



FINAL REPORT 2020-21

Canadian Commission on Democratic Expression

Harms Reduction: A Six-Step
Program to Protect Democratic
Expression Online

JANUARY 2021



The Public Policy Forum works with all levels of government and the public service, the private sector, labour, post-secondary institutions, NGOs and Indigenous groups to improve policy outcomes for Canadians. As a non-partisan, member-based organization, we work from “inclusion to conclusion,” by convening discussions on fundamental policy issues and by identifying new options and paths forward. For more than 30 years, the PPF has broken down barriers among sectors, contributing to meaningful change that builds a better Canada.

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TABLE OF CONTENTS

Foreword	5
Executive Summary	8
Commission’s Preamble	11
Chapter 1: The Problem Before Us	17
Chapter 2: What to Do About Online Hate and Harms	24
The Commission’s Program.....	27
How the Pieces Fit Together.....	29
The Commission’s Plan in Greater Detail	31
Recommendation #1 A New Duty on Platforms to Act Responsibly.....	31
Recommendation #2 A New Regulatory Body	32
Recommendation #3 A Social Media Council.....	33
Recommendation #4 Transparency Measures	34
Recommendation #5 Remedies for Individual Content Harms.....	37
Recommendation #6 A Quick Takedown System.....	39
Further Issues for Consideration Around Harms	39
Next Steps: Going Deeper into Root Causes	44
Annex A: Commissioner Biographies	46
Annex B: Concurring Statement of Commissioner Jameel Jaffer	48
Annex C: Timeline of Witness Testimony and Commission Deliberations	50
Annex D: List of Public Submissions	52
Annex E: List of Commissioned Research	53

ABOUT THE INITIATIVE



The Canadian Commission on Democratic Expression is a three-year initiative, led by the Public Policy Forum that aims to bring a concerted and disciplined review of the state of Canadian democracy and how it can be strengthened. The centerpiece is a small, deliberative Commission which will draw on available and original research, the insights of experts and the deliberations of a representative citizen's assembly to assess what to do about online harms and how to buttress the public good. The Commission is designed to offer insights and policy options on an annual basis that support the cause of Canada's democracy and social cohesion. The Commission is supported by national citizen assemblies as well as by an independent research program.

This initiative grew out of earlier insights about the relationship of digital technologies to Canada's democracy covered by the Public Policy Forum's ground-breaking report, *The Shattered Mirror* and its subsequent interdisciplinary research outlined in the *Democracy Divided* report (with UBC) and through the Digital Democracy Project partnership with McGill university.

The initiative is stewarded by Executive Director, Michel Cormier and delivered in partnership with MASS LBP and the Centre for Media, Technology and Democracy at McGill University's Max Bell School of Public Policy, who are executing the national citizen assemblies and research program, respectively.

To learn more about the initiative and how you can become involved, please visit www.ppforum.ca. The initiative will run from April 2020 to March 2023.

This project has been made possible in part by the Government of Canada. PPF would also like to thank the McConnell Foundation for their support.





**EDWARD
GREENSPON**

FOREWORD

Since 1986, the Public Policy Forum has been bringing people together to tackle policy challenges in the name of a healthy democracy. Our motto is Good Policy. Better Canada. The topic changes, but the goal always remains the same.

At times, we deal directly with democratic policies themselves around election finances or the relationship between political officials and public servants. Since 2016, PPF has been particularly attentive to the future of journalism and the impacts of internet platforms on everything from financing journalism to hate speech and disinformation. Our January 2017 report, *The Shattered Mirror: News, Democracy and Trust in the Digital Age* helped inspire the Local Journalism Initiative, a labour tax credit for Canadian journalists and the designating of journalism as eligible for charitable giving.

This body of work led PPF to organize two major inter-related initiatives in 2020: The Canadian Commission on Democratic Expression and the Citizens' Assembly on Democratic Expression. The question posed to both was how to reduce harmful speech on the internet without impairing free speech? We had become intrigued by an influential 1966 report by the Special Committee on Hate Propaganda, also known as the Cohen Committee after its chair, Maxwell Cohen, then Dean of Law at McGill University. Its efforts led directly to the anti-hate speech provisions in Canada's Criminal Code.

We have seen hate speech and other online harms go through a disturbing growth spurt over the past several years, aided and abetted by the evolution of the internet and particularly the platform companies that host user-generated and third-party content. We're long past 1966, and we felt it was time for a contemporary Cohen committee to take a fresh look in the context of the digital age. Along with our long-time colleagues in digital democracy research at McGill's Max Bell School of Public Policy, we constituted a diverse new commission, whose members you can see on pages 12 and 43 of this report. Seeing as we're in the 21st century, we felt that this distinguished group should work in parallel with a more representative body. Our partners, MASS LBP sent 12,500 invitations to randomly selected households across Canada, receiving 369 positive responses, which were eventually winnowed down to 42 Canadians from every province and territory and background. Both groups



threw themselves at the task and have produced thoughtful prescriptions for one of the most vexing challenges of modern times.

My own concerns about online harms were heightened in 2016 as PPF undertook its research for *The Shattered Mirror*. I was introduced to the concepts of filter bubbles and echo chambers, which work together to shape what I saw online. Without knowing it, we had all been quietly subdivided into information enclosures.

Moreover, facts and truth were fungible concepts in this new digital public sphere. At that time, a New York real estate developer and presidential hopeful named Donald Trump was spreading doubt and falsehoods about the birthplace of President Barack Obama. I asked a Facebook executive why the site was filled with false assertions that Obama had been born in Kenya. I was told that many people believed that, and it wasn't Facebook's place to decide what was right or wrong. People were free to believe what they wanted.

This indifference to truth was enormously off-putting to someone with a long background in journalism, especially coming from the world's largest disseminator of information. Democracy cannot function without common pools of facts with which to debate and disagree and then arrive at an accommodation. Add hate-filled diatribes, bullying, harassment, conspiracy theories, fake COVID-19 news and you have a recipe for the democratic degradation plaguing many nations.

As we were completing the writing of this report, the seat of the U.S. legislature was attacked by Trump loyalists. Researchers tracking social media had watched them organizing on the web in the days and weeks beforehand on niche sites such as Parler, Gab and TheDonald and in larger digital gathering places like Twitter, Facebook and TikTok.¹ Very little now happens in the offline world without starting in the online world. Often, a core group will plan quietly on a small site or within a protected Facebook group and then move into the social media commons to recruit, support and build momentum. There is a reason people refer to it as an ecosystem, which makes it important that policy responses are also shaped systematically.

These issues aren't easy. They go to core rights and values. How does a society deal with its precious free speech rights if its information highways are clogged

¹Wamsley, L. (2021). On far-right websites, plans to storm the Capitol were made in plain sight. NPR. <https://www.npr.org/sections/congress-electoral-college-tally-live-updates/2021/01/07/954671745/on-far-right-websites-plans-to-storm-capitol-were-made-in-plain-sight>



with hate and other harms that are disproportionately aimed at women, minorities, Indigenous people, those with non-traditional gender identities?

We put these kinds of questions to our seven commissioners and the 42 members of the Citizens' Assembly. It was inspiring to watch the diligence and dedication with which they rolled up their sleeves and sweated the details.

In the end, they decided that the current system of content moderation under the sole direction of the platform companies is not doing the job and cannot do the job. And that public institutions representing a public interest must step up on behalf of the victims of the deluge and the sanctity of our democracy.

One of the original members of the Cohen committee was a Université de Montréal law professor named Pierre Trudeau. He resigned to run for office and would eventually see through the committee recommendations as Prime Minister. At a 1965 meeting of the group, according to an account by legal historian William Kaplan, Trudeau recounted how at first he had been inclined to think the problem was not great enough to justify creating new laws. "However," he said, "I have changed my thinking somewhat. I am not as certain now that the sheer size of the problem is the crucial consideration. We must consider the effects of hate propaganda on those people who are being insulted."

The internet is all about scale. And so the scale of the problem is far greater today. These two reports tell us what we should do about it.

I want to thank the Commissioners and Citizens' Assembly members. I want to thank our partners at McGill (Taylor Owen, Sonja Solomun, Helen Hayes, Maryna Polataiko), and at MASS LBP (Peter MacLeod, Rosemary McManus, Chris Ellis and Rukhsaar Daya) who worked on this report. And my colleagues at the Public Policy Forum, most particularly Policy Lead Gareth Chappell, Research Assistant Lisa Semchuk and PPF Fellow Michel Cormier, who served as the Commission's Executive Director.

Edward Greenspon

President & CEO
Public Policy Forum



EXECUTIVE SUMMARY

Following nine months of study and deliberations, the Canadian Commission on Democratic Expression has settled on a series of principles and recommendations that can lead to a practical course of action. What we set forth is a series of functional steps to enable citizens, governments and platforms to deal with the matter of harmful speech in a free and democratic, rights-based society like Canada. We recognize the complexity of the issues at play and offer these as a path forward and with the knowledge they will be subject to further debate and molding.

PRINCIPLES

1. Free speech is fundamental to a democratic society and that the internet enables more people to participate in public discussions and debates.
2. The rise of hatred, disinformation, conspiracies, bullying and other harmful communications online is undermining these gains and having a corrosive impact on democratic expression in Canada.
3. The status quo of leaving content moderation to the sole discretion of platforms has failed to stem the spread of these harms and that platform companies can find themselves in conflict between their private interests and the public good.
4. We find fault with the notion that platforms are neutral disseminators of information. Platforms curate content to serve their commercial interests and so must assume greater responsibility for the harms they amplify and spread.
5. Government must play a more active role in furthering the cause of democratic expression and protecting Canadians from online harms.
6. Any policy response must put citizens first, reduce online harms and guard against the potential for over-censorship of content in putting forth remedies. This requires a balanced and multi-pronged approach.

These principles have led the Commission to an integrated program of six scaffolding recommendations.



RECOMMENDATIONS

1. A new legislated duty on platforms to act responsibly.

Establishment by Parliament of a statutory Duty to Act Responsibly imposing an affirmative requirement on platforms under legislation and regulation, including social media companies, large messaging groups, search engines and other internet operators involved in the dissemination of user-generated and third-party content. In addressing harms, the details of this duty must take account of principles such as the fundamental nature of free speech.

2. A new regulator to oversee and enforce the Duty to Act Responsibly.

Creation of a new regulatory body, operating within legislated guidelines, that represents the public interest and moves content moderation and platform governance beyond the exclusive preserve of private sector companies. The regulator would oversee a Code of Conduct to guide the actions of parties under its supervision, while recognizing that not all platforms can be treated in precisely the same manner. Regulatory decisions will be judicially made, based in the rule of law and subject to a process of review.

3. A Social Media Council to serve as an accessible forum in reducing harms and improving democratic expression on the internet.

Ensuring an inclusive dialogue on ongoing platform governance policies and practices, including content moderation, through a broadly based social media council that places platforms, civil society, citizens and other interested parties around the same table.

4. A world-leading transparency regime to provide the flow of necessary information to the regulator and Social Media Council.

Embedding significant, world-leading transparency mechanisms at the core of the mandate for the regulator and Social Media Council – on data, ads, bots and the right to compel information. This will also assist researchers, journalists and members of the public with access to the information required for a publicly accountable system.

5. Avenues to enable individuals and groups to deal with complaints of harmful content in an expeditious manner. An e-tribunal to facilitate and expedite dispute resolution and a process for addressing complaints swiftly and lightly before they become disputes.

Creating rapid and accessible recourse to content-based dispute settlement by a dedicated e-tribunal charged with addressing online content disputes in a timely manner. And creating a process that enables targets of harms to compel platforms to make creators aware of a complaint.



6. A mechanism to quickly remove content that presents an imminent threat to a person.

Development of a quick-response system under the authority of the regulator to ensure the rapid removal of content – even temporarily – that creates a reasonable apprehension of an imminent threat to the health and safety of the targeted party.

■ ■ ■

The Commission considered imposing takedown requirements on platforms as some nations have done. These generally identify offending categories of content, provide a fixed window, such as 24 hours, for it to be removed and may levy significant penalties. We are concerned that such systems could create incentives for over-censorship by platform companies. Our recommendations do less to circumscribe speech in recognition of the fact that harmful speech and the unjustified denial of freedom of expression are both problematic.

The standards of the Duty to Act Responsibly are purposely left vague at this point to give government, the regulator, and the Social Media Council an opportunity to flesh it out as part of a Code of Conduct. To be sure, we are not recommending the creation of a self-standing new tort as the basis for a cause of action, but rather imposing affirmative requirements on the platforms to be developed under legislation and regulation. We expect the Code will evolve given the recentness of the problem and the rapid evolution of the internet.



COMMISSION'S PREAMBLE

We are seven individual Canadians. We embrace the astounding ways in which the internet, and social media in particular, have lowered barriers to participation in the public realm. They have strengthened our democracy by giving individuals new ways of making themselves heard, new ways of organizing politically, new ways of engaging with elected representatives and new ways of holding power to account.

Freedom of the press, American author and journalist A.J. Liebling famously said 60 years ago, was guaranteed only to those who owned one.² Today, anyone can own a corner of the internet. More people than ever can benefit from enhanced access to knowledge, community and collective action. But there is also the darker side. Along with a more open and accessible public square has come a less trustworthy and safe one. This represents one of the central paradoxes and challenges of our times – and of this paper.

Like others, we see the rising tides of hatred, disinformation, conspiracies, misogyny, bullying and other harmful communications online. This tsunami of social and democratic harms is driving women, minorities, Indigenous peoples and others from the digital public sphere.³ Disinformation undermines public debate by depriving it of a common set of facts. Separating citizens into information silos compromises our ability to make collective decisions. This is particularly serious in a diverse nation like Canada in which accommodation and social cohesion are necessary values.

We cannot allow those intent on frustrating democratic expression in Canada to hijack this great moment of democratizing possibility. That this is occurring amidst a golden time for democratic enrichment makes it especially tragic. The laundry list of harms is too long to ignore: [misogyny](#), [racism](#), [anti-Semitism](#), [Islamophobia](#), [White supremacy](#), [homophobia](#), [disinformation](#), [alternate facts](#), [bullying](#), [phony consumer reviews](#), [seniors' fraud](#), [counselling of suicide](#), [conspiracy theories](#), [attacks on electoral integrity](#), [incitement to violence](#) - on it goes. It has reached a point where the targets of harassment sometimes feel their health and safety requires them to withdraw from the digital square – the very antithesis of free expression.

Internet platforms have been insufficiently diligent in turning back these harms; indeed, their systems are in many respects complicit. Harmful and hateful speech are not so much anomalies as the logical products of the web's structures, design, policies, and practices – its social media offshoots in particular.

Governments the world over have struggled to introduce robust policy responses. While the federal government has proposed the governance framework of a Digital Charter and has tabled new data privacy

2 Liebling, A.J. (1960). The wayward press: Do you belong in journalism? The New Yorker, (May 14, 1960), 105. Condé Nast.
<https://www.newyorker.com/magazine/1960/05/14/do-you-belong-in-journalism>

3 Citron, D.K. (2016). Hate crimes in cyberspace. Harvard University Press.



legislation (Bill C-11) and broken new ground in the 2018 Election Modernization Act,⁴ little has so far changed in how the digital sphere is governed in Canada. To be sure, the technologies in question are new and rapidly evolving and many of the problems have only come into focus in the last five to 10 years. Moreover, attempts to tackle them can cross over into the complex terrain of free speech. Still, we must muster the conviction and will to address these matters through concrete actions taken in the public interest. The harms are increasingly evident, and the public is increasingly looking to its representatives for action. This report will offer up our best thinking on how to formulate that response.

At the invitation of the Public Policy Forum, we have spent the past nine months gathering around our computer screens under the auspices of the Canadian Commission on Democratic Expression. Our mandate: “to respond to hate speech and online harms while safeguarding access to reliably sourced information in order to empower informed citizens for collective decision-making.” We have met with scholars, legal experts, platform representatives, police officers, human rights officers, targets of hate and others. We have been briefed on initiatives in other jurisdictions.

Together, as a Commission, we have come to conclusions on what ails our information systems and what solutions suit Canadians. Our purpose is to advocate on behalf of the public interest in an era in which the giant digital platforms have come to dominate not just distribution of information but public discussion around it.

Our starting point was the proliferation of online hate. But as one of our expert visitors pointed out, no matter what door one chooses – the online hate door, the disinformation door, the electoral integrity door – they end up confronting the same set of structural biases baked into the business models of the companies that have come to dominate internet traffic and revenue.

We are not a representative group – seven individuals never could be – but we have discovered a great deal of diversity in our viewpoints, backgrounds and experiences. This, coupled with an openness to debate, think and learn from each other, has informed our conclusions.

Our Commission has worked in parallel with the PPF-organized Citizens’ Assembly on Democratic Expression, comprised of 42 Canadians from all 10 provinces and three territories. They provide a more faithful portrait of contemporary Canada. “It’s kind of like pulling the country together in one room,” said the chair of the assembly after its 18 gatherings, which totaled more than 43 hours of deliberation. We have been briefed regularly on its proceedings and attended the presentation of its final report. We are impressed by the work.

⁴ Elections modernization act (S.C. 2018, c. 31). https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_31/page-1.html



In both processes, we have heard and seen how behaviors associated with the structures of social media companies and others can cause real harm to real people.⁵ As Commission research advisor Taylor Owen told us, the structural biases grow out of the platforms' commercial needs; for massive scale; to induce users to remain online long enough to feed them additional ads; to acquire more and more personal data to better target those ads; to continuously refine algorithms to manage and manipulate this data to catapult the platforms into market dominance. The emotional and self-reinforcing nature of the content required to keep this system humming does not necessarily serve the public interest well.

As we turned to hate speech as our first topic, we have held to three points expressed in Canada's Charter of Rights and Freedoms. First, freedom of expression is fundamental to the health of a free and democratic society, it is a right not a privilege. Section 2(b) of the Charter sets out the elemental nature of "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." Second, nothing is absolute in Canada's constitutional construction. It has long been understood that rights can conflict with one another in given situations – that security of the person, for instance, also carries weight. The Charter, therefore, provides a balancing mechanism in its very first section, instructing that its rights are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Third, the onus lies on the state to make any case for limitations. And it must persuade an independent judiciary that an exception to free expression is warranted.

Canadian courts have accepted limits in regard to tobacco⁶ and political advertising⁷, pornography⁸ and hate speech.⁹ This report is cognizant and respectful of both Section 2(b) and Section 1. We believe we take a stronger free speech stance than some other jurisdictions. We have an aversion to broad takedown measures even as we accept that free expression must include the right not to be harassed or intimidated out of one's own freedom of expression.

Ultimately it is the role of governments to protect against social harms, stand up for the targeted and assert the greater public interest through the appropriate governance of platforms, search engines and other intentional or incidental purveyors of this material.

5 Gillespie, T. (2018). *Custodians of the internet: Content moderation and the hidden decisions that shape social media*. Yale University Press.

https://www.researchgate.net/profile/Tarleton_Gillespie/publication/327186182_Custodians_of_the_internet_Platforms_content_moderation_and_the_hidden_decisions_that_shape_social_media/links/5dfcfa3a6fdcc2837318e10/Custodians-of-the-internet-Platforms-content-moderation-and-the-hidden-decisions-that-shape-social-media.pdf

6 In *RJR-MacDonald Inc. v. Canada* (Attorney General), [1995] 3 SCR 199, the Supreme Court ruled that broad prohibitions on tobacco advertising and requirements for unattributed warnings did not constitute a justified infringement on the freedom of expression. Parliament subsequently responded with narrower prohibitions targeting lifestyle advertising, advertising appealing to young persons, and false or misleading advertising, and requirements for attributed warnings. These were upheld as constitutional by the *Court in Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30; [2007] 2 SCR 610.

7 *Harper v. Canada (Attorney General)*, 2004 SCC 33; [2004] 1 SCR 827.

8 See, for example, *R. v. Butler*, [1992] 1 SCR 452, *R. v. Sharpe*, 2001 SCC 2; [2001] 1 SCR 45, and *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69; [2000] 2 SCR 1120.

9 *R. v. Keegstra*, [1990] 3 SCR 697.



Hate speech is neither abstract nor victimless. It brings individuals, identifiable groups and society as a whole into disrepute and even danger. In what other sphere are the lives of Canadians so deeply affected yet government has had so little to say? In a democratic society, no one should feel driven from the public square.

Recently, platform companies have become more aggressive in their content moderation practices in a bid to contain the harms of online hate, health misinformation,¹⁰ and electoral interference.¹¹ This has opened up a crucial window of opportunity for policy reform and a national conversation about the governance of digital platforms.

In the final presentation of the Citizens' Assembly, one member asked: will our generation allow this situation to persist because we lacked the collective courage and capability to confront it? The answer can only be no. It would be an abdication of public policy duty to permit this wound to fester. We offer a program of treatment.

The Canadian Commission on Democratic Expression trusts the analysis and recommendations contained in this report will prove helpful in informing public debate and the necessary actions by government and Parliament.

10 Swire-Thompson, B. and Lazer, D. (2020). Public health and online misinformation: Challenges and recommendations. *Annual Review of Public Health*, 41, 433-451. <https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-040119-094127>

11 Poell, T., van Dijck, J., and de Waal, M. (2018). *The platform society: Public values in a connective world*. Oxford University Press.



RICK ANDERSON

Rick Anderson



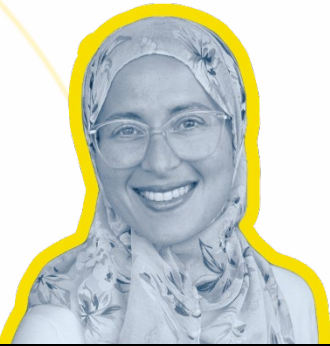
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CHAPTER 1: THE PROBLEM BEFORE US

Just before 8 p.m. on January 29, 2017, a former Canadian soldier whose self-professed prejudices and insecurities about immigrants were stoked by online content, opened fire with a .223-calibre semi-automatic assault weapon as evening prayers ended at the Islamic Cultural Centre of Quebec City. Six worshippers were killed and 19 injured. At his sentencing, it was revealed that he had consumed a steady diet of online Islamophobia from social media accounts. His tastes ranged from right-wing to extreme – all pounding home the same messages, ones never given credence in mainstream media in the previous age of gatekeeper dominance.

In 2019, his name was painted on weapons used by the Christchurch New Zealand shooter who killed 51 people in two mosque attacks – a decorative tribute that included the names of other violent white supremacists.

Three years later, shortly after 8 p.m. on May 25, 2020, George Floyd was arrested in Minneapolis for allegedly using a counterfeit \$20 dollar bill. The cellphone video of a police officer pressing his knee into Floyd's neck for more than eight minutes as he died sparked global outrage and protests. Over the next several weeks, 15 to 26 million people participated in demonstrations in the United States alone, according to the New York Times. The killing galvanized thousands of organizations to review their policies and practices involving Black, Indigenous and other People of Colour and pledge to address inequalities.

Two digitally driven stories. On the one hand, we see movements for social change being organized on the internet – people who might otherwise never meet in the physical world finding common cause online, as with Black Lives Matter and the #MeToo movement. On the other hand, we see too many internet interactions among troubled or malevolent individuals metamorphosing into real-world physical violence. And too much disinformation that, in one example, has seen more than 100 British cellphone towers burned down because 5G technology is said to spread COVID-19. We see too much revenge porn. Too much harassment of public officials, especially women and especially racialized women. These and other harms are what most concern the Commission.

The place names of the most sensational atrocities linger in memory: Christchurch, Charlottesville, Pittsburgh's Tree of Life synagogue, Quebec City's mosque, the Yonge Street van attack, Parkland, Las Vegas. The context for each attack varied, but almost all featured perpetrators who found some inspiration or operational advice online and used the internet as a megaphone. Many posted trophy pictures or manifestos of justification. The Christchurch killer live-streamed on Facebook, where it was circulated to millions and can still be found, despite efforts to remove it, a year after the incident.



Canada is not immune, as seen in Quebec City, on Yonge Street and in the attempted break-in by an armed man at Rideau Hall intent on arresting the Prime Minister.¹² A 2020 interim report by the Institute for Strategic Dialogue¹³ found on seven mainstream and fringe sites and “identified 6,600 right-wing extremist channels, pages, groups and accounts.” This extremist ecosystem included 6,352 Twitter accounts, 130 public Facebook pages and groups and 32 YouTube channels. The study divided them into five sub-groups: white supremacists, ethnonationalists, Islamophobes, sovereigntists and militia groups, and the so-called “manosphere” where the Yonge Street driver spent his time.

This report grapples with a pair of ill-matching realities:

1. The digital sphere, like media before it, can produce both good and bad. “A free press can, of course, be good or bad,” said French author Albert Camus, “but, most certainly without freedom, the press will never be anything but bad.”¹⁴ The authors of this report believe the wisdom of this observation holds true in the digital age and that the internet has been a great equalizer in providing access to communications channels to those marginalized by previous media systems.
2. Yet there is the second reality, that the well-financed and coordinated disinformation campaigns, the political conspiracies and targeted harm of specific identities – are not aberrations, but the natural by-products of structural factors. What’s more, it is this design that largely determines what we see and how we can and cannot behave in the digital public sphere. When a piece of harmful speech or disinformation goes viral, it is because it was amplified by an algorithm. When a troll army descends on a journalist, it was because an individual attack was made visible to a mob. Many of the harms perpetrated on social platforms are therefore not simply the result of individual bad actors but are a function of how these information systems are designed. Chemical pollution can be eradicated without shutting down the plants that create it. But is the same true of social media companies – or are their negative effects baked into their business models?

What is evident is that hate speech and other harms are clearly on the rise. Statistics Canada compiles an annual inventory of cyber-related violations from selected police services. The 2015 total was 17,887. By

12 Tunney, C. (2021). Rideau Hall intruder wanted to have Trudeau arrested: RCMP investigation. CBC News. <https://www.cbc.ca/news/politics/hurren-rideau-hall-arrest-1.5866297>.

13 Davey, J., Hart, M., and Guerin, C. (2020). An Online Environmental Scan of Right-wing Extremism in Canada: Interim Report. ISD. <https://www.isdglobal.org/wp-content/uploads/2020/06/An-Online-Environmental-Scan-of-Right-wing-Extremism-in-Canada-ISD.pdf>

14 Camus, A. (1960). *Resistance, Rebellion and Death*. Alfred A. Knopf.



2019, it had grown by about 20-25% annually to reach 44,136 or 121 a day.¹⁵ These cybercrimes are almost as prevalent as Criminal Code traffic violations (minus drunk driving).¹⁶

Among the most prevalent cybercrimes in Canada in 2019:¹⁷

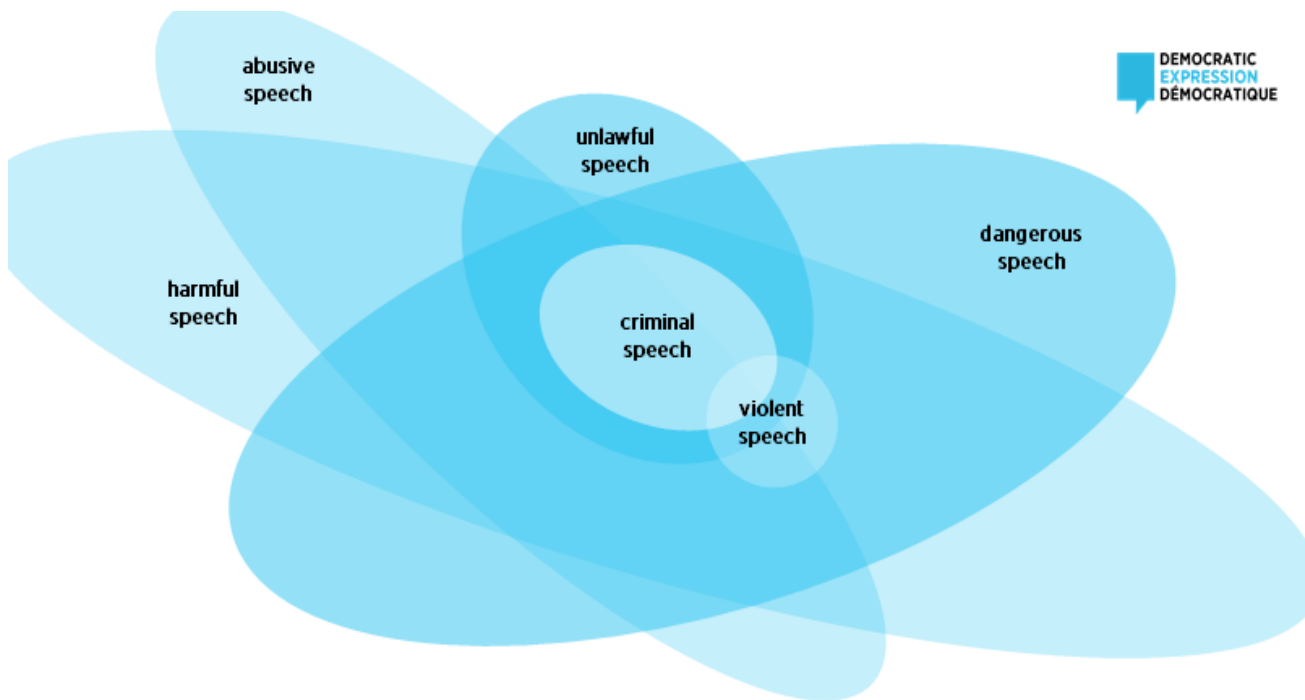
- Luring a child via a computer (1,450)
- Non-consensual distribution or transmission of an intimate image(s) with intent to harm or humiliate, otherwise known as “revenge porn” (718)
- Extortion (1,410)
- Criminal harassment (1,715)
- Indecent/harassing communications (4,933)
- Uttering threats (3,122)
- Fraud (21,047)
- Identity fraud (1,920)
- Making or distribution of child pornography (4,174)

In testimony before the Commission, we heard about a catalogue of different harms outlined by Lex Gill, a Montreal lawyer and legal fellow at Citizen Lab with expertise in technology and civil liberties. The graphic below helps illustrate a number of these overlapping categories.

¹⁵ Statistics Canada. (2019). Police-reported cybercrime, number of incidents and rate per 100,000 population, Canada, provinces, territories and census metropolitan areas. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510000201>

¹⁶ Statistics Canada. (2019). Incident-based crime statistics, by detailed violations, Canada, provinces, territories, and census metropolitan areas. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.160&cubeTimeFrame.startYear=2015&cubeTimeFrame.endYear=2019&referencePeriods=20150101%2C20190101>

¹⁷ Statistics Canada. (2019). Police-reported cybercrime, by cyber-related violation, Canada (selected police services). <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510000101>



It is useful to visualize a spectrum of harms associated with online speech. To try to hammer down each in a precise manner would be to engage in a frustrating round of whack-a-mole. The Commission began its deliberations with a focus on hate speech, but has come to recognize the borders between harms are highly fungible and require a far more holistic approach.

The Commission benefited from bi-weekly meetings with and written submissions from more than 30 individuals and organizations. We also commissioned several pieces of original research through the Centre for Media, Technology and Democracy at McGill University's Max Bell School of Public Policy.

One of our earliest visitors was Toronto restaurateur and philanthropist Mohmad Fakh, owner of the Paramount chain, who told us the disturbing account of becoming a target of an online hate campaign and its lasting toll on him and his family. Online harms undermine one's willingness to become politically engaged and participate directly in the democratic process, he said, especially for immigrants or members of a racialized group.

Mr. Fakh is a person of great fortitude and a successful businessman. His defamation suit against his haters succeeded, but his legal bill would still be beyond most people. His story prompted one of the Commissioners to remark: "You should not have to be a hero in order to succeed against hate."

In his appearance before our group, Ben Scott, Executive Director of Reset and a well-known advocate against online harms, spoke about the different strategies required to address 'the supply side' of the problem – producers and disseminators – versus 'the demand side' – the audience.



Both require attention, he said, but it is better to start to “regulate the market in a way that incentivizes the digital media platforms to change how their product and services work. How do you categorize these companies under the law so that they have a responsibility for what they disseminate to the public?” The demand side, he cautioned, is a much longer-term project. “Regulation is easier than education.”

Two Toronto Police Service hate crime unit detectives described some of the hurdles to investigating and prosecuting these crimes generally, and particularly online manifestations. These tend to be complex investigations. Social media messaging services almost all use end-to-end encryption, meaning the communications and images in question are not saved onto a server and therefore not available. The use of VPNs – virtual private networks – also masks user identities. These make it difficult for police to gather information even through a production order or search warrant. Smaller police forces with fewer resources are even more hobbled in an area in which interpretation is required to assess whether an offence has occurred.

Mark J. Freiman, a former deputy attorney general in Ontario and a litigator with expertise in hate law and free speech issues, told us hate speech needs to be assessed along a continuum of offences requiring different responses with a common lens of public safety and “protecting society.”

■ ■ ■

There is no doubt Canadians are troubled by the situation and are looking for action.

The Commission received written submissions from 11 organizations and three individuals and was given Ryerson University’s 2019 Leadership Lab poll of 3,000 Canadians commissioned from Abacus Data on democratic participation and polarization.¹⁸ Among its findings:

Six out of 10 believe that the government should require social media companies to fix the problems that they have created.

- Nearly half of Canadians report seeing both deliberately false information and divisive content at least once a week. Those who get their news from Facebook, Twitter and YouTube report greater frequency, including about half seeing hate speech at least weekly.
- About one in four Canadians say they have reported or flagged an account or post for hateful or false content. Only about a third found this effective.
- Respondents were split over whether social media companies (35%) or the people who use social media (31%) are most responsible for addressing disinformation, hate speech and extreme views spreading on platforms.

¹⁸Ryerson Leadership Lab. (2019). Rebuilding the public square. <https://www.ryersonleadlab.com/rebuilding-the-public-square>



- Six out of 10 believe that the government should require social media companies to fix the problems that they have created.
- Three out of four support requirements to remove illegal content like hate speech in a timely manner.
- When asked to choose between protecting freedom of speech or reducing the amount of hate speech, harassment, and disinformation online, 63% chose the latter.

Among other submissions, the Commission heard troubling data on misogyny and anti-Semitism. Six out of 10 young Canadian women surveyed this year experienced online abuse and harassment and an international poll by Amnesty International said an abusive Tweet is sent to a woman every 30 seconds on Twitter, including threats of murder, rape and the use of misogynist slurs.^{19,20} Meanwhile, we heard that domestically created neo-Nazi propaganda was viewed 10 times more often in Canada than an average Globe and Mail article.²¹

For its part, the Canadian Civil Liberties Association said there was still insufficient evidence about the extent and impact of the problem and expressed concern that platforms would become censors of controversial speech if they had legal responsibility imposed for hate and harmful speech posted on their platform.

This report will argue for a multi-pronged approach in keeping with a spectrum of harms and their effects. We have clearly emerged in the regulatory camp, but with a bias toward regulating the system rather than the content. Given the nature and rapid evolution of the medium, an attempt to tick off an exhaustive list of harms, deal with them individually and move on would be fanciful, partial and temporary. The Commission's research advisor Taylor Owen, Professor and Director of the Centre for Media, Technology and Democracy at McGill commented that taking down a viral tweet or banning an individual bad actor does not adequately address the problem at hand.

“It is far more important, and will be much more effective, to address the structure and incentives of the machine that allows this content to be seen by millions of people.”

Online hate and other harms create fear, sow division and can destroy lives. They weaken social cohesion and undermine public confidence. This is what we set out to address in the following section.

19 Plan International. (2020). State of the world's girls: Free to be online? <https://plancanada.ca/day-of-the-girl/#research>

20 Amnesty International. (2018). Troll patrol report: Using crowdsourcing, data science, and machine learning to measure violence and abuse against women on Twitter. <https://decoders.amnesty.org/projects/troll-patrol/findings>

21 Submission from the Canadian Anti-Hate Network to the Canadian Commission on Democratic Expression.





CHAPTER 2: WHAT TO DO ABOUT ONLINE HATE AND HARMS

Platform companies bear responsibility for what they disseminate. Full stop. Harms come in different shapes and sizes. Not all are equal in terms of severity. Context matters. Endangerment matters. Repeat offending matters. The Commission has come to view harmful online content as existing along a spectrum, generating different impacts and warranting different responses. Still, it all emerges out of a single ecosystem, which provides both unprecedented access to participate in public debates alongside an all-too frequent degradation of the quality to that debate.

Some countries have responded to these incursions against democratic and pluralist values with so-called takedown policies,^{22,23} which can root out some harms on the spectrum, but, in the Commission's view, at too high a potential cost to free expression. With no silver-bullet solution, the Commission has opted for a multi-pronged and highly functional approach aimed at both problematic pieces of content and the systems that aid and abet their generation and amplification.

As a democracy built on the concept of informed citizens exercising political judgments in a spirit of civility and common good, a reasonable and effective balance must be struck between free speech and harm reduction.

Platforms are not, as is sometimes asserted, common carriers akin to the phone company and therefore bereft of any burden for what one user may communicate to or about another. Liability over content is attached in law to the process of dissemination, distinct from the act of creation. And the core function of social media platforms is that they distribute one person's content to others. As New Zealand Prime Minister Jacinda Ardern said after the Christchurch massacre: "We cannot simply sit back and accept that these platforms just exist, and what is said is not the responsibility of the place where they are published. They are the publisher, not just the postman."

They are not publishers in the same sense as newspapers or broadcasters. They cannot reasonably be expected to vet every piece of content before it enters public circulation. Nonetheless, they serve as the editorial directors of the digital public sphere. Their algorithms choose which pieces of content and with what level of prominence will be served to subsets of like-minded users. Platforms moderate content – their

22 De Streef, A, Defreyne, E., et al. (2020). Online platforms' moderation of illegal content online: Law, practices and options for reform. Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, 6-100.
[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU\(2020\)652718_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU(2020)652718_EN.pdf)

23 Brown, A. (2020). Models of governance of online hate speech: On the emergence of collaborative governance and the challenges of giving redress to targets of online hate speech within a human rights framework in Europe. Council of Europe, 1-198.
<https://rm.coe.int/models-of-governance-of-online-hate-speech/16809e671d>



algorithms make certain content either more or less visible. This commercial colonization of the public sphere makes it imperative their profound influence be offset by public accountability requirements.

In September 2020, the United Nations published a hate speech strategy that provides a useful accountability framework by dividing harms into three categories:

This commercial colonization of the public sphere makes it imperative their profound influence be offset by public accountability requirements.

- Those that violate international law through incitement to genocide and “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”
- Those that violate national laws, such as hate propaganda in Canada under Sections 318 and 319 of the Criminal Code, which prohibit advocating genocide, publicly inciting hatred against identifiable groups in a manner likely to lead to a breach of the peace and willfully promoting hatred against identifiable groups.
- The dissemination of offensive or otherwise disturbing forms of expression that are without legal restrictions.

For the purposes of this paper, we will focus on the second and, particularly, third grouping. As with any social ill, treating the symptoms cannot constitute the entirety of the public policy response. Root causes must figure into the solution, although this report will only start us down that path.

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The latter stages of the Commission’s work coincided with the 2020 U.S. Presidential election and its disturbing aftermath. It became difficult to ignore the role social media played in sowing distrust by riling up Republicans to believe the election had been rigged against them.^{24,25} On the day Congress was certifying the vote, legions of Trump supporters, wound up by Republican elected officials and social media sites, descended in large numbers on Washington and ultimately invaded the Capitol. Once again, the unchecked activities of the online ecosystem manifested its aggressions in the offline world.

Decisions are made every day by platform companies that can dial up or dial down the level of toxicity. We were especially disturbed to learn that Facebook, which had decided after the election to change its news feed algorithm to prioritize authoritative news sources such as the *New York Times* and *National Public*

24 Spring, M. (2020). The deep roots of Trump’s ‘voter fraud’ strategy. BBC News. <https://www.bbc.com/news/blogs-trending-55009950>.

25 Ramjug, P. (2020). Many republicans don’t believe the election results, a new survey says. News@Northeastern. <https://news.northeastern.edu/2020/12/11/who-won-the-2020-presidential-election-joe-biden-or-donald-trump-depends-whom-you-ask/>.



Radio, reset it a month later, in the midst of the Georgia Senate runoffs, to restore greater prominence to partisan sites featuring more incendiary content.²⁶

It is another reminder that platforms make opaque and societally important choices that necessarily involve balancing private and public interests.²⁷ Given that they exercise tremendous influence over public discourse and democratic quality, it is imperative they discharge their responsibilities with the highest possible purpose in mind. It is abundantly clear that content moderation schemes operated or overseen by platforms have failed to stem the spread of online hate and other harms. While it is our hope that a culture of co-operation can develop in addressing online harms, it must be accompanied, when that does not occur, by a regimen of consequences.

Our plan offers a coherent approach to reducing harms built on the foundation of a new Duty to Act Responsibly and protecting freedom of expression. We believe it will prove far more effective than self-regulation and less problematic than reactive takedowns laws, such as Germany's Network Enforcement Act (NetzDG).

The Commission remains mindful of the danger that platforms might respond to regulation, especially when accompanied by heavy fines, with over-removal of content.²⁸ Nobody should want the battle against harmful communications to cause collateral damage by suppressing content that is merely contentious. While that can often inflict discomfort, it also forms the essential backbone of lawful dissent.

As of yet there is a shortage of evidence about over-removal, but academic experts point out that available data comes from social media companies themselves and would not reflect defensive changes to their terms of service agreements. The over-removal, in other words, might be pre-baked into adjustments to the law that platforms have already made.

Of course, it cuts both ways. In the aftermath of the U.S. election, the large platforms found themselves in a damned if you do and damned if you don't position when it came to blocking or flagging accounts they deemed to be spreading inaccurate election information, including Donald Trump's account. These actions induced many Trump followers to move their social media activities to less mainstream right-wing sites like

26 Roose, K. (2020). Facebook reverses postelection algorithm changes that boosted news from authoritative sources. The New York Times. <https://www.nytimes.com/2020/12/16/technology/facebook-reverses-postelection-algorithm-changes-that-boosted-news-from-authoritative-sources.html>

27 Van Dijck, J., Poell, T., and de Waal, M. (2018). The platform society: Public values in a connective world. Oxford University Press.

28 Keller, D. (2015). Empirical evidence of "over-removal" by internet companies under intermediary liability laws. The Centre for Internet and Society: Blog. Stanford University. <http://cyberlaw.stanford.edu/blog/2015/10/empirical-evidence-over-removal-internet-companies-under-intermediary-liability-laws>



Gab and Parler.^{29,30} And it reminded us that policy must deal not just with one or two platforms but with a complex ecosystem dominated by the big-name companies but that goes well beyond them.³¹

A credible public interest approach will have to assert platform responsibility throughout the ecosystem. Its focus must be on harm reduction while its design avoids causing harm to free speech itself.

We sought to construct a policy approach that respects Canadian law and precedent, speaks to Canadian conceptions and norms and is grounded in the Canadian condition.

THE COMMISSION'S PROGRAM

Over the course of nine months, we have learned a great deal about the very wide range of policies being proposed and implemented around the world as governments attempt to address online harm. While the Commission does not want to be overly prescriptive or detailed, we have devoted considerable time and study to what a citizen-centric, made-in-Canada harms reduction strategy might look like. We sought to construct a policy approach that respects Canadian law and precedent, speaks to Canadian conceptions and norms and is grounded in the Canadian condition.

What follows are six inter-related recommendations we hope will provoke public debate and garner serious consideration by the Canadian government. We recognize that each is complex and will involve significant trade-off analyses that go beyond our remit. However, we believe that, as a package, they offer significant movement toward a system of governance for an increasingly urgent problem. Canadian expectations that their governments address this problem are growing. Below is a series of six practical steps we believe can help satisfy these emerging expectations, with fuller accounts of each item to follow.

- 1. Establishment by Parliament of a statutory Duty to Act Responsibly imposing an affirmative requirement on platforms under legislation and regulation, including social media companies, large messaging groups, search engines and other internet operators involved in the dissemination of user-generated and third-party content. In addressing harms, the details of this Duty must recognize principles such as the fundamental nature of free speech.**
- 2. Creation of a new regulatory body, operating within legislated guidelines, that represents the public interest and moves content moderation and platform governance beyond the exclusive preserve of the private sector. The regulator would oversee a Code of Conduct to guide the**

29 Isaac, M. and Browning, K. (2020). Fact-Checked on Facebook and Twitter, conservatives switch their apps. The New York Times. <https://www.nytimes.com/2020/11/11/technology/parler-rumble-newsmax.html>

30 Contretas, B. (2021). Trump without Twitter: Will he move to the 'trumpnet'?. Los Angeles Times. <https://www.latimes.com/business/technology/story/2021-01-08/trump-without-twitter-will-he-move-to-the-trumpnet>

31 Gillespie, T., Aufderheide, P., et al. (2020). Expanding the debate about content moderation: Scholarly research agendas for the coming policy debates. Internet Policy Review, 9(4), 1-30. <https://policyreview.info/articles/analysis/expanding-debate-about-content-moderation-scholarly-research-agendas-coming-policy>



actions of parties under its supervision, while recognizing that not all platforms can be treated precisely the same. Regulatory decisions would be judicially made, based in the rule of law and subject to a process of review.

- 3.** Ensuring an inclusive dialogue on ongoing platform governance policies and practices, including content moderation, through a broadly based Social Media Council that places platforms, civil society, citizens and other interested parties around the same table.
- 4.** Embedding significant, world-leading transparency mechanisms at the core of the regulator's and Social Media Council's mandate – on data, ads, bots and the right to compel information. This will also assist researchers, journalists and members of the public with access to the information needed for a publicly accountable system.
- 5.** Providing avenues to give individuals and groups recourse to deal with complaints around individual pieces of content in an expeditious and accessible manner. An e-tribunal would be established to facilitate professional dispute resolution. As well, a system akin to that used in copyright law that would enable complainants to notify platforms of concerns about specific pieces of content and require the platforms, in turn, to notify the creator of that content. In some cases, we believe such notification might lead to remedial action without further intervention. This avenue could exist separately from the e-tribunal (between complainant and creator) or can be within the toolbox of the e-tribunal.
- 6.** Developing a quick-response system under the authority of the regulator to ensure the rapid removal of content – even temporarily – that creates a reasonable apprehension of an imminent threat to the health and safety of a targeted person or group.



HOW THE PIECES FIT TOGETHER

Our framework starts with the simple but powerful step of placing a statutory Duty to Act Responsibly on platforms that disseminate user-generated and third-party content online.

The Duty will require platforms to show that reasonable measures are being taken and, when necessary, adjustments made to avoid the occurrence of harms to individuals and groups. The legal requirement places the onus on the platforms themselves. This is very different from a takedown regime, which we do not view as consistent with past practices or the best course for a country like Canada, which prizes free expression and maintains a reasonable reservoir of social capital. We note that through many decades of Canadian content policies, governments avoided suppressing information even from foreign sources, in favour of promoting more Canadian sources.

The new Duty to Act Responsibly provides the foundation for public authorities to furnish a citizen-centric approach to platform governance. As of today, an individual or group targeted online has little resort other than throwing themselves at the mercy of the platforms, or initiating a complaint to police or private lawsuit. This action plan will provide them with public options for recourse and remediation.

We call on the government to enable effective oversight of this Duty to Act Responsibly through the creation of a new, well-resourced regulatory body. It will put the meat on the bones of the government's legislative intent through the implementation of an industry Code of Conduct. The regulator will primarily concern itself with the systems that generate harmful content and not each piece of harmful content and will operate within the rule of law and with decisions that are reviewable. The regulator will sit in the middle of three new public bodies, with a Social Media Council on one side and a modern dispute resolution body on the other.

Our approach is intended to be effective, not punitive. We hope for cooperation and consensus in establishing the pre-eminence of the public interest in reducing online harms and furthering freedom of expression. The function of the Social Media Council is to create an institutional forum where industry, civil society, citizens and other interested parties can study and debate emerging issues with a mind to providing policy recommendations to the regulator.^{32,33} The Social Media Council will serve as a policy arm and be empowered to convene parties and advise the regulator on the substance of the Code of Conduct.

In order for the regulator and Social Media Council to be effective, given the enormous size, clout and complexity of the platforms, our plan introduces a world-leading transparency regime on regulated parties. It would provide regulators, researchers and citizens insight into the workings of the digital public sphere

32 Tenove, C., Tworek, H., and McKelvey, F. (2018). Poisoning democracy: How Canada can address harmful speech online. Public Policy Forum, 5-34. <https://ppforum.ca/wp-content/uploads/2018/11/PoisoningDemocracy-PPF-1.pdf>

33 Tworek, H. (2019). Social media councils. Centre for International Governance Innovation. <https://www.cigionline.org/articles/social-media-councils>



and make a contribution to levelling the playing field with the larger platforms through enhanced accountabilities.

Two avenues will be created to address disputes over individual pieces of content:

1. First, a process will be created to allow those feeling targeted by harms to be able to notify the creators of the disputed content of their complaints. This system of notice and notice, a Canadian innovation for online copyright disputes, obliges platforms receiving notice of a specific complaint to forward this notice to the creator and serve as an intermediary for any reply, while maintaining the confidentiality of the parties. We believe that ensuring creators are always told of a complaint will lead to early resolution of many disputes, particularly those that originate in the heat of a moment.
2. Government will create an independent e-tribunal, a relatively new concept drawn from a successful British Columbia example and designed to provide swift administrative legal decisions. For complainants who find themselves dissatisfied with the initial response of the platforms or the creators of content, the e-tribunal would provide a disinterested professional body available online and equipped with a toolbox ranging from mediation to cease and desist orders and the right to issue fines. There would be no requirement for an e-tribunal case to follow a notice and notice process.

Finally, although our program counsels against a mandatory takedown regime, we make a critical exception in instances of content that poses a reasonable apprehension of imminent threat to the health or safety of a targeted person. In such exceptional cases, the regulator would communicate directly about the specific piece of content with the platform(s) where the content resides.

■ ■ ■

In all cases, the first line of defence for individuals or identifiable groups is to directly contact the platform and/or the creator of the offending content. We believe most disputes over harms can be addressed this way. But we also believe that if complainants remain dissatisfied, it is incumbent they have resort to an empowered public body.

To be clear, this program is intended to provide a functional toolkit that enables the full spectrum of harmful content to be addressed, both from a content and systemic point of view, within the context of a free and democratic society. To be successful in representing the public interest, especially in relation to the size and sophistication of the regulated parties, these public bodies must be resourced to a level commensurate with the challenges.



THE COMMISSION'S PLAN IN GREATER DETAIL

RECOMMENDATION #1

With this Duty to Act Responsibly, we seek to establish a serious expectation of responsibility with serious consequences for failure to adhere to the standards of responsible conduct.

A New Duty on Platforms to Act Responsibly

Platform companies must accede to a greater public interest by assuming responsibility for harmful content that appears within their domains. As disseminators, they share in responsibility for harms and serve as the conduit to and from the creators. It is unrealistic to expect harms to disappear altogether. What is required is a robust harm reduction strategy.

Parliament's enactment of a Duty to Act Responsibly would put affirmative responsibilities on the platforms reflecting that the public and Parliament expect better. This is not the basis for a civil wrong. It will also

serve as a powerful statement of solidarity to victims of hate and other harms online. The sense of the state standing with them will alter the tone of the conversation about this new generation of harms, in keeping with legislative initiatives dating back to the 1960 Bill of Rights, the 1969 Official Languages Act, the 1970 hate speech provisions of the Criminal Code, the 1971 Multiculturalism Act, the Charter itself and prohibitions against discrimination contained in various provincial human rights codes.

In addition to creating a new legal standard, the government will declare through its actions that civil society does not tolerate hate, disinformation and other harms and holds all parties involved in their transmission accountable for victimization and/or harm based on race, gender, religion, language, sexual orientation, gender identity, status as original inhabitants of this land or other identifiable characteristics. We are not speaking in this report about abstract concepts, but of real harm to real people.

The United Kingdom, within its own legal traditions, is currently advancing a similar type of duty of care for online platforms.³⁴ One of the advantages of this approach is its regulatory focus on systemic issues at the root of the problem, with a related body with a streamlined approach suited to digital issues dealing with specific content interventions (other than extreme instances of harms that can result in imminent physical danger). This should reduce the likelihood of the regulator being placed in the untenable position of trying to balance alleged harms against the potential chilling effect on free speech. It will also prevent the similarly

³⁴ Online harms white paper, 2020. Department for Digital, Culture, Media & Sport. Government of the United Kingdom. <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper#fulfilling-the-duty-of-care>



impossible position of being bogged down by thousands of content disputes and being unable to address their systemic causes.

We are, however, keenly sensitive about over-shooting the objective. We have followed the arguments of human rights organizations, such as Article 19,³⁵ which has cautioned against forcing platforms to remove 'lawful but awful' speech.³⁶ We do not want to recommend remedies that could persuade platforms to use their terms of service to hinder difficult, dissenting and activist speech so critical to a healthy democracy.

We are mindful, as well, of the entreaties of anti-hate groups that the safety of historically marginalized groups is at stake. With this Duty to Act Responsibly, we seek to establish a serious expectation of responsibility with serious consequences for failure to adhere to the standards of responsible conduct.

RECOMMENDATION #2

Establishment of a New Regulatory Body to Oversee and Enforce the Duty to Act Responsibly

The Commission calls on the government to grant legislative authority to a new regulatory body that will oversee and enforce this new Duty to Act Responsibly on platforms. Such oversight and enforcement is imperative to mitigating harms from online content and ensuring accountability. Given the nature of speech, a body must be constituted that is at arm's length from the government of the day yet bases judicially made findings on the rule of law and that are subject to a process of review.

The commercial incentives of the digital economy and its global scale make it difficult to imagine how the current system of pure self-regulation could ever succeed. From a governance point of view, protection of individuals and identifiable groups properly falls to public authorities and institutions. By the nature of the medium, platforms will remain the first line of defence, but now answerable to official and legally sanctioned guardians of the public good.

There was near unanimity about the need for a regulator among those who appeared before and contributed to the Commission's work. The complexity of harmful online content makes it necessary that the regulator, and its sibling Social Media Council, engages in the kind of ongoing process of knowledge accumulation, research and interaction with the regulated companies that would be inappropriate for a court. The digital realm is evolving so rapidly it would be impossible to create a set of rules or guidelines today that won't require adjustment in a year or two or three.

35 McKew, Q. (2020). Online harms: Duty of care would restrict free speech in the UK. Article 19.

<https://www.article19.org/resources/online-harms-duty-of-care-would-restrict-free-speech-in-the-uk/>

36 Keller, D. (2020). If lawmakers don't like platforms' speech rules, here's what they can do about it. Tech Policy Greenhouse. Tech Dirt. <https://www.techdirt.com/articles/20200901/13524045226/if-lawmakers-dont-like-platforms-speech-rules-heres-what-they-can-do-about-it-spoiler-options-arent-great.shtml>



Code of Conduct

The regulator will be responsible for publication and enforcement of a Code of Conduct for regulated parties that will undergird the Duty to Act Responsibly. We see the Social Media Council playing a central role in designing this Code. We note that the Citizens' Assembly on Democratic Expression followed a similar line of thinking.

The regulator will need to have both bark and bite – and be subject to review. It would be expected to publish regular public evaluations of how platforms are meeting their Duty to Act Responsibly. It also must be given the ability to impose fines or administrative penalties for violations, with their level based on severity, frequency and repetition as well as the size and reach of the regulated party in question. We note that other jurisdictions are moving forward with fines of 5-10% of global revenues, an unprecedented level for organizations with unprecedented wealth. The UK is even proposing secondary legislation that could lead to jailing of executives. A Canadian regulator must have similar power to be effective. Even so, the regulator's first duty in our view is not to be punitive but corrective.

Start-ups and Smaller Competitors

The Commission is fully aware that an identical regulatory regime put in place for huge global platforms could place an unmanageable burden on newer or smaller competitors in the space. Our purpose is not to inadvertently hobble competition or innovation. We recognize that some smaller entities may be niche players promoting extreme speech and will fall under this regulatory umbrella to the extent they operate in Canada. Others will be simply trying to create businesses to service their users. Government and the regulator will need to take into consideration how to adjust for different levels of demands on different companies.

RECOMMENDATION #3

A Social Media Council

A Social Media Council is an inclusive body that will provide an institutional forum to address medium-term policy issues and other subjects of interest related to platforms.³⁷ It is an independent, stakeholder-based body with dedicated professional support that is attached to the regulator. Critically, it would perform a formal consultative role for the regulator in providing broad-based input into the content of the Code of Conduct and how changing technology, business models and user experience affect policy. While the regulator would hold final say on the content of the Code, the Council's advisory role would allow for a

37 Tenove, C., Tworek, H., and McKelvey, F. (2018). Poisoning democracy: How Canada can address harmful speech online. Public Policy Forum, 5-34. <https://ppforum.ca/publications/poisoning-democracy-what-can-be-done-about-harmful-speech-online/>



diverse, cross-party discussion that would bring citizens, civil society, platforms and other stakeholders around one table.

It ensures that a broader citizen-oriented perspective is involved in discussions and that these are kept transparent. The Social Media Council is not a decision body but provides a check and balance that multiple perspectives are heard and that the regulatory system is not captured by the extraordinarily powerful presence of the platform companies. Given the role platforms play in our democratic life, it is imperative the evolving rules of the game not be left to economic operators alone or recede behind closed doors.

Over time we expect the Social Media Council to build trust and forge cooperation among different stakeholders and provide an ongoing pressure point for a broader public interest. It could provide a convenient home for multiple platform operators to gather and discuss common content moderation approaches and strategies given the migratory patterns of hate and other harms from platform to platform. Citizen involvement is critical to its success in that it would take the discussions beyond an assembly of interested parties and that the overall public interest would always be party to the proceedings.³⁸ The Council could also identify new or worsening harms, which could ultimately be rendered illegal content.

RECOMMENDATION #4

The opacity of digital platforms serves only the interests of the companies that own them. It undermines any public capacity to understand how they work and hold them accountable.

Embed World-Leading Transparency Measures at the Core of Regulatory Oversight and Social Media Council Dialogue

One of the central challenges faced by researchers, journalists, policy communities, social media users and, soon, regulators is that the platform ecosystem is a black box. Existing interfaces and data access protocols provide narrow and sometimes misleading windows into complex dynamics with an ever-increasing impact on contemporary democracy. Without access to the rich data locked in the black box, governing harms disseminated by platforms becomes hugely challenging if not impossible.

The opacity of digital platforms serves only the interests of the companies that own them. It undermines any public capacity to understand how they work and hold them accountable. As such, we believe Canada should become an international leader in empowering the regulator to mandate significant new transparency measures.

³⁸ Arnstein, S.R. (1969) A ladder of citizen participation. *Journal of American Planning Association*, 35(4), 216-224.



Risk Assessment Reports

The regulator should require regular public risk assessment reports from platforms, which should detail their efforts to contain harmful content. In doing so, they would formalize transparency objectives by reporting any changes to the terms of service agreements; instances and categories of content takedowns, account cancellations (de-platforming) and complaints received from users; the numbers, training and operating procedures of content moderators; the algorithmic architecture used to identify problematic content; the number and location of content moderators and what guidelines they use to moderate Canadian content; and measures being taken to address systemic risks around concerns about public health, public safety, electoral integrity, social cohesion, etc. The regulator would be required to publicly release the risk assessment reports and its own analysis on a regular schedule.³⁹

Regulator Rights to Compel Information

The regulator would be granted the power to compel information as it sees fit from platform companies and, critically, to perform independent audits on algorithms. Understanding these programs and being able to ask informed questions and form judgments about their impacts is necessary for the regulator to do its job well. Platforms live and die by their algorithms. The regulator needs to be able to assess the extent to which they are used or not, for example, to identify and restrict circulation of the most serious harms.

Data Sharing

Sunlight is a powerful disinfectant and policy solutions that induce or demand mechanisms for ethical, reproducible and privacy-preserving research are overdue. Such policy solutions will require greater collaboration between social media companies and journalistic, academic, and policy communities; such partnerships could potentially be supported in Canada by Statistics Canada. We note that the existing voluntary approach has not produced sufficient transparency and oversight particularly around harms. As such, the regulator should be empowered to compel social media companies to better share data when and where necessary.

Advertising Transparency

The government of Canada was ahead of much of the world with the election advertising registry it mandated prior to the 2019 election.⁴⁰ The next step is to expand the registry beyond elections and to add to it the disclosure of the targets of online ad campaigns.⁴¹ Internet advertising differs fundamentally from

39 Santa Clara Principles on transparency and accountability in content moderation. <https://santaclaraprinciples.org>

40 *Elections modernization act* (S.C. 2018, c. 31). https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_31/page-1.html

41 Government of Canada. (2018). Democracy under threat: Risks and solutions in the era of disinformation and data monopoly. Report of the Standing Committee on Access to Information, Privacy and Ethic, 42 Parliament (1st Session, 2018). <https://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP10242267/ethirp17/ethirp17-e.pdf>



that in other media. The whole point of mass media advertising is to be as visible as possible. People can see who is trying to influence who.

By virtue of its highly targeted nature – a digital ad can be aimed at as few as a dozen people with similar characteristics and tens of thousands of versions can be served up on behalf of a given advertiser – the purchase of attention becomes opaque. The missing element within election writ periods is who a given ad is aimed at and its reach. Moreover, the influence game extends beyond election writs, and so the same principles of transparency should be provided for all ads at all times in a publicly accessible archive as stipulated by the regulator.

Public Labelling and Registration of Bots

Automated political propaganda, misinformation and harmful speech (political spam) are rapidly growing problems. It is very difficult to hold speech accountable when we don't know if it was created by a human or artificial intelligence. Automated accounts have been shown to amplify division and inflammatory messages.

They can also play a positive role. Accounts tracking and posting about changes to the Wikipedia pages of politicians, for example, or accounts that automatically republish news headlines, serve a public good. The solution to the downsides without minimizing the benefits is transparency. As Commission research advisor Taylor Owen has argued elsewhere, “there are some potential governance mechanisms that could be quickly enacted to get ahead of this growing problem.⁴² For example, all digital media accounts that exhibit behaviours of automation or high-frequency spam could be clearly labelled as a default setting. Platforms could approve users who want to deploy bots and then those accounts could be identified as such. Users that engage with accounts that are later found to be automated should be notified. Citizens should know when they are engaging with an agent, bot or other form of AI impersonating a human.”

Disclosure of Beneficial Ownership

Not all purveyors of hate or disinformation are global giant platforms. Some harms emanate from discussion groups or niche platforms or websites dedicated to disinformation. While we will limit the regulated parties in this report to those disseminating user-generated and other third-party content – and steer clear of content creators themselves – the registration of beneficial ownership and/or control is a pure transparency issue. To not know who controls the distribution of information allows for dark money to operate in our political system, potentially even skirting political financing laws. It also makes it impossible to hold parties to account, even for basic actions like defamation. Newspapers and broadcasters must publicly exhibit their owners and chief operators. This same principle should exist in the digital space.

⁴² Bot disclosure and accountability act, 2018. U.S. Congress, 115th Session. <https://www.congress.gov/bill/115th-congress/senate-bill/3127/text>



RECOMMENDATION #5

An e-tribunal for online content disputes could rebalance power in the digital sphere from the unaccountable processes within the platform companies to a public institution dedicated to due process and transparency.

Remedies for Individual Content Harms

So far, we have largely dealt with systemic issues. We have expressed concern that the regulator not become bogged down in the weeds of hundreds or thousands of individual complaints and thus distracted from its overarching goal of ensuring platform companies act on their Duty to Act Responsibly. Processes to resolve specific content-based conflicts efficiently and effectively are necessary. The collective record of these disputes should represent a key input into the overall assessment of a platform company by the regulator.

A number of our interlocutors called for a return of Section 13 of the Canadian Human Rights Act,^{43,44} citing the need for a public mechanism to combat online hate speech and respond to public

complaints in a timely manner that could include cease and desist orders. It was noted that the Criminal Code, which covers some digital harms, is a cumbersome mechanism given that the criminal process is slow and expensive, that it can realistically only address a handful of cases and that the bar for prosecution is high, as is appropriate when one's liberty is a stake.⁴⁵ At the same time, we heard how online hate cases had exacted an enormous toll on the Canadian Human Rights Commission and its staff, draining resources from other areas of inquiry and subjecting some workers to unaccustomed threats. We are hesitant to endorse a return to the status quo ante and worry, in any case, that such a solution could become a political football to the detriment of a necessary political consensus on platform governance.

Thus, we seek a new way forward with the establishment of a new e-tribunal and a similarly novel process of notice and notice.

Given the massive scale and incredible speed of the internet, we are attracted to a dispute settlement model pioneered in British Columbia. The B.C. Civil Resolution Tribunal (CRT)⁴⁶ is Canada's first online tribunal, a streamlined dispute settlement mechanism within the public justice system for matters related to small claims, condominiums, motor vehicles and societies and cooperative associations. Its tools can be accessed online and include templates for negotiation, facilitation and adjudication.

43 B'nai Brith Canada. Submission to the Canadian Commission on Democratic Expression.

44 Canadian Anti-Hate Network. Submission to the Canadian Commission on Democratic Expression.

45 Karam, M., Lukassen, J., Miladinovic, Z., and Wallace, M. (2020). Measuring efficiency in the Canadian adult criminal court system: Criminal court workload and case processing indicators. Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00004-eng.htm>

46 Civil Resolution Tribunal. British Columbia. <https://civilresolutionbc.ca>



We propose adapting this model for disputes over harms from individual pieces of internet content as well as instances of platform takedowns and de-platforming. (We note that a bill⁴⁷ currently before Parliament on data privacy appears to envisage the creation of a similar body at the federal level.)

As University of British Columbia professor Heidi Twork told the Commission, an e-tribunal for online content disputes could rebalance power in the digital sphere from the opaque and unaccountable processes within the platform companies to a public institution dedicated to due process, transparency, constitutionalism and the following of precedents. It would also allow for the resolution of Canadian disputes within Canada. Currently, with content moderation under the control of platform companies, the training and domicile of the content moderators is a black box. Meanwhile, Facebook's new Oversight Board hears only a handful of global cases and has no Canadian member.⁴⁸

As well, we recommend adoption of notice and notice: a system to ensure complaints about problematic content are received by creators of the content and that they have a chance – but not an obligation – to respond.

The notice and notice system, already in use in complaints of online copyright violations,^{49,50} would require an explanation of the complaint and give creators a time-limited opportunity to withdraw harmful content voluntarily. Complainants would have the right to proceed through the e-tribunal process should a response not materialize or be unsatisfactory. Platforms would be held liable if they did not pass the notice on to a creator.

Creators of harmful content often want to hide in the shadows; some may fear public notoriety if their harmful content becomes known as theirs; yet others may not appreciate the harm they are causing, or may even regret it. Sometimes a soft approach will work. We want to give it a chance.

47 Bill C-11, 2020. <https://parl.ca/DocumentViewer/en/43-2/bill/C-11/first-reading>

48 Facebook Oversight Board. (2020). <https://oversightboard.com>. For further discussion, see Klonick, K. (2020). The Facebook Oversight Board: Creating an independent institution to adjudicate online free expression. *Yale Law Journal*, 129(2418), 2418-2499.

49 Laidlaw, E. (2019). Notice-and-notice-plus: A Canadian perspective beyond the liability and immunity divide. *The Oxford Handbook of Intermediary Liability Online*, 1-24. Oxford University Press. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3311659

50 Laidlaw, E. and Young, H. (2018). Internet intermediary liability in defamation. *Osgoode Hall Law Journal*, 56(1), 112-161. <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3389&context=ohlj>



RECOMMENDATION #6

A Quick Takedown System for Instances of Reasonable Apprehension of Imminent Danger to the Safety of a Targeted Person or Group.

Sometimes content does need to come down, even temporarily, while the danger posed can be ascertained. The instantaneous nature of the internet is both a strength and a weakness and from time to time, quick, defensive actions are required.

The cases about which the Commission has been informed often featured a lack of urgency (or perhaps human capacity) from platforms. Urgency may then need to be mandated. Targets need to know that systems exist to protect them, and that these are transparent. We therefore recommend that the regulator be empowered to issue cease and desist orders for takedown within 24 hours in cases judged to contain a credible and imminent threat to safety. These orders would obviously be challengeable in court.

This is an exception to our general rule that the regulator refrain from individual content decisions and address systemic issues. In these rare instances, the presence of the regulator in the decision would command attention and, of course, allow for some degree of informed judgment in terms of the seriousness and imminence of the threat.

Eventually, these cases can go before the e-tribunal or the courts, which could hear arguments for or against the takedown and determine whether the content should be restored.

■ ■ ■

FURTHER ISSUES FOR CONSIDERATION AROUND HARMS

Beyond our six-point plan, the Commission has discussed several other issues of which we would like to share several insights for the benefit of policymakers and others with an interest in these issues.

Anonymity vs Accountability

Should users of social media platforms enjoy online anonymity? No question was as vexing in our work and each member of this Commission sees the advantages and disadvantages of both. We are attentive to the crucial importance of anonymity for human rights advocates, whistleblowers, and historically marginalized and vulnerable groups, such as those subjected to domestic abuse. We can see the negative potential silencing effect on reports of abuse, including online sexual harassment and gender-based technologically facilitated violence.



As the last few years have made increasingly explicit, hate speech and incitement to violence are routinely spread by verified, ‘real name’ accounts – including politicians and presidents around the world. Anonymity is not always the key to protecting or abusing speech. However, we also heard from law enforcement agencies and anti-hate activists that offenders are emboldened by anonymity because they are far less likely to bear economic or social costs for their extreme views.

The relative weighting of these poles by different Commission members led to thorough and heartfelt discussions. This conundrum also figured prominently in Citizens’ Assembly discussions: many felt that anonymity makes it easier to behave in irresponsible ways and creates a downward slope. The Assembly ultimately called on “government and its regulatory agencies to adopt policies, laws and regulations to ensure that individuals cannot use anonymity to shield themselves from the consequences of producing or engaging in harmful, hateful or defamatory speech.”⁵¹

The Commission arrived at a different place. As a general rule, we agree that citizens in a democratic society should engage in open debate and be as identifiable in their online activities as they are offline. This is the accountability side of the equation, and it carries weight. But those cases of political dissenters, some of whom we have seen subjected to threats by agents of foreign states operating in Canada, whistleblowers, victims of abuse and those who risk the consequences of social stigma through no fault of their own gave us pause.

In the final analysis, we decided that the protection of dissent and privacy should prevail and therefore online confidentiality be protected. An exception would exist for due process in investigations of criminal activity or for serial offenders of online harms, whose names could be made public by the regulator subject to a court challenge.

Legal Liability and Fines

How a platform abides by its Duty to Act Responsibly has an obvious bearing on its liability. If it amplifies harmful content, for example, its liability grows. Should it ignore takedown requests, it grows greater still. Should it permit a content creator to offend repeatedly, then it grows again.

On the mitigation side of the equation, defences existing in other areas of law offer a level of protection when diligent exercise of duties can be demonstrated, even if they ultimately fall short. Mistakes and misjudgments will occur, even when it comes to harmful content. Whether these are or are not part of a pattern of behaviour – systemic failures – can be expected to influence liability.

⁵¹ Canadian Citizens’ Assembly on Democratic Expression. (2021). Canadian Citizens’ Assembly on Democratic Expression: Recommendations to strengthen Canada’s response to new digital technologies and reduce the harm caused by their misuse. Public Policy Forum.



Parliament may create offences with defences based on different levels of intent.⁵² In the case of strict liability offences under environmental statutes, courts have recognized a defence of reasonable care.⁵³ Was due diligence exercised? Did a culture of complacency exist? Was adequate training in place? We also find guidance in the case of news media, where the Supreme Court of Canada created a doctrine of ‘responsible communications’ in a Toronto Star defamation case in which the newspaper successfully argued the issue was in the public interest and that it exercised due diligence in its reporting.⁵⁴

Of course, the liability incentive is relative. The challenge when it comes to platforms is that most tend to be global companies with extraordinary financial resources, and so normal incentives do not apply. Then again, they prefer to be law abiding. Google’s parent company ended 2020 with a [market value of US\\$1.2 trillion](#), three-quarters the size of the entire Canadian economy. Facebook’s was [US\\$778 billion](#), TikTok’s more than [US\\$100 billion](#), Snapchat’s [US\\$75 billion](#), and Twitter’s [US\\$43 billion](#).

Normal course fines, even in the millions or tens of millions of dollars, may still not serve as a deterrent. In recognition of this, Britain’s proposed online harms legislation would give its regulator the power to fine companies up to £18m or 10% of annual global turnover – whichever is higher.^{55,56} The regulator would also be given the power to block non-compliant services from being available in the UK and it contemplates possible future measures that would allow the jailing of company executives. The EU, meanwhile, is proposing fines of up to 6% of annual world-wide revenue for large platforms.⁵⁷

Law Enforcement

Federal and provincial Attorney-Generals should review resource levels for anti-hate police units and Crown prosecutor offices to ensure they can properly pursue hate speech cases. While criminal prosecution should be reserved for the most serious offenses, authorities in population centres large and small need to be equipped with the expertise and capacities to take these on.

CUSMA and Intermediary Liability

The ability for harmed parties to pursue intermediary liability (i.e. civil actions against disseminators of content) has been thrown into uncertainty in Canada with the Canada-United States-Mexico Agreement –

52 See R. v. Sault Ste. Marie, [1978] 2 SCR 1299, in which the Supreme Court discusses true criminal offences, strict liability offences, and absolute liability offences.

53 Ibid.

54 Grant v. Torstar Corp., 2009 SCC 61, [2009] 3 SCR 640.

55 Online harms white paper, 2020. Department for Digital, Culture, Media & Sport. Government of the United Kingdom. <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper#fulfilling-the-duty-of-care>

56 Kelion, L. (2020). Online harms law to let regulator block apps in UK. BBC News. <https://www.bbc.com/news/technology-55302431>

57 Europe fit for the digital age: Commission proposes new rules for digital platforms, 2020. European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2347.



widely known as the new NAFTA.⁵⁸ Article 19.17 of this agreement places certain limits on the civil liability of internet platforms for third-party content they host or process. The section allows an exception for the enforcement of criminal law. There are some arguments that this impediment in the case of damages does not foreclose the possibility of equitable remedies.⁵⁹

This digital rights section is new and untested and its impact on Canada's legal capacity to govern platform behavior unclear. This needs public clarification by government, and it should seek independent legal opinion as to how intermediary liability⁶⁰ may be affected and make this opinion public within six months.

Review of Legislation

As stated earlier, the digital ecosystem is evolving rapidly. It is common for legislation to have a mandatory review attached.⁶¹ We consider three years more appropriate in this greenfield area of policymaking.

58 Canada-United States-Mexico Agreement (CUSMA), 2019. <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng>

59 Krishnamurthy, V. and Fjeld, J. (2020). CDA 230 goes North American? Examining the impacts of the USMCA's intermediary liability provisions in Canada and the United States. Cyberlaw Clinic, 2-20. Harvard Law School. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3645462

60 Ibid.

61 Guide to making Federal acts and regulations, 2nd Edition. Privy Council Office. Government of Canada. <https://www.canada.ca/en/privy-council/services/publications/guide-making-federal-acts-regulations.html>





CONCLUDING COMMENTS

NEXT STEPS: GOING DEEPER INTO ROOT CAUSES

In Section 2, the Commission laid out six recommendations aimed at curbing the dissemination of harmful content. The regulatory functions we suggest are intended to create a standard of reasonableness around how platforms deal with the harmful content in their domains, with responses modulated to the seriousness and pattern of abuse, and consequences for failure to comply.

The Commission is concerned by society's drift into silos. We subscribe to the belief that democracy thrives when citizens debate off a common set of facts. Disagreement is the lifeblood of a democracy, but disinformation and denigration have no place.

This approach marks just the beginning, however, in altering the incentives and disincentives of the structural issues driving negative pathologies. Platforms are in the attention maximization business.⁶² Their commercial models are driven by the accumulation of vast quantities of user data⁶³ acquired by getting people online and maximized by keeping them there. Researchers have concluded that disinformation, particularly false news attracts more eyeballs than real news, which offers a poor set of incentives. What's good for the platforms is not necessarily good for society.

In his visit with the Commission, Reset's Ben Scott told us that going after root causes entails purposely weakening the machinery of algorithmic targeting and the fragmenting of audiences – which inevitably requires restricting the amount of data these companies can collect and limiting how they can use it to manipulate audiences.

Research advisor, Taylor Owen added, “If one agrees this is a structural problem, then regulatory interventions need to address those directly.” Again, that presents a need “to get at the machine and the dynamics of the machinery.”

There is no doubt the Commissioners have learned a great deal on our journey. And less doubt there is much more to be learned, and to be addressed. The Commission's program contained in this paper would begin to address a serious and neglected problem that has risen suddenly and in the context of all the positives

62 Wu, T. (2019). The attention merchants: The epic scramble to get inside our heads. Alfred A. Knopf.

63 Sadowski, J. (2019). When data is capital: Datafication, accumulation, and extraction. *Big Data & Society*, 1-12. <https://journals.sagepub.com/doi/pdf/10.1177/2053951718820549>



associated with the digital era. While we are grateful for the opportunity to contribute, there is much more road to be traveled. We note the Public Policy Forum plans to empanel two more Commissions and two additional Citizen Assemblies in 2021-23 to build on our work. They will have plenty to do.

Our report focused on the supply side of the problem, the creation of all this problematic content. We also are deeply concerned about the demand side, the counter-existence of reliable information and the capacity to discern the difference. The Commission is concerned by society's drift into silos. We subscribe to the belief that democracy thrives when citizens debate off a common set of facts. Disagreement is the lifeblood of a democracy, but disinformation and denigration have no place.

We support public measures to underwrite journalistically grounded news organizations, both public and private and for-profit and non-profit. We noted earlier how Facebook's algorithms have been tweaked at key moments of political engagement, dialed up at times and dialed back down in displaying news from trustworthy news organizations. Society needs this dialed up. The emergence of the toxic online environment coincides with a drastic decline in the funding and viability of commercial news outlets producing public service journalism.^{64, 65}

While we do not believe that greater digital education provides full immunity against sophisticated systems of disinformation and hatred, public trust, social cohesion and an educated and informed public represent the ultimate defence against the spread of falsehoods, conspiracies and their offspring: division, disorientation and polarization. The health of our democracy ultimately depends on citizens having the capacity, willingness and opportunity to participate in our public life. This entails long-term investments with long-term payoffs. How to do this more broadly and effectively is worthy material for a future Commission.

Ultimately, everything comes back to citizens and ensuring fundamental communications technology serves a broader public interest. Meanwhile, governments have work to do cleaning up the system that has led to an internet that too often debases rather than enhances public dialogue and political life.

64 Public Policy Forum. (2017). The Shattered Mirror. <https://shatteredmirror.ca>

65 Rashidian, N., Tsiveriotis, G., Brown, P., et al. (2019). Platforms and publishers: The end of an era. Columbia Journalism Review. https://www.cjr.org/tow_center_reports/platforms-and-publishers-end-of-an-era.php



ANNEX A: COMMISSIONER BIOGRAPHIES

RICK ANDERSON

Principal, Earncliffe Strategy

Rick Anderson is a Canadian political strategist, public affairs commentator and businessman. Highly active in politics and public affairs commentary throughout his life, Rick has served in senior advisory positions to prime ministers, party leaders and leadership candidates.

JULIE CARON-MALENFANT

Director General, Institut du Nouveau Monde

Julie joined the INM - an independent and non-partisan organization that works to strengthen democratic institutions through citizen participation - in 2009, and has taken on the role of general management since 2017. She is regularly consulted on issues related to citizen participation in the public decision-making process and democratic life.

ADAM DODEK

Dean, Faculty of Law (Common Law Section), University of Ottawa

Adam Dodek is Dean and Full Professor at the University of Ottawa's Faculty of Law - Common Law Section. He is a public law scholar and previously worked in the private sector and in government, as a Policy Advisor and then as Chief of Staff to the Attorney General of Ontario.

AMIRA ELGHAWABY

Journalist and Human Rights Advocate

Prior to joining Canada's labour movement where she currently works, Amira spent five years promoting the civil liberties of Canadian Muslims at the National Council of Canadian Muslims (NCCM) between 2012 to the fall of 2017. Amira is a founding board member of the Canadian Anti-Hate Network.



JAMEEL JAFFER

Executive Director, Knight First Amendment Institute at Columbia University

Jameel Jaffer is the Executive Director of the Knight First Amendment Institute at Columbia University, which defends the freedoms of speech and the press through litigation, research, and public education. He grew up in Kingston and Toronto.

JEAN LA ROSE

Former Chief Executive Officer, Aboriginal Peoples Television Network

Jean La Rose was the Chief Executive Officer of APTN from November 2002 until December 2019 after having served as Communication Director to three AFN National Chiefs from 1994 to 2002.

THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, PC, CC, CSTJ, FCIARB

The Right Honourable Beverley McLachlin served as Chief Justice of Canada from 2000 to mid-December 2017. In the summer of 2018, Ms. McLachlin became a Member Arbitrator at Arbitration Place.



ANNEX B: CONCURRING STATEMENT OF COMMISSIONER JAMEEL JAFFER

I was honored to be part of this project, and I learned a great deal from discussions with other Commissioners. I am confident the Commission’s report will make a significant contribution to the debate about how new communications platforms are shaping and sometimes distorting the digital public sphere, and about the steps the government should take in response. I endorse the report in its broad outlines, and I agree that a new regulatory framework is needed to help ensure that the digital public sphere is serving democracy rather than undermining it. I particularly appreciate the report’s detailed proposals relating to transparency. Robust transparency mandates are vital to ensuring that regulators, researchers, and data journalists can play the roles our society needs them to play.

A few reservations prevent me from giving the report an unqualified endorsement. Two in particular warrant mention here. First, I find it difficult to endorse the proposed Duty to Act Responsibly when the content of that duty is left almost entirely to Parliament and the new regulator to decide. Defining the duty will require difficult tradeoffs, not only between free speech and other values—for example, privacy, equality, and due process—but also between different conceptions of free speech. Before endorsing the Duty to Act Responsibly, I would want to know more, at least at a high level, about how those tradeoffs will be made. I would also want to know what categories of “harmful” speech would trigger the duty. Because the report leaves these questions to others, I am unable to fully endorse the proposed duty even though I agree wholeheartedly with the proposition that the platforms must bear responsibility for democratic harms that result from their policies and practices.

Similar questions prevent me from fully endorsing the proposed e-tribunals and notice-and-notice process. I agree that a tribunal system could play a useful role in ensuring efficient resolution of disputes about content alleged to be unlawful. I also believe that it is an urgent problem for democracy that a small number of platform companies have become largely unaccountable gatekeepers to public discourse online. I am not persuaded, though, that establishing a new tribunal system with a broad mandate would be preferable to requiring large platforms themselves to establish, at their own expense, review and appeals processes that are more efficient and transparent than the ones some of them have already established. Before endorsing the proposed e-tribunals, I would want to know more about their mandate, and also about what relationship the proposed tribunals would have to the processes that some of the platforms have already established.

Despite my reservations about these points, I am delighted to be associated with the important work the Commission has done. Again, I fully support the report’s conclusion that a new regulatory regime is needed. Indeed, the urgent need for government intervention has been brought into even sharper focus by events of



the past few weeks. I expect that the Commission's report will be received as a significant contribution to a debate that is important and overdue.



ANNEX C: TIMELINE OF WITNESS TESTIMONY AND COMMISSION DELIBERATIONS

Activity	Date
Commission Orientation and Planning Meeting	May 13, 2020
Witness Testimony and Commission Deliberations on (1) the Legal Aspects of Hate Speech in Canada and (2.) Networked Infrastructure and the Digital Public Sphere With M^e Lex Gill , Lawyer, Trudel Johnson & Lespérance and Associate at Citizen Lab and Mike Ananny , Associate Professor of Communication and Journalism, USC Annenberg School for Communication and Journalism	June 22
Witness Testimony and Commission Deliberations on Science and Disinformation in a Time of Pandemic With Chris Dornan , Professor in the School of Journalism and Communication at Carleton University	June 25
Witness Testimony and Commission Deliberations on the Scale and Scope of Online Harms in Canada With Dr. Chris Tenove , Postdoctoral Fellow, Department of Political Science, University of British Columbia and Dr. Mohamad Fakih , President & CEO of Paramount Fine Foods	July 23
Witness Testimony and Commission Deliberations on the Role and Responsibilities of Digital Platforms With Ben Scott , Executive Director, Reset	Aug. 6
Witness Testimony and Commission Deliberations on the Role and Responsibilities of Digital Platforms With Michele Austin , Head, Government Relations, Twitter Canada and Kevin Chan , Global Director and Head of Public Policy, Facebook Canada	Aug. 20
Witness Testimony and Commission Deliberations on the Effectiveness of Existing Criminal Code Provisions With Det. Kiran Bisla and Det. Sergeant Scott Purches , Toronto Police Service Hate Crime Unit and Mark J. Freiman , Counsel to Rosen & Company, Barristers	Sept. 3



Witness Testimony and Commission Deliberations on the Non-Criminal Ways of Tackling Online Harms With Richard Moon , Professor of Law, University of Windsor and Marie-Claude Landry, Ad.E. , Chief Commissioner, Canadian Human Rights Commission	Sept. 17
Witness Testimony and Commission Deliberations on International Approaches to Preventing and Mitigating Online Harms With Alexander Brown , Reader in Political and Legal Theory, University of East Anglia	Oct. 1
Witness Testimony and Commission Deliberations on a Systemic Approach to Online Harms With Dr. Taylor Owen , Associate Professor Max Bell School of Public Policy, McGill University	Oct. 15
Witness Testimony and Commission Deliberations on Policy Options to Combat Online Harms with Dr. Heidi Tworek , Associate Professor, University of British Columbia	Oct. 29
Witness Testimony and Commission Deliberations on Social Media Councils and e-Courts With Dr. Heidi Tworek , Associate Professor, University of British Columbia	Nov. 12
Meeting of the Commission and the Citizen Assembly on Democratic Expression	Nov. 21
Witness Testimony and Commission Deliberations on the Approaches to and Models for a Government Regulator for Digital Platforms With Dr. Fenwick McKelvey , Associate Professor, Concordia University	Nov. 26
Witness Testimony and Commission Deliberations on Structural Policy Issues With Dr. Taylor Owen , Associate Professor Max Bell School of Public Policy, McGill University	Dec. 10
Presentation of Recommendations by the Citizen Assembly on Democratic Expression to the Commission	Dec. 12
Commission Deliberations	Dec. 17, 21 Jan. 5, 7, 2021



ANNEX D: LIST OF PUBLIC SUBMISSIONS

From September 1 to November 30, the Canadian Commission on Democratic Expression invited interested members of the public and institutions to make a written submission consistent with the Commissions lines of inquiry.

The Commission received 14 written submissions in total: 11 from organizations, and 3 from individuals. Below lists those organizations and individuals who consented to share their written submission publicly.

Written Submissions by Organizations:

Baha'i Community of Canada - Office of Public Affairs

B'nai Brith Canada

Canadian Civil Liberties Association

Canadian Secular Alliance

Facebook

Justice Centre for Constitutional Freedoms

Ryerson Leadership Lab

Saskatchewan Human Rights Commission

The Canadian Anti-Hate Network

Women's Legal Education & Action Fund (LEAF)

Written Submissions by Individuals:

Ashu M. G. Solo

Hilary Young



ANNEX E: LIST OF COMMISSIONED RESEARCH

Ahmed, N. (2021). *Beyond the Technology: Navigating Online Harm*. Research Report. Canadian Commission on Democratic Expression.

Ananny, M. (2020). [Public Interest and Media Infrastructures: Regulating the Technology Companies that Make 'Pictures in Our Heads'](#). Research Report. Canadian Commission on Democratic Expression.

Caplan, R. (2021). Title Forthcoming. Research Report. Canadian Commission on Democratic Expression.

Dornan, C. (2020). [Science Disinformation in a Time of Pandemic](#). Research Report. Canadian Commission on Democratic Expression.

Gill, L. (2020). [The Legal Aspects of Hate Speech in Canada](#). Research Report. Canadian Commission on Democratic Expression.

McKelvey, F., and Duguay, S. (2020) *Regulatory Options for Digital Platforms*. Research Memo. Canadian Commission on Democratic Expression.

Tenove, C., and Tworek, H. (2020). [Processes, People and Public Accountability: How to Understand and Address Harmful Communication Online](#). Research Report. Canadian Commission on Democratic Expression.

Tworek, H. (2020). *Social Media Councils and E-Courts in Canada*. Research Memo. Canadian Commission on Democratic Expression.



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