

Battling Hate:

A comparative examination of present law and policing strategies with
respect to hate-motivated criminal offences

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SECTION 1: Introduction

As part of the work of the coalition formed in response to the vandalism of Professor Jaya's car on June 19th, anti- hate crime legislation and policing strategies were researched. The following paper briefly outlines the manner in which motivations of hate factor into the prosecution of crimes (Section 2) and into the investigation of crimes in police jurisdiction that have anti- hate crime strategies (Section 3). Section 4 concludes with a brief analysis of the treatment Professor Jaya could expect her incident to have received in police jurisdictions with anti- hate crime strategies.

SECTION 2: Treatment of hate-bias crimes under the *Criminal Code*

Under s.718.2 of the Criminal Code (relevant text below), courts are *required*, when sentencing a felon, to consider evidence indicating the presence of a hate-based motivation in a crime. It seems to me then, that police have a corresponding duty to record all evidence that *may* indicate a hate/biased-based motive, and to record it as such. I would argue that it is not the discretion of the police to decide whether there was hate/bias intended or not. It is the discretion of the judge to consider.

This section of the Criminal Code raises questions concerning how the investigating officer recorded the racial slur on Professor Jaya's car. Under s.718.2 I believe he *should have* recorded it as a racial slur, possibly indicative of hate/bias motivation directed at the victim.

As for the handling/treatment of victims, police units must develop their own policies and train their officers accordingly. However, when it comes to gathering and recording evidence, the law shows that the presence of a racial obligates the responding officer to treat the crime as a possible hate/bias crime.

It is my understanding that the officer involved in Professor Jaya's experience dismissed (at least outwardly) the possibility of a hate/bias motivation (partial or otherwise). If he also recorded the evidence so dismissively, I would argue that he failed to perform his duty. Without properly recording the presence/nature of the slur, a court trying the case would be unable to give adequate consideration to the presence of a hate/bias motivation. The likelihood of apprehending the felon *should be* completely irrelevant to the responding officer's treatment of the evidence.

SECTION 3: Treatment of hate-bias crimes in other jurisdictions

Several Canadian jurisdictions have protocols and specialized units for identifying and dealing with crimes motivated by hate or biases. The information I have collected from the Toronto Police Service (TPS) and Calgary Police Services (CPS) websites provides some comparative models of anti- hate crime policing strategies.

Defining hate crimes – TPS vs. CPS:

Toronto Police Service:

Hate crime is a CRIMINAL OFFENCE committed against a person or property that is based upon the victim's race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor. (www.torontopolice.on.ca/crimeprevention/hatecrime.php)

Calgary Police Services:

A hate/bias crime is a criminal offence committed against a person or property that is motivated, in whole or in part, by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, gender, age, mental or physical disability or sexual orientation of the victim.

(Diversity Resources Unit, Calgary Police Services, "Report Hate/Bias Crime!" pamphlet, <http://www.gov.calgary.ab.ca/police/inside/hate-bias-brochure.pdf>)

The two definitions are very similar, but some potentially key discrepancies are present...

a) 'Based upon' vs 'motivated, in whole or in part, by bias, prejudice or hate based on'

CPS' definition offers a more comprehensive explanation on how the existence of hate crimes is to be determined. By specifying that hate crimes are those 'motivated, in whole or in part, by bias, prejudice or hate', law enforcers are

presented with a threshold that allows them to identify crimes as hate crimes where even *some* existence of bias, prejudice or hate is evident. I would advocate the CPS definition as the better of the two as it is impossible to know how much animosity against a victim's characteristic an offender holds. Section 718.2 of the *Criminal Code* (discussed in Section 1, relevant text in Appendix A) does not include the phrase 'in whole or in part', but does enumerate 'bias, prejudice or hate'.

b) Protecting 'gender' vs. 'sex'

TPS names "sex" as a ground for identifying a hate crime, whereas CPS names "gender". The exclusive use of either of these terms may lead to problems. 'Gender' recognizes that women and men may be victimized by offenders who are biased against femininity or masculinity, but not on the basis of biology. Conversely, including the word 'sex' recognizes that women and men may be victims of hate crimes because of an offenders bias(es) against the biological female or biological male. Admittedly, this is largely a game of semantics. But when drafting policies concerning personal characteristics, I believe it is an important game. Section 718.2 of the *Criminal Code* does not include 'gender', so a court would have to decide whether to adopt it as a 'similar factor'. I would recommend that if NL police units are to adopt anti- hate crime strategies, *both* 'sex' and 'gender' should be named as grounds, unless/until otherwise indicated by courts or legislation.

c) ...or any other similar factor'

This segment of the TPS definition is important so that the law can easily adjust to societal changes. It is very conceivable that more personal characteristics worthy of protection under hate crime laws may be identified in the future, and this phrase clearly provides enforcers with the discretion to include analogous grounds. This is also in keeping with section 718.2 of the *Criminal Code*, which includes this phrase.

Examples of hate/bias crimes include:

Violence, threats of violence

Vandalism, graffiti

Threatening phone calls

Physical assaults

Hate mail

Destruction of religious symbols

Fire bombings

(Diversity Resources Unit, Calgary Police Services, "Report Hate/Bias Crime!" pamphlet, <http://www.gov.calgary.ab.ca/police/inside/hate-bias-brochure.pdf>)

Advocating genocide – Supporting or promoting the intent to destroy, in whole or in part, any identifiable group, for example any section of the public distinguishable by colour, race, religion or ethnic origin. Specifically by killing members of the group or

deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

Public incitement of hatred

– Communication of statements, for example, words spoken, recorded electronically or otherwise, gestures, signs or other visible representations, in a public place, that incites hatred against an identifiable group (see above) that is likely to lead to a breach of the peace.

– Communication of statements, other than in a private conversation, that willfully promote hatred against any identifiable group.

www.torontopolice.on.ca/crimeprevention/hatecrime.php)

What Toronto Police Services is doing about hate/bias crimes:

The Hate Crime Unit is part of Intelligence Services and was established in 1993 to provide support to front line officers and investigative units throughout the city. The Unit monitors hate motivated crime for the purpose of aiding and identifying crimes and criminals and to assist with sentencing at the end of the judicial process. This is important because Section 718 of the Criminal Code of Canada allows for increased sentences to be considered where there is evidence that a Hate Motivated Crime has been committed.

What Calgary Police Services is doing about hate/bias crimes:

(Calgary Police Services, Diversity Resources Unit,
<http://www.gov.calgary.ab.ca/police/inside/frame1.html>.)

The hate/bias crimes liaison officer educates Calgarians on hate/bias crime, while building communication between police and targeted communities. The liaison officer also works with the Crown Prosecutor's office to identify crimes motivated by hate or bias. This role is particularly important because, if a judge is satisfied that an offence was motivated by hate, bias or prejudice, he or she can increase the sentence imposed on the offender.

The Calgary Police Service Cultural Resources Unit has launched a "Report Hate/Bias Crimes Initiative" to encourage people to report hate/bias crimes and incidents. The initiative includes a database, and a brochure and poster entitled: Report Hate/Bias Crime! The brochure also explains the difference between crimes and incidents.

The Service's communications officers - who field all non-emergency calls - have been trained in the new procedure of tracking hate/bias incidents, as well as crimes.

SECTION 4: Conclusions with respect to Professor Jaya's case

A hate/bias crime, according to the above police services is an action that constitutes a criminal offence and displays a motivation of hate or bias on the basis of victim's personal characteristics.

The vandalism of Professor Jaya's car was most certainly an offence, and the racial slur graphitized onto the car displays a motivation based on hate/bias of personal characteristics (colour, assumption of ethnicity or national origin). The likelihood of apprehending the perpetrator is irrelevant in determining the existence of a hate/bias crime, as are the age of, and the degree of hate/bias held by, the perpetrator. Under the Toronto and Calgary policies, Professor Jaya was indeed a victim of a hate/bias crime, and (at the very least) the nature of the crime would have been recorded for tracking.

If the perpetrator is apprehended and prosecuted, the existence of a hate-based motive will be considered by the court in deciding a sentence. The police records of the incident will be pivotal in this process.

APPENDIX A: Section 718.2 of the *Criminal Code* (relevant text only)

(Source: Canadian Legal Information Institute, <http://www.canlii.org/ca/sta/c-46/sec718.2.html>.)

A court that imposes a sentence ***shall***^{*} also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor...

shall be deemed to be aggravating circumstances...

* The judicial duty (as opposed to judicial discretion) to consider hate/bias motivation is indicated in the text of s.718.2 – “A court that imposes a sentence ***shall*** also take into consideration” the grounds enumerated, and analogous to those enumerated, in 718.2(a)(i). (emphasis added)