



The Committee for Justice in Canada
B'NAI BRITH CANADA
Le comité pour la justice au Canada

Combatting Online Hate & Antisemitism

B'nai Brith Canada Submission to the Department of Justice

August 28th, 2020

- B'nai Brith Canada **welcomes the focus by the Department of Justice on remedies to deal with online hate**, particularly that of an antisemitic nature. We build on our submissions and testimony of May, 2019, to the House of Commons Standing Committee on Justice and Human Rights and our later submission to the then-Minister for Democratic Institutions.
- On May 2, 2019, we **testified before the House of Commons Standing Committee on Justice and Human Rights**. We offered [*detailed proposals and legal perspectives*](#), which we summarize and expand upon in brief here. Our ideas are supplemented by **the attached brief prepared by our Honorary Senior Legal Counsel, Mr. David Matas**.
- The issues need to be addressed through a mix of legal and policy approaches. B'nai Brith Canada has called for [*a national action plan to combat antisemitism*](#), with **specific proposals aimed at our Parliament, the federal, provincial/territorial and municipal governments**. Dealing with online hate should be one element of the broader effort.
- B'nai Brith Canada **welcomes Canada's signature of the 'Christchurch Call to Action'** and the announcement of a [**'Digital Charter'**](#). Clear measures to develop further and implement these instruments in the Canadian context should involve **close collaboration with Jewish community organizations**.

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- Canada's Digital Charter includes a welcome **Principle #9 that says our networks should be free from hate and violent extremism**, that "Canadians can expect that digital platforms will not foster or disseminate hate, violent extremism or criminal content." But the Charter does not seem to develop that theme in detail. Now is the time to do so. We see the Department of Justice questions as working towards that goal.
- We **need to focus on hate content, before it transforms** into terrorist and violent extremist content online. In December 2018, the Government of Canada launched the [National Strategy on Countering Radicalization to Violence](#), which outlines Canada's approach and priorities to prevent the kind of radicalization that leads to violence. Within this strategy, we need to **focus more on how online hate, countered at an early stage, can help forestall radicalization** to violence.
- The federal government should **compel social media companies to be more transparent about their content moderation**, including their responses to harmful speech.
- Governments, together with civil society and affected community organizations, foundations, companies and universities must support **more research to understand and respond to harmful speech**, as well as disinformation.
- In November, 2017, we wrote Ministers regarding the [European Union's May 31, 2016, Code of Conduct on Illegal Online Hate Speech](#), and suggested **Canada adopt the EU's 'trusted flagger' approach** as one measure in addressing online hate. We have made this same point in testimony to parliamentarians. In theory, the major service providers prohibit, under their terms of service, incitement to hatred; it is worthwhile making an effort to **turn this prohibition in theory into prohibition in practice**.
- The **Canadian Human Rights Commission could and should develop a similar agreement with the major internet providers** and develop its own list of 'trusted flaggers' to engage in similar work. The work should be coordinated with the European Commission and the European 'trusted flaggers' to avoid duplication of effort.

- We have also focused the attention of Ministers on the United Kingdom's April, 2019 [Online Harms White Paper](#) and the [feedback](#) received and published in February, 2020. These materials contain instructive lessons. One proposal from the United Kingdom is the idea of **an independent regulator to enforce the rules**.
- The UK also now has a [Code of Practice for Providers of Online Social Media Platforms](#), with actions that social media platforms should take to prevent bullying, insulting, intimidating and humiliating behaviours on their sites. Why cannot Canada adopt similar approaches?
- However, the UK approach puts the onus on platforms and service providers. There may be utility in **shifting the onus to an expert, government-appointed body** which has no financial interest in maximizing traffic on any particular provider, is not imbued with a free speech absolutist ethic, and is **equipped to recognize and address hate speech** when it occurs.
- The creation of a **forum similar to the Canadian Broadcast Standards Council, to convene social media companies, civil society, and other stakeholders** – in this case, representatives of the Jewish community – to develop and implement codes of conduct to address harmful speech.
- Action cannot be left to governments, platforms and content providers. We **need to foster public debate and education** so Canadians understand the challenges and the role they play in countering online hate (including disinformation). We are **prepared to support the government convening roundtables to discuss the challenges with the Canadian Jewish community**.
- Within the framework of such a forum, we recommend a **re-purposing of current programmes and funding envelopes to create resources specifically focused on countering online hate**, particularly that of an antisemitic nature, and that those resources be made available initially for three years. We have had some discussions towards this objective with the Anti-Racism Secretariat, in its implementation of Canada's Anti-Racism Strategy.

- International cooperation is important. Canada should **ratify the 2002 Additional Protocol to the Council of Europe Convention on Cybercrime** (concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems).
- **We need to expand tools and services for targets.** Platforms should offer far more user-friendly services, tools, and opportunities for individuals facing or fearing online attack. This includes greater filtering options that allow individuals to decide for themselves how much they want to see of likely hateful comments.
- There needs to be **protections for individuals who are being harassed** in a coordinated way, including user-friendly tools to help targets preserve evidence and report problems to law enforcement and companies.
- Statistics Canada's Canadian Centre for Justice and Community Safety Statistics has consulted B'nai Brith on improvements to the Uniform Crime Reporting system. The CCJCSS and the Canadian Association of Chiefs of Police have also launched an [initiative to collect disaggregated data](#) related to ethno-cultural groups. We have advocated the **need for law enforcement to better understand incidents of an antisemitic nature, and to record data on antisemitic hate incidents** (not just crimes). We have supported the concept of **an online portal for Canadians to report individual experiences** with online and other forms of harassment.
- The government can **encourage enhanced industry support for 'counter speech' initiatives**, including fostering, aggregating and promoting positive messages responding to offensive content. This is where B'nai Brith Canada can play a clear role.
- The government can work with the **Canadian Human Rights Commission**, and provincial human rights commission, to further develop a **public education mandate** that would focus on understanding, reporting, and countering online hate and antisemitism.
- **Striking a balance between the right to freedom of expression and the right to freedom from incitement to hatred** and discrimination requires remedies that are not so easily accessible that they can become vehicles to harass legitimate expression.

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- Freedom of religion is a countervailing value to the right to freedom from incitement to hatred. In balancing off these two rights, **the right to freedom from incitement to hatred must prevail**. Incitement to hatred is integral to no religion. The defence of religious expression guts the offence of incitement to hatred.
- In order to appreciate incitement to hatred, it is important to have **working definitions relevant to each victim group**. This is why B'nai Brith Canada supports the more widespread adoption and implementation of the **definition of antisemitism used by the International Holocaust Remembrance Alliance (IHRA)**. Such definitions are useful for all aspects of anti-hate laws, including consent of the Attorneys-General for consent to prosecution.
- The previous Section 13 of the **Canadian Human Rights Act** went too far in one direction, an undue limitation on freedom of expression, where easy access could lead to the harassment of legitimate expression. We **need to revive the substance of Section 13** to have a civil tool to combat online hate speech.