SUBMISSION TO THE STANDING SENATE COMMITTEE ON HUMAN RIGHTS

REGARDING BILL C-9, AN ACT TO AMEND THE CRIMINAL CODE OF CANADA
(HATE PROPAGANDA, HATE CRIME AND
ACCESS TO RELIGIOUS OR CULTURAL PLACES)

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Overview

Charter Advocates Canada ("**CAC**") is honoured to provide these submissions regarding Bill C-9, *An Act to amend the Criminal Code (hate propaganda, hate crime and access to religious or cultural places)*, as passed by the House of Commons on March 25, 2006 ("**Bill C-9**") to the Standing Senate Committee on Human Rights.

CAC is a federal not-for-profit corporation and a charity registered with the Canada Revenue Agency. CAC is also registered with the Law Society of Ontario as a Civil Society Organization. Its mission is to provide *pro bono* legal services to the public. CAC's constituting documents describe its overall mandate in the following terms:

> To uphold the enforcement of the Constitution of Canada and other existing laws of Canada and the provinces and territories thereof, as they relate to constitutional freedoms, civil rights, human rights, and other protections under the Constitution of Canada, by facilitating legal advice and representation before government, administrative tribunals, and the courts, where there is need.

In pursuit of these purposes, CAC has eight lawyers, and several staff members, all working full time on dozens of constitutional and human/civil rights cases at all levels of court across Canada, including in the Federal Court system. CAC's lawyers possess decades of experience in litigation and constitutional law. As needed, CAC also consults with other lawyers and experts to give advice on its cases.

Like other civil rights organizations, CAC has identified a number of significant issues with Bill C-9. Each of these issues is discussed in the following pages. CAC's recommendations with respect to each identified issue are set out at the end of each section.

ISSUE #1 – The Proposed Repeal of the "Religious Defence"

Under section 319(3) of the *Criminal Code*,[1] an accused can be acquitted of the offence of wilful promotion of hatred under subsection 319(2), if he establishes:

> (a) that the statements communicated were true; or
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> (b) if, in good faith, the accused 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; or
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> (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

[1] *Criminal Code*, RSC 1985, c. C-46 [*Criminal Code*], subsection 319(3).

> (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.[2] [Emphasis added.]

The same defences are available under subsection 319(3.1) as a defence to the offence of wilful promotion of antisemitism under subsection 319(2.1).

If passed, Bill C-9 would repeal ss. 319(3)(b) and 319(3.1)(b) of the *Criminal Code*. As noted above, these subsections provide defences to the offences of wilful promotion of hatred and the wilful promotion of antisemitism[3] where "***in good faith, the accused 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 "**Religious Defence**").

CAC opposes the repeal of the Religious Defence. As explained below, the Religious Defence was (and remains) an integral part of the constitutional balance struck with respect to s. 319(2) (and subsequently 319(2.1)) as recognized by the Supreme Court of Canada.

In *R. v. Keegstra*,[4] the SCC narrowly upheld the constitutionality of s. 319(2) in a 4:3 decision. While the dissent would have struck down the offence of wilfully promoting hatred as being too great an incursion into the ambit of free expression, the majority upheld the provision, concluding that the offence was narrowly tailored to achieve a constitutionally valid balance. Crucially, the majority relied on the four defences contained in s. 319(3) as a part of that balance.[5]

The majority of the Court in *Keegstra* held that the four 319(3) defences (including the Religious Defence) ***together*** significantly helped reduce the danger that s. 319(2) could be construed as overbroad or unduly vague.[6] Chief Justice Dickson, for the majority, wrote at pages 779-780:

> A careful reading of the s. 319(3) defences shows them to take in examples of expressive activity that generally would not fall within the "wilful promotion of hatred" as I have defined the phrase. Thus the three defences which include elements of good faith or honest belief -- namely, s. 319(3)(*b*), (*c*) and (*d*) -- would seem to operate to negate directly the *mens rea* in the offence, for only rarely will one who intends to promote hatred be acting in good faith or upon honest belief. These defences are hence intended to aid in making the scope of the wilful promotion of hatred more explicit; individuals engaging in the type of expression described are thus given a strong signal that their activity will not be swept into the ambit of the offence. The result is that what danger exists that s. 319(2) is overbroad or unduly vague, or will be perceived as such, is significantly reduced. To the extent that s. 319(3) provides justification for the accused who would otherwise fall within the parameters of the

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[2] *Criminal Code*, s. 319(3).
[3] See *Criminal Code*, ss. 319(2) and 319(2.1).
[4] *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697.
[5] Note that when Parliament subsequently created the offence of wilful promotion of antisemitism (s. 319(2.1)), they included the very same defences, now found in s. 319(3.1).
[6] *Keegstra*, *supra*, at pp. 779-780.

> offence of wilfully promoting hatred, it reflects a commitment to the idea that an individual's freedom of expression will not be curtailed in borderline cases. The line between the rough and tumble of public debate and brutal, negative and damaging attacks upon identifiable groups is hence adjusted in order to give some leeway to freedom of expression. [7]

Dickson C.J. continued, at page 786:

> To summarize the above discussion, in light of the great importance of Parliament's objective and the discounted value of the expression at issue I find that the terms of s. 319(2) create a narrowly confined offence which suffers from neither overbreadth nor vagueness. This interpretation stems largely from my view that the provision possesses a stringent *mens rea* requirement, necessitating either an intent to promote hatred or knowledge of the substantial certainty of such, and is also strongly supported by the conclusion that the meaning of the word "hatred" is restricted to the most severe and deeply-felt form of opprobrium. Additionally, however, the conclusion that s. 319(2) represents a minimal impairment of the freedom of expression gains credence through the exclusion of private conversation from its scope, the need for the promotion of hatred to focus upon an identifiable group **and the presence of the s. 319(3) defences**. […][8] [Emphasis added.]

In CAC's submission, removing one of the 319(3) defences undermines the commitment referred to by Dickson C.J. above, and, in turn, calls the constitutionality of s. 319(2) back into question. CAC submits that it would be counterproductive to repeal a defence that was cited by the SCC as a reason for upholding the constitutionality of s. 319(2) in the first place: the result of its repeal may in fact be that s. 319(2) can no longer pass constitutional muster *at all*.

Further, Bill C-9 jeopardizes the constitutionality of s. 319(2) to combat what appears to be a non-existent threat in any event. To the best of CAC's knowledge, the Religious Defence has never been successfully used by an accused to escape conviction, let alone frustrate the prosecution of genuinely dangerous expression. To the contrary, the courts have interpreted s. 319(3)(b) in a manner that distinguishes between genuine religious argument and expression that uses religious scripture as a pretext for hatred.

In *R. v. Harding*, an accused attempted to raise the Religious Defence and his arguments were rejected by three levels of court in Ontario. The trial judge found that the expression of religious opinion cannot be extended to shield expression that promotes hatred simply because it is contained in the same message.[9]

On appeal, the Superior Court of Justice agreed with the trial judge and refused to "*construe the defence in s. 319(3)(b) in a manner that would permit the mere imbedding of a wilful message of hate within protected religious comment to immunize the maker of the message from successful*

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[7] *Ibid*.
[8] *Ibid.*, page 786.
[9] *R. v. Harding*, 2001 CanLII 28036 (ON SC) at para. 40.

prosecution."[10] On a further appeal, the Court of Appeal for Ontario held that merely because some statements were expressions of religious belief, other statements are not shielded from scrutiny.[11]

Removing the Religious Defence casts a chilling effect over religious discourse and, most concerningly, it makes it possible to charge individuals for the mere reproduction of certain religious texts. For example, Leviticus reads: "*If a man has sexual relations with a man as one does with a woman, both of them have done what is detestable. They are to be put to death; their blood will be on their own heads.*"[12] The Quran reads: "*And remember when Lot scolded the men of his people, saying 'Do you commit a shameful deed that no man has ever done before? You Lust after men instead of women! You are certainly transgressors' … We poured upon them a rain of brimstone. See what was the end of the wicked!*"[13] Without s. 319(3)(b), there is nothing to prevent a court from finding that the mere recitation of these quotes (for example, during a sermon or similar address in a place of worship) promotes hatred on the basis of sexual orientation.

In place of the Religious Defence, Bill C-9 would add a "clarification" that nothing in ss. 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.*

A similar clarification is provided with respect to s. 319(2.1).

In CAC's view, these clarifications provide no additional protection for expression and do not adequately replace the Religious Defence. In fact, the clarifications are tautological. In essence, they "clarify" that communications are not prohibited by s. 319 ***"if they do not wilfully promote hatred against an identifiable group***". What this means in reality is merely that if one does not commit an essential element of the offence, then he will not be guilty of the offence – which is obvious and of no real value. Ultimately, Bill C-9 removes a positive defence – one that actually protects free expression – and has replaced it with a meaningless statement that does not.

To the best of CAC's knowledge, there are *no examples* of the Religious Defence being used to defend harmful expression. Rather, the defence provides a "strong signal" to individuals engaging in good faith religious discourse that their expression will not be swept into the ambit of the

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[10] *Ibid*. at para. 42.
[11] *R. v. Harding*, 2001 CanLII 21272 (ON CA) at para. 49. See also *R. v. Popescu*, 2020 ONCJ 427 at paragraph 65 (OCJ).
[12] Leviticus 20:13, New International Version.
[13] Quran 7:80-81, 84, trans. Mustafa Khattab.

offence.[14] Bill C-9 eliminates an important safeguard for no discernible benefit. It imposes a heavy constitutional cost for no apparent reason.

CAC therefore recommends that clauses 4(1.1) and (1.2) be removed from Bill C-9.

ISSUE #2 – The Proposed "Hate Symbols Offence"

Clause 4(1) of Bill C-9 creates a new offence of wilfully promoting hatred by displaying terrorist symbols, the swastika or the "Nazi double Sig-Rune, also known as the SS bolts" (the "**Hate Symbols Offence**").

CAC opposes the creation of the Hate Symbols Offence, for the following reasons.

First, the Hate Symbols Offence is duplicative. The offence requires that the display of hate symbols be used to "***wilfully promote hatred***". This means that the offence does not capture any conduct that is not already captured by s. 319(2). Section 319(2) already applies to "statements" that wilfully promote hatred: at s. 319(7), the term "***statements***" is defined as including "***signs or other visible representations***." Indeed, in 2010, an individual was convicted of inciting hatred for burning a cross in front of a bi-racial couple's house.[15]

Moreover, hate speech prohibitions are not the only recourse available to police in such situations. For example, in 2012, an individual was found guilty of mischief under s. 430(4)[16] of the *Criminal Code* for drawing symbols associated with the Ku Klux Klan and Nazis in front of a black family's house.[17]

Second, the Hate Symbols Offence creates the risk of duplicative charges as well. Given the total overlap of conduct captured by the Hate Symbols Offence and s. 319(2), it is likely, if not inevitable, that police will lay ***both*** charges when confronted with conduct involving the display of symbols listed in the Hate Symbols Offence. This should be discouraged; the Supreme Court of Canada has warned that duplicative charging "***increases the length of the trial***" and "***places a greater burden on trial judges and juries by increasing…the complexity of jury instructions***." It is also a recipe for inconsistent verdicts, which provide accused with a ground of appeal.[18] Even if two findings of guilt are made, one count will be stayed, so the additional charge introduces a risk with no potential benefit.

Third, the Hate Symbols Offence arbitrarily distinguishes between different symbols. The provision targets symbols associated with Nazism, but not, for example, communism, despite the obvious and widespread harm caused by communism historically. Further, the Hate Symbols Offence includes symbols associated with listed entities under Canada's terrorist listing regime.

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[14] *Keegstra*, *supra* at p. 779.
[15] *R. v. Rehberg*, 2010 NSBC 101.
[16] *Criminal Code*, s. 430(4).
[17] *R. v. A.B.*, 2012 NSPC 31.
[18] *R. v. R.V.*, 2021 SCC 10 at paras. 78-79.

Organizations are listed based on the decision of the Minister of Public Safety and Emergency Preparedness, which only requires "reasonable grounds to believe" that an organization is involved in terrorist activity.[19]

Once an organization is added to the list, s. 319(2.2) would make any symbols associated with the groups capable of attracting criminal liability if displayed. Given the encroachment into free expression this poses, it is dangerous to have an open-ended list that can be expanded merely by ministerial decision, without public input.

In addition, or in the alternative, CAC submits that the word "solely" in the proposed subsection 319(6) should be changed to "merely".[20] "Merely" is a more accurate word to describe the intent of subsection 319(6). Currently, the language of subsection 319(6) is confusing and can be read to suggest that communications that ***only*** discredit, humiliate, hurt or offend do not incite or promote hatred; however, communications that ***do other things*** in addition to discrediting, humiliating, hurting or offending ***do*** incite or promote hatred. But it is not clear what those other things are.

In CAC's submission, this potential ambiguity can be easily avoided by using the word "merely". "Merely" better conveys the true meaning of the subsection, which is that the relative degree of harm caused by the statement in question is of insufficient intensity or gravity to attract criminal liability.

CAC also notes the SCC's use of the word "merely" in *Whatcott v. Saskatchewan Human Rights Tribunal*,[21] when discussing the relative difference between "detestation and vilification" and "discrediting, humiliating or offending":

> In my view, "detestation" and "vilification" aptly describe the harmful effect that the *Code* seeks to eliminate. Representations that expose a target group to detestation tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond **merely** discrediting, humiliating or offending the victims.[22] [Emphasis added.]

In CAC's view, if the purpose of proposed subsection 319(6) is to codify the SCC's holding in *Whatcott*, then "merely" more accurately accomplishes that purpose.

CAC therefore recommends that clause 4 be removed from Bill C-9. At minimum, the word "solely" in proposed subsection 319(6) should be changed to "merely".

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[19] *Criminal Code*, R.S.C. 1985, C. C-46, s. 83.05(1).
[20] Similarly, the French version of the text should be amended to read "… pour la **simple** raison qu'elle discrédite…"
[21] *Whatcott v. Saskatchewan Human Rights Tribunal*, 2013 SCC 11 (SCC).
[22] *Ibid.*, paragraph 41.

ISSUE #3 – The Proposed "Hate Motivated Offence"

Motive and Criminal Liability

A longstanding principle in the criminal law is that a person's motivation in committing a crime does not need to be proven, or even identified. In *Lewis v. R.*,[23] the Supreme Court of Canada observed that ***motive is no part of a crime and is legally irrelevant to criminal responsibility. It is not an essential element of the prosecution's case as a matter of law***. At page 834, Justice Dickson continued:

> Evidence of motive is merely circumstantial evidence like any other circumstantial evidence, which may or may not be of importance, depending on the facts of each case. But motive as a legal concept is not a necessary element of the case to be proved by the prosecution, and the prosecution is free to adduce such evidence or not.

Motive, or lack thereof, as a piece of circumstantial evidence, *can* be relevant in the overall assessment of criminal liability. For example, a strong financial motive to commit theft or fraud could be considered by a trier of fact in assessing whether the accused did in fact commit the criminal act with the required intent. But, again, an accused's motivation for committing an offence **is not** an element of the offence and is not required to be proven by the prosecution in order to establish criminal liability.

Importantly, however, an accused's motivation to commit a crime ***is*** relevant at the sentencing stage. For example, section 718.2(a)(i) of the *Criminal Code* provides:

> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> **(i)** evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor, […]
>
> shall be deemed to be aggravating circumstances;

Section 718.2(a)(i) thus **requires** a sentencing judge to take the above into account, as an aggravating factor, If there is evidence of such bias, prejudice, or hate, the sentence would be increased accordingly, subject to the wide discretion of the sentencing judge.

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[23] *Lewis v. R.*, [1979] 2 SCR 821 at pp. 833-834 (SCC).

Bill C-9's Proposed Hate Motivated Offence

Despite subsection 718.2(a)(i), Bill C-9 seeks to create the new *Criminal Code* offence of committing an existing offence under the *Criminal Code*, or any other act of Parliament, where the offence *"…is motivated by hatred based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression*" (the "**Hate Motivated Offence**"). The Hate Motivated Offence carries with it a potential maximum penalty of life in prison.

The practical effect of the creation of this new offence is to drastically and disproportionately increase the maximum available sentence for the vast majority of crimes, where they are proven to be motivated by hate.

CAC's position is that the proposed Hate Motivated Offence is not necessary. As noted above, sentencing judges are already required to consider, as an aggravating factor, whether the offence was motivated by bias, prejudice or hate under section 718.2(a)(i) of the *Criminal Code*. Moreover, the new Hate Motivated Offence violates the long-standing legal principle that motive is not a necessary consideration in proving criminal liability, while providing no added benefit in reducing crime beyond what is already required by way of the sentencing principles of denunciation and deterrence.

Furthermore, CAC is not aware of any indication that the current regime is in need of revision. Indeed, the Government of Canada's own analysis shows that between 1977 and 2006, when motivation by hate was considered as an aggravating factor during sentencing, the average sentence was increased by **70%**. Its analysis post-2006 was hampered by sentencing judges not specifically breaking down their analysis while considering the issue;[24] even so, the one case that did carry out such an analysis post-2006 was in line with pre-2006 figures.[25]

Moreover, the Government's report did not cite cases where the sentencing judge expressed concern that the applicable maximum sentence was not high enough to accomplish the sentencing goals of denouncing unlawful conduct and deterring such future behaviour. In fact, where judges do consider section 718(2)(a)(i) of the *Criminal Code*, it is usually in the context of a serious violent crime.[26] These sorts of crimes are already subject to substantial maximum penalties.

In addition, for the same reasons as those given above, CAC submits that the word "solely" in the proposed s. 320.1001(3) be changed to "merely" (and in the French text, the word "simple" should be added). "Merely" and "simple" are more accurate words to describe the intent of subsection (3).

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[24] *Hate as an Aggravating Factor at Sentencing - A Review of the Case Law from 2007–2020,* 2020 CanLIIDocs 3732 at page 38.
[25] *R. v Kandola*, 2010 BCSC 841 at paragraph 40 (BCSC).
[26] *Hate as an Aggravating Factor at Sentencing - A Review of the Case Law from 2007–2020,* 2020 CanLIIDocs 3732 at page 43.

CAC therefore recommends that clause 5, 10 and 11 be removed from Bill C-9. At minimum, the word "solely" in proposed section 320.1001(3) should be changed to "merely".

ISSUE #4 – The Proposed "Intimidation Offence"

The proposed subsection 423.3(1) would create an offence for anyone engaging in conduct intended to "***provoke a state of fear***" in a person in order to impede access to a place (a) primarily used for religious worship, or (b) by an identifiable group under subsection 318(4) of the *Criminal Code* for administrative, social, cultural or sports activities or events, or as an educational institution (including a daycare), or as a seniors' residence, or (c) a cemetery ("**Enumerated Locations**").

The proposed subsection 423.3(2) would also make it an offence to obstruct or impede a person from entering a building or structure referred to in subsection 423.3(1).

CAC opposes the creation of these new offences, for the reasons that follow.

First, subsection 423.3 is duplicative. It captures conduct already criminalized by several other sections of the *Criminal Code.* For example, subsection 423.3(2) duplicates subsection 176(2) of the *Criminal Code,*[27] which prohibits anyone from disturbing or interrupting a religious service or meetings with a moral, social or benevolent purpose. For another, subsection 430(1)(d) (mischief) prohibits the willful obstruction, interruption or interference with any person in the lawful use, enjoyment or operation of property.[28]

There is no need to duplicate subsections 176(2) and 430(1)(d) of the *Criminal Code,* which have established case law and workable legal standards.

Similarly, intimidation, which is what subsection 423.3(1) appears to address, is already prohibited too. Behaviour such as riots and unlawful assembly, harassment, uttering threats, and intimidation are already covered by other provisions of the *Criminal Code.*[29] People engaging in such behaviours at any of the Enumerated Locations (or anywhere) would thus already be in contravention of the *Criminal Code.*

In CAC's view, enacting duplicative provisions will not resolve the problem of hatred, but will instead create uncertainty in the law and increase the risk of duplicative charges and inconsistent verdicts.

Second, subsection 423.3(1)(a)(ii) would expand the location of the offence to a virtually unlimited and undefined number of locations across Canada. The definition in this provision only requires that the *primary* purpose of a building or structure is used for religious worship or is used by an identifiable group per section 318(4) for the purposes of "***administrative, social, cultural or sports activities or events***" or "***as an educational institution, including a daycare centre***" or "***as a residence for seniors***." These descriptions could catch thousands of buildings across Canada. Given the very wide scope of this provision, it is therefore easy to imagine peaceful protests taking place where protestors have no idea that they are protesting at an Enumerated Location.

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[27] *Criminal Code*, s. 176(2).
[28] *Criminal Code*, s. 430(1)(d).
[29] *Criminal Code,* R.S.C. 1985, c. C-46, ss. 63-66, 264, 264.1, 423.

Further, the provision does not require that the Enumerated Location is *actually* being used for the purposes listed in subsection 423.3(1)(a). It only requires that the Enumerated Location is *primarily* used for the purposes set out in subsection 423.3(1). Thus, a person could be criminally liable, even if a party or person that is ***not*** an identifiable group uses an Enumerated Location, albeit not for its primary purpose. For example, a political party could rent out a church gym to host a rally; given the wording of the provision, protests taking place outside the church gym would be caught by subsection 423.3. By disregarding the *actual* use of the Enumerated Location, section 423.3 is overbroad.

Third, subsection 423.3(1) creates a regime that makes it extremely difficult for police to ascertain when it is triggered. Simply put, there is a very fine line between a protestor who ***intends to protest***, voice unpopular opinions and disrupt the daily lives of others in order to draw attention to one's cause (and who may by such actions unknowingly or unintentionally cause others to become fearful), and a protestor who actually ***intends to cause fear***. There is therefore a danger of arbitrary police action during protests, where police "err on the side of caution" and make arrests under this new provision when they should not, thereby eroding the constitutional freedoms of expression, assembly and association.

Peaceful protests, assemblies or demonstrations are, by their nature, *meant* to be disruptive and to draw attention to their cause. Recently in *Hillier v. Ontario,* the Ontario Court of Appeal ("**ONCA**") held that "***…the primary objective of public assemblies is to "confront others or to gain attention by disrupting ordinary life, or the ordinary use of space.***"[30] Similarly in *Bracken v. Fort Erie (Town),* the ONCA held that while restrictions on political protests can be made to prevent disruption, protestors are "***…not required to limit their upset in order to engage in the constitutional right to protest.***"[31] The ONCA also held in *Bracken* that "***[a] person's subjective feelings of disquiet, unease, and even fear, are not in themselves capable of ousting expression categorically from the protection of s. 2(b)***."[32]

Further, in *R. v. Skoke-Graham,* which concerned section 172 [now 176] of the *Criminal Code* dealing with disturbing worship services or certain meetings, the SCC held that mere annoyance, anxiety or emotional upset is insufficient to ground a conviction.[33]

Rather than fostering the free exchange of ideas and protecting Canadians' fundamental freedoms, however, this new provision may ultimately chill expressive activity, as people cannot be certain whether their expression will be interpreted by others (including the police) as "***an intent to provoke a state of fear***". This should not be encouraged in a free and democratic society.

CAC therefore recommends that clauses 2, 6, 8 and 9 be removed from Bill C-9.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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[30] *Hillier v. Ontario,* 2025 ONCA 259 at para 40, citing Richard Moon, "Freedom of Expression" (September 2022) (Ottawa: Public Order Emergency Commission, 2023), at p. 25.
[31] *Bracken v. Fort Erie (Town),* 2017 ONCA 668 at para 51. ["*Bracken*"]
[32] *Bracken* at para 49.
[33] *R. v. Skoke-Graham,* 1985 CanLII 60 (SCC), 1 S.C.R. 106 at para 33.