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The Elusive Motive Requirement in Canada's Terrorism Offences: Defining and Distinguishing Ideology, Religion, and Politics

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Abstract

Canada distinguishes "ordinary crime" from terrorism offences primarily by reference to whether an act meets the Criminal Code's definition of "terrorist activity." The most confusing and least understood element of terrorist activity is its motive requirement, that being that for a crime to constitute a terrorism offence, the actor must be motivated by politics, religion, or ideology. How do we know when such a motive exists, or even how to define these motivations? How do we differentiate ordinary crime from terrorism if we do not know what ideologies or religions "count" and which do not? Do far-right motivations picked and chosen from numerous groups count? How about someone that is motivated to act violently by a belief in QAnon, or because of their commitment to a political protest movement? In this article we explain why the motive requirement is so in need of refinement and shed light on what differentiates ordinary crime from terrorism. To do so, we offer a comprehensive study of the legislative history behind Canada's anti-terrorism criminal regime as well as every terrorism judgment, sentencing decision, and jury instruction issued between 2001–2021. We find that neither Parliament nor the courts have defined the motive requirement, leaving others to define terrorism as something closer to "we know it when we see it." We thus look more broadly, including inside and outside the realm of criminal law, for workable legal definitions of political, religious, and ideological; we engage in a process of statutory interpretation to narrow the definitions; and, finally, to better understand the most complex and vexing motive—that being ideology—we look outside the law entirely to terrorism studies, sociology, religious studies, and elsewhere. Drawing on these varied sources, we offer a definition for the motive requirement that is practical for the courtroom while serving to both restrict the application of Canada's anti-terrorism regime beyond its current incarnation and also ensure that emergent extremist activity is adequately captured. Such clarity is vital to the rule of law because the motive requirement is an element of terrorism offences and, as such, must be proved by the Crown beyond a reasonable doubt; but it is also necessary to ensure that investigations, charges, and prosecutions are based on concise understandings of "terrorist activity" and not implicit understandings that tend to marginalize some (usually minority) groups while allowing others more permissive room to manoeuvre.

The Elusive Motive Requirement in Canada's Terrorism Offences: Defining and Distinguishing Ideology, Religion, and Politics

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Canada distinguishes "ordinary crime" from terrorism offences primarily by reference to whether an act meets the *Criminal Code*'s definition of "terrorist activity." The most confusing and least understood element of terrorist activity is its motive requirement, that being that for a crime to constitute a terrorism offence, the actor must be motivated by politics, religion, or ideology. How do we know when such a motive exists, or even how to define these motivations? How do we differentiate ordinary crime from terrorism if we do not know what ideologies or religions "count" and which do not? Do far-right motivations picked and chosen from numerous groups count? How about someone that is motivated to act violently by a belief in QAnon, or because of their commitment to a political protest movement? In this article we explain why the motive requirement is so in need of refinement and shed light on what differentiates ordinary crime from terrorism. To do so, we offer a comprehensive study of the legislative history behind Canada's anti-terrorism criminal regime as well as every terrorism judgment, sentencing decision, and jury instruction issued between 2001–2021. We find that neither Parliament nor the courts have defined the motive requirement, leaving others to define terrorism as something closer to "we know it when we see it." We thus look more broadly, including inside and outside the realm of criminal law, for workable legal definitions

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of political, religious, and ideological; we engage in a process of statutory interpretation to narrow the definitions; and, finally, to better understand the most complex and vexing motive—that being ideology—we look outside the law entirely to terrorism studies, sociology, religious studies, and elsewhere. Drawing on these varied sources, we offer a definition for the motive requirement that is practical for the courtroom while serving to both restrict the application of Canada's anti-terrorism regime beyond its current incarnation and also ensure that emergent extremist activity is adequately captured. Such clarity is vital to the rule of law because the motive requirement is an element of terrorism offences and, as such, must be proved by the Crown beyond a reasonable doubt; but it is also necessary to ensure that investigations, charges, and prosecutions are based on concise understandings of "terrorist activity" and not implicit understandings that tend to marginalize some (usually minority) groups while allowing others more permissive room to manoeuvre.

ON 24 FEBRUARY 2020, police and emergency crews were called to a downtown Toronto spa. Outside the spa, they found a man and woman bleeding from serious injuries; inside, police found a woman stabbed to death. The suspect ("Toronto Youth"), who cannot be named because he was only seventeen years old at the time of arrest, was charged with one count of murder and two counts of attempted murder, to which he subsequenty pled guilty. Two months later, in May 2020, the murder charge was updated to include "murder – terrorist activity"[2] because, as the Royal Canadian Mounted Police (RCMP) noted, further investigation revealed that the attack "was inspired by the Ideologically

2. RSC 1985, c C-46, s 231(6.01).

Motivated Violent Extremist (IMVE) movement commonly known as INCEL."[3] Yet even as the terrorism label seemed to follow from the evidence of involuntary celibate ("incel") motivations, the same was not true only a few years earlier. In 2018, Alek Minassian, who also claimed to be motivated by the same ideology, drove a rented truck down a busy Toronto sidewalk, killing ten and injuring nine others; Minassian was charged with and convicted of murder but, notoriously, never with terrorism.[4]

A little over a year after the Toronto Youth attack, a man in London, Ontario, deliberately drove a truck into a Muslim family while they were out for a walk. One woman died at the scene, three others later died in hospital, and a nine-year-old boy was the only survivor. The attack sent shock waves through the Muslim community in Canada, especially as police released a public statement immediately after the attack asserting their belief that the suspect, Nathaniel Veltman, was motivated by xenophobia and anti-Muslim hatred.[5] Veltman was arrested and charged with four counts of first-degree murder (pursuant to sections 235 and 231(2) of the *Criminal Code*) and one count of attempted murder. Less than a week later, on 14 June 2021, the indictment was updated to indicate that the first-degree murder charges relied on both section 231(2), "first degree murder…planned and deliberate," and section 231(6.01), "murder – terrorist activity."[6] However, only a few short years before the Veltman attack, Alexandre Bissonnette, motivated in part by a similar ideological strain of xenophobia and anti-Muslim hate, entered a Quebec mosque and killed six people; police charged Bissonnette with multiple counts of murder and attempted murder, but never with terrorism.[7]

Indeed, a recent study indicates that between December 2001, when Canada's criminal terrorism regime was first enacted, and December 2019, Bissonnette's charges were the rule rather than the exception: Not one of the fifty-six individuals

3. Stewart Bell, Andrew Russell & Catherine McDonald, "Deadly Attack at Toronto Erotic Spa Was Incel Terrorism, Police Allege," *Global News* (19 May 2020), online: <globalnews.ca/news/6910670/toronto-spa-terrorism-incel> [perma.cc/JRH9-G4CR].
4. See *R v Minassian*, 2019 ONSC 4455 at para 6.
5. See Amanda Coletta, "Four Muslim Family Members in Canada Killed in 'Targeted' Attack, Police Say," *The Washington Post* (8 June 2021), online: <www.washingtonpost.com/world/2021/06/07/canada-london-vehicle-attack-hate-veltman> [perma.cc/5FVP-PNV4].
6. See Royal Canadian Mounted Police, News Release, "London Police Service and Royal Canadian Mounted Police Provide Update to the Criminal Charges Related to the London, Ontario Vehicle Attack" (14 June 2021), online: <www.rcmp-grc.gc.ca/en/news/2021/london-police-service-and-royal-canadian-mounted-police-provide-update-the-criminal> [perma.cc/94XD-AJQT] [RCMP News Release].
7. See *R c Bissonnette*, 2019 QCCS 354 at para 46.

charged with terrorism offences during this period was associated with far-right groups or espoused such an ideology, despite numerous violent attacks that might have led to such charges.[8] Put another way, an "ideological divide"[9] has existed in Canada whereby those inspired by far-right ideologies are charged with "ordinary crime" or hate offences, whereas terrorism charges were reserved almost exclusively for those inspired by al Qaeda or the like.[10]

Criminal proceedings against both Veltman and the Toronto Youth are ongoing at the time of writing. But if these cases proceed to trial, the judge or jury will have to answer some of the same crucial—and increasingly uncomfortable—questions that Canadians have rightfully asked in the aftermath of these and other horrific attacks perpetrated by far right-motivated ideologues. Most obviously, why and how do their actions motivated by (far-right) ideologies count as terrorism for the purposes of criminal charges? And is Canada's criminal terrorism regime capable of capturing and successfully prosecuting such ideologies, or for that matter those not premised on the ideology of a religiously motivated group like al Qaeda? Put another way, what was it about Veltman and the Toronto Youth's actions that moved police to label them murder-terrorist activity and not simply premeditated murder, as with the ideologically similar cases that preceded them? More generally, what role does ideology play in moving serious crimes into the realm of terrorism, and, fundamental to all of this, how do we define ideology? Moving forward, how do we, as a society and as a legal profession, know when a violent or serious crime committed by an adherent to a new movement—be it incel, QAnon, or whatever comes next—could or should be considered terrorism rather than an "ordinary" crime—a distinction thought crucial by those who drafted and enacted Canada's terrorism offences?[11]

At first blush, the answer to the definitional question might appear relatively straightforward or even trite: Law enforcement should label both the Veltman and the Toronto Youth incel attacks terrorism because both crimes appear, if initial reporting is accurate, to target not just multiple people but specific groups of people. The Toronto Youth incel attack targeted women, while perceived "foreigners" and Muslims were allegedly Veltman's broader target. These attacks affected more than just the immediate victims of the crime; the hate that

8. See Michael Nesbitt, "Violent Crime, Hate Speech or Terrorism? How Canada Views and Prosecutes Far-right Extremism (2001-2019)" (2021) 50 Common L World Rev 38.
9. *Ibid* at 53.
10. *Ibid* at 52.
11. See Kent Roach, *September 11: Consequences for Canada* (McGill-Queen's University Press, 2003) at 32 [Roach, *September 11*].

motivated this horrific violence impacted entire communities. This intention to target and attack an "other" might thus, self-evidently, take these crimes beyond the ordinary—beyond one committed due to personal greed, circumstance, or interpersonal animosity—and into the realm of terrorism.

Such an answer is consistent with how police,[12] politicians,[13] community groups, and media[14] generally applied the term "terrorism" or "terrorist attack" in the wake of the Veltman arrest, but is *inconsistent* with the absence of terrorism charges for Minassian, Bissonnette, and others.[15] The above approach is also broadly consistent with the distinction between terrorism and ordinary crime found in a host of international treaties on terrorism to which Canada is a party.[16] Importantly, however, this approach is inconsistent with the *Criminal Code* terrorism scheme. Indeed, in 2001, when Canada passed its criminal anti-terrorism laws in response to the 11 September 2001 ("9/11") attacks, Parliament added a motive requirement to its definition of terrorist activity, making a conscious decision *not* to adopt the above approach—or perhaps more accurately, to go beyond the above approach and demand proof of a further ideological, religious, or political motive.[17] How Canadian criminal law distinguishes "ordinary crime" from terrorism would seem, then, at a principled level at least, somewhat unclear. Certainly, Canada's charging and prosecuting

12. See RCMP News Release, *supra* note 6.
13. See Katie Dangerfield, "'This Is a Terrorist Attack': Trudeau Condemns Tragedy in London, Ont. that Left 4 Dead," *Global News* (8 June 2021), online: <globalnews.ca/news/7930589/london-attack-justin-trudeau-terrorist-attack> [perma.cc/6HAB-LEHV].
14. In reference to the terrorism charges, friend of the targeted family Saboor Khan said that it was "the right thing to do" because "the family and the community has been terrorized and many of us are afraid to leave our homes." See Associated Press, "The Man Accused of Hitting A Muslim Family With His Car Is Facing Terrorism Charges" (14 June 2021), online: *NPR* <www.npr.org/2021/06/14/1006230177/nathaniel-veltman-canada-hitting-muslim-afzaal-family-car-terrorism-charges> [perma.cc/65TJ-2QYV]; Liam Casey, "Terror Charges Laid against Man Accused in London Attack against Muslim Family," *The Toronto Star* (14 June 2021), online: <www.thestar.com/news/canada/2021/06/14/nathaniel-veltman-accused-of-killing-four-in-london-ont-set-to-appear-in-court.html> [perma.cc/L6PM-3V2Y].
15. See Nesbitt, *supra* note 8 at 45-47. Nesbitt discusses the prosecution of Richard Bain and notes the case of *R v Souvannarath*. 2019 NSCA 44.
16. For a review of the international definitions, see Marcello Di Filippo, "The Definition(s) of Terrorism in International Law" in Ben Saul, ed, *Research Handbook on International Law & Terrorism* (Elgar, 2020) 2.
17. For a discussion of the origins of Canada's definition of terrorist activity (and lack of definition of terrorism), see Roach, *September 11*, *supra* note 11 at 29-34.

decisions to date, as this article discusses, provide ample room for debate and confusion.[18]

This article seeks to shed light on how Canadian law can and must more effectively delineate between ordinary crime and terrorism, such that police, the public, lawyers, and judges can better understand the elements of our terrorism offences. To do so, this article proceeds in four parts. In Part I, we explain Canada's terrorism offences regime in greater detail with a specific view to the legislative history and the three elements of "terrorist activity"—a phrase that, as we explain, is the foundation of the terrorism regime. Throughout this article, we refer to these elements as the consequence clause, the purpose clause, and the motive clause. We identify that the motive clause, which states that for an act to be terrorist activity it must be motivated in whole or in part by *politics*, *religion*, or *ideology*, is poorly defined and was poorly understood by law makers at the time of drafting. Therefore, the motive clause, we argue, has been the source of most of the confusion since the terrorism regime came into effect.

In Part II, we conduct a comprehensive review of how terrorist activity and specifically the motive clause have been treated at trial and in judgments between 2001 and 2021, including in *R v Khawaja* ("*Khawaja*"), the first case to rule on the constitutionality of the motive requirement at the Supreme Court of Canada.[19] We establish that Canadian jurists have spilled very little ink defining the motive clause. In fact, the term "ideology"has, at the time of writing, never been defined in a judgment of the Court. This remains true despite the existence of charges for terrorist activity against sixty-two individuals, over thirty convictions, and approaching fifty resolved files since Canada's *Criminal Code* terrorism offences were first enacted.[20] This lack of a definition makes it difficult to measure the actions of an accused against the elements of terrorism activity, and, we argue, has greatly contributed to official and public confusion about what constitutes a motive necessary to ground a terrorism charge. Instead, to date, classifying a crime as terrorism seems to be accomplished by an "I know

18. See Nesbitt, *supra* note 8. Nesbitt makes the case that Canada's charging and prosecuting decisions are debatable and confusing, particularly when comparing and contrasting violent acts perpetrated by the far right as opposed to al Qaeda and like inspired actors.
19. *R v Khawaja*, [2008] OJ No 4244 (QL) [*Khawaja* SC]; *R v Khawaja*, 2010 ONCA 862 [*Khawaja* CA]; *R v Khawaja*, 2012 SCC 69 [*Khawaja* SCC].
20. See *Anti-terrorism Act*, SC 2001, c 41 [*ATA*, *2001*]; Michael Nesbitt & Harman Nijjar, "Counting Terrorism Charges and Prosecutions in Canada Part 2: Trends in Terrorism Charges" (24 June 2021), online: *Intrepid* <www.intrepidpodcast.com/blog/2021/6/24/counting-terrorism-charges-and-prosecutions-in-canada-part-2> [perma.cc/U4WC-SDFT] [Nesbitt & Nijjar, "Counting Terrorism Charges"].

it when I see it" mindset. This unsustainable approach not only creates significant confusion within the public and the legal system writ large, but it is unprincipled and inconsistent with the rule of law.

In Part III, we engage in the exercise of statutory interpretation to try to define the terms that make up the motive element of terrorist activity. As part of this exercise, we look first for definitional assistance beyond existing terrorism cases to identify how the terms "religious," "political," and "ideological" are defined elsewhere in the *Criminal Code*, and then more broadly in Canadian law. We find that the law currently offers robust and fit-for-purpose definitions of religion/religious and politics/political. However, no such definition exists for ideology/ideological; as a result, we turn to the principles of statutory interpretation to craft a workable definition of ideology. After refining the dictionary definition of ideology to account for the purpose and context of the terrorism regime, we find that the definition remains vague and likely too broad to be well understood and applied by law enforcement, prosecutors, and judicial decision makers.

Thus, in Part IV, we look to disciplines other than law for guidance and clarity. In this part, we draw from terrorism studies and areas of religious studies, sociology, and psychology—each with a long history of examining the role of ideology in terrorism. We find that the definition developed by terrorism scholars Gary Ackerman and Michael Burnham is well accepted and particularly instructive in the Canadian legal context. Thus, we propose that Canadian courts define ideology as a system of unshakable beliefs that is judgmental of the way society is or ought to be, is intended to be propagated, and claims explanatory power.[21] We also suggest that Ackerman and Burnham's sub-definitions of "system," "societal beliefs," "intent to propagate," "judgmental," and "claims explanatory power" are extremely helpful in further refining the scope of application of the definition of ideology.

Not only is this proposed definition—or, rather, this definition and series of sub-definitions—consistent with the finding in Part III arrived at by way of statutory interpretation, but it also offers the necessary precision to remove any vagueness concerns while also offering details and insights that would be highly instructive for legal decision makers. Specifically, a dictionary definition or the like of "ideology," something like a set of ideas or system of beliefs, would extend the scope of terrorism offences to all sorts of crimes that are based, in part, on such a system of beliefs or ideas, including domestic assaults motivated in part

21. The term "economic" is removed from this definition because it is hard to conceive of a system of economic beliefs that would not meet the definition of political identified by the Court. See *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*].

by misogyny, crimes based on narcissism or even a Robin Hood belief system, and so on. Such a definition would normalize terrorism as an offence, turning crimes not commonly understood as such into serious offences and extending the stigma and significant terms of incarceration to a far greater number of offenders. At the same time, the definition proposed herein is sufficiently broad to move beyond simply capturing al Qaeda-inspired extremism as terrorism; serious crimes motivated by other ideologies like those of the incel community or far right are also, we believe, appropriately captured by this definition.

Ultimately, we conclude that a failure to engage with the meaning of the "motive clause" in the definition of terrorist activity, particularly the failure to define the constituent elements thereof, has contributed to significant confusion about what distinguishes terrorism from ordinary crime. Moreover, it may help explain why far-right actors have historically been charged with hate crimes in Canada, whereas religiously motivated violent extremists in the mold of those inspired by ISIS or al Qaeda are charged with terrorism. Applying the definitions of the terms "political," "religious," and "ideological" identified in this article could significantly enhance the public understanding of what constitutes terrorism and how it is differentiated at law from ordinary crime. Adopting the definitions herein—or something close thereto—will also lead to a more consistent and, we hope, less biased application of the law—a much-needed development in Canadian terrorism prosecutions.

I. A (BRIEF) HISTORY OF CANADA'S TERRORISM OFFENCES, EFFORTS TO DEFINE TERRORISM AND TERRORIST ACTIVITY, AND THE MOTIVE CLAUSE

Canada's anti-terrorism criminal regime dates to just after the horrific events of 9/11. At that time, there was no widely accepted definition of terrorism in international criminal law.[22] It was largely for this reason that, prior to 9/11, the international community failed to conclude a comprehensive and multilateral treaty to counter the growing threat of terrorism. Instead, fourteen treaties were adopted to condemn specific types of terrorist activities, including hijacking aircraft and maritime vessels, taking hostages, and unlawfully possessing nuclear

22. See Craig Forcese & Leah West, *National Security Law*, 2nd ed (Irwin Law, 2021) at 149.

material.[23] All but two of these treaties created international criminal offences and obliged state parties to the treaties to criminalize these acts domestically.

Swiftly after 9/11, the United Nations Security Council (UNSC) passed Resolution 1373, requiring all member states to criminalize various acts associated with terrorism, including those in the piecemeal conventions.[24] It also obligated all member states to "ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice."[25]

Regrettably, "terrorist acts" were not defined until three years later in UNSC Resolution 1566 as

> criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to

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23. *Ibid*. See *e.g. Convention on Offences and Certain Other Acts Committed on Board Aircraft*, 14 September 1963, 704 UNTS 219 (amended by 2014 Protocol); *Convention for the Suppression of Unlawful Seizure of Aircraft*, 16 December 1970, 860 UNTS 105 (amended by 2010 Protocol); C*onvention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, 23 September 1971, 974 UNTS 177 (amended by 1988 Protocol); *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, 24 February 1988, 1589 UNTS 474 (entered into force 6 August 1989); *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, 10 March 1988, 1678 UNTS 201 (as amended by 2005 Protocol); *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf*, 10 March 1988, 1678 UNTS 201 (amended by 2005 Protocol); *Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation*, 10 September 2010, No 55859 (entered into force 1 July 2018); *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, 28 December 1973, 1035 UNTS 167 (entered into force 20 February 1977); *International Convention for the Suppression of Acts of Nuclear Terrorism*, 13 April 2005, 2445 UNTS 89 (entered into force 7 July 2007); *International Convention Against the Taking of Hostages*, 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983); *International Convention for the Suppression of Terrorist Bombings*, 15 December 1997, 2149 UNTS 256 (entered into force 23 May 2001); *Convention on the Physical Protection of Nuclear Material*, 26 October 1979, 1456 UNTS 101 (entered into force 26 October 1987); *Convention on the Marking of Plastic Explosives for the Purpose of Identification*, 1 March 1991, 2122 UNTS 359 (entered into force 21 June 1998); *International Convention for the Suppression of the Financing of Terrorism*, 9 December 1999, 2178 UNTS 197 (entered into force 10 April 2002) [*Terrorist Financing Convention*].
24. *Threats to International Peace and Security Caused by Terrorist Acts*, SC Res 1373, UNSCOR, 56th year, UN Doc S/RES/1373 (2001).
25. *Ibid*.

> abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.[26]

As we shall see, this 2004 definition of terrorist acts has elements consistent with the Canadian definition of "terrorist activity," though it has one significant omission: what we in Canada refer to as the "motive clause." We will return to the Canadian definition, but, for now, it is essential to recognize that there was no widely accepted definition of terrorism for Canada to draw upon when it was crafting its legislation in response to Resolution 1373 in 2001.[27]

Indeed, because Canada had no established definition of terrorism or terrorist act from which to work, the Liberal government felt that Canada had to chart its own course. Then-Justice Minister Anne McLellan delivered a statement to explain the approach taken in the proposed legislation the day after the Bill's introduction in the House of Commons:

> The legislation before the House would provide a definition of terrorist activity for the first time. This definition is critical, as many of the legal implications under the bill are tied to the concept of terrorist activity. The first element of the definition outlines the offences that are established in the 12 international conventions related to terrorism, all of which we have signed.
>
> Equally important, however, is a general definition that refers to acts or omissions undertaken for political, religious or ideological purposes and which are intended to intimidate the public, force governments to act and cause serious harm.
>
> We have carefully restricted the definition to make it clear that property damage and disruption of an essential service are not in and of themselves sufficient to constitute a terrorist activity. The action taken must also endanger lives or cause serious risks to the health and safety of the public.
>
> This is an important issue about which some of my colleagues have expressed concern. To respond to their concerns let me assure the House and all Canadians that this definition shall in no way include legitimate forms of political dissent. It would not impinge upon the lawful activities of legitimate political groups or lobby organizations. In addition, the legislation would permit the designation of groups whose activities meet the definition of terrorist activity.[28]

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26. *Threats to International Peace and Security Caused by Terrorist Acts*, SC Res 1566, UNSCOR, 59th year, UN Doc S/RES/1566 (2004).
27. See Department of Justice Canada, "About the *Anti-terrorism Act*" (7 July 2021), online: *Government of Canada* <www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html> [perma.cc/ZX4Y-Z7EX].
28. *House of Commons Debates*, 37-1, No 95 (16 October 2001) at 1015 (Hon Anne McLellan).

The approach proved controversial, particularly the vague assertion that the legislation would capture politically and religiously inspired terrorist groups but not "legitimate forms of political dissent." Peter MacKay, then a Progressive Conservative Member of Parliament, expressed clearly the concern at the time:

> I am told there are 190 definitions of terrorism in legislation around the world. Bill C-36 defines terrorist activity as action taken for a political, religious or ideological purpose that threatens the public or national security by killing, seriously harming or endangering a person, causing property damage likely to injure people, or disrupting an essential service or facility.
>
> The definition does not state that terrorist activity does not involve lawful activity such as protests and strikes. There is therefore concern…that legitimate political protest might fall under a rather broad umbrella.[29]

However, Irwin Cotler, then a Liberal Member of Parliament, responded that "with respect to new definitions of terrorist activity as set forth in proposed section 83.01 of the act, *they appear to be clearly defined*, both with respect to the character of the terrorist acts and the *mens rea*, or guilty intent, required for prosecutable purposes."[30] Having said that, neither Cotler nor the Liberal government attempted to explain how the definition was clear, nor did they ever offer workable definitions of "political," "religious," or "ideological" in the context of motive.

Despite the concerns of the minority, the majority government's proposal carried the day. Only three months after 9/11, Parliament passed the *Anti-Terrorism Act* (*ATA*); it received Royal Assent on 18 December 2001.[31] The *ATA* introduced a myriad of changes to existing legislation ranging from the *Officials Secrets Act* to the *Firearms Act* to the *Canadian Human Rights Act*. Most relevant for our purposes, it also created part II.1 of the *Criminal Code*, entitled "Terrorism," and created nine novel terrorism offences.[32] As described by McClellan above,

29. *Ibid* at 1155 (Hon Peter MacKay).
30. *Ibid* at 2150 (Hon Irwin Cotler) [emphasis added].
31. *ATA*, *2001*, *supra* note 20.
32. *Ibid*, s 4. The initial offences included providing or collecting property for certain activities; providing, making available property or services for terrorist purposes; using or possessing property for terrorist purposes; participation in the activity of a terrorist group; facilitating terrorist activity; the commission of an offence for a terrorist group; instructing to carry out activity for a terrorist group; instructing to carry out terrorist activity; and harbouring or concealing. In the twenty years since, that list has grown to fifteen offences with the addition of leaving Canada to participate in the activity of a terrorist group; leaving Canada to commit an offence for a terrorist group; leaving Canada to facilitate terrorist activity; leaving Canada to commit an offence that is terrorist activity; and counselling the commission of a terrorism offence. These offences were originally added from 2013 to 2015 with the passages

each terrorism offence is tied to the concept of either a terrorist group or terrorist activity, rather than a generic definition of terrorism, which MacKay preferred.[33] Section 83.01(1) of the *Criminal Code* defines "terrorist" activity and "terrorist group." A "terrorist group" is defined, in part, as a group "that has as one of its purposes or activities facilitating or carrying out any terrorist activity."[34] Meeting the definition of "terrorist activity" is thus central to all terrorism offences.

There are then two definitions of "terrorist activity." First, terrorist activity is one of ten offences outlawed by international anti-terrorism conventions to which Canada is a party;[35] no charges have ever been laid for such an offence. Second, terrorist activity is an act or omission that meets three criteria.[36]

First, it must be an act or omission, inside or outside Canada, that intentionally

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of the *Combating Terrorism Act* and the *Anti-terrorism Act*, *2015*. SC 2013, c 9 [*CTA*]; SC 2015, c 20. Section 83.221, regarding "counselling," was significantly amended in 2019 with the *National Security Act*, *2017*. SC 2019, c 13 [*NSA*, *2017*]. Harbouring was replaced in 2013 with the more specific offences of concealing a person who carried out terrorist activity and concealing a person who is likely to carry out terrorist activity. See *Criminal Code*, *supra* note 2, ss 83.23(1)-(2). The original amendments were brought into force with the passage of the *CTA*. *Ibid*, s 9. This offence was subsequently amended in 2019 by the *NSA*, *2017*. *Ibid*, s 22.

33. There is one exception: counselling commission of a terrorism offence. See *Criminal Code*, *supra* note 2, s 83.221. However, any terrorism offence will be dependent on the establishment of a terrorist group or terrorist activity, meaning these two predicates still form the root of the offence.
34. *Ibid*, s 83.01(1).
35. *Ibid*, s 83.01(1)(a). See *e.g. Convention for the Suppression of Unlawful Seizure of Aircraft*, 16 December 1970, 860 UNTS 105 (entered into force 19 July 1972); *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, 23 September 1971, 974 UNTS 177 (entered into force 26 January 1973); *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, 14 December 1973, 1035 UNTS 167 (entered into force 20 February 1977); *International Convention against the Taking of Hostages*, 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983); *Convention on the Physical Protection of Nuclear Material*, 3 March 1980, 1456 UNTS 124 (entered into force 8 February 1987); *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, 24 February 1988, 1589 UNTS 474 (entered into force 6 August 1989); *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992); *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, 10 March 1988, 1678 UNTS 304 (entered into force 1 March 1992); *International Convention for the Suppression of Terrorist Bombings*, 15 December 1997, 2149 UNTS 256 (entered into force 23 May 2001); *International Convention for the Suppression of the Financing of Terrorism*, 9 December 1999, 2178 UNTS 197 (entered into force 10 April 2002).
36. See *Criminal Code*, *supra* note 2, s 83.01(1)(b).

> (A) causes death or serious bodily harm to a person by the use of violence;
>
> (B) endangers a person's life;
>
> (C) causes a serious risk to the health or safety of the public or any segment of the public;
>
> (D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C); or
>
> (E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C).[37]

We call the above "the consequence clause." Second, this act or omission must be committed "in whole or in part for a political, religious or ideological purpose, objective or cause."[38] We call this "the motive clause." Third, the act or omission must be committed

> in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada.[39]

We call this "the purpose clause."

In practice, the Crown must first prove either the existence of a terrorist group (which ties back to proving terrorist activity) or that some conduct meets the three criteria for terrorist activity (consequence, purpose, and motive), and then prove the commission of a criminal offence tied to that terrorist activity or a terrorist group. Once these conditions are met, we may legally refer to the crime in question as terrorism.

Notably, the *Criminal Code* fairly clearly articulates both the consequence clause and the purpose clause of terrorist activity. Unfortunately, as MacKay noted in 2001, neither section 83.01 nor section 2, which sets out general definitions for the entire *Criminal Code*, defines the terms political/politics, religious/religion, or ideological/ideology. As noted above, Cotler simply asserted that these terms were sufficiently clear.[40] If this is true—that the terms are clear—then there

37. *Ibid*, s 83.01(1)(b)(ii).
38. *Ibid*, s 83.01(1)(b)(i)(A).
39. *Ibid*, s 83.01(1)(b)(i)(B).
40. See *House of Commons Debates*, *supra* note 28 at 2150.

should be no problem discovering the meaning of the terms and applying them, even in the absence of a *Criminal Code* definition. If the drafters understood the meaning of "political," "religious," and "ideological," then the legislative history of the *ATA* should offer some insight into what these terms mean in the context of the terrorism regime. It does not.

Our review of the legislative history found no clear explanation for why the drafters chose these terms for inclusion in the motive clause, nor is there clear evidence for the impetus to include the motive clause within the definition of terrorist activity. Indeed, the 1999 *International Convention for the Suppression of the Financing of Terrorism* was extremely influential in Canada's drafting of its criminal terrorism regime, yet its definition of terrorism contained no motive clause; Canada's drafters included a motive element.[41]

What we do know is that Canada's criminal terrorism regime is similar in construction to its anti-organized crime regime,[42] which was well-known by the government's criminal law policy and associated sections tasked with putting together the draft legislation. Comparing the terrorism and anti-organized crime regimes, it is plausible that the anti-organized crime laws formed the basis for the terrorism regime, adjusted to reflect that terrorist groups and terrorist activity were the targets of the scheme, not organized crime groups and activities. The two regimes are broadly similar in construction. Both regimes begin by defining the subjects of the offences: terrorist activity, terrorist groups, and criminal organizations, respectively. Then, these predicate definitions and concepts are associated with a series of offences, for example, participation in a terrorist group,[43] participation in a criminal organization,[44] facilitation of terrorist activity,[45] or the commission of an offence for a criminal organization.[46] However, there is nothing in the anti-organized crime provisions that explains the motive clause in terrorist activity, as this term is altogether different from the *Criminal Code*'s definition of "criminal organization."[47]

41. See *Terrorist Financing Convention*, *supra* note 23.
42. See *Criminal Code, supra* note 2, ss 467.11-467.13.
43. *Ibid*, s 83.18.
44. *Ibid*, s 467.11.
45. *Ibid*, s 83.19.
46. *Ibid*, s 467.12.
47. "Criminal organization" is defined at the outset of the anti-organized crime section of the *Criminal Code*, just as terrorist activity is at the outset of the terrorism section. *Ibid*, s 467.1(1).

There is also little doubt that the United Kingdom's *Terrorism Act 2000* influenced the drafters of the *ATA*.[48] This legislation defines terrorism as "the use or threat of action where…the use or threat is made for the purpose of advancing a political, religious or ideological cause."[49] But how did the United Kingdom arrive at such a definition, and why would Canada choose to copy it? Professor Kent Roach, who has written extensively on both the formation and application of the *ATA*, remarked that the definition's origins are unclear but may trace back to an operational definition used by the US Federal Bureau of Intelligence (FBI). According to Roach:

> The origins of Britain's requirement that terrorism be committed for political, religious, or ideological motives is interesting and, given the American rejection of such a requirement, somewhat ironic. Lord Lloyd, in his 1996 review of British anti-terrorism legislation, expressed concerns that the existing definition might not catch some forms of terrorism and expressed approval for the following working definition of terrorism used by the Federal Bureau of Investigation in the United States:
>
> > The use of serious violence against persons or property, or the threat to use such violence, to intimidate or coerce a government, the public or any section of the public, in order to promote political, social or ideological objectives.[50]

Once again, while this historical influence may provide insight into the creation of Canada's anti-terrorism criminal scheme, it does not provide any guidance on how to define and differentiate between the words "political," "religious," and "ideological" in the motive clause. We have found no readily available reference to how the United Kingdom or the FBI interpreted these terms at the time, nor any evidence of the influence these definitions had on Canadian law makers.

Notably, the *ATA* also amended the *Canadian Security Intelligence Service Act* ("*CSIS Act*") definition of terrorism to align with the new *Criminal Code* definition of terrorist activity.[51] Originally, the definition of threats to the security of Canada in section 2 of the *CSIS Act* included

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48. See Kent Roach, "Defining Terrorism: The Need for a Restrained Definition" [Roach, "Defining Terrorism"] in Nicole LaViolette & Craig Forcese, eds, *The Human Rights of Anti-terrorism* (Irwin Law, 2008) 97. See also Alan Greene, "Defining Terrorism: One Size Fits All?" (2017) 66 ICLQ 411.
49. *Terrorism Act 2000* (UK), c 11, s 1.
50. Roach, "Defining Terrorism," *supra* note 48 at 114-15.
51. *Canadian Security Intelligence Service Act*, RSC 1985, c C-23, s 2 [*CSIS Act*].

> activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state.[52]

It now reads:

> activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state.[53]

McLellan explained the need for this change because "terrorists may be driven by motives other than purely political."[54] It appears, however, that this provision was primarily amended for consistency purposes. There is no evidence in Hansard or the secondary literature that Parliament offered any insight into the meaning of political, religious, or ideological in the *CSIS Act*.

Fortunately, while the legislative history of the *ATA* offers little to tell us how to define political, religious, or ideological, it does offer a sense of what *type* of activities the drafters intended to target and why. McClellan explained:

> Our current laws allow us to investigate terrorism and prosecute those who have engaged in various specific acts generally associated with terrorism, including hijacking, murder, and sabotage. However, these and other laws are not sufficient. Perhaps the greatest gap in the current laws is created by the necessity of preventing terrorist acts from taking place. Our laws must reflect fully our intention to prevent terrorist activity, and currently they do not. Under our current laws we can convict terrorists who actually engage in acts of violence if we are able to identify and apprehend them after their acts have been committed. However, I think we all agree that Canadians have a right to expect their government to do everything it can to prevent such horrific acts as those of 11 September from happening in the first place.[55]

We see here that with the *ATA*, Parliament intended to capture and criminalize activity that occurred before a serious act of violence took place. As such, Parliament intended Canada's terrorism offences to be primarily, though not exclusively, preventative. Parliament also intended to pre-empt the activities of all kinds of terrorist organizations, though front of mind were religiously affiliated groups like al Qaeda, an organization subscribing to an extreme Salafist

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52. *Ibid*, s 2(c), as it appeared on 17 December 2001.
53. *Ibid*, as it appeared on 14 March 2023.
54. *House of Commons Debates*, *supra* note 28 at 1025.
55. House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 37-1, No 49 (20 November 2001) at 1220 (Hon Anne McLellan).

view of Islam and (purportedly) guided in its actions by those religious beliefs.[56] The other often-referenced terrorist group at the time was the Irish Republican Army (IRA)—an organization associated with a discrete political grievance against the UK government and motivated to change the policies, laws, or constitution thereof.[57] The preoccupation with these groups helps to explain the inclusion and distinction between the terms "religious" and "political" in the definition in the *ATA*—but what about "ideological"?

Testifying before the House of Commons Committee on Justice and Human Rights regarding the proposed bill, Mr. Paul Wilkinson, a professor of terrorism studies and political violence from the University of St Andrews in Scotland, was asked to comment specifically on the inclusion of "ideology" in the UK legislation. He said:

> On the first point about the use of the term ideological—and you will notice the term religious is also inserted there—I think the intention was to ensure that if someone disputed the term political as the basis of their justification for using terror, they would still be covered by the act. One has to remember that in the period since the Prevention of Terrorism Act, which was 1974, the British legislation had to catch up with the fact that in the 1980s you had the mushrooming of groups that at least claimed to be religiously motivated or to have some kind of philosophical justification other than a secular political cause of some sort. The idea of extending the definition in that way was designed to catch that.[58]

Wilkinson's answer offers little more than vague allusions to groups understood to be terrorist, without any concrete explanations as to why they are ideological as opposed to politically or religiously motivated. Unfortunately, his description was arguably the most precise explanation offered before the Committee.

What conclusions can we draw from all of this? Two things. First, Parliament wanted to ensure that the definition of terrorist activity captured the activities of groups like al Qaeda and the IRA, but that legitimate political and religious activity and dissent were not criminalized. Second, the drafters understood that the motivations of those who deploy terrorist tactics could evolve, and they wanted to ensure that the terrorism regime would also capture the violent activities of new groups in the future. What precisely the term "ideological" meant was never clearly addressed. Presumably, the drafters believed that we would recognize ideologically motivated terrorism when we saw it. The immediate threat the

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56. Roach, *September 11*, *supra* note 11 at 27.
57. See *e.g.* House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 37-1, No 32 (24 October 2001) at 1310 (Paul Wilkinson).
58. *Ibid* at 1340.

legislation sought to address was Islamist extremist-inspired terrorism and preventing another 9/11, and this is what it did.

Fifty-nine of the first sixty terrorism charges laid in Canada were against individuals allegedly motivated by al Qaeda and ISIS-inspired extremism.[59] The single outlier was a charge against a supporter of the Liberation Tigers of Tamil Eelam (LTTE), a militant separatist ("political") group in Sri Lanka.[60] Law enforcement, prosecutors, and judges knew and understood what it meant and looked like to be religiously (and to a lesser extent) politically motivated to engage in serious acts of violence; a precise legal definition was apparently not required.

Nevertheless, as anticipated, new movements have arisen (or different movements have re-emerged) in recent years that advocate the use of violence to advance their priorities and agendas. These movements look, sound, and organize differently than those many have come to associate with terrorism since 2001. Without a clear understanding of what "ideology" means, those responsible for enforcing the *Criminal Code* have been unsure whether the activities of such new or re-emerging groups qualify as "terrorist." Indeed, in 2015, as the far-right threat was rising (again), the RCMP expressed doubt as to whether far-right extremism *could* amount to terrorism and pointed to the "ideological basis and motivation for the act" as the troublesome criterion.[61] Even if investigators could find evidence of such a motive, they were unsure whether far-right ideologies were "coherent" enough to merit terrorism charges. This uncertainty may also explain why law enforcement did not charge Bissonnette and Minassian with terrorism offences.[62]

The RCMP's hesitancy to expand the application of the terrorism regime to new movements is, in one sense, understandable. If the term "ideology" captures any system of beliefs or set of ideas that influence, in whole or in part, an actor planning to commit or who has committed a serious crime, it becomes challenging to distinguish between terrorism and serious crime. A moderate, narrow, and thoughtful definition of ideology is necessary to capture new movements but also to distinguish terrorism and serious crime, lest we begin to classify common crime—or worse, civil disobedience by various activist groups—as terrorism.

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59. See Nesbitt & Nijjar, "Counting Terrorism Charges," *supra* note 20.
60. *Ibid*.
61. Stewart Bell, "What Does It Take to Lay Terrorism Charges? An Internal Government Document Explains the RCMP View," *Global News* (27 April 2018), online: <globalnews.ca/news/4173552/canada-terrorism-charges-rcmp-document> [perma.cc/GN7W-CLFZ].
62. *Ibid*. See also Jim Bronskill, "Scope of Right-Wing Extremism Vexed Security Officials, Documents Show," *CBC News* (27 January 2020), online: <www.cbc.ca/news/canada/edmonton/right-wing-extremism-1.5441464> [perma.cc/PE79-JP3K].

Unfortunately, the legislative history provides us with few clues as to how to thread this needle. Sadly, we establish next that a comprehensive review of every criminal terrorism judgment, sentencing decision, and jury instruction issued between 2001 and 2021 similarly provides little guidance.

II. REVIEWING TWENTY YEARS OF CANADIAN TERRORISM JURISPRUDENCE FOR A DEFINITION OF "POLITICAL," "RELIGIOUS," OR "IDEOLOGY"

Remarkably, in the twenty years between 2001 and 2021, none of the Canadian courts tasked with applying provisions that include terrorist activity as an element of the offence has found it necessary to define *any* of the terms found in the motive clause, be it "political," "religious," or "ideological." Indeed, Canada's first terrorism case, *Khawaja*, saw a challenge to the constitutionality of the motive clause. The defence argued that section 83.01(1)(b)(i)(A) (the motive clause) infringed section 2 of the *Charter of Rights and Freedoms* ("*Charter*") because it had a chilling effect on the freedom of expression, religion, and association, and that "it would legitimize law enforcement action aimed at scrutinizing individuals based on their religious, political or ideological beliefs."[63] Put another way, the motive clause demanded that these would be, in the words of Roach, "political and religious trials";[64] and, given that the religion in mind when the motive clause was drafted was al Qaeda's warped conception of Islam, the concern was that the clause would cause undue attention to religiously motivated activities and lead to discrimination against the Muslim community.

In finding that the provision did not engage section 2 of the *Charter*, the Court of Appeal for Ontario explained:

> The motive clause has virtually no effect on the manner in which potential terrorist activities are investigated and prosecuted. The vast majority of terrorist acts are borne of political, religious, and ideological motivations. Consequently, motive will play a crucial role in the detection and prosecution of terrorist activities. The investigative focus will fall on persons or groups whose beliefs are known or believed to promote or condone terrorist conduct. Where those investigations lead to prosecutions, the motive of the accused will no doubt be a central feature of the prosecution's case.[65]

The Court of Appeal never defined "religion," "politics," or "ideology" in its decision, nor is the above-quoted explanation of the role of motive in the

63. *Khawaja* SCC, *supra* note 19 at para 76.
64. Roach, *September 11*, *supra* note 11 at 27.
65. *Khawaja* CA, *supra* note 19 at para 129.

definition of terrorist activity particularly coherent: We know only that motive is both a "central feature" of any terrorism case and that it has "virtually no effect" on how "terrorist activities are investigated and prosecuted." Though this is a confusing and arguably contradictory result, since *Khawaja*, the motive has both been central to how we implicitly understand and charge terrorism, as discussed in the introduction of this article, and it has been of "no effect" in the prosecution of the crime at court, at least insofar as it has gone undefined in courts of law.

In the appeal in *Khawaja*, the Supreme Court of Canada did add some clarity to the Court of Appeal's explanation of the motive clause, at least in terms of what ideology is *not*. In its only evaluation of the motive clause to date, the Court asserted that it

> does not include the non-violent expression of a political, religious, or ideological thought, belief or opinion. Only individuals who go well beyond the legitimate expression of a political, religious, or ideological thought, belief, or opinion, and instead engage in one of the serious forms of violence…listed in s. 83.01(1)(b)(ii) [the consequence clause] need fear liability under the terrorism provisions.[66]

Like the Court of Appeal's ruling, this finding does not help to define the elements of the motive clause in any meaningful sense; instead, it only clarifies that those with political, religious, or ideological beliefs that also meet the consequence predicate of terrorist activity are captured by the *Criminal Code*'s terrorism regime. As such, rather than resulting in increased discrimination, the motive clause is, on this reading, on solid constitutional footing because it further limits the application of Canada's terrorism offences.

The reality in Canadian courts has, to date, upheld the concern that spurred the constitutional challenge. Of those charged with terrorism offences in Canada between 2001 and 2021, other than the two most recent cases—those being Veltman (far right) and Toronto Youth (incel)—fifty-nine of the first sixty cases were allegedly motivated by ISIS or al Qaeda-inspired extremism.[67] Not only are both of these groups listed terrorist entities, but both movements also seek to advance extreme and perverted versions of the Muslim faith; as such, acting to support both movements has been routinely accepted as satisfying the "political, religious or ideological purpose, objective or cause," element of terrorist activity. The same can be said for the remaining terrorism case, which concerned sending

66. *Khawaja* SCC, *supra* note 19 at para 82.
67. See Nesbitt & Nijjar, "Counting Terrorism Charges," *supra* note 20. The sixtieth case was associated with a listed terrorist entity, the Tamil Tigers.

money (terrorist financing) to the LTTE, a militant separatist movement in Sri Lanka that likewise was listed as a terrorist entity under Canada's *Criminal Code*.[68]

Worryingly, these prosecutions do not tell the story of extremism in Canada, which has seen a growing and persistent threat posed by those inspired by far-right ideologies since at least 2014. Canadian security services have increasingly recognized this far-right threat as the most prevalent, or among the most prevalent, extremist terrorist threats to Canada.[69] In fact, since 2014, "ideologically motivated violent extremism" has been a factor in a number of attacks that, in total, have left twenty-five people dead and forty-one wounded.[70] By comparison, since 2001, only three people in Canada have been killed by individuals motivated by Islamist-inspired extremism.[71] Yet, again, criminal investigations leading to terrorism charges have focused predominantly—and until recently, almost exclusively—on members of the Muslim community, and historically not at all on the far right.[72] Rather than the definition of terrorist activity limiting the application of terrorism offences as the Court asserted it would, it appears that, in practice, the definition is limiting the application

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68. See *R v Thambaithurai*, 2010 BCSC 1949.
69. See *e.g.* Canadian Security Intelligence Service, *CSIS Public Report 2019* (Public Works and Government Service Canada, 2020) at 13; Public Safety Canada, *2017 Public Report on the Terrorist Threat to Canada: Building a Safe and Resilient Canada* (Public Safety Canada, 2017) at 7; David Lao, "'Escalating' Far-Right Violence in U.S. to Pose Greatest Terrorist Threat: Experts," *Global News* (27 June 2020), online: <globalnews.ca/news/7116354/far-right-violence-america-terrorism-threat> [perma.cc/H8N7-4PZL]; Alex Boutilier, "CSIS Highlights White Supremacist Threat Ahead of Radical Islam," *Toronto Star* (15 March 2015), online: <www.thestar.com/news/canada/2015/03/15/csis-highlights-white-supremacist-threat-ahead-of-radical-islam.html> [perma.cc/NP4Z-DBGG].
70. Canadian Security Intelligence Service, "Remarks by Director David Vigneault to the Centre for International Governance Innovation" (9 February 2021), online: *Government of Canada* <www.canada.ca/en/security-intelligence-service/news/2021/02/remarks-by-director-david-vigneault-to-the-centre-for-international-governance-innovation.html> [perma.cc/7TQR-5KAY]. These remarks were made before the attack in London killed four people and injured a nine-year-old boy.
71. See *e.g.* The Canadian Press, "Terrorism in Canada: Timeline of Plots, Attacks and Allegations," *CTV News* (23 October 2014), online: <www.ctvnews.ca/canada/terrorism-in-canada-timeline-of-plots-attacks-and-allegations-1.2067337> [perma.cc/8SKD-6SGB]; Public Prosecution Service of Canada, "Sentence of Life Imprisonment for Murder in Terrorism Case" (6 August 2021), online: <www.ppsc-sppc.gc.ca/eng/nws-nvs/2021/26_08_21.html> [perma.cc/YE3F-UKLL]. Since 2014, the number of deaths associated with far-right attacks has, sadly, only increased in both real and relative terms (to other forms of extremism-caused deaths in Canada), which is evident from the prosecutions of Minassian, Bissonnette, Toronto Youth (incel attack), and Veltman, all discussed herein.
72. See Nesbitt, *supra* note 8 at 45.

of Canada's terrorism laws to *only one group*, and thus arguably *increasing* discrimination.

One might say that this is about the application of the law by police and prosecutors, not a necessary corollary of its drafting. For this to be true, the understanding of what ideas can motivate terrorism must be expanded beyond religiously inspired groups to capture violence motivated by the far right, the incel movement, et cetera. However, this again raises the primary concern identified during the parliamentary debate on the *ATA*: How does one coherently define the motive clause so that, as the Court asserted, it further limits the application of Canada's terrorism offences, while at the same time leaves the door open for terrorism prosecutions motivated by new belief systems of the future? In other words, how can the law be interpreted in a way that both goes beyond the current practice, focused predominantly on religiously inspired extremism, while at the same time ensuring that the motive clause properly restricts the current and future application of the label "terrorism"?

As we have seen, neither the courts nor Parliament have provided any guidance on this question. Both the Court of Appeal for Ontario and the Supreme Court of Canada failed to define the motive requirements in *Khawaja* or even to identify which of the three motives—political, religious, or ideological—best applied in that case. In so doing, the courts also implied that the motive requirement was doing very little to limit the scope of the application of terrorism offences at all, first when the Court of Appeal said that the motive had "virtually no effect," and then when the Court conflated the motive and consequence clauses,[73] with the latter seeming to do the work in limiting the scope of application.[74] In the result, though the definition of terrorist activity took centre stage in Canada's first terrorism trial, we were left with little in the way of explanation as to the scope of the terms used.

What followed *Khawaja* was over thirty criminal trials (as of 2021), each one failing to define the motive requirement. In fact, having reviewed every reported judgment related to terrorism offences since the passage of the *ATA*, we were unable to identify any subsequent attempt by a court to interpret the phrase "political, religious or ideological purpose, objective or cause" or the individual

73. See *Khawaja* CA, *supra* note 19 at para 129.
74. See *Khawaja* SCC, *supra* note 19 at para 82.

terms.[75] This is true even in the thirteen cases where the accused was convicted and sentenced for terrorism offences.[76]

Moreover, judgments in Canadian terrorism cases have overwhelmingly failed to particularize whether an accused's motivations were political, religious, or ideological. Instead, Courts have routinely conflated the three terms, using phrasing like "religious ideology," without describing what that ideology entails or why ideology had to be added to religious belief to explain the motive.[77] The reasons for sentence in each terrorism case resulting in a conviction also fail to articulate what these terms mean, despite the absence or presence of the offender's

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75. While this article was in production (August 2023), a decision was released in the Toronto Youth incel case. See *R v OS*, 2023 ONSC 4142. In that case, the youth pleaded guilty to one count of murder and one count of attempted murder. However, the Crown brought an application to treat the offences as terrorist activity for the purposes of sentencing so that the youth might be sentenced as an adult. For our purposes, this meant that the Crown had to prove that the crimes amounted to terrorist activity, meaning that the court had to address whether the murder and attempted murder charges also met the consequence, motive, and purpose clauses in the definition of terrorist activity. This is the first decision to address the issue head-on in this way. Not surprisingly, the central dispute in the decision was whether the motive clause was satisfied. *Ibid*, paras 20-22. Unfortunately, the court followed the recommendation of the Crown and took a cursory approach to statutory interpretation to adopt what is, in essence, a dictionary definition of ideology. *Ibid*, paras 24-25, 26, 33. As discussed in this article, below, that dictionary definition of "ideology" or "ideological" quite clearly offers an insufficiently precise understanding of what the term means in the context of Canada's motive clause. In particular, that definition is incapable of offering meaningful assistance in differentiating most ordinary crime from terrorism or adding anything to limit or expand the definition of terrorist activity beyond what it would be if it had only consequence and purpose clauses. As such, although it bears noting that there is now one lower court case that has, at least, addressed the definition of terrorism, and the motive clause in particular, head-on, the reasoning there does not address the arguments or longstanding concerns raised in this article, nor does it, in the authors' opinion, in practice, take the definition much beyond "we know it when we see it."

76. For a list of all thirteen sentencing decisions and related data, see Michael Nesbitt & Harman Nijjar, "Table of Canadian Terrorism Cases to Date" (17 June 2021), online (pdf): *Intrepid* <static1.squarespace.com/static/59b99154bce176cf26878ef3/t/60cb6861e998f20eb0b6acb6/1623943265837/IntrepidBlog_TerrorismChargesData.pdf> [perma.cc/4PME-Z2SV].

77. See *e.g. R v Khalid*, 2010 ONCA 861 at para 35 ("[f]uelled by his religious and ideological convictions, he was prepared to engage in the mass murder of innocent men, women and children on Canadian soil"). Even where a court tends to identify a particular motive—religious, political, or ideological—it has tended to be circumspect about whether the particular motive is accurate. See also *R v NY*, 2008 CanLII 24543 (Ont SC) at para 22. See also *Khawaja* SCC, *supra* note 19 at para 89. The Court finds that the accused had an "extremist religious ideology" without explaining the basis for this finding.

ongoing ideological commitments and religious views frequently being a factor for consideration by the sentencing judge.[78]

Not finding any definition for "political," "religious," or "ideological" in any judicial decisions or reasons, we looked next to jury instructions. To date, only five jury trials for terrorism offences have ended with a verdict. Of these, there have been four convictions of six accused[79] and a single acquittal of two accused.[80] We reviewed the transcripts of the jury instructions in each of these cases. In only one case, *R v Ansari* ("*Ansari*"), did the judge attempt to define the elements of the motive offence for the jury. When describing the motive element, Justice Dawson explained:

> I am sure you all have a good sense of what constitutes a political, religious or ideological purpose, objective or cause. The ordinary meanings of these words apply. However, in order to assist you I will give you brief dictionary definitions of these words that are applicable in the context of this case.
>
> "Political" means "relating to the government or public affairs of the country or another country" or "related to politics."
>
> "Religious" means "relating to a religion."
>
> "Ideological" is a derivative of the word "ideology," which means "a system of ideas and principles forming the basis of an economic or political theory" or "the set of beliefs held by a particular group."
>
> "Purpose" means "something to be obtained" or "a thing intended."
>
> "Objective," in this context, means a goal or an aim.
>
> "Cause," in this context, means a principle or movement one is prepared to defend or advocate.[81]

In the history of terrorism cases in Canada, this appears to be the only time a Canadian jurist has ever attempted to define or explain what motivation differentiates terrorism from ordinary criminal offences. By relying simply on

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78. See *e.g. R v Ahmed*, 2014 ONSC 6153 at para 51 [*Ahmed*]; *R v Dughmosh*, 2019 ONSC 1036 at para 33 [*Dughmosh*]; *R v Chand*, 2010 ONSC 6538 at para 92 [*Chand*]; *R v Ansari*, 2010 ONSC 5455 at para 16 [*Ansari*].
79. See *Dughmosh*, *supra* note 77; *Ahmed*, *supra* note 77; *Ansari*, *supra* note 77; *R v Hersi*, 2014 ONSC 4414; *R v Esseghaier*, 2015 ONSC 5855. For a listing of all the cases, including broken down by verdicts, see generally Nesbitt & Nijjar, "Counting Terrorism Charges," *supra* note 20.
80. See *R c Jamali*, 2017 QCCS 6078.
81. *Ansari*, *supra* note 77 (Charge to the Jury at para 237) [on file with authors]; *Chand*, *supra* note 77 (Charge to the Jury at para 237) [on file with authors].

the dictionary definition, Justice Dawson tells us that the Crown must establish that the accused was motivated, in part, by a goal, principle, aim, or movement related to politics, religion, or a set of beliefs held by a particular group or that form the basis of a political or economic theory. This definition is not just vague and tautological, but the addition of the word "ideology" makes it so broad that it literally includes any set of ideas shared by more than one person; the application of criminal terrorism laws could get very broad indeed in such a scenario.

Moreover, if Justice Dawson's explanation is correct, the motive clause adds little to limit or expand the definition of terrorism beyond what the consequence and purpose clauses found in the definition of terrorist activity already circumscribe.[82] Indeed, it would be exceptionally rare for anyone with the intent to commit a serious act of violence to intimidate a segment of the public "with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada" to commit such a crime purely based on greed, vengeance, or fame. And yet, in recent years, the motive predicate in general, and the concept of "ideology" in particular, has seemingly played a crucial role in the decision by law enforcement to classify (or not) an offence as terrorist and by prosecutors to charge (or not) an accused with terrorism offences. Indeed, in both the Veltman and Toronto Youth cases, police press releases and statements explained that the ideological motivation was the factor that pushed them towards classifying the attacks as terrorism.[83]

III. APPLYING THE RULES OF STATUTORY INTERPRETATION

The previous two Parts established that neither the legislative history of Canada's terrorism offences nor twenty years of terrorism jurisprudence offer guidance regarding what "political, religious, or ideological" actually mean. Of course, this conclusion merely demonstrates that courts will have to tackle the motive element in the future; it offers neither courts, lawyers, nor the general public much insight into what motivations meet the definition of terrorist activity.

82. Perhaps it is thus unsurprising that the Court finds it "abundantly clear that the trial judge would have convicted with or without the motive clause." *Khawaja* SCC, *supra* note 19 at para 92.

83. See Public Safety Canada, "Terrorism Charges Laid in Ideologically Motivated Homicide" (20 May 2020), online: <www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/prlmntry-bndrs/20200831/062/index-en.aspx> [perma.cc/LZ2J-A356]; Bell, Russell & McDonald, *supra* note 3.

In this Part, therefore, we embark on a further exercise of statutory interpretation to understand the legal meaning of the terms "political," "religious," and "ideological."

A. IDEOLOGY, RELIGIOUS, AND POLITICAL IN THE BROADER CRIMINAL LAW CONTEXT

As a first effort, we looked elsewhere in the *Criminal Code* and related jurisprudence for use of terms "political," "religious," and "ideological." This investigation can be helpful because law makers use language consistently within a statute so that the same words (tend to) have the same meaning and different words have different meanings.[84] However, as Pierre-André Côté warns, "[w]hen a case dealing with one provision is used to interpret another, even in the same statute, the need for caution cannot be overstated."[85] Caution is required because the meaning of a word will always partially depend on the context in which it is used and thus interpreted, and "there is a danger in transposing the meaning given by one judge to a word in a specific context to another enactment for which a different context may suggest a different meaning."[86] Nevertheless, we can start our analysis from the presumption that Parliament uses words and patterns of expression in a consistent manner.[87] If courts have already gone through the full exercise of statutory interpretation to determine what these terms mean in the context of the criminal law, we can infer that this meaning will (or at least might) be adopted in the context of terrorism prosecutions.

1. RELIGION

The terms "religion" or "religious" are found in numerous *Criminal Code* provisions. For example, it is an offence to prevent an officiant from celebrating a religious service or performing their duties and to disturb or interrupt religious gatherings.[88] In other cases, religion creates an exception to an offence. For example, it is lawful for religious organizations to conduct or manage a lottery

84. See Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed (Butterworths, 1994) at 163 [Sullivan, *Driedger*]. See also *R v Zeolkowski*, [1989] 1 SCR 1378 at 1387.
85. *The Interpretation of Legislation in Canada*, 4th ed (Carswell, 2011) at 546.
86. *Ibid*. See also *Lanston Monotype Machine Company v Northern Publishing Co* (1922), 63 SCR 482 at 497 ("it is always dangerous…to construe the words of one statute by reference to the interpretation which has been placed upon words bearing a general similarity to them in another statute dealing with a different subject matter").
87. See Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Irwin Law, 2016) at 43 [Sullivan, *Statutory Interpretation*].
88. *Criminal Code*, *supra* note 2, ss 176(1)-(2).

where the proceeds are used for a "religious object or purpose."[89] There are also several provisions where "religion" is listed among several other grounds that, where an act or omission is motivated by prejudice or hate based on those grounds, it is an offence, or such a finding elevates the sentence if convicted of an offence.[90] Regrettably, we have not identified any case where a court applying these provisions interpreted the meaning of religion.

This is not to say that the meaning of religion has never arisen in criminal law cases, including, as noted above, in terrorism prosecutions.[91] Canadian jurisprudence has addressed whether a criminal offence violates an accused's freedom of religion protected by section 2(a) of the *Charter*. In *Syndicat Northcrest v Amselem* ("*Syndicat Northcrest*"), Justice Iacobucci, writing for the majority of the Court, noted that to define religious freedom, the Court must first define religion, even if it was not possible to do so precisely.[92] The majority found that

> [d]efined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, *religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject*.[93]

While this definition is helpful, there are difficulties with transposing terms interpreted in the *Charter* context to the non-*Charter* context. Unlike a statute, the *Charter* is a "purposive document. Its purpose is to guarantee and to protect, within the limits of reason, the enjoyment of the rights and freedoms it enshrines. It is intended to constrain governmental action inconsistent with those rights and freedoms."[94]

The Court tells us repeatedly that the *Charter* is to be interpreted "generous[ly]" rather than "legalistic[ally]" and "in light of the interests it was meant to protect."[95] In short, there are different rules for interpreting the provisions of a statute—particularly a criminal one—and the provisions of the *Charter*.

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89. *Ibid*, s 207(1).
90. *Ibid*, ss 318-319, 430(4.1), 718.2(a)(i).
91. See *e.g. Khawaja* SC, *supra* note 19; *Khawaja* CA, *supra* note 19; *R v Nuttall*, 2016 BCSC 1404 at paras 825-33.
92. 2004 SCC 47 at para 39 [*Syndicat Northcrest*].
93. *Ibid* [emphasis added].
94. *Hunter v Southam Inc*, [1984] 2 SCR 145 at 156.
95. *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at 344.

This distinction was highlighted recently by Justice Abella in her minority opinion in *Quebec v 9147-0732 Québec inc*.[96] In rejecting the majority's more restrictive interpretation of section 12 of the *Charter*, she remarked that the Court has consistently emphasized that "examining the text of the *Charter* is only the beginning of the interpretive exercise, an exercise which is fundamentally different from interpreting a statute."[97] Yes, the plain text of the *Charter*'s provisions matter because the language chosen to articulate the right is key to understanding its purpose, but the plain text of the provision is not a "factor of special significance," as it is in statutory interpretation.[98] This is evident, noted Justice Abella, in the context of the Court's interpretation of section 2(a) of the *Charter*, which was accomplished "without recourse to a dictionary definition of 'religion,' choosing instead to examine the 'historical context' and 'purpose' of freedom of religion and conscience."[99]

Still, the scope of the *Charter*'s protections for religious freedom does shape our understanding of the criminal offences listed above. This is because, as Benjamin L. Berger explains, some of these criminal offences are designed to "secure and to facilitate the enjoyment of religious freedom and equality."[100] In such cases, like the prohibition against hate speech in section 319, criminal offences are drafted with the intent of protecting religious freedom, and courts have interpreted their application accordingly.[101] While this is not the direct purpose of the *Criminal Code*'s terrorism scheme, it is the basis for the inclusion of the exception in the definition of terrorist activity that stipulates that "the expression of a political, religious or ideological thought, belief or opinion does not come within…the definition *terrorist activity* in subsection (1) unless it constitutes an act or omission that satisfies the criteria of that paragraph."[102] As we must presume that the word "religious" in both the definition and the exception clause of section 83.01 have the same meaning, the Court's interpretation of religion from *Syndicat Northcrest*

96. 2020 SCC 32.
97. *Ibid* at para 71.
98. *Ibid* at para 72.
99. *Ibid*.
100. "Moral Judgement, Criminal Law and the Constitutional Protection of Religion" (2008) 40 SCLR (2d) 513 at 522.
101. *Ibid* at 523-24, citing *R v Keegstra*, [1990] 3 SCR 697 and *R v Zundel*, [1992] 2 SCR 731. For an excellent review of the history of Canada's hate speech criminal provisions, see Kenneth Grad, "A Gesture of Criminal Law: Jews and the Criminalization of Hate Speech in Canada" (2022) 59 Osgoode Hall LJ 375.
102. *Supra* note 2, s 83.01(1.1).

provides meaningful guidance at minimum and perhaps even a useful definition for use in defining terrorist motives.

Moreover, we believe that the *Syndicat Northcrest* definition—particularly the clarity provided in defining the religious belief as both deeply held and associated with spiritual life—is consistent with the type of religiously motivated terrorists that those drafting the *ATA* were attempting to capture. The proposed connection both to the divine and to one's spiritual faith also clarifies how religious motivation might differ from other motivations that are not spiritual—presumably including political and ideological motivations.

2. POLITICS OR POLITICAL

The term "political" appears only one other time in the *Criminal Code*: Section 269.1(3) defines torture and makes clear that torture cannot be justified by "internal political instability."[103] Unfortunately, no reported judgment interprets this phrase.[104]

3. IDEOLOGY OR IDEOLOGICAL

Similarly, the term "ideology" or "ideological" is not found elsewhere in the *Criminal Code*, nor has it been interpreted in a recorded judgment arising from a criminal proceeding[105].

B. POLITICAL AND IDEOLOGICAL IN OTHER CANADIAN LEGAL CONTEXTS

Having found no helpful guidance on the meaning of "political" or "ideological" in criminal law jurisprudence, we turn next to the broader legislative context for assistance. As Ruth Sullivan explains, provisions from the entire body of Canadian federal law are presumed to "form a coherent and harmonious body of law."[106] As such, when interpreting statutes, courts prefer interpretations "that avoid conflict or interference with the operation of another legislative scheme."[107] This is especially true where the acts deal with the same subject but also applies to a lesser extent to the entire body of Canadian legislation.[108] It is presumed

103. *Ibid*, s 269.1(3).
104. Based on a search of this phrase in CanLII and QuickLaw.
105. Note again that, while this article was in production, a decision in Toronto Youth case *R v OS*, 2023 ONSC 4142, addressed this issue, though not in a manner that makes a material difference to the arguments or concerns raised in this article. *Supra* note 75.
106. *Statutory Interpretation*, *supra* note 86 at 181.
107. *Ibid*.
108. See *Auer v Lionstone Holdings Inc*, 2005 ABCA 78 at para 20.

that the entire statute book is "drafted with care, using the same techniques and conventions."[109] Thus, we can justify drawing inferences from other federal statutes to interpret the meaning of "political" and "ideological" in the *Criminal Code*.

1. POLITICAL

In *Action by Christians for the Abolition of Torture v Canada*,[110] the Federal Court of Appeal was tasked with interpreting the scope of the expression "political activities" in what was at the time section 149.1(6.2) of the *Income Tax Act*.[111] The court considered the French and English dictionary definitions of the term "politics" and canvassed jurisprudence from the United Kingdom and Canadian administrative decisions. The court ultimately concluded

> that the words "political purposes" or "political activities", in their ordinary meaning, cover much more than initiatives leading to legislative changes. In my opinion, they cover any attempt to sway a government or a member of the government or, where there is a democracy, a member of the Parliament in such areas as these organizations or individuals are politically in a position to take action in response to the pressures to which they are subjected.
>
> It is the very nature of the initiative in relation to these organizations and individuals, the very identity of the interlocutor that one is seeking to influence, which gives the activity its political character, independently of the cause in question and its value, independently of the position this interlocutor has or has not taken or will take in relation to that cause and independently of the state of public opinion in relation to that cause. Whether it is support, flattery or criticism, the initiative is political. And it is no less political because the cause that is the object of the initiative is popular, or has unanimous support or is endorsed by the existing authorities.[112]

In *Canada v Ward* ("*Ward*"), the Court defined the term "political opinion" included in the definition of "Convention Refugee" in section 1(1) of the *Immigration Act, 1976*,[113] which incorporated the 1951 *Convention Relating to the Status of Refugees* ("Convention") into Canadian law.[114] Under the *Immigration and Refugee Protection Act*, a Convention Refugee is one who "by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or *political opinion*" leaves their country

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109. Sullivan, *Statutory Interpretation*, *supra* note 86 at 182.
110. 2002 FCA 499 [*Action by Christians*].
111. RSC 1985, c 1 (5th Supp). The expression was removed from the Act in 2018.
112. *Action by Christians*, *supra* note 108 at paras 66-67 [emphasis added].
113. *Ward*, *supra* note 21.
114. 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

of nationality and is unable to return or seek their home state's protection.[115] The Court adopted a definition of political opinion meaning "any opinion on any matter in which the machinery of state, government, and policy may be engaged."[116] The Court then went on to clarify that political opinions need not be expressed outright but may be inferred from a person's actions.[117]

In both cases, the definitions are circumscribed by the subject of one's actions or beliefs, rather than the type of activity engaged in or how an opinion is conveyed. For example, according to these definitions, picketing or boycotting a private company because it sells animal products would not qualify as a political activity or an expression of a political opinion. Picketing outside of your local Member of Parliament's office for any reason or expressing the belief that the selling of animal products should be illegal would, however, meet the definition of "political." This approach makes sense in the context of the *Criminal Code*'s terrorism scheme, where the term "political" is used to denote a motivation rather than a specific type of conduct. It is also consistent with the type of politically motivated extremists that the drafters of the *ATA* had in mind, according to the legislative history (*e.g.*, the IRA).[118] Further, this definition provides a coherent distinction between a "political" motivation and what "ideological" might mean: An act intended to influence a politician to act or refrain from acting in a certain way in their public capacity becomes politically motivated, while a similar act with a more *sui generis* audience, intending to create fear in a particular group, might then look ideological.

Also consider that in *Ward*, the Court helpfully defined the phrase "particular social group" in the context of the definition of a Convention Refugee. The Court here found that even though the inclusion of the social group category was meant

> to cover any possible lacuna left by the other four groups, this does not necessarily lead to the conclusion that any association bound by some common thread is included. If this were the case, the enumeration of these bases would have been superfluous; the definition of "refugee" could have been limited to individuals who have a well-founded fear of persecution without more. The drafters' decision to list

115. SC 2001, c 27, s 96 [emphasis added].
116. *Ward*, *supra* note 21 at 90.
117. *Ibid* at 91.
118. The IRA, or the Northern Ireland problem, as it was sometimes called, was referenced on several occasions during legislative hearings. See *e.g.* Senate of Canada, Proceedings of the Special Senate Committee on the Subject Matter of Bill C-36, *Evidence*, 37-1, No 4 (29 October 2001) at 9 (Hon Anne McLellan); Senate of Canada, Proceedings of the Special Senate Committee on Bill C-36, *Evidence*, 37-1, No 8 (5 December 2001) at 20 (Hon A Raynell Andreychuk).

> these bases was intended to function as another built-in limitation to the obligations of signatory states. The issue that arises, therefore, is the demarcation of this limit.[119]

The Court determined that, to ensure that each enumerated ground had internal limits, the scope of the phrase "particular social group" should reflect the underlying themes of the Convention, those being human rights and anti-discrimination. From here, the Court was able to articulate a three-pronged test to determine whether a claimant is a member of a "particular social group" as defined under the *Immigration Act*.[120]

As in *Ward*, the Court in *Khawaja* found that the drafters' decision to list three distinct motives in the definition of terrorist activity was intended to function as a built-in limitation.[121] Not all acts of violence meant to intimidate will rise to the level of terrorism. Only serious acts of violence proved beyond a reasonable doubt to be motivated by politics, religion, or ideology may earn the label "terrorist."

2. IDEOLOGY

The word "ideological" is found in three federal statutes: the *CSIS Act*,[122] the *Security of Information Act*,[123] and the *Protection of Passenger Information Regulations*.[124] In each, the term is used in provisions defining terrorism or threats to the security of Canada for the purpose of those acts and do so by relying on the *Criminal Code* definition of terrorist activity. In other words, all uses of the term "ideology" in Canadian statutory law are tied (back) to the concept of terrorist activity as defined in the *Criminal Code*. Unfortunately, no reported judgment related to these acts defines the term "ideology."

3. SUMMARY

Based on the jurisprudence canvassed above, we suggest that a political "purpose, objective or cause" exists where a group or individual is compelled to act by a desire for their government, a representative of government, or an elected official to take positive action on any matter related to the machinery of government, state, or policy, including economic policy. By contrast, the decision in *Syndicat Northcrest* tells us that a religious "purpose, objective or cause" exists where a group

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119. *Ward*, *supra* note 21 at 68.
120. *Ibid*.
121. *Khawaja* SCC, *supra* note 19 at para 82.
122. *Supra* note 51, s 2.
123. RSC 1985, c O-5, s 3(1)(a).
124. SOR/2005-346, s 1.

or individual is driven to act by their system of faith and worship, involving the belief in a divine, superhuman, or controlling power. We can find no definition of "ideology" in existing jurisprudence.

Nevertheless, the Court in *Ward* tells us that, by necessary implication, the term "ideology" cannot simply be a catch-all for any or all motivations not captured by the terms "political" or "religious." Otherwise, the motive clause would be superfluous. The drafters could have simply defined "terrorist activity" as a serious act of violence (consequence clause) intended to intimidate a segment of the population or the government (purpose clause). "Ideology" must have a circumscribed meaning. At the same time, that meaning must be distinct from the concepts of "religious" and "political."

To identify the meaning of "ideology" we must, therefore, start afresh. To do so, the Court tells us in *Re Rizzo & Rizzo Shoes Ltd* to adopt the modern principle of statutory interpretation: "[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[125] This necessitates an analysis of the text's ordinary meaning, the intention of the drafters, the purpose of the rule the drafters intended to enact, and the consequences of adopting the proposed interpretation.[126]

C. INTERPRETING IDEOLOGY USING THE MODERN PRINCIPLE OF STATUTORY INTERPRETATION

The modern principle of statutory interpretation tells us to start by determining the ordinary meaning of the word "ideology."[127] Unless there is a clear reason to reject the ordinary meaning, the presumption is that is how Parliament intended us to understand the term. Importantly, "ordinary meaning" is not synonymous with "dictionary meaning." Sullivan explains that "ordinary" implies "the meaning that would be understood by a competent language user upon reading the words in their immediate context."[128] It is a fact that one must establish by either evidence or judicial notice, meaning a fact that is so well-known that it can

125. [1998] 1 SCR 27 at para 21. See also *65302 British Columbia Ltd v Canada*, [1999] 3 SCR 804 at para 50; *R v Sharpe*, 2001 SCC 2 at para 33; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26; *Redeemer Foundation v Canada (National Revenue)*, 2008 SCC 46 at para 15; *R v Ahmad*, 2011 SCC 6 at para 28; *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at para 102.

126. See Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (LexisNexis Canada, 2014) at 9-10 [Sullivan, *Construction*].

127. See Sullivan, *Statutory Interpretation*, *supra* note 86 at 59.

128. *Ibid* at 61.

be taken for granted or a fact that is non-controversial and easily established by readily available definitive sources.[129]

Unfortunately, the definition of ideology is not so uncontroversial or obvious that it can be taken for granted. In fact, in a 2021 literature survey of nearly three hundred scholarly articles containing "46 distinct definitions of ideology," the authors found "few, if any" shared definitional components.[130] Thus, in the case of a term like "ideology," dictionary definitions do offer an objective starting point—though not necessarily the end point—in identifying the plausible definitions that can then be refined by reference to the context and purpose of the legislative provision.[131] As we saw above, the dictionary definition used in Justice Dawson's jury instructions was, on its own, far too broad in the context of the definition of "terrorist activity."

To begin, the *Oxford English Dictionary* offers two definitions of "ideology" still in regular use:

- "The study of ideas; that branch of philosophy or psychology which deals with the origin and nature of ideas";[132] and
- "A systematic scheme of ideas, usually relating to politics, economics, or society and forming the basis of action or policy; a set of beliefs governing conduct."[133]

Considered in the context of the *Criminal Code* terrorism scheme, the latter definition is helpful. The term "ideological" is defined in relation to the word "ideology" as either:

- "Occupied with or motivated by an idea or ideas, esp. of a visionary kind; speculative, idealistic";[134] or
- "Of or relating to a political, economic, or other ideology; based on a principle or set of unshakeable beliefs."[135]

Read together, these definitions give us a starting point from which we can refine the meaning of "ideology" within the motive clause of terrorist activity: To be ideologically motivated, the basis for one's actions is a principle or set

129. *Ibid*. See also *R v Find*, 2001 SCC 32 at para 48.
130. Gary Ackerman & Michael Burnham, "Towards a Definition of Terrorist Ideology" (2021) 33 Terrorism & Political Violence 1160 at 1164.
131. See Sullivan, *Statutory Interpretation*, *supra* note 86 at 65.
132. *Oxford English Dictionary* (Oxford University Press, December 2022), sub verbo "ideology," online: <www.oed.com/view/Entry/91016> [perma.cc/D8XX-K8YC].
133. *Ibid*.
134. *Oxford English Dictionary* (Oxford University Press, December 2022), sub verbo "ideological," online: <www.oed.com/view/Entry/91012> [perma.cc/YSA5-5PRJ].
135. *Ibid*.

of unshakable beliefs derived from a scheme of ideas usually related to politics, economics, or society.

The next step (the one not taken in Justice Dawson's jury instructions in *Ansari*) is to determine whether this interpretation makes sense in the context of the definition of terrorist activity and the purpose of the *ATA*. Here, it is useful to consider the definition of "ideology" in relation to the meaning of "religious" and "political" and the presumption against tautology. It is a principle of statutory interpretation that law makers are expected to avoid the use of superfluous or meaningless words.[136] "[E]very word and provision found in a statute," explains Sullivan, "is supposed to have a meaning and a function."[137] Law makers do not unnecessarily repeat themselves.

The Court applied this principle in *R v Barnier* ("*Barnier*").[138] In that case, the Court was asked to interpret the definition of "insanity" (in what was then section 16(2) of the *Criminal Code*), which included the terms "knowing" and "appreciating." In so doing, Justice Estey remarked:

> One must, of course, commence the analysis of a statutory provision by seeking to attribute meaning to all the words used therein. Here Parliament has employed two different words in the critical portion of the definition, which words in effect established two tests or standards in determining the presence of insanity.[139]

Had the legislature intended there to be only one standard, found Justice Estey, they would have employed one of the two words, but not both. After canvassing the dictionary definitions of the terms, he was satisfied that the meanings of "knowing" and "appreciating" were separate and distinct.[140]

The same principles can be applied to the terrorism scheme in the *Criminal Code*. As in *Barnier*, Parliament employed multiple words in the critical point of the definition of "terrorist activity" (those being "political," "ideological," and "religious"). Each word establishes a different basis for the necessary motive for a terrorism offence. The dictionary definition of "ideology" includes a systematic set of beliefs based on politics, but we must presume that law makers did not use these terms redundantly. As such, the actual meaning of "ideology" must be narrower than what is found in the *Oxford English Dictionary* and must take

136. See Sullivan, *Driedger*, *supra* note 83 at 159. See also *Canada (National Revenue) v Thompson*, 2016 SCC 21 at para 32.
137. *Construction*, *supra* note 124 at 211.
138. [1980] 1 SCR 1124 at 1135.
139. *Ibid*.
140. *Ibid* at 1136.

into account the definitions of "religion" and "political" that we identified in the jurisprudence.

Thus, "ideology," as used in the definition of "terrorist activity," must be distinct from a motive driven by a system of faith or worship involving a belief in the divine or superhuman, and its target must go beyond a desire to influence an elected official or representative of government to take action on a matter related to the machinery of government or state policy. We also know from the dictionary definition of "ideology" that it is a system of beliefs, though it cannot be so broad as to be any system of belief, or it would be reduced to superfluousness; put another way, "ideological" is a system of belief that is separate from political or religious purpose, but it also must be something narrower so as to not capture any idea held by an offender that contributes to their reason for committing a crime.

With all of this in mind, we can remove the references to "political" and "economics" and further refine our definition of "ideological": To be ideologically motivated, one's actions or beliefs are driven by a principle or set of unshakable beliefs derived from a scheme of ideas related to society (but not politics or religion).[141]

Ideology is therefore tied to how one comprehends their society, rather than how a person relates to and understands their faith or the proper role and policies of government. Moreover, in contrast with a political motive, the "target" victim group of an ideologically motivated terrorist—that is, the extended target beyond the individual or individuals upon whom violence is directly inflicted—extends beyond elected officials and government officials to groups or subgroups in society. In this way, hate groups would more easily qualify as "ideologically motivated," even if some actions also have a political component.

Through this exercise we have identified three distinct "purpose[s], objective[s] or cause[s]." However, the definition of "ideology" is still vague and arguably difficult to apply. Can it really be said that any set of ideas about society is sufficient to ground an ideology, or is more required? Consider an example. If a person believes that drivers should always drive the maximum speed limit and slow drivers should always pull over and allow faster drivers to pass, this is arguably a set of beliefs related to society. If a person, seeing someone not obeying this belief system, tries to intimidate the slow driver and dangerously runs them off the road, would this act of violence qualify as terrorist activity?

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141. As noted above, the term "economic" is removed from this definition because it is hard to conceive of a system of economic beliefs that would not meet the definition of political. See *supra* note 21.

Such a finding is certainly not consistent with the purpose and historical context of the terrorism regime.

Similarly, surely an ideology cannot mean any system of belief, lest a narcissist or megalomaniac who commits an armed robbery on the idea that the world revolves around them and they deserve the money thereby becomes a terrorist; or a member of a criminal gang who commits a murder driven by a system of beliefs about the importance of loyalty and supporting the gang becomes a terrorist; or a poor parent who commits an armed robbery driven in small part by the idea of "family first" becomes a terrorist. Put simply, if the Court was correct in *Khawaja* in asserting that the motive clause can, and constitutionally must, limit the scope of application of Canadian terrorism laws, then the definition of "ideological" must be narrower than what we have identified.

We are thus left with the outline of a definition for "ideology," but one that needs to be refined and narrowed. Not finding any answers in the case law or the legislative history, we now take a closer look at the "context" in which Parliament added "ideological" to the definition of terrorist activity. In particular, we saw in Part I, above, that Parliament looked to academics in the field of terrorism (and associated) studies to help explain why "ideology" was included in the UK anti-terrorism legislation, why the term was a necessary addition to the Canadian legislation, how it was justified as part of the definition, and how it might be distinguished from the political and religious motivations. We did not find particular clarity in those answers. However, we see that the ordinary meaning of the word "ideology"—as Parliament construed it at the time—was associated with how "ideology" was understood in terrorism studies and by those who study and apply the concept of ideology to terrorism. In the hopes of finding a more precise and practical answer than was provided in 2001, we now do the same.

IV. A (PRACTICABLE) SOCIAL SCIENCE DEFINITION OF IDEOLOGY

The study of ideology dates back almost a century and has piqued the interests of political scientists, economists, psychologists, historians, and philosophers alike. In these fields, the concept of ideology provides a unique and helpful conceptual tool, captivating social scientists with its supposed ability to explain political phenomena; however, much of the research on ideology fails to interact with other disciplines' literature, resulting in a highly fragmented disarray of isolated and often repetitive studies. Recent Canadian studies on far-right extremism have attempted to escape this problem by relying, in whole or in part, on the

legal definition in the *Criminal Code*,[142] creating the potential for a negative feedback loop of tautological explanations of ideology that lack, in the end, precise definitions.

Despite its popularity across the social sciences, the concept of ideology is also regrettably plagued with excessive definitional baggage, making it difficult to operationalize in any meaningful way. (This can be contrasted with the Canadian legal approach to ideology, which, as we have seen, has been regrettably plagued by virtually no definitional baggage.) The term "ideology" has essentially no consolidated meaning across fields of study, as there are "at least as many definitions…as there are theorists proposing them,"[143] which could explain why the precise meaning of ideology is often assumed rather than explicated.[144] In two influential studies of ideology, Malcolm B. Hamilton describes twenty-seven common elements of ideology, while John Gerring identifies thirty-five attributes.[145] As Gerring notes, ideology "means almost nothing at all if all of its possible attributes are included."[146]

One of the first authors to explicitly use the term was the eighteenth-century French philosopher Antoine Destutt de Tracy.[147] For de Tracy, ideology was a new discipline: the science of ideas. De Tracy wanted to "inquire into the origin of ideas, without considering religious or metaphysical aspects."[148] Karl Marx understood the term quite differently, and elements of his understanding also colour much of what we think about ideology today. For Marx, ideology is largely a misunderstanding of society, a misinterpretation of the ways things are,

142. See *e.g.* Barbara Perry & Ryan Scrivens, "Who's a Terrorist? What's Terrorism? Comparative Media Representations of Lone-Actor Violence in Canada" in Jez Littlewood, Lorne L Dawson & Sara K Thompson, eds, *Terrorism and Counter-Terrorism in Canada* (University of Toronto Press, 2020) 242 at 245.
143. Malcolm B Hamilton, "The Elements of the Concept of Ideology" (1987) 35 Political Studies 18 at 18.
144. See David W Minar, "Ideology and Political Behavior" (1961) 5 Midwest J Political Science 317.
145. Hamilton, *supra* note 141; John Gerring, "Ideology: A Definitional Analysis" (1997) 50 *Political Research Q* 957 [Gerring, "Ideology"].
146. John Gerring, "What Makes a Concept Good?: A Critical Framework for Understanding Concept Formation in the Social Sciences" (1999) 31 Polity 357 at 371. See also Hamilton, *supra* note 141. See Nesbitt, *supra* note 8.
147. See Emmett Kennedy, "'Ideology' from Destutt de Tracy to Marx" (1979) 40 *J History Ideas* 353.
148. Andreas Fagerholm, "Ideology: A Proposal for a Conceptual Typology" (2016) 55 Soc Science Information 137 at 141.

influenced by bias and distorted ideas.[149] As Talcott Parsons notes, "deviations from scientific objectivity" are essential elements of ideology, and the "problem of ideology arises where there is a discrepancy between what is believed and what can be scientifically correct."[150] With these three influential scholars, the study of ideology transforms from the study of ideas to one of characterizing bad ideas that cannot be reliably tested or proven.

Scholars like Andreas Fagerholm, who combed through dozens of definitions of ideology to uncover any common elements, note that bias and subjectivity as well as links to political matters tend to be part of any definition of ideology.[151] In other words, unlike previous definitions of ideology being scientifically unprovable, more recent sociological theorizing on social constructionism notes that this is largely irrelevant: It is enough that an individual believes something to be true, because it will likely influence their worldview and behaviour. Some scholars, like Robert Wuthnow, argue that ideology is largely beyond politics and denotes "any subset of symbolic constructions which…serves as a vehicle for the expression and transmission of collectively shared meanings."[152] This approach might even be seen as less subjective as it would protect ideology from being defined as simply those views that are revolutionary, or forged in resistance, or that push back against the status quo. To be clear, labelling something as "ideological" also discursively sets ideas apart as extreme and irrational and can be deployed for political purposes. In other words, ideology is something *they* have, while *our* ideas are rooted in rationality and sound policy; *we* are ideologically neutral. (There is an uncomfortable connection between this understanding of ideology and how the far right's ideological bona fides were questioned for a number of years.)

Given the convoluted nature of ideology, in studying the *concept*, it is challenging to produce a catch-all definition without limiting our ability to identify, understand, and explain the role of ideology in extremely diverse acts of terrorism. As such, many researchers have attempted to break down the essence of ideology using definitional frameworks and conceptual typologies in hopes of clarifying what ideology is and is not.[153] The general aim and arguably

149. *Ibid* at 142. See also John Torrance, *Karl Marx's Theory of Ideas* (Cambridge University Press, 1995).
150. Fagerholm, *supra* note 146 at 142, citing Talcott Parsons, "An Approach to the Sociology of Knowledge" in KH Wolff, ed, *Transactions of the Fourth World Congress of Sociology*, vol 4 (International Sociological Association, 1959) 25.
151. Fagerholm, *supra* note 146.
152. *Ibid* at 143.
153. *Ibid*; Gerring, "Ideology," *supra* note 143.

the most successful approaches have begun with a definition containing minimal elements of ideology and then further built on it with additional attributes to create a set of subtypes within a broader, compounded typology.[154] Gerring's intentionally broad and commonly cited starting definition considers ideology as "a set of idea-elements that are bound together, that belong to one another in a non-random fashion."[155]

In much of the terrorism studies literature, a large part of the focus has been on ing how ideology might be important for understanding an individual's radicalization to violence, given that no one individual radicalizes in the same way. Most terrorism scholars seem to accept something close to Wuthnow's "worldview" approach to ideology. They emphasize an ideology's ability to "elevate" mundane group dynamics, beliefs, and actions into something greater or something sacred. As Donald Holbrook and John Horgan note, ideology "imbues its components, such as status, belonging and reward, with significance which can only be understood in that ideological context: defining allegiances and roles, brotherhoods and sisterhoods, and the pull of immaterial rewards such as salvation through martyrdom."[156] Michelle Dugas and Arie Kruglanski also delineate what they call a *terrorism-justifying ideology* as a kind of worldview that is more likely to push individuals to violence. A terrorism-justifying ideology, in their minds, includes: (1) belief that the in-group has experienced a grievance; (2) identification of a culprit responsible for the grievance against the group; and (3) endorsement of terrorist acts as morally justifiable and effective methods to accomplish their goals.[157] More recent approaches in terrorism studies have largely seen ideology as the mechanism that imbues actions with significance, solidifies in-group and out-group identity, and normalizes and redefines what previously may have been thought of as deviant ideas and actions as good, necessary, and obligatory.

A recent viable (practicable) and well-respected approach to ideology in the terrorism studies space was proposed by leading scholars Ackerman and Burnham.[158] As they point out, much of the work in terrorism studies has been focused on understanding the role of ideology in terrorist violence. Some scholars argue that ideology is simply the tool used by groups to win over the masses and

154. See Fagerholm, *supra* note 146 at 141, 144-48.
155. Gerring, "Ideology," *supra* note 143 at 980.
156. "Terrorism and Ideology: Cracking the Nut" (2019) 13 Perspectives on Terrorism 2 at 7.
157. Michelle Dugas & Arie Kruglanski, "The Quest for Significance Model of Radicalization: Implications for the Management of Terrorist Detainees" (2014) 32 Behav Sci & L 423 at 427-28.
158. See Ackerman & Burnham, *supra* note 128 at 1160.

is of secondary importance when compared to other factors in the radicalization process. Others argue, as noted above, that ideology is more foundational to the process of radicalization to violence, influencing how the group understands its role, articulates its grievances, thinks about future goals, and delineates who belongs and who does not. As Ackerman and Burnham note, "[i]f scholars have entirely dissimilar notions of what an ideology is, the operationalization of the concept in data collection and analysis will differ, and it is little wonder that they reach different conclusions about the relevance or impact of ideology in the context of terrorism."[159]

The definition of ideology that Ackerman and Burnham propose is as follows: Ideology is a "system of societal beliefs that is judgmental of the way things are and/or ought to be, is generally intended to be propagated, and claims exclusive explanatory power within the domain it encompasses."[160] They then proceed to break down and examine each aspect of this proposed definition, as follows:

> "*System*": Most ideologies consist of a set of ideas that are "connected to and contingent upon one another in some way, and across which patterns are discernible."[161] In other words, ideologies are not simply a list of ideas, but these ideas relate to each other in some way to form a system or complex whole.
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> "*Societal beliefs*": The system of ideas is also "construed as beliefs, in the sense of ideas which adherents accept to be true with some degree of confidence."[162] Ackerman and Burnham go a step further, however, arguing that any set of ideas or beliefs will not suffice to form an ideology. These beliefs must be societal in the sense that "the content of ideologies must relate to how individuals comprehend their society, as well as how they relate to it."[163]
>
> "*Judgmental and prescriptive*": Ideologies do not simply make apathetic and dry observations about the state of the world, but "rather [do] so through a normative lens by ascribing value or meaning to a given perception of reality."[164] One outcome of this is that ideologies tend to be prescriptive in nature: "If one is judging the world in some way, there logically must exist an ideational standard against which the current state of the world is being at least implicitly compared (and often found wanting)."[165]

159. *Ibid* at 1161.
160. *Ibid* at 1166 [emphasis in original].
161. *Ibid*.
162. *Ibid*.
163. *Ibid*.
164. *Ibid* at 1167.
165. *Ibid*.

> "*Intent to propagate*": This element of an ideology is fairly obvious. For Ackerman and Burnham, ideologies must necessarily be formulated in a way that they can be shared with others. This does not mean that all ideological movements need to proselytize or try to persuade others. Rather, ideologies just need to be "structured in such a way that [their] ideas are designed to be broadcast more widely than the individual who created them."[166]
>
> "*Exclusive explanatory power*": Those who subscribe to ideologies tend to be more strident than those who believe in other things. On the spectrum of certainty—ranging from "I'm pretty sure this is true" to "I know for certain this is true" —those who believe in ideologies fall on the latter end of the spectrum. Ackerman and Burnham rightly note that without some sense of certainty and truth claim, ideologies would struggle to mobilize movements and have a difficult time creating strong in-group bonds.[167]

The above provides a set of useful parameters for helping us understand whether a person's ideas qualify as a system of beliefs related to society.

First, the term "system" means a number of interrelated ideas—it is not simply one idea, nor a random assortment of ideas. Notably, the fact that ideas must be related to qualify as a system of beliefs is not the same as requiring that they be coherent or withstand logical scrutiny. Second, ideological beliefs relate to how a person understands society, not simply their personal circumstances. These beliefs are normative and form the basis for how someone explains and understands the world around them and their place in it. Third, the system not only explains the way the world is, but also prescribes how it ought to be. Fourth, and this is important in understanding how terrorist acts relate to ideology, the system of beliefs is meant to be shared with others. There may be some redundancy between this fourth requirement and the purpose clause in the *Criminal Code*'s definition of "terrorist activity," which requires establishing an accused's intent to intimidate the government, a group, et cetera. Such redundancy is not surprising given that both the "terrorist activity" definition and the definition of "ideology" offered by Ackerman and Burnham are trying to explain how terrorism is conceptually different from an ordinary act of violence. Nevertheless, Ackerman and Burnham's "propagate" requirement provides a useful reminder that ideologically motivated extremism is intended not just to cause fear to others (the purpose clause), but to resonate with and inspire like-minded others to act. Certainly, in the Canadian context—but also internationally—there is plenty of evidence to back up this understanding of how ideology and terrorism fit together: Manifestos have become an increasingly common form of expression

166. *Ibid* at 1168.
167. *Ibid*.

used by terrorists to explain their actions and call others to act, while the acts and targets are chosen to do the same.[168]

Together, these four criteria significantly and practically refine our understanding of what an ideological motivation entails. Turning these criteria into questions could help law enforcement, prosecutors, and the judiciary to consider and weigh the evidence before them when determining whether a person's motivations are ideological and therefore captured by the *Criminal Code* definition of "terrorist activity."

We thus propose some such questions, including: (1) Does the accused ascribe to a system of beliefs? (2) Does their system of beliefs relate to how they understand society? (3) Does their system of beliefs prescribe an ideal society? (4) Is their system of beliefs intended to be shared with and influence others?

Ackerman and Burnham, having defined and explained ideology based on a useful distillation of numerous other definitions of ideology, also proceed to provide definitions for two violent subsets of ideology—what they call *violent adversarial ideology* and *terrorist ideology*. They define the first subset of ideology as one that "enunciates specific grievances, delimits enemies, and legitimates violence against those enemies."[169] A terrorist ideology, for them, is "a violent adversarial ideology which explicitly permits the use of terrorism."[170] Ackerman and Burnham then define terrorism as

> the intentional use or threatened use of violence by an ideologically motivated non-state actor in a manner that would be regarded in wartime as contravening international humanitarian law and that is directed against victims selected for their symbolic or representative value, as a means of instilling anxiety in, transmitting one or more messages to, and thereby manipulating the attitudes and behavior of a wider target audience or audiences.[171]

A terrorist ideology, for Ackerman and Burnham, is simply an adversarial violent ideology that condones the kind of violence outlined in their definition of terrorism. In this way, ideology in the context of a motive for terrorism imbues

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168. For excellent reporting on this phenomenon, see Andrew Russell, Stewart Bell & Mercedes Stephenson, "London Attack Suspect Was Inspired by New Zealand Mosque Shooter, Sources Say," *Global News* (10 November 2021), online: <globalnews.ca/news/8361038/london-attack-suspect-inspired-new-zealand-mosque-shooter> [perma.cc/J2EN-6PGF]. As quoted in the article, the Canadian government's Integrated Threat Assessment Centre has so described ideologically motivated extremism: It is intended "to inspire others in the milieu to act." *Ibid*.
169. Ackerman & Burnham, *supra* note 128 at 1169.
170. *Ibid* at 1170.
171. *Ibid* at 1171 [emphasis omitted].

the definition with a final element: The ideology must condone the commission of violence, or what amounts to the consequence clause in section 83.01(b)(ii) of the *Criminal Code*. Thus, just like Canadian criminal law, per Ackerman and Burnham's definition, the motive and consequence are distinct but necessarily interrelated elements of terrorist activity.

Upon review, Ackerman and Burnham's approach to qualifying a set of ideas or beliefs as an "ideology" is legally practical. Not only does it reinforce the definition of "ideological" arrived at using the principles of statutory interpretation, but it provides useful guidance for those tasked with assessing the motivations of individuals who support, commit, or seek to commit serious acts of violence to determine whether they meet the *Criminal Code* definition of "terrorist activity."

Returning to the definition arrived at through statutory interpretation and incorporating the definition offered by Ackerman and Burnham, we propose that the term "ideological" in section 83.01(1)(b)(i)(A) means a motivation based on a system of unshakable beliefs that is judgmental of the way society is or ought to be, is intended to be propagated, and claims explanatory power.[172] We also propose, as outlined above, that Ackerman and Burnham's sub-definitions of "system," "societal beliefs," "intent to propagate," "judgmental," and "claims explanatory power" are extremely useful and may be of assistance to those tasked with applying the law.

Applying these criteria to incel or far-right movements, we see that, contrary to early concerns expressed by the RCMP, their belief systems could amount to an ideology capable of motivating terrorist activity. At the same time, we can see how the refined definition of "ideology" offered above does not capture, for example, the narcissist who commits an armed robbery because they see themselves as deserving and as the centre of the universe. Recall that this example was used to explain why the dictionary definition of ideology—a system of beliefs related to society—is too broad: Such an individual has a system of (selfish) beliefs, which relate to society and, particularly, their (central) role in it, and their actions are driven in part by these beliefs. Provided that the narcissist's actions also meet the consequence and purpose clauses, the motive clause is doing no work to limit the scope of application of terrorism further. However, applying this article's definition of ideology, the motive clause effectively excludes the narcissist in this hypothetical from being charged with terrorism. Narcissism is a (recognized) personality disorder; while it may lead the narcissist to hold certain beliefs about

172. Again, the term "economic" is removed from this definition because it is hard to conceive of a system of economic beliefs that would not meet the definition of political.

their role in society, those beliefs are not designed to be shared with others to explain an ideal society.

V. CONCLUSION

We have proposed that, within the context of the motive element of terrorist activity set out in section 83.01(1)(b)(i)(A) of the *Criminal Code*, courts should follow the Court's lead in *Syndicat Northcrest* by defining religion as "freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject."[173] By contrast, a person motivated by political beliefs is compelled to act by a desire for their government, a representative of government, or an elected official to take action on any matter related to the machinery of government, state, or policy. Finally, an ideological motive is one based on a set of unshakable beliefs that is judgmental of the way society is or ought to be, is intended to be propagated, and that claims explanatory power.

To assist in the application of the definition of "ideology," we suggest that law enforcement, prosecutors, and decision makers consider four key questions raised by Ackerman and Burnham's work: (1) Does the accused ascribe to a system of beliefs? (2) Does their system of beliefs relate to how they understand society? (3) Does their system of beliefs prescribe an ideal society? (4) Is their system of beliefs intended to be shared with others?

In adopting these definitions, we can clearly and for the first time see the logical symbiotic interaction between the motive clause, the purpose clause, and the consequence clause in the *Criminal Code*'s definition of "terrorist activity."

Simply put, where a system of firmly held, prescriptive beliefs motivates an action and sends a public-facing message (motive clause) intended to intimidate the public or a segment thereof with respect to its security (purpose clause), and where that action also satisfies the (serious) consequence clause, we have ideologically motivated terrorist activity. Likewise, where a political belief (motive clause) drives an action that meets the consequence clause intended to influence an elected official or state actor to take specific action, we have politically motivated terrorist activity. In this way, the *ideological motive* also attaches most directly (though not necessarily solely) to the first part of the purpose clause, that being an intention to intimidate the public or a segment thereof with regard

173. *Supra* note 91 at para 39.

to its security. The *political motive* attaches best to the elements of the purpose clause that clearly—if perhaps clumsily—speaks of the purpose of compelling a government (or, in our definition, state representative) or an "international organization" from taking or refraining from taking an action. The religious motive, the most distinct of the three, can presumably attach to either "target group" (public or government) within the purpose clause.

The Court in *Khawaja* made clear that Parliament intended for the motive clause to limit the scope of application of terrorism laws. Indeed, it is this limit that makes the regime constitutional. As such, the motive cannot be so broad that an idea satisfies the clause. Unfortunately, the history of the application of Canadian terrorism laws demonstrates that the uncertainty about the scope of the motive clause has inappropriately limited the scope of crimes that qualify as terrorism to those perpetrated by a distinct group of people. Until recently, only a very particular motive—Islamist-inspired extremism—has sufficed to move seriously violent acts from ordinary crime to terrorism.

To meet the rising threat of new ideologically motivated violence movements and to ensure the terrorism regime is applied consistently and not discriminately against marginalized populations, we must clarify what "ideological" means in the context of terrorist activity; the definitions offered in this article offer such clarity. All three definitions also serve to elucidate crucial elements of terrorism offences in Canada that, for too long, have been treated more akin to "I know it when I see it." This gut feeling approach has arguably led not only to bias and unequal application of the law, but also to a slow response to emergent threats and, thus, a failure to fully protect Canadians. Conversely, the definitions offered herein are not so broad as to open the floodgates to charges for activities never intended to be captured in the definition of terrorism. In addition, these definitions provide much-needed coherence to the broader definition of terrorist activity by making clear the distinction and interaction between the motive and purpose clauses, and how together they are used to explain—along with the consequence clause—when ordinary crime rises to the level of terrorism in Canada.

That said, though the authors do believe that they have identified a workable solution, this article makes no claim to any sort of Dworkinian "one right answer" thesis.[174] Rather, at a broad level, the authors' intention herein is first and foremost to offer a starting point for more robust consideration of the terrorism motive clause by the academy and those who apply and interpret the law. After all, the motive clause represents an element of Canadian terrorism offences that

174. Ronald Dworkin's famous "one right answer" thesis is first explicitly outlined in his famous text. See *Taking Rights Seriously* (Harvard University Press, 1978).

must be proved beyond a reasonable doubt. Unless and until Canadian courts define what the Crown must prove more precisely, how can one ever meet this standard? At the same time, setting clear guidelines for what needs to be proven to satisfy the motive clause will help investigators avoid the "I know it when I see it" standard and instead meet a more robust, clear, and coherent legal threshold.

Ultimately, whether the beliefs that motivated Veltman or the Toronto Youth satisfy the definition of "ideology" identified in this article will depend on the facts and evidence presented at trial. We hope this work encourages the courts, Crown, and defence counsel involved in these and future cases to take the motive clause seriously, to marshal the necessary evidence and, for the first time, challenge its application to the motive element of terrorist activity.