



Brief on Bill C-9, the
Combating Hate Act

Submitted to the
Standing Committee on Justice and Human Rights

by the
International Civil Liberties Monitoring Group

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Introduction

The International Civil Liberties Monitoring Group is a coalition of Canadian organizations founded in 2002 following the adoption of Canada's first ever anti-terrorism act. Our mandate is to monitor and defend against the impacts of Canada's national security and anti-terrorism laws on civil liberties in Canada and internationally. Our 45 member organizations cover a broad range of sectors, including faith-based, labour, human rights, environmental, legal and humanitarian groups.

Through our work, we have documented and advocated against acts of xenophobia, racism, Islamophobia and anti-Semitism, particularly when these arise from baseless accusations of sympathy for, links to, involvement in "terrorist" activities. This ranges from systemic racism in government practices such as racial profiling, unwarranted surveillance of particular communities and over-representation in the criminal justice system, to individual acts of hate against individuals and communities, including vandalism, harassment and assault and even murder.¹

We believe strongly that Canada must do more as a society to address polarization, marginalization and hate, and that there is a role for both government and the public to play in doing so.

Despite this, the ICLMG is alarmed by the approach of Bill C-9, the *Combating Hate Act*, to addressing concerns about rising incidents of hate. The government's approach of adopting new *Criminal Code* offenses, expanding existing offenses and removing legal safeguards will undermine protections guaranteed under the Canadian Charter of Rights and Freedoms, particularly freedom of expression, freedom of association and freedom of peaceful assembly.

They would also go against Canada's international obligations under both the Article 19 of the Universal Declaration of Human Rights, as well as Article 19 of the International Covenant on Civil and Political Rights, both of which guarantee freedom of expression.

The resulting restrictions on freedom of expression and peaceful assembly will have an overall detrimental impact on efforts to reduce polarization and division in society. Indeed, many of the communities that the government has stated will be protected by the provisions of Bill C-9 are also those who have benefitted from strong *Charter* protections that allow them to advocate publicly, and strongly, for their rights to be respected and against injustices such as hate-based violence, racism, discrimination and xenophobia.

These concerns are reflected in a joint letter the ICLMG signed alongside 36 other civil society organizations from across various sectors, including the Canadian Civil Liberties Association, the Black Legal Action Centre, the Canadian Labour Congress, the Canadian Muslim Lawyers'

¹ ICLMG, *Defending Civil Liberties in an Age of Counter-terrorism and National Security*, Sept. 2024. Online: <https://iclmg.ca/20years/>

Association, the Jewish Faculty Network, the Canadian Muslim Public Affairs Council and the Ligue des droits et libertés, raising substantial concerns with Bill C-9 and calling for it to be withdrawn.²

In the following brief, we will touch on three specific concerns with Bill C-9:

- The proposed new *Criminal Code* offense of “wilfully promoting hatred against any identifiable group by displaying [a symbol] in any public place.”
- The proposed new Criminal Code offences of intimidation and obstruction outside certain buildings and structures
- The removal of the requirement for Attorney General consent for hate propaganda charges

While our focus is on these three areas, we also support the submissions of the Ligue des droits et libertés, the Canadian Civil Liberties Association, and the Canadian Muslim Public Affairs Council, in their concerns over all aspects of the bill.

1. New *Criminal Code* offense of “wilfully promoting hatred against any identifiable group by displaying [a symbol] in any public place.”

Clause 4 of Bill C-9 proposes to create a new offence under section 319(2.2) of the Criminal Code of “wilfully promot[ing] hatred against any identifiable group by displaying, in any public place,” certain symbols. The symbols included under the proposed offence would include:

- a) a symbol that is principally used by, or principally associated with, a listed entity, as defined in subsection 83.01(1);
- b) the Nazi Hakenkreuz, also known as the Nazi swastika, or the Nazi double Sig-Rune, also known as the SS bolts; or
- c) a symbol that so nearly resembles a symbol described in paragraph (a) or (b) that it is likely to be confused with that symbol.

If found guilty of an offence, an individual could face up to two years in prison.

We are concerned with this new offence for three key reasons:

First, the offence is duplicative of existing hate propaganda laws, and is therefore redundant and unnecessary.

Section 319(2) of the *Criminal Code* establishes the offence of wilfully promoting hatred against an identifiable group by communicating statements in public, and 319(2.1) establishes the same regarding the condoning, denying or downplaying of the Holocaust.

² Online at: <https://ccla.org/press-release/civil-society-groups-demand-federal-government-rethink-bill-c-9/>

The Minister of Justice has stated that the simple public display of the kind of symbol covered by 319(2.2) would not be considered a criminal offence, but rather that it would need to be displayed in such a way that it wilfully promotes hatred.³

Moreover, the Minister of Justice, in testimony to parliament, confirmed that the display of certain symbols is already a factor that can be considered when determining whether an individual has committed an offence under the existing hate propaganda offences. This would mean that, for example, that if a symbol used for the promotion of hatred is not captured under either the terrorist entities or Nazi insignia provisions – for example, the display of a noose or the insignia of the Klu Klux Klan, which is not a listed terrorist entity, to incite anti-Black hatred – it could still be considered as a factor in determining an offence under 319(2).

Given all this, it is unclear why a new provision is necessary, since the use of symbols can already be considered part of the pattern of behavior for committing a hate offence. The only impact would be to place extra emphasis on the use of these particular symbols for the policing of hate offences, and the possibility of charging an individual with two separate crimes for the same act. As we explain in the following sections, the vague wording of “symbols associated with or used by” a listed terrorist entity or those symbols that are similar in resemblance, as well as the problematic nature of the terrorist entities listing process itself, raises significant concerns that the proposed new provisions will lead to the criminalization or stigmatization of those engaged in legitimate acts of protest, dissent and free expression.

Second, the wording of this new offense creates the serious risk of police making discretionary decisions related to what constitutes a symbol “associated with” or “used by” a listed entity.

Over the past several months, we have seen heated arguments and accusations that certain symbols associated with protests in support of Palestinian human rights and against the genocide in Gaza are either hateful, are associated with a terrorist entity, or both. Peaceful and lawful protests have been accused of fomenting hate based on the signs and slogans that they carry. Some have gone so far as to accuse individuals wearing the keffiyeh of promoting hatred and that it is associated with terrorist activities. Others have said that the slogan, “From the River to the Sea” is a call for violence and hatred, and associated it with Hamas, despite its widespread use, and the legitimate understanding that it is a call for liberation of Palestinians living under apartheid, and not a de facto call for violence or the incitement of hatred.

Under this new legislation, police would be asked to make a determination, in the middle of a march or protest, not just of what constitutes a symbol associated with a terrorist entity, but that it is being used to wilfully promote hatred. There will continue to be pressure on police to stop and arrest anybody carrying a symbol that is used by or associated with a terrorist entity – whether that be a Hamas or Hezbollah flag, a keffiyeh or a disputed slogan on a sign. Indeed,

³ Woolf, M. “Anti-hate bill could mean 10 years in prison for obstructing access to places of worship,” 19 September 2025. *The Globe and Mail*. Online at: <https://www.theglobeandmail.com/politics/article-anti-hate-bill-sean-fraser-places-worship-religious-schools/>

we have already seen that occurring, with the arrest of an individual in Toronto for carrying the flag of the Popular Front for the Liberation of Palestine, a listed terrorist entity.⁴ He was charged with the public incitement of hatred, but those charges were dropped because there was no evidence to determine that he was in fact wilfully promoting hatred. That determination would not change with this bill. But the emphasis and pressure on police to act, and then determine whether charges have a prospect of conviction later, will increase because of the new emphasis on the displaying of symbols.

This is made even more complicated if police are empowered to make the decision that a symbol so nearly resembles the symbol associated with a terrorist entity. For example, would a protester with a of a green flag or scarf – a color that has distinct significance in Islam – be determined to resemble the Hamas flag, which is also green? Or since some terrorist organizations have featured Arabic writing, including the “shahada,” the Islamic declaration of faith, on their flags, could a police officer believe that any such display is on a sign, a shirt or a banner closely resemble a terrorist entity to merit arrest?

These concerns can apply more broadly as well: Some protesters, including at the Ottawa convoy protest, have displayed what is known as the Gadsden flag: a yellow flag featuring a snake and the words, “Don’t tread on me.” Adopted originally in 1778 to symbolize unity among US colonies against the British Empire, it has more recently been used by the Proud Boys, a listed terrorist entity in Canada. Under these new provisions, the display of the Gadsden flag could result in police action. Moreover, convoy participants also displayed a Canadian version of the Gadsden flag that replaces the snake with a Canada goose. Police could still interpret this sign as “resembling” the original, and therefore triggering these new provisions.⁵

Given the severe potential for overreach, along with the stigma of being accused of committing a hate crime, we believe that this law will create a significant chill on free expression and dissent.

Finally, basing this new offence on the Terrorist Entities List, is in and of itself problematic.

The ICLMG, along with many others, have raised serious concerns with the terrorist entity listing process, including: the list is based on unaccountable executive listing decisions; decisions to list are based on secret evidence that cannot be shared publicly or with the listed entity itself; and the absence of adequate avenues for challenging listings and obtaining redress.

Decisions to list or not list can also be political in nature. As eminent national security scholars Kent Roach and Craig Forcese noted in their 2018 article, “Yesterday’s Law: Terrorist Group Listing in Canada”:

⁴ <https://www.cbc.ca/news/canada/toronto/man-arrested-flag-charge-1.7080485>

⁵ <https://www.cbc.ca/news/canada/convoy-protest-flags-extremism-1.6351336>

“Listing decisions may implicate domestic politics, as Canadian politicians calculate the implications of listing among diaspora communities in Canada. Sometimes also at issue are foreign policy considerations, and especially Canada’s stature as a proverbial ‘honest broker’ in international peace negotiations. These considerations seem particularly acute where the entity has a political wing and exercises a governance role in a foreign jurisdiction.”⁶

This is compounded by the secrecy of the decision-making process, undermining the ability to ensure that a decision meets the adequate threshold or is made in an unbiased, objective manner.

Moreover, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has warned that serious human rights violations that can occur “where a vague and overbroad definition of terrorism triggers a vague and overbroad category of ‘terrorist organization,’ which in turn triggers vague and overbroad offences.”⁷

Given all this, we are opposed to any new Criminal Code provisions that would rely on the Terrorist Entities Listing process, and reiterate our coalition’s longstanding call for the regime to instead be abolished.

2. New *Criminal Code* offences of intimidation and obstruction outside certain buildings and structures

New offenses in Bill C-9 regarding obstruction and intimidation in proximity to certain places, including places of religious worship, schools, community and sports centres, raise similar concerns. The *Criminal Code* already allows for police to act on the basis of mischief, intimidation, harassment, or threats. As we have seen across the country, especially in regards to protests in support of Palestinian rights, police have more than enough powers to disrupt protests on a wide range of grounds, and in fact have often engaged in over enforcement, demonstrated by the myriad of charges that have been dropped, as well as the violent dismantling of peaceful encampments.

Moreover, the new offence of intimidation is overly broad and would rely too heavily on police discretion. Under the new offence, law enforcement would need to determine whether the intent of an individual is to provoke fear in another person. This is an incredibly difficult determination to make based on the actions of individuals, especially those who may be participating in a demonstration. Instead, it would be likely that police would rely on either

⁶ Forcese, C., & Roach, K. (2018). Yesterday’s Law: Terrorist Group Listing in Canada. *Terrorism and Political Violence*, 30(2), 259–277. <https://doi.org/10.1080/09546553.2018.1432211>

⁷ United Nations, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, “Best practices to protect human rights while using administrative measures to prevent terrorism: restrictive orders, terrorist listings, security detention and compulsory interventions”, Report, A/80/284, July 31, 2025. Online: <https://docs.un.org/en/A/80/284>

their own subjective interpretation of the intent of individuals or, even more likely, if others tell police officers that they feel a sense of fear. This is a much too subjective standard, and should instead focus on the more objective standard recognized by the courts of whether or not individuals are threatening or engaging in physical violence that could impact the physical integrity of an individual.

Both the obstruction and intimidation offences would also apply to an incredibly broad and difficult to ascertain set of buildings, and would also apply regardless of the activities being carried out.

For example, campuses across Canada have spaces dedicated for use by identifiable groups, including buildings and offices, or even places of worship and prayer rooms. Locations used primarily by identifiable groups could also be located inside and next to buildings used for multiple other purposes. It is entirely possible that an action by individuals unrelated to the protected place in question could still be interpreted as causing fear. Or even more likely, such actions could obstruct access to that place, thereby triggering the legislation, despite the actions having nothing to do with the promotion of hatred.

The proposed legislation also ignores the fact that a place used primarily by an identifiable group could be used for purposes other than those related to the protected person, including, for example, a religious institution hosting a political or commercial event unrelated to its religious practices. This was the case when a synagogue hosted a real estate event selling land in the illegally occupied West Bank.⁸ Other religious institutions and community spaces regularly rent out rooms or halls for events unrelated to their religious activities. Under Bill C-9, any protest of these events would result in triggering these provisions.

3. Removal of the requirement for Attorney General consent for hate propaganda charges

Bill C-9 would also remove existing requirements under s. 319(6) of the *Criminal Code* for attorney general approval of laying hate propaganda charges. If adopted, this would eliminate a long-standing safeguard meant to protect against disproportionate or legally unsound criminal charges that impact free expression rights.

The removal of this check-and-balance would not only amplify the concerns raised above regarding new provisions that would be created by Bill C-9, but also on all existing hate propaganda offences.

As noted in the open letter signed by 37 civil society organizations, “This increases the risk of arbitrary, inconsistent or selective enforcement, and a chilling effect on lawful dissent. It also opens the door to vexatious private prosecution. Once again, the changes proposed in Bill C-9

⁸ <https://toronto.citynews.ca/2024/03/07/israeli-event-promoting-west-bank-property-draws-critics/>

are likely to disproportionately harm equity-deserving groups, who have historically been subject to excessive surveillance and policing of their expression.”⁹

Conclusion

The proposed new offences would carry significant penalties, including the threat of jail time, and will result in people who would ordinarily take action to speak out on important social issues refraining from doing so under the fear of being trapped in the dragnet of additional, unclear and broad discretionary powers. If that is not the government’s intent, we urge it to withdraw this bill in favour of approaches that both protect vulnerable communities and ensure the protection of Charter rights and civil liberties in Canada.

⁹ Online at: <https://ccla.org/press-release/civil-society-groups-demand-federal-government-rethink-bill-c-9/>