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Abstract

The sentencing provisions of section 718.2(a)(i) of the Criminal Code of Canada adopt the view that Canadians have the right to live in society without being subjected to hatred. The research has shown, however, that section 718.2(a)(i) misses the opportunity to address hate-motivated offences directed toward Aboriginal people. This is particularly troubling given the high rates of violence experienced by Aboriginal people and Aboriginal women.

It is now widely acknowledged that Euro-centric laws and discriminatory policies flourished in Canadian society in an attempt to dismantle formerly organized Aboriginal nations and their strong structures of governance, diverse cultures of language, practices and traditions. Although later laws were entrenched to transform oppressive relationships, this thesis reveals there remains significant gaps in understanding hate motivated crimes directed toward Aboriginal people and Aboriginal women.

The patterns of violence directed toward Aboriginal women substantiate the finding that for some men, Aboriginal women are considered prey. However, the sparse data available does not distinguish Aboriginal women as a specific class of people subjected to hatred. Reviewing the current case law, the thesis looks closely at: proving hate motivated offences, ideology, slurs, knowledge, degree of motivation, identity of the victim, the accused and issues surrounding denial of culpability. Several important broad findings and trends of the courts are drawn from the examined jurisprudence and literature.

This thesis revels there is little case law giving meaningful attention to the hatred of Aboriginal people. Aboriginal people and Aboriginal women are, with few exceptions, a missing category of protection under section 718.(2)(a)(i) in both the written provisions and case law.

The direct and specific inclusion of Aboriginal women as a protected category of protection under s. 718.2(a)(i) and a definition provision of hatred would be consistent with principles of the constitution, human rights law and the provisions of the Criminal Code. Most importantly, it may assist in addressing gaps in addressing hate-motivated crimes directed toward Aboriginal people and Aboriginal women.
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# Table of Contents

Permission to Use .................................................................................................................. i

Abstract ................................................................................................................................. ii

Acknowledgements ............................................................................................................... iii

Table of Contents ................................................................................................................ iv

Introduction .......................................................................................................................... 1

Chapter 1: Historical Context ............................................................................................. 6  
1.1 History ............................................................................................................................. 7  
1.2 Discriminatory Laws and Policies ................................................................................. 12  
1.3 Constitution of Canada ................................................................................................. 17  
1.4 Summary ......................................................................................................................... 20

Chapter 2: Mapping the Legislation ..................................................................................... 23 
2.1 Human Rights Legislation ............................................................................................. 23  
2.2 Criminal Code Legislation ............................................................................................ 27  
   2.2.1 Defence of Provocation ......................................................................................... 27  
   2.2.2 Specific Offences ..................................................................................................... 27  
   2.2.3 Sentencing Provisions ........................................................................................... 32  
2.3 Summary ......................................................................................................................... 36

Chapter 3: Hate-motivated Violence ...................................................................................... 37 
3.1 Violence and Hatred in Canada ...................................................................................... 38  
3.2 Institutional Racism ....................................................................................................... 39  
3.3 Violence Against Aboriginal Women: Duel Discrimination ...................................... 41  
3.4 Comparative Rates ........................................................................................................ 46  
3.5 Summary ......................................................................................................................... 55

Chapter 4: Theories, Concepts and Definitions ................................................................... 57 
4.1 Theorizing and Conceptualizing Hatred ........................................................................ 57  
4.2 Defining Hatred ............................................................................................................. 62
4.2.1 Prejudice and Bias ................................................................. 62
4.2.2 Hallmarks of Hatred in Human Rights .................................... 63
4.2.3 Jurisprudence .................................................................... 64
4.3 Summary .............................................................................. 74

Chapter 5: Categorical Distinctions .............................................. 75

5.1 Enumerated Group Comparisons ........................................... 76
  5.1.1 Sexual Orientation ............................................................. 76
  5.1.2 Sex and Gender ................................................................. 77
5.2 Aboriginal Women: A Missing Category ............................... 80
5.3 Summary .............................................................................. 83

Chapter 6: The Law of Hate-motivated Crimes ................................ 84

6.1 Proving Hate-motivated Crimes ............................................. 85
  6.1.1 Onus of Proof and Gardiner Hearings ................................. 85
  6.1.2 Expert Evidence ............................................................... 86
    2.1 Tattoos ............................................................................ 86
    2.2 Dates .............................................................................. 90
6.2 Triggering Threshold ............................................................. 91
  6.2.1 Actions not Beliefs ............................................................ 91
  6.2.2 Slur and Arrest ................................................................. 91
  6.2.3 Level of Knowledge and Personal Motivation ..................... 93
  6.2.4 Degree and Changing Motivation ...................................... 95
  6.2.5 Summary ...................................................................... 98
6.3 Three-Prong Approach .......................................................... 98
  6.3.1 Status and Perceived Status .............................................. 99
    1.1 Aboriginal People as Victims ............................................ 103
  6.3.2 Slurs .............................................................................. 106
    2.1 Prior to Offence ............................................................... 107
    2.2 During and After Offence ................................................ 108
    2.3 Against Aboriginal People ............................................... 110
  6.3.3 Denial and Justification .................................................... 111
3.1 Group Membership ......................................................... 111
3.2 Intoxication ................................................................. 114
3.3 Emotion ................................................................. 116
6.4 Summary ................................................................. 117

Chapter 7: Conclusion ....................................................... 118
7.1 Final Reflections .......................................................... 118
7.2 Healing of Hate .......................................................... 121

Bibliography ................................................................. 123