



February 24, 2020

VIA EMAIL

TO:

Doug Ford, Premier of Ontario
John Fraser, Interim Leader of the Ontario Liberal Party
Andrea Horwath, Leader of the Ontario New Democratic Party
Mike Schreiner, Leader of the Green Party of Ontario

Regarding: Bill 168, Combating Antisemitism Act, 2020

I am writing to you on behalf of the British Columbia Civil Liberties Association (“BCCLA”) to urge you and the Legislature of Ontario not to adopt the International Holocaust Remembrance Alliance (“IHRA”) definition of antisemitism when it comes before you.

The BCCLA is Canada’s oldest civil liberties and human rights organization, founded in 1962. We are unequivocally opposed to antisemitism and all forms of racism. We support provincial initiatives to combat racism, racial profiling, and racial targeting. However we are strongly opposed to the IHRA definition because of its threat to freedom of expression. The legal adoption of the IHRA definition is inconsistent with the values underlying the *Charter of Rights and Freedoms* and would greatly narrow the scope of political expression in Ontario and Canada.

Section 2(b) of the *Charter of Rights and Freedoms* holds that everyone has the following freedoms: freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication. The values underlying the protection of freedom of expression are the enhancement of individual self-fulfilment, democratic discourse, and the search for truth. On numerous occasions, the Supreme Court of Canada has held the *Charter*-protected right to freedom of expression is closely connected to and “perhaps the linchpin” to the political process and democratic governance.



Bill 168 is a legislative infringement on expressive content — specifically, highly-protected political speech — and unjustifiably removes *Charter* section 2(b) protections both in purpose and effect. Canadian courts interpret section 2(b) generously and broadly, thus taking government infringements of freedom of expression seriously. The Supreme Court of Canada has held where the purpose of a government action is to restrict the content of expression, to control access to a certain message, or to limit the ability of a person who attempts to convey a message to express themselves, that purpose will infringe freedom of expression. Canada is also a signatory to the *International Covenant on Civil and Political Rights*, Article 19 of which holds “Everyone shall have the right to freedom of expression.”

The IHRA definition of antisemitism is extremely vague, open to misinterpretation, and the document states that it is “non-legally binding.” Not only is the text unsuitable for any legal or administrative purpose in Ontario or Canada, but the accompanying illustrative examples suggest that the definition conflates certain critiques of the state of Israel with antisemitism. If implemented, the IHRA definition will serve to severely infringe on freedom of expression, as well as chill political expressions of criticism of Israel and support for Palestinian rights. We note that similar motions were recently presented in Vancouver, Calgary, and Montreal city councils but were not adopted in any of those cities.

The BCCLA strongly believes that a broad range of perspectives must be welcome in our public sphere. We support the rights of people to celebrate or condemn the actions of foreign or domestic governments, without being vulnerable to censorship or other action from their provincial government. The BCCLA joins others in calling on all levels of government to continue to combat antisemitism and other forms of racism while ensuring that *Charter* rights are protected in the context of political speech and legitimate political action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harsha Walia', is written over a light blue horizontal line.

Harsha Walia
Executive Director