

GLBT TASK FORCE FACT SHEET

HATE CRIMES

A hate crime is a criminal offence committed against persons, property or society that is motivated, in whole or in part, by an offender's bias against an individual's or a group's race, religion, ethnic/national origin, gender, age, disability or sexual orientation. Hate crimes include not only violence against individuals or groups, but also crimes against property, such as arson or vandalism, particularly those directed against community centers or houses of worship. The following is a check-list of questions law enforcement considers in making a determination as to if a crime is, or is not a potential hate/bias crime.

1. What are the perceptions of the victim(s) and witnesses about the motivation behind the crime?
2. Were there any comments, gestures or written statements by the perpetrator that reflect bias?
3. Was the victim engaged in activities promoting his/her group or community at the time of the crime?
4. Did the incident coincide with a holiday or date of significance to a particular group?
5. Were there any differences between perpetrator and victim, whether actual or simply perceived by the perpetrator?
6. Have there been similar incidents in the same area that indicate a possible pattern?
7. Did the incident occur in an area that has seen activity by organized hate groups?
8. Is there an absence of any other motive, such as economic gain, that would explain why the crime was committed?

"Hate" is defined as a crime under two parts of Canada's Criminal Code: sections 318 and 319. To convict anyone under the Code, very specific proof is required: both of the criminal act itself, and of the intention or motivation to commit the crime. It isn't enough that someone has said something hateful or untrue; the courts will only find someone guilty if they contravened the Code exactly, and if they did it deliberately.

In most cases, hate propaganda communicated through the Internet is an offence under the Criminal Code. Amendments to the Code, made under the Anti-Terrorism Act in December 2001, further clarify measures and offences regarding Internet hate crimes.

Section 318: Advocating Genocide

The criminal act of "advocating genocide" is defined as supporting or arguing for the killing of members of an "identifiable group" — persons distinguished by their colour, race, religion or ethnic origin. The intention or motivation would be the destruction of members of the targeted group. Any person who promotes genocide is guilty of an indictable offence, and liable to imprisonment for a term not exceeding five years.

Defining Genocide

Section 318 defines genocide as any acts committed with intent to destroy an identifiable group —such as killing members of the group, or deliberately inflicting conditions of life calculated to bring about the group's physical destruction.

Section 319(1): Public Incitement of Hatred

The crime of "publicly inciting hatred" has four main elements. To contravene the Code, a person must:

- communicate statements,
- in a public place,
- incite hatred against an identifiable group,
- in such a way that there will likely be a breach of the peace.

HATE CRIMES, Continued

Under section 319, "communicating" includes communicating by telephone, broadcasting or other audible or visible means; a "public place" is one to which the public has access by right or invitation, express or implied; and "statements" means words (spoken, written or recorded), gestures, and signs or other visible representations.

All the above elements must be proven for a court to find an accused guilty of either:

- an indictable offence, for which the punishment is imprisonment for a term not exceeding two years; or
- an offence punishable on summary conviction.

Section 319(2) defines the additional offence of communicating statements, other than in private conversation, that willfully promote hatred against an identifiable group.

Section 319(3) identifies acceptable defenses. Indicates that no person shall be convicted of an offence if the statements in question:

- are established to be true
- were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds it was believed to be true
- were expressed in good faith, it was attempted to establish by argument and opinion on a religious subject

were expressed in good faith, it was intended to point out, for the purpose of removal, matters tending to produce feelings of hatred toward an identifiable group in Canada

Warrants of Seizure

Section 320 of the Criminal Code provides for the seizure and forfeiture of physical hate propaganda material kept on any premises for distribution or sale.

Section 320.1 added under the Anti-Terrorism bill in 2001, allows the courts to order publicly available hate propaganda to be deleted from computer systems, such as a Web site. The individuals responsible for posting the offensive material are given the opportunity to convince the court that it does not constitute hate propaganda. This provision applies to any hate propaganda located on a Canadian computer system, regardless where the owner of the material is located.

Additional Hate Provisions

The courts may define the motivations of hate, bias or prejudice as aggravating factors when sentencing an offender for other offences, such as assault, damage to property, threatening, or harassment. The result is usually a more severe punishment (section 718.2(a)(i)).

The Hamilton Police Services operates a Hate-Crime Unit that investigates crimes committed based on hate/bias. The Hate-Crime Unit is composed of one full-time investigator whose direction and focus is to concentrate on those incidents where hate or bias has been identified as a precipitating component in the commission of the criminal offence.

In January 2003, the aforementioned position was created and instituted. Acknowledging the potential for additional support, the newly fashioned, dedicated position remained within the Intelligence Branch. In the age of Intelligence Led Policing, where information is collected, documented and disseminated at a relatively quick pace, the need to act promptly and efficiently on this information was taken into consideration.

IF YOU BELIEVE YOU ARE THE VICTIM OF A CRIME MOTIVATED AGAINST YOU BY HATE OR BIAS, IT IS IMPORTANT TO CALL THE POLICE AND REPORT YOUR INCIDENT.

Many people who are the victim of hate crimes are not comfortable with disclosing their incident to police. There are many reasons why people do not report hate crimes to the police

- They believe that the incident will just go away
- They have not "come out" and believe that friends and family may find out about their sexuality or gender issues
- They do not believe the police can be trusted to investigate their matter
- They wish testify in court openly about the incident.

We have to acknowledge that there are people in our community committing crimes of hatred as bias against our community. The only way that we can fight back against those who would commit such crimes against us is to give the Police all the information so that they can do their job.

Remember, the person who attacked you may be someone the police are looking for. They may have attacked someone in the past. They just may attack someone again in the future if they get away with what they have done to you.

If you feel that you have been the victim of a hate/bias crime, call the Hate-Crime Unit at (905) 546-4325. If you are in immediate danger, call 911.