




# Hate Crimes and Incidents:

An Investigator's Guidebook






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This Guidebook offers concrete and specific recommendations for identifying and investigating hate crimes and incidents. These recommendations are intended to provide investigators with the knowledge and tools to better serve and support victims and their broader communities, hold offenders accountable for their actions, and enhance the overall quality of police hate crime response practices. This Guidebook begins where the *Hate Crimes and Incidents: A Frontline Officer's Initial Response Guidebook* ends.

Though many of the recommendations provided in this Guidebook are specific to criminal investigations, providing a strong and supportive police response to hate incidents is also important. Though they may not meet the threshold for laying criminal charges, such incidents nevertheless cause great harm to victims and their broader communities. Much of the information in this Guidebook is therefore applicable to calls for service involving both hate crimes and incidents.

The information presented herein is largely reproduced from an Investigator's Guidebook prepared by Sergeant Elvis Musinovic, NCO i/c BC Hate Crimes, E Division Major Crime Section, Royal Canadian Mounted Police, D/C Gregory Keall, Investigator, E Division Major Crime Section, Royal Canadian Mounted Police, and A/Inspector Greg Yanicki, Senior Investigative Officer, E Division Major Crime Section, Royal Canadian Mounted Police – and supplemented in places with information sourced from academic research and investigatory support publications (with attribution provided throughout).

Where necessary, procedural/operational guidelines have been adapted for use by police services across Canada, with the assistance of members of the Hate Crimes Task Force.

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# Definitions

## Hate Crime

A hate crime is a criminal offence committed against a person or property that is motivated in whole or in part by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or gender identity or expression, or on any other similar factor.

Hate crimes encompass violence and other forms of harm against individuals or groups, and also include certain property crimes. Property includes places of worship, such as a temple, mosque, synagogue or church, or objects or locations of religious significance, such as schools, community centres, or cemeteries.

Examples of hate crime may include acts of violence or hostility such as an assault (hitting or spitting on someone) or causing mischief to property such as a school or place of worship. The key is that these acts intentionally target individuals or groups.

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## Hate Incident

A hate incident involves the same characteristics as a hate crime but does not meet the threshold to be classified as an offence under the *Criminal Code*. It is defined as a non-criminal action that is motivated by bias, prejudice or hate against a person or property, based on their race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or gender identity or expression or on any other similar factor. In other words, hate incidents are “awful but lawful” non-criminal actions or behaviour that are motivated solely or in part by hate against an identifiable group.

Examples of hate incidents may include using racial/derogatory slurs, verbal abuse or insulting a person because of their ethnic or religious dress or how they identify (for example, a dispute in a parking lot that escalates to verbal abuse that involves racial or otherwise derogatory slurs). Such incidents can be very harmful and lead to emotional and psychological stress and trauma. Police officers responding to hate incidents should continue applying a trauma-informed approach and seek to provide victims and their broader communities with referrals to local organizations that offer victim-centric services and support.



## Identifiable Group

In recognition that certain segments of the population may face systemic and even violent discrimination and require specific legal protection, the *Criminal Code*, under Section 318(4), defines the term identifiable group as a group identified based on their “colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability”.





# Investigating Hate Crimes and Incidents

Everyone has the right to feel safe and to live their lives in the absence of fear or threat. It is critically important to investigate hate crimes and incidents for the following reasons:

- investigating hate incidents can help mitigate feelings of fear and anxiety for victims, assist police and communities with crime prevention, and keep situations from escalating to violence or other criminal offenses; and
- a timely police response reinforces the message that hate crimes and incidents will be vigorously investigated, thereby:
  - enhancing a sense of safety and security on the part of victims and the broader community; and
  - bolstering police-community relationships and trust.

The impact of hate crimes and incidents can be profound, lasting, and more severe than other victimization types. They also extend beyond the immediate victim, potentially creating a ripple effect onto families and communities. Recognizing and understanding the breadth of impact hate crimes and incidents have on communities should remain the primary focus for investigators. Throughout the investigative process, investigators should strive for the respectful and sensitive treatment of victims, their families and communities, and provide referrals to support organizations and services as required.



# Establishing Hateful Motivation: Key Bias Indicators

Hate crimes and incidents may be motivated entirely or partially by hate. A crime motivated by hate and another factor, such as ignorance, fear, feelings of personal shame or powerlessness, is still motivated by hate (alongside additional factors).

Proving that the conduct was motivated by hate – in full or in part – is crucial given the extremely high legal threshold for prosecuting hate crimes. Documenting the who/what/when/where/why/how criteria therefore takes on particular importance when investigating and prosecuting offences that are suspected to have been motivated by hate.

Gleaning insight into a suspect's motives may help determine whether the suspect's actions were motivated, in whole or in part, by hate. The presence of these indicators does not necessarily confirm that the occurrence was motivated by hate/bias but may indicate the need for further investigation into motive.

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A crime motivated by hate and another factor, such as ignorance, fear, feelings of personal shame or powerlessness, is still motivated by hate (alongside additional factors).



# Victim, Suspect and Situational Considerations

- Does the victim(s) belong to an identifiable group?
- Perceptions of the victim(s) and witness(es) about the crime/incident and potential motivating factors. Note: Interviews should follow policy, but interview tactics should ensure that victim(s)/witness(es) not be directly asked whether they believe the offence constitutes a hate crime. It is appropriate to ask if they have any idea why the offence occurred.
- Did the suspect make comments (verbal or written, in person or online) or use symbols or gestures that reflect hate before, during or in the immediate aftermath of an incident?
- Has the suspect been previously involved in hate crimes and/or incidents?
- Were the suspect(s) and the victim(s) from different racial/ethnic, religious, national origin, sexual orientation, gender or gender identity/expression or disability groups?
- Were there similar previous incidents in the same location or neighborhood that might suggest that a pattern of offending and/or escalation exists?
- Is the victim easily identifiable as a member of their community? For example, by clothing/symbols (e.g., religious garb, flags associated with the 2SLGBTQI+ community), or conduct (e.g. attending places of worship, cultural events and celebrations)?
- Did the incident coincide with a holiday or day of particular significance to the victim(s), suspect(s) or their communities (e.g., a religious holiday or event; to copy-cat or pay tribute to a previous and often sensationalized hate/extremist event perpetrated in Canada or elsewhere)?
- Is there evidence that points to the involvement of organized hate groups or their members?
- Is there no other apparent motive(s) for the offence/incident (e.g. economic gain)?

## Property Offence Considerations

- What is the property's function? Is it a place with cultural or religious significance (such as a place of worship or a cemetery) or a community facility (such as a cultural centre or a historical monument)?
- Were there any recent events at the property benefiting an identifiable group (e.g. a Pride event held at a community centre that was subsequently vandalized)?
- Has the property been subject to previous hate-motivated offences?  
  
**Note:** Check in with your service's crime analyst for graffiti or general mischief to property trends in the area.
- When investigating a graffiti-related mischief, be sure to determine the meaning behind any symbols used or displayed and/or the timing of the offence.

## Additional Considerations

- Closely examine each case for evidence that clearly indicates the motivation for the crime was hate/bias related.
- Be aware that hate crimes can be perpetrated by individuals that appear to be from the same culture or background as the victim. Listen carefully to fully understand the victim's perspective - individuals may be targeting each other because of something unseen like a difference of religion or region within the same culture.
- Even if the suspect was mistaken in the belief that the victim was a member of a targeted group, the offence is still a hate crime if the suspect was motivated by hate or bias against that group.
- Should an incident be initially classified to be motivated by hate/bias and later found not to be, then all reports should reflect this change. Conversely, should an incident not be initially classified to be motivated by hate/bias and later found to be, then all reports are to reflect this.

## Hate Symbols Databases

Two searchable databases of hate symbols, characters and themes exist to assist in their identification:

1. **The Toronto Holocaust Museum's Online Hate Research and Education Project**
2. **The U.S. Anti-Defamation League (ADL)**

Investigators interested in gaining a fulsome understanding of active hate groups in their area of jurisdiction should also contact the area within their service that houses this information.

# Recommendations for Conducting a Supportive, Victim-Centred and Trauma-Informed Investigation

Understanding the post-victimization impact that hate crimes and incidents can have on victims\*, their families and the broader community is critical for police services. Victim-centred and trauma-informed approaches help provide a more informed, sensitive and respectful service delivery.

In addition to the harms suffered by victims, their families and communities, hate crimes and incidents also lead to broader societal impacts and harms. For example, when hate crimes are unaddressed, victims and communities may lose trust in the police and the criminal justice system.

Hate crimes and incidents can significantly affect the healthy and positive coexistence between different segments of a community. Taking a victim-centred and trauma-informed approach ensures that the victim's rights, the safety of the public and the reparation of harm remain top priorities throughout any investigation.

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\*This Guidebook refers to people affected by hate crimes and incidents as victims in order to be consistent with common legal and practitioner terminology. However, it is important to recognize that the terms "survivor" and/or "victim-survivor" are sometimes preferred because each emphasizes strength, agency and resilience instead of focusing solely on an individual's status as a victim of a criminal act.

## Victim-Centred Approach

Taking a victim-centred approach emphasizes the victims' rights and their safety and well-being, while ensuring an empathetic, sensitive and nonjudgmental approach to respecting their expressed needs and choices throughout an investigation. When responding to hate crimes, this approach can help support victims where the intersectionality of identities is also a factor.

The term intersectionality refers to the ways in which multiple identity characteristics (race, ethnicity, gender, religion, sexual orientation, etc.) may intersect and interact to produce unique experiences of discrimination and/or privilege. Police must ensure that they consider all aspects of a victim's identity when investigating suspected hate crimes and incidents.

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## Victim Rights

The *Canadian Victims Bill of Rights* defines a victim as "an individual who has suffered physical or emotional harm, property damage, or economic loss as a result of the commission or alleged commission of an offence". It provides victims of crime with the right to information, right to protection, right to participation and right to seek restitution. Investigators seeking to share a breakdown of these rights with victims should refer to the [Canadian Victims Bill of Rights](#) page on the Office of the Federal Ombudsperson for Victims of Crime website.

The *Canadian Victims Bill of Rights* defines a victim as "an individual who has suffered physical or emotional harm, property damage, or economic loss as a result of the commission or alleged commission of an offence".

# Investigators Should:

- Remain calm, objective and compassionate; treat victims with respect and in a professional and individualized manner.
- Always ask the victim(s) how they wish to be addressed, instead of assuming a person's identity based on their appearance.
- Recognize and accommodate the victim's need to be heard, believed and taken seriously.
- If a victim does not appear to be cooperative or is exhibiting aggressive behaviour, this may be due to their reaction to the trauma inflicted by the hate crime. If possible, give the victim the space and time they need to process their situation.
- Where possible, ensure that victim(s) have support from friends, family, faith leaders and/or community leaders/elders throughout the criminal justice process.
- Ask victim(s) what they need and if/how they want police to help them; investigators should respect victim preferences, provide information of victim services and supports, and assist with referrals if requested/needed.
- Reassure victim(s) that they are not to blame for what happened, that the police will vigorously investigate the crime and otherwise assist in holding the suspect(s) accountable, and that every effort will be made to protect their safety.
- Trauma-informed interview techniques should be used, as traditional interview techniques can inadvertently re-traumatize victims.
- Encourage victim(s) and witness(es) to tell the story in their own words; allow them to vent feelings about the incident or crime.

## To use a trauma-informed interview technique:

- Start with a "pure" version of events – an uninterrupted, verbatim victim statement.
- Bring the victim back to key parts of the event through the use of open-ended questions (do not ask leading questions, which can contaminate victim/witness statements).
- Once the victim/witness narrative is complete, ask any necessary follow-up questions (see, for example, guidelines for gleaning information about hateful motivation/bias indicators presented above), without giving clues as to what is important from an investigatory standpoint.
- Encourage victims to complete **Victim Impact Statements**, which gives them a voice in the criminal justice process by describing the physical, emotional and economic impacts of the offence. Affected community members should also be encouraged to complete **Community Impact Statements**.

**Note:** For a more detailed overview of trauma-informed victim interviewing techniques developed for sexual assault victims, though the general principles underpinning questions to ask/avoid apply in the context of hate crime as well, see the [International Association of Chiefs of Police's Successful Trauma Informed Victim Interviewing Guide](#) (links to an online PDF).



## Investigators Should Avoid:

- Abrupt or rushed interactions/communication with victim(s).
- Telling victim(s) that you know how they feel.
- Directly asking victims whether they think their victimization was motivated by hate.
- Criticizing the victim's behavior.
- Making assumptions about the victim's status as a member of one or more identifiable groups, including their national or ethnic origin, religion, sexual orientation, or gender identity. Whether a hate crime has been committed depends on the suspect's motive, not the victim's status.
- Allowing personal value judgements about the victim's identity, behaviour, lifestyle choices, or culture to affect objectivity.
- Using offensive, biased or outdated terminology.
- Belittling the seriousness of the incident, especially if it does not meet the chargeable threshold, didn't involve serious harm and/or the suspect is a young offender.

# Trauma-Informed Approach

**Applying a Trauma-Informed Approach** means offering services and support while keeping in mind what someone who has been through trauma has experienced and how it affects them. The main focus is on making sure they feel safe, have choices, and are in control of their situation.

The impacts from hate crime victimization are broad and may be influenced by a number of factors, including (but not limited to): previous victimization experience, the nature of the crime or incident, the severity of the crime and injury, previous experiences with discrimination, the availability of family, social and/or faith-based support and the intersectional nature of an individual's identity which can compound and intensify the experienced harm.

It is critical for police and organizations to apply an intersectional lens when responding to hate crimes and incidents, to recognize these factors, to effectively address the nuances of harm and to provide victims with the appropriate support.

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**Common trauma responses that can result from hate crimes and incidents include:**

- emotional and psychological distress;
- acute shock and disbelief;
- feelings of anger that could be directed toward the suspect, police and society;
- depression, anxiety and suicidal ideation;
- an extreme sense of isolation;
- reduced sense of safety and security;
- increased sense of vulnerability and fear of repeat victimization;
- feelings of shame, humiliation and hopelessness;
- hyper-vigilance, avoiding people, places and situations perceived to be potentially dangerous;
- concealing aspects of their social identity (e.g. not wearing religious or cultural clothing or symbols, etc.); and
- substance abuse and self-harm behaviours.

# Constitutional and Legal Considerations

## The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms* (hereafter “the Charter”) outlines the civil and human rights that Canadian citizens, permanent residents and newcomers to Canada are guaranteed.

One of these rights is freedom of expression, which is laid out in section 2(b) and enshrines the fundamental freedom of “thought, belief, opinion and expression, including freedom of the press and other media of communication”.

Everyone in Canada has the right to peacefully protest or convey a point of view, even if their viewpoints are considered offensive by others. However, these freedoms are not absolute; section 1 of the Charter states: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. This places legal limits on certain offensive things that people can say.

The Supreme Court of Canada has upheld restrictions on forms of expression deemed contrary to the spirit of the Charter.

“The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”



# Examples of Restrictions on Freedom of Expression

Hate propaganda comes in many forms. It can include hatred rooted in racism (including anti-Black, anti-Asian and anti-Indigenous racism), misogyny, homophobia, transphobia, antisemitism, Islamophobia and white supremacy. It is important to note that the offence of hate propaganda occurs when it is being directed at individuals or groups of individuals - not against ideas, philosophies, political parties, or states/nations and their associated offices, symbols or public officials.

A 2006 Canadian Human Rights Tribunal decision (Warman v. Kouba) established eleven “hallmarks of hate” that are often used by offenders in their speech towards targeted groups.

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## Targeted groups are:

- portrayed as a powerful menace that is taking control of the major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being;
- portrayed as preying upon children, the aged, the vulnerable, etc.
- blamed for the current problems in society and the world;
- portrayed as dangerous or violent by nature;
- devoid of any redeeming qualities and their members are innately evil; and/or
- de-humanized through comparisons to and associations with animals, vermin, excrement, and other noxious substances.

## Messaging may often include:

- “true stories,” news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group;
- the idea that nothing but the banishment, segregation or eradication of this group of people will save others from the harm being done by this group;
- highly inflammatory and derogatory language used to create a tone of extreme hatred and contempt;
- trivializing or celebrating past persecution or tragedy involving members of the targeted group; and/or
- calls to take violent action against the targeted group.

**All of these attributes involve an attack on the inherent self-worth and dignity of members of the targeted group.**

# Hate Crime and the Criminal Code

There are a number of provisions available within the *Criminal Code* that address hate crimes:

## Hate Propaganda Offences

- Section 318 - Advocating Genocide
- Section 319(1) - Public Incitement of Hatred
- Section 319(2) - Wilful Promotion of Hatred
- Section 319(2.1) - Wilful Promotion of Antisemitism

## Hate Propaganda Offences - Warrant of Seizure Powers

- Section 320(1) - Warrant of Seizure (publications)
- Section 320.1(1) - Warrant of Seizure (computer systems)

Section 430(4.1) - Mischief to Property - Religious/Educational, etc.

Sections 320.101-104; 273.3(1) - Conversion Therapy Offences

Section 718.2(a)(i) - Sentencing Principles



# Hate Propaganda Offences

Hate propaganda is defined in section 320(8) of the *Criminal Code* as: "Any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under section 319".

In Canada, the terms "hate propaganda" or "hate speech" are often used to describe hateful statements that are made in public that target an identifiable group. Such statements can be made orally or in writing – for example, through distribution of flyers or posters, by speaking in public, or by writing anywhere that the public can access, including online or in social media platforms. When hate propaganda meets a criminal threshold, this usually means it meets the elements of Wilful Promotion of Hatred, which is outlined in section 319(2) of the *Criminal Code*.

Only a very small number of suspects are charged under section 319(2) in a given year, as Crown Counsel has to obtain approval from the provincial Attorney General in order for a charge to proceed.

Section 319(1), Public Incitement of Hatred, is generally enforced as a real-time offence. An arrest under section 319(1) occurs when there are reasonable grounds to believe that a suspect's hateful statements will lead to a breach of the peace – for example, a public order disruption or riot.

## Section 318 – Advocating Genocide

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.

Genocide means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

- killing members of the group; or
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

### Important Considerations:

- May only be prosecuted with the consent of the Attorney General.
- This offence may be the basis for an authorization to intercept private communications (section 183).
- Does not require proof that genocide occurred.
- The guilty mind required is the intent to directly prompt or provoke another to commit genocide.

## Section 319(1) – Public Incitement of Hatred

Everyone 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 peace is guilty of

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

### Important Considerations:

- This a real-time offence witnessed by a police officer in a public place where it is likely that the actions of the individual could lead to a breach of the peace.
- Requires that the individual encourage someone else to hate an identifiable group or incite someone else to participate in violent or unlawful behaviour towards an identifiable group.
- These situations could occur during protests and/or counter protest involving identifiable groups and in public places during times of unrest/war.

## **Section 319(2) – Wilful Promotion of Hatred**

Everyone who, by communicating statements, other than in private conversation, promotes hatred against any identifiable group is guilty of

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

### **Important Considerations:**

- May only be prosecuted with the consent of the Attorney General.
- The accused had as their intention/conscious purpose the promotion of hatred or they foresaw that the promotion of hatred was certain or morally certain as a result of their communicated statements.
- It is insufficient that the message be offensive, or that the trier of fact dislikes the statements.
- Communicated includes by telephone, broadcasting or other audible or visible means.
- A statement includes words spoken, written or recorded electronically or otherwise, and gestures, signs or other visible representations.
- Requires that the suspect is promoting hatred to someone else outside of private conversations.
- Promoting means actively supports or instigates and requires more than mere encouragement; only the most intense forms of dislike fall within this scope.

## **Four Defences to Wilful Promotion of Hatred:**

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

## **Section 319(2.1) – Wilful Promotion of Antisemitism**

Everyone who, by communicating statements, other than in private conversation, willfully promotes antisemitism by condoning, denying or downplaying the Holocaust

- is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- is guilty of an offence punishable on summary conviction.

### **Important Considerations:**

- May only be prosecuted with the consent of the Attorney General.

## **Four Defences to Wilful Promotion of Anti-Semitism:**

- The communicated statements are true.
- An opinion or argument was expressed in good faith and either concerned a religious subject or was based on a belief in a religious text.
- The statements were relevant to a subject of public interest, were for the public benefit, and were on reasonable grounds believed to be true.
- The statements were meant to point out matters that produce or tend to produce feelings of antisemitism toward Jews and were made in good faith for the purpose of their removal.



# Hate Propaganda Offences - Warrant of Seizure Powers

## **Section 320(1) – Warrant of Seizure Powers (Publications)**

A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in the premises within the jurisdiction of the court, is hate propaganda shall issue a warrant [to seize] the copies.

## **Section 320.1(1) – Warrant of Seizure Powers (Computer Systems)**

If a judge is satisfied by information on oath that there are reasonable grounds [for believing that any material that is hate propaganda, or data that makes hate propaganda available, that is stored on and made available to the public through a computer system], that is within the jurisdiction of the court, the judge may order the custodian of the computer system to:

- give an electronic copy of the material to the court;
- ensure that the material is no longer stored on and made available through the computer system; and
- provide the information necessary to identify and locate the person who posted the material.

## Mischief to Property – Section 430(4.1)

Everyone who commits mischief in relation to property described in any of paragraphs (4.101)(a) to (d) if the commission of the mischief is 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,

- is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- is guilty of an offence punishable on summary conviction.

**Definition: Property** – a building or structure, or part of a building or structure, that is primarily used:

- for religious worship - including a church, mosque, synagogue or temple, or an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery;
- by an identifiable group as an educational institution - including a school, daycare centre, college or university, or an object associated with that institution located in or on the grounds of such a building or structure;
- by an identifiable group for administrative, social, cultural or sports activities or events - including a town hall, community centre, playground or arena, or an object associated with such an activity or event located in or on the grounds of such a building or structure; or
- by an identifiable group as a residence for seniors or an object associated with that residence located in or on the grounds of such a building or structure.



# Conversion Therapy – Section 320.101-104; 273.3(1)

Other relevant provisions to the *Criminal Code* that are associated with hate/bias crimes include those centered around conversion therapy.

In early 2024, Public Safety Canada warned that the “anti-gender” movement poses an increasing and significant threat to national security in Canada.

The *Criminal Code* defines conversion therapy as a practice, treatment or service designed to:

- change a person’s sexual orientation to heterosexual;
- change a person’s gender identity to cisgender;
- change a person’s gender expression so that it conforms to the sex assigned to the person at birth;
- repress or reduce non-heterosexual attraction or sexual behaviour;
- repress a person’s non-cisgender gender identity; or
- repress or reduce a person’s gender expression that does not conform to the sex assigned to the person at birth.

For greater certainty, this definition does not include a practice, treatment or service that relates to the exploration or development of an integrated personal identity — such as a practice, treatment or service that relates to a person’s gender transition — and that is not based on an assumption that a particular sexual orientation, gender identity or gender expression is to be preferred over another.

## Conversion Therapy – Section 320.102

Everyone who knowingly causes another person to undergo conversion therapy - including by providing conversion therapy to that other person - is:

- guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or
- guilty of an offence punishable on summary conviction.

## **Promoting or Advertising – Section 320.103**

Everyone who knowingly promotes or advertises conversion therapy is

- guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
- guilty of an offence punishable on summary conviction.

## **Material Benefit – Section 320.104**

Everyone who receives a financial or other material benefit, knowing that it is obtained or derived directly or indirectly from the provision of conversion therapy, is

- guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
- guilty of an offence punishable on summary conviction.

## **Removal of Child from Canada for Conversion Therapy – Section 273.3(1)**

Removing from Canada a person who is ordinarily resident in Canada and who is under the age of 18 years, with the intention that an act be committed outside of Canada that if committed in Canada would be an offence against section 320.102 in respect of that person.

Every person who contravenes this section is guilty of

- an indictable offence and liable to imprisonment for a term not exceeding five years; or
- an offence punishable on summary conviction.

## Other Sentencing Principles – 718.2(a)(i)

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
  - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor shall be deemed to be aggravating circumstances.

## How is Section 718.2 Applied?

At sentencing, the prosecutor may introduce that the suspect was motivated in whole or in part by hate, prejudice or bias and if proven beyond a reasonable doubt the judge will consider this an aggravating factor and increase the offender's sentence.

For example, a suspect is arrested for assault, subsequently charged and convicted. At sentencing, s. 718.2 is applied.

Note that the sentencing provision includes "or on any other similar factor" following the list of identifiable groups, which other *Criminal Code* provisions relating to hate crime do not possess.

When investigating a criminal offence that is motivated in whole or in part by hate, investigators are required to articulate the elements of the offence as well as the evidence of hateful motivation.

# Sentencing Principles – Report to Crown Counsel

Ensure that the Crown Prosecutor is notified of the fact that there is evidence that the offences were motivated by hate/prejudice/bias and that the section 718.2(a)(i) of the *Criminal Code* may apply.

In addition to the standard requirements of a Report to Crown Counsel (RTCC) articulating the circumstances of the offence, investigators should include an additional section in the RTCC with the header: Section 718.2 - Hate Motivated Offence Sentencing Principles. The purpose of this paragraph is to draw Crown and Judge attention, during sentencing, to the offender's actions and behaviours that may be considered motivation for hate, prejudice or bias during sentencing.

In this paragraph outline the following:

- Articulate that the offence(s) were motivated in whole or in part by hate/prejudice/bias;
  - Refer to **Establishing Hateful Motivation - Key Bias Indicators** to help identify and articulate motive.
- Summarize all evidence indicating that this offence was motivated by hate/prejudice/bias and why it should be considered as an aggravating factor at sentencing; and
  - This may include victim/witness/suspect statement(s), physical evidence (e.g. graffiti or hate symbols, damage to property), video evidence (e.g. a person was picked out of a group because they belong to an identifiable group).
- Consider factors such as language and tone, target choices, previous hate incidents or pattern of similar behaviours.

The purpose... is to draw Crown and Judge attention, during sentencing, to the offender's actions and behaviours that may be considered motivation for hate, prejudice, or bias during sentencing.



# Investigative Recommendations

The following procedural guidelines have been developed to facilitate effective, professional and victim-centred investigations of hate crimes and incidents:

- Offer and obtain interpreter(s) as required to facilitate communication with involved parties and to ensure that the victim has a voice in the process.
- Look for any hate crime indicators during the investigative process.
- Ensure all evidence is gathered including, but not limited to, photographing, seizing and securing scene evidence.
  - Examples include spray cans, video surveillance, electronic devices, victim and witness statements, and 911 recordings.
- Consider utilizing other police resources (e.g. Hate Crime unit, Forensic Identification Services, Media Relations).
- Notify your supervisor per jurisdictional policy.
- In your articulation use exact language (words spoken, written or otherwise communicated by the suspect).
- Report hate crimes and hate incidents per jurisdictional policy.
- If charges are laid, articulate the motivation of bias, prejudice, or hate at all possible stages of investigation (e.g. synopsis, RTCC, statements, etc.).
- Leverage the benefits of victim-centric, trauma-informed victim interactions throughout the investigative process.
  - Identify and assign one investigator to interview the victim(s) wherever practical to minimize trauma.
  - Ensure victim safety concerns are acknowledged and addressed:
    - speak with victims about their support needs and preferences;
    - identify culturally-responsive and trauma-informed local agencies that are in keeping with victim's needs and preferences; and
    - assist victims in accessing their preferred services and support types.
  - Inform victim(s) about what to expect and provide contact information to facilitate follow ups; ensure regular updates are provided to victim(s) and community groups (as appropriate) throughout the investigation and court process.

- Encourage victims to submit Victim Impact Statements (section 722) and community members to submit Community Impact Statements (section 722.2).
  - Consider alternative measures such as Sureties to Keep the Peace (i.e. peace bonds, section 810 of the *Criminal Code*.) or a restorative justice approach (in exceptional circumstances) where appropriate.
    - Re-integration programs may be beneficial for repeat perpetrators of hate incidents, if available.
  - Consider supporting the victim(s) and their broader communities with crime prevention resources and strategies, either internally or externally (e.g. Canada Community Security Program).
  - In situations involving property offences (for example, racist symbols spray-painted on a wall or structure), contact the owner/manager of the property to ensure that the physical evidence is quickly removed following documentation.
- In instances that may have national implications or involve live situations that could pose a threat to public safety at large (beyond jurisdictional boundaries), share information via national intelligence pathways to ensure a coordinated response and mitigate any broader community safety concerns (e.g. contact the RCMP Integrated National Security Enforcement Team).
  - Familiarize yourself with the *Canadian Victims Bill of Rights*.
  - Engage community resources that are involved with the targeted group for guidance and knowledge of customs and traditions.



## Conclusion

In addition to investigating hate crimes and incidents, police play a critical role in providing important information, assistance and access to supportive services tailored to specific victim needs. The quality of the interaction with police can influence victims' perceptions of the entire criminal justice system, which can affect their willingness to cooperate, share information and otherwise participate in the criminal justice process.

Hate crimes and incidents intentionally and specifically target individuals because of their personal identity characteristics. As such, these are very personal crimes with profound negative impacts for victims and their broader communities. A strong, supportive and immediate police response provides crucial assistance to victims, but it can also bolster relationships and trust between police and the communities they serve, leading to increased reporting, enhanced investigations and, by extension, a greater likelihood that accused persons will be successfully prosecuted.



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