

# WESTERN Standard

## The worst assault on free speech in modern Canadian history

John Carpay, B.A., LL.B. | March 1, 2024



*Minister of Justice Arif Virani*

It would take a dozen columns to address properly all of the threats to free expression that are contained in the *Online Harms Act* (Bill C-63), introduced in the House of Commons on Monday February 26. Here follow some of the worst aspects, in the limited space allotted.

It is a laudable goal to force online platforms to remove 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.

However, good intentions do not justify passing additional laws that duplicate what is already prohibited by Canada's *Criminal Code*. Perhaps police need more resources to go after people who are committing crimes?

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 264(1) prohibits criminal harassment, which captures serious bullying. 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.

Section 59 (1) criminalizes sedition: advocating the use of force to achieve governmental change within Canada. 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 counseling an offence even if that offence is not committed.

Those who support the *Online Harms Act* should explain clearly why they believe that existing legislation is inadequate to address "harmful" online expression.

If passed into law, the *Online Harms Act* will create a new Digital Safety Commission to enforce compliance with new regulations created by the federal cabinet, without any input from Parliament. Using their new regulatory powers, Mr. Trudeau and his colleagues will be able to control and censor every "social media service" in Canada, setting out what cannot be said, and what must be said.

A new army of Digital Safety Commission bureaucrats will enforce new restrictions on speech, with the federal cabinet having the power to set out what penalties apply to what offences.

The *Online Harms Act* would add section 810.012 to the *Criminal Code*, empowering a complainant to assert to a provincial court that they "fear" that someone will promote genocide, hatred or antisemitism. If the judge believes that there are "reasonable grounds" to justify the fear, the court can immediately require the accused citizen to do any or all of the following: wear an ankle bracelet; obey a curfew and stay at home; abstain from alcohol, drugs, or both; 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 required firearms.

In other words: a citizen who has not committed any crime can be subjected to court-ordered restrictions on her liberty, just because someone fears that she might commit a "speech" crime in future. A person's failure to agree to these restrictions could result in a prison term up to two years.

For the existing *Criminal Code* offence of advocating for genocide, the *Online Harms Act* would raise the maximum penalty from five years in jail to life imprisonment.

When pro-Palestinian demonstrators chant "From the river to the sea, Palestine will be free," are they advocating for the genocide of Jews? Some say yes, others say no. Estonia, Germany, and the Czech Republic have designated this phrase to be criminal speech. The Dutch Supreme Court said the phrase is OK.

A man in Calgary was charged by police for using this phrase, but the charges were later stayed.

Do we really want government to use its coercive powers to decide whether polemical political slogans are actually calls for genocide, and then punish citizens accordingly? Considering the inherent difficulty and subjectivity in determining whether or not a person actually "advocated for genocide," the punishment of a five-year prison term is already an adequate deterrent for the crime of speaking the wrong words.

The *Online Harms Act* would give the Canadian Human Rights Commission new powers to prosecute and punish offensive but non-criminal speech by Canadians if, in the subjective opinion of unelected and unaccountable bureaucrats, they deem someone's statement to be "hateful."

The *Online Harms Act* will provide endless opportunities for a new army of deeply offended busybodies to file thousands of complaints, including anonymous complaints, against their ideological opponents or other fellow citizens. Those found guilty by the Canadian Human Rights Tribunal can be required to pay as much as \$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 demonstrate having suffered any loss or damage, other than feeling offended by the alleged "hate."

All of the above will have a massive chilling effect on free expression by Canadians. Many citizens will self-censor to avoid being prosecuted by the Canadian Human Rights Commission. Canadians who practice courage by continuing to exercise their *Charter*-protected freedom of expression will see many of their opinions removed from the internet by the operators of social media websites and platforms, as these operators will seek to avoid running afoul of Mr. Trudeau's new regulations, which will be enforced by the Digital Safety Commission.

Let's hope that enough Canadians choose freedom over fear, to get us through this present darkness.

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