

## BRITISH COLUMBIA HUMANIST ASSOCIATION

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## REPEAL CANADA'S BLASPHEMY LAWS

### Submission of the BC Humanist Association on Bill C-51

October 25, 2017

By Ian Bushfield, Executive Director

### Executive Summary

We support the repeal of sections 296 and 176 of the *Criminal Code*. These two sections serve, respectively, as explicit and de facto blasphemy laws that criminalize the rights of Canadians to challenge religious orthodoxy. They privilege religious worldviews over nonreligious ones and serve to chill criticism of religion. The harms they seek to redress are best addressed through the promotion of tolerance and understanding and criminal actions are dealt with through other sections of the Code.

### About the BC Humanist Association

The British Columbia Humanist Association (BCHA) has been providing a community and voice for Humanists, atheists, agnostics and the non-religious of Metro Vancouver and British Columbia for over 30 years. We support the growth of Humanist communities across BC, provide Humanist ceremonies, and campaign for progressive and secular values. Humanism is a progressive philosophy of life that, without supernaturalism, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity. The BCHA is a member of the International Coalition Against Blasphemy Laws (ICABL). ICABL is an international coalition of organizations committed to removing blasphemy laws that “restrict questions, criticism or ridicule of religion or religious concepts” wherever they exist.<sup>1</sup>

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<sup>1</sup> <http://end-blasphemy-laws.org/about/>

## Section 296

No one has been prosecuted under the *Criminal Code*'s prohibition on blasphemous libel since 1935 and the last charges laid were in 1979. Nevertheless, the fact the crime remains on the books is an ongoing concern for atheists and the nonreligious, who are most often persecuted under such laws.

The arguments for repealing the prohibition on blasphemous libel have been well articulated by numerous columnists, civil libertarians and legal experts over the past decade<sup>2</sup>. Simply put, the law can have a chilling effect on the freedom of speech of religious dissidents and apostates. The law also serves as a symbol to theocratic regimes that have implemented and invoked blasphemy laws to censor dissent.

The threat of this law being used in Canada is not just theoretical. In February 2017, a Danish man faced charges under a similar law, which prohibited publicly ridiculing religious belief or worship, after allegedly burning a Quran for an online video. No one had been convicted under that law since 1946 and the last charges were laid in 1971.<sup>3</sup> In June, however, the Danish parliament voted to repeal the law and the charges were dropped.<sup>4</sup> This case highlights that decades old laws can be invoked to censor speech. Similarly, Canada's anti-polygamy laws remained dormant for 127 years until charges were laid in 2014 against members of the fundamentalist Mormons in Bountiful, BC.

In 2016, over 7500 Canadians signed a parliamentary e-petition supporting the repeal of this section.<sup>5</sup> In its reply to the petition, the Government stated that this provision is under review by the Minister of Justice and we were pleased to see it included in Bill C-51.

In situations where criticism of religion is deemed to rise to a level where it is "intended or likely to circulate extreme feelings of opprobrium and enmity against a racial or religious group,"<sup>6</sup> Canada maintains a robust human rights regime to tackle such hate speech. Prohibiting blasphemy only serves to force individuals to self-censor reasonable criticisms of religion.

To date, we are aware of no group or body that supports retaining this section and we have heard no arguments in favour of its retention. Rather, its repeal has wide support across the civil sector and the political spectrum.

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<sup>2</sup> [http://www.bchumanist.ca/years\\_of\\_speaking\\_out\\_against\\_canada\\_s\\_blasphemy\\_law](http://www.bchumanist.ca/years_of_speaking_out_against_canada_s_blasphemy_law)

<sup>3</sup> [http://www.bchumanist.ca/danish\\_blasphemy\\_case](http://www.bchumanist.ca/danish_blasphemy_case)

<sup>4</sup> <http://end-blasphemy-laws.org/2017/06/blasphemy-law-abolished-denmark/>

<sup>5</sup> <https://petitions.parl.gc.ca/en/Petition/Details?Petition=e-382>

<sup>6</sup> *R. v. Keegstra* [1990] 3 S.C.R. 697

## Section 176

We also support the repeal of Section 176, which includes the criminal prohibition on obstructing clergy or ministers from “celebrating divine service” and on disturbing religious worship. These sections act as a secondary blasphemy law through the criminalization of religious dissent and protest.

Unlike section 296, this provision has been invoked multiple times since the 1980s.<sup>7</sup> Most notable was the Supreme Court of Canada case of *Stoke-Graham v The Queen*.<sup>8</sup> In this case, six individuals were charged after kneeling instead of standing to receive communion in their church. While their short and peaceful protest was ultimately upheld and the charges dismissed, the highest court did find that the law was ultimately constitutional. Since then, Metro Vancouver resident and self-described “dissident” Jehovah’s Witness Joseph Reed faced numerous charges between 1983 and 1999 for protesting outside Kingdom Halls and Jehovah’s Witnesses meetings. Further charges have been laid against activists who interrupted a Christian activists’ dinner and against an Ottawa woman who caused minor property damage to an Ottawa church.

There is therefore a real chance of prosecution under Section 176 for individuals who protest a religious gathering. This creates a chill on expression and the willingness of individuals to raise objections to what’s declared orthodoxy or dogma. It’s not difficult to imagine an individual who seeks to challenge the segregation of men and women in a mosque, mandatory attire in a temple or even the existence of god prior to a sermon facing similar charges. These individuals may be doubters or atheists but it’s just as likely that they are as (or more) religious than their fellow congregants. Instead of protecting religious freedom, the law therefore ends up enshrining religious authority through the power of the state.

In 2016 the BCHA agreed a definition of a secular society as one that affirms the right of every individual to practice any religion or none, free from coercion by the government, private institutions or their community; and that the state has a duty of religious neutrality, meaning it must neither endorse nor prohibit any belief or non-belief.<sup>9</sup> We specifically sought to include coercion by private institutions and communities in that definition to highlight the inequalities and power dynamics that individuals face within organized religious communities. Religious organizations hold immense power over their congregants. Humanists have a long history of standing up for the rights of marginalized individuals, and thus we seek to balance these scales. It’s through this recognition of the rights of the individual to believe or not believe that we can express our support for religious dissidents, reformers and apostates.

Section 176 clearly acts as a restriction on the ability of an individual to question or criticize religious practices or concepts and, as such, we consider it another blasphemy

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<sup>7</sup> [http://www.bchumanist.ca/repealing\\_canada\\_s\\_other\\_blasphemy\\_law](http://www.bchumanist.ca/repealing_canada_s_other_blasphemy_law)

<sup>8</sup> *Stoke-Graham v. The Queen*, [1985] 1 S.C.R. 106

<sup>9</sup> <http://www.bchumanist.ca/secularism>

law. The section conflicts with our view on secularism as the state is actively intervening to protect the religious rights of the majority and those in power over the individual in what are often ultimately internal disputes over matters of creed. The state's duty of religious neutrality means it must remain an impartial adjudicator with respect to these disputes, and not automatically pick the side of the ruling order.<sup>10</sup>

By repealing this section, we recognize the freedom of individuals to differ from their religious congregation and their freedom to express that difference.

Subsection (1) of the provision also unduly privileges clergy and ministers over other occupations, including the leadership of nonreligious organizations like Humanist Celebrants. By repealing this section, we therefore ensure an equality of treatment for people of all faiths and none.

There will always be cases where protest or dissent escalate and there is a legitimate societal interest in criminalizing certain disruptive actions. In these cases, the *Criminal Code* provides numerous other levers for law enforcement to turn to. For example, as Liberal MP Chris Bittle has pointed out, section 175 covers causing a disturbance, 264 criminalizes uttering threats, 423 intimidation and 319 incitement of hatred.<sup>11</sup> Beyond that, most religious services are held on private property and religious groups can pursue injunctions through civil, rather than criminal, litigation.

As Humanists, we support everyone's right to practice their religion free from harassment or fear of reprisal. We unequivocally condemn the increasing number of hate crimes, particularly those targeting people from marginalized faith communities, like the Jewish and Muslim communities. However, maintaining this specific criminal prohibition has clearly not had the deterrent effect claimed by its proponents. Such prohibitions merely treat the symptoms of antisemitism and anti-Muslim bigotry, while failing to deal with the underlying causes. As with most ill conceived Band-Aid solutions, this provision can ultimately have unintended consequences, in this case creating a chill religious dissent.

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<sup>10</sup> See: *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3

<sup>11</sup> <https://openparliament.ca/debates/2017/6/15/chris-bittle-1/>