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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 reveals there is little case law giving meaningful attention to the hatred of Aboriginal people. Aboriginal people are rarely found to be victims of hate-motivated crimes. 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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