

# HATE CRIME RESEARCH

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# HATE CRIME PROVISIONS IN THE CRIMINAL CODE

There are 4 specific hate offences in the *Criminal Code*:

- s. 318 - Advocating genocide & s.318.4 - Definition of “identifiable group”
- s.319(1) - Incitement to hatred & s.319(2) - Wilful promotion of hatred
- s.430.4.1 and 4.101 - Mischief relating to religious property

There is also the hate as an aggravating factor at sentencing provision.

- s.718.2(a)(i) - This provision states that courts should take into consideration at sentencing:

*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, gender identity or expression, or on any other similar factor.*

## DEFINITIONS

*“Identifiable group” is defined in subsection 318(4) of the Criminal Code as meaning 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.*

*A hate crime is a criminal violation motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor.*

- Uniform Crime Reporting Survey 2.2

# NATIONAL DATA SOURCES ON HATE CRIME

## **Self-reported national data**

- General Social Survey on Victimization (2009, 2014, 2019)
- Ethnic Diversity Survey (2002)
- Canadian Legal Problems Survey (2021)

## **Police-reported national data**

- Uniform Crime Reporting Survey 2.2 (since 2005)

## **Court-based national data**

- Integrated Criminal Court Survey – does not collect information about the application of aggravating factors at sentencing

# RESEARCH AND DATA AT JUSTICE CANADA

## Three main waves of activity :

1. Mid-nineties, research commissioned around hate crimes when s.718.2(a) was proposed and came into force.
2. Under Canada's Action Plan Against Racism (2006-2009), research funds dedicated to both impact of hate crime on victims and communities, as well as research on a range of issues such as the use of s.718.2(a)(i) – hate as an aggravating factor at sentencing; media portrayal of hate crimes; understanding the community impact of hate crime through case studies; understanding the needs of victims, among other topics.
3. Under Canada's Anti-Racism Strategy (2019-2022), research funds have again been dedicated to research on a range of issues including an update on case law and s.718.2(a)(i). Funding has supported the Canadian Legal Problems Survey, 2021, undertaken by Statistics Canada with results being released in early 2022. Funding from other federal departments has enabled qualitative work on serious legal problems for minority populations including Indigenous people, Black Canadians, immigrants, persons with disabilities and LGBTQ2S+.

## EXAMPLES OF RESEARCH – CASE LAW

- The first report *Hate as an Aggravating Factor in Sentencing: A Literature and Case Law Review* (2009), is available publicly with the title posted on the Department's website.
- RSD replicated the study, examining published case law on the application of *Criminal Code* subparagraph 718.2(a)(i) in all jurisdictions over the last 10+ years (2007-2020). Researchers reviewed 1,388 published decisions in English and French between 2007 and 2020. This sentencing provision was considered and applied in 48 of these cases. These results are similar to the first review. Released in March 2021.
- A case law review has limitations. Not all cases that are adjudicated are published as case law. In addition, published cases do not necessarily reflect the body of actual cases in a given area of law as the focus will always be on precedent setting cases or new areas of legal interpretation.

# COMMUNITY IMPACT OF HATE CRIME

- RSD sought to empirically measure the community impact of hate-motivated crimes.
- Two case studies from Ontario: Victoria Park, Kitchener; and Lake Simcoe, Georgina.
- Data collected by the Centre for Community Based Research (CCBR) via survey and focus groups on the emotional, psychological and economic impact of hate crime on two communities:

1) the geographic community; and

2) the ethnic/racial identity community who were targeted by the perpetrators (i.e. individuals who self-identify as a member of the victim's ethnic/racial community because of like characteristics).

Kitchener case study: Kitchener African Identity Community (KAIC) n = 196; Kitchener Geographic Community n = 411

Georgina case study: Greater Toronto Area Chinese Identity Community n = 288; Georgina Geographic Community n = 360.

# QUESTIONS AND FOR MORE INFORMATION:

See the list of research reports posted by **ICCLR**.

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