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Chair: James Maloney



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• (1145)

[English]

The Chair (James Maloney (Etobicoke—Lakeshore, Lib.)): Good morning, everybody. I'd like to call this meeting to order. Happy Monday.

Welcome to meeting number 18 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to the order of reference of October 1, 2025, the committee is meeting to continue its clause-by-clause study of Bill C-9, an act to amend the Criminal Code regarding hate propaganda, hate crime and access to religious or cultural places.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application. I would like to confirm that sound tests were done successfully.

Before we continue, I ask that all in-person participants consult the guidelines written on the cards on the table. These measures are in place to help prevent audio and feedback incidents and to protect the health and safety of all participants, especially including the interpreters. You will also notice a QR code on the card, which links to a short awareness video.

I'd like to make a few comments for the benefit of witnesses and members. Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your mic. Please mute yourself when you're not speaking. For those on Zoom, you know how to get the interpretation. All comments should be made through the chair, please. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

I would like to welcome our witnesses here once more and thank them for their ongoing and continued patience. From the Department of Justice, we have Kristen Ali, manager and senior counsel from the criminal law policy section; Joanna Wells, team lead and senior counsel from the criminal law policy section; and Marianne Breese, counsel from the criminal law policy section.

(On clause 4)

The Chair: We are still debating Mr. Brock's subamendment to CPC-8.1. That's where we were when we adjourned last meeting. We will pick up where we left off.

Where's the speaking list?

Larry Brock (Brantford—Brant South—Six Nations, CPC): We adjourned, so I think we have to establish a new speakers list.

The Chair: You're quite right.

Mr. Brock, you have your hand up.

Go ahead, Mr. Fortin.

[Translation]

Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Mr. Chair, unless I misheard you, I didn't hear you say whether the sound tests had been done and, if so, whether the results were conclusive.

• (1150)

[English]

The Chair: They were done and they were conclusive, yes. I witnessed it myself.

[Translation]

Rhéal Éloi Fortin: Thank you, Mr. Chair.

[English]

The Chair: It's my pleasure.

Did you have your hand up on that issue only or did you want to speak?

Rhéal Éloi Fortin: It was on that issue only.

The Chair: Okay.

I'll go in the order I see here: Mr. Brock, Mr. Baber and then Mr. Lawton.

Mr. Brock, you have the floor.

Larry Brock: Thank you, Chair.

Welcome back, colleagues. There was a general discussion before we left the House and engaged in a constituency week that there would be some consideration given to a new amendment that clarified the language, ideally trying to reach an agreement on the impasse we had before Christmas regarding the removal of the religious defence in the Criminal Code. I understand that there were some consultations with stakeholders by the government in that regard. I received proposed language late yesterday evening. I've had a brief opportunity to explore that language with my team and to get instructions.

I also had an opportunity to speak with the minister this morning. I understand that someone from the Liberal team will be moving this particular amendment to start off our discussions today.

I simply want to put that on record. I anticipate that this will give every member at committee an opportunity to express their opinion on this religious defence.

The Chair: Thank you, Mr. Brock.

Mr. Baber.

Roman Baber (York Centre, CPC): I think the Conservatives have been very clear: We are of the view that elimination of the religious defence to wilful promotion of hatred is something that we cannot support. There were some good faith discussions about looking to insert another amendment. I point to the fact that Mr. Lawton's amendment, which attempts to deal with that, is still on the floor.

I don't know; I would perhaps leave it to your judgment, maybe with the assistance of the clerk, to see how we can potentially deal with a further proposed Liberal amendment should the government be in a position to present it.

The Chair: Mr. Lawton.

Andrew Lawton (Elgin—St. Thomas—London South, CPC): Just to be more explicit—I want to respect the privilege at issue here—if the Liberal team and the Liberal government are serious about dealing with the concerns that have been raised about religious freedom and freedom of expression, it is important to put it on record.

I would seek unanimous consent from the committee to deal with the addition of clause 11.1, if someone is willing to move it, and put it as the issue at hand. Once that's dispensed with, we can continue. I seek unanimous consent for that.

The Chair: I understand that you're seeking unanimous consent to do something if they do it.

Andrew Lawton: I'm seeking unanimous consent to permit any member who wishes to move the amendment to do it at this point in our deliberations on Bill C-9. This is consistent with what the minister, I believe, has communicated to Mr. Brock.

The Chair: Thank you. There's nothing to vote on in those circumstances.

Is there anything else, Mr. Lawton?

Andrew Lawton: I'll add myself to the speaking list.

Seeing that no one said no, is anyone prepared to move this amendment dealing with religious freedom concerns?

The Chair: There's a speaking order. If somebody gets to their turn and wants to move something, we'll deal with it when the time comes.

Unless you're moving something.... I understand. I will get to Mr. Housefather. I'm simply asking if you're done.

Andrew Lawton: Yes, but I'm seeking unanimous consent.

The Chair: What is the unanimous consent for?

Andrew Lawton: It is to allow new clause 11.1 to be moved at this point.

The Chair: Okay. Thank you.

Do you mind if I go to Mr. Housefather first? I suspect he'll address this.

Andrew Lawton: Absolutely.

The Chair: Thank you.

Mr. Housefather.

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

Yes, we have an amendment that we will be moving at the proper time, when we get to the clause at hand. It deals with page 6 and line 12. It's well after clause 4, which we're now on. We've been dealing with the current subamendment to an amendment on the floor for quite a long time. I think we should dispose of that and go through the other clauses to get to where we would be to put forward the "for greater certainty" clause that has been discussed.

While I believe that a lot of the arguments the Conservatives have been putting forward have been incredibly misleading to people, we do have to deal with the concerns that have now been raised as a result. This "for greater certainty" clause, I think, will help to do that.

We had earlier times when I, for example, had an amendment I wanted to propose and then park, and we weren't able to do it because we were in the middle of a clause. Right now, we're in the middle of a clause, so I would prefer to at least deal with the current subamendment and amendment that we've been dealing with ad nauseam and vote on them. If the Conservatives are finished talking about them, we can just vote, and then we can move to our "for greater certainty" clause.

Thank you, Mr. Chair.

• (1155)

The Chair: Thanks, Mr. Housefather.

Mr. Lawton, it's back to you.

Andrew Lawton: I appreciate that.

First, there are a couple of concerns. Number one is that the Liberal government has been communicating to Canadians, the media and people who are concerned about some of these core religious freedom and freedom of expression issues that they intend to address them through an amendment.

The reason we have been parked for so long on the current discussion on Mr. Brock's subamendment to my amendment, which attempted to provide some clarifying language in light of BQ-3—the amendment that was passed last year, removing the religious defence—is that the subamendment we are currently dealing with would, arguably, be unnecessary if we had strong protection at another point in the Criminal Code and in Bill C-9.

If the Liberals really intend to deal with these religious freedom concerns.... The passage of their amendment would actually render much of what we're discussing here moot. I'm trying to find ways that we can collaborate and break up this logjam.

If the Liberals are willing to move this amendment now, as we've been told by the minister, it would make more sense to deal with it out of order, because it will have a bearing on how other issues that arise in this bill are dealt with, particularly the very subamendment we're on right now. If the Liberals aren't prepared to move this, it speaks volumes about how they prioritize addressing these concerns.

I'd say to Mr. Housefather's point that there's arguably a line conflict between new clause 11.1 and what we're discussing right now. I want to make sure that we're dealing with the strongest possible protections. I don't want us to dispense with something now under the promise that we'll get to this later on, only to find out that it's not going to be allowed, it's going to be ruled out of scope or there's going to be a line conflict found there.

I'd like to be added to the bottom of the speaker's list, but that's my intervention right now, Chair.

The Chair: Thank you, Mr. Lawton.

Mr. Housefather, did you put your hand back up or is that still up from before? You did. Okay.

Next we have Mr. Brock, Mr. Baber and then Mr. Housefather.

Larry Brock: Thank you, Mr. Chair.

I appreciate Mr. Housefather's comments. I deem them to be a little at odds with the spirit of the discussions I had, not only with the minister himself today but also with the parliamentary secretary this past Friday. The only thing I can conclude from that is that they're not serious about dealing with this particular amendment and ending the logjam we have at committee.

I'm also mindful of the comments that I put on the record before we finalized, line by line, clause by clause, Bill C-14. I reminded this committee, as I reminded Canadians as a whole, that there was a very strong message from the Liberal government, in particular from Prime Minister Carney and House leader Steven MacKinnon—and I'm quoting Mr. MacKinnon's words—to “put up or shut up”, in terms of immediately passing Bill C-14 and Bill C-16.

Despite the ambiguous language from the Prime Minister last Thursday in Surrey, suggesting that Bill C-14 is somehow still being held up, this is completely untrue. It's in the Senate and has been in the Senate for some time now. However, the Prime Minister wants to prioritize Bill C-16. Stakeholders have asked parliamentarians to prioritize Bill C-16.

That being said, I'm willing to move a motion at this point, Mr. Chair:

That the committee immediately prioritize the consideration of Bill C-16, the Protecting Victims Act.

The Chair: Thank you, Mr. Brock.

It's a dilatory motion, so we'll vote on that.

● (1200)

[*Translation*]

Rhéal Éloi Fortin: Can you repeat the motion?

[*English*]

Larry Brock: It is:

That the committee immediately prioritize the consideration of Bill C-16, the Protecting Victims Act.

The Chair: Is that clear, Mr. Fortin? All right. Thank you.

Mr. Clerk, go ahead.

(Motion negatived: nays 5; yeas 4)

The Chair: Mr. Baber, go ahead.

Roman Baber: I'm a little perplexed by what's transpiring right now. Everyone agrees that there are concerns, on the Conservative side, with respect to the amendment adopted by this committee, which removed the good faith religious speech defence to an allegation of wilful promotion of hatred. After some time, our Liberal colleagues understood that this is a material concern, perhaps, not just for the Conservative Party of Canada but for many other Canadians. We now understand that the Liberals are about to propose their own amendment seeking to fortify some of the protections that were available, under section 319, subsequent to the removal of the defence. I believe Mr. Lawton's amendment also seeks to do this. I think everyone agrees—and everyone should agree that everyone now agrees—that we want to see whether we can improve the language so that it will be agreeable to everyone.

I'm not exactly sure why my friend Mr. Housefather opposes our suggestion to prioritize the Liberal proposal and to see whether we can work it out and whether we can negotiate the language. I'd even suggest that we might consider adjournment so that we can look at the collective language being proposed, compare it to Mr. Lawton's language, understand the position of our Bloc committee member and see whether we can negotiate the gridlock we find ourselves in.

Mr. Housefather is scheduled to speak after me. I'm wondering, in good faith, why we can't prioritize—without breaching any privilege—the intended Liberal amendment, to try to bridge the gap between the Liberal Party and Mr. Lawton's subamendment, which we're currently debating, since they intend to do the same thing.

The Chair: Thank you.

Mr. Housefather.

Anthony Housefather: Mr. Chair, part of the issue is that, with the train being cancelled today at the last minute, unfortunately, I am not in the room, so I'm unable to have conversations directly with my Conservative colleagues.

The proposal we're putting forward is in a different clause. There isn't a conflict of lines.

I understand the position of the Conservatives, who have been filibustering on this issue for a while. In the event that the Conservatives are prepared to stop filibustering, park this amendment where we are right now and move to the new Liberal amendment to line 12 on page 6, I am prepared to do that.

[Translation]

If the Bloc Québécois also agrees, I'm prepared to do so.

[English]

I hope this will be treated with due consideration, with the understanding that we would revert right back to clause 4 afterwards.

Mr. Chair, if I have the unanimous consent of the committee to move to the Liberal amendment, which would add some language after line 12 on page 6, I am happy to do that.

• (1205)

The Chair: Just to be clear, are you seeking unanimous consent?

Anthony Housefather: Yes, I am seeking unanimous consent to park the current amendment and subamendment and to move to a different Liberal amendment, which is a stand-alone clause after line 12 on page 6.

The Chair: Mr. Fortin.

[Translation]

Rhéal Éloi Fortin: I would just note that it's after line 12, page 6, in the English version, but in the French version, it's after line 13, page 6.

[English]

The Chair: Do we have unanimous consent? It appears we do.

(Clause 4 allowed to stand)

The Chair: Does everybody have a copy of this thing? I don't think so.

Let's suspend for a moment to make sure that everybody has a working copy of what we're about to do.

• (1205)

(Pause)

• (1220)

The Chair: I call this meeting back to order.

Mr. Housefather, you just proposed this procedure, but I don't think we actually had the amendment read into the record, so maybe you or... Ms. Lattanzio is here now; maybe she wants to read it into the record.

I think everybody has received a hard copy, or at least a copy by email, but if you could read it into the record, Ms. Lattanzio, that might help.

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

Good morning, colleagues.

I would like to read into the record the amendment that I understand was just passed out by the clerk. It is that Bill C-9 be amended by adding after line 12 on page 6 the following:

CLARIFICATION

Hate propaganda

11.1(1) For greater certainty, nothing in subsection 319(2) or (2.2) of the Criminal Code shall be construed as prohibiting a person from communicating a statement on a matter of public interest, including an educational, religious, political or scientific statement made in the course of a discussion, publication or debate,

if they do not wilfully promote hatred against an identifiable group by communicating the statement.

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

Mr. Chair, I just want to give a bit of context with regard to this clause.

Over the course of the past few months, we've heard concern from faith communities, legal experts and civil society about the removal of the former religious exemption in the Criminal Code. Those concerns were raised sincerely, and it is important to address them clearly so that there is no confusion about what this bill does or does not do.

Let me be clear about the effect of this change. Removing that subsection does not expand the hate propaganda offence. It does not lower the threshold, and it does not change the elements that the Crown must prove.

The existing subsection created interpretive ambiguity that allowed the provision to be invoked in ways Parliament never intended. Its removal reflects Parliament's confidence that the existing high threshold, including the requirement that the accused wilfully promoted hatred, is sufficient on its own and that the charter protection provides the backdrop for any remaining uncertainty.

Freedom of religion, Mr. Chair, and freedom of expression in Canada remain fully protected by the charter. This is not changing. Canadians are free to hold and express their religious beliefs. Courts have been clear for decades that ordinary religious expression does not meet the legal test for wilfully promoting hatred. Preaching, teaching of one's faith, reading of scripture, sermons, prayer, religious education and the good faith discussion of religious texts are not criminalized by this bill, and they never have been.

The purpose of removing the former subsection was to eliminate confusion and ensure that the law is applied as Parliament intended. The existing elements of the offence, together with the charter protection, already provide a clear and effective framework to distinguish between protected expression and criminal hate propaganda.

Over the past number of months, Minister Fraser and I met with faith leaders and religious organizations from across the country. We heard that even when the operative legal threshold did not change, the removal of the subsection could be misread as a signal that ordinary religious expression was now at risk.

We listened to those concerns. We are adding a clause for greater certainty. The clause does not create a new defence. It does not reintroduce the removed provision, and it does not narrow or broaden the offence. Its purpose is to make explicit in the legislation what the courts have long recognized: that genuine religious, academic, political or other good faith discussion on matters of public interest is not what this offence targets, unless, of course, someone is wilfully promoting hatred against an identifiable group.

For greater clarity, the bill will state in plain terms that nothing in this legislation affects worship, sermons, prayer, religious education, peaceful debate or even the good faith reading and discussion of religious texts. The law continues to focus on deliberate and serious hate while protecting the freedoms Canadians expect in a free and democratic society.

• (1225)

Ultimately, the bill is about protecting Canadians, including people of faith, from hate and intimidation. The clarifying language we are introducing this morning ensures that Parliament's intent is clear, both in the text of law and on the parliamentary record.

With that, Mr. Chair, I move to table my amendment.

The Chair: Thank you, Ms. Lattanzio.

Mr. Lawton is the next speaker on the list.

Andrew Lawton: Before I begin, are you confirming that the amendment is in scope and in order? Is that a firm ruling you're making?

The Chair: Yes.

Andrew Lawton: I appreciate the recognition by my Liberal colleague that there is a problem with Bill C-9. I appreciate that there has been some effort, even nominally, to engage with faith communities, which have felt very personally targeted by what's become of Bill C-9.

The problem—we heard this in Ms. Lattanzio's remarks—is that the amendment does not actually seek to bolster any protections. It doesn't seek to, in her words, “reintroduce” any defence or any protection for religious freedom or public interest expression. It simply aims to say that none of this was at issue in the first place.

For people who raised concerns that Bill C-9 would erode long-standing protections in criminal law, the government's own admission right now about this amendment is that nothing is changing. It's trying to pacify those with concerns without actually strengthening these protections in law.

I'm very aware of the timing. A few days ago, we had a ruling by the British Columbia Human Rights Tribunal that invoked some of the very same ideas at issue in Bill C-9. It's about how courts and administrative bodies deal with the question of hate and how that definition, which is changing and weakening under Bill C-9, is applied to people who engage in discussion that may be hurtful or offensive to people—rightly so—but it still deals with contentious social discussions in which people have a range of political opinions and religious perspectives and views.

This amendment comes after the Liberals' claim to have consulted with faith communities. I engaged in a great deal of consultation

with these people as well. I actually took a bit of time over our winter recess, and I travelled from British Columbia to Newfoundland, holding round tables with faith leaders and meeting with groups ranging from Jewish groups to Christian groups, Muslim groups and Sikh and Hindu groups. A few things emerged from those discussions.

One of them is how little those groups felt they had been consulted on these questions, how much they felt their initial concerns that religious freedom was being infringed upon or affected by Bill C-9 and how little they felt the government was actually taking that seriously.

Something changed around the time we were getting ready to come back.

We heard, again, to the minister's credit, that he and his office had had some conversations with some groups. These groups said this religious defence was important not just to pacify them but because it actually spells out in law an idea that the courts have long viewed as essential to upholding the existence of hate speech laws and the existence of section 319 of the Criminal Code. The idea that was put forward was that the religious defence is crucial, given that the charter specifically enumerates religious freedom.

I note that when the proposed amendment from the Bloc Québécois to remove the religious defence was put forward, which the Liberals endorsed, the argument wasn't that it was redundant; the argument was that we didn't want to protect religious speech. If the redundancy approach were really at issue here, the amendment would remove the public interest defence, the truth defence and the religious defence. It would remove all defences; the Liberals were saying that these defences don't really matter because the charter already has robust protections.

Already, we were hearing doublespeak in terms of which message was being communicated to which group. On the one hand, stakeholders in Quebec, notably, were being told, “Yes, we agree that religion should not give you a pass on violent rhetoric.” We heard the Adil Charkaoui case come up, which has nothing to do with the religious defence because prosecutors did not rely on it not to charge and it does not apply to any of the offences dealing with violence, threats of violence or even incitement. It applies very narrowly only to the wilful promotion of hate.

On the other hand, we have faith groups and faith leaders being told by the government, “Absolutely, we're going to protect your religious freedom. Nothing will change from the status quo right now.”

Which is it? Is the removal of the defence redundant or important? This is not a position that has been reconciled. No community is being protected from hate if their sincerely held religious beliefs and scriptures are going to subject them to prosecution.

● (1230)

This is not a conspiracy theory that's emanating from some distorted interpretation drummed up on X. This was inflamed by your predecessor, Mr. Chair, Marc Miller, who's now the minister responsible for Canadian identity and culture. He said that there is such "clear hatred" in three books of the Bible and two books of the Torah that prosecutors should have the discretion to lay charges inherently because you could not cite the scriptures he disapproves of "in good faith".

This is why Canadians are concerned. I would note that Minister Miller's comments were actually saying that even with the religious defence you should be criminally charged for quoting these verses, which he did not enumerate, in the Torah and the Bible because you could not be doing it in good faith.

In the amendment that was just moved by Ms. Lattanzio, there is no delineation of good faith, because there is, in fact, no protection. There's no protection given. We're just being told not to worry and that our religious freedoms will not be eroded. The reasoning is very circular.

We're talking about the criminal charge of wilfully promoting hate. The amendment says:

For greater certainty, nothing in subsection 319(2) or (2.2) of the Criminal Code shall be construed as prohibiting a person from communicating a statement on a matter of public interest, including an educational, religious, political or scientific statement made in the course of a discussion, publication or debate, if they do not wilfully promote hatred against an identifiable group by communicating the statement.

This says that, "for greater certainty", you are not prohibited under the subsection on wilfully promoting hate from doing something unless you are wilfully promoting hate. That is not a clarifying statement. That does not provide any clarity or certainty. That is circular reasoning at best.

The whole point of the religious defence is that it actually set out what can be conceived of as hate. The religious defence before, and the public interest defence, the defence of truth, I believe—and I would have to get clarity from our departmental officials, and I will in a moment—are potentially threatened by the addition of this new clause. I'd like some clarity on that.

Before, it said that you could not be wilfully promoting hate if, "in good faith", you were expressing a religious sentiment or citing a religious text. This says that you will not be engaged in what the law views as wilfully promoting hate if you're doing this unless you are wilfully promoting hate. It provides no definition. It provides no clarity, and it provides no limitation on how the term "hatred" will be applied and interpreted. This is especially germane in the context of Bill C-9, given that, as drafted now, Bill C-9 provides a new definition of "hatred" that has a lower threshold, that actually waters down the definition.

If you read the British Columbia Human Rights Tribunal decision, which came about the other day, you see how the tribunal has had to walk through in its process and say that this line meets the threshold for hate and that this line doesn't, or that this is hateful and that this is discriminatory. There's a lot in the decision that I find very harmful to people's emotions and feelings. There are things in there that I would never want to stand behind the sub-

stance of. However, if you read the decision, it points to the problem of having to draw these lines.

In the case of the tribunal, it could rely on Supreme Court jurisprudence, notably the Whatcott decision and, more recently, the Ward decision, which tried to deal with some of these balancing questions of whether a particular sentiment falls on one side of the hate boundary or the other.

In the case of human rights tribunals, they actually have a different definition that they can lean on for things that fall under the threshold of hate but that still meet the threshold of what they view as discrimination. It's very likely, because the criminal definition of hate is changing, that some of these things that fell into a murkier territory in the British Columbia Human Rights Tribunal decision would now actually invite criminal charges.

We've now taken a bill that the Liberals claim is supposed to provide clarity and certainty and have injected more uncertainty and more ambiguity into it.

When I talk to pastors, imams, rabbis, priests and leaders of Sikh gurdwaras and Hindu temples about this, the one unanimous sense that everyone can agree with is that faith leaders who act in good faith in this country do not wish to spread hate. They do not want a licence to hate, because that is not what they know their faith to be. They know that their Bible, their Torah, their Holy Scriptures and their religious beliefs are not peddling hate.

● (1235)

They do not trust the government to draw that determination, especially in light of decisions we've seen made by human rights tribunals, as well as in light of a lot of the discourse on social media right now and in light of Minister Miller's comments delineating scriptures as "hateful". They do not trust the government or other bad actors in society who may wish to weaponize a complaints process to make those determinations.

All of them have said, "Listen, our scriptures are about love; our faith is about love, but we need the freedom to engage in this debate and the freedom to engage in this dialogue." They feel comforted by the existence of a specific religious defence of that freedom. It's also how people will be able to root out the bad actors in society.

I pointed out in a number of these discussions, and it was unanimously understood, that there has been a lack of recognition by this particular government over the years of the tremendous benefits that faith communities provide to this country. Whether it's the church that runs the food bank to feed the homeless, whether it's the synagogue that runs the subsidized housing for seniors, whether it's the mosque that runs outreach programs for youth and children or whether it's all of these things, these are ministries—philanthropic initiatives—that only exist because people of faith feel motivated to act out a message of love, faith and community as their religion tells them to do. We don't get to benefit as a society from the good that faith communities do if we don't protect their right to spread their religious message, to share their religious teaching and to read their religious scripture without the fear that it will be weaponized against them.

Legislating hate is legislating emotion. Calling verses of Holy Scriptures “clearly hateful” and inviting prosecutors to lay charges can only erode religious freedoms. For the government to say that there has been no effect of Bill C-9 on religious freedoms—in the same breath as saying they are listening to concerns about religious freedom and they'll address those concerns, but it won't actually change anything, because you already have religious freedom—proves that the government is trying to check a box. It is trying to solve a political problem instead of listening to these good faith concerns, which, as Ms. Lattanzio said—and I'm grateful she said it—were “sincerely” expressed.

I'll even quote from Mr. Housefather. He said, “we do have to deal with the concerns that have now been raised as a result. This ‘for greater certainty’ clause, I think, will help to do that.”

We have an admission that there are legitimate concerns—concerns that, by the way, have been raised by Liberal members of Parliament. I'm grateful for the leadership of some particular members of the Liberal caucus, who have had town halls in their ridings to deal with these concerns and bring them back to Ottawa.

Chair, I know that you are also the chair of the caucus. I hope you've been having a spirited discussion about this internally.

I hope the Liberal members of Parliament will be able to vote freely on the bill to deal with some of these concerns, which are affecting communities in very different ways. This is not about just one particular faith community. Religious freedom for one is religious freedom for all. Political speech is just as affected by this as religious speech is.

I'd like to turn to the officials on this. You've had the opportunity to listen to the wording of the amendment. I don't know if you have a hard copy in front of you. Does this amendment fundamentally change anything about what speech will be classed as wilfully promoting hatred, specifically in a religious context but in general as well?

• (1240)

Marianne Breese (Counsel, Criminal Law Policy Section, Department of Justice): Thank you for the question.

This “for greater certainty” clause would confirm the scope of conduct expression that is caught by the offences. It would not change the application of the scope of the offences.

Andrew Lawton: Would it change the scope when compared with the previous religious defences?

Marianne Breese: As drafted, it would not. The “for greater certainty” clauses are used to clarify or explain an existing rule or provision or to clarify its interpretation. This one focuses on the *mens rea*, the mental fault requirement. This clause would make clear what expression is not captured by the offence as it currently stands. It would make clear that nothing prevents a person from expressing on matters of public interest. It gives examples of that. Nothing would prevent that from happening if they are not wilfully promoting hatred against an identifiable group. This serves to clarify the existing offence.

Does this answer the question?

• (1245)

Andrew Lawton: It doesn't clarify what is captured by “wilfully promoting hatred”, which the existing religious defence does. The existing religious defence basically says that good faith religious expression, as one example, is not wilfully promoting hate, whereas this has very circular language saying that wilfully promoting hate does not include these things unless they're wilfully promoting hate. It's basically reaching its own conclusion by using the same language.

Marianne Breese: The defence serves to clarify the scope of the offence. To the extent that good faith expression is incongruent, the court has said that in the sense of a redundancy with the offence, this clause would serve to confirm that good faith expression, as was contemplated in the defence, would indeed not meet the high threshold of “wilfully promoting hatred against any identifiable group”.

Andrew Lawton: If the last line of new clauses 11.1(1) and 11.1(2) were removed, would that strengthen the protection, in your view? This would be anything after “publication or debate”, and this is basically what I would view as the circular line: “if they do not wilfully promote hatred against an identifiable group by communicating the statement.”

Marianne Breese: The purpose of the “for greater certainty” clause is not to add something new; it is to clarify an existing rule. By removing it, the essence of the clarification—which is on the *mens rea*—would be removed from the clause.

Andrew Lawton: Okay. Because it's not adding anything, if Bill C-9 did weaken religious protections, this would not strengthen defences against them. Is that what you're saying?

Marianne Breese: I'm saying that the removal of the defence is a separate issue. This clause reinforces the narrow scope of the offence and what expression is captured by it, and it addresses misunderstandings about, perhaps, what the repeal of the defence does.

Andrew Lawton: I appreciate that. My issue with this does not lie in what our officials—who have been very patient throughout this process—have been saying. The problem that we're finding is that stakeholders who engaged in dialogue with members of the Liberal government have been told something different from what's actually been moved. They were told that members would hear these concerns and put robust protections in the bill ensuring that religious freedoms will be upheld and that the Marc Miller fantasy of going to arrest people for Bible verses they quote would not actually live out in this. What we're being told through this, quite frankly, is tantamount to gaslighting: that there is no reason to be alarmed.

I would note that the government has still not publicly signalled whether it will be appealing the Federal Court of Appeal decision on the Emergencies Act. This decision found that the government broke the most supreme law of the land, the Constitution, when, just over four years ago, it invoked the Emergencies Act to freeze bank accounts of political protesters to limit the legal right to protest. As for Minister Fraser, I asked him at committee. I asked in the House of Commons as well, and Minister MacKinnon did not answer. He has not said whether he will appeal or accept the finding.

Why I think this is so relevant is that it was also a situation in which the government used the very same circular reasoning used here to defend its actions: They said when they invoked the Emergencies Act that it would not violate people's charter rights because the charter protects their rights. Now the Federal Court and the Federal Court of Appeal have said that was a load of hooley. I think "hooley" is a parliamentary word.

Here, we have the same logic: Your rights will be protected because the charter protects your rights. Well, the charter may provide a remedy after the fact, if someone is charged. Perhaps the charter will be invoked in what happened in British Columbia, but this government has not earned or warranted the benefit of the doubt when it comes to matters of conscience and matters of faith.

I mentioned earlier the tremendous work that faith institutions do across the country, including in my riding. I'd be remiss not to point out that it was put in jeopardy some years back, when the Canada summer jobs program was risked by a Liberal government amendment that forced faith organizations and other organizations to basically forswear certain deeply held religious convictions in order to get a bit of help to hire a summer student. We also had the recommendation from Liberal and New Democrat members of the finance committee in 2024 that was going to remove charitable status from houses of worship.

All of this pales in comparison to laws that will threaten prosecution and that will chill freedom of expression and religious freedom for deeply held religious beliefs, which are not protected by this amendment. We've heard from the government, from Ms. Lattanzio and from the departmental officials that nothing in this proposed amendment actually strengthens protections. It merely reinforces the status quo. If the status quo is what's causing people to be concerned, the government's own admission is that there is nothing in this that will address those concerns.

At this time, Chair, I would like to move a subamendment, which is that everything after "publication or debate" in 11.1(1) be deleted and everything after "publication or debate" in 11.1(2) be deleted.

• (1250)

The Chair: Do you have that in writing?

Andrew Lawton: No. I can put it in writing, if you'd like to suspend.

The Chair: Yes. Let's suspend for a moment.

• (1250)

(Pause)

• (1250)

The Chair: I call the meeting back to order.

Mr. Lawton, you still have the floor.

Andrew Lawton: To provide some context for this subamendment, I think that, currently, this certainty/clarification clause has actually created more uncertainty. The question I have is whether the Liberals actually want to protect religious freedom and freedom of expression and to acknowledge truly that the sincerely expressed concerns about the bill are because of what's in the bill and what the bill actually does.

I'm trying to, with my subamendment, at the very least eliminate the circular and, quite frankly, confusing language, by indicating that it is not wilfully promoting hate if you are expressing a matter in the public interest, including an educational, religious, political or scientific statement. To say that it's not wilfully promoting hate if you're doing that, unless it's wilfully promoting hate, is incredibly illogical on its face because it doesn't actually help us articulate whether a deeply held good faith religious view could be misconstrued by the state as wilfully promoting hate—or whether a political statement could.

In context, this is an issue on which the government has a track record of limiting good faith political expression and dialogue. We cannot be told that the status quo protects these freedoms when it's clear that the status quo doesn't protect these freedoms. If we're to have a bill that truly protects Canadians, including the very Canadians that Bill C-9 purports to protect—Canadians of faith and minority communities—from the overzealousness of the state, we need to strengthen protections and provide robust protections. We cannot simply say, "Don't worry; you have these freedoms because the charter says you have these freedoms."

I see Mr. Housefather's hand is up. I would very much appreciate clarification from my Liberal colleagues, when they intervene on this, on whether they are serious about addressing these concerns rather than just pacifying people on this political problem.

I had calls this morning from faith leaders and representatives of a range of groups—Christian leaders and Muslim leaders. What they said they were told was coming is not what's in this amendment. They were told that there would actually be a reckoning, that removing the religious defence created a problem and that the government hoped, in good faith, to help solve that problem.

Instead, the language that was put forward is meant to tell people, “There wasn't actually a problem in the first place. Don't worry.” However, the testimony we heard from our very skilled and knowledgeable experts was that this does not change anything. It maintains the status quo.

This is not actually an amendment at all. If it were to be removed, everything in the bill would remain the same. If we're actually trying to deal with these concerns head-on, this is not the way to do it.

• (1255)

The Chair: Thank you.

I have Mr. Baber next.

Roman Baber: How much time do I have, Mr. Chair?

The Chair: You have about three minutes.

Anthony Housefather: I have a point of order, Mr. Chair.

The Chair: I'm sorry. Go ahead, Mr. Housefather.

Anthony Housefather: I'm sorry. You've allowed Mr. Lawton to speak to a subamendment that he raised. I don't believe this subamendment is in order, Mr. Chair. This subamendment would completely negate the intention of what the proposed amendment does and says, and it would completely change how the Criminal Code interprets what is or is not hate speech and wilfully promoting hatred against an identifiable group.

This would essentially say that anything, at that point, as long as it is communicating a statement on a matter of public interest, does not constitute wilful promotion of hatred. It would completely negate the Criminal Code. It's against the purpose of the bill.

I didn't know when to intervene, Mr. Chair, because you kept letting him speak. Have you made a ruling? My argument is that this is completely out of order.

Roman Baber: I have a point of order.

The Chair: Mr. Housefather, I haven't seen the subamendment in writing, in hard copy, myself. I've seen it circulated by email.

Mr. Baber, do you have a comment on the same point of order?

Roman Baber: Yes. Mr. Lawton's subamendment seeks to delete only a portion of Ms. Lattanzio's amendment. Just because it has a different legal effect—as it may, according to both Mr. Lawton and Mr. Housefather—does not make it out of order. The substantive change that would be triggered by Mr. Lawton's subamendment is still within the scope of the section. A subamendment that seeks to delete only a portion of Ms. Lattanzio's amendment would certainly be in order, irrespective of the legal effect.

• (1300)

The Chair: You've stopped talking. Does that mean you're done?

Roman Baber: Yes, I'm done.

The Chair: Okay. Thank you.

Give me one moment, please. I have two people talking to me at the same time.

Here's what I'm going to do. It's one o'clock right now. I need to see a hard copy of this subamendment before I make a ruling, so I'm going to adjourn the meeting and see you on Wednesday.

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