

## Effective and Democratic Responses to Antisemitism

Canadian Civil Liberties Association  
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### **Introduction**

Founded in 1964, the Canadian Civil Liberties Association (“CCLA”) is a national organization dedicated to the furtherance of civil liberties in Canada. The CCLA has several thousand paid supporters, and a wide variety of persons, occupations, and interests are represented in the national membership. The CCLA’s principal mandate is to promote and protect fundamental rights and liberties. In keeping with its ongoing commitment to the protection of civil liberties, the CCLA has a long history of fighting against discrimination in both the public and private sector, and continues to be concerned about effectively combating discrimination in the context of a free and democratic society. It is therefore not difficult to appreciate the connection between these concerns and the mandate of the Canadian Parliamentary Committee for Combating Antisemitism (“the Committee”). The CCLA applauds the Committee’s endeavours to identify and define the nature of antisemitism in Canada today, analyze the extent of the problem, and make practical recommendations as to how the problem can be addressed. The CCLA understands that the Committee’s inquiry is particularly focused on the ‘new antisemitism’, and that it is concerned about criticisms of the State of Israel being used as a mask for more ‘traditional’ antisemitic discourse.

The CCLA’s submissions to the Committee will focus on four main points:

- 1. Antisemitism and discrimination:** A robust and accessible legal system is critical to ensuring individuals and institutions can effectively combat antisemitism;
- 2. Strengthening the culture of human rights:** Human rights commissions and tribunals should be strengthened in their anti-discrimination work;
- 3. Adequate statistical information:** Adequate statistical reporting mechanisms should be developed to facilitate accurate, ongoing monitoring; and
- 4. Antisemitic discourse on campus:** While the creation of hostile campus atmosphere is a very serious concern that requires a coordinated response, solutions that propose censorship or

curtailment of freedom of expression should be firmly rejected; universities should be encouraged to provide support for marginalized students and encourage initiatives that provide space for open and constructive dialogue and discussion.

The CCLA's overarching concerns are the potential and actual effects of antisemitism in Canada, both in terms of its impact on anti-Jewish sentiment, discrimination and hate crimes, as well as the implications for freedom of speech in general.

## **1. Antisemitism and Discrimination**

The right to equality is a paramount and fundamental right within Canadian society. It is enshrined in the *Canadian Charter of Rights and Freedoms*, as well as the various provincial and federal human rights acts. The Canadian government, civil society, and individual Canadians, should be extremely concerned about allegations of rising prejudice against any identifiable group.

Discrimination is lived in a myriad of forms, and there can be no single solution to combating its diverse manifestations. Individuals may be denied employment, lodging or services, passed over for promotion, unfairly charged with crimes, unfairly sued, overcharged for services, treated poorly by insurance agents, restaurant owners or EBay vendors, defamed, the victims of property crime or violently attacked.

Discrimination can also have a profoundly internalized impact. It may prevent individuals from complaining, responding, arguing, expressing themselves, suing, running for elections or generally participating fully in their society. While it may not always be apparent that unequal treatment stems from conscious prejudice, it is felt nevertheless.

Because discrimination has such a powerful and pervasive effect, an effective response requires that all aspects of the legal system function fairly and adequately. Employment policies must be fair, consumer protection must be effective, policing must be measured, courts must be unbiased, and compensation systems must be available to provide a remedy. Indeed, strong democratic institutions – legal, cultural and social – are essential to ensure that even the invisible forms of antisemitism are confronted and remedied.

There are a number of tools Canada already has in place to monitor and combat prejudice, as well as a number of ways these tools could be made more effective. Just as the reduction of smoking requires employing strategies that cross both the public and private spheres, so too does the eradication of discriminatory attitudes. As will be argued in Part II of our submissions, specialized and targeted approaches to antidiscrimination are essential. In addition, however, the CCLA urges the Committee to consider that access to justice continues to be a significant problem for those who face discrimination. Support for dispute resolution mechanisms, legal aid, programs and organizations that facilitate access to courts, and for court challenges themselves should form part of an effective response to antisemitism.

**CCLA therefore urges the Committee to recognize that, for individuals who have been discriminated against, an effective and accessible legal system is essential.**

## **2. Strengthening Canada's human rights culture**

Human rights commissions and tribunals are essential tools of anti-discrimination work. Recently, a number of individuals have been highly vocal in their criticisms of these bodies, leading to various calls for their abolition. CCLA is a stalwart defender of the anti-discrimination provisions of human rights laws. It urges a continuing support for human rights commissions. The work of human rights commissions and tribunals across the country in educating the public and in investigating and responding to allegations of discrimination in the private sector are required to combat antisemitism and discrimination in general. Moreover, the policy work and wider investigations performed by the commissions continues to serve as an invaluable monitoring tool. The compilation of data and investigations performed by human rights commissions are a necessary instrument in the effort to continually monitor and respond to antisemitism. As with many, if not all, facets of the legal system, there is no doubt that improvements may be made to improve the human rights system's efficiency. This does not mean, however, that the appropriate response is to excise the system entirely. Indeed, the promotion of a robust and effective human rights culture may require the input of additional funding and the evolution of creative new ways for human rights commissions to play their role.

The CCLA also submits that human rights commissions have a role to play in combating prejudiced or discriminatory speech. While CCLA does not condone the inclusion of 'hate speech' prohibitions in human rights acts, the organization does firmly support using the

educational mandate of the human rights commissions to respond to prejudiced discourses. Individual Canadians and Canadian civil society should be empowered to openly and robustly criticize speech they see as discriminatory. Fostering a culture of human rights, and a culture of counter-speech, requires education, sensitization, and increasing awareness. Human rights commissions are essential educators in this regard, and should be encouraged to employ their educational mandate in diverse and creative manners.

**CCLA urges the Committee to express its support for human rights commissions' antidiscrimination work, and to recommend the provision of additional resources to promote a robust and effective human rights culture.**

**Human rights commissions should be encouraged to use their educational mandate to respond to prejudiced discourses and to foster a culture of counter-speech among the general public.**

### **3. Adequate statistical information**

Another indispensable tool in the fight to monitor and respond to antisemitism is the compilation of statistics on discrimination. Since 1999, Statistics Canada has been gathering information on hate crimes through the General Social Survey, and has published several reports on the subject. The data is collected both through self-reported information from a survey of the general public, and through police-reported information. The compilation of accurate, objective data on hate crimes and discrimination in Canada is essential to developing a thorough understanding of the issue.

In this vein, it should be noted that in 2001-2002, a pilot survey of twelve major police forces in Canada counted 229 incidents of hate crimes directed toward people or institutions of Jewish faith<sup>1</sup> making Jews the most likely group to be the target of crimes the police had identified as being motivated by hatred (Jewish targets constituted 25% of all reported hate crimes).<sup>2</sup> In 2006, a Canada-wide survey of police forces reported 137 hate crimes incidents targeting Jewish individuals or institutions (27%

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<sup>1</sup> Warren Silver, Karen Mihorean and Andrea Taylor-Butts, "Hate Crime in Canada", Juristat: Canadian Centre for Justice Statistics, Statistics Canada – Catalogue no. 85-002-XPE, Vol. 242, no. 4 at pg. 18

<sup>2</sup> *Ibid.* at pg. 9.

of all hate crimes).<sup>3</sup> The 2007 survey found 124 police-reported hate crimes against Jews (25% of all hate crimes).<sup>4</sup> Although police-reported data does not always provide a full picture of hate crimes, and non-criminal acts of discrimination are not captured, such data is nevertheless crucial as a partial aid in the analysis of societal trends.

While the current level of reporting provides some basis for analysis, it is CCLA's view that a more nuanced and detailed periodic survey would be useful. The current statistics on hate crimes do not capture acts of discrimination or expressions that are taken to be hateful or prejudiced, and Statistics Canada's 2002 Ethnic Diversity Study, which surveyed community members on their perceptions of general societal prejudice towards them, has not been repeated, and does not appear to be scheduled for further study.<sup>5</sup> CCLA will be appealing to Statistics Canada, as well as a number of human rights commissions, to request that they modify and expand their data collection on hate crimes, discrimination and prejudice to provide a basis for more sophisticated analysis and research on the subject. Ongoing, detailed and timely statistical reporting is essential to developing a fuller understanding of not only antisemitism, but also trends with regard to the full range of hate crimes, discrimination and intolerance within Canada.

**CCLA urges the Committee to mandate Statistics Canada to undertake an on-going longitudinal monitoring of discriminatory actions and prejudice in Canada.**

**4. Antisemitic discourses on university campuses**

Finally, CCLA notes that there is a large amount of concern surrounding the creation of a hostile atmosphere on Canadian university campuses. For example, the website of this Committee notes:

While accusations of blood libel, or petty vandalism are still issues for the Jewish community, new fears have arisen especially for those who support the State of Israel. On campuses

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<sup>3</sup> Mia Dauvergne, Katie Scrim and Shannon Brennan, "Hate Crime in Canada, 2006", Canadian Centre for Justice Statistics, Statistics Canada – Catalogue no. 85F0033M – No. 17 (June 2008, Ministry of Industry) at pg. 9.

<sup>4</sup> Phil Walsh and Mia Dauvergne, "Police-reported hate crime in Canada, 2007", Juristat, Statistics Canada – Catalogue no. 85-002-X, Vol. 29, no. 2, (May 2009, Minister of Industry) at pg. 15.

<sup>5</sup> See "Ethnic Diversity Study", Statistics Canada, online:

<http://www12.statcan.ca/english/census06/reference/consultation/92-135/ethnicdiversity.cfm>.

specifically, Jewish students are being threatened and intimidated to the point that they are not able to express themselves, or are even fearful to wear a Jewish skull cap or star around their necks.<sup>6</sup>

There is no doubt that debates over the Israel-Palestine conflict have generated increasing tensions at a number of Canadian universities. The rhetoric has not been limited to students, with faculty members, student and faculty unions, and even university administrations at times weighing in on various issues. It is little wonder that some Jewish students have felt threatened or intimidated by the content and tone of the debate on some university campuses.

While university administrations have a duty to ensure their campuses are open and welcoming spaces, the CCLA is deeply concerned about any policy recommendations that would encourage university administrations to enforce the boundaries of debate and discourse, leading to a curtailment of freedom of speech. Some groups have pressed university administrations to censor specific terms or images, shut down debates, and use student codes of conduct to enforce limits on the criticism of Israel. There have also been a few examples of administrations employing such measures.<sup>7</sup> Such responses represent a serious threat to freedom of speech and academic freedom, and should not be encouraged.

Freedom of expression, of course, has its limits. It should be made clear that intentional incitements to violence that result in imminent danger, as well as signs or publications that clearly show an intent to discriminate, are contrary to the *Criminal Code* and the various human rights acts. Incidents of threats against Jewish students should be reported, investigated and

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<sup>6</sup> Canadian Parliamentary Coalition to Combat Antisemitism, "About Us", online: <http://www.cpcca.ca/about.htm>.

<sup>7</sup> CCLA has already witnessed attempts to censor 'inappropriate' expression in the context of the Israel-Palestine conflict. Some universities have banned posters and have attempted to limit expression on campus. In February 2009, both the University of Ottawa and Carleton University banned a poster which featured a cartoon of a helicopter labelled "Israel" shooting a missile at a child, whose shadow spelled out "Gaza". The University of Ottawa stated that the poster was "inflammatory and capable of inciting confrontation", and Carleton's Equity Services staff judged that it contained "certain words or images [that] could be seen to incite others to infringe rights protected in the Ontario Human Rights code" and was "insensitive to the norms of civil discourse". Carleton's Interim Provost subsequently sent a letter to the Carleton community, noting that it is impermissible for students to be "inappropriately challenging or questioning a person's race or beliefs," and reminding students that they could possibly face expulsion for infringing the students' code of conduct. For CCLA's response, please see our letters to the University of Ottawa and Carleton University, attached. Similarly, in 2008 there was some suggestion that McMaster University had banned on-campus use of the phrase "Israeli apartheid", and that activities promoted under the banner of Israel Apartheid week were unacceptable and prohibited.

legally pursued. Such acts have also been curtailed in many Codes of Conduct and Anti-Harassment policies on campuses and elsewhere. They have no place in a society that values equality and multiculturalism.

Subject to such limits, however, university or government censorship of even highly offensive expression represents a dangerous threat to freedom of speech. University bans on material place an inevitable chill on freedom of speech – a chill that is antithetical to the very mission of a university.

As the Committee recognizes, combating antisemitism is not about limiting criticism of the State of Israel.

Many people disagree with some of the policies that the State of Israel has adopted, as many people disagree with some of the policies of the United States or Canada. Any discussion of freedom of speech in relation to the new antisemitism must begin with the recognition that not all criticism of Israel, even when generalized or hyperbolic, can be labelled as antisemitic. Furthermore, the attempt to distinguish between comments and expressions that constitute legitimate criticism, and those that cross the line into unfair criticism, is a line-drawing exercise that is fraught with difficulty. As highlighted by the British All-Party Parliamentary Inquiry into Antisemitism:

Antisemitic discourse is, by its nature, harder to identify and define than a physical attack on a person or place. It is more easily recognised by those who experience it than by those who engage in it. Many witnesses felt that antisemitism in public and private discourse has become commonplace. It is hard to identify because the boundaries of acceptable discourse have become blurred to the point that individuals and organizations are not aware when those boundaries have been crossed, and because the language used is more subtle. However, veiled or not, it is still an expression of prejudice.

It is important to clarify that none of those who gave evidence wished to see the right to free speech eroded in order to curtail racist or antisemitic discourse. What they urged

was that those in public positions or positions of influence should take care in their use of language and exercise the right to free speech with responsibility. ...<sup>8</sup>

Although criticism of Israel may have a particularly cutting impact, it should also be recognized that harsh, intemperate and one-sided criticism is not a phenomenon reserved solely for the Jewish state. In the 1970s, many supporters of the Vietnam War likely believed that the campus movements criticizing the United States government were overly simplistic and one-sided. More recently, many Canadian students' vociferous and one-sided criticisms of the United States and its foreign policy over the last decade likely led many American students to feel unwanted, unwelcome, or hesitant to reveal their country of origin. Similarly, often ill-informed criticism of Shari'a law, or strident, biting criticism of Iran, or even vocal criticism of Islam itself, may lead Muslim students to feel uncomfortable on campus.

While universities and policy makers should be alive to the impact these debates can have on minorities, their response should not include censorship or official sanction. University administrations should not be in the business of censoring academics, students or individuals because they have expressed their point of view in a manner that others view as one-sided, disrespectful, or misguided. The line between appropriate and inappropriate criticism is simply too vague, and the threat to freedom of expression too great, to employ censorship or official sanction in such situations.

Rejection of censorship, however, does not mean that university administrations are without recourse.

This is not the first time universities have had to take measures in order to ensure that minorities feel comfortable and safe on campus. After September 11, 2001, Ontario Universities were concerned about a possible backlash against Muslim students, and the creation of a hostile campus atmosphere. The suggested responses included extending targeted support networks and empowering minority student groups to give them a voice and campus presence. With regard to tensions over the Israel-Palestine conflict specifically, McMaster recently pursued a "Peace Initiative" that, while supporting freedom of speech, aims to provide a meaningful and

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<sup>8</sup> All-Party Parliamentary Group against Antisemitism, "Report of the All-Party Parliamentary Inquiry into Antisemitism" (2006, London) at pg. 16.

respectful platform for discussion and debate. The University administration, and both Muslim and Jewish student and Faculty groups supported the initiative, and according to media reports the initiative was highly successful.<sup>9</sup> York University has similar plans to foster respectful debate and dialogue in the upcoming year.

There may be a need to support and reassure Jewish students, and to ensure that there is adequate space for continuing dialogue and the expression of alternative points of view. Universities can also play a significant role in building students' capacity to engage in dialogue, listen to diverse opinions and respond to offensive speech with resilience. Discriminatory attitudes will not be eradicated without the presence of strong counter-speech and it is paramount that universities form part of the solution in providing the space and means to engage in such debates.

**CCLA urges the Committee to reject any suggestions to curtail speech as a response to antisemitic dialogue.**

**CCLA urges the Committee to encourage the creation of spaces for constructive dialogue on university campuses so as to foster and build within university communities, and the Canadian populous in general, the capacity to meaningfully engage with difficult issues.**

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<sup>9</sup> Wade Hemsworth, "Accord brings peace to McMaster campus" *The Hamilton Spectator* March 7, 2009, online: <http://www.thespec.com/article/525805>. For the text of the McMaster Peace Initiative document see <http://dailynews.mcmaster.ca/images/The%20McMaster%20Peace%20Initiative.pdf>.