

Policy:

Hate Crimes

Policy Code:

HAT 1

Effective Date:

February 16, 2024

Cross-references:

ALT 1 CHA 1 LEG 1
VIC 1 VUL 1 YOU 1.4

Hate crimes are an affront to human dignity. They threaten the important societal values of equality and diversity, causing division and discord. The harm they cause, even when not accompanied by physical violence or property damage, can have serious, cumulative, and long-lasting impacts. These impacts affect not only the targeted individuals and other members of the targeted group but also society as a whole.¹

Hate is disproportionately experienced by marginalized communities and especially by those with “intersecting identities” (i.e., persons who have multiple attributes that may subject them to discrimination including race, religion, and gender identity).²

Hate crimes can cause grave psychological and social consequences, including:

- increased vulnerability and fear for personal and collective safety
- erosion of the sense of self-worth, inclusion, and belonging
- a chilling effect on the speech and self-expression of those who are targeted

Hate crime offences

The *Criminal Code* does not use the term “hate crime”. For the purposes of this policy, hate crimes include the following:

- advocating or promoting genocide (section 318)
- public incitement of hatred (section 319(1))
- wilful promotion of hatred (section 319(2))

¹ *R v Keegstra*, [1990] 3 SCR 697 at paras 60-63

² BC Human Rights Commission, “From hate to hope: Report of the Inquiry into hate in the COVID-19 pandemic” (2023), page 9

- wilful promotion of antisemitism (section 319(2.1))
- offences related to conversion therapy (which target and seek to repress, reduce, or change particular sexual orientations, gender identities, or gender expressions)
 - causing a person to undergo conversion therapy (section 320.102)
 - removing a child from Canada with intent to cause them to undergo conversion therapy (section 273.3(1)(c))
 - promoting or advertising conversion therapy (section 320.103)
 - receiving a material benefit from the provision of conversion therapy (section 320.104)
- mischief to property of an identifiable group motivated by bias, prejudice, or hate (section 430(4.1))
- any *Criminal Code* offence motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor (section 718.2(a)(i)); which may include, among other offences, assault, criminal harassment, uttering threats, or mischief

The *Criminal Code* defines an “identifiable group” as any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability (section 318(4)).

Historically, the hate crime provisions have not been applied with equal vigor to all identifiable groups, particularly those subjected to hate because of their sex,³ sexual orientation, gender identity or expression, or Indigeneity. Crown Counsel should consider invoking the hate crime provisions whenever the available evidence demonstrates that an identifiable group, or one of its members has been targeted, including the identifiable groups listed above that historically may not have received the same level of protection or attention.

Legal advice to the police – investigative stage

Advice on hate crime investigations may be provided to investigative agencies by Crown Counsel (*Legal Advice to Police* (LEG 1)). Hate crime resource counsel are available to consult with investigative agencies or Crown Counsel.

3 *R v Sears*, 2021 ONCA 522, denying leave from 2021 ONSC 4272, affirming 2019 ONCJ 104

Charge assessment

Expressions of apparent bias, prejudice, or hate may be viewed by persons directly affected or by members of the public as a hate incident. However, not every hate incident amounts to a hate crime under the *Criminal Code*. When the hateful conduct rises to the level of a *Criminal Code* offence, a criminal prosecution may be initiated if the BC Prosecution Service receives a Report to Crown Counsel from an investigative agency that meets the standard for charge approval in *Charge Assessment Guidelines* policy ([CHA 1](#)).

Canada has a long and regrettable history of racism against Indigenous, Asian, Black, and other racialized peoples, and of discrimination on the basis of religion, sex, and gender. Some investigating officers and Crown Counsel may not be fully familiar with or appreciate the gravity or impact upon the target of any particular racist or discriminatory language. Victims may be reticent to repeat it or explain its meaning and significance. In conducting a charge assessment, Crown Counsel should consider whether the police have provided a full recounting of all the impugned hateful actions and words, as well as any necessary context to understand their nature and their impact on the victim. Crown Counsel should also consider whether the aggravating sentencing provision contained in section 718.2(a)(i) may apply. If necessary, Crown Counsel should request further investigation to be able to make those determinations.

Any Report to Crown Counsel alleging a hate crime should be referred to a Regional Crown Counsel, Director, or their respective deputy for assignment. The Regional Crown Counsel, Director, or their respective deputy may wish to consult with hate crimes resource counsel prior to completion of a charge assessment (*Charge Assessment Guidelines* (CHA 1)).

The public interest generally favours prosecution of a hate crime, particularly when the case involves any of the following circumstances:

- harm caused to a victim
- harm caused to that victim's community
- relative vulnerability of the victim
- reasonable grounds for believing the offence is likely to be continued or repeated

When assessing the public interest, Crown Counsel should also consider the circumstances of the accused. Evidence that the accused is a young person, has been diagnosed with a mental illness or disability, or belongs to an identifiable group (the same one as the alleged victim or another one) may be relevant public interest factors but is not determinative.

Crown Counsel approving a hate crime charge should notify the Communications Counsel, who will respond to any related media enquiries.

Consent of the Attorney General

Proceedings related to the following offences or applications require the consent of the Attorney General, which may be provided by the Assistant Deputy Attorney General:

- advocating or promoting genocide (section 318)
- wilful promotion of hatred (section 319(2))
- wilful promotion of antisemitism (section 319(2.1))
- application for a warrant of seizure of hate propaganda from premises (section 320)
- application for a warrant of seizure of hate propaganda from computer systems (section 320.1)
- proceedings related to promoting or advertising conversion therapy following execution of a warrant of seizure from premises pursuant to section 164 or a warrant of seizure from computer systems pursuant to section 164.1 (section 320.103)

Administrative Crown Counsel should provide the Regional Crown Counsel, Director, or their respective deputy with a draft form of consent of the Assistant Deputy Attorney General when they recommend approval of a hate crime under any of these sections.

Motivation by bias, prejudice, or hate

Whenever there is a reasonable basis on the available evidence to conclude that an offence was motivated by bias, prejudice, or hate based on a section 718.2(a)(i) factor, Crown Counsel should tender the evidence, pursue a finding under section 718.2(a)(i), and advance a sentencing position that addresses the aggravating circumstances.

By definition, any hate propaganda and conversion therapy offence, as well as an offence of mischief that is motivated by bias, prejudice, or hate against an identifiable group, meets the test for aggravating circumstances under section 718.2(a)(i) and Crown Counsel should advance a sentencing position that addresses the aggravating circumstances of those offences.⁴

4 *R v Sears*, 2021 ONCA 522 at para 41; *R v Bethune and Severe*, 2022 BCPC 243

Alternatives to prosecution

Before referring or approving a hate crime for alternative measures or extrajudicial measures, Crown Counsel must seek the prior approval of a Regional Crown Counsel, Director, or their respective deputy (*Alternatives to Prosecutions – Adults* ([ALT 1](#)), *Youth Criminal Justice Act – Extrajudicial Measures* ([YOU 1.4](#))). Alternatives to prosecution for hate crimes should only be approved in exceptional circumstances, if the following conditions are met:

- identifiable individual victims were consulted, and their wishes considered
- the accused has no relevant history of related offences or violence
- the accused accepts responsibility for the act or omission that forms the basis of the alleged offence
- the accused poses no ongoing risk of significant harm to the targeted individual or community

Victim Impact Statements and Community Impact Statements

Crown Counsel should attempt to obtain a victim impact statement prior to sentencing in accordance with *Victims of Crime* ([VIC 1](#)) and *Vulnerable Victims and Witnesses* ([VUL 1](#)) (section 722).

An individual on a community's behalf may file a community impact statement with the court (section 722.2). Community impact statements may increase the awareness of the sentencing judge of the harm to the identifiable group as a whole.

Indigenous persons

Numerous government commissions and reports, as well as the judgments of the Supreme Court of Canada, have recognized that discrimination experienced by Indigenous persons, whether as a result of overtly racist attitudes or culturally inappropriate practices, extends to all parts of the criminal justice system.

The history of colonialism, displacement, and residential schools in Canada has translated into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous persons. In addition, the rates of victimization of Indigenous persons, especially for Indigenous women and girls, are significantly higher than those for non-Indigenous persons.⁵

⁵ *Victimization of Aboriginal People in Canada, 2014*, Statistics Canada, 2016

The continuing consequences of colonialism for Indigenous persons in Canada provide the necessary context for any matter involving an Indigenous accused. These consequences “must be remedied by accounting for the unique systemic and background factors affecting Indigenous peoples, as well as their fundamentally different cultural values and world views.”⁶

Crimes against Indigenous persons, including hate crimes against Indigenous victims, groups, and communities, are underreported. Crown Counsel should ensure that their charge assessments and positions on resolution and sentencing reflect the gravity of the problem of violence and hatred against Indigenous persons in our society, particularly Indigenous women and girls, and the serious injustices they have faced.⁷

Crown Counsel should also recognize that in cases that involve the abuse of a person who is vulnerable because of personal circumstances, including because a person is Indigenous and female, the court must give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence (section 718.04).

⁶ *Ewert v Canada*, 2018 SCC 30 at paras 57 and 58; *R v Barton*, 2019 SCC 33 at paras 198-200; also [BC First Nations Justice Strategy](#), February 2020

⁷ *R v Barton*, 2019 SCC 33 at para. 198