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Hate as an Aggravating Factor at Sentencing

A Review of the Case Law

from 2007–2020

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2020

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Executive Summary

This study examines the way courts have applied hate as an aggravating factor at sentencing (subparagraph 718.2(a)(i) of the *Criminal Code*). The main purpose of this research was to identify the most common characteristics of offenders and victims of hate crimes, to identify the most frequent grounds of victimization, the reasoning behind the courts' application of subparagraph 718.2(a)(i) of the *Criminal Code*, and to find trends in the way sentencing judges determine the quantum of sentences after they apply subparagraph 718.2(a)(i) of the *Criminal Code*.

To meet these objectives, research was conducted primarily through a review of case law databases to examine sentencing decisions published from 2007 to 2020 that considered subparagraph 718.2(a)(i) of the *Criminal Code*. This research also examined police-reported hate crime statistics between 2010 and 2018 and self-reported hate crime statistics from the 2014 General Social Survey to establish comparisons with published case law dealing with hate as an aggravating factor at sentencing.

In published case law dealing with hate as an aggravating factor at sentencing, most hate crime offenders acted alone, rather than as part of a group. Offences committed by male offenders made up the majority of case law reviewed in this study. In a small minority of cases, a female was the principal perpetrator.

The average age of hate crime offenders was about 31 years old in published case law reviewed in this study. This number is consistent with 2018 police-reported hate crime statistics where the median age of offenders was 32 years old. In the case law, offenders identified as White were the most frequent offenders. In only one case was an offender identified as Black.

In the reviewed case law published between 2007 and 2020, violent offences were the most common types of offences, including assault (levels 1, 2, and 3), manslaughter, and first-degree murder. In contrast, in police-reported hate crime statistics in 2018, non-violent offences were the most reported charges.

Hatred against race, nationality, or ethnicity is the most common motivating factor recorded in the published case law. Within case law dealing with racial hatred, the Arab population was the most targeted racialized identity group followed by the Black population. In police-reported hate crime statistics, the Black and the Arab communities were also the most targeted racialized identity groups; crimes against the Black population were the most frequent grounds of victimization. Where offences

were motivated by hatred against race, Indigenous and White victims were overrepresented in published case law compared to police-reported hate crime statistics.

In both police-reported hate crimes and the published case law, hate crimes committed on the grounds of religion were the second most frequent grounds of victimization. In the reviewed case law, the Muslim population was the most targeted religious identity group. Further, significantly fewer crimes targeted against the Jewish population were recorded in published case law than in police-reported hate crime statistics, where the Jewish population was the most targeted religious identity group.

Between 2007 and 2020, sentencing judges started applying subparagraph 718.2(a)(i) to crimes committed on the grounds of religiously motivated violent extremist ideologies. In these cases, the sentencing judge found that hatred on the grounds of religion was an aggravating factor at sentencing.

Hate crimes committed on the grounds of age, language, or a disability were the three least frequent grounds of victimization recorded in published case law dealing with hate as an aggravating factor at sentencing. Hatred against a victim's age, language, or disability was not identified as an aggravating factor in the application of subparagraph 718.2(a)(i) of the *Criminal Code*. Police-reported hate crime statistics also recorded low frequencies of hate crimes committed on the grounds of age, language, or disability.

In the case law and in police-reported hate crime statistics, sex is rarely recorded as a motivating factor. This was also found in the review of case law from 1996 to 2007 (Lawrence et al. 2009). However, between 2007 and 2020, there was an increase in published case law dealing with hate crimes committed on the grounds of sex, specifically hate crimes against females. In addition, between 2010 and 2018, police-reported violent hate crimes committed against Indigenous and Muslim populations were more likely to involve female victims in comparison with crimes against other identifiable groups.

Further, in both the case law and in police-reported hate crime statistics, there was a decrease in crimes committed on the grounds of sexual orientation. Between 2006 and 2020, crimes committed on the grounds of sexual orientation decreased by more than half in comparison with the 2009 report's study period. Similarly, in police-reported hate crime statistics, crimes committed on the grounds of sexual orientation have consistently decreased since 2013. In the case law reviewed for this study, the gay population was the only group targeted by hate crimes committed on the grounds of sexual orientation. In police-reported hate crime statistics, the gender orientation or expression of victims were also targeted identity groups, i.e., the lesbian, bisexual, asexual, and pansexual communities.

Between 2007 and 2020, sentencing judges have categorized new identity groups under the meaning “other similar factors,” which had not been considered prior to 2007. Sentencing judges found that offences motivated by hatred towards political beliefs, against police officers, and against homeless people were aggravating factors at sentencing. In one instance, a sentencing judge examined whether hatred against an identifiable street gang was an aggravating factor at sentencing, but the judge concluded that “other similar factors” could not bear that meaning.

In the application of subparagraph 718.2(a)(i), the most commonly discussed sentencing principles are deterrence and denunciation. There was an increase in the number of times courts have cited the protection of society compared to the previous study.

The offender pleaded guilty to the accusations in little over half of published case law. Further, after courts found that hate was an aggravating factor, the average length by which sentences were increased was about 70 percent. However, the number of judges who detailed the quantum by which sentences were increased after courts applied hate as an aggravating factor at sentencing, was significantly lower than that between the years 1977 and 2006.

1.0 Introduction

Under Canada’s Action Plan Against Racism (CAPAR) (a government-wide strategy from 2006 to 2010), the Research and Statistics Division, Department of Justice Canada, did a study to examine how courts applied hate as an aggravating factor at sentencing (subparagraph 718.2(a)(i) of the *Criminal Code*). The 2009 study examined whether cases applying hate as an aggravating factor at sentencing reflected the number of self-reported hate incidents or police records of hate crimes, whether the application of subparagraph 718.2(a)(i) resulted in longer or more restrictive sentences, and whether legal thinking evidenced in case law, particularly the degree of motivation required to apply the aggravating factor, evolved over time.

The 2009 study examined case law, as well as police-reported hate crime statistics and academic literature.¹ The study examined case law published from 1977 to 2006. The beginning of the study period started in 1977 as “hate motivated bias was recognized by Canadian courts as an aggravating factor at sentencing”² in the 1977 decision of *R v. Ingram and Grimsdale*.³ Thus, the search included the

¹ Austin Lawrence, *Hate as an Aggravating Factor in Sentencing in Canada*. Ottawa: Department of Justice Canada.

² *Ibid* at 40.

³ *R. v. Ingram* (1977), 35 CCC (2d) 376, [1977] O.J. No. 531.

words “hate,” “prejudice,” and “bias” to find case law that considered hate an aggravating factor at sentencing published between the years 1977 and 1995.

In 1995, Parliament amended the *Criminal Code* and adopted subparagraph 718.2(a)(i), which made “it unnecessary to wait for judges to extend incrementally the application of [sentencing principles related to hateful motivation] to different offences. Section 718.2(a)(i) suddenly ma[d]e these anti-discrimination values potentially applicable to all criminal offences.”⁴ As soon as hate motivation, prejudice, or bias were codified as aggravating factors to any *Criminal Code* offence in 1995, the 2009 study reviewed subparagraph 718.2(a)(i) of the *Criminal Code* to find case law that involved hate as an aggravating factor at sentencing published between 1995 and 2006.

The purpose of the present study is to update the findings collected in the 2009 study and to examine case law that involved subparagraph 718.2(a)(i) of the *Criminal Code* from 2007 to 2020.

2.0 Background

What are hate crimes?

Hate crimes are criminal acts motivated by an extreme bias or hatred towards a particular social group. Hate crimes may be directed at symbolic physical targets (such as a mosque) or individual victims. The defining characteristic of hate crime is that the offender is motivated by their hatred of the victim’s imputed identity in a particular socially defined group, rather than anything idiosyncratic about the victim or their behaviour. Both qualitative and quantitative research show that hate crimes cause “disproportionate harm” to both individual victims and the wider population or community that shares the targeted identity characteristic of the hate crime victim.⁵

The *Criminal Code* criminalizes specific kinds of activities as being either crimes of hate propaganda or hate crimes.

There are three hate propaganda offences. It is an offence under subsection 318(1) of the *Criminal Code* to advocate or promote genocide against an identifiable group. It is an offence under subsection 319(1) to incite hatred against an identifiable group in a public place that is likely to lead to a breach of the peace. It is an offence under subsection 319(2) to wilfully promote hatred against an identifiable group

⁴ Lawrence, *supra* note 1 at 40.

⁵ Lawrence, *supra* note 1 at 11.

other than in private conversation. “Identifiable group” is a defined term in the *Criminal Code* (subsection 318(4)).

Regarding hate crimes, there is a specific offence, now in subsections 430(4.1) and (4.101) of the *Criminal Code*, of mischief to property that is primarily used for a religious purpose, or certain other kinds of property (such as educational institutions or community centres) that are primarily used by an identifiable group, where the mischief is committed out of bias, prejudice, or hatred against an identifiable group. Before 12 December 2017, this offence was defined only in subsection 430(4.1) and was restricted to property primarily used for religious worship.

In addition to this specific hate crime, the *Criminal Code*, in subparagraph 718.2(a)(i), requires courts to consider, as an aggravating factor when determining the sentence for any crime, if the crime was motivated by hatred, bias, or prejudice, based on numerous criteria. The relevant part of section 718.2 reads:

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 gender identity or expression, or any other similar factor.

It should be noted that “gender identity or expression” was added in 2017 to subparagraph 718.2(a)(i).⁶

Hate as an aggravating factor at sentencing was included in the *Criminal Code* in 1995 under Bill C-4, along with a number of other sentencing reforms. Since then, a number of other aggravating factors have been added to paragraph 718.2(a).⁷

⁶ BILL C-16, *An Act to Amend the Canadian Human Rights Act and the Criminal Code*, S.C. 2017, c.-13.

⁷ *Criminal Code*, RSC 1985, c C-46 paragraph 718.2(a) as amended. Interestingly, no mitigating factors have been added, as was originally envisioned.

Measuring hate crime in Canada

The number of incidents of alleged hate crime in Canada is measured by both police-reported and self-reported national surveys. Police-reported incidents only refer to incidents that are brought to the attention of law enforcement and reported on in the Uniform Crime Reporting Survey (UCR). The Canadian Centre for Justice Statistics made significant efforts a decade ago to improve police-reported data on hate crimes by developing training materials for front-line police officers and providing training to police services across the country.

Self-reported data are collected through the General Social Survey (GSS) on Canadians' Safety (Victimization) every five years. These data complement police-reported data and reflect the victim's belief as to whether the incident was hate-motivated. The latest national self-reported data available are from the GSS 2014; the next cycle of the survey was in the field in 2019, with results released in late 2020. The 2014 GSS showed that two-thirds of the 33,000 criminal incidents seen by victims as hate-motivated were not reported to police (69 percent).⁸ Together, police-reported and self-reported data present a more comprehensive picture of hate crime in Canada, as with other underreported crimes, such as sexual assault and intimate partner violence.

The Integrated Criminal Court Survey (ICCS) provides data on the outcomes of cases in Canadian courts, as well as the sentences ordered by the court. ICCS data can provide details on the hate propaganda and hate mischief offences. Unfortunately, the ICCS does not capture aggravating factors at sentencing so it is not possible to know from the general data which general offences were hate-motivated and whether this was considered at sentencing. For this information, it is necessary to turn to case law, or court and Crown files. The latter method is labour-intensive. Reported case law is publicly available through CanLII, as well as other jurisprudence databases, such as Westlaw, QuickLaw, and others.⁹

In this case law review, case law is used as a data source for social science analysis, rather than legal analysis. Although the judge's reasoning is included, this study is interested in the characteristics of the offender, the victim, and the case itself. This report also includes national data from Statistics Canada and relevant academic literature from the past decade.

⁸ Perreault, *Criminal Victimization* (Ottawa: Juristat, 2015) at 3.

⁹ CanLII is freely available while Westlaw and QuickLaw require subscriptions. French language cases can be searched in these three databases. "La Référence" can be searched for cases heard in the Québec jurisdiction.

Statistics on hate crime in Canada

The General Social Survey (GSS) on Victimization (2014) collects data on victimization as reported by individuals, rather than on what police report. Both police-reported data and data collected through the GSS show that these crimes most often involve minority groups.

Results from the GSS show that:

Among the minority groups covered by section 718.2 of the *Criminal Code*, people self-identifying as homosexual or bisexual recorded the highest violent victimization rate at 207 incidents per 1,000 population, compared to 69 per 1,000 for heterosexuals, according to the 2014 GSS. People with disabilities also had an above-average victimization rate (123), and while this category includes all types of disabilities, physical and mental, these higher rates appear to be specifically the result of the high victimization rates among those with a mental or learning disability.¹⁰

Further, it is interesting that “the 2014 GSS on Victimization asked victims of crime whether or not they believed the incident committed against them could be considered a hate crime. Findings indicate that in most (76 percent) violent incidents involving an immigrant victim, the victim did not believe the incident was motivated by hate—a proportion similar to that among non-immigrant victims.”^{11 12}

Results from the 2014 GSS indicate that, generally, the nature of the violent incidents reported by Canadians did not vary by religious affiliation. Overall, most individuals experienced a single incident and did not believe the incident was a hate crime. Additionally, most incidents involved a male offender, although this proportion was slightly lower among individuals with no religious affiliation (80 percent) than Christians (88 percent).¹³

An article published using data from the 2014 GSS also found that:

Overall, immigrants and people who reported belonging to a visible minority group were less likely than non-immigrants and persons not belonging to a visible minority

¹⁰ Perrault, *supra* note 8 at 16.

¹¹ Similar results were observed in 2004 and 2009.

¹² Ibrahim, *Violent victimization, discrimination and perceptions of safety: An immigrant perspective, Canada, 2014* (Ottawa: Juristat, 2018) at 3.

¹³ *Ibid* at 6.

group to say that they felt very safe walking alone in their neighbourhood after dark (Chart 12 and Table 3).¹⁴ These differences were more pronounced for people who had immigrated since 2005 (46% versus 54% of non-immigrants) and for certain visible minority groups, such as those identifying themselves as Chinese (38%), Filipino (41%) or Southeast Asian (40%) compared with those who do not self-identify with any visible minority group (54%).¹⁵

Perhaps due to the fact that crimes against the Arab and West-Asian population have increased, the Arab and West-Asian populations, especially women, say they felt somewhat or very unsafe walking alone in their neighbourhood after dark.¹⁶ The homosexual population was also less likely than the heterosexual population to say they felt very safe while walking in their neighbourhood after dark.¹⁷

Police-reported hate crimes are quantified through the Uniform Crime Reporting Survey (UCR). This report used the most recent UCR statistics published in 2018. Police-reported hate crimes are defined by the UCR as follows: “Police-reported hate crime is defined as a criminal violation against a person or property motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or gender identity or expression, or any other similar factor.”¹⁸ In 2018, 1,798 hate crimes were reported by the police in Canada.¹⁹ This was the second highest number of police-reported hate crimes recorded from 2009 to 2018, after those reported in 2017.

In police-reported hate crime statistics for 2018, crimes motivated by hatred towards race/ethnicity, and religion were the most frequent grounds of hate-motivated crimes. The religious group that is most often targeted is the Jewish population (20 percent of total police-reported hate crimes), followed by the Muslim population (10 percent of total police-reported hate crimes). The Black population is the

¹⁴ Perrault, *Canadians' perceptions of personal safety and crime, 2014* (Ottawa: Juristat, 2017) at 16.

¹⁵ Perrault, *supra* note 14 at 16.

¹⁶ *Ibid.*

¹⁷ *Ibid* at 17. This observation applies only to males as there was no difference for homosexual and heterosexual females.

¹⁸ Moreau, *Police-reported hate crime in Canada, 2018* (Ottawa: Juristat, 2020) at 4.

¹⁹ *Ibid* at 4.

group most frequently targeted by race (16 percent of total police-reported hate crimes), followed by the Arab/West Asian population, which accounts for six percent of total police-reported hate crimes.

3.0 Method

The primary objective of this research is to examine how courts are applying subparagraph 718.2(a)(i) of the *Criminal Code* by reviewing case law from 1 January 2007, to 23 March 2020.

We searched in CanLII, WestlawNext Canada, Lexis Advance Quicklaw, and La Référence using an extensive set of search terms. In CanLII, we searched by accessing subparagraph 718.2 of the *Criminal Code* and by searching case law that referenced this provision. We also searched in CanLII for case law that mentioned the words "hate" or "hatred" or "prejudice" or "bias" in the document text, removing tribunal decisions²⁰ from the search results for a total of 1,246 cases. We also searched WestLawNext Canada, Lexis Advanced Quicklaw, and La Référence for the same set of search terms. We found and reviewed an additional 142 cases. We reviewed a total of 1,388 cases for relevance. Out of that total sample, we discarded 1,297 cases because "hate," or subparagraph 718.2 of the *Criminal Code*, was absent from the sentencing judge's consideration. After narrowing down the results further, we deemed a total of 48 cases relevant because the sentencing judge discussed or considered s.718.2(a)(i) in his or her decision. These are the cases that we analyzed and discussed in the *Findings* section of this report.

We also reviewed Statistics Canada's police-reported statistics on hate crimes²¹ and self-reported data from the General Social Survey on Victimization²² to contextualize the findings for the published case law. Finally, we conducted a brief literature review to identify recent Canadian research and update the findings from the 2009 report pertaining to the social science literature on hate crimes in Canada.

Further, we did a separate search in CanLII, WestlawNext Canada, Lexis Advance Quicklaw, and La Référence for the four hate crime offences that are specifically criminalized in the *Criminal Code* (subsections 318(1), 319(1), 319(2), and 430(4.1) of the *Criminal Code*). We dealt with these offences separately since they are different from subparagraph 718.2(a)(i), because these offences have specific sentences built into them, and since subsections 318(1) and 319(2) require the consent of the Attorney General before court proceedings can commence under these provisions. We noted up subsections 318(1), 319(1), 319(2) and 430(4.1) within these four databases and reviewed seven cases for paragraph

²⁰ Such as decisions from human rights tribunals, labour tribunals, or the Immigration and Refugee Board.

²¹ Moreau, *supra* note 18.

²² Perrault, *supra* note 8.

318(1), 21 cases for paragraph 319(1), 47 cases for paragraph 319(2), and three cases for paragraph 430(4.1). We oriented our focus towards cases where subparagraph 718.2(a)(i), or hate as an aggravating factor, was also considered by the judge. Thus, out of that total sample, we discarded six cases for subsection 318(1), 15 cases for subsection 319(1), 35 cases for subsection 319(2), and two cases for subsection 430(4.1), because subparagraph 718.2(a)(i) or hate as an aggravating factor was not considered by the judge. After narrowing down the results, only one case was relevant for subsection 318(1), four cases for subsection 319(1), 11 cases for subsection 319(2), and one case for subsection 430(4.1). These are the cases we analyzed under the *Hate Propaganda and Mischief Relating to Religious Property* section of this report.

There are several limitations to relying on published case law. First and foremost, the case law that is published does not necessarily represent all adjudicated cases in an area of law. The cases tend to be precedent-setting or reflect the more serious fact situations. Because national statistics do not capture aggravating factors at sentencing, however, this approach provides some indication of trends and how the courts are addressing these cases.

Second, some cases are adjudicated, but remain unpublished and, thus, unreported. For instance, some judges render their decisions orally, without producing written copies of their judgment. In other cases, decisions can remain unpublished for specific reasons, for example in the case of a criminal jury trial where the jury provides its decision orally without producing written motives for its decision.²³ However,

... in the absence of other sources of data, a careful analysis of published case law is the best indirect source of information for examining particular trends of how specific types of cases are being treated by the courts because published case law is understood to be reflective of accepted thinking on how particular legal issues or patterns of fact are being interpreted in the courts. Therefore, it represents the best data available for examining trends in decision making regarding particular legal issues.²⁴

Third, CanLII, WestlawNext Canada, and Lexis Advance Quicklaw have comprehensive coverage of reported, and unreported case law.²⁵ However, CanLII, WestlawNext Canada, Lexis Advanced Quicklaw,

²³ CanLII, *Frequently Asked Questions (FAQ)*.

²⁴ Lawrence, *supra* note 1 at 15.

²⁵ Queens' University Library, *Legal Citation with the 9th edition of the McGill Guide*.

and La Référence all have specific publishing criteria that do not capture the entirety of existing court decisions. For instance, CanLII:

...does not perform a triage of decisions on the basis of substance or importance. CanLII aims at posting all written decisions distributed by courts and tribunals. That said, many decisions issued orally will never be distributed in a written format. This often happens in certain criminal cases -- for instance, when verdict decisions are rendered by a jury, without written reasons. Please also note that CanLII abides by applicable rules respecting publication restrictions and for this reason may delay publication of some decisions in order to comply with temporary bans on publication.²⁶

According to WestlawNext Canada and Lexis Advance Quicklaw's customer service, both these databases follow a similar approach. They publish "all cases provided to them by the courts" unless specifically requested or mandated to take a case out for legal reasons, such as a publication ban. Further, they admit that some cases "fall between the cracks," although rarely, and that missing cases can be flagged and added to the database accordingly. La Référence's customer service described a very similar approach to publishing cases. They do not have an editorial team making publishing decisions. Rather, La Référence's content team receives cases directly from the courts and publishes the cases they receive. Similar to Westlaw and Quicklaw, La Référence does not publish anything that is under a ban and it cannot publish oral decisions. Thus, we know there may be existing case law that was not reported in these databases. This is a limitation.

We structured the report around the following research questions:

1. How many cases have been reported between 2007 and 2020 where subparagraph 718.2(a)(i) has been considered? What are the facts of these cases? Characteristics of offenders, victims, and offence?
2. What is the court's reasoning/rationale for the application of this aggravating factor?
3. Are there any discernible trends in sentencing as a result of the application of this aggravating factor? In terms of severity or quantum of sentence?

²⁶ CanLII, *supra* note 23.

4.0 Findings

Canadian criminal courts have previously stated that subparagraph 718.2(a)(i) is a “rarely used provision”²⁷ and that sentencing judges have given only limited consideration to subparagraph 718.2(a)(i).²⁸ The findings from this review of published case law corroborate this statement. Between 2007 and 2020, 48 published cases dealt with subparagraph 718.2(a)(i), or hate as an aggravating factor at sentencing, in some manner. This published case law can be divided into five analytic categories according to the level of consideration that subparagraph 718.2(a)(i), or hate as an aggravating factor, was given by the sentencing judge. Table 1 shows the distribution of case law among these five analytic categories.²⁹

Table 1: Published cases considering 718.2(a)(i) and/or hate motivation at sentencing, 2007 to 2020³⁰

	Category	Published case law (n)	Published case law (%)
A	Considered 718.2(a)(i) and did apply it	31	65%
B	Considered 718.2(a)(i) and did not apply it	10	21%
C	Discussed 718.2(a)(i), but did not consider hate as an aggravating factor	5	10%
D	Discussed hate motivation, but not 718.2(a)(i), and did use hate as an aggravating factor at sentencing	1	2%
E	Discussed hate motivation, but not 718.2(a)(i), and did not use hate as an aggravating factor at sentencing	1	2%
	TOTAL	48	100%

The findings in Table 1 demonstrate that in the majority of cases where hate, bias, or prejudice towards an identifiable group was at least discussed, subparagraph 718.2(a)(i) of the *Criminal Code* did receive a

²⁷ *R v J.R.B.* [2004] N.J. No. 101 (Nfld. Prov. Ct.), para 6.

²⁸ *R v Trusler*, [2006] O.J. No. 4303, (Ont. Ct. of Just.), para 39.

²⁹ The distinction between “considered” and “discussed” is made according to WestlawNext Canada’s Keycite indicator. After noting up subparagraph 718.2(a)(i) of the *Criminal Code*, cases with the Keycite indicator “referred to”, are indicated in Table 1 as discussed, and cases with the Keycite indicator “considered” are indicated in Table 1 as considered.

³⁰ “Appendix 2: Sample of Published Cases” identifies the sample of published cases used in this study.

level of consideration by the sentencing judge (86 percent). Where subparagraph 718.2(a)(i) of the *Criminal Code* was specifically considered, the majority of cases applied prejudice, bias, or hate motivation as an aggravating factor at sentencing (65 percent). Thus, where subparagraph 718(a)(i) was considered at sentencing, the findings show an increase in the percentage of cases from 2007 on that applied subparagraph 718.2(a)(i) at sentencing (65 percent), in comparison with cases published between 1977 and 2006 (60 percent). In about one-third of the case law reviewed for this study, subparagraph 718.2(a)(i) was discussed, or considered, without being applied at sentencing (31 percent).

Charge

The majority of published case law (75 percent) dealing with hate as an aggravating factor at sentencing between 1977 and 2006 was for violent offences.³¹ For the current study period, the findings show that violent offences are still the most common offences, at 86 percent (Table 2). The remaining charges in the recent study period were for non-violent offences (14 percent). We also find consistency in the nature of the charges laid against offenders where hate was considered an aggravating factor at sentencing. In case law published between 2007 and 2020, more serious offences largely predominate over less serious offences,³² as also occurred in case law published between 1977 and 2006³³ (Table 2).

Conversely, the majority of police-reported hate crimes were reported for non-violent offences. In 2018, 57 percent of police-reported hate crimes were for non-violent offences and 43 percent were for violent offences.³⁴ In police-reported hate crime statistics, this was largely due to the high volume of regular mischief (45 percent of all police-reported hate crimes). However, it is interesting to note that the

³¹ Lawrence, *supra* note 1 at 19.

³² The distinction between a more serious and a less serious offence is based on Statistics Canada's 2009 Crime Severity Index (CSI). According to Statistic Canada's Crime Severity Index: "the Crime Severity Index tracks changes in the severity of police-reported crime by accounting for both the amount of crime reported by police in a given jurisdiction and the relative seriousness of these crimes. It tells us not only how much crime is coming to the attention of police, but also about the seriousness of that crime. To do this, each type of offence is assigned a seriousness "weight". The weights are derived from actual sentences handed down by courts in all provinces and territories. More serious crimes are assigned higher weights, less serious offences lower weights". Thus, this offence classification was used and according to the CSI classification, the case law reviewed for this study revealed that more serious offences largely predominate over less serious offences (e.g. murder (1st and 2nd degree), manslaughter, assault), in that they were given more weight (considered more serious) and placed in the top half of the seriousness categorization. These findings compare favourably to the results presented in the 2009 report. Please refer to the Crime Severity Index for a detailed classification of criminal offences based on their seriousness level: <https://www150.statcan.gc.ca/n1/pub/85-004-x/2009001/part-partie1-eng.htm>.

³³ Lawrence, *supra* note 1 at 19.

³⁴ Moreau, *supra* note 18 at 6.

volume of non-violent police-reported hate crimes declined between 2017 and 2018 (down 21 percent), at the same time as violent police-reported hate crimes increased (up 38 percent).

Table 2: Offences in the published case law, 2007 to 2020

	Published case law (n)	Published case law (%)
Violent Offences		
Aggravated assault	9	14%
Assault causing bodily harm	7	11%
Participating in activity of a terrorist group	6	9%
Manslaughter	4	6%
First-degree murder	3	5%
Assault	3	5%
Assault with a weapon	3	5%
Commission of offence for terrorist group	3	5%
Sexual assault	2	3%
Criminal harassment	2	3%
Attempted kidnapping	1	2%
Attempted murder	1	2%
Conspiracy to commit mass murder	1	2%
Conveying death threats	1	2%
Intimidation	1	2%
Manslaughter with a firearm	1	2%
Attempted murder with a firearm	1	2%
Second degree murder	1	2%
Uttering threats	1	2%
Working on explosives with intent	1	2%
Accessory after the fact (by helping a criminal escape justice)	1	2%
Being in possession of a dangerous weapon	1	2%
Conspiracy to traffic in controlled substances	1	2%
Conspiracy to use explosives	1	2%
Total for violent offences	56	

Non-violent offences		
Causing a disturbance	2	3%
Mischief	7	11%
Total for non-violent offences	9	
TOTAL – All offence types	65 ^{35,36}	108% ³⁷

Victim Characteristics

There are several trends regarding the characteristics of hate crime victims recorded in published case law.

- *Most victims are male:* In published cases where hate was considered an aggravating factor at sentencing, there were more than twice the number of male victims as female victims. Within the 33 cases containing information about the sex of the victim, there were a total of 45 victims. Thirty of them were male victims (67 percent) whereas 15 of them were female victims (33 percent). These findings are similar to police-reported hate crimes where, between 2010 and 2018, 32 percent of police-reported hate crimes involved female victims whereas 68 percent involved male victims.³⁸

Table 3: Sex of the victim

	Published case law (n), 2007–2020	Published case law (%), 2007–2020	Police-reported crimes (%), 2010–2018
Male	30	67%	68%
Female	15	33%	32%
TOTAL	45³⁹	100%	100%

³⁵ Although we reviewed a total of 48 cases, offenders committed 65 different offences.

³⁶ To ensure consistency and coherence, where the offender was charged for more than one offence, we added only the two most serious charges where hate was considered an aggravating factor at sentencing to this table. Thus, although the total number of cases reviewed is 48, the total number of offence type is 65, as the sentencing judge considered hate as an aggravating factor for more than one offence in 17 cases.

³⁷ Total is not 100 percent due to rounding.

³⁸ Moreau, *supra* note 18 at 17.

³⁹ There were 33 cases that had information on the sex of the victims (n=45). The total is calculated based on those 45 victims.

- *Age of victims varies:* Within published case law considering hate as an aggravating factor at sentencing, only nine cases included information about the age of the victims. Within these nine cases, there were a total of 13 victims: six female victims between the ages of 12 and 23 and seven male victims between the ages of 17 and 82. However, as mentioned in the 2009 report, “unfortunately, with such a small fraction of published cases recording this information and an unknown relationship with actual cases, it is impossible to know if this marked age differential in younger female victims and older male victims is an actual characteristic of cases considering hate as an aggravating factor.”⁴⁰
- *Community is affected by hate crime:* In the context of hate crimes, “not only are individuals victimized by the offender, but the community of people who share the identity of the victim are also impacted.”⁴¹ In some cases, when the offender’s animosity is targeted at a certain identity group, the offender will intentionally target a community of people when committing a hate crime.⁴² In half of the 48 published cases, the facts surrounding the offenders’ actions indicated that they targeted individual people as victims (e.g., murder, assault), and eight offenders targeted groups of people (17 percent) (e.g., assault on a family or group of friends). In 16 of the cases (33 percent), the facts surrounding the offenders’ actions indicated that the offender targeted whole communities as victims (e.g., mischief, threats, participating in activity of a terrorist group).

Victim impact statements describe the harm done to and the loss suffered by the victim of the offence and the Court must consider them when sentencing the offender. They were first introduced in the *Criminal Code* in 1988 and the provisions have been amended several times since then.^{43, 44}

⁴⁰ Lawrence, *supra* note 1 at 20.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Criminal Code*, RSC 1985, c C-46, s722; 1995, c 22, s 6; 1999, c 25, s 17 (Preamble); 2000, c 12, s 95; 2015, c. 13, s 25.

⁴⁴ Roberts, “Victim Impact Statements: Lessons Learned and Future Priorities” *Victims of Crime Research Digest* (2008) at 3–16.

As previously mentioned, in the context of hate crimes, a hate crime is committed not only against an individual, but against an entire identity population or community. A decade ago, research conducted by the Department of Justice found in two case studies that examined the community impact of hate crime that communities of identity were affected more adversely than geographic communities.⁴⁵ In one of the cases, a community impact statement (CIS) was prepared and read out to the court during the sentencing trial of one of the offenders. A CIS may describe the losses suffered by the community affected, such as a neighbourhood or business association, or equality-seeking organization. When the *Canadian Victims Bill of Rights*⁴⁶ came into force in July 2015, amendments strengthened victims' participation rights and made community impact statements (CIS) available for all offences.⁴⁷ Prior to the 2015 amendments, a sentencing judge had the discretion to allow a CIS to be presented and they were, in a small number of cases.

Table 4: Victim or community impact statement in the published case law, 2007 to 2020

	Published case law (n)	Published case law (%)
Victim impact statement	14	29%
Community impact statement	1	2%
No victim or community impact statement	33	69%
TOTAL	48	100%

In the majority of cases dealing with hate as an aggravating factor at sentencing published between 2007 and 2020 (69 percent), the victims of the crime filed neither a victim impact statement nor a community impact statement. In more than a quarter of the cases dealing with hate as an aggravating factor at sentencing (29 percent), the victims of the offence filed at least one victim impact statement.

⁴⁵ See Fashola, "Understanding the Community Impact of Hate Crimes: A Case Study" *Victims of Crime Research Digest* (2011) at 22-27.

⁴⁶ *Canadian Victims Bill of Rights*, SC 2015, c. 13, s. 2.

⁴⁷ *Criminal Code*, RSC 1985, c C-46, s 22, s 6; 1999, c 25, s 18(Preamble). For a summary of recent case law on victim impact statements and community impact statements. See Manikis, "Recent Developments in Victim and Community Participation in Criminal Justice" *Victims of Crime Research Digest* (2019) 12: 5–12.

In two of these cases, the victims of the offence filed multiple victim impact statements (cases where the victims filed 10 and six different victim impact statements, respectively).

Interestingly, even though 16 cases deal with offenders that seemed to target communities as victims, the community filed a community impact statement in only one case⁴⁸ (two percent). One possible way to understand the low number of community impact statements filed is that 29 of the 48 cases dealing with hate as an aggravating factor at sentencing were heard before the *Canadian Victims Bill of Rights* came into force on 23 July 2015.

Grounds of victimization

The reasons for victimization, that is, the identity that motivated the offender's criminal behaviour, are extremely important. Subparagraph 718.2(a)(i) of the *Criminal Code* provides a non-exhaustive list of grounds—race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or any other similar factor.

An important caveat was noted in the 2009 report, “The legislation is organized around the assumption that identity is established by the perpetrator of a crime, not by the victim. Anti-hate crime legislation functions in the absence of the victim's self-identity.”⁴⁹ This is because in law it is the interpretation of evidence surrounding the motivation of the offender that determines if a hate crime has occurred, not the victim's interpretation of how their identity has been affronted through their experience of the criminal incident. As might be expected from crimes often perpetrated out of bigotry and ignorance, the offender's conception of the victim's identity and the victim's conception of their own identity often match imperfectly or sometimes not at all.”⁵⁰ Table 5, below, documents the different grounds found in the cases.

Table 5: Type of identity hated (“grounds”)

	Published case law, 2007–2020 (n)	Published case law (%), 2007–2020	Police-reported hate crime (%), 2018
Race	23	38%	44%
Nationality or ethnicity	7	12%	

⁴⁸ *R v Brazau*, 2017 ONSC 2975, 139 WCB (2d) 429.

⁴⁹ Lawrence, *supra* note 1 at 22.

⁵⁰ *Ibid.*

Sexual orientation	4	7%	10%
Religion	14	23%	36%
Disability (mental or physical)	0	0	0% ^{51 52}
Language	1	2%	1%
Age	1	2%	1%
Sex	5	8%	3%
“Other similar factor”	5	8%	5%
TOTAL	60⁵³		100%

Race, ethnicity, and nationality

As shown in Table 5, the most common grounds of hatred recorded in the published case law dealing with hate as an aggravating factor at sentencing, accounting for half of the offences, are race, nationality, or ethnicity. These findings are consistent with the 2018 police-reported hate crime statistics where the most frequent grounds were also race, nationality, or ethnicity (44 percent). Crimes committed on these grounds accounted for 780 police-reported hate crimes.⁵⁴ Table 6, below, provides a further breakdown of these grounds.

Table 6: Cases motivated by hatred of race or colour

	Published case law (n), 2007–2020	Published case law (%), 2007–2020	Police-reported hate crime (%), 2018
Arab	7	30%	14%
Black	4	17%	36%
East or Southeast Asian	1	4%	7%
Indigenous	3	13%	5%

⁵¹ Hatred towards a disability was the motivating factor in five police-reported crimes. However, the number shows as 0 percent due to rounding.

⁵² Statistics Canada, Police-reported hate crime, by type of motivation, Canada.

⁵³ Although the actual number of cases was only 48, there are a total of 60 instances where different hated identities were mentioned. In at least seven cases, two of the victim’s perceived identities motivated the offending.

⁵⁴ Moreau, *supra* note 18 at 25.

South Asian	1	4%	10%
Latino	1	4%	23%
Multiple racialized groups targeted	2	9%	
Racialized group unclear or “other”	2	9%	
White	2	9%	5%
TOTAL	23	99%⁵⁵	100%

Although the small number of cases make comparisons difficult, Arab and Black populations are the most targeted racialized groups in both police-reported hate crimes and in published case law dealing with hate as an aggravating factor in sentencing. In the case law we reviewed for this study, the Arab population was the most targeted racialized group by crimes committed by hatred of race (30 percent). In police-reported hate crimes from 2018, the Arab population was the second most targeted racialized group.

Further, the findings reveal that the Indigenous and White populations are overrepresented in published case law where offences were motivated by hatred towards race, compared with police-reported hate crime statistics. Crimes committed on the grounds of hatred towards the Indigenous and the White populations are the third and fourth most targeted racialized groups in published case law (13 percent and nine percent, respectively), whereas they were the two least targeted racialized groups in police-reported hate crimes in 2018.

As shown in Table 5, seven cases were motivated by hatred towards an ethnicity or a nationality (12 percent of total hate crime motivations). Out of these seven cases, four cases applied hatred towards an ethnicity or a nationality as an aggravating factor at sentencing for offenders who committed crimes on the grounds of religiously-motivated violent extremist ideologies (57 percent of case law dealing with hatred towards a nationality or an ethnicity). The remaining three cases dealing with crimes motivated by hatred towards an ethnicity or a nationality were targeted against victims of the Persian population (14 percent), the Syrian population (14 percent), and the Middle Eastern population (14 percent).

⁵⁵ Total does not equal 100 percent, due to rounding.

Religion

The second most frequent grounds of hate crimes are hatred towards a religious group, in both published case law dealing with hate as an aggravating factor at sentencing (23 percent) and in police-reported hate crime statistics (36 percent).⁵⁶ A total of 639 police-reported crimes were motivated by hatred towards a religious group in 2018.⁵⁷ Religious hate crimes targeted the Jewish population in 347 instances (54 percent), making it the most targeted religious group.⁵⁸ Although police-reported hate crimes motivated by hatred towards the Muslim population decreased by 54 percent in 2018 (in comparison with 2017), hatred towards the Muslim population remained the second most targeted religious group in police-reported hate crimes.⁵⁹ A total of 173 police-reported hate crimes targeted that population (27 percent).⁶⁰

Table 7: Cases motivated by hatred of religion

	Published case law (n), 2007–2020	Published case law (%), 2007–2020	Police-reported hate crime (%), 2018
Muslims	7	50%	27%
Jews	1	7%	54%
Catholics	0	0%	6%
Other religion ⁶¹	0	0%	7%
Other—Religiously-motivated violent extremism ideologies	6	43%	0%
Religion not specified	0	0%	6%
TOTAL	14	100%	100%

Consistent with the findings of the 2009 report,⁶² the Muslim and the Jewish populations remain the only two religious identity groups targeted by hate crimes in published case law dealing with hate as an aggravating factor at sentencing. The Muslim population was the most targeted group among case law

⁵⁶ Moreau, *supra* note 18 at 25.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Includes religion not otherwise listed, such as Sikhs, Hindus, Buddhists, etc.

⁶² Lawrence, *supra* note 1 at 23.

where crimes were motivated by hatred towards a religion (50 percent). This represents an important change from the 2009 report where crimes targeted against the Muslim population accounted for only nine percent of religious hate crimes.⁶³ Interestingly, out of the 14 cases dealing with hatred towards religion, the Jewish population was only targeted once (seven percent). Although the proportions remain small, this number is significantly less than the numbers reported in the 2009 report where four cases dealt with hatred towards the Jewish population (80 percent of cases dealing with hatred towards religion).⁶⁴ Also, the findings show that the Jewish population is considerably underrepresented in the published case law in comparison with police-reported hate crime statistics, where the Jewish population was targeted by 347 hate crimes (54 percent of police-reported hate crimes targeted against a religion).

Contrary to published case law dealing with hate as an aggravating factor at sentencing, the Jewish and Muslim populations were not the only religious identity groups targeted in police-reported hate crime statistics in 2018.⁶⁵ There were 35 instances where crimes motivated by hatred of a religion targeted the Catholic population (six percent), and 46 that targeted other religions (e.g. Sikhs, Hindus, Buddhists, etc.) (seven percent).⁶⁶

A little over three quarters of the published case law dealing with hatred towards a religion were for non-violent offences (79 percent), including nearly a third that were for offences against property (29 percent). Violent offences made up only three cases dealing with hatred towards a religion (21 percent). Police-reported hate crime statistics are consistent with these findings. Among the two most targeted religious groups, 84 percent of crimes motivated by hatred against the Jewish population and 60 percent of crimes targeted against the Muslim population in 2018 were non-violent.

In published case law considering hate as an aggravating factor at sentencing, sentencing judges have started applying subparagraph 718.2(a)(i) of the *Criminal Code* to crimes committed on the grounds of religiously motivated violent extremist ideologies. Within the 14 cases dealing with hatred towards a religion, six cases dealt with crimes committed on the grounds of religiously motivated violent extremist ideologies (43 percent). Although judges did not identify the specific religion targeted by these beliefs, hatred towards a religion was deemed an aggravating factor at sentencing in all six of these cases. In all

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Moreau, *supra* note 18 at 25.

⁶⁶ *Ibid.*

six of these decisions terrorist activities were planned and inspired by religiously motivated violent extremist ideologies. However, in all six cases, the terrorist activities were intercepted before they were put into action.

Language

In the previous report, there were no instances where published case law dealt with hatred based on language as an aggravating factor at sentencing.⁶⁷ During the current study period, only a single case considered hate towards a language as an aggravating factor at sentencing (two percent). In *R v Warren SRM (Officer Cadet)*,⁶⁸ the sentencing judge considered hatred towards Francophones when examining the applicability of subparagraph 718.2(a)(i) to a violent offence (Assault causing bodily harm [CC, s. 267(b)]). In this decision, the sentencing judge concluded that the prosecutor failed to provide sufficient evidence to prove that hatred towards Francophones was an aggravating factor at sentencing. In this case, the offender made comments against Francophones, but the prosecutor failed to prove that the offender was motivated by hatred towards French-speaking Canadians when committing the assault.

In police-reported hate crime statistics in 2018, language is the sixth most frequent grounds for hate crimes.⁶⁹ In 2018, only 14 police-reported crimes were committed on the grounds of hatred towards a language (one percent). Although the number of police-reported hate crimes committed on the grounds of language is available, the nature of these crimes is not (e.g., anti-French or anti-English, violent or non-violent crimes).

Age

As noted in the previous report: “Hate crimes motivated by ageism are very rarely recorded by police services in Canada.”⁷⁰ In 2018, 10 police-reported hate crimes were motivated by hatred towards the victim’s age. This represents less than one percent of total police-reported hate crimes.⁷¹ The findings collected in the course of this study corroborate these numbers. For the current study period, the

⁶⁷ Lawrence, *supra* note 1 at 24.

⁶⁸ *R v Warren SRM (Officer Cadet)* [2008]CM 2005.

⁶⁹ Statistics Canada, *supra* note 54. See Table: 35-10-0066-01

⁷⁰ Lawrence, *supra* note 1 at 29.

⁷¹ Statistics Canada, *supra* note 54.

sentencing judge considered hatred towards age as an aggravating factor at sentencing in only one case (two percent).

In *R v MacLean*,⁷² the sentencing judge stated that subparagraph 718.2(a)(i) was relevant in this case. The judge began by recognizing that there is a difference between an offender who deliberately commits a crime while knowing that the victim is underage, and an offender who is not aware of the victim's age. The sentencing judge then applied this principle to the facts of the case and stated that, in this case, the offender failed to take reasonable steps to find out the victim's age, which is punishable, although less blameworthy, than an offender who deliberately lured a child to commit a crime. The sentencing judge recognized the relevance of subparagraph 718.2(a)(i) and analyzed the relationship between the offender and the victim's age. However, the judge did not specify whether he considered these facts aggravating and whether he applied subparagraph 718.2(a)(i) with regard to age.

Sex

As noted in the previous report about hate as an aggravating factor at sentencing:

Sex and gender are ... often confused in common understanding, in collected statistics, and by the courts. Sex is the biological descriptor of being physically male or female. Gender is the set of social meanings that is given to being a man or a woman (and in some cultures other genders, as well). In published cases, gender and sex appear to often be used interchangeably. Thus, in 718.2(a)(i) the ground of "sex" includes crimes motivated by hatred of either sex or gender. Further, Canadian courts and human rights tribunals have tended to understand that gender identity is equated with sex as an analogous ground of discrimination or hatred.⁷³

Importantly, in 2017, the *Criminal Code* was amended to specifically include gender identity or gender expression as two of the grounds in subparagraph 718.2(a)(i).

In police-reported hate crimes, only 49 hate crimes were motivated because of hatred based on the victim's sex or perceived sex (three percent of total police-reported hate crimes). Between the years 2010 and 2018, violent hate crimes committed against the Indigenous (45 percent) and Muslim

⁷² *R v MacLean*, 2018 NLSC 209, 151 W.C.B. (2d) 441.

⁷³ Lawrence, *supra* note 1 at 24.

populations (45 percent) were more likely to involve female victims in comparison with crimes against other identifiable groups. However, the proportion of police-reported crimes committed against each sex is unavailable.

In published case law from 2007 to 2020 considering hate as an aggravating factor in sentencing, five cases (eight percent) dealt with hatred towards sex. This is more than double the number of such cases in case law published between the years 1977 and 2006, which considered hatred towards sex in only two cases (four percent).⁷⁴ In three of the cases for the current study period, the sentencing judge did apply subparagraph 718.2(a)(i) of the *Criminal Code* and concluded that hatred towards sex was an aggravating factor at sentencing. In the other two cases dealing with hatred towards sex, the sentencing judge did not apply subparagraph 718.2(a)(i) of the *Criminal Code*. In all five of these cases, where hatred towards sex was considered at sentencing, the hatred was targeted against women.

As noted in the previous report:

Partly as a result of campaigns to address violence against women, in Canada, another one of the sentencing principles that has been established in section 718.2 of the *Criminal Code*, in sub-section (a)(ii), is that:

(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,

(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner.⁷⁵

It is possible that cases where hatred of sex is one of the elements motivating the offender, particularly in cases of domestic abuse, section 718.2(a)(ii) might be employed instead [of] 718.2(a)(i). Supporting this hypothesis is reported case law, where, when the offence was found to be motivated by a hatred towards sex, the victim and offender were either strangers to one another or recent and tenuous acquaintances.

⁷⁴ *Ibid* at 25.

⁷⁵ This subparagraph was amended in 2019 by Bill C-75 to read: (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family.

Sexual Orientation

Hate crimes committed on the grounds of sexual orientation have decreased by more than half in comparison with the previous report.⁷⁶ Between 1977 and 2006, the offender was motivated by hatred on these grounds in 11 published cases (22 percent of published case law dealing with hate as an aggravating factor at sentencing). For the current study period, the offender was motivated by hatred towards sexual orientation in only four cases (seven percent of the case law).

Although the number of police-reported hate crimes committed on the grounds of sexual orientation was greater in 2018 than in 2006 (from 80 in 2006 to 173 in 2018), the actual proportion has decreased, which is consistent with this report's findings. In 2013, out of all hate crimes reported to police that year, 16 percent were committed on the grounds of sexual orientation.⁷⁷ Thereafter, that proportion has been decreasing consistently.⁷⁸ In 2018, police-reported hate crimes committed on the grounds of sexual orientation accounted for 10 percent of police-reported hate crimes; this is the lowest proportion since 2007.⁷⁹

In the case law published for the current study period, all crimes motivated by hatred of a sexual orientation were targeted against the gay population (100 percent).⁸⁰ The majority of police-reported hate crimes in 2018 that were committed on the grounds of sexual orientation were committed against the gay and lesbian population (79 percent), but also those who identified (or were perceived to identify) as bisexual (three percent), and as other sexual orientations, such as the asexual and pansexual populations (12 percent).

Disability (mental and physical) and other similar factors

In contrast to the previous report,⁸¹ none of the cases dealing with hate as an aggravating factor at sentencing were motivated by hatred towards a person with a mental or physical disability (Table 3). Although not applied clearly, offences motivated by hatred towards a disability (mental or physical) accounted for six percent of published case law (three cases) between the years 1977 and 2006.⁸²

⁷⁶ Lawrence, *supra* note 1 at 21.

⁷⁷ Allen, "Police reported hate crime in Canada, 2013" *Juristat* (2015) at 23.

⁷⁸ Allen, *supra* note 78 at 23.

⁷⁹ Walsh, "Police reported hate crime in Canada, 2007" *Juristat* (2009) at 15.

⁸⁰ The term gay is used here to denote the male homosexual community as reported in the published case law, 2007–2020. It is acknowledged that many different terms of identity are used by many different communities and people.

⁸¹ Lawrence, *supra* note 1 at 21.

⁸² *Ibid.*

Similarly, only nine police-reported hate crimes in 2018 were listed as being motivated by hatred towards a disability.⁸³

Table 8: Cases motivated by other similar factor in the published case law, 2007 to 2020

	Published case law (n)	Published case law (%)
Occupation	1	20%
Political beliefs	1	20%
Hatred for authority and police	2	40%
Hatred for homeless people	1	20%
TOTAL	5	100%

Subparagraph 718.2(a)(i) of the *Criminal Code* reads that sentencing judges have the discretion to find “other similar factors” as aggravating factors at sentencing. Between 2007 and 2020, the results reveal that hatred towards new identity groups was categorized under the meaning “other similar factors.” Sentencing judges found that offences motivated by hatred towards political beliefs, against police officers, and against homeless people were aggravating factors at sentencing under “other similar factors” of subparagraph 718.2(a)(i). These three aggravating factors were absent from case law considering hate as an aggravating factor at sentencing published between the years 1977 and 2006.⁸⁴

In *R v Mills*,⁸⁵ the sentencing judge considered whether hatred towards an identifiable street gang could fall under “other similar factors” and be considered an aggravating factor at sentencing under subparagraph 718.2(a)(i) of the *Criminal Code*. However, the sentencing judge concluded that “other similar factors” did not meet the criteria and refused to consider hatred towards an identifiable street gang an aggravating factor under subparagraph 718.2(a)(i) of the *Criminal Code*.

⁸³ Statistics Canada, *supra* note 54. See Table: 35-10-0066-01

⁸⁴ Lawrence, *supra* note 1.

⁸⁵ *R v Mills*, 2019 ONCA 940, 382 C.C.C. (3d) 377.

Offenders/ Group offending

Similar to crime in general, people accused of police-reported hate crimes are mostly younger males.

From 2010 to 2018, the median age of people accused of police-reported hate crimes was 26.⁸⁶

However, the median age of these offenders has been increasing since 2014.⁸⁷ The median age of police-reported hate crime offenders went from 26 in 2014 to 32 years of age in 2018.⁸⁸ These numbers are consistent with this report's findings.

In published case law considering hate an aggravating factor at sentencing, the age of the offender was indicated for 38 out of 48 cases. Within these 38 cases, 27 of the offenders were between the ages of 18 and 35 (71 percent), nine were above the age of 35 (24 percent), and two were youth offenders (five percent). Where the age of the offender was indicated in the reported case law reviewed in this study, the average age of the offender was about 31 years old. This average is significantly higher than the average age of the offenders reported in hate crimes case law published from 1977 to 2006 (24 years of age).⁸⁹ However, this upwards trajectory is consistent with police-reported hate crime statistics, which also report an increase in the median age of the offenders.⁹⁰

Table 9: Sex of offenders

Sex	Published case law (number of offenders) (n), 2007–2020	Published case law (% of offenders), 2007–2020	Police-reported crimes (% of offenders), 2010–2018
Male	45	94%	86%
Female	3	6%	14%
TOTAL	48	100%	100%

As for the sex of the offenders, the majority in the published case law reviewed in this study were male offenders (45 out of 48 cases, or 94 percent). In only three cases out of 48 were females the principal

⁸⁶ Moreau, *supra* note 18 at 31.

⁸⁷ *Ibid* at 19.

⁸⁸ *Ibid*.

⁸⁹ Lawrence, *supra* note 1 at 31.

⁹⁰ Moreau, *supra* note 18 at 19.

perpetrator (six percent). Male offenders also constituted the majority of people accused in police-reported hate crimes (86 percent)⁹¹ whereas females made up the minority (14 percent).⁹²

Table 10: Offenders' identity in a racialized group in the published case law, 2007 to 2020

	Published case law number of offenders	Published case law (%)
Arab	6	13%
Black	1	2%
East or Southeast Asian	0	0%
Indigenous	3	6%
South Asian	4	8%
White	22	46%
No racialized identity Noted	12	25%
TOTAL	48	100%

Statistics Canada's police-recorded statistics do not report the offenders' identity in a racialized group (i.e., race, colour, ethnicity, or nationality). However, information about the offender's identity in a racialized group was noted for 36 of the 48 published cases relevant to this study. Offenders identified as White represented the most frequent racialized identity (22 out of 48 cases or 46 percent). In the minority of cases with information on the race of the offender, they are identified as Arab (13 percent), South Asian (eight percent), and Indigenous (six percent). In only one case was the offender identified as Black (two percent), and the remaining 12 cases did not note any racialized identity (25 percent).

As noted in the previous report, it is important to highlight the following note to contextualize the scope of these findings:

[A]s scholars of whiteness studies have noted, an aspect of the systemic racism of North American society is that "White" is considered to be a normative social category that is often not racialized. Thus, one might hypothesize that a large

⁹¹ Moreau, *supra* note 18 at 31.

⁹² *Ibid.*

majority of the offenders who were not racialized in the published cases might be considered to belong to the racialized category of White. If the offender in most of the cases where the offender's racialized identity was not noted were White, then roughly three quarters of offenders in published hate crime cases might belong to the racialized category of White.⁹³

In the published case law addressing hate as an aggravating factor at sentencing, 29 of the 48 cases dealt with offences that were committed by lone offenders (60 percent), and the remaining 19 cases dealt with groups of at least two offenders (40 percent). The findings are quite similar to the findings detailed in the 2009 report where, out of the 48 cases that considered subparagraph 718.2(a)(i) of the *Criminal Code* or described an element of hate, 27 cases dealt with lone offenders (56 percent) and 21 cases dealt with groups of at least two offenders (44 percent).⁹⁴

Reasons for considering hate in sentencing

The findings revealed by this research are consistent with those detailed in the 2009 report on hate as an aggravating factor at sentencing, specifically that: “[T]he most commonly discussed sentencing principles were those that parliamentarians established as being the main impetus behind the inclusion of 718.2(a)(i); namely deterrence and denunciation.” As shown in Table 11, specific and general deterrence were the most commonly cited principles related to sentencing (cited 64 times), closely followed by denunciation and retribution, which were cited 45 times.

Further, the findings reveal that after general and specific deterrence, the most commonly cited principles related to sentencing in the case law reviewed for this study were denunciation (cited 40 times), rehabilitation (cited 33 times), proportionality (cited 25 times), and the protection of society (cited 22 times). This is similar to the findings reported in the 2009 report where the most commonly cited principles related to sentencing, after general and specific deterrence, were also denunciation (cited 44 times), and rehabilitation (cited 26 times).⁹⁵ Conversely, the results report that for the current

⁹³ Lawrence, *supra* note 1 at 31.

⁹⁴ *Ibid* at 33.

⁹⁵ *Ibid* at 43.

study period, the least cited principles related to sentencing were accountability (cited three times), parity (cited four times), and reparation (cited four times). As was the case for the previous study period,⁹⁶ reparation was cited in only four of the cases reviewed for this study, consistently making it one of the least-cited sentencing principles in case law dealing with hate as an aggravating factor at sentencing.

Table 11: Number of times particular principles related to sentencing were cited in the published case law, 2007 to 2020

Principles of Sentencing	Number of times referenced in decisions
General deterrence	39
Specific deterrence	25
Total Deterrence	64
Denunciation	40
Retribution	5
Total Denunciation	45
Promotion of responsibility in offender	6
Accountability	3
Acknowledgement of harm done to community	8
Total Recognition	17
Rehabilitation	33
Protection of society	22
Reparation	4
Totality	7
Parity	4
Proportionality	25
Number of instances where a sentencing principle was discussed	222
Number of offenders	48

⁹⁶ *Ibid.*

In case law considering hate as an aggravating factor at sentencing, a number of conditions were imposed on the offenders as part of the sentencing judges' decisions. The most common conditions were the obligation to provide a DNA sample, and the prohibition on possessing weapons, which accounted for 60 percent of all conditions ordered at sentencing. Other common conditions were victim surcharge (7), counselling (7), community service (4), fines (2), or supervised/conditional access to the Internet (2). In the previous report, offenders were ordered to draft an apology letter in five cases; in the current report, no offenders were ordered to draft apology letters.⁹⁷

Table 12: Number of times conditions were imposed in the published case law, 2007 to 2020, by type of condition

Conditions	Number of times conditions imposed, by type of condition
Weapon prohibition	20
Counselling	7
DNA sample	21
Registered sex offender	1
Abstain from alcohol/drugs	1
Abstain from being a nuisance to the public	1
Abstain from partaking in illegal public demonstrations	1
Communication restrictions	1
Community service	4
Victim surcharge	7
Fine	2
Supervised / Conditional access to the internet	2
Number of Particular Conditions	68
Number of Different Offenders	48

⁹⁷ Lawrence, *supra* note 1 at 44.

In a little over half of the published case law considering hate as an aggravating factor at sentencing, the offender initially pleaded guilty to the accusations (58 percent). Only a few cases noted the offender's initial plea as being not guilty (eight percent). The remaining cases did not provide information on whether the initial plea from the offender was guilty or not guilty (33 percent). As noted in the previous report: "This may be indicative of a situation where the evidence against the offender was quite clear."⁹⁸

Quantum of enhancement

Subparagraph 718.2(a)(i) of the *Criminal Code* gives trial judges the discretion to decide whether hate should be taken into account as an aggravating factor at sentencing, and to what extent it should increase the severity of a sentence.⁹⁹ Judges are guided by the decisions of the appellate courts, but are not subject to advisory guidelines on how to exercise their discretion.¹⁰⁰ In published case law considering hate an aggravating factor at sentencing, only a few judges detailed how they applied subparagraph 718.2(a)(i) and how that influenced the severity of the sentence. Of the 48 cases dealing with hate as an aggravating factor at sentencing, sentencing judges have applied hate, or subparagraph 718.2(a)(i), as an aggravating factor at sentencing in 32 cases (Table 1). As previously noted, this represents an increase in the percentage of cases that applied hate as an aggravating factor in sentencing (65 percent; Table 1), in comparison with cases published between 1977 and 2006 (60 percent).¹⁰¹ However, in only one case did the sentencing judge detail how they applied subparagraph 718.2(a)(i) as an aggravating factor, and the quantum with which it increased the sentence (three percent) (*R v Kandola*).¹⁰² This is significantly less than in cases published between 1977 and 2006 where seven cases detailed the quantum with which the sentencing judge augmented the sentence on the grounds of hate motivation.¹⁰³

In *R v Kandola*, the sentencing judge explicitly stated that the minimum sentence proposed by the defence attorney, five months incarceration for assault causing bodily harm, was demonstrably unfit since the offence was motivated by hatred towards the homosexual population. Therefore, the sentencing judge pronounced a sentence of 17 months incarceration for assault causing bodily harm.

⁹⁸ Lawrence, *supra* note 1 at 44.

⁹⁹ *Ibid* at 45.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid* at 18.

¹⁰² *R v Kandola*, 2010 BCSC 841, 88 WCB (2d) [*Kandola*].

¹⁰³ Lawrence, *supra* note 1 at 45.

The judge justified this sentence by applying subparagraph 718.2(a)(i) of the *Criminal Code* and by explaining the crucial importance of deterrence in this case to properly deter the Canadian population from committing offences on the grounds of hatred towards a person with a different sexual orientation.¹⁰⁴ By increasing the sentence by 12 months, the sentencing judge augmented the quantum of sentence by 71 percent on the grounds that the offender's hatred towards the homosexual population was an aggravating factor at sentencing. Although the proportions are less, the findings are consistent with the average quantum of enhancement found in sentences that were increased on the grounds of hate motivation between 1977 and 2006 (70 percent).¹⁰⁵

The judgment in *R v Kandola* sets precedent in the determination of whether hatred towards a victim's sexual orientation should be deemed an aggravating factor at sentencing. In *R v Kandola*, the sentencing judge considered six factors in determining whether he or she should apply subparagraph 718.2(a)(i) and consider hatred towards the victim's sexual orientation an aggravating factor at sentencing:

- (1) anti-homosexual language uttered before, during, or after the offence;
- (2) whether the offence was committed in a location homosexuals are known to frequent;
- (3) the lack of provocation;
- (4) any lack of prior interaction between accused and victim;
- (5) extreme or disproportionate violence; and
- (6) the absence of any possible alternative explanation.¹⁰⁶

In case law following *R v Kandola*, the sentencing judge also considered these six factors in determining whether hatred towards a person with a different sexual orientation should be considered an aggravating factor at sentencing. Namely, the sentencing judges in *R v Stalker*¹⁰⁷ and *R v Woodward*¹⁰⁸ followed the six factors established in *R v Kandola* and found that hatred towards the victim's sexual orientation was an aggravating factor at sentencing. However, as stated above, neither of the

¹⁰⁴ *Kandola*, *supra* note 103.

¹⁰⁵ Lawrence, *supra* note 1 at 45.

¹⁰⁶ *Kandola*, *supra* note 103.

¹⁰⁷ *R v Stalker*, 2011 BCSC 1401, 97 WCB (2d) 395.

¹⁰⁸ *R v Woodward*, 2010 BCPC 271, 91 WCB (2d) 131.

sentencing judges in these cases explained why they increased the amount of the sentence after considering hatred towards the victim's sexual orientation to be an aggravating factor.

[Hate Propaganda and Mischief relating to religious property \(sections 318\(1\), 319\(1\), 319\(2\), 430\(4.1\) of the *Criminal Code*\)](#)

As mentioned earlier, the *Criminal Code* contains specific provisions for hate propaganda and mischief motivated by hatred relating to certain kinds of property. These criminal offences criminalize specific hate motivated conduct, namely advocating or promoting genocide against an identifiable group (subsection 318(1)), inciting hatred against any identifiable group where such incitement is likely to lead to a breach of the peace (subsection 319(1)), wilfully promoting hatred against any identifiable group (subsection 319(2)), and committing hate-motivated mischief relating to property primarily used for religious worship or certain other kinds of property (subsections 430(4.1) and 430(4.101)). For the purpose of this study, the research focused on cases that considered both subparagraph 718.2(a)(i) and one of the hate propaganda provisions or the hate-motivated mischief provision.

Because these criminal offences are specifically criminalized in the *Criminal Code*, specific sentence parameters are imposed on each of these offences. Interestingly, although each of these four criminal offences deal with hate in a certain manner, only 14 percent of cases considering subsection 318(1) (one case), 19 percent of cases considering subsection 319(1) (four cases), 24 percent of cases considering subsection 319(2) (11 cases), and 33 percent of cases considering subsection 430(4.1) (one case) have also considered hate an aggravating factor at sentencing (subparagraph 718.2(a)(i) of the *Criminal Code*).¹⁰⁹

Similar to the general case law where subparagraph 718.2(a)(i) was considered at sentencing, young men were the principal perpetrators in the majority of cases where both subparagraph 718.2(a)(i) and a hate propaganda provision were considered. In fact, men were reported as the principal perpetrator in every case where subparagraph 718.2(a)(i) and one of the hate propaganda, or hate-crime mischief provisions, were considered (100 percent). The findings also show that, in the 13 cases where

¹⁰⁹ Two of these cases consider both subsection 319(2) and subsection 319(1) (*R v A.B.*, 2012 NSPC 31 (CanLII), and *R v Leach*, 2019 BCCA 451 (CanLII)), and one of these cases consider both subsection 319(2) and subsection 318(1) (*R v Balaram-Sivaram* [2019] O.J. No. 4999). Thus, although the number of cases considering both subparagraph 718.2(a)(i) and one of the hate propaganda or hate-crime mischief provisions is 17, there are only 14 individual cases considering these sections.

information about the age of the offender is available, eight of the offenders were between the ages of 17 and 35 (62 percent), and the remaining five offenders were over the age of 49 (39 percent).¹¹⁰ Within the 13 cases with information on the age of the offender, the average age of the offender was 38 years of age, which is slightly older than the average age reported in general case law considering subparagraph 718.2(a)(i) of the *Criminal Code* (31 years of age).

As explained in the previous sections of this report, hate crimes cannot only target individuals as victims, but also communities as a whole. Partly explained by the nature of these four *Criminal Code* offences, the facts surrounding the offenders' actions indicated in 93 percent of the cases that they only targeted communities as victims (in 13 of the 14 cases), and in seven of these cases (50 percent of cases that targeted communities) multiple communities were targeted by the offender. The remaining case targeted both communities and individuals as the victims of the crime (five percent) (*R v Balaram-Sivaram*).¹¹¹

Within the six cases that targeted single communities, five were motivated by hatred of a religion (83 percent), and one was motivated by hatred of a race (17 percent). Three of the offences motivated by hatred of a religion targeted the Muslim population and the remaining two targeted the Jewish population. The remaining racially motivated offence targeted the Middle Eastern population. Among the cases where multiple populations were targeted by the offence, eight cases were motivated by religion (100 percent of the cases where multiple populations were targeted), six cases were motivated by race (75 percent of cases where multiple populations were targeted), three cases were motivated by hatred of a sexual orientation (38 percent), one case was motivated by hatred of a national origin (13 percent of cases where multiple populations were targeted), and one case was motivated by hatred of a sex (13 percent¹¹² of cases where multiple populations were targeted). Specifically, among the cases where multiple populations were targeted, the Jewish population was targeted six times, the Black population was targeted five times, the Muslim population was targeted three times, the homosexual population was targeted three times, the Middle Eastern population was targeted once, the Israeli population was targeted once, and women in general were targeted once.

¹¹⁰ Total does not equate to 100 percent due to rounding.

¹¹¹ *R v Balaram-Sivaram*, 2020 ONCA 204, 162 WCB (2d) 304.

¹¹² Total amounts to more than 100 percent as eight of the cases targeted more than one identifiable group.

Thus, overall, the Jewish population was targeted the most (ten of the 14 cases; 71 percent of the cases), followed by the Muslim population (six of the 14 cases; 43 percent of the cases), and the Black community (five of the 14 cases; 36 percent of the cases).¹¹³ These findings are consistent with the most common grounds of victimization recorded in case law considering hate an aggravating factor at sentencing, as well as to police-recorded hate crimes statistics presented in the *Grounds of Victimization* section of this report.

Where judges gave consideration to both section 319(1) (incitement of hatred in a public place against an identifiable group that is likely to lead to a breach of the peace) and subparagraph 718.2(a)(i) of the *Criminal Code*, half of the cases dealt with offenders writing hateful messages in public places (two of the four cases; 50 percent). The remaining two cases were for offenders inciting hatred through the distribution of hateful pamphlets (one case), and for explicitly stating hateful comments in a private conversation.¹¹⁴ Although judges pronounced a guilty verdict in two of the four cases where subparagraph 718.2(a)(i) was considered alongside section 319(1) of the *Criminal Code*, the judges only applied subparagraph 718.2(a)(i) in one of these cases. In this decision,¹¹⁵ the offender's anti-Muslim pamphlets demonstrated prejudice and intolerance of the Muslim population, which ultimately led the judge to apply subparagraph 718.2(a)(i) of the *Criminal Code*. However, even though the sentencing judge gave "substantive weight" to this aggravating factor, they did not explain the amount by which subparagraph 718.2(a)(i) affected the severity of the sentence.¹¹⁶

In cases where both subsection 319(2) (wilful promotion of hatred against an identifiable group) and subparagraph 718.2(a)(i) of the *Criminal Code* were considered, the offences were mostly cases where the offender published hateful comments towards an identifiable group on the web, or administered websites where hateful comments directed against an identifiable group were published (six of the 11 cases; 55 percent). The remaining four cases were for writing hateful messages in public places (two cases), for expressing racist comments publicly (one case), or for holding racist comments in a private conversation (one case).¹¹⁷ Within the 11 cases where subsection 319(2) and subparagraph 718.2(a)(i)

¹¹³ Total amounts to more than 100 percent as eight of the 14 cases targeted more than one identifiable group.

¹¹⁴ In *R v Leach*, 2019 BCCA 451 (CanLII), the judge concluded that subsection 319(1) did not apply to racist comments spoken in a private conversation.

¹¹⁵ *R v Brazau*, [2014] OJ No 2080.

¹¹⁶ *Ibid.*

¹¹⁷ In *R v Leach*, 2019 BCCA 451 (CanLII), consideration was given to both sections 319(1) and 319(2). Thus, the judge arrived at the same conclusion than for section 319(1), and concluded that section 319(2) did not apply to racist comments from a private conversation.

were both considered, subparagraph 718.2(a)(i) was applied in nine of these cases (82 percent). Interestingly, the only two cases where subparagraph 718.2(a)(i) was considered without being applied alongside subsection 319(2) were cases where the judge acquitted the offender of the charges laid under subsection 319(2) of the *Criminal Code*. Further, only three of the nine cases where subparagraph 718.2(a)(i) and subsection 319(2) were applied have information on the effect of hate as an aggravating factor at sentencing (33 percent). In these three cases, the judge rejected the possibility of a conditional sentence and concluded that, because the offence was motivated by hatred against a group identified in subparagraph 718.2(a)(i) of the *Criminal Code*, the appropriate sentence was one of imprisonment.

The decision in *R. v. Balaram-Sivaram*¹¹⁸ is the only case where subsection 318(1) (advocating or promoting genocide against an identifiable group) is considered alongside subparagraph 718.2(a)(i) of the *Criminal Code*. In this decision, the offender sent emails to multiple individuals and organizations, and used social media with “the specific intent to commit genocide and intended to advocate genocide against an identifiable group listed in subsection 318(4) of the *Criminal Code*, distinguished by race, religion, ethnic origin or sexual orientation. These communications are replete with words advocating in various iterations, the death of Jews, people from the State of Israel and homosexuals.”¹¹⁹ The judge concluded that the offender advocated genocide against several identifiable groups and sentenced the offender, applying hate as an aggravating factor, to three years of imprisonment. Although the judge recognized the application of subparagraph 718.2(a)(i) and hate as an aggravating factor at sentencing, they did not provide information on the quantum by which subparagraph 718.2(a)(i) influenced the sentence.

Section 430(4.1) of the *Criminal Code* (mischief relating to property primarily used for religious worship, before the subsection was expanded to include certain other kinds of property) was only considered alongside subparagraph 718.2(a)(i) in *R v Ghaffari*.¹²⁰ In this case, the offender interrupted a religious service during the holy month of Ramadan and screamed obscenities at the attendees. The judge did not apply subparagraph 718.2(a)(i) of the *Criminal Code* and justified his decision by stating that subsection 430(4.1) incorporated the aggravating circumstances surrounding the religious hatred that accompanies mischief relating to religious property in the offence itself. Thus, the judge noted that an appropriate sentence for an offender guilty of breaching subsection 430(4.1) generally requires a

¹¹⁸ *Supra*, note 111.

¹¹⁹ *Ibid* at para 21.

¹²⁰ *R v Ghaffari*, 2017 ONCJ 523, 141 WCB (2d) 648.

custodial sentence. However, although the judge recognized that the offender committed mischief in the course of a religious service by shaming Islam, the judge concluded that the offender's actions were motivated by anger at his mother's death and found the offender not guilty.

5.0 Conclusion

We conducted this study to discern trends in the application of subparagraph 718.2(a)(i) of the *Criminal Code* and hate as an aggravating factor at sentencing. To do so, we considered three main research questions: how many cases were reported between 2007 and 2020 where subparagraph 718.2(a)(i) has been considered and what the specifics surrounding these offences were, what the court's reasoning/rationale for the application of hate as aggravating factor was, and whether there were any discernible trends in sentencing as a result of the application of hate as an aggravating factor at sentencing.

To answer these three main research questions, the same methodology was used in this study as in an earlier 2009 study by Lawrence et al. Canadian jurisprudence was reviewed to find cases where subparagraph 718.2(a)(i) of the *Criminal Code* or hate as an aggravating factor at sentencing were considered by Canadian courts. A total of 1,388 cases were reviewed for relevance. Out of that total sample, 1,297 cases were discarded due to hate, or subparagraph 718.2 of the *Criminal Code*, being absent from the sentencing judge's consideration. Thus, a total of 48 cases were relevant to this study where the sentencing judge discussed or considered subparagraph 718.2(a)(i) in his or her decision.

This study showed that where judges considered subparagraph 718.2(a)(i) of the *Criminal Code*, the majority of them applied the section and found hatred against an identifiable group an aggravating factor at sentencing. In only a minority of cases did judges consider, or discuss, subparagraph 718.2(a)(i) of the *Criminal Code* without applying the section.

Further, this research demonstrated that in the case law reviewed for this study, the majority of offences were for violent and generally serious crimes. Notably, assault (level 1, 2, and 3), first degree murder, and manslaughter were among the more frequent hate crime offences. Male victims constituted a little over two-thirds of hate crime victims recorded in the reviewed case law, and female victims accounted for the remaining third. Interestingly, this study showed that although individual victims were targeted in half of the cases reviewed for this study, and that whole communities were targeted in a third of the cases, victim impact statements were filed in less than a third of the cases and community impact statements were only filed in a single case.

In both police-reported hate crime statistics and case law considering hate an aggravating factor at sentencing, the most frequent grounds of victimization were race, nationality, ethnicity, and religion. This study revealed that the Arab and the Black communities were the most targeted identity groups among racially motivated hate crimes, findings consistent with police-reported hate crimes statistics in 2018. Among religiously motivated hate crimes, the case law showed that religious victimization mostly targeted the Muslim population, followed by a small percentage that targeted the Jewish population. The Muslim and Jewish communities were the only two religious communities targeted by religiously motivated hate crimes in the case law we reviewed for this study.

Similar findings were obtained for cases considering both subparagraph 718.2(a)(i) of the *Criminal Code*, and the hate propaganda, or hate-crime mischief relating to religious and certain other property provisions. In cases where both subparagraph 718.2(a)(i) of the *Criminal Code* and the hate propaganda, or hate-crime mischief relating to religious property were considered, the Jewish population was the most targeted identity group, closely followed by the Muslim, and the Black communities. Furthermore, this study showed a new trend in the way judges have applied subparagraph 718.2(a)(i) on the grounds of religious hatred, namely that they have considered religion as an aggravating factor in crimes committed under religiously motivated violent extremist ideologies (considered in nearly half of the cases dealing with religious victimization).

As with police-reported hate crime statistics between 2010 and 2018 and crime in general, this study showed that the majority of hate crimes recorded in published case law were committed by younger males. Notably, offenders were between the ages of 18 and 35 in nearly three-quarters of the cases; the average age of offenders was 31. Further, in 94 percent of the cases reviewed for this study the offenders were males, leaving only six percent of cases committed by female offenders. These statistics are consistent with police-reported hate crime statistics. Within the cases where the race of the offender was known, hate crime offenders were most frequently identified as White, whereas in the remaining minority of cases the offenders were identified as Arab (13 percent), South Asian (eight percent), and Indigenous (six percent). In only one case was the offender identified as Black (2 percent). The case law reviewed for this study also demonstrated that hate crimes were more frequently committed by lone offenders (60 percent), rather than groups of offenders (40 percent).

Consistent with the findings presented in the 2009 report and similar to police-reported hate-crime statistics for 2018, hate crimes were rarely committed on the grounds of age, language, and disability. Hate crimes committed on the grounds of sex and sexual orientation were also reported. In all cases

where crimes were motivated by hatred towards sex, the offender was motivated by hatred towards females. Similarly, in all of the cases dealing with crimes motivated by hatred towards a sexual orientation, the offender targeted members of the gay population.

The findings also showed that when sentencing judges applied subparagraph 718.2(a)(i) of the *Criminal Code*, they frequently did so alongside the sentencing principles of general and specific deterrence, as well as denunciation. Although in the majority of cases where subparagraph 718.2(a)(i) was considered, the sentencing judge opted to apply hate as an aggravating factor at sentencing, only one case detailed the quantum applied. Thus, as was reported in the 2009 report, subparagraph 718.2(a)(i) remains a rarely-used provision and it is apparent that details regarding the quantum of sentence that follow the application of subparagraph 718.2(a)(i) remain infrequent in case law considering hate as an aggravating factor at sentencing.

In short, this study painted a portrait of the application of hate as an aggravating factor at sentencing, specifically regarding the application of subparagraph 718.2(a)(i) of the *Criminal Code*. This study also presented the characteristics and specificities surrounding hate crime offences, the victims, and the offenders recorded in case law published between 2007 and 2020. Although the proportions are smaller, the findings of this study are generally consistent with those presented in the 2009 report, and to those recorded in police-reported hate crimes statistics in 2018.

Many additional research questions remain to be explored. For example, the many cases of racially motivated crimes against Indigenous people, so prevalent in the case law, is an avenue that would benefit from additional research. It would also be valuable to explore the reasons behind the shortage of details regarding the quantum by which the application of subparagraph 718.2(a)(i) enhances a sentence.

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