

# Canada's Blasphemy Law

## Sleeping But Not Dead

**Cassandra Martino**

It may be hard to believe, but blasphemy is still a crime in Canada. Criminal Code Section 296 states: "Every one who publishes a blasphemous libel is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years." The prohibition contains a defense for expressing "in good faith and in decent language an opinion on a religious subject." But wait: what is a "blasphemous libel"? What does it mean to talk about religion "in good faith and in decent language"? How does this law affect the religious and secular humanist communities? Is it even ethical, much less legally enforceable? Although frustrating, a review of the law's history is only able to answer some of these questions.

### History, Purpose, Scope

Since the Criminal Code of Canada was first enacted in 1892 there has been a section banning blasphemous libel. Over 123 years later, this law has remained despite multiple substantial revisions of the Criminal Code and the enactment of the Charter of Rights and Freedoms.<sup>1</sup> Indeed, apart from an increase in

the penalty, the statute remains unchanged since it first became part of Canadian law.

From a legal perspective, the statute is fundamentally flawed. Every crime has two parts: the forbidden act (*actus reus*) and the guilty intent (*mens rea*). Here, the forbidden act is "publishing a blasphemous libel," but the statute doesn't tell us what that is! And perhaps worse, it remains silent on what the guilty intent must be: is it simply the intent to publish something that turns out to be blas-

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phemous, or is it instead the intent to publish something already known to be blasphemous?

Traditionally, ambiguous statutes can be clarified by judges. Canada's first reported prosecution under the blasphemy statute was in 1901 in a case known as *Pelletier* case. Four other notable prosecutions followed in 1925, 1926, 1933, and 1936 and are referred to as *Kinler*, *Sterry*, *St. Martin*, and *Rahard* respectively.<sup>2</sup> Unfortunately, these cases do little to clarify the meaning and application of the statute. Whether something is a "blasphemous libel" is a matter left to the jury to decide on a case-by-case basis, and the cases disagree on what the *mens rea* for the crime is.

Let's address the elephant in the room here. Most people are not aware that this law exists

and this is due to the lack of enforcement in a published judicial decision in almost 80 years. This raises the question: why should we care? First, seemingly forgotten laws have a bad habit of springing back into existence. In the words of scholar Jeremy Patrick (2008), Canada's blasphemy law is "not dead, just sleeping." There are other examples of forgotten Canadian criminal

laws being used after decades of neglect. It is not unreasonable to assume that Section 296 could once again be used as the basis for a prosecution. Indeed, apart from the five known published judicial decisions, research has revealed dozens of other prosecutions, some as late as the 1970s!<sup>3</sup> Second, the mere existence of a blasphemy law on the books undermines Canada's commitment to religious freedom, multiculturalism, and freedom of expression. Indeed, how can our government condemn the terrible prosecutions for blasphemy in repressive societies overseas without looking like a hypocrite?

Other articles in this issue of *Humanist Perspectives* will go over the harm that blasphemy laws can cause. Most readers will have heard about Raif Badawi, Charlie Hebdo, and instances where people suffer in their home country due to blasphemy laws. Besides inexcusable human rights violations internationally, blasphemy laws intrinsically cause harm. They restrict freedom of speech, infringe on freedom of religion, incite vigilante "justice," and ultimately fail to promote religious harmony. Free speech should have limits on inciting violence; however, in this instance the limit itself is inciting violence.

### **The Charter of Rights and Freedoms**

In the Charter of Rights and Freedoms, enacted into law in 1982 as part of the Constitution Act, we are guaranteed freedom of religion and free speech. These are part of four fundamental

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freedoms in the second section of the Charter. A prohibition on blasphemy, by its very definition, is against free speech. By limiting discussion of religious subjects, it violates freedom of religion. Because it historically protects and relates exclusively to Christianity, it violates the Charter's guarantee of equality.

All of these violations would have to be justified under Section 1 of the

Charter as "demonstrably justified in a free and democratic society." It seems unlikely the law could stand up to this scrutiny for several reasons.. It's not clear what the government's justification for the law could be, as hate speech is already prohibited under Canadian law and something "blasphemous" is not necessarily something hateful. Indeed, the law is so vague that it would be almost impossible for a member of the public to know whether they're about to violate it!

Any argument in favor of a law against blasphemy stems from the idea that we should protect people from being offended. In a multicultural society such as Canada we need to ask who should be protected. Each religion in some aspect blasphemes the next by declaring them untruths and stating an alternative. This is the same declaration atheists and humanists make. How could the law be redefined to protect atheists from the blasphemy that God exists while at the same time protecting Christianity from the blasphemy that God does not? In essence the law itself is unconstitutional and would most likely be found to violate the Charter of Rights and Freedoms. However, until the law is used again, courts probably won't be willing to decide the issue and we won't know for certain.

### **Repeal the Law**

Early in 2015, the Centre for Inquiry Canada (CFIC) began work with organizations around the world to oppose blasphemy laws wherever

they exist, including Canada's very own prohibition on blasphemous libel. CFIC is considering various options, but, in the words of Jeremy Patrick (2008), the "obvious and most democratically-legitimate" way of solving the problem is to persuade Parliament to abolish the crime of blasphemy. CFIC hopes to bring enough public and political attention to this issue that, if nothing else, a brave MP will sponsor a Private Member's Bill to repeal Section 296 of the Criminal Code. If you would like to show your support for CFIC's campaign to get this blasphemy ban out of Canada we would urge you to write a letter to your Member of Parliament. Additional information and resources can be found on the CFIC's website at: <http://centreforinquiry.ca/canadas-blasphemous-libel-law/>.

**Acknowledgments:**

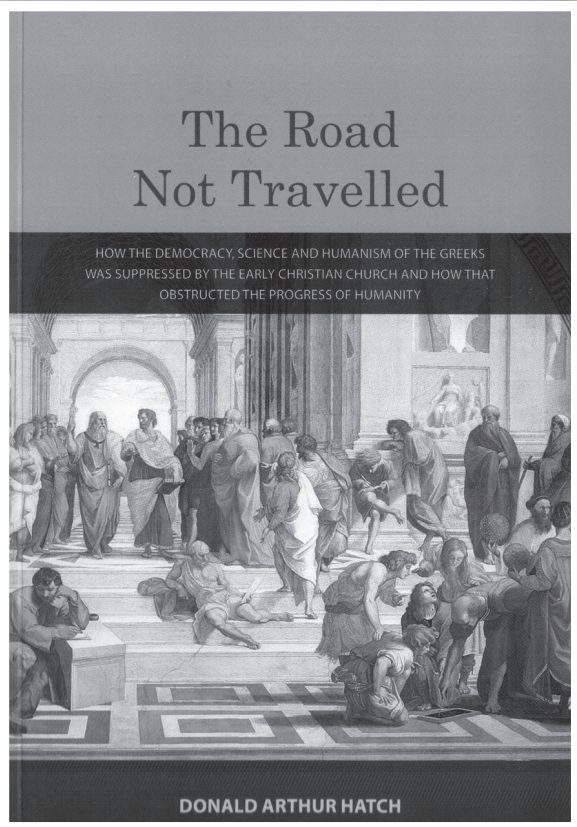
This article was informed by the research and comments of Jeremy Patrick, a CFIC con-

sultant and legal scholar at the University of Southern Queensland School of Law, Australia.

**References**

1. Jeremy Patrick, *Not Dead, Just Sleeping: Canada's Prohibition on Blasphemous Libel as a Case Study in Obsolete Legislation*, Volume 41:2 University of British Columbia Law Review, pp. 194-248, 2008.
2. *Ibid.*
3. Jeremy Patrick, *Beyond Case Reporters: Using Newspapers to Supplement the Legal-Historical Record (A Case Study of Blasphemous Libel)*, Volume 3:2 Drexel Law Review, pp. 539-560, 2011.

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# Donald Hatch

has packed each page with knowledge and with thoughtful comments about our past and about the emergence of a hopeful future as we proceed from the path of religious superstition and supernaturalism into a more enlightened time.

– Goldwin Emerson, Ph.D.

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