

Recommendations for Bill C-63



**An Act to Enact
Online Harms Act**



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Full Version

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Summary

This document examines the limitations of Bill C-63 in addressing hate crimes, particularly concerning sentencing extensions and the lack of emphasis on rehabilitation and deradicalization. It argues that hate is learned and can be unlearned, advocating for policy changes to reflect this understanding. Recommendations include restoring original maximum sentencing, creating pathways to rehabilitation and deradicalization, empowering collaboration between relevant agencies, and making education more accessible within the prison system.

At-a-Glance

Issues with Bill C-63

1. The extension of sentencing for advocating genocide, public incitement of hatred and willful promotion of hatred.
2. The lack of mention of rehabilitation, deradicalization or restorative justice within the conditions in recognizance to keep the peace.

Recommendations for extension of sentencing:

1. Restore original maximum sentencing
2. Create pathways to rehabilitation, deradicalization and restorative justice
3. Empower the Canada Centre for Community Engagement and Prevention of Violence to collaborate with the Digital Safety Office of Canada for deradicalization and prevention efforts
4. Make education within the prison system more easily accessible

Recommendation for conditions in recognizance:

1. Include a condition for the prevention of radicalization, rehabilitation, and deradicalization or exit in the conditions in recognizance.

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Introduction

Hate is learned. We are not born hating others. Hateful ideologies are developed in a cultural context¹ through social conditioning², manipulation and the influence of powerful recruitment techniques, both online³ and off. Because hate is learned, it can be unlearned. Bill C-63 doesn't reflect this reality, though, and that has to change.

This document highlights two key problems with Bill C-63 around sentencing and conditions of recognizance and provides recommendations for policy change and reform in Canada's approach to punishing hate crimes.

Background

On February 26, 2024, Bill C-63 was introduced to parliament for a first reading. The Online Harms Act, also known as Bill C-63, is a proposed legislation in Canada that seeks to address online harms and promote online safety. It aims to reduce the harms caused by dangerous content online, ensure transparency and accountability of social media service operators, and protect children from harmful content. The act includes provisions for enacting the Online Harms Act, establishing the Digital Safety Commission of Canada, creating the Digital Safety Ombudsperson of Canada, and establishing the Digital Safety Office of Canada. It also includes duties for social media service operators, amendments to the Criminal Code and the Canadian Human Rights Act, and amendments to the Act respecting the mandatory reporting of Internet child pornography. Bill C-63 is an ambitious and detailed legislation that aims to protect individuals from harmful content, address hate crimes and hate speech, and promote online safety in Canada.

Although Bill C-63 includes many positive changes and helpful protections, there is a concerning lack of focus on rehabilitation, deradicalization and the possibility of change within the criminal code changes regarding advocating genocide, inciting and willfully promoting hate and the conditions in recognizance to keep the peace.

This section will address two main issues with Bill C-63:

1. The extension of sentencing for advocating genocide, public incitement of hatred and willful promotion of hatred.
2. The lack of mention of rehabilitation, deradicalization or restorative justice within the conditions in recognizance to keep the peace

Extension of Sentencing

Bill C-63 includes extensions in imprisonment sentencing for advocating genocide [318 (1) - addition of life imprisonment), public incitement of hatred [319 (1) - additional three years imprisonment] and willful promotion of hatred [318 (2) - additional three years imprisonment]. These are serious offences and deserve serious consideration. However, it is the position of The Counter Project that this increase in sentencing is inhumane and shows a lack of understanding around the processes of radicalization, the reality that many radicalized individual perpetrators are often victims of manipulation, and the potential for radicalized individuals to change and reform. In the following sections, this paper will explore the arguments against sentence extensions and propose alternate policy recommendations.

Why are extended sentences ineffective & inhumane?

Hate is learned (and can be unlearned)

Hate-based behaviours have a variety of risk factors, and the process of radicalization is multi-faceted. These factors can be structural, interpersonal and individual. Hate can result from:

- › Adverse childhood experiences⁴
- › Being male⁵
- › Being young⁶
- › Emotional instability⁷
- › Family values that align with hateful ideologies
- › Immersion in ethnocentric environments
- › Income inequality⁸
- › Lack of community, connection, and purpose⁹
- › Lack of exposure to diversity
- › Lack of pro-social modelling
- › Online exposure to hate¹⁰
- › Peer pressure
- › Permissive social norms¹¹
- › Psychological manipulation
- › Religious fundamentalism
- › Sense of anger over perceived injustice¹²
- › Strong nationalistic identity
- › Substance use or abuse¹³

This is a limited list of possible factors, there are many more. This list illustrates the reality that the risk factors for radicalization are outside of an individual's control and pave the way to hate in a manner that is often difficult, if not impossible, to resist. Ultimately, the combination of factors at play in

radicalization limits or eliminates choice as radicalization leads to isolation within a radicalized environment (whether online or off, family or social group), which then cuts off the individual's exposure to alternative viewpoints and solidifies their radical ideology. Exposure to alternative viewpoints is a powerful tool for deradicalization, and without it change becomes unlikely. Due to these factors, it should be considered that radicalized individuals have reduced moral blameworthiness and culpability and require special consideration for rehabilitation and deradicalization or exit.

These pathways to radicalization also have a common foundation in directing learned behaviour. The risk factors create a high-pressure environment and internal psychology which drives individuals towards radical ideologies (adverse childhood experiences, emotional instability, immersion in ethnocentric environments etc.). They may also directly teach hateful ideas that are difficult to resist given the total immersion within the environment (family values that align with hateful ideologies, peer pressure, online exposure to hate etc.). This illustrates the reality that hate is learned. However, it also provides hope that it can be unlearned.

Unlearning hate is a complicated process that includes exposure to new ideas and people¹⁴, compassion¹⁵, trained professionals, addiction recovery, trauma recovery, economic support, prison rehabilitation, and access to healthy sources of community, connection, and purpose. Many of these pathways to unlearning hate are explored in Canada's National Strategy for Countering Radicalization to Violence¹⁶ in which it is recognized that preventing hate-based violence requires an interdisciplinary and multi-agency approach.

The fact that hate can be unlearned is also illustrated by the success of prevention and exit programs in Canada such as ETA Ontario¹⁷, FOCUS Toronto¹⁸, Evolve¹⁹, Shift²⁰, Project ReSet, and those outside of Canada like Life After Hate²¹. These programs have seen success in helping a variety of individuals overcome hateful ideologies and reintegrate into society.

Hate is learned and those who embrace hate are capable of change given the right support and rehabilitation. However, those opportunities are not provided within the prison system.

They thought I would never change, so they facilitated my crime. (In their minds, I was going to commit it anyway.)

They thought I would never change, so they sentenced me to life. (My sentence ends upon my final breath.)

They thought I would never change, so they left me in the dark and threw away the keys. (Counselling is only for humans.)

My name is Zakaria Amara, and for seventeen dark years, I was simply viewed as a convicted terrorist. Today, I am a published author and poet. I am also a consultant for ETA Ontario, an organization that offers crucial guidance to youth who have been influenced by extremist ideologies.

To change is to be human. We are all capable of change, and laws that are blind to this truth deny our very nature.

Indeed, the rise of hate crimes in our society is something to be concerned about and I commend the government for attempting to address it. However, as a community, we must all understand that we cannot punish our way out of this problem. ETA Ontario is just one example of how early intervention models have proven successful. Rather than arrest and prosecution, the RCMP increasingly refers individuals to programs such as ETA, ReSet, and others. Furthermore, since arrests are bound to happen in extreme cases where there are no alternative options, it is important to apply sentences that leave room for the possibility of change, especially when no loss of life has taken place. Finally, special counselling programs and resources should be made available to those serving sentences for hate crimes.

- Zakaria Amara - Author, Poet, Consultant

Prison doesn't provide adequate rehabilitation

Despite the claims of the criminal code, in which rehabilitation of the offender is listed as a primary purpose and principle of sentencing²², prison doesn't offer adequate rehabilitation, especially for hate-based crimes. Prisoners within the system are often left to fend for themselves and rehabilitation or deradicalization might happen due to chance, distance from a manipulative source or education—none of which are factors provided by the system itself with the aim of deradicalization.

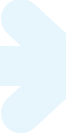
Additionally, due to the lack of deradicalization support in the prison system, offenders can remain radicalized regardless of the amount of time they spend in the system. Time is not a significant independent factor in rehabilitation efforts and won't heal on its own. Adding extra time to sentences only increases the chance of time loss, isolation and regret should those who are incarcerated happen to find their way free of radicalization while they are serving their sentence.

Prison is not an effective deterrent

One of the other purposes and principles of sentencing in the criminal code is "to deter the offender and other persons from committing offences"²³, however, hate crimes are on the rise in Canada²⁴ in the US²⁵. Hate crimes in Canada rose 83% from 2019 to 2022 and in the US there was an increase of approximately 31% from 2020 to 2021. Incarceration doesn't act as an effective deterrent to crime²⁶, especially not longer sentences^{27 28}.

Imprisonment and longer sentences may also even exacerbate recidivism²⁹. If imprisonment isn't effectively serving the function of deterrence, providing adequate rehabilitation or considering the complexity of pathways to hate, it is time to radically rethink Canada's approach to hate.

Without focused intervention within the prison system, most hate offenders will be either left to suffer incarceration or leave the system still holding radical and harmful ideologies. For this reason, the solution to the problem of hate can't include extending sentences and must focus instead on rehabilitation, deradicalization or exit and restoration.



My name is Angela. I was born into a family that taught me to hate myself and others through the use of racial slurs, paranoia, and homophobia, among other things. I landed in the violent far-right around the age of fifteen. Over the eight years that followed, I was further indoctrinated to be anti-Semitic, anti-government, anti-immigration, and I could go on. At the age of twenty-three, I found myself in federal prison for my involvement in a hate crime where a Jewish man was pistol-whipped. Although I did not go into the store where this crime occurred, I am still guilty of the part I played by being present, even if from a distance, and in discussing the robbery. I deserved to go to prison for my role in the crime, but I am also grateful that that is where my path landed me.

It was not the institution that facilitated my change but the raw human experience. In prison, I was disarmed of my hate and aggression by women of color and others who held me accountable but also treated me with kindness and compassion. Through the lens of this raw human experience, my mind, heart, and life changed immensely. Upon release from prison, I began to learn about the world and others through academia, completing my Associate's degree, Bachelor's, and Master's, one after the other. For the past two decades, I worked on healing myself, made amends in communities I once harmed, have been accountable for my past, and work daily to give back to society meaningfully. It is one of my greatest successes in life that I get to be an example for other former violent extremists. I am currently the Director of Special Projects at Life After Hate. Life After Hate is an organization I co-founded with five other former extremists almost fourteen years ago. Some of our work includes supporting exiting individuals who choose to give up the Violent Far-Right, developing counter-narratives, and creating public education so others understand the dangers involved in Violent Extremism.

I know change is possible because I am a living example. It is not easy, but it is well worth the effort. Not every single person will change their mind, but many will. They can only do so if given the resources and opportunities. At Life After Hate, we call this compassion with accountability.

- Angela King - Founder of Life After Hate



Recommendations

1. Restore original maximum sentencing

Hate is learned and is driven by factors beyond the control of the individual, leaving them with limited choices to break free from hateful ideological influences. Additionally, prison doesn't provide adequate rehabilitation or deradicalization. Finally, imprisonment, especially longer sentences, does not act as an effective deterrent and may even encourage recidivism. For these reasons, it is recommended that maximum sentencing be reduced back to its original levels and that the focus be put on rehabilitation, deradicalization, and restorative justice.

Recommended terms in the criminal code for length of sentencing:

Advocating Genocide

318 (1) Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.³⁰

Public Incitement of Hatred

319 (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.³¹

Wilful Promotion of Hatred

319 (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.³²

2. Create pathways to rehabilitation, deradicalization and restorative justice

Canada is missing an opportunity to change the tide of hate by merely focusing on retributive punishment for individuals radicalized into hate³³. Those who recover from radicalization often become powerful voices in the struggle against hate. They often choose to speak out and educate others in meaningful ways as they seek to repair the damage done to the community through their hateful actions. By giving those under the influence a chance to redeem themselves, Canada can show the value of restoration and rehabilitation and offer alternative possibilities to those struggling with their hateful identities.

By offering pathways to rehabilitation, deradicalization or restorative justice, Canada can pave the way for a new approach to hate sentencing.

Rehabilitation and deradicalization or exit from hate are a complex undertaking. As previously mentioned, programming for deradicalization is not a one-size-fits-all strategy and involves exposure to new ideas and people³⁴, compassion³⁵, trained professionals, addiction recovery, trauma recovery, economic support, and access to healthy sources of community, connection, and purpose. In Canada, we have a variety of organizations undertaking this programming, including ETA Ontario³⁶, FOCUS Toronto³⁷ and Evolve³⁸, Shift³⁹ and Project ReSet. By collaborating with these organizations and other mental health and community-based programs around the country, it is possible to provide healthy and safe pathways for rehabilitation and deradicalization to those sentenced for hate-based crimes.

Another possible pathway away from hate is restorative justice. Restorative justice is a method of justice that aims to mend harm by facilitating dialogue and addressing the needs of both the harmed individuals and those accountable for the harm following a crime⁴⁰. It has been used within the Canadian justice system for over 40 years⁴¹. It has provisions within the Criminal Code of Canada as it relates to alternative measures and sentencing principles that seek “to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community”⁴². Restorative

justice programs are more effective compared to traditional non-restorative methods in enhancing victim/offender satisfaction, fostering greater compliance among offenders with restitution, and mitigating rates of recidivism⁴³. There is also growing evidence that suggests restorative justice can be effective for both victims and offenders of hate crimes^{44 45 46}. Offering restorative justice as a possible pathway would show a greater understanding of the mechanisms of radicalization into hate and an acknowledgement of the best practices to reduce suffering for both victim and perpetrator.

Recommended Adjustments

To better facilitate the possibility of these pathways, it is recommended that new language be added to section 720 (2) of the Criminal Code, regarding court-supervised programs. The current language is as follows:

“Court-supervised programs

(2) The court may, with the consent of the Attorney General and the offender and after considering the interests of justice and of any victim of the offence, delay sentencing to enable the offender to attend a treatment program approved by the province under the supervision of the court, such as an addiction treatment program or a domestic violence counselling program.”⁴⁷

The recommended new language is:

Court-supervised programs

(2) The court may, with the consent of the Attorney General and the offender and after considering the interests of justice and of any victim of the offence, delay sentencing to enable the offender to [participate in](#) a treatment [or rehabilitation program](#) [or a restorative justice process](#) approved by the province under the supervision of the court, such as an addiction treatment program, [a deradicalization or exit program](#) or a domestic violence counselling program.⁴⁸

This language provides more inclusion for hate-based radicalization and creates more opportunities for rehabilitation and restorative justice practices within the framework of the legal system.

3. Empower the Canada Centre for Community Engagement and Prevention of Violence to collaborate with the Digital Safety Office of Canada for deradicalization and prevention efforts

To effectively combat hate speech and online harm, empowering and funding close collaboration between the Canada Centre for Community Engagement and Prevention of Violence (CCCEPV) and the Digital Safety Office of Canada (DSOC) is essential. The CCEPV has unique and specialized insight into extremist pathways leading to violence and how online hate can act as both a precursor to and recruitment method for hate-based violence. The collaboration between the CCCEPV and the DSOC should include:

- › Providing support to and funding for existing deradicalization and rehabilitation programs, ensuring they are equipped to effectively address the online dimension of radicalization and accept offenders as part of a pathway to reduced sentencing.
- › Prioritizing efforts to reduce isolation, a key precursor to radicalization, by promoting community engagement and connection, particularly within vulnerable communities.
- › Developing and implementing targeted prevention strategies that focus on fostering social and economic support within communities at risk of radicalization.
- › Collaboration on educational initiatives aimed at both youth and parents to equip them with the knowledge and tools to recognize and address extremist ideologies online.
- › Actively engaging with community leaders and stakeholders to build trust and foster a sense of collective responsibility in combatting hate speech and online radicalization.
- › Encouraging and funding grassroots efforts led by community leaders to promote community cohesion and interconnectedness, thereby reducing susceptibility to hate-based narratives.

4. Make education within the prison system more easily accessible

Deradicalization is often made possible through exposure to new people and perspectives^{49 50 51}. One way to do this is to facilitate proper education within the prison system. Numerous studies consistently demonstrate that engaging in education reduces the likelihood of reoffending by around 20-30%, while partici-

pation in post-secondary education can lower recidivism rates even further, ranging from 45-75%⁵². Education can also provide exposure to new ideas and perspectives and equip offenders with vital skills for countering radicalization, including critical thinking and media literacy. However, despite its proven efficacy in reducing recidivism rates, and the potential for aiding deradicalization efforts, obtaining an education behind bars has become increasingly challenging in Canada⁵³. With limited or no access to the Internet and the near-elimination of paper correspondence courses, incarcerated individuals are denied critical opportunities for intellectual engagement and personal growth.

Ultimately, education is a powerful tool in challenging extremist ideologies. By providing accessible education programs tailored to address the specific drivers of radicalization, as well as general educational programs, we can empower offenders to confront and reject extremist narratives. Education also serves to generate a sense of purpose and belonging, mitigating feelings of isolation and vulnerability that can make people susceptible to radicalization. For all these reasons, prioritizing and investing in comprehensive education initiatives within the prison system is essential for breaking the cycle of radicalization and promoting successful rehabilitation.



Conditions in Recognizance

Bill C-63 added a provision for creating a peace bond if someone fears an individual might commit an offence under sections 318 or 320 of the criminal code. The conditions of recognizance are as follows:

"(6)The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that require the defendant to

- (a) wear an electronic monitoring device, if the Attorney General makes that request;*
- (b) return to and remain at their place of residence at specified times;*
- (c) abstain from the consumption of drugs, except in accordance with a medical prescription, of alcohol or of any other intoxicating substance;*
- (d) provide, for the purpose of analysis, a sample of a bodily*

substance prescribed by regulation on the demand of a peace officer, a probation officer or someone designated under paragraph 810.3(2) (a) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to believe that the defendant has breached a condition of the recognizance that requires them to abstain from the consumption of drugs, alcohol or any other intoxicating substance;

(e) provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation at regular intervals that are specified, in a notice in Form 51 served on the defendant, by a probation officer or a person designated under paragraph 810.3(2) (b) to specify them, if a condition of the recognizance requires the defendant to abstain from the consumption of drugs, alcohol or any other intoxicating substance; or

(f) abstain from communicating, directly or indirectly, with any person identified in the recognizance, or refrain from going to any place specified in the recognizance, except in accordance with the conditions specified in the recognizance that the judge considers necessary.”⁵⁴

This bond is important, given that an individual who has been radicalized into hate may pose a threat to the community, and this should be appropriately addressed. However, the suggested conditions of recognizance must reflect the nuance of the situation and the sensitivity needed to take preventative measures when it comes to radicalized individuals and countering violent extremism.

The conditions mentioned here hold significance to both those responsible for sentencing and for the general public, as they give context for how we expect to treat those who are at risk of committing violence. Because of this, it is important to include mention of rehabilitation, deradicalization or exit and restorative justice pathways in these conditions.

Another significant factor to this bond is that it includes youth as outlined in the modification to the Youth Criminal Code with the addition of “recognizance — fear of hate propaganda offence or hate crime” in section 14(2)⁵⁵. This addition makes it even more significant that rehabilitation, deradicalization and restorative pathways are included in the conditions of recognizance, considering the standard set out in the Youth Criminal Code that calls attention to the diminished moral culpability of

youth and the requirement to emphasize rehabilitation and reintegration⁵⁶. By including these pathways in Bill C-63, Canada has the opportunity to support youth in rehabilitation and deradicalization which is especially relevant today with 30% of offenders in cyber-related hate crimes being young men aged 12-17, many of whom have been radicalized in alt-right online spaces⁵⁷.

Recommendations

1. Include a condition for prevention of radicalization, rehabilitation, and deradicalization or exit in the conditions in recognizance

It is recommended that there be an inclusion of a possible condition for the prevention of radicalization, rehabilitation, deradicalization or exit in the conditions in recognizance.

The precedent is set for this in the Criminal Code under section 4.1 in which the first possible condition of recognizance is participation in a treatment program:

“Conditions in recognizance

(4.1) The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable for preventing the commission of an offence referred to in subsection (1), including conditions that require the defendant

(a) to participate in a treatment program;”⁵⁸

The recommended new condition for the conditions in recognizance in Bill C-63 is as follows:

(6) The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that require the defendant to

(a) participate in a program for the prevention of radicalization, a deradicalization or exit program, or rehabilitation;

By including prevention and rehabilitation in this bill, it speaks to the reality of the situation for most individuals drawn to hate and gives hope for the possibility of change.



Conclusion

This isn't an easy topic to talk about or advocate for. Most people have a retributive mindset around hate and are scared of radicalized individuals. Many people also hold the belief that those who have been radicalized into hate are not capable of change⁵⁹. But Canada has the opportunity to be a leader in recognizing that hate is not static and can be unlearned.

Bill C-63, while addressing online harms and promoting safety, falls short in its approach to rehabilitation and deradicalization within the criminal justice system. By extending sentencing without sufficient focus on addressing the underlying factors contributing to hate-based crimes, the bill fails to acknowledge the potential for change and reform among offenders. The lack of emphasis on rehabilitation and deradicalization within the conditions of recognizance also neglects crucial opportunities for intervention and support.

To address these shortcomings, it is recommended to restore original maximum sentencing levels and prioritize rehabilitation, deradicalization or exit, and restorative justice approaches. Providing pathways to sentence reduction through participation in rehabilitation and deradicalization programs, as well as restorative justice practices, can offer offenders real opportunities for change. Offering these pathways through the conditions of recognizance can also effectively reduce the possibility of potential harm. Additionally, empowering collaboration between the Canada Centre for Community Engagement and Prevention of Violence and the Digital Safety Office of Canada can enhance efforts to combat hate speech and online radicalization. Making education more accessible within the prison system is also essential for facilitating deradicalization efforts and promoting successful rehabilitation. By investing in comprehensive education initiatives tailored to address the specific drivers of radicalization and providing opportunities for intellectual engagement and personal growth, we can empower offenders to confront and reject extremist ideologies.

By prioritizing rehabilitation, deradicalization, and education, we can start the work of breaking the cycle of radicalization and promote a safer, more caring and compassionate society.



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