From Bill C-63 to Bill C-9: Charter Limits on Canada's Emerging Hate and Online-Speech Regulation

Current legislative focus: Bill C-9 (Combatting Hate Act), with Bill C-63 as constitutional and policy background

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Purpose. This paper argues that Bill C-9 is more defensible than Bill C-63, but still constitutionally vulnerable if its hate, symbol, and access provisions are interpreted or enforced beyond the narrow detestation-or-vilification threshold recognized by the Supreme Court of Canada.

Abstract

Canada's current hate-regulation debate has two distinct legislative anchors. The first is Bill C-63, the 2024 Online Harms Act proposal, which attempted to build a broad federal architecture for regulating harmful online content and platform accountability. The second is Bill C-9, the current Combatting Hate Act proposal, introduced in September 2025, which is narrower and more criminal-law focused, amending the Criminal Code to redefine "hatred," create a new hate-crime offence, criminalize certain public displays of terrorism and Nazi symbols when used to wilfully promote hatred, and create new intimidation and obstruction offences aimed at protecting access to religious and cultural spaces.[1][2][3]

This paper argues that Bill C-9 should not be assessed in isolation. It should be read against the constitutional lessons exposed by the rise and stall of Bill C-63. C-63 made visible the central tension in Canadian online-speech regulation: the state has a pressing and substantial interest in addressing genuine hate, intimidation, and violent incitement, but it must do so without collapsing the distinction between unlawful hatred and protected political, moral, or religious expression. Bill C-9 is materially narrower than C-63, but it still raises important Charter questions because it codifies a hate definition, introduces a broad new hate-crime offence, and creates protest-adjacent access offences that could be tested against peaceful assembly, expressive activity, and religious liberty.[2][3]

The constitutional analysis in this paper proceeds on three levels. First, it examines the doctrinal framework under sections 2(a), 2(b), and 1 of the Canadian Charter of Rights and Freedoms, with particular attention to R v Keegstra and Saskatchewan (Human Rights Commission) v Whatcott. Second, it considers structural concerns that recur in modern speech regulation, including overbreadth, delegated censorship through platform or institutional enforcement, chilling effects, and the possibility of politicized or selective deployment. Third, it tests the law against real-world edge cases: the dispute over whether anti-Zionism should be treated as antisemitism; criticism of military action, assassination, and wartime leadership during the current Middle East war; and the status of traditional Catholic doctrine on abortion, same-sex marriage, and prayer in public places.

The paper concludes that a constitutionally sustainable compromise is possible. Canada can prohibit

intentional, threatening, or extreme forms of hate promotion and targeted intimidation while expressly preserving religious doctrine, political criticism, criticism of states and ideologies, academic analysis, journalism, and peaceful protest. The deeper lesson is that hate-law drafting must remain disciplined enough to punish genuine vilification and intimidation without allowing current events, political pressure, or moral disagreement to turn lawful dissent into a criminal or quasi-criminal category.

At a glance: Bill C-63 versus Bill C-9

Dimension	Bill C-63 (2024)	Bill C-9 (2025)	Constitutional significance
Primary model	A broad online-harms regulatory framework with platform duties and new institutions	Targeted Criminal Code amendments focused on hate propaganda, hate crime, and protected-place access	C-9 narrows the scope, which may improve section 1 minimal-impairment arguments.
Speech trigger	Broader 'harmful content' architecture	Codified hatred definition: detestation or vilification; not mere hurt or offence	The narrower threshold tracks Whatcott and reduces overbreadth risk if faithfully applied.
Institutions	Digital Safety Commission, Ombudsperson, Office	Traditional criminal-law enforcement with new offences	Less systemic regulation means fewer collateral censorship risks than C-63.
Protest/assembly implications	Indirect through platform moderation and harmful content regulation	Directly through intimidation and obstruction offences around religious/cultural places	C-9 raises sharper 2(b)/2(c) issues in protest settings.
Religious freedom	Risk through broad harmful-content categories and platform over-removal	Includes legitimate-purpose defence for religion in symbol offence	Text helps, but application still matters for 2(a).

Empirical context

Canada's hate-crime environment provides the policy backdrop for both bills. Police-reported hate crime more than doubled between 2018 and 2024, and cyber-related hate among young people and in police reporting rose during the same period.[12][13][14]

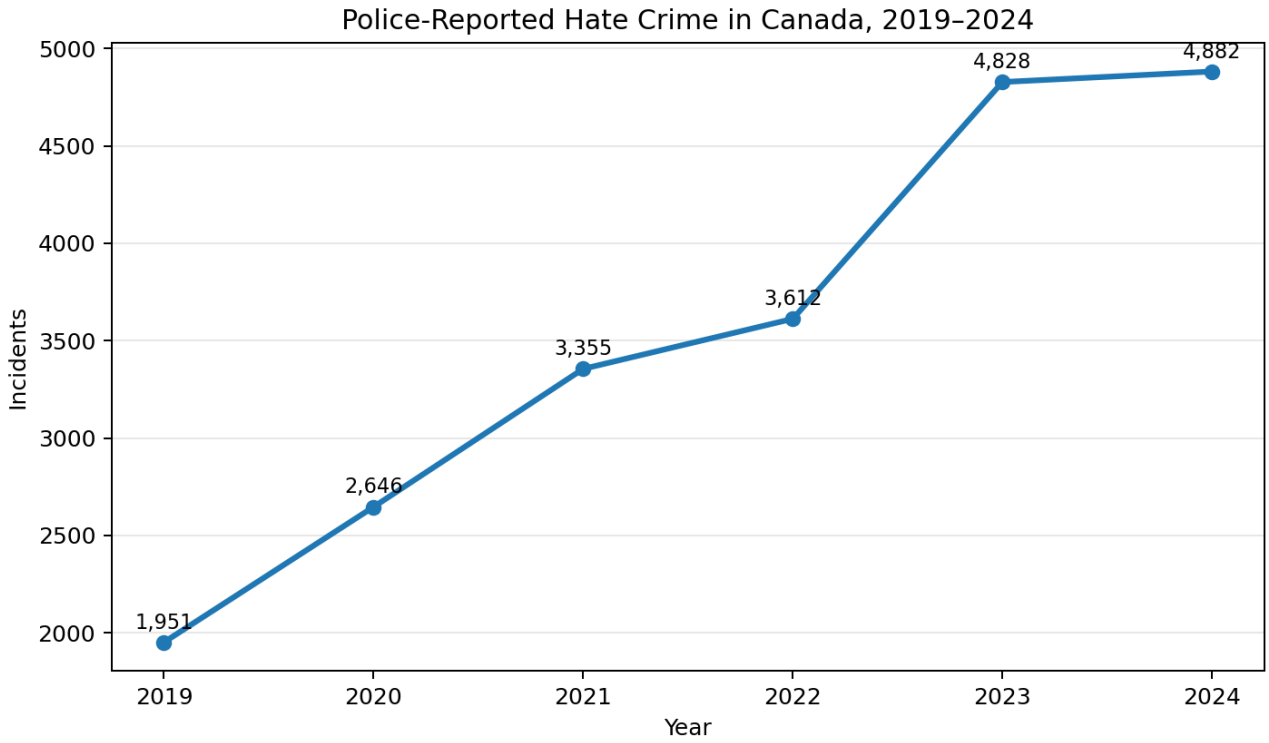

Figure 1. Police-reported hate crime in Canada, 2019–2024. Source: Statistics Canada and RCMP text versions.[13][14]

1. Introduction

Digital speech regulation is no longer a hypothetical question in Canada. It is a live constitutional project. Over the past several years, Parliament has considered increasingly ambitious ways to respond to harmful online content, extremist propaganda, group-targeted intimidation, and the role of large platforms in amplifying those harms. The debate has now crystallized around two bills that illuminate different aspects of the problem: Bill C-63, the broad 2024 Online Harms Act proposal, and Bill C-9, the current 2025 Combatting Hate Act, which narrows the field to Criminal Code hate propaganda, hate crime, and access to religious and cultural places.[1][2]

The legal and policy challenge is not whether Canada may address hate. It plainly may. Canadian constitutional law has long recognized that the state may restrict the most extreme forms of hate propaganda. The challenge is where, and how, the law draws the line. That line matters because freedom of expression under section 2(b) protects not only agreeable speech but also hard, offensive, polemical, and unsettling speech. Freedom of religion under section 2(a) protects not only worship but the public expression of doctrine, morality, and witness. Once the state enters the terrain of hateful or harmful expression, it encounters speech that is painful, divisive, and emotionally charged — but not necessarily unlawful.[4][5][6]

Bill C-63 made that difficulty visible at a systemic level. It proposed platform duties, regulatory institutions, and a wider online-harms architecture. Bill C-9, by contrast, looks more modest and more targeted. It would repeal the Attorney General consent requirement for hate propaganda prosecutions; create a new offence for wilfully promoting hatred by displaying certain terrorism-related or Nazi symbols in public; create a stand-alone hate-crime offence for any offence motivated by hatred; codify a definition of hatred centered on detestation or vilification; and create intimidation and obstruction offences protecting access to religious

worship and identifiable-group spaces.[2][3] In political terms, C-9 appears easier to defend because it is narrower and because Justice Canada expressly frames it as codifying Supreme Court jurisprudence and protecting peaceful protest through specific intent and information-sharing exceptions.[3]

Yet narrower does not mean constitutionally uncomplicated. The same categories that drove concern under C-63 remain present under C-9: What counts as hatred? When does emotionally severe political criticism become group-targeted vilification? How should the law treat religious doctrine that disapproves of protected characteristics or conduct? When does protest near protected places become intimidation? And who decides? Those questions become sharper, not softer, in periods of war, community fear, and political pressure.

This paper takes Bill C-9 as the legislative spotlight. It uses Bill C-63 as background and contrast, not as the main object of criticism. Its thesis is that Bill C-9 is likely more defensible than C-63, but it still sits in a zone of constitutional risk unless interpreted and applied with narrow discipline. The paper proceeds in five steps. First, it explains why C-63 matters as legislative background and how C-9 differs. Second, it sets out the core Charter framework. Third, it identifies the structural risks common to modern speech regulation. Fourth, it tests the law against three contemporary case-study clusters. Fifth, it proposes a compromise model that preserves Bill C-9's legitimate anti-hate purpose while reducing the risk of unconstitutional spillover into protected speech.

2. Legislative evolution: what C-63 exposed and what C-9 now attempts

Bill C-63 was a sweeping attempt to create an Online Harms Act and associated enforcement architecture. According to LEGISinfo and the Justice Canada Charter statement, it would have imposed a duty on regulated services to act responsibly, adopt measures adequate to mitigate the risk that users would be exposed to harmful content, and submit to a new institutional framework including a Digital Safety Commission, Digital Safety Ombudsperson, and Digital Safety Office.[1][7] It also contained Criminal Code and Canadian Human Rights Act amendments that made it one of the most expansive speech-regulation proposals Canada had seen in decades.

The significance of C-63 lies not only in its content but in the public and constitutional reaction it generated. Critics argued that broad harmful-content categories, coupled with platform duties and regulator oversight, would induce over-removal of lawful speech. Supporters countered that a modern digital environment requires modern governance tools. The legal point is not who won that political debate. It is that C-63 surfaced the central constitutional fault line: online-harms law becomes dangerous when the state moves from punishing clearly unlawful conduct into building a broad compliance system around ambiguous categories of expression.

Bill C-9 is the narrower response. Its official summary is concrete. It amends the Criminal Code to repeal the Attorney General consent requirement for hate propaganda offences, create a symbol-display offence, create a new hate-crime offence that applies when any federal offence is motivated by hatred, and create new intimidation and obstruction offences aimed at access to buildings used for worship or by identifiable groups for educational, social, cultural, sports, administrative, or seniors' residence purposes.[2] The bill also codifies a definition of hatred as an emotion involving detestation or vilification that is stronger than disdain or dislike, and adds clarification that speech does not incite or promote hatred solely because it discredits, humiliates, hurts, or offends.[2][3]

That last feature is critically important. Justice Canada's Charter statement expressly says the bill aims to codify the Supreme Court's settled jurisprudence in Keegstra and Whatcott, emphasizing that hatred means extreme detestation or vilification and not mere offense, humiliation, or hurt.[3] On its face, that is a constitutional improvement over looser policy language about harmful content. Similarly, the new symbol-

display offence includes defences for legitimate purposes such as journalism, religion, education, or art, provided the purpose is not contrary to the public interest.[2][3]

Still, C-9 raises its own constitutional issues. Repealing Attorney General consent lowers a procedural gate in hate prosecutions. The stand-alone hate-crime offence dramatically extends hate motivation across the Code and other Acts of Parliament. The access offences are drafted against a real background of hostility and intimidation around synagogues, mosques, schools, and community centres — but they also regulate conduct at or near protest sites and therefore sit close to section 2(b) and 2(c) territory.[3] The core question is whether the narrowing moves in C-9 are enough, in text and in application, to keep the law inside Charter limits.

In that sense, C-63 and C-9 form a constitutional sequence. C-63 showed the risks of system-wide online-harms regulation anchored in broad categories. C-9 responds by narrowing the legal focus to more conventional criminal-law tools. The success of that narrowing depends on whether courts, prosecutors, police, and governments resist the temptation to let the emotional intensity of current events expand the law beyond the detestation-or-vilification threshold that the Supreme Court and Justice Canada have identified as constitutionally necessary.

3. The Charter framework: sections 2(a), 2(b), 2(c), 7 and 1

Any serious analysis of Bill C-9 must begin with the Charter.

Section 2(b) protects freedom of thought, belief, opinion, and expression, including the press and other media of communication. The Supreme Court has repeatedly stated that expression is protected because of its roles in truth-seeking, democratic participation, and individual self-development. That protection is broad by design. It does not disappear simply because expression is rude, extreme, one-sided, or offensive. Justice Canada's Charterpedia underscores that section 2(b) covers virtually all activity intended to convey meaning, subject to narrow exceptions such as violence itself.[5]

Section 2(a) protects freedom of conscience and religion. That protection extends beyond private belief into public manifestation — worship, teaching, moral witness, and the communication of doctrine. In practical terms, section 2(a) becomes relevant whenever the state regulates speech touching religious morality, symbols, proselytizing, or criticism of faith. A hate-law regime that claims to preserve religion but in practice makes orthodox doctrinal teaching too risky to articulate has a section 2(a) problem even if no church is formally prohibited from worship.[4]

Section 2(c), freedom of peaceful assembly, is also implicated by C-9's intimidation and obstruction offences. Justice Canada's Charter statement expressly acknowledges that the proposed offences may engage sections 2(b) and 2(c) because they could potentially prohibit communications and assemblies that would otherwise be protected. It defends the bill on the basis that the intimidation offence requires a specific intent to provoke fear in order to impede access, and the obstruction offence includes an exception for persons present only to obtain or communicate information.[3] Those are helpful safeguards. They are not, however, self-executing. Their constitutional adequacy depends on interpretation and enforcement.

Section 7 is engaged because the new offences carry imprisonment and therefore implicate liberty. Justice Canada's Charter statement argues that the hate-crime and access offences are not inconsistent with principles of fundamental justice because they are tailored to their objectives and use clear definitions, mens rea requirements, and limitations.[3] Again, that is plausible, but its success depends on whether the operational line between "fear-inducing intimidation" and forceful protest is maintained.

The final filter is section 1 and the Oakes test. If a law limits sections 2(a), 2(b), or 2(c), the state must show a pressing and substantial objective, rational connection, minimal impairment, and overall proportionality. Preventing hate propaganda and intimidation at houses of worship is obviously a pressing objective. The constitutional battle therefore lies mostly in minimal impairment and proportionality. A law that punishes only intentional, threatening, extreme vilification or access-blocking intimidation is easier to justify than a law that drifts into offense-based or viewpoint-sensitive suppression.

Keegstra and Whatcott remain central here. Keegstra upheld the willful-promotion-of-hatred offence, but in a context where the provision was aimed at extreme expression against identifiable groups. Whatcott, in turn, narrowed the concept of hatred to language that exposes a group to detestation and vilification and distinguished that category from mere repugnance, offense, or harsh disagreement.[6][8] Bill C-9's constitutional claim to legitimacy rests heavily on the proposition that it follows those cases. If application moves beyond that threshold, its section 1 defence becomes weaker.

4. Structural risks in modern speech regulation

Four structural risks recur whenever the state regulates hateful or harmful expression.

The first is overbreadth. Laws aimed at hate are often politically popular at the hard core — swastikas used to glorify Nazism, explicit threats, or organized calls for violence. They become constitutionally dangerous at the margins, where doctrine, political ideology, identity, and current events intersect. A definition that works comfortably against an explicit threat may work badly against a sermon, a protest chant, or a legal critique of a military strike.

The second is delegated censorship. C-9 is more prosecutor- and police-facing than C-63, but the broader Canadian environment still includes platform moderation, institutional compliance, and informal deplatforming pressures. Even where the criminal law is narrow, the policy ecosystem can overreact. Universities, employers, municipalities, venues, and online platforms may remove speech or cancel events long before a court has said whether the expression is unlawful. The legal threshold may remain high on paper while actual speech conditions become far more restrictive in practice.

The third is the chilling effect. Unclear categories do not have to produce convictions to suppress speech. They suppress by making the cost of error too high. If a priest cannot tell whether a sermon on marriage will be characterized as hateful, he may avoid the topic. If a Jewish anti-Zionist scholar cannot tell whether criticism of Zionism will be recast as antisemitism, she may blunt the argument. If a protest organizer cannot tell whether standing near a synagogue or mosque while criticizing a war might be characterized as intimidation, the organizer may cancel a lawful event.

The fourth is politicization. Hate-law enforcement never occurs in a vacuum. It unfolds amid war, elections, polarizing protests, social-media campaigns, and community trauma. Under these conditions there is a powerful temptation to stretch the law toward whichever side currently appears threatening. The state may frame a protest as hateful because it is inflammatory; activists may frame criticism as incitement because it is harsh; politicians may demand bans before the legal threshold is actually met. Courts provide a backstop, but a law should not rely on courts alone to rescue it from poor drafting or overcharged enforcement.

These structural risks matter because they show why a bill can be textually improved and still remain practically dangerous. The legal question is therefore not just "What does C-9 say?" It is also "What kinds of public controversies will C-9 be asked to manage?" The answer to that question lies in current case studies.

These examples are used solely to illustrate how speech regulation frameworks interact with contested political discourse; they are not offered as judgments on the underlying geopolitical events themselves.

5. Case study I: anti-Zionism, antisemitism, and the category problem

One of the most difficult contemporary questions in hate-law analysis is whether anti-Zionism should be treated as antisemitism. The constitutional answer cannot be a slogan. It has to be a distinction.

Antisemitic hate speech targets Jews as Jews. It uses group-directed vilification, collective blame, dehumanization, conspiracy, or threats. That can readily cross the line into unlawful hate propaganda. Anti-Zionist expression, by contrast, may target Zionism as a political ideology, criticize the existence or conduct of a state, or oppose forms of nationalism associated with Israel. Some of that speech can, in context, become antisemitic. But it is not legally identical from the outset.

The category problem becomes sharper because many Jews themselves reject the proposition that Zionism represents Judaism or all Jewish people. Some Jewish religious groups oppose Zionism on theological grounds. Some Jewish scholars oppose it as a political ideology. Some Jewish activists oppose particular Zionist currents while still supporting Israel's existence. If the state or a regulator simply declares anti-Zionism to be antisemitism, it not only suppresses political speech but risks suppressing Jewish dissent itself.

Under Canadian constitutional doctrine, the safer legal path is to ask a narrower question: does the speech target Jews as an identifiable group in the extreme sense recognized by Whatcott and Keegstra? If yes, the state may intervene. If the expression criticizes a state, an ideology, or military conduct, that is presumptively political expression, even if many listeners experience it as deeply painful. Political expression receives the strongest Charter protection because democracy depends on allowing citizens to argue about states, wars, nationalisms, and alliances.

Bill C-9's codified definition of hatred helps here because it says hatred means detestation or vilification, stronger than disdain or dislike, and clarifies that communication does not incite or promote hatred solely because it discredits, humiliates, hurts, or offends.[2][3] Applied faithfully, that language should protect even harsh anti-Zionist speech unless it crosses into group-directed antisemitic vilification or threat. Applied loosely, it could still be used to pressure institutions or prosecutors to treat anti-Zionist speech as presumptively suspect because of current political context.

This is not merely theoretical. In online environments, group identity and political ideology are often fused by design. Hashtags, clips, and viral frames collapse distinctions. That is precisely why legal drafting and enforcement discipline matter. The law must preserve the difference between "I hate Jews" and "I oppose Zionism" even though the surrounding political culture often tries to erase it.

6. Case study II: the current Middle East war, criticism of strikes, and protest restrictions

The second case study concerns the current Middle East war. Reuters has reported that Iran's Supreme Leader Ali Khamenei was killed in the opening U.S.-Israeli strikes of February 28, 2026, and that Canada has maintained it would enforce the International Criminal Court warrant for Benjamin Netanyahu if he entered Canada.[9][10] These facts make the speech environment especially charged. They also make the constitutional distinction between unlawful hate and lawful political criticism especially important.

Suppose a speaker says that the killing of Iran's supreme leader was unlawful, escalatory, or strategically reckless. Suppose a speaker says that leaders who supported or justified the strike bear moral or legal responsibility for widening the war. Suppose a speaker says that Canada should arrest Netanyahu if he enters

the country because Canada has said it will respect the ICC process. These are all hard-edged political statements. They may be inflammatory. They may be unpopular. They may be wrong. But they are still political speech.

None of those statements becomes criminal merely because the war implicates Jewish, Iranian, Muslim, or Middle Eastern identities. The constitutional test does not ask whether the topic is emotionally explosive. It asks whether the expression crosses into threats, intentional incitement, or extreme group vilification. Criticism of a strike, criticism of a war's authors, criticism of a foreign leader, or criticism of a government's alliance choices remains core democratic speech.

This point is reinforced by recent protest litigation in Ontario. In March 2026, the Ontario government sought an injunction to stop Toronto's Al-Quds Day demonstration after Premier Doug Ford publicly characterized the event as hateful. The court declined to stop the rally, and it proceeded with police presence and counter-protests.[11] Whatever one thinks of the event's message, the constitutional lesson is obvious: the state cannot pre-emptively suppress protest simply because the protest is provocative or because public officials believe it may carry hateful implications. The legal threshold for an injunction remains higher than political discomfort.

Bill C-9 becomes relevant here because its new intimidation and obstruction offences are likely to be tested in highly contested protest settings near protected places. Justice Canada says the offences are designed not to criminalize peaceful protest or demonstrations, in part because of the specific-intent requirement and the information-sharing exception.[3] That is reassuring as a matter of statutory design. But the practical risk remains: police or complainants may try to characterize intense protest near synagogues, mosques, community centres, or schools as intimidation rather than protected assembly. Courts may ultimately reject that claim, but the chilling effect may occur long before any acquittal.

This case study therefore shows why the constitutional question is not abstract. In periods of war, emotionally severe but lawful criticism must remain protected. A hate-law framework that cannot preserve that protection will become a wartime speech-control tool rather than a genuine anti-hate measure.

7. Case study III: Catholic doctrine, same-sex marriage, abortion, and prayer in public spaces

The third case study moves from geopolitics to religion. It asks whether traditional Catholic teaching on abortion, same-sex marriage, and prayer in public spaces could be drawn into hate-law logic if the law is interpreted too broadly.

Start with abortion. Catholic doctrine teaches that human life begins at conception and that abortion is morally wrong. A priest or lay Catholic who says, "Abortion is gravely wrong and society should protect unborn life," is making a theological and moral claim. That claim is intensely contested in public life. It may be heard as judgmental, exclusionary, or psychologically harmful. But none of that transforms it into hatred. Under sections 2(a) and 2(b), it remains protected religious and political speech unless it escalates into threats or targeted harassment of actual persons.

The same applies to Catholic teaching on marriage. If a Catholic speaker says, "Marriage is the union of a man and a woman," the speaker is expressing a doctrinal view that conflicts with the legal and social framework of same-sex civil marriage. But a democratic constitution does not require the state to criminalize doctrinal disagreement in order to vindicate equality. The line remains the same: harsh doctrine may be constitutionally protected even when it is morally painful for others, provided it does not become extreme vilification or targeted incitement.

Prayer in public spaces raises a related but distinct issue. Canada rightly rejects state-imposed prayer in certain official settings because of state neutrality concerns. Yet private or communal prayer in public places — at rallies, on sidewalks, in parks, or near civic institutions — remains an ordinary form of religious expression. If public religious expression can be recast as harmful merely because observers find it politically charged or exclusionary, freedom of religion becomes thin indeed.

Bill C-9 is not, on its face, a law about sermons or doctrine. In fact, its symbol-display offence includes a defence for legitimate purposes related to religion, provided the purpose is not contrary to the public interest.[2][3] That is a valuable signal. Even so, if the surrounding political culture begins to treat orthodox religious doctrine as presumptively hateful, the textual safeguard may not be enough to prevent institutional overreaction. Schools, platforms, and public bodies may still suppress speech out of caution.

The Catholic case study therefore demonstrates a broader point. A sound anti-hate framework must be able to say, clearly and without embarrassment, that disagreement is not hatred. The state may protect people from threats and intimidation; it may not criminalize moral doctrine simply because contemporary politics reads doctrine as exclusion.

8. Comparative models: what Canada should and should not borrow

Comparative law does not supply a perfect template, but it can sharpen judgment.

The United States remains the most speech-protective comparator. Under Brandenburg v Ohio, speech can be restricted only where it is directed to inciting imminent lawless action and likely to produce it. Canada has never gone that far, and Keegstra confirms that our constitutional tradition allows more room for anti-hate law. Still, the American model provides an important warning: once the state moves too quickly from offense to prohibition, political liberty suffers.

The United Kingdom offers a narrower but useful lesson. The UK criminalizes the stirring up of racial and religious hatred, yet Parliament also inserted express protections for discussion, criticism, ridicule, insult, and proselytizing in the religious-hatred context. The principle is sound even if the UK framework is imperfect: where the state regulates hate, it should simultaneously protect theological disagreement and criticism of belief systems.

Germany's Volksverhetzung model is more restrictive. Its history explains why. Germany is willing to criminalize broader forms of collective insult and agitation where public peace is threatened. Canada should be cautious about importing that model because our constitutional culture gives wider latitude to moral and political dissent, especially around religion and public-policy disputes.

The European Union's Digital Services Act is not primarily a hate-speech code. Its significance lies in platform accountability, transparency, and systemic-risk governance. That may be the EU's most useful lesson for Canada: not every speech problem should be solved by broad content prohibition. Sometimes the better response is procedural transparency, appeal rights, and mitigation of amplification risks rather than criminalization.

The chart in this paper places Canada between the U.S. and Germany on a qualitative speech-regulation spectrum. Bill C-9 nudges Canada toward more restrictive criminal-law treatment in specific contexts — symbols, hate-motivated offences, protected-place access — but it also includes jurisprudence-based clarification language that can keep it within constitutional bounds if taken seriously. The comparative lesson is therefore not that Canada must choose between permissiveness and overreach. It is that Canada should be specific about what it is punishing and generous about what it is preserving.

9. A Charter-compatible compromise

A constitutionally sustainable Canadian compromise would do four things.

First, it would preserve the narrow Whatcott/Keegstra conception of hatred as detestation or vilification, and it would resist all efforts to dilute that threshold through politics, current events, or administrative convenience. If a statement merely discredits, humiliates, hurts, or offends, it should not be enough. Bill C-9 says exactly that. The challenge is to hold the line.[2][3][6][8]

Second, it would preserve strong mens rea and context requirements. The intimidation offence should require proof of intent to provoke fear in order to impede access; the obstruction offence should remain focused on actual unlawful interference rather than the general discomfort caused by protest. Peaceful demonstrations, criticism, and information-sharing should not be relabelled as intimidation because they occur near protected sites.[3]

Third, it would expressly protect protected expression categories in the statute itself. The safest drafting move is a "for greater certainty" clause making clear that nothing in the Act prohibits, penalizes, or shall be interpreted to penalize good-faith religious doctrine, criticism of religion, criticism of a state or political ideology, journalism, satire, academic analysis, legal advocacy, or peaceful protest, unless the expression intentionally advocates or incites violence, targeted harassment, or unlawful discrimination as defined elsewhere in the law.

Fourth, it would pair criminal-law enforcement with institutional safeguards: transparent prosecutorial guidance, independent review, reporting on use of the offences, and a refusal to pressure platforms or public bodies into quasi-censorship at thresholds lower than the criminal law itself permits.

In practical terms, this compromise means Canada can and should punish true hate propaganda, threats, terror-symbol glorification used to promote hatred, and deliberate campaigns to block or frighten people away from worship or community institutions. But Canada should not use hate law to settle arguments about Zionism, to silence criticism of military action, or to suppress Catholic or other religious doctrine. That is where constitutional fidelity lies.

The central constitutional question facing Parliament is therefore not whether Canada should address online harm, but **how a democratic state can do so without converting contested political, religious, or moral speech into legally punishable expression.**

10. Conclusion

Bill C-9 is easier to defend than Bill C-63, but it is not constitutionally self-justifying. Its legitimacy depends on narrow interpretation, disciplined enforcement, and a continuing refusal to confuse hateful incitement with painful disagreement.

The constitutional line in Canada is not mysterious. The Supreme Court has said it before: hatred means extreme detestation or vilification, not merely hurt, humiliation, or offense. Justice Canada says Bill C-9 codifies that line. The practical task, then, is to ensure the law remains where it claims to stand.[3][6][8]

That task matters because the edge cases are not peripheral. They are the actual speech controversies of the age: anti-Zionism and antisemitism; criticism of war and wartime leaders; public prayer; Catholic doctrine on marriage and abortion; protest outside communal institutions. If the law can preserve free expression and religious freedom there, it is likely sound. If it cannot, the problem is not only with the cases. It is with the law.

A democratic society may criminalize extreme hatred and intimidation. It may not criminalize dissent because dissent occurs during a crisis, because doctrine is exclusionary, or because politics is emotionally unbearable. Bill C-9 can survive constitutional scrutiny only if Canada remembers that distinction — not in theory, but in application.

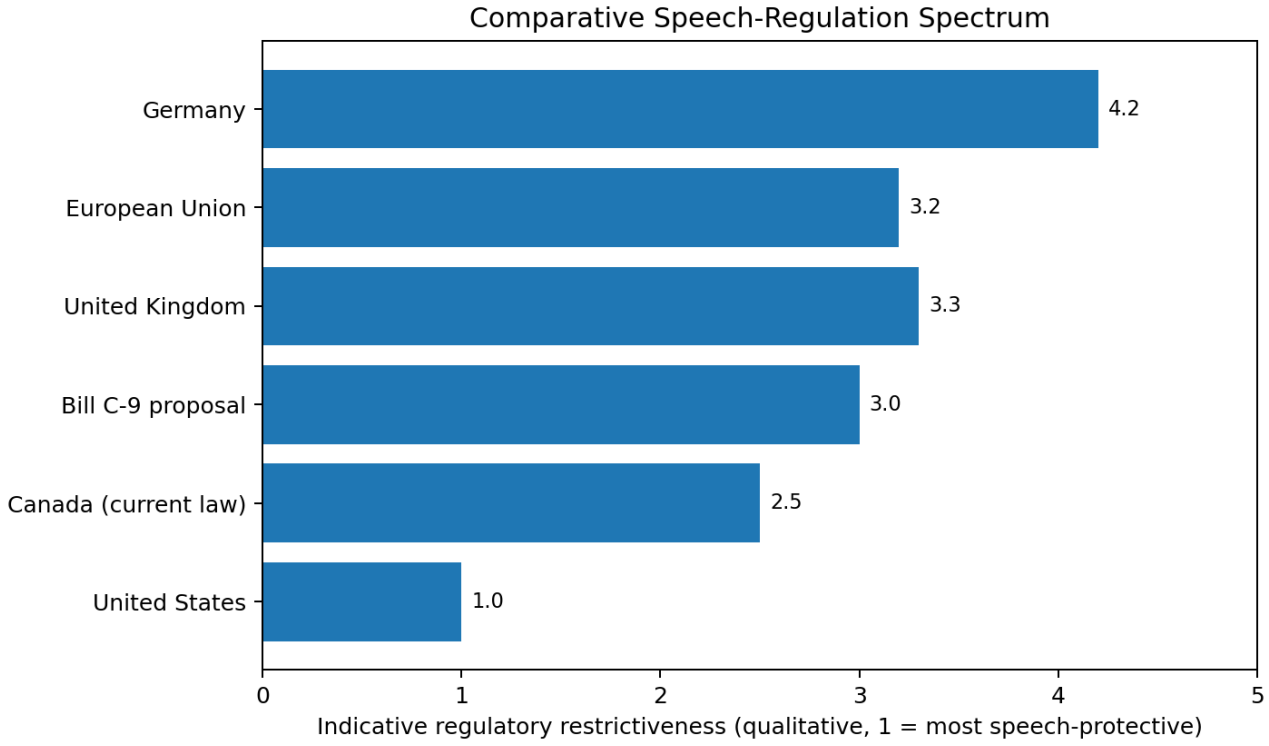

Figure 2. Comparative speech-regulation spectrum. The scoring is qualitative and illustrative, intended to show relative regulatory restrictiveness rather than legal precision.

Comparative law matrix

Jurisdiction	Core threshold	Treatment of religious/political speech	Institutional style	Takeaway for Canada
United States	Incitement to imminent lawless action	Very broad protection for political and ideological speech	Court-driven, anti-censorship tradition	Useful warning against offense-based suppression.
United Kingdom	Stirring up racial/religious hatred	Express protection for criticism, ridicule, and theological disagreement	Criminal-law model with speech carve-outs	Canada should emulate explicit carve-outs.
Germany	Incitement threatening public peace; stronger anti-extremism rules	Less speech-protective where history and public-order concerns dominate	Criminal-law plus historical anti-extremism architecture	Canada should be cautious about importing broader insult-like categories.
European Union	Platform accountability and systemic risk mitigation	More focus on process and transparency than on direct prohibition	Administrative regulation of digital services	Shows a path beyond blunt content removal.
Canada	Detestation or vilification under hate-law jurisprudence	Strong but not absolute protection for political and religious speech	Charter balancing through courts, prosecutors, and institutions	The Whatcott/Keegstra line must remain the anchor.

Proposed model clause for a Charter-compatible compromise

The following drafting model captures the compromise advanced in this paper:

> For greater certainty, nothing in this Act shall be interpreted to prohibit or penalize the good-faith expression of religious doctrine, criticism of religion, criticism of a state or political ideology, journalism, satire, academic analysis, legal advocacy, or peaceful protest, unless the expression intentionally advocates or incites violence, targeted harassment, or unlawful discrimination as otherwise defined in this Act.

This type of clause would not immunize threats or organized intimidation. It would, however, make the statute's constitutional boundaries visible to police, prosecutors, institutions, and the public.

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About the Main Author

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