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**DISPROPORTIONATE HARM:
HATE CRIME IN CANADA**

An Analysis of Recent Statistics

**Julian V. Roberts
Department of Criminology
University of Ottawa**

1995

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UNEDITED

**Research, Statistics and Evaluation Directorate/
Direction générale de la recherche,
de la statistique et de l'évaluation**

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Julian V. Roberts

Professor,

Department of Criminology,

University of Ottawa,

Ottawa, Canada.

Telephone: (613) 564-7852

Fax: (613) 564-3871

EXECUTIVE SUMMARY

Hate Crime

Hate crimes are crimes in which the offender is motivated by a characteristic of the victim that identifies the victim as a member of a group towards which the offender feels some animosity. The problem of hate crime is a truly global phenomenon and Canada is no exception. Because they are directed both at a group and an individual victim, hate crimes carry an element of harm that is not present in other kinds of offending. For this reason, many jurisdictions have passed legislation increasing the penalties for crimes motivated by hate. The Sentencing Reform Bill (C-41) in Canada is an example of this kind of statute. Similar legislation is to be found in the United States and other countries.

The importance of the problem of hate crime is apparent from the vigorous response that has emerged, both in terms of private organizations (such as B'nai Brith) and the policing community. Specialized hate crime units have been created in many (but by no means all) police services across Canada. As well, several police services are now collecting information on the incidence of crimes motivated by hate. Nevertheless, it is clear that many hate crimes are, for a variety of reasons, still not reported to the police. In fact, it is likely that hate crimes are among the most under-reported forms of criminality.

Purpose and Scope of Report

To date, there has been little systematic research in Canada upon the nature and incidence of hate crimes. The purpose of the present report was to collect together in a single document information on the incidence of hate crimes. A special request was sent by the Department of Justice Canada to a number of different sources, including police forces across Canada and B'nai Brith. These data are summarized in this document, along with additional information relating to hate-motivated incidents involving gays and lesbians.

Classification of Hate Crimes

One of the difficulties surrounding the collection of hate crimes concerns the definition of what constitutes a hate-motivated incident. There is considerable variability in the definitions in use by police services across Canada. Some police forces (such as the Metropolitan Toronto Police Service) use what might be termed an exclusive definition. That is, a crime is only classified as a hate crime when, in the opinion of the investigating officer, the act was "based solely upon the victim's race, religion, nationality, ethnic origin, sexual orientation gender or disability". Other police agencies such as the Ottawa Police Service use a lower threshold. According to this broader definition, a hate-motivated crime is one that was motivated "in whole or in part, by a bias". The matter of definition is critical; if the exclusive definition is used, then a much smaller number of incidents are likely to be classified as hate crimes. This observation is

borne out by statistics both in Canada and elsewhere: jurisdictions adhering to an exclusive definition report significantly lower rates of hate crimes.

Under-reporting Incidents of Hate Crime

A central deficiency of all criminal justice statistics is that a proportion of incidents are never reported to the police. This proportion (known as the "Dark Figure" of crime varies from offence to offence, and may run as high as 95 percent for certain crimes. There are several reasons to believe that the percentage of offences that are not reported to the police may be particularly high for hate crimes. First, victims may fear additional victimization. Second, victims of racially-motivated hate crimes may well be apprehensive that the criminal justice system will not take their reports seriously enough. Third, the sensitive nature of hate crimes directed at gays or lesbians may result in the victim staying away from the police for fear of stigmatization on the basis of homophobia.

Hate Crime Patterns in Other Jurisdictions

Hate crime statistics have been collected on a systematic basis in the United States since 1990, when Congress passed the *Hate Crime Statistics Act*, which requires states to collect such data and submit them to the federal government. In the most recent year for which data are available, there were almost 9,000 hate crime incidents recorded by the Federal Bureau of Investigation. This total clearly represents but a small fraction of hate crimes actually committed. The most frequently occurring offence was threatening, followed by vandalism and assaults. Racial minorities were the most frequent target of hate motivated crimes, accounting for almost two-thirds of incidents recorded. The next most frequent target category was religious groups. Almost all the incidents in this category were anti-semitic in nature. There was a clear interaction between the nature of the offence and the nature of the target. Hate crimes directed against individuals on the basis of race or ethnicity were more likely to be crimes of violence, while anti-semitic incidents were more likely to be crimes of property.

British data derived from the British Crime Survey (and published by the Home Office) provide a good indication of the magnitude of the problem. Drawing upon a victimization survey (and not just reports recorded by the police), a recent report suggests that over 100,000 racially-motivated crimes occur every year in Britain. This does not include hate crimes directed at gays or lesbians, or incidents of anti-semitism. If these additional forms of hate crime were added, the total would be much higher.

Hate Crime Trends in Canada

As noted above, this report summarizes data from three sources: several police services across the country who responded to a data request from the Department of Justice Canada, B'nai

Brith of Canada and two groups representing the gay and lesbian communities in Toronto and Montreal.

Police Forces

The majority of hate crimes recorded by the police across Canada were directed against racial minorities. Sixty-one percent of all hate crime incidents were directed against racial minorities, 23 percent against religious minorities, 11 percent against gays or lesbians and 5 percent against ethnic minorities. This breakdown is remarkably similar to the breakdown of targets in the United States, where 63 percent of incidents were directed at racial minorities. This suggests that there are strong parallels between the nature of hate crime in Canada and elsewhere.

B'nai Brith

The League of Human Rights of B'nai Brith Canada has compiled data on anti-semitic incidents for over a decade now. These data are published in the annual "Audit of Anti-semitic Incidents". Since the same definitions and incidents have been used over this period, this data-base constitutes a unique historical record of hate crimes in Canada. Incidents in the data-base are classified as vandalism or harassment. In 1994, there were 290 incidents of anti-semitism recorded by the League for Human Rights. These data provide convincing evidence that there has been an increase in anti-semitic activity on Canada in recent years. This represents an almost 50 percent increase in the number reported since 1992. Most incidents occurred in cities: Ottawa, Montreal and Toronto accounted for over 80 percent of all incidents, with exactly half occurring in Toronto alone.

Gay and Lesbian Community Groups

Research in other countries such as the United States has clearly shown that gays and lesbians are a principal target for hate crimes. In addition, there are several reasons to believe that members of the gay community are less likely than any other victimized group to report incidents to the police. For this reason, police statistics are likely to seriously underestimate the extent of the threat to the gay community in Canada. Analysis of calls to a hotline in Toronto run by the 519 Church Street Community Centre shows that a high incidence of hate-motivated incidents directed at gays and lesbians involve physical assault. Only a minority of incidents reported to the hotline had been reported to the police. Data from this same source suggest that hate crimes directed at this group are also less likely to result in a conviction than other crimes. Similar trends emerged from an analysis of statistics from a shorter period in Montreal. These were reported by the Table de Concertation des lesbiennes et des gais du Grand Montreal.

Estimates of Number of Hate Crimes Committed

Although the exercise must remain rather speculative, an attempt was made to estimate the number of hate crimes committed annually in Canada, not just the number of incidents recorded by the police. Using the data from Ottawa in 1994, the following extrapolation was made. In that year, 211 founded hate crimes were recorded by the Ottawa police. Assuming that only one-third of all incidents are ever reported to the police, this suggests that 633 incidents were actually committed. Since Ottawa accounts for 7 percent of the total *Criminal Code* offences for the major urban centres in Canada, this implies that the total number of hate crimes committed in nine urban centres (Halifax, Montreal, Ottawa, Toronto, Winnipeg, Regina, Calgary, Edmonton, Vancouver) is approximately 60,000. This estimate is consistent with estimates of the incidence of hate crimes in other jurisdictions. For example, the British Home Office has estimated that there are approximately 100,000 hate crimes committed annually in England and Wales. This British estimate is based upon a single form of hate crime (racially-motivated crimes), while the estimate for Canada's urban centres includes other forms of hate crime such as crimes motivated by hatred based on religion, ethnicity and ethnic orientation.

Better Statistics

In order to provide an effective response to the problem of hate crimes, the criminal justice system needs adequate statistics. This is important from two perspectives. First, because the general public are probably unaware of the scope of the problem, hate crimes have remained, to a large extent, hidden from public view. Second, the system needs to know more about the nature and distribution of hate crimes so that criminal justice as well as community resources can be most effectively employed. At the present, as can be seen from this report, we do not have adequate information about hate crimes in Canada.

Several options were reviewed for improving the comprehensiveness of hate crime statistics. One possibility would be simply to encourage more police forces and special interest groups to gather such data. This seems to be a weak option. Sufficient variability exists at the present time in terms of the definition of hate crimes that a uniform, national approach is justified. This could consist of passage of a Hate Crime Statistics Act (such as the one passed by the federal government in the United States), or it might simply involve modifying the Uniform Crime Reporting Survey so that hate motivation would be included in the information recorded by the police officer.

Conclusion

An effective criminal justice response to hate crimes involves a number of important elements. However, nothing is more critical than having an accurate idea of the nature and extent of the problem. This can only come about if a greater effort is made to collect comprehensive statistics. At the present, Canada lags far behind other nations in this regard.

This report represents the first, small step towards documenting the incidence of this pernicious crime which by its very nature strikes at the heart of a multicultural society.

Summary of Recommendations

The following Recommendations were made to improve our knowledge of, and response to, hate crimes in Canada:

1. Further consideration should be given to the *Hate Crime Statistics Act* (Bill C-455) which received first reading in Parliament in 1993, but which has not been reviewed further.
2. A uniform definition of a hate crime should be developed in consultation with all stakeholders in the area across Canada.
3. Consistent with the practice in other countries, the definition of a hate crime should not require the exclusive motivation threshold currently used in some jurisdictions. Hate crimes should be defined as crimes in which hatred or bias was in whole or in part responsible for the commission of the offence.
4. In order to protect the privacy of individual victims, the definition of a hate crime should refer to the "actual or perceived" group status of the hate crime target.
5. Uniform guidelines should be developed to permit greater consistency in the application of the definition of what constitutes a hate crime.
6. The Canadian Centre for Justice Statistics should adopt the collection of hate crime statistics as a priority for future information requirements in the area of criminal justice.
7. Questions relating to hate motivation should be added to the data elements currently collected on the revised Uniform Crime Reporting (UCR) survey (UCR II).
8. In order to estimate the true extent to which hate crimes are under-reported, questions about hate motivation should also be added to the General Social Survey (GSS) victimization survey.
9. Consideration should be given to increasing the amount of resources devoted to research into the nature and origins of hate crimes in Canada.
10. Consideration should be given to the creation of new criminal offences which would better reflect the true nature of hate crimes. One such offence could be defined as the desecration of property which carries religious significance. These offences would replace the application of mischief as a charge in cases of hate crimes directed at synagogues and other places of religious worship.

11. Greater efforts need to be made to increase visibility of the criminal justice response to hate crimes. This includes reaching out to the groups that have been the target of hate motivated crimes, particularly the gay and lesbian communities.
12. Specialized Hate Crime Units should be created in all major urban police forces across the country. These units should be composed of officers with special training in the area of crimes motivated by hate or bias. In addition to the conventional police functions of responding to incidents, and gathering evidence, these units should also participate in various police-community activities. The experience of the Ottawa, Toronto and Montreal police services shows how an effective Hate Crime Unit should function.
13. Hate crime units in police agencies should be constantly in contact with the populations most at risk for hate crimes. This suggests periodic meetings with these groups to ensure that these communities are aware of hate crime trends, and that the police are responsive to the communities that they serve and protect.
14. In light of the extremely low reporting rate, and the disproportionately high rate of violence in hate crimes directed at gays and lesbians, a principal focus of any hate crime strategy should be upon the gay/lesbian communities in Toronto, Montreal and Vancouver.
15. In order to promote greater public awareness of this form of criminality, an effort should be made to convey information about hate crime motivation to the news media, so that this material will be communicated to the public.
16. When an individual receives an enhanced sentence for a hate-motivated crime, this ground for aggravation should be noted in the reasons for sentence, and should be part of the offender information system which is communicated to federal or provincial correctional authorities.
17. Confronting hate crimes is not the unique jurisdiction of the criminal justice system. As with other socio-legal issues such as drinking and driving and domestic violence, a general social response is necessary. Accordingly, a greater effort should be made to educate the public about this form of criminal behaviour. A major focus of any such initiative should be directed at schools.
18. Community groups should take an active role in educating their members about ways to respond to hate crimes when they occur. The activities of the 519 Church St. Community Centre provide a good role model in this regard.
19. Community surveys should be conducted of the populations most at risk in order to gauge the extent to which they have confidence in the criminal justice response to reports of hate crimes.

20. Consideration should be given to a national police training workshop, which would involve police officers from all hate crime units across the country, in order to promote a uniform police response to the investigation of hate crimes.

1.0 INTRODUCTION

The first step in addressing hate crimes is to know the magnitude of the problem (Marowitz, 1991: 3).

The problem of hate crime of one form or another is a truly global phenomenon, and Canada is no exception. The international news media report incidents of hate crime on an almost daily basis, whether it is anti-semitic propaganda or the desecration of synagogues in France, extreme violence directed against immigrant minorities in Germany (Aronowitz, 1994; Ward, 1991) or Scandinavia (Bjorgo, 1994; Loow, 1995), racial assaults in Great Britain (see Bowling, 1994) or more systematic crimes of hate against whole communities in Bosnia-Herzegovina (Hamm, 1994). In Canada, the domestic incidents of hate crime that have been reported in the news media are, to date, less extreme, yet the problem may well be just as insidious.

There has been little empirical research on the issue of hate crimes in Canada. One reason for this is the absence, so far, of comprehensive criminal justice statistics which include information on the offender's motivation. As will be seen later in this report, police services across Canada have only recently begun accumulating hate crime statistics in a systematic fashion. Although a number of recent scholarly articles have addressed the topic (e.g., Gilmour, 1994; Ross, 1994), Canada lacks a comprehensive examination of hate crime statistics.

The problem of hate crimes is of relevance to two recent legislative initiatives in Canada, both of which will be explored in greater detail later in this report. One is Bill C-455, the *Bias Incidents Statistics Act*, which received first reading in 1993. This statute calls for the collection of national statistics relating to crimes motivated by hate. The second relevant Bill is Bill C-41, the Sentencing Reform Bill.¹ One of the critical provisions of that *Act* creates a statutory aggravating factor, which requires harsher penalties for crimes motivated by hate.

1.1 Purpose of Report

The present document differs from previous reports on this issue in that the emphasis is on empirical data, and criminological aspects of the problem. In fact, the purpose of this report is two-fold. First, to describe and evaluate the data currently available relating to hate or bias crimes in Canada. This part of the report consists of an analysis of data provided to the Department of Justice Canada in response to a special request for current statistical information. At this stage such an exercise must be preliminary in nature, as few groups collect hate crime statistics on a systematic basis, and not all police forces across the country have invested to the same degree in the collection of such statistics. Although the focus is on statistics relating to hate crime, a

¹ *An Act to Amend the Criminal Code (sentencing) and Other Acts in consequence thereof.* Statutes of Canada 1995, Chapter 22. Assented to 13th July 1995.

number of recommendations are made regarding the criminal justice response to the phenomenon of hate crime in Canada. The second purpose consists of outlining and evaluating the options facing the criminal justice system in terms of collecting better information about this kind of criminal activity. Throughout the document there is an attempt to place issues relating to the definition and incidence in an international context. Comparisons are made with findings from two other jurisdictions: the United Kingdom and the United States.

This report continues a recent Department of Justice Canada initiative in the area of hate or bias crime. Earlier documents which address this issue include a legal analysis of criminal law aspects of the problem (see Gilmour, 1994) and a survey of hate motivated activity (see Nelson and Kiefl, 1995). The emphasis is upon hate crime statistics derived from police services across the country, although data from B'nai Brith, and two organizations in Toronto and Montreal that collect information on hate crimes directed at gays and lesbians are also included. For more information on the more general topic of hate crime activity, the reader is directed towards a report entitled, "Survey of Hate-Motivated Activity" (Nelson and Kiefl, 1995).

As will be seen, the focus of this research is upon crimes motivated by hatred or bias, rather than the offences defined in sections 318-320 of the *Criminal Code* which address hate propaganda. Far less is known about crimes motivated by hate than the hate propaganda offences which have received a great deal of attention as a result of several *causes celebres* in recent years.²

The document begins with a discussion of the nature of hate-motivated crimes and the difficulties surrounding the collection of statistics in this area. Varying definitions of hate-motivated crimes are then presented. We then review the incidence of hate crimes in two other jurisdictions (the United States and the United Kingdom) before presenting a summary of hate crime statistics in Canada. These data are drawn from private agencies (e.g., B'nai Brith Canada) as well as the criminal justice system. The report concludes with a discussion of ways to improve the collection of police statistics relating to hate crimes. Various options are evaluated, including passage of a *Hate Crimes Statistics Act* comparable to that which was passed by the United States Congress in 1990.

1.2 The Issue of Disproportionate Harm

There are several reasons why the criminal justice system singles out hate crimes for special attention. Garafolo and Martin (1991) identify three principal justifications. First, hate crimes have effects upon the victim beyond those commonly associated with non-bias crimes. They note that:

² For example, the cases involving Malcom Ross and Ernest Zundel -- see Ross, 1994 for further information.

the characteristics that elicit the victimizations (e.g., race, ethnicity, religion) are often important elements in the victim's own sense of identity, thus presenting the bias crime victim with additional factors that can create feelings of anger and vulnerability" (p. 18).

For example, a gay person who is attacked or harassed because of his or her sexual orientation will suffer the physical consequences of the assault as well as the affront to their character.

The second reason noted by these authors for paying special attention to hate crimes is the impact that they have on whole communities. Hate crimes increase the level of fear, and can only heighten tension between different racial and ethnic groups. This observation has been made by many writers. Sanderson (1991: 43) for example, notes that, "...a hate crime resembles no other crime. The effects of hate crime reach beyond the immediate victim or institution and can damage society and fragment communities". This constitutes an additional element of harm, which accordingly should be recognized by the criminal law.

That said, there are at least two reasons to believe that hate crime statistics underestimate the full extent of harm inflicted upon the community. The first of these is essentially a statistical argument. It is clear that the hate crime statistics available to date underestimate the true incidence of this form of criminal activity in Canada. The extent of this underestimation must remain unknown until such time as better sources of data are available. *It would be a mistake to measure the importance of hate crimes simply by the number of incidents reported to the police.* But there is another way in which these statistics underestimate the importance of the problem. The statistics fail to convey a sense of the true harm inflicted upon the individuals and groups that are the target of hate crimes.

To some degree this can be said of any statistical information. The Uniform Crime Reporting (UCR) statistics published annually by the Canadian Centre for Justice Statistics provide a useful source of the kinds of incidents reported to the police (e.g., Canadian Centre for Justice Statistics, 1994). However, they fail to convey a sense of the full impact upon the victim. This is particularly true for hate-motivated crimes. A recent study conducted by the League for Human Rights for the Commission on Systemic racism in the Ontario Criminal Justice System is revealing in this respect. This research consisted of a series of focus groups with members of several ethnic minorities (see League for Human Rights, 1993). The general conclusion of that research was that racially motivated crime is an issue of serious concern to all the groups studied (South Asian, Asian, Muslim, Jewish, Black, and Aboriginal communities in Toronto). The harm is not restricted to just the victims involved. Hate crimes convey a message of fear to all members of the community to which the specific individual belongs. The seriousness of a hate crime cannot be fully understood without taking this additional element into consideration. The harm lies in the atmosphere of fear and apprehension to which all hate crimes contribute.

It is also worth noting that research in other jurisdictions shows a clear association between the presence of hate motivation, and the extent of injuries inflicted in crimes against the person. For example, Levin and McDevitt (1993) review data from the Boston Police Department showing that assaults motivated by hate resulted in greater physical injury than other forms of assault. According to this same source, victims of hate-motivated violence experienced two to three times more negative psychological and behavioural sequelae than victims of violence not motivated by racial or ethnic hatred.

Canadians who are not members of one of the communities usually targeted may have difficulty comprehending the seriousness of hate crimes. We can all appreciate the potential impact of break and enter, or an assault, but it may be harder for some people to fully appreciate the impact of a racially-motivated attack or an attack on a gay person, either on the specific individual or the community targeted. This may explain why police officers interviewed by the League for Human Rights acknowledged that racially motivated crime was not an issue for Torontonians in general (League for Human Rights, 1993: 12-13). And, since racial minorities are under-represented among criminal justice professionals, the effect may be that the seriousness of hate crimes is not fully appreciated by the criminal justice system. Respondents interviewed for the League for Human Rights study also stressed the need to continue efforts to raise awareness within the police about the issues surrounding victimization in hate crimes. The problem of insufficient awareness among criminal justice professionals (including the police) has also been noted in other countries (see Levin and McDevitt, 1993).

The statutory penalty enhancement for hate-motivated crimes which is contained in the sentencing reform Bill exists to reflect the fact that the harm is not restricted to a specific individual. Carrying this logic to the level of a police report, it is obvious that a police report cannot capture the full impact of a hate crime upon the community to which the victim belongs. This alone distinguishes hate crimes from offences committed for some other motivation.

1.3 Victims' Rights and Responses

The issue of identifying hate-motivated crimes also has important consequences for victims' rights and responses to the criminal justice system. If a crime is motivated by racism, and this is not taken into account by the criminal justice system, then the system has effectively failed to reflect the true extent of the harm to the victim. To the extent that victims are aware of this, they may well become disenchanted with the criminal justice response, and this may reduce still further the probability that such incidents will be reported to the police. Moreover, since hate crimes are directed at large groups (e.g., a particular racial or ethnic minority, or all members of a religion), the harm is far greater than if a only a single victim was affected (see Ferry, 1991: 85). The role of the victim also has consequences for the collection of hate crime statistics. As Cook (1991) notes, "a good reporting and analysis system sends a positive message to the victims of bias

incidents: government cares". There are also consequences for victims if the police fail to accurately record hate crimes. As Levin and McDevitt (1993: 169) note:

The failure of an officer to properly identify an incident as hate motivated sometimes results in escalated violence and additional harm to the victim.

2.0 METHODOLOGICAL ISSUES

Before presenting statistics on the incidence and reporting rates of hate crimes, it is important to discuss the question of how to define a hate-motivated crime.

2.1 Hate Crimes: The Problem of Definition

Perhaps the central problem in the classification and recording of hate crimes is the issue of definition. The empirical data that follow in this report must be considered in light of the definitions which guided their collection. If definitions of what constitutes a hate crime are highly variable, this will generate inconsistency in statistics purporting to measure the activity. The focus in this section is on the definitions of hate crimes used by different police agencies across Canada and in other jurisdictions. First, however, it is worth noting a general definition provided by researchers working in the area. According to Garofalo and Martin (1991: 17):

A bias-motivated crime is a crime in which the offender is motivated by a characteristic of the victim that identifies the victim as a member of some group towards which the offender feels some animosity.

As will be seen, the definitions used by different police forces are more specific and more restricted in scope.

2.2 Hate Crime Definitions in Other Jurisdictions

2.2.1 United Kingdom

The definition used by the police in the United Kingdom is restricted to racially motivated crime incidents, and assumes the following form:

(a) Any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation; or,

(b) Any incident which involves an allegation of racial motivation made by any person (Maung and Mirrlees-Black, 1994).

The British definition suffers from the deficiency that it excludes hate crimes directed at targets other than racial minorities. Thus, other forms of hate crime such as anti-semitism, or anti-gay attacks are not captured either by the official police statistics or by the periodic victimization survey (British Crime Survey). On the other hand, the British definition has the advantage of defining a hate crime by specific reference to the perception of the victim(s), even if this perception is at odds with the view of the investigating officer.

2.2.2 United States

Definitions of hate crimes vary across the United States. The following examples are representative of these:

Hate Crime: Any unlawful action designed to frighten, harm, injure, intimidate or harass an individual, in whole or in part, because of a bias motivation against the actual or perceived race, religion, ethnic background or sexual orientation of the victim (IACP National Law Enforcement Policy Centre, 1991).

An act which appears to be motivated or perceived to be motivated by the victim based on race, religion or ethnic background (Maryland: see Cook, 1991).

2.3 Hate/Bias Crime Definitions used in Canada

Some police forces provided a clear definition in response to the Department of Justice Canada request; for others, the definition quoted below comes from bias crime guidelines provided to officers.³

Metropolitan Toronto Police Force

A hate crime is a criminal offence committed against a person or property that is based solely upon the victim's race, religion, nationality, ethnic origin, sexual orientation, gender or disability.

Halifax Police Department

A hate crime is a criminal offence committed against a person or property, the motive for which is based in whole or in part upon the victim's race, religion, nationality, ethnic origin, gender, disability or sexual orientation.

Edmonton Police Service

Bias crime: A criminal offence committed against a person or property, that is based solely upon the victim's race, religion, nationality, ethnic origin or sexual characteristic.

Ottawa Police Service

³ The discussion that follows does not include small police forces, several of which have also adopted hate crime policies. For example, the Sudbury Regional Police introduced a hate crime policy in August 1995.

A criminal offence committed against a person or property which is motivated by the suspect/offender's hate/bias against a racial, religious, ethnic, sexual orientation or disability group.

Winnipeg Police Department

Hate crimes are traditional offenses motivated by an offender's bias as a result of religion, race, nationality or sexual orientation.⁴

Montreal Police Force

The Montreal police force uses the same definition that is used in Toronto (see above).

Ministry of the Solicitor General / Correctional Service of Canada

Crime was motivated because of hate/bias toward the victim's racial, religious, ethnic or sexual orientation.

Policing Standards Manual, Province of Ontario

A criminal offence committed against a person or property which is motivated by the suspect/offender's hate/bias against a racial, religious, ethnic, sexual orientation or disability group.

Ontario Provincial Police

A criminal act against a person(s) or property that is based solely, or in part, upon the victim's race, religion, ethnicity, sexual orientation or disability.

Royal Canadian Mounted Police (RCMP)

The RCMP does not use the category "hate crime" in any formal way. However, some hate crimes are clearly addressed by the National Security Investigation Sections of the RCMP. Criminal, political or religious extremism, for example, can take a form that most people would recognize as a hate crime.⁵ Most of the hate crimes described in this report fall within the ambit of the provincial or municipal police services, rather than within the jurisdiction of the RCMP in its federal role. Although the RCMP does gather information relating to ideologically-motivated serious crime, statistics are not routinely compiled on criminal incidents that were motivated by hatred.

⁴ The Winnipeg police service now uses a "whole or in part" definition of hate crimes. As well, the Hate crime unit investigates incidents of hate crime based on actual or perceived group status.

⁵ An example of such a crime is the case of several militant Muslims who conspired to bomb a Hindu temple and an East Indian cinema in Toronto in 1991. It is significant that the sentencing judge acknowledged the notion of terrorism as an aggravating factor, thus treating it in a way comparable to hate motivation (sentencing hearing transcript available from the author).

One critical question springs out from this short list: how inclusive should the definition of a hate crime be? There are clear differences between the definition used in Toronto and Edmonton for example, in which the act must have been based solely on some victim characteristic, and the broader definition in which the words "in whole or in part" are used. Clearly, a uniform definition is necessary if the statistics are to be comparable across different provinces.

2.4 Towards a Uniform Definition

Before hate crime statistics can be collected in a systematic way, a standard definition of a hate or bias crime will have to be adopted. This will necessitate a critical examination of definitions currently used by Canadian police forces or organizations outside the criminal justice system, such as B'nai Brith. Some components of the definition will be critical. For example, the definition used by the Halifax Police Department describes a hate crime as an offence motivated "in whole or in part" by hatred of certain victim characteristics. The Metropolitan Toronto Police use a more restrictive definition of a crime that is based "solely" upon a victim's race, religion, nationality, ethnic origin, sexual orientation, gender or disability.

If the more general definition is used, there are likely to be far larger numbers of hate crimes recorded by the police across Canada. The Toronto version seems overly restrictive; almost no crime is committed solely for one reason or another. As with most human behaviour, hate crime may well be multiply determined. Once again the European experience is instructive. Hate crimes committed against racial minorities in England or Jewish citizens of France have not been random in the sense that any member of the particular minority group has been targeted. Whichever definition is chosen, it must be applied across the country, or else hate crime statistics will present a distorted picture.

As noted by the Metropolitan Toronto Police in their submission to the Department of Justice Canada:

It is essential, in our view, that the definition and criteria for determining the extent of hate crime be standardized so that when comparisons are made and programs developed, the supporting data is sound and will meet the tests of integrity...[otherwise] the Metropolitan Toronto Police may report 150 hate crimes, and another police force report only 70 hate crimes. These figures, representing different criteria and definitions, would limit their usefulness in further analysis and program development.

The experience with the issue of crime definition in the United States is also worth noting. By 1994, over 35 states had enacted statutes pertaining to hate-motivated crimes. These statutes take many different forms, but all states have had to grapple with

the question of the extent of motivation required. There has been a fair amount of American case law on the issue, and the general result lies somewhere between the extremes of total and incidental motivation. That is, the state must show that the accused's hate motivation was a substantial motivation for the crime, and not just incidental to the act. However, the prosecution need not show that the crime would not have been committed in the absence of the hate motivation.

To rely on an exclusive motivation definition is likely to have the effect of seriously underestimating the incidence of hate crimes. Many hate crimes will not be classified as such if such an exclusive definition is used.

This point can readily be substantiated by comparing the hate crime statistics from two forces using different definitions, Toronto and Ottawa. As noted earlier, Toronto uses an exclusive motivation definition. In Ottawa, however, the Bias Crime Guidelines state the following:

Bias is to be reported only if the investigation reveals sufficient objective facts to conclude that the offender's actions were motivated, in whole or in part by bias (Ottawa Police Service, 1994).

Assuming that racial or ethnic hatred is *a priori* the same in the two urban centres, we would expect a much higher number of hate crimes in Toronto. There are approximately five times as many *Criminal Code* infractions in Toronto than Ottawa.⁶ It would be reasonable, therefore, to expect the incidence of reported hate crimes to be approximately five times higher in Toronto than in Ottawa. In fact, a higher proportion of racial and ethnic minorities in Toronto as compared to Ottawa would lead one to expect an even higher rate of hate crimes in Canada's largest city since these minority communities are a principal target of hate crimes. The expectation of a much higher number of hate crimes in Toronto is also sustained by B'nai Brith data from the same year (1993). B'nai Brith records almost half the incidents of anti-semitism in Canada as occurring in Toronto, with only 16 percent of all incidents taking place in Ottawa.

What do the hate crime statistics recorded by the police show? In Toronto, there were 155 hate crime incidents recorded by the police in 1993. This compares to 176 for the same period in the city of Ottawa. The explanation for this would appear to be that one force is using a higher threshold to define a hate crime (a definition that requires exclusive motivation). The same point can be made using American data. Levin and McDevitt (1993: 171) note that:

New York City recorded 525 bias crimes in 1991, while Boston recorded 218 incidents with less than one-tenth of New York's population. This statistic surely reflects the Boston Police

⁶ There were 29,972 *Criminal Code* incidents recorded in Toronto and 5,835 in Ottawa in 1993 (see Canadian Centre for Justice Statistics, 1994).

Department's more expansive bias crime definition, or, more accurately, the lower hurdle for bias intent which must be met for bias crime classification.

It is clear then, that a standard definition of hate crime as well as uniform criteria for application need to be developed. This recommendation has been made by several critical groups in the area, including the Metropolitan Toronto Police Force.⁷ As well, the less restrictive definition by the Ottawa police service (among others) would appear to be the most appropriate one.

There is of course a danger to having a less stringent definition. If the motivation is not exclusive, interpretations of what constitutes a hate crime are likely to be variable, and this will undermine the comparability of statistics.

2.5 Relationship Between Hate Crime Definitions and the Sentencing Reform Bill

Since a critical provision in the recent sentencing reform statute (Bill C-41) calls for enhanced penalties for hate crimes, there should be some consistency between police definitions of such crimes and the statutory definition contained in the Bill. According to Bill C-41, a hate crime is one which, "was motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim".⁸ This Bill is consistent with legislation introduced in other jurisdictions. For example, proposed amendments to the *Public Order Act* 1986 in England and Wales provide for a doubling of the maximum penalty for any offence where the court is satisfied that the offence was committed on racial grounds.

Comparing the Sentencing Reform Bill's definition of a hate crime to the definitions used by different police forces reveals several inconsistencies. The sentencing statute's definition is clearly broader than several of the police definitions. For example, the physical disability of the victim is grounds for augmenting the penalty for an offence as a hate crime in the sentencing Bill, but does not figure in the definition used by the Winnipeg Police Department or the Edmonton Police Service. These inconsistencies will need to be resolved. And, since the sentencing Bill definition has received the endorsement of Parliament, a strong argument can be made that the police definitions should conform to the sentencing Bill definition, and not the reverse.

The final issue to be noted in this section concerns the nature of the incident reported to the police. In all the definitions provided above, the act which is the subject of an investigation has to be criminal in nature. However, some jurisdictions do not restrict their attention to potential crimes. Hate crime statistics have been collected and analyzed in Maryland since 1981. The definition for collection procedures is the following:

⁷ See the Metro Toronto Police Force response to the Department of Justice request for data in 1994.

⁸ Bill C-41, S. 718.2 (a) (i).

To report an act which appears to be motivated or perceived to be motivated by the victim based on race, religion or ethnic background (Cook, 1991: 107).

The act is not required to be a violation of any statute.

2.6 Limitations on Official Hate Crime Statistics

2.6.1 Unreported Crimes

A central deficiency of criminal justice statistics is that a proportion of incidents are never reported to, or recorded by the police. This statistic is known as the "Dark Figure" of crime, and it varies from offence to offence as a result of a multitude of factors, including public confidence in the criminal justice system, the seriousness of the crime, the magnitude of financial incentives to report, the potential for embarrassment to the victim and many other factors (see Hood and Sparks, 1978). For some crimes like sexual assault, the so-called dark figure may be in excess of 90 percent of incidents actually committed, while for other offences such as theft of a motor vehicle or break and enter (business residence) the dark figure may be as low as 5 percent of all incidents.

What is the dark figure likely to be for hate-motivated crimes? In the absence of reliable data, estimates of the proportion of unreported hate crimes must be rather speculative. However, there are several reasons to believe that *of all forms of criminality, hate crimes are likely to be among the most underreported offences*. First, the victims (direct or indirect) as well as witnesses may fear additional victimization if the police become involved. The experience in some other jurisdictions has been that witnesses are particularly reluctant to come forward in cases of racially-motivated violence, as these crimes are frequently committed by gangs or groups of offenders. For example, in England there have been several such incidents. In the most recent, a Bengali man was almost killed by a group of 20 white youths, only one of whom was charged. Although the assault took place in broad daylight, the judge noted in sentencing this offender that the police had met with "an almost blank wall of silence in their investigations", due to apprehension of retaliation (Manchester Guardian, 1994).

Second, a large number of hate crimes involve damage to property, and can only be effectively prevented by increased surveillance. Neither public nor private resources can be stretched to include continuous monitoring of property. In several European countries, reporting incidents of hate-motivated vandalism to the police has provoked further cases of hate-motivated mischief.

Another reason why hate crimes are not reported to the police concerns apprehension on the part of victims regarding the response of the criminal justice system.

Racial minorities are a prime target of hate crimes. In fact, as police statistics presented later in this report reveal, they are the primary target of hate crimes involving violence. These same racial minorities may perceive racially motivated crimes as part of a larger problem of racism in some of Canada's major cities (see League for Human Rights, 1993). This perception of racism also includes the criminal justice system. Thus racial minorities are likely to be apprehensive of the criminal justice response to a report of a crime against someone in their community, and this may well deter them from reporting a crime. In one recent study, members of the Muslim community in Toronto, for example, expressed the view that they were not comfortable approaching the police to report a crime. This reluctance is likely to be even greater if the crime was motivated by hate or bias. In this sense, too, hate crimes are unlike other crimes.⁹ It is also the case that some immigrants may not trust the criminal justice system (and specifically police officers) as a result of negative experiences in their countries of origin. For such people, there is an additional hurdle to overcome. Police services must be aware of this and make additional efforts to reach such individuals.

Victims of hate-motivated crime may be reluctant to report such crimes to the police on account of adverse reaction to such disclosures. Members of the gay and lesbian community may not wish to publicly disclose the fact that they were at certain locations, or may fear negative repercussions if they report a hate crime based on their sexual orientation (See Herek, 1994: 102-103 for a discussion of this form of "secondary victimization"). Research in other jurisdictions has clearly shown that the stigma associated with reporting an "anti-gay" crime has meant that the vast majority of such crimes remain unreported (see Herek, 1989). One major study in America found that members of the gay community were the most frequent targets of hate crimes, although these incidents were seldom reported to the criminal justice system (see Coldren, 1991; Herek, 1994). As well, the attitudes of some police officers towards members of the gay community may well inhibit the reporting of hate crimes of this kind. For these reasons alone it would be unwise indeed to conclude that the number of anti-gay crimes recorded by the police represents the total number of incidents actually committed. Testimony before the Parliamentary committee reviewing Bill C-41, the Bill which prescribes higher penalties for hate motivated crimes, is revealing in this respect. A number of Members of Parliament questioned the utility of including sexual orientation as a ground for hate motivation since in terms of numbers, "there is not an outrageous amount" (House of Commons, November 24, 1995, 65:28).

A final reason why hate crimes might fail to be recorded appropriately has to do with the special investigative problems. In order for a crime to be classified as a hate crime, the officer must record some evidence of hate motivation. In most cases involving crimes against the person this means the offender's use of language. Police officers must pay special attention to the circumstances surrounding the commission of the offence, and without special training, this may not be done (see Levin and McDevitt, 1993: Chapter 12).

⁹ The under-reporting of hate crimes is found in many other countries as well - see testimony of Dr. Karen Mock before the Parliamentary Committee reviewing Bill C-41.

There are sound reasons, then, to believe that the incidence of unreported hate crimes is much higher than crimes in general. It is also important to point out that variation exists in terms of the likelihood that different categories of victim will report to the police. An exploration of this issue is beyond the scope of the present report, however, some statistics from the United States suggest that hate crimes directed at the gay community are particularly likely to remain hidden from the criminal justice system. Berrill (1992: 115) for example, reports findings from a national survey of more than 2,000 people in eight cities. The survey found that 15 percent had been physically assaulted, 42 percent had been threatened with physical violence and fully 93 percent reported harassment of some kind as a result of their sexual orientation. Herek and Berrill (1992: 40a) summarize additional survey data and conclude that:

the sheer number of incidents reported in these studies is staggering.....the quantitative and qualitative data gathered thus far are a frightening testament to the human cost of anti-gay bigotry.

2.6.1.1 Reporting Rates of Hate Crimes in Other Jurisdictions

Since this is the first document to provide information on hate crime incidents in Canada, it is obviously hard to make firm estimates about the percentage of such crimes that are reported to the police. Our best estimates are extrapolations from similar data in other jurisdictions. Home Office data from the United Kingdom in 1981 suggest that only one racial attack in ten was reported to the police (see Bowling, 1994). A more recent survey in London discovered an even lower reporting rate: only five percent of racial attacks were reported to the police (see London Borough of Newham, 1987).

The latest British Crime Survey showed that reporting rates were lower among Afro-Caribbean respondents when racial motivation was an element of the crime. Thus 30 percent of racially-motivated offences were reported to the police, compared to 43 percent of crime incidents without a racial element (for reasons that are unclear, this effect did not emerge from the Asian respondents). The authors of a recent report based upon the British Crime Survey (BCS) concluded:

The BCS estimate of the number of racially-motivated incidents [in England and Wales] is substantially higher than that recorded by the police. In England and Wales in 1991, 7,882 incidents were recorded by the police as having a racial element. This contrasts with the BCS 'best' estimate of 130,000 racially motivated crimes and threats over the same period (Maung and Mirrlees-Black, 1994: 20-21).

In fact, the dark figure is even greater than these figures suggest, on account of the fact that the police definition of a racially motivated incident is broader than that used in the BCS. There is no reason to suspect that reporting rates for racially-motivated attacks

would be any higher than this in Canada. *These data suggest that hate crimes involving personal injury are among the least likely forms of criminality to be reported to the criminal justice system.*

2.6.2 Classification Problems

Another reason why a hate-motivated crime may fail to enter the official statistics is that it is dependent upon an accurate classification by a police officer. Police officers are understandably reluctant to undertake a decision about the motivation of the suspect. Or, failing to appreciate the importance of determining whether the crime was motivated by hate, officers may simply ignore the issue assuming that an assault is an assault, whatever the reason for the attack. Consider an argument which rapidly escalates into a fight. In the course of the fight, racial insults are exchanged and a criminal charge is eventually laid. Was this a hate crime? Was the assault racially motivated? And if so, was racial hatred the sole motivation or simply a precipitating factor? Only the accused knows the answer to this question¹⁰, and he/she is unlikely to be forthcoming on the issue. Similar problems confront the investigation of property crimes against minorities. Unless the vandalism takes a specific form (such as spray painting racist symbols), it may pass unnoticed as a hate crime.

Another deficiency of hate crime statistics concerns the question of representativeness. As noted earlier, only a minority of sexual assaults are reported to the police. This means that a portrait of the nature of sexual assault based upon cases processed by the courts is unlikely to reflect the true nature of the crime. The same argument applies to hate-motivated crimes. The portrait of hate motivated crime that emerges from official statistics may be very different from the portrait that emerges from a victimization survey which includes incidents that were not processed by the criminal justice system.

For a variety of reasons, then, the hate crime statistics that have been collected to date probably underestimate the incidence of this form of crime, as well as presenting a distorted view of the kinds of hate crimes committed and the groups that are most likely to be targeted.

Conclusion

Extrapolating from research in other countries, it would appear that only a small percentage of hate motivated crimes -- perhaps one incident in ten -- are ever reported to the criminal justice system.

2.7 Data Sources

¹⁰ As the principal witness, the victim too may have some insight into the question.

The data reviewed in this report are drawn from several sources. However, it should be clear from the outset that these sources represent only a fraction of the groups in Canada that have a stake in the issue of hate crime. These data were provided to the Department of Justice Canada in response to a request for information sent in 1994 to police forces across the country as well as to certain organizations such as B'nai Brith Canada that are known to collect statistics relating to hate crimes. The elusive nature of hate crimes means that perhaps more than any other form of criminality, a true picture of the prevalence of this crime can only be obtained by drawing upon diverse sources. These include criminal justice statistics (such as police data), victimization surveys, as well as sources outside the criminal justice system such as the periodic surveys conducted by B'nai Brith or the calls made to gay/lesbian assistance hotlines.

3.0 FINDINGS

3.1 Hate Crimes in Other Jurisdictions

As noted in the introduction, the phenomenon of hate crime is truly universal. Although a complete international survey is beyond the scope of this report, some data from the United States and the United Kingdom are presented to give the reader an idea of the extent and nature of the problem in those jurisdictions. These countries have been selected because they most closely resemble the Canadian context (in terms of legal culture and socio-cultural history) as well as because they are the jurisdictions with the most reliable crime statistics relating to hate motivation.

3.1.1 United States¹¹

According to the 1990 *Hate Crime Statistics Act* (to be described in greater detail later in this report), the federal Attorney General is mandated to acquire hate crime statistics. Since that year, these statistics have been available from the United States Federal Department of Justice. Table 1 provides a breakdown of hate crimes recorded by police across the United States in 1992. These data are drawn from law enforcement agencies in over 40 states. These participating agencies covered slightly over half the United States population (all data tables can be found in Appendix A of this report). As can be seen, the most frequent offence category of hate crime is threats, accounting for over one-third of all recorded incidents. This is followed by mischief/vandalism (23 percent of incidents) and simple assault (20 percent). Personal injury offences account for over one-third of incidents. In total, almost 9,000 incidents were recorded by the Federal Bureau of Investigation in the most recent year for which data are available at the time of writing.

Table 2 presents a classification of the hate crimes in the United States broken down according to the nature of the group targeted, from which it can be seen that the most frequent targets -- accounting for almost two-thirds of the incidents -- were racial minorities. The three other target categories (ethnic groups, religious groups and certain sexual orientation) each account for approximately the same percentage of incidents (between 10 and 15 percent). Within these categories, the following trends emerged. The most frequent racial category victimized was Black Americans, accounting for 59 percent of incidents. White American victims accounted for slightly less than half all the incidents in this category. Hispanic victims accounted for the majority of incidents in the ethnicity category, while anti-semitic incidents accounted for the vast majority (88 percent) of incidents in the religion category. Almost three-quarters (72 percent) of the sexual orientation category were crimes against gay persons.

¹¹ See Federal Bureau of Investigation, 1992, for more information about hate crime statistics from different American states.

These data should not be interpreted as firm indicators of the relative incidence of different forms of hate crime. Rather, they presumably reflect both the actual incidence of such crimes as well as the likelihood that victims will report to the police. If some victims such as members of the gay and lesbian community (and as noted earlier, research suggests that this is in fact the case) are less likely to report than other victims, then the pattern of relative frequency revealed by this table is going to be distorted.

Table 3 provides a similar breakdown of hate crimes by target category in a major metropolitan centre which has collected hate crime statistics for some time (New York City). As can be seen in this table, the pattern is fairly similar to that found at the national level.

Table 4 gives a breakdown of hate crime target categories in New York city. This table shows that there is a clear relationship between the nature of the group targeted, and the offence committed. Hate crimes directed against individuals on the basis of their race, ethnicity or sexual orientation are more likely to be crimes against the person (e.g., assault). Thus over 40 percent of hate crimes against these three target groups were crimes of assault. By contrast, only six percent of hate crimes directed against religious targets were crimes of physical violence. The most likely category of hate crime involving a religious target was mischief, which accounted for over half the incidents recorded.

3.1.2 United Kingdom

The data from the United Kingdom are of particular interest because they derive from two sources: a victimization survey and criminal incidents recorded by the police. Thus they include reported as well as unreported incidents. It is important to reiterate that the general term "hate crime" is not used in England and Wales¹²; the data pertain only to racially-motivated crime.

3.1.2.1 British Crime Survey (BCS)

The victimization survey data come from the latest administration of the British Crime Survey. This is a large survey of a nationally representative sample of approximately 10,000 adults in England and Wales which has been carried out repeatedly since 1982. It includes victimizations that occurred in the 12 months preceding the survey, whether they were reported to the police or not (see Mayhew, Maung and Mirrlees-Black, 1993, for further information on the BCS). Members of ethnic minorities were asked whether or not they thought that an incident had been racially motivated. Table 5 provides estimates of the numbers of incidents that respondents perceived to be racially motivated. Ranges are

¹² Scotland has a separate criminal justice system.

provided rather than specific numbers. As can be seen, the BCS data suggest that over 100,000 racially-motivated crimes occurred in the year covered by the survey. If a broader definition of hate crime had been used, one which included crimes such as anti-semitic incidents, the totals would obviously have been higher still.

Table 6 provides a breakdown of the proportion of incidents reported to the BCS survey for two minority groups: Afro-Caribbean and Asian. As can be seen, high percentages of certain crimes against these groups were perceived by the survey respondents to have been racially motivated. For example, over half the threats directed at Asian respondents were perceived by the victim to have been racially motivated. Almost half the incidents of assault against Asians, and almost half the incidents of assault against Afro-Caribbeans were racially-motivated (see Maung and Mirrlees-Black, 1994, for further information).

By comparing the BCS data to the number of racially-motivated crimes reported to the police, we can see shed light on the reporting rate of incidents of this crime. Fitzgerald (1995) reports the number of racial incidents reported to the police in England and Wales over the period 1988 to 1992.¹³ It is clear that the number of racial incidents reported to the police in 1992 is a small fraction of the number of incidents captured by the British Crime Survey (7,734).

3.2 Canada

3.2.1 Hate Crime Statistics Recorded by the Police

The collection of hate crime statistics by different police services across Canada is sufficiently variable to preclude an integrated analysis. Accordingly, statistics from those forces that participated in this survey and who provided data to the Department of Justice Canada will be summarized and discussed on an individual basis. At the conclusion of this section some summary statements will be made. It should be noted that the police forces represented here are those that responded with empirical data, although these data were not always in the form that permitted detailed secondary analysis. Some forces have not yet commenced the collection of hate crime data. The Ontario Provincial Police, for example, do not collect hate crime statistics, and there are no provisions for the collection of such data in the near future. The reason for this appears to be recognition that hate crime is largely an urban problem in Canada. The discussion that follows reflects the information submitted to the Department of Justice Canada. The reader should be aware that other forces may well have similar hate crime units, although this was not made known to the Department at the time that this survey was conducted. Appendix D

¹³ See Fitzgerald (1995) for discussion of differences between the increase in racially motivated crimes in official statistics versus victimization surveys.

contains a list of contact persons for the Hate Crime Units in the organizations contacted for this project.

3.2.1.1 Toronto

The Metropolitan Toronto Police Force began to systematically collect data on hate crimes in January 1993. This activity is part of an extensive hate crime initiative which reaches into the community. In addition to its investigative activities, the Hate Crime Unit also participates in public education in the area. For example, hate crime and hate propaganda posters and pamphlets have been developed and distributed to schools in the Toronto area. Members of the Hate Crime Unit also receive additional training. One benefit of the statistical data collected to date is that the Hate Crime Unit has initiated consultations with educators, community groups as well as other police officers in order to establish additional partnerships aimed at preventing and responding to crimes motivated by hate or bias. Since data for the whole of 1994 were not available at the time this report was written, most of the Toronto data discussed here come from 1993.

Table 7 provides a breakdown of hate crimes as a function of the nature of the group targeted. As can be seen, racial minorities account for the greatest percentage of incidents (50 percent), followed by religious groups (35 percent), sexual orientation (10 percent) and then ethnicity/nationality (5 percent). It should be noted that this breakdown may well reflect differential willingness to turn to the criminal justice system. If, as the research literature in other countries suggests, gay individuals are less likely to report crimes to the police, these statistics may under-represent the threat to the gay community, relative to other minorities, racial or otherwise.

Additional information was provided by the Toronto Police Service regarding the nature of the targets within specific target groups. Almost half (48 percent) of the racial incidents were directed against black individuals. The next most frequently targeted groups were East Indians (22 percent of incidents) and Asians (8 percent). Thirteen percent of the incidents were classified as multi-bias incidents and 8 percent were hate crimes directed at white targets. Turning to the classification of crimes in terms of ethnicity rather than race, it is clear that no particular ethnic group was targeted more frequently than any other. Almost all (94 percent) of the sexual orientation hate crimes were directed at gay males rather than lesbians. Not surprisingly, in light of the data from other sources, the vast majority of religious hate crimes (89 percent) were anti-semitic in nature.

Table 8 presents a breakdown of the Toronto police data according to offence category. Mischief (over and under combined) accounts for 39 percent of incidents recorded by the police. Assault is the next most frequent category, accounting for one incident in four.

The data from Toronto also show that personal injury offences are more likely to be directed to racial minorities, as the following statistics for the two most frequent offence categories reveal. Of the assault reports, over three-quarters (77 percent) were directed at racial groups. Religious groups were more likely to be the victims of property crimes: almost a third of mischief offences were directed at religious groups, but only seven percent of the assaults were directed at this target category (see Table 9).

The Toronto data are also useful because they provide some insight into the typical offender. The majority of the offenders arrested for a hate crime were young males under 20 years of age. Most were first offenders. These findings are consistent with research conducted in other jurisdictions. Thus Levin and McDevitt (1993) report that in New York City, the median age of hate crime offenders was 18, almost 10 years younger than the median for offenders in general. In Sweden, most hate crime offenders were under twenty at the time of the commission of the offence (see Loow, 1995).

Data from the first six months of 1994 show a modest increase in the proportion of all hate crimes directed at racial groups (50 to 58 percent) with a corresponding decline in the amount of hate crime involving religious groups. This is worth noting because it means there has been an increase in the proportion of hate crimes involving offences against the person, since racial hate crimes are far more likely to involve violence (than are hate crimes directed at religious targets - see below).

The data from the first half of 1994 are also noteworthy because they suggest an increase in the absolute level of hate crime activity in the city of Toronto. A total of 112 occurrences were recorded in this period. This is a 55 percent increase in reported hate crime incidents over the preceding year. However, it is important to point out that as with changes in other crime trends, this increase could also reflect an increased willingness to report such incidents to the criminal justice system. The police appear to attribute the increase to greater public confidence in the Metropolitan Toronto Force.¹⁴

It seems more likely that the increase reflects a genuine increase in the number of hate crimes as well as a shift in the mix of offences. The trend observed in the police statistics confirms what was noted in the B'nai Brith data from the same year (see later section of this report). Since the B'nai Brith data are independent of the police and are unaffected by public expectations of the criminal justice response, this suggests a genuine increase in offending. As for the offence mix, it is clear that there has been an increase in the proportion of hate

¹⁴ A memorandum from the Chief of Police notes that: "The 51% increase of reported hate crime incidents is indicative of the increased community awareness and the Force's commitment to its proactive strategy. The increase further appears to be an indicator of the public's confidence in having the police properly investigate these offences" (p. 2).

crimes that involve violence, and personal injury offences are more likely to be reported to the police than crimes involving property. This would have the effect of inflating the statistics.

3.2.1.2 Police de la Communauté urbaine de Montréal

This police service began collecting data on anti-semitic incidents in 1988. In 1990, racially-motivated crimes were added and this was followed in 1992 by the creation of a computerized database, to which officers were required to submit reports. The hate crime initiative was formally created in 1994, and comprehensive reports on hate crime activity are now released on a regular basis (three times a year). As well, an annual report is published. In addition to the collection of systematic statistics and the prosecution of hate crimes, individuals from the Montreal force also participate in conferences and workshops on the subject of responding to hate crimes. For the purposes of the present report, findings derive from the period January 1, 1994 to December 31, 1994. In this period there were 199 incidents of hate-motivated crimes in the Montreal community that were recorded by the police. Of these, the vast majority (79 percent) were directed at racial minorities: no other target category accounted for more than nine percent of the incidents recorded (see Table 10).

Overall, two-thirds of the hate crime incidents recorded in Montreal in 1994 involved crimes against the person, with the remaining one-third classified as property crimes. A more detailed offence breakdown is provided in Table 11. As can be seen, assault was the offence which accounted for the greatest percentage of reports (34 percent).

An interesting interaction exists between the nature of the crime and the particular group targeted. Hate crimes directed against gays are significantly more likely to involve violence. Thus almost nine out of ten hate crimes against gay targets involve violence, while only 30 percent of anti-semitic hate crimes involved a crime against the person. Anti-black hate crimes fell between these two extremes: 69 percent of hate crime incidents were crimes against the person. The 1994 annual report concludes from this that the anti-semitic incidents are the work of racist organizations, while the other two categories are more likely to be accounted for by individual acts of racial intolerance.

Since 1994 was the first year of full collection of comprehensive data, historical comparisons are problematic. However, examination of the anti-semitic statistics show a relatively stable pattern over the period 1988 to 1992, with a significant increase over the last two years for which such statistics are available (1992-1994). It is not clear what is responsible for this recent increase, although it seems consistent with increases elsewhere. The final observation about the Montreal data is that several districts have particularly high rates of hate crime

incidents. Thus while two-thirds of the districts have relatively uniform rates, five districts report numbers of incidents up to five times in excess of the area average.

Data from the Montreal police also provide information on the criminal justice outcome in hate crime incidents. A criminal charge was laid in 17 percent of the 198¹⁵ incidents reported. While this may seem like a small percentage, two considerations should be borne in mind. First, a significant number of hate crimes are directed against property, and a criminal charge is laid in only a small percentage of property crimes recorded by the police. For example, in 1993 (the most recent year for which data are available), the "cleared by charge" statistic for Canada (aggregated across offences) was 16 percent (Canadian Centre for Justice Statistics, 1994). Second, it is clear from research in other jurisdictions that hate crimes are notoriously hard to clear by the laying of a charge. A charge rate for hate crimes that is slightly higher than the average rate of charging shows the additional effort that police agencies have directed to this form of criminality.

3.2.1.3 Ottawa

The Ottawa Police Service has perhaps the most organized bias crime unit in the country. The unit evolved out of sustained liaison with the community of Ottawa. The experience in Ottawa shows that the police-community partnership is a critical way of responding to the special problems created by hate crimes. The Ottawa Unit is unique in other respects too. As a recent publication notes:

What makes the [Ottawa Carleton Regional Police Bias Crime] Unit different is that there is a legitimate investigative function. In addition, the Unit has an intelligence and educational component. We believe that all three are necessary in order to properly address the concern of bias motivated crimes (Ottawa Police Service, 1994: 1).

The Ottawa Carleton Regional Police Bias Crime Unit was established in January 1993. Modelled on the Boston Police Department's Community Disorders Unit, it reflects a grass-roots approach to the problem hate crimes which stresses the importance of consultation with community groups. The unit is comprised of two investigators and a sergeant. In addition to its investigative function, the Unit is also very active in community education. Members of the Unit deliver lectures to community groups, minority groups as well as the news media.

¹⁵ Charges were laid against 33 accused out of a total of 190 incidents (8 incidents were declared "unfounded").

The Ottawa Police Service submission to the Department of Justice Canada request contains hate crime statistics for a two-year period from January 1993 to December 1994. In 1993, there were 176 hate crime incidents recorded by the Ottawa Police Bias Crime Unit. This rose to 211 in 1994. Over the two-year period covered by the data, there were 387 cases. Consistent with the trends in Toronto and Montreal, Table 12 shows that the most frequent targets of hate crimes in Ottawa were racial minorities, followed by religious groups. Table 13 shows that Blacks are the most frequently targeted racial group. Anti-semitic incidents accounted for almost all (87 percent) of the religious category. Of the 45 incidents directed at individuals on account of their sexual orientation, 93 percent were directed at males, 7 percent at females.

It is clear that the interaction between the nature of the crime and the nature of the target group is replicated in the Ottawa statistics. That is, the vast majority of hate crimes directed against racial minorities involved violence or the threat of violence. Cases of vandalism against this target group accounted for a small percentage of incidents. Anti-semitic hate crimes on the other hand were far more likely to involve mischief or vandalism.

3.2.1.4 Ontario Provincial Police

While it is anticipated that such information may be required in the future, at the present time the O.P.P. have not yet begun to collect hate crime statistics. It is worth noting however that a guidelines exist for the investigation of hate-motivated crime. These guidelines include an explanatory description of hate crimes, along with explicit criteria for identifying hate-motivated incidents.

3.2.1.5 Sûreté du Québec

Since hate crimes are concentrated in urban centres (in Canada at least), this organization has no statistical data relating to such offences.

3.2.1.6 City of Halifax Police Department

Collection of statistics relating to hate crimes began in January 1994. The Halifax Police Department has taken steps to ensure that all members of the force are aware of the existence of hate crimes. The Halifax Police Department has appointed a Race Relations Coordinator, with a mandate to raise and promote awareness both in the community and the force itself, of the problem of hate crimes. This police department recorded only three hate crime incidents over the most recent period for which data are available (January to October, 1994).

3.2.1.7 Edmonton Police Service

The Edmonton Police Service has been involved in identifying and collecting statistics on Bias Motivated Crimes since September 1994. Since that time, all members of the force have been trained in responding to incidents of hate-motivated crime. This police service recorded three incidents of hate crimes for the period September to November 1994. Two of these were directed against racial minorities, the third was an incident of anti-semitism.

3.2.1.8 Other Police Agencies

Finally, it is worth noting that some police agencies (such as the Vancouver Police) have a hate crime policy in practice, and also record hate crimes, although they did not participate in the survey which gave rise to this report.

3.2.2 Aggregate Trends

Since there is considerable variability in terms of the targets selected in different parts of the country, Table 15 provides a breakdown of target categories for all reported incidents combined. These percentages are weighted to reflect the different rates of reporting, and do not include the B'nai Brith data or incidents of crimes against gays or lesbians (which will be discussed later in this report). As can be seen, 61 percent of the almost 1,000 hate crime incidents recorded by the police were directed at racial minorities. The next most frequent category was religious groups, (almost all anti-semitic incidents), followed by sexual orientation and ethnic origin. This table also presents a breakdown of hate crime targets from the United States. It is interesting to note that the pattern of victimization is very similar in the two countries: racial minorities account for almost two-thirds of all incidents recorded by the police.

Following analyses used in other countries, it is possible to generate an estimate of the number of hate crimes that occur in Canada on an annual basis. Such an estimate will of course be highly speculative. Nevertheless, using the Ottawa police statistics as a basis, we can perform some extrapolations. There is no reason to suppose that Ottawa has a higher than average incidence of hate crimes. Indeed, the relatively small percentage of non-white residents (compared to Toronto for example) suggests that a broader estimate of the number of hate crimes based on the Ottawa statistics is likely to underestimate the magnitude of the problem.

Since hate crime is largely (although not necessarily exclusively) an urban phenomenon, we shall restrict the analysis to the following major urban centres: Halifax; Montreal; Ottawa; Toronto; Winnipeg; Regina; Calgary; Edmonton; Vancouver. The analysis that follows draws upon recently published crime statistics for these cities (see

Hendrick, 1995). The data are drawn from 1994. In that year, the police in Ottawa recorded 211 hate crimes. If we assume a reporting rate of one third, this means that 633 verified (i.e., founded) incidents occurred in that year. Since Ottawa accounts for 7 percent of the total *Criminal Code* infractions for this group of urban centres, an estimate of the total number of hate crimes committed in these cities would be slightly under 60,000 (59,502). Such an estimate is not out of line with other countries. It will be recalled that it was estimated that there were over 100,000 racially-motivated crimes in the United Kingdom, and this estimate was based on a single form of hate crime. If a lower reporting rate was used in the calculation, the total number of estimated incidents would obviously be higher. The accuracy of an estimate of this kind remains to be verified by future research drawing upon victimization surveys. However accurate it turns out to be, one trend is clear: using police statistics as the sole index of hate crime activity is going to seriously underestimate the magnitude of the problem across the country.

As noted in the introduction, hate crimes are among the most under-reported offences. This means that an examination of hate crimes derived from the criminal justice system (i.e., incidents recorded by the police) would seriously underestimate the prevalence of these incidents, as well as distort the nature of the problem. For this reason, at this point we turn to hate crime statistics derived from two sources outside the criminal justice system. These two sources were selected because they represent the groups most often affected by hate.

3.2.2.1 B'nai Brith Data

The best data available on the incidence of hate crimes of a particular category in Canada come from the League for Human Rights of B'nai Brith Canada. These statistics have been compiled for over a decade now, and are publicly available in the annual "Audit of Anti-Semitic Incidents". Since the same definitions (and criteria for inclusion) have been used over this period, and the same mechanisms employed to record incidents, this data base provides a unique historical record of hate crimes in Canada over the past 13 years. The B'nai Brith database is therefore a vital resource for anyone wishing to know more about the incidence of hate crimes. These data are restricted to incidents of anti-semitism. However, anti-semitic hate crimes constitute one of the principal hate crime targets in Canada, and the principal hate crime target in other jurisdictions as well. The B'nai Brith data are presented separately in this report because they are qualitatively different from the statistics recorded by the police (although some of the incidents recorded by the B'nai Brith will presumably have also been reported to the police).

Incidents included in the database are classified either as episodes of vandalism or harassment. The annual document describes the former as:

an act involving physical damage to property. It includes graffiti, swastikas, desecrations of cemeteries and synagogues, other property damage, arson and other criminal acts such as thefts and break-ins where an anti-semitic motive can be determined (League for Human Rights, 1995: 3).

"Harassment" includes "anti-semitic hate propaganda distribution, hate mail and verbal slurs or acts of discrimination against individuals. Death threats and bomb threats against individuals and property, as well as any kind of physical assault" (League for Human Rights, 1995: 3).

It is clear then, that the B'nai Brith data are more inclusive than hate crime statistics gathered by the police. Some of the incidents that are included in the B'nai Brith database would not be considered crimes, even though the social harm may be as great or greater than a crime, and the acts may be even more morally reprehensible.¹⁶ The B'nai Brith data provide a broader insight into hate-motivated behaviour than can be obtained from police reports. For this reason, the B'nai Brith data will be referred to as hate activity incidents, rather than crimes, *per se*.

Before describing recent trends in anti-semitic incidents, it is worth making a few observations about the B'nai Brith statistics. First, these incidents are primarily the result of reports by victims themselves. This differs from police statistics, where a higher proportion are likely to arise from witnesses. Second, not all reports result in an entry in the annual Audit. The League for Human Rights conducts a thorough investigation of each incident in order to establish that anti-semitism was indeed the underlying motivation. Third, an attempt is made to ensure comparability from year to year, so that the database is unaffected by changing thresholds of proof. The criteria for inclusion have been constant since the Audit was established in 1982. In this sense, on a national level the B'nai Brith statistics are purer than criminal justice statistics which, as noted earlier, use variable definitions of what constitutes a hate crime. Finally, it is important to point out that, as with police statistics, the B'nai Brith data represent but a fraction of incidents of anti-semitism in this country. For a number of reasons, a great deal of anti-semitism passes unrecorded by either the police or B'nai Brith. *When the 1994 Audit reports 290 incidents, it should not be taken that this represents anything other than a fraction of the true total of anti-semitic incidents across Canada.*

Table 16 provides a breakdown of anti-semitic incidents recorded by the League for Human Rights since 1982. Several trends are apparent from this table.

¹⁶ Of course this limitation cuts both ways: not all the incidents in the B'nai Brith data-base are criminal in nature, but equally so, not all the crimes are going to be captured in official crime statistics, for reasons discussed earlier in this report.

First, there has been a steady increase in the recorded number of anti-semitic incidents over the decade, rising from 63 in 1982 to almost 300 in 1994, the most recent year for which data are currently available. Second, harassment incidents have accounted for approximately two-thirds of all incidents over the entire period. Third, there has been a dramatic increase in the number of incidents recorded in recent years. Thus there were 196 incidents recorded in 1992. The total for 1994 was 290, which represents an almost 50 percent increase in two years. These data underline the fact that anti-semitism is clearly a social problem in Canada.

Table 17 makes it clear that incidents of anti-semitism reported to and recorded by the League for Human Rights are concentrated in three principal cities: Montreal, Toronto and Ottawa. Together these cities account for over 80 percent of the incidents of anti-semitism in Canada that are captured by this database. There are several possible explanations for this finding. These three cities have large Jewish communities. This increases the number of potential targets. As well, awareness of the League for Human Rights Audit may be greater in these cities, thereby increasing the likelihood that a victim will contact the B'nai Brith.

3.2.2.2 Hate Crimes Directed at Gays and Lesbians

The second non-criminal justice source of data drawn upon in this report concerns hate-motivated crimes directed against gays and lesbians. The research literature in other jurisdictions makes it clear that gays and lesbians are a prime target for hate-motivated crimes, and have been for many years. In addition, gay and lesbian victims are probably less likely to report to the police than any other group. *For this reason, a portrait of hate crime incidents in Canada would be inadequate without some information about crimes directed against gays and lesbians.* The data provided in this report are far from exhaustive; they derive from organizations in two major cities: Toronto and Montreal. They are provided to give an indication of the scope of the problem within the gay community.

Toronto

The principal source of information about hate crimes in Toronto is the 519 Church St. Community Centre. One of the activities of this community centre was the creation, in 1990, of a "Gay and Lesbian Bashing Hotline". A confidential report is completed about all calls to this line. This information is then communicated to the police for further investigation. The line is available during the Centre's opening hours. In mid-November 1994, the Centre hired a full-time Trainer and Educator for the Victim Assistance Program. This individual currently processes all the reports made to the line. As well, she trains

volunteers to handle incoming reports. The line is now known as the Lesbian and Gay Bashing Reporting and Information Line.

Two caveats are worth making regarding these data. First, it is important to note that, as with police statistics, these data do not capture the all the incidents of anti-gay activity taking place in Toronto. The majority of incidents are, for a variety of reasons, reported neither to the hotline nor the police. Second, these data -- like the British Crime Survey data (but unlike the police statistics) -- consist of reports of incidents in which the victim reports the hate motivation. It is possible that some of these incidents involve crimes that were not motivated by hatred of gays or lesbians, but were seen that way by the victim.¹⁷

Over 90 percent of the calls to the Toronto hotline were made by gay men. However, this statistic should not be taken to suggest that lesbians are significantly less likely to be the target of harassment or assault on the grounds of their sexual orientation. Although no direct evidence is available in Canada, research in other countries suggests that the nine to one ratio represents a differential willingness to report incidents to either a hotline or the police and that, in fact, lesbians are almost as likely to be the target of hate-motivated crimes as gay men.

Table 18 presents a breakdown of incidents reported to the hotline over the period January 1, 1990 to April 1, 1995. As can be seen, there is a high incidence of physical assault: almost half (46 percent) of the incidents involved some form of physical assault. Almost a third of incidents involved some form of verbal harassment, while 15 percent of reports involved a threat of some form. Less than 10 percent were hate-motivated cases of vandalism or theft. A further 12 reports were made concerning reports of assaults against gays by police officers (these are not included in Table 18). Some indication of the gravity of the incidents reported to the hotline can be found in Table 19, which provides a breakdown of the 50 percent of respondents who reported some form of injury. All respondents reported bruising of some kind, with almost one in five reporting a fracture (percentages exceed 100 percent due to multiple responses). Of the 22 cases of head injuries, one-third resulted in concussion. These data suggest that crimes of violence directed against gays and lesbians involve a greater degree of injury than the average assault. The revised U.C.R. survey contains information on the severity of assaults reported to the police across Canada. Recent statistics show that of all assaults reported involving a male victim, major injuries were involved in fewer than one case in ten reported to the police (see Roberts, 1994c: 83). This is also consistent with research in the United States.

The majority of these incidents (53 percent) had not been reported to the police. Approximately 40 percent had been reported to the police, while a further

¹⁷ Once again, the reverse may also be true. Individual victims may be selected by offenders on the basis of their race, ethnicity or sexual orientation without this being known to the victim.

three individuals planned to report the incident. This information was unavailable for 14 cases (no information are directly available on why individual victims did not report the incident). The fact that most incidents had not been reported to the police explains, in part, why such a small number result in official action by the criminal justice system. Of the 239 reports recorded by the hotline, only 104 were reported to the police. Of these, charges were laid in 8 cases, and convictions recorded in only 2 cases. Convictions are recorded in a very small percentage of crimes committed. However, the data from the 519 Church Street Toronto Hotline suggest that a much smaller percentage of hate crimes result in a conviction. Recent data from Statistics Canada show that on average, a conviction is recorded in approximately one crime in twenty. *The percentage of hate crimes resulting in a conviction is clearly much smaller.*

An analysis of calls to a hotline is no substitute for systematic research. For obvious reasons, such calls are likely to represent a somewhat distorted image of violence against the gay community. Nevertheless, in the absence of more rigorous research, this source of information is the best available. However, superior data relating to anti-gay incidents in Toronto will soon be available. In 1995, the 519 Church Street Community Centre conducted a survey of the gay and lesbian community in Toronto. The questionnaire contained a number of in-depth questions relating to harassment and physical and verbal abuse. Since it was a survey, and not an analysis of calls to a hotline, the responses are likely to give a far more accurate image of anti-gay violence in the Toronto Community.¹⁸

Montreal

Unfortunately, statistics on hate crimes in Montreal are restricted to the police data. The only non-criminal justice data come from a study conducted by the Table de concertation des lesbiennes et des gais du Grand Montreal. This study was conducted over a three-month period in 1993. It was discontinued only as a result of a lack of resources. Over the period covered there were 54 reported incidents. However, some of these reports (as with other victimization surveys) concerned incidents that took place prior to the period covered by the survey. Accordingly, it is impossible to draw conclusions about the numbers of incidents, and whether the rate of anti-gay crime is higher in Montreal than Toronto. However, the data are useful for providing information on the nature of the crimes. The Montreal statistics confirm the picture emerging from Toronto. Thus, over half the incidents involved violence. In fact, acts of aggression were the most frequent category of incident reported. Almost all (83 percent) of the victims were gay men. Almost half the incidents resulted in physical trauma, and one-quarter resulted in material loss of some kind.

¹⁸ The results of the survey should be available in early 1996. Readers interested in further information are advised to contact the 519 Church street Community Centre in Toronto, the address of which is provided in the Appendix to this report.

These data support the findings from other jurisdictions which show that crimes of hate directed against the gay community are more likely to involve violence, or the threat of violence, than hate crimes directed at other groups.

Before leaving the Montreal data it is worth noting that evidence exists in that city of the most extreme form of hate crime. In December 1992, two gay men were murdered by groups of teenagers, and since then there have been several more such incidents. Over the period 1988 to 1995, thirty gay individuals have been murdered under conditions that strongly suggest a homophobic motivation. In March, 1995, *The Globe and Mail* reported the murder of Quebec actor Richard Niquette, who was stabbed to death by men who preyed on homosexuals. The *Globe* noted that he was the "19th gay man to be killed under similar circumstances in the past four years" (*Globe and Mail*, March 3, 1995). This most extreme form of hate crime, which can provoke widespread alarm among members of the community, clearly requires a vigorous response from the criminal justice system, beginning with the police.

Finally, it should be noted that some respondents in both cities reported acts of aggression by police officers. These remain unsubstantiated at present, and until evidence is adduced to substantiate them it would be unwise to judge the officers concerned. However, acts of aggression by police officers are obviously far more serious than similar crimes by civilians as they undermine public confidence and reduce still further the likelihood that these crimes will be reported to the criminal justice system.

4.0 DISCUSSION

There are several reasons why we need better information on the incidence and nature of hate crimes in Canada than is currently available. First, because the magnitude of the problem has yet to be fully appreciated by many people, and one reason for this is that hate crimes are under-reported. In this respect, Canada differs from the United Kingdom, where as Fitzgerald (1995:4) notes:

we no longer need to measure the problem in order to prove that it exists. That is, despite the variation between results generated in different places by different methods, the cumulative evidence makes it impossible to deny that there is a problem.

Second, we need to understand which groups are being targeted and to allocate criminal justice resources in an efficient and effective manner. Third, better information would make it possible to evaluate the efficacy of the justice system (and community-based) response.

4.1 Hate Crime Statistics: Data Collection Issues

One conclusion, then, from the research initiative that gave rise to this report is that we need better information about the incidence of hate crimes in Canada. There are several ways that our knowledge of hate crime can be improved. One is simply to encourage more police forces and special interest groups to collect data relating to hate crime incidents. Over time, this will surely result in better data. However, inconsistencies will still remain, and in all likelihood certain forms of hate crime will remain highly under-reported. The alternative solution is to promote a truly national data-collection initiative. At this point a summary of the arguments for and against such a strategy are made.

4.2 Advantages of Collecting National Data

4.2.1 Consistency

Defining a hate or bias crime is far from easy. As noted in earlier sections of this document, a large number of definitions have been proposed and are in use in Canada and elsewhere, and it is clear that different organizations follow different approaches to data collection. There is even considerable variability between police forces (see earlier sections of this report). The result is inevitably a lack of consistency. If there were a national strategy focused upon the collection of such data, we would have a much more accurate idea of the true nature and scope of hate crime activity in the country. This knowledge would then inform policy development in terms of issues such as penalty

enhancements for hate crimes, creation of new offences, revisions to the statutory maximum penalties and so forth.

4.2.2 Recognition of Harm

The principle of proportionality is central to the sentencing process in Canada. This means that the severity of sentences should be directly proportional to the seriousness of the crimes for which they are imposed. The principle of proportionality will be enshrined in a statute, as a result of the Sentencing Reform Bill (C-41)¹⁹. This Bill contains a provision (s. 718.1) which states that, "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender." Gravity can be considered the harm threatened or inflicted. Hate or bias crimes carry an added dimension of crime seriousness. This dimension includes elements such as the threat to other members of group victimized, as well as the affront to the general community (Roberts, 1994a). So long as most hate crimes (with a few exceptions) continue to be hidden from criminal justice awareness, the element of harm will not be fully reflected in sentencing patterns at the trial court level.

4.2.3 Integrating Different Components of the Criminal Justice System

When the Sentencing Reform Bill (C-41) becomes law (early in 1996), there will be an even greater need to collect accurate data about the incidence of hate crimes. One provision in the Bill (s. 718.2 (a) (i)) provides a statutory aggravating circumstance where there is "evidence that the offence was motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim". This provision reflects current case law and is consistent with enhanced penalties for hate crimes that are found in other jurisdictions such as the United States (see Roberts, 1994a). If the aggravated penalty provision contained in Bill C-41 is to be more than purely symbolic, it will be necessary to have reliable information about hate crimes. This is what I refer to as integrating the information collecting function and the sentencing process. In fact, the successful prosecution of hate-motivated crimes will depend upon systematic investigation of evidence relating to the motivation of the offender. If this is not done, hate-motivated crimes will seldom result in the enhanced penalty prescribed by the Sentencing Bill.

There is also a strong argument to be made that better defining hate crimes will have a positive pedagogic effect on the criminal justice system and society in general. At the present time, many crimes that are motivated by hate or bias are not recognized as such by the system or in terms of social reaction. A few years ago in Toronto, a number of youths participated in the killing of a man that they believed to be homosexual. This was a clear case of a hate crime, and yet no mention of this was made in media reports at

¹⁹ *An Act to Amend the Criminal Code (sentencing) and Other Acts in consequence thereof*. Statutes of Canada 1995, Chapter 22. Assented to 13th July 1995.

the time. According to the new sentencing *Act*, a harsher sentence should be imposed for a crime (in this case the conviction was manslaughter) which was motivated by hate. If acknowledgement of this were to be entered into the reasons for sentence²⁰, and if these reasons were then publicized, the result may well be increased public and professional awareness of hate-motivated crime.

One of the most compelling arguments in favour of national statistics is that minority groups themselves -- the people most directly affected by hate crimes -- are strongly in favour of better information regarding the incidence and prevalence of this kind of crime. Finally, many of the policy recommendations by groups such as the B'nai Brith of Canada cannot be implemented without having systematic data on hate crimes across the country.

4.2.4 Ensuring That All Target Groups are Covered

In the course of describing hate crime statistics from other jurisdictions, we have seen that hate crimes are directed at a number of different targets. By leaving the task of data collection to specific groups, we run the risk of failing to take into account hate crimes directed at groups without sufficient resources to collect such data, or groups who are not recognized by criminal justice authorities as legitimate targets of hate-motivated crime.

4.2.5 Utility to Local Communities

There is also a utility to communities in having reliable hate crime statistics. It is important for a community to know the extent of the problem, and to be able to place the problem in some kind of national context. As well, communities need to know where the problem is greatest and who is being targeted. They can only know this if reliable statistics exist.

4.2.6 Following Best Practices Elsewhere

It is also important to note that the national collection of hate crime statistics is consistent with the practice followed in other jurisdictions that have a great deal in common with Canada, namely the United Kingdom and the United States.

4.3 Disadvantages of National Collection

4.3.1 Resources

²⁰ Another provision of the proposed sentencing Bill requires judges to state their reasons for sentence in all cases. At the present, judges are not obliged to provide reasons in all cases.

One argument against the national, standardized collection of this kind of information would simply be that it would require additional effort by police forces across Canada, at a time when police resources are stretched to the limit. Since hate crimes tend to be concentrated in the major urban centres, would it not make more sense to invest in data collection in cities, and leave rural communities out of the exercise? While it is true that hate crime in Canada is almost exclusively an urban phenomenon, this argument assumes that the collection of information on hate motivation would be onerous for police forces. This is not necessarily true. The collection of hate crime statistics does not necessitate the creation of a specialized Hate Crime Unit, although such a step obviously makes sense in Canada's largest police forces. For small, rural communities, a requirement that hate motivation be explored would require little additional effort, since the number of incidents would be so small. Without a more thorough cost-benefit analysis it is hard to make definitive statements, but the additional investment of police resources might not be excessive and would have important practical and symbolic significance.

4.3.2 Duplication

It might also be argued that a national data-collection initiative is unnecessary so long as good data are available at the local level. The positive experience in Ottawa, for example, demonstrates that good data can be collected at the local level, for what are essentially local purposes. While this is true, it overlooks the important symbolic utility of a national data-collection exercise. As well, even if all urban police forces were to collect hate crime statistics in as comprehensive a fashion as the Ottawa, Montreal and Toronto forces, the problem of inconsistency of definition would remain, and comparisons of rates between various Canadian cities would be impossible.

To summarize, there appear to be more arguments in favour of than opposed to some form of national data collection strategy.

At this point the ways in which such a strategy may be implemented is investigated.

4.4 National Integration of Hate Crime Statistics

For the reasons outlined earlier in this report, it seems clear that we need a better idea of the true nature and extent of hate crimes in Canada. There are several steps that could be taken; some possibilities are outlined below.

4.4.1 Encourage Different Groups to Collect Their Own Statistics

The simplest yet least effective way to increase the comprehensiveness of hate crime statistics would be to encourage various minority groups to conduct an exercise similar to that of the B'nai Brith, namely to create and maintain an inventory of hate crime incidents. In fact, several religious, gay and lesbian groups in the United States have been collecting their own statistics for years. However, there are several deficiencies associated with this suggestion. First, it is unlikely that all groups that are the target of hate crimes will have the resources and the experience to match the B'nai Brith effort in this regard. As noted earlier, the Montreal organization representing the gay and lesbian community did not have sufficient resources to continue their data-gathering activities. Second, different groups are likely to adopt variable definitions of what constitutes a hate or bias crime. As noted earlier, police forces across the country use different definitions, and the variability is likely to be even greater for advocacy groups. Third, with each special interest group recording only those incidents directed at members of its constituency, no comprehensive picture can emerge. The final reason why the collection of such statistics should not be left to these private organizations is that statistics collected in this way do not have the same credibility and impact as data routinely collected by a government agency.

4.4.2 Special Studies Approach

A second way of obtaining national, standardized data on hate or bias crimes would involve the Canadian Centre for Justice Statistics conducting periodic "sweeps" of the country within the aegis of its "Special Study" initiative. This would permit the collection (albeit periodic) of data without necessitating changes to any of the current surveys, such as the Uniform Crime Reporting Survey. I have argued elsewhere (Roberts, 1994b) that the Special Studies approach is the best way of collecting information on the racial or ethnic origin of the suspect. For hate crimes, however, this is not in my view the best path to take, for several reasons.

Unlike race-crime statistics, there is no potential danger associated with adding elements to the UCR survey. As well, since hate crimes represent a very small percentage of incidents²¹, the additional burden to police forces would be minimal. For the vast majority of crimes recorded, the police officer would simply leave the hate crime questions blank. The experience in the United States is instructive here. Shortly after eight states began collecting hate crime statistics, research indicated that no significant increase in costs was observed. Second, special studies often take a considerable amount of time and consensus to be approved. There is the danger that the media interest which currently surrounds hate crimes (see for example, Macleans, 1995) will dissipate, and the momentum for further action will be lost.

4.4.3 Modifying the Revised Uniform Crime Reporting System

²¹ In 1993, police forces across Canada recorded over three million violations of federal or provincial statutes (Canadian Centre for Justice Statistics, 1994).

The most effective way to achieve standardization and national data involves adding some data elements to the Uniform Crime Reporting (UCR) System. The revised UCR contains a great deal more information about the crime incident, the suspect and the victim than its predecessor, the aggregate UCR. According to the *Statistics Act, Revised Statutes of Canada, C. S19*, the objective of the incident-based UCR is to collect essential incident-based information on the nature and extent of crime in Canada. The incident-based UCR provides information for policy and legislative development, evaluation of new legislative development and international comparisons. The database is also used by the news media, academics and researchers. *Incorporating some data elements relating to the motivation of the crime would be consistent with all these objectives.*

Although the idea of adding data elements relating to hate motivation is straightforward enough, changing the current data elements would require several steps, and would not be a simple undertaking. First, a federal-provincial consultation would be required, the results of which would be provided to the Judicial Information Council (JIC). A critical issue that would have to be resolved relates to the creation of new offences. If new hate crime offences were added to the *Criminal Code*, modification of the UCR would take a somewhat different route. Second, a consultation with police forces across the country, including the Canadian Association of Chiefs of Police (CACCP) would be necessary. Clearly, if the incident-based UCR is to be amended, it will have to benefit from the input and co-operation of police officers across the country. Third, there would have to be a consultation with affected community groups across the country.

Fourth, there will have to be several changes to the Uniform Crime Reporting Manual (Canadian Centre for Justice Statistics, 1984). This is the document which reflects police scoring practices and guides officers across the country. The changes would include information about the definition of a hate or bias crime. This means of course that the issue of definition which was explored earlier in this report would have to be resolved. Finally, the Canadian Centre for Justice Statistics would have to be supportive of, and heavily implicated in, any revision to the UCR. Part of the Centre's activities would consist of a thorough pre-test of any revised UCR form, and this too would take time.

To summarize, modifying the UCR to make it responsive to new hate crimes, or the question of hate motivation is probably the most effective way to generate comprehensive hate crime statistics. However, such a reform would require many steps, protracted consultation involving various stake-holder groups, and would take a considerable amount of time to implement.

A private member's Bill introduced in the Canadian Parliament in 1993 calls for the systematic collection of national statistics on hate crimes. This Bill reflects the views of diverse special interest groups that have called for better statistical information. The proposed Bill is modeled upon an American Bill introduced a few years earlier. Before

reviewing the Canadian proposal, it is worth examining the American proposal in more detail, as it provides a model statute that may of be use to Canada.

4.5 United States *Hate Crime Statistics Act*

In 1990, the United States Congress passed the *Hate Crime Statistics Act (United States Statutes at Large, 1991; hereafter Act; see Appendix B of this report for the full text -- similar Bills exist at the state level - see for example, Berk, 1990)*. The purpose of this piece of legislation was to ensure that hate crime statistics are collected across America. Prior to the passage of this *Act*, there were no national criminal justice statistics on the incidence of hate-motivated crimes in the United States. The only source of information was private organizations such as the AntiDefamation League's annual audit of anti-semitic incidents and the National Gay and Lesbian Task Force Policy Institute which documents acts of crimes against the gay communities in major American cities. Thus, there are clear parallels between the situation in America prior to the *Hate Crimes Statistics Act*, and Canada today.

There are several components to the *Act*. First, while data are required on an annual basis, there is a five-year limit on the reporting requirement. Thus, the idea is to acquire a significant body of data on the issue of hate crimes, rather than to collect these data on a permanent basis. Second, the definition of a hate crime is broad, and does not require the exclusive motivation standard required in some other jurisdictions. The *Act* simply speaks of "crimes that manifest evidence of prejudice". The prejudice must be based on "race, religion, sexual orientation or ethnicity". Third, there is a list both of target groups, and more unusually, also crimes. The crimes identified in the statute are: "murder; non-negligent manslaughter; forcible rape; aggravated assault; simple assault; intimidation; arson; and, destruction, damage or vandalism of property".

In addition, there is a statutory requirement for the Attorney General to establish guidelines for the collection of such data, including the necessary evidentiary criteria that must be met before an incident is classified as a hate or bias crime. As well, the statute prohibits the use of these data for anything other than legitimate research or statistical purposes, and the data must be purged of any information that could possibly reveal the identity of an individual crime victim. Finally, the sensitivity of the sexual orientation provision is also apparent from a coda that is appended to the statute.²²

4.6 Canadian Hate Crime Statistics Act (Proposed)

²² At the end of the *Act*, the statute provides a reminder to the American public that "the American family life is the foundation of American Society" and that "Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of this Act be used to promote or encourage homosexuality" (Sec. 2 (a)).

Bill C-455²³ received first reading in June 8, 1993. As with most private member's Bills, it was not reviewed by the House of Commons Committee on Justice and Legal Affairs, and no plans exist to review it in the near future. The purpose and scope of the Bias Incidents Statistics Act is summarized well in an explanatory note:

The purpose of this Bill is to have police forces across the country collect statistics that would indicate the number of incidents investigated by them that were wholly or partly motivated by bias against those sections or individual members of the public distinguished by colour, race, religion, sexual orientation or ethnic origin and that would identify the sections or persons who were the target of bias in each such incident. These statistics would be submitted to the Solicitor General of Canada and receive public exposure by being tabled in the House of Commons.

Several comments are worth making about this proposed Bill (see Appendix C for the complete text). First, it adopts a broad definition which does not require an exclusive motivation. This is consistent with the *United States Hate Crime Statistics Act*, and with some, but not all of the police forces in Canada (see earlier sections of this report). Second, the act calls for the federal Solicitor General to establish criteria for the classification of hate crimes. This too, is consistent with the United States statute. Third, the Bill identifies a list of target groups, although it does not include all the categories mentioned in the Sentencing Reform Bill: mental or physical disability and age are absent from the Bias Incidents Statistics Act. Why these were omitted is unclear. Finally, it is worth noting that this act is designed to draw attention to the problem of hate crimes, by virtue of the fact that these statistics would be tabled in the House of Commons, and not simply submitted to the Ministry of the Solicitor General in the form of a research report.

Is it necessary to adopt a Hate Crimes Statistics Act in Canada? In my view, the answer to this question depends upon the degree of consensus surrounding the previous issues relating to the collection of information about hate crimes. If police forces show little sign of consensus, or little interest in co-ordinating efforts in terms of data collection and offence definition, then passage of such a statute may be the only way in which a systematic picture of the hate crime problem can emerge. On the other hand, it is clear from the police forces that participated in the survey that gave rise to this report, that significant interest does exist within the policing community at the present time. Passage of a hate crime statistics act will not solve all the problems associated with the definition and collection of such data. It would be unwise to think otherwise. Nor will such an act do much to facilitate the prosecution of such crimes. However, what the act will do is promote consistency in the collection of hate crime statistics, and this is an important first step.

²³ An Act to provide for the collection of statistics respecting incidents investigated by police forces where those incidents manifest evidence of bias against certain identifiable groups.

If national hate crime statistics are compiled by local forces and sent to a central data repository such as Statistics Canada, will this obviate the need for individual community groups such as B'nai Brith to compile their own statistics? The answer is probably not. Police statistics will always be susceptible to reporting biases, and the only way of knowing about the true incidence of hate-motivated crime is to have an independent source of information. In the absence of a periodic victimization survey, we will remain dependent upon community groups to provide information on hate crimes that are not reported to the police. As well, non-criminal justice organizations such as B'nai Brith have been instrumental in sensitizing the community to the magnitude of the hate crime problem (see Czajkoski, 1992).

4.7 Classification of Hate Crimes

The way in which hate crimes are currently classified by the criminal justice system diminishes our awareness of the impact of these crimes. To take but a single example, consider one of the most common forms of hate or bias crimes: defacing religious symbols. There have been many instances over the past few years of the desecration of Jewish cemeteries both here and in Europe.²⁴ These incidents have been classified as mischief. According to Section 430. (1) of the *Criminal Code*, "Every one commits mischief who wilfully (a) destroys or damages property".

Classifying hate crime incidents in this way has at least two important negative consequences. First, it diminishes the importance of hate crimes by lumping them together with other, far less malign incidents of vandalism. Spray-painting swastikas on headstones is treated, in terms of the *Criminal Code* charge against an individual, in the same way as a teenager who spray-paints his initials on a school wall, although the social harm (and the culpability of the offender) is considerably greater. Even the word "mischief" has a popular connotation of a very minor offence. The term "vandalism" is not much better: it conjures up images of graffiti on subway trains, and implies an act that is relatively trivial, and rather mindless (see Wolfgang, Figlio, Tracy and Singer, 1985). Hate crimes are clearly more serious and, far from being mindless, are purposively directed at specific targets, and reflect a definite ideology of hatred (see Hamm, 1994).

The second problem is that offenders of very different degrees of culpability are classified in the same way. This homogenization may be addressed at the stage of sentencing (for those cases that eventually result in a conviction). That is, judges may impose sentences which reflect the additional harm of hate-motivated crimes. However, this is poor substitute for a more accurate classification at the level of the charge. As well, there is the question of the criminal record. Drawing upon prior convictions as contained in a CPIC file, a judge sentencing an offender with prior convictions of mischief would have no way of knowing about the nature of the previous offending. This is because the CPIC system does not include such information. The severity of the

²⁴ The incidents that occurred in southern France in 1990 are the most notorious examples, but they have been repeated in many countries since.

sentence would therefore fail to reflect the seriousness of the offence for which it was imposed, thereby undermining the critical principle of proportionality in the sentencing process.²⁵

A central issue that has to be resolved then, in this area is whether it is appropriate to create specific hate crimes. This issue has already been addressed, and there are complex arguments on both sides (see Gilmour, 1994: 77-86 for a thorough discussion). However the question is eventually resolved, it does seem clear that the status quo, in which offenders can commit repeated acts of criminal hatred without this necessarily being recognized by the criminal justice system, is inadequate.

In short, the use of a catch-all offence like mischief leads to a loss of precision in the application of the criminal law. Of course, the same argument applies to racially-motivated assaults. Under the present system, we have no reliable way of knowing whether a recidivist offender's previous convictions for assault were racially-motivated or not.

Accordingly, in my view, there is a powerful argument to be made for the creation of some specific hate crime offences. For example, there could be a specific offence such as the desecration of religious symbols, property or institutions. This is a recommendation that has been advanced by numerous groups in Canada and elsewhere, including B'nai Brith Canada (League of Human Rights, 1993: 44). Creating a limited number of hate crimes would not result in duplication of offences for the reason that the desecration of a tomb is not the same criminal act as the spray-painting of a subway train. Attempting to respond to the former act by classifying it in the same *Criminal Code* section as the latter is inevitably going to lead to a trivializing of what is a serious crime. Nor can this additional element of harm be adequately recognized at the time of sentencing, for the reasons outlined above.

Finally, the experience in other jurisdictions has shown that a vigorous response to hate crimes has positive effects both in terms of reducing the incidence of such offences, and also promoting more cohesive communities, in which the various minorities that have traditionally been the target of hate crimes feel their needs have been addressed. The police response is a critical component in the effort to address the problem of hate crimes, but it is still only one component. There are other steps that can be taken. One of these consists of promoting public awareness of the problem, and public confidence in the system's response. A good example of a proactive approach to the problem is the billboards that have been placed in the Toronto Transit system.²⁶

²⁵ This critical principle of proportionality in sentencing permeates the sentencing literature (see, for example, Canadian Sentencing Commission, 1987). As well, the principle lies at the heart of the statement of sentencing purpose and principle contained in the Sentencing Reform Bill (C-41) which is currently being reviewed by Parliament (see Roberts and von Hirsch, 1995).

²⁶ These signs draw passengers attention to the problem of such crimes, and provide specific contacts for victims.

4.8 Police Training Initiative

Passing laws and setting up systems to collect data simply are not enough. The states must train local law enforcement officers in how to detect hate crimes, how to respond to those crimes and how to report them accurately and completely (Coldren, 1991: 131).

Police training in the area of hate crime investigation is critical. While a uniform definition of what constitutes a hate crime is obviously going to be useful, if officers are not provided with the skills and training to correctly identify and classify reports of hate crimes, the national statistical database will be of little utility. As one officer responding to the Department of Justice Canada data request noted:

The integrity of the [hate crime] data system will be dependent on the foundation of a consistent definition as well as consistent application of the definition by police services across the country.

It is clear that the police response to hate crimes could benefit from additional training. While members of several Canadian police forces have travelled to the United States to acquire experience in responding to hate crimes, there has been no national training initiative. The experience in Toronto and Ottawa could be of considerable use to other Canadian police forces. If there were a national hate crime workshop for police officers²⁷, the experiences in Ottawa and Toronto could be shared across the country. This would promote a more uniform response in terms of procedures, training and investigation. This training should also include how to deal with the victims of hate crimes in a sensitive and appropriate manner. While a number of national police training initiatives exist in other areas such as domestic violence (e.g., Roberts and O'Sullivan, 1993), there is currently no training for police officers in the area of hate crimes. And since, detecting hate motivation is a problem that will confront all police officers, not just members of a specialized hate crime unit, consideration should be given to making hate crime training a part of the basic training for recruits.

4.9 Non-criminal Justice Agencies

Although this report has been directed largely to the criminal justice response to hate crimes, it is important to note that responding to this problem is not only the responsibility of the police and the courts. Long-term, non-reactive strategies are likely to prove more effective in reducing the incidence of hate-motivated crime. These strategies are likely to be based in large part on education initiatives, particularly those involving schools. As noted earlier in the report, the typical hate crime offender is a young person, usually under the age of 25. Criminal justice interventions involving the arrest, prosecution and punishment of culpable individuals are important, but are reactive in

²⁷ A workshop was held in 1994 on the police response to hate crimes, but the focus was not upon the issues raised in this report, such as the need to harmonize hate crime definitions.

nature; they are invoked once the crime has been committed (see Cook, 1991). Greater efforts need to be made to educate young persons about the harm inflicted by hate crimes, and the fact that more than other crime, hate crimes traduce the spirit of a multicultural, multiracial society.

The research literature on vandalism is instructive in this respect. Many of the hate crimes reported to the police involve some form of vandalism, particularly anti-semitic vandalism directed at synagogues. Surveys of young persons show that they fail to appreciate the severity of crimes of vandalism, and this may well be responsible for the high rates of participation. For example, research in Ontario involving schoolchildren found that respondents believed vandalism to be a low severity crime, which was least likely to result in conviction (Ontario Task Force on Vandalism, 1981). Not surprisingly, perhaps, perceptions of offence severity were inversely related to the likelihood that the respondent has participated in an act of vandalism (Ontario Task Force on Vandalism, 1981: 248). This finding has also been found elsewhere. As Zimmerman and Broder (1981: 51) note:

There is a significant negative relationship between the seriousness and extent of activity; the more serious an act, the less likely it is engaged in, and the fewer the children who engage in it.

In short, educating the public in general, and the young in particular, about the seriousness of this form of criminal activity is likely to prove an effective long-term strategy to combat the incidence of hate crimes.²⁸

4.10 Research Priorities Relating to Hate Crimes

In addition to formalising the collection of uniform statistics by the police, there are several other steps that should be taken to improve our knowledge of the nature and incidence of this form of criminality.

4.10.1 Survey of Community

Although hate crime units now exist in most major urban police forces, little is known about their relationship with the communities most affected by hate crimes. For example, we do not know how much confidence members of the Gay and Lesbian community have in the police response to reports of hate crime. Only when we have a scientific survey of the communities most affected will we be able to know how effective the police response has been in terms of reaching out to victims of hate crime. Research on hate-motivated crime in other countries (e.g., Maung and Mirrlees-Black, 1994) has

²⁸ Parallels also exist with the literature on drinking and driving, another crime which is disproportionately committed by the young. The incidence of impaired driving offences declined in 1994 for the eleventh consecutive year (see Hendrick, 1995). An important factor accounting for this long-term decline has been changing attitudes towards the seriousness of the crime.

shown that fear, dislike, or lack of confidence in the police was the reason why visible minorities did not report crimes to the criminal justice system. We need to know whether this is also the case with regard to ethnic minorities as well as other communities that are the target of hate crimes.

4.10.2 Victimization Surveys

As noted in the introduction to this report, crime statistics collected by the criminal justice system capture only part of the true incidence of crime. This has implications for any attempt to track the incidence of hate crimes. For example, it suggests that hate crimes should also be addressed in a victimization survey. The principal victimization survey in Canada is the personal risk survey contained in the General Social Survey (GSS). The survey was conducted in 1988 and replicated in 1993. The data from the survey have added considerably to our knowledge of crime patterns in Canada (see, for example, Gartner and Doob, 1994). It would be relatively straightforward to add some additional questions to the GSS that would explore victims' perceptions of crime incidents in which hate motivation played a role (or was perceived by the victim to have played a role). Without such additional information, our knowledge of the incidence of hate crime would be restricted to official crime statistics.

On the basis of current data, we do not know a great deal about the relative victimization rates of different minorities. Is the incidence of hate crime directed at the Jewish community greater than that directed at Black communities in Canada? Both groups have in the past been the object of discrimination and overt racism. However the data on acts of anti-semitism have been subject to better documentation over the years. Although the Audit of Anti-Semitic Incidents conducted annually by the League for Human Rights of B'nai Brith Canada probably captures only a minority of incidents of anti-semitism in this country, the documentation provides a useful index of one important form of hate crime activity. We need to have a similar research initiative for other minority groups. This information could be obtained by means of a victimization survey.

4.10.3 Criminal Justice Processing of Hate-motivated Crimes

The successful prosecution of hate-motivated crimes creates special challenges for the police and the crown. No systematic research has examined the way in which the police investigate such crimes. Even cursory examination of the information sent to the Department of Justice Canada suggests variability in the approach to investigation of hate crimes. This initiative would involve qualitative research. The findings described in this report are all quantitative in nature. However, there is a limit to what we can learn about hate crime incidents, and the way that the criminal justice system responds to them, by means of quantitative research. Accordingly, an in-depth analysis of a limited number of case files would greatly aid our understanding of the problem. This research would supplement quantitative findings that inform us about gross trends across jurisdictions

and over time. One important topic that needs to be addressed from this perspective is the extent to which hate crimes in Canada are the product of organized groups (as is the case in most European jurisdictions -- see Loow, 1995) rather than individual offenders without any such affiliation.

4.10.4 Case Law Analysis of Sentencing Decisions in Hate Crime Sentences

As noted earlier, the Sentencing Reform Bill (C-41) specifies hate motivation as an aggravating factor. This is consistent with recommendations made by various groups and individuals (see Etherington, 1994: 81). As well, it has been observed that this statute merely codifies what the courts have been doing for some time: increasing the quantum of punishment in those cases in which hatred of an identifiable group was a precipitating factor. However, this assertion has never been fully documented, and the few existing sentencing texts (Canadian Sentencing Commission, 1987; Ruby, 1994) are silent on the issue. It is important to know whether the courts have in fact recognized hate motivation in this way, and also to what extent. To what extent should this factor aggravate? The power of different aggravating factors varies widely. Some indication of the range of aggravation would be of utility to judges and would result in greater uniformity in terms of application of the statutory penalty enhancement.

4.10.5 Offender Profile Analysis

Research in other jurisdictions as well as the limited information currently available in Canada suggests that hate crime offenders are a relatively homogenous group. They are younger than the general offender population, and although the general offender population is comprised largely of males, hate crime offenders are exclusively masculine. They also tend to have links with gangs. To the extent that this is true for hate crimes across Canada, there are important policy implications to be drawn in terms of the criminal justice response.

4.10.6 Public Opinion Survey of Attitudes Towards Hate-motivated Crimes

It would be worth knowing more about public perception in this area. For example, what do the public know about the extent of the problem in Canada? Do they support the use of hate motivation as an aggravating factor at the time of sentencing? Are people in some demographic categories less likely to report crimes motivated by hate? These are some of the questions that would be answered by systematic public opinion research.

5.0 RECOMMENDATIONS AND CONCLUSION

5.1 Recommendations

On the basis of the findings reviewed in this report, the following recommendations relating to policy and research are made:

1. Further consideration should be given to the *Hate Crime Statistics Act* (Bill C-455) which received first reading in Parliament in 1993, but which has not been reviewed further.
2. A uniform definition of a hate crime should be developed in consultation with all stakeholders in the area across Canada. These stakeholders should not be restricted to the criminal justice system.
3. Consistent with the practice in other countries, the definition of a hate crime should not require the exclusive motivation threshold currently used in some jurisdictions. Hate crimes should be defined as crimes in which hatred or bias was *in whole or in part* responsible for the commission of the offence.
4. In order to protect the privacy of individual victims, the definition of a hate crime should refer to the "actual or perceived" group status of the hate crime target.
5. Uniform guidelines should be developed to permit greater consistency in the application of the definition of what constitutes a hate crime.
6. The Canadian Centre for Justice Statistics should adopt the collection of hate crime statistics as a priority for future information requirements in the area of criminal justice.
7. Questions relating to hate-motivation should be added to the data elements currently collected on the revised Uniform Crime Reporting (UCR) survey (UCR II).
8. In order to estimate the true extent to which hate crimes are underreported, questions about hate-motivation should also be added to the General Social Survey (GSS) victimization survey.
9. Consideration should be given to increasing the amount of resources devoted to research into the nature and origins of hate crimes in Canada.
10. Consideration should be given to the creation of new *Criminal Code* offences which would better reflect the true nature of hate crimes. One such offence could be defined as the desecration of property which carries religious significance.

These offences would replace the application of mischief as a charge in cases of hate crimes directed at synagogues and other places of religious worship.

11. Greater efforts need to be made to increase visibility of the criminal justice response to hate crimes. This includes reaching out to the groups that have traditionally been the target of hate-motivated crimes.
12. Specialized Hate Crime Units should be created in all major urban police forces across the country. These units should be composed of officers with special training in the area of crimes motivated by hate or bias. In addition to the conventional police functions of responding to incidents, and gathering evidence, these units should also participate in various police-community activities. The experience of the Ottawa, Toronto and Montreal police services shows how an effective Hate Crime Unit should function.
13. Hate crime units in police agencies should be constantly in contact with the populations most at risk for hate crimes. This suggests periodic meetings with these groups to ensure that these communities are aware of hate crime trends, and that the police are responsive to the communities that they serve and protect.
14. In light of the extremely low reporting rate, and the disproportionately high rate of violence in hate crimes directed at gays and lesbians, a principal focus of any hate crime strategy should be upon the gay/lesbian communities in Toronto, Montreal and Vancouver.
15. In order to promote greater public awareness of this form of criminality, an effort should be made to convey information about hate crime motivation to the news media, so that this material will be communicated to the public.
16. When an individual receives an enhanced sentence for a hate-motivated crime (according to case law or the new Sentencing Bill), this ground for aggravation should be noted in the reasons for sentence, and should be part of the offender information system which is communicated to federal or provincial correctional authorities.
17. Confronting hate crimes is not the unique jurisdiction of the criminal justice system. As with other socio-legal issues such as drinking and driving and domestic violence, a general social response is necessary. Accordingly, a greater effort should be made to educate the public about this form of criminal behaviour. A major focus of any such initiative should be directed at schools.
18. Community groups should take an active role in educating their members about ways to respond to hate crimes when they occur. The activities of the 519 Church St. Community Centre provide a good role model in this regard.

19. Community surveys should be conducted of the populations most at risk in order to gauge the extent to which they have confidence in the criminal justice response to reports of hate crimes.
20. Consideration should be given to a national police training workshop, which would involve police officers from all hate crime units across the country, in order to promote a uniform police response to the investigation of hate crimes.

5.2 Conclusion

An effective criminal justice response to hate crimes involves a number of important elements: close police-community relations, public confidence in the effectiveness of the police response to reports of hate crimes as well as appropriate processing of those reports by the courts. The quality of the police response to hate crimes is critical, as is the public perception of that response. If people feel that the criminal justice system is not responding appropriately and vigorously to the problem of hate crimes, these incidents will remain unreported. However, nothing is more critical than having an accurate idea of the true nature and full extent of the problem. This can only come about if a greater effort is made to collect comprehensive hate crime statistics.

At the present, Canada lags behind other western nations in this regard. The present report represents the first, small step towards documenting the incidence of this pernicious form of criminal activity, which, by its very nature, strikes at the heart of a multicultural society.²⁹

²⁹ This threat has been acknowledged in the case law: "An assault which is racially motivated renders the offence more heinous. Such assaults, unfortunately, invite imitation and repetition by others and incite retaliation. The danger is even greater in a multicultural, pluralistic urban society." *R. v. Ingram and Grimsdale* (1977) 35 C.C.C. (2d) 376 (Ont. C.A.), at 379, cited by League for Human Rights, 1993).

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APPENDIX A

DATA TABLES

Table 1 **Hate Crimes in America: Offence Breakdown (1992)**¹

Offence	# of Incidents	% Total Incidents
Threats	3,328	37%
Mischief/Vandalism	2,040	23%
Assault	1,765	20%
Aggravated Assault	1,431	16%
Robbery	172	2%
Break and Enter	69	<1%
Arson	47	<1%
Theft	36	<1%
Murder	17	<1%
Rape	8	<1%
Theft Motor Vehicle	5	<1%
TOTAL	8,918	100%

¹ Source: Federal Bureau of Investigation, U.S. Department of Justice.

Table 2 **Hate Crimes in America: Target Categories (1992)**¹

Category	# of Incidents	% Total Incidents
Racial	5,050	63%
Religious	1,240	15%
Sexual Orientation	944	12%
Ethnicity/Nationality	841	10%
TOTAL	8,075	100%

¹ Source: Federal Bureau of Investigation, U.S. Department of Justice.

Table 3 Hate Crimes in America: Target Categories in New York City (1987-1988)¹

Category	# of Incidents	% Total Incidents
Racial	585	59%
Religious	280	28%
Sexual Orientation	66	7%
Ethnicity/Nationality	62	6%
TOTAL	993	100%

¹ Excludes unclassified cases. Source: Garafolo (1993).

Table 4 Hate Crimes in America: Offence Categories by Target Group New York City (1988)¹

Offence	Racial	Ethnicity/ Nationality	Religious	Sexual Orientation
Assault	42%	42%	6%	41%
Harassment	37%	44%	34%	45%
Mischief	7%	6%	55%	8%
Threats	6%	3%	1%	2%
Burglary/ Robbery	5%	2%	3%	2%
Reckless Endanger Life	1%	2%	--	2%
Other	1%	1%	1%	1%
TOTAL	100%	100%	100%	100%

¹ Column totals may exceed 100% due to rounding. Source: Garafolo (1993).

Table 5 Estimates of Number of Racially-motivated Crimes in England and Wales (Afro-Caribbeans and Asians)¹

Assault	23,000-45,000
Threats	29,000-71,000
Vandalism	17,000-41,000
Other Crimes	8,000-26,000
TOTAL	89,000-171,000

¹ Source: British Crime Survey, 1992

Table 6 Racially-motivated Crimes in England and Wales: Proportion of all crimes involving racial motivation¹

	Afro-Caribbean	Asian
Threats	35%	57%
Assault	30%	44%
Robbery	2%	8%
Theft from motor vehicle	2%	2%
Burglary	4%	4%
Motor vehicle theft	2%	2%
All offences reported to British Crime Survey	14%	24%

¹ Source: British Crime Survey (1992); Home Office

Table 7 **Hate Crimes in Toronto: Target Categories**¹

Category	# of Incidents	% Total Incidents
Racial	77	50%
Religious	54	35%
Sexual Orientation	16	10%
Ethnicity/Nationality	8	5%
TOTAL	155	100%

¹ Source: Metropolitan Toronto Police

Table 8 **Hate Crimes in Toronto: Offence Categories**¹

Offence	# of Incidents	% Total Incidents
Mischief Under	38	25%
Assault	37	24%
Threats	27	17%
Mischief Over	21	14%
Bomb Threats	13	8%
Robbery/Break & Enter	7	5%
Other	12	7%
TOTAL	155	100%

¹ Source: Metropolitan Toronto Police

Table 9 **Hate Crimes in Toronto: Offence Category by Target Category**¹

Target Category	Crime	
	Assault	Mischief
Racial	77%	58%
Religious	7%	31%
Ethnicity/Nationality	9%	8%
Other	19%	3%
TOTAL	100%	100%

¹ Source: Metropolitan Toronto Police

Table 10 **Hate Crimes in Montreal: Target Categories**¹

Category	# of Incidents	% Total Incidents
Racial	157	79%
Religious	8	4%
Sexual Orientation	17	9%
Ethnicity/Nationality	7	4%
Other	10	5%
TOTAL	199²	100%

¹ Source: Montreal Police

² The total of 199 reflects the fact that one incident was directed at two distinct categories of victims (Jewish people and homosexuals), accordingly it was counted twice.

Table 11 **Hate Crimes in Montreal: Offence Categories**¹

Offence	# of Incidents	% Total Incidents
Assault	68	34%
Mischief	57	29%
Threats	47	24%
Hate Literature	9	5%
Robbery	8	4%
Break and Enter	5	3%
Theft	4	2%
TOTAL	198	100%

¹ Source: Montreal Police

Table 12 **Hate Crimes in Ottawa: Target Categories**¹

Category	# of Incidents	% Total Incidents
Racial	215	54%
Religious	110	29%
Sexual Orientation	45	11%
Ethnicity/Nationality	25	6%
TOTAL	395	100%

¹ Source: Ottawa Police Service

Table 13 **Hate Crimes in Ottawa: Detailed Breakdown of Racial Categories**¹

Racial Category	# of Incidents	% Total Incidents
Anti-Black	161	75%
Anti-White	27	13%
Anti-Asian	12	6%
Anti-Multi-Racial	9	4%
Anti-Aboriginal	6	3%
TOTAL	215	100%

¹ Source: Ottawa Police Service

Table 14 **Hate Crimes in Ottawa: Breakdown of Religious Target Category**¹

Religious Category	# of Incidents	% Total Incidents
Anti-Semitic	96	87%
Anti-Islamic	8	7%
Anti-Catholic	3	3%
Anti-Protestant	1	<1%
Other	2	2%
TOTAL	110	100%

¹ Source: Ottawa Police Service

Table 15 **Hate Crime Targets: Canada v. U.S. (Police Statistics)**¹

Target Category	% Hate Crimes in Canada (1993-1994)	% Hate Crimes U.S (1992)
Racial Minorities	61%	62.5%
Religious Minorities	23%	15.4%
Sexual Orientation	11%	11.7%
Ethnic Minorities	5%	10.4%
TOTAL	100%	100%

¹ Sources: Canada: Department of Justice Canada; U.S.: Department of Justice, Federal Bureau of Investigation.

Table 16 Anti-Semitic Incidents, Canada 1982-1994¹

Year	Offence Category				Total # of incidents	Total %
	Vandalism		Harassment			
	# of incidents	% Total	# of incidents	% Total		
1982	19	(30%)	44	(70%)	63	(100%)
1983	25	(52%)	23	(48%)	48	(100%)
1984	60	(48%)	66	(52%)	126	(100%)
1985	52	(55%)	43	(45%)	95	(100%)
1986	23	(42%)	32	(58%)	55	(100%)
1987	18	(33%)	37	(67%)	55	(100%)
1988	52	(46%)	60	(54%)	112	(100%)
1989	63	(36%)	113	(64%)	176	(100%)
1990	60	(29%)	150	(71%)	210	(100%)
1991	50	(20%)	201	(80%)	251	(100%)
1992	46	(23%)	150	(77%)	196	(100%)
1993	105	(41%)	151	(59%)	256	(100%)
1994	92	(32%)	198	(68%)	290	(100%)

¹ Source: League for Human Rights (1994)

Table 17 **Anti-Semitic Incidents in Canada: Principal Cities Affected, 1994¹**

City	# of Incidents	% Total Incidents in Canada
Toronto	146	50%
Montreal	55	19%
Ottawa	36	12%

¹ Source: League for Human Rights (1994)

Table 18 **Statistics from Lesbian/Gay Hotline in Toronto 1990-1995¹**

Assault Reported	Number of Incidents	% Total Incidents
Physical & Verbal	175	36%
Verbal harassment	136	30%
Threatening	72	15%
Physical Assault	51	10%
Vandalism/Theft	43	9%
Sexual Assault	10	<1%
TOTAL	487	100%

¹ Source: 519 Church Street Community Centre.

Table 19 **Injuries reported to Gay/Lesbian Hotline¹**

Injury Reported	Percentage Reporting
Head injuries	16%
Bruises	100%
Lacerations	29%
Scratches	6%
Sprains	6%
Rapes	1%
Groin injuries	2%
Fractures	17%
Emotional trauma requiring time off	1%

¹ Note: Percentages exceed 100% due to multiple responding
Source: 519 Church Street Community Centre.

APPENDIX B

UNITED STATES HATE CRIMES STATISTICS ACT

AN ACT

To provide for the acquisition and publication of data about crimes that manifest prejudice based on certain group characteristics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Hate Crime Statistics Act".

(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for the calendar year 1990 and each of the succeeding 4 calendar years, about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term "sexual orientation" means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act.

(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

(5) The Attorney General shall publish an annual summary of the data acquired under this section.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 1994.

SEC. 2. (a) Congress finds that

(1) the American family life is the foundation of American Society,

(2) Federal policy should encourage the well-being, financial security, and health of the American family

(3) schools should not de-emphasize the critical value of American family life.

(b) Nothing in this Act shall be construed, nor shall any funds appropriated to carry out the purpose of the Act be used, to promote or encourage homosexuality.

Approved April 23, 1990.

APPENDIX C

**CANADIAN *HATE CRIMES STATISTICS ACT*
(PROPOSED)**

BILL C-445

An Act to provide for the collection of statistics respecting

incidents investigated by police forces where those incidents manifest evidence of bias against certain identifiable groups.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Bias Incidents Statistics Act*.

INTERPRETATION

2. In this Act,

"Force" means the Royal Canadian Mounted Police;

"identifiable group" means any section of the public distinguished by colour, race, religion, sexual orientation or ethnic origin and includes any person belonging to that group;

"Minister" means the Solicitor General of Canada.

CLASSIFICATION OF INCIDENTS AND COLLECTION OF STATISTICS

3. (1) The Commissioner of the Royal Canadian Mounted Police shall establish a unit within the Force that shall, for each year following the coming into force of this Act,

(a) classify as a bias incident, any incident investigated in that year by the Force that the unit is satisfied, after applying the criteria referred to in subsection (2), was wholly or partly motivated by bias against an identifiable group; and

(b) collect and compile statistics that indicate the number of incidents classified in that year as bias incidents and that identify which identifiable group was the target of bias in each such incident.

(2) The Minister shall establish and publish criteria for the purposes of paragraph (1)(a).

(3) Subject to subsection (4), the Commissioner of the Force shall submit the statistics collected and compiled pursuant to subsection (1) to the Minister on or before February 1 in the year next following the year to which the statistics relate.

(4) No statistics submitted to the Minister pursuant to subsection (3) shall reveal the identity of any individual involved, either directly or indirectly, in an incident classified as a bias incident pursuant to this Act.

AGREEMENT WITH A PROVINCE OR MUNICIPALITY

4. (1) Subject to this section, the Minister may enter into an agreement with the government of a province or a municipality to acquire, for each year covered by the agreement, statistics that indicate the number of incidents investigated by a police force in that year that are classified as bias incidents by that force and that identify which identifiable group was the target of bias in each such incident.

(2) The Minister shall not enter into an agreement referred to in subsection (1) unless the Minister is satisfied that any classification referred to in that subsection will be made after the application of criteria similar to those established by the Minister under section 3.

(3) The Minister shall not acquire any statistics pursuant to an agreement made under subsection (1) that reveal the identity of any individual involved, either directly or indirectly, in an incident that is classified as a bias incident by a police force.

(4) In this section,

"bias incident" means an incident that a police force is satisfied, after applying criteria similar to those established by the Minister under section 3, was wholly or partly motivated by bias against an identifiable group;

"police force" means any police force under the jurisdiction of the government of a province or a municipality and includes the Force where the Force is used or employed by either of those governments pursuant to an arrangement made with the Minister under section 20 of the *Royal Canadian Mounted Police Act*.

REPORT TO THE HOUSE OF COMMONS

5. The Minister shall annually cause a copy of the statistics submitted pursuant to section 3 or acquired pursuant to an agreement made under section 4 to be laid before the House of Commons on or before March 1 in the year next following the year to which the statistics relate or, if that House is not then sitting, on the first day next thereafter that the House of Commons is sitting.

COMING INTO FORCE

6. This Act shall come into force on a day to be fixed by order of the Governor in Council.

APPENDIX D

LIST OF HATE CRIME CONTACT AGENCIES AND PERSONS

Constable Mike Cheeson
Intelligence
Durham Region police Department
77 Centre Street North
Oshawa, Ontario
L1G 4B7

Det. Hugh Frey
Integrated Intelligence Unit
Edmonton Police Service
9620 - 103 "A" Avenue
Edmonton, Alberta
T5H 0H7

Inspector Gordon Legge
Race Relations Co-ordinator
Halifax Police Service
1975 Gottingen Street
Halifax, Nova Scotia
B3J 2H1

Det. Dan Dunlop
Bias Crime Unit
Ottawa Police Service
474 Elgin Street
Ottawa, Ontario
K2P 2J6

Det. Sgt. Wayne Cotgreave
Hate-Bias Section
Intelligence Branch
Metropolitan Toronto Police
40 College Street
Toronto, Ontario
M5G 2J3

Staff Sgt. Ron Oliver
Hate Crime Unit
Winnipeg Police Department
P.O. Box 1680
151 Princess Street
Winnipeg, Manitoba
R3C 2Z7

Det. Const. Bruce Burley
Hate Crimes Unit
Ontario Provincial Police
50 Andrew Street South

Orillia, Ontario
L3V 7T5

Mr. Steve Strang
CID-CAB Criminal Intelligence Directorate
RCMP. H.Q.
H200, 1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

Dr. Karen Mock
National Director
League for Human Rights,
B'nai Brith Canada
15 Hove Street,
Downsview, Ontario
M3H 4Y8

Agent Yves Jodoin
Enquete et renseignement de securite
Surete du Quebec
1701 Parthenais
C.P. 1400, Succursale "C"
Montreal, Quebec
H2L 4K7

Sgt. Det. Andre Boisjoly
Section Renseignement
4545 rue Hochelaga
Montreal, Quebec
H1V 1C2

Table de Concertation des lesbiennes et des gais
du Grand Montreal,

C.P. 182

Succursale "C",

Montreal, Quebec

H2L 4K1

519 Church Street Community Centre

Toronto, Ontario

M4Y 2C9