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WOMEN'S LEGAL
EDUCATION & ACTION FUND
FONDS D'ACTION ET D'ÉDUCATION
JURIDIQUE POUR LES FEMMES

Submission to the Canadian Commission on Democratic Expression

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November 26, 2020

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26 November 2020

As an organization with a mission to advance the substantive equality rights of women and girls, the Women's Legal Education and Action Fund (LEAF) is concerned about the gendered nature of online hate, and the negative impact of such online hate on women and girls' ability to participate publicly and freely in Canadian democracy. LEAF is currently preparing a research report outlining law reform approaches to regulate online platforms from a substantive gender equality perspective. We anticipate the report will be ready for circulation in early 2021.¹

The key findings and principles from LEAF's research and advocacy on online hate warrant consideration by the Commission. In particular, LEAF submits that the Commission should recognize: (1) that online hate targets women and girls and perpetuates misogyny, leading to negative impacts on democracy, and (2) government regulation of online platforms is necessary to strike an appropriate balance between countering hate and disinformation and freedom of expression.

1. Online hate exacerbates misogyny and deters women and girls from participating freely in democratic activities.

Canadian courts and tribunals have long recognized the detrimental impact of hate speech on democracy. As the Supreme Court of Canada recognized in *Saskatchewan (Human Rights Commission) v. Whatcott*, hate speech undermines the ability of targeted groups to participate in democracy by delegitimizing their humanity:

Indeed, a particularly insidious aspect of hate speech is that it acts to cut off any path of reply by the group under attack. It does this not only by attempting to marginalize the group so that their reply will be ignored: it also forces the group to argue for their basic humanity or social standing, as a precondition to participating in the deliberative aspects of our democracy.²

Women are disproportionately targeted in acts of online hate and abuse, including hate speech.³ A 2018 study by Amnesty International found that on average, an abusive tweet is sent to a woman every 30 seconds on Twitter,⁴ and a 2018 survey by Statistics Canada found that women were more likely than men to have experienced unwanted behaviour that made them feel "unsafe or

¹ Cynthia Khoo is the researcher and author of the forthcoming report. We would be happy to share the report with the Commission once it is available to the public in early 2021.

² *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11 at para 75.

³ For a full gender-based analysis of online hate, see LEAF's Submission to the House of Commons Standing Committee on Justice and Human Rights respecting the Committee's Study of Online Hate (10 May 2019) online: <https://www.leaf.ca/wp-content/uploads/2019/05/2019-05-10-LEAF-Submission-to-the-Standing-Committee-on-Justice-and-Huma....pdf>

⁴ Amnesty International, "Troll Patrol Findings: Using Crowdsourcing, Data Science & Machine Learning to Measure Violence and Abuse against Women on Twitter" (March 2018) online: <https://decoders.amnesty.org/projects/troll-patrol/findings> [Troll Patrol]

uncomfortable in a virtual space” in the past 12 months.⁵ Women living with intersecting marginalization are even more likely to be the targets of online abuse; Black women were 84% more likely than white women to be mentioned in an abusive tweet.⁶

Women who are public figures – such as politicians, journalists, activists and organizers – are especially vulnerable to online harassment and abuse, leading some to opt out of those spaces. For example, in *R. v. Elliott*⁷ a male accused was charged with criminally harassing two feminist activists on Twitter. One of the feminist activists who was targeted left Twitter after men’s rights activists “deluged her account with abuse following the acquittal [of the accused at trial]”.⁸

This is not unusual. In a recent Canadian study of online harassment faced by girls and women aged 15-25, 19% of the participants stated they would stop posting content that expresses their opinion, and 8% said they would quit the social media platform on which the harassment happened.⁹

When women and girls self-censor or opt out of digital spaces, this undermines their ability to participate fully in online activities that are crucial to our democracy such as: exchanging ideas and opinions without fearing for their safety; engaging in advocacy work; and mobilizing and organizing for social change. As the UN Special Rapporteur on Violence against Women explained, online violence against women “not only violates a woman’s right to live free from violence and to participate online but also undermines democratic exercise and good governance, and as such creates a democratic deficit.”¹⁰

2. Government must regulate online platforms in order to strike the right balance between countering hate and disinformation and safeguarding free expression.

To ensure that online hate does not proliferate unchecked, government must regulate digital platforms to balance market forces that have an incentive to prioritize certain forms of expression, which can weaken the foundations of our deliberative democracy.

Our constitutional rights – including freedom of expression – are not absolute.¹¹ If the harms of expression outweigh its salutary effects, limiting that expression is justified. If the harms impact

⁵ Statistics Canada, “Gender-based violence and unwanted sexual behaviour in Canada, 2018: Initial findings from the Survey of Safety in Public and Private Spaces” 5 December 2019, online: Statistics Canada. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00017-eng.htm>

⁶ *Troll Patrol*, *supra* note 4.

⁷ 2016 ONCJ 35 [*Elliott*].

⁸ Shane Dingman, “BuzzFeed writer’s harassment just the latest example of why Twitter is broken for women” *Globe and Mail*, 22 February 2016: <https://www.theglobeandmail.com/technology/harassment-of-buzzfeeds-koul-shows-how-twitter-is-broken-for-women/article28845004/>

⁹ Plan International Canada, “Online Harassment is Silencing Girls Online, Driving Them from Facebook, Instagram and Twitter” 5 October 2020, online: https://plancanada.ca/stories/freedom-online?utm_source=plantwitter&utm_medium=social&utm_campaign=fy21-global-idg

¹⁰ Dubravka Simonovic, “Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective” UN Human Rights Council, June 2018, online: <https://digitallibrary.un.org/record/1641160?ln=en>

¹¹ *R v Oakes*, [1986] 1 SCR 103.

groups who are already marginalized and vulnerable, then freedom of expression must be balanced against the equality rights guaranteed under the *Charter*.

When considering the appropriate balancing of freedom of expression with other *Charter* rights, it is essential to consider the context in which online speech operates, including the fact that business models of digital platforms seek to profit from existing inequalities rather than correct them.¹² For example, YouTube has been criticized for “a business model that rewards provocative videos with exposure and advertising dollars, and an algorithm that guides users down personalized paths meant to keep them glued to their screens.”¹³ Put differently, “[h]ate online triggers traffic to online content and interaction about it, which translates in economic revenue for platforms and could explain their lack of response to online abuse.”¹⁴

The “marketplace of ideas”, which is often invoked as a justification for unfettered freedom of expression – where all ideas are purportedly given equal weight to naturally give rise to the best idea – does not reflect reality. As LEAF has argued, “[in] a marketplace where some have a greater ability to speak and be heard than others, it is more likely that the advantaged will emerge out of the competition of ideas.”¹⁵ The ability of the advantaged to monopolize the marketplace is especially true on digital platforms, where business models prioritize attention-grabbing expression and advertising, without giving due consideration to ensuring everyone’s right to equal expression.

In sum, business interests of online platforms do not align with the equality rights necessary for a deliberative democracy. Government regulation is necessary to achieve the appropriate balance between countering hate and disinformation and safeguarding freedom of expression.

¹² Jane Bailey, “Private Regulation and Public Policy: Toward Effective Restriction of Internet Hate Propaganda” (2003) 49 McGill LJ 59.

¹³ Kevin Roose, “The Making of a YouTube Radical” *New York Times*, 8 June 2019: <https://www.nytimes.com/interactive/2019/06/08/technology/youtube-radical.html>

¹⁴ Molly Dragiewicz et al., “Technology facilitated coercive control: domestic violence and the competing roles of digital media platforms” (2018) 18:4 *Feminist Media Studies* 609. See also: Zeynep Tufekci, “It’s the (Democracy-Poisoning) Golden Age of Free Speech” *Wired.com*, 16 January 2019: <https://www.wired.com/story/free-speech-issue-tech-turmoil-new-censorship/>

¹⁵ *R v Keegstra*, [1990] 3 SCR 697, LEAF Factum at para 55.