat of violence. If it were a threat of violence, it could be prosecuted as an assault. When we're talking about hate speech that does not include a threat of violence, then it's something else.

In my books, that speech should not be restricted, so the answer to your—

[*Translation*]

Rhéal Éloi Fortin: Excuse me for interrupting, I know it's rude, but my speaking time is two and a half minutes, and two minutes have already passed.

[*English*]

Bruce Pardy: That's okay. Go ahead.

[*Translation*]

Rhéal Éloi Fortin: Let me give you an example to see if I understand correctly. If I said that all Liberal and Conservative political organizers should be exterminated because I lost my election, that could, at a stretch, be acceptable to you, even though I am calling for them to be killed. Is that correct?

[*English*]

Bruce Pardy: No, that's not true.

There's going to be a problem here where speech is not just hate speech but is actually a threat. What you're describing there is potentially a threat to the lives of other people.

[*Translation*]

Rhéal Éloi Fortin: However, when we say, “Allah, do something about the enemies of the people...identify them all, then exterminate them...” doesn't that seem like a threat of violence to you?

[*English*]

Bruce Pardy: Yes.

The Chair: Thank you.

That's it, Mr. Pardy. Thank you.

Bruce Pardy: To be honest, I would like to see the [*Inaudible—Editor*] for myself, but yes [*Inaudible—Editor*], potentially.

The Chair: Mr. Pardy, thank you.

Mr. Baber, it's over to you.

Rhéal Éloi Fortin: Come on, Marc. Let him answer. What's the problem with my question? You don't like it?

The Chair: No, I think your question is totally fine, but you've asked it eight times.

Mr. Baber, it's over to you.

Roman Baber: Mr. Pardy, I'll permit you to answer for my friend's benefit.

The call in Montreal was for extermination of the Zionists, or supposedly a prayer for extermination of the Zionists.

Do you believe that is protected speech?

Bruce Pardy: No.

In the abstract, if you say to me that you call for the death of people, whether it's particular people or a group of people, that in my books is not okay. I don't think you should be able to hide behind the context of that advocacy.

I hope that answers your question.

Roman Baber: Thank you.

Professor Pardy, I would like to talk about a few elements of the bill that have yet to be addressed today.

The new criminal hate offence can be laid in response to any offence contrary to any act of Parliament. Is that correct?

Bruce Pardy: Right. It sounds like it, yes.

Roman Baber: In other words, you can predicate the stand-alone criminal hate offence on conduct that is not necessarily criminal.

Bruce Pardy: Sure, that's correct. That's possible.

Roman Baber: For instance, you could suggest that non-payment of wages under the Canada Labour Code, if it is motivated by hate, could lead to a criminal charge.

• (1655)

Bruce Pardy: Yes. That's correct.

Roman Baber: You could suggest that if someone's engaged in the suppression of votes under the Canada Elections Act, that could lead to a criminal charge.

Bruce Pardy: Yes.

Roman Baber: I find that very concerning—

Bruce Pardy: So do I.

Roman Baber: —especially given that the government seeks to lower the bar to convict...of hate, at the same time removing the safeguard of the attorney general.

Would you recommend that we confine the application of the stand-alone hate offence to offences truly criminal in nature?

Bruce Pardy: Well, first, yes, absolutely.

Second, I would recommend that you get rid of it all together. That's because what you are now doing, even if you limit it to criminal offences, is setting up two tiers of violent offences.

Let's compare two things. Let's say somebody assaults two different people. In the first case, they just choose someone randomly on the street, or they pick somebody they know. In the second case, they pick somebody because of their identity. In both cases, they do exactly the same thing. They beat them up. Both of those things are wrong. They are both offences. They are both equal because the amount of violence is equal. What we're doing now is saying that one of those is more serious than the other one.

No. They are both serious. They are both violent. They are both wrong.

Roman Baber: If a person intimidates someone while obstructing them from entry into a religious institution or an educational institution, isn't that already illegal? Isn't that already criminal?

Bruce Pardy: Yes, it is criminal if there's any kind of intimidation or violence involved. In the sense that we have Criminal Code offences that can be applied there. If those offences do not apply because the elements are not there, then all you're probably talking about is speech, and speech should be fine.

Roman Baber: I would think that if you're intimidating someone while obstructing them from entering the premises, that would be assault.

Bruce Pardy: You would think so, yes, if you have actual obstruction. If you are standing in the way and moving around to make sure that they can't get around you and yelling in their face, then that sounds like a Criminal Code offence that we already have.

Roman Baber: Professor Pardy, I look at this bill overall. The government is lowering the bar for what hate speech is. It's removing the safeguard of the attorney general consent, potentially opening folks to politically motivated prosecutions. You can lay the new hate charge on top of what is essentially civil conduct.

I don't understand why this Liberal government is so obsessed with criminalizing freedom of expression.

Bruce Pardy: I don't either. I wish I knew.

Roman Baber: Thank you, Mr. Pardy.

The Chair: Are you good?

Roman Baber: Yes.

The Chair: Next is Ms. Dhillon for five minutes.

Anju Dhillon: Thank you, Mr. Chair.

I'll direct my question to Ms. Al-Azem.

You mentioned being perturbed by a certain line of questioning today. You were cut off.

Would you like to elaborate on that?

Nusaiba Al-Azem: Certainly.

I find it really concerning that the Muslim woman in the room was the one who was consistently asked to condemn Hamas, to talk about terrorist actions, etc. I think this proximity, this constant association of Muslims being proximate to terror is part and parcel of exactly kind of thing I mentioned in our initial submission. We've seen for two decades exactly how that kind of line of thinking and that kind of view of Muslim Canadians has really impacted us. It's not just our sense of citizenship; we end up being over-policed and under-protected.

I really appreciate the opportunity to let me finalize that thought.

Anju Dhillon: Thank you for sharing that.

You mentioned that there's been an increase in attacks in the last year, and every single day you get a phone call from somebody being attacked one way or the other because of their identity. Could you please talk to us about the difference you've seen between the acts being denounced when you're being called versus what you've seen in the past?

Nusaiba Al-Azem: Sorry, but I don't think I fully understood the question.

Anju Dhillon: My colleague Ms. Lattanzio was asking you about getting a phone call every day about somebody being attacked on the basis of their race or the way they look. Can you talk to us about the difference? Have you seen a big increase over the years in violent acts committed against people in your community? What kind of difference is there between previous attacks and these ones?

● (1700)

Nusaiba Al-Azem: There has certainly been an increase. It's been an overwhelming increase for our organization to be able to address.

In terms of the nature or the violence of those acts, no, unfortunately, it's not worse. We saw the Quebec mosque shooting, and that was how many years ago? We saw our London family terror attack, and that was how many years ago? We saw what happened in mosques in Toronto; a caretaker at a mosque in Toronto was killed, and that was many years ago?

I can't say they've increased in intensity because I don't think you can increase in intensity when your starting line is murder. I'm certainly seeing an increase in frequency and an increase in regular assaults alongside Islamophobic remarks or comments, etc., as people are just going about their days, totally unprovoked. It certainly adds to this general phenomenon of feeling over-policed and under-protected.

Anju Dhillon: It was mentioned earlier that beating up somebody is beating up somebody, and that merits the same prosecution where somebody is being beaten up simply because they are or if somebody is being beaten up based on the way they look. What do you have to say about that?

Nusaiba Al-Azem: The underlying action is the same, but in terms of the impact that may have on a community, in working for a community organization that delivers community impact statements regularly in criminal sentencing matters, I can definitely assure the members of this committee that it does have real impacts.

I'm a Londoner. I was in the room when Nathaniel Veltman was sentenced. I was in the room when his actions were declared terrorism. I was in the room in a full gallery of Londoners who are still dealing with the impacts of those actions on their sense of belonging. It's not just Muslims; we heard from a number of vulnerable community members and community groups about how it impacted their sense of belonging.

Anju Dhillon: Thank you.

The Chair: Thank you, Ms. Dhillon.

Thank you, Ms. Al-Azem.

Thank you to the witnesses on this first panel. Thank you for taking the time to do this.

We will suspend for a couple of minutes to switch over.

• (1700) _____ (Pause) _____

• (1710)

The Chair: Thank you, everyone.

We are beginning our second round, which will go until 6:30.

On this panel we have, appearing in their own capacity, Mark Sandler, as an individual, chair of Alliance of Canadians Combatting Antisemitism; Cassandra Hallett, director general of the Canadian Teachers' Federation; Cary Kogan, professor, and Deidre Butler, associate professor, from the Network of Engaged Canadian Academics; and Brandon Silver, director of policy and projects, from the Raoul Wallenberg Centre for Human Rights.

I'll briefly remind you that you have five minutes each. Try to keep it to that. We have a little more time today, but there are a lot of you and I think we're all eager to hear your testimony and have some interaction.

There was a lot of back and forth. I'm trying to keep the dynamic between people questioning and the witnesses, but if it gets a little out of hand, I'll ask you to direct the questions through me, just to make sure that we maintain decorum so we can get complete answers from the witnesses today, who have spent a lot of time to get here and have prepared accordingly.

I'll start off in that order.

Mark, it's you first for five minutes. Then it's Ms. Hallett, followed by Professor Kogan, Professor Butler and then Brandon.

Thank you.

Mark Sandler (Chair, Alliance of Canadians Combatting Antisemitism, As an Individual): Thank you, Mr. Chair and members of the committee, for the opportunity to address you on Bill C-9.

I bring the perspective of someone who's been involved in combatting anti-Semitism for 40 years and in training police and prosecutors across the country on the availability of criminal measures to combat hate. I have appeared before this committee and other parliamentary committees, and in the Supreme Court of Canada on multiple occasions, with regard to hate-motivated crimes and the constitutionality of hate legislation.

I'm currently chair of the Alliance of Canadians Combatting Antisemitism, which is a non-partisan coalition of over 60 community organizations, Jewish and non-Jewish, a number of which will be filing written submissions supporting the position that I will outline for you today.

I have already provided the committee with a detailed written legal analysis of the legislation and with my recommendations, so in my introductory remarks, I wish to make only five points.

First, I support several of the components of Bill C-9 as enhancements to the existing criminal law, particularly in the creation of a hate offence for those who commit conventional crimes motivated by hatred. Creation of such an offence appropriately labels offenders for the purposes of their criminal records and makes more likely the imposition of true deterrent and denunciatory sentences.

I also support the new offences of intimidation and obstruction, not because they criminalize conduct that would otherwise not be criminal but because I know, having spoken to officers, that the creation of these new offences will incentivize police to prioritize and address hate-motivated crimes targeting vulnerable community spaces.

You will hear some people and organizations contend that these provisions violate the charter. Similar arguments were made by those who opposed the creation of the current hate propaganda sections of the Criminal Code, and I was there. Those arguments lack merit in relation to the proposed hate offence, especially if the definition of hatred were to track precisely the language adopted by the Supreme Court of Canada in upholding limits on freedom of expression. The intimidation and obstruction sections, if anything, more carefully protect lawful protests than existing provisions that might be used under the Criminal Code, based on the specific intent required to prove each of these new offences.

Second, although the removal of the attorney general's consent is intended to streamline hate propaganda prosecutions, which makes the proposal superficially attractive, it would be dangerous to remove that requirement altogether. The requirement for consent represents an important safeguard against vexatious and frivolous misuse of the hate propaganda provisions. The attorney general's consent requirement should either be retained as is or retained only in relation to private prosecutions, where the dangers are most acute. As I've set out to you in my written materials, there's precedent for that very approach to be taken.

Third, the existing wording of the new offence pertaining to the display of symbols raises a number of issues that I've identified in my written submissions. I believe that a carefully crafted provision can address the display of terror symbols more effectively than the proposed legislation. The proposed legislation must also be amended to better protect the symbology of Hindus, Jains and Buddhists.

Fourth, there is a significant omission in the legislation—namely, there's a need for the creation of the offence of wilfully promoting terror activities or the activities of a terrorist group. I explain in my written submissions why such a provision is fully compliant with the charter, based on existing jurisprudence, and would focus not on which identifiable group is or is not targeted by hate speech, but on speech that supports violent terror activities, unprotected under the charter.

Finally, the real issue that we cannot lose sight of is enforcement of existing laws. We are underutilizing existing criminal law measures. This committee should signal that all governments and law enforcement must work co-operatively to ensure that law enforcement utilizes the tools they already have available to them, as well as any enhancements this legislation may add, to address pervasive anti-Semitism and other forms of hatred in Canada.

• (1715)

Just over a week ago, a man pleaded guilty in a Toronto courtroom to multiple terrorism-related offences, for conduct that included his authorship and distribution of manifestos on behalf of a white supremacist hate group. These manifestos were cited by criminals around the world as justification for heinous crimes that they committed. The manifestos advocated violence, including sabotage of critical infrastructure, murder of police officers and high-profile assassinations. The prosecutor described the manifesto as including “radically antisemitic” material and incitement to attacks against LGBTQ+ individuals, Jews and people of colour.

Over 34 years ago, the Supreme Court of Canada recognized the need to place limits on freedom of speech to address the most virulent forms of hatred, because such speech not only marginalizes vulnerable Canadians but also attracts adherents to extremist and sometimes violent ideology. The proposed legislation, with appropriate amendments, represents one step forward in addressing the epidemic of hate crimes that threatens the safety and security of all Canadians.

Thank you, Mr. Chair.

The Chair: Thank you.

Ms. Hallett.

Cassandra Hallett (Executive Director, Canadian Teachers' Federation): Thank you.

Good evening, Mr. Chair, and thank you to the committee for having me. The CTF/FCE has spoken at committee a number of times in recent years. We always appreciate the opportunity to bring our perspective on issues that impact children, students, educators and their families.

My name is Cassandra Hallett. I am the executive director of the Canadian Teachers' Federation. Our organization represents over 370,000 education workers and their families, with members in every province and territory in Canada.

While we represent teachers and educators from coast to coast, I want to begin with the vision of the Canadian Teachers' Federation—a Canada where every child has equitable access to quality public education. For us it means, among other things, that every child gets to attend school without fear of intimidation, harassment or hatred.

Unfortunately, the CTF/FCE and our member organizations in every province and territory have observed a rise in the level of what we feel is hate-fuelled language and protest in Canada. This language has manifested itself into a climate where students and school staff no longer feel completely safe. Educators and teachers have been targets of public pressure to stop teaching topics in provincially or territorially mandated curricula, such as climate change, the importance of racial or gender inclusion, or the value of gender equity.

There has been an eruption of distrust in educators, with the public questioning whether the protection and well-being of students is a priority. This lack of trust is shocking, not only when you consider the fact that the overwhelming majority of educators enter the profession because of their passion for teaching and educating, but

also because most education workers are more likely than workers in any other industry to have children of their own. The new-found skepticism that education staff and students feel leaves education staff and students feeling like school is no longer the safe and protected space that many people previously believed was the norm.

The issue concerned CTF/FCE members across the country so much that a resolution was passed at our general meeting in 2023 calling for governments across the country to create “safe zones” around schools that made it an offence to hold protests that target or intimidate students and/or staff on the basis of their gender identity, sexuality, race, religion or other protected category. Children, educators and their families deserve to go to their places of learning and their places of work with the knowledge that intimidation and hatred will not be tolerated.

Bill C-9 is seeking to address intimidation felt by those attending an educational institution. The legislation even specifies day care centres. We commend this aspect of the legislation. Children and families deserve access to education without the prospect of feeling unwelcome because they identify with the groups mentioned. This sense or state of safety is something that we unfortunately have taken for granted in Canada. It is saddening to note that protecting schools from discrimination needs to be explicitly outlined in legislation, but this is the moment we find ourselves in.

The CTF/FCE does support the intent of this part of the legislation. The issue of combatting hate is very important for us and for teachers across the country. We recently worked with the Canadian Anti-Hate Network and shared some of their resources amongst our members because of the alarming rise in discrimination, xenophobia, anti-Semitism, Islamophobia and gender identity-based hate all across the country.

The global political climate has ushered in a new era of divisiveness and animosity. Whatever the reason for this swell in division, children should never be on the receiving end of aggressive shows of disagreement. A school needs to be a sanctuary. Many people understand that schools should be a special place that's outside of the acceptable places to air your grievances or concerns.

• (1720)

As a federal organization representative of educators, we will be the first to say that we stand in line with any legislative change that makes schools or classrooms safer places to learn, play and work; however—

The Chair: Ms. Hallett, you're way over five minutes.

Cassandra Hallett: I'm sorry.

The Chair: Can you briefly get to the end of it? We'll be able to ask you questions about that a little later.

Cassandra Hallett: I'm almost there, thank you.

I'll just note that we do recognize that the legislation requires more review. We look to the positions of other organizations, including our partners such as Egale, the Black Legal Action Centre, the Canadian Muslim Public Affairs Council and the Canadian Labour Congress, who have legitimate concerns with this legislation.

I will stop there. My apologies.

Thank you.

The Chair: Thank you.

Professors Kogan and Butler, you have five minutes total between you two.

Deidre Butler (Associate Professor, Network of Engaged Canadian Academics): Mr. Chairman and members of the committee, thank you for this opportunity to share our insights and expertise about anti-Semitism as you review Bill C-9.

I'm Dr. Deidre Butler, associate professor of Jewish studies at Carleton University.

[*Translation*]

Cary Kogan (Professor, Network of Engaged Canadian Academics): Good morning, Mr. Chair.

My name is Cary Kogan and I am a professor of clinical psychology at the University of Ottawa.

Deidre Butler and I are the co-founders of the Network of Engaged Canadian Academics.

[*English*]

The Network of Engaged Canadian Academics, NECA, promotes academic freedom, research excellence and intellectual pluralism to counter anti-Semitism. Our network includes over 400 faculty members on 52 Canadian campuses.

• (1725)

Deidre Butler: We speak to you today as scholars. For over three decades, universities and colleges have been the front lines of contemporary anti-Semitism in Canada. Since October 7, 2023, our members describe campuses where anti-Semitism continues to surge unchecked and where Jew hatred is normalized, often under the guise that this is political speech or protected by academic freedom.

Cary Kogan: NECA unequivocally affirms the urgent need to strengthen academic freedom, a right that must be exercised with academic responsibility. Critically, academic freedom cannot supersede the law, including hate speech laws. As experts on anti-Semitism, we submit examples from Canadian campuses. These illustrate the pressing need to clarify, update and strengthen hate crime legislation to address bias, prejudice and hate against all minoritized groups.

Deidre Butler: Too many Canadian professors and students promote violence and hatred, express support for the ideologies of designated terrorist organizations and demand the exclusion of Zionists. Their definition of Zionist is defamatory and bears no resemblance to the real meaning of Zionism that is an integral part of

Canadian Jewish identity. Hate directed against Zionists is hate directed against 94% of Jews in Canada.

Cary Kogan: When hate is normalized, bad actors are emboldened. From hostage posters shredded and pins stuck into the photos of infant and elderly hostages, to vandalism and mischief, including shattering windows, breaking into buildings, spray-painting hateful graffiti, defacing dorm rooms and disrupting classes, these crimes are divorced from their intent and impact when they are not recognized as crimes motivated by hate.

Deidre Butler: Campus encampments displayed signs saying, "No Zionists allowed", restricting access and excluding many Jewish and other students. On November 9, 2023, the anniversary of Kristallnacht, students at several universities held protest with posters showing a foot smashing through glass to evoke the historical trauma of the Holocaust. At one university, faculty and students sheltered in offices under security but still had to walk through a screaming crowd to attend classes. Just two weeks ago, an angry mob of students swarmed a small group of Jewish students who were holding a memorial for those murdered on October 7. Across Canada, student groups on social media continue to call for the exclusion of all Zionists from campus.

Cary Kogan: The glorification of terrorism and anti-Jewish hate work together on our campuses. Consider how an encampment sign demanding resistance against the Zionist entity by any means necessary was prominently featured while a masked man proudly flaunted a Hamas bandana. To be clear, Hamas is a recognized terrorist organization. Hamas' charter calls for the obliteration of Israel and justifies the killing of Jews worldwide. Posters and social media include images of tanks, Molotov cocktails and Kalashnikov rifles.

Deidre Butler: Campus protesters in their social media posts call for the destruction of Israel "from the water to water", for global intifada, for death to Jews and death to Zionists and display inverted red triangles, a symbol employed by Hamas to identify targets for assassination.

Professors encourage and sometimes require for course credit participation and support of protests and actions that frequently amplify these terror messages and symbols. Some even celebrate the October 7 massacre.

Cary Kogan: As scholars, we support the efforts of this government in addressing rising hate in developing Bill C-9. We support the recognition in Bill C-9 of intimidation and impeding access to space. As we have illustrated, terror symbols and the promotion of terrorist ideologies are key tools for propagating hate on campuses.

We support the proposal by Mark Sandler and ALCCA. The separate charge of wilful promotion of terrorism should be introduced, as well as the amendment to the bill dropping the requirement for evidence of hateful intent when terror symbols are displayed.

Deidre Butler: We speak to you today as professors who research anti-Semitism, with examples from campuses across Canada. Hatred undermines the university's mission of advancing knowledge and training future Canadians. Hatred impedes the free flow of ideas that drive innovation and creativity, which are essential to the future of Canada.

When identity-based hate is allowed to flourish on campus, no one is safe. Ultimately, all society is diminished.

Thank you.

• (1730)

The Chair: Thank you.

Mr. Silver.

[*Translation*]

Brandon Silver (Director of Policy and Projects, Raoul Wallenberg Centre for Human Rights): Honourable members, thank you for giving me the opportunity to address the committee.

The study of Bill C-9, which aims to combat hatred, is very relevant at this time, as we are experiencing a real crisis of hatred.

[*English*]

Hate crimes have more than doubled here over the past five years, with nearly 20,000 incidents reported by the police. Most of these crimes target Canadians based on their race, religion or sexual orientation.

This rapid rise is underpinned by what feels like a culture of impunity surrounding incitement to hate. History has taught us that the most unspeakable of crimes begin with incitement.

The Holocaust did not begin with the gas chambers. It began with words and the stereotyping and dehumanization of Jews, in the same way that the killing fields of the genocide against the Tutsi in Rwanda started with radio propaganda calling them cockroaches.

The Supreme Court of Canada enshrined this principle in law, affirming that Léon Mugesera, who was then living in Quebec, was responsible for participating in the genocide against the Tutsis due to his hateful speech, and should be deported, even if he hadn't been in Rwanda when the killings themselves occurred.

In the hate speech trilogy of Supreme Court cases in 1990 of Keegstra, Taylor and Andrews, the court affirmed the constitutionality of Criminal Code restriction on hate speech. This was further enshrined and refined by courts in the subsequent decades, always holding that hate speech can be proscribed in compliance with the Canadian Charter of Rights and Freedoms.

Not only are hate speech prohibitions not in breach of the charter, they actually help protect it. Hate is an assault on the inherent dignity of the person, on the equal dignity of all people, on the right of minorities to protection from group vilifying hate and on Canada's international treaty obligations.

There is no right to use one's freedom of expression to infringe upon the rights of others.

The combatting hate act makes a meaningful contribution to protecting Canadians and promoting human rights in the face of rising

hate crime. The provisions on hate symbols and the targeting of community institutions are particularly important as a matter of principle and policy.

Banning the wilful promotion of hatred against an identifiable group by displaying specific Nazi or terrorist hate symbols in public addresses a leading form of incitement today. These hate symbols represent violence and are anti-democratic in nature. Such expression vilifies and excludes targeted minorities, incites harm against them and undermines broader human rights norms.

Neo-Nazism and any of the designated terrorist groups are a danger to Canadians. Their hate symbols send a clear message. A Nazi symbol tells Holocaust survivors they are not safe or equal in Canada and encourages white supremacists to act against them.

The ISIS flag tells Yazidi and minority Muslim survivors of terrorist atrocities such as the Ahmadiyah and Ismailis that they are targets in Canada and encourages Islamist extremists to act against them.

These are hate groups that murder, maim and menace Canadians and seek to dismantle democracy. That is what their symbols represent.

Criminalizing the intimidation or the impeding of access to a community institution associated with a minority group, such as a day care, seniors' residence or place of worship, protects the freedoms of vulnerable people.

No Canadian, whether they are a Jewish toddler being dropped off at a day care, a Muslim going to mosque, or an LGBTQ+ person attending an event at their community centre, should face hateful harassment and obstruction in their neighbourhoods.

There are always legitimate legal debates surrounding any legislation being proposed. However, saying that one's constituents cannot express themselves without resorting to wilfully promoting hate in Nazi or terrorist symbols or obstructing access for vulnerable groups to their crucial communal institutions, says much about the nature of their intended expression. These elements of Bill C-9 are a necessary and narrowly tailored response to a massive rise in hate crimes, and a reaffirmation of principles that Canadian courts have already upheld for decades.

To truly effectively combat hate crime, legislation must be followed by government leadership. The Prime Minister and his cabinet ministers should make it a habit to visit victims to offer them comfort, and to immediately and unequivocally condemn hate crimes when they occur.

As well, the government should mobilize federal, provincial and municipal law enforcement and leaders to move together on a common cause. The government can convene the federal, provincial and territorial meeting of ministers of justice and public safety for a special meeting on combatting hate crimes, and create an FPT working group that meets regularly to enhance co-operation and effective enforcement in that regard.

[*Translation*]

The aspects of Bill C-9 that deal with hate propaganda and access to religious or cultural sites are particularly necessary. However, the government must show leadership beyond these measures.

Thank you very much.

The Chair: Thank you, Mr. Silver, and thank you to all the witnesses.

We will now begin the first round of questions.

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

• (1735)

[*English*]

Roman Baber: Mr. Sandler, welcome to Ottawa.

I trust you're aware of the fact you were invited here both by the Conservatives and by the Liberals.

Mark Sandler: It's good to hear.

Thank you.

Roman Baber: I think that speaks to your expertise on the issues to be discussed today.

For 35 years, we used the Supreme Court's definition of the word "hatred" in Keegstra, which is, "emotion of an intense and extreme nature that is clearly associated with vilification and detestation."

The Liberal definition of hatred is an "emotion that involves detestation or vilification". They removed the words "intense and extreme nature", and instead of being clearly associated with vilification and detestation, they just want an "emotion that involves" them.

Am I wrong to think the Liberal definition of hatred prescribes a significantly lower bar to convict for hate speech?

Mark Sandler: You're not wrong in the sense that I wholly support the use of the precise language the Supreme Court of Canada used in Keegstra to define hatred.

I am concerned the definition that currently exists arguably does lower that standard, particularly in the use of "detestation or vilification" as opposed to "detestation and vilification" and some of the other points you've made. I do not want any excuse for a challenge to the existing hate propaganda sections of the Criminal Code based on a perceived difference in the standards set for hatred.

Roman Baber: You've heard some of the other witnesses today articulating a concern that the proposed definition is unconstitutional.

Mark Sandler: My point is that the Supreme Court of Canada upheld the hate propaganda section of the Criminal Code on the ba-

sis that it set a standard for "wilful". It set a standard for "promotion". It set a standard for "hatred". That's what made the section constitutional, so I do not want to interfere in the slightest with the standards the Supreme Court of Canada set, which were the basis for its determination that the legislation was constitutional.

Roman Baber: Bill C-9 removes the requirement of the attorney general's consent for the alaying of hate speech offences. Are you concerned that politically motivated Crowns or police may initiate prosecutions that aren't appropriate and specifically, to go further, that vexatious litigants may litigate private prosecutions for hate speech and appeal decisions that try to end or block such prosecutions?

Mark Sandler: I am concerned, and I have expressed the concern for over 30 years that the attorney general's consent is a safeguard against the frivolous and vexatious use of these sensitive sections of the Criminal Code. That's why I proposed either the retention of the attorney general's consent, notwithstanding the difficulties at times in getting that consent or getting that consent in a timely way, or, as an acceptable alternative, that consent be retained for privately initiated investigations. That's the real danger—the privately laid charges.

Roman Baber: The new stand-alone criminal hatred offence can be laid in response to any offence contrary to any act of Parliament. I find that to be very concerning, because we may attract criminal prosecution for what is otherwise civil or quasi-criminal legislation.

Would you recommend we confine the application of the hate offence to conduct that is truly criminal in nature?

Mark Sandler: I definitely agree that the hate offences should apply not to quasi-criminal offences but to criminal offences. If there is concern about the scope of the present provision, then one can either deal with it by confining hate offences to the Criminal Code or by, as I would suggest, specifying the acts of Parliament to which it applies.

Roman Baber: Bill C-9 repeals subsection 430(4.1), "Mischief", for targeting places of worship because of bias or prejudice; going forward, hatred will be required. Doesn't that mean it will be more difficult to get a conviction for mischief against religious property? It would be more limited in scope if this section were repealed and someone were to desecrate a church, a synagogue or a mosque.

Mark Sandler: Let me put it this way, because in essence I'm going to agree with you, but I'll frame it in my words. That's what lawyers do.

I was an advocate when this section was created to show that the desecration of places of worship and other similar places are treated in a more serious way. That's why this offence was created. It only requires proof that the vandalization was motivated by bias, prejudice or hatred, which is a lower standard than hatred.

I understand the use of hatred alone for direct offences involving speech, but for the vandalism of religious institutions and the like, for me, this section should be retained as is. We shouldn't be making it more difficult to label the desecration of religious institutions as hate offences.

● (1740)

Roman Baber: I will take your invitation and I will phrase it in my own way, which is that I believe that repealing this section will make it easier for someone to get away with desecration or mischief against a religious institution.

Mr. Sandler, if a person obstructs and intimidates someone as they're walking into their religious institution or their educational institution, isn't that already criminal under the Criminal Code? It could be mischief, it could be intimidation or it could be assault.

The Chair: Give a brief answer, Mr. Sandler.

Mark Sandler: The answer is yes.

What I've said is that the current, proposed intimidation or obstruction sections don't make criminal conduct that is not already criminal. In my view, they send a signal to those who would be minded to commit these offences. They assist law enforcement in giving priority to them and they enhance sentences for it, but they do not criminalize conduct that is not already criminal.

The Chair: Ms. Lattanzio.

Patricia Lattanzio: Thank you, Mr. Chair.

Thank you for being here today and for providing your insights on this important piece of legislation.

My question will be directed to you, Ms. Hallett.

First off, as a former school board commissioner and as a mom of three kids, I want to commend the work that teachers do on a daily basis. I profoundly believe that education starts at a very young age. I think it is important, as you stated, that we provide our kids with a very safe environment that is conducive for them to learn, to explore and to have an exchange of ideas, values and thoughts.

With that being said, teachers across Canada are seeing more hate and intolerance in schools. In your opinion, how can Bill C-9 reinforce the values that we see in the majority of our schools, which are safety, respect and inclusion?

Cassandra Hallett: Thank you very much.

As I mentioned in my opening remarks, the Canadian Teachers' Federation will really be in favour of any legislation that helps to ensure that schools can be sanctuaries where everyone—the students, of course, and also the education workers and teachers—feels safe. They're free from intimidation and harassment.

We're seeing, as has been said many times already in this room, an increasing rise in many forms of hate and violence across the country. We do believe that aspects of Bill C-9, as well as potentially other legislation, which we'll speak about at other times, could really make a difference in ensuring that schools are those sanctuaries. There are international declarations calling for schools to be sanctuary spaces. We don't see that being enacted in Canada.

We really do think that much greater clarity is needed in legislation so teachers can teach provincially and territorially approved curricula free from aggressive, hateful actions and protests, etc., and so that students who may identify with a vulnerable group can be safe going to school. That's one of our biggest concerns.

Patricia Lattanzio: From your perspective, how does the law of Bill C-9 complement the work that teachers are already doing in order to build that inclusive spirit in their classrooms?

Cassandra Hallett: As mentioned, we appreciate the specific designation or reference to day care centres in the legislation. There could certainly be more in the legislation related to the K-to-12 school system. Even though we recognize that K-to-12 schooling is provincial and territorial jurisdiction, public safety is federal.

Patricia Lattanzio: Can you provide examples of what work could be done?

● (1745)

Cassandra Hallett: We can certainly follow up with some specific language if that would be helpful.

Patricia Lattanzio: Sure. You could submit something in writing to the committee, and that would be looked at. Thank you.

It's over to you, Mr. Sandler.

I want to come back on the questions that were asked by my colleague and this idea of having a criminal offence with the civil component to it. I'm very interested because we want to get this right. We want to make sure the law will have the effects it's supposed to have.

I want to have clarification and a better understanding of the separation of the two. In your opinion, how can we make sure this piece of legislation will address that hate exactly, and that it will be criminal in its nature?

Mark Sandler: I think what Mr. Baber was raising with me is the fact that the hate offence, as currently defined, applies to any Criminal Code offence as well as any offence under any federal statute. He raised a concern about whether or not any federal statute would incorporate quasi-criminal offences created under other pieces of legislation and, as such, undermine the purpose behind this, which is to address true crime. I said that, if there's concern about this, the way to address it is by saying that the hate offence section applies to the Criminal Code and to specify the other offences to which it applies, rather than leaving it open to all federal offences that exist.

Let's face it. This is going to be applicable, based on my experience, in 99.9% of cases of Criminal Code offences. That's what you want to strike at—labelling offences as hate offences that are conventional offences under the Criminal Code but also having the hate motivation.

Patricia Lattanzio: Thank you.

I have no further questions.

The Chair: Mr. Fortin.

[*Translation*]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

I would like to thank the witnesses for joining us today.

Ms. Hallett, Ms. Butler and Mr. Kogan, thank you for taking a stand on behalf of the children in our schools. My wife is a teacher. We each have children and grandchildren, and we are always concerned about the disastrous news coming out of our schools. Thank you for what you are doing.

Mr. Sandler, I have a few questions and I would ask you to answer them quickly because, as you know, time is fleeting.

According to section 319(2) of the Criminal Code, “everyone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty” of an offence. Subsection 319(2.1) says the same thing for someone who “wilfully promotes antisemitism by condoning, denying or downplaying the Holocaust”. These two provisions, which prohibit incitement to hatred or antisemitism, are accompanied by a defence whereby “No person shall be convicted of an offence under subsection (2)...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”. The same provision exists for subsection (2.1).

In your opinion, should this defence be removed from the Criminal Code or should it be retained?

[English]

Mark Sandler: The answer is this: When we originally argued this case in the Supreme Court of Canada, the court relied upon the existence of those defences to uphold the constitutionality of the hate propaganda sections.

I have some concerns about how the religious defence is being interpreted because it's over-interpreted in such a way that people think it gives a defence to religious expression when it doesn't, based upon the words “in good faith”. I'm very sympathetic to your position that the defence should be omitted and that wilful promotion of hatred should remain constitutional, notwithstanding its omission. However, I'm concerned it would reopen the constitutionality of the provision.

It's with some reluctance that I respectfully disagree with removing the section, though I'm very sympathetic to why it should be removed, in your view.

[Translation]

Rhéal Éloi Fortin: About two years ago, in October 2023, Imam Adil Charkaoui made a public statement in Montreal. I will quote his words: “Allah, do something about these Zionist aggressors. Allah, do something about the enemies of the people of Gaza. Allah, identify them all, then exterminate them, and spare none of them!”

In your opinion, do such statements contravene the provisions of the Criminal Code?

• (1750)

[English]

Mark Sandler: He committed at least two offences. There's the wilful promotion of hatred against an identifiable group, and he also committed the offence of inciting hatred against an identifiable group likely to lead to a breach of the peace.

I heard the position was taken that he was expressing a view on a religious subject. That's nonsense. The defence would not be available to him. It wasn't made in good faith, and it was simply the wilful promotion of hatred. It was no defence that he also used the term “Zionist” as opposed to “Jews”. He was using it as a proxy for “Jews”, and frankly, it was a profound and disturbing call for the extermination of Jews and should have been treated as such by the police.

[Translation]

Rhéal Éloi Fortin: Overall, in Bill C-9, there are a number of positions or issues with which I agree, but they are already in the Criminal Code. You discussed this with my colleagues who asked you questions before me.

In your opinion, isn't passing a bill that repeats what is already in the Criminal Code a bit troublesome, even counterproductive, since it opens the door to interpretations that may not have been intended? In principle, legislators don't call for something without reason. If we specifically prohibit something, we may be allowing something else.

Don't you think this way of legislating is a bit counterproductive?

[English]

Mark Sandler: I don't, but I have to look at each of the sections.

When you look at the hate offence, for example, that is something that is being added which is new, because it is labelling the offence in a different way from the way it is currently labelled. By the way, it's completely consistent with even the more limited use of the criminal law in the United States. They have hate offences in the same way as is being proposed here.

The reason the labelling is important is that a lot of the hate-mongers are repeat offenders, and it's important that the criminal record labels their prior offences in a way that prosecutors and police know that the prior offences were hate motivated. That is not always apparent from looking at the record, and it provides for enhanced penalties if the Crown proceeds by indictment. For me, that's not duplication.

In terms of intimidation and obstruction, because I know your time is limited I'll answer very quickly to say that it is already criminalized by other offences. For me, the message I am getting from police is that if we specifically deal with it in the context of access to places of worship and other places, that will give greater priority and attentiveness on the part of the police to utilizing these provisions effectively.

I recognize the duplication. I would normally agree with you that we don't simply duplicate for the sake of duplication, but for me I think there is some important messaging through the use of those provisions.

The Chair: Thank you, Mr. Sandler.

[Translation]

Rhéal Éloi Fortin: Thank you.

[English]

The Chair: We'll do a complete second round starting with Mr. Lawton, and then Mr. Housefather, Mr. Gunn and Mr. Chang. In the third round, I'll do some slicing and dicing to come up with something reasonable, so I'll get back to everyone on the complex math involved.

Mr. Lawton, please begin.

Andrew Lawton: Thank you.

Mr. Silver, you alluded to the importance of political leadership. I actually agree that in the context of Bill C-9 we have to look at the broader context of hate and its origins.

I am assuming you would be aware that in August, there was an open letter signed by several Liberal members of Parliament condemning the rise of anti-Semitism.

What do you make of the fact that only 31 Liberal MPs, a very slim minority, signed that letter?

Brandon Silver: The engagement by members of Parliament from across all party lines in combatting hate is something that is appreciated by the centre I represent, and we take an all-party approach to our commentary on matters before the House.

Andrew Lawton: I'm sorry. I'm not sure if you heard the question, sir. I asked what you think of the fact that in August, only 32—I apologize—Liberal members of Parliament signed the letter denouncing the rise in anti-Semitism.

• (1755)

Brandon Silver: I would trust that any member of the House, given the opportunity to comment, would condemn anti-Semitism. In my own experience engaging with members of the House, I see that to be the case, that condemnation of anti-Semitism is something that should be above partisan politics, and...the strong support from all parties in the House on the matter.

Andrew Lawton: Wonderful, so not signing a declaration condemning anti-Semitism is a bit of a problem. I'm glad we got there, Mr. Silver.

Your organization's founder, Irwin Cotler, actually advised Mr. Anthony Housefather, a Liberal member of Parliament, to leave the Liberal caucus over anti-Semitism in the Liberal Party. Do you agree with Mr. Cotler's advice?

Brandon Silver: I'm here representing the Raoul Wallenberg Centre for Human Rights. You might want to consider addressing any questions about Professor Cotler's views on any particular electoral matter to him directly. I'd be pleased to comment on any aspects of Bill C-9.

Andrew Lawton: You did mention political leadership as being important. Do you think there has been leadership from the Liberal Party on anti-Semitism in the last two years?

Brandon Silver: The references to political leadership were with regard to what tangible—

Andrew Lawton: I appreciate that. Do you believe there has been leadership from the Liberal Party of Canada in condemning anti-Semitism in the last two years, yes or no?

Brandon Silver: What we call for here is for government members of Parliament to—

Andrew Lawton: That is a yes or no question, Mr. Silver. Are you declining to answer?

Brandon Silver: In condemning anti-Semitism, there is a need for—

Andrew Lawton: Okay. I reclaim my time, sir, if you're not going to answer.

I'd like to turn to you, Ms. Hallett.

You mentioned protecting teachers against hate. Your concerns and engagement on Bill C-9 are in regard to what you're identifying as being directed at teachers. Is that correct?

Cassandra Hallett: That's partially correct. Our concern is for everyone in the public school system—teachers, students, education workers. We're deeply troubled by a rise in hate against students from vulnerable groups, as well as educators from vulnerable groups.

Andrew Lawton: Have you read the Government of Canada's report, "Antisemitism in Ontario's K-12 Schools"?

Cassandra Hallett: I have not read that specific report. However, I have read many reports on increasing violence in schools, and I have been part of many resources to create safe, inclusive spaces for our schools.

Andrew Lawton: Thank you.

One of the take-aways from the report is that, of the thousands of incidents, a great many of them are anti-Semitic incidents. One in six anti-Semitic incidents involve teachers or school-sanctioned activities.

Does it concern you that teachers and schools are actually involved in perpetuating hate against students?

Cassandra Hallett: Any perpetuation of hate is a concern. I would not comment more on a report I haven't read and one statistic that's been pulled out of context for me, but I can assure you that the vast majority of educators across this country are doing their level best to create safe, inclusive environments for all of the students in their care, and they deserve the same as educators.

Andrew Lawton: What do you believe should be available to students and families dealing with anti-Semitism when the person of authority, the teacher or the school, through a sanctioned activity, is responsible for it? That's what this report gets to, and I do hope you'll take a look at it afterwards.

Cassandra Hallett: I will.

I won't speak specifically on Ontario matters as we are a pan-Canadian federation representing the teachers' unions and educators across the entire country, but I can, again, assure you, as an educator myself, that in every province and territory, there are mechanisms in the teaching profession, in public schools, just as you find in other professions. If someone is out of bounds, so to say, if their conduct is inappropriate, if they, as the example you're citing, are inciting hate, then there are mechanisms for follow-up, appropriate channels for addressing that, for complaint, for discipline.

Please don't think that's any different than for another issue. Absolutely there's recourse if someone is conducting themselves inappropriately.

The Chair: Thank you, Ms. Hallett.

Next is Mr. Housefather for five minutes.

Anthony Housefather: Thank you, Mr. Chair.

Thank you so much to the witnesses.

I note that three of the different witnesses, Mr. Sandler, Mr. Kogan and Dr. Butler, appeared before our committee last year on the anti-Semitism study, and that Bill C-9 puts into effect many of the recommendations from the justice committee on the anti-Semitism study.

I would also note that the letter that was referred to by my colleague Mr. Lawton actually endorsed each and every one of the recommendations from the anti-Semitism study, some of which Mr. Lawton doesn't endorse, so he would not have signed that letter. I don't think it was a simple condemnation of anti-Semitism. It was actually a detailed request to government to implement measures, many of which are reflected in this law, Bill C-9.

Mr. Silver, do you agree that, regardless of whether some of these measures in Bill C-9 would essentially reformulate certain elements in the Criminal Code, they send an important message to police and to prosecutors, and an important message to provinces and municipalities that these are important to the federal government within our sphere of jurisdiction, and that we want them to act? A lot of the complaints have been that they are not acting. An example would be the intimidation and obstruction offences. Do you feel that using the intimidation and obstruction offences will assist police in actually charging people who are blocking access to buildings?

• (1800)

Brandon Silver: A fellow witness, Mark Sandler, gave a very compelling and comprehensive response to some of those matters, which I would indeed echo. From a deterrent standpoint, there's the signalling to those in breach of the law that it adds to their record. Also, there's the signal it sends to law enforcement and to partners at every level of government that this is a matter that should be a priority. There is a requirement for enhanced enforcement that has been a large part of the problem until now. That is why I made my reference to how political leadership—and also, with some specific recommendations about the FPT, the federal, provincial and territorial meetings of the relevant ministers and their counterparts—at every level of government has not been sufficiently utilized for hate speech matters, and whether, for questions of enhancing enforcement and coordination, a specialized working group could be created after a meeting.

Surrounding the questions of attorney general consent, it's presented as a zero-sum game between the current clogged system, where there's not enough movement on approvals and removing it altogether. However, perhaps the FPT meetings can also be a forum for enhanced co-operation among levels of government, on approvals of prosecutions by the AG. I think there are other alternatives that can be offered to ameliorate the situation in terms of pro-

viding the relevant consent at the federal level and in partnership with the provinces, territories and even the municipalities.

Anthony Housefather: You don't agree that the careful line that has to be drawn between the interplay of sections 2 and 1 of the charter to limit freedom of expression in certain contexts—I think you expressed it very well—is violated by the clauses right now that are in the bill.

Brandon Silver: I would add that there are other relevant sections of the charter as well—section 15 on equality, section 27 on multiculturalism. There are multiple charter values that come into play, and quite consistent Supreme Court decisions throughout several decades that uphold the narrowly tailored restrictions regarding hate speech, and which actually align with not only section 1 being a valid restriction, but also uphold the other sections of the charter that espouse core Canadian values.

To your earlier question on obstruction, on hate symbolism, there is an additional component of very specific, proscribed symbolism. That is new, and it's important. I emphasized in my remarks why these symbols incite hate and are anti-democratic, and that is an important addition to existing criminal restrictions.

Anthony Housefather: My last question is for Mr. Sandler.

You agree that Bill C-9 should proceed, that it's important and that law enforcement will get a good lesson from Bill C-9 to actually enforce provisions that they previously, we all agree, had not been enforcing—perhaps the new ones and old ones.

Can I ask you about removing the words “hateful intent” as well, in terms of the delimitations on flying the terror symbols? What exactly would you propose be changed? What would you remove, exactly?

The Chair: Mr. Sandler, respond very briefly, or you can submit a written response.

Mark Sandler: Very briefly, if you see my written submission, I've set out a series of proposals that would more clearly tie the symbols to terror activities, and it would be a free-standing offence that wouldn't require proof of all of the elements of wilful promotion of hatred. I've set that out in more detail in my written submissions, Mr. Housefather.

• (1805)

The Chair: Thank you both.

[Translation]

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

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Mr. Sandler, I understand from your testimony that you support Bill C-9

That is good, but I am not sure I understand your position on the requirement to obtain the Attorney General's authorization to prosecute hate propaganda. Bill C-9 proposes to remove that requirement. In your opinion, is it a good idea to remove it, or should it be retained?

[English]

Mark Sandler: I've said I support Bill C-9, with the qualifications that are set out in my written submission.

One qualification is that I do not support the removal of the attorney general's consent altogether. I see two alternatives. One is that you retain the attorney general's consent as a safety measure against the misuse of these sections. The alternative is that you retain it, at least in relation to private prosecutions, because that's where the real mischief will take place.

[Translation]

Rhéal Éloi Fortin: Thank you, Mr. Sandler.

Mr. Silver, I would like to ask you the same question. In your opinion, should we retain the provisions of the Criminal Code that require authorization from the Attorney General before bringing such an action, or should we get rid of them, as proposed in Bill C-9?

Brandon Silver: I agree with my colleague Mr. Sandler. There are other solutions. We can create a more efficient and faster system without having to eliminate the provisions that require the consent of the Attorney General. We can keep them and create a more efficient internal process that involves collaboration between the different levels of government, namely the federal, provincial and municipal governments.

Rhéal Éloi Fortin: Thank you.

Brandon Silver: I apologize for the quality of my French. I am trying my best.

Rhéal Éloi Fortin: Thank you.

The Chair: Mr. Gunn, you have the floor for five minutes.

[English]

Aaron Gunn: Mr. Sandler, if Bill C-9 isn't amended significantly, if the provisions remain as far as removing the requirement for the AG consent as well as the watered-down definition of hate are concerned, could you support this bill in its current form?

Mark Sandler: The simple answer is no. I need to see movement on the attorney general's consent, and I need to see movement on a definition of hatred.

Aaron Gunn: You've made some other points. I can't remember which question you were responding to, but you were talking about, I believe, a preacher in Montreal who you believed had violated the laws as they are written.

Do you believe that the laws in Canada, particularly those that pertain to the incitement of violence, are enforced equally and consistently across the country today?

Mark Sandler: That's a question that could occupy an hour of time.

The bottom line is that I work with law enforcement right across the country. I do not believe that the current measures are enforced

in the same way in every jurisdiction. Sometimes the laws are underutilized in some jurisdictions, and that's not the case in other jurisdictions. No, I don't see an even application of the law.

Aaron Gunn: Why do you think that is?

Mark Sandler: I've set out in a discussion paper that was presented at the National Forum on Combatting Antisemitism a series of issues which I think have to be addressed.

The first is that police officers have to be acquainted with all of the legal measures that are available to them to combat hate, and police officers are sometimes unaware of those provisions that exist.

The second is that police officers need to understand what forms of hatred exist and, in the context of anti-Semitism, what contemporary anti-Semitism looks like. They have to understand what it means in order to apply the law effectively.

Third, they have to be supported, whether by municipal police service boards or municipalities if they're municipal police forces. In other words, they don't direct the day-to-day decisions made by police, but they have to demonstrate a zero tolerance for anti-Semitism and other forms of hatred. They have to create policies on policing that should be implemented by the police force, and I see some of that not taking place right across the land.

● (1810)

Aaron Gunn: With the concerns you raised earlier that you then connected to not being able to support the bill in its current form, if the bill does pass in its current form without those modifications, what do you think are the most likely potentials for abuse or the most worrisome potential elements for abuse?

Mark Sandler: There are two that concern me the most. I don't want to see in this highly politicized environment we live in private prosecutions being laid, for example, against Zionists just for being Zionists. That's what we're going to see, efforts to weaponize sections of the Criminal Code. That could take place regardless of whether this legislation passes or not, but that's why the attorney general's consent, or the proxy that I've suggested for it, is of concern to me. The second is that, although the courts may interpret the definition of hatred as being synonymous with the Supreme Court of Canada's decision, I don't want the risk of relitigating the existing sections of the Criminal Code and potentially coming to a different result.

Those are two things I would identify.

Aaron Gunn: I have one final question for you.

There's been a lot of talk and some concerns surrounding the erosion of free speech and free expression in the United Kingdom and some of the laws there. That's not an area that I'm expert in.

In your opinion, is it justifiable to have concerns about the erosion of free speech and free expression and going down the road of essentially jailing people for making social media posts that some find distasteful, hurtful or even hateful?

Mark Sandler: The answer is that I've proposed a new section, which is "wilful promotion of terror activities", because I don't like the looseness in the language that exists in the United Kingdom over the glorification of terrorism, which I think is prone to the concerns that you've expressed.

That's why I look at the terrorism sections that currently exist under the Criminal Code. They're a hodgepodge and very difficult for law enforcement to apply. Law enforcement expressed concerns about it. That's why I've crafted a potential section that's very narrowly crafted, draws upon existing jurisprudence and recognizes that we do not protect, under freedom of speech guarantees in the charter, the wilful promotion of terror—in other words, violent activity.

I am concerned that we not go the route the United Kingdom has taken. I don't think this legislation is doing that, and I certainly don't think my proposed new offence would do that either.

The Chair: Thank you both.

We'll go to MP Chang for five minutes.

Wade Chang: Thank you, Chair.

Mr. Silver, do you think it's fair to say that freedom of religion and freedom from hate depend on each other—that both are essential to a safe and inclusive Canada?

Brandon Silver: Yes, I do, and that's recognized in the charter itself and in the precedent from the Supreme Court on hate speech provisions that were, as my fellow witness, Mr. Sandler, referred to, litigated in the past. They need not be relitigated.

Protecting vulnerable groups from group-vilifying hate ensures their equal participation in society. Anything less is an erosion of democratic norms that allow the full participation of every Canadian in public discourse, regardless of their background, and in living their lives freely.

Wade Chang: Your organization has long championed the protection of human rights, and it fights against anti-Semitism around the world. How does Bill C-9 advance Canada's broad leadership in these areas?

Brandon Silver: There was a reference in my remarks to Canada's international obligations. While the focus has quite understandably been largely domestic in terms of existing precedent and policy, there is also a corpus of international law with which this dovetails quite effectively, mandating the upholding of equality protections and also validating prohibitions on group-vilifying hate.

This also brings Canada's legislation, and particularly the components that I referenced in my remarks, in line with international standards. This is something that has, again, been decided domestically by the Supreme Court. Also, there is a corpus of international law and a number of international cases that uphold the legality of these provisions.

• (1815)

Wade Chang: This bill focuses on protecting access to religious and cultural spaces from hate-motivated interference. Why is this kind of protection especially important in today's climate?

Brandon Silver: As I referenced in my opening remarks, in the last five years alone, the number of hate crimes has increased to

20,000. There's been an exponential growth, and there needs to be a concerted effort to address it.

This legislation is certainly not a panacea. It won't provide all the answers, but I think the important signalling that it does, the deterrence effect that it may have on would-be criminals and the prioritization by law enforcement that it would encourage will make a meaningful impact in trying to tackle what is indeed a crisis. Not doing anything would be far worse.

Wade Chang: Thank you very much.

My next question is for Ms. Hallett.

From your perspective, how does legislation like this complement the effort teachers are already making to create an inclusive, welcoming learning environment in Canadian schools?

Cassandra Hallett: I believe I touched on this earlier, insofar as the legislation, as we've reviewed, really only focuses on day care centres in terms of a specific education focus.

While the Canadian Teachers' Federation welcomes that aspect of the legislation, there's not a lot in it that's specific to the K-to-12 school system, from our perspective.

That doesn't mean it would be unhelpful, but we are really eager to see much more being done, at all levels of government, to ensure that schools are safe for, as I've said before, students and all of the education workers in the school.

It's not necessarily counter to making schools safe, but it doesn't go very far in terms of K-to-12 schools.

Wade Chang: This will be my last question.

How can this legislation empower our communities to respond more effectively when a hate instance occurs, not just through the justice system, but through education and prevention?

Cassandra Hallett: A piece of legislation, again, if I speak on behalf of educators, will only go so far. However, if we can make strides in Canadian society to condemn hate in all its forms, that will be something that has a trickle-down effect for our educators and for their students, because as a society we will be improving in terms of ensuring that we know hate in all its forms, whether it is anti-Semitism, anti-2SLGBTQ rhetoric, etc., is not acceptable.

Certainly legislation that promotes safety and freedom could be helpful, but regarding the specifics of how Bill C-9 would help in K-to-12 schools, I think it would take some time, respectfully, to see how that would bear out.

The Chair: Thank you.

Wade Chang: Thank you.

The Chair: We'll have about another 10 minutes of questions, starting with Mr. Baber and then Mr. Chang for four minutes each, and then Mr. Fortin for two minutes to close things off.

Roman Baber: Mr. Sandler, I appreciate my friend MP Gunn's exchange with you on the equal application of the rule of law. Every Sunday in my riding in North York, a bunch of thugs show up in keffiyehs and they scream for intifada. The basic translation of the word "intifada" is violent resistance, yet no arrests ensue.

Let me ask you something. Do you believe that calling for intifada on a Canadian street is incitement to violence?

Mark Sandler: I believe it definitely can be. The only reason I put a qualifier on it is that I always, as part of my training, instruct police to look at all of the circumstances and all of the words said in determining whether the requisite intent exists, but it is definitely capable of that, especially when coupled with other language that is clearly either genocidal or hate filled.

Roman Baber: If they have a character dressed and role-playing Yahya Sinwar, the mastermind of October 7, would you call the chants for intifada incitement to violence?

Mark Sandler: I've taken the position that some of the demonstrations that you're describing did cross the line into hate speech.

• (1820)

Roman Baber: Yet there were no arrests by the Toronto police.

Mark Sandler: It's been very challenging to address situations where they do not involve traditional forms of hate.

When you're doing the intersection of anti-Zionism and anti-Semitism, there has to be a better understanding of what's being said and when it crosses the threshold into hate. When people are chanting that all Zionists are evil, genocidal and racist, without distinction, that crosses into hate speech. That's very different from criticizing Israel, its conduct, its policies, its government and the like. Those distinctions have to be better understood.

Roman Baber: Mr. Sandler, it's okay for us to politely disagree. All I ask is for equal application of the rule of law, something that regretfully we're not seeing in this context. We're hearing deafening silence from my friends the Liberals across the aisle on this. This bill does not do anything to address any of that, because all of that is already contrary to the Criminal Code.

I heard you say in your opening remarks that you're disappointed that wilful promotion of terrorism did not make it into this bill. I'd take the opportunity to remind you that the former Conservative government passed promotion of terrorism into the Criminal Code as a criminal offence, and that in 2017 the Liberal government under Justin Trudeau diluted that law and in fact repealed some portions of that law, leading it to remain as only a counselling terrorism offence.

Please talk to us a little bit about wilful promotion of terrorism. What would you like to see added? Do you believe it will survive constitutional scrutiny if framed correctly?

Mark Sandler: I have no doubt it will survive constitutional scrutiny because I've drafted the legislation for the consideration of this committee. It's contained in my written submission. I've drawn upon words that have already been constitutionally protected, "wil-

ful promotion of", and then instead of "hatred against an identifiable group", "dealing with terror activities or the activities of a terror group", both of which—"terror activities" and a "terrorist group"—are defined already under the Criminal Code. For me, there can be no constitutional protection for the wilful promotion of terror activities or the activities of a prohibited group under the Criminal Code.

You can look to my written submissions for some of the language. For me, this would solve a number of the issues that currently exist.

Roman Baber: Like what?

Mark Sandler: For example, when there's a fight about whether or not it's wilful promotion against an identifiable group, namely Jews or Israelis, as opposed to whether it's political speech against Zionism, that shouldn't be the focus in all instances. The focus should be on whether you're promoting terror activities. This would put the focus where it belongs for some of these cases.

The Chair: Thank you, Mr. Sandler.

Ms. Dhillon, you have four minutes.

Anju Dhillon: My questions will be directed to Mr. Silver.

First of all, thank you so much for your incredible testimony today. You actually got to the bottom of something that hasn't been mentioned thus far, which is that it takes words. It takes hateful literature and propaganda to start something, and you gave the examples of the Holocaust and the Rwandan genocide. That was very important to the work we're doing here today.

It was not 10 and not 15 but six million members of the Jewish community who were subjected to the Holocaust. This all started with words, and thank you so much for pointing that out today.

During the previous panel, I was actually having the same thoughts as you. Symbols are used to emphasize these things, like the Nazi symbol and the Confederate flag. These were symbols used during the convoy right here in Ottawa: the Confederate flag, the Canadian flag being hung upside down, and the Nazi sign painted on the Canadian flag. Conservative members of Parliament were serving coffee and donuts to these people.

A voice: That's not true.

Anju Dhillon: Everything that happened was done to intimidate and harass citizens. It was an attack on democracy.

Can you please talk to us more about words, propaganda and hateful literature, as you mentioned in your opening statement?

Brandon Silver: Without opining on any particular instance within Canada, the legislation itself is incredibly important in identifying specific symbols that are used in the wilful promotion of hatred. It's a very narrowly tailored and elegant piece of legislation that tackles a growing problem.

We see that the incitement you so eloquently referenced in your remarks underpins attacks against vulnerable minorities. These hate rallies that MP Fortin referenced are oftentimes accompanied by very specific symbols that have a specific context and a specific and wilful goal, and that is to intimidate vulnerable minorities and ensure that some Canadians do not have equal access to their places of worship, their schools and their community centres so they cannot live their lives fully and equally as Canadians. These symbols are part of that process, and this legislation makes an important point of pointing that out.

• (1825)

Anju Dhillon: Thank you so much for that.

I'm running out of time. Quickly, there was something said about assaulting somebody because of how they look.

The other thing is there are Holocaust deniers, and they use that as freedom of speech. Brian Mulroney said something very interesting in 2023:

[I]n the wake of the Holocaust...firewalls were thrown up, and the bonfires of antisemitism were for a time reduced to flickering embers. But those firewalls, weakened by the passage of time and willful neglect, have been breached. Cloaked in the armour of free speech, fuelled by hate and stoked by the oxygen of the internet and social media, those fires now burn out of control.

This applies in this context, but do you believe that this applies in other contexts where there are minorities and there are people from the LGBTQ community? Do you see these fires being stoked once again, and are you seeing the slow erosion of the civil liberties and all these rights of those who are vulnerable being violated?

The Chair: We won't have time for an answer, Mr. Silver.

Anju Dhillon: Can you please give a written response?

The Chair: That would be acceptable to us.

Anju Dhillon: Thank you.

[*Translation*]

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

Rhéal Éloi Fortin: Thank you, Mr. Chair.

Ms. Hallett, I only have two minutes of speaking time, but I will give them to you.

I would like you to talk to us about the effect of hate symbols on children and teachers in our schools.

If possible, I would like you to distinguish between different types of symbols, such as those identifying a criminal or terrorist organization, or any other type of symbol.

Can you tell us, in two minutes, what effect these symbols have on children and teachers in our schools?

Cassandra Hallett: Unfortunately, across the country, we are seeing an increase in violence and aggression in schools, especially at the primary level. Our Canada-wide research shows that symbols and ideas originating on social media, among other places, are negatively influencing students, to the extent that some do not feel comfortable or safe in their schools, while others feel that they might become more aggressive if they see certain symbols—

Rhéal Éloi Fortin: In a few seconds, do you have any specific examples of these symbols?

Cassandra Hallett: Yes.

Rhéal Éloi Fortin: For example, we know that there were T-shirts with slogans supporting the Hells Angels. Hamas flags—

Cassandra Hallett: In New Brunswick, cards sent by post contained symbols and messages that were clearly anti-2SLGBTQ. This had a very negative effect on students. There are other examples across the country that we could talk about.

Rhéal Éloi Fortin: Thank you very much.

The Chair: Thank you.

[*English*]

I want to thank all the witnesses. This was very helpful to the committee. Indeed, this will probably translate into our views on the legislation. I want to take this chance, from the chair's position, to thank all of you for that testimony today.

• (1830)

Andrew Lawton: Before the witnesses are dismissed, Mr. Chair, I want to say that I ran out of time before I could get to professors Butler and Kogan, but I sense that they have a response to the government's report on anti-Semitism in Ontario schools. I just want to ask if we could allow them to provide to the committee a written submission on anything they wish to share on that.

A voice: Absolutely.

Deidre Butler: I will with pleasure.

Andrew Lawton: Thank you very much.

I wanted to get to you, but I ran out of time.

Deidre Butler: Thank you.

The Chair: Thank you.

On that note, I wish everyone a great Friday and a great weekend.

Go, Jays!

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