

END

# Hate Crime

*B.C. Hate Crime Team Roles and Responsibilities*







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## *Introduction*

The Ministry of Attorney General and Minister Responsible for Multiculturalism, the Ministry of Public Safety and Solicitor General, police agencies and community groups recognize the importance of responding vigorously to crimes motivated by hate and bias. These offences are committed against individuals or groups because of personal characteristics such as race, religion, ethnicity, sexual orientation or disability.

Hate crimes are offences that strike at the very cohesiveness of society. While all crimes are abhorrent, a hate crime is specifically committed to harm and terrify not only a particular victim but the entire group of which the victim is a member. A unique characteristic of hate crimes is that often individuals and groups are targeted solely on the basis of who they are, not because of anything they have done. Implementing normal crime prevention measures is often not an effective tool because victims of hate crimes cannot prevent or change who they are.

The impact of these crimes extends beyond the initial victims and creates fear in the broader communities. These crimes can lead to social tensions between individuals, groups, the police and other government agencies, thereby furthering the destructive aims and objectives of those who encourage and promote hate.

Hate crimes create stress in the wider community. They are divisive, engender repetition by others and incite retaliation. If left unchecked, these crimes can increase in their severity and may result in an escalation in social tensions between different groups that can destroy the harmony in our communities.

Fighting hate and bias crime effectively relies on partnerships. The response to this growing problem cannot be made by law enforcement agencies alone. Government, police, community organizations and individuals must be committed to working together to stem hatred in society.

## *B.C. Hate Crime Team*

The B.C. Hate Crime Team was created in 1996 with a mandate to ensure the effective identification, investigation and prosecution of crimes motivated by hate. The role of police and Crown counsel in tracking hate-related crime is vital in fulfilling the mandate of the Hate Crime Team.

The Hate Crime Team developed the Hate and Bias Crime Policy Guide in consultation with community groups, the B.C. Association of Chiefs of Police and the Provincial Committee on Diversity and Policing. This booklet, revised as the B.C. Hate Crime Team Roles and Responsibilities, includes:

- a provincial definition of hate and bias crime;
- a description of the roles of the police, victim services and Crown counsel;
- an outline of links with the community that can help address hate and bias crimes; and
- the options for addressing incidents that are motivated by hate but are not criminal offences.

The B.C. Hate Crime Team prepares periodic status reports for public distribution, which summarize team activities and the nature of hate and bias incidents in the province, and includes a broad analysis of charges and prosecution results.

The team has representatives from the following government agencies and police: the Ministry of Attorney General and Minister Responsible for Multiculturalism (Criminal Justice Branch and the Settlement and Multiculturalism Division), Ministry of Public Safety and Solicitor General (Police Services), the Royal Canadian Mounted Police and the Vancouver Police Department.

Two full-time police officers coordinate hate and bias-related investigations in the province by working with local police and communities.

Team members from the Settlement and Multiculturalism Division of the Ministry of Attorney General coordinate the Critical Incident Response Model (CIRM) program, which supports communities in developing local action plans to address racism and hate. Police officers attend initial CIRM community meetings to deliver presentations raising awareness about hate, and to encourage community groups to report hate incidents to local police. As a result, community groups have an increased awareness of hate crimes, and knowledge of reporting mechanisms and support.

The police officers on the team liaise with the RCMP and municipal police departments, and provide support and assist on investigations. Crown counsel provides legal advice, information and support to police and prosecutors in the province on hate-motivated cases. Other members on the joint-management team provide administrative services, policy advice and support within British Columbia, and with federal and other provincial agencies.

Police and Crown counsel on the team have supported and assisted other jurisdictions in addressing hate crime, including the provision of advice, information and investigative assistance on national and international investigations.

## *Definitions*

### **Hate Crime**

The Hate Crime Team's Terms of Reference includes a definition of hate crime based on S. 718.2(a)(i) of the Criminal Code:

*A hate-bias crime is a criminal offence committed against a person or property which is motivated by the suspect's bias, prejudice or hate against an identifiable group based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.*

All provincial police agencies adopted this definition following the creation of the team.

### **Non-criminal Hate and Bias Incidents**

A hate- or bias-related incident is an intentional, hostile act by an individual or group against a person or property with identifiable characteristics or affiliations such as race, religion, sexual orientation, place of origin, ethnicity, disability, gender or age.

Most racist, homophobic and sexist acts are not Criminal Code offences. They are covered by human rights and civil rights protection legislation, harassment policies or by the ministry's community response and prevention efforts.



## **Hate and Bias Crime Categories**

The hate and bias crime provisions of the Criminal Code can be separated into two categories.

### *Category 1*

- Hate propaganda offences, in which the offender advocates genocide or expresses hatred of an identifiable group, are included in Sections 318 and 319;
- Hate propaganda warrant of seizure proceedings in which a Supreme Court judge determines if material (either hard copy or electronic data stored on a computer system) seized under S. 320 or S. 320.1 is hate propaganda and should be destroyed or deleted. These sections focus on removal/destruction of the material, and not with charging people with offences.

### *Category 2*

Any other offence motivated by bias, prejudice or hate in which the sentencing judge must consider that motivation as an aggravating factor. Some examples include:

- assault, based on perceived sexual orientation;
- threatening, such as correspondence or communication with overtones of bias, prejudice or hate;
- damage to property, motivated by bias, prejudice or hate; and
- damage to a building, synagogue or temple used for religious worship, which is motivated by bias, prejudice or hate based on religion, race, colour, or national or ethnic origin, as pertaining to S. 430(4.1).

Hate and bias crimes involve intimidation, harassment, physical force or threat of physical force against a person, family or property.

Case law considered motivation based on bias, prejudice or hatred as an aggravating factor on sentencing even before the 1996 amendment introducing S. 718.2 (a)(i).

### **Hate Propaganda Offence**

A hate propaganda offence is substantially different from a hate-bias crime (as described previously) in the nature of the offence and the types of groups protected.

Hate propaganda offences are set out in Sections 318 and 319, and involve advocating genocide, public incitement of hatred and the wilful promotion of hatred against an “identifiable group” as defined in S. 318(4). Here follows the relevant Criminal Code sections:

#### *S. 318 – Advocating Genocide*

*(1) Every one who advocates or promotes genocide is guilty of an indictable offence.*

*(2) “Genocide” means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,*

*(a) killing members of the group; or*

*(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.*

#### *S. 318(4) – Identifiable Group*

*“Identifiable group” means any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.*

### *S. 319(1) – Public Incitement of Hatred*

*Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of an offence.*

### *S. 319(2) – Wilful Promotion of Hatred*

*Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of an offence.*

### *Sections 320 and 320.1 – Warrants of Seizure*

*These warrant of seizure sections pertain to the removal of hate propaganda written material. This includes hate propaganda that is stored on computer systems and made available to the public, including through the Internet. A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication or electronic material—copies of which are kept for sale or distribution in premises or on a computer system within the jurisdiction of the court—is hate propaganda, may issue a warrant authorizing seizure of the copies or order the custodian of the computer system to provide an electronic copy of the material to the court.*

### **Attorney General Consent**

Prosecutions under Sections 318 and 319(2) require the consent of the Attorney General, while Sections 320 and 320.1 require the consent of the Attorney General before the commencement of proceedings. In British Columbia, it is the Assistant Deputy Attorney General (as head of the Criminal Justice Branch) who provides the requisite consent of the Attorney General.

### **R. v. Keegstra and R. v. Harding**

Allegations under Section 319 rarely meet the high standard of proof mandated within the legal definitions and evidential requirements established in *R. v. Keegstra* [1990] 3 S.C.R. 397, 61 C.C.C. (3d) 1, 1C.R. (4th) 129.

However, in the case of *R. v. Harding* 45 O.R.(3d) 207, [1998] O.J.No. 2603, the allegations did meet all the requirements as established by *R. v. Keegstra*. The accused was charged with wilfully promoting hatred against an identifiable group by publishing and distributing pamphlets and recording telephone messages stating: Muslims are a dangerous people capable of terrorism and great cruelty; Muslims are intolerant of other faiths and pose a threat; Muslims dishonestly masquerade as pacifists; and all Muslims wish to take over Canada. The court found the Crown had proven beyond a reasonable doubt that the accused had promoted hatred against an identifiable group.

*R. v. Harding* provides an excellent precedent for the type of evidence that a court requires before it enters a conviction.

### **R. v. Nicholson**

*R. v. Nicholson*, July 11, 2002, Information Number 10621, Merritt Provincial Court, was the first prosecution of promoting hate propaganda on the Internet in Canada under Section 319(2).

William Patrick Nicholson plead guilty to a charge of promoting hatred against identifiable groups. While searching his house pursuant to a warrant, police found explosives, illegal weapons and hate propaganda on the offender's computer.

A search of Nicholson's computer revealed evidence of his public comments, his communications on web pages, and his e-mails, which promoted hatred and provided the basis for the Section 319(2) charge. He was sentenced to a one-year conditional sentence in the community with conditions, including a prohibition from using a computer or communicating on the Internet.

The judge stated the offender would have gone to jail for the hate propaganda offence had he not already received a sentence in custody for the illegal explosive and weapons charges.

### **Hate and Bias Motivation**

Section 718.2 (a)(i) of the Criminal Code, which was introduced as a response to public concerns regarding hate-motivated crimes, states:

*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 any other similar factor.*

When the Crown proves an offence was motivated by bias, prejudice or hate, Section 718.2(a)(i) requires the court to consider that motivation as an aggravating factor when sentencing the offenders.

### **R. v. Miloszewski**

Section 718.2 (a)(i) was used in sentencing in R. v. Miloszewski [1999] B.C.J. No. 2710 Surrey Provincial Court Registry No. 96687-03-D2 on November 16, 1999. The provincial court judge sentenced five individuals on a charge of manslaughter in the January 4, 1998, death of Nirmal Singh Gill.

The five accused broke into a fenced parking lot adjacent to a Sikh temple intending to vandalize automobiles. All five had been drinking. The victim, a caretaker at the temple, came upon three of the accused in the parking lot and they attacked him. The other two accused then joined in the attack. The caretaker was later found 40 metres from the temple and taken to hospital, where he died of his injuries.

The court found the Crown had proven beyond a reasonable doubt that each of the accused was motivated in their attack by bias, prejudice or hate, based on Mr. Gill's race, national or ethnic origin, colour or religion. The trial judge found that Section 718.2 (a)(i) is a direction to a sentencing judge to give substantial weight to the consideration that it is an aggravating factor when an offence is motivated by bias, prejudice or hate.

### **R. v. Van-Brunt**

Section 718.2 (a)(i) was also used in R. v. Matthew Douglas Van-Brunt [2003] Vancouver Provincial Court Registry No. 78864-1 on March 7, 2003.

The victim and three of his friends were waiting for a taxi after finishing their shifts late at night in Burnaby. The victim was the only African Canadian in the group; the others were Caucasian. As they were waiting, an older vehicle went by, about which the victim commented.

The car stopped around the corner and the passenger and driver exited and started jeering at the victim as they approached him. The victim did not know them. The passenger was carrying a beer bottle. The accused was carrying a foot-long metal bar concealed behind his forearm. The accused and the passenger hurled racial slurs at the victim in angry voices. The victim said he did not want trouble. The passenger spit in the victim's face and the accused struck the victim on the forehead with the metal bar. The victim fell backwards on the ground and then got up. The passenger threw the beer bottle at the victim but missed. The passenger was never identified. The accused made a threat to the victim's family, again using the same racial slurs used previously.

The victim's wound required 23 stitches and months to heal, while he suffered migraine headaches up to the time of trial.

The defence offered evidence that: the accused had a troubled family history; he had his own alcohol and drug problems; he had not shown previous racist attitudes; and one of his friends was an African Canadian who never heard a racist remark from him. A defence expert said his behaviour could be explained without a racial motivation.

The court followed a case from Ontario, *R. v. Vrdoljak*, [2002] O.J. 1332, which cited an article written by the original police members and Crown counsel with the B.C. Hate Crime Team. It expressed the view that a court in sentencing could find that a hate crime can be motivated, in whole or in part, by bias, prejudice or hate.

The judge in *R. v. Van-Brunt* concluded the Crown had proven beyond a reasonable doubt that the offence had been motivated, in whole or in part, by bias, prejudice or hate, based on the victim's race or colour.

The judge sentenced the accused to nine months in custody and three years of probation after taking into account aggravating as well as mitigating factors, such as the accused had ceased alcohol consumption and had no previous record.

### ***R. v. Peers and Wilson***

*R. v. Peers and Wilson*, Vancouver Provincial Court, September 30, 1999, Information Number 100463, and Sechelt Provincial Court, January 18, 2000, Information Number 11518T, involved two court files arising out of the same incident on July 26, 1999.

Three individuals were walking on Davie Street in Vancouver, drinking beer and screaming obscenities and threats about harming gay people. Their actions frightened and annoyed people on the street. One person, the complainant, was offended by the steady stream of insults and sexually biased slurs; he followed the three individuals. He then approached Peers and Wilson. During the conversation, the complainant grabbed Wilson's shirt. Wilson said they didn't intend to assault anyone and the complainant let go. Shortly afterward, Peers challenged the complainant to fight. The complainant retreated saying he did not want to have anything to do with him. Peers punched the complainant on the side of the head, knocking his glasses off. The complainant continued to back up and Peers punched him on the nose, making it bleed. Peers punched the complainant a third time while the other two attempted to restrain him.

All three individuals left the scene but were found and arrested by police. In separate hearings, Peers plead guilty to assault and Wilson plead guilty to causing a disturbance in a public place. Both were sentenced to terms of imprisonment.

The two provincial court judges were referred to Section 718.2 (a)(i), and both considered the nature of the offences as a serious aggravating factor in sentencing. They also considered the offences were motivated by bias, prejudice or hate, based on sexual orientation.

Other offences that fall within the scope of Section 718.2 (a)(i) include damaging personal and public property, and threats and criminal harassment. Racist graffiti on private or public property is also included in this category.

### **Separate Hate-Motivated Offence**

S. 430(4.1) – Mischief to Religious Properties

This offence would be included in S. 718.2(a)(i) for sentencing purposes.

*Every one who commits mischief in relation to property that is a building structure or part thereof 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, if the commission of the mischief is motivated by bias, prejudice or hate based on religious, race, colour or national or ethnic origin, is guilty of an offence.*

### **Other Remedies**

Not all incidents of bigotry and intolerance are considered criminal offences. There are other remedies available for complaints of non-criminal incidents.

### **B.C. Human Rights Tribunal (Human Rights Code)**

The Human Rights Code, RSBC 1996, Chapter 210, prohibits discriminatory practices in the context of publications, employment, residential tenancy and the use of public facilities. Discrimination is prohibited on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, and sex or sexual orientation.

As well, Section 7 of the Human Rights Code prohibits the publication or display of material that discriminates against people based on race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age.

The B.C. Human Rights Tribunal is an independent, quasi-judicial body created by the Human Rights Code. The tribunal is responsible for accepting, screening, mediating and adjudicating human rights complaints. The tribunal offers the parties to a complaint the opportunity to try to resolve the complaint through mediation. If the parties do not resolve the complaint, the tribunal holds a hearing. Although it does not have the legal authority to fine, sentence or convict anyone, the tribunal can order a stop to the discrimination and offer other remedies to a victim of discrimination.

Contact the B.C. Human Rights Tribunal at:

#### *B.C. Human Rights Tribunal*

1170 – 605 Robson St., Vancouver BC V6B 5J3

Toll-free in B.C.: 1 888 440-8844; TTY: 604 775-2021

Telephone: 604 775-2000; Facsimile: 604 775-2020

E-mail: [BCHumanRightsTribunal@gov.bc.ca](mailto:BCHumanRightsTribunal@gov.bc.ca)

Website: [www.bchrt.gov.bc.ca/](http://www.bchrt.gov.bc.ca/)

### **Civil Rights Protection Act**

The Civil Rights Protection Act, S.B.C. Chapter 12, was enacted as a proposed remedy for complaints of non-criminal incidents. It defines “prohibited act” as conduct or communication interfering with the civil rights of a person or class of persons by promoting hatred, contempt, superiority or inferiority based on colour, race, religion, ethnicity or place of origin. A prohibited act is a tort actionable without proof of damage. The act has yet to be tested despite being in force since 1981.

### **Canadian Human Rights Commission (Canadian Human Rights Act)**

The Canadian Human Rights Act has similar provisions to B.C.’s Human Rights Code. The Canadian Human Rights Commission administers the Canadian Human Rights Act and is responsible for ensuring compliance with the Employment Equity Act. Both laws ensure that the principles of equal opportunity and non-discrimination are followed in all areas of federal jurisdiction.

Because telecommunications are under federal jurisdiction, S. 13 of the act specifically applies to discrimination that is communicated by telecommunications, including computer-related communication.

Contact the Canadian Human Rights Commission at:

#### *Canadian Human Rights Commission*

British Columbia and Yukon Regional Office  
301 – 1095 West Pender St., Vancouver BC V6E 2M6  
Toll-free: 1 800 999-6899; TTY: 1 888 643-3304  
Telephone: 604 666-2251; Facsimile: 604 660-2386  
E-mail: [info.com@chrc-ccdpc.ca](mailto:info.com@chrc-ccdpc.ca)  
Website: [www.chrc-ccdpc.ca/](http://www.chrc-ccdpc.ca/)

### ***B.C. Hate Crime Team: Police Officers***

The police are the front line when dealing with hate and bias crimes. All law enforcement officers must be familiar with the offences and the special issues relating to victims of hate crimes.

The B.C. Hate Crime Team has two full-time police officers trained to recognize the specialized and multi-jurisdictional nature of hate propaganda offences. The team’s mandate includes:

- assisting in investigating all hate propaganda offences (Sections 318 and 319) in the province with the cooperation of local police agencies;
- assisting local police agencies with investigations of other crimes motivated by hate or bias;
- tracking hate crime incidents;
- ensuring local police agencies are informed of hate activities in their own and surrounding jurisdictions;
- developing and delivering training for law enforcement personnel;
- liaising with community groups;
- participating in education and prevention programs;
- collecting and analyzing all reports of hate crime;
- liaising with the Settlement and Multiculturalism Division of the Ministry of Attorney General and Minister Responsible for Multiculturalism;
- developing and delivering victim service training and awareness;

- referring complaints of non-criminal hate and bias incidents to the B.C. Human Rights Tribunal or to the Canadian Human Rights Commission, as appropriate to their jurisdictions; and
- working with federal and provincial police and other agencies to address hate and bias crime issues, including investigations of hate on the Internet.

### **Guidelines for Police Officers and Agencies**

These procedural guidelines, for all police agencies and officers in B.C, will ensure appropriate responses to incidents motivated by hate and bias.

- Assign officers to respond to all incidents or reported incidents of hate and bias crimes.
- Provide assistance to the victims in accordance with established victim services procedures.
- Ensure all evidence is gathered as if for court purposes, including taking photographs, and seizing and securing crime scene evidence.
- Investigate all reported incidents and treat each incident as a high priority.
- Document each incident as a separate, clearly categorized hate-bias offence.
- Provide hate-bias crime reports to the Hate Crime Team's enforcement section immediately.
- Inform a police officer of the Hate Crime Team of community concerns or potential problems.

### **Four Steps for Police**

Front-line police officers need to progress through four steps when dealing with hate-bias crimes. The steps are: identification, investigation, victim issues, and notification.

#### **1. Identification**

Often, the first call to report a hate-bias crime is made directly to: the police (911 or non-emergency), the VictimLINK information line (1 800 563-0808), the Hate Crime Team or a community police station.

A police officer must attend to a report of a hate crime. Officers encountering difficulty in determining the motivation of the suspect are encouraged to contact the Hate Crime Team for assistance.

Before an incident is classified as a hate- and bias-motivated crime, police officers should consider the following:

- any statements made by suspects in custody that indicate the crime was motivated by hate or bias toward the victim because of race, nationality, colour, religion, sex, age, mental or physical disability, or sexual orientation, as defined in Section 718.2(a)(i);
- the absence of an apparent motive for the crime;
- the use or display of symbols, graffiti, comments, acts or gestures that are commonly associated with hate-bias groups or known to be used by organized hate groups (e.g., a swastika);

- whether the offence coincides with a holiday, event or date with religious or historical significance to the victim's or suspect's group;
- the perception of the motivation behind the offence from the victim or victim's community;
- the perception of witnesses to the offence;
- historical animosity that exists between the victim's group and the suspect's group;
- whether the victim was in an area or place commonly associated with a particular group (e.g., a gay bar);
- the suspects' previous involvement in similar incidents, and their membership in an organized hate group or hate organization;
- whether similar incidents occurred in the community with victims from the same group; and
- whether the offence occurred at the same time or shortly after hate group activity (e.g., distribution of hate literature).

## **2. Investigation**

Police attendance at hate-bias crime scenes reflect the importance and seriousness of incidents.

Officers must consider the following practices: securing evidence, and witness and victim statements; consulting with supervisors and other senior officers; and the use of other police resources (e.g., identification, crime laboratory, media relations).

Police officers investigating alleged offences under Sections 318 or 319(2) must remember that no charge under these sections will be considered without the written consent of the Attorney General.

Section 319(1) is a dual offence and charges are processed in the normal way.

## **3. Victim Issues**

The victim is important to the investigator. When a case is submitted to Crown counsel for charge approval, investigators should consider S. 722, which allows victims of crime to submit impact statements. Community based groups can also provide relevant information on sentencing, including the frequency and impact of particular offences on their community.

Targeted individuals symbolize the group and all members of the group are possible victims. Through malicious and violent behaviour, perpetrators communicate to targeted individuals and groups that they are not welcome in the community or neighbourhood.

The psychological trauma experienced by victims and their group, whether the offence or incident is criminal in nature or not, can be overwhelming. Victims who change their behaviour will not decrease the likelihood of repeat attacks. That realization leads to a sense of fear, isolation and vulnerability. Victims may be reluctant to come forward because of one or many fears. They include immigration issues, being compromised, retaliation, and law enforcement and their response. Victims may also be wary of coming forward because of cultural and language barriers.



Police officers need to be familiar with the Victims of Crime Act, which ensures crime victims have information about:

- availability of victim services;
- compensation for criminal injury;
- the criminal justice system;
- the status of the police investigation;
- the administration of an offender's sentence; and
- the victim's right to privacy.

Information about victim services is available from a number of sources. For example, many police agencies have victim service workers, some on a 24-hour basis. If there are no local resources, victims can call the provincial victims' information line for multilingual service, 24 hours a day, seven days a week at:

*VictimLINK*

toll-free: 1 800 563-0808

#### **4. Notification**

Police officers can ensure that hate- and bias-motivated offences are properly dealt with by advising Crown counsel that a case involves or may involve hate and bias crimes. In their Report to Crown Counsel, investigators must give reasons why the offence is hate- and bias-motivated so the case obtains the careful attention required. Requests for charges should be sent quickly for consideration by Crown.

### *Contact the B.C. Hate Crime Team*

Police officers are encouraged to consult with the officers on the B.C. Hate Crime Team for assistance and advice at:

*B.C. Hate Crime Team*

Telephone: 604 660-2659 or 604 660-2617

Facsimile: 604 543-4856

### *B.C. Hate Crime Team: Crown Counsel*

Crown counsel and police have mutually independent roles in the criminal justice system. Crown counsel exercise their discretion independently when deciding whether to lay charges.

For hate-motivated cases, the role of the Crown counsel on the B.C. Hate Crime Team is to provide legal advice, information, and support to police and Crown counsel in the province. Crown counsel and another team representative are also active on the Federal-Provincial-Territorial Working Group on Cyber-crime. With this work, they have successfully recommended amendments to the Criminal Code to address hate offences in cyberspace. That work continues.

The following outlines the charge assessment guidelines policy for Crown counsel.

#### **Charge Assessment**

Crown counsel acts on behalf of the public and in the public interest. Cases in which criminal activity is motivated by bigotry and intolerance for others are taken as serious matters.

When there is a substantial likelihood of conviction, and the offence is motivated by bias, prejudice or hate based on factors included in the Criminal Code, it is in the public interest to prosecute the offence vigorously. It is also in the public interest for the court to consider the motive as an aggravating factor in sentencing.

The Crown counsel charge assessment guidelines require that:

1. there be a substantial likelihood of conviction; and,
2. there is a public interest in the prosecution.

In almost all cases in which offences are motivated by bias, prejudice or hate, the public interest factors apply in favour of prosecution, as outlined in the Crown counsel policy on Charge Assessment Guidelines (CHA 1). The requirement for substantial likelihood of conviction is very important.

Crimes motivated by bias, prejudice or hate based on factors included in Section 718.2(a)(i) are serious. When Crown counsel concludes, after consultation with Regional or Deputy Regional Crown Counsel, there is a reasonable likelihood the court will make a determination on sentencing that an offence was motivated by bias, prejudice or hate; and, in the course of the trial, there is evidence to support that beyond a reasonable doubt, the Crown should lead the evidence necessary and take the position on sentencing that the motivation must be treated as an aggravating factor under Section 718.2(a)(i).

Section 430(4.1) prohibits mischief to religious property and has a different set of identifiable groups from Section 718.2(a)(i) and the hate propaganda sections, but is arguably subject to Section 718.2(a)(i).

The hate propaganda sections in the Criminal Code include an offence for making statements (outside of a private conversation) that wilfully promote hatred against an identifiable group, in S. 319(2). An identifiable group is distinguished by colour, race, religion, ethnic origin or sexual orientation.

Sections 318 and 319(2) require the Attorney General's consent before initiating proceedings. In B.C., the Crown Counsel Act provides for the Assistant Deputy Attorney General to give consent to proceed. Prosecutors applying for consent to proceed must first consider statutory defences contained in S. 319(3). The impact and subsequent publicity if an uncertain case is acquitted may be seen to exonerate or justify a perpetrator's views

In Section 319(1), the consent of the Assistant Deputy Attorney General is not required to proceed with charges related to inciting public hatred.

In Section 318, the consent of the Assistant Deputy Attorney General is required before Crown counsel can proceed with charges for advocating or promoting genocide, but no statutory defences apply. Consent to prosecute should be obtained when the evidence meets the charge assessment guidelines as outlined.

On sentencing, victims and affected community members should be provided the opportunity to provide victim impact information.

### **Alternative Measures**

Alternative measures provide options to judicial proceedings for dealing with a person accused of committing an offence.

The charge assessment guidelines normally require hate-motivated and hate propaganda offences to be prosecuted.

The prosecution policy entitled “Alternative Measures for Adult Offenders (ALT 1)” provides that alternative measures referrals for hate motivated offences should be made only in exceptional circumstances and after consultation with Regional or Deputy Regional Crown Counsel. The alternative measures policy also provides that referrals for hate propaganda offences should be made only in rare circumstances and with the written consent of the Assistant Deputy Attorney General. In both cases, considering the effect that hate propaganda and hate-bias offences have on victims, their community and society in general, the following conditions must be met on a referral:

- identifiable individual victims should be consulted, and their wishes considered;
- the offender has no history of related offences or violence;
- the offender should accept responsibility for the act or omission that forms the basis of the alleged offence; and
- the offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

### *Linking With Communities*

Hate-bias incidents and discrimination affect communities in many ways. Communities may become targeted, labelled or disempowered by factors beyond their control.

Public education is a prevention strategy and can mobilize the community’s response to hate incidents. Strategies to fight hate activities in its many forms are developed in collaboration with law enforcement and community groups and organizations at all levels.

The Settlement and Multiculturalism Division of the Ministry of Attorney General developed the Critical Incident Response Model (CIRM) to support community responses and prevention efforts to address racism and hate. CIRM is a three-year, three-step process to enable the building of healthy, safe and welcoming communities across the province. The model helps provide a link between communities and the B.C. Hate Crime Team. More information on CIRM can be found at: [www.WelcomeBC.ca](http://www.WelcomeBC.ca).

The division’s role on the B.C. Hate Crime Team is to:

- refer individuals to community-based organizations for support and assistance when dealing with issues of racial discrimination;
- assist in the coordination of ongoing community consultations;
- advise the Hate Crime Team of incidents of racism and hate that are brought to the division’s attention;
- support community activities to assist individuals and groups experiencing racial discrimination; and
- develop and collect anti-racism resources to increase public awareness.

## *Additional Resources*

More resources are available at: [www.WelcomeBC.ca](http://www.WelcomeBC.ca). Tools and information are located in the Resources and Publications section, under Settlement and Multiculturalism Division. Here are a few key resources.

### *Building Safe Communities: Community Kit*

The Critical Incident Response Model (CIRM) is described in this publication.

### *Directory of B.C. Multicultural, Anti-racism, Immigrant and Community Service Organizations*

This popular resource provides an online directory of organizations, agencies and government departments.

### *Responding to Incidents of Racism and Hate: A Handbook for Service Providers [February 2003]*

A 51-page handbook for professional service providers, which provides information and details for helping victims of racism as well as strategies for dealing with racism in communities.

## *Summary*

The Ministry of Attorney General and Minister Responsible for Multiculturalism, police agencies, and community groups recognize the importance of responding to crimes motivated by hate and bias. These offences are committed against individuals or groups because of personal characteristics and affiliations, not because of who they are.

The role of police and Crown counsel in investigating and prosecuting incidents of hate crime is vital to the success of this response. Communities also maintain a critical role in partnership with the B.C. Hate Crime Team. Only by working together, we can help end hate and bias crimes. For information, contact the B.C. Hate Crime Team at:

### *B.C. Hate Crime Team*

Telephone: 604 660-2659 or 604 660-2617

Facsimile: 604 543-4856









Ministry of  
Attorney General