

Hate and hate crimes in Canada

an introduction



A publication of the United Cultures of Canada Association (UCCA)

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Written by Kevin Holowack

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United Cultures of Canada Association
Unit 2, 810 Saddleback Road NW, Edmonton T6J 4W4
Email: ucca@shaw.ca Website: www.ucca.ca

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1) Introduction

This booklet is a short introduction to the topics of racism, discrimination, and hate crimes in Canada. It explains what hate crimes are and provides relevant political and historical context. It is intended to give you a better understanding of how hate crimes and hate crime laws impact people in Canada. It will also equip you with the knowledge to productively discuss issues of racism, hatred, and hate crimes.

An important caveat of this booklet is that hate crimes are only one aspect of racism and discrimination in Canada today. For hate crimes to happen, there must already be hatred in society. This booklet's opinion is that hatred can only be eliminated through social justice, education, and the strength of communities. Hate crime laws only serve to punish offenders, compensate victims, or act as a deterrent to hateful actions. On their own, they are not a solution to hatred but a response to it. We cannot understand hate crimes without considering the broader context of racism and discrimination that hate crime laws are intended to address

The concept of “race”

The concept of “race” has an important history. Not all cultures have had a concept of race, and most humans in the past did not see themselves as divided into different “races.”¹ Beginning in the 16th century, Europeans started using the word “race” to refer to visible differences between people. The Europeans who colonized North America and elsewhere were extremely influenced by the

idea that there are “superior” and “inferior” races. This way of thinking has been responsible for some of the most horrifying events of all time, including genocide and slavery. However, there has never been widespread agreement about what “race” means. Depending on where and when the term is used, it may be related to skin colour, but sometimes it overlaps with ethnicity, religion, culture, or even language.

Race is not a biological fact

Today, scientists agree that race is not a biological fact. People may look different, but there is no underlying or essential factor of “race” that determines who people are. In reality, all humans are extremely similar in terms of genetics and potential. Nonetheless, “race” is a powerful idea that has shaped societies around the world for hundreds of years. Many academics refer to race as a “social idea” or a “cultural idea.” This highlights the fact that, even though “race” is not biological, the *idea* of race still influences our society and daily interactions. People who are part of a marginalized racial community are still victims of hatred, discrimination, and systemic inequalities even if race is not a biological fact.

Growing awareness about racism

Canada has historical and ongoing inequalities based on race. The country developed under the control of governments, police, and policymakers who believed Indigenous people and other people of colour (as well as some groups from Europe) were “inferior races.”

The British government that colonized this part of the world, and the Canadian government after 1867, used false ideas about race to justify taking away the land and rights of Indigenous people, forcing Indigenous children into residential schools, and severely restricting their ability to use their languages or practice their cultures. Canada also practiced segregation and the enslavement of Black people, even if not to the extent that the United States did.² Other groups, especially people from Asia, have historically faced severe discrimination in terms of immigration and workplace conditions.³

These stories are all part of what makes modern Canada. A 2021 poll shows that one in five of *all* Canadians experience racism either often or occasionally.⁴ Around 60% of Canadians think racism is a serious problem.⁵ Recently, activists for racial justice, including many Black⁶ and Indigenous⁷ activists, have raised public awareness about racism. Canadians are increasingly coming to understand that racism is a systemic issue and that marginalized groups are consistently treated unfairly by the government, the police, and other institutions.⁸

Racism and Canada's legal system

Because of Canada's past, it is unsurprising that racism is built into Canada's legal system. Historically, racialized people have been blocked from entering law. Until 1951, for example, the *Indian Act* required many First Nations people to give up certain rights if they wanted to go to higher education such as law school. To take another example, Japanese Canadians were blocked from

becoming lawyers and judges in many parts of Canada until 1948.⁹ Today, the vast majority of police, lawyers, judges, and other legal professionals in Canada are white.¹⁰ Furthermore, the majority of them are male, especially in higher-ranking positions.¹¹ Therefore, many people have their reasons to be skeptical or apprehensive about the legal system's commitment to equality and justice.¹²

Key issues involving Canada's legal system and racialized people

In 2021, the federal government announced that urgent action is needed to address the disproportionate harm the legal system has on racialized people in particular.¹³ There are several key issues to keep in mind when we think about racism in Canada's legal system today.

One key issue is the over-incarceration of Indigenous people, which has been a reality in Canada since the Second World War.¹⁴ Although Indigenous people make up only 3% of Canada's total population, about 25-30% of people admitted to Canadian jails each year are Indigenous. A second issue is a lack of action by the police and the government to address Missing and Murdered Indigenous Women and Girls (MMIWG), which is often considered a national crisis. A third issue is the ongoing mistreatment of BIPOC (Black, Indigenous, and People of Colour) by the legal system. For example, studies show that racialized people in Canada are more likely to be stopped by police for no good reason and to be the victim of excessive force by the police. Studies also show that, on average, BIPOC receive harsher

penalties for crimes than white Canadians who commit the same crimes. Finally, there is some data suggesting that Black Canadians are held in custody for longer periods of time than other Canadians for the same crime.^{15,16}

Government action to make the justice system fairer

In recent history, the Canadian government has taken some actions with the expressed intention of making the justice system fairer. In 1995, for example, it amended the *Criminal Code* so that courts must consider circumstances related to a person's Indigenous identity when determining sentencing. Canadian courts also developed the "Gladue principles," a series of considerations courts are supposed to apply when engaging with Indigenous people. These principles are not officially enshrined in law, but courts are supposed to apply them wherever possible.¹⁷ More recently, the Canadian government proposed amendments to the *Criminal Code* and the *Controlled Drug and Substances Act* that would reduce minimum penalties for certain crimes.¹⁸

Racism and intersectionality

One extremely useful tool for understanding issues of discrimination, including hate crimes, is intersectionality. The term "intersectionality" was created by a feminist civil rights advocate named Kimberlé Crenshaw in 1989, and today is it used by many academics, researchers, legal experts, and policy-makers. Intersectionality is a framework for understanding how different forms of discrimination—like racism, sexism, homophobia,

and more—overlap to create complex forms of oppression and inequality. In other words, intersectionality helps us see how someone can experience discrimination based on a variety of identities at the same time.

Some examples of intersectionality

It is easiest to understand intersectionality through examples. For instance, an LGBTQ person from a marginalized ethnic community can experience double the amount of discrimination. Courts, prisons, and police may treat them unfairly based on one or both characteristics. Their ethnic identity may prevent them from accessing support for LGBTQ issues, and their LGBTQ identity may prevent them from accessing support from their ethnic community. They may be considered a “minority within a minority.” Intersectionality helps us see how these identities work together to shape this person’s unique interactions with society, culture, and law.

Here are some other examples: a woman from a marginalized ethnic group, or a newcomer, is more likely than men from the same groups to experience harassment; a racialized person with a disability is in a position that makes them more likely to experience violence and abuse than a white person with the same disability; and an elderly person from a marginalized group is more likely to experience barriers to accessing social support or healthcare.

Intersectionality and sociological problems

Intersectionality can also be applied to large-scale or “sociological” problems. To take a simple example, women make less money than men on average, but racialized women make even less money than white women on average. Similarly, people from a low socio-economic background or class will face obstacles to education and employment, but a racialized person or immigrant from a similar background may face additional barriers due to racial discrimination.

Intersectionality and hate crimes

Researchers have also applied intersectionality to hate crimes. A 2014 survey of Canadians who have been the victim of hate found that nearly half (49%) of respondents believed the incident was motivated by more than one identity factor.¹⁹ Similarly, the Canadian Human Rights Commission, which hears complaints of discrimination involving the federal government, found that almost half of the complaints made in 2020 were based on more than one identity factor.²⁰ For example, the complaints referred to discrimination based on disability *and* sex or race *and* religion.

Analyzing hate crimes with intersectionality

Intersectionality can also make analyzing hate crimes more complicated. For example, if a Black woman wearing a hijab is targeted, it is not always clear whether the act was motivated by a hatred of gender, race, culture, religion, or something else.

Looking at this situation through intersectionality, we could say that all of these factors may be involved in a particular way. With intersectionality in our toolkit, we can more productively consider which identities are more likely to be targeted, where and why they are targeted, what motivates the offender, and how to prevent similar incidents from happening in the future.

What are “hate crimes” exactly?

The term “hate crime” was first used in the United States in the 1980s and has since become popular around the world.²¹ It is used by many governments and international bodies like the United Nations. The term appears often in Canadian media and legal literature.

Recent research shows, unsurprisingly, that the Canadian public has an inconsistent understanding of what the term “hate crime” actually means.²² Many images might come to mind. At the most extreme, we might imagine a mass shooting fueled by hatred against a particular race, religious group, or other identity. We might imagine offensive graffiti or someone who is publicly harassed because of their identity. We might imagine newspapers or pamphlets that ridicule a marginalized group of people or encourage violence against them. All of these things may be considered “hate crimes” in some instances, but they are not all handled the same way by the law.

Legally defining hate crimes in Canada

In a general sense, we can say that hate crimes are crimes committed against a person, a group of people, or a piece of property in which the criminal is motivated by hatred. Importantly, however, the term “hate crime” has no official legal definition in Canada. In fact, the term does not appear in the *Criminal Code* or in any other piece of legislation. Nonetheless, there are a variety of laws conventionally referred to as “hate crime laws.” Some of these are in the *Criminal Code* and some are found within various human rights laws like the *Canadian Human Rights Act* or the *Alberta Human Rights Code*. These so-called “hate crime laws” generally protect people who are part of an “identifiable group,” which refers to people who share an identity based on race, ethnicity, religion, nationality, sexual orientation, gender identity, age, disability, and more. Usually, Canadian hate crime laws also refer to actions motivated by “bias” and “prejudice” as well as “hatred.”

Important terminology

There are a handful of terms other than “hate crimes” that can help us talk about hatred in society. Sometimes legal and media sources will use the term “racially motivated crime,” referring to hate crimes that are specifically motivated by race and not another characteristic. “Hate-motivated crime” is a more precise term than “hate crime” because it focuses on motivation, which is what the legal system is required to determine in order to prosecute these types of crimes. “Hate-motivated incident” (or

“hate incident”) is a broader term than “hate crime” because it refers to events that are not technically considered crimes or events that are not reported to the police and so not recorded as a crime. Finally, “bias-motivated incident” (or “bias incident”) is a term sometimes used by police and other agencies to collect data, which helps reflect a wider variety of events than “hate incident.”

Why differences in terminology matter

Differences in terminology can matter significantly. For example, surveys that collect data about hatred often ask participants to self-report. People who self-report are generally talking about hate-motivated incidents (which may or may not be criminal) rather than crimes that they have officially reported. This creates extreme discrepancies between data collected by police and data collected by surveys, as we will discuss later. Likewise, the media may report on a hate-motivated incident as a “hate crime,” giving a false impression that there are effective legal avenues for the victim to seek justice when this is not always the case.

When experts talk about “hate crime laws,” they are usually referring to: 1) one of several sections of the *Criminal Code* that explicitly deal with hate-motivated crimes or hate speech, 2) any human rights laws at the federal or provincial level under which people can complain about hate-motivated human rights violations, and 3) any municipal bylaws that deal with hate, such as bylaws against public harassment. All of these are discussed in detail later in this booklet. First, we will learn how these laws came to be.

Introduction | Recap

Race is not a biological fact and is better understood as a social or cultural idea.

Canadians are increasingly aware of racism and other forms of discrimination in society and the legal system, largely thanks to activists for racial justice.

Intersectionality is a framework for understanding how various forms of oppression (ex. racism, sexism, homophobia) overlap and is a useful tool for analyzing hate.

“Hate crimes” generally refers to crimes committed on the basis of hatred against an identifiable group, but the term has no legal definition in Canada and is not in the Criminal Code.

Other common and related terms include “hate-motivated crime,” “racially motivated crime,” “hate incident,” and “bias incident.”

2) The history of Canada's hate crime laws

Canada's hate crime laws came into existence gradually. They are the result of Canada's movement toward human rights over the course of the 20th century. This began when Canada signed the *Universal Declaration of Human Rights* (UDHR) in 1948. Article 2 of the UDHR lists the right to live free from discrimination as a fundamental human right. This includes freedom from discrimination based on many of the identifiable characteristics that the law recognizes today, such as race, ethnicity, sex, and religion. The UDHR was not a legally binding document. It was intended as a roadmap for countries to achieve more humanitarian conditions after the Second World War.

Since the 1940s, Canada has signed a variety of other anti-discrimination treaties. Important signings include the *International Convention on the Elimination of All Forms of Racial Discrimination* (1966), the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), the *Convention on the Rights of Persons with Disabilities* (2006), and the *UN Declaration on the Rights of Indigenous Peoples* (2007).

The Cohen report and hate propaganda laws

Although Canada already had a reputation for championing human rights abroad, enthusiasm for domestic anti-discrimination laws only took off in the 1960s. At that time, there was a rise in neo-Nazi activity in Canada, with many of these groups trying to publish and disseminate their racist ideas. The

government created a committee to advise it on how to respond to the neo-Nazi propaganda. The committee created a report, called the “Cohen Report,” which told the government that it needed more laws to address the rise of hatred, but that the laws should be limited so that they don’t infringe on the right to freedom of expression, which is also considered a fundamental human right.

Based on recommendations in the Cohen Report, the government added what are called “hate propaganda” provisions to the *Criminal Code*. This was part of a wider series of legal reforms in 1970.²³ Today, these laws are found in sections 318 and 319 of the *Criminal Code*. They make it a crime to promote hatred, incite violence, or promote genocide. For a piece of communication to be legally considered “hate propaganda,” it must be accessible to the public and be spread with deep malicious intent. The hate propaganda laws were not used until the 1980s, when they were central to a series of landmark cases that involved more prominent neo-Nazis and white supremacists. These cases made it to the Supreme Court, which was required to refine what exactly the law means by “hate,” how to examine evidence for motivations of hate, and so on.

The Canadian Charter of Rights and Freedoms

Another major piece of legislation affecting hate crimes is the *Canadian Charter of Rights and Freedoms*, which became part of the Canadian constitution in 1982. The previous federal rights legislation, the *Canadian Bill of Rights*, was a federal statute but not part of the constitution. The constitution is considered the

highest law in Canada. Any law that conflicts with the *Charter* is not considered a law at all, and all people in Canada are allowed to appeal to the *Charter* if they believe their rights have been violated. *Charter* rights have been particularly important when it comes to laws that target hate speech. In effect, courts can only prosecute hate speech if they can prove that the offender's actions were so extreme that "reasonable limits" (as the *Charter* puts it) should be placed on their right to freedom of expression.

Other milestones and changes to the *Criminal Code*

Another hate crime law was created in 1996, when the government amended the *Criminal Code* to include s. 718.2. This law is part of a larger category of laws that allow a court to increase or decrease sentencing by considering "aggravating" and "mitigating" factors. The new s.718.2 allows courts to increase sentencing if it finds that hate, bias, or prejudice are aggravating factors in the crime. In other words, any crime can receive harsher sentencing if motivated by hate. The government created s. 718.2 specifically for the purpose of deterring hate crimes. The law came about through Bill C-41, which was supported by many advocacy organizations including Jewish Canadian rights groups, gay and lesbian activist groups, and other anti-racist groups.²⁴ However, some experts argue that s. 718.2 is rarely applied, so its value is largely symbolic.²⁵

In 2001, the government also added s. 430(4.1) to the *Criminal Code*, which deals with damage or interference to religious property. It appears under the broader category of mischief crimes

and was introduced in the aftermath of 9/11 to deter vandalism and other crimes against religious buildings. In 2017, the section was expanded to include property owned by or associated with any identifiable group.

Human rights laws

Aside from criminal laws, there are a variety of human rights laws in Canada that deal with hatred and hate-motivated incidents. These laws also came into existence over the course of Canada's history. The *Canadian Human Rights Act*, for example, was passed in 1977. This legislation generally protects people against discrimination from the federal government or when accessing government services. From 2001 to 2007, the *Act* contained a provision that targeted hate speech online, but it was removed after a series of controversies that led some to believe it was incompatible with freedom of expression. All the provinces and territories also have their own human rights legislation that applies to discrimination involving the provincial government, employers, landlords, and various public and private services.

The list of people who are protected by hate crime laws and human rights laws changes over time. In the 1970s, most of these laws mentioned discrimination based on skin colour, race, religion, or ethnicity. Sometimes they included sections on political orientation or language. Today, most of these laws also include nationality, sex, sexual orientation, gender identity, gender expression, mental disability, and physical disability.²⁶ The *Alberta Human Rights Act* was amended as recently as 2018 to mention discrimination based on age.

The history of Canada's hate crime laws | Recap

Canada's anti-discrimination laws developed gradually since the *Universal Declaration of Human Rights* was signed in 1948.

Canada's first hate crime laws were added to the *Criminal Code* in the 1970s to fight "hate propaganda" and were used in a series of high-profile cases against white supremacists.

The *Canadian Charter of Rights and Freedoms* became part of the Constitution in 1982, securing many rights including freedom of expression but enabling courts to prosecute actions that exceed the "reasonable limits" of a democratic society.

3) Hate crimes and hate crime laws in Canada

Hate propaganda laws: s. 318, 319(1), and 319(2)

There are three hate propaganda laws in Canada, which are found in s. 318, s. 319(1), and s. 319(2). of the *Criminal Code*. In general, these laws make it illegal to promote genocide or incite hatred through various modes of communication. To sentence someone under these sections, courts must find beyond a reasonable doubt that a particular communication act (a speech, an article, a book, etc.) was motivated by an extreme negative emotion and/or that it has the effect of likely exposing an identifiable group to violence, detest, or humiliation. These laws have historically only been applied to extreme cases. The hate propaganda laws are not the same as “hate speech laws.” Most of what we think of as “hate speech”—such as hateful online content or awful remarks on the street—is not considered hate propaganda. Less severe cases are either not illegal in Canada or are handled by human rights laws.

The *Criminal Code* is specific about what it means by “hate propaganda.” First, hate propaganda must be in a place where the public is likely to find it, although not necessarily a publicly owned place or platform. Hate propaganda must also target an identifiable group as defined by the *Criminal Code*. The *Criminal Code* considers hate propaganda to include spoken words, written or recorded content, gestures, signs, and other “visible representations.” For these things to be “communicated” to the public, they must be shared by telephone, broadcasting, or other

means of audio, video, or image distribution.

S. 318: advocating genocide

S. 318 makes it an indictable offence to advocate for genocide against an identifiable group. “Indictable offence” means the accused is given the option of appearing before a jury. “Genocide” refers to either killing members of a group or putting them in a situation that will cause their physical death and destruction. Someone found guilty under s. 318 can serve up to five years in jail. All cases that involve s. 318 have to be reviewed and approved by an Attorney General, which is supposed to add an extra level of oversight due to this sensitive area of criminal law.²⁷ S. 318 has only been applied a few times in Canadian history. One review of Canadian law databases between 2007 and 2020 found only three cases that applied s. 318 during that period and one successful conviction. The case involved a man who sent out emails and Twitter messages calling for extreme violence against Jews and LGBTQ people.²⁸ (Note that databases do not contain records of all adjudicated cases in Canada.)

S. 319(1) and s. 319(2): promoting hatred or inciting violence

S. 319(1) and s. 319(2) are a set of laws that make it illegal to spread messages that are likely to promote hatred or incite violence against an identifiable group. The statements must be done in a way that is likely to lead to a breach of the peace (or *does* lead to a breach of the peace). In general, the *Criminal Code*

understands a “breach of the peace” to occur when a person or group is physically harmed or threatened with harm. In a few cases, these sections have also been used to sentence people on the ground that their messaging could cause severe psychological or emotional distress to members of an identifiable group. Someone who is guilty under s. 319(1) or s. 319(2) can either face a summary conviction (i.e. they are sentenced without a jury) or an indictable offence. In general, summary convictions are reserved for less severe cases.

Whereas s. 319(1) is specifically about inciting violence, s. 319(2) is about willfully promoting hatred—with an emphasis on *willfully*. A key difference is that people charged under s. 319(2) are given a series of defenses that protect them from being convicted. The *Criminal Code* specifically states that the accused cannot be convicted if: 1) they can prove that their statements were “true,” 2) they can prove that they sincerely believe in their statements based on their faith in a religious doctrine, or 3) if the statements are “relevant to any subject of public interest” and “for the public benefit.” Likewise, someone can’t be convicted under s. 319(2) if the purpose of their statements was satirical—i.e. if they made hateful statements for the purpose of pointing out that hatred is bad.

S. 319(2) is more common than s. 319(1), although both sections are rare.²⁹ A review of case databases from 2007 to 2020 found that s. 319(1) was applied 21 times and s. 319(2) was applied 47 times.³⁰

Example of s. 319(2) applied in court: defendant found guilty

Examples help illustrate the ways that s. 319(2) can be applied in court. In one case, an Ontario man was charged for causing a public disturbance after he recorded a video of himself saying Islamophobic things to strangers on the train. His actions distressed other passengers and caused several trains to stop, delaying thousands of commuters for long periods of time. The court found that the man's Islamophobic views—which he recorded on video, along with screaming and shouting—sufficiently proved that his public disturbance was motivated by hatred and was done with the intention of spreading hatred. He was found guilty of willfully promoting hatred and sentenced to 20 months in jail under s. 319(2).

Example of s. 319(2) applied in court: defendant found not guilty

In many cases where s. 319(2) is applied, however, it is not used to sentence the offender. In one example from 2012, an 18-year old was charged with using spray paint to write large amounts of racist graffiti around his neighbourhood when he was 17. The court found that the action was horrible and harmful to the community. However, the offender didn't have a clear motivation, and the judge concluded that he barely knew the meaning of what he was writing. Thus, the court could not rule that the offender was willfully promoting hatred. He was instead charged with

mischievous with hate as an “aggravating factor” under s. 718.2.³¹

Damaging property: s. 430(4.1)

As a whole, s. 430 is the part of the *Criminal Code* dealing with mischief crimes. Mischief crimes refer to damaging or obstructing property, including digital property stored on a computer. Subsection 430(4.1), added in 2001, originally contained provisions about mischief to religious property but now mentions property owned or used by any identifiable group. This includes schools, daycares, cemeteries, community centres, playgrounds, seniors homes, and more. Someone charged under s. 430(4.1) can face an indictable offence or a summary conviction depending on the severity of the crime.

Examples of s. 430(4.1) applied in court: defendant found guilty

A review of law databases found that s. 430(4.1) was only applied three times between 2007 and 2020.³² Two of these cases included graffiti or defacement of property. In April 2020, a man in Regina was successfully charged under s. 430(4.1) for using a marker to write a series of racist slogans on the door to a Chinese cultural centre.³³ In 2021, a teenager who went on a vandalism spree in Ottawa was also charged under s. 430(4.1). His crime involved spray painting white supremacist slogans and symbols on Muslim, Christian, and Jewish places of worship. Because he was under the age of 18, he was charged under the *Youth Criminal Justice Act* instead of s. 430(4.1).³⁴

In the third case, a man walked into a mosque and started verbally attacking Islam and Muslims. Then he urinated on the steps of the mosque. He was charged with interfering with ongoing religious service (or the “lawful use of property,” as the *Criminal Code* puts it) under s. 430(4.1). The accused defended himself in court by pointing out that he is a member of the same religious community as the people who were worshiping at the mosque, so the incident could not be motivated by hate. However, based on video evidence and testimony, the court could not determine any motivation for the incident other than hatred. Therefore, he was found guilty under s. 430(4.1).³⁵

Hate as an aggravating factor: s. 718.2(a)(i)

As a whole, s. 718 contains various circumstances where a court is allowed to adjust sentencing. S. 718.2(a)(i) is a special provision that allows a court to increase sentencing if it determines that hate was an aggravating factor in the crime. More specifically, s. 718.2(a)(i) permits courts to consider evidence that might prove that a crime was motivated by hate, bias, or prejudice and to increase sentencing as it finds appropriate. In order for a court to increase sentencing under s. 718.2(a)(i), it must prove beyond any reasonable doubt that the offender was “motivated to act” on the basis of hate, bias, or prejudice.³⁶

S. 718.2(a)(i) is the most common hate crime legislation in Canada

Because it deals with sentencing rather than a specific crime, s.

718.2(a)(i) is the most common piece of hate crime legislation in Canada. However, it is still rare. One review of databases found the section was considered by judges 91 times between 2007 and 2020. Of those cases, the court ruled that hate was an aggravating factor a total of 31 times.³⁷ Many of those cases dealt with crimes already convicted under the hate propaganda laws (s. 318-319).

Difficulty of applying of s. 718.2(a)(i) in court

A legal review from 2018 suggests that courts have an extremely difficult time “delving into the mind” of the offender in order to prove that they are motivated by hate.³⁸ It also found issues with the way s. 718.2(a)(i) is worded because it does not mention anything about the degree of motivation. For this reason, courts have been inconsistent about what they consider a strong motivation of hate. Sometimes the crime itself is clear evidence that it was motivated by hate to some extent (ex. racist graffiti), but usually courts are careful about applying s. 718.2(a)(i) due to the sensitive nature of this law.

Examples of s. 718.2(a)(i) applied in courts

In recent years, s. 718(a)(i) was applied in a variety of cases involving hateful messages. In 2019, two men in Ontario were charged under s. 319(2)—the willful promotion of hatred—for hanging up posters promoting violence against Black people and Jews. They were found guilty, and the judge used s. 718(a)(i) to increase the severity of the sentences to include community service and a two-year probation.³⁹ In another case, a judge relied

on s. 718(a)(i) to sentence a man who made racist statements about a Muslim business owner in Calgary. The court determined that the messages put the business owner at risk because the offender, who also ran for mayor of Calgary, had a significant platform. The offender was charged with defamation in 2019 and ordered to stop his messaging—in 2021, he was charged with violating court orders.⁴⁰

S. 718(a)(i) applied in cases involving threats or physical violence

In 2015, a man under the influence of alcohol threw hot cheese on a convenience store employee in Alberta while shouting racist language. The man was charged with assault, and the judge relied on s. 718(a)(i) to sentence him to a 12-month probation and justify an \$800 fine rather than a \$300 fine, which is what the offence would have received if it were not hate-motivated.⁴¹ Hate was also found to be an aggravating factor in a violent attack in Lethbridge in 2021. In this case, a man was charged with manslaughter after killing an Indigenous person, who was a stranger to him, in an alleyway. The Alberta Court of Appeal had set aside a murder conviction to avoid involving a jury. However, because the crime was motivated by hatred, the judge used s. 718(a)(i) to maximize a manslaughter sentence. The offender was sentenced to ten years in jail and a lifetime ban on owning weapons.⁴²

Human rights laws dealing with hatred and discrimination

In addition to the sections of the *Criminal Code* discussed above, there are various human rights laws in Canada that target hateful actions and expressions. In general, human rights laws address issues with discrimination and inequality. Most of these laws are found in federal human rights legislation like the *Canadian Human Rights Act* as well as provincial or territorial human rights legislation like the *Alberta Human Rights Act* or the Ontario Human Rights Code. The *Canadian Human Rights Act* guarantees that everyone in Canada receives equal treatment when dealing with the Canadian government. It protects against discrimination in instances where you are receiving services from the federal government or from federally regulated industries such as banks and airlines.

The *Canadian Human Rights Act* is enforced by the Canadian Human Rights Commission, which is allowed to investigate public complaints and has its own tribunal system (i.e. a court system dealing only with human rights cases) for prosecuting infringements of the Act. Provincial human rights acts, such as the *Alberta Human Rights Act*, work like the federal laws except that they apply to cases involving provincial governments, municipal governments, private sector businesses, employers, and most services not covered by the *Canadian Human Rights Act*.

The difference between human rights laws and criminal laws

It is important to know that human rights laws are different than criminal laws. Human rights laws are not intended to prosecute

and punish criminals but rather deter discrimination and compensate victims. People charged under these laws are usually given a cease and desist order or are required to compensate the victim in some way (often through an apology) rather than go to jail or pay a large fine.

Human rights laws and “protected grounds”

Human rights legislation protects people whose identity falls under certain “protected grounds.” These grounds vary slightly depending on your jurisdiction. Usually, they include race, ethnicity, age, religion, sexual orientation, gender identity, and disability. They may also include marital status (i.e. whether or not you are married), family status, genetic characteristics, or criminal history.

Human rights legislation protects against both “discrimination” and “harassment.” Discrimination is understood as any behaviour, decision, or policy that affects people negatively because of a protected ground. For example, you can file a complaint with the Canadian Human Rights Commission if the federal government does anything that denies you employment, services, or access to facilities and accommodations. “Harassment,” meanwhile, refers to any behaviour that makes you feel offended, humiliated, or threatened based on a protected ground. This includes sexual harassment, bullying, and unwanted touching.

Anyone can contact a human rights commission to submit a complaint, but we should keep in mind that most complaints do

not end up in a human rights tribunal. They are either dismissed by the commission or settled out of court. In 2020, around 49,000 people contacted the Canadian Human Rights Commission. Of these, only 1,030 of these cases involved successfully filing a complaint. According to the commission, the majority of people who contact it are “helped without needing to file a complaint.”⁴³

It is worth knowing that many pieces of human rights legislation also contain specific provisions dealing with hate speech in particular. Every province and territory except Yukon forbids public displays of hateful messages or incitements of hatred. Historically, these laws have been used less often than the hate propaganda laws in the *Criminal Code*. However, human rights laws dealing with hate speech generally target a wider scope of offences than the *Criminal Code*. This is largely due to the fact that human rights laws are focused on remediation, so they are generally less focused on the motivations of the accused and more focused on the effect on the victim.⁴⁴

Edmonton’s public spaces bylaw

It is worth noting that the City of Edmonton introduced its own hate-related harassment bylaw when it amended Bylaw 14614 in 2021. The amendment allows law enforcement to enforce a \$250 fine for public harassment and heavier fines for repeat offences.⁴⁵ It defines “harassed” as “feeling tormented, troubled, worried, plagued, or badgered.”

In other words, the bylaw protects people from unwelcome

comments, bullying, or any action that causes deep offence or humiliation in public spaces. As of June 2022, the only other Canadian cities with penalties for street harassment are Calgary and London, Ontario.

There have been reports that the City of Edmonton may amend the public spaces bylaw again to explicitly forbid displaying materials that communicate hateful messages.⁴⁶ This would include flags, symbols, banners, and signs. As of June 2022, these amendments have not been made.

Hate crimes and hate crimes laws in Canada | Recap

Sections 318, 319(1), and 319(2) of the *Criminal Code* are known as “hate propaganda laws” and make it illegal to promote genocide or incite hatred through various forms of communication.

Historically, the hate propaganda laws have only been used in extreme cases.

Section 430(4.1) is a mischief crime clause that allows courts to specifically prosecute damage or interference to property owned by or associated with an identifiable group.

Section 718.2(a)(i) allows courts to increase sentencing if it determines hate is an “aggravating factor,” meaning any crime can technically be sentenced as a hate crime

Historically, courts have had trouble applying s. 718.2(a)(i) because it involves determining motivation.

4) The impact of hate crimes

The main reason it is important to learn about hate crimes is that they are more damaging than crimes not motivated by hate. Experts have suggested a variety of strong reasons why this is so.⁴⁷ These can be broken down into harms against the victim, harms against the victim's community, and harms against society.

Impact on individuals: hate crimes are more violent

One reason hate crimes are especially harmful to individual victims is that they are more likely to be violent than non-hate crimes. In the 1990s, researchers examining police data from Boston, United States stated that hate crimes are more often “excessively brutal” than other crimes.⁴⁸ This makes sense given that hate crimes are driven by a strong negative emotion rather than personal gain. In Canada, data from 2010 to 2018 also shows that hate-motivated crimes were more violent on average: 64% of hate crimes against people based on their sexual orientation were violent, and around 65% of hate crimes against people of Asian descent were violent.⁴⁹

Impact on individuals: a “deeper” sense of pain

Individual victims of hate crimes are also more likely to suffer psychological or emotional distress. For example, they may feel a “deeper” sense of pain based on the fact that they were targeted because of their identity.⁵⁰ On average, victims of hate-motivated crimes are more likely to develop depression because

of the incident. They may also develop changes in behaviour. For example, they may speak or act differently or hide parts of who they are. They may also change their day-to-day routine to avoid more hate-motivated attacks. Together, these factors can cause severe and ongoing mental health issues.

Impact on communities: hate crimes are “message crimes”

Hate crimes are unique from other types of crimes because they impact entire communities in addition to the people directly involved.⁵¹ Hate crimes are sometimes called “message crimes” because their purpose is to send a threatening message to people who identify with the targeted victim or property. For example, hate crimes against LGBTQ people happen everywhere on earth, which can lead to a sense of fear, isolation, or low self-esteem among people who identify as LGBTQ even if they have not personally been the victim of a hate crime. It is easy to see why hate crimes can cause emotional damage to communities even if the crime was not violent. For example, racist graffiti on a building sends a threatening and potentially distressing message to all people who see it.

Impact on society: the “ripple effect”

Hate crimes have a negative impact on society at large, apart from the targeted group. Existing qualitative studies indicate that hate crimes against one group can have a “ripple effect,” causing distress to other marginalized groups in the same society.⁵² The

prevalence of hate crimes can also cause society to lose confidence in the police and the legal system, especially because these crimes are rarely reported or prosecuted. Finally, when hate crimes are covered by the media, they can inspire other people to commit similar crimes. This is sometimes called “copycat crime.”

How common are hate crimes?

It is impossible to know how common hate crimes really are. The main reason is that the majority of them are not reported to police, and the police do not record them all as “hate crimes” even if they are reported. The second reason is that not everyone has the same definition of “hate crime,” so there are key differences in the data collected by police, government surveys, and other non-government organizations. Although we do not have precise numbers on the prevalence of hate crimes in Canada, we can observe some general trends.

Police records indicate rising hate crimes in Canada

First, we know that hate crimes are on the rise. Based only on police records, the Government of Canada reported that the number of hate crimes rose by 47% in 2017 and has remained high ever since.⁵³ In 2020, the most recent year the data is available, there were a total of 2,669 “hate crime incidents” in Canada, compared to 1,851 in 2019.⁵⁴ Of these, 79 were in Edmonton and 141 were in Calgary. In 2021, the Edmonton Police Service said there were over 100 hate-motivated incidents in Edmonton, including online threats, violence, and property damage.⁵⁵ Many researchers also suggest that the COVID-19 pandemic is linked to

a rise in hate crimes, particularly against people of Asian descent. The number of anti-Asian hate incidents in Vancouver increased 717% between 2019 and 2020, for example.⁵⁶

Self-reporting shows real number to be significantly higher

Statistics based on self-reporting repeatedly show that the real number of hate crimes or hate-motivated incidents is significantly higher than police records suggest. A key source of self-reported data is the General Social Survey (GSS), which is run by Statistics Canada. The purpose of the GSS is to dig deeper into pressing societal topics including crime. Statistics Canada's analysis of the 2019 GSS—the last year data on crime was collected—estimates that there were around 223,000 hate crimes that year. By comparison, the police recorded 1,591. The GSS suggests that around 58% of these crimes were violent, 25% were against a “household” (including vandalism), and 17% involved theft. The Canadian Anti-Hate Network points out that, according to GSS estimates, someone in Canada is more likely to be the victim of a hate crime than be injured in a motor vehicle accident.⁵⁷

Reasons why victims did not report hate crimes or hate incidents

The GSS also asked people why they didn't report the hate crime or incident to the police. It found that 64% of people chose not to report the incident because they didn't think the police would consider it important. Meanwhile, 62% said they felt the crime

was too minor to report, and 58% felt that the offender would not be punished even if they did report the incident.⁵⁸ The GSS from 2014 collected additional reasons why someone would not report a hate crime, including: the victim was afraid that the offender would take revenge, the victim didn't trust the police based on past experiences, or the victim was afraid or anxious about dealing with the court system. Some also said that the reason they didn't report the incident was because they didn't want their community to know about it.

We can imagine other reasons hate crimes go unreported. For example, a marginalized person is less likely to be connected with the support or resources they need to deal with the police. People may also have language barriers or lack access to a phone. Also, people may be dissuaded from reporting a hate crime based on the fact that these crimes are rarely prosecuted. Finally, a victim of a hate crime may be unaware that the crime was motivated by hate because not all hate crimes involve a clear message or sign indicating their motivation.

The problem of underreporting is a massive issue for how society understands and deals with hate crimes or designs hate crime laws. Some experts insist that the most important step in making these laws more effective is collecting the right data.⁵⁹

Types of hate crimes committed in Canada

Police records provide some insight into the types of hate crimes that are prevalent in Canada. Remember, however, that

these numbers may be completely inaccurate due to issues of underreporting.

In 2018 police records show that the most common type of hate crimes are ones motivated by hatred against a particular race or ethnicity (1,584 crimes in 2020). The second most common were based on religion (515). A significant number of crimes were also based on sexual orientation (259). Some hate crimes were recorded as being motivated by “other similar factors” (92), while crimes based on disability (9) and age (4) were least common.⁶⁰

Data suggesting types of hate crimes impacting specific groups

There is some loose police data about which types of hate crimes affect which identifiable groups. These numbers suggest that hate crimes committed against an LGBTQ person or someone with an Arab or Asian background are more likely to be violent. Crimes motivated by hatred of a particular religion are most likely to involve mischief such as vandalism and property damage, and they are most likely to target Jewish people and property. Crimes motivated by racism are most likely to target Black people, followed by people of Arab or West Asian descent.⁶¹

The Organization for the Prevention of Violence also suggests, based on their interviews with Indigenous leaders, that hate crimes and hate incidents affecting First Nation, Métis, and Inuit communities are much higher than reports indicate as these groups are barely represented in police data.⁶²

Finally, hate crimes against Indigenous or Muslim populations are more likely to target women than men.⁶³ Edmonton saw a disturbing increase in hate-motivated attacks against Muslim women 2021, for example, with seven of them resulting in criminal charges.⁶⁴

Who commits hate crimes?

The problem of underreporting means that it is difficult to know who commits hate crimes and why. However, police records show that the vast majority of people who commit hate-motivated crimes are men.⁶⁵ Data from 2010-2018 shows that around 84% of hate crime offenders were men. This is even higher for hate crimes against LGBTQ people—90% of people charged for hate crimes against this community were men. Hate crime offenders also tend to be younger. Most, but not all, are under the age of 30.

Scholars have also pointed out the majority of reported hate crimes are committed by “ordinary” people rather than people we think of as “extremists.”⁶⁶ Most recorded hate crimes can be considered “mindless crimes” because they are not linked to a wider agenda or plan. Only rarely are hate crime laws used against people who are part of an organized extremist group. However, this does not mean these groups do not exist. Experts and advocates widely agree that hate-based organizations and their ideologies are growing in Canada.⁶⁷ There is ongoing concern and discussion about how and whether this trend will affect hate crime rates.⁶⁸

Four broad categories of all hate crime offenders

One group of scholars has proposed a typology that puts all hate crime offenders into one of four categories:⁶⁹

1. “Thrill seekers.” These people commit hate crimes for the excitement of it. They may have been influenced by peer pressure and are often known to law enforcement for having committed crimes in the past.
2. “Reactive/defensive offenders.” These people commit hate crimes because they think they are protecting their “way of life.” They may have general racist or anti-immigration ideas, which they usually express elsewhere. Their peers may know them as a person who says hateful things.
3. “Retaliatory offenders.” These people commit hate crimes in order to “get revenge” for something. These may believe they were discriminated against first. They may be under the impression that they are marginalized and need to fight back.
4. “Mission offenders.” These people commit hate crimes because they are part of a wider movement or see themselves as part of a movement. They may believe they are somehow “saving society.” They may or may not be directly involved in an organized extremist group.

The impact of hate crimes | Recap

Victims of hate crimes are more likely than victims of other crimes to experience psychological or emotional pain.

Hate crimes are more violent on average than non-hate crimes.

Hate crimes are often “message crimes” intended to threaten entire communities, not just individual victims.

Hate crimes can have a “ripple effect,” leading to more fear, more hatred, and more hate-motivated crimes in society.

Police records show that hate crimes rates are rising, but the actual number of hate crimes is hard to determine due to underreporting.

According to the Canadian Anti-Hate Network, self-reported numbers indicate that someone in Canada is more likely to be the victim of a hate crime than be injured in a motor vehicle accident.

5) Political questions around hate speech laws

Among the various laws called “hate crime laws” in Canada are some that target hate speech and incitement to violence. These laws include the hate propaganda provisions of the *Criminal Code* and any human rights laws that apply to hateful or inflammatory expression. These laws have always been controversial and have resulted in ongoing debates. Supreme Court justices have periodically been challenging these laws since the 1970s. The main argument against these laws is that they represent a threat to the freedom of expression, which is considered a fundamental right by many governments around the world. It is enshrined in the *Universal Declaration of Human Rights*. However, all democratic governments have laws that put limits on the freedom of expression under very specific circumstances.

Freedom of expression in Canada

In Canada, the freedom of expression is protected by the *Charter of Rights and Freedoms* along with the freedom of religion, assembly, and association. The *Charter* states that freedom of expression applies to individuals as well as the press (ex. newspapers) and other media outlets. However, the *Charter* also states that any freedom can be subject to “reasonable limits” if those limits “can be demonstrably justified in a free and democratic society.” In effect, for courts to prosecute any form of hateful expression, they need to prove that the act was so terrible that it is beyond what can be permitted in a free society—and in

Canada's case, an officially multicultural society.

How the Supreme Court has defined hate speech

Since the 1980s, the Supreme Court has ruled several times that certain extreme kinds of hate speech go beyond the “reasonable limits” of society. Those decisions have set the precedent for how the issue is handled in courts today. For example, the Supreme Court has had to define “hatred” on various occasions in order to apply the *Criminal Code*'s provisions against “inciting hatred” or “promoting hatred.” Later courts have worked within those definitions. In general, “hatred” has come to be interpreted as extreme vilification and disgust, dehumanization, or a deep intense emotion. As for violence, the Supreme Court has ruled at various times that hateful expressions that expose identifiable groups of people to physical harm can be sentenced under s. 319(1) and s. 319(2)—but so can expressions that expose people to deep humiliation, ridicule, and other psychological damages.

Hate speech, media, and human rights laws

Human rights laws dealing with hate speech, including parts of the *Alberta Human Rights Act*, have been involved in a handful of high-profile controversies. Most of these controversies involve media outlets. In 2002, for example, the Alberta Human Rights Commission (AHRC) had its decision about hate speech overturned by a higher court. The case involved a man who published a homophobic letter in a Red Deer newspaper, which prompted residents to file a complaint. The AHRC ordered the

author of the letter to apologize and address damages. Higher courts overturned this decision because they found that the letter did not go to the extreme limits of previous cases where courts, especially the Supreme Court, had successfully sentenced hate speech. The case was dropped.⁷⁰

Hate speech and the Internet

Hate speech on the Internet is increasingly a point of international concern. In 2015, the United Nations declared that online hate speech is rising, and it has continued to rise ever since.⁷¹ Online hate speech comes with unique challenges. For example, it spreads much more quickly than other forms of expression. It can spread around the world with the click of a button. This makes it much harder for governments or technology companies to track and remove it. From a legal perspective, it is not always clear who is responsible for stopping the spread of hate speech online.

Horrendous events in Canada linked to Internet hate speech

Globally, the majority of this hateful online content targets minority communities based on ethnicity, race, and nationality, while online hate speech based on religion and class is becoming more common.⁷² In Canada, there have been several horrendous crimes committed by people who got their hateful ideas from the Internet. The Quebec City mosque shooting in 2017, in which six people were killed and three people injured, was committed by a man who spent a lot of time visiting websites that incite violence

against marginalized groups including Muslims. In 2018, a man killed 11 people with his car in Toronto. He was also inspired by online content that promotes hatred—this time against women.

Canada’s approach to online hate is not clearly defined

Right now, Canada’s approach to online hate speech is not well defined. Canada’s hate propaganda laws (s. 318-319 of the *Criminal Code*) do not explicitly apply to the Internet. However, the Internet is likely to fall under the hate propaganda laws as they apply to most messaging that is accessible to the public. Meanwhile, Canada’s *Broadcasting Act* prevents television and radio platforms from broadcasting hateful messaging, but it does not apply to online content because the Internet is not included in the definition of “broadcasting.” Finally, Canada’s *Anti-Terrorism Act* makes advocating for terrorist offences illegal, which may also apply to statements on the Internet. It also allows courts to remove terrorist propaganda from the Internet. However, the difference between “hate propaganda” and “terrorist propaganda” has not yet been well defined by courts.⁷³

Removal of section 13 of the Canadian Human Rights Act

In the past, there were federal human rights laws that specifically targeted hate speech online. S. 13 of the *Canadian Human Rights Act*, which was added in 2001, included provisions against online communications that are likely to expose a person to hatred. For years, s. 13 was used successfully, mostly against far-right extremists. However, in 2007 the section was used by a group

of law students who filed complaints against a right-wing media outlet for posting inflammatory and allegedly Islamophobic content. This event turned out to be controversial. The case was eventually dropped, and some well-known organizations, including the Canadian Civil Liberties Association, began criticizing s. 13 for placing too many restraints on the media's freedom of expression. The government removed s. 13 in 2014.

Strategy under consideration to respond to online hate speech: Bill-36

Today, there is ongoing debate about how the government should respond to online hate speech. Canadians are clearly concerned about this issue. A recent survey by the Centre for Race Relations found that around 78% of Canadians are worried about the growth of hate speech online, and 74% are worried about a rise in right-wing extremism.⁷⁴ Likewise, around 60% of Canadians believe the federal government should take steps to prevent hate speech online, while 80% think social media companies and other technology platforms should be responsible for addressing online hate. In June 2021, the Liberal government introduced Bill-36, which would amend the Canadian Human Rights Act to include provisions against hate speech that are similar but not identical to the repealed s. 13. This bill will be tabled again in the near future.

Political questions around hate speech laws | Recap

A common argument against hate speech laws is that they can conflict with the freedom of expression, which is protected by the *Charter*.

Since the 1980s, the Supreme Court has ruled several times against hate speech that goes beyond the “reasonable limits” of society, setting a precedent for all future hate speech cases.

Human rights laws dealing with hate speech have also been the subject of several high-profile controversies in recent years.

The Internet poses new problems for law makers combatting hate speech, and several atrocities have already been committed in Canada based on hateful ideas circulating on the Internet.

6) Notable court cases

Below are a series of notable court cases involving Canada's hate crime laws since they were first applied in the 1980s and 1990s. Most of these cases involve the rarely used hate propaganda laws (s. 318-319 of the Criminal Code) or human rights laws. They are notable because they have set the tone for future discussions about these laws both inside and outside the courts.

Most notable cases involve the Supreme Court of Canada. The Supreme Court handles cases that have been elevated from lower courts and cases that involve interpreting the constitution. In other words, for a case to appear before the Supreme Court, the accused usually needs to appeal (i.e. challenge) the decision made by a provincial court or a lower federal court. This happens if someone argues that a lower court made a decision that conflicts with their rights as stated in the Charter of Rights and Freedoms. Decisions made by the Supreme Court act as precedents for all other courts in Canada dealing with similar types of crimes, and the definitions and interpretations put forward by the Supreme Court are cited by future courts.

Note that, when referring to court cases, the letter "R." refers to "regina" or "rex," the Latin words for "queen" and "king." Conventionally, this refers to criminal cases involving the Government of Canada ("the Crown"). Also keep in mind that the examples below only represent cases that have been appealed, and so directed to the Supreme Court, or are notable for other reasons. They do not represent the scope of hate and hate crimes

in Canada today.

***R. v. Keegstra*: hate propaganda laws declared “constitutional”**

James Keegstra was a high school teacher in Eckville, Alberta. For more than ten years, Keegstra taught his students antisemitic content, including that the Holocaust did not happen and that Jews are part of a global conspiracy.⁷⁵ He also taught hateful stereotypes about Jews, which students in his class needed to memorize in order to pass their exams. In 1984, Keegstra was convicted by a provincial court for promoting hatred against an identifiable group under s. 281(2) of the *Criminal Code*, which is now s. 319(2). Keegstra appealed the decision several times by saying the hate propaganda laws conflicted with his right to freedom of expression as contained in the *Charter*.

In 1990, the case rose to the Supreme Court, which had to determine the extent to which the hate propaganda laws were in line with the goals of the Charter. Four out of the seven Supreme Court justices determined that the hate propaganda laws *did* conflict with the right to freedom of expression, but that Keegstra’s actions were so horrible that they were subject to “reasonable limits” in a free society. This argument relied on the fact that Keegstra’s actions were intended to create psychological harm within an identifiable group and incite physical violence against that group. During this case, the court defined “hatred” as an emotion that is attached to an identifiable group and “implies that those individuals are to be despised, scorned, denied

respect, and made subject to ill-treatment on the basis of group affiliation.”

The most important result of the *R. v. Keegstra* case is that, for the first time, the Supreme Court ruled that the hate propaganda laws are “constitutional.” In other words, the laws are not in conflict with the Canadian constitution as long as they are carefully applied and do not impose unreasonable limits on the freedom of expression.

***Canadian Human Rights Commission v. Taylor*: more actions subject to “reasonable limits”**

John Ross Taylor was part of a fascist Canadian political party, and he promoted fascism his entire life. In the 1970s and 80s, he would distribute cards with a phone number that led people to pre-recorded antisemitic messages. He was charged under s. 13 of the *Canadian Human Rights Act* (which no longer exists). This section made it illegal to spread hate messages through what it called “telecommunications,” which included phones. Because this was a human rights case, the court did not impose jail time. It gave Taylor a cease and desist order to stop sharing the cards. He continued sharing the cards, so he was put in jail for one year for breaching court orders.

In 1983, he was criminally charged with spreading hateful messages. This time, he appealed to the Supreme Court by saying the laws violated his *Charter* rights. Like in *R. v. Keegstra*, the Supreme Court found that the hate speech laws that were in s. 13

of the *Canadian Human Rights Act* did in fact conflict with the right to freedom of expression. However, like in *R. v. Keegstra*, the court ruled that John Ross Taylor's actions were so vile that they were subject to "reasonable limits" in a free society.

***R. v. Zundel*: conviction overturned as law determined to conflict with Charter rights**

Ernst Zundel lived in Toronto and was deeply involved in antisemitic groups. In 1985, he published a pamphlet that denied the Holocaust and spread other hateful ideas about Jews. Zundel was charged under s. 181 of the *Criminal Code*, which no longer exists. This section prohibited "fake news." In other words, it made it a crime to willfully publish statements, stories, or news if you are aware that it is false *and* if it is likely to lead to a breach of peace. The court found that Zundel violated s. 181 because his pamphlet was filled with lies and made-up evidence. He spent 15 months in jail.

However, in a 1992 re-trial called *R. v. Zundel*, the conviction was overturned because the court decided that s. 181 violated Zundel's *Charter* rights beyond what was a "reasonable limit." The court decided that s. 181 was too broad, and the section was later removed from the *Criminal Code*. Note that laws preventing the spread of harmful false information still exist in s. 300 of the *Criminal Code* under the category of "defamatory libel," but these laws do not specifically refer to messaging that promotes hatred against identifiable groups.

Saskatchewan Human Rights Commission v. Whatcott: **hate speech prosecuted, leading to disagreement with** **the Supreme Court**

In 2001 and 2002, Bill Whatcott distributed flyers around Regina and Saskatoon that promoted hatred against LGBTQ people. Four people filed complaints with the Saskatchewan Human Rights Commission. The commission's tribunal found that Whatcott violated a section of the human rights code that prohibits publications that expose people to hatred based on their identity. However, Whatcott appealed the decision in 2010, and the case was sent to the Supreme Court.

The Supreme Court had to evaluate whether the Saskatchewan Human Rights Commission made the right decision. Ultimately, it upheld the lower court's decisions in the case of two of the flyers but overturned its decision in the case of the other two flyers. It determined that the Saskatchewan Human Rights Commission had made a mistake because it only considered some phrases found in the flyers and not the flyers as a whole. The Supreme Court decided that the flyers as a whole do not qualify as prohibited hate publications under Saskatchewan's human rights laws.⁷⁶

At the end of this trial, the Supreme Court offered advice to future provincial courts handling hate speech cases.⁷⁷ They said that courts must focus on the effects of the hate speech and not on the subjective intentions of the accused. In other words, hate speech should only be prosecuted if it is likely to incite violence against

the targeted group or promote more discrimination. They also insist that “hate” must be understood very specifically as strong emotions of “detestation” and “vilification.”

***R. v. Krymowski*: judge could not determine language used was “racist”**

In 2005, a group of neo-Nazis were charged with the willful promotion of hatred under s. 319(2) of the *Criminal Code*. This case is known as *R. v. Krymowski*, after one of the men involved in the case. The neo-Nazis’ alleged crime was holding a demonstration against Roma refugees arriving in Canada by standing outside their hotel and displaying signs with racist language. The court cited *R. v. Keegstra* to show that the hate propaganda laws are constitutional. However, the neo-Nazis were not charged because the judge could not determine beyond a reasonable doubt that the racist language used on the signs was in fact referring to Roma people. This decision has been widely criticized ever since.

***R. v. Sears and St. Germaine*: women identified as subject of hate crime**

In the 2010s, James Sears and LeRoy St. Germaine published and distributed newsletters that promoted hatred against women and Jews. The newsletters were delivered to around 300,000 homes in Toronto and had an online readership of around one million people. Canada Post learned about the newsletters and blocked their delivery in 2016. Both men were later convicted

in Ontario provincial courts for willfully promoting hatred. This was the first case where women were specifically mentioned as an identifiable group when applying the hate propaganda sections of the *Criminal Code*.

Mugesera v. Canada (Minister of Citizenship and Immigration): deportation on the basis of hate propaganda and crimes against humanity

Léon Mugesera was a former politician in Rwanda who was granted asylum in Canada in 1993.⁷⁸ In 1995, the Canadian government learned that Mugesera gave a speech in 1992, while still in Rwanda, that promoted genocide against the minority Tutsi population before the genocide began in 1994. The Canadian government arrested Mugesera and tried to deport him by using provisions in the *Immigration Act*.

The Supreme Court originally dismissed the deportation case because of a lack of evidence linking Mugesera's speech to the events of the genocide. In 2005, however, the court overturned the previous ruling and upheld a deportation order, this time referencing the hate propaganda laws of the *Criminal Code* as well as the *Crimes Against Humanity and War Crimes Act*. Because Mugesera was found guilty of a crime against humanity, he was not allowed to remain in Canada under current immigration policy. For years, Mugesera appealed the deportation order on various grounds, including the possibility of torture and execution if he were to be sent back to Rwanda. However, he was ultimately deported in 2012. Rwandan courts convicted him of inciting genocide, and he was sentenced to life in prison.

7) Reporting hate and discrimination

As discussed earlier, not all hate crime victims report the incident. There are various reasons for this. However, systems can only respond to hate crimes when victims initiate the process of reporting them. Therefore, it is important to report hate crimes and human rights violations when possible.

Reporting hate to the police

Police services in many Canadian cities have a special unit for dealing with hate. These units are supposed to investigate and track data related to hate. The hate crime unit of the Edmonton Police Service (EPS) is called the Hate Crimes and Violent Extremism Unit. EPS wants Edmontonians to report all “hate-motivated crimes” (criminal offences) as well as “hate incidents” (non-criminal actions) to the police.⁷⁹ It is also possible to file a report anonymously through Crime Stoppers, a non-profit organization that works closely with EPS.

If you are the victim of a hate crime, you can also contact Edmonton Police Service’s victim services unit, which is called Crime and Trauma-Informed Support Services (CTSS). This unit, which was created in 2019, provides services and resources to victims of all kinds of crime including support in court settings. It can be contacted by email or phone.⁸⁰

A common barrier to contacting the police is that the victim is afraid or doesn’t trust the authorities. The Canadian Race

Relations Foundation (CRRF) recommends that people who are nervous about calling the police should ask a friend, family member, or other members of your community to report the incident for you.⁸¹ Reaching out to your support networks is a good idea in any case, regardless of whether you decide to report the incident.

Some people chose to report hate to the media rather than the police. This is a very different process than reporting an incident to the police. You may want to take special care to ensure that the coverage is handled appropriately and that your story is represented fairly. The CRRF recommends working with the police or an independent advocacy organization before contacting the media.

Reporting human rights violations

Many forms of discrimination or harassment can be reported to the Canadian Human Rights Commission or a provincial human rights commission. These bodies exist to uphold human rights legislation, which protects everyone in Canada from discrimination based on their identity. The commissions deal with various aspects of life, including employment, housing, government services, and private services.

The Canadian Human Rights Commission hears complaints of discrimination and harassment if they happened in the context of services offered by the federal government or services regulated by the federal government like banks and airlines. The

Alberta Human Rights Commission hears complaints related to discrimination and harassment in the context of employment, renting and tenancy, accessing goods and services, trade unions, and public publications or messages. Both commissions have websites with more information on how to report a rights violation.

Note that you cannot file a complaint against a private individual or in any situation outside of the specific contexts set by the commissions. It is, however, possible to file a complaint on behalf of someone else.

8) How to fight hatred in Canada

There is not a single Canadian or resident of Canada who is not impacted by hate. Some of us are victims of hate and racism, while some of us have witnessed these things first-hand. You may have friends and peers who have been victims of hate. You may even know people who are responsible for spreading hate. Nearly all Canadians have seen hate speech on the Internet, and some experts warn that there are signs of hateful extremism becoming “normalized” in this country.⁸² Regardless of your experience, we all live in a society that is better off when we stand up against hatred in all its forms.

Here are steps you can take to help the fight against hatred in Canada.

1. Support friends and peers who are victims of hate

Victims of hate crimes or hate-motivated incidents can experience psychological, emotional, and physical distress both short term and long term. If someone you know is targeted by hate, offer your support and a sympathetic ear. Understand that the individual may have experienced something traumatic and needs time to process their experience.

2. Report hate crimes and hate-motivated incidents

As explained earlier, hate crimes are vastly underreported in Canada, which leads to poor data collection that hinders effective

policy to address hatred. If possible, report all hate crimes and hate-motivated incidents to the proper authorities, which is usually your local police department. If you or the victim are uncomfortable dealing with the police, consider working with a community or advocacy organization to report the incident.

3. Show solidarity

There are countless organizations in Canada standing up against hate. These include activists, advocacy groups, political groups, educational groups, and more. You can show solidarity by supporting these groups, attending events, and participating in anti-hate or anti-racism demonstrations if it is safe to do so. Keep in mind that solidarity extends across identity lines. All disadvantaged groups in society stand to benefit from supporting one another in their battle against hatred.

3. Fight false information, spread accurate information

The Internet and the media contain an endless amount of information, much of which is inaccurate or simply based on lies. Fighting hatred means ignoring or reporting all messaging that promote violence or discrimination or advances a racist worldview. Instead, you should carefully evaluate all information to make sure it grounded in research and not intended to promote anger and division between groups.

Remember that “racial superiority” is a myth, and any content that promotes racism is founded on lies. Also remember that not all media outlets or news stations are trustworthy. There exist

plenty of well-known platforms—for example, Fox News in the United States—that are constantly criticized for promoting a hateful worldview or enraging the public in order to gain ratings and make money. Just because something is popular does not mean it is right.

5. Stay informed

Discussions about racism, anti-racism, and hatred are changing day by day. While the Canadian public is becoming increasingly aware of hatred in society, there are still many unanswered questions about how to address it. For example, there are ongoing debates about the proper role of police in Canadian society and the extent to which Canada should control hate speech on the Internet. Sometimes these issues have no simple answers. By staying informed, you can make meaningful contribution to these discussions and help shape the future of the country.

6. Get involved in politics

If you feel comfortable participating in politics, you can engage with your elected officials about issues of hate. Local politicians, including city councillors and the mayor, sometimes make a point of engaging with the public about racism. If you are concerned with issues in your city or neighbourhood, you can reach your elected official through social media or by contacting their office. You can also express your thoughts in a letter to your elected MLA or MP.

7. Be safe

While it is often necessary to stand up against hatred, your own safety comes first. If you encounter someone using hate speech or committing hateful actions, only engage if it does not put you or your community at risk. Avoid demonstrations held by hateful extremists or other violent groups if they are likely to put you in harm's way. At the end, of the day, hate is a systemic problem with deep historical roots. It will only be solved by collective action and education over time, not by taking on individual perpetrators of hate one by one.

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