



Why do Canadians Need Legislation To Regulate Online Hate Speech



ACLRC

Alberta Civil Liberties Research Centre

2025

Why do Canadians Need Legislation To Regulate Online Hate Speech

By the

Alberta Civil Liberties Research Centre

Alberta Civil Liberties Research Centre

Mailing Address:
University of Calgary
2500 University Drive NW
Room 2350 Murray Fraser Hall
Calgary, Alberta T2N 1N4
p:(403) 220-2505
f:(403) 284-0945
e:aclrc@ucalgary.ca
www.aclrc.com

© 2025

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/4.0/>.



Acknowledgments



Dedication

This project is dedicated to the memory of Linda McKay-Panos, B.Ed., J.D., LL.M., Executive Director (1992-2024), whose vision, dedication, and contributions were integral to this report.

THE ALBERTA LAW FOUNDATION

The Alberta Civil Liberties Research Centre is supported by a grant from the Alberta Law Foundation.

Board of Directors of the Alberta Civil Liberties Research Centre

Dr. Doreen Barrie, Chair; Salimah Janmohamed, KC, Treasurer; Michael Greene, KC; Dr. Evaristus Oshionebo, KC; Brian Edy; Alastair R. Lucas, KC

Principal Writer

Myrna El Fakhry Tuttle, J.D., M.A., LL.M., Research Associate.

Editor

Rowan Hickie, B.A.(Hons), J.D., LL.M.

Project Management

Sharnjeet Kaur, B.Ed, Administrator.

On the internet, the Alberta Civil Liberties Research Centre's home page is located at: www.aclrc.com

Table of Contents

| | | |
|------|--|----|
| I- | Introduction..... | 3 |
| II- | Freedom of Expression and Hate Speech under International Law..... | 9 |
| A- | Freedom of Expression..... | 9 |
| B- | Hate Speech..... | 12 |
| III- | Freedom of Expression and Hate Crimes in Canada..... | 15 |
| A- | Freedom of Expression..... | 15 |
| B- | Hate Crimes..... | 17 |
| IV- | Online Platforms' Policies on Hate Speech..... | 20 |
| A- | Google..... | 21 |
| B- | YouTube..... | 21 |
| C- | X (formerly Twitter)..... | 22 |
| D- | Meta (Facebook, Instagram, Threads)..... | 23 |
| E- | TikTok..... | 24 |
| V- | Bill C-63 in Canada..... | 25 |
| A- | Purposes of Bill C-63..... | 26 |
| B- | Duties Imposed on Social Media Services..... | 27 |
| C- | Amending the <i>Criminal Code</i> | 31 |
| D- | Amending the <i>Canadian Human Rights Act</i> | 32 |
| E- | Amending <i>An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service</i> | 34 |
| VI- | Other Jurisdictions..... | 35 |
| A- | The <i>Network Enforcement Act</i> in Germany..... | 36 |
| i- | Provisions..... | 36 |
| ii- | Amendment..... | 39 |
| B- | The <i>Digital Services Act</i> in the European Union..... | 41 |
| i- | Overview of the <i>Digital Services Act</i> | 41 |
| ii- | Duties of Providers of Digital Services..... | 42 |
| iii- | Penalties..... | 45 |
| C- | The <i>Online Safety Act</i> in the United Kingdom..... | 46 |
| i- | Which services are regulated by the <i>Online Safety Act</i> ?..... | 46 |
| ii- | Duties of Providers of Regulated Services..... | 48 |
| iii- | Enforcement..... | 50 |
| VII- | Recommendations..... | 52 |

| | |
|---|----|
| Bibliography | 55 |
| Legislation..... | 55 |
| Jurisprudence | 55 |
| International Legislation | 55 |
| International Instruments and Documents | 56 |
| Secondary Materials: Books & Articles | 56 |
| Secondary Materials: Government Documents | 57 |
| Secondary Materials: Other (Websites) | 57 |

I- Introduction

The internet and social media networks (also known as online platforms or service providers) have become an essential part of our daily lives. Platforms like TikTok, Facebook, Instagram, and X (formerly Twitter) serve as powerful tools, connecting millions of people with family and friends while facilitating the global sharing of information.

In addition, the internet has provided individuals a platform to express their opinions. As the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression noted:

Unlike any other medium the Internet facilitated the ability of individuals to seek, receive and impart information and ideas of all kinds instantaneously and inexpensively across national borders. By vastly expanding the capacity of individuals to enjoy their right to freedom of opinion and expression, which is an ‘enabler’ of other human rights, the Internet boosts economic, social and political development, and contributes to the progress of humankind as a whole.¹

However, despite these benefits, the internet and online platforms have also been misused to spread hateful and harmful messages, sometimes leading to physical violence. These platforms can also be used to threaten and intimidate individuals, endangering their safety.²

According to the Human Rights Centre in Australia:

The internet and the rapid spread of information and communication has brought great potential to accelerate human progress. These technologies can, if their use is grounded in human rights law and principles, contribute to the protection and

¹ 3 Freedom of Expression and the Internet, online: Australian Human Rights Commission <<https://humanrights.gov.au/our-work/3-freedom-expression-and-internet>>.

² Anthony Housefather, “TAKING ACTION TO END ONLINE HATE, Report of the Standing Committee on Justice and Human Rights” (June 2019), online: House of Commons Canada <<https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10581008/justrp29/justrp29-e.pdf>> at 7 [Anthony Housefather].

promotion of human rights. However, the rapid spread of disinformation and misinformation online poses significant challenges to the fulfilment and the enjoyment of those rights.

The amplification of disinformation and hate speech online turbo-charges discrimination, polarises society and distorts public debate on matters of critical importance. From disinformation campaigns undermining the right to health during a pandemic, to misleading material that can distort free and fair elections, to hate speech that stokes violence and threatens lives, the proliferation of disinformation, misinformation and harmful material online has a profound impact on human rights and democratic processes in Australia.³

In Canada, various communities have experienced online hate speech based on factors such as colour, ethnicity, religion, gender identity or sexual orientation.⁴

Hate crime laws have been developed in Canada, but they require a careful balance between the rights and freedoms protected by the Canadian *Charter of Rights and Freedoms* (the *Charter*).⁵ For example, the balance between individuals' right to express themselves and other individuals' right to safety. While protecting the fundamental right of freedom of expression is essential for any democracy, certain forms of expression - such as hate speech, disinformation and child pornography - can have serious harmful consequences.

³ David Mejia-Canales, "Submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023" (August 2023), online: Human Rights Law Centre <<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/64e45cd098dedd6263caab05/1692687568826/Final+submission+to+Department+re+Communications+Legislation+Amendment+%28Combatting+Misinformation+and+Disinformation%29+Bill+2023+%281%29.pdf>> at 5 [David Mejia-Canales].

⁴ Robert Mason and Julian Walker, "Legislative Summary of Bill C-36: An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)" (8 September 2021), online: Library of Parliament <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C36E>.

⁵ Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*].

The Government of Canada stated:

The digital world can pose significant risks. Social media can be used to sexually exploit children, promote self-harm to children, incite violence, put people's safety at risk and foment hate. Online harms have real world impact with tragic, even fatal, consequences.⁶

Many governments, including Canada, have struggled to enact legislation that effectively balances freedom of expression with the need to protect vulnerable individuals and groups from online harm. Effective legislation must ensure online safety while also holding online services accountable for managing harmful content on their platforms.⁷

In its report on online hate, the Standing Committee on Justice and Human Rights in Canada (Standing Committee) stated:

Victims of hate crime are usually subject “to humiliation and degradation, resulting in grave psychological and social consequences.” Online hate “undermines the well-being and sense of security of victims” as well as their “sense of belonging.” More generally, it increases discord in society and contributes to the marginalization of certain groups “by convincing listeners of the inferiority of the targeted group.”⁸

The Standing Committee asserted that freedom of expression “provides the avenues for exposing and addressing injustice and for evolving our understanding about society and democracy and the environment in a way that makes for a better world.”⁹ The Standing Committee also clarified that free speech, “such as libel, impersonation, threats and incitement to

⁶ Government of Canada introduces legislation to combat harmful content online, including the sexual exploitation of children (26 February 2024), online: Government of Canada <<https://www.canada.ca/en/canadian-heritage/news/2024/02/government-of-canada-introduces-legislation-to-combat-harmful-content-online-including-the-sexual-exploitation-of-children.html>>.

⁷ Have your say: The Government's proposed approach to address harmful content online (25 September 2021), online: <<https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content.html>>.

⁸ Anthony Housefather at 8.

⁹ Anthony Housefather at 11-12.

violence can be restricted but only when necessary for the respect of the rights of others. But that restriction must be limited, well-defined and serve the public interest.”¹⁰

In 2019, Canada signed the Christchurch Call to Action,¹¹ a non-binding pledge alongside other nations and online service providers to prevent the internet from being used to promote terrorism and violent extremism, while still respecting freedom of expression.¹²

Following this, the Government of Canada introduced Bill C-36 in 2021, aiming to combat hate speech and hate crimes, provide remedies for victims, and hold individuals accountable for harmful online expression.¹³ Bill C-36 proposed amendments to the *Canadian Human Rights Act*¹⁴, the *Criminal Code*¹⁵, and the *Youth Criminal Justice Act*.¹⁶

For example, the *Canadian Human Rights Act* would have been amended to make it a “discriminatory practice” to communicate hate speech online if it was “likely to foment detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination”.¹⁷ However, Bill C-36 did not pass due to the 2021 federal election.¹⁸

¹⁰ Anthony Housefather at 11-12.

¹¹ The Christchurch Call to Action To Eliminate Terrorist and Violent Extremist Content Online, online: Christchurch Call < <https://www.christchurchcall.org/christchurch-call-to-eliminate-terrorist-and-violent-extremist-online-content-adopted/>>.

¹² Canada joins Christchurch Call to Action to eliminate terrorist and violent extremist content online (14 May 2019), online: Prime Minister of Canada <<https://www.pm.gc.ca/en/news/news-releases/2019/05/15/canada-joins-christchurch-call-action-eliminate-terrorist-and-violent>>.

¹³ Bill C-36, *An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)* 2nd Sess, 43rd Parl, 2021 [Bill C-36].

¹⁴ *Canadian Human Rights Act*, RSC 1985, c H-6 [*Canadian Human Rights Act*].

¹⁵ *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*].

¹⁶ *Youth Criminal Justice Act*, SC 2002, c 1.

¹⁷ *Canadian Human Rights Act* at s 13(1).

¹⁸ Robert Mason and Julian Walker, “Legislative Summary of Bill C-36: An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)” (8 September 2021), online: Library of Parliament

A 2021 poll revealed that Canadians embraced stronger government intervention to combat “hateful and racist content and behaviour online.”¹⁹ The majority favored tougher laws holding perpetrators accountable and creating an independent body to ensure social media companies comply with the law. Additionally, Canadians wanted social media companies to be held responsible for harmful content and to be compelled to remove it, including suspending users who post such material.²⁰

According to the 2022 Canadian Internet Use Survey, 8% of Canadians reported being victims of online harmful expression, such as “bullying, harassment, discrimination, inappropriate use of personal pictures or videos.”²¹ Among youth aged 15 to 24, the proportion of victims was even higher (11%). Additionally, 51% of Canadians reported encountering content online that could incite hate or violence, and 73% saw content they suspected to be false or inaccurate.²²

In 2023, the Leadership Lab research team at Toronto Metropolitan University conducted a survey of 2,000 Canadians aged 16 and older to assess exposure to online hate speech.²³ The

https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C36E.

¹⁹ RESULTS: POLL ON ONLINE HATE - CONDUCTED BY THE CANADIAN ANTI-HATE NETWORK AND EKOS RESEARCH (22 March 2021), online: ANTIHATE.CA

https://www.antihate.ca/results_poll_on_online_hate [Anti-Hate Poll].

²⁰ Anti-Hate Poll

²¹ Canadian Internet Use Survey, 2022 (20 July 2023), online: Statistics Canada

<https://www150.statcan.gc.ca/n1/daily-quotidien/230720/dq230720b-eng.htm> [StatsCan].

²² StatsCan.

²³ Sam Andrey, “Survey of Online Harms in Canada” (March 2023), online: Toronto Metropolitan University <https://dais.ca/reports/survey-of-online-harms-in-canada/>.

findings revealed that 20% of those surveyed reported seeing online hate speech monthly, while 16% encountered weekly, and 5% daily.

Additionally, 10% reported being targets of online hate speech, while 8% experienced online harassment that caused them to fear for their safety. These statistics were nearly twice as high among vulnerable groups, including racialized individuals, people with disabilities, and those identifying as LGBTQ2S+.²⁴

The survey also revealed that two-thirds of Canadians support government intervention to regulate social media companies and address harmful online content. As Sam Andrey emphasized, “our fourth report on this topic provides the latest evidence that online hate and misinformation continues to erode the safety and well-being of Canadians and most want our government and platforms to take action”.²⁵

In February 2024, the Canadian federal government introduced Bill C-63, the *Online Harms Act*.²⁶ This Bill aims to:

[...] promote the online safety of persons in Canada, reduce harms caused to persons in Canada as a result of harmful content online and ensure that the operators of social media services in respect of which that *Act* applies are transparent and accountable with respect to their duties under that *Act*.

²⁴ Sam Andrey, “Survey of Online Harms in Canada” (March 2023), online: Toronto Metropolitan University <<https://dais.ca/reports/survey-of-online-harms-in-canada/>> [Sam Andrey].

²⁵ Sam Andrey.

²⁶ Bill C-63, *An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*, 1st Sess, 44th Parl, 2024 [Bill C-63].

The *Online Harms Act* establishes three key entities: the Digital Safety Commission of Canada, the Digital Safety Office of Canada, and the position of Digital Safety Ombudsperson of Canada. It mandates social media platforms to implement tools for tracing harmful content and to develop a digital safety plan to ensure the timely removal of such content.

II- Freedom of Expression and Hate Speech under International Law

Freedom of expression is the right to express and receive opinions, ideas and information. Today, the exchange of views and expression of opinions increasingly occur online, primarily through online platforms. However, hate speech -whether online or offline - poses a serious threat to democracy and human rights. It undermines fundamental freedoms, harms individuals' essential rights, and further isolates affected individuals and groups.²⁷

A- Freedom of Expression

The right to freedom of expression is a fundamental human right,²⁸ recognized in key international human rights instruments, including the Universal Declaration of Human Rights²⁹,

²⁷ COMBATING HATE SPEECH (June 2022), online: Council of Europe <<https://edoc.coe.int/en/racism/11119-combating-hate-speech-recommendation-cmrec202216-and-explanatory-memorandum.html>> [Council of Europe].

²⁸ Ban Ki-moon, "Freedom of Expression, a Fundamental Human Right" (26 February 2010) online: United Nations <<https://www.un.org/en/chronicle/article/freedom-expression-fundamental-human-right>>.

²⁹ Universal Declaration of Human Rights, GA Res 217 (III) A, UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 [UDHR].

the International Covenant on Civil and Political Rights³⁰ (ICCPR) and the Convention on Eliminating Racial Discrimination³¹ (ICERD).

Article 19 of the Universal Declaration of Human Rights reads:

Everyone has the right to freedom of opinion and expression.

Article 19 of the ICCPR elaborates:

- 1) Everyone shall have the right to hold opinions without interference.
- 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.

While freedom of expression is a fundamental right, it can be restricted when necessary to protect the rights of others, public order or national security.

Article 19(3) of the ICCPR states:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The United Nations Human Rights Committee has asserted that freedom of expression can be restricted when “the restriction is: a) provided by a law of sufficient precision, b) for one

³⁰ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976) [ICCPR].

³¹ International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 UNTS 195, Can TS 1970 No 28 (entered into force 4 January 1969, accession by Canada 14 October 1970) [ICERD].

of the purposes outlined in Article 19(3), and c) conforms to strict tests of necessity and proportionality.”³²

In April 2021, G7 member states agreed upon Internet Safety Principles to tackle the global challenge of online safety.³³ These principles encouraged companies to protect children from illegal and harmful content and advised governments, companies, civil society, academia and other stakeholders “to educate and empower people of all ages with the skills, digital competence, access and knowledge they need to make informed and safe choices online.”³⁴

Subsequently, in May 2021, the Organization for Economic Cooperation and Development³⁵ (OECD) amended its Recommendation on Children in the Digital Environment, which emphasized the need to balance efforts to reduce online harms to children with ensuring the rights to free speech and online access for all.

Then, in April 2022, more than 60 countries launched the Declaration for the Future of the Internet.³⁶ The Declaration’s principles include commitments to:

- Protect human rights and fundamental freedoms of all people;
- Promote a global Internet that advances the free flow of information;
- Advance inclusive and affordable connectivity so that all people can benefit from the digital economy;

³² David Mejia-Canales at 7.

³³ G7 tech leaders agree bold new proposals to boost online safety worldwide (28 April 2021), online: GOV.UK <<https://www.gov.uk/government/news/g7-tech-leaders-agree-bold-new-proposals-to-boost-online-safety-worldwide#:~:text=Leaders%20from%20the%20UK%2C%20Canada,harmful%20activity%20and%20prioritise%20the>> [G7 Online Safety].

³⁴ G7 Online Safety

³⁵ Recommendation of the Council on Children in the Digital Environment (Adopted on: 15/02/2012, Amended on: 30/05/2021), online: OECD Legal Instruments <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0389>>.

³⁶ Declaration for the Future of the Internet, online: <<https://www.state.gov/wp-content/uploads/2022/04/Declaration-for-the-Future-for-the-Internet.pdf>>.

- Promote trust in the global digital ecosystem, including through protection of privacy; and
- Protect and strengthen the multi-stakeholder approach to governance that keeps the Internet running for the benefit of all.

It is important to note that, as businesses, digital platforms do not have the same legal duty as States to guarantee and promote human rights. However, the United Nations' Guiding Principles on Business and Human Rights provides a framework to ensure that all businesses protect and respect human rights.³⁷

B- Hate Speech

International human rights law does not explicitly define hate speech. However, most United Nations instruments prohibit the advocacy of hate, discrimination, hostility, or violence.³⁸

Article 20(2) of the ICCPR states:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 4 of the ICERD reads:

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial

³⁷ David Mejia-Canales at 6.

³⁸ Council of Europe at 17.

- discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
 - (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

According to the United Nations (UN), hate speech refers to “offensive discourse targeting a group or an individual based on inherent characteristics (such as race, religion or gender) and that may threaten social peace.”³⁹

The UN also stated that “public incitement to genocide and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are prohibited under international law, and are considered the severest forms of hate speech.”⁴⁰

In addition, UN Secretary-General António Guterres asserted that:

addressing hate speech does not mean limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility and violence, which is prohibited under international law.⁴¹

³⁹ Understanding hate speech, What is hate speech?, online: United Nations <<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>>.

⁴⁰ UN actions against hate speech, International Human Rights Law, online: United Nations <<https://www.un.org/en/hate-speech/united-nations-and-hate-speech/international-human-rights-law>> [Actions against hate speech].

⁴¹ Actions against hate speech.

The UN Strategy and Plan of Action on Hate Speech (the UN Strategy) defines hate speech as:

any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor.⁴²

Furthermore, the UN Strategy acknowledges that “there is no universal definition of hate speech under international human rights law. The concept is still under discussion, especially in relation to freedom of opinion and expression, non-discrimination and equality.”⁴³

The UN Strategy made it clear that addressing hate speech does not mean “limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility and violence, which is prohibited under international law.”⁴⁴

In 2022, the Council of Europe asserted that:

Hate speech is a type of expression that incites, promotes, spreads, or justifies violence, hatred or discrimination against individuals based on personal characteristics such as race, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation. Given the fact that hate speech harms these individuals, States must enact measures in order to prevent it.⁴⁵

⁴² United Nations Strategy and Plan of Action on Hate Speech, online: United Nations <https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf> at 1 [UN Plan of Action].

⁴³ UN Plan of Action at 1.

⁴⁴ UN Plan of Action at 1.

⁴⁵ Council of Europe at 7.

The Council of Europe added:

In recent years, hate speech has increasingly been spread through the internet. Preventing and combating online hate speech poses specific challenges, as it can be disseminated as never before across the world in a matter of seconds. It can sometimes remain persistently available online ... The member States have the ultimate obligation to protect human rights and fundamental freedoms also in the digital environment ... This includes the duty to protect individuals against violations, including potential violations, committed by other private persons and organisations.⁴⁶

Additionally, hate speech can lead to divisions in society and affect those targeted by it, leading to their isolation. Therefore, these individuals may stop sharing their ideas or expressing their concerns, which impedes their proper representation.⁴⁷

III- Freedom of Expression and Hate Crimes in Canada

Under international law, Canada is obligated to protect its citizens' freedom of expression. However, this freedom is subject to restrictions under anti-hate laws, which aim to prevent hate propaganda. These laws are designed to regulate messages of hatred targeted at specific individuals and groups.

A- Freedom of Expression

Section 2(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*) protects “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”.

⁴⁶ Council of Europe at 16.

⁴⁷ Council of Europe at 15.

Freedom of speech is also recognized as a fundamental human right in the *Canadian Bill of Rights* in sections 1(d) and (f).⁴⁸

The freedoms outlined in the *Charter* ensure that Canadians have the right to form their own opinions, discuss them, and communicate them with others. These principles are vital to individual liberty and essential to the functioning of a democratic society, where people can freely discuss matters of public policy, criticize governments and express opinions on social issues.⁴⁹

However, while the right to freedom of expression is guaranteed under section 2(b) of the *Charter*, it is not an absolute right. For instance, laws against hate propaganda and child pornography impose limitations to prevent harm to individuals and groups.⁵⁰

According to Pyeng Hwa Kang:

In Canada, freedom of expression is fundamental but not absolute, particularly when there are legitimate pressing and substantial concerns that may justify its inhibition. The meaning of a right or freedom guaranteed by the *Charter* must be understood in the light of the interests it was meant to protect. When words intend to inflict harm to others, especially those belonging to minority groups, it is obvious that hate speech is incompatible to the purposive spirit of the *Charter*.⁵¹

Despite its importance, freedom of expression can be restricted by law and upheld by courts if it can be demonstrated that such restrictions are justifiable in a free and democratic

⁴⁸ *Canadian Bill of Rights*, SC 1960, c 44.

⁴⁹ Myrna El Fakhry Tuttle, “When Can the Right to Freedom of Expression be Curtailed?” (4 July 2019), online: LawNow <<https://www.lawnow.org/when-can-the-right-to-freedom-of-expression-be-curtailed/>> [Myrna El Fakhry Tuttle].

⁵⁰ Myrna El Fakhry Tuttle.

⁵¹ Pyeng Hwa Kang, “Constitutional Treatment of Hate Speech and Freedom of Expression: a Canada – U.S. perspective” (2018), online: OpenEdition Journals <<https://journals.openedition.org/revdh/4109?lang=en>> para 13.

society under section 1 of the *Charter*. Accordingly, Canada has enacted laws that restrict certain types of expression, including speech that incites violence and hatred.

B- Hate Crimes

According to the Government of Canada, “hate crimes are criminal acts done by a person who is motivated by an extreme bias or hatred towards a particular social group. Hate crimes may be directed at physical, symbolic targets or individuals or groups of people.”⁵²

Research studies show that hate crimes cause “disproportionate harm to individual victims as well as other members of the community belonging to the targeted social group. These crimes send a message of rejection towards both the target of the crime and their community.”⁵³

Police services across Canada use a consistent definition of hate crime to ensure uniformity in the data they collect and report:

Hate crime is defined as a criminal violation motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or gender identity or expression, or any other similar factor.⁵⁴

Sections 318 and 319 of the *Criminal Code* deal with hate and impose sanctions against anyone who wilfully promotes genocide or incites hatred in public.

⁵² Anna Ndegwa and Susan McDonald, “Hate Crimes in Canada”, online: Government of Canada <<https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd16-rr16/p1.html>> [Anna Ndegwa and Susan McDonald].

⁵³ Anna Ndegwa and Susan McDonald.

⁵⁴ Anna Ndegwa and Susan McDonald.

Section 318 (1) criminalizes advocating or promoting genocide. Anyone found guilty of this offense faces up to five years of imprisonment.

Section 319(1) makes it illegal to publicly incite hatred against an identifiable group if it is likely to result in a breach of the peace.

Section 319(2) prohibits willfully promoting hatred against an identifiable group in public communication, except in private conversations. Those convicted may face up to two years of imprisonment if charged with an indictable offense or a lesser penalty if convicted summarily.⁵⁵

Richard Moon noted:

[Sections 318 and 319 prohibit] the advocacy or promotion of genocide, the incitement of hatred against an identifiable group, when this incitement is likely to lead to a breach of the peace, and the wilful promotion of hatred against an identifiable group. Investigations into allegations of hate speech under the *Criminal Code* are conducted by the police. If an individual is charged with one of these offences, his or her trial will be conducted in a court of law. To be convicted under any of these offences, the accused must be shown to have committed the relevant act and to have done so either intentionally or with knowledge or awareness of the nature of her/his actions. If found by the court to have committed the offence, he or she may be sentenced to a fine or a term of imprisonment. ... [Section 320(1)] enables a court to order the seizure ... of material that the court determines to be “hate propaganda.”⁵⁶

⁵⁵ Section 320(8) of the *Criminal Code* defines hate propaganda as: “any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under section 319.”

“Identifiable group” is defined by section 318(4) of the *Criminal Code* 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.”

“Communicating” is defined by section 319(7) of the *Criminal Code* as including “communicating by telephone, broadcasting or other audible or visible means.”

⁵⁶ Richard Moon, “Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet” (October 2018), online: Canadian Human Rights Commission <https://publications.gc.ca/collections/collection_2016/ccdp-chrc/HR4-33-2008-eng.pdf> at 3.

Additionally, section 319 requires the approval of the Attorney General before charges can be laid. This requirement applies to very few sections of the *Criminal Code*, highlighting the importance of protecting freedom of expression in a democratic society.⁵⁷

In *Canada (Human Rights Commission) v Taylor*, the Supreme Court found that many anti-hate propaganda laws do infringe on the right to free expression.⁵⁸ However, the Court determined that these laws are justifiable under section 1 of the *Charter*.

In *R v Keegstra*, the Supreme Court again found that the offence outlined in section 319(2) infringed on the right to freedom of expression.⁵⁹ However, the Court upheld the law, ruling that it constituted a reasonable limit under section 1 of the *Charter*.

The Supreme Court also discussed the concept of hatred, stating that hatred “connotes emotion of an intense and extreme nature that is clearly associated with vilification and detestation.”⁶⁰ It added:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.⁶¹

⁵⁷ Myrna El Fakhry Tuttle.

⁵⁸ *Canada (Human Rights Commission) v Taylor*, 1990 CanLII 26 (SCC), [1990] 3 SCR 892.

⁵⁹ *R v Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697 [*R v Keegstra*].

⁶⁰ *R v Keegstra*.

⁶¹ *R v Keegstra*.

Furthermore, section 430 (4.1) of the *Criminal Code* reads:

Everyone who commits mischief in relation to property described in any of paragraphs (4.101) (a) to (d), if the commission of the mischief 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,

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- (b) is guilty of an offence punishable on summary conviction.

Section 718.2 states:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor.

Although these legal provisions aim to address hate crimes, they have proven insufficient in curbing the spread of hate speech on online platforms.

IV- Online Platforms' Policies on Hate Speech

Several platforms, including Facebook, Google, TikTok and X, have implemented policies on hate speech or hateful content. These platforms continuously update their technology to detect and remove hateful material and increase the number of employees dedicated to managing such content.⁶²

⁶² Anthony Housefather at 26.

A- Google

Google is committed to free expression but strictly prohibits hate speech on its platforms. The company ensures that its services do not promote or condone violence, discrimination, or incitement of hatred against individuals or groups. According to Google's Policies for Content Posted by Users:

Our products are platforms for free expression, but we don't permit hate speech. Hate speech is content that promotes or condones violence against or has the primary purpose of inciting hatred against an individual or group on the basis of their race or ethnic origin, religion, disability, age, nationality, veteran status, sexual orientation, gender, gender identity, or any other characteristic that is associated with systemic discrimination or marginalization.⁶³

B- YouTube

Hate speech is not allowed on YouTube. The platform prohibits content that promotes violence or hatred against individuals or groups based on any of the following grounds:

- Age
- Caste, Ethnicity, or Race
- Disability
- Immigration Status
- Nationality
- Religion
- Sex, Gender, or Sexual Orientation
- Veteran Status
- Victims of a major violent event and their kin⁶⁴

⁶³ Policies for Content Posted by Users on Search, online: Google <<https://www.google.com/intl/en-US/search/policies/usercontent/#:~:text=Our%20products%20are%20platforms%20for,don't%20permit%20hate%20speech>>.

⁶⁴ Hate speech policy, online: YouTube <<https://support.google.com/youtube/answer/2801939?hl=en#:~:text=Hate%20speech%20is%20not%20allowed,Caste>>.

YouTube encourages users to report any content that violates this policy. If a violation is found, the content is removed, and the user who posted it is notified via email.

C- X (formerly Twitter)

X's policy on hateful conduct prohibits direct attacks against individuals or groups

based on:

- Race
- Ethnicity
- National origin
- Caste
- Sexual orientation
- Gender
- Gender identity
- Religious affiliation
- Age
- Disability
- Serious disease⁶⁵

X's mission is to empower people to express their ideas and opinions freely while recognizing that abuse can hinder this process. The platform is committed to combating hate-driven abuse that targets historically marginalized communities. Violations of X's policies may result in the following actions:

- Reducing post visibility, including removing it from search results and trends
- Restricting engagement options (e.g., likes, replies, reposts)
- Excluding posts from advertisements
- Suspending accounts that repeatedly violate the policy.

⁶⁵ Hateful Conduct (April 2023), online: X Help Centre <<https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>>.

D- Meta (Facebook, Instagram, Threads)

Meta's policy on hateful conduct aims to ensure that users can express themselves freely without fear of being attacked based on their identity.⁶⁶ The company defines hateful conduct as direct attacks on individuals, not ideas, based on the following protected characteristics:

- Race
- Ethnicity
- National origin
- Disability
- Religious affiliation
- Caste
- Sexual orientation
- Gender identity
- Serious disease.
-

Meta also protects refugees, migrants, immigrants, and asylum seekers, especially from severe attacks. The platform removes:

- Dehumanizing speech
- Allegations of serious immorality or criminality
- Harmful stereotypes
- Serious insults or calls for exclusion based on protected characteristics.

Content moderation is divided into two severity tiers, and Meta provides users with tools to report violations. After review, users are notified of actions taken, and they can request a secondary review if they disagree with the decision. As of January 2025, Meta replaced its third-party fact-checking system with Community Notes, a crowd-sourced approach similar to X's model.⁶⁷

⁶⁶ Hateful Conduct Speech (7 January 2025), online: <<https://transparency.meta.com/policies/community-standards/hate-speech/>> [Meta Policy].

⁶⁷ Justin Hendrix, "Transcript: Mark Zuckerberg Announces Major Changes to Meta's Content Moderation Policies and Operations," (7 January 2025), online: Tech Policy Press <<https://www.techpolicy.press/transcript-mark-zuckerberg-announces-major-changes-to-metas-content-moderation-policies-and-operations/>>.

E- TikTok

TikTok’s hate speech policy clearly states that the platform “does not allow any violent threats, promotion of violence, incitement to violence, or promotion of criminal activities that may harm people, animals, or property.”⁶⁸

The policy also states that they “do not allow any hate speech, hateful behavior, or promotion of hateful ideologies. This includes explicit or implicit content that attacks a protected group.”⁶⁹

It further says that they “do not allow showing, promoting, or engaging in youth sexual or physical abuse or exploitation. This includes child sexual abuse material (CSAM), grooming, sextortion, sexual solicitation, pedophilia, and physical or psychological harm of young people.”⁷⁰

Social media networks are increasingly vulnerable to online hate speech, which can lead to serious violations of individuals' human rights if not addressed promptly. Therefore, swift action is necessary to protect victims. Government intervention is essential in regulating these

⁶⁸ Safety and Civility (17 April 2024), online: <https://www.tiktok.com/community-guidelines/en/safety-civility/?enter_method=left_navigation> [TikTok Policy].

⁶⁹ TikTok Policy.

⁷⁰ TikTok Policy.

platforms, and this can be achieved through collaboration with various stakeholders, including tech companies, human rights organizations, and policymakers.⁷¹

V- Bill C-63 in Canada

In February 2024, after years of negotiations with different shareholders, the Canadian federal government introduced Bill C-63, aimed at enacting the *Online Harms Act* (referred to here as Bill C-63).⁷² Bill C-63 proposes amendments to the *Criminal Code*, the *Canadian Human Rights Act* and *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*.⁷³

However, due to the prorogation of Parliament in January 2025, legislative proceedings were paused. While prorogation does not suspend Parliament's activities, it resets the legislative agenda once Parliament reconvenes in March 2025.⁷⁴ As a result, key pieces of legislation, including Bill C-63, may not move forward. Nevertheless, it remains important to examine Bill C-63's provisions to assess its proposed amendments, objectives, and potential impact on freedom of expression.

⁷¹ Anthony Housefather at 27.

⁷² Bill C-63, An Act to enact the *Online Harms Act*, to amend the *Criminal Code*, the *Canadian Human Rights Act* and *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*.

⁷³ *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, SC 2011, c 4.

⁷⁴ Dale Smith, "Death on the order paper" (14 January 2025), online: CBA/ABC National <<https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2025/death-on-the-order-paper>>.

A- Purposes of Bill C-63

Part 1 of the Bill C-63 outlines its key purposes, which include protecting children's physical and mental health, mitigating the risks posed by harmful content online while respecting freedom of expression, holding online platforms accountable and making certain offensive forms of harmful content inaccessible.⁷⁵

To achieve these goals, the *Act* proposes the establishment of a new regulatory framework that would include the Digital Safety Commission (Commission), the Digital Safety Ombudsperson (Ombudsperson) and the Digital Safety Office.

The Commission would have the mandate to “promote online safety in Canada and contribute to the reduction of harms caused to persons in Canada as a result of harmful content online.”⁷⁶ As a new regulatory body, it would administer and enforce the *Act*, develop online safety standards and investigate complaints related to content that sexually victimizes a child, revictimizes a survivor or is intimate content distributed without consent.⁷⁷

The Commission would also have the authority to hold hearings on public complaints about content or concerns about social media platforms' compliance with the *Act*.⁷⁸

⁷⁵ Bill C-63 s 9.

⁷⁶ Bill C-63 s 11.

⁷⁷ Bill C-63 s 11.

⁷⁸ Bill C-63 s 88.

In issuing regulations and guidelines, the Commission would be required to consider factors such as freedom of expression, equality rights, privacy rights, the needs and perspectives of Indigenous peoples.⁷⁹

Additionally, Bill C-63 provides for the appointment of a Digital Safety Ombudsperson, whose role would be to “provide support to users of regulated services and advocate for the public interest with respect to systemic issues related to online safety.”⁸⁰

The Digital Safety Office would “support the Commission and the Ombudsperson in the fulfillment of their mandates, the exercise of their powers and the performance of their duties and functions.”⁸¹

B- Duties Imposed on Social Media Services

Bill C-63 would impose duties on social media services to reduce users’ exposure to harmful content, ensure compliance with online safety standards, and implement measures to address child exploitation, hate speech, and other regulated harms.

Section 2(1) of Bill C-63 provides the following definitions:

content that foments hatred means content that expresses detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination, within the meaning of the *Canadian Human Rights Act*, and that, given the context in which it is communicated, is likely to foment

⁷⁹ Bill C-63 s 27.

⁸⁰ Bill C-63 ss 29-31.

⁸¹ Bill C-63 s 39,40.

detestation or vilification of an individual or group of individuals on the basis of such a prohibited ground. (*contenu fomentant la haine*)

content that incites violence means content that actively encourages a person to commit — or that actively threatens the commission of — an act of physical violence against a person or an act that causes property damage, and that, given the context in which it is communicated, could cause a person to commit an act that could cause

- (a) serious bodily harm to a person;
- (b) a person's life to be endangered; or
- (c) serious interference with or serious disruption of an essential service, facility or system.

Section 2(1) identifies seven categories of harmful content:

- intimate content communicated without consent;
- content that sexually victimizes a child or revictimizes a survivor;
- content that induces a child to harm themselves;
- content used to bully a child;
- content that foments hatred;
- content that incites violence; and
- content that incites violent extremism or terrorism.

Section 2(1) also defines social media services as "a website or application accessible in Canada, with the primary purpose of facilitating interprovincial or international online communication among users by enabling them to access and share content."

Bill C-63 specifies that the regulations apply to a regulated service, which is any social media service that:

- (a) has a number of users that is equal to or greater than the significant number of users provided for by regulations made under subsection (2); or
- (b) has a number of users that is less than the number of users provided for by regulations made under subsection (2) and is designated by regulations made under subsection (3).⁸²

⁸² Bill C-63 s 3(1).

It is important to note that Bill C-63 does not apply to a private messaging feature of a regulated service.⁸³

To comply with their duties under Bill C-63, online platforms would be required to act responsibly by implementing measures to mitigate the risk of users being exposed to harmful content. They must also develop a digital safety plan and ensure compliance with requirements related to the removal of certain harmful content.⁸⁴

John Salloum et al. explained the obligations required from online platforms under the duty to act responsibly:

- publishing accessible and easy-to-use user guidelines that include user standards of conduct and descriptions of compliance measures vis-à-vis harmful speech
- providing users with tools to block other users from finding or communicating with them on the service
- implementing tools and processes to flag harmful content, including notices to users who flagged content and users who communicated the content that was flagged
- labeling certain harmful content artificially amplified through third-party automated means such as bots or bot networks
- making a resource person available to support users with concerns about harmful content and [the *Act*] compliance measures, as well as ensuring that the resource person is easily identifiable and that their contact information is easily accessible
- preparing a digital safety plan that meets prescribed disclosure requirements (e.g., how the platform complies with the *Act*, statistics on the moderation of harmful content and an inventory of electronic data), submitting the plan to the Digital Safety Commissioner and making it publicly available in an accessible and easy-to-read format.⁸⁵

⁸³ Bill C-63 s 6(1).

⁸⁴ Bill C-63 ss 54-62.

⁸⁵ John Salloum et al., “Canada’s new Online Harms Act (C-63): what you need to know” (1 March 2024), online: OSLER <<https://www.osler.com/en/resources/regulations/2024/canada-s-new-online-harms-act-c-63-what-you-need-to-know>>.

In addition, platforms would be required to integrate age-appropriate design features to protect children from harmful content.⁸⁶ Furthermore, online platforms would be required to make certain harmful content inaccessible within 24 hours of identifying it.⁸⁷

Platforms that fail to comply with the provisions of the Act will face significant penalties. The maximum penalty for a violation would be up to 6% of a platform's global revenue or \$10 million, whichever is greater.⁸⁸ Repeated violations can lead to higher penalties of up to 8% of global revenue or \$25 million, whichever is greater.⁸⁹

These penalties are designed to ensure that online platforms take their obligations seriously and comply with the requirements of Bill C-63.

Additionally, to ensure that social media services are fulfilling their duties under Bill C-63, platforms are required to retain all relevant records related to compliance and make them available for review by the Digital Safety Commission.⁹⁰

The Commission will have the authority to grant accredited persons (such as researchers, educators, and advocacy groups) access to the data submitted by online platforms in their digital

⁸⁶ Bill C-63 ss 64,65.

⁸⁷ Bill C-63 ss 67-75.

⁸⁸ Bill C-63 ss 96-101.

⁸⁹ Bill C-63 s 120(2).

⁹⁰ Bill C-63 s 72.

safety plans. This will allow for greater transparency and accountability in how platforms are handling harmful content and their efforts to reduce online harm.⁹¹

C- Amending the *Criminal Code*

Part 2 of Bill C-63 would amend the *Criminal Code* by establishing a new hate crime offence, introducing a recognizance to keep the peace for hate propaganda and hate crime offences, defining hatred for the purposes of these offences, and increasing the maximum sentences for hate propaganda offences.

If passed, Bill C-63 would amend the following sections of the *Criminal Codes*:

Subsection 318(1) of the *Criminal Code* is replaced by the following:

Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for life.

Paragraph 319(1)(a) of the *Criminal Code* is replaced by the following:

an indictable offence and is liable to imprisonment for a term of not more than five years; or

Paragraph 319(2)(a) of the *Criminal Code* is replaced by the following:

(a) an indictable offence and is liable to imprisonment for a term of not more than five years; or

Paragraph 319(2.1)(a) of the *Criminal Code* is replaced by the following:

is guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or

Subsection 319(7) of the *Criminal Code* is amended by adding the following in alphabetical order:

hatred means the emotion that involves detestation or vilification and that is stronger than disdain or dislike.

⁹¹ Bill C-63 ss 73,74.

Section 319 of the *Criminal Code* is amended by adding the following after subsection (7):

- (8) For greater certainty, the communication of a statement does not incite or promote hatred, for the purposes of this section, solely because it discredits, humiliates, hurts or offends.

Regarding hate crimes, the *Criminal Code* would be amended by adding the following after section 320.1:

320.1001(1) Everyone who commits an offence under [*the Criminal Code*] or any other Act of Parliament, if the commission of the offence is motivated by hatred based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, is guilty of an indictable offence and liable to imprisonment for life.

The *Criminal Code* would also be amended by adding the following after section 810.011:

- 810.012(1) A person may, with the Attorney General's consent, lay an information before a provincial court judge if the person fears on reasonable grounds that another person will commit
- (a) an offence under section 318 or any of subsections 319(1) to (2.1); or
 - (b) an offence under section 320.1001.

D- Amending the *Canadian Human Rights Act*

Bill C-63 proposes an amendment to the *Canadian Human Rights Act (CHRA)* through the addition of Section 13. This section seeks to address online hate speech and other forms of discriminatory communication.

Part 3 of Bill C-63 would introduce the following new section after section 12 of the *CHRA*:

13(1) It is a discriminatory practice to communicate or cause to be communicated hate speech by means of the Internet or any other means of telecommunication in a context in which the hate speech is likely to foment detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination.

(2) For the purposes of subsection (1), a person communicates or causes to be communicated hate speech so long as the hate speech remains public and the person can remove or block access to it.

Part 3 of Bill C-63 defines hate speech as “the content of a communication that expresses detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination.”⁹²

Section 9 further clarifies that “the content of a communication does not express detestation or vilification, for the purposes of subsection (8), solely because it expresses disdain or dislike or it discredits, humiliates, hurts or offends.”

It is important to note that both Bill C-36 (2021) and Bill C-63 (2024) have sought to amend the *CHRA* by introducing section 13 with similar definitions of hate speech.

Prior to its repeal in 2013, Section 13 of the *CHRA* prohibited individuals from communicating via computer “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.” This provision was removed after concerns about its potential conflict with freedom of expression.⁹³

⁹² Bill C-63 s 8.

⁹³ Anthony Housefather at 31-32.

The reintroduction of Section 13 in Bill C-63 brings with it legal questions, particularly regarding its compatibility with the *Charter*. Specifically, the Supreme Court in *Saskatchewan (Human Rights Commission) v Whatcott*⁹⁴ clarified that:

[...], the legislative term “hatred” or “hatred or contempt” is to be interpreted as being restricted to those extreme manifestations of the emotion described by the words “detestation” and “vilification”. This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects.⁹⁵

With Parliament prorogued, the fate of Bill C-63 is uncertain. If passed, it will likely face judicial scrutiny. Specifically, courts will need to assess whether the reintroduction of Section 13 infringes upon Section 2(b) of the *Charter*—which protects freedom of expression—and, if so, whether this infringement can be justified under Section 1 of the *Charter*.

E- Amending *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*

Part 4 of Bill C-63 would amend *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*.

Subsection 1(1) would be amended to define Internet service to include a service:

- (a) providing Internet access;
- (b) providing Internet content hosting, regardless of the originator of the content or the manner by which the content is made accessible; or

⁹⁴ *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 (CanLII), [2013] 1 SCR 467 [*Saskatchewan (Human Rights Commission) v Whatcott*].

⁹⁵ *Saskatchewan (Human Rights Commission) v Whatcott* at para 57.

- (c) facilitating interpersonal communication over the Internet, including a service providing electronic mail.

Sections 3 and 4 would be replaced by the following:

If a person who provides an Internet service to the public has reasonable grounds to believe that their Internet service is being or has been used to commit a child pornography offence, the person must notify the law enforcement body designated by the regulations of that fact, as soon as feasible and in accordance with the regulations.

Also, the following would be added after section 9:

9.1 For greater certainty, this Act is not to be construed as limiting in any way any obligation under the *Privacy Act* or any applicable provincial privacy legislation.

Section 11 would be replaced by the following:

A prosecution for an offence under this Act cannot be commenced more than five years after the time when the act or omission giving rise to the prosecution occurred.

VI- Other Jurisdictions

Many countries around the world have passed legislation regulating online hate speech. Notable examples include the United Kingdom (UK), Germany, France, Australia, Singapore and the European Union (EU). However, for the purposes of this report, we will focus on the approaches taken by the UK, Germany, and the EU.

In the United States (US), several federal and state laws impose obligations on social media platforms to regulate harmful content.⁹⁶ At the time of writing, the legality of some of these laws is being argued before the US Supreme Court. One such law is the Federal *Kids Online Safety Act*, which proposes a duty of care to prevent and mitigate online harms to children.⁹⁷

A- The *Network Enforcement Act* in Germany

In 2017, Germany passed the *Network Enforcement Act* (Netzwerkdurchsetzungsgesetz, NetzDG)⁹⁸ to combat fake news and hate crime on social media platforms. In January 2018, it came into effect.⁹⁹

i- Provisions

Article 1, Section 1 of the *Network Enforcement Act*, outlines the scope of the law:

(1) This Act shall apply to telemedia service providers which, for profit-making purposes, operate internet platforms which are designed to enable users to share any content with other users or to make such content available to the public (social networks). Platforms offering journalistic or editorial content, the responsibility for which lies with the service provider itself, shall not constitute social networks within the meaning of this Act. The same shall apply to platforms which are designed to enable individual communication or the dissemination of specific content.

⁹⁶ Mark Sherman, “Supreme Court casts doubt on GOP-led states’ efforts to regulate social media platforms” (26 February 2024), online: AP <<https://apnews.com/article/supreme-court-social-media-florida-texas-19180ad0a9bdf48ddb77f14a5e335545>>.

⁹⁷ *Kids Online Safety Act*, S 1409 — 118th Congress (2023-2024), online: Congress .gov <<https://www.congress.gov/bill/118th-congress/senate-bill/1409/text>>.

⁹⁸ *Network Enforcement Act* (the Act to Improve the Enforcement of Rights on Social Networks), 2017, online: <<https://perma.cc/7UCW-AA3A>>.

⁹⁹ Imara McMillan, “Enforcement Through the Network: The Network Enforcement Act and Article 10 of the European Convention on Human Rights”, online: Chicago Journal of International Law <<https://cjl.uchicago.edu/print-archive/enforcement-through-network-network-enforcement-act-and-article-10-european>> [Imara McMillan].

(2) The provider of a social network shall be exempt from the obligations stipulated in sections 2 and 3 if the social network has fewer than two million registered users in the Federal Republic of Germany.

According to this section, the *Network Enforcement Act* applies to social media service providers, such as Facebook, Instagram, YouTube, and Google. However, the law specifically excludes “professional networks, specialist portals, games with online messaging systems, sales platforms, and emails.”¹⁰⁰ The law is also limited in scope to platforms with two million or more registered users in Germany.

The *Network Enforcement Act* requires service providers to address complaints related to unlawful content in accordance with the German *Criminal Code*. To qualify for removal under the *Network Enforcement Act*, content must fall under one of the specified criminal offence sections.¹⁰¹

As Imara McMillan explains, “there is no guidance about how to determine whether something is manifestly unlawful under the law other than the related criminal statutes, so companies must make their own determination or seek the outside assistance of an attorney.”¹⁰²

In article 1, section 2(1), the *Network Enforcement Act* lays out the obligations of service providers. Specifically, service providers that receive more than 100 complaints per calendar

¹⁰⁰ Imara McMillan.

¹⁰¹ Article 1 section 1(3) of the *Network Enforcement Act* states: “Unlawful content shall be content within the meaning of subsection (1) which fulfils the requirements of the offences described in sections 86, 86a, 89a, 91, 100a, 111, 126, 129 to 129b, 130, 131, 140, 166, 184b in connection with 184d, 185 to 187, 241 or 269 of the Criminal Code and which is not justified.”

¹⁰² Imara McMillan.

year about unlawful content are required to publish biannual reports detailing how they handle such complaints. These reports must be publicly available on the service providers' websites and in the German Federal Gazette.

According to article 1, section 2(2), these reports must cover a nine-point list of requirements, ranging from general observations about the provider's efforts to combat criminally punishable content, to detailed statistics on the number of complaints received, their sources, and the time taken to remove the reported content.

Under article 1, section 3(2)(2), social media providers must remove or block access to content that is manifestly unlawful within 24 hours of receiving a user complaint. However, providers may request an extension by working with law enforcement authorities. If the content is unlawful but not manifestly so, the provider must remove or block access to it without undue delay and no later than 7 days after receiving the complaint.

According to Google Transparency Report:

The *Network Enforcement Act* requires social networks with more than 2 million registered users in Germany to exercise a local take down of 'obviously illegal' content (e.g., a video or a comment) within 24 hours after notification. Where the (il)legality is not obvious, the provider normally has up to seven days to decide on the case. On an exceptional basis, it can take longer—if, for example, users who upload content—the users for whom posts, pictures or comments are stored on Google+ (uploader)—are asked to weigh in, or if the decision gets passed onto a joint industry body accredited as an institution of regulated self-regulation.¹⁰³

¹⁰³ Removals under the Network Enforcement Law, online: Google Transparency Report <<https://transparencyreport.google.com/netzdg/googleplus?hl=en>>.

Finally, section 4(2) the *Network Enforcement Act* imposes high fines for noncompliance. Social media companies can be fined up to 5 million euros for failure to comply with the law.

ii- Amendment

When the *Network Enforcement Act* was first enacted, it drew concerns over its potential impact on freedom of expression. In response, various political parties proposed several amendments aimed at addressing these issues.¹⁰⁴

Consequently, in June 2021, the *Act to Amend the Network Enforcement Act* came into force.¹⁰⁵ This amendment required service providers to implement an effective and transparent procedure for reviewing decisions on the removal or blocking of access to harmful content. Furthermore, it introduced an appeal procedure for social network providers and video-sharing platform services.

According to Christina Etteldorf:

Both the complainant (i.e. the person who flags the third-party content) and the user, on whose behalf the flagged content was stored (content creator), can request a review if a service provider decides to remove or block access to content following a complaint alleging that it is illegal. For the review process to be triggered, an appeal must be submitted, with grounds of complaint, within two weeks of the provider's decision being taken. [...]

The reform of the NetzDG [*Network Enforcement Act*] that resulted from the amending act served in part to implement Articles 28a and 28b of the EU Audiovisual Media Services Directive. Video-sharing platform services could

¹⁰⁴ Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech, online: Library of Congress <<https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/>>.

¹⁰⁵ *The Act to Amend the Network Enforcement Act* (2021), online: <<https://perma.cc/9W8E-GSWM>>.

previously be subject to the NetzDG insofar as they could also be defined as social networks. However, these did not include platforms that only distributed specific, e.g. thematically limited, content (such as so-called video-game “Let’s Plays”) in user postings, independent of their social network functions. Now the law has been extended to cover all video-sharing platform services, this limitation no longer applies and the obligations of social networks and video-sharing platform services with regard to unlawful content have been harmonised.¹⁰⁶

As a result, under the amendment, video-sharing platform services are now fully integrated into the *Network Enforcement Act*.¹⁰⁷

Since the amendment's implementation in 2021, Facebook has faced two fines for using “dark patterns” - design tactics that encouraged users to report content under Facebook’s community standards rather than the legal categories set out in the *Network Enforcement Act*. Facebook was also penalized for excluding these complaints from its transparency reports, thereby undermining the law’s reporting obligations.

Moreover, enforcement actions were initiated against several undisclosed companies for failing to appoint legal representatives based in Germany, as required by the *Network Enforcement Act*.¹⁰⁸

¹⁰⁶ [DE] OCTOBER ENTRY INTO FORCE FOR NETZDG APPEAL PROCEDURE (2021), online: IRIS Merlin <<https://merlin.obs.coe.int/article/9334>>.

¹⁰⁷ Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech, online: Library of Congress <<https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/>>.

¹⁰⁸ Rachel Griffin, “New School Speech Regulation and Online Hate Speech: A Case Study of Germany’s NetzDG” (2021), online: HAL Open Science <<https://sciencespo.hal.science/hal-03586791/document>> at 13.

B- The *Digital Services Act* in the European Union

The *Digital Services Act (DSA)* is a European Union (EU) regulation adopted by the European Union Parliament in 2022 as part of the EU's broader effort to create a safer and more accountable digital space.¹⁰⁹ The *DSA* came into force in August 2023, initially applying to large online platforms and very large online search engines. It became applicable to other entities starting in February 2024.¹¹⁰

i- Overview of the *Digital Services Act*

The *Digital Services Act DSA* regulates a broad range of online services, from basic websites to complex internet infrastructure and online platforms.¹¹¹ The *DSA* defines services, platforms, and providers such as intermediary service providers, online platforms, and online search engines.¹¹²

¹⁰⁹ Regulation (Eu) 2022/2065 Of The European Parliament And Of The Council Of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (*Digital Services Act*), online; Euro-Lex <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>> [*DSA*].

¹¹⁰ The *DSA* was first proposed in December 2020 and was meant to update the EU e-commerce Directive adopted in 2000, which dealt with businesses operating online; Petra Arts, "All you need to know about the Digital Services Act" (19 February 2024), online: The Cloudflare Blog <<https://blog.cloudflare.com/digital-services-act>>.

¹¹¹ The Digital Services Act: What to Expect, online: Trust Arc <<https://trustarc.com/resource/digital-services-act/#:~:text=The%20DSA%20defines%20digital%20services,where%20the%20business%20was%20established>>.

¹¹² Article 3 of the *DSA* gives the following definitions:

'intermediary service' means one of the following information society services:

- (i) a 'mere conduit' service, consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;
- (ii) a 'caching' service, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;
- (iii) a 'hosting' service, consisting of the storage of information provided by, and at the request of, a recipient of the service;

The *DSA* specifically targets large online platforms and search engines with over forty-five million monthly users in the EU, imposing stricter rules and obligations.¹¹³

According to Norton Rose Fulbright:

the *DSA* is intended to [...] address illegal content, transparent advertising and disinformation. It aims to create a safer and more transparent online environment for users. It does this by placing obligations on all digital services that connect consumers to goods, services and content, including ‘intermediaries’ that provide conduit, caching and hosting services.¹¹⁴

ii- Duties of Providers of Digital Services

Since August 2023, major online platforms like Google, Facebook, and Amazon, have been required to comply with the *DSA*, which holds them accountable for the content posted on their platform.¹¹⁵

‘illegal content’ means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law;

(i) ‘online platform’ means a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation;

(j) ‘online search engine’ means an intermediary service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found.

¹¹³ *DSA*: Very large online platforms and search engines, online: European Commission <<https://digital-strategy.ec.europa.eu/en/policies/dsa-vlops>>.

¹¹⁴ Norton Rose Fulbright.

¹¹⁵ Emma Roth, “The EU’s Digital Services Act goes into effect today: here’s what that means” (25 August 2023), online: <<https://www.theverge.com/23845672/eu-digital-services-act-explained>> [Emma Roth].

Section 12 of the *DSA* Preamble defines 'illegal content' broadly to include illegal activities, products, services, or information. This includes illegal hate speech, terrorist content, child sexual abuse images, non-consensual private images, and online stalking.

Section 22 of the Preamble stipulates that providers must act quickly to remove or disable access to illegal content once they are aware of it. This action must be taken while respecting users' fundamental rights, such as freedom of expression and information.

Under articles 9 and 10 of the *DSA*, intermediary services must comply with removal and information orders issued by regulators and judicial authorities. Additionally, under Article 13, providers of intermediary services that offer services in the EU but don't have an establishment in the EU must designate a legal representative in an EU Member State where they offer their services.

Article 15 requires providers of intermediary services to publicly disclose annual reports on their content moderation activities during the relevant period. These reports must include details on various aspects of moderation, such as the types of illegal content addressed, initiatives such as information relating to illegal content, the use of automated tools, training measures, and complaints received under complaints-handling systems.

Article 16 mandates that providers of hosting services offer user-friendly mechanisms for users to report illegal content. Article 17 requires providers of hosting services to provide affected users clear and specific reasons when restricting access to content deemed illegal or in violation of terms and conditions. This includes the decision made, facts supporting it, use of

automated tools, the legal or contractual basis for the action, and information on available redress mechanisms.

Article 18 requires providers of hosting services to inform national law enforcement or judicial authorities of the relevant EU Member State if they become aware of content suggesting a criminal offence involving threats to life or safety.¹¹⁶

Furthermore, under article 28(1)(2), the *DSA* requires the protection of minors. Providers of online platforms must establish appropriate and proportionate measures to guarantee a high level of privacy, safety, and security for minors using their services. Also, if providers are aware that a user is a minor, they must not offer targeted advertisements or use the minor's personal data for such purposes. If providers have reasonable certainty that a recipient is a minor, they are prohibited from using the minor's personal data.

Article 28(3) clarifies that “compliance with the obligations set out in this article shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor.”

According to Emma Roth:

The overarching goal of the *DSA* is to foster safer online environments. Under the new rules, online platforms must implement ways to prevent and remove posts containing illegal goods, services, or content while simultaneously giving users the means to report this type of content. Additionally, the *DSA* bans targeted advertising based on a person's sexual orientation, religion, ethnicity, or political

¹¹⁶ *DSA* art 18.

beliefs and puts restrictions on targeting ads to children. It also requires online platforms to provide more transparency on how their algorithms work.¹¹⁷

The *DSA* also imposes additional obligations on very large online platforms to address and manage systemic risks.¹¹⁸ These platforms must take reasonable, proportionate, and effective measures tailored to mitigate risks they identify.¹¹⁹

iii- Penalties

According to the EU Commission “the Digital Services Coordinator and the Commission will have the power to require immediate actions where necessary to address very serious harms. A platform continually refusing to comply could result in a temporary suspension in the EU.”¹²⁰

Under article 52 of the *DSA*, Member States can impose penalties on providers of intermediary services within their jurisdiction for infringements. These penalties should be effective, proportionate, and dissuasive. The maximum fine for non-compliance with the *DSA* is 6% of the provider’s annual worldwide turnover. Additionally, Member States can impose periodic penalty payments, with a maximum of 5% of the provider’s average daily turnover or income.

¹¹⁷ Emma Roth.

¹¹⁸ *DSA* art 34.

¹¹⁹ *DSA* art 35.

¹²⁰ Questions and answers on the *Digital Services Act* (23 February 2024), online: European Commission <https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348>.

C- The *Online Safety Act* in the United Kingdom

In October 2023, the United Kingdom’s *Online Safety Act* received Royal Assent.¹²¹ According to the United Kingdom (UK) government, the *Online Safety Act* aims to “make the UK the safest place in the world to be online.”¹²²

The *Online Safety Act* establishes a new regulatory framework to combat illegal and harmful content online. It places responsibility on providers of regulated services for the content posted on their platforms. It also imposes various duties on them to identify, mitigate and manage the risks of harm from illegal and harmful content.¹²³

i- Which services are regulated by the *Online Safety Act*?

Section 228(1) and (2) of the *Online Safety Act* defines an “internet service” as a “service that is made available by means of the internet”, including those combining internet and electronic communications services.

¹²¹ Online Safety Act 2023, CHAPTER 50, online: <https://www.legislation.gov.uk/ukpga/2023/50/pdfs/ukpga_20230050_en.pdf> [*Online Safety Act*].

¹²² UK children and adults to be safer online as world-leading bill becomes law, online: Gov.UK <<https://www.gov.uk/government/news/uk-children-and-adults-to-be-safer-online-as-world-leading-bill-becomes-law>>.

¹²³ Spencer Feingold, “The UK’s Online Safety Bill could transform the internet. Here’s how” (12 June 2023), online: World Forum Economic <<https://www.weforum.org/agenda/2023/06/united-kingdom-uk-online-safety-bill-internet-privacy-parliament/>>.

Section 3(1) defines “user-to-user services” as “internet services by means of which content generated directly on the service by a user of the service or uploaded to or shared on the service by a user, may be encountered by another user of the service.”

Section 3(4) defines “search service” as “an internet service that is, or includes, a search engine.” According to lawyer Anthony Woolich, large tech companies and online platforms fall under the definition of user-to-user services, including:

- social media platforms, such as Facebook and X;
- messaging services, such as WhatsApp and Facebook Messenger;
- video-sharing services, such as TikTok and YouTube;
- marketplaces and listing services, such as Amazon and eBay; and
- file-sharing services, such as Microsoft OneDrive and Google Drive.¹²⁴

Woolich also notes that “the wide definition of user-to-user services means that many other websites and apps will also be regulated by the Act. For example, an organisation will provide a regulated user-to-user service if it has a website that has a chat function or discussion forum.”¹²⁵

Under section 226, the provider of a user-to-user or search service is the entity that controls who can use the user-to-user function or the operations of the search engine. For combined services, the provider is the entity controlling both (a) who can use the user-to-user part of the service and (b) the operations of the search engine. If no entity has such control, the provider is treated as being an individual or the individuals that have such control.

¹²⁴ UK ONLINE SAFETY ACT 2023: NEW REGULATORY FRAMEWORK TO ENSURE ONLINE SAFETY, Online: HFW <<https://www.hfw.com/insights/UK-Online-Safety-Act-2023-New-regulatory-framework-to-ensure-online-safety/>> [HFW].

¹²⁵ HFW.

The Office of Communications (OFCOM) provides examples of a “user-to-user” service, including:

- a social media site or app;
- a photo- or video-sharing service;
- a chat or instant messaging service, like a dating app; or
- an online or mobile gaming service.¹²⁶

According to OFCOM, “more than 100,000 online services could be subject to the new rules, including organisations ranging from very large, well-resourced companies to small and micro-businesses across various sectors.”¹²⁷

ii- Duties of Providers of Regulated Services

The *Online Safety Act* appoints OFCOM as the regulator for online safety. OFCOM is tasked with issuing guidance and codes of practice to help providers of regulated services comply with the obligations set forth under the *Online Safety Act*.¹²⁸

Section 1 of the *Online Safety Act* states:

- 1) This *Act* provides for a new regulatory framework which has the general purpose of making the use of internet services regulated by this *Act* safer for individuals in the United Kingdom.
- (2) To achieve that purpose, this *Act* (among other things)—
 - (a) imposes duties which, in broad terms, require providers of services regulated by this *Act* to identify, mitigate and

¹²⁶ New rules for online services: what you need to know (7 May 2024), online: OFCOM <<https://www.ofcom.org.uk/online-safety/information-for-industry/guide-for-services>>.

¹²⁷ Ofcom’s approach to implementing the Online Safety Act (26 October 2023), online: OFCOM <https://www.ofcom.org.uk/_data/assets/pdf_file/0017/270215/10-23-approach-os-implementation.pdf at 4.

¹²⁸ HFW.

manage the risks of harm (including risks which particularly affect individuals with a certain characteristic) from—

- (i) illegal content and activity, and
 - (ii) content and activity that is harmful to children, and
- (b) confers new functions and powers on the regulator, OFCOM.

(3) Duties imposed on providers by this *Act* seek to secure (among other things) that services regulated by this *Act* are—

- (a) safe by design, and
- (b) designed and operated in such a way that—
 - (i) a higher standard of protection is provided for children than for adults,
 - (ii) users' rights to freedom of expression and privacy are protected, and
 - (iii) transparency and accountability are provided in relation to those services.

Part 3 of the *Online Safety Act* imposes specific duties on providers of regulated user-to-user and search services, which include the following obligations:

- Providers have a duty to carry out a suitable and sufficient illegal content risk assessment. Providers also have a duty to take appropriate steps to keep the risk assessment up to date.¹²⁹
- Providers have a duty to operate the service using systems and processes that allow users and affected persons to easily report illegal content.¹³⁰
- Providers have a duty to operate a complaints procedure in relation to a service that:
 - (a) allows for relevant kinds of complaint to be made;
 - (b) provides for appropriate action to be taken by the provider of the service in response to complaints; and
 - (c) is easy to access, easy to use and transparent.¹³¹
- Providers have a duty to have particular regard to the importance of protecting users' rights to freedom of expression and privacy when deciding on and implementing safety measures and policies.¹³²
- Providers have various duties to make and keep written records.¹³³

¹²⁹ *Online Safety Act* ss 9, 26.

¹³⁰ *Online Safety Act* ss 20, 31.

¹³¹ *Online Safety Act* ss 21, 32.

¹³² *Online Safety Act* ss 22, 33.

¹³³ *Online Safety Act* ss 23, 34.

In addition, providers of regulated user-to-user and search services that are likely to be accessed by children have additional obligations under the *Online Safety Act*. These include conducting a children’s risk assessment and protecting children’s online safety.¹³⁴

Under the *Online Safety Act*, there are two categories of harmful content to children that online platforms must address.

The first category is primary priority content, such as pornography and material promoting suicide, self-injury and eating disorders.¹³⁵ Platforms must ensure children do not encounter this type of content, which requires implementing age verification measures.¹³⁶

The second category is priority content, such as targeted attacks based on religion, race, sexual orientation, disability, bullying and contents that encourage children to take part in dangerous activities.¹³⁷ Providers must take proactive steps to prevent children from being exposed to this type of harmful content.¹³⁸

iii- Enforcement

OFCOM has the authority to impose fines of up to £18 million or 10% of a provider’s worldwide annual revenue, whichever is higher, in cases of a violation of the *Online Safety*

¹³⁴ *Online Safety Act* ss 11-13, 28-30.

¹³⁵ *Online Safety Act* s 61.

¹³⁶ Dan Milmo “TechScape: How the UK’s online safety bill aims to clean up the internet” (24 October 2023), online: The Guardian <<https://www.theguardian.com/technology/2023/oct/24/techscape-uk-online-safety-bill-clean-up-internet>> [Dan Milmo].

¹³⁷ *Online Safety Act* s 62.

¹³⁸ Dan Milmo.

*Act.*¹³⁹ If two or more entities – such as parent and subsidiary companies – are jointly and severally liable for a penalty, the maximum fine is calculated based on the total worldwide annual revenue of the group. In such cases, the maximum fine remains £18 million or 10% of the group’s global revenue, whichever is higher.¹⁴⁰

In addition, any eligible entity may submit a complaint to OFCOM if it believes that a feature of a service or the conduct of a provider of a regulated service poses a material risk of causing significant harm to users or the public, significantly undermines freedom of expression, or has another substantial adverse impact on users or the public.¹⁴¹

¹³⁹ *Online Safety Act* s 143, sched 13 para 4(1).

¹⁴⁰ *Online Safety Act*, sched 13 paras 5(1), (3).

¹⁴¹ *Online Safety Act* s 169.

VII- Recommendations

The Alberta Civil Liberties Research Centre offers the following recommendations to strengthen Bill C-63, also known as the *Online Harms Act*, to ensure it effectively balances online safety and individual rights:

Enhancing Bill C-63 Framework

Bill C-63 is a critical step in regulating online hate speech and protecting Canadians. Drawing inspiration from successful models in jurisdictions like the UK, Germany, and the EU, Canada can shape effective, responsive legislation. While it won't eliminate all harmful content, the Online Harms Act aims to establish a framework requiring service providers to take meaningful actions to protect users and mitigate risks.

Empowering Canadians to Flag and Report Harmful Content

If passed, Bill C-63 will enhance user safety by giving Canadians the ability to flag harmful content and request its removal. Citizens will also be able to report non-compliance to the Digital Safety Commission or file complaints with the Canadian Human Rights Commission in cases of online hate speech.

Uncertainty in Legislative Progress

While Bill C-63 represents a promising step forward, its future remains uncertain due to ongoing parliamentary prorogation. Whether this Bill will be amended, passed, or dismissed remains to be seen.

Key Recommendations for Strengthening Bill C-63:

i- Review and Amend Bill C-63 for Clarity and Proportionality

Bill C-63 should undergo amendments, particularly concerning the proposed increase in penalties for advocating genocide and the vagueness of the “harmful content” definition. The proposed life imprisonment penalty may be disproportionate, and a clearer definition of harmful content would help protect freedom of expression.

ii- Introducing Fines for Non-Compliance

Service providers should be held accountable for failing to remove harmful or illegal content in a timely manner. Bill C-63 should impose substantial fines on platforms that do not comply with content removal requirements, reinforcing their responsibility to maintain a safe digital environment.

iii- Public Education and Awareness Campaigns

The government should prioritize public education to raise awareness about online hate speech. Community outreach initiatives can help users understand what constitutes harmful content and empower them to report or flag it more effectively.

iv- Aligning the Act with Charter Rights

Bill C-63 should respect constitutional rights under the *Charter*, particularly freedom of expression. While limitations on expression can be justified under section 1 of the Charter, these

restrictions must be minimal, rational, and proportionate. Platforms should be guided on how to balance the removal of harmful content with respect for individual rights.

v- Strengthening Online Platforms' Responsibilities

Online platforms should be required to develop internal guidelines aligned with human rights standards, including freedom of expression and privacy. The Digital Safety Commission should offer clear guidelines on the types of content to be removed and how to do so transparently and consistently. Additionally, platforms should conduct regular risk assessments and offer tools for users to easily flag harmful content.

Bibliography

Legislation

An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service, SC 2011, c 4.

Bill C-36, *An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)* 2nd Sess, 43rd Parl, 2021.

Bill C-63, *An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*, 1st Sess, 44th Parl, 2024.

Canadian Bill of Rights, SC 1960, c 44.

Canadian Charter of Rights and Freedoms, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

Criminal Code, RSC 1985, c C-46.

Canadian Human Rights Act, RSC 1985, c H-6.

Youth Criminal Justice Act, SC 2002, c 1.

Jurisprudence

Canada (human Rights Commission) v Taylor, 1990 CanLII 26 (SCC), [1990] 3 SCR 892.

(Human Rights Commission) v Whatcott, 2013 SCC 11 (CanLII), [2013] 1 SCR 467.

R v Keegstra, 1990 CanLII 24 (SCC), [1990] 3 SCR 697.

International Legislation

Kids Online Safety Act, S 1409 — 118th Congress (2023-2024), online: Congress.gov <<https://www.congress.gov/bill/118th-congress/senate-bill/1409/text>>.

Network Enforcement Act (the Act to Improve the Enforcement of Rights on Social Networks), 2017, online: <<https://perma.cc/7UCW-AA3A>>.

Online Safety Act 2023, CHAPTER 50, online: <https://www.legislation.gov.uk/ukpga/2023/50/pdfs/ukpga_20230050_en.pdf>.

Regulation (Eu) 2022/2065 Of The European Parliament And Of The Council Of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (*Digital Services Act*), online; Euro-Lex < <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>>.

The Act to Amend the Network Enforcement Act (2021), online: < <https://perma.cc/9W8E-GSWM>>.

International Instruments and Documents

International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976).

International Convention on the Elimination of All Forms of Racial Discrimination, 7 March 1966, 660 UNTS 195, Can TS 1970 No 28 (entered into force 4 January 1969, accession by Canada 14 October 1970).

Recommendation of the Council on Children in the Digital Environment (Adopted on: 15/02/2012, Amended on: 30/05/2021), online: OECD Legal Instruments < <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0389>>.

Universal Declaration of Human Rights, GA Res 217 (III) A, UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

Secondary Materials: Books & Articles

El Fakhry Tuttle, Myrna “When Can the Right to Freedom of Expression be Curtailed?” (4 July 2019), online: LawNow < <https://www.lawnow.org/when-can-the-right-to-freedom-of-expression-be-curtailed/>>.

Griffin, Rachel “New School Speech Regulation and Online Hate Speech: A Case Study of Germany’s NetzDG” (2021), online: HAL Open Science < <https://sciencespo.hal.science/hal-03586791/document>>.

Hendrix, Justin "Transcript: Mark Zuckerberg Announces Major Changes to Meta's Content Moderation Policies and Operations," (7 January 2025), online: Tech Policy Press <<https://www.techpolicy.press/transcript-mark-zuckerberg-announces-major-changes-to-metas-content-moderation-policies-and-operations/>>.

Hwa Kang, Pyeng “Constitutional Treatment of Hate Speech and Freedom of Expression: a Canada – U.S. perspective” (2018), online: OpenEdition Journals < <https://journals.openedition.org/revdh/4109?lang=en>>.

McMillan, Imara “Enforcement Through the Network: The Network Enforcement Act and Article 10 of the European Convention on Human Rights”, online: Chicago Journal of

International Law < <https://cjil.uchicago.edu/print-archive/enforcement-through-network-network-enforcement-act-and-article-10-european>>.

Milmo, Dan “TechScape: How the UK’s online safety bill aims to clean up the internet” (24 October 2023), online: The Guardian < <https://www.theguardian.com/technology/2023/oct/24/techscape-uk-online-safety-bill-clean-up-internet>>.

Salloum et al., John “Canada’s new Online Harms Act (C-63): what you need to know” (1 March 2024), online: OSLER < <https://www.osler.com/en/resources/regulations/2024/canada-s-new-online-harms-act-c-63-what-you-need-to-know>>.

Sherman, Mark “Supreme Court casts doubt on GOP-led states’ efforts to regulate social media platforms” (26 February 2024), online: AP < <https://apnews.com/article/supreme-court-social-media-florida-texas-19180ad0a9bdf48ddb77f14a5e335545>>.

Secondary Materials: Government Documents

Anna Ndegwa and Susan McDonald, “Hate Crimes in Canada”, online: Government of Canada < <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd16-rr16/p1.html>>.

Anthony Housefather, “TAKING ACTION TO END ONLINE HATE, Report of the Standing Committee on Justice and Human Rights” (June 2019), online: House of Commons Canada < <https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10581008/justrp29/justrp29-e.pdf>>.

Richard Moon, “Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet” (October 2018), online: Canadian Human Rights Commission < https://publications.gc.ca/collections/collection_2016/ccdp-chrc/HR4-33-2008-eng.pdf>.

Robert Mason and Julian Walker, “Legislative Summary of Bill C-36: An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)” (8 September 2021), online: Library of Parliament < https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C36E>.

Secondary Materials: Other (Websites)

3 Freedom of Expression and the Internet, online: Australian Human Rights Commission < <https://humanrights.gov.au/our-work/3-freedom-expression-and-internet>>.

Canadian Internet Use Survey, 2022 (20 July 2023), online: Statistics Canada < <https://www150.statcan.gc.ca/n1/daily-quotidien/230720/dq230720b-eng.htm>>.

Canada joins Christchurch Call to Action to eliminate terrorist and violent extremist content online (14 May 2019), online: Prime Minister of Canada < <https://www.pm.gc.ca/en/news/news-releases/2019/05/15/canada-joins-christchurch-call-action-eliminate-terrorist-and-violent>>.

COMBATING HATE SPEECH (June 2022), online: Council of Europe < <https://edoc.coe.int/en/racism/11119-combating-hate-speech-recommendation-cmrec202216-and-explanatory-memorandum.html>>.

Ban Ki-moon, “Freedom of Expression, a Fundamental Human Right” (26 February 2010) online: United Nations < <https://www.un.org/en/chronicle/article/freedom-expression-fundamental-human-right>>.

Combatting hate speech and hate crimes: Proposed legislative changes to the *Canadian Human Rights Act* and the *Criminal Code*, online: Government of Canada < <https://www.justice.gc.ca/eng/csj-sjc/pl/chshc-lcdch/index.html>>.

Dale Smith, “Death on the order paper” (14 January 2025), online: CBA/ABC National < <https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2025/death-on-the-order-paper>>.

David Mejia-Canales, “Submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023” (August 2023), online: Human Rights Law Centre < <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/64e45cd098dedd6263cab05/1692687568826/Final+submission+to+Department+re+Communications+Legislation+Amendment+%28Combatting+Misinformation+and+Disinformation%29+Bill+2023+%281%29.pdf>>.

Declaration for the Future of the Internet, online: < <https://www.state.gov/wp-content/uploads/2022/04/Declaration-for-the-Future-for-the-Internet.pdf>>.

[DE] OCTOBER ENTRY INTO FORCE FOR NETZDG APPEAL PROCEDURE (2021), online: IRIS Merlin < <https://merlin.obs.coe.int/article/9334>>.

Digital Services Act (May 2023), online: Norton Rose Fulbright < <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/e1e7805d/digital-services-act>>

DSA: Very large online platforms and search engines, online: European Commission < <https://digital-strategy.ec.europa.eu/en/policies/dsa-vlops>>.

Emma Roth, “The EU’s Digital Services Act goes into effect today: here’s what that means” (25 August 2023), online: < <https://www.theverge.com/23845672/eu-digital-services-act-explained>>.

G7 tech leaders agree bold new proposals to boost online safety worldwide (28 April 2021), online: GOV.UK < <https://www.gov.uk/government/news/g7-tech-leaders-agree-bold-new-proposals-to-boost-online-safety-worldwide#:~:text=Leaders%20from%20the%20UK%2C%20Canada,harmful%20activity%20and%20prioritise%20the>>.

Germany: Network Enforcement Act Amended to Better Fight Online Hate Speech, online: Library of Congress < <https://www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/>>.

Government of Canada introduces legislation to combat harmful content online, including the sexual exploitation of children (26 February 2024), online: Government of Canada < <https://www.canada.ca/en/canadian-heritage/news/2024/02/government-of-canada-introduces-legislation-to-combat-harmful-content-online-including-the-sexual-exploitation-of-children.html>>.

Hate speech policy, online: YouTube < <https://support.google.com/youtube/answer/2801939?hl=en#:~:text=Hate%20speech%20is%20not%20allowed,Caste>>.

Hateful Conduct (April 2023), online: X Help Centre < <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>>.

Hateful Conduct Speech (7 January 2025), online: < <https://transparency.meta.com/policies/community-standards/hate-speech/>>.

Have your say: The Government's proposed approach to address harmful content online (25 September 2021), online: < <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content.html>>.

New rules for online services: what you need to know (7 May 2024), online: OFCOM < <https://www.ofcom.org.uk/online-safety/information-for-industry/guide-for-services>>.

Ofcom's approach to implementing the Online Safety Act (26 October 2023), online: OFCOM < https://www.ofcom.org.uk/_data/assets/pdf_file/0017/270215/10-23-approach-os-implementation.pdf>.

Petra Arts, "All you need to know about the Digital Services Act" (19 February 2024), online: The Cloudflare Blog < <https://blog.cloudflare.com/digital-services-act>>.

Policies for Content Posted by Users on Search, online: Google < <https://www.google.com/intl/en-US/search/policies/usercontent/#:~:text=Our%20products%20are%20platforms%20for,don't%20permit%20hate%20speech>>.

Questions and answers on the *Digital Services Act* (23 February 2024), online: European Commission

< https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348>.

Removals under the Network Enforcement Law, online: Google Transparency Report

< <https://transparencyreport.google.com/netzdg/googleplus?hl=en>>.

RESULTS: POLL ON ONLINE HATE - CONDUCTED BY THE CANADIAN ANTI-HATE NETWORK AND EKOS RESEARCH (22 March 2021), online: ANTIHATE.CA

< https://www.antihate.ca/results_poll_on_online_hate>.

Safety and Civility (17 April 2024), online: < https://www.tiktok.com/community-guidelines/en/safety-civility/?enter_method=left_navigation>.

Sam Andrey, “Survey of Online Harms in Canada” (March 2023), online: Toronto Metropolitan University

< <https://dais.ca/reports/survey-of-online-harms-in-canada/>>.

Spencer Feingold, “The UK’s Online Safety Bill could transform the internet. Here's how” (12 June 2023), online: World Forum Economic <

<https://www.weforum.org/agenda/2023/06/united-kingdom-uk-online-safety-bill-internet-privacy-parliament/>>.

The Christchurch Call to Action To Eliminate Terrorist and Violent Extremist Content

Online, online: Christchurch Call < <https://www.christchurchcall.org/christchurch-call-to-eliminate-terrorist-and-violent-extremist-online-content-adopted/>>.

The Digital Services Act: What to Expect, online: Trust Arc <

<https://trustarc.com/resource/digital-services-act/#:~:text=The%20DSA%20defines%20digital%20services,where%20the%20business%20was%20established>>.

UN actions against hate speech, International Human Rights Law, online: United Nations

< <https://www.un.org/en/hate-speech/united-nations-and-hate-speech/international-human-rights-law>>.

Understanding hate speech, What is hate speech?, online: United Nations <

<https://www.un.org/en/hate-speech/understanding-hate-speech/what-is-hate-speech>>.

United Nations Strategy and Plan of Action on Hate Speech, online: United Nations

< https://www.un.org/en/genocideprevention/documents/advising-and-mobilizing/Action_plan_on_hate_speech_EN.pdf>.

UK children and adults to be safer online as world-leading bill becomes law, online: Gov.UK

< <https://www.gov.uk/government/news/uk-children-and-adults-to-be-safer-online-as-world-leading-bill-becomes-law>>.

UK ONLINE SAFETY ACT 2023: NEW REGULATORY FRAMEWORK TO ENSURE ONLINE SAFETY, Online: HFW < <https://www.hfw.com/insights/UK-Online-Safety-Act-2023-New-regulatory-framework-to-ensure-online-safety/>>.