IMMIGRANTS, 'NON- IDENTIFIABILITY' AND THE CHALLENGE OF TACKLING HATE ONLINE

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The author describes important limits to the effectiveness of online harms legislation in combating hate. He contends that too frequently the language employed by perpetrators of hate often masks their targets making it very difficult to pursue. He contends that online harms legislation will encounter challenges in protecting immigrants who are not designated as an identifiable target of hate. He concludes that it is essential for the government, educators, and civil society to work together on public education strategies to address this issue effectively.

INTRODUCTION

In Canada and globally, concerns are growing about the expression of hate and its increasing presence online. According to the UN's Special Rapporteur on Minorities Issues' thematic report[1], national, ethnic, religious, and linguistic minorities[2] are recurring targets of hate speech, with 70% or more of hate crimes or hate speech on social media directed at these groups. The report also highlights that migrants and refugees are especially vulnerable to racism and discrimination which can be accompanied by hateful rhetoric and incitement (de Varennes, 2021).

A report by the Royal Canadian Mounted Police (RCMP) observed that between 2009 and 2016, levels of police-reported hate crimes in Canada saw minor fluctuations, with the first significant spike occurring in 2016. This rise coincided with the rise of populist politics and inflammatory rhetoric directed at immigrant, racialized, and religious minority groups (Royal Canadian Mounted Police, 2024)

In recent years, governments in pluralist democracies have attempted to enact legislation to combat the spread of hate online. In Canada, the *Online Harms Act* (Bill 63), represents the federal government's latest effort to address this

1 www.ohchr.org/en/special-procedures/sr-minority-issues

2 www.ohchr.org/en/minorities

critical issue. The proposed legislation aims to protect individuals – notably children – from harmful content, including sexual exploitation and hate speech. It seeks to achieve this via modifications to the *Criminal Code* and the creation of a Digital Safety Commission (DSC). The bill places the responsibility on social media to regulate harmful content. If the legislation is adopted, the DSC will establish a set of regulations and have the power to levy fines against companies that break the rules (Department of Canadian Heritage, 2024)

The Canadian Race Relations Foundation (2024) asserts that "freedom of speech does not mean freedom to commit acts of hate", emphasizing that the online harms legislation is overdue and addresses a glaring gap that has long posed a threat to people in Canada. Many religious and racial minorities support the need for the legislation. There is however a persistent concern, notably amongst civil liberties organizations, about potential infringements on free speech, as those tasked with enforcing digital safety may struggle to differentiate between hate speech and offensive language. Over 15 civil society groups have urged Canada's Justice Minister to separate the child protection provisions from other aspects of the legislation.

The following will look at the rise of hate expression, the groups most affected, public concern over its online presence, and the extent to which Canadians believe legislation can effectively curb this phenomenon. It will also explore whether such laws can meaningfully protect newcomers from vilification.

DOCUMENTING HATE EXPRESSION IN CANADA

According to the RCMP, between 2015 and 2022, the most common motivations for hate crime were based on hatred of race/ethnicity (7,204 incidents, representing 45% of police-reported hate crimes), religion (4,455 incidents, or 28%), sexual orientation (1,653 incidents, or 10%). Additionally, hate crimes related to sex/gender accounted for 289 incidents (1.8%), while other motivations, such as mental or physical disability, language, age, occupation, or political beliefs, represented 710 incidents (4.4%).

Canadians have observed a steady increase in the dissemination of hate, as reflected in Table 1. In May 2024, approximately three-quarters of Canadians agreed that hate is on the rise in the country, compared to two-thirds who held this view in February 2024.

As shown in Table 2, a majority of Canadians report frequently encountering expressions of hate online. Women are more likely than men to report seeing such content, and among age groups, the youngest cohort (ages 18 to 24) has the highest percentage, with 70% stating they often witness hate speech online.

Table 3 shows that among those who believe that hate is on the rise in Canada, two-thirds say they frequently encounter hate online, compared to only one-third of those who do not believe hate is increasing in the country.

One of the most common forms of online hate targets immigrants, seeking to position immigrants as threats to personal, national, economic, and cultural security (Costello, 2021). When asked to rank groups they believe are most likely to be victims of hate and prejudice, no single group is identified by a majority of Canadians. However, Muslims are frequently cited, with just over one in five Canadians selecting them as the most vulnerable, followed by Indigenous persons, immigrants, Jews, and LGBTQ+ individuals. (See Table 4)

When the results are broken down by age cohort, it is observed that there has been a rise in the perception of immigrants as the most vulnerable group. Among the 18 to 34 age group, more than one in five now view immigrants as particularly vulnerable to hate and prejudice. (See Table 5)

TABLE 1. "HATE IS ON THE RISE IN MY COUNTRY (CANADA)."

	Total	18–24	25–34	35–44	45–54	55–64	65+
February 23–26, 2024	66%	53%	64%	60%	65%	68%	76%
May 17–20, 2024	74%	69%	78%	69%	78%	69%	78%

Source: Leger for the Association for Canadian Studies, February 23–26, 2024 and May 17–20, 2024

TABLE 2. "I OFTEN SEE EXPRESSIONS OF HATE ONLINE."

	Total	Male	Female	Between 18 and 24	Between 25 and 34	Between 35 and 44	Between 45 and 54	Between 55 and 64	65+
Canada May 17–20	58%	54%	63%	70%	65%	63%	57%	51%	52%

Source: Leger for the Association for Canadian Studies, February 23–26, 2024 and May 17–20, 2024

TABLE 3. I OFTEN SEE EXPRESSIONS OF HATE ONLINE VS. HATE IS ON THE RISE IN MY COUNTRY.

Canada		Hate is on the rise in my country	
		Yes	No
I often see expressions of hate online – Please respond YES or NO to the following:	Yes	66.3%	36.0%
	No	33.7%	64.0%
Total		100.0%	100.0%

Source: Leger for the Association for Canadian Studies, February 23–26, 2024 and May 17–20, 2024

TABLE 4. OF THE FOLLOWING GROUPS PLEASE RANK IN ORDER WHICH YOU CURRENTLY CONSIDER TO BE MOST LIKELY TO BE THE VICTIM OF PREJUDICE/HATE IN...

	Canada	
	February 23–27	May 17–20
Muslims	24.5	22%
Indigenous Peoples	17.5%	17%
Immigrants	13.5%	15%
Jews	13%	15%
LGBTQ+	15%	15%
Black persons	11.5%	13%
Asians	4%	4%

Source: Leger for the Association for Canadian Studies, February 23–26, 2024 and May 17–20, 2024

HATE CRIME VICTIMIZATION AND TARGETED GROUPS: IMMIGRANTS ARE NOT AN IDENTIFIABLE GROUP

There are several provisions within the *Criminal Code* of Canada that address hate crimes amongst relevant examples one finds:

- **Advocating genocide (subsection 318.1);** for example, a subject openly advocates for the genocide of all people of a specific religion or religious group.
- **Public incitement of hatred where likely to lead to a breach of the peace (subsection 319.1);** wherein a subject wilfully promotes hatred against any identifiable group. For example, a protest leader who addresses a group of people by saying "You must go and commit violence against [names a specific identifiable group]" is publicly inciting hate.
- **Wilful promotion of hatred (subsection 319.2);** anyone who, by communicating statements other than in private conversation, wilfully promotes hatred against an identifiable group. The statement can be spoken, written, or recorded and can include gestures, signs, photographs, and drawings.
- **Wilful promotion of antisemitism (subsection 319 (2.1);** for example, writing or publishing antisemitic articles that promote Holocaust denial narratives.
- **Conversion therapy offenses (sections 320.101–104; subsection 273.3(1);** any form of treatment that attempts to actively change someone's sexual orientation, gender identity, or gender expression.

TABLE 5. RANK IN ORDER WHICH YOU CURRENTLY CONSIDER TO BE MOST LIKELY TO BE THE VICTIM OF PREJUDICE/HATE IN...

	Canada					
	18–34		35–54		55 plus	
	February 23–26	May 17–20	February 23–26	May 17–20	February 23–26	May 17–20
Jews	6%	13%	9%	11%	16%	19%
Muslims	18%	16%	18%	22%	24%	26%
Indigenous Peoples	19%	20%	17%	18%	13%	14%
Black persons	12%	16%	9%	15%	9%	9%
Immigrants	13%	21%	10%	14%	10%	12%
Asians	5%	5%	4%	4%	2%	3%
LGBTQ+	11%	10%	13%	16%	14%	17%
None of the above/Other	17%		20%		12%	

Source: Leger for the Association for Canadian Studies, February 23–26, 2024 and May 17–20, 2024

Hate crimes are defined as criminal acts that are found to have been motivated wholly or in part by hatred toward an identifiable individual or group. These groups, as outlined in subsection 318(4) of the *Criminal Code* of Canada, are distinguished by race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability (Justice Canada, 2024)

For its part, the proposed *Online Harms Act*[3] would specifically target seven types of harmful content:

Mischief motivated by hate about religious property (subsection 430 (4.1)); for example, vandalizing a place of worship like a church, synagogue, temple, gurdwara, or mosque.

- Content that sexually victimizes a child or revictimizes a survivor;
- Intimate content communicated without consent;
- Content used to bully a child;
- Content that induces a child to harm themselves;
- Content that foments hatred;
- Content that incites violence; and
- Content that incites violent extremism or terrorism.

WILL ANTI-HATE LEGISLATION WORK?

Beyond the debate over whether the *Online Harms Act* could infringe on free speech, there remains doubt about its effectiveness in curbing hate speech, given the sheer volume of hate expression on social media. A March 2024 Leger survey reveals that while 70% of respondents support the government's plan to regulate online content, only 40 % believe the legislation will create safer online platforms. Furthermore, 50% expressed distrust in the government's ability to protect free speech, while 43% felt the government was worthy of such trust (Taylor, 2024).

CONCLUSION

Canadians recognize that immigrants are often targeted by hate online, often portrayed as unable to adapt or associated with fears of violence and terrorism. The rise in anti-immigrant hate expression threatens cohesion thus making it essential to identify and understand the factors that direct individuals toward such malicious online content. Online attacks that explicitly refer to immigrants often mask the specific groups being targeted, allowing perpetrators to dismiss accusations of hate speech and discrimination. Given the limits of the online harms legislation in protecting immigrants from online vilification, the government and civil society need to work together on public education strategies to address this issue effectively.

3 www.canada.ca/en/canadian-heritage/services/online-harms.html

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