

FROM THE RIVER TO THE SEA: PALESTINE WILL BE FREE

A PRIMER ON HISTORY, CONTEXT, AND LEGALITIES IN CANADA



UNIVERSITY OF
TORONTO



HEARING
PALESTINE



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This Primer was led by faculty at the University of Toronto’s Hearing Palestine Initiative, an academic initiative that explores the history, culture, and collective memory of Palestine and Palestinians, including those now residing in Canada. It is the only academic initiative of its kind in Canada, and is uniquely qualified to address the history, context, and legalities around the slogan, “From the River to the Sea, Palestine will be free.” The Primer itself is the result of academic and creative input from many scholars, graduate students, and designers from across Canada. Collectively written, reviewed, and edited, it reflects deep historical, religious, legal, anthropological, and sociological expertise on Israel, Palestine, and the reception across the globe of the conflict between the two. The faculty team that oversaw production of the primer are as follows:

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INTRODUCTION

Since the attacks by Hamas in Israel on October 7, and the subsequent Israeli bombardment of Gaza, protests the world over have spawned a debate about the meaning, intent, and impact of the political slogan “From the River to the Sea, Palestine will be free.” These 10 words are causing considerable debate worldwide on the line between valid political speech and promulgation of hate. For instance, when US Representative Rashida Tlaib invoked the phrase on social media, the House of Representatives censured her. In contrast, in August 2023, a Dutch court ruled that the 10 words are subject to various interpretations, and should benefit from freedom of speech protections. In Canada, this slogan produced similar concerns when Calgary police arrested Wesam Cooley for causing a disturbance by using an “antisemitic phrase” during a protest rally. His lawyer identified the phrase as the 10-word Palestinian protest slogan. Though the Crown prosecutor dropped all charges against Cooley, the arrest raises fundamental questions about what the phrase means, and most notably, whether and to what extent the slogan, when chanted, constitutes hate promoting speech under relevant provisions of the *Criminal Code*. When some Jewish Canadians hear the slogan, they describe it as a call for the elimination of Israel and of Jewish-Israelis, and thereby as promoting Antisemitism. When Palestinian and Palestinian solidarity activists use the slogan, they say it is a chant for freedom and equality. For them, the slogan cannot be equated with an eliminationist program. Moreover, influential scholars, both Palestinian and Israeli, explain that such an equation draws on long standing racist and Islamophobic tropes, or lack of historical context.

As this slogan continues to be used across the country, police, hate crimes units, and Crown prosecutors may require guidance on how to understand this phrase, and its implications on their obligations under the *Criminal Code*. This Primer focuses on the applicability or inapplicability of the section 319 hate speech provisions of the Code as well as s.718.2(a)(i). These are the sections of the Code most likely to be implicated by the slogan “from the River to the Sea, Palestine will be free.” Section 319 of the Code contains three separate hate speech offences including public incitement of hatred (s.319(1)), wilful promotion of hatred (s.319(2)), and the wilful promotion of Antisemitism by denying the Holocaust (s.319(2.1)). Section 718.2(a)(i) delineates hate motivation for the commission of offences as an aggravating circumstance for an offender’s sentence.

To assess the applicability of the above sections of the *Criminal Code*, it is vital to provide the historical context in which the political slogan appeared in Palestinian national movements, as well as how Palestinian and Israeli intellectuals today understand the political slogan. Those experts who have reviewed this history most carefully, especially Maha Nassar ([2018](#), [2023](#)), Youssef Munayyer ([2021](#)), and Elliot Colla ([2023](#)), have concluded that its meaning — especially in the North

American context — is based in Palestinian calls for liberation, given a long history of dispossession. These leading experts all reject the idea that the eliminationist interpretation is central to the history of Palestinian interpretations, including in their considerations after October 7, 2023. Without this expert analysis, it is not possible to properly assess the meaning of the slogan for purposes of the relevant *Criminal Code* sections.

Given the different interpretations of the political slogan, how should law enforcement approach its use? A team of historians, anthropologists, and law professors prepared this Primer to address the history of this slogan, its use in Canada, and how it has been received, in order to provide the necessary context to inform police and prosecutors of their duties under the *Criminal Code* and the *Charter*. The team drew upon experts from across the country, with a specific focus on the obligation of police and prosecutors to uphold the provisions of the *Criminal Code*.

Of course, though the slogan is merely 10 words, its varied meanings, significance, and impact draw upon a complex geo-political history in the Middle East, and separately but no less importantly, upon a history of that phrase's reception by the Canadian public and Canadian institutions. These two histories converge when police and other officials hear these 10 words from Canadians across Canada's vast landscape. For that reason, this Primer provides a history of the slogan in light of both a regional history of the conflict, and how it takes shape in Canadian contexts. Doing so will require distinguishing between the **phrase** "from the River to the Sea" and the **political slogan** "from the River to the Sea, Palestine will be free." The phrase and the slogan have distinct histories, but those histories overlap in the use of the slogan today.

Importantly, this Primer is focused on the implications of these distinct but overlapping histories with respect to the Canadian *Criminal Code*. For that reason, the Primer is necessarily focused on the histories that inform those usages that are now subject to suspicion and criminalization. News reporting on this issue indicates that those most likely targeted by police and other security institutions for using the slogan are those who advocate for Palestine. Moreover, the relevant

Criminal Code provisions addressed below have significant *intent* requirements. Consequently, this Primer will necessarily address what it means for Canadians advocating for Palestine across our cities and institutions to use this slogan in light of the current conflict in the region.

This narrow focus is important. Some may fault this Primer for not duly emphasizing the *impact* the slogan has on some Jewish Canadians. This Primer is principally focused on supporting Canada's police and hate crimes units to understand their obligations under the *Criminal Code*. Any application of hate promulgation

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provisions under the *Criminal Code* certainly requires considering impact evidence with respect to a determination of hate. But as the legal analysis below also shows, any application of these provisions demand attention to the *intent* of the speaker. When juxtaposing *impact* with the complex history of this phrase, we find that the 10-word slogan’s meaning is indeterminate at best. As such, any legal analysis will necessarily focus on intent, which is separate and distinct from analysis of impact. This Primer certainly considers the impact this slogan has on some communities in Canada. This Primer also considers the various interpretations of the slogan, and their associated impact, on Jewish Canadians, by reviewing the discussions by Jewish and Israel advocacy organizations. But it is careful to calibrate this historical and contextual evidence with respect to the distinct elements of the *Criminal Code* provisions and their requirements under prevailing jurisprudence.





TALKING ABOUT PALESTINE IN CANADA

When used in Canada, the 10-word slogan exists in a context where Canadian public institutions have a history of disregarding Palestine, or unduly reducing it to religious terms. As a result, part of the public interest in the use of the slogan by protestors cannot be fully appreciated: namely, protestors are using the slogan to break free of the tendency by public institutions to recognize them as only Muslims, or members of a religious group. The slogan instead helps to centre Palestinian existence as a distinct people with historical rights. The meaning of the slogan right now cannot be separated from that effort to go beyond the religious terms of reference that percolate across Canadian institutions.

This problem of erasing Palestine is often mentioned in criticisms of mainstream Canadian media. It has long been reported that Canada's media landscape has a "Palestine exception". In a June 2022 article in *The Review of Journalism* (Farawi 2022), journalists from across Canada's media landscape anonymously explained their concerns about media censorship with respect to Palestine.

Other public institutions also have a tendency to reduce the complex history of this regional conflict into narrow religious terms. For instance, in 2021, the Canadian Judicial Council (CJC) undertook an ethics review of Justice David Spiro of the Federal Tax Court for his alleged interference with a hiring process at the University of Toronto Faculty of Law. Justice Spiro was alleged to have objected to the hiring of a human rights scholar critical of Israel. In his letter to the CJC supporting Spiro, Chief Justice of the Federal Tax Court, Eugene Rossiter, wrote that Justice Spiro was now required to "recuse himself immediately from any file at any time in which it appeared to him that either the counsel, representative of any litigant or a litigant is a Muslim or is of the Islamic faith" (Baksh and Findlay 2021). Rossiter's letter makes

the reductive mistake of transforming "Palestine" into a religious term, "Muslim", and thereby erases the question of Palestinian human rights from public consideration. Incidentally, Rossiter's letter also neglects the fact that some Palestinians are Christian, and that historically, the land that became Palestine under British rule (1917-1948) cultivated customs that cut across many faiths, including the three most recognized monotheistic religions, Islam, Christianity and Judaism.

Years earlier, the philosopher Charles Taylor and historian Gérard Bouchard led the Bouchard-Taylor Commission on Reasonable Accommodation under a Government of Quebec Order in Council. In their final

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report, they provided an example of why a judge might need to remove religious insignia while presiding over litigation. They ask: “Could a Muslim respondent assume the impartiality of a Jewish judge wearing a kippah...?” ([Bouchard-Taylor, 151](#)). Why would the authors ask this question in such narrow religious terms, unless they inadvertently reduced the geo-political complexity of the Israeli-Palestinian conflict to a religious one? Even when Canadian leaders and institutions describe the conflict in national terms, there is always the spectre of competing religious groups in the background.

This reduction permits, to a degree, the events in Gaza to be framed in terms of Antisemitism and Islamophobia. We see this in the current response of government offices. There are federal offices now devoted to combating Antisemitism and Islamophobia in Canada. And both offices have been busy addressing concerns in the wake of the Israel-Gaza war since October 2023. For example, Deborah Lyons was recently appointed to the position of Special Envoy on Preserving Holocaust Remembrance and Combatting Antisemitism in October 2023, and she believes certain criticisms of Israel fall under the rubric of Antisemitism. She describes Canada’s adoption of the controversial International Holocaust Remembrance Association (IHRA) working definition of Antisemitism as straightforward. In her words: “when it [Israel] becomes a complete and constant target, without any other focus, or balance with other conflicts or controversies then it becomes very obvious that it is done from an antisemitic perspective” ([Robertson 2023](#)). Canada’s Islamophobia special envoy, Amira Elghawaby, released a statement on the Israeli-Gaza war explaining how the violence in the Middle East was instigating rising Islamophobia in Canada. As she explained, “[r]ight now, there are fears of a resurgence in Islamophobia which has troubling echoes of the past” ([Elghawaby 2023](#)). In other words, across Government and media landscapes, talk of Palestine may be muted, reduced, or focused on religious identity. This problem is also pronounced in consideration of domestic law and policy (e.g., IHRA and s. 319(2.1))

For police and Crown prosecutors across Canada, the mistakes and reductions by Canadian media and public institutions imply that it is also reasonable to presume that ordinary Canadians may make such mistakes. Moreover, for purposes of understanding Palestine solidarity protestors, it is worth noting that such mistakes and reductions contribute to institutional reluctance to say or speak “Palestine”. This institutional reticence provides a distinctively Canadian backdrop to today’s Palestine solidarity protestors. It is important for Canada’s policing agencies to understand this institutional context when considering what an utterance of the 10-word slogan may mean.

First, the history of Israel and Palestine is variously represented in the media, in school curricula, and university courses. Given longstanding critiques of how Palestine is discussed publicly, leading historians of Palestine and of Israel believe it is necessary to appreciate the complicated history of colonization of Mandate Palestine since the 1920s, and the dispossession of Palestinians from their

homes over decades (Khalidi 2019, Lockman 2012, Pappé 2007, Robinson 2013, Sabbagh-Khoury 2023, Said 1992, Sayegh 1965, Shafir and Peled 2002). This issue includes continued Israeli settlement in the West Bank and Gaza Strip post 1967 in contravention of international law ([Global Affairs Canada 2023](#)). For Canada's policing forces, appreciating that there is a complex historical context is necessary for better understanding how that history is invoked in political slogans. In other words, this history complicates the factual determination of hate and the legal question of intent/willfulness under the relevant *Criminal Code* provisions.

Second, police and Crown prosecutors must recognize that in all domestic contexts, public discussion about Israel and Palestine, including about the current war in Gaza, takes shape in the wake of the Truth and Reconciliation Commission. For example, today, some Canadians are making a historical comparison between Indigenous peoples in Canada and Palestinians, and this affects how they interpret the conflict between Israelis and Palestinians. The TRC has had an important impact on how Canadians understand and appreciate the rights of Indigenous peoples in Canada. Moreover, Canada's royal assent to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) provides a framework for integrating that domestic paradigm into global discussion. Canada's embrace of the TRC and UNDRIP now inform how the Israeli-Palestinian conflict is understood among some Canadians.

Of course, these complicated global and domestic histories are not always amenable to writing editorial columns, supporting political platforms, or inspiring protesting publics. Indeed, it is precisely because the focus is on a 10-word slogan without reference to these complex histories that police and prosecutorial authorities are left to view the slogan only in reference to the limited framework of the criminal law.





WHOSE SLOGAN? WHICH MEANING?

While Canadians will continue to debate the meaning of this phrase, this Primer explains how the history of this phrase and the wide range of meanings attributed to it preclude application of the *Criminal Code*.

In this Primer we distinguish between **the phrase** “from the River to the Sea” and **the protest slogan** “from the River to the Sea, Palestine will be free.” We examine how the phrase and the slogan are used by Palestinian and Israeli movements, intellectuals, and leaders, as well as how they have been used in solidarity protests in Canada. In addition this Primer situates these two phrases within the broader jurisprudence of the *Criminal Code*. Leveraging academic expertise to support a more informed citizenry, this Primer recognizes that Canadians will continue to disagree on what the phrase means. Further, it explains why arrest or prosecution for saying these words cannot be supported under prevailing Canadian law.

“FROM THE RIVER TO THE SEA” – THE HISTORY AND CONTEXT OF THE PHRASE

The phrase “from the River to the Sea” refers to the territory between the Jordan River and the Mediterranean Sea. That territory today is jurisdictionally complex and has long been the site of conflict. The UN has recognized two states, Palestine and Israel, although in practice, only Israel is sovereign over its territory, and, according to international law, it illegally occupies the West Bank and controls the Gaza Strip. There are multiple disputes about the history of this territory, and about how to reach a peace agreement.

To understand the emergence of the phrase, it is vital to consider Palestinian history. Since at least the 1800s, Palestinians have held this geographical understanding of the territory they know as Palestine, and have circulated this understanding through art, maps, and other cultural forms. The jurisdictional divisions of this territory began to be constituted after World War I, when the British Empire took control of the area and expanded the historical boundaries of the territory to include the Negev Desert.

Since the establishment of the State of Israel in 1948, and the accompanying dispossession of Palestinians from their lands and homes, there has been a desire on the part of the large Palestinian refugee population to return to their homes. While international law may give refugees this right, local and international politics have prevented their return. Moreover, major wars fought between Israel and neighboring countries in the first three decades after Israel’s founding have complicated the right of Palestinian refugees to return. The War of 1967 in particular both expanded the territory Israel controlled as well as led to substantial growth in the Palestinian refugee population.

The phrase “from the River to the Sea” then denotes generally the spatial boundaries of Palestine as understood since the 1800s. In Arabic, two phrases are used: *min al-bahr ila al-nahr* (from the Sea to the River) or *al-mayyah ila al-mayyah* (the water to the water). When asked where Palestine is, Palestinian communities across different areas invoke this historical and popular understanding of Palestine’s boundaries (Smith 2020). Furthermore, as the historian Maha Nassar has recently written: “One reason for the phrase’s appeal is that it speaks to Palestinians’ deep personal ties to the land. They have long identified themselves – and one another – by the town or village in Palestine from which they came” ([Nassar 2023](#)).

In modern Israeli Hebrew, the most common version of the phrase “from the River to the Sea” is “*beyn hayarden layam*,” meaning “between the Jordan River and the Mediterranean Sea.” (The phrase is also found reversed, *beyn hayam layarden*.) The meaning of this phrase differs among Jewish-Israelis themselves, especially depending on whether they have a maximalist concept of Israeli territory or criticize the Israeli post-1967 occupation of the West Bank and Gaza Strip, or if they have even stronger criticisms about Israeli state institutions. For instance, the famous [1977 platform](#) of the ruling Likud Party pronounced a maximalist idea that “between the Sea and the Jordan there will be only Israeli sovereignty.” On the other hand, the former speaker of the Knesset, Avraham Burg, used “*beyn hayarden layam*” as [the title](#) for a series of political interviews of both Israelis and Palestinians during the pandemic. In other words, Burg recognizes the phrase as meaningful for both Israelis and Palestinians, and also presents an anti-occupation concept. Most recently, the Hebrew phrase was used in more critical ways by some protestors at the Israeli pro-democracy demonstrations that lasted from January to September 2023. They shouted versions like “*beyn hayarden layam demokratiya lekulam*” which translates as “between the Jordan and the Sea democracy for everyone” ([Rapoport 2023](#); [Hager 2023](#)). This heavier criticism is also found as the title of a report by B’Tselem, a prominent Israeli human rights organization, (in English): “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid” ([B’Tselem 2021](#)).

“FROM THE RIVER TO THE SEA, PALESTINE WILL BE FREE:” THE POLITICAL SLOGAN AND ITS MEANINGS

The historical and political transformations in the latter half of the 20th century inform Palestinian political expression, especially in the diaspora, where the majority of Palestinians today reside. In this changing historical context, the phrase has assumed new forms and meanings, including the chant that has been used at Palestinian solidarity protests since October 7, 2023: “From the River to the Sea, Palestine will be free.”

Historians who have carefully considered the origins of the phrase, and later the political slogan, in Palestinian movements note that the historical meanings are complex and have shifted. However, all are in agreement that for Palestinian

movements the slogan is not primarily a political program (e.g., two-state solution, one-state solution, confederation, etc.), but rather a Palestinian expression for liberation, freedom, and equality given the on-going context of colonization and military occupation.

While the phrase emerged in Palestinian political culture in the 1960s (Nassar [2018](#)), the political slogan seems to have arisen during the popular uprising or intifada of the 1980s and early 1990s (Colla [2023](#)). The scholar of Arabic literature, Elliot Colla, who has written about Arabic political slogans, discusses the Arabic version of the slogan: “*Min al-nahr ila al-bahr, Filastin satatharrar*”. In his careful look at the slogan’s emergence and the historical evidence that is available, Colla ([2023](#)) emphasizes that “It is a mistake to think that the full meaning of a slogan is to be found in the words alone,” and that it is necessary to take into consideration the specific context of its use in demonstrations. About its use in North America, he writes:

The English version of this slogan is relatively new to Palestine solidarity protests in North America, dating back to the early 2000s or perhaps earlier. Here, it circulates in a different way, given the different goals and conditions of local protest culture. In the North American case, it’s not delivered as an expression of protest or grievance but rather of liberation aspiration. This resonates strongly with other themes of struggle and overcoming, particularly among African American and Native movements.

Two of the most influential and oft-quoted articles are by the scholars Maha Nassar ([2018](#)) and Youssef Munayyer ([2021](#)). Nassar and Munayyer emphasize the complex history of the phrase and slogan, but that what is uniform is the call for liberation. Like Colla ([2023](#)), Nassar also looks at the use of the phrase, and later the political slogan, and concludes: “What Palestinians do want is equal rights. They want to be able to work hard to achieve their dreams without being discriminated against. They want to be able to live where they choose without being told they can’t because of

their ethnicity or religion. They want to be able to choose the leaders who control their lives.” In addition, Munayyer ([2021](#)) counters the often repeated idea that the phrase or slogan should be considered eliminationist. He writes: “The claim that the phrase ‘from the river to the sea’ carries a genocidal intent relies not on the historical record, but rather on racism and

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Islamophobia,” where any or all who use the phrase are presumed to be religiously intolerant, or worse, inclined toward terrorist-informed eliminationist ideologies.

Very little on the Arabic or English versions of the Palestinian political slogan has been published in either the Israeli press or in Hebrew-language scholarly work. The leading Hebrew-language news portal, *YNet*, published a report that recognizes the multiple interpretations of the slogan: “the expression is interpreted differently by different people, and its opposing meanings have increased with the years. ... For many Palestinians, the slogan represents the ‘right of return’ to towns and villages where their ancestors lived before the establishment of the State of Israel. It [the slogan] also comprises a yearning for an independent and united Palestinian state that includes Gaza, the West Bank, and East Jerusalem” ([Adelson 2023](#)). The Israeli historians of the Holocaust and Genocide, Amos Goldberg and Alon Confino, argue explicitly against the eliminationist interpretation of the Palestinian use of the slogan: “When interpreting it [the slogan], it is important to insist on historical periodization and on avoiding historical anachronism, which is what is done by those who claim that it is a slogan of genocide. This insistence is important because the meaning of the slogan is open to interpretation, and depends on the concrete and historical context in which it is said and of course on the personal intention of everyone who uses this slogan” ([Goldberg and Confino 2023](#)).

Chants and slogans are important for protests. Given the longstanding tradition of protest with regard to the Palestinian case, demonstrators have drawn upon a deep repertoire of chants in recent weeks, including “from the River to the Sea, Palestine will be free”. Experts of the Israel-Palestine conflict are also reflecting on the meaning of this phrase since October 7, 2023. For instance, the Israeli Oxford historian of the Middle East and winner of the British Academy Medal, Avi Shlaim, explains in an interview with the BBC: “My interpretation of the slogan is that it is a call for freedom and equality for all the citizens between the Jordan River and the Mediterranean Sea, including Israelis” ([BBC News 2023](#)). In the same BBC segment, the Palestinian political scientist Leila Farsakh (University of Massachusetts), an expert on Palestinian economy and society, stated: “Today, when a Palestinian says ‘from the River to the Sea, Palestine will be Free,’ it may refer to more than one thing. It could be in favor of a two-state solution, it could be a call for one state. But, the primary focus is renouncing colonialism and the demand for freedom for all Palestinians. This includes Palestinians in Israel who are citizens of Israel ..., the Palestinians in the West Bank ..., the Palestinians in Gaza, and the Palestinians in East Jerusalem, as well as freedom for all Israelis” who live in this contested region. In a recent essay, Columbia University anthropologist, Nadia Abu El-Haj, argues that the slogan “should be understood for what it is: a vision of and for a better world” ([Abu El-Haj 2023](#)).





THE SLOGAN IN CANADA: INTENT AND IMPACT

There are numerous approaches to assessing what this slogan means and how to measure it with respect to the proliferation of hate. The Canadian political scientist, Mira Sucharov (Carleton University), helpfully distinguishes two methods of assessing what the slogan means and to whom. Anti-racism discourses would focus on the *impact* a slogan has on a targeted community. Such an approach, if applied here, would necessarily emphasize how the 10-word slogan is understood by parts of Canada’s Jewish communities, where there are many who feel targeted by this phrase ([Sucharov 2023](#)).

If impact — as opposed to intent — were the approach of the *Criminal Code*, this Primer would canvas how Jewish Canadians understand the slogan and the impact it has on their lives and wellbeing. The Primer provides examples of that impact as it relates to the determination of hate as a finding of fact. As Sossin J. emphasized in *R. v. Whatcott* (2023 ONCA 536), anti-hate laws aim to address “the social impact of hateful speech against a targeted group”. But as noted above, the complex history of the slogan precludes a simplistic reduction of this phrase to one meaning or another. The robust history of the phrase and the slogan suggest that these 10 words cannot be understood as *inherently* hateful or hate-promoting. Rather, that history, as examined in this Primer, demonstrates that those using this 10-word slogan generally understand it as a call for recognition and change, deeply rooted in the quest for justice and freedom.

Consequently, the Primer focuses on the intent element of the relevant *Criminal Code* provisions. In other words, the focus is on the intent of the alleged speaker of the slogan in a political protest, as this is the most common scenario that provokes calls for criminalization. As explained below, provisions like s. 319 of the *Criminal Code* demand a focused analysis on intent. Because the evidence on the hateful content of the 10-word slogan does not yield any straightforward analysis, the law requires a strict consideration of the speaker’s intent with respect to promulgation of hate against an identifiable group. Because there is no way to reduce the 10-word

slogan to one meaning or another, and a speaker chanting this slogan may draw on a complex history of this slogan’s meaning, this Primer advises against prosecuting protestors chanting this slogan under hate speech provisions of the *Criminal Code* or considering it an aggravating circumstance in sentencing under s. 718.2(a)(i). .

The robust history of the phrase and the slogan suggest that these 10 words cannot be understood as inherently hateful or hate-promoting.

PALESTINIAN CANADIANS AND PALESTINIAN SOLIDARITY ORGANIZATIONS IN CANADA

What is the historical context of Palestinian and Palestinian solidarity organizing in Canada? Palestinian Canadians first developed groups and institutions in the 1960s to counter racist depictions of Arabs and Muslims in the press, to lobby the Canadian government, and to celebrate Palestinian and Arab culture. Their activities included the publication of newsletters and reports, the organization of demonstrations, and the convening of conferences and banquets. These groups' initial membership was drawn principally from students and professionals in Canada's major cities. Locally born groups, like the Canadian Arab Friendship Society and the Canadian Arab Federation, were joined by branches of North American and international organizations, like the General Union of Palestinian Students and the Organization of Arab Students (Asal 2020; Hussein 2022).

Today's activist networks are substantially larger and drawn from a considerably deeper and wider social base. Nevertheless, the activities remain the same: criticism of and advocacy towards the media and government. One substantial change over the nearly seven decades of organized Palestinian solidarity activity in Canada is the growth and strength of coalitions. While early efforts were led and peopled by Palestinian and other Arab Canadians, today they are joined in large numbers by numerous racialized groups, immigrants, and Indigenous people, as well as others committed to the general principles of justice and equality.

Palestinian and Arab organizations in Canada, as well as parallel ones in the US, agree that the message of the slogan is to call attention to the colonization of Palestinian territories, which has led to the oppression of Palestinians. They uniformly interpret the message of the slogan as a call for freedom and equality. The two articles quoted most often are those written by Palestinian scholars Maha Nassar (2018) and Youssef Munayyer (2021), which are described above. In an interview with the Ontario legal news publication *Law Times* (Macnab 2023), Dania Majid, president of the Arab Canadian Lawyers Association (ACLA), spoke about the slogan: "Majid says that the pro-Palestinian chants are calls for equality and human rights for all and that the truth about their meaning has been widely reported in the media."

There are frequent uses of the slogan on social media of organizers of the Palestinian solidarity protests in Canada. However, it is not possible to discern an interpretation from merely expressing the slogan alone. Interviews with protest leaders, on the other hand, offer helpful context about meaning and significance. Some of the largest protests in Toronto for example have been organized by the Palestinian Youth Movement. One organizer, Dalia Awwad, was interviewed by the *Toronto Star* (Cohen and Chong 2023):

"We need to contextualize Palestine as a place that's being subjected to colonialism," she said. "And so when we call for freedom, we're calling for freedom from that settler-colonial system."

Awwad says the question of what a “liberated Palestine” will look like is not one she can answer. But she said her calls for it carry no intent to commit a genocide or marginalize people to achieve it. What it will require, she said, is granting millions of Palestinians around the world a “right of return” into what is now Israeli territory, a privilege currently available to Jews around the world.

As the *Toronto Star* reports further, this position strikes some, like Professor Aurel Braun of the University of Toronto, as support for Hamas. We return below to the question of how this equation with supporting Hamas is made.

There are several Palestine advocacy organizations in the US which have large followings in Canada. For example, the US-based Institute for Middle East Understanding has spoken about the meaning of the slogan in [an Instagram post](#): “The slogan “From the river to the sea, Palestine will be free” is a call for freedom and an end to Israel’s oppression of Palestinians from the Jordan River to the Mediterranean Sea.” Likewise, the US-based Palestine Legal, whose legal perspective is also influential in Canada, [links](#) to the article by Youssef Munayyer (2021) on its resource page.

JEWISH CANADIANS AND JEWISH CANADIAN ORGANIZATIONS IN CANADA

For some Jewish Canadians, however, the slogan is heard and experienced as a call for ethnic cleansing of the State of Israel of its Jewish inhabitants. Sucharov provides anecdotal examples of how this view finds expression. Some hear in the phrase “ethnic cleansing, or worse, genocide.” Another, she reports, hears “the annihilation of the state of Israel.” That same respondent continued: “Best case scenario? A Palestinian state in which Jews are a tolerated minority. “Worst case scenario? Mass extermination of Jews and the establishment of a *Judenrein* [meaning free of Jews] Palestine on Israel’s ruins” (Sucharov 2023). There is no good polling among Jewish Canadians about the 10-word slogan, so the data to date is principally anecdotal. Further, it is worthwhile remembering that the most comprehensive survey of Jewish Canadians, completed in 2018, found substantial generational gaps exist across many issues, as well as a spectrum of positions overall (Csillag 2019).

Some national Canadian Jewish and Israel advocacy organizations have insisted that the 10-word slogan implies the complete elimination of Israel and Jewish Israelis. The Centre for Israel and Jewish Affairs (CIJA) states that the slogan “calls for the establishment of a State of Palestine from the Jordan River to the Mediterranean Sea, erasing the State of Israel and its people” (CIJA 2021). For a source, it refers the reader to a webpage on a US-based organization, American Jewish Committee (AJC). Similar positions can be found on the social media or websites of Friends of the Simon Wiesenthal Center, B’nai Brith Canada, and Hillel Ontario.

These organizations share a similar approach to insisting on the eliminationist interpretation of the slogan. They focus on groups like Hamas and their use of the

slogan. They understand Hamas as denying the sovereign legitimacy of the State of Israel. Generally, this interpretation is maintained with reference to Hamas documents like the 2017 “Document of General Principles and Policies” which replaced the earlier 1988 charter. In this document, Hamas’ leadership sets out the contours of Palestine and also states its refusal to relinquish any part “from the river to the sea,” while also allowing for the possibility of a two-state solution. Further, at times, Hamas leaders have been quoted as open to this possibility of a two-state solution (e.g., [Reuters 2007](#); [Times of Israel 2016](#)), and at other times, making statements that call for the ethnic cleansing of Jewish-Israelis (e.g., [Times of Israel 2017](#)). Some experts on Hamas argue that the organization has been willing during its history to accept a two-state solution (see below).

In short, the eliminationist interpretation generally involves focusing on such statements about ethnic cleansing, as well as its justifications for targeting and killing Israeli civilians, especially in light of the horrific Hamas attacks on October 7, 2023. The logic implied is that because Hamas can be considered to call for ethnic-cleansing, then any use of the slogan in Canada must necessarily draw on Hamas’ ideology. The logic here also implies that it is not necessary to consider the history and current use of the slogan in Canada, despite the uniqueness of the Canadian context that gives nuance to how it is used domestically.

Not all Jewish and Israel advocacy organizations in Canada believe the slogan necessarily embraces ethnic cleansing or genocide. A wide range of organizations, which identify as progressive Jewish organizations, disagree with the eliminationist interpretation of CIJA and others. For instance the New Israel Fund, Canadian Friends of Peace Now, and J-Space Canada issued a [joint-letter](#) in July 2021 to the Government of Canada and the leaders of the major political parties about expulsions of Palestinian residents from East Jerusalem. They echoed the slogan to plead for the freedom and equality of both Israelis and Palestinians: “We call on you to urge Israel to cease its injustice against Palestinians, and to uphold the rights of all between the Jordan River and the Mediterranean Sea. Until Israel lives up to its founding declarations and principles, neither Palestinians nor Israelis will be free.” In July 2023, J-Space highlighted the statement of Israeli Minister of Justice Yariv Levin in the Knesset, who proclaimed that the Land of Israel (*erets yisra’el*) belongs to the nation of Israel (*am yisra’el*). J-Space expressed concern that Levin insists that all of the territory between the River and the Sea will belong only to the Jewish people. It also [noted](#) the hypocrisy of such a statement: “[W]hen Palestinians so much as utter ‘from the river to the sea’ they are accused of antisemitism.”

Finally, Independent Jewish Voices (IJV) expressly addressed the controversies over the slogan: “The chant is a call for Palestinian liberation from settler colonialism, a call for the freedom and human rights of Palestinians to be respected across their homeland” ([IJV 2023](#)) IJV includes references to multiple relevant sources as a basis for its analysis, including the article mentioned above by Youssef Munayyer ([2021](#)).





POLICING THE SLOGAN UNDER THE CANADIAN CRIMINAL CODE?

Since October 7, 2023, the words “from the River to the Sea, Palestine will be free” constitute more than just a slogan; they have incited debate about whether they should be considered hate speech under sections 319(1)(2) and (2.1) of the Canadian *Criminal Code*. A prevailing view leading the charge for criminalization is that because Hamas has used this phrase in an eliminationist register, use of this phrase (presumably anywhere else in the world) is necessarily eliminationist for purposes of the factual finding of hate and the legal element of intent under the criminal law. The historical context of the slogan and its utilization in the Canadian context does not permit this conclusion.

First, this understanding of Hamas is not historically accurate; some experts on Hamas, like Tareq Baconi (2020, [2023](#)), believe that Hamas has been willing to accept a negotiated two-state solution which would perforce include recognition of Israel. Second, even if Baconi is incorrect, and Hamas uses the slogan in an eliminationist register, this eliminationist meaning cannot serve as a basis for arrest or prosecution *in Canada*. Under the prevailing law, there must be a finding of fact that the slogan is necessarily hateful; but neither the words of the slogan nor the historical record permit such a narrow understanding of the slogan, especially as used in the Canadian context. Moreover, the law emphasizes the importance of the speaker’s intent; there must be evidence that the speaker intended to promulgate hate against a targeted group. Simply using the 10-word slogan cannot be construed as evidence of such intent; its meaning is far too indeterminate given the historical and contextual record.

This section will integrate the complex history of the slogan into an analysis of s. 319(1)(2) and (2.1). These sections of the *Criminal Code* prohibit the incitement and willful promotion of hatred and Antisemitism against identifiable groups. In addition, there is debate whether utterance of the slogan can be considered an aggravating circumstance under s. 718.2(a)(i). It is important to note that because s.319(2.1) was enacted so recently, it has not been subject to jurisprudential interpretation and the constitutionality of the provision has not yet been tested. The hate speech provisions of the Code implicate s.2(b) *Charter* right to freedom of speech. Delineated as a fundamental right, s.2(b) guarantees the right to “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”

A reading of the case law under ss.319(1) and (2) indicates that the phrase “from the River to the Sea, Palestine will be free” does not violate either provision of the Code.

With such wide ranging interpretations of the phrase, it is speech that cannot be understood as contravening either provision as it does not meet the requisite thresholds for inciting or promoting hate and it does not target an identifiable group. Discussion of the legal principles leading to this conclusion under each of s.319(1)(2) and (2.1) is elaborated below. In addition, the conclusions of this Primer indicate the slogan could not presumptively be construed as an aggravating circumstance under s. 718.2(a)(i) given both the ambiguity of its meaning, and the varied contexts in which it might be used. As indicated above, only by narrowly presuming the slogan to be inherently eliminationist or hateful, can police and prosecutors consider the application of the *Criminal Code* against speakers of this slogan. The history of this slogan is far too complex for state institutions to adopt this position. Additionally, the words contained in the slogan itself are open to interpretation and do not identify any particular group or connote hatred. Hatred based on some interpretations of a phrase do not fall within the ambit of the hate speech provisions of the Code. Further, presuming the eliminationist interpretation casts all who utter the slogan as aligned with Hamas and/or terrorism in general. This understanding of the slogan itself runs the risk of evoking anti-Palestinian racism as detailed in the Arab Canadian Lawyers Association report on anti-Palestinian racism ([Majid 2022](#)).

SECTION 319(1): PUBLIC INCITEMENT OF HATRED

Section 319(1) of the *Criminal Code* deals with the incitement of hatred against identifiable groups in public places, where such incitement is likely to lead to a breach of peace. This specific provision targets speech that directly incites violence or hatred towards identifiable groups. Section 318(4) defines an identifiable group as “any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.”

The slogan “from the River to the Sea, Palestine will be free” diverges significantly from such hate speech. Rather than inciting hatred or violence against a specific group, the slogan's history suggests it is chanted to reflect Palestinian aspiration for self-determination. It also provides a response to historical (and ongoing) geopolitical conflicts, including institutional silencing across the Canadian public. As such, the slogan is not reducible to one meaning or another. In the Canadian context, it has offered protestors a strong political statement rather than a call to hatred, distinguishing it from the kind of hate speech s 319(1) is designed to target.

In the context of 319(1), the Supreme Court of Canada (SCC) in *R v Andrews* ([1990] 3 SCR 870) emphasized the necessity of limiting free speech when it amounts to hate speech that dehumanizes or vilifies an identifiable group. However, as explained above, the slogan “from the River to the Sea, Palestine will be free” does not align with this criteria. Unlike the derogatory speech in *Andrews*, the slogan is embedded within a wide-ranging history; this historical complexity precludes any simplistic

reduction of this slogan’s meaning. Moreover, as recounted above, many who chant the slogan do not seek to dehumanize or vilify any group; instead they chant it to articulate a historical and political longing for Palestinian lands and rights. Indeed, as noted above, leading Israeli intellectuals like Avi Shlaim, as well as Independent Jewish Voices Canada, understand the slogan in these terms. Indeed, various Jewish groups have adopted the slogan in Palestine solidarity protests. Furthermore, in *R v Krymowski* (2005 SCC 7), the interpretation of hate speech stresses the significance of **context and potential impact on targeted groups with reference to the definition of identifiable groups under s.318(4) of the *Criminal Code***. The history of the slogan and its current use in Canada precludes any simple or easy finding that it inherently promotes or is intended to promote hatred against any group. Instead, evidence suggests the slogan can and does serve as a collective expression of identity and aspiration, distinct from the hate speech characterized in *Krymowski*.

Thus, in light of the legal standards set in these cases, it is evident that the slogan “from the River to the Sea, Palestine will be free” can and does operate within the realm of political expression and does not fulfill the elements of hate speech defined in s 319(1) of the *Criminal Code*.

SECTION 319(2): WILFUL PROMOTION OF HATRED

Section 319(2) of the *Criminal Code* addresses the intentional or wilful promotion of hatred against identifiable groups. **Intent** to spread hate is an important factor in this context. The Supreme Court in *R. v. Keegstra*, ([1990] 3 S.C.R. 697), held that the high fault requirement in s.319(2) was key to its holding that statements prohibited in s.319(2) could reasonably be made criminal and was a reasonable limit on freedom of expression.

In the case of “from the River to the Sea, Palestine will be free,” the historical record does not permit finding it promotes hatred against an identifiable group; as noted above, there is overwhelming historical evidence that the slogan continues to be used in order to express a historical and political aspiration. This is a critical distinction, as seen in the case of *R v Buzzanga and Durocher* (1979 CanLII 1927 ON CA), where the *intent* behind the actions was pivotal in determining hate speech. In *Buzzanga and Durocher*, the Court’s focus on intent led to an overturned conviction due to a lack of clear intent to promote hatred. In that case, the accused made statements that appeared to be derogatory to those who spoke French. At the same time, there was evidence that the statements aimed to support the cause of the French language. In *Keegstra*, the SCC identified hate speech as characterized by malicious intent towards an identifiable group. Unlike in *Keegstra*, the slogan and those who chant it do not inherently display this intent nor target an identifiable group.

The case of *R v Sears* (2021 ONCA 522) adds a critical dimension to this analysis. James Sears was convicted for willfully promoting hatred against Jews and women, based on publications that celebrated Hitler, denied the Holocaust, and advocated

violence against women. Sears and his co-accused argued that they were not targeting all Jews and women, but the court found otherwise based on the evidence. This case underscores that for speech to be considered as promoting hate under 319(2), it must be explicitly hateful and target an identifiable group. The slogan, in comparison, is not explicit and it lacks that direct and malicious targeting.

Moreover, the judgements in *Ward v Quebec* (2021 SCC 43) and *Saskatchewan (Human Rights Commission) v Whatcott* (2013 SCC 11) provide further clarity. In *Ward*, the Court differentiated offensive speech from hate speech, suggesting that speech that is provocative or unsettling does not necessarily constitute hate speech. The slogan, while strong and emotive, arises from a complex history that cannot be essentialized or reduced merely to inciting hatred. In *Whatcott* (2013), the Court pointed out that for speech to be considered hate speech, it must be extremely severe. The slogan, when understood in the broader historical context and varied interpretations outlined above, does not reach this level of severity.

Therefore, when considering the **intent, context**, and the **level of severity**, as outlined in the case law, the slogan is at the very least indeterminate in its meaning. In *Keegstra*, the Supreme Court of Canada dealt with expressions that were explicitly and unmistakably hateful towards Jews; this lies in stark contrast to the 10-word slogan, which has a history that does not lend itself to such determinate meanings. *Whatcott* (2013) further clarifies that hate speech under Canadian law must reach a severe level of intensity, a criterion also not met by the slogan. Similarly, in *Sears* the Court highlighted the necessity of explicitness and directness in speech to be considered under s 319(2). The slogan, in contrast, has no such explicitness or directness. Moreover its history precludes any claim to an inherent meaning. Rather, its history and use align with democratic protections for political expression and human rights advocacy.

CONSIDERATION OF SECTION 319(2.1)

Section 319(2.1) was added to the *Criminal Code* in 2022. It states: “Everyone who, by communicating statements, other than in private conversation, wilfully promotes antisemitism by condoning, denying or downplaying the Holocaust.” The Holocaust is defined as “the planned and deliberate state-sponsored persecution and annihilation of European Jewry by the Nazis and their collaborators from 1933 to 1945.” Because the provision is so new, it has not been subjected to jurisprudential interpretation and its constitutionality has not yet been tested. We are nonetheless of the view that the slogan could not be found to violate s.319(2.1).

The slogan “from the River to the Sea, Palestine will be free” does not condone or deny the Holocaust. Its focus is distinctly set on the historical and current political contexts of the Palestinian struggle, advocating for Palestinians’ basic rights, including the right of self-determination. Indeed, no organization or significant intellectual has claimed that the slogan in any way condones, denies, or downplays the Holocaust. Hypothetically, one may imagine an argument that the slogan may have the effect of “downplaying” the Holocaust. But in *Buzzanga* the court stressed that speech that

has adverse effects is not in itself enough to be criminalized because of the critical subjective fault requirement of “wilfully”, which is also included in the new s.319(2.1). In *Keegstra*, the Court held that the wilful subjective fault requirement was critical in justifying the criminalization of hate speech as a reasonable limit on freedom of expression. The absence in the 10 word slogan of any language indicating a wilful promotion of Antisemitism, targeting Jewish people, and referencing the Holocaust precludes it from being Antisemitic under s 319(2.1).

DEFENCES AVAILABLE UNDER THE HATE SPEECH PROVISIONS OF THE CODE

Not only does the slogan not fall under the ambit of sections 319(1), 319(2) or 319(2.1) of the *Criminal Code*, but it also aligns with certain defences to these offences provided for in the Code.

Defence of Truth (Sections 319(3)(a) and (3.1)(a)):

There are two ways to understand whether and to what extent this defence is applicable. On the one hand, the 10-word slogan is a political slogan of aspiration, which is not reducible to an empirical analysis of truth or falsehood. On this reading, it is akin to other slogans, such as “the people, united, will never be defeated” or the Standing Rock slogan “Water is Life”. These are slogans of hope as opposed to truth; they are neither provable nor disprovable. On the other hand, if truthfulness under *R v. Zundel* ([1992] 2 SCR 731) were understood in terms of a historical record that attests to the aspirational meaning the speaker ascribes to the 10-word slogan, the speaker may certainly benefit from the defence. The slogan, viewed from the lens of a historical record, as summarized above, reflects a Palestinian historical narrative on self-determination and rights. While that historical narrative may be contested, that does not discount the claim of truth a speaker may make relative to that wide ranging historical record.

Defence of Religious Opinion (Sections 319(3)(b), (3.1)(b)):

The slogan might be defended as an argument or opinion on a religious subject to the extent that the slogan is widely, albeit incorrectly, perceived as engaging on a matter of religious significance. It is true that many Canadians, including members of the judiciary, make the mistake of viewing a geo-political controversy as a religious one. It is reasonable to conclude that an ordinary Canadian might make this same category error. But that mistake does not undermine the utility of the defence. This is especially true in Canada, where its two federal offices on Antisemitism and Islamophobia have expressly addressed the conflict in the Middle East using the frames of Antisemitism and Islamophobia, which carry a religious connotation.

Defence of Public Interest (Sections 319(3)(c), 3.1(c)):

The *Whatcott* (2013) decision underscored the importance of the public interest and good faith in expressing opinions. The history of the slogan and its use in the

Canadian context permit those chanting it today in Canada to compellingly claim they are contributing to public discourse on a matter of considerable concern to Canada and the world. On this understanding, the slogan enters the realm of public debate, a space recognized as vital for democratic discourse, and should be protected under the Charter protected s.2(b) right of free expression as a matter of public interest.

Defence of Intent to Point Out Hatred for Removal (Sections 319(3)(d) and (3.1)(d)):

Drawing from *R v Keegstra* ([1990] 3 SCR 697), where the intention behind speech was critically examined by the Court, the slogan's history and its use in Canada allow those invoking it publicly today in Canada to reasonably argue they are highlighting, not inciting, hatred. If the slogan is interpreted as a means to draw attention to the erasure of Palestine and Palestinians, and ultimately to seek the removal of systemic injustices faced by Palestinians, it aligns with the defence under this section. Unlike in *Keegstra*, where hate speech was directed towards an identifiable group, the slogan may be used to address and remove anti-Palestinian racism. Anti-Palestine Racism (APR) is "a form of anti-Arab racism that silences, excludes, erases, stereotypes, defames or dehumanizes Palestinians or their narratives" ([Majid 2022](#)). Examples of erasure by and within Canadian institutions were identified at the outset of this Primer. The slogan, when used to assert the historical memory of Palestine and Palestinians, can be understood to reverse the erasures of that memory in Canada. On this understanding of the slogan, a defendant who chanted the slogan can draw on the complex history noted above to defend against any criminal charge by explaining the use of the slogan was motivated by a desire to express political grievances and advocate for a resolution to the Israeli-Palestinian conflict, rather than to incite hatred. This intent is crucial in distinguishing the slogan from expressions that s 319 of the *Criminal Code* seeks to penalize.

Moreover, the historical record outlined above suggests that any defendant charged for promulgating hate can attest to the use of the slogan in good faith. That historical record empowers potential defendants to claim their use of the slogan was rooted in a desire for change and resolution, rather than an attempt to propagate hate. The good faith aspect is integral to the defence of removal, and is supported by the complex history of this slogan.

Lastly, the slogan addresses a matter of significant public interest. The conflict abroad affects many Canadians here at home. Many Canadians have friends and family on either or both sides of the conflict. Their community organizations are in some cases organized around concern for Israel, Palestine, and adjacent cultural/religious values and aspirations. Canada's history of promoting humanitarianism and development prompts some of the country's largest charities to support relief efforts in the region, with Canadians donating daily to these organizations. Democracy does not require unanimity; indeed, democracy is at its best when we respect differences of opinion, as opposed to policing them. However poorly the 10 word slogan (or any political

slogan, for that matter) reflects the complex history of Israel and Palestine, its use among Canadians in protests across the country has and will continue to bring these complex histories into the public sphere. This aligns with the legal perspective that expressions contributing to the public interest, especially in resolving sources of conflict and hatred, should be protected.

Canadian jurisprudence has consistently upheld the importance of freedom of expression, especially in political contexts. In cases like *Irwin Toy Ltd. v Quebec (Attorney General)* (1 SCR 927) and *Whatcott* (2013), the Supreme Court emphasized the value of protecting political speech, even when it is controversial. These precedents, when read alongside the historical context of the slogan, support the interpretation of the slogan as a form of political expression within the ambit of protected speech, particularly when it aims to highlight and address contentious issues.

SECTION 718.2(A)(I) AND SENTENCING

Section 718.2(a)(i) of the Code focuses on sentencing in criminal cases where the underlying offence may have been “motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor.” The section applies when sentencing an offender to a crime, including offences against property or persons. Below is an analysis of the inapplicability of s.718.2(a)(i) to the slogan “from the River to the Sea, Palestine will be free.”

Comparing the slogan to other political expressions scrutinized under similar legal frameworks — and considering the slogan's complex history and use in Canada — it becomes evident that the 10-word slogan lacks the primary or significant bias, prejudice, or hate motivation stipulated in section 718.2(a)(i). This lack of hate-driven intent aligns with the judicial interpretations seen in *R v Vrdoljak* (53 WCB (2d) 254 (Ont CJ)) and *R v Van-Brunt* (2003 BCPC 559), where the motivation behind the offences was critically evaluated.

If Crown counsel were to ascribe hatefulness to the slogan for the purpose of securing a more significant sentence under s. 718.2(a)(i), the prosecutor would need to argue for that significance in light of circumstantial evidence in and around the commission of the offence. To explore this possibility, consider the following hypotheticals.

Hypothetical 1: *Joseph, a graffiti artist in Montreal, is walking to a protest against Israel's assault on Gaza. Prior to reaching the site of the protest, he comes across a Jewish Community Centre. The Center displays an Israeli flag and a poster calling for support for Israel in this urgent time of need. Joseph, who always carries spray paint in his satchel, paints “From the River to the Sea, Palestine will be Free” on the front of the building. Montreal police catch him in the act and arrest him for causing mischief by damaging property (Criminal Code s. 430(1)). Crown prosecutors are considering whether the slogan Joseph spray painted constitutes an aggravating circumstance under s. 718.2(a)(i).*

The prosecutor will need to argue that the slogan is an eliminationist phrase, that Joseph intended it in that way, and that the hatred he promoted was targeted a specific group, in this case Jewish Canadians. The problem with this analysis is that the Centre also featured an Israeli flag and a poster for an appeal to support Israel in this time of urgency. Joseph may certainly have defaced property under s. 430(1). But by featuring the Israeli flag and the appeal poster publicly, Joseph can reasonably argue that the Jewish Community Center engaged in political speech; Joseph's spray painting of the slogan, however mischievous under the *Criminal Code*, was no less political speech highlighting the plight of Palestinians.

Hypothetical 2: *Suppose, however, that the Jewish Community Centre did not feature the Israeli flag or the poster calling for support for Israel. In that case, would Joseph's graffiti of the slogan constitute an aggravating circumstance under 718.2(a)(i)?*

The answer requires assessing Joseph's intent or mental state. Joseph may claim to have acted upon a mistake of fact, namely reducing a complex regional conflict to a religious one. This is the same error that Justice Rossiter and the Quebec Reasonable Accommodation Commission made when they too reduced this complex conflict to religious terms. A prosecutor would have to consider the possibility that, like Justice Rossiter, Joseph made a category mistake when spray painting the slogan on the building. Joseph may invoke the mistake of fact defence and claim he did not have the requisite intent to warrant the prosecutor's resort to s. 718.2(a)(i). But even if Joseph made no mistake of fact, does the act of spray painting the slogan constitute an aggravating circumstances? Again that will depend on whether the police presume the slogan, as a matter of fact, to be necessarily eliminationist in meaning and intent. Drawing on the complex history of the slogan, Joseph can reasonably argue that such a determination of the the slogan's meaning is not supportable by the historical record.

Hypothetical 3: *In the final example, suppose that the Jewish Community Center did not feature the Israeli flag or a poster appealing to support Israel in this emergency context; and again, Joseph spray paints "From the River to the Sea, Palestine will be free." But further, suppose Joseph spray painted below the 10-word slogan, "Exterminate all the Jews from Israel.". In this situation, certainly Joseph defaced property under s. 430(1). Spray painting "Exterminate all the Jews from Israel" may very well fall under s. 718.2(a)(i) as an aggravating circumstance for sentencing purposes.*

From a prosecutorial perspective, this would seem to be an easy case. But could the prosecutor equally argue that the aggravating circumstance in this case is the 10-word slogan? It seems unreasonable for a prosecutor to allocate prosecutorial resources to litigate the 10-word slogan as aggravating circumstance, given the complex historical record that undermines determinacy to the slogan's meaning. If a prosecutor were to do so, the prosecutor would have to argue for the slogan's hateful

intent by reference to the second sentence spray painted on the wall. But in such a scenario, it is no less reasonable to imagine Joseph claim that he meant the 10-word slogan in an aspirational sense of Palestinian freedom, while admitting that the second sentence was intended to be hateful.

Hypotheticals like the three above are standard law school techniques for teasing out legal issues. The three hypotheticals, however artificial they may seem, tease out the core issue that this Primer has sought to explain: the 10-word slogan has too complex a history to be reduced to mean one thing or another to any given person or community or peoples. It is imperative that the police and prosecutors do all they can to rid hatefulness in our cities and communities. But they must do so within the confines of the law. Under the law as it currently is understood, the 10-word slogan cannot be presumed, as a matter of fact, to promote hate against a particular group. Its history and varied uses over time do not permit such a narrow meaning.

In short, given the complex history of the 10-word slogan, it cannot be presumed to be an inherently hateful statement that falls within the ambit of s. 718(2)(a)(i). While it is true that Canadians will continue to disagree on what it means, police and prosecutors are nonetheless held to the requirements of the law. The meaning of the phrase is, at best, historically too rich and complex to be leveraged in a zero-sum game of arrest or not, charge or not. The slogan's roots in historical and geopolitical strife, as documented in international human rights reports, tend toward understanding it as a political expression protected as political speech under the Charter, rather than the kind of hate anticipated by the *Criminal Code*.





CONCLUSION

At the time of writing, Israel recommenced its attack on Gaza after a short ceasefire. “From the River to the Sea, Palestine will be free” continues to echo around the world as protests continue to take place in major global capitals. In Europe and North America, democratic states are debating how to understand the slogan and what to do about it: does it call for the elimination of Israel and Jewish Israelis, or is it a call for Palestinian liberation and freedom? Is it hate speech or political speech worthy of democratic protections?

There is no doubt that for some Jewish Canadians, hearing that slogan can have a painful impact on their sense of wellbeing. They may consider the slogan to impact them harshly, as a call for the elimination of Israel and Israel’s Jewish population. It is a slogan they associate with terrorist groups that they understand as hostile to Israel’s very existence. It is also true that there are differences of opinion on Jewish Canadians about the meaning of the slogan. The impact the slogan evokes is certainly part of the evidentiary record on harm and hateful content. But it is not the only evidence of what this 10-word slogan means. The historical record of the regional conflict, and the historical record of how that regional conflict is received in Canada do not permit such an easy reduction of the slogan.

To date, those whose speech is criminalized for use of the slogan are those who are Palestinian or participate in Palestine solidarity rallies and protests. For that reason, this Primer centers on the history of this phrase as it relates to its use among Palestinians and their allies in protests across Canada. For this group of people targeted by the spectre of criminalization, merely saying the 10-word slogan cannot be presumed as a matter of fact to be hateful against a specific group. The history and context of this slogan and how it is used is far too complex to be reduced to one characteristic or another; instead in such cases, emphasis will need to be placed on determining the intent of the speaker on a case-by-case basis.

The history of this slogan demonstrates that while there is a case to be made that some global actors may use it with an eliminationist meaning, it is generally understood in Canada to be a call for recognition and change, justice and freedom. The slogan is used in a number of different contexts and can have multiple meanings in terms of what kind of future is envisioned in Israel and Palestine. Scholars with expertise in the subject conclude that the slogan is a call for an end to the structures of violence that have impacted Palestinian life for decades. Moreover, for all writers examined, the meaning of the slogan is recognized to depend on the speaker and context.

Given the complex history and recorded use of the 10-word slogan, chants of “from the River to the Sea, Palestine will be free” cannot be considered to ‘target an identifiable group’, a prerequisite to laying charges under the hate speech provisions

outlined in s.319(1) or (2); nor can these calls be considered to ‘downplay’ the Holocaust pursuant to s.319(2.1) of the Code. Because the slogan has no essential or inherent meaning, its use cannot perforce constitute ‘hate’, ‘bias’, or ‘prejudice’ towards an identifiable group and therefore cannot animate s.718.2(a)(1).

It is clear that a criminal law response in terms of charging those chanting “from the River to the Sea, Palestine will be free” with hate speech or hate motivated offences under the Code is or would be a gross overreach of the criminal law and one which erodes the Charter protected fundamental right to freedom of speech.





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LEGAL REFERENCES

Canadian Charter of Rights and Freedoms,

Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 a:

Fundamental Freedoms

2 Everyone has the following fundamental freedoms:

- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media communication.

Criminal Code, RSC 1985, c C-46:

Advocating genocide

318 (1) Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

Definition of identifiable group

- (4) In this section, identifiable group means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

Public incitement of hatred

319 (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Wilful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Wilful promotion of antisemitism

(2.1) Everyone who, by communicating statements, other than in private conversation, wilfully promotes antisemitism by condoning, denying or downplaying the Holocaust

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- (b) is guilty of an offence punishable on summary conviction.

Defences

(3) No person shall be convicted of an offence under subsection (2)

- (a) if he establishes that the statements communicated were true;
- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Defences — subsection (2.1)

(3.1) No person shall be convicted of an offence under subsection (2.1)

- (a) if they establish that the statements communicated were true;
- (b) if, in good faith, they expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds they believed them to be true; or
- (d) if, in good faith, they intended to point out, for the purpose of removal, matters producing or tending to produce feelings of antisemitism toward Jews.

Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
 - (v) evidence that the offence was a terrorism offence.



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