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A Threat to Democracy: Government control over Canadians' thoughts, beliefs and opinions

Submissions on Motion 103

Brief to the Standing Committee on Canadian Heritage

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About the Justice Centre

Founded in 2010 as a voice for freedom in Canada's courtrooms, the Justice Centre for Constitutional Freedoms defends the constitutional freedoms of Canadians through litigation and education.

The Justice Centre's vision is for a Canada where:

- each and every Canadian is treated equally by governments and by the courts, regardless of race, ancestry, ethnicity, age, gender, beliefs, or other personal characteristics
- all Canadians are free to express peacefully their thoughts, opinions and beliefs without fear of persecution or oppression
- every person has the knowledge and the perseverance to control his or her own destiny as a free and responsible member of our society
- every Canadian has the understanding and determination to recognize, protect and preserve their human rights and constitutional freedoms
- people can enjoy individual freedom as responsible members of a free society.

About the Authors

Jay Cameron – Jay Cameron earned a Bachelor of Arts in English from Burman University, and an LLB from the University of New Brunswick. After articling at a large national law firm and being called to the bar in 2008, Jay worked for the Attorney General of British Columbia as a provincial Crown Prosecutor. His practice included bail hearings, *Charter* Applications, and prosecuting various offences. He returned to Alberta and civil litigation in 2012, and has since appeared at every level of court in four provinces, as well as the Ontario Court of Appeal. In addition to criminal law, Jay's extensive and varied litigation practice has included construction, oil and gas, child protection, administrative law, real estate, family, insurance, land development, personal injury, defamation and constitutional law. Jay joined the Justice Centre in early 2015.

John Carpay – John Carpay was born in the Netherlands, and grew up in British Columbia. He earned his B.A. in Political Science at Laval University in Quebec City, and his LL.B. from the University of Calgary. Fluent in English, French, and Dutch, John served the Canadian Taxpayers Federation as Alberta Director from 2001 to 2005, advocating for lower taxes, less waste, and accountable government. Called to the Bar in 1999, he has been an advocate for freedom and the rule of law in constitutional cases across Canada. As the founder and president of the Justice Centre for Constitutional Freedoms, John has devoted his legal career to defending constitutional freedoms through litigation and education. He considers it a privilege to advocate for courageous and principled clients who take great risks – and make tremendous personal sacrifices – by resisting the unjust demands of intolerant government authorities. In 2010, John received the Pyramid Award for Ideas and Public Policy in recognition of his work in constitutional advocacy, and his success in building up and managing a non-profit organization to defend citizens' freedoms. He serves on the Board of Advisors of iJustice, an initiative of the Centre for Civil Society, India.

Introduction

On March 23rd 2017, the Canadian House of Commons passed M-103 (the "Motion"), a non-binding Motion that condemns "Islamophobia", racism and religious discrimination. The text of the Motion states:

> *That, in the opinion of the House, the government should: (a) recognize the need to quell the increasing public climate of hate and fear; (b) condemn Islamophobia and all forms of systemic racism and religious discrimination and take note of House of Commons' petition e-411 and the issues raised by it; and (c) request that the Standing Committee on Canadian Heritage undertake a study on how the government could (i) develop a whole-of-government approach to reducing or eliminating systemic racism and religious discrimination including Islamophobia, in Canada, while ensuring a community-centered focus with a holistic response through evidence-based policy-making, (ii) collect data to contextualize hate crime reports and to conduct needs assessments for impacted communities, and that the Committee should present its findings and recommendations to the House no later than 240 calendar days from the adoption of this motion, provided that in its report, the Committee should make recommendations that the government may use to better reflect the enshrined rights and freedoms in the Constitution Acts, including the Canadian Charter of Rights and Freedoms*.[1] [emphasis added]

The Motion presupposes as fact that there is a "rising public climate of hate and fear" in this country which the government needs to quell. To "quell" is to "thoroughly overwhelm and reduce to submission or passivity"[2], "to stop something, especially by using force"[3], "to put down forcibly; suppress".[4] Canadians are concerned about the Motion and the potential infringement of their constitutional freedoms. The word "quell" only serves to increase concerns – it is a harbinger of compulsion, with an implied use of force.

The contention that there is a "rising public climate of hate and fear" in Canada is foundational to the Motion. This Committee should be exceedingly wary of presupposing this statement as representative of reality. No evidence has been produced of the existence, scope or severity of the supposed "rising climate of hate and fear" in this nation, or its nature or character. It remains

[1] M-103, *Systemic Racism and Religious Discrimination*, 1st Sess, 42nd Parl, 2017.
[2] [https://www.merriam-webster.com/dictionary/quell]
[3] [http://dictionary.cambridge.org/dictionary/english/quell]
[4] [http://www.thefreedictionary.com/quell]

entirely unclear what this "rising climate of hate and fear" refers to, or what facts form its basis. Laws should target specific problems or injustices. A vague and ill-defined problem cannot lead to the creation of just laws. It would be irresponsible as a Committee to take the existence of this alleged state of affairs at face value in its study of the Motion. Suppositions of unestablished and undefined facts make for bad recommendations of law.

The reality of a peaceful, harmonious Canada

According to the 2017 Global Peace Index[5] presented at the United Nations on June 21, 2017,[6] Canada is the eighth safest country out of 163 nations globally, a figure which improved slightly in 2016.[7] Canada scored particularly well in regard to the absence of internal conflicts, violent crime and political instability.[8] On a yearly basis, Canada is repeatedly voted one of the most desirable countries in which to live.[9] The largely peaceful day-to-day co-existence of millions of people from various races, cultures and religions in Canada contradicts the assertion that there is a "rising climate of hate and fear" in Canada that requires a new and forceful legislative response.

Current laws address real problems, while respecting fundamental *Charter* freedoms

There are legitimate concerns that any legislative action resulting from M-103 would unjustifiably infringe the *Charter*[10] freedoms of Canadians. Existing *Criminal Code* provisions against violence and hate speech, human rights legislation (provincial and federal), the law of defamation, and various other torts (e.g. personal injury, negligence) provide abundant means to address real problems that actually arise in the lives of citizens. These laws place carefully tailored limits on lawful conduct between Canadians while respecting *Charter* freedoms. As John Stuart Mill noted: "[t]he third, and most cogent reason for restricting the interference of government, is the great evil of adding unnecessarily to its power."[11] In the absence of a specific problem that is clearly defined, along with an explanation as to how and why current laws fail to address it, it is neither desirable nor possible to legislate as proposed by M-103 in a manner consistent with the Constitution.

[5][http://visionofhumanity.org/app/uploads/2017/06/GPI-2017-Report-1.pdf]
[6] [http://economicsandpeace.org/events/2017-global-peace-index-release-at-the-united-nations/]
[7] Global Peace Index, p. 2
[8] Global Peace Index, pp.
[9] [https://globalnews.ca/news/3293192/canada-2nd-best-country-2017-world-rankings-survey/];
[10] *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 (the "*Charter*")
[11] [http://www.econlib.org/library/Mill/mlLbty5.html]

Attempting to do so would be a transformative and critical step across a line that no government which respects the freedoms of its citizens may cross.

Attempting to "completely eliminate racism and religious discrimination including Islamophobia" in Canada's multicultural society would require a despotic government oppression and control of not only speech and expression, but thought itself. **In proposing to eliminate racism, discrimination and Islamophobia, the government necessarily makes itself the sole arbiter of what constitutes those things, and tasks itself with their elimination.** If M-103 is legislatively codified, the unconstitutional infringement of freedom of thought, belief, expression, conscience and religion is inevitable.

The *Charter* Protects Freedom of Thought, Belief and Expression

Section 2(b) of the *Charter* states:

> Everyone has the following fundamental freedoms:
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

The Supreme Court of Canada has stated that "the very lifeblood of democracy is the free exchange of ideas and opinions".[12] Cory J., writing for the majority of the Supreme Court in *Edmonton Journal v. Alberta (Attorney General),*[13] stated:

> It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized… It seems that the rights enshrined in s. 2(b) should therefore only be restricted in the clearest of circumstances.[14]

Speech begins in the mind; it is a reflection of the workings of the inward person. The *Charter* protects freedom of expression "so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or

[12] *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139 [*Commonwealth*], p. 182, citing *R. v. Kopyto*, 1987 CanLII 176 (ON CA), p. 89.
[13] [1989] 2 S.C.R. 1326 [*Edmonton Journal*]
[14] *Ibid*, para. 2

contrary to the mainstream".[15] Speaking for a unanimous Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,[16] Iacobucci J. stated:

> Underlying freedom of expression are the core values of (1) seeking the truth and the common good; (2) promoting self-fulfilment of individuals by allowing them to develop thoughts and ideas as they see fit; and (3) ensuring that participation in the political process is open to all persons: *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 976; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 762-64, *per* Dickson C.J. *Charter* jurisprudence has established that the closer the speech in question lies to these core values, the harder it will be to justify a s. 2(*b*) infringement of that speech under s. 1 of the *Charter*: *Keegstra*, at pp. 760-61.

Focus on behaviour or on thoughts?

Criminal racist and discriminatory actions, including those directed against Muslims, are already illegal in Canada.

Enforcing some kind of unspecified ban on racism that goes beyond prohibiting behaviour that is already unlawful would require the government to police personal sentiments based on government definitions of what constitutes racism. Thought control by government, whether achieved or merely attempted, is antithetical to a free society. It is not government's role to compel everyone to like or love each other, or each others' religions and ideologies, nor does government have ability to bring this about. The role of civil government is to provide a framework of order in which people can practice and exercise their freedom of conscience, religion, expression, association, and freedom of peaceful assembly. Requiring citizens to adhere to "correct" or "approved" opinions, or to pretend to do so, is one of the features of totalitarian states.

The criminal law, for example, makes a distinction between *mens rea* (the required mental state) and *actus reus* (the action of committing a crime), and requires both to be established beyond a reasonable doubt to result in a conviction. There is no such thing as a crime where the *mens rea* alone is sufficient to convict. A person cannot be punished for merely intending to steal because the prohibited act has not been committed. In similar fashion, racist or bigoted thoughts should not be punished.

[15] *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, at para 50.
[16] [2002] 2 SCR 522 at para. 75.

In a free society, thoughts about other people should not be punishable. Since racism and discrimination are fundamentally a state of mind, the "quelling" of racism and discrimination requires government interference in the very thoughts of the citizen.

Unacceptably vague terms

Compounding the unconstitutionality of such state interference with personhood is the vagueness and subjectivity of what constitutes "racism and discrimination", not to mention the undefined term "Islamophobia". Without any definition, it will be the responsibility of the Committee to define "Islamophobia" as it considers appropriate. A main concern with the word "Islamophobia" is that it may encompass critique or satire of the religious tenets of Islam.[17]

What is "Islamophobia"?

Words matter, especially in the crafting of laws. M-103 is a direction from the House for this Committee to make recommendations for the purposes of further government action; presumably the creation of new legislation.

The crafting of laws requires certainty. As the Supreme Court of Canada noted in *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*,[18] the "prescribed by law" requirement in section 1 of the *Charter* exists to protect the public from arbitrary state limitations on *Charter* rights.[19] The Supreme Court of Canada quoted constitutional law professor Peter W. Hogg in regard to the protection against arbitrary state action:

> The requirement that any limit on rights be prescribed by law reflects two values that are basic to constitutionalism or the rule of law. First, in order to preclude arbitrary and discriminatory action by government officials, all official action in derogation of rights must be authorized by law. Secondly, citizens must have a reasonable opportunity to know what is prohibited so that they can act accordingly. Both these values are satisfied by a law that fulfils two requirements: (1) the law must be adequately accessible to the public, and (2) **the law must be formulated with sufficient precision to enable people to regulate**

[17] Barbara Kay, "How Long Until my Honest Criticism of Islamism Constitutes a Speech Crime in Canada?" *National Post*, (7 Feb 2017), see online: [http://nationalpost.com/opinion/barbara-kay-how-long-until-my-honest-criticism-of-islamism-constitutes-a-speech-crime-in-canada/wcm/7b02b5c0-e409-480d-b30a-78fd98681d9e]; Rex Murphy, "M-103 Has Passed. And What Today Has Changed for the Better?" National Post, (24 March 2017), online: [http://nationalpost.com/opinion/rex-murphy-m-103-has-passed-and-what-today-has-changed-for-the-better]
[18] [2009] 2 SCR 295 [*Translink*]
[19] *Translink*, para. 51

> **their conduct by it, and to provide guidance to those who apply the law.**[20] [emphasis added]

Constitutionalism and the Rule of Law are key values to Canada's liberal democracy. Both require certainty in regard to the use of state power and precision in the crafting of laws.

Motion M-103 does not define the term "Islamophobia." Yet "Islamophobia" is a key component of the Motion, because MP Iqra Khalid, who tabled M-103, refused to remove it from the proposed wording.[21] The word remains undefined in the Motion. Presumably, in order to study how to eliminate "Islamophobia" (and provide legislative recommendations), the Committee needs to know what "Islamophobia" is. The Committee cannot make recommendations to quell "Islamophobia" without specifically defining it.

Ms. Khalid proposed to this Committee that "Islamophobia" is the "irrational fear of Islam."[22] This definition creates several problems, not the least of which is whether Parliament can constitutionally legislate against an irrational fear. Laws can and do prohibit bad actions. But irrational fears cannot be outlawed. Should it be against the law in Canada to be irrational? Or fearful? About anything? And if there is an irrational fear of Islam, does that mean that there may be rational fears or concerns that are not "Islamophobic"? Where would the line between the two propositions be?

Section 2(b) Protects Listeners Also

Section 2(b) of the *Charter* protects not only the speaker's right to speak, but also the listener's right to hear. The Supreme Court of Canada has held repeatedly that the public, the intended recipients of the expression, have the right to receive and access information.[23] This right of listeners is as important as the right of the expressing party.[24]

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[20] *Translink*, para. 50
[21] https://openparliament.ca/debates/2017/2/15/iqra-khalid-2/
[22] [http://parlvu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20170918/-1/27847?Language=English&Stream=Video&useragent=Mozilla/5.0]
[23] See, for example, *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 [*Ford v. Quebec*]; *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827 [*Harper v. Canada*]; *Edmonton Journal.*
[24] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 [*Canada Broadcasting Corp*.], at para. 23. See also *Ruby v. Canada (Solicitor General)*, [2002] 4 SCR 3 at para. 53.

In *Harper v. Canada (Attorney General),* the majority of the Court noted "the right of the people to discuss and debate ideas forms the very foundation of democracy".[25] In speaking specifically of the need for citizens to hear, the majority of the Court stated:

> Freedom of expression protects not only the individual who speaks the message, but also the recipient. Members of the public — as viewers, listeners and readers — have a right to information on public governance, absent which they cannot cast an informed vote; see Edmonton Journal, supra, at pp. 1339-40. Thus the *Charter* protects listeners as well as speakers; see Ford v. Quebec (Attorney General), 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, at pp. 766-67.
>
> This is not a Canadian idiosyncrasy. The right to receive information is enshrined in both the Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), and the International Covenant on Civil and Political Rights, Can. T.S. 1976 No. 47. Canada is a signatory to both. American listeners enjoy the same right; see Red Lion Broadcasting Co. v. Federal Communications Commission, 395 U.S. 367 (1969), at p. 390; Martin v. City of Struthers, 319 U.S. 141 (1943), at p. 143. The words of Marshall J., dissenting, in Kleindienst v. Mandel, 408 U.S. 753 (1972), at p. 775, ring as true in this country as they do in our neighbour to the south:
>
> > [T]he right to speak and hear — including the right to inform others and to be informed about public issues — are inextricably part of [the First Amendment]. The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion. The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the means indispensable to the discovery and spread of political truth. [Citations omitted.]
> > …
> > It is clear that the right here at issue is of vital importance to Canadian democracy… The ability to speak in one's own home or on a remote street corner does not fulfill the objective of the guarantee of freedom of expression, which is that each citizen be afforded the opportunity to present her views for public consumption and attempt to persuade her fellow citizens. Pell J.'s observation could not be more apt: "[s]peech without effective communication is not speech but an idle monologue in the wilderness"; see United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972), at p. 415.[26]

[25] *Harper v. Canada,* at para. 12.
[26] *Harper v. Canada,* paras. 17-20.

The prosecution of ideas that are expressed peacefully by citizens

Michel Juneau-Katsuya appeared as a witness before this Committee on Wednesday, September 20, 2017, and illustrated why so many Canadians are deeply concerned about M-103. Mr. Juneau-Katsuya, formerly of CSIS and the RCMP, currently operates in the realm of private security. His testimony was concerning. He minimized the constitutional rights of Canadians both to speak and to hear, and advocated for the removal of broadcast licenses of radio stations that aired concerns about immigration and Islam, calling such stations "trash radio" to justify censorship (i.e. such stations have nothing legitimate to say, in his opinion, so they should be censored). He stated that there is "too much shyness and political correctness when it comes to the prosecuting process, letting it go under the blanket of free speech and letting things go too far."[27] It is apparent that Mr. Juneau-Katsuya thinks the government should be far more involved in policing the expressions (and therefore the thoughts) of Canadians, and that the *Charter* is an inconvenient barrier to this end. Mr. Juneau-Katsuya could advance arguments as to why some radio programs are "trash," but in a free society this determination is made by individual radio listeners, not by government.

In a multicultural, multi-religious society such as Canada, the ideas of its citizens are as diverse as its people. Many of these ideas necessarily conflict with each other in regard to culture, morality and spirituality, social structure and philosophy. People adhere to a diversity of religions or worldviews (including non-theistic belief systems such as materialism, relativism, and atheism). Each individual believes that her or his worldview offers a superior, or more correct, interpretation of the world. Each person, in turn, has the right to share her or his beliefs with each other and with the public.[28] The stifling of this expression, as advocated by Mr. Juneau-Katsuya, would criminalize lawful conduct that is necessary for Canada's liberal democracy.

Is having or voicing concerns about some Islamists "Islamophobia"

As detailed by Global Peace Index, Canada is the eighth safest country in the world. Much of the world's population is not so fortunate.

[27] http://parlvu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20170920/-1/27874?useragent=Mozilla/5.0
[28] *R. v. Big M Drug Mart Ltd.,* [1985] 1 SCR 295,paras. 94-96.

The Middle East and North Africa ("MENA") is ranked by the Institute for Economics and Peace[29] as the least peaceful region in the world for the fifth successive year. Saudi Arabia, followed by Libya, recorded the largest deteriorations in the region. Both Saudi Arabia and Libya are countries where Islam is the predominant religion. According to the Global Peace Index, "Saudi Arabia fell in the rankings because of its involvement in the Syrian and Yemen conflicts and increased terrorist activity, mainly conducted by ISIL and its affiliates, while the fall for Libya was due to its increased level of internal conflict."[30]

For the year 2016, the domain[31] that deteriorated the most over the ten-year period was Safety and Security, with 61 per cent of MENA countries recording a deterioration. The major declines in this domain occurred in the sub-Saharan Africa region "due to increases in terrorism impact and political instability."[32] In 2016, 94% of the world's peace keeping forces were deployed to Middle East North Africa and Sub-Saharan Africa.[33] The countries these peacekeeping forces are deployed to are predominantly Islamic.

Is it "Islamophobic" for Canadians to be concerned about how the immigration of persons from these nations may impact the safety of Canada? Is it "Islamophobic" to conclude that the nations which are ruled by a combination of "mosque and state" are far less safe than Canada, and are repeatedly and consistently ranked among the most dangerous countries in the world? Should it be illegal to express such concerns?

WADI (Arabic for "Valley") is an NGO operating in the Middle East and focused on women's issues, that started working in Iraqi Kurdistan (Iraqi Kurds are typically Sunni Muslims[34]) in 2003. After gaining the trust of the local women through medical work their patients revealed that female genital mutilation ("FGM") was common.[35] The procedure was reported to be performed with unsterilized instruments or even broken glass and without anesthesia on girls four to twelve years

[29] The Institute for Economics and Peace produces the Global Peace Index, considered the world's leading benchmark for measuring the peacefulness of nations, is used by many leading organisations and presented yearly to the United Nations.
[30] Global Peace Index, p. 2
[31] One of the criterion used to calculate the Global Peace Index
[32] Global Peace Index, p. 3
[33] Global Peace Index, p. 51, table 2.26
[34] [http://www.pewresearch.org/fact-tank/2014/08/20/who-are-the-iraqi-kurds/]
[35] [http://www.meforum.org/1629/is-female-genital-mutilation-an-islamic-problem] See Appendix "A" for full article.

old, with the extent of the mutilation "dependent on the experience of the midwife and the luck of the girl." The cutting of the clitoris is performed according to the "sunnat excision", i.e. the excision according to the tradition of the prophet.[36] The locals reported that the wound is then treated with ash or mud with the girls then forced to sit in a bucket of iced water. Many Kurdish girls die, and others suffer chronic pain, infection, and infertility."[37]

In subsequent studies in the area it was determined that approximately 60% of the women in the area had undergone FGM, stated it was "normal" and that it was both a tradition and religious obligation.[38] Despite the fact that the United Nations has made the prevention of female genital mutilation a priority for three decades, the practice is expanding.[39] The clitoris is considered dirty (haram), and "women fear that they cannot find husbands for their daughters if they have not been mutilated; many believe men prefer sex with a mutilated wife."[40]

Interestingly, when the widespread use of female genital mutilation by Iraqi Kurds was reported, "some members of influential Islamic and Arabic organizations in the diaspora scandalized the findings, accusing WADI of trying to insult Islam and spread anti-Islamic propaganda."[41] Members of the "Initiative of Muslim Austrians called the data part of an "**Islamophobic campaign**" and declared no FGM exists in Iraq."[42]

Is it "Islamophobia" to voice concerns about the safety and security of Muslim women? Is it irrational for a Canadian to be concerned about child female genital mutilation, and its continued occurrence in some Canadian Islamic communities,[43] or that there has never been a conviction for female genital mutilation in Canada?[44] Is it rational, or irrational, to believe that the Constitution of Canada protects a little girl's right not to have her genitals mutilated? Is it rational or irrational

[36] [https://wadi-online.org/2017/03/06/the-campaign-against-female-genital-mutilation/] See Appendix "A" for full article.
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.* And see Julia M. Masterson and Julie Hanson Swanson, Female Genital Cutting: Breaking the Silence, Enabling Change (Washington, D.C.: International Center for Research on Women and the Center for Development and Population Activities, 2000), p. 5.
[43] [http://www.metronews.ca/news/canada/2017/08/21/women-in-ismaili-muslim-sect-say-they-have-had-fgm-in-canada.html] See Appendix "A" to this report for full article.
[44] [http://www.metronews.ca/news/ottawa/2017/07/18/ottawa-says-no-commitment-on-tracking-cases-female-genital-mutil.html]

to be concerned about the safety and autonomy of Canadian women who may be compelled to wear a burka, hijab or niqab against their wills, in a society that respects the equality, opinions and rights of women? Is it rational or irrational to be concerned about suicide bombers and terrorism? Is it racist to express concerns about these issues? Is it discriminatory? Is it "Islamophobic"?

Further, there are different beliefs and factions within Islam, and these ideological conflicts are sometimes expressed by violence.[45] Is a Shiite "Islamophobic" for expressing strong disagreement with Sunni teachings or practices? Can a Muslim be "Islamophobic" if he criticizes the practice of female genital mutilation? Tarek Fatah, a Muslim, testified before this Committee on Wednesday, September 20th, 2017, and stated that "so-called" experts in Islam (whom he likened to Islamic popes who pretend to infallibility), who are in favour of jihad and burkahs and female genital mutilation, must be challenged.

Is Mr. Fatah an "Islamophobe" because he thinks that it is repugnant for women to be compelled to wear a burkah? Should his ability to think or say this be quelled? Does the Committee know the answers to any of these questions? Should it pretend to?

Islam is not a single, united, coherent and uniform whole. Instead, there are different factions, movements and ideologies within Islam. Which one of those factions are Canadians free to be concerned about? Canadian Muslims have the constitutional right to criticize the positions of those within their own religion, with whom they disagree. Likewise, non-Muslims also have the constitutional freedom to criticize Islam. All Canadians enjoy the freedom to criticize all religions (including worldviews and belief systems such as atheism, agnosticism and other "isms"). The Supreme Court of Canada has ruled that the state is not to make itself the arbiter of religious dogma.[46] The myriad questions are proof of the wisdom of the *Charter* and the Supreme Court of Canada's holding that the state is to be neutral in regard to debates about religion.

[45] [http://www.bbc.com/news/world-middle-east-16047709]

[46] *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551, para. 50: "In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion."

Conclusion

When a Parliamentary Committee is asked by the House of Commons to study something, the Committee should know what that "something" is. So should Canadians. There are three main problems with M-103. First, the Motion is vague and lacks the certainty for proper legislative recommendations. Second, the state has no business in attempting to control the minds and thoughts of its citizens, as is implicitly proposed by the Motion; the *Charter* stands as a guardian between the citizen and oppressive state action. Third, "Islamophobia" is not capable of constitutional legislative prevention for the reasons set out herein.