



## Legislative Summary

# BILL C-36: AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADIAN HUMAN RIGHTS ACT AND TO MAKE RELATED AMENDMENTS TO ANOTHER ACT (HATE PROPAGANDA, HATE CRIMES AND HATE SPEECH)

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*Legislative Summary of Bill C-36*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-36: AN ACT TO AMEND THE CRIMINAL CODE AND THE CANADIAN HUMAN RIGHTS ACT AND TO MAKE RELATED AMENDMENTS TO ANOTHER ACT (HATE PROPAGANDA, HATE CRIMES AND HATE SPEECH)

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## 1 BACKGROUND

### 1.1 SUMMARY OF BILL C-36

Bill C-36, An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech) was introduced in the House of Commons on 23 June 2021 by the Honourable David Lametti, Minister of Justice.<sup>1</sup> The bill died on the *Order Paper* when Parliament was dissolved on 15 August 2021.

Bill C-36 amends the *Criminal Code*<sup>2</sup> (the Code), the *Canadian Human Rights Act*<sup>3</sup> (CHRA) and the *Youth Criminal Justice Act*<sup>4</sup> (YCJA) to create new legislative options that address hate promotion and protect people from hate crimes. It adds new section 13 to the CHRA, making it a discriminatory practice to communicate or cause to be communicated hate speech by means of the Internet or by other means of telecommunication. It permits the Canadian Human Rights Commission (the Commission) to receive complaints regarding violations of the new section, and it allows the Canadian Human Rights Tribunal (the Tribunal) to adjudicate any disputes and to order remedies, such as ordering a person to cease and/or redress a discriminatory practice, provide financial compensation to the victim or pay a penalty.

Bill C-36 also amends the Code to permit a person (the informant) to seek a court order (a recognizance) when they have reasonable grounds to fear that another person (the defendant) will commit one of several listed offences. If granted by a court, the recognizance requires the defendant to keep the peace and comply with other conditions appropriate in the circumstances. The listed offences are those that are motivated by bias, prejudice or hate, and include the hate promotion offences set out in sections 318, 319(1) and 319(2) of the Code, and the offence of causing mischief relating to religious property or educational institutions set out in section 430(4.1). Amendments to the YCJA ensure that the recognizance may be ordered when it is feared that a youth between the ages of 12 and 17 will commit one of these listed crimes.

In announcing Bill C-36, the federal government stated that the bill is to be part of a broader regulatory framework that will follow soon. It will include additional rules for social media platform operators to make them more accountable and transparent “while combating harmful content online” (which includes hate speech, terrorist content, content that incites violence, child sexual exploitation content and the non-consensual distribution of intimate images). The government promised that it will “engage Canadians on a detailed technical discussion paper” that will outline its proposals.<sup>5</sup> Although Bill C-36 does not make reference to this proposed framework, the bill does make it clear, as explained in this paper, that certain new sections do not apply to persons and organizations that hold licences or distribute content under the *Broadcasting Act*.<sup>6</sup>

## 1.2 HATE PROMOTION AND HATE CRIMES IN CANADA

Many groups and communities in Canada have been targeted and harmed by hate speech and hate crimes, often based on such personal characteristics as colour, ethnicity, religion, gender identity or sexual orientation. The Internet has provided new ways for individuals to spread and amplify hateful messages that can also lead to physical violence. Recent stories of hate crimes committed in Canada and abroad have raised public awareness about these issues.<sup>7</sup> A majority of recently polled Canadians indicated that they are concerned about the spread of hate speech online and they support further government effort to prevent it.<sup>8</sup>

In 2019, the House of Commons Standing Committee on Justice and Human Rights released a report, *Taking Action to End Online Hate*, in which the Committee made nine recommendations, including that the Government of Canada formulate a legislative definition of hate or hatred and establish a civil remedy for those who assert that their human rights have been violated under the CHRA.<sup>9</sup> The report noted that online hate speech often precedes acts of violence, and that since 2009, police services in Canada have reported between 1,167 and 2,073 hate crimes each year.<sup>10</sup>

More recent data indicates that the number of hate crimes in Canada is rising, with 2,669 police-reported hate crimes recorded in 2020, and a significant increase in crimes targeting Black, Indigenous and East Asian or Southeast Asian populations.<sup>11</sup> Moreover, the actual number of hate crimes in Canada is believed to be considerably higher than the data collected by police agencies, in part because many incidents are not reported to police. In a 2014 survey, Canadians reported that they had been victims in over 330,000 criminal incidents in the previous 12 months that they perceived as being motivated by hate; two-thirds of these incidents were not reported to the police.<sup>12</sup>



Internationally, different legislative approaches aim to balance the right to freedom of expression with the responsibility to protect vulnerable individuals and groups from hate speech.<sup>13</sup> Given the global nature of both the Internet and online expression, the Government of Canada has recognized the importance of working multilaterally to address online hate speech.<sup>14</sup>

In 2019, Canada signed the *Christchurch Call to Action*,<sup>15</sup> a non-binding pledge between governments and online service providers that includes a commitment by governments to enforce laws that stop the production and dissemination of terrorist and extremist content online, in a manner that is consistent with the right to freedom of expression. Moreover, international law has long prohibited certain forms of hate speech, including the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>16</sup>

In addition, one of the principles of the Government of Canada's proposed Digital Charter – announced in 2019, containing ten draft principles to help guide the government's work in the digital realm – is that “digital platforms will not foster or disseminate hate, violent extremism or criminal content.”<sup>17</sup>

### 1.3 CANADIAN LEGAL CONTEXT

#### 1.3.1 Overview

Canada has various laws that target the harms caused by the spread of hatred. Since 1970, the Code has included an offence for hate promotion which was passed by Parliament to target the activities of the white supremacist groups that were operating in Canada at that time. Since then, the debate about how to stop the spread of hate has been ongoing, whether in challenges to the constitutionality of Canada's anti-hate promotion laws in courts before the human rights tribunals authorized to hear complaints about hate promotion, or in parliamentary debates about proposals to amend these laws. Some commentators believe that freedom of expression should not be restricted to target hate promotion, but if necessary, it should be restricted as little as possible. From this perspective, a free forum allows all ideas, including negative ones, to be openly addressed and countered with more compelling arguments. Others believe that the protection of vulnerable groups outweighs the right to express hatred that could cause significant harm to others.<sup>18</sup>

While the right to freedom of expression is guaranteed under section 2(b) of the *Canadian Charter of Rights and Freedoms*<sup>19</sup> (the Charter), it is not an absolute right; it may be limited by laws and upheld by courts when it can be demonstrated that the restrictions are justifiable in a free and democratic society.<sup>20</sup> There are other examples of such restrictions on free expression in the Code such as in the offences of defamatory libel, counselling suicide, perjury and fraud.<sup>21</sup>

Other federal laws include provisions aimed at addressing communications and materials that spread hatred. Regulations made under the *Broadcasting Act* prohibit the broadcasting of any abusive comment or abusive pictorial representation that exposes an individual or group or class of individuals to hatred or contempt.<sup>22</sup> Also, the *Customs Tariff* prohibits the importation of hate propaganda.<sup>23</sup> Section 718.2(a)(i) of the Code allows for increased penalties when an offender commits a crime motivated by bias, prejudice or hate against identifiable groups.<sup>24</sup>

The CHRA prohibits various forms of discrimination against persons based on certain listed grounds, such as race, sex, religion, sexual orientation, national origin and disability, among others. Until 2013, former section 13 of the CHRA prohibited communicating by telephone or on the Internet any matter that would expose persons to hatred or contempt based on prohibited grounds of discrimination. It was repealed by a private member's bill, Bill C-304, An Act to amend the Canadian Human Rights Act (protecting freedom), which received Royal Assent on 26 June 2013.<sup>25</sup>

The key anti-hate provisions in the Code, in former section 13 of the CHRA and section 14 in the former version of *The Saskatchewan Human Rights Code*<sup>26</sup> have been examined as part of various decisions by the Supreme Court of Canada in which it has held that, although these laws infringe the right to free expression granted in section 2(b) of the Charter, they are reasonable and justifiable limits on this right.<sup>27</sup> As explained below, these decisions have helped define what constitutes hatred for the purpose of enforcing these laws.

Although a full review of Canada's anti-hate laws is beyond the scope of this legislative summary, a more detailed analysis of these laws and a historical overview are presented in *Hate Speech and Freedom of Expression: Legal Boundaries in Canada*,<sup>28</sup> a Library of Parliament publication.

### 1.3.2 *Criminal Code*

Hate promotion offences and related provisions are set out at sections 318 to 320.1 of the Code.<sup>29</sup> Some key components are as follows:

- Section 318(4) defines an “identifiable group” as any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.
- Section 318 makes it an offence to advocate or promote genocide, which is defined as killing members of an identifiable group or deliberately inflicting on an identifiable group conditions of life calculated to bring about the group's physical destruction. Section 318(3) requires the consent of the relevant attorney general<sup>30</sup> before proceedings can be instituted.

- Section 319(1) makes it an offence to communicate in a public place any statement that incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace (such as a riot, an act of violence or other disorderly conduct).
- Section 319(2) makes it an offence to communicate statements that wilfully promote hatred against an identifiable group, unless this communication is in private conversation. As with offences under section 318, prosecution under section 319(2) cannot be instituted without the consent of the attorney general.

Any person charged under section 319(2) of the Code may put forward one of the defences set out in section 319(3), which include that:

- The communicated statements are true.
- An opinion or argument was expressed in good faith and either concerns a religious subject or is based on a belief in a religious text.
- The statements are relevant to a subject of public interest and there are reasonable grounds to believe they are true.
- The statements are meant to point out matters that produce feelings of hatred toward an identifiable group and are made in good faith for the purpose of their removal.

While this amounts to a reverse onus on accused persons and requires that they respond to charges with their defence, the Supreme Court found this to be a justifiable limitation on the right to be presumed innocent under section 11(d) of the Charter.<sup>31</sup>

Sections 320 and 320.1 include provisions that allow a court to order the seizure and confiscation of hate propaganda, including when it is stored and made available using computers and similar technology.

### 1.3.3 Canadian Human Rights Laws

The CHRA prohibits discriminatory practices within federal jurisdiction (and therefore applies to the Government of Canada, Crown corporations and other federally regulated businesses and entities) based on the listed grounds:

[...] race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.<sup>32</sup>



Complaints about alleged discriminatory practices can be filed with the Commission; it is empowered to investigate discrimination complaints and act as a gatekeeper in the human rights complaint process. If the Commission determines that an inquiry is warranted, and if the complaint is not otherwise settled or resolved (for example, through mediation), the complaint may proceed to the Tribunal. The Tribunal then conducts an inquiry to determine whether discrimination has occurred, and if it has, what remedy is appropriate. The Tribunal may make an order against the person found to have engaged in the discriminatory practice. Orders can include ceasing the discriminatory practice and taking measures to prevent similar discrimination in the future, compensating the victim for wages lost as a result of the discrimination, compensating the victim up to \$20,000 for pain and suffering, and compensating the victim up to \$20,000 if the person engaging in the discrimination did so wilfully or recklessly.<sup>33</sup>

Until it was repealed in 2013, section 13 of the CHRA set out a mechanism for dealing with hate promoted by way of telecommunications. While the Code imposed a criminal sanction on hate speech designed to deal with more egregious hate promotion, the CHRA dealt with hate speech as a discriminatory practice and provided a more accessible forum in which to bring forward a complaint against a person sharing hateful material.

Section 13 emerged in response to the use of telephone hate messages by neo-Nazi sympathizers in the 1970s. Beginning in the 1990s, section 13 was also used to address hate posted on websites and to deal with those who operated such sites. This section was amended in 2001 to explicitly state that hate messages on the Internet come within the jurisdiction of the Commission and the Tribunal.

Over the years, criticism of this approach to dealing with hate speech grew louder, as did calls to repeal section 13. Some high-profile cases<sup>34</sup> drew media attention to the fact that even if complaints were found not to meet the threshold for being considered hate speech, individuals still had to respond, raising some concerns that the fear of a complaint could have a chilling effect on free expression.<sup>35</sup>

To address these concerns, the Commission published two reports, one in 2008 and one in 2009. The first report was commissioned from Richard Moon, an expert on freedom of expression. He recommended that section 13 be repealed and that police and prosecutors make wider use of section 320.1 of the Code to prosecute hate crimes.<sup>36</sup> This report was followed by the Commission's *Special Report to Parliament: Freedom of Expression and Freedom from Hate in the Internet Age*, which suggested the following amendments:

- Add a statutory definition of “hatred” and “contempt” in accordance with Supreme Court jurisprudence.
- Allow for an award of costs in exceptional circumstances where the Tribunal finds that a party has abused the process.

- Include a provision to allow the early dismissal of section 13 complaints when messages do not meet the narrow definition of hatred or contempt.
- Repeal the provision that allows for the assessment of fines against those who violate section 13.<sup>37</sup>

Though section 13 was repealed a few years after these reports were published, most of these recommendations have been incorporated into the new version of section 13, as proposed in Bill C-36.<sup>38</sup>

Provincial and territorial human rights laws also prohibit discrimination in various circumstances – in accommodation, employment and the provision of services, for example – on grounds generally similar to those in the CHRA. Every human rights law in Canada except in Yukon includes some form of prohibition against the public display, broadcast or publication of messages that announce an intention to discriminate or that incite others to discriminate based on prohibited grounds.<sup>39</sup> The laws in British Columbia, Alberta, Saskatchewan and the Northwest Territories also include some form of prohibition against the promotion of hatred or contempt.<sup>40</sup>

#### 1.3.4 Judicial Interpretation of “Hatred” and the Constitutionality of Anti-hate Laws

Although there is little jurisprudence that deals with Canada’s anti-hate laws, the relevant court decisions include important judicial interpretations of section 2(b) of the Charter.<sup>41</sup> The Supreme Court of Canada has upheld the constitutionality of the relevant provisions in the Code, former section 13 of the CHRA and *The Saskatchewan Human Rights Code* (which was updated in 2018). These decisions also explored the purpose and merits of these laws and helped clarify the scope of the prohibitions against spreading hatred. In brief, these decisions recognize the importance of limiting hate speech because of the harm it causes to vulnerable groups and to Canadian democracy. The Court has also underscored the fact that these laws must be proportional and balanced so that they do not overly limit free expression. It also determined what constitutes hateful expression that should be prohibited, and why speech that is merely offensive, hurtful, controversial or repugnant is not extreme enough to be captured by these laws.<sup>42</sup>

In a 1991 case, *R. v. Keegstra*,<sup>43</sup> the majority of the Supreme Court recognized that the offence in section 319(2) of the Code infringed the right to freedom of expression, but it upheld the law as being a reasonable limit under section 1 of the Charter (i.e., reasonable in a free and democratic society). For one, the Court noted the substantial harm caused by hate speech and how hate speech does not contribute to the “fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged.”<sup>44</sup> The Court determined that the law was “proportional” in its purpose and effects, because the various safeguards that are included serve to minimally impair the right. These safeguards include the requirement to obtain the attorney

general's consent before starting criminal proceedings and the four defences set out in section 319(3).

The Court also discussed what constitutes hatred for the purposes of these laws. It described how hatred “connotes emotion of an intense and extreme nature that is clearly associated with vilification and detestation.” It added:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.<sup>45</sup>

In its 1990 decision in *Canada (Human Rights Commission) v. Taylor*, the Supreme Court upheld former section 13 of the CHRA as also contributing to an objective of “pressing and substantial importance sufficient to warrant some limitation upon the freedom of expression.”<sup>46</sup> However, in the dissenting judgment written by then Justice Beverley McLachlin, she and two other justices concluded that former section 13 was unconstitutional. Justice McLachlin found that the section was overly broad, because among other things, it captured private speech between consenting participants and speech that may not be intended as discriminatory. She wrote that, “while the chilling effect of human rights legislation is likely to be less significant than that of a criminal prohibition, the vagueness of the law means it may well deter more conduct than can legitimately be targeted.”<sup>47</sup>

In *Lemire v. Canada (Human Rights Commission)*, the Federal Court of Appeal examined the penalty provisions in the CHRA that impose a fine for violations of former section 13, and it held that these were not penal in nature and were a “reasonable means of imposing financial accountability for the damage caused by the vilification of targeted groups and of deterring the communication of hate speech in order to decrease discrimination against them.”<sup>48</sup>

In *Saskatchewan (Human Rights Commission) v. Whatcott*, the Supreme Court upheld the constitutionality of the prohibition against hatred in section 14(1)(b) of *The Saskatchewan Human Rights Code* at the time, as a reasonable limit on free expression, at least in part.<sup>49</sup> It prohibited “any representation” (i.e., messages or other publications) that “exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.”<sup>50</sup> In its reasons, the Court reviewed its previous decisions, again underscoring the harms of hate speech which include its “tendency to silence the voice of its target group” in a way that is detrimental to the values underlying freedom of speech. It explained that only speech of an “ardent and extreme” nature should be considered to meet the definition of hatred. In particular, subjecting

vulnerable groups to detestation or vilification was found to be the type of expression that constitutes hate speech and was the appropriate focus of *The Saskatchewan Human Rights Code*. However, the Court found that the phrasing in section 14(1)(b) on speech that is belittling or that affronts the dignity of a person was not sufficiently egregious to justifiably limit freedom of expression; the Court found that it was unconstitutional, and consequently, it was struck from the legislation.

## 2 DESCRIPTION AND ANALYSIS

### 2.1 AMENDMENTS TO THE *CRIMINAL CODE*

#### 2.1.1 Defining Hatred (Clause 2)

Clause 2 of Bill C-36 makes two amendments to section 319 of the *Criminal Code* (the Code) to add a definition of hatred that aligns with the above-noted decisions of the Supreme Court of Canada.

Under new section 319(7) of the *Code*, hatred “means the emotion that involves detestation or vilification that is stronger than dislike or disdain.” For greater certainty, new section 319(8) adds that a statement does not incite or promote hatred “solely because it discredits, humiliates, hurts or offends.”

These new sections aim to establish the scope of what speech should be considered hate speech and merit criminal sanction. Communications that merely express dislike or disdain, or that discredit, humiliate, hurt or offend should not be considered illegal expressions of hatred. To be considered hate speech, the communication must involve detestation or vilification. It must also meet the other requirements in section 319, as these are not being amended.

#### 2.1.2 Surety to Keep the Peace – Hate Propaganda (Clauses 1, 3 and 8)

New section 810.012 permits a court to issue a recognizance – also called a peace bond or a surety to keep the peace – that requires a person to keep the peace with regard to hate propaganda and hate crimes.<sup>51</sup>

##### 2.1.2.1 Recognizances

A person (the informant) who fears on reasonable and probable grounds that another person (the defendant) will cause injury to them, a spouse or a child, or damage to their property, can make an application to the court to have the defendant sign a recognizance – a promise the defendant makes to the Court to keep the peace and be of good behaviour. The defendant may be given probation-like conditions to follow, like being prohibited from contacting the informant or from being within a designated

distance of the informant’s place of residence or work. If these conditions are breached, the defendant may be charged under section 811 of the Code (breach of recognizance).

Sections 810 through 811.1 of the Code cover the existing recognizances that are available in various circumstances and other relevant procedural matters. Currently, reasons for granting a recognizance include a fear on reasonable grounds of the following:

- injury to a person or to their spouse or child, or damage to their property (section 810 of the Code);
- intimidation of a participant in the justice system or a journalist, a criminal organization offence or a terrorism offence (sections 83.3, 810.01 and 810.011 of the Code);
- certain sexual offences involving persons under the age of 14 years (section 810.1 of the Code); and
- serious personal injury offences (section 810.2 of the Code).

A recognizance can be ordered even when no offence has been committed. This type of application may be made without police involvement when an individual fears for their own safety or for that of a spouse, a child, a grandparent, a close friend, etc.<sup>52</sup> Similarly, when police determine that they have insufficient evidence to proceed with charges, they may recommend that the informant apply for a peace bond. Where charges have been laid, they may be withdrawn by the Crown prosecutor, if a peace bond is signed as an alternative to further criminal proceedings.

While application processes may vary between jurisdictions in Canada, generally, the applicant must attend the office of a justice of the peace to convey all background information and a record of incidents. As recognizances are not automatically imposed, the justice of the peace may refuse the application, or the defendant may not agree with the facts and contest the order.<sup>53</sup> A recognizance is not reflected on a person’s criminal record, but it is kept in the police computer system while it is in effect.

#### 2.1.2.2 Recognizances for Hate Crimes

Clause 3 of the bill adds new section 810.012(1) to the Code, which allows a person to seek a recognizance when they have reasonable grounds to fear that another person will commit an offence under section 318, 319(1), 319(2) or 430(4.1), or any “offence motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, gender identity or expression, or any other similar factor.”<sup>54</sup>

Section 430(1) of the Code defines mischief as the wilful destruction of or damage to property, or the interference or obstruction with the use and enjoyment of property. Sections 430(4.1) and 430(4.101) criminalize mischief related to religious property,



educational institutions or other property used by an identifiable group, if this was motivated by bias, prejudice or hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

### 2.1.2.3 Details and Procedural Elements

Clause 3 of the bill also creates new sections 810.012(2) to 810.012(11) of the Code which provide further details about the new recognizance and procedural elements relevant to it.

New section 810.012(11) states that existing section 810(5) applies to recognizances ordered under it. The latter states that “the provisions of this Part apply, with such modifications as the circumstances require, to proceedings under this section.” When it examined this section, the Supreme Court explained that section 810(5) incorporates all provisions of Part XXVII of the Code, adding that, “Parliament has chosen a rather circuitous route to incorporate the necessary procedures to cause the parties to appear.”<sup>55</sup> In brief, incorporating the full part into the procedures for recognizances means that sections on various additional rules and options, such as the rules for laying an information or for appearing by video or audioconference, apply to the new recognizances.

New section 810.012(2) allows a provincial court judge to require the informant and the defendant to appear before them. If, after reviewing the evidence, the judge is satisfied that there are reasonable grounds to fear that an offence listed above will be committed, the judge may order the defendant to enter into a recognizance to keep the peace and be of good behaviour under new section 810.012(3). The recognizance can be for a period of up to 12 months, unless the defendant was already convicted of an offence referenced in section 810.012(1), in which case it can be extended to up to two years (new section 810.012(4)).

Under new section 810.012(5), if the defendant refuses or fails to enter into the recognizance, they may be committed to prison for a term of up to 12 months.<sup>56</sup>

New sections 810.012(6) to 810.012(8) cover the types of conditions that may be attached to the recognizance. Section 810.012(6) provides a non-exhaustive list of conditions that, if ordered, require the defendant to wear an electronic monitoring device, remain at their residence at specified times, stay away from specified places or not communicate with a person, among other things. Existing section 810(3.02) already states that the justice or court may “add any reasonable conditions to the recognizance that the justice or court considers desirable to secure the good conduct of the defendant.” The Supreme Court has explained that the conditions must have a nexus with the specific fear expressed by the informant and should not be so onerous as to effectively set up the defendant to fail (for example, impose a condition to

abstain from consuming drugs and alcohol on a defendant known to have a substance use disorder).<sup>57</sup>

New sections 810.012(6)(c) and 810.012(6)(e) allow a judge to require the defendant to abstain from consuming intoxicating substances, drugs not medically prescribed and alcohol, and to provide a sample of a bodily substance, as required, to persons designated under regulations (as explained below). Samples can be required at regular intervals to ensure compliance with the order or when a designated person has reason to believe the defendant has breached the condition. Additional rules for handling these samples are provided in clauses 4 and 5.

New section 810.012(7) permits a judge to add a time-limited condition for safety that would prohibit the defendant from possessing crossbows, firearms, ammunition, or other prohibited weapons or explosives. New section 810.012(8) requires the judge to indicate how these items will be dealt with once collected, if this condition is imposed. If it is not, under new section 810.012(9), the judge must add to the record a statement of reasons for not imposing it. New section 810.012(10) allows a judge to vary the conditions of the recognizance on application of an informant.

Clause 1 amends section 264(4) to allow a judge to consider an offender's contravention of the terms and conditions of a recognizance under section 810.012 to be an aggravating factor in sentencing for the offence of criminal harassment.

Clause 8 updates Form 32 of the Code so that it can be used for recognizances under section 810.012. This form is completed by a provincial court clerk, justice or judge when a defendant enters into a recognizance. It contains the relevant details about the defendant and the conditions imposed, and a signed acknowledgement to comply.

### 2.1.3 Collection of Bodily Samples (Clauses 4 to 6 and 9)

Clauses 4 through 6 of the bill replace existing sections of the Code on the collection and use of bodily samples and related data; the only change is the addition of new section 810.012 or some of its subsections to various existing procedures.

Existing section 810.3 pertains to the collection of bodily samples. New sections 810.012(6)(d) and 810.012(6)(e) permit this collection, if there are reasonable grounds to believe that a defendant has breached a condition of the recognizance requiring that they abstain from consuming drugs not medically prescribed, including alcohol and other intoxicants (which can be included as a condition of the recognizance under section 810.12(6)(c)).

Among other things, and subject to regulations, section 810.3 allows the attorney general of a province or the minister of justice of a territory to designate the persons responsible for demanding, taking, analyzing and destroying samples, and specify the

manner in which they may do so. Section 810.4 restricts the use of any bodily sample collected to determining whether a defendant is complying with the condition to abstain in the recognizance. Section 811.1 describes the designated analyst's certification as to whether the defendant tested positive or negative for the presence of substances.

Clause 9 of the bill amends Form 51 in the Code, which provides a person with notice of their obligation to provide samples of bodily substances. It adds section 810.012(6)(e) to the list of sections in the Code for which the form may be used.

Part 3 of the *Samples of Bodily Substances Regulations*<sup>58</sup> sets out various procedural elements that concern samples of bodily substances provided by defendants in compliance with conditions added to a recognizance.

## 2.2 AMENDMENTS TO THE YOUTH CRIMINAL JUSTICE ACT (CLAUSES 10 AND 11)

The *Youth Criminal Justice Act* (YCJA) provides the framework for a justice system designed for youth aged 12 to 17 to “protect the public by holding youth accountable, promoting the rehabilitation and reintegration of youth back into society, and preventing crime.”<sup>59</sup> This system is based on the principle that youth should be presumed to be less morally blameworthy than adults and should be treated in a way that recognizes their greater dependency and reduced level of maturity. While the offences in the Code apply to youth, their cases are handled in accordance with the YCJA.

Under the YCJA, a youth justice court has exclusive jurisdiction to make orders requiring a young person to enter into a recognizance pursuant to the above-noted section 810, 810.01, 810.011 or 810.02 of the *Criminal Code*. Clauses 10 and 11 of Bill C-36 add recognizances under section 810.012 of the *Criminal Code* to those listed in sections 14(2) and 142(1)(a) of the YCJA.

## 2.3 AMENDMENTS TO THE CANADIAN HUMAN RIGHTS ACT (CLAUSES 12 TO 22)

### 2.3.1 Hate Speech as a Discriminatory Practice (Clauses 13, 15, 19 and 21)

Clause 13 adds new section 13 to the *Canadian Human Rights Act* (CHRA). This section defines the discriminatory practice of communicating hate speech. Specifically, under new section 13,

[i]t is a discriminatory practice to communicate or cause to be communicated hate speech by means of the Internet or other means of telecommunication in a context in which the hate speech is likely to

foment detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination.

New section 13(10) explains that communication does not constitute hate speech “solely because it expresses mere dislike or disdain or it discredits, humiliates, hurts or offends.” As with the definition of hatred added to the Code in clause 2 of Bill C-36, this definition is consistent with the Supreme Court’s interpretation of the version of section 13 of the CHRA that was repealed in 2013 and the definition of hatred in the case law described above.

Clause 19 of the bill adds new section 53.1 to the CHRA, which sets out the orders that the Tribunal can make against a person who engages in the discriminatory practice of communicating hate speech.<sup>60</sup> These include an order to cease the practice and take measures to redress that practice or prevent it from recurring, pay up to \$20,000 in compensation to any victim personally identified in the hate speech communication, and pay an additional fine of up to \$50,000, depending on such factors as the extent and gravity of the hate speech and the intent of the person who communicated it, among others.

Clause 19 of the bill also adds new section 53.2 to the CHRA, allowing the Tribunal to award costs for abuse of process. Under section 41(1) of the CHRA, the Commission is already empowered to decline to deal with complaints that appear to be “trivial, frivolous, vexatious or made in bad faith.” Clause 15(2) adds new section 41(1.1) to the CHRA to clarify that the Commission will decline to deal with a section 13 complaint “if it is plain and obvious” that the complaint relates to conduct that does not constitute hate speech. The possibility of costs for abuse of process could further discourage parties from bringing forward frivolous or bad faith complaints under new section 13.

Pursuant to clause 21, contravening an order made under section 52(1) or 52(2) is an offence punishable on summary conviction by a fine of up to \$50,000 (section 60(1)).

Clause 13 also specifies the types of communication that do not constitute hate speech for the purpose of new section 13:

- Under new section 13(3), a person does not communicate hate speech who merely hosts, caches or indicates the location of the hate speech.
- New section 13(4) excludes telecommunications service providers from liability for what other persons communicate through their facility or service.
- Under new section 13(5), section 13 does not apply to private communications, which addresses one of the major criticisms of the previous section 13.<sup>61</sup>

- New section 13(6) excludes speech that is already regulated by the *Broadcasting Act* which imposes similar obligations on licensees with respect to hate speech. As part of these obligations, licensees must not distribute abusive content that “is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.”<sup>62</sup>
- An exception is made under new section 13(7) for providers of an online communication service. New section 13(8) defines this service as one “that is accessible to persons in Canada” and that is primarily intended to enable users to communicate over the Internet interprovincially and internationally.<sup>63</sup> The Government of Canada has indicated that the reason for this exclusion is that social media platform operators are the subject of the promised public engagement by Canadian Heritage “which will outline a proposed approach to regulating social media and harmful content, including hate speech, online.”<sup>64</sup>

### 2.3.2 Confidentiality Protections for Victims (Clauses 14, 17 and 21)

Clause 14(2) of the bill adds new section 40(8) to the CHRA, which allows the Commission to deal with a complaint under new section 13 without disclosing the identity of the alleged victim, the complainant or other persons who have assisted the Commission, where “there is a real and substantial risk that any of those individuals will be subjected to threats, intimidation or discrimination.”

Clause 14(2) also adds new sections 40(9) and 40(10) to the CHRA, which allow the Commission to order others who have learned the identity of an alleged victim, complainant or other person who has assisted the Commission not to reveal that person’s identity, unless doing so is required by law or is necessary for the purposes of an investigation, a conciliation or a settlement under the CHRA. Clause 21 makes it an offence to contravene an order under section 40(9); a person who does so is liable on summary conviction to a fine of up to \$50,000.

Similarly, although inquiries are generally to be conducted in public, clause 17 amends section 52 of the CHRA to allow the Tribunal to take measures, upon request, to ensure the confidentiality of the inquiry, if there is “a real and substantial risk” that the alleged victim, the complainant or an individual who gives evidence or otherwise assists the inquiry in any way “will be subjected to threats, intimidation or discrimination.”

Other new sections in clause 14(2) address various procedural matters pertaining to these orders, such as when an order may be revoked or when it no longer has effect.



2.4 COORDINATING AMENDMENTS, INCIDENTAL AMENDMENTS  
AND COMING INTO FORCE  
(CLAUSES 16, 20 AND 23)

Currently the maximum number of Tribunal members is 15. Under section 426(1) of the *Budget Implementation Act, 2018, No. 2*, three additional members will join when it comes into force.<sup>65</sup> Independently of this provision, under clause 16, two additional members would join the Tribunal such that the total number of members would be 20, if both provisions were to come into force.

Clause 20 makes an incidental amendment to section 57 of the CHRA to allow orders under new sections 53.1 and 53.2 to be enforced in the same manner as orders under section 53.

Clause 23(1) provides that the amendments to the *Criminal Code* and to the YCJA come into force 90 days after Bill C-36 receives Royal Assent. Clause 23(2) states that the provisions relating to the CHRA come into force on a day or days to be fixed by order of the Governor in Council.

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NOTES

1. [Bill C-36, An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act \(hate propaganda, hate crimes and hate speech\)](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session.
2. [Criminal Code](#), R.S.C. 1985, c. C-46 (the Code).
3. [Canadian Human Rights Act](#), R.S.C. 1985, c. H-6.
4. [Youth Criminal Justice Act](#), S.C. 2002, c. 1.
5. Department of Justice Canada, [Government of Canada takes action to protect Canadians against hate speech and hate crimes](#), News release, 23 June 2021.
6. [Broadcasting Act](#), S.C. 1991, c. 11.
7. Examples of Canadian media articles reporting on hate crimes in Canada include: “[Reported hate crimes rising in Canada. Here’s how police investigate and prosecute them](#),” *CBC News*, 25 July 2021; Miriam Katawazi, “[How many deaths need to happen?: Canada has a troubling anti-Muslim hate problem](#),” *CP24.com*, 18 June 2021; Nick Boisvert, “[Canada’s LGBTQ population now 1 million – but hate crimes are rising too: Statistics Canada](#),” *CBC News*, 15 June 2021; Laurent Lavoie, “[Record de crimes haineux ciblant l’orientation sexuelle](#),” *Le Journal de Montréal*, 2 April 2021 [AVAILABLE IN FRENCH ONLY]; Stephanie Liu, “[Reports of Anti-Asian hate crimes are surging in Canada during the COVID-19 pandemic](#),” *CTV News*, 18 March 2021; “[Hausse des incidents haineux à l’endroit de la collectivité asiatique à Ottawa](#),” *Radio-Canada*, 18 March 2021 [AVAILABLE IN FRENCH ONLY]; Maija Kappler, “[Racism In Canada Is Ever-Present, But We Have A Long History Of Denial](#),” *HuffPost*, 1 June 2020; and Sébastien Tanguay, “[Québec, une des pires villes du pays pour ce qui est des crimes haineux](#),” *Radio-Canada*, 29 November 2020 [AVAILABLE IN FRENCH ONLY].
8. Canadian Race Relations Foundation and Abacus Data, [Online Hate and Racism: Canadian Experiences and Opinions on What to Do About It](#); EKOS Research Associates, “[Results: Poll on Online Hate – Conducted by the Canadian Anti-Hate Network and EKOS Research](#),” *Antihate.ca*, The Canadian Anti-Hate Network blog, 22 March 2021; and Angus Reid Institute, [Blame, bullying and disrespect: Chinese Canadians reveal their experiences with racism during COVID-19](#), 22 June 2020.
9. House of Commons, Standing Committee on Justice and Human Rights, [Taking Action to End Online Hate](#), Twenty-ninth report, June 2019, recommendations 6 and 7, p. 3.

10. Ibid., p. 18.
11. Statistics Canada, "[After five years of increases, police-reported crime in Canada was down in 2020, but incidents of hate crime increased sharply](#)," *The Daily*, 27 July 2021.
12. Greg Moreau, Canadian Centre for Justice and Community Safety Statistics [Police-reported hate crime in Canada, 2019](#), *Juristat*, Statistics Canada, 29 March 2021.
13. For example, Germany's Network Enforcement Act requires platforms to remove "manifestly illegal" content within 24 hours; this includes speech that incites hatred or violates human dignity in a manner that is suitable for causing a disturbance of the peace. France's Law on Countering Online Hatred sought to impose similar obligations on online platforms, but was largely struck down by the French constitutional court. Australia's *Racial Discrimination Act 1975* prohibits public acts based on race, colour or national or ethnic origin that are reasonably likely to offend, insult, humiliate or intimidate; complaints go to the Australian Human Rights Commission.
14. Innovation, Science and Economic Development Canada, [Canada's Digital Charter in Action: A Plan by Canadians, for Canadians](#).
15. Prime Minister of Canada, Justin Trudeau, [Canada joins Christchurch Call to Action to eliminate terrorist and violent extremist content online](#), News release, 15 May 2019.
16. United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), art. 20; and United Nations, "[International Convention on the Elimination of All Forms of Racial Discrimination](#)," 1966, art. 4.
17. Innovation, Science and Economic Development Canada, [Canada's Digital Charter: Trust in a digital world](#). On 17 November 2020, the Minister of Innovation, Science and Industry introduced Bill C-11, An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts (short title: Digital Charter Implementation Act, 2020) in the House of Commons; the bill seeks to implement key aspects of the Digital Charter, primarily through reforms to federal privacy legislation. See [Bill C-11, An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session.
18. For examples of such discussions, see House of Commons, Standing Committee on Justice and Human Rights, "Chapter 3 – Striking the Right Balance Between Different Rights and Freedoms Protected by the Charter," [Taking Action to End Online Hate](#), Twenty-ninth report, June 2019; [R. v. Keegstra](#), [1990] 3 S.C.R. 697; and Special Committee on Hate Propaganda in Canada, *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, 1965.
19. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
20. For more information, see Government of Canada, "[Section 2\(b\) – Freedom of Expression](#)," *Charterpedia*; and Julian Walker, "Chapter 2: Freedom of Expression and the *Canadian Charter of Rights and Freedoms*," [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.
21. Justice Antonio Lamer discussed the offences in the Code that place some kind of restriction on expression in a Supreme Court decision. See [Reference re ss. 193 and 195.1\(1\)\(c\) of the criminal code \(Man.\)](#), [1990] 1 S.C.R. 1123.
22. [Broadcasting Distribution Regulations](#), SOR/97-555, s. 8. See also [Radio Regulations, 1986](#), SOR/86-982, s. 3; [Television Broadcasting Regulations, 1987](#), SOR/87-49, s. 5; and [Discretionary Services Regulations](#), SOR/2017-159, s. 3.
23. For further details, see Canada Border Services Agency, [Memorandum D9-1-15: Canada Border Services Agency's Policy on the Classification of Hate Propaganda, Seditious and Treason](#), 12 July 2017; and Canada Border Services Agency, [Memorandum D9-1-17, Canada Border Services Agency's Determination Procedures for Obscenity and Hate Propaganda](#), 20 September 2018. See also [Customs Act](#), R.S.C. 1985, c. 1 (2<sup>nd</sup> Supp.); and Canada Border Services Agency, "[Chapter 98 – T2018: Special classification provisions – non commercial](#)," Customs Tariff 2018, Tariff item 9899.00.00.
24. For more information, see Julian Walker, "Section 3.3 – Crimes Motivated by Hatred," [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.

25. [Bill C-304, An Act to amend the Canadian Human Rights Act \(protecting freedom\)](#), 41<sup>st</sup> Parliament, 1<sup>st</sup> Session (S.C. 2013, c. 37). See also Julian Walker, “Section 4.2 – Former Section 13 of the *Canadian Human Rights Act*,” [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.
26. [The Saskatchewan Human Rights Code](#), S.S. 1979, c. S-24.1, has since been replaced with [The Saskatchewan Human Rights Code, 2018](#), S.S. 2018, c. S-24.2, s. 14.
27. [Canada \(Human Rights Commission\) v. Taylor](#), [1990] 3 S.C.R. 892; [Saskatchewan \(Human Rights Commission\) v. Whatcott](#), 2013 SCC 11; and [Whatcott v. Saskatchewan \(Human Rights Tribunal\)](#), 2010 SKCA 26 (CanLII) (appeal allowed in part, [Saskatchewan \(Human Rights Commission\) v. Whatcott](#)).
28. Julian Walker, [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.
29. In addition to being addressed in the specific hate crimes found in these sections, hate is considered as an aggravating circumstance in the sentencing for any type of criminal offence under section 718.2(a)(i) of the Code. For more information, see Julian Walker, [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.
30. A definition of “attorney general” is provided in the Code: “Attorney General ... means ... the Attorney General of Canada or the Attorney General or Solicitor General of the province in which those proceedings are taken and includes the lawful deputy of any of them.” See [Criminal Code](#), R.S.C. 1985, c. C-46, s. 2.
31. [R. v. Keegstra](#), [1990] 3 S.C.R. 697.
32. [Canadian Human Rights Act](#), R.S.C. 1985, c. H-6, s. 3(1).
33. Canadian Human Rights Tribunal, “Remedies,” [A Guide to Understanding the Canadian Human Rights Tribunal](#).
34. See, for example, Canadian Human Rights Commission, [Decision of the Commission: Canadian Islamic Congress v. Rogers Media Inc. \(20071008\)](#), 25 June 2008; Ontario Human Rights Commission, [Commission statement concerning issues raised by complaints against Maclean’s Magazine](#), 9 April 2008; and [Elmasry and Habib v. Roger’s Publishing and MacQueen \(No. 4\)](#), 2008 BCHRT 378.
35. For more information, see Julian Walker, “Section 6 – The Debate Regarding Anti-hate Provisions in Human Rights Legislation,” [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.
36. Richard Moon, [Report to the Canadian Human Rights Commission Concerning Section 13 of the Canadian Human Rights Act and the Regulation of Hate Speech on the Internet](#), October 2008.
37. Canadian Human Rights Commission, [Special Report to Parliament: Freedom of Expression and Freedom from Hate in the Internet Age](#), June 2009.
38. The main exception is that orders made under new section 13 can include fines of up to \$50,000. See section 2.3.1 of this paper.
39. See British Columbia, [Human Rights Code](#), R.S.B.C. 1996, c. 210, s. 7; Alberta, [Alberta Human Rights Act](#), R.S.A. 2000, c. A-25.5, s. 3; Saskatchewan, [The Saskatchewan Human Rights Code, 2018](#), S.S. 2018, c. S-24.2, s. 14; Manitoba, [The Human Rights Code](#), C.C.S.M. c. H175, s. 18; Ontario, [Human Rights Code](#), R.S.O. 1990, c. H.19, s. 13; Quebec, [Charter of Human Rights and Freedoms](#), C.Q.L.R., c. C-12, ss. 10 and 11; New Brunswick, [Human Rights Act](#), R.S.N.B. 2011, c. 171, s. 7; Nova Scotia, [Human Rights Act](#), R.S.N.S. 1989, c. 214, s. 7; Prince Edward Island, [Human Rights Act](#), R.S.P.E.I. 1988, c. H-12, s. 12; Newfoundland and Labrador, [Human Rights Act, 2010](#), S.N.L. 2010, c. H-13.1, s. 19; Nunavut, [Human Rights Act](#), S.Nu. 2003, c. 12, s. 14 (CanLII); and Northwest Territories, [Human Rights Act](#), S.N.W.T. 2002, c. 18, s. 13.
40. See British Columbia, [Human Rights Code](#), R.S.B.C. 1996, c. 210, s. 7; [Alberta Human Rights Act](#), R.S.A. 2000, c. A-25.5, s. 3; Saskatchewan, [The Saskatchewan Human Rights Code, 2018](#), S.S. 2018, c. S-24.2, s. 14; and Northwest Territories, [Human Rights Act](#), S.N.W.T. 2002, c. 18, s. 13.
41. Key Canadian cases involving anti-hate law provisions include the following: [Regina v. Buzzanga and Durocher](#), 1979 CanLII 1027 (ON CA); [Canada \(Human Rights Commission\) v. Taylor](#), [1990] 3 S.C.R. 892; [R. v. Keegstra](#), [1990] 3 S.C.R. 697; [R. v. Andrews](#), [1990] 3 S.C.R. 870; [R. v. Harding](#), 2001 CanLII 21272 (ON CA); [R. v. Krymowski](#), 2005 SCC 7; [Mugasera v. Canada \(Minister of Citizenship and Immigration\)](#), 2005 SCC 40; [R. c. Pousseault](#), 2007 QCCQ 384 (CanLII); [R. v. Ahenakew](#), 2009 SKPC 10 (CanLII); [Saskatchewan \(Human Rights Commission\) v. Whatcott](#), 2013 SCC 11; and [R. v. Sears](#), 2019 ONCJ 104 (CanLII).

- For more information, see Julian Walker, "Section 5: The Constitutionality of Anti-hate Provisions," [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.
42. For example, see [Saskatchewan \(Human Rights Commission\) v. Whatcott](#), 2013 SCC 11, paras. 39–46.
43. [R. v. Keegstra](#), [1990] 3 S.C.R. 697.
44. Ibid.
45. Ibid.
46. [Canada \(Human Rights Commission\) v. Taylor](#), [1990] 3 S.C.R. 892.
47. Ibid.
48. [Lemire v. Canada \(Human Rights Commission\)](#), 2014 FCA 18, para. 104.
49. [Saskatchewan \(Human Rights Commission\) v. Whatcott](#), 2013 SCC 11.
50. Ibid., para. 3.
51. A recognizance is not the same as a restraining order; the latter is most often ordered through the family courts and under provincial rules, rather than through the criminal courts.
52. For more information, see Government of Canada, "[Peace Bonds Fact Sheet](#)," *Victims' Rights in Canada*.
53. Ibid.
54. Note that these personal characteristics are the same as those in section 318(4) of the Code, but here "language" is added.
55. [R. v. Penunsi](#), 2019 SCC 39, paras. 28 and 29.
56. Under new section 810.012(11) of the Code, existing section 810(4) applies to recognizances under the new section. The latter indicates that for a failure or refusal to enter into a recognizance, the warrant of committal is to be made using Form 23 of the Code.
57. See [R. v. Penunsi](#), 2019 SCC 39, paras. 78–80.
58. [Samples of Bodily Substances Regulations](#), SOR/2014-304. Other related regulations under the Code include: [Blood Drug Concentration Regulations](#), SOR/2018-148; [Approved Drug Screening Equipment Order](#), SOR/2018-179; [Approved Breath Analysis Instruments Order](#), SI/85-201; [Order Approving Blood Sample Containers](#), SOR/2005-37; and [Approved Screening Devices Order](#), SI/85-200.
59. Government of Canada, [Overview of the Youth Criminal Justice Act](#).
60. Clause 12 amends section 4 of the *Canadian Human Rights Act*, which also states that any discriminatory practice described in sections 5 to 14.1 may be the subject of an order. The amendment adds that the orders that can be made include those in new section 53.1.
61. See [Canada \(Human Rights Commission\) v. Taylor](#), [1990] 3 S.C.R. 892, McLachlin, J. (dissenting in part).
62. [Broadcasting Distribution Regulations](#), SOR/97-555, s. 8(1)(b). Note that on 3 November 2020, in the House of Commons, the Honourable Steven Guilbeault, Minister of Canadian Heritage, introduced Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts. This bill proposes amendments to the *Broadcasting Act* that update the law to confirm that online broadcasting is covered by the Act and that modernize the Canadian Radio-television and Telecommunications Commission's enforcement powers. For more information, see [Bill C-10, An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session; and Isabelle Brideau et al., [Legislative Summary of Bill C-10: An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts](#), Publication no. 43-2-C10-E, Library of Parliament, 14 December 2020.
63. Bill C-36 does not explain why it is relevant that the service being described here would enable users to communicate over the Internet "interprovincially and internationally." This phrase is not used in the *Canadian Human Rights Act* or in the *Broadcasting Act*. It is presumable that this pertains to federal jurisdiction and the application of these two laws.
64. Government of Canada, [Combating hate speech and hate crimes: Proposed legislative changes to the Canadian Human Rights Act and the Criminal Code](#).
65. [Budget Implementation Act, 2018, No. 2](#), S.C. 2018, c. 27.