Brief on Bill C-9, the *Combatting Hate Act*

Submitted to the
Standing Senate Committee on Human Rights

by the
International Civil Liberties Monitoring Group

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1. 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. The coalition's 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 and racism, particularly when these arise from baseless accusations of sympathy for, links to, or 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 strongly believe 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 taken in Bill C-9, the *Combatting Hate Act*, to address rising incidents of hate. The government's proposal to adopt new *Criminal Code* offences, expand existing offences, and remove 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 run counter to Canada's international obligations under Article 19 of the Universal Declaration of Human Rights and 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 benefited 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' Association, the Jewish Faculty Network, the Canadian Muslim Public Affairs Council, and the

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

Ligue des droits et libertés, which raises substantial concerns about Bill C-9 and calls for its withdrawal.[2]

The complexities of this legislation merit extensive study in Parliament, and we were dismayed by the decision to limit debate at clause-by-clause and at third reading in the House of Commons. The result was that important amendments went unexamined and unchallenged. This is specifically true of the amendment to remove paragraphs 319(3)(b) and 319(3.1)(b) from the *Criminal Code*, which establish a good-faith religious defense. This change elicited substantial concern from the public, and raises serious concerns regarding the balancing of freedom of religion, freedom of expression and protection against hate speech. The study of this bill in the Senate must provide the opportunity to rectify this serious issue.

In the following brief, we will touch on two 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

While our focus is on these two areas, we also support the submissions of the Ligue des droits et libertés, the Canadian Civil Liberties Association, the Canadian Muslim Public Affairs Council, and the Canadian Muslim Lawyers' Association in their broader concerns with this bill.

2. 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* as follows:

> **(2.2)** Everyone commits an offence who wilfully promotes hatred against any identifiable group by displaying, in any public place:
>
> **(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, 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 a symbol described in paragraph (a) or (b).

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

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

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

a. Lack of clarity regarding impact of the new offence

First, there has been considerable disagreement around what this new offence will entail. The government, including the Minister of Justice, has stated that s. 319(2.2) would not apply to the mere public display of the impugned symbols. Rather, such display would need to be accompanied by evidence of the individual's intent to wilfully promote hatred.[3]

However, the wording of the offence goes much further than the government's description. Instead, the offence is written in such a way that the simple public display of one of the symbols included in s. 319(2.2) would in and of itself be considered a wilful incitement to hatred.

This is because the offence states that an individual "commits an offence who wilfully promotes hatred […] **by displaying**" an impugned symbol. A plain reading of the offence by police or the courts could reasonably be that it is the simple display of such an image that in and of itself promotes hatred.

While the government may state this is not their intention, it does not change the fact that the wording of the text could easily – and is likely to be – understood this way.

Moreover, there is no further clarification in the offence that the simple display of a symbol would not constitute an offence.

The French version of the text also supports this interpretation. It reads:

> « (2.2) *Commet une infraction quiconque fomente volontairement la haine contre un groupe identifiable* ***par l'exposition*** *dans un endroit public de l'un des symboles suivants »*

This expands the possible application of the law much more broadly that what has been proposed by the Minister of Justice and government officials. It is not simply the recognition that the use of a "tool" in the commission of an offence can make an offence even more serious, as the Minister stated at committee.[4] Rather, it could mean that any public display of such a symbol could be considered an act of wilful incitement of hatred. This would go even further than Canada's anti-terrorism laws, which do not criminalize the simple display of symbols used by or associated with a terrorist entity. It would also displace the burden of proving that displaying a proscribed symbol does not incite hatred onto the individual, rather than necessitating that the state proves that the display of such a symbol was a wilful

[3] Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. (2025). Minutes of Proceedings. 45th Parliament, 1st session, meeting no. 7, 9 October 2025. Online at: https://www.ourcommons.ca/DocumentViewer/en/45-1/JUST/meeting-7/evidence#Int-13172600

[4] Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. (2025). *Minutes of Proceedings.* 45th Parliament, 1st session, meeting no. 7, 9 October 2025. Online at: https://www.ourcommons.ca/documentviewer/en/45-1/JUST/meeting-7/evidence#Int-13171949

incitement to hatred. It is also difficult to see how such a provision would be considered a Charter compliant restriction on freedom of expression.

b. Duplicative nature of the offence

Second, even if we were to concede that the government's explanation of 319(2.2) is accurate, the offence would be duplicative of existing hate propaganda laws, and is therefore redundant and unnecessary.

Section 319(2) of the *Criminal Code* already establishes the offence of wilfully promoting hatred against an identifiable group by communicating statements in public.

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 s.319(2).[5] This is also supported by court rulings, including a 2010 decision finding a Nova Scotia man guilty of public incitement to hatred for burning a cross on an interracial couple's front lawn.[6] It is clear that, under current law, the display of a symbol (terrorist or otherwise) as part of an act to wilfully promote hatred can already result in a maximum sentence of two years, the same as proposed for the new offence created by the proposed s.319(2.2).

Moreover, the provisions of the proposed s.319(2.2) would in some ways be more limited that the existing offence. As demonstrated in the previous example, s.319(2) is not limited to specific symbols, whereas the proposed s.319(2.2) will be limited only to symbols used by listed terrorist entities and Nazi symbolism. Bill C-9 would therefore exclude other well-known symbols of hate, such as those used by the Ku Klux Klan to incite anti-Black or antisemitic hatred.

c. Concerns around the vagueness and discretionary nature of the offence

Third, 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

[5] Canada. Parliament. House of Commons. Standing Committee on Justice and Human Rights. (2025). *Minutes of Proceedings.* 45th Parliament, 1st session, meeting no. 7, 9 October 2025. Online at: https://www.ourcommons.ca/DocumentViewer/en/45-1/JUST/meeting-7/evidence#Int-13172650

[6] CBC News staff. "N.S. man guilty of hate crime in cross-burning," 9 Nov. 2010. Online at: https://www.cbc.ca/news/canada/nova-scotia/n-s-man-guilty-of-hate-crime-in-cross-burning-1.925313

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, of what constitutes a symbol associated with a terrorist entity. Police will be empowered to stop and arrest anybody carrying a symbol that is used by or associated with a terrorist entity – whether that be a Hamas flag, a keffiyeh, a watermelon or a disputed slogan on a sign. In fact, this has already occurred: an individual in Toronto was arrested for carrying the flag of the Popular Front for the Liberation of Palestine, a listed terrorist entity.[7] 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. Under this legislation though, there is high probability that this individual could be determined to be promoting hatred simply by engaging in their free expression rights by displaying a flag. At a minimum, it is likely to increase police scrutiny and result in an increase in similar charges, regardless of whether the charges proceed to court.

This will be made even more complicated by empowering police to decide that a symbol "so nearly" resembles a 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 on a sign, a shirt or a banner so nearly resemble a symbol used by a terrorist entity to merit arrest?

These concerns apply across the political spectrum: 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, regardless of whether it is being used to promote hatred.[8]

As mentioned earlier in our brief, it is important to bear in mind that under Canada's anti-terrorism laws, the mere display of a symbol used by or associated with a terrorist entity is not

[7] Balintec, Vanessa. "Toronto police lay 'unprecedented' hate crime charge, say man allegedly held 'terrorist flag' at protest," *CBC News*, 11 Jan. 2024. Online at: https://www.cbc.ca/news/canada/toronto/man-arrested-flag-charge-1.7080485

[8] Nicholson, Katie. "From snakes to Spartans: The meaning behind some of the flags convoy protesters are carrying," *CBC News*, 15 Feb. 2022. Online at: https://www.cbc.ca/news/canada/convoy-protest-flags-extremism-1.6351336

an offence. Bill C-9, as written, risks either explicitly, or by association, going further. It is no mistake or oversight that Canada has not made the display of a symbol associated with a terrorist entity a crime: doing so would clearly be an infringement of freedom of expression under the Charter.

d. The Terrorist Entities List is unsuitable as the foundation of new anti-hate laws

Finally, the decision to base this new offence in the Terrorist Entities List is itself problematic.

The ICLMG, along with many others, has raised serious concerns with the terrorist entity listing process, including: the list being based on unaccountable executive listing decisions; decisions to list relying 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":

> "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."[9]

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."[10]

Given all this, we oppose any new *Criminal Code* provisions that would rely on the Terrorist Entities List, and reiterate our coalition's longstanding call for the regime to instead be abolished.

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[9] 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

[10] 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

While it is positive that the House of Commons amended Bill C-9 to add a requirement for Attorney General consent for laying charges under s. 319(2.2), this does not allay the concerns raised by this provision. This change may eventually result in fewer charges being laid, but it does not address concerns of over-enforcement by police. Already, we have seen calls to engage in mass arrests at protests because of the display of certain symbols; under this pressure, the adoption of this new offence could result in police engaging in a significant number or arrests, regardless of whether they will proceed to trial. These arrests – and the ensuring fear of arrest – will have both a significant impact on freedom of expression and assembly.

e. Recommendations

Given the vague, overly broad and discretionary and overly broad nature of the offence, along with the stigma of being accused of committing a hate crime, the proposed offence law will create a significant chill on free expression and dissent. Combined with the redundancy of the offence, and the problematic nature of the Terrorist Entities listing itself, we recommend that this offence be removed from Bill C-9.

Barring that, we recommend that at a minimum it be amended to clarify that the offence is not the simple display of a symbol listed in s.319(2.2) (a), (b) or (c) by making the following change:

> 319**(2.2)** Everyone commits an offence who wilfully promotes hatred against any identifiable group ~~**by**~~ **while** displaying, in any public place:

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

New offenses created in Clause 6 of 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 of being overly broad, open to discretionary enforcement, and of being mostly redundant with existing offences, and should not be adopted.

a. The offences are mostly redundant

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.

b. The intimidation offence risks discretionary enforcement

Moreover, the new offence of intimidation (proposed s. 423.3 (1)) is overly broad and would rely too heavily on police discretion. Under the new offence, law enforcement would be empowered 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. Police will therefore be likely to rely on either their own interpretation of the intent of individuals, or if others tell police officers that they feel a sense of fear. This standard is much too subjective. Instead, the focus should be on the more objective standard recognized by the courts of whether or not individuals are threatening to engage or engaging in physical violence that could impact the physical integrity of an individual.

c. The offences are overly broad

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.[11] 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 could trigger these provisions.

d. Recommendation

Based on all the above, we recommend that clause 6 be removed from Bill C-9.

[11] The Canadian Press. "'Palestine is not for sale:' Israeli event promoting West Bank property draws critics," *CityNews*, 7 March 2024. Online at: https://toronto.citynews.ca/2024/03/07/israeli-event-promoting-west-bank-property-draws-critics/

4. Conclusion

While new measures to tackle the troubling increase of hate-based violence are necessary, they must work in tandem with the protection and upholding of Charter rights and civil liberties.

The new offences proposed in Bill C-9, though, 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, punishable by significant penalties, including the threat of jail time. Given all this, we reiterate our call for Bill C-9 to be withdrawn in favour of approaches that both protect vulnerable communities and ensure the protection of *Charter* rights and civil liberties in Canada, and urge the Senate to take action during its study of this legislation.