

Policy:

## Hate Crimes

Policy Code:

**HAT 1**

Effective Date:

March 1, 2018

Cross-references:

[ALT 1](#) [CHA 1](#) [VIC 1](#)

[VUL 1](#) [YOU 1.4](#)

“Hate crimes” are criminal offences that are motivated by, and generally involve the selection of victims based on, the offender’s bias, prejudice, or hate towards others. They are driven by bigotry and intolerance for others and are regarded as serious matters.

The *Criminal Code* contains specific offences and sentencing provisions relating to hate crimes. The offence provisions prohibit certain types of hate-motivated conduct and define specific sentencing parameters for that conduct. For all offences, the *Criminal Code* provides that when an offence was motivated by hate that motivation is an aggravating factor on sentencing.

Generally, the public interest factors outlined in the policy on *Charge Assessment Guidelines* ([CHA 1](#)) favour prosecution for hate crimes particularly where:

- considerable harm was caused to a victim
- the victim was a vulnerable person
- 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
- there are grounds for believing that the offence is likely to be continued or repeated

All Reports to Crown Counsel involving hate crimes should be referred by the Administrative Crown Counsel to a Regional Crown Counsel, Director, or their respective deputy for charge assessment.

A Regional Crown Counsel, Director, their respective deputy, or a designated senior Crown Counsel, should consult with their regional Resource Crown Counsel on Hate Crimes prior to concluding the charge assessment.

## A. Specific Hate Crime Offences – Charge Assessment and Consent of the Attorney General

### Hate Propaganda – Sections 318 and 319 of the *Criminal Code*

Section 318 of the *Criminal Code* creates the offence of advocating or promoting genocide against an identifiable group. Section 319(1) creates the offence of communicating a statement in any public place that incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace. Section 319(2) creates an offence for communicating statements, other than in private conversation, which wilfully promote hatred against any identifiable group. All of these provisions define “identifiable group” as, “any section of the public distinguished by colour, race, religion, national, or ethnic origin, age, sex, sexual orientation, gender identity or gender expression or mental or physical disability.” None of them requires proof that the communication caused actual hatred.

### Consent of the Attorney General Required

Prosecutions under sections 318 and 319(2) of the *Criminal Code* require the consent of the Attorney General. The Assistant Deputy Attorney General is authorized to provide the requisite consent on behalf of the Attorney General.

Before a charge is laid, Administrative Crown Counsel should review the report to Crown Counsel and provide a recommendation on whether to seek consent to a Regional Crown Counsel, Director, or their respective deputy, who will review the decision and recommendation and, if appropriate, seek the consent of the Attorney General.

### Hate-Motivated Mischief – Property for Religious Worship and used by Identifiable Groups

Section 430(4.1) of the *Criminal Code* creates a hybrid offence for committing mischief in relation to property described in paragraphs (4.101)(a) to (d) if the commission of the mischief is “motivated by bias, prejudice or hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression or mental or physical disability.” The types of property described in paragraphs (4.101)(a) to (d) include a building or structure (as well as an object in or on the grounds of the building or structure) that is primarily used for religious worship (4.101(a)), or a building or structure (as well as or an object in or on the grounds of the building or structure) that is primarily used by an identifiable group as defined in subsection 318(4) as an educational institution (4.101(b)), for administrative, social, cultural, or sports activities or events (4.101(c)), or as a residence for seniors (4.101(d)).

## **B. All Offences involving Motivation by Hatred – Aggravating Factor on Sentencing**

At sentencing proceedings for all offences, where Crown Counsel concludes there is a reasonable likelihood that the court will make a determination that an 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, gender identity or gender expression or any other similar factor,” Crown Counsel should ensure evidence necessary to prove the motivation beyond a reasonable doubt has been led and, if that evidence is admitted, take the position on sentencing that the motivation be treated as a statutorily imposed mandatory aggravating factor under section 718.2(a)(i) of the *Criminal Code*.

Where, in the prosecution of a specific offence under sections 318, 319(1), 319(2) or 430(4.1), there was evidence of a motivation of bias, prejudice, or hatred beyond that which was required to make out the elements of the offence, Crown Counsel should consider submitting to the court that the additional motivation is an aggravating factor under section 718.2(a)(i) of the *Criminal Code*. These can be separate aggravating circumstances even if the offence is already one of hate.

## **C. Victim Impact Statements and Community Impact Statements**

Crown Counsel should attempt to obtain a Victim Impact Statement pursuant to section 722 of the *Criminal Code* prior to sentencing in accordance with the policies *Victims of Crime – Providing Assistance and Information to (VIC 1)* and *Vulnerable Victims and Witnesses – Adults (VUL 1)*.

In addition, pursuant to section 722.2 of the *Criminal Code*, “an individual on a community’s behalf” may file a Community Impact Statement at the court registry. Such impact statements may be especially helpful to ensure sentencing courts are fully aware of the social effects of hate crimes.

## **D. Removal of Hate Propaganda – *In Rem* Provisions**

Sections 320 and 320.1 of the *Criminal Code* create *in rem* provisions authorizing a court to order the deletion and destruction of hate propaganda when such material is contained in a written publication that is kept for sale or distribution or stored in a computer system that makes such material available to the public. Because these sections require the consent of the Attorney General, Administrative Crown Counsel should review the matter and provide a recommendation on whether to seek consent to a Regional Crown Counsel, Director, or their respective deputy. They will then review the recommendation and, if appropriate, seek the consent of the Assistant Deputy Attorney General.

## E. Alternative Measures

For adults and young persons, the policies *Alternative Measures for Adult Offenders* (ALT 1) and *Youth Criminal Justice Act – Extrajudicial Measures* (YOU 1.4) apply to all hate crimes. In addition to their general provisions, policies ALT 1 and YOU 1.4 provide the following specific guidance for the approval of alternative measures for hate crimes (excerpt from ALT 1):

*“A Regional Crown Counsel, Director, or their respective deputy must approve any referral of a person for alternative measures consideration and also the specific alternative measures recommended in any Alternative Measures Report.”*

In addition, for hate crimes, such approvals should be given only if the following conditions are met:

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