

Title: The Danger of Hate Speech and Canada's Need For Stronger Regulations

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I argue that stronger regulations need to be in place to criminalize hate speech in order to protect the wellbeing of Canadians. One of the most important political issues facing Canadians today is the very minimal laws and regulations protecting Canadians from hate speech. In the past 10 years, the Government of Canada has actually decreased citizens' protection of hate speech by removing Section 13 from *Canada's Human Rights Act* (Tomlins, 2015, p. 45). The current regulations in place only protect acts of hate crime where targeted groups are in literal danger, specifically Sections 318 and 319 regulating genocide and violence (p. 61).

With very little protection for marginalized groups against hate speech, individuals and groups are more frequently targeted, ultimately making it more socially acceptable and institutionalizing inequality (Carlson, 2020). In order to protect the safety of Canadians, the Government of Canada needs to move forward with passing Bill C-36, which proposes amendments to *Canada's Human Rights Act* and *Criminal Code*, reimplementing Section 13, adding stronger regulations against hatred and hate speech that are up to date with technology, and introducing a new peace bond that, if breached, could result in jail time (Government of Canada, 2021b). The passing of Bill C-36 will implement much-needed stronger protection for marginalized Canadians' psychological and physical health, and equality.

Literature Review

This literature review provides insight into the academic literature surrounding hate speech in Canada. The first article by Tomlins (2015) provides insight into why Canada's hate

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crime regulations changed and then Carlson (2020) describes the effects hate speech has on its targets.

Tomlins (2015) describes the "Mohammad Cartoon Controversy" case study that began back in 2006, and in 2012 was one of the main contributing factors to the Canadian government repealing Section 13 of *Canada's Human Rights Act*. The author describes how Section 13 of *Canada's Human Rights Act* protected marginalized groups from hate speech over the telephone and online. Tomlin goes on to describe the Human Rights Commission's decision-making process behind the redaction of Section 13 of *Canada's Human Rights Act*, which was ultimately decided because Sections 318 and 319 of the Criminal Code already protect those groups from violent acts of hate.

Carlson (2020) describes the negative effects that hate speech has on identifiable groups and marginalized individuals who are targeted. The author presented that hate speech is frequently used as acts of racism and sexism, which only adds to the already well-established power imbalance between the group targeted and the group deploying it. Carlson also endorses the idea of stronger regulations to combat hate speech.

History of Hate Speech Regulations in Canada

Section 13 of *Canada's Human Rights Act* goes back to 1977, where regulations were set focusing on preventing discrimination telephonically (Tomlins, 2015, pp. 45-46). In 2001, amendments were made to extend regulations to online communication as well (pp. 45-46). From December 31, 2002, to June 25, 2014, Section 13 of *Canada's Human Rights Act* see Table 1.

Table 1: Section 13 of <i>Canada's Human Rights Act</i> (Government of Canada, 2021-a)

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.
13(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.
13(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.

That being said, in 2006 the case study of the “Mohammad Cartoon Controversy” began and changed everything. In September of 2006, Danish newspaper Jyllands-Posten published editorial cartoons of the Islamic prophet Mohammad; however, these cartoon depictions were Islamophobic (Tomlins, 2015). Later that year, Western Standard, an Alberta-based media company, published two-thirds of the editorial cartoons (p. 55). From there, legal battles began, as did questioning of *Canada’s Human Rights Act* Section 13.

Canada’s Human Rights Commission then hired Professor Richard Moon of Windsor University to review Section 13. Moon suggested Section 13 be repealed completely as he believed the only hate speech necessary for regulating was that which put specific groups in actual danger, and with Sections 318 and 319 of the *Criminal Code* regulating genocide and violence (see Table 2 below), he argued Section 13 was unnecessary (Tomlins, 2015, p. 61). In the end, Moon’s review and the political discussions surrounding the publishing of the

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Mohammad cartoons left the Parliament of Canada to vote to repeal Section 13 of *Canada’s Human Rights Act* (p. 45).

318(1)	Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.
318(2)	In this section, genocide means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely, <ul style="list-style-type: none"> (a) killing members of the group; or (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.
319(1)	Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of <ul style="list-style-type: none"> (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction.
319(2)	Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of <ul style="list-style-type: none"> (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction.

Since June 25, 2014, Section 13 of *Canada’s Human Rights Act* has been repealed, but on June 23, 2021, Canada’s Minister of justice introduced and did the first reading 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)” (Lametti, 2021).

The Harm of Hate Speech

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Although Section 13 was redacted with the idea that freedom of speech was more important and that Sections 318 and 319 would prevent any physical danger for identifiable groups, discrimination and hatred communicated to identifiable groups is also quite damaging. Carlson (2020) studies the term 'hate speech' as a structural phenomenon and describes the effect it has on maintaining societal oppression. Hate speech is "a form of verbal assault that causes psychological and emotional harm to those targeted" (p. 218). That being said, Braun (2004) makes the point that when it comes to hate speech, it's not so much about protecting citizens from emotional distress, but instead about protecting from "injury to public peace and order resulting from the hatemongers' failure to convince targeted victims that they are unworthy and inferior" (p. 63). To correct the idea that hate speech doesn't cause real harm, it's important to note "not only does hate speech cause psychological and physiological damage to people, but it also works to uphold existing social hierarchies and, in doing so, prevents equality" (Carlson, 2020, p. 217).

Hate speech is constantly used for racism, homophobia, sexism or religious discrimination, which is a large contributor to privileged groups maintaining power (Carlson, 2020, p. 218). As Downs and Cowan (2012) note, "there is an existing imbalance of power, and freedom of speech reinforces inequality with oppressive speech" (p. 1354). The more these groups are targeted, the more it becomes socially acceptable, ultimately institutionalizing inequality (Carlson, 2020, p. 219). Most often, these targeted groups consist of the lesbian, gay, bisexual, transgender and queer (LGBTQ+) community, Black, Indigenous and People of Colour (BIPOC) and women, and the deployers are cisgender, white males (Carlson, 2020, p. 219). Even as movements like Black Lives Matter rise to motivate and grow support for equality,

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some deployers have united and used hate speech to secure social dominance (p. 220). Carlson makes the connection that “for centuries, hate speech has been deployed as a mechanism for colonization, which, at its core, refers to the practice of domination involving the subjugation of one group of people to another” (p. 220). That being said, “the right to exercise free expression does not include the right to do unjustifiable harm to others” (Cohen-Almagor, 2001, p. 82).

The limited regulations surrounding hate speech can dangerously lead to and be overlapping hate crimes. Barendt (2019) makes the point:

Hate speech undermines the sense of assurance, to which we are all entitled, that we will not be discriminated against or subject to violence just because we are a member of a particular racial, religious, or other vulnerable groups. This assurance is a public good, providing a sense of inclusiveness to which a good society is committed. (p. 541)

The Government of Canada (2021d) released some alarming statistics, “in 2019, police reported 1,946 criminal incidents in Canada that were motivated by hate, an increase of 7% or 129 more incidents than were reported the previous year” (para. 17) and “between 2018 and 2019, the number of police-reported crimes motivated by hatred of a race or ethnicity increased 10%” (para. 18).

Furthermore, Nesbitt et al. (2021) study the difference between hate crimes and terrorism by far-right extremists. The author goes on to note that “for sentencing purposes, judges shall (mandatory language) consider whether there is ‘evidence that the offence was motivated by bias, prejudice or hate’” (as cited in Nesbitt et al., 2019, p. 43). In their study, the authors found 20 publicly reported offences of Section 319 of the *Criminal Code* between December 2001 and December 2019, all of which were also committed by men (p. 44). To conclude, the authors found “that far-right extremists are being charged primarily with hate crimes because all that they are doing is hate speech; and, second, that none of the far-right murderers introduced above

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were charged with terrorism because their crimes did not amount to terrorism in Canadian law” (p. 50).

Hate Speech on Social Media

Since Section 13 of *Canada's Human Rights Act* has been repealed, social media and the use of social media platforms have grown immensely and become a new source to transmit hate speech. However, it is up to social media companies to come up with their own regulations for hate speech; “For example, Facebook says it will remove any ‘direct attacks on people based on protected characteristics – race, ethnicity, national origin, religious affiliation, sexual orientation, sex, gender, gender identity, and serious disability or disease’ posted to their site” (Carlson, 2020, p. 218).

Estellés and Castellví (2020) make the point, “the increasing influence of social media in campaigns has also contributed to trivializing the political debate and spreading hate speech” (p. 2). Another author also noted that following Donald Trump’s win of the 2016 U.S. Presidential Election, hate speech became much more common and acceptable (Carlson, 2020, p. 220). Both cases are consistent with the Government of Canada statistics: “In 2017, the number of hate crimes increased markedly by 47% and has remained at comparable levels in 2018 and 2019” (Government of Canada, 2021d, para. 19).

Status of Bill C-36

Canada’s Minister of Justice and Attorney General introduced Bill C-36 on June 23, 2021 (Government of Canada, 2021d). This bill proposes amendments to the *Criminal Code*, *Canadian Human Rights Act* and the *Youth Criminal Justice Act*, to better regulate hate crimes

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and hold deployers accountable (Government of Canada, 2021b, para. 1). Bill C-36 (2021)

specifies:

This enactment amends the Criminal Code to create a recognizance to keep the peace relating to hate propaganda and hate crime and to define "hatred" for the purposes of two hate propaganda offences. It also makes related amendments to the Youth Criminal Justice Act. In addition, it amends the Canadian Human Rights Act to provide that it is a discriminatory practice to communicate or cause to be communicated hate speech by means of the Internet or 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. It authorizes the Canadian Human Rights Commission to accept complaints alleging this discriminatory practice and authorizes the Canadian Human Rights Tribunal to adjudicate complaints and order remedies. (para. 1-2)

The specific proposed changes to the *Canadian Human Rights Act* would also include the reinstatement of Section 13 (Government of Canada, 2021b). The new amendments would allow targeted groups and individuals to file hate speech complaints, to be screened by the Canadian Human Rights Commission and possibly result in monetary compensations and penalties (Government of Canada, 2021b).

With the Government of Canada's proposed Bill C-36, the goal is to also improve regulations for online hate speech that are up to date with technology. As cited in Government of Canada (2021d), Steven Guilbeault, Canada's Minister of Canadian Heritage, stated:

Online platforms are central to participation in public life and have enormous power over online speech and Canadians' everyday lives. While they allow us as Canadians to stay in touch with loved ones, learn and debate, they can also be used to discriminate, harm and silence. In consultation with Canadians, the Government of Canada is committed to taking action to put in place a robust, fair and consistent legislative and regulatory framework on the most egregious and reprehensible types of harmful content. (para.13)

Bill Blair, Canada's Minister of Public Safety and Emergency Preparedness, adds, "the Government of Canada is taking action to address harmful content online and make the internet

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safer. We look forward to hearing from Canadians and to continue working with allies and social media platforms to prevent the internet from being used as a tool to incite and promote terrorism, violence, and hatred” (Government of Canada, 2021d, para. 14). To achieve this goal, “the bill addresses recommendations made by the Standing Committee on Justice and Human Rights in its 2019 report, *Taking Action to End Online Hate*. It also addresses comments heard during community consultations to inform Canada’s Anti-Racism Strategy” (Government of Canada, 2021d, para.15).

Bill C-36 completed its first reading in the House of Commons on June 23, 2021. Before the bill is passed, it must still go through its second reading in the House of Commons, consideration in committee, report stage, and its third reading in the House of Commons (Parliament of Canada, 2021). Then it must also go through its first, second and third reading in the Senate (Parliament of Canada, 2021).

Conclusion

In order to protect the safety and equality of their marginalized citizens, the Government of Canada should carry on with the passing of Bill C-36. This bill proposes legislative changes in the *Canadian Human Rights Act* and the *Criminal Code* in combating hate speech and hate crimes. With the way regulations still stand now, hate speech contributes to the oppression of targeted groups and marginalized individuals, while privileged groups remain in power. The only way to achieve equality is for civil regulations against hate speech (Carlson, 2020). I argue that stronger regulations need to be in place to criminalize hate speech in order to protect the wellbeing of Canadians, by passing Bill C-36, the Government of Canada can make this happen.

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