



What is Bill C-63 and why are we alarmed

Legislation to develop online protections for privacy, and against harmful online activity has been long-awaited. However, the legislation tabled by the federal government on February 26, 2024 - Bill C-63 – isn't hitting the mark.

With Parliament back in session, it's likely that Bill C-63 will soon be brought back for its second reading.

For this reason, the BCCLA has prepared a three-part deep dive series on Bill C-63 to outline our concerns, with a focus on Part 2 of the Bill and its proposed amendments to the *Criminal Code*, as we renew our plea for the government to sever Part 2 from the legislation.

What's in Bill C-63?

Bill C-63: An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts.

Bill C-63 is an omnibus bill – a type of bill which combines a range of separate issues - and currently has four distinct Parts¹:

- **Part 1** proposes to address the issue of online harms. For example, non-consensual distribution of intimate images, content that induces children to harm themselves, and content that incites violence or terrorism.
- **Part 2** proposes to make several amendments to the *Criminal Code*, increasing penalties for hate-speech related crimes, the worst among these being life imprisonment as a potential penalty for all crimes and all federal offences, if a new hate-motivation offence is attached. It would also introduce a new peace bond that aims to restrict people from potentially hateful behaviour before they have done anything illegal.

¹ Bill C-63, *An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*, 1st Sess, 44th Parl., 2024, online: <<https://www.parl.ca/DocumentViewer/en/44-1/bill/C-63/first-reading>>.



- **Part 3** will reintroduce a section of the *Canadian Human Rights Act* to enable human rights complaints for Internet communications.
- **Part 4** will create mandatory reporting measures for Internet child pornography.

In the BCCLA’s opinion, there are some welcome developments in Parts 1 and 4. However, Parts 2 and 3 are both problematic, diverting valuable debate needed around Parts 1 and 4, and should be severed from the Bill.

While this deep dive series primarily focuses on Part 2, let’s take a quick look at Part 3. In the BCCLA’s view, the reintroduction of a problematic section of the *Canadian Human Rights Act* would only serve to flood the Canadian Human Rights Tribunal with complaints beyond its capacity. Countless insults, offensive remarks, threats, and genuinely problematic statements are posted daily on social media; the Tribunal can’t possibly sort through them all, or even through the fraction of complaints that would likely be filed.

According to Part 3 of Bill C-63, complainants could request to be anonymous or could potentially include a large number of people who see a viral post, while the Tribunal’s monetary rewards could rise to \$20,000. There is a real danger that people will use the new provision to gain money or to carry out a grudge. Given how ineffective this would be, the BCCLA has also urged the government to sever Part 3.

Now back to Part 2, which is the most deeply alarming and problematic, and which we believe should not be enacted. The overreaches of the *Criminal Code* provisions under Part 2 have been a major point of concern across Canada, with strong opposition from advocacy groups across a wide political and social spectrum.

The BCCLA feels, and other critics of the Bill agree, that Part 2 of Bill C-63 will create draconian rules,² cause chilling effects on free expression meaning that people may fear speaking out even when they have a constitutional right to do so,³ and will distract from the needed debate and discussion on Parts 1 and 4 of the Bill.⁴ More than this, the BCCLA feels that Part 2 will

² Joanna Baron, “The government doubles down on censoring the internet”, *The Hub*, (February 28, 2024), online: <<https://thehub.ca/2024-02-28/joanna-baron-the-government-doubles-down-on-censoring-the-internet/>>.

³ Canadian Civil Liberties Association, “CLA Urges Substantial Amendments to the Online Harms Act”, (February 28, 2024), online: <<https://ccla.org/press-release/ccla-urges-substantial-amendments-to-the-online-harms-act/>>.

⁴ Michael Geist, “Why the Criminal Code and Human Rights Act Provisions Should Be Removed from the Online Harms Act”, (February 28, 2024), online: <<https://www.michaelgeist.ca/2024/02/why-the-criminal-code-and-human-rights-act-provisions-should-be-removed-from-the-online-harms-act/>>.



likely harm some of the people who are most often targeted by hatred, people who this Bill purports to protect.

In this first of a three-part deep dive into Bill C-63, we share with you some of our overall concerns with Part 2 and why we think it should be struck from the Bill entirely.

New Life Imprisonment Penalties Are Unacceptable and Unnecessary

Part 2 of Bill C-63 would introduce a new hate-motivation offence, which could create penalties up to life imprisonment for any crime or federal offence, if found to be motivated by hate. This means spray-painting racist words on a wall could be considered as bad as murder, and worse – at least, more harshly punishable – than sexual assault.

Likewise, offences in federal legislation could be turned into indictable crimes punishable by life imprisonment, if found to be motivated by hate. This covers a very wide range of activities, including refusing to answer an official census, falsifying business documents, or obstructing customs officers. The BCCLA considers this enormous expansion of potential carceral and life imprisonment penalties to be unacceptable.

This new hate-motivation offence itself is also unnecessary. Hate-motivation is already an aggravating factor that can lead to higher sentences, and we already have criminal offences for public incitement of hatred, willful promotion of hatred, and willful promotion of antisemitism. We also have criminal offences for harassment, nuisance, mischief, assault, non-consensual distribution of intimate images, aiding or abetting more serious crimes, and most other problematic behaviour connected to acts of hatred.

The issue here is that these existing laws are not being enforced. Introducing harsher criminal penalties will not resolve this enforcement problem.



Police are choosing to put their resources into decamping homeless people,⁵ enforcing injunctions for private corporations,⁶ and deploying heavily-armed tactical units against protesters.⁷ To our knowledge, police aren't putting the same level of resources into following up on the numerous hate crimes that have already been reported to them, nor in holding members of their own forces accountable for displaying hateful behaviour.

Reports by the BC Office of the Human Rights Commissioner⁸ and the Downtown Eastside Women's Centre⁹ indicate that people reporting hate-related crimes may be ignored by police or may face systemic barriers in reporting these incidents, such as racism from police, lack of accountability, and lack of access to legal support. Bill C-63 does not address any of these barriers.

"We Won't Actually Use It" Is Not a Justification

The Minister of Justice has argued that Part 2 of Bill C-63 won't actually be used to impose life imprisonment for minor offences or incidents.¹⁰ However, even the threat of incarceration will

⁵ Jamin Mike & Bob Weber, "After standoff, Edmonton police move in to clear out final 'high risk' homeless encampment", *Global News*, (January 11, 2024), online: <<https://globalnews.ca/news/10216638/edmonton-homeless-encampment-removal-legal-battle/>>; see also: Mike Howell, "Vancouver police spent \$409K in eight days to decamp East Hastings", *Vancouver is Awesome*, (January 24, 2024), online: <<https://www.vancouverisawesome.com/local-news/vancouver-police-spent-409k-in-eight-days-to-decamp-east-hastings-ken-sim-8159141>>.

⁶ Brett Forester, "Injunctions justify RCMP spending near \$50M on resource standoffs, B.C. Mountie says", *CBC News*, (January 13, 2023), online: <<https://www.cbc.ca/news/indigenous/rcmp-cirg-injunctions-brewer-1.6713168>>.

⁷ Ryan Cooke, "Police in riot gear hold off fisheries protesters as N.L. Liberals finally land budget", *CBC News*, (March 21, 2024), online: <<https://www.cbc.ca/news/canada/newfoundland-labrador/budget-day-protest-round-two-1.7150621>>; "Pro-Palestine protesters say cops used excessive force; Toronto police reject claim", *Global News*, (April 1, 2024), online: <<https://globalnews.ca/news/10395692/pro-palestinian-protesters-say-cops-used-excessive-force-toronto-police-reject-claim/>>; Jay Reeves & Kat Stafford, "Use of force criticized in protests about police brutality", *CTV News*, (June 1, 2020), online: <<https://www.ctvnews.ca/world/use-of-force-criticized-in-protests-about-police-brutality-1.4962996>>.

⁸ BC Office of the Human Rights Commissioner, *From hate to hope: Report of the Inquiry into hate in the COVID-19 pandemic*, (2023), online: <https://bchumanrights.ca/wp-content/uploads/BCOHRC_Hate-in-the-pandemic.pdf> at p. 217.

⁹ Carol Muree Martin & Harsha Walia, *Red Women Rising: Indigenous Women Survivors in Vancouver's Downtown Eastside*, (2019), online: *Downtown Eastside Women's Centre* <<https://dewc.ca/content/wp-content/uploads/2019/04/MMIW-Report-Final-March-10-WEB.pdf>> at p. 125-126 & 130-131.

¹⁰ Catherine Tunney, "[Virani defends Online Harms Bill after Margaret Atwood warns of 'thoughtcrime' risk](#)", *CBC News*, (March 12, 2024).



create a chilling effect. People will be less inclined to speak freely, to protest openly, or to challenge government decisions if they're afraid of being arrested and imprisoned, even if these actions are legitimate.

It's also, at best, naïve to claim that the new laws will not be used in negative ways, after Parliament has authorized these uses. At its most basic, if the government is saying it doesn't want a piece of legislation to be used the way it is written, then the legislation shouldn't be passed into law.

Parliament also cannot blithely leave the criminal justice system to sort everything out. Judges must apply the law as it's written. It's against the rules of statutory interpretation to assume that Parliament intended a piece of duly-enacted law to carry no meaning or weight. And as it's written, Bill C-63 explicitly authorizes the use of punishments up to and including life imprisonment for every crime and federal offence if found to be motivated by hate, including all the minor ones.

Innocent People Will Be Unnecessarily Hurt

Innocent people are willing to plead guilty to an offence that carries a lesser penalty, rather than risk life imprisonment. Academic research shows that these types of wrongful convictions have already occurred in Canada.¹¹ With its new potential for life imprisonment for any hate-motivated crime or federal offence, Part 2 of Bill C-63 risks drastically increasing the potential for wrongful convictions in Canada.

Nor is it accurate to say that a person can simply prove their innocence at trial, with no harm done. The criminal law process itself is a punishing experience to go through. Even if an innocent person doesn't plead guilty and chooses to fight their case in court, the criminal law process is hugely expensive, stressful, and disruptive to people's lives.

With the new amendments to the *Criminal Code* under Bill C-63, a much broader range of people will be exposed to potential criminal liability or criminal proceedings. For instance, federal offences relating to taxes, banking, or immigration could become crimes potentially punishable by incarceration, all the way up to life imprisonment. This is a very dangerous

¹¹ Kent Roach, "Canada's False Guilty Pleas: Lessons from The Canadian Registry of Wrongful Convictions", (2023) 4(1) *Wrongful Conviction Law Review* 16, online: <<https://canlii.ca/t/7n4zv>>; Dianne L. Martin, "Distorting the Prosecution Process: Informers, Mandatory Minimum Sentences, and Wrongful Convictions", 39 *Osgoode Hall Law Journal* 513, online: <<https://digitalcommons.osgoode.yorku.ca/ohlj/vol39/iss2/12/>>.



development. Criminal sanctions in general, and life imprisonment in particular, should be reserved for the most extreme circumstances.

Democracy Requires Freedom of Speech

The ability to express criticism of governments, institutions, and ideas should never be taken for granted. But freedom of expression requires making space for different views, which also means allowing space for views that some may consider unpleasant, offensive, or simply different from their own worldview. According to the Supreme Court of Canada:¹²

As McLachlin J. (as she then was) wrote in *R. v. Zundel*, 1992 CanLII 75 (SCC), [1992] 2 S.C.R. 731, “[t]he view of the majority has no need of constitutional protection [...] [F]reedom of expression does not truly begin until it gives rise to a duty to tolerate what other people say [...] It thus ensures the development of a democratic, open and pluralistic society.”

In this case, Part 2 of Bill C-63 may intend to serve a public good by reducing hate speech. Unfortunately, the means chosen by the government will reduce all speech, whether hateful or simply unpopular, including the views of minority groups already facing discrimination.

For instance, these new amendments could further suppress pro-Palestinian speech in Canada, Quebec residents speaking out against English-Canadian interference, Indigenous land defenders seeking to exclude colonial powers from their lands, or refugees protesting the actions of their former countries – all legitimate perspectives that could be silenced from fear of these proposed and highly punitive laws.

Social interactions and open communication are important tools that can convince people to adopt broader and more inclusive perspectives. If people are too afraid to voice their prejudices, they may never hear any pushback or challenges to their worldviews. Ultimately, this type of suppression of speech, thought, and public discourse is more likely to create further hatred and misunderstanding than reduce it.

Bill C-63 Should Remove Part 2

We renew our plea for Parliament to sever Part 2 of Bill C-63. There is important work to be done to prevent online harms through Parts 1 and 4, but Part 2 must go to give them the space

¹² *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43, online: <<https://canlii.ca/t/jk1t>> at para 60.



and discussion they deserve. The BCCLA joins a chorus of civil society organizations, advocacy groups, and concerned individuals and call on the government to sever Part 2 from Bill C-63.¹³

Watch out soon for the second deep dive in our series on Bill C-63 which will take a closer look at the new proposed life imprisonment penalties for "hate propaganda" and "hate motivation" offences under the *Criminal Code* and federal legislation.

¹³ Raisa Patel, "Government gone overboard': Experts concerned by Ottawa's attempts to rein in hate speech", *Toronto Star*, (March 10, 2024), online: <https://www.thestar.com/politics/federal/government-gone-overboard-experts-concerned-by-ottawas-attempts-to-rein-in-hate-speech/article_1b03ddf2-dd70-11ee-b84d-27141058aa32.html>; Marie Wolfe, "Margaret Atwood calls online harms bill 'Orwellian', notes potential for abuse", *The Globe and Mail*, online: <<https://www.theglobeandmail.com/politics/article-margaret-atwood-online-harms-bill/>>; Amnesty International, "Joint Letter urges Justice Minister to split the Online Harms Act (Bill C-63)", (May 7, 2024), online: <<https://amnesty.ca/human-rights-news/joint-letter-urges-justice-minister-to-split-the-online-harms-act-bill-c-63/>>.