

Applicable Canadian laws to terrorism & hate speech with respect to Hamas flags
as well as Hostage poster removal

Hello,

I am increasingly concerned at the escalating violence shown towards Jews around the world. Please find below applicable Canadian laws so that Hamas flags become prohibited in Canada. Hamas has been classified as a terrorist organization in Canada, these Hamas flags and consequently hate symbols which are representative of terrorism and the goal of killing all Jews worldwide should be banned in Canada. I am very disappointed that the banning of Hamas flags has yet to happen, below are some of the applicable laws that should assist in the prohibition of the Hamas hate symbols.

Further, in regards to people taking down the Hostage posters, I've also included an article link and excerpt regarding Hampstead, Montreal Quebec imposing a \$1000 fine for any perpetrators of the Hostages posters removal. A fine should be implemented across Canada as well.

Please contact me should you like to discuss anything regarding this document or would like help with implementation. I'm hoping for swift action taken against Hamas symbols as well as Hostages posters removal.

Thank you,

Randi

Randi Libman
647-220-5594 (cell)
RandiLibman@outlook.com

Hamas charter:

Source: https://avalon.law.yale.edu/20th_century/hamas.asp

Excerpt below of the Hamas Covenant 1988, The Covenant of the Islamic Resistance Movement, 18 August 1988:

The Universality of the Islamic Resistance Movement:

Article Seven:

As a result of the fact that those Moslems who adhere to the ways of the Islamic Resistance Movement spread all over the world, rally support for it and its stands, strive towards enhancing its struggle, the Movement is a universal one. It is well-equipped for that because of the clarity of its ideology, the nobility of its aim and the loftiness of its objectives.

.....removed additional text for brevity.....

Moreover, if the links have been distant from each other and if obstacles, placed by those who are the lackeys of Zionism in the way of the fighters obstructed the continuation of the struggle, the Islamic Resistance Movement aspires to the realisation of Allah's promise, no matter how long that should take. The Prophet, Allah bless him and grant him salvation, has said:

"The Day of Judgement will not come about until Moslems fight the Jews (killing the Jews), when the Jew will hide behind stones and trees. The stones and trees will say O Moslems, O Abdulla, there is a Jew behind me, come and kill him. Only the Gharkad tree, (evidently a certain kind of tree) would not do that because it is one of the trees of the Jews." (related by al-Bukhari and Moslem).

The Slogan of the Islamic Resistance Movement:

Article Eight:

Allah is its target, the Prophet is its model, the Koran its constitution: Jihad is its path and death for the sake of Allah is the loftiest of its wishes.

Peaceful Solutions, Initiatives and International Conferences:

Article Thirteen:

Initiatives, and so-called peaceful solutions and international conferences, are in contradiction to the principles of the Islamic Resistance Movement.

.....removed additional text for brevity.....

There is no solution for the Palestinian question except through Jihad. Initiatives, proposals and international conferences are all a waste of time and vain endeavors.

Hamas is classified as a terrorist organization in Canada.

Laws related to terrorism in Canada:

Definitions of Terrorism and the Canadian Context

Source: https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr09_6/p3.html

Excerpt:

In Canada, section 83.01 of the Criminal Code[1] defines terrorism as an act committed "in whole or in part for a political, religious or ideological purpose, objective or cause" with the intention of intimidating the public "...with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act." Activities recognized as criminal within this context include death and bodily harm with the use of violence; endangering a person's life; risks posed to the health and safety of the public; significant property damage; and interference or disruption of essential services, facilities or systems.

About the Anti-terrorism Act (ATA):

Source: <https://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html>

Excerpt:

Adopted by Parliament following the attacks of September 11, 2001, the Anti-terrorism Act (ATA) amended the *Criminal Code*, the *Official Secrets Act*, the *Canada Evidence Act*, the *Proceeds of Crime (Money Laundering) Act* and a number of other Acts. It also enacted the *Charities Registration (Security Information) Act*. It was not a stand-alone Act, but rather an amending statute. The ATA formed a key component of the Government's Anti-terrorism Plan, which had four objectives:

- to prevent terrorists from getting into Canada and protect Canadians from terrorist acts;
- to activate tools to identify, prosecute, convict and punish terrorists;
- to keep the Canada-U.S. border secure and a contributor to economic security; and
- to work with the international community to bring terrorists to justice and address the root causes of violence.

.....removed additional text for brevity.....

Background to Bill C-36:

The response to terrorism from the international community following September 11, 2001 was swift. On September 28, 2001, the United Nations Security Council adopted Resolution 1373, which amongst other things required all UN member states to prevent and suppress the financing of terrorist acts; criminalize the wilful provision or collection of funds to be used to finance terrorist acts; suppress the

recruitment of terrorist groups; and deny safe haven to those who finance, plan, support or commit terrorist acts.

.....removed additional text for brevity.....

The preamble to the Bill observed that Canadians and people everywhere are entitled to live their lives in peace, but that terrorism constitutes a substantial threat to international peace and security as well as to Canada and Canadian institutions.

Legal Framework:

Penal Law

The ATA created measures to take enforcement action against those responsible for terrorist activities, provided new investigative tools and ensured that Canadian values of respect and fairness were preserved.

Part 1 of the ATA amended the Criminal Code to create a new chapter dealing specifically with terrorism. A core provision in this chapter is the definition of "terrorist activity", which has two components and applies to activities inside or outside Canada. Satisfying either component constitutes a "terrorist activity". The first component of the definition is defined in part as an act or omission committed in or outside Canada that would be an offence under the major international treaties that apply to terrorist activities, like hijacking and terrorist bombing. The second part defines "terrorist activity" as an act or omission undertaken, inside or outside Canada, for a political, religious or ideological purpose that is intended to intimidate the public with respect to its security, including its economic security, or to compel a person, government or organization (whether inside or outside Canada) from doing or refraining to do any act, and that intentionally causes one of a number of specified forms of serious harm.

.....removed additional text for brevity.....

Terrorism Offences

Comprehensive terrorism offences created in the Criminal Code include:

- knowingly participating in, or contributing to, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity;
- knowingly facilitating a terrorist activity;
- commission of a serious (i.e. indictable) offence for the benefit of, at the direction of or in association with a terrorist group;

- knowingly instructing anyone to carry out a terrorist activity for a terrorist group; knowingly harbouring or concealing any person who has carried out or is likely to carry out a terrorist activity for the purpose of enabling the person to facilitate or carry out any terrorist activity; and
- collecting, providing or making available, using or possessing property for certain activities/purposes (terrorist financing).

Hamas (Harakat Al-Muqawama Al-Islamiya) (Islamic Resistance Movement) listed as a terrorist entity

Source: <https://www.publicsafety.gc.ca/cnt/ntnl-scr/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-en.aspx>

Excerpt:

Description

Hamas, the Arabic acronym for the group Harakat Al-Muqawama Al-Islamiya, is a radical Islamist-nationalist **terrorist organization** that emerged from the Palestinian branch of the Muslim Brotherhood in 1987. **It uses political and violent means to pursue its goal** of establishing an Islamic Palestinian state in Israel. **Since 1990, Hamas has been responsible for terrorist attacks against both civilian and military targets. Hamas has been one of the primary groups involved in suicide bombings aimed at Israelis since the start of the Al-Aqsa intifada in September 2000.** In 2006, Hamas participated in and won Palestinian parliamentary elections, leading to negotiations between the group and the Palestinian Authority over the establishment of a unity government. In 2007, however, Hamas overthrew the Palestinian Authority in the Gaza Strip and seized power of the coastal territory. Although the group's political leadership resides in Damascus, Hamas uses the Gaza Strip as a base for terrorist operations aimed against Israel.

Criminal Code (R.S.C., 1985, c. C-46)

Source: <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-12.html#h-116622>

Excerpt:

Participating, Facilitating, Instructing and Harboring

Participation in activity of terrorist group

- **83.18 (1) Every person who knowingly participates in or contributes to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.**

.....removed additional text for brevity.....

Prosecution

(2) An offence may be committed under subsection (1) whether or not

- (a) a terrorist group actually facilitates or carries out a terrorist activity;
- (b) the participation or contribution of the accused actually enhances the ability of a terrorist group to facilitate or carry out a terrorist activity; or
- (c) the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist group.

.....removed additional text for brevity.....

Factors

(4) In determining whether an accused participates in or contributes to any activity of a terrorist group, the court may consider, among other factors, whether the accused

- (a) uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist group;
- (b) frequently associates with any of the persons who constitute the terrorist group;
- (c) receives any benefit from the terrorist group; or
- (d) repeatedly engages in activities at the instruction of any of the persons who constitute the terrorist group.

.....removed additional text for brevity.....

Counselling commission of terrorism offence

- 83.221 (1) Every person who counsels another person to commit a terrorism offence without identifying a specific terrorism offence is guilty of an indictable offence and is liable to imprisonment for a term of not more than five years.

Application

(2) An offence may be committed under subsection (1) whether or not a terrorism offence is committed by the person who is counselled.

- 2015, c. 20, s. 16

- 2019, c. 13, s. 143

Warrant of seizure

- 83.222 (1) A judge who is satisfied by information on oath that there are reasonable grounds to believe that any publication, copies of which are kept for sale or distribution in premises within the court's jurisdiction, is **terrorist propaganda** may issue a warrant authorizing seizure of the copies.

.....removed additional text for brevity.....

Definitions

(8) The following definitions apply in this section.

court has the same meaning as in subsection 320(8). (*tribunal*)

judge has the same meaning as in subsection 320(8). (*juge*)

terrorist propaganda means any writing, **sign, visible representation** or audio recording that counsels the commission of a terrorism offence. (*propagande terroriste*)

3.2.3 Public Interest

Source: <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p5/ch01.html>

Excerpt:

Prosecutors must consider the public interest when deciding which charges should be laid. The choice of charges is sometimes binary: it could either be prosecuted with a national security lens or be prosecuted without such a lens, by applying other Criminal Code offences. When confronted with this choice, prosecutors must determine which offences should be prosecuted in the public interest. Besides considering which offences are most clearly supported by admissible evidence, prosecutors must also consider the potential impact of particular charges on national security, international relations and national defence. This includes considering to what extent the disclosure required for the prosecution may have a negative impact on those interests.

Prosecutors must also consider which charges appropriately reflect the nature of the conduct and its gravity, denunciation being a particularly relevant consideration for terrorism offences. In the Report on the Air India tragedy, **the Honourable John Major summarized the characteristics of terrorism that distinguish it from other crimes. He noted that "[t]errorism is an existential threat to Canadian society in a way that murder, assault, robbery and other crimes are not. Terrorists reject and challenge the very foundations of Canadian society."** ^{Footnote10} The Supreme Court has affirmed that denunciation and deterrence, both specific and general, will generally be paramount at the sentencing hearing given the seriousness of terrorism offences. Moreover, the attempt to justify or legitimize violent acts by putting a

political, ideological or religious gloss over them must be denounced. In other words, prosecutors may underline that the beliefs or purposes in themselves are not criminal even if they are abhorrent, but that the underlying acts are criminal, and are not justified by virtue of the association with a political, ideological or religious belief or purpose.

5.3 Sentencing under the Youth Criminal Justice Act

5.3.1 Terrorism Offences

A young person with no record who is found guilty of a terrorism offence may be eligible for a custodial sentence pursuant to s. 39(1)(a) of the YCJA. This section provides that custodial sentences may be imposed when the young person has committed a violent offence. Violent offence is defined in s. 2 of the YCJA as:

- (a) An offence committed by a young person that includes as an element the causing of bodily harm;
- (b) An attempt or a threat to commit an offence referred to in paragraph (a); or
- (c) An offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

Given the broad range of conduct which may be captured by terrorism offences such as facilitation, prosecutors will have to consider whether the conduct at issue in a particular case fits the definition of violent offence, and be prepared to counter defence arguments that it does not.

Paragraph 39(1)(d) would also generally support a custodial sentence for terrorism offences. It provides that in "exceptional cases," a custodial sentence may be imposed for an indictable offence where the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in s. 38.

Prosecutions and other judicial measures

Source: <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/rsInc-gnst-trrrsm/index-en.aspx>

Excerpt:

Federal statutes establish a legal regime that prosecutes terrorists for their activities. Thus far, investigations have led to successful criminal prosecutions by the Public Prosecution Service of Canada (PPSC) for offences involving terrorist activities, such as in the cases of Mohammed Momin Khawaja, Said Namouh, and 11 members of the so-called "Toronto 18."

As a result of these prosecutions, PPSC has developed a body of specialized expertise in terrorism prosecutions. Cases are carefully assigned to qualified prosecutors and are monitored by a National

Terrorism Prosecutions Coordinator, as well as regional coordinators. Other special measures ensure that resource demands are adequately managed. Prosecution policies and specialized resource tools relating to terrorism offences are continually being refined within PPSC.

.....removed additional text for brevity.....

Counter-Terrorism Legislation

Excerpt:

Before September 11, 2001, the *Criminal Code* had been amended periodically as required to implement United Nations (UN) counter-terrorism instruments that had been adopted since 1970. Terrorism was addressed using the normal processes of investigation, prosecution and conviction under the *Criminal Code*.

After September 11, 2001, the Government determined that it was necessary to include specific terrorism offences in the *Criminal Code*, in large part to address the issue that once a terrorist event takes place, it is too late. As a result, Parliament enacted the *Anti-terrorism Act (ATA)*, which amended a number of statutes and enacted one new one. This legislation:

- created measures to take enforcement action against those responsible for terrorist activities;
- created a legislative framework for combating terrorist financing; and
- **ensured that Canadian values of respect and fairness were preserved and that hatred was addressed through stronger laws against hate crimes and hate propaganda.**

The measures contained in the ATA enhanced the Government of Canada's abilities to effectively deter, disable, identify, prosecute, convict and punish terrorists, thereby protecting Canadians from terrorist acts before they occur.

Hate Crimes

Source: <https://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html>

Excerpt:

Section 430(4.1) of the *Criminal Code* is the offence of mischief motivated by bias, prejudice or hate **based on religion**, race, colour or national or ethnic origin, committed in relation to property that is a place of religious worship or an object associated with religious worship located in or on the grounds of such a building or structure, including cemeteries. **Mischief directed against religious property has an impact beyond physical damage or destruction - it also serves to convey hate messaging.**

Section 320.1 of the *Criminal Code*, pursuant to an ATA amendment, allows the courts to order the deletion of publicly available on-line hate propaganda from computer systems when it is stored on a server that is within the jurisdiction of the court. The provision applies to hate propaganda located on Canadian computer systems, regardless of where the owner of the material is located, or whether he or she can be identified. Individuals who post the material have an opportunity to be heard before the judge decides to order the deletion of the material.

The *Canadian Human Rights Act* prohibits the spreading of hate messages that would expose a person or group to hatred or contempt because of that individual's identification with a prohibited ground of discrimination. The ATA amended the *Canadian Human Rights Act* to clarify that communication of hate messages using new technologies, such as the Internet, is a discriminatory practice.

Hate speech v.s. Freedom of Speech

Source: <https://bchumanrights.ca/hate-speech-qa/#:~:text=Yes%2C%20freedom%20of%20expression%20is,limits%20on%20freedom%20of%20expression.>

Excerpt:

Don't people in Canada have a right to freedom of speech?

Yes, freedom of expression is a constitutional right in Canada. But like all constitutional rights, freedom of expression is subject to reasonable limits.

Hate speech and discriminatory speech are prohibited because government has decided these laws are reasonable limits on freedom of expression.

The Supreme Court of Canada has found that laws that prohibit hate speech are reasonable and justified because hate speech can desensitize people to the effects of hate speech on minority groups, making it easier to deny those groups equal rights.

Does the *Criminal Code* include hate crimes other than those related to hate speech?

Yes. The two hate crimes related to hate speech—"wilful promotion of hatred" and "public incitement of hatred"—are not the only hate crimes in the *Criminal Code*. The *Criminal Code* defines two more hate crimes:

- Advocating or promoting genocide
- Damaging or defacing any of the places used mainly by an identifiable group of people when that vandalism is motivated by bias, prejudice or hate

In addition, when an offence is motivated by hate against an identifiable group, a judge may consider that motivation as an aggravating factor to a criminal sentence (see section [718.2](#) of the Criminal Code). Hate can motivate almost any type of crime committed against a person or property.

Criminal Code (R.S.C., 1985, c. C-46)

Source: <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-318.html>

Excerpt:

Advocating genocide

- 318 (1) Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Definition of *genocide*

(2) In this section, *genocide* means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

- (a) killing members of the group; or
- (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

Definition of *identifiable group*

(4) In this section, *identifiable group* means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

- R.S., 1985, c. C-46, s. 318
- 2004, c. 14, s. 1
- 2014, c. 31, s. 12
- 2017, c. 13, s. 3
- 2019, c. 25, s. 120

Do the laws against hate speech include all forms of expression?

Source: <https://bchumanrights.ca/hate-speech-qa/#:~:text=Yes%2C%20freedom%20of%20expression%20is,limits%20on%20freedom%20of%20expression.>

Human rights law

As long as the speech is public and, in the case of B.C.'s *Human Rights Code*, within provincial jurisdiction, hate speech laws apply.

Hate speech can include any statement, publication, notice, sign, symbol, emblem, photograph, or other representation that amounts to hate speech.

Criminal Code

Hate speech under the *Criminal Code* talks about “communicated statements.” Communicated statements include written or spoken words, gestures, signs and other images.

What if the speech is communicated privately?

Private communications cannot be hate speech under the *Human Rights Code* or the *Criminal Code*. So, if someone says something to you that you think is hate speech but nobody else is there or could reasonably have been expected to be there, that speech will not violate hate speech laws. Often it will be obvious if something is public or private, but sometimes this can be complicated.

Note, however, that private communication can still violate the *Human Rights Code* under other sections such as discrimination in services, tenancy or employment.

How is someone convicted of “wilful promotion of hatred?”

Key definitions

Wilful promotion of hatred is a criminal offence in Canada. Wilful promotion of hatred means to make “statements” in public that wilfully or intentionally promote hate against an “identifiable group.” Unlike public incitement of hatred, wilful promotion of hatred does not have to involve a breach of the peace.

“Identifiable” groups of people share a protected characteristic. The *Criminal Code* lists the characteristics that may apply: colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, and mental or physical disability.

Again, “statements” includes more than just spoken words or speeches. Statements can be written or recorded, and they include gestures, signs, photographs and drawings.

A guilty verdict for the offence of “wilful promotion of hatred” does not require proof that the speech actually caused further hateful comments or acts against the targeted group. The purpose of this law is to prevent any serious harm that may result from hate speech, including harm to the targeted group and society generally.

How is someone charged and convicted of “wilful promotion of hatred”?

The police investigate to find evidence that this crime has been committed. It is then up to the prosecutor (called Crown Counsel) to decide if the evidence is strong enough to charge someone with wilful promotion of hatred and go to trial. It is then up to the judge who hears the case to decide if the accused person is guilty or not guilty.

Few people in Canada have been found guilty of wilful promotion of hatred. Here are some examples of hate speech that led to guilty verdicts:

Caution: The following examples may be distressing to some readers.

- A high school teacher made anti-Semitic comments to his students. He told them that Jews made up the Holocaust to get sympathy and described Jews as evil.
- A man who described himself as a Christian pastor wrote pamphlets containing hateful comments about Muslims wanting to take over and turn Canada into a Muslim country. He distributed the pamphlets near a local high school attended by Muslim students.
- A man posted hate speech on various websites. His statements targeted Jews, homosexuals, Black, non-white and mixed-race people. He referred to lynching, Nazi propaganda, and traitors to the white race. He also used his own website to recruit skinheads, and to link to other white supremacist websites.

Fines in Hampstead, Montreal Quebec imposed towards people taking down Hostages posters article, link below. Ontario and the rest of Canada should do the same.

Source: <https://montreal.citynews.ca/2023/11/03/hampstead-fines-posters-israel/>

Excerpt:

