



BRIEF

to the

Commission on Institutions of the Quebec National Assembly

on

Bill 59, An Act to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals

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INTRODUCTION

The Concordia Student Union (CSU) wishes to thank members of the Commission on Institutions of the Quebec National Assembly for the opportunity to submit a brief detailing its views and position on Bill 59, *An Act to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals*.

The Bill is of special interest to the student population of Concordia University, particularly students at the undergraduate level who are represented by the CSU. Many CSU students come from communities that have been, at some point in their years at the university as well as in their daily life, exposed to hate and violence based on race, gender, religion and sexual orientation, among other grounds, both inside and outside the university's campus.

For this reason, the CSU not only has the mandate to speak on issues addressed by Bill 59, but it also has the moral duty and social obligation to take a stand on Bill 59.

The CSU: Mandate and Structure

The Concordia Student Union (CSU) is the umbrella organization that represents more than 36,000 undergraduate students and over 90 student clubs at Concordia University in Montreal. It speaks for undergraduate students who come from diverse racial, ethnocultural, religious, sexual and socioeconomic backgrounds.¹ Its mandate is to represent these students and their rights, needs and interests within and outside the Concordia University community.

The CSU is governed by the Council of Representatives. The Council is comprised of a maximum of 30 undergraduate students. All Councillors are directly elected by undergraduate students.

Within the Council, there is an Executive Team of eight students, which is headed by the President of the CSU and seven Vice-Presidents who are responsible for different portfolios such as external affairs and mobilization, finance, clubs and internal affairs, academic and advocacy, to name a few.

A Legacy to Learn From

While Concordia University has, over the years, acquired an international and national reputation as well as standing of excellence in many fields such as business administration, engineering, communications studies, public policy and

¹ "Fast facts: Concordia in numbers" (24 August 2015) at "Total Enrolment for 2013/14 in Credit Courses", online: <<http://www.concordia.ca/about/fast-facts.html>>

administration, feminist studies, film and visual arts, it also carries a history of incidents that has compelled its community to be more conscious of, sensitive to and pro-active regarding issues of diversity and human rights.

The 1969 computer incident over racism, the 1992 massacre by Valerie Fabrikant, the 2002 protest against Benjamin Netanyahu's speech, and the more recent controversy over one CSU member's degrading treatment of a female student executive have revealed an undercurrent of violence, discrimination and hate that has become an integral part of the university's — and the city's — history. While these conflicts create pain, division and even violence, they also serve as lessons of history to learn from and to build on for the future.

In this regard, the CSU has also developed within its organizational culture, awareness and concrete measures to defend and promote the interests of its diverse student population. The CSU housing and employment service (HOJO), the Student Advocacy Centre and its Legal Information Clinic have provided pioneering and invaluable services to its students. In recent years, the CSU has taken proactive actions:

- to protect international students from predatory rental practices from unscrupulous landlords,
- to participate in and support the 2012 student movement for accessible tuition and education,
- to defend the constitutional and civil rights of students who participate in these demonstrations and who are apprehended, arrested, charged and sanctioned by authorities,
- to stand behind its Muslim students from growing Islamophobia from outside the university,
- to support its Black students from racial discrimination and profiling in their off-campus life, and
- to protect women and LGBT students from sexual harassment, sexual violence and homophobia on- and off-campus.

The CSU recognizes and values diversity, human rights and inclusion, not only in terms of guiding philosophy, but also in terms of concrete undertakings because it considers these as the cornerstone of student life, higher education and civil society.

In this regard, its participation in the present hearings on Bill 59 is a natural extension of its mandate.

THE CSU'S VIEWS AND CONCERNS REGARDING BILL 59

The CSU strongly supports the overriding goal to combat any form of speech that exposes members of vulnerable and protected minorities to hate, violence and discrimination. Such speech undermines the peaceful and democratic foundations of Quebec and Canadian society, particularly when its intent and effect is to violate the most fundamental right of human rights, namely the right to life, liberty and security of the person.

The CSU condemns all ideologies and expressions of hate, violence and discrimination, especially those based on race, religion, gender, sexual orientation and disability. It has taken unequivocal stands on numerous occasions against racism, sexism, anti-Semitism, Islamophobia and homophobia, to name a few, and will continue to do so for legal, ethical, and social reasons.

The CSU recognizes the particularly detrimental effects of recent public debates on the now-defunct Charter of Quebec Values, which particularly exposed people of the Jewish, Muslim and Sikh faiths in Quebec to intense vilification and detestation. In the French-speaking community of Quebec, where the French-speaking Muslim and Arab populations have grown considerably in the last ten years, Islamophobia is on the rise, often with the support of certain sensationalist media and politicians that consistently blur the lines between Muslims and terrorists.

For instance, the recent sensational and exploitative TVA coverage of the Muslim Students Association at Concordia illustrates how hate and bias can be easily produced and marketed with impunity.

The CSU believes that strong and effective actions need to be developed by government and civil society, in partnership with the populations that are most directly affected, in order to prevent, sanction and eliminate these divisive and destructive manifestations of hate and violence.

The CSU believes that the current human rights regime in Quebec (which is composed of the Quebec Human Rights Commission and the Human Rights Tribunal) and the criminal justice system can be improved upon with better resources and competencies to address hate speech and hate crimes.

Notwithstanding its firm convictions on these issues, the CSU has numerous concerns with Bill 59 as presently worded. These concerns are as follows:

1. Hate Speech and Speech Inciting Violence

The CSU is concerned about the lack of definition of key terms in s. 1 of the Bill. The terms “hate speech”, “violence” and “publicly” are not defined. As such, the terms could be applied in ways that are subjective or overbroad and could thus infringe on constitutional and civil rights such as the freedom of expression as protected by s. 2(b) and the right to the liberty and security of the person as protected by s. 7 of the *Canadian Charter of Rights and Freedoms*, as well as similar provisions in the *Quebec Charter of Human Rights and Freedoms*.

S. 1 of the Bill states that

[t]he Act applies to **hate speech** and **speech inciting violence** that are engaged in or disseminated **publicly** and that **target a group of people** sharing a characteristic identified as prohibited grounds for discrimination under **section 10** of the Charter of human rights and freedoms (chapter C-12). [emphasis added]

First of all, the Act should include a definition of “hate speech” and how it differs from discriminatory speech as well as acts that are already covered through different provisions of the Quebec Charter. Furthermore, since the proposed s. 1 of Bill 59 covers all the prohibited grounds of non-discrimination in the Quebec Charter, an application of the Act in its current state could mean that:

- Both anti- and pro-abortion activists could be found as engaging in hate speech because their communication targets women and thus those sharing s. 10 characteristics of religion, sex and/or pregnancy;
- Both gay and transgender rights activists as well as anti-gay and anti-transgender activists who use religion to justify their ideology may be found as engaging in hate speech that targets those who share s. 10 characteristics of sex, sexual orientation, and/or religion; and
- Campaigns to boycott, divest and sanction Israel can be declared as a form of anti-Semitic hate speech.

The CSU believes that Bill 59 should look to the recent Supreme Court ruling in *Saskatchewan (Human Rights Commission) v Whatcott*² in which the court states that

² *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467 [Whatcott]

the legislative term “hatred” or “hatred or contempt” is to be interpreted as being **restricted to those extreme manifestations of the emotion described by the words “detestation” and “vilification”**. This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects.³

In other words, hate speech should be narrowly defined to mean expression that exposes vulnerable groups to detestation and vilification — and such expression “goes far beyond merely discrediting, humiliating or offending the victims.”⁴ The expression should be analyzed objectively to “determine whether a reasonable person, aware of the context and circumstances, would view the expression as likely to expose a person or persons to detestation and vilification on the basis of a prohibited ground of discrimination.”⁵

Regarding the “public” nature of the proposed ban of hate speech, legislators can perhaps look to the Saskatchewan Human Rights Code, s. 14(1)(a) for an example of how to define “public”:

“... on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any notice, sign, symbol, emblem, article, statement or other representation”.⁶

The CSU is also concerned with the vagueness or overbreadth of s. 2 of Bill 59 and how its real-life application could infringe on the freedom of expression as protected by s. 2(b) of the Canadian Charter and s. 3 of the Quebec Charter.

According to s. 2:

Engaging in or disseminating the types of speech described in section 1 is prohibited.

Acting in such a manner as to cause types of speech to be engaged in or disseminated is also prohibited.

However, the purpose of these prohibitions is not to limit the dissemination of such speech intended to legitimately inform the

³ *Ibid* at para 57 [emphasis added].

⁴ *Ibid*, at para 41.

⁵ *Ibid*, at para 59.

⁶ *The Saskatchewan Human Rights Code*, SS 1979, c S-24.1, <<http://canlii.ca/t/52hbf>> retrieved on 2015-08-24

public (an exemption also found in s. 22 of the Bill).

Theoretically, under s. 2, in a university context, those who could be found as engaging in or disseminating hate speech or speech that incites violence can include:

- Individual students
- Student groups particularly of religious, political or cultural nature,
- Professors or staff,
- Board of Governors or members of the University's Senate,
- Student unions that approve of clubs' existence and some actions, and
- Website hosts, group or forum administrators

Even the printing company that produces leaflets and posters for an activity deemed to constitute "hate speech" can be held liable s. 2. Similarly, an author or research who speaks out against gay marriage or transgender rights from a scientific perspective can be held liable as well as those who sponsor the speech, and ultimately, the university's administrators for failing to prevent such a speech.

Furthermore, the CSU is concerned about the qualification of "legitimately" informing the public. Who is to decide what is legitimate?

The CSU believes s. 2 should be replaced with a formulation that limits third-party liability to certain conditions and that ensures that, with a more detailed definition of hate speech, there will be no chilling effect on public discussions and debates, no matter how controversial or unpopular they may be.

2. The Fines

As a student union, the CSU is particularly concerned about vague and overbroad third-party liability as outlined in s. 2, and the hefty amount of fines as outlined in s. 20 of Bill 59, which range from \$1,000 to \$10,000 for the first offense and which can double in the case of repeat offenses.

In light of its federated structure, this means that if a student club is found to have committed hate speech, the CSU can be held liable under s. 2 of Bill 59. Since the prohibited grounds of discrimination and hate are extensive, Bill 59 will not only stifle freedom of speech and expression in the context of an institution of higher learning, debate and divergence of opinion, but it will also impose on organizations such as the CSU and federations of students the duty to police all student clubs and activities on- and off-campus.

The issue is not only the amount of financial sanctions alone, which can be prohibitive for student associations, but it is also about the danger or possibility of

multiple and simultaneous infractions, given the diverse nature of the student population and activities held under the aegis of the CSU.

3. The Hate List

Bill 59 also allows for the creation and the maintenance of a publicly accessible list of persons found by the Quebec Human Rights Tribunal to have engaged in or disseminating hate speech, or “acted in such a manner as to cause such speech to be engaged in or disseminated” (ss. 11 and 17). It also grants the Tribunal the power to determine how long a person’s name to remain on the list to be kept publicly on-line by the Human Rights Commission (s. 21).

As well, Bill 59 legalizes the assumption that “a person whose name is on the list ... is considered to exhibit behaviour that could reasonably pose a threat for the physical or emotional safety of the students” in primary and high schools and colleges (ss. 24, 27 and 32).

The CSU is deeply concerned about the concept of a publicly accessible hate list, because:

- There are no time limits and no transparent and equitable procedures for individuals’ appeal, review and challenge to being placed on the list;
- There are no safeguards for privacy and identity confirmation in cases of common individual names;
- There are no legal protections or rules in cases where the person is a minor, whose identity is usually protected under current Quebec laws,
- There are no protections for individuals found responsible for hate speech by the Quebec Human Rights Tribunal, and the protections for their constitutional rights to the presumption of innocence and to due process in case of other infractions.

The CSU believes that the list proposed in Bill 59 is much more draconian than the federal No Fly List, or the national sex offender registry, in that it is public, and can be permanently so. A person found guilty of a more serious criminal offense and with a criminal record would have more rights, including the right to seek a pardon and to protection from discrimination based on criminal records, than a person found guilty of the civil or penal offense of hate speech under Bill 59. This list cannot therefore be allowed under any form in our liberal democracy.

4. Honour-Based Violence

Honour-based violence is recognized in ss. 16, 23 and 33 of Bill 59.

While the CSU recognizes the need to combat and end violence against women and girls in all its forms, it calls for prudence to ensure that ethnicity, religion and race are not used interchangeably with the ideology of misogyny and sexual violence, as this in turn may increase racism and xenophobia while relegating the fact of anti-woman hate and violence to the background.

If the trend is towards an international recognition of women's rights as being foremost in human rights, greater care should be developed to avoid a hierarchy of oppression of women whereby culture or religion-based oppression, or "femicide" is considered worse than other forms of violence against women, include state-sponsored violence against women.

There is indeed something socially reprehensible and morally questionable when so many government actions and resources are devoted to a handful of cases involving honour-based violence against women and girls from certain ethnocultural and religious backgrounds when the murder and disappearance of more than 1,200 Aboriginal women and girls barely receives concrete institutional priorities.

In light of growing Islamophobia and xenophobia in Western society, the CSU calls upon the Quebec government and political parties on all sides of the National Assembly to work in partnership with stakeholders most identified, rightfully or otherwise, with honour-based violence with the view to ensure that "femicide" is contextually and correctly addressed while minimizing and preventing racial, ethnic or religious bias from occulting the more fundamental problem of sexual violence against women and girls.

5. Educational Institutions' Responsibilities

Under ss. 24 to 32, all primary, secondary and collegiate educational institutions are required to take concrete actions to address hate speech and speech inciting violence.

As stated earlier, the CSU considers highly questionable these institutions' duty and authority to automatically consider "a person whose name is on the list... is considered to exhibit behaviour that could reasonably pose a threat for the physical or emotional safety of the students." This is, in the CSU's opinion, unconstitutional.

The CSU believes that all educational institutions must act to prevent hate, violence, intimidation and discrimination directed at not only students, but also staff and educational service users.

In this regard, it is perplexed that the university sector is not included in the group of institutions with the obligation to act. Recent scandals involving sexual violence and harassment in different universities in Canada show that universities are not immune to hate speech and biased-based violence. This exclusion must be corrected.

CONCLUSION

In light of the above, the CSU urges Quebec legislators, particularly the Justice Minister, to go back to the drawing board. It recommends the following:

1. Define “hate speech” and “speech inciting violence” in accordance with the most recent Supreme Court ruling in the *Whatcott* case;
2. Eliminate the vague and overbroad provision holding liable anyone “acting in such a manner as to cause such types of speech to be engaged in or disseminated”;
3. Withdraw entirely the proposed “Hate List”;
4. Remove minimal financial sanctions and leave such matters to the courts to decide on the merits of each case;
5. Include universities in the category of educational institutions required to take action against hate and violence;
6. Avoid, in the application of the law, producing Islamophobia and xenophobia in combating gender-based violence or “femicide”, by, among things, working in close partnerships with women from communities most vulnerable to racism and xenophobia;
7. Increase resources to promote human rights, combat discrimination and improve access to the existing human rights regime of Quebec.

The CSU ultimately believes that the fundamental flaws of Bill 59 are such that the Bill will create legal, political and social distractions in the more important collective fight against hate and violence.

It is perhaps more effective and constructive to devote public energy and resources to improving access to justice through the existing Quebec Human

Rights Commission and the Quebec Human Rights Tribunal, and to developing the capacity of police services to combat hate crimes and hate propaganda.