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Minister of Justice Arif Virani

Online Harms Act the latest manifestation of Canada's new maternal fascism

John Carpay, B.A., LL.B. | March 5, 2024

Our federal government, like a mother seeking to protect her very young and vulnerable children, has announced its plan to keep us safe from “harm” on the internet. As Justice Minister Arif Virani explained at a February 26 news conference, toys like LEGO have rigorous safety standards to protect children, therefore the government must protect Canadians from “the most dangerous toy” in their homes: the internet.

Minister Virani seems to think that Canadians are not smart enough to make up our own minds about what is or is not “harmful” online, so the government must do this on our behalf. And we are apparently not strong enough to refute false information, or to engage in robust debate. Hence the government proposes to limit the free expression of all Canadians, for our safety, through the *Online Harms Act*, Bill C-63.

Almost all of the *Online Harms Act* duplicates existing *Criminal Code* prohibitions against online posting of revenge porn and other non-consensual sharing of intimate images, content that bullies children, content that sexually victimizes children, content that encourages children to harm themselves, and

content that incites violence, terrorism, or hatred.

For example, section 162.1(1) of Canada's *Criminal Code* already prohibits online and offline publication of an intimate image without consent. Section 163 already prohibits publication of obscene materials and child pornography. Section 319(1) prohibits the public incitement of hatred towards a group that is identifiable by race, ethnicity, religion, sex, sexual orientation, gender identity, gender expression, and other personal characteristics (but not vaccination status in case you were wondering). Last but not least, *Criminal Code* section 22 already prohibits counselling, procuring, soliciting, or inciting another person “to be a party to an offence,” with guilt found if the person who received the counsel goes on to commit the offence. Section 464 takes this a step further, criminalizing counselling an offence even if that offence is not committed.

If passed into law, the *Online Harms Act* would empower the Canadian Human Rights Commission to prosecute and punish non-criminal speech by Canadians if, in the subjective opinion of unelected and unaccountable bureaucrats, they deem someone's statement to be

“hateful.” A new army of deeply offended busybodies will file thousands of complaints, including anonymous complaints, against their ideological opponents and other fellow citizens. Those found guilty will pay up to \$50,000 to the government, plus up to \$20,000 to the person designated as the victim of the speech crime. The victim need not prove having suffered any damage, other than feeling hurt or offended by the alleged “hate.”

The *Online Harms Act* will also create a new Digital Safety Commission to enforce compliance with new censorship regulations that will be created by the federal cabinet, without any input from Parliament. Every “social media service” in Canada will be monitored and censored by the Digital Safety Commission, the Canadian Human Rights Commission, or both. A new army of bureaucrats will enforce new restrictions on Canadians' speech.

The *Online Harms Act* would also authorize violating the liberty of a citizen who has not committed any crime. The proposed addition to the *Criminal Code*, section 810.012, would empower a complainant to assert to a provincial court that they “fear” that someone will promote genocide, hatred, or anti-Semitism. If

the judge believes that there are “reasonable grounds” to justify the fear, the court can immediately require the accused citizen to wear an ankle bracelet; obey a curfew and stay at home; provide bodily substances (e.g. blood, urine) to confirm abstinence from drugs or alcohol; refrain from communicating with certain designated persons; not go to certain places; and surrender her or his legally owned and legally acquired firearms. A person’s failure to agree to these restrictions could result in a prison term of up to two years.

Yes, Minister Virani believes that our “safety” from a possible speech offence is so sacrosanct that the government should be able to remove civil liberties from Canadians based on what they might say in future!

In his masterful work, “The Anatomy of Fascism,” Robert O. Paxton surveys fascist movements and parties in Europe in the 1920s and 1930s, looking at their differences and similarities and then arriving at a workable definition. Fascist movements were hostile to democracy and to the individual’s rights and freedoms. Being firmly convinced of the absolute correctness of their own ideas, fascists saw free speech as one of the obstacles that stood in the way of achieving unity. For them, individual freedom interfered with important national objectives, established by government. The impulse to silence one’s opponents rather than engaging them in debate is as old as mankind itself. While this censorship impulse is not limited to fascism alone, it is most certainly a fascist characteristic.

We’ve moved away from the brutal and violent fascism that was seen, to varying degrees, in most European countries during the 1920s and 1930s. Our streets today are not patrolled by angry thugs wearing jackboots and chanting nationalist slogans. Today, you are more likely to hear a country’s majority ethnic group being denounced as oppressive or as intrinsically evil than to hear it praised as a superior race.

In contrast to the 1920s, today’s fascism is decidedly maternal, seeking to obliterate constitutional rights and freedoms to promote the important national objective of “safety.” Like an overbearing mother who seeks to control and manage all aspects of her children’s lives for the sake of safety, Minister Virani feels a deep need to protect his helpless Canadian children by controlling what we write, see, and hear online.

Fascists use coercion, not persuasion. Fascists in the 1920s restricted speech as part of a grand plan to increase the nation’s power and territory. Today’s maternal fascists restrict speech as part of a grand plan to pursue safety, equity, diversity, and inclusion. *Charter*-protected free expression must give way to the national mission of combatting homophobia, transphobia, Islamophobia, misogyny, and other sins.

Fascism’s imagined enemy has changed, but its censorship impulse remains the same. For today’s maternal fascists, the enemy is not some maligned ethnic minority, neighbouring country, or political opposition. Instead, today’s fascists want to trample on charter rights and

freedoms because these stand in the way of achieving “safety.”

Unlike its European ancestors from a century ago, today’s maternal fascism does not seek to harm your physical body. Today, you generally need not fear getting beaten up on the street for belonging to the wrong ethnic group or for supporting the wrong political party. Instead, under maternal fascism, you can be placed under house arrest because someone fears that you might say something hateful in the future. Maternal fascists will jail you for life, not based on bad behaviour, but simply for speaking the wrong words. Maternal fascists want to see you self-censor your own speech, or risk spending tens of thousands of dollars to defend yourself against a prosecution brought by the Canadian Human Rights Commission. Under maternal fascism, instead of having your small business ransacked by nationalist hooligans, you will be ordered to pay \$20,000 to some “victim” whose feelings were hurt by your speech, plus \$50,000 to the state.

Certainly, one can make a strong argument that today’s maternal fascism is less harmful than its European predecessors. I say we are better off to reject fascist censorship entirely, in all its forms, including its maternal manifestation as the *Online Harms Act*.

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