

CLD MEMORANDUM RESPECTING ALL CHIEFS' MEMO

TO: Ken Weatherill
Assistant Deputy Minister
Public Safety Division
Ministry of the Solicitor General

FROM: Randy Schwartz
Assistant Deputy Attorney General
Criminal Law Division
Ministry of the Attorney General

DATE: May 1, 2024

SUBJECT: **All Chiefs' Memo:** Hate crime overview and upcoming training for OACP and all police services in Ontario

The purpose of this memo is to advise all Chiefs of Police about:

1. *Criminal Code* powers available to police officers to address hate-related crimes
2. upcoming joint Ministry of the Attorney General (MAG)-Ministry of the Solicitor General (SOLGEN) training to support police officers in investigating hate-related crimes
3. the Ministry's Criminal Law Division Hate Crime Working Group, which is available to provide pre-charge investigative advice to the police and guidance on the AG consent process

Background

Hate crime will not be tolerated in Ontario. Hate crime is particularly serious because of its harmful impact on the individuals involved, other members of the target group, members of other vulnerable groups, the community and society as a whole. There is also a direct causal link between hateful rhetoric and the commission of real-world violence. Police should be vigilant about recognizing when an offence is hate-motivated.

Police-reported hate crimes have risen dramatically in recent years, both in terms of the number and severity of incidents. Almost 50% of all police-reported hate crimes in Canada

occur in Ontario, with that number spiking even further following the start of the Israel-Hamas war in October 2023. Antisemitism and Islamophobia are at historic highs and those communities are justifiably afraid. This growing prevalence of hate is even more alarming when considering that hate crimes remain one of the most underreported crime sets.

While the *Criminal Code* contains robust tools to combat hate, it can sometimes be challenging for frontline officers, as well as the public, to know where lawful expression and assembly cross the threshold into criminal hate speech. There is often no bright line as to what is or is not “hate,” with that determination instead depending on a contextual analysis of the facts of the case. As is discussed below, MAG’s Hate Crime Working Group (HCWG) is available to assist police in making these determinations.

The Ministries of the Attorney General and the Solicitor General are working together to provide clarity and guidance for all officers in Ontario on how to spot, investigate and support the prosecution of hate-related offences. This collaborative approach builds on the information contained below and will include specific training for all Ontario officers through the development of online tools.

1. ***Criminal Code* Anti-Hate Powers Available to Police**

The criminal law provides several tools for police to respond to hate crimes. The Attorney General’s consent is **NOT** required for the vast majority of ‘hate crimes’ and is not an impediment to the laying of hate crime charges. There is no single ‘hate crime’ offence in the *Criminal Code*. The hate-related provisions are generally divided into two categories – Hate Propaganda/Speech Offences and Hate Motivated Offences.

Attorney General (AG) consent is required ONLY for the following hate propaganda offences/seizures, none of which require actual or threatened violence:

- **Advocating Genocide** (s.318(1)): This provision prohibits the public communication of statements intended to advocate for the death or destruction of an ‘identifiable group’ - defined in the *Criminal Code* as any section of public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability. This same definition of ‘identifiable group’ applies to the offences of wilful promotion of hatred (s. 319(2)) and public incitement of hatred (s.319(1)), discussed below.
- **Wilful Promotion of Hatred:** (s.319(2)): Considered the heart of the hate propaganda offences, this provision criminalizes the public communication of statements that wilfully promote hatred against an ‘identifiable group’. The threshold for proving hate is high having regard to freedom of expression values. Statements must rise to the level of vilification and detestation. Communications that are merely offensive, insulting or humiliating do not constitute hate.
- **Wilful Promotion of Antisemitism:** (s.319(2.1)): This provision is limited to Holocaust denial/condonation/minimization. It was enacted in June 2022 and has not yet been charged in Ontario.

Police requests for AG consent to lay charges of advocating genocide and wilful hate promotion are rare. Police services consult early and work closely with members of Ontario's Hate Crime Working Group (HCWG) in connection with these requests. These requests typically involve the most egregious forms of hate speech.

Police can also apply for **hate propaganda warrants and forfeiture orders** for physical and electronic materials (s.320 and s.320.1). AG consent is required.

AG consent is NOT required for the vast majority of hate crimes police encounter every day. These include all hate-motivated offences and one hate propaganda offence as follows:

- **Public Incitement of Hatred** (s.319(1)): This offence involves the public communication of statements that incite hate against an 'identifiable group' where the incitement is likely to lead to a breach of the peace. It is geared towards a person 'whooping up' a crowd in a rally-type situation. An actual breach of the peace does not have to occur for this charge to be laid. It can be an effective tool for police to use in real-time to prevent a potential breach of the peace.
- **Hate-Motivated Mischief to Property** (s.430(4.1)): This offence targets mischief committed against religious or cultural property or other property used by an 'identifiable group' when the commission of the mischief is motivated by bias, prejudice or hate towards the group. This offence is frequently charged by police where there is hateful graffiti on places of worship, community centres, schools etc.
- **Hate-Motivated Offences/Hate in Aggravation of Sentence** (s.718.2(a)(i)): Hate-motivated offences include any substantive criminal offence – typically assault or threatening – that have a hate component, e.g., an assault or threat accompanied by a racial slur or a comment like "go back to your country". Section 718.2(a)(i) of the *Criminal Code* requires judges to consider the hate component of the offence as an aggravating factor in deciding on an appropriate sentence.

Non-Hate Offences: There are other non-hate related offences available to police that may be used effectively in situations where police wish to maintain law and order in the face of escalating tensions that may not rise to the level of any of the hate-related offences set out above. These include mischief, obstruct peace officer, intimidation by blocking a highway, and unlawful assembly, etc. These non-hate specific offences can still be found to be hate-motivated at sentencing under s. 718.2(a)(i).

2. Joint MAG/SOLGEN Training for the OACP and all Police Officers

MAG and SOLGEN provide police training on hate crimes through the Ontario Police College (OPC), and to local police services as requested. Additional online training materials are being developed to ensure that all officers in Ontario understand the tools they have to effectively respond to hate.

Upcoming training will include:

- **Online educational training for police officers.** MAG is working closely with SOLGEN to develop this training with an expected availability/delivery of programming of Monday, June 10, 2024.
- **A targeted training session for the Ontario Association of Chiefs of Police** to be held this summer.

These training sessions will include:

- **A review of current *Criminal Code* provisions and tools.**
- **A discussion of how to practically identify ‘hate’.** This will include reference to the ‘Hallmarks of Hate’, which is a Supreme Court endorsed list of traditional hallmarks aimed at helping to identify vilifying hate speech.
- **Practical application of these tools to a variety of investigative scenarios,** including those where hate crimes often arise (postering, rallies/protests, etc.).

3. The Hate Crime Working Group (HCWG)

The Criminal Law Division’s HCWG was established in April 2019, and is comprised of specially trained Crown prosecutors in each region of the province who are available to provide pre-charge advice to police in all hate-related investigations. We encourage police to reach out to the HCWG as needed through regional representatives. **A current list of HCWG members and their contact information is attached** as Appendix A to this memo. HCWG Chairs, Karen Shai and Jamie Klukach, are available for more urgent consultation on weekends.

The HCWG is also available to assist where the police are considering laying a hate propaganda charge requiring AG consent. Police should reach out to a regional representative of the HCWG to arrange for a consultation as early as possible in the investigation. The HCWG assists in identifying investigative gaps which may need to be addressed before a formal request package can be submitted to the AG. The HCWG also advises police on the components of the AG consent package. A decision from the AG/DAG can typically be expected within 4-6 weeks after receipt of a complete package.

I trust this information will assist you.

Sincerely,



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Ontario 

Appendix A

Criminal Law Division Hate Crime Working Group Contacts List (as of April 22, 2024)	
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