

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

PARAMOUNT FINE FOODS and MOHAMAD FAKIH

Plaintiffs

and

KEVIN J. JOHNSTON, RANENDRA BANERJEE AND
FREEDOMREPORT.CA

Defendants

**COMMUNITY IMPACT STATEMENT OF
NATIONAL COUNCIL OF CANADIAN MUSLIMS**

1. This is a community impact statement prepared by the National Council of Canadian Muslims (“NCCM”) in the sentencing of Kevin J. Johnston for contempt of court.

(a) About NCCM

2. NCCM is a national, non-partisan and non-profit organization founded in 2000 to protect Canadian human rights and civil liberties, challenge discrimination and Islamophobia, build mutual understanding, and advocate for the public concerns of Canadian Muslims. To this end, NCCM intervenes in litigation and engages in law reform and public education. While NCCM does not claim to be the only representative of the Canadian Muslim community, since its inception, it has been at the forefront among Muslim associations in defending human rights and civil liberties and is the largest Muslim advocacy organization in Canada. NCCM has proven itself

over the past two decades to be a major representative voice of Canadian Muslims in the public sphere, and a bridge to the broader Canadian community.

3. NCCM's work to advocate for the rights and interests of Canadian Muslims is informed by the experiences of the Canadian Muslim community. NCCM maintains a strong relationship with Muslim communities and organizations across Canada. In this way, NCCM's work reflects the needs of Canadian Muslims across Canada.

4. NCCM has particular expertise in the impact of hate speech and other forms of hate on Canadian Muslims. In July 2021, NCCM made submissions at the National Summit on Islamophobia, organized by the Minister of Diversity, Inclusion and Youth, that brought all levels of the government to work towards binding policy change. NCCM engaged in a process of developing recommendations after hosting consultation sessions with mosques and other community organizations and proposed a number of recommendations to address Islamophobia and hate, including calling for a legislative review of the *Canadian Human Rights Act* to address the issue of Islamophobia and online hate and recommendations in relation to the rise and proliferation of white supremacist groups.

5. On June 16, 2021, NCCM testified before the Standing Committee on Public Safety and National Security on the issue of ideologically motivated violent extremism. NCCM raised concerns in relation to the rise in hate, racism and Islamophobia faced by Canadian Muslim communities and efforts that need to be undertaken in order to dismantle white supremacist groups in Canada that incite and enable hate, xenophobia and violence against certain segments of the public, including members of the Muslim community.

6. On May 9, 2019, NCCM appeared before the Justice and Human Rights Committee to provide recommendations on addressing the issue of online hate. NCCM recommended that the *Canadian Human Rights Act* be reopened for legislative review; that the government begin a parliamentary study into how social media companies can be regulated to better protect Canadians and reduce online hate, while ensuring that free speech rights are protected; and that the government combat online hate through digital literacy grants so that industry and civil society actors can conduct research and develop tools and programming to combat online hate.

7. Through its advocacy work, NCCM has developed particular expertise in the relationship between hate speech and how it erodes the rights and participation of members of targeted groups, such as Canadian Muslims.

(b) Hate and the Impact on Canadian Muslims

8. NCCM has reviewed Mr. Johnston's statements found to be in contempt for non-compliance with the order of Justice Ferguson dated May 13, 2019. NCCM provides the following statement to comment on the impact of Mr. Johnston's conduct and statements in relation to one of Canada's most well-respected and publicly known Canadian Muslims.¹

(c) We are answering a simple question in this community impact statement: to what extent does repeated attacks in defiance of a court order on a prominent Canadian Muslim leader by Mr. Johnston have broader impacts on Canadian Muslims in general?

¹ See Mr. Fakhri's award as one of Canada's most respected CEO's. Waterstone Human Capital, "Winners" (2019): <https://waterstonehc.com/wp-content/uploads/2020/11/CMA-CEO-Past-Winners-2014-19.pdf>.

(d) The Impact of Hate – and the Apparent Lack of Consequences - at a Tiki-Torch Rally

9. On February 20, 2021, Johnston attended a ‘Tiki Torch’ anti-lockdown rally held at the Alberta Legislature.²

10. As noted by NCCM’s CEO shortly after, the homage to Charlottesville by the rally organizers had a profound negative statement to make in relation to Alberta’s Muslim community.³ Specifically, what was highlighted most notably was the apparent lack of immediate consequence to the organizers and to the speakers. This concern around a lack of consequence is not new in relation to those who intimidate, surveil, and attack Canadian Muslims.

11. As noted by NCCM’s CEO at the time:

Because while the torches come out last weekend, the march of white supremacy and racist violence has been on the horizon in Edmonton since its foundation. We can no more discount what happened in Edmonton last weekend than we can discount the vast majority of good folks out there — because the good folks in our city keep letting bad things happen to those who look different...I’m also not going to spend time talking about whether the rally was animated by racism. Even the most cursory look at the event speakers should make it obvious as to what animated their cause. The holding of tiki torches just serve to punctuate the point. In 2019, members of an organization calling itself the Wolves of Odin, but also going by the Clann, surveilled and then entered the oldest mosque in Canada, right here in Edmonton. No charges were laid.

And things like this keep happening.

I was in Edson days after an attack in 2018, where someone attempted to burn down the mosque shortly after evening prayers. The arsonist failed — but the attempt was brazen, bold, and ultimately, to the best of my knowledge, no charges were ever filed.

² EJY Affidavit, para. 8, Exhibit “G”, AAMR, Tab 2G, AAMR, pp. 78-84, cited in Factum of the Plaintiffs/Moving Parties (July 19, 2021) at page 8.

³ Mustafa Farooq, “Time to draw a line against racism in Edmonton”, *Edmonton Journal*, (February 24, 2021): <https://edmontonjournal.com/opinion/columnists/opinion-time-to-draw-a-line-against-racism-in-edmonton>

Throughout 2015-19, groups like the Three Percenters operated in and around Edmonton. The Three Percenters' preoccupation with Islam and Muslims is of particular concern. The group promotes a culture of paranoia, fear, and conspiracy theories within its ranks — and are armed and dangerous. They openly express and conduct activities based on their perceived threat of Islam. The group has also made it clear that they have no reservations about using violence to protect themselves from this perceived threat if necessary. It is eerie to note that the group has in the past staked out a Calgary mosque.⁴

12. Concerns around Albertan Muslims not being able to seek justice from law enforcement is a major concern that many community members raise. Less than a month later, a complainant alerted NCCM alleging that she was discouraged from filing an official report after experiencing an attack at a transit station and felt the police response was motivated by her race and religion.⁵

13. The fact that Mr. Johnston spoke at the rally and repeated his hateful and defamatory words towards one of Canada's most well-respected Canadian Muslims in breach of a court order, and did not face immediate consequences, sends a message to Canadian Muslims that the ability of our processes to challenge illegal conduct are at risk.

14. The Supreme Court of Canada has also recognized the emotional harm that hate speech can cause upon an individual and the targeted community at large.⁶ The derision, hostility, and abuse encouraged by hate speech has a severe negative impact on the individual's human dignity, self-worth and acceptance. People and communities subjected to hatred or contempt because of their religion, race or other characteristics suffer fear, humiliation and a loss of self-esteem.

15. Mr. Johnston's conduct has caused emotional and psychological harm to members of the Canadian Muslim community. Mr. Johnston, who holds a public platform and has thousands of

⁴ *Ibid.*

⁵ CBC News, "Edmonton police may release call made by Black Muslim woman targeted in racist attack" (March 2, 2021), online: <<https://www.cbc.ca/news/canada/edmonton/edmonton-police-muslim-women-tiki-torch-rally-1.5934099>>.

⁶ *R v Keegstra*, 1990 CanLII 24, [1990] 3 SCR 697.

followers, has used his position – standing in front of the Alberta legislature - to spread hateful rhetoric against a member of the Muslim community and his continued lack of respect for the court demonstrates the lengths by which he is willing to go to in order to cause deep and everlasting emotional and psychological harm to Canadian Muslims.

(e) Mr. Johnston’s Conduct in a Broader Context of Online hate

16. Mr. Johnston’s brazen conduct does not exist in a vacuum. It exists in the context of a massive surge of online hate directed at marginalized communities, and specifically at Canadian Muslims. When Mr. Johnston live-streams his hateful content in breach of a court order, it sends a message to Canadian Muslims that their experiences with online hate will not be appropriately dealt with.

17. As the Supreme Court of Canada accepted in *Whatcott* and *Keegstra*, hate speech humiliates and degrades its targets and “lays the groundwork for discrimination, marginalization and violence against the targeted group.⁷ Hate propaganda can operate to convince listeners, even if subtly, that members of certain racial or religious groups are inferior. The result may be an increase in acts of discrimination and incidents of violence.

18. Indeed, online hate, is unrelenting, vicious, and dangerous. The reality of this danger was made clear on January 29, 2017 when Alexandre Bissonnette attacked the CCIQ mosque in Quebec. When Bissonnette was sentenced, online hate featured prominently in the judge’s decision. In *R. c. Bissonnette*, Justice François Huot indicated that Bissonnette drew upon online sources before committing this horrific attack:

⁷ *Saskatchewan (Human Rights Commission) v Whatcott*, [2013 SCC 11](#) at para 114; *R v Keegstra*, [1990 CanLII 24](#), [1990] 3 SCR 697; *Oger v Whatcott (No. 7)*, [2019 BCHRT 58](#) at para 143.

[10] ...il consulte assidûment divers sites Internet portant, notamment sur les armes à feu et auteurs d'actes terroristes. À titre d'exemples, il accède, le 27 janvier, au compte Twitter de #Muslimban...

[11] Le lendemain, il fait diverses lectures sur Jaylen Fryberg, l'auteur de la tuerie de Marysville, Elliot Rodger, responsable de la tuerie de masse du 23 mai 2014 à Isla Vista en Californie, Dylann Roof, l'assassin de neuf Afro-Américains lors de la fusillade de l'église de Charleston, l'attaque de San Bernardino et la page Facebook du mouvement FÉMUL (Féministes en mouvement de l'Université Laval).

[12] Dans la matinée du 29 janvier 2017, Bissonnette déjeune en consultant d'autres sites traitant d'attentats djihadistes...

(Translated to English)

[10] During this same period, he regularly consulted various Internet sites relating, in particular, to firearms and perpetrators of terrorist acts. For example, on Jan. 27, he accessed #Muslimban's Twitter account...

[11] The following day, he made various readings on Jaylen Fryberg, the author of the Marysville slaughter, Elliot Rodger, mass murderer of May 23, 2014 in Isla Vista, California, Dylann Roof, the murderer of nine African Americans during the shooting of the Charleston church, the San Bernardino attack and the Facebook page of the FÉMUL movement (Feminists in Motion at Laval University).

[12] On the morning of January 29, 2017, Bissonnette consulted other sites dealing with jihadist attacks...⁸

19. There is no clearer indication to us that online hate poses as existential threat to Canadians, and to Canadian Muslims. An analysis of his computer records showed that Bissonnette, from December 27, 2016 to January 29, 2017, consulted various sources about Islam on the internet. While we do not propose that Bissonnette was solely motivated by online hate speech or online racist manifestos, it is clear that Bissonnette consulted these online sources before committing his attack. That is simply part of the evidence. In Canada, there is little doubt from an empirical perspective that online hate, primarily through social media, but also through blogs, podcasts, other websites, and the dark web continues to fuel animosity and Islamophobia towards Canadian

⁸ *R. c. Bissonnette*, [2019 QCCS 354](#) at paras. 10-12.

Muslim populations.⁹ Online hate stokes animosity, fear, and promotes misinformation and anti-Semitism against our friends and allies in the Jewish community as well. The scourge of white supremacy, as well as the “incel” community, has been given a revival and a rebirth by way of the growth of social media, where misinformation and hate pose an existential threat to Canadian security.

20. Nor is the example of Bissonnette an outlier of experiences in terms of online hate directed towards Canadian Muslims. In 2016, media research company Cision documented a 600% rise in the amount of intolerance and hate speech in social media postings between November 2015 and November 2016. Their study focused on the usage of hashtags like #banmuslims and #siegeheil.¹⁰ According to a 2019 survey by Leger Marketing, 60% of Canadians report having seen hate speech on social media, and 62% of Quebecers stated that they had seen hateful or racist speech on the internet/social media in relation to Muslims.¹¹ According to a Statistics Canada the number of anti-Muslim hate crimes more than tripled between 2012 to 2015, even as the overall incidence of hate crimes declined.¹² As compared to other groups targeted by hate, Muslims (and Indigenous peoples) had the highest percentage of women victims (45%) between 2010 and 2018.¹³

⁹ Barbara Perry & Ryan Scrivens, “A Climate for Hate? An Exploration of the Right-Wing Extremist Landscape in Canada” Springer- Critical Criminology 2018, online: <https://www.researchgate.net/publication/324714463_A_Climate_for_Hate_An_Exploration_of_the_Right-Wing_Extremist_Landscape_in_Canada>.

¹⁰ Maclean’s, “Online hate speech in Canada is up 600 percent. What can be done?”, November 2, 2017 (online: Maclean’s”) <<https://www.macleans.ca/politics/online-hate-speech-in-canada-is-up-600-percent-what-can-be-done/>>.

¹¹ Marian Scott, “Most Canadians have seen hate speech on social media: survey”, January 27, 2019, online: Montreal Gazette <<https://montrealgazette.com/news/local-news/hate-speech-targets-muslims?r>>.

¹² Statistics Canada, “Police-Reported Hate Crime in Canada, 2018,” 26 February 2020, online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00003-eng.htm>>.

¹³ *Ibid.*

21. Mr. Johnston's conduct and hateful rhetoric against Mr. Fakhri was well-documented and circulated amongst Canadian Muslims; NCCM received over 85 complaints in the last two years about Mr. Johnston's conduct, including at various vigils, rallies, and in relation to his online video messages. There is no doubt that there is the perception that Mr. Johnston can continue to attack well-respected individuals like Mr. Fakhri with impunity, in defiance of well-publicized court decisions, and that this implies that Canadian Muslims will not be protected from someone who spreads hate about our communities. Canadian Muslims who view this hate propaganda will continue to live with the knowledge that they can easily be subjected to hateful rhetoric online and targeted. This logically causes Canadian Muslims to be more fearful in their communities, which in turn causes Canadian Muslims to increase their precautions and limit their behaviour, as well as lose trust in our justice system.

(f) Hate perpetuates stereotypes, stigma, and reinforces barriers for Canadian Muslims

22. The hate disseminated by Mr. Johnston risks contributing to prejudice and bias against Canadian Muslims. Mr. Johnston's publications about Mr. Fakhri resonate, reinforce and contribute to these deeply rooted racist and religious stereotypes or tropes about Canadian Muslims and those of Middle Eastern descent. In this way, Mr. Johnston's speech harms Canadian Muslims as a group. Such conduct also has a profound effect on Canadian Muslims' fundamental freedoms. The Supreme Court of Canada in *Whatcott* recognized that hate speech has a tendency to silence the voice of the targeted group and can prevent the free expression of those who are targeted by hate speech.¹⁴ More broadly, hate propaganda can prevent members of the target groups from openly participating in society without fear.

¹⁴ *Saskatchewan (Human Rights Commission) v Whatcott*, [2013 SCC 11](#) at para 114.

23. Mr. Johnston's conduct and publications in this case targeted Mr. Fakhri who participates in a public way in society. This sends a clear message to Canadian Muslims that if they engage in public life or speak out in an open forum, they risk having derogatory images and hateful messages published about them and distributed throughout the community. They risk becoming the target of racist and xenophobic attacks. They risk family members, including their children, being harassed, accosted or even physically harmed. They risk losing their reputation in the community. They risk the safety and security of their business and employees. It is logical that this would significantly discourage, and prevent, many Canadian Muslims who would otherwise seek opportunities in public life and openly participate in the public sphere. Indeed, because of the risk of reprisals or backlash, it has been our experience that many Canadian Muslims are also afraid to enforce their rights and freedoms and openly report hate-motivated incidences.

(g) Conclusion

24. Mr. Johnston's actions have a dramatic impact on Canadian Muslims, and their feelings of safety and security. Hate based groups and political movements are increasing in prevalence,¹⁵ and a significant feature of this rise in hate-based ideology is the ability of individuals or groups disseminate hate through online platforms without facing consequences.

25. NCCM, as an organization that advocates for the rights and concerns of Canadian Muslims, is deeply disturbed by the conduct of Mr. Johnston. Hate speech at its core causes emotional and psychological harm to individuals and Canadian Muslims as a group. It increases their fear and creates barriers for Canadian Muslims in all aspects of their life, which can impact their free

¹⁵ The New York Times, "Over 1,000 Hate Groups Are Now Active in United States, Civil Rights Group Says" (20 February 2019), online: < <https://www.nytimes.com/2019/02/20/us/hate-groups-rise.html> >.

participation in society. It also perpetuates negative stereotypes and systemic discrimination against Canadian Muslims. Both conscious and unconscious bias against Muslims perpetuated by individuals, politicians, social influencers, the media and hate groups, among others, play a significant role in dehumanizing Muslims, motivating hate crimes, promoting discrimination and exacerbating socioeconomic exclusion. It is therefore incumbent that all efforts are made to protect the cultural diversity that defines Canada and ensure the safety and equal participation of all members of our society.

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