



Date: October 27, 2020

To: The Standing Committee on Justice Policy of the Ontario Legislature.

Re: Written Submission on Bill 168

From: Michael Bueckert, PhD, Vice President, Canadians for Justice and Peace in the Middle East (CJPME)

To Members of the Standing Committee on Justice Policy of the Ontario Legislature,

I am writing to you on behalf of Canadians for Justice and Peace in the Middle East (CJPME), a national organization with thousands of members in Ontario, whose mission is to promote justice, development and peace in the Middle East, and here at home in Canada. We urge this committee not to pass Bill 168, or, at the very least, that it excludes the IHRA “illustrative examples” which define criticism of Israel and/or Zionism as antisemitism.

Antisemitism is a problem in Canada, and CJPME stands firmly opposed to it. Nevertheless, CJPME opposes the International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism, and particularly its illustrative examples which repeatedly refer to criticism of Israel and Zionism as antisemitic. Taken together, we and our supporters are concerned that the definition and its examples will be used to stifle free speech and activism related to Israel and Palestine. This is a concern shared by the Canadian Labour Congress, the Canadian Federation of Students, the BC Civil Liberties Association, more than 400 academics, and many other civil society groups.

I point out that Independent Jewish Voices Canada (IJV Canada) has undertaken a detailed analysis which reveals specific problems with the text of IHRA,¹ and they have compiled a list of more than 30 examples of IHRA being weaponized to silence criticism of Israel.² The point of this brief is not to repeat those arguments, but rather to delve further into the practical issues of interpreting IHRA. This will demonstrate that IHRA poses real harms to basic civil liberties and is a potential threat to anyone who would advocate for Palestinian human rights.

No safeguards for free speech

First, despite what supporters of Bill 168 will claim, the IHRA working definition contains no real safeguards to protect free speech or legitimate criticism.

Supporters of IHRA will point out that the accompanying examples specify that “criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.”³ However, on closer examination, this reassurance proves meaningless. After all, how is one to determine whether any given political expression about Israel is satisfactorily “similar to that leveled against any other country”? It is inherently a subjective determination, based on one’s personal and political opinion, and not a test that can reasonably guide public institutions.



Further, one of the IHRA's most ambiguous "illustrative examples" is "Applying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation." One can reasonably ask: who is in a position to determine whether any given criticism of Israel constitutes a double standard? Any country facing significant criticism will complain of being unfairly held to a double standard. In fact, Apartheid South Africa made the same complaints in response to pressures from the anti-apartheid movement in the 1980s.⁴ More to the point, Israel frequently accuses the United Nations of holding it to a double standard, when in fact it is being evaluated according to universal standards of international law. Such complaints may or may not have merit, but this is certainly not a satisfactory standard for evaluating antisemitism.

Admittedly, it *is* possible that Israel is occasionally held to a *higher* standard than other countries. This is because Israel desires to be an accepted member of the family of liberal Western democracies. Because it desires close diplomatic and trade relationships with Canada, the US, and the EU, Israel's human rights violations are subject to more scrutiny than a country like North Korea or Syria. The West does not impose "no fly zones" over Israel, or send UN Peacekeepers to prevent Israeli incursions into Gaza. The West expects Israel to live up to its responsibilities as a signatory to the 4th Geneva Convention, and to protect the vulnerable Palestinian civilians living under its authority. This does not indicate prejudice, but simply that Israel's claim for a place at the table with liberal Western democracy imposes a higher standard of behaviour. A "double standard" in this case does not reveal anything about antisemitism.

Another "illustrative example" of antisemitism included as part of the IHRA definition is "Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor." This poses significant problems, as the charge of denying Jewish self-determination is a loaded accusation that is often misapplied to criticism and protest of the state of Israel. For many observers, this contention is defined in a way to rule out virtually any criticism of Israeli racism. Sadly, examples of Israeli racism are numerous, and include "Jim Crow"-esque administrative laws imposed by Israel in the West Bank; the forced dispossession of 700,000 Palestinians in 1947-48; and Israeli policies that ban Palestinian refugees from returning to their homes. If saying that Israel "is a racist endeavor" is off limits, then the primary outcome of IHRA will be to defend instances of Israeli racism from international scrutiny, and to suppress all Palestinian narratives.

Further, the charge of denying Jewish self-determination is often levelled against those who support the right of return for Palestinian refugees (as is recognized under international law), or those who call for a single democratic state where Israelis and Palestinians would be granted equal rights. Sometimes these political positions are characterized as calls for the "destruction of Israel," because they would modify its demographic character. Rather than calling for Israel's destruction, these positions are about advocating justice for refugees, and for the extension of democracy to Palestinians. Unfortunately, while other Western democracies struggle with social movement demands to establish truly inclusive societies for all of their citizens, the Israeli right-wing leadership seems intent on creating an ethnically pure nation-state – quite the anachronism for 2020. The positions asserted by advocates for Palestinian rights are legitimate, anti-racist positions, and it would be absurd to label them antisemitic.

Ultimately, these IHRA statements provide no practical guidance on what is acceptable criticism of Israel. As such, if someone believes that a given political expression is unfair to Israel, they will seek to accuse that expression of violating IHRA, regardless of the expression's legitimacy, merits, or relationship to antisemitism.

Interpreting IHRA to shut down speech

The real threat of IHRA is not so much in the specific text, but in its interpretation and enforcement where it can be weaponized against virtually any form of political expression.

We know that IHRA will be applied to criticism and protest of Israel, and to pressure institutions into shutting down those forms of expression. We know this because many of Bill 168's main proponents have already been doing this for years. The following is a small selection of examples of Bill 168's supporters have interpreted IHRA and its relationship to speech on Israel.

Example A

In a press release titled "CIJA Applauds Integration of IHRA Definition Into Canada's New Anti-Racism Strategy," the Centre of Israel and Jewish Affairs (CIJA) said:

"The IHRA definition also **explicitly recognizes that anti-Zionism** – that is the **delegitimization** and **demonization** of the Jewish state – **is a clear and unequivocal expression of antisemitism**. The definition states clearly that Jew hatred includes applying antisemitic slurs to Israel, denying the Jewish people's legitimate right to self-determination, accusing Israelis of blood libels, and **holding Israel to double standards**. The IHRA definition also recognizes that, like any democracy, criticism of Israeli policy is not antisemitic. But calling into question the right of the Jewish people to self-determination is."⁵

In a related web post titled "Why is the IHRA Definition Important?", CIJA claimed that "The IHRA definition clearly exposes how the **demonization of Israel** is antisemitism, pure and simple."⁶

Of course, Zionism is a political ideology, and so criticism of Zionism (or anti-Zionism) constitutes legitimate speech and academic inquiry which deserves protection. Moreover, "delegitimization," "demonization," and "double standards" are entirely subjective claims about criticism, and could be applied to virtually anything. Who is to determine whether a protest of Israel, or a vigorous critique of Israeli settlements, is "demonizing" that country? Again, it comes down to personal opinion, and in practice will end up in the severe policing of language.

Example B

In Feb 2020, B'nai Brith Canada and Friends of the Simon Wiesenthal Centre each endorsed and circulated an open letter to the President of the University of Toronto, which argued that adopting IHRA would give the administration the "obligation" to intervene into the internal affairs of student associations if they allowed protests of Israel to take place, such as a boycott, sanctions and divestment campaign (BDS) against Israel, or Apartheid Week events:

We put to you, and to the University of Toronto administration, that the adoption of the IHRA definition of antisemitism in full and as policy would be a necessary first concrete step forward. Flowing from this, **the university would have every right, if not the obligation, to face down the UTGSU's support for BDS as well as its holding of the annual "Israel Apartheid Week."**⁷



As reported by *Canadian Jewish News*: the “professors want the university to adopt the IHRA definition and to apply it to **end BDS efforts on campus and abolish the IAW campaign.**”⁸

In another *Canadian Jewish News* article, one of the academics behind the letter further specified that the goal of the IHRA definition is to censor protests of Israel:

“Discussions about Israeli policies are fine. IAW and BDS are not about that. We feel these are sinister anti-Semitic events. They’re not fair conversations about solving the Middle East conflict. BDS is not a solution other than Israel ceasing to be a Jewish state,” he said. With the IHRA definition in its toolbox, the **university administration can move to “disallow these activities on campus,”** he added.⁹

Example C

In an op-ed, Liberal MPs Anthony Housefather and Michael Levitt argued that IHRA is necessary because it applies to protests of Israel:

And crucially, [IHRA] includes instances where anti-Semitism is **masked as criticism of Israel or Zionism**. While criticism of Israeli government policy is legitimate, holding Israel to a different standard than other countries, questioning its right to exist or calling for its destruction, **like Israel Apartheid Week on university campuses**, denies the only Jewish state the rights afforded to every other country [...] Too often, **anti-Israel rhetoric**, like that **employed by the boycott, divestment and sanctions movement**, is marked by delegitimization, demonization and double standards – aspects of discourse that clearly cross the line into anti-Semitism.¹⁰

Example D

Daniel Korn, executive director of Hasbara Fellowships Canada, claims that IHRA determines “BDS and anti-Israel activism” to be antisemitic, saying:

“[IHRA] would help administrations understand the difference between legitimate criticism of Israel and campaigns that seek to isolate, demonize and delegitimize it [...]
The time has come to **put a stop to deceitful and pernicious campaigns that usurp the language of human rights to promote a biased political agenda**. Adopting the IHRA definition will help college and university administrations bring that principled goal to fruition.”¹¹

Aside from the implication that universities should rely on IHRA to ban campus protests of Israel, the claim that the language of human rights is being “usurped” to hide antisemitic goals is extremely troubling and *dangerous*. Such an interpretation could basically prohibit any criticism of Israel based on human rights law – a suggestion which should be preposterous to a liberal society that prizes freedom of expression.

Example E

Early in 2020, the pro-Israel group Canadian Antisemitism Education Foundation (CAEF) had a campaign arguing that the United Nations database of businesses related to settlements in the Occupied Palestinian Territory had violated IHRA:

“According to the accepted **International Holocaust Remembrance Alliance (IHRA) definition**, this action most certainly represents another day of antisemitism at the United Nations—treating Israel differently than any other country for similar circumstances. Even worse, since there is no illegal occupation, the treatment is nothing more than overt Anti-Zionism which is Antisemitism.”¹²

Example F

In a report from 2019, pro-Israel group NGO Monitor accused the United Church of Canada and humanitarian NGO Kairos Canada of violating the IHRA definition, due to their partnership with Palestinian women’s group Wi’am, which had joined a 2005 statement from Palestinian civil society in support of boycotting Israel. As the report explained:

BDS campaigns targeting Israel are considered antisemitic, according to the IHRA definition of antisemitism (officially recognized by Global Affairs Canada) as they attempt to deny “the Jewish people their right to self-determination” and apply “double standards.”¹³

Relatedly, a tweet by NGO Monitor (and retweeted by CIJA) claimed that that NGOs who “single out and attack Israel” are antisemitic, and that the Canadian government should implement the IHRA definition against them. The implication was that Canada should eliminate their development aid funding:

Canada adopting [@TheIHRA](#) definition of [#Antisemitism](#) is an important symbolic and declaratory move. **Implementing it in the Canadian policy, including NGO funding used to single out and attack Israel, is essential.**¹⁴

Pro-Israel group Honest Reporting Canada also picked up on this issue to argue that supporting a boycott violates IHRA, and that NGOs should lose their federal funding if they have connections to pro-boycott groups:

Indeed, **BDS campaigns, such as those promoted by the United Church of Canada’s Palestinian partner Wi’am, meet the IHRA definition of anti-Semitism**, as they attempt to deny “the Jewish people their right to self-determination” and apply “double standards.” Wi’am is receiving 20 per cent of the grant to Kairos Canada ... **Canada should investigate this incident and consider rescinding any funds that clearly contradict Canadian values and policies.**¹⁵

Example G

B’nai Brith Canada, a major supporter of Bill 168 and IHRA, has two active censorship campaigns targeting Ontario universities:

B'nai Brith Canada is petitioning York University to have a lecturer be “disqualified from teaching a human-rights course” due to his academic criticism of Zionism.¹⁶

B'nai Brith Canada is petitioning the University of Toronto to reject the candidacy of Dr. Azarova for directorship of the human rights law program, due to her scholarship critical of Israel's occupation.¹⁷ B'nai Brith's CEO wrote that Dr. Azarova's “anti-Israel obsessions” should have disqualified her from consideration in the first place.¹⁸

Example H

Pro-Israel group Honest Reporting Canada says that media organizations should adopt the IHRA definition, which would mandate news editors to censor anti-Zionist opinions and possibly even reporting that is unfavourable to Israel:

With this definition of antisemitism so widely accepted, **it thus becomes imperative for media outlets in Canada to use it as a working definition in their own reporting of Israel.** Legitimate criticism of Israel is acceptable and welcome in a country with a free and vibrant press such as Canada, and while the open expression of hatred against Jews is rare in mainstream society today, it continues to exist **under the guise of anti-Zionism. It becomes incumbent, therefore, for media outlets to not allow expressions of antisemitism masquerading as political positions to have a seat at the proverbial table.**¹⁹

This recommendation is alarming. If the IHRA was applied in this way, it could potentially mean that newspapers would not even be able to accurately report on events in Israel. It is not difficult to imagine that, as per this suggestion, media should not interview, or include the opinions of parties that are critical of Israel.

Example I

This is not only a problem in Canada, but also in other jurisdictions that have adopted the IHRA definition. US President Trump, whose administration has adopted the IHRA definition, is reportedly considering labeling prominent human rights groups including Amnesty International, Human Rights Watch, and Oxfam, as antisemitic organizations due to their criticism of Israeli human rights abuses, and encouraging other countries not to support them.²⁰

Zachor Legal Institute, a major pro-Israel “legal think tank,” praised Trump for this proposed policy, and argued that Trump would be correctly applying the IHRA definition against the NGOs.²¹

Conclusion

It is clear that many supporters of Bill 168 interpret IHRA in a way that would limit speech: in their view, the IHRA would designate specific and legitimate forms of political expression about Israel to be considered antisemitic, including a boycott of Israel or making comparisons to South Africa. According to IHRA supporters, it is this aspect that makes the definition valuable.

Supporters of Bill 168 claim that the goal of IHRA is to empower public authorities (especially university administrators) to take action to stop, disallow, or to defund, those forms of political expression from taking place.

This does not mean that public institutions would automatically ban speech if IHRA was adopted. However, given the considerable ambiguity of the definition and its examples, IHRA's meaning is entirely open to subjective interpretation. How will public authorities be able to adjudicate whether a student boycott of Israeli products, a photo exhibition about Palestinian political prisoners, or a lecture on why Israel should extend equal rights to all Palestinians, should be considered a "double standard" or the "demonization" of Israel?

The fact is that public authorities do not have the tools to adjudicate claims about whether any given criticism violates IHRA. Given this inability, there is a genuine risk that authorities will apply IHRA liberally, as we have seen happen in other countries, notably the United States. At the very least, it will create a chilling effect where people will refrain from criticizing Israel in order to prevent being targeted by the provincial government.

One can disagree with the tactic of a boycott against Israel, or of comparing Israeli policies to Apartheid South Africa, but they are legitimate and valuable forms of political expression. Further, a recent EKOS poll co-sponsored by CJPME shows that a clear majority of Canadians do not view these forms of criticism to be antisemitic.²² (Ironically, our survey itself was accused of violating IHRA in a blog published by CAEF).²³

If adopted, the IHRA definition will be used – as it is already being used – to put maximum pressure on public institutions to crack down on speech and activism critical of Israel. In Canada, the IHRA definition is already having a chilling effect, as many people hesitate to speak truthfully about Israel and Palestine in fear of being falsely labeled antisemitic. And this is the point.

Recommendation: CJPME urges this committee not to pass Bill 168, or, at the very least, that it explicitly excludes the IHRA illustrative examples which define criticism of Israel and/or Zionism as antisemitism.

Notes

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² IJV Canada, "IHRA Definition At Work," September 4, 2020, <https://www.ijvcanada.org/ihra-definition-at-work/>

³ IHRA Working Definition of Antisemitism, <https://www.holocaustremembrance.com/working-definition-antisemitism>

⁴ I discuss this in my PhD dissertation: Michael Bueckert, "Boycotts and Backlash: The Canadian Opposition to Boycott, Divestment, and Sanctions (BDS) Movements from South Africa to Israel," PhD Dissertation, Carleton University, 2020, <https://curve.carleton.ca/2aeddef3-06a0-4b8e-8504-367caf8edd17>

⁵ Centre for Israel and Jewish Affairs (CIJA), "Press Release: CIJA Applauds Integration of IHRA Definition Into Canada's New Anti-Racism Strategy," June 25, 2019, <https://www.cija.ca/press-release-cija-applauds-integration-of-ihra/>

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- ¹³ NGO Monitor, “Canadian Funding to BDS-Promoting Organizations,” April 3, 2019, <https://www.ngo-monitor.org/reports/canadian-funding-to-bds-promoting-organizations/>
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