



Inquiry into hate in the pandemic: Hearing transcript

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Roundtable attendees: Natasha Tusikov

BCOHRC¹ attendees: Human Rights Commissioner Kasari Govender, Sarah Khan, Camellia Bhatti

Please note that third-party personal information has been removed from this transcript.

[Introductory comments by Human Rights Commissioner Kasari Govender not included in transcript.]

Natasha Tusikov: Thank you. So, I want to thank the B.C.'s Office of the Human Rights Commissioner for the invitation to present here, it's a really important topic and certainly one we need a broader public debate on.

My name is Natasha Tusikov, I'm an assistant professor in the criminology program in the Department of Social Science at York University. My research focuses on the intersections of regulation, law, and technology. I particularly focus how companies – like social media companies, payment companies – set and enforce rules governing their services. My 2017 book "Chokepoints: Global Private Regulation on the Internet" examines how internet companies act as regulators, both on their own behalf or their own commercial interests, and at the behest of governments.

I've also examined how PayPal and other payment providers withdraw payment services from individuals and entities linked to organized hate groups into a 2019 article for "Surveillance & Society." I co-edited a 2021 volume that brought together scholars from across Europe, Latin America, Canada, and China to explore the state's varying role in regulating different aspects of the internet.

¹ BC's Office of the Human Rights Commissioner

I've also edited--written multiple editorials examining how the Canadian government, particularly, should better regulate social media to address the harms from online hate speech and from medical misinformation. Many of these editorials are publicly available from the CG Think Tank, The Center for International Governance Innovation based in Waterloo, Ontario.

So, I want to take the opportunity today to discuss hate in the pandemic with a focus on the role of social media. And I'll address how social media companies, specifically their business models, facilitate rather than hinder the spread of hate. And I want to take the opportunity to push some conventional lines of thinking on regulating social media. So, to do so, I'll make four broad points on regulating social media and then seven recommendations.

So first, it's essential to recognize that all speech is regulated. All societies recognize that some types of speech are inherently destabilizing or harmful to specific communities. Child sexual abuse content, for example, is the most obvious example of this type of problem. Another example is Germany's ban on public Holocaust denialism, and the sale of Nazi paraphernalia. But mainstream discussions of regulating bad speech are often simplistically portrayed as a binary between free speech and censorship, and this isn't a productive way to address an important policy issue.

So, we should begin from a point where all speech is regulated to some degree, depending on how it's undertaken, by whom, for what reasons – regulating speech is legitimate. So, once we've had that initial discussion, we can productively engage in questions of how harmful speech should be addressed, by whom, and with what policies and technologies.

Now second, we need to acknowledge that debates over regulating speech occur within certain frames. Though we're in Canada, too much of our debate is shaped by U.S. libertarian approaches to speech. Libertarian approaches to free speech view speech as taking a precedent over all other rights and freedoms because those freedoms depend on an effective right of dissent. The idea under this approach is that the antidote, antidote to bad speech, is more speech. This is the so-called "marketplace of ideas." Another libertarian defense claims that free speech of, especially free expression of hateful speech, provides a societal safety valve with the idea that free speech releases anger before it builds to violent action. Problematically, this means that we should tolerate some hate speech so violent extremists don't kill us. And we've repeatedly seen when journalists, artists, academics, and activists publicly leave social media because of racism, misogyny, discrimination from users – including rape and death threats.

So, instead of good speech thriving in this so-called "marketplace of ideas," what we see is bad speech drives out good speech and good speakers. Now this emphasis on U.S.-style free speech is often referred to as free speech absolutism. U.S. law prof. Mary Anne Franks calls this absolutism a "cult of free speech," a form of constitutional fundamentalism. So, problematically, it privileges free speech above all other constitutional rights.

Now, in contrast, the Canadian approach to freedom of expression is markedly different. We have different political and cultural norms in Canada. For example, a majority of Canadians said in a 2021 Leger poll that social media companies should be required to monitor posted content and remove hate speech. The same poll said nearly half of Canadians think the Canadian government should have the power to regulate hate speech. As well, the Canadian Charter sets reasonable



limits, prescribed by law, to rights and freedoms that can be justified in a free and democratic society.

But U.S.-based social media companies – I'm talking here of YouTube, Facebook, Twitter, and others – operate, even in Canada, according to U.S. legal norms with a special emphasis on U.S.-style freedom of speech. Social media companies embed those norms in their terms of service agreements, where they shape their operations globally. So, this can take the form of platforms permitting nearly all types of speech, even that which is hateful, toxic, and harassing.

Now third, social media companies employ the frame of platforms. U.S. free speech is the guiding principle and that's evident in how social media companies portray themselves. But as communications scholar Tarleton Gillespie notes, technology firms also use the term "platform" as political rhetoric. Companies sell themselves, portray themselves, as technical, passive intermediaries that merely facilitate interactions amongst users, thereby erroneously portraying themselves as neutral infrastructure. Now, they do this to disguise the fact that they directly curate, that is, regulate user speech for commercial gain while claiming they operate as neutral providers of content. Companies define themselves as platforms in order to avoid certain regulatory frameworks and thus legal responsibilities for the content they promote.

Social media firms, for example, argue they're not broadcasters. This is even though they produce and fund content and make editorial decisions that prioritize its content. Similarly in other fields, Uber, for example, argues it's not a taxi company. Airbnb contends it's not a hotel service.

Now fourth, debates on regulating social media, whether in Canada or elsewhere, too often occur along relatively conventional lines that echo how companies prefer to operate. Now, our discussions often focus on improving existing practices. So, flagging practices, companies' rules, their use of algorithms as tools, and their human content moderators. Now, certainly all of these elements can be strengthened, improving their accuracy and efficiency, but I refer to such strengthened conventional practices as "status quo plus regulation."

Now what makes this conventional line of reasoning problematic, is that the status quo doesn't work – flaws and errors are commonplace. Companies admit that their enforcement efforts against hate speech are insufficient. This is really troubling because adding more flags and algorithms and human content moderators won't fix this problem. So how might we fix it? Here is where I offer 7 recommendations.

So first, I argue that we need to move the discussion of regulating social media beyond the common framing of free speech versus government censorship. This framing is evident during the public discussion of Canada's Online Harms Bill. Social media companies commonly emphasize fears of government censorship and surveillance. And critics of the bill and a broader regulation of social media in general complain about surveillance creep and the possible chill on legitimate speech.

But what these debates often lack are details of actual harms from hate speech. What's missing are accounts from victims, people who left social media because of rape or death threats, or those who are dealing with doxxing. Debates on regulating social media need to hear from people where online threats crossed over into violence in the real world. Now during the pandemic we've



seen violence against health care workers, against elected officials, and we've seen that cross into violence in the real world – vandalism, property damage of homes, as well as threats made against these individuals.

We also need to consider those whose speech has already silenced because of hate. Too often victims of hate crime, those silenced, harassed, and driven from online spaces are overlooked when debates simplistically focus on protecting free expression. Our democracy is much poorer if we discount people who are already driven out of participating in public debates, and this includes elected officials harassed and vilified online, like the former Environment Minister, Catherine McKenna, who also faced death threats.

So, in sum, we need to reframe these debates from free speech to focusing on actual harms. Second, we need to be frank about how and to whom these big social media companies are accountable. Companies are--these companies are largely based in the United States, except for the China-based TikTok, with Canadian operations. Despite global operations, the companies are really only responsive to U.S. lawmakers and U.S. regulators. Problems outside the United States, such as Facebook's role in facilitating a genocide in Myanmar, stimulate less official action. The U.S. has the clout of its regulators, it has the clout of its market, and it has a home advantage of its lawmakers where they can summon big tech leaders to appear before them in Congress.

Smaller states, like Canada, lack the regulatory power, lack the draw of a large internal market to enact necessary reform. And when Canadian parliamentarians summon big tech leaders, like Zuckerberg et al., to appear before Parliament, they often decline to appear.

Now third, we have to move away from relying upon voluntary principles to govern problems like online hate. Industry often prefers non-legally binding sets of principles, like in distinct codes of conduct, to binding legal requirements. For example, the Christchurch Principles are a voluntary set of commitments amongst governments and social media platforms to address terrorism and violent extremist content online. Now amongst other things, these principles emphasize ensuring that social media algorithms don't drive people towards terrorist content or violent extremist content.

Now, while the principles are laudable, they lack teeth – there's no teeth to require any necessary action. As I've said, companies have few incentives to enforce rules contrary to their commercial interests. And here, I argue what's needed is legislation. Germany's "NetzDG" law, Network Enforcement Act, provides a path here. The NetzDG requires social media companies to remove clearly illegal hate content within 24 hours after receiving a user complaint.

Canada is currently proposing to amend hate speech laws and amend its Online Harms Bill that will institute new rules for harmful speech online. We should be talking about taking the best part of laws like NetzDG and applying them here.

Now fourth, we have to move beyond the "status quo plus regulation" by focusing on firms' business models. Social media companies make most of their money from advertising. In fact, they're actually ad companies. They rely on user engagement as a key growth metric. Social media companies use technological means, like algorithms, to maximize user engagement with user-generated content, which these companies heavily curate to generate their ad revenue. So



simply put, regulating speech, amplifying some speech, downplaying other speech, is what they do. But this is commercial regulation – unaccountable and designed to maximize profit.

Now fifth, we have to recognize that social media companies won't change their business model without government intervention. Firms design algorithms to recommend content and people and events to increase user engagement. Now this is even the case when such recommendations involve following extremist groups, or sharing medical misinformation, or hate speech. And, as we all know, harmful, vile content can generate lots of engagement – clicks, comments, likes, shares. And to this end, commercial reliance on user engagement as a growth metric means that companies are extremely reluctant to enact measures to deal with bad actors and bad speech.

This reluctance includes setting rules that might somehow constrain growth or limit user engagement. For example, the MIT Technology Review found that Facebook has discarded algorithms designed to reduce this information because they would have decreased user engagement. So, this means that companies have conflicting interests in regulating content. It's unlikely that these companies will institute practices, including any changes to algorithms, that address problematic content if they change or decrease user engagement. In short, we need government legislation to compel structural changes to business models.

Now sixth, we need to consider what substantive reform to social media companies might look like in Canada. Governments could reform advertising as a revenue source. This could involve prohibiting micro-targeted ad-dependent businesses. The goal here is to minimize social media companies' reliance on user engagement as a growth metric, and this is because advertising is not the only way a company can make money. A subscription-based model, like that of Netflix, provides more stable revenue that could reduce companies' obsession with engagement quantity over engagement quality. Governments could also impose rules on algorithms, such as regulating or prohibiting certain types of recommendation algorithms that direct users towards problematic events or groups.

Now, a common critique of these proposals is that rules by individual states will fracture the internet with different websites or platforms in different countries. Country-specific rules, however, shouldn't automatically be ruled out. Canadians, like Germans, may determine that social media should reflect our political and cultural values with country-specific laws on online hate. Now, the status quo approach to regulated hate isn't working. More voluntary codes, more flagging, and claims of better artificial intelligence won't solve the problem.

Now finally, I want to offer caution to working with social media companies on addressing hate crime. For years, we've heard social media companies give excuses and propose partial remedies every time there's a scandal, every time there is harmful content. Every scandal, however, we revisit the same ground – with seemingly little progress. This is confirmed by whistleblower accounts that reveal platforms stifle research on the harms their platforms cause and are reluctant to introduce measures to address them.

The UN again found Facebook facilitated a genocide in Myanmar. Rohingya people are currently suing Facebook. With this type of continual failed promises from social media companies, we need to discuss the idea of "techwashing." This is similar to the idea of greenwashing – when big oil companies promote dubious environmental products simply for the PR efforts. At what point do



we consider these social media companies bad actors with little meaningful interest in addressing hate? I'd argue we're at that point, and we need legislation to compel action. I realize I'm being provocative, but it's really important to shift this conversation beyond meaningless pledges to strengthen rules or improve artificial intelligence. Let's discuss actual, meaningful changes so we don't repeat this discussion a year from now.

So, in conclusion, I'm starting--I'm calling for a different starting point when addressing online hate. Debates about governing social media need to emphasize real world harm to specific communities over constitutional abstractions like free speech or free expression. Let's not assume that social media regulation is a de facto attack on free speech. Rather, we can benefit by thinking through platform regulation as we should other policy issues. And a harm-based focus, here, would center victims of hate crime.

Now, I talked a lot today about mostly U.S. based social media platforms, but we have our own homegrown platforms in the form of Rumble. The video streaming site launched in 2013. Rumble now aims to be a right-wing alternative to YouTube, with lots of big U.S. conservatives currently on the platform.

Now, in addition, there's other online entities that facilitate online hate, not just social media firms. Fundraising platforms, which got a lot of attention during the Ottawa Occupation, allow extremist groups to raise funds – including for their legal fees. Payment providers, like PayPal, remove some organized hate groups, but they allow others to keep selling their merchandise using PayPal and raising funds. Marketplaces, like Amazon, sell hate-related products, books espousing violent conspiracy theories. And so, what we need is more research and more policy-maker attention to how entities, other than social media platforms, monetize the spread of hate.

There was a recent private member's bill in Parliament from the NDP to outlaw the sale, in Canada, of white supremacist paraphernalia like Nazi symbols and Confederate flags. We need concerted government efforts to address hate, and we need to examine the entire digital economy. We also need to think more critically and more imaginatively about how to address online hate.

Thank you, and I look forward to any questions.

Commissioner Kasari Govender: Thank you so much. That was incredibly useful, and I look forward to actually listening back and making sure we've caught all the points that you raised there. I do have a few questions, though. I'm wondering just actually, just starting kind of at the end there, you talked about whistleblower research that shows the act of suppression of research against social media companies. Can you point us to that research?

Natasha Tusikov: Yeah, so this is Frances Haugen's testimony in the U.S. Congress, talking about Facebook suppressing research showing that Instagram knew that content was causing teen girls to self-harm. This is part of a broader trend of companies having a very good idea that their platforms further problematic content, that they contribute to harmful content. But they run up against their commercial imperative which is to keep users engaged in order to generate advertising revenue. So, even though there might be, you know, well intentioned individuals within the social media companies, who want to change and propose changes, that runs up



against the very strong incentive that they have to keep going and generating advertising revenue.

Commissioner Kasari Govender: You briefly mentioned the 24-hour removal period, in the German legislation, I believe. I know that--I've read some about the controversy about whether that would appear in the Canadian legislation and potential impacts on counter speech. Can you speak to that issue at all? Whether you think that it will have a negative--could have a negative impact on progressive or counter speech as well?

Natasha Tusikov: Yes, I think this is--recognizing that whenever we propose rules to regulate speech, there is always going to be an effect, and there is always going to be some kind of unintentional effect on legitimate speech. How we design those rules, the time frame, the ability to appeal – those can mitigate any kind of problems. The challenge with this discussion is, we were always focused on potential chills to legitimate speech, while seemingly overlooking or entirely discounting other people who have their speech silenced through violent hate content.

And if we bring all aspects of this discussion to the table and weigh people who are already silenced, who are terrified, who have been chased out of the public arena, with the possible potential of chilling legitimate speech, we'll be better able to mitigate amongst all of the harms.

Commissioner Kasari Govender: Thank you. You talked, in the beginning of your recommendation section, about ensuring that the voices of those who've been pushed out, as you've just talked about, and those who have experienced that transition from online hate to real world violence, how their voices are left out of out of the conversation – which you've just touched on as well. Now, can you give us some specific guidance on how you see those voices more effectively being incorporated into the debate, if you have any.

Natasha Tusikov: Well, certainly one aspect we can talk about is, when we have a public debate, so when the Online Harms Bill, the revised version is introduced, we have some excellent legal voices in Canada who point out the legal shortcomings and the possible chill on speech. What we don't have is an equivalent focus on what the actual harms are to people already. So, it's always focused on a possible chill to future speech, but we aren't foregrounding this, and that people are already harmed.

There is research, already, of the scope of racism and violent aggressive speech that forces people, and we can just look at, there's been some really great surveys about how journalists, especially racialized journalists, especially women face a much higher level of personal attacks, and how that circumscribes or changes their life. We can expand that to other areas, especially elected officials, and then foreground those experiences and foreground that research when we're debating this. And this is difficult because in a debate like the Online Harms Bill, there are a number of popular, well-known voices that always bring up the traditional problems of surveillance creep and possible chill of legitimate speech. But there don't seem to be equivalent voices speaking up for victims. Now this could be because, you know, NGOs are overburdened and they have many other things to do, but that the media and the policymakers aren't going to those areas. So that's what also needs to be a priority – not only going to very nuanced legal criticism of this but to actual harms.



Commissioner Kasari Govender: Thank you. Can you talk about the--if you see any impact of the pandemic on all of these issues that you've been talking about, both the increase in hate and your recommendations around regulation? And if so, why? Why do you see that impact? And if not, can you tell us more about that

Natasha Tusikov: Well, certainly I've seen surveys where there has been – especially captured early on – an uptick in hate against Asian Canadians, Asian Americans, both in the real world and online, especially when the pandemic first started and there were the xenophobic hateful attacks that this was a “Chinese Virus,” that this was engineered as a “Chinese Virus,” that kind of fraudulent erroneous claim. So, certainly in terms of racialized elements of hate during the pandemic – we've seen that.

We've also seen both online and about real-world attacks against medical professionals, that certainly I can't remember from before the pandemic, where people have, through medical misinformation or through you know, whatever is going on in their lives, expressing violent hate towards medical professionals. I've seen this in the Niagara area for our Medical Professional of Health, Dr. Hirji, being at the at the end of, not only of abusive hate online, but also being, you know, being accosted by protesters outside this house – elected officials as well.

So, I think this has really ramped up, medical misinformation, and one reason why we're seeing this is there is the monetization of misinformation. So, often the broader debate talks about digital literacy – if only people had the right facts, if only we could reach people and convince them vaccines are safe – and that is all a useful line of discussion. What that misses is that social media companies are monetizing this. This people are making money from spreading medical misinformation. People are publishing books and documentaries and selling garbage. And these companies, like Facebook and Amazon, are knowingly facilitating that. And until you address the monetization of medical misinformation, you're not going to address the hate that stems from that.

Commissioner Kasari Govender: And how do we address the monetization of medical information?

Natasha Tusikov: This is difficult, but this is where it gets at the social media company's business model, interrupting the way that they sell ads, the way that they rely on ads. It also focuses on the types of groups or events that the companies promote--the social media companies promote. You know, medical misinformation parenting groups. Events like the Ottawa Occupation that were advertised and promoted on Facebook.

Commissioner Kasari Govender: Thank you. Do you--have you--I was asking you specifically about the pandemic, and I appreciate that your answer to that. I'm wondering if you have any insight or have done any research and know of research specific to times of crisis – other times of crisis. I mean, clearly, we find ourselves in a unique moment with the internet – in terms of a global crisis. Can you draw any other correlations for us between increased hate speech online and other forms of societal crisis like natural disasters?

Natasha Tusikov: Yeah. So, I'm a trained as a criminologist--and certainly the war on terror. So, every time that there is a terrorist incident, or something that--an attack, or something that



appears as if it's a terrorist motivated attack, there's an influx of anti-Muslim rhetoric, right? There's Islamophobic, hateful rhetoric. And we've certainly seen this through numerous surveys, numerous research all over the world in terms of not only effects on the real world, but in terms of social media as well. So, we could look to that kind of examples. Now, those are usually temporal in that there's an uptick, an immediate increase, and then a gradual lessening off because it doesn't happen or occur over a longer time period like the pandemic which has been stretching on for two years.

Also, I would, maybe, direct the Commission towards looking at India. India has been struggling to regulate how its social media companies have been used to facilitate anti-Muslim violence including retaliatory killings through like the WhatsApp social media platform. So that's been used to spread fear and spread deliberate lies against a Muslim minority population that's, in some cases, has resulted in arbitrary executions.

Commissioner Kasari Govender: Thank you. Sarah, do you have any further questions? I think some of the questions we discussed earlier, Professor, is it Tusikov?

Natasha Tusikov: Tusikov.

Commissioner Kasari Govender: Tusikov--has covered. But do you have any additional questions here?

Sarah Khan: I do.

Commissioner Kasari Govender: Over to you.

Sarah Khan: Thank you. Thank you so much for your presentation, it's very useful. I was--you talked about Rumble as a site that has some prominence in Canada, and I'm wondering if you could provide any insight into other less visible sites that might be facilitating hate content and have—that have gained or are gaining prominence in Canada?

Natasha Tusikov: In Canada, no, I haven't focused on that area. I mean, the obvious ones that come to mind are, you know, the U.S.' Parler and Gab. The challenge that we see, though, is even though right-wing extremism, including, you know, Trump and Steve Bannon, people like that, who have been temporarily or permanently banned from mainstream social media sites – there's a lot of discussion about creating their standalone right-wing extremist sites. The problem is, there isn't a large enough network effect. So even though Gab has, I think it's about four or five million people now – that seems like an alarming number of people who have flocked to a very right-wing hate site – but globally that's tiny. And what right-wing extremists have found is that not enough people are coming with them to their sites. So de-platforming using mainstream social media sites works, right? If YouTube and Facebook and Twitter and TikTok can get rid of some of these people, take, you know, de-amplify their voice by removing their platform, by demonetizing their channels, they can go to these smaller sites where they have a much, much smaller audience.

Sarah Khan: Okay, thank you very much. I think that's all I have. Kasari, you covered a lot of good questions. Thank you.



Commissioner Kasari Govender: I had one more around whether you have any specific recommendations that you would like to see the provinces enact – without getting too much into jurisdictional conversations. But I just wondered if you had anything specific that you would apply there?

Natasha Tusikov: Yeah, that's a good question I don't think I've thought of that before. Most of my work is aimed at trying to introduce, toughen up privacy legislation. You know, the Online Harms and the hate legislation. So, nothing immediately comes to mind, but definitely if I think of something I'll all forward that.

Commissioner Kasari Govender: Thank you so much. That would be very helpful. As I say, this was an incredibly helpful conversation. Really appreciate both you making time to be here with today, but also all the work that you do on this issue. I know we'll be looking at your writings, as well, in this process. If you, if you are interested, we would very much welcome written submissions from you. And if that, even just in the form of your speaking notes, but any other written information you have to share with us – we'd be really grateful, and we're accepting those until the end of March.

Natasha Tusikov: Perfect. Okay.

Commissioner Kasari Govender: And with that, I'll just pass it over to Camellia for just some final comments if you have any.

Camellia Bhatti: Yeah, thank you so much. I'm just echoing Commissioner Govender, thank you so much for your time and your willingness to share your knowledge with us. Just reiterating what Commissioner Govender has said, so we would appreciate any written or video submissions before March 31st. And once the video is ready to post we will notify you. So, in case you'd like to review it before for it's p

