



**NATIONAL
COUNCIL
OF CANADIAN
MUSLIMS**

Your Voice. Your Future.

**CONSEIL
NATIONAL
DES MUSULMANS
CANADIENS**

Votre voix. Votre avenir.

BRIEF ON ONLINE HATE: LEGISLATIVE AND POLICY APPROACHES

**THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS
HOUSE OF COMMONS | MAY 9, 2019**

I. Introduction

The National Council of Canadian Muslims (NCCM) is an independent, non-partisan and non-profit organization that protects Canadian human rights and civil liberties, challenges discrimination and Islamophobia, builds mutual understanding, and advocates for the public concerns of Canadian Muslims. Our mission is to protect Canadian human rights and civil liberties, challenge discrimination and Islamophobia, build mutual understanding, and advocate for the public concerns of Canadian Muslims.

The NCCM has a long-standing and robust public record of participating in major public inquiries (including the Maher Arar Public Inquiry), intervening in landmark cases before the Supreme Court of Canada (such as *Bombardier Aerospace Training Center*, 2015 SCC 39), and providing advice to security agencies on engaging communities and promoting public safety.

II. Why Study Online Hate?

On the evening of July 29, 2017, six Canadian Muslims were murdered and 19 injured in the midst of their prayers at the Centre Culturel Islamique de Québec in Ste. Foy, Quebec by Alexandre Bissonnette.

Ibrahima Barry. Azzedine Soufiane. Aboubaker Thabti. Khaled Belkacemi. Mamadou Tanou Barry. Abdelkarim Hassane. In an instance of hate and violence, their earthly presence was removed from us in what remains the worst attack on a house of worship on Canadian soil.

In *R. c. Bissonnette*, 2019 QCCS 354, Justice François Huot indicated at paragraphs 10-12 of the decision that Bissonnette drew upon online sources before committing this horrific attack:

[10] ...il consulte assidûment divers sites Internet portant, notamment sur les armes à feu et auteurs d'actes terroristes. À titre d'exemples, il accède, le 27 janvier, au compte Twitter de #Muslimban...

[11] Le lendemain, il fait diverses lectures sur Jaylen Fryberg, l'auteur de la tuerie de Marysville, Elliot Rodger, responsable de la tuerie de masse du 23 mai 2014 à Isla Vista en Californie, Dylann Roof, l'assassin de neuf Afro-Américains lors de la fusillade de l'église de Charleston, l'attaque

de San Bernardino et la page Facebook du mouvement FÉMUL (Féministes en mouvement de l'Université Laval).

[12] Dans la matinée du 29 janvier 2017, Bissonnette déjeune en consultant d'autres sites traitant d'attentats djihadistes...

[Translated to English]

[10] During this same period, he regularly consulted various Internet sites relating, in particular, to firearms and perpetrators of terrorist acts. For example, on Jan. 27, he accessed #Muslimban's Twitter account...

[11] The following day, he made various readings on Jaylen Fryberg, the author of the Marysville slaughter, Elliot Rodger, mass murderer of May 23, 2014 in Isla Vista, California, Dylann Roof, the murderer of nine African Americans during the shooting of the Charleston church, the San Bernardino attack and the Facebook page of the FÉMUL movement (Feminists in Motion at Laval University).

[12] On the morning of January 29, 2017, Bissonnette consulted other sites dealing with jihadist attacks...

There is no clearer indication to us that online hate poses as existential threat to Canadians, and to Canadian security. An analysis of his computer records showed that Bissonnette, from December 27, 2016 to January 29, 2017, consulted various sources about Islam on the internet. While we do not propose that Bissonnette was solely motivated by online hate speech or online racist manifestos, it is clear that Bissonnette consulted these online sources before committing his attack. That is simply part of the evidence.

In Canada, there is little doubt from an empirical perspective that online hate, primarily through social media, but also through blogs, podcasts, other websites, and the dark web continues to fuel animosity and Islamophobia towards Canadian Muslim populations. Online hate stokes animosity, fear, and promotes misinformation and anti-Semitism against our friends and allies in the Jewish community as well. The scourge of white supremacy, as well as the "incel" community, has been given a revival and a rebirth by way of the growth of social media, where misinformation and hate pose an existential threat to Canadian security.

In 2016, media research company Cision documented a 600% rise in the amount of intolerant and hate speech in social media postings between November 2015 and November 2016. Their study focused on the usage of hashtags like #banmuslims and #siegeheil.¹ According to a 2019 survey by Leger Marketing, 60% of Canadians report having seen hate speech on social media, and 62% of Quebecers stated that they had seen hateful or racist speech on the internet/social media in relation to Muslims.²

There is far more empirical data demonstrating this point than can be adequately condensed into this brief. Perry and Scrivern's recent research on how Canadian hate groups (like Blood and Honour or the Canadian Nationalist Front) utilize online platforms, including social media platforms, demonstrates that white supremacist and online hate groups use online platforms to create an "enabling environment".³ Groups like the Soldiers of Odin (founded by a neo-Nazi), Pegida Canada, and other organizations routinely use Twitter and Facebook as organizing tools, as well as to continue to spread misinformation and hate about immigrants, feminists, refugees, and the Canadian Muslim community.

Examples abound relating to the continued and real life impact of online hate against local Muslim communities. The Fort McMurray mosque, for instance, has faced numerous threats online for years, including most recently after the New Zealand shootings. Some Facebook users called for the Markaz ul Islam mosque to be burned down and blown up, while another called for the mosque to "have a pig roast". To our knowledge, while the RCMP did investigate these clear instances of online hate speech, potentially breaching the *Criminal Code*, no charges have been laid.

¹ Maclean's, "Online hate speech in Canada is up 600 percent. What can be done?", November 2, 2017 (online: Maclean's") < <https://www.macleans.ca/politics/online-hate-speech-in-canada-is-up-600-percent-what-can-be-done/>>.

² Marian Scott, "Most Canadians have seen hate speech on social media: survey", January 27, 2019 (online: Montreal Gazette) < <https://montrealgazette.com/news/local-news/hate-speech-targets-muslims>>.

³ Barbara Perry & Ryan Scrivens, "A Climate for Hate? An Exploration of the Right-Wing Extremist Landscape in Canada" *Springer- Critical Criminology* 2018, online: <https://link.springer.com/article/10.1007%2Fs10612-018-9394-y>.

It is clear, given our current environment, that action must be taken in order to ensure that there is a comprehensive, whole-of-society approach to reducing the harms of online hate.

We are recommending that government take action in three key ways to combat online hate:

- Modernizing the *Canadian Human Rights Act*, RSC 1985, c H-6 [CHRA] by opening it for a fulsome legislative review;
- Having government consider and study best practices from other jurisdictions on regulating social media companies to prevent online hate and misinformation through a parliamentary study; and
- Setting aside funding to provide grants to academics, organizations, entrepreneurs, and NGOs to deliver programming around digital literacy for Canadians.

III. Opening the CHRA for legislative review

Many of our colleagues and friends have already made submissions before you on the question of the since-repealed section 13 of the CHRA. The old text of section 13 read:

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

Interpretation

(2) For greater certainty, subsection (1) applies in respect of a matter that is communicated by means of a computer or a group of interconnected or related computers, including the Internet, or any similar means of communication, but does not apply in respect of a matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.

Interpretation

(3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of that matter.

We take no position on the controversy that led to section 13 eventually being repealed. However, it is clear that many academics, activists, and policy makers believe that section 13 should be revisited by way of legislative amendment to the CHRA.

This is not our position. The case law around section 13 demonstrates that section 13's utilization was not in line with what we might deem to be best practice. Indeed, despite the controversy around section 13, section 13 complaints constituted a mere 2% of the total number of complaints brought to the Canadian Human Rights Commission. In other words, many affected groups in Canada did not appear to significantly rely on section 13 as they dealt with cases of online hate.

Rather, we recommend that government initiate a comprehensive legislative review of the CHRA. If we examine, for instance, the 181 page report in 2000 from the Canadian Human Rights Act Review Panel, the Review Panel put forward a robust and well considered analysis of the Act, which at the time, had not been reviewed since comprehensively reviewed since 1977.

We believe that the CHRA is due for such a comprehensive review process, especially given the rise of modern forms of hate, violence, and discrimination that have arisen in the last 19 years since the 2000 review. Such a comprehensive review process would not only enable a panel to review the overall impact of a revised section 13, but would be able to review the impact of such a provision in light of the entire Act.

Dominique Clément's 2017 piece in the *Osgoode Hall Law Journal* on the need to "renew" Canadian human rights legislation makes much the same point.⁴ Engaging in a fulsome review process that looks not only at legal options, but

⁴Dominique Clément, "Renewing Human Rights Law in Canada" (2017) 54 *OHLJ* 4, 1311.

also at furthering the Canadian Human Rights Commission's mandate around education on human rights, is critical. A fulsome review could also engage in consultation with historically disadvantaged communities like the First Nations people, Indigenous communities, and Metis around the CHRA and what change might look like.

Such a review would allow a review panel to engage in consultations, and make recommendations, around such needed questions as:

1. How do we define 'hate' in the context of the CHRA?
2. How can we ensure that the freedom to engage in legitimate criticism of ideology, state action, and religious praxis is protected for Canadians?
3. Would a revised version of section 13 fit within the broader legislative scheme of the CHRA, given the above considerations?
4. If a revised version of section 13 was considered, to what extent could resources be allocated so that a revised section could be utilized effectively by self-represented litigants (as online hate often targets individuals who may not have the resources or knowledge to mount a fulsome challenge)?

Therefore, we recommend that the government consider a fulsome legislative review of the CHRA to consider how to address the rise of online hate, anti-Semitism, and Islamophobia in balance with the rights of Canadians to engage in legitimate critique necessary for the full functioning of a democratic society. A review is timely, given that the last fulsome review was done in 2000, well before social media companies like Facebook had even opened their doors.

IV. A Parliamentary Study on Social Media Company Regulation

It is estimated that approximately 84% of Canadians use Facebook, and a majority of Canadians get their news through social media.⁵ There is an abundance of empirical data, not duplicated here, to suggest that "fake news" is circulated through a number of social media apps, including Facebook, Twitter, WhatsApp, and other social networks.

⁵ CBC, "How does your social media use stack up against other Canadians?", (March 9, 2018), online: <https://www.cbc.ca/radio/spark/388-pokemon-go-for-ecologists-fake-videos-and-more-1.4569277/how-does-your-social-media-use-stack-up-against-other-canadians-1.4569280>.

From the perspective of the Council, it is clear that the current state of affairs, where online hate spreads rapidly through social media networks, is not healthy for democracy or safety in Canada.

Other jurisdictions have begun to take action on regulating social media companies when it comes to the issue of online hate. The German *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken*, also known as the *Facebook Act* or NetzDG, requires social networks with more than 2 million registered users in Germany to exercise a local takedown of obviously illegal content within 24 hours of notification, or face a significant financial penalty (up to \$50 million euros). Between January 2018-June 2018, Facebook removed 362 posts directly after complaints under the legislation.⁶

In Australia, there was a recent criminal code amendment, the *Sharing of Abhorrent Violent Material Bill*, following the New Zealand Christchurch shooting. The amendment makes it a criminal offence for social media platforms not to remove abhorrent violent material expeditiously. Contraventions are punishable by 3 years' imprisonment or fines that can reach up to 10% of the platform's annual turnover.

In April 2019, the UK government released a 102-page White Paper entitled, "Online Harms". In summary, the White Paper calls for a comprehensive consultation process, as well as creating an independent regulator that will draw up codes of conduct for social media companies, outlining a statutory "duty of care" towards users, with the threat of penalties for non-compliance including heavy fines.

However, we would not recommend that the government adopt a single model from a particular system. Rather, we recommend that a formal parliamentary study be begun on the question of regulating social media companies specifically. Such a study would generate the appropriate study it deserves through internal Government of Canada experts. Such a study would also engage external experts, human rights scholars, academics, and industry.

⁶ Marrian Zhou, "Facebook: We've removed hundreds of posts under German hate speech law", July 27, 2018 (CNET): <<https://www.cnet.com/news/facebook-weve-removed-hundreds-of-posts-under-german-hate-speech-law/>>

The parliamentary study would study how to create a new regulatory system that would include some form of penalizing social media companies for not taking down material that breaches the *Criminal Code* and human rights legislation. The study would ensure that the new proposed regulatory system is effective, does not limit freedom of expression, and does not overly burden industry.

Therefore, we are recommending that the government consider launching a parliamentary study into the question of regulating social media companies specifically.

V. Prevention and Education

The UN Report of the Special Rapporteur on minority issues in 2015 held that education and building resilience were key elements to combatting online hate targeting minority communities.⁷ Many academics and policy makers continue to argue that education and prevention are critical to stemming the growth of online hate.

Working towards “digital literacy” amongst Canadians could ensure that Canadians, young and old, are less likely to be influenced by hate or misinformation online. Given the spread of climate change denial, anti-vaxxer science, and the dangers of foreign influence during electoral periods on social media, designing programs for digital literacy has long-term positive impacts that go well beyond preventing Islamophobia narrowly.

We recognize that the Government of Canada currently has invested over \$29.5 million in digital literacy efforts in supporting the Government of Canada's Innovation and Skills Plan. However, these efforts are largely geared around bringing all Canadians into the digital age, rather than ensuring that Canadians that are on the internet have the skills and capabilities to determine legitimate sources of knowledge from “fake news” and online hate.

⁷ UN Report on Minority Issues, 2015, online:
https://www.ohchr.org/EN/HRBodies/HRC/.../Session28/.../A_HRC_28_64_ENG.doc.

Our recommendation to the government is to consider creating a special grant program to develop digital literacy programming. Such a grant would be available to academics, entrepreneurs, anti-racism organizations, and NGOs who have expertise in thinking about digital literacy, democracy, and online hate. It would also allow the government to foster further innovation in Canada to provide grants to psychologists doing research to funding programs directly addressing anti-Semitic beliefs amongst a given population.