

## Hate Crime in Canada

It has been well-documented that hate and hate crime have long been part of the Canadian experience. Marginalized groups have historically been victimized by discrimination. Early settlers promoted ideas that Aboriginal peoples were less human than the colonizers, thereby excusing the abuses they perpetrated on the First Nations, some of which continue to this day. The unchecked campaign of dehumanization was so effective as to have allowed abuses to go unpunished. Aboriginal peoples were subjugated and dispossessed of their lands and resources, enduring oppressive government policies and practices such as the removal of their children to residential schools. These were reprehensible acts grounded in the belief that Aboriginal peoples were inferior and expendable. The impact of these acts was profound. They were corrosive to Aboriginal cultures and detrimental to the health and well-being of individuals, communities and entire nations.

The legacy today is social dysfunction, ill-health and poverty in many Aboriginal communities, a unique constitutional and legal relationship with the Crown, and widespread negative stereotyping and disparagement of Aboriginal peoples. The history of colonialism and its legacy determine the character of hate and hate crime directed at Aboriginal peoples today.

In addition to the continued promotion of hatred against Aboriginal peoples, there is evidence of extensive antisemitism in the early days of Canada, perpetrated by various religious and government leaders who were associated with virulent antisemitism, from justifying pogroms to openly praising Hitler's leadership and denying safety to Jews who were fleeing Nazi persecution.

During this period, many other minority groups were also victimized by hate propaganda, most notably the Sikhs and Chinese. The horrific incident of the Komagatu Maru [when a boatload of Sikhs was denied entry to Canada even though they met the requirements of a systemically racist immigration policy, resulting in a significant number of deaths, rather than allowing the ship to dock] has left an indelible scar. And the overtly discriminatory *Chinese Head Tax and Exclusion Act*, placing undue pain and hardship uniquely on Chinese immigrants and their families who contributed significantly to the growth and development of Canada, has only this year been redressed after almost 30 years of advocacy on the part of the Chinese Canadian community. All of these historic examples, and their current legacy, illustrate the complicity of governments in perpetrating systemic racism and hate.

The history of the Lesbian/Gay/Bisexual/Transgendered (Two Spirited) Intersexed (LGBTI) Community is one of living in fear because of one's sexual orientation. In 1986, massive police raids against bathhouses in Toronto, one of few safe places for

gay men at the time, galvanized the community to campaign for basic human rights. It was not until 1986 that the Ontario Legislature voted to include sexual orientation in the *Ontario Human Rights Code*.

Anti-Black racism today finds its roots in the history of slavery and oppression of African Canadians, resulting in the criminalization, racial profiling, stereotyping and marginalization of the African Canadian community. The recent experiences and needs of the Arab, Muslim and South Asian communities illustrate how close to the surface discrimination and hate really are, and how the needs of vulnerable communities can dramatically change, bringing increased pressures to those who attempt to counter hate and hate crime.

The 2001 report of the Canadian Centre for Justice Statistics (CCJS) entitled *Hate Crimes in Canada: An Overview of Issues and Data Sources*, indicates that the concept of “hate” as a “social/criminal policy concern” became apparent in the 1965 *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada* (Cohen Committee). A common theme of these reports, and many others, was that although individual hate crimes may affect only a few victims directly, such activity creates a “climate of malice and destructiveness to the values of our society.” Because of both the severe individual and community impact, hate crimes have been said to inflict “disproportionate harm” (Roberts, 1995). Over the past 40 years, Canadian history, community experience, statistical data, government reports and academic literature provide ample evidence to justify attention to hate crime specifically and hate activity in general and to the climate that gives rise to them. These are issues that deserve urgent priority.

For an overview of the Canadian literature and legislation, as well as studies and models from several international and local community sources, please consult the background documents to this report. Several main themes have emerged from these previous studies.

First, hate crimes inevitably create many secondary victims in addition to the person(s) directly affected. The victims may include family, friends, and many others who identify with the vulnerable group to which the victim belongs. Hate crimes and hate propaganda promote fear, insecurity and disunity among racialized and other minority communities, whether the crime is based on race, colour, religion, ethnicity or sexual orientation. A hate crime or incident is an attack not only against the person or property, but also, necessarily, on the victim’s identity: an attack because of who the victim is, not because of what he or she may have done. Thus, the victim is doubly victimized.

Secondly, many studies have identified several problems related to data collection, including the fact that there is little consensus as to the definition of hate crime. The lack of a clear and common definition for hate crime and its related activity has continued to be a source of frustration for those engaged in hate crime research and advocacy. The public cannot be expected to mobilize against hate activity when there is no agreement about what it is. People who experience hate can hardly be expected to recognize and deal with it, when there is no generally accepted way to identify and name it.

The 2001 CCJS study cites “a paucity of data on hate crime”, and the CCJS has since conducted several studies with a view to assessing the feasibility of collecting national police-reported hate crimes statistics, using a common definition and

recording system. The CCJS 2004 *Pilot Survey on Hate Crime* revealed that during the study period (2001-2002), a total of 928 hate crime occurrences were reported by the 12 participating police services – including six large Ontario services. Of the 928 incidents, 57% were motivated by race or ethnicity, and 43% by religion. Sexual orientation accounted for approximately 10% of the cases. The most common type of hate crime violations included mischief or vandalism (29%), assault (25%), uttering threats (20%) and hate propaganda (13%). Fifty three percent (53%) of the race/ethnicity crimes were against a person, and approximately 67% of anti-religion hate crimes were property offences and vandalism. Threats and physical force accounted for the majority of violent crime, and those targeted as a result of their sexual orientation were more likely than others to be violently victimized.

Thirdly, the few statistics that are available on hate crimes are hindered by chronic under-reporting of these crimes by victims. As Roberts (1995) concluded, “of all forms of criminality, hate crimes are likely to be among the most unreported of offences”. Indeed, several studies and reports estimate that only one in ten incidents of hate is ever reported. Similar to other crimes, fear of reprisal is a prime reason that victims do not report hate crimes. But with hate crimes, since it is the identity of the victim that is also attacked, fear of losing one’s identity can generate strong feelings of fear and anxiety. Victims may also be frightened to face the offender, and they fear contact with perpetrators within the justice system.

Previous reports have also cited cultural or linguistic barriers between the victim and police and victim services. Other factors accounting for underreporting include: a fear of secondary victimization by the justice system; a fear that their victimization will not be taken seriously; and a belief that reporting an incident would not result in any action or help.

Another key issue cited by several previous reports is the difficulty in bringing hate mongers to justice. Because of the nature of the crime (vandalism, anonymous hate messages), the accused were identified in only 48% of the reported incidents in the CCJS 2001 study. Court statistics relating to *Criminal Code* offences collected by the Ministry of the Attorney General’s Court Services Division revealed that in the last five-year period (from 2000), there have only been 84 charges under Sections 318, 319 and 430 (4.1) of the *Criminal Code* in Ontario, with all of them coming under Section 319 (see Appendix in *Background Documents*). Of these 84 charges, there were 40 charging informations; that is, some offenders were responsible for multiple charges. Historically, there have only been approximately 25 convictions since the anti-hate laws were enacted.

## Ontario Hate Crime Initiatives

In addition to the creation of the Hate Crimes Community Working Group, there are several Ontario initiatives concerning hate crime and hate activity in the Province of Ontario. They are each described in more depth in the background materials that accompany this report, and include:

*Policing Standards Guidelines*: Section 29 of the Adequacy and Effectiveness of Police Services regulation under the *Police Services Act* (PSA) requires that police services boards have policies on investigating hate propaganda and hate or bias motivated

crime. Section 12(1)(h) also requires the Chief of Police to develop and maintain procedures on and processes for undertaking and managing these investigations.

*Ontario Police College (OPC)*: Under the *Police Services Act*, officers are required to complete an initial period of training within six months of being appointed to a police service. The OPC is responsible for administering provincial basic training to all new recruits in Ontario. The 13 topics include anti-racism, community policing, and federal and provincial statutes. There is mandatory training related to hate crimes as part of the community policing module.

*Ontario Provincial Police (OPP)*: The OPP has a Hate Crime/Extremism Unit, mandated to conduct multi-jurisdictional strategic and intelligence operations targeting individuals or organized groups involved in hate crime activity and criminal extremism. They collect, evaluate, collate, analyze, disseminate and utilize intelligence on targeted activities; provide specialized investigative support; contribute to and maintain a data base; share information with other law enforcement and/or government agencies; and assist with the training of officers

*Hate Crime/Extremism Investigative Team (HCEIT)*: Recently expanded to 10 services, the HCEIT is a joint forces team funded by the Ministry of Community Safety and Correctional Services, mandated to collect, evaluate and disseminate information and intelligence on targeted activities and to provide specialized investigative support for matters involving hate propaganda, the promotion of genocide, hate motivated crimes, and the diverse variants of criminal extremism. They assist with officer training and produce frontline educational materials.

While there are some police-based, court-based and community-based services that seek to provide assistance to all victims of crime, victims of hate crime require additional services, and specialized and culturally appropriate support, that takes into account their status as victims of hate-motivated crime. Victims may not have contact with, or access to, police-based services that require police referral, and may turn to others for help and support. Many victims are unaware of the services that exist to help them, or may be unable to reach services for a variety of reasons. In a study of *Victim Impact of Racially Motivated Crime* (1993 for the Ontario Commission on Racism in the Criminal Justice System), it was concluded from an investigation of six racial and religious minority communities in Toronto that “racially motivated crime inflicts a great amount of pain which crosses community boundaries and increases the isolation of minority communities.”

## Services to Assist Victims of Hate Crime

For further background data and resources on hate crime in Ontario, Policing Service Initiatives and Victim Services, see the accompanying materials to this report.

Victims of hate incidents often do not know where to go for help. Some may report the incident to police, while many may remain silent. Members of different ethnic or religious groups may turn to community or religious organizations that they trust. Many may feel that what they have suffered feels like hate, but are unsure, and do not know who to ask. Criminologists estimate that only 1 in 10 hate incidents are ever reported.

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Different victims also have different needs: Some need crisis counselling; others fear for their safety and want protection from further harm; some want “justice” and an opportunity to tell their story in court; others want compensation; and some just want to be left alone.

The Hate Crimes Community Working Group has attempted to summarize the various victims’ services, both government and community-based, that are available to assist victims of hate crimes and hate incidents.

## Government-Funded Victim Services

Most victims engage the criminal justice process by reporting a hate crime to police. In some parts of Ontario, there are dedicated hate crimes units, while in other areas there are officers trained to respond to hate crimes. When a victim reports a hate crime, police investigate the incident and, based on the evidence available, may lay charges against the alleged perpetrator. In many cases, it may be difficult to prove that an offence was motivated by hate. For this reason, police may not flag an incident as a hate crime.

While some police services have their own victim support programs, such as in Hamilton and Peel, police often refer victims to government-funded victim services, such as the *Victim Crisis Assistance and Referral Services (VCARS)*, which provide victims with short-term crisis counselling and referrals to community agencies in the immediate aftermath of a crime. Each VCARS program is a not-for-profit agency funded by the Ministry of the Attorney General through transfer payments.

During the criminal justice process, victims of violent offences may receive assistance from the *Victim/Witness Assistance Program (V/WAP)*, which provides court orientation to victims and witnesses. Staff also offer assistance with Victim Impact Statements and information about the *Criminal Injuries Compensation Board*. Victims of violent hate crimes have recently been acknowledged as a priority for service from V/WAP.

After conviction, victims may obtain information about the status of the offender from the *Victim Support Line*. Victims of violent offences may also seek compensation from the *Criminal Injuries Compensation Board*. Victims of non-violent hate crimes are currently not eligible for compensation, regardless of how traumatic the victimization is to the psyche.

The *Sexual Assault Domestic Violence Treatment Program* provides immediate, confidential, and individualized treatment to females or males who have recently been sexually assaulted or are victims of intimate partner abuse.

The *Office for Victims of Crime (OVC)* became a permanent advisory agency in 2001, to advise the Attorney General on ways to ensure the principles set out in the *Victims’ Bill of Rights* are respected. They advise also on provincial standards for victims’ services, on the use of the Victims’ Justice Fund to provide and improve services, research and education on treatment of victims of crime, on matters of legislation and policy on the treatment of victims of crime and on the prevention of further victimization.

Victims may make a complaint to the Ontario Human Rights Commission (OHRC) or the Canadian Human Rights Commission (CHRC) if they believe that they have been

discriminated against or harassed. The various human rights commissions deal within their respective jurisdictions with hate/bias-related incidents that fall under human rights legislation, whether or not they qualify as criminal offences.

In the education system, the new Ontario school curriculum emphasizes that the schools must be free from discrimination to ensure that all students have equal opportunity to achieve their full potential. Many colleges and universities have ombudspersons, or human rights commissioners, who act at arm's length from the institution, with a mandate to address and resolve concerns and complaints about unfairness in a university policy, process or procedure, or discrimination and/or harassment.

Although there are several services for victims of crime that are administered and/or funded through the Ministry of the Attorney General, they appear to be relatively unknown amongst diverse vulnerable communities. Indeed, most members of the Hate Crimes Community Working Group were unaware of many of these services prior to reviewing the briefing notes and hearing about the Ontario Victims Services Secretariat at our inaugural meeting. It is usually to community-based services that victims of hate crime turn, if they are to seek help at all.

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## Community-Based Victim Services

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Community organizations, often at the frontline of providing services to victims of hate incidents and hate crime, differ from government-based initiatives in several ways. First, community-based initiatives tend to enjoy higher visibility because they are based in the demographic constituencies which they serve. Secondly, community-based victim support is likely to be integrated into a broader mandate to offer assistance in areas of social and economic equity and justice. Thirdly, these agencies identify the need for culturally and linguistically specific tools to support victims through the healing process and to assist them as they navigate the criminal justice system. Community organizations enjoy a certain level of trust among the clients they serve although it is crucial to recognize that issues such as gender, class, sexual orientation and gender identity affect access and delivery – as they do in the society at large.

In spite of being severely under-funded and thereby, of necessity, short-term, several very effective projects to raise awareness and to counter hate crime victimization have been mounted by community organizations. For example:

- The **Safety in the Streets** program by the Grand Council Treaty 3 Justice Initiative is designed to build trust and break down barriers that prevent First Nations people from bringing incidents of racism and hate crimes to the attention of police or other authorities, and to promote healing between Aboriginal and non-Aboriginal communities in Kenora and the Treaty 3 area.
- The **Say No to Hate** campaign of the Council of Agencies Serving South Asians, is a video and training program aimed at youth and produced and conducted by youth.
- **Taking Action Against Hate (Protection, Prevention and Partnerships)** is a training of trainers program prepared by the League for Human Rights of B'nai Brith Canada, aimed at community groups, schools, law enforcement and government agencies.

- **Stand Up, Speak Out**, a resource kit produced by the Federation of Muslim Women, provides resources to empower victimized members of the community.
- The Scadding Court Community Centre provides a model for police/community partnerships to counter hate crimes and also to facilitate the police complaints process.
- **Choose Your Voice** is the initiative of FAST (Fighting Antisemitism Together) in cooperation with the Canadian Jewish Congress.
- The Anti-Violence Programme at the 519 Community Centre provides model programming and services for victims of homophobic harassment and assault.
- **Deconstructing On-Line Hate** by the Media Awareness Network (MNet), helps parents, children and schools recognize and react to hate on the internet.

These and many other programs and services offered by not-for-profit groups are continually at risk of being discontinued because of lack of ongoing funding, making it impossible to sustain initiatives, with the result that ongoing dissemination of the information and services is almost impossible.

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Non-governmental organizations (NGOs) are also typically over-extended and notoriously under-resourced, resulting in lack of sustainability of culturally appropriate victim services and programming. As the first point of contact for victims – outside of circles of family and friends – these organizations are charged with providing emotional and physical support as well as guidance and referrals. A review of the services of NGOs in Ontario reveals that very few of these organizations have developed a dedicated anti-hate crime support function. Instead, most offer broad-based programmes aimed at developing community capacity. Those organizations that do offer services specific to victims of hate crime have tended to focus their attention on public education and awareness, direct assistance, reporting and monitoring. The need for recognition of community expertise and capacity building is a serious problem for victims of hate and bias crime across the country.

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This Background section was intended only to provide a very brief overview of current issues in hate and hate crime, with some examples of government and community based programs. Further background data, historical and current issues and resources on Hate Crime in Ontario, Policing Service Initiatives and Victim Services are presented in the background materials that accompany the report. It is the information that was gleaned from the literature and services review that provided the rationale for the collection of further data and current information via a Community and Stakeholder Engagement Strategy, described below.