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Hearings conducted by the Standing Committee on Justice Policy

Legislative Assembly of Ontario, Canada

Bill 168, Combating Antisemitism Act, 2020

TESTIMONY OF DR BRIAN KLUG

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My name is Dr Brian Klug. I am Senior Research Fellow in Philosophy at St Benet's Hall in the University of Oxford, member of the Faculty of Philosophy at the University of Oxford, and Honorary Fellow, Parkes Institute for the Study of Jewish/non-Jewish Relations, University of Southampton. I am an Associate Editor of the journal *Patterns of Prejudice* and on the International Advisory Board, 'Negotiating Jewish Identity: Jewish Life in 21st Century Norway' (The Norwegian Center for Studies of the Holocaust and Religious Minorities). I have published on antisemitism and racism since the late 1980s. I am the author of *Being Jewish and Doing Justice: Bringing Argument to Life* (2011), *Offence: The Jewish Case* (2009) and chapters on antisemitism in several books, including *Antisemitism, Islamophobia and the Politics of Definition* (forthcoming, 2021), *The Medieval Roots of Antisemitism* (2018) and *Racialization and Religion* (2014). My writing on Judaism and antisemitism has been published in numerous periodicals, such as *Ethnic and Racial Studies*, *European Judaism*, *International Journal of Public Theology*, *Jewish Quarterly*, *Journal of Jewish Studies*, *Journal of Modern Jewish Studies*, *Patterns of Prejudice* and *Political Quarterly*. At the invitation of the Jewish Museum Berlin, I gave the public lecture, 'What Do We Mean By Antisemitism?', marking the 75th anniversary of Kristallnacht (2013). I gave the Holocaust Memorial Day address at the University of Cambridge (2018) and the University of Oxford (Harris Manchester College, 2020). Tutorial courses that I have taught at Oxford include 'Philosophy After Auschwitz', 'Zion and Zionism' and 'Jewish Identity: Contemporary Issues'.

Bill 168 requires the Government of Ontario, in combating antisemitism, to be guided by the Working Definition of Antisemitism published by the International Holocaust Remembrance Alliance (IHRA), including the core definition and the list of illustrative examples; henceforth

referred to as 'the Working Definition'. My testimony is to the effect that the Working Definition is not fit for purpose.

The IHRA website says: "In order to combat antisemitism effectively, it is important to have clarity about what antisemitism is and how it may manifest itself."¹ I agree. For this very reason, the Working Definition does not work as a definition. Its profound lack of clarity undermines the intended purpose of the bill: to enable the Government "to apply a consistent interpretation of Acts, regulations and policies designed to prevent Ontarians from discrimination and hate amounting to antisemitism". Ever since it was produced in 2016, the lack of clarity of the Working Definition has given rise to confusion, and the confusion has led to bitter controversy, in country after country around the world.

The controversy is almost entirely in one context: academic and political speech (especially on the left) about Zionism and the Israeli-Palestinian conflict. The key question in this context is this: **When should speech about Israel or Zionism be protected and when does it cross the line into antisemitism?** People of good will, on both sides of the Israeli-Palestinian debate (and on no sides) seek guidance on this issue. The first possible manifestation of antisemitism that the Working Definition cites is "the targeting of the State of Israel, conceived as a Jewish collectivity", and 7 of its 11 examples are about Israel or Zionism. It appears, then, that the Working Definition is intended to provide this guidance. But not only does it fail to answer the key question, it muddies the waters. Moreover, it has become politicised, with opinion about the definition tending to divide roughly along the same lines as opinion about the

¹ <https://www.holocaustremembrance.com/news-archive/working-definition-antisemitism>.

Israeli-Palestinian conflict. All this is the result of the manifold ways in which the text is both confused and confusing.

If the Working Definition is incorporated into law, it will spread the confusion and inflame the controversy. Moreover, despite its title, Bill 168 will retard the cause of combating antisemitism. This is partly because the word 'antisemitism' is devalued if it is misused; and the Working Definition, because of its internal flaws, lends itself to being misused, as I shall now explain.

At the heart of the Working Definition are two sentences, set apart from the rest of the text, which I shall call 'the core definition'. The first of these two sentences says: "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews." This has been aptly described by Professor David Feldman, Director of the Pears Institute for the Study of Antisemitism (Birkbeck, University of London), as "bewilderingly imprecise".² The sentence is deficient in at least three respects:

- (a) The phrase "a certain perception" is hopelessly vague. If the perception is not described, then the word is not defined. True, scattered among the 11 examples is a smattering of classic anti-Jewish tropes. But a definition that is based on perception should, at least, incorporate an outline of what that perception consists in.³

² David Feldman, 'Will Britain's new definition of antisemitism help Jewish people? I'm sceptical', *The Guardian*, 28 December 2016.

³ Thus, the Community Security Trust (CST) regularly includes a thumbnail sketch of the antisemitic figure of the 'Jew' in their excellent annual reports on antisemitic discourse. See, for example, *"Antisemitic Discourse in Britain 2017"*, London: Community Security Trust, 2018, p. 10. (The CST is "a charity that protects British Jews from antisemitism and related threats": <https://cst.org.uk/about-cst>.)

- (b) But is antisemitism necessarily about perception? Acts of discrimination against Jews might or might not be based on “a certain perception”. Whether this point matters or not depends on the purpose for which the definition is intended. But if it is meant (in part) as a tool for monitoring incidents of discrimination, or to assist in diagnosing institutional antisemitism, or “to protect Ontarians from discrimination”, then a definition in terms of perception is too narrow.
- (c) The sentence emphasises “hatred”. Hatred toward Jews might be common on the right, especially the far right, but not the left. As I wrote in a recent article: “It is not as if there are hordes of rabid antisemites queuing up to spout their venom in a left-wing vernacular”.⁴ On the left (especially the radical left), an antisemitic discourse is typically the product of convergence between classic left-wing themes, such as anti-capitalism and anti-colonialism, and certain antisemitic tropes deeply embedded in European culture.⁵ Emphasising “hatred” is misleading in precisely the principal context for the controversy over the Working Definition: opposition on the left to Israel or Zionism.

The second sentence in the core definition says that “manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property ...”, etc. I stop there because the phrase “Jewish or non-Jewish”, used without explanation, is bizarre. Perhaps it is there because someone who is targeted as a Jew might turn out not to be Jewish, and someone who is not Jewish might be targeted on account of their Jewish connections. (In the UK’s Equality Act 2010 this is called ‘discrimination by perception’ and ‘discrimination by

⁴ ‘How not to tackle antisemitism on the left’, *Vashti*, 17 August 2020.

⁵ See Ben Gidley et al, ‘Labour and antisemitism: a crisis misunderstood’, *The Political Quarterly*, vol 91, no 2 (April-June 2020).

association’ respectively.) This, however, is an *extension* of what the word means, not one of its defining properties. By the same token, both Muslims and non-Muslims *could* be victims of Islamophobia, and misogyny *can* be manifested against men as well as women. But no *definition* of these concepts includes these possibilities. (No one would *define* misogyny as being ‘directed toward female or male individuals’.) A definition is a form of words that clarifies the meaning of a concept. The phrase ‘Jewish or non-Jewish’ in the core definition is the opposite of clarifying: it is confusing.

Since the core definition is so opaque, the burden of clarification falls on the set of examples that follow it. In principle, giving concrete examples is an excellent idea. They can do what an abstract definition – even a good one – cannot do: convey what antisemitism means in practice. However, in order for examples to work, it must be clear how to apply them. On this score, the text, once again, is confused and confusing. As this goes to the heart of the controversy over the Working Definition, I shall try to elucidate as succinctly as I can.

There is a tension between the preamble that introduces the entire set of examples and the examples themselves. The preamble contains a proviso which says they “could, taking into account the overall context”, be examples of antisemitism. *Could*, depending on *context*. Yet most of the examples, barring exceptional circumstances, do *not* depend on context. Take “the myth about a world Jewish conspiracy” in the second example: it is a classic antisemitic trope, no ifs or buts or maybes. On the other hand, the eighth example mentions “applying double standards” (to Israel): here, context is everything. Likewise with examples 6, 7 and 10, which also pertain to Israel or Zionism. Yet the text puts all 11 examples on the same logical level.

The effect of all this is as follows. Taking their cue from the text itself, people assume that all 11 examples should be treated the same way. They see that the list includes the blood libel, Holocaust denial, the myth about a world Jewish conspiracy, and so on: some of the most vivid and clear-cut expressions of antisemitism. Consequently, for many people, the proviso in the preamble about context is cancelled out or forgotten. Because the Working Definition lends itself to being read this way, one side in the debate over Zionism and Israel tends to promote the definition, while the other side tends to oppose it. The latter see it not as a tool for fighting antisemitism but as an instrument for advancing a partisan political agenda on Israel and Zionism.

Furthermore, they see the Working Definition as a threat to legitimate freedom of speech (including academic freedom). This impression is reinforced by a sentence in the text that occurs between the core definition and the examples: “However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.” At first sight, this seems to *provide* for free speech, but actually it does the opposite. It implies that *excessive* criticism is, in and of itself, antisemitic. But it is not – any more than excessive criticism of the PLO is necessarily racist against Arabs or Palestinians. Excessive criticism is just a fact of political life, especially when feelings run as high as they do in the context of Israel and Palestine. The point is this: There is no requirement in human rights ethics or law that, in order to merit protection, political speech has to be measured or reasonable. This point is fundamental to the principle of freedom of expression, which, of course, is affirmed not only by article 19 of the Universal Declaration of Human Rights but also article 10 of the European Convention on Human Rights (and other human rights instruments). Article 14 expressly

forbids discrimination on the grounds of political opinion. Neither article lays down the condition that an opinion has to be reasonable or that criticism may not be excessive. **Crucially, the line between antisemitic and non-antisemitic speech is different from the line between unreasonable and reasonable speech.** The two lines can coincide, but they need to be clearly distinguished. The Working Definition, on the contrary, blurs them.

To sum up: a definition of antisemitism ought to rise above the fray. It should help people to separate out the fight against antisemitism from the battle over Zionism and the Israeli-Palestinian conflict. But, because of its internal flaws, the Working Definition has become a site where the political battle is fought. As such, it neither promotes the cause of combating antisemitism nor protects legitimate freedom of (political and academic) speech.

One final remark. The testimony that I have given goes to the inadequacy of the text of the Working Definition, not to lack of integrity on the part of its authors. I cast no aspersions on their motivations. The argument I have made is simply this: the definition, however well intentioned, does not stand up to examination. It fails to meet the IHRA's own criterion: clarity. It is true that many countries and organizations have adopted it in good faith. But, first, I commend to the committee 'The Emperor's New Clothes', the fairy-tale by Hans Christian Andersen. Second, good faith is not good enough. It is no substitute for critical, impartial evaluation of the text. In effect, those institutions that have endorsed the Working Definition have, inadvertently or otherwise, passed the buck. I respectfully submit that, for the sake of combating antisemitism, the buck should stop here.