



**NATIONAL
COUNCIL
OF CANADIAN
MUSLIMS**

Your Voice. Your Future.

Submission to the Quebec National Assembly on Bill 59 – An Act to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals.

September 23, 2015

National Council of Canadian Muslims (NCCM)
www.nccm.ca

Overview

The National Council of Canadian Muslims (NCCM) is pleased to contribute a submission in respect of Bill 59, *An Act to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals*.

The National Council of Canadian Muslims is an independent, non-partisan and non-profit organization dedicated to protecting the human rights and civil liberties of Canadian Muslims (and by extension of all Canadians), promoting their public interests, building mutual understanding and challenging Islamophobia, xenophobia and all forms of discrimination.

The NCCM regularly provides media commentary on issues affecting Canadian Muslims. It offers frequent seminars and workshops on Islamic practices and issues of religious accommodation, and produces a number of publications which include guides outlining Islamic religious practices for journalists, employers, educators, and health care providers.

The NCCM distributes a concise “Know Your Rights” pocket guide in both English and French. These publications are regularly requested by government departments, local and national media outlets, police services, hospitals, schools, private firms, and various non-profit groups. The NCCM has worked with the Islamic Social Services Association (ISSA) to produce and disseminate a 38-page handbook for Canadian Muslim communities about radicalization towards violent extremism. The handbook was distributed throughout Muslim communities across Canada and includes general information about radicalization towards criminal violence and promotes as an antidote the promotion of active citizenship, social engagement, legal awareness, and self-empowerment among disaffected youth.

The Muslim community in Quebec and the rest of Canada have been disproportionately impacted by hate speech and other hateful and discriminatory acts, especially since September 11, 2001. While hateful acts against other groups in Canadian society are actually decreasing, a 2013 report from Statistics Canada shows that hate crimes against Canadian Muslims actually rose from the previous year by 44%¹. Incidents of hate speech against Muslims also appear to be on the rise based on the reporting the NCCM has seen. This increase formed part of the impetus for the 2015 launch of the

¹ <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14191-eng.htm>

NCCM's National Hate Crimes Awareness campaign² aimed at encouraging people to report not only hate crimes but also hate incidents. The latter refers to incidents that do not rise to the level of criminality as defined under current hate laws but are hateful in nature.

At the same time, the political and religious opinions of Canadian Muslims have been scrutinized more closely than others, sometimes with grave consequences. Muslims have been frequently maligned, misrepresented and misunderstood in Canadian society. Their religion is frequently associated with terrorism and nefarious geo-political developments. The reality Canadian Muslims face is the constant framing of their communities as fifth columns whose loyalty is suspect based on stereotypes and assumptions about their religious practices or political convictions. For this reason, it is not unreasonable that many of them have genuine concerns that that a vague law regulating speech could be used against them unfairly, with severe, long-term impact.

² <http://www.nccm.ca/nccm-launches-national-hate-crimes-awareness-project/>

Summary of position

The NCCM is an organization that has advocated both for enforcing hate speech laws in instances where Canadian Muslims have been targeted by hate, and for restraint in law enforcement where Muslims have been profiled or presumptively suspected on the basis of discriminatory considerations. Having seen both sides of this issue, the NCCM sought to strike a balanced view with respect to the proposed law. Having done so, we conclude that, while the stated aims and objectives of the proposed law to protect vulnerable people are in principle commendable, Bill 59 as it is currently written constitutes a dangerous departure from established human rights norms and procedures and should therefore not be adopted into law.

The NCCM supports the regulation of hate speech in Canada through the *Criminal Code* and human rights statutes. We are concerned that Bill 59 goes further than existing statutory models and, in so doing, exceeds the reasonable limits that appropriately balance constitutional rights.

The NCCM objects to Bill 59 on the basis of four concerns:

1. The anonymity of the complaints process may encourage false, frivolous or discriminatory complaints.
2. Provisions dealing with forced marriages, students' emotional and physical security, and expanded child protection powers to interrupt "excessive control" over a minor are all troublingly vague and risk being enforced in a discriminatory manner.
3. References to "honour" in the bill are vague and are likely to produce discriminatory enforcement, given the prevalent and false stereotype that this practice is solely found in those from this religious group and that Muslim men have tendencies to act violently on the basis of "honour".
4. The creation of a registry to publicly identify parties found to have engaged in hate speech will have a severe chilling effect on constitutionally protected freedoms.

Another unintended consequence that may result from the passing of this law would be that minorities could be punished for expressing unpopular opinion or dissent. In this way, the proposed bill has the potential to stifle freedom of

expression, whereas the NCCM promotes the ability to state opinions and foster thoughts, as it is an important value in a democratic society.

It is necessary to balance freedom of expression with freedom from discrimination

The NCCM has always advocated for the freest possible democratic society. We defend broad diversity and work with many individuals and groups, even where we do not agree on all points. In the social and political realms, we believe it is important to let individuals and groups resolve contentious and divisive issues.

The line between protecting identifiable groups and individuals from threats and incitement on the one hand and unfairly stifling constitutionally protected expressions of thought and opinion on the other is not always a bright one, but it exists. The NCCM defends a wide scope for freedom of expression, even if it means tolerating unpopular or hurtful speech.

Hate speech laws are morally and constitutionally justifiable where a threat to safety or dignity is manifestly evident. The NCCM supports the Supreme Court of Canada's judgment in *Saskatchewan Human Rights Commission v. Whatcott* (SCC), in which hate speech prohibition was upheld. However, Bill 59 goes too far by creating the risk of punishing action and speech that would not be considered unlawful under any comparable law.

Members of Canadian Muslim communities have experienced the damaging abuses that can flow from state interference in individuals' constitutionally protected activity, such as speech, religious practice and associations. Stifling freedom of expression has the potential to undermine confidence in public administration and in the democratic fabric of the state.

Muslims are viewed with suspicion

The National Council for Canadian Muslims is well aware of the fact that most hate speech in Canada occurs with impunity. More aggressive laws are not necessarily the cure for the problem of impunity and can produce perverse outcomes. If the target of hate speech laws are members of minority religious groups who already experience stereotyping and marginalization, enforcement under the new law could actually lead to the strengthening of Islamophobic sentiments and other stereotypes that produce hate.

In the current context of the over-surveillance and criminalization of members of the Muslim community based on often erroneous suspicions of links to terrorism, the powers given to the Quebec Human Rights Commission under this proposed law to investigate, even if within the limits of public discourse, can create a chill in civic engagement amongst citizens generally, but especially in the Muslim community. This would only lead to fear of social engagement and participation in public debate. Ironically, it also has the potential to push some moderate views to extremes and to drive extremist views underground. While the Bill was introduced as one of the anti-radicalization efforts led by the present Quebec provincial government, it could actually undermine grassroots efforts to combat radicalization through education and legal empowerment. As research by UK-based think tank Demos states in its study into radicalization:

...the best way to fight radical ideas is with a liberal attitude to dissent, radicalism and disagreement. This can de-mystify and de-glamourise terrorism without alienating large numbers of people. However – a liberal approach depends on independent voices setting out forceful counter-arguments against extremist ideas.³

Secondly, the power to adjudicate conferred to the Quebec Human Rights Tribunal must be paired with great care to outline procedural guarantees for the accused. The anonymity of the civil procedure for reporting hate speech is especially concerning in terms of legal safeguards.

Existing hate speech laws are sufficient

The purpose of Bill 59 is described as being to prevent and combat hate speech and speech inciting violence. While the NCCM fully agrees with the goal of combating hate speech, we are concerned that the law will cross the line between protecting identifiable groups and individuals from exposure to hate speech and unfairly stifling constitutionally protected rights.

The NCCM believes that the existing prohibitions against hate speech contained in the *Criminal Code* (sections 318 to 320) are sufficient to capture speech that incites violence. Beyond the criminal law, the existing framework contained in provincial statutory human rights, some of which do regulate hate speech, are sufficient to protect the dignity interests at stake. While legal innovations are needed to advance the protection of groups and individuals, we believe that problems concerning opinions and speech primarily result from social factors and therefore require social solutions above all.

³ http://www.demos.co.uk/files/Edge_of_Violence_-_web.pdf

The effect of a registry and penal sanctions for expressions of unpopular speech may also derail civic engagement in the Muslim community. More specifically, Bill 59 may make it harder to identify radicalized individuals, as extremist opinions and expressions will be kept “underground” and away from the public eye.

Several sections of Bill 59, such as sections 16, 23, and 33 mention the concept of violence based on “honour”, which is used without precision or context. Without a definition, it remains ambiguous what purpose is served by these provisions. The risk of using this term ambiguously reinforces stereotypes by associating Muslims with certain types of crimes and motivations for criminal activity.

Anti-radicalization requires education and integration

The NCCM believes in a broad, comprehensive and nationally coordinated strategy to combat the problem of radicalization towards violence among some Muslims. We view this work as primarily requiring education and social engagement, and not merely intelligence gathering, citizen reporting and law enforcement.

Efforts to raise awareness among Canadians about the value of diversity is work that should not be done through law enforcement. While some instances of extremist speech, whether by Muslims or against Muslims, should attract legal sanction, law enforcement is not an effective tool to cure problems of social discord.

One of the dangerous by-products of shunning members of society from the public space is that they are forced underground where they are more easily susceptible to being radicalized in the absence of the vigorous and public debate of ideas. At a time when Muslim civic leaders are trying to encourage Canadian Muslims, especially the young who are finding their identity and those vulnerable to the cut-and-paste interpretations of faith employed by extremist propagandists, to engage openly in Canadian democracy, the chill created by this law could make anti-radicalization efforts more difficult to implement.

Bill 59 has the potential to trigger these unintended consequences and it is suspected that it may make it harder to fight radicalization, which should be countered through education campaigns and further investigation into the societal causes, including youth alienation, systemic discrimination and socioeconomic disadvantage. Fighting issues such as radicalization through law

enforcement may undermine the buy-in to democratic projects and civic engagement.

Conclusions

The NCCM respectfully submits that Bill 59 is not a necessary piece of legislation to protect Quebecers against hate speech. The *Criminal Code* and existing human rights statutes in Quebec are sufficient protections.

Bill 59, in its current form, risks moving beyond countering hate speech to the realm of infringing upon the free exercise of expression and speech, and runs counter to the goal of effectively challenging extremism.

Thank you for allowing us to express our concerns regarding Bill 59 and we are available to answer your questions.