Commission Questionnaire 2022
Israel

- Canada -

1. Does your country protect freedom of speech and, if so, how? Please refer to legislation, including any applicable bill of rights or charter of rights or human rights code, as examples, and/or jurisprudence (court decisions) as an overall picture.

Canadian Bill of Rights and Charter

Canada's efforts to protect freedom of speech can be traced back 70 years. In the 1950's, the Canadian government began their first attempt at legislating rights and freedoms at the national level. As a result, the *Canadian Bill of Rights*, S.C. 1960, c. 44, was enacted by the government of John Diefenbaker in 1960. The *Canadian Bill of Rights* applies only to federal statutes, and recognizes the freedom of speech in its first section:

> *Recognition and declaration of rights and freedoms*
> *1 It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,*
> *...*
> *(d) freedom of speech;*

While the *Canadian Bill of Rights* is still in force, it was superseded by the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ["*Canadian Charter*"]. To support freedom of speech, s. 2 of the *Canadian Charter* recognizes freedom of expression as a fundamental freedom:

> *Fundamental freedoms*
> *2 Everyone has the following fundamental freedoms:*
> *...*
> *(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;*

Since the enactment of s. 2(b) of the *Canadian Charter* in 1982, the Supreme Court of Canada has highlighted the values underlying protection of freedom of speech in Canada. These values, as summarized in *Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2, at para. 37, include supporting self fulfilment, democratic discourse and truth finding. To determine whether s. 2(b) applies to a particular situation, the Supreme Court of Canada has adopted a three-part test:

(1) Does the activity in question have expressive content, thereby bringing it within the protection of s. 2(b)?
(2) Does the method or location of this expression remove that protection?

> *"It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression."*
>
> - Justice Cory; *Edmonton Journal v. Alberta (AG)*, [1989] 2 SCR 1326.

(3) If the expression is protected by s. 2(b), does the government action in question infringe that protection, either in purpose or effect?

Typically, this test is applied very broadly, with any activity being deemed "expressive" if it attempts to convey meaning (*R. v. Keegstra*, [1990] 2 SCR 697). In terms of method and location, expression through violence and threats of violence is not protected by s. 2(b) of the *Canadian Charter*. In addition, not all public places are protected; truly "public arenas" are "vigilantly protected from legislative restrictions on speech" while expression in more restricted areas, like airports, is afforded less protection (*Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139). To address the third question, the courts consider the purpose and effect of the government action to determine whether it infringes on s. 2(b) protection.

While freedom of expression is a protected freedom in Canada, this protection is not absolute. Rather, freedom of expression is subject to reasonable limitations. In Canada, this limitation is outlined in s. 1 of the *Canadian Charter*, which establishes that reasonable limits can be placed on rights and freedoms, including the freedom of expression, if those limits are prescribed by law and can be demonstrably justified in a free and democratic society. To determine whether s. 1 of the *Canadian Charter* applies, the courts consider (1) whether the state action has an objective of pressing and substantial concern in a free and democratic society, and (2) whether there is proportionality between the objective of the action and the effect of the restriction (*R. v. Oakes*, [1986] 1 SCR 103). If the analysis fails at the second stage, the legislation may be helf to be in violation of the *Canadian Charter* and therefore of no force or effect.

Key Supreme Court of Canada decisions addressing s. 2(b) of the *Canadian Charter:*

1. *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927:
   A company challenged advertisement laws restricting advertisements targeted at children under the age of 13. The majority of the Supreme Court determined that the restriction was justifiable under s. 1 of the *Canadian Charter*, since the objective of the regulation was to protect a vulnerable group (ie. Children).

2. *R. v. Keegstra*, [1990] 3 SCR 697:
   A high school teacher was charged with wilfully promoting hatred by communicating anti-Semitic statements to his students. He claimed that this violated his s. 2(b) freedom of expression. The majority of the Supreme Court determined that the criminal law against hate speech (discussed further under Question #2) is justified under s. 1 of the *Canadian Charter* since the limit is rationally connected to the purpose of restricting hateful expression and is not overly limiting or severe.

> *"Freedom of expression was entrenched in our Constitution and is guaranteed in the Quebec Charter so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream."*
>
> - Justice Lamer and Justice Wilson; *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927

Human Rights Legislation

Prior to 2013, the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, also addressed hateful communication; in the form of hate messages. This provision targeted online communications which were "likely to expose a person or persons to hatred or contempt" on the basis of a prohibited ground of discrimination:

> *13 (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.*

In 2013, after garnering attention through a citizen-led campaign for repeal, s. 13 of the *Canadian Human Rights Act* was repealed by the Canadian government. Recently, however, there has been progress in amending the *Canadian Human Rights Act* to re-address hateful communications. On June 23, 2021, Bill C-36 had its first reading at the Parliament of Canada. Among its provisions, Bill C-36 proposes to amend the *Canadian Human Rights Act* to re-instate an amended s. 13, improve the hate speech complaints process, provide additional remedies to address the communication of hate speech, and define hate speech based on Supreme Court of Canada decisions. Currently, Bill C-36 is awaiting its second reading in parliament.

While human rights legislation addressing hate speech has not been in force on the national level since 2013, the provincial governments across Canada have enacted provincial legislation to address hateful communication. In Canada, the provincial governments of Alberta, British Columbia, Saskatchewan, and the Northwest Territories have created civil sanctions for hate speech in their human rights legislation. While the wording of the provincial legislation differs across the provinces, they hold similarity in their attempt to prohibit expression that is likely to expose a person to hatred or contempt.

> "*Hate propaganda contributes little to the aspirations of Canadians or Canada in the quest for truth, the promotion of individual self-development or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged*."
>
> - Justice Dickson; *Canada (Canadian Human Rights Commission) v. Taylor*, [1990] 3 SCR 892

Key decisions addressing freedom of expression in human rights legislation in Canada:

1. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 SCR 892:
   An individual distributed cards inviting people to call a phone number, which would then play messages containing hateful statements about the Jewish race and religion when people called. A complaint was brought under s. 13 of the *Canadian Human Rights Code.* The majority of the Supreme Court of Canada (4-3 decision) upheld the constitutionality of s. 13(1), finding that the section did

infringe on freedom of expression but that the infringement was justifiable.

2. *Saskatchewan (HRC) v. Whatcott*, 2013 SCC 11:
   An individual published flyers which contained homophobic messages. The Supreme Court held that the *Saskatchewan Human Rights Code's* prohibition on hate speech, aside from a small portion which was overbroad, was constitutional. It held that two of the flyers constituted prohibited hate speech, but the other two, while offensive, did not demonstrate hatred.

3. *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162*:*
   A complaint was brought against an individual who owned a website which communicated discriminatory messages. The Canadian Human Rights Tribunal found that s. 13 of the *Canadian Human Rights Code* was unconstitutional. However, since the Tribunal did not have the authority to overturn sections of the *Canadian Human Rights Act*, it simply declined to apply the section in that case. Upon judicial review, the Federal Court of Canada found that the Tribunal erred by not properly applying s. 13.

International Agreements

Along with national and provincial legislation to support freedom of expression, Canada is a part of multiple international agreements which support freedom of expression, including:

- *Convention on the Elimination of All Forms of Racial Discrimination*, UN General Assembly resolution 2106 (XX), Article 5: States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (d) Other civil rights, in particular: (viii) The right to freedom of opinion and expression.
- *International Covenant on Civil and Political Rights*, UN General Assembly resolution 2200A (XXI), Article 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- *Convention on the Rights of Persons with Disabilities*, UN resolution A/RES/61/106, Article 21: States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention
- *Convention on the Rights of the Child,* UN General Assembly resolution 44/25, Article 13(1): 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds,

regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. Does your country criminalize hate speech and, if so, how? Please refer to legislation and/or jurisprudence as an overall picture.

Criminal Law

With a rise of hate propaganda in Canada in the 1960's, the Canadian government created the 1965 Cohen Committee to address the issue. In 1966, the Committee released the unanimous *Report of the Special Committee on Hate Propaganda in Canada*. Based in large part on the Committee's recommendations, the Canadian government amended the *Criminal Code*, R.S.C., 1985, c. C-46, in 1970 to add s. 318-320. Section 319 addresses the public incitement of hatred:

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

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Wilful promotion of hatred

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

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

"*Not every abuse of human communication can or should be controlled by law or custom. But every society from time to time draws lines at the point where the intolerable and the impermissible coincide.*"

- Cohen Committee, *Report of the Special Committee on Hate Propaganda in Canada* (1966)

Offences under s. 319(1) and (2) are hybrid with a Crown election; meaning the prosecution can choose to proceed with the offence as either a summary conviction or as an indictable offence. If prosecuted by indictment, there is a Defence election of court under s. 536(2) of the *Criminal Code* to trial by provincial court, superior court judge-alone or superior court judge-and-jury. Under s. 319, those found guilty of wilfully promoting or inciting hatred against any identifiable group in public will face punishments ranging from a fine to 2 years' imprisonment.

Notably, there is no legal requirement to prove that the communication involved with a charge under s. 319 of the *Criminal Code* actually caused hatred or harm. However, a conviction under s. 319(2) does require a finding that the accused "willfully promoted" hatred. In *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, at para 105, the Supreme Court of Canada found that this intent requirement will often flow from the establishment of the elements of the criminal act of the offence.

While no definition of "hatred" is provided in the *Criminal Code*, definitions have developed through jurisprudence. The Supreme Court of Canada has defined "hatred" as "[connoting] emotion of an intense and extreme nature that is clearly associated with vilification and detestation", noting that "hatred is not a word of casual connotation. To promote hatred is to instil detestation" (*R. v. Keegstra*, [1990] 3 SCR 697; *R. v. Andrews*, [1990] 3 SCR 870). In addition, clarity is provided by the definition of "identifiable group" in s. 318 of the *Criminal Code*, which defines the term as any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability. This definition applies to s. 319.

Section 319 is closely related to several other provisions of the *Criminal Code*, including s. 318, which criminalizes advocating or promoting genocide, and s. 430(4.1), which prohibits mischief in relation to property that is motivated by bias, prejudice or hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression or mental or physical disability.

Currently, s. 319 of the *Criminal Code* is facing potential amendments. Bill C-36, which had its first reading by parliament on June 23, 2021, proposes to define hatred in the *Criminal Code* based on Supreme Court decisions. In addition, Bill C-36 proposes to create a new peace bond to help prevent hate propaganda offences and hate crimes. If enforced, this would allow someone who reasonably fears that they could be a target of a hate crime or hate propaganda to apply for a peace bond to be imposed on an individual to deter that person from committing the crime. Under the current proposal, a breach of the peace bond would carry a maximum penalty of four years imprisonment (Similar to other peace bonds in Canada).

Key decisions addressing s. 319 of the *Criminal Code*:

1. *R. v. Keegstra*, [1990] 3 SCR 697:
   A high school teacher was charged under s. 319 after communicating anti-Semitic statements to his students. The Supreme Court thoroughly analyzed the offence and determined that considering the importance of Parliament's purpose in preventing the dissemination of hate propaganda and the tenuous connection such expression has with s. 2(b) values, the narrow parameters of the restrictions on speech under s. 319(2) of the *Criminal Code* are justifiable under s. 1 of the *Canadian Charter.* The acquittal was set aside, and a new trial was ordered.

2. *R. v. Andrews*, [1990] 3 SCR 870
   The accused was a publisher for the Nationalist Reporter, and published messages promoting the theory of white supremacy. The accused was convicted and sentenced to twelve months imprisonment. Applying the reasoning in *R. v. Keegstra*, [1990] 3 SCR 697, the Supreme Court found that s. 319(2) of the *Criminal Code* infringes the freedom of expression guaranteed in s. 2(b) of the *Canadian Charter,* but is saved by the *Charter's* s. 1.

3. *R. v. Krymowski*, 2005 SCC 7:
   A crowd of people were charged under s. 319 of the *Criminal Code* after gathering with signs and chanting hateful statements against Roma people who were seeking refugee status. The trial judge found that the use of the word "gypsies" was not the same as "Roma" people and, therefore, the accused were acquitted. The Supreme Court disagreed; unanimously finding that the trial judge should have relied on the ordinary understanding of the term "gypsies". The acquittal was set aside, and new trials were ordered.

4. *R. v. Ahenakew*, 2008 SKCA 4:
   A Canadian politician was charged under s. 319 of the *Criminal Code* after making hateful statements against people of the Jewish faith. He was convicted by the Provincial Court of Saskatchewan for one of the statements made to a reporter. The politician successfully appealed, with the Saskatchewan Court of the Queen's Bench finding that the trial judge did not properly consider the context of the interview. The conviction was set aside, and a new trial was ordered. During the second trial, the court found that while the comments were "revolting" and "disgusting", they did not constitute "promoting hatred."

5. *R. v. Popescu*, 2020 ONCJ 427 :
   The accused, a repeat offender of s. 319 offences, was charged after distributing DVDs that contained videos with homophobic messages. After a thorough analysis, the court determined that no defences under s. 319 applied, and the hateful messages were not protected by s. 2(b) of the *Canadian Charter.* As a result, the accused was found guilty.

> *"Hate propaganda seriously threatens both the enthusiasm with which the value of equality is accepted and acted upon by society and the connection of target group members to their community."*
>
> - Justice Dickson; *R. v. Keegstra*, [1990] 3 SCR 697

3. Does your country have restrictions by the criminal law of the freedom of speech? And if yes, could you give an overall picture of what the legislation is like? Including
o Are there groups of persons who enjoy special protection **of their** freedom of speech due to their gender, sexual preference, religion, race or other conditions
o Are there topics that enjoy special protection **in terms of** freedom of speech – for example topics of religion and politics

Religion

Religion is afforded special protection in both the *Criminal Code* and the *Canadian Charter*. In the *Criminal Code*, one of the statutory defences (discussed further under Question #4) for a charge under s. 319 focuses on religious communication. If the impugned communication was based on a "religious subject" or "opinion based on a belief in a religious text", the accused will not be convicted:

Defences
s. 319 (3) No person shall be convicted of an offence under subsection (2)
…
(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;

In addition, in the *Canadian Charter*, religion is recognized as a fundamental freedom, listed separately from freedom of expression:

Fundamental freedoms

2 Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion;

Key case addressing the religion defence under s. 319(3)(b) of the *Criminal Code*:

1. *R. v. Harding*, 152 O.A.C. 230 (C.A.)
   The accused was charged under s. 319 of the *Criminal Code* after making statements and distributing pamphlets containing hateful messages against the Muslim religion. On appeal, the Ontario Court of Appeal considered the religion defence under s. 319(3)(b). Quoting the trial judge, the Court of Appeal notes that there is "no reason to construe 319(3)(b) in a manner that would permit the mere imbedding of a wilful message of hate within protected religious comment to immunize the maker of the message from successful prosecution". In this sense, while a defence relating to religion is available, it has limited application and can not be used to shield truly hateful communication. The conviction was upheld.

French-Canadian Population

While administrative rather than criminal, one group in Canada that enjoy a special protection of their freedom of speech is the French-Canadian population. As an English-French bilingual country, Canada has taken effort to support the preservation of the French language; especially in Quebec, Canada's primary French province. In the province of Quebec, freedom of expression in English is restricted, and outdoor signage may only use English text if it is accompanied by French text which is "markedly predominant". This restriction is outlined in the *Charter of the French Language*, which is only enforced in the province of Quebec:

58. Public signs and posters and commercial advertising must be in French.
They may also be both in French and in another language provided that French is markedly predominant.

While this provision may appear as a restriction rather than a protection, it can be argued that the intention is to protect French speaking Canadians right to express themselves in their language

long-term. In this sense, the limitation on the English language is an effect, but not the purpose, of the legislation. The Supreme Court of Canada has determined that the signage regulation is a "reasonable" limit on the freedom of expression because of the unique importance of preserving the French language in Canada. If an individual is found in violation of the *Charter of the French Language*, they may face a fine of between $600-$6,000 CAD.

Key decision discussing the unique protection of the French language in Canada:

1. *Ford v. Quebec (Attorney General)*, [1988] 2 SCR 712:
   This is a landmark Supreme Court of Canada decision in which the Court struck down part of the *Charter of the French Language* which required exclusive use of French in commercial signs in Quebec. A majority of the Supreme Court found that this restriction was not necessary and could not be justified by s. 1 of the *Canadian Charter*. While protection of the French language is important to Canadian history, the Supreme Court has rejected overly stringent restrictions on use of the English language in Quebec.

4. If there are restrictions in the criminal law of the freedom of speech, are the restrictions then absolute or must they be weighed against the consideration of free speech?

• Does this apply to all groups and if not, are the restrictions either absolute or not? Please mention which persons and groups belong to which category
• In cases where the freedom of speech and the restrictions are to weighed against each other –
o Are there then **guidelines** on how the **balancing** should be **done**?
o If Yes, which of the two parameters weighs heaviest, a) the protection of free speech or b) the category that is protected by the legislation? And does this **differ** from category to category?
o And how **much discretion is there such that the outcome of the balancing exercise may differ from judge to judge?**

The criminal restrictions on freedom of speech in Canada are not absolute. Anyone charged under s. 319 of the *Criminal Code* has the right to have their case tried in a court of law. After an investigation is conducted by the police, the accused must be shown to have committed the act either intentionally or with knowledge and/or awareness of their actions. These elements must be proven beyond a reasonable doubt.

There are also four statutory defences available to an accused facing a charge under s. 319. If the accused can prove one of the following circumstances applies, they will not be convicted:

Defences
s. 319 (3) No person shall be convicted of an offence under subsection (2)
(a) if he establishes that the statements communicated were true;
(b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Notably, there is also a distinct safeguard in place for convictions under s. 319(2) of the *Criminal Code.* No prosecution under this section can be initiated without consent of the provincial Attorney General. Overall, this has limited charges under s. 319 and, in part, this oversight is in place to support the balance between freedom of speech and restricting hate speech in Canada.

In addition to the statutory safeguards, the Supreme Court of Canada has recognized clear limits on what communication rises to the level of a s. 319(2) criminal charge. In *R. v. Keegstra*, [1990] 3 SCR 697, Justice Dickson noted that the term "hatred" is "circumscribed so as to only cover the most intense form of dislike". The communication must clearly and actively incite hatred. Also, in considering a charge under s. 319(2), a trial judge in Canada must consider not only the words used by the accused, but also the circumstances and context in which they were spoken (*R. v. Ahenakew*, 2008 SKCA 4, at para. 21).

The checks and balances put in place by the legislation, the common law precedent, and the criminal trial process in Canada, provide safeguards to protect freedom of expression. It is clear from the case law that has emerged since the enactment of s. 319 in 1970 that the standard for conviction is high, and only truly hateful communications will be pursued criminally in Canada.

> *"… the crime of incitement to hatred requires the trier of fact to consider the speech objectively but with regard for the circumstances in which the speech was given, the manner and tone used, and the persons to whom the message was addressed."*
>
> - Majority Decision; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40

Key decisions addressing s. 319 of the *Criminal Code*:

1. *R. v. Keegstra*, [1990] 3 SCR 697:
   A high school teacher was charged under s. 319 after communicating anti-Semitic statements to his students. The teacher argued that the reverse onus of proof in s. 319(3)(a) infringed his presumption of innocence. The Supreme Court found that the defence is necessary since if the defence of truth is too easily used, Parliament's objective to restrict hateful communication under s. 319(2) will suffer unduly. As a result, the Supreme Court found that the reverse onus of proof in the defence under s. 319(3)(a) infringed the presumption of innocence, but that placing the onus on the accused to prove the truth of his statements was a reasonable restriction under s. 1 of the *Canadian Charter*.

5. Do you find that the legislation is clear and comprehensible to the citizen or does it give cause for doubt?
o If it gives cause for doubt, how is it expressed? Does it **deter** the citizen from making statements? Or does it **deter** citizens from suing?

The legislation is clear and comprehensible. However, since a conviction under s. 319 of the *Criminal Code* depends on the factual circumstances, including tone, the application can be challenging for a citizen to understand.

In addition, there is no clear definition of "hated" in the current Canadian legislation addressing freedom of speech and hate speech. Instead, the understanding of the definition of "hatred" in the context of s. 319 of the *Criminal Code* has developed through jurisprudence. The addition of a definition of "hatred", which is currently being considered by the Parliament of Canada in Bill C-36, will hopefully provide additional clarity to the offence.

6. Do you find in your work as a judge that the relevant legislation in your country, as it pertains to the freedom of speech and its protection and the criminalization of hate speech, is clear and comprehensible, or do you find that it gives too much room for different outcomes in the same types of cases?

The factors to consider, as outlined by the Supreme Court of Canada in multiple decisions, provide clarity to the application of s. 319 of the *Criminal Code* at the trial level. While the potential for different outcomes exists, hate speech convictions in Canada are determined based on the facts. As explained by Justice Dickson in *R. v. Keegstra*, [1990] 3 SCR 697, only statements rising to "the most severe and deeply felt form of opprobrium" (ie. Criticism) are criminally prosecuted in Canada. The contextual analysis involved in deciding a s. 319 charge may lead to differing outcomes but, overall, the process recognizes the defence given to trial judges presiding over criminal cases in Canada.