

**Introduction**

On February 26, the government tabled Bill C-63. This is a long and complex bill. We are studying it carefully.

We approach this bill, as we do all laws and policies, through biblical principles. The commandments to love God and to love our neighbour can be fleshed out in principles such as caring for those who are vulnerable, upholding human dignity, and advocating for religious freedom.

Strong concerns have been expressed about the impact of this bill on expression, including expression of religious beliefs. We believe holding religious beliefs and acting on them (including, but not only, through expression) is of ultimate importance. This is an important part of our consideration as we examine this bill and the impact it could have.

This bill would make numerous significant changes to the law, and there are valid and serious concerns and questions about it that need to be answered and addressed. And precisely because it is broad ranging, we need to look at it carefully, critically and soberly.

**Overview**

In broad strokes, the bill has three main sections. The first section is the *Online Harms Act* which would impose responsibilities on online platforms and social media services.

It would require online platforms, to address seven categories of harmful content related to non-consensual intimate content, content that sexually victimizes children or revictimizes a survivor, and content that foments hatred or incites violence. It would also require platforms – upon becoming aware of content that sexually victimizes a child or revictimizes a survivor, or of intimate content uploaded without consent – to make this content inaccessible in Canada within 24 hours.

It would create a Digital Safety Commission to ensure online platforms are following their responsibilities. The Digital Safety Commission would receive complaints and be able to order the removal of content that sexually victimizes a child or revictimizes a survivor, or intimate content distributed without consent. It would be able to fine online platforms for breaches of the new law.

It would also create a Digital Safety Ombudsperson who would support social media users and advocate for the public interest in relation to online safety. A Digital Safety Office of Canada would be set up to support both the Digital Safety Commission and the Ombudsperson. The second section of Bill C-63 would make changes to the *Criminal Code*. It would add a definition of hatred and a new crime of “committing an offence that is motivated by hatred”

with a possible maximum sentence of life in prison. It would increase the maximum sentences for current hate propaganda offences and add hate propaganda and hate crime offences to the current peace bond provisions. The peace bond provisions allow for pre-emptive, time-limited restrictions on a person a judge deems likely to commit an offence, upon an application approved by the Attorney General.

The third section would amend the *Canadian Human Rights Act*. Bill C-63 would add communicating hate speech as a discriminatory practice, bringing back a revised version of the old “section 13” that was repealed in 2014. This would allow a person or a group to make a complaint to the Canadian Human Rights Commission about online speech that is “likely to foment detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination.” The revised s. 13 provision allows complainants to be anonymous if there is an alleged risk they will be subject to threats, intimidation or discrimination. As with all human rights law, a lower evidentiary bar would apply than for existing *Criminal Code* violations (which require proof beyond a reasonable doubt and that a person “willfully” promoted hatred). Instead, the Tribunal would be empowered to order compensation of up to \$20,000 to be awarded to the complainant, and fines of up to \$50,000 to be paid to the government.

There is a fourth section to the bill which strengthens the current law on mandatory reporting of child pornography by internet service providers. We do not consider these amendments to be of concern and will not be addressing them here.

### **Why is the government acting to address online harms?**

In this legislation, the government is attempting to address two different areas: (1) online harms, including sexual victimization of children and distribution of intimate images without consent, and (2) hate-motivated activity, including hate speech. Although this legislation lumps all these types of content together, there are significant differences to the balancing act required between avoiding harm and unjustified restrictions on freedom of religion and expression, so we will address each separately.

#### Sexual Content

There is no question that children and youth face a range of risks and harms in the online world. Children and youth face devastating, lifelong consequences when videos and images of their abuse and exploitation, or images they have shared with peers are posted, viewed and distributed online. Sextortion and resulting teen suicides are well documented.

The images of children, teens and young women who have been sexually victimized, trafficked or whose intimate images were recorded or uploaded without their consent, have been found uploaded on pornography platforms. These images can be viewed, downloaded and shared millions of times.

A parliamentary committee report on Pornhub notes,

These survivors shared the trauma of having abusive images of them uploaded online without their knowledge or consent—many of which depicted activities undertaken or recorded without their consent, or both. Some explained how the upload of their images revictimized them; it allowed pornography sites to profit from their violation and allowed viewers to take pleasure in, comment on, download and re-upload that experience.<sup>1</sup>

The Canadian Centre for Child Protection calls the growing number of incidents of criminals targeting youth through sextortion an “epidemic.”<sup>2</sup> Cybertip.ca receives 50 reports of sextortion per week. Boys as young as 12 years old have committed suicide in Canada in recent months after falling victim to sextortion.

The EFC has been asking the government to hold these platforms to account for the sexually exploitative content they host, to take measures to keep children from accessing all sexually explicit content, and to prevent child sexual abuse materials from being uploaded in the first place.

The harm associated with child sexual abuse images and intimate images distributed without consent being uploaded to pornography platforms or other social media services is inherent and demonstrable.

There is no question that simply expecting these platforms to self-regulate, clean up their spaces and make them safer does not work. They must be required to take such actions and be held accountable to do so.

But there is no question that the task of a government seeking to hold these platforms to account is complex.

### Hate Content

It is also clear that social media has provided a forum for sharing violent rhetoric and ideology, and a fertile ground for its proliferation. And sometimes, those violent ideologies move from those online spaces into the real world, with tragic consequences.

We have seen a significant increase in hate crimes in Canada. Anti-Semitic incidents are consistently among the most frequent hate crimes and have increased dramatically over the last few months. And minority religious groups such as Jewish and Muslim communities are asking for hateful, violent rhetoric, online and in the real world, to be addressed.

We share their concerns. As Christians, we are also concerned about increasing anti-religious sentiment in Canada. There has been a significant increase in church burnings, particularly of

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<sup>1</sup> <https://www.ourcommons.ca/Content/Committee/432/ETHI/Reports/RP11148202/ethirp03/ethirp03-e.pdf>

<sup>2</sup> <https://globalnews.ca/news/9622864/canada-epidemic-sextortion-cases-children-teens/>

Catholic churches, in the last three years.<sup>3</sup>

We know, as people of faith, that a threat against one on the basis of belief is a threat against the whole community. Christians are subject to extensive religious persecution internationally, and we recognize the danger when groups are targeted on the basis of religious beliefs.

Freedom of expression is fundamentally important in a free and democratic society. It must be respected and protected. At the same time, freedom of expression is not absolute, but subject to reasonable limits. The *Charter* does not protect expression such as hate speech that involves threats of violence or that takes the form of violence,<sup>4</sup> or which promotes detestation or vilification.<sup>5</sup>

On its face, Bill C-63 seeks to stem the tide of hateful and violent rhetoric online, and that is a worthy objective. However, it is critical that any such effort respect and protect the right to freedom of thought, belief, opinion and expression, guaranteed under the *Charter*.

There are some critical questions with how the bill seeks to address those particular harms. Some of these questions concern how hate is understood and interpreted, whether the proposed law allows for government overreach or fosters censorship of minority views, whether the new legislation will meet its stated goal of combating harmful content or whether it will impose a chill, at best, and punishment, at worst, for unpopular expression.

### **Section One: *Online Harms Act***

The stated legislative purpose of the *Online Harms Act* is to “promote the online safety of persons in Canada, reduce harms caused ... as a result of harmful content online and ensure that the operators of social media services ... are transparent and accountable with respect to their duties under that Act.”

The bill targets seven categories of harmful content.

#### Sexual and self-harm content

1. Intimate content communicated without consent (including so-called “revenge porn”)
2. Content that sexually victimizes a child (child sexual abuse images) or revictimizes a survivor of sexual abuse or exploitation
3. Content that induces a child to harm themselves (self-harm, eating disorders, suicide)
4. Content used to bully a child

#### Hate speech content

5. Content that foments hatred

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<sup>3</sup> <https://tnc.news/2024/02/12/a-map-of-every-church-burnt-or-vandalized-since-the-residential-school-announcements4/>

<https://www.cbc.ca/news/canada/edmonton/church-fires-canada-1.7055838>

<sup>4</sup> <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/rfcp-cdlp.html>

<sup>5</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12876/index.do>

6. Content that incites violence
7. Content that incites violent extremism or terrorism

The bill sets up a Digital Safety Commission to administer and enforce the Act, imposing certain responsibilities on social media service providers and pornography platforms and holding them accountable to those responsibilities.

It also creates the position of Digital Safety Ombudsperson to provide support ‘for users to social media services ... and advocate for the public interest in relation to online safety.’

### Sexual and self-harm content

There is much good here. It is evident that the government has studied efforts like the Online Safety Bill in the UK and the Kids Online Safety Act in the US. In some ways, these measures would bring Canada in line with efforts in other countries to address harms children face online.

Here are three positive aspects of note.

- The bill takes a holistic approach to the nature of harms children and youth face online. We are pleased that it takes a comprehensive look at the ways children and youth may be sexually victimized online.
- It tackles the proliferation of revenge porn and intimate images shared and distributed online without consent.
- It would require social media services and pornography platforms to take a ‘safety by design’ approach, develop a digital safety plan to prevent harms online, and to have a clear, simple and readily accessible recourse for those whose images have been uploaded or for those who come across it to file a complaint.

We are disappointed, however, that the bill is lacking on the prevention side. For example, it stops short of requiring pornography platforms to put meaningful age verification in place (as would be required by private member’s bill Bill S-210, which is currently before the House of Commons<sup>6</sup>) and to verify the age and consent of every person depicted in an image for video *before* those images are uploaded (as would be required by private member’s bill Bill C-270<sup>7</sup>; see also the Privacy Commissioner’s Investigation into Aylo’s compliance with PIPEDA<sup>8</sup>).

In an otherwise sweeping bill, it is disappointing there is no requirement that platforms prevent upload of material that is exploitive, sexually victimizing of children, or non-consensual; nor does it require them to proactively seek out such content and remove it. The removal of such content is complaints-based, so while it imposes responsibilities on platforms, the bill still relies on victims or other users to initiate removal of such content.

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<sup>6</sup> <https://www.parl.ca/legisinfo/en/bill/44-1/s-210>

<sup>7</sup> <https://www.parl.ca/legisinfo/en/bill/44-1/c-270>

<sup>8</sup> <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2024/pipeda-2024-001/>

## Hate speech content

Despite the good efforts at addressing content that sexually victimizes a child or intimate images shared without consent, we are concerned about the inclusion of ‘content that foments hatred’.

Content that foments hatred, one of the targeted areas of harm, is defined as “content that expresses detestation or vilification of an individual or group on individuals on the basis of a prohibited ground of discrimination within the *Canadian Human Rights Act*, and that, given the context in which it is communicated, is likely to foment detestation or vilification of an individual or group of individuals on the basis of such a prohibited ground.”

The bill also states that “For greater certainty...content does not express detestation or vilification solely because it expresses disdain or dislike or it discredits, humiliates, hurts or offends.”

How hatred is defined, understood, and applied in practice, is key. This “For greater certainty” clause is intended to provide clarity and reassurance. However, there are still concerns with how this would be understood and applied, given the context of public discourse in which, for example, ‘misgendering’ a person, saying a woman is an adult human female, or biblical teachings on sexuality, are commonly described as hateful. Absolute clarity is needed on where that threshold will lie. It cannot be left to quasi-judicial bodies to decide on a case-by-case basis.

It is true that social media services and platforms are privately-owned and able to remove content at their discretion. (There is also a clear legal obligation to report child sexual abuse images under existing laws which part 4 of this Bill would strengthen). We are concerned, however, that social media services would have an incentive to be over-inclusive in what they remove to ensure that they do not run afoul of the ‘content that foments hatred’ prohibition. The result could be a de facto censorship of controversial opinions, even if, upon closer analysis, a particular post would not in fact meet the legal threshold of hate.

The EFC has asked consistently that content that sexually victimizes a child or revictimizes a survivor and intimate content that is communicated without consent be dealt with separately from the other listed harms. These specific harms need to be dealt with *now*, and not bogged down by the controversy and complexity of the rest of the bill. We will continue to urge the government to carve out these harms from the bill and address these separately.

The EFC recommends sexual and self-harm content prohibitions be split from hate speech prohibitions.

## **Section Two: Changes to the *Criminal Code***

This section adds a definition of hatred to the *Criminal Code* and adds a new Hate Crime provision with a possible life imprisonment sentence. The definition is the same as that laid out in the *Online Harms Act*, detailed above.

Currently, an offence motivated by hatred is considered an aggravating factor in sentencing. Crimes motivated by hate may receive more severe penalties. By contrast, this bill creates a new standalone provision of an offence motivated by hatred. This new provision is very broad, in that it applies to offences under the *Criminal Code* or *any other federal government statute*. It also carries the potential of a maximum penalty of life imprisonment. Not many crimes carry the possibility of a life sentence. This would set the maximum penalty for an offence motivated by hatred substantially higher than, for example, human trafficking offences, or purchasing a minor for sexual services.

Prosecution of the new hate crime offence would involve the same evidentiary requirements as other charges under the *Criminal Code*.

Bill C-63 would add hate propaganda and hate crime to the peace bond provisions in the *Criminal Code*. The peace bond provisions allow for pre-emptive, temporary restrictions on a person a judge deems likely to commit an offence, such as a restraining order. The Attorney General of Canada would have to sign off on a government lawyer applying to court for peace bonds related to hate propaganda or hate crimes. If a judge agreed that a peace bond was warranted, it could restrain an individual who is deemed *likely* to commit a crime. It is pre-emptive and time-limited.

Some communities are asking for such provisions where violent intent is expressed, and violent action is anticipated. There are tragic, real-life examples of people who have communicated increasingly radical and violent ideologies online before ultimately carrying out a horrific attack, such as the attack against the Tree of Life synagogue in the United States.

We understand the intent of this provision, but are concerned about the serious risk of overreach as the provision would restrict a person's freedom in anticipation of what they *might* say and do, not for what they have said and done, and even if they have no criminal record. The restrictions could be severe, amounting to house arrest.

We have significant concerns with the *Criminal Code* amendments proposed in this bill.

### **Section Three: *Canadian Human Rights Act***

The internet and telecommunications are the jurisdiction of the federal government, so this section of the bill would allow complaints about online hate in these areas to be made to the Canadian Human Rights Commission.

The proposed revised section 13 provision would add hate speech as a discriminatory practice. It would also allow complainants to remain anonymous for hate speech complaints if there is an alleged risk they will be subject to threats, intimidation or discrimination. An individual or group would make a complaint to the Commission and the Commission would decide if the complaint is legitimate or "frivolous and vexatious." If it decides there is merit, it would proceed to a tribunal.

Penalties are severe if the online communication or post is found to meet the definition of discriminatory practice in the bill, with possible monetary orders of up to \$20,000 to the complainant, and fines of up to \$50,000 to the government.

Unlike the proposed standalone hate crime provision under the *Criminal Code* which would be determined in a court of law by a Judge institutionally separate from government and with life tenure, s. 13 of the *CHRA* would be implemented by the Human Rights Commission and Tribunal. These are administrative and quasi-judicial bodies, respectively, whose members are appointed by government without life tenure, and are thus at greater risk of political selectivity or implied pressure. It is these government appointees who would be tasked with determining what meets the threshold of “detestation or vilification,” not a court of law. Also, unlike the current *Criminal Code* offences, there would not be defences such as if the statements were true or an in good faith expression of religious belief.<sup>9</sup> Intent or motivation is not a consideration, only the effect of the communication.

This section is particularly concerning in its potential for overreach. This provision could have not just a punitive effect, with the possibility of severe financial penalty, but also a chilling effect on online expression, prompting self-censoring. The tighter definitions in the legislation are insufficient in our view to prevent the types of enforcement abuses and chilling effect which led to the repeal of the former s. 13 in 2014.

We have grave concerns with Part 3 of the bill.

### **Conclusion**

We believe that content related to the sexual victimization of children, revictimization of a survivor, and the non-consensual sharing of intimate images, must be dealt with expeditiously. We will be looking closely at the provisions related to the Digital Safety Commission

We have serious concerns and reservations about the inclusion of certain types of alleged hate speech within Part One of the Bill, some of the proposed amendments to the *Criminal Code* in Part Two and in particular, the re-enactment of s. 13 of the *Canadian Human Rights Act* in Part Three. Because of the risks to freedom of expression, those sections require particularly careful consideration of freedom of expression, significant amendments, and should proceed much more slowly, if at all.

We will continue to study the bill.

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<sup>9</sup> <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-45.html#h-121176>