



EFC

The Evangelical
Fellowship of Canada

Submission of the Evangelical Fellowship of Canada
to the Standing Committee on Justice and Human Rights

**Bill C-51: *An Act to amend the Criminal Code and
the Department of Justice Act***

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Submission to the Standing Committee on Justice and Human Rights on Bill C-51

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians, with affiliates including 44 denominations, 65 ministry organizations and 33 post-secondary educational institutions. It is estimated that there are 6,500 congregations that belong to our affiliate denominations across Canada. Established in 1964, the EFC provides a national forum for Canada's four million Evangelicals and a constructive voice for biblical principles in life and society.

Religious freedom, expression and collaboration have been hallmarks of the EFC's work for decades. We work together with interfaith partners from many religious groups on issues of common concern, and share in dialogue about the role of religion in a pluralistic society.

The EFC has addressed religious discrimination and supported religious freedom in more than 20 court interventions, including in support of non-evangelicals, such as Jehovah's Witnesses, Roman Catholics, Ktunaxa First Nation and the Hutterian Brethren.

Bill C-51

We have one concern with Bill C-51, and that is with clause 14, which would remove section 176 of the *Criminal Code of Canada*. This section of the *Code* provides specific, explicit protection for religious officials and religious gatherings.

The purpose of Bill C-51 is to clean up the *Criminal Code*, repealing or amending provisions that have been found or would likely be found unconstitutional, and repealing offences that are obsolete or redundant.

The reasoning given for inclusion of Clause 14 in the Bill is that section 176 of the *Criminal Code* is redundant.

Respectfully, we disagree.

Section 176 is not redundant.

The existing case law pertaining to this section is instructive in this regard.

In these *Criminal Code* provisions, the nature of the disruption matters. Section 175(1)(a) on causing a disturbance requires physical contact or loud or offensive noises – screaming,

shouting, swearing or obscene language. But not all disruptions of religious gatherings will engage section 175. There are disruptions that are profoundly disturbing, upsetting, and even frightening to worshippers that don't involve physical contact or loud or offensive noise. And in these cases, section 176(2) and (3) offer needed protection and reassurance.

Section 176(2) and (3), then, are unique in that they prohibit any disturbance of religious gatherings, even if the disturbance doesn't include the criteria described in 175(1)(a).

We see this difference illustrated in the B.C. court decisions regarding Joseph Reed. Initially, Mr. Reed used a megaphone to disturb a gathering of Jehovah's Witnesses. He was charged (and convicted) in those instances under s. 175. Mr. Reed went on to deliberately disturb and interrupt meetings of Jehovah's Witnesses several more times, but without the megaphone, and without making excessive noise. He would typically adorn himself with placards, covered in text that was deeply offensive and upsetting to the Jehovah's Witnesses at the gathering. In one instance, he pushed past an usher to gain entrance into the service and sat down, deliberately disrupting the service and refusing to leave. In another, he stood in front of the entrance to the service, which made some congregants fearful of passing him to enter. Another time, he knocked on the exterior doors to interrupt the service and tried to enter with a very elderly congregant.

Mr. Reed has been charged with other offences, such as assault. But he has also been charged and convicted, on more than one occasion, of disrupting a worship service under section 176(2), which at the time was numbered s.172(2). It seems, in reading the decisions, that the charges laid under section 176 reflect both the nature of the disturbance, and, importantly, the intent of his actions, which were in each instance calculated to disrupt the worship services.

This is what Mr. Justice Craig of the BC Court of Appeal said in his oral comments in a 1985 decision¹:

There is no allegation that Mr. Reed was shouting or screaming or causing an undue amount of noise. However, that is not a condition precedent to the operation of s. 172(2). It is an offence simply to disturb or interrupt an assemblage of persons met for religious worship, regardless of the motive.

Madam Justice Proudfoot, writing for the majority in a 1994 BC Court of Appeal decision regarding Mr. Reed, stated:

Section 175(1)(a) makes it an offence to cause a disturbance in or near a public place. Section 176 makes it an offence to wilfully disturb or interrupt an assemblage of persons met for religious worship, or to wilfully do anything that disturbs the order or solemnity of such a meeting. In my view, the sections are quite different. Section 176 specifically

¹ *R. v. Reed*, British Columbia Court of Appeal, 1985, para 26.
<https://www.canlii.org/en/bc/bcca/doc/1985/1985canlii637/1985canlii637.html>

targets interference with religious services or worship, but s. 175 deals with a variety of problems.²

Section 176(2) and (3) protect the freedom of association guaranteed under s. 2(d) of the *Charter*. It offers broader protection for those gathered from having their meeting disrupted, and the purpose of their associated frustrated, in a way other than what is prohibited by s. 175(1)(a).

It is our submission that section 176(2) and (3) provide unique and specific protection for religious gatherings from disruption that is not offered by other sections of the *Criminal Code*, and should be retained.

We note also that the concerns addressed by section 176(2) and (3) are not adequately addressed by the *Criminal Code*'s trespassing offence.

Section 177 of the *Criminal Code* contains an offence of trespassing at night, which is very limited. The civil tort of trespass, which does not provide the same degree of protection, would require a religious group to take steps to get an injunction, at their own cost, in order to receive protection against disturbance. Provincial trespassing provisions, if they exist, would differ amongst the provinces, and do not have the same weight as a *Criminal Code* prohibition.

Section 176 gives unique protection for religious services in public places.

Not every religious service takes place within a building. Not every religious group owns a property on which they hold a worship service. Section 176(2) and (3) provide unique protection for things like a religious procession on the street, a Jewish ritual enclosure in a public place or a service in a park, particularly in cases where the criteria in section 175(1)(a) are not met.

Again, other *Criminal Code* prohibitions against public disturbance and trespass do not offer the same degree of protection as does section 176. There are deliberate disturbances to religious services and clergy that do not fall under other provisions.

To remove section 176 would unnecessarily strip away explicit protection for religious gatherings and officials. Removal of this protection would undermine the assurance of religious practitioners that they may gather safely. It would also undermine the value of religious practice and observance in Canadian society.

² *R. v. Reed*, BCCA, 1994, para 25. <http://www.courts.gov.bc.ca/jdb-txt/ca/94/04/c94-0487.htm>

Section 176 has been found to be constitutional.

Appellate courts have upheld the constitutionality of s. 176 numerous times.³ The Supreme Court of Canada and appellate courts have considered this section of the *Criminal Code* and have found it to be valid federal legislation. As former Supreme Court Justice Wilson concurred in a 1985 minority opinion, this section is properly characterized as criminal law, and I quote, “since in substance it is an enactment to prevent breaches of the public peace and to enable citizens to conduct services of worship without fear of disturbance.”⁴

Bill C-51 proposes to remove valuable protection for religious gatherings and clergy that is constitutional, and has been in place, and used, for decades.

Section 176 is not obsolete.

As you have heard, section 176 was engaged as recently as within the last year, in a case here in Ottawa. There have been numerous cases dealing with this provision, including one heard by the Supreme Court of Canada in 1985. In MP responses to constituent concerns about Clause 14, there have been reports of 30 court cases involving charges under s. 176 between 2000 and 2015.

Protection of Religious Freedom

In her statements before this Committee, the Minister of Justice said that removal of this provision would in no way affect people’s religious freedom. While we respect that there is no intention to diminish religious freedom, we believe removal of this provision will have this effect.

As the BC Court of Appeal found in the 1994 *R. v. Reed* case, “Section 176(3) protects the freedom of religion of persons ‘met for religious worship’.”⁵

In an earlier decision, Mr. Justice Esson of the BC Court of Appeal stated:

Such things as freedom of assembly and freedom of association, which are also in the *Charter*, could be meaningless without some such protection as s. 172(2)⁶

At a time of growing intolerance and rising incidents toward faith communities, Parliament’s duty to ensure the protection of religious officials and communities is especially significant.

³ For example, para 35-36 of *R. v. Reed*, BC Court of Appeal, 1985.

⁴ *Skoke-Graham v. The Queen*, The Supreme Court of Canada (1985), para. 77

⁵ BC Court of Appeal, 1994.

⁶ Para 41, *R. v. Reed*, British Columbia Court of Appeal, 1985

<https://www.canlii.org/en/bc/bcca/doc/1985/1985canlii637/1985canlii637.html>

Further, we find that such a move seems inconsistent with other government efforts to increase protection for religious communities and address discrimination. For example, Parliament was unanimous in passing Bill C-305 in May 2017. This bill amended the *Criminal Code* prohibitions on mischief, giving additional protection to buildings or structures used primarily for religious worship.

Parliament, again, agreed that religious discrimination is rising and in need of study during debates on Motion M103. The Canadian Heritage Committee is currently conducting a study based on M103, looking at the extent of religious discrimination in Canada, and considering how the government can act to address it. In this context, removing this specific protection for religious officials and gatherings from the *Criminal Code* sends a confusing and contradictory message to faith communities in Canada, many of whom feel particularly and increasingly vulnerable.

Religious freedom is known as the first freedom, because where it flourishes, all other freedoms flourish. The authors of the *Charter of Rights and Freedoms* specifically included religious freedom as the first provision. Freedom of religion is listed in the *Charter* alongside freedom of conscience, freedom of expression and freedom of association. Although these freedoms are related, each one is listed and given specific protection.

The meetings of religious communities are a fundamental expression of belief and practice, and an outworking of religious freedom. Section 176 specifically protects the rights of individuals to freely practice this essential element of their religious belief and practice - gathering.

International agreements and reports point to the need for protection of worship, as well.

As noted in the UN *Rapporteur's Digest on Freedom of Religion or Belief: Excerpts of the Reports from 1986 to 2011*:⁷ "places of worship are an essential element of the manifestation of the right to freedom of religion or belief to the extent that the great majority of religious communities or communities of belief need the existence of a place of worship where their members can manifest their faith."

Article 6(a) of the *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief* states that: "The right to freedom of thought, conscience, religion or belief includes the freedom, 'To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes' ..."

The Uniqueness of Religious Gatherings

Finally, and significantly for many faith communities in Canada, the removal of section 176 would communicate a lack of understanding of and appreciation for the value and uniqueness

⁷ Rapporteur's Digest, p. 20.

<http://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>

of religious gatherings. Religious gatherings are distinct in character and purpose. They are not just like any other public gathering or assemblage of persons. And an attack on a religious official or religious gathering is also distinct in character and purpose.

It is our submission that offences against religious officials and people at worship are unique in character, in significance and in motivation, and therefore it is not only valid, but an important objective for Parliament and the *Criminal Code* to continue to treat them as such.

As noted in the *Rapporteur's Digest on Freedom of Religion or Belief*: "members of religious communities or communities of belief, whenever they find themselves in places of worship, are in a situation of special vulnerability given the nature of their activity."⁸

An offence against a people at worship reverberates through the community and touches every member. An offence against one faith at worship has an impact on all religious adherents.

The Special Rapporteur on freedom of religion or belief notes further that, "unlike other forms of violations of the right to freedom of religion or belief, attacks or other forms of restriction on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the rights of a group of individuals forming the community that is attached to the place in question."⁹

The *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief* states in its preamble, "Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed."¹⁰

Our faith, and every other faith, expresses a specific vision of how life should be lived. Religion is the system of belief, worship and practice that is of ultimate importance to a person. For some, it is the ultimate commitment to a divine being or force that provides personal and communal direction to life. And for many believers, part of living out that faith includes gathering with like-minded believers for reflection, contemplation, prayer, communion, teaching and worship. This matters.

The specific protection offered by section 176 recognizes that there is something different, distinct and valuable about religious practice. It recognizes that there is a good that makes it worthy of specific and explicit protection. However unintentional it may be, to remove this protection would erode that recognition, and undermine the value and place of religious belief and practice in Canada.

⁸ Rapporteur's Digest, p. 19.

⁹ Rapporteur's Digest, p. 20.

¹⁰ <http://www.un.org/documents/ga/res/36/a36r055.htm>

Recommendations

The Justice Minister has expressed concern that the language in section 176(1) is specific to the Christian faith or to Christian clergy. We believe it should be made clear that this protection is extended to all faith communities.

We have two recommendations for the Committee:

1. We recommend that Bill C-51 be amended, to retain section 176.
2. We recommend that the language in section 176(1)(a) and (b) be amended to make it clear that the specific protection is extended to leaders in all religious communities.

The words “clergyman or minister” in 176(1)(a) and (b) could be replaced with a term such as “religious official” or “religious leader.” This would ensure that the *Criminal Code* clearly maintains and extends religious freedom and protection for all.

Conclusion

Section 176 is not redundant, and it provides unique protection to a unique form of expression.

Canada is a religiously plural nation. The freedom we enjoy to give expression to our respective faiths is both one of our greatest strengths as a nation, and one of our greatest challenges. It is the task of government to govern all Canadians fairly, to model diversity, respect and tolerance.

Particularly now, in a time of growing concern about intolerance toward religious minorities in Canada, Parliament’s duty to ensure the protection of religious officials and communities is especially significant.

We urge you to amend Bill C-51, fulfill the *Charter’s* guarantee of religious freedom and maintain protection for the integrity and security of religious worship in Canada.