

Hate Crime Legislative Policy
A Comparative Analysis between the UK and Canada

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Hate crimes not only target citizens, but also confront a country's democratic principles of diversity, freedom, and human rights. A crime type of this nature requires a multidisciplinary and holistic public policy response, including criminal sanctions. Developing a legislative policy framework enables investigations and prosecutions for the purpose of deterrence, denunciation, and thus, a safer society. However, a comparative policy analysis between the U.K. (England and Wales) and Canada revealed that legislative policy, for both countries, lacked policy analysis principles, such as engagement, research, or consultations. Furthermore, hate crime legislative policies were embryonic; developed intermittently over time; reactive to political issues; exclusive in its group taxonomy; incorporated limited hate crime sections; and were void of policy learning, change management or evaluation. It should be noted that this assessment excludes Canadian Criminal Code (CC) hate propaganda laws (Justice Laws Website, n.d.) or the UK hate speech laws dealing with stirring up religious or racial hatred (Crown Prosecution Service, 2022).

Victim and Community Harm

The deficiencies in legislative policy in the UK and Canada become more salient when understanding the harm hate crimes inflict against individuals and communities, as they target immutable, intrinsic characteristics of their victims. The disproportionate impacts are well documented. They include, inter alia, suspicion, distrust, unsafe feelings, vulnerability, fear, anxiety, anger, diminished well being, vigilance, a desire to retaliate, shock, sadness, and symptoms of PTSD. (Allwood et al., 2021; American Psychological Association, 2021; American Psychiatric Association, 2021; Fashola, 2011; Organization for the Security and Co-operation in Europe, 2018; Organization for the Security and Co-Operation in Europe, 2021; Paterson et al., 2018; Perry & Alvi, 2012; Roberts, 1995). Furthermore, impacted communities stated that improvement in police response is needed because of negative victim experiences with police, legislative issues, inadequate police understanding and specialization of hate crimes, and barriers to reporting (Alberta Hate Crimes Committee, 2023; Camp, 2021; Chaudhry et al.,

2022; Organization for Security and Cooperation in Europe; 2021; Perry & Samuels-Wortley, 2021; Turlock & Mayan, 2022;).

Hate Crime Legislation Comparison: the UK and Canada

UK

Canada and the UK differ in their legislative approach to hate crimes. To illustrate, the UK uses two pieces of legislation to investigate and prosecute hate crime – The Crime and Disorder Act, 1998 (CDA) (The National Archives, n.d.) and the Criminal Justice Act (CJA) (The National Archives, n.d.). Thus, the police and The Crown Prosecution Services (CPS) (n.d.) perform parallel investigations and prosecutions for hate crime using both statutes. It should be noted that the CDA restricts protected groups to race and religion only. Nevertheless, general crimes that are motivated by religious or racial hate are investigated, charged, and prosecuted under the CJA, e.g., assault. The offender will also be investigated, charged, and prosecuted for the contemporaneous offence - hate crime, under the CDA. Noteworthy is that hate crimes under the CDA are restricted to assault, mischief (criminal damage), harassment, and public order offences (fear of provocation of violence, and stalking) only.

Investigating and categorizing hate crimes under the CDA allows police and the CPS to classify offences as hate crime, which enables automatic tracking for police, government, prosecution services, academia, and non-government organizations (NGO), and subsequently better informed policy. For example, the CPS stated that in 2021-2022, they prosecuted more than 10,000 hate crimes, where 86 % of the defendant's were found guilty (Crown Prosecution Services, n.d.). Furthermore, in 2022 the UK police recorded 155,841 hate crime offences (United Kingdom Government, 2022) with a population of just under 60 million (Office for National Statistics, 2022). It should be noted that the definition of hate crime in the U.K. is different than Canada and could contribute to increased statistics, as it includes victim perception as a primary indicator for hate crime identification (Crown Prosecution Services, n.d.).

Although the CDA includes several hate crime offences, it has an exclusionary component which weakens its effectiveness, as hate motivation is restricted to racial or religious groups only. To illustrate, the U.K. population is 59.6 million (Office of National Statistics, 2021), where 19 ethnic groups make up 6.2% of the population, and 3.2% identify as gay/lesbian/bisexual/other. Furthermore, disability accounts for 11 to 23% of the population, and gender comprises 51% of the population (United Kingdom Government, 2023). Consequently, statistics for other marginalized groups are not accounted for which decreases knowledge to inform policy. Also, an interpretation lingers - that other communities are not considered worthy of protection from hate crimes.

Canada

Comparatively, the CC has only one hate crime section - Mischief to Property Used by Identified Communities, Section 430 (4.1) CC (Justice Laws Website, n.d.). The legislation was enacted in reaction to 9/11 under the Anti-Terrorism Act (Government of Canada, n.d.; Toronto Police Service, 2021). Statistics Canada recorded only 159 Mischief to Property incidents in 2020 (6% of recorded hate crimes) (Wang & Moreau, 2022). All other crimes, including those determined to be hate motivated, are submitted on the national crime database as a general crime, such as assault, uttering threats, or harassment (Camp, 2021; personnel communication, Statistics Canada, 2022). This limits the true extent of hate crime in Canada unless each of the 177 police services in Canada develop independent hate crime data collection methods (Camp, 2021). If they do, the data collection process is not overseen, managed, or enforced by any institution.

With only one hate crime section in the CC, and police using independent methods to record hate crimes, Canada recorded only 3360 police-reported hate crimes in 2021 (Statistics Canada, 2023) with a population of just under 40 million (Statistics Canada, 2023). This is considerably less than the UK which recorded 155, 841 hate crimes with a population of 60 million (United Kingdom Government,

2022). Highlighting the poor legislative policy and weak data collection methods was a general social survey conducted by Statistics Canada in 2019 which recorded 233,000 hate events (Canada Anti-Hate Network, 2021). That same year police-reported hate crimes were 1946 (Statistics Canada, 2021).

Sentencing Provisions:

Canada

Although Canada has only one hate crime section, it does have a robust hate crime sentencing provision, section 718.2 (a) (i), CC (Justice Laws Website, n.d.). The section is a sentencing guideline which considers aggravating circumstances. For example, upon conviction of an offence deemed to be hate motivated, evidence of hate can be introduced at the sentencing hearing allowing the judge to explore enhanced sentencing. Moreover, the section is inclusive and integrates several identities: colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression or mental or physical disability, or any other similar factor. However, due to data collection issues only 48 files were found where section 718 was considered between 2007-2020 (Provost-Yombo et al., 2020).

UK

Comparatively, the UK has two pieces of legislation that take sentencing into account – The Criminal Justice Act (CJA) (The National Archives, n.d.) and the Sentencing Act (SA) (The National Archives, n.d.). Both provide mechanisms for sentencing enhancement when it is proven hate was a motivating factor. However, the CJA and the SA integrates a restricted group in comparison to the 718 CC provisions: race, religion, disability, sexual orientation, and transgender identity only; this will decrease hate crime sentencing statistics. Furthermore, the limited list questions the UK government perceptions and values toward excluded groups, which could manifest into a trust issue between community and government. On a positive note, in 2021-2022, the CPS prosecuted hate crimes where the judge increased the offender's sentence in 79% of the cases. (Crown Prosecution Services, n.d.).

Policy Evaluation

The purpose of professional policy evaluation is for policy makers to identify mistakes or failures, and subsequently make steps to improve intelligence, efficacy, and policy learning (Pal et al., 2021). The policy transfer method (Moyson et al., 2017) of examining policies from different government units or institutional settings was used in this evaluation, comparing the UK policy to Canada's. It evaluated empirical data (hate crime statistics), performed subjective value inquiries, e.g., reactive policy making, and reviewed meta-analysis, e.g., existing literature (Pals et al. 2021). It concluded that the legislative policy framework for both countries were poor because of reactive policy making; causal chains were broken; and policy analysis, strategic planning, community engagement, evaluation, or policy leaning was not performed.

Reactive Policy making

"Hot" reactive policy making is tenuous as it is crisis driven, relies on fragmented information, contains short term priorities, and typically is not well researched or evidence-based (Pals et al., 2021; Rogers, 2014). To illustrate, in 2001 Canada incorporated a narrowly defined policy instrument (Pals et al., 2021) - a CC section for damage to religious property, post 9/11, under the Anti-Terrorism Act (Government of Canada, n.d.; Toronto Police Service, 2021) (Later amended to Mischief to Property Used by Identified Communities). This was a reaction to the political climate from the uptick in anti-Muslim hate crimes (Nersessian, 2004). Canada ignored the opportunity for a deeper evaluation resulting in a policy window being missed to include additional CC offences motivated by hate. This would have increased statistics and contributed to better information for policy analysis.

Beyond section 430 CC, Canada and the UK have a history of crisis driven, reactive and intermittent legislative policy making regarding hate crimes, while ignoring comprehensive policy analysis which would have enhanced policy making and improved legislative frameworks. For example,

in Canada the hate propaganda sections became law in 1970 (Walker, 2018) post holocaust; and section 718 CC in 1995 (Provost-Yombo et al., 2020) was enacted during an upsurge in hate crimes (Shaffer, 1995). Similarly, in the UK the legislative inception dates were 1998 for the CDA (The National Archives, 1998) under a “tough on crime” political environment by Prime Minister Tony Blair (Open Learn University, n.d); in 2003 for the CJA (The National Archives, 2003); and the Statistics Act 2020 (The National Archives, 2020) within the political milieu to increase public trust in government (United Kingdom Government, 2012). There is no evidence or research indicating that a broad legislative policy analysis occurred. These are salient examples of intermittent or reactive policy making within political environments that ignore policy windows for enhanced information.

Policy Models and Broken Causal Chain

Policy analysis uses program theory, logic or change framework models (Pals et al., 2021; Rogers, 2014) to highlight the influence change (causal variable) has on policy impact (Pals et al., 2021). In the UK and Canadian analysis, the policy instrument – legislation, is the causal variable. Additionally, a causal chain (inputs, activities, outputs, and outcomes) links the various stages of policy making to the causal variable. To demonstrate, in the case of hate crime legislation, inputs/activities/instruments (legislation) cause output/activities (investigations and prosecutions), which cause outcomes/impact – accurate hate crime statistics to inform sound policy for the public good (deterrence/denunciation - safer community). However, in the UK and Canada the legislative policy logic models appear broken as the causal chain was never securely established. To demonstrate, both countries enacted incomplete legislative policy inputs (causal variable), resulting in imperfect investigative and prosecutor ability – charge sections, fulsome list of identified communities, and statistics (outputs). Consequently, the key outcome, to provide a safer environment through criminal sanctions to ensure deterrence and denunciation, is not achieved. Specifically, the UK failed by providing an incomplete list of identified communities for sentencing enhancement, and both countries failed by providing an incomplete list of hate crime charge sections.

Subsequently, the impact of a safer and more inclusive society, free of hate crimes is minimal. Furthermore, the deficiencies weaken accurate data collection. This augments policy failure as institutions charged with managing hate crime do not know the true extent of hate crimes, resulting in ill-informed policy making.

Community Engagement and Policy Learning

Design thinking methods such as collaboration and engagement with downstream actors, e.g., hate crime victims, are vital to policy making; however, there is no evidence that the UK or Canada engaged in this process. To illustrate, policy making, change management and evaluation occurs with public participation, and incorporating a client focused approach, providing policy makers opportunity for improvement (Hendriks, 2020; Pals et al., 2021; Rogers, 2014). Furthermore, it augments knowledge, expertise, values, understanding, needs, feedback, solutions, transparency, accountability, fairness, equitable outcomes, decision making, trust, and equality (Ansell, 2017; Henkriks, 2012; Moyson et al., 2017; Pals et al., 2021). No evidence exists from either country that community engagement occurred, limiting opportunities for policy learning.

Policy learning is essential as it contributes to better decision making, and improved policy making for society's problems (Moyson et al., 2017). As Pal et al. (2021) noted, policy learning includes alterations to policy instruments, e.g., legislation, and defining problems by going through a policy cycle which includes options, selection, implementation, and evaluation. There is no evidence that this process occurred in the UK or Canada.

Interestingly, research indicated that communities victimized by hate crimes desire enhanced legislation (Alberta Hate Crimes Committee, 2023; Perry and Scrivens, 2019). This opens a policy window for Canada and the UK to explore victimized communities' desires regarding legislative improvements. This could occur through a more democratised, client centered, New Public Management (Hendriks,

2020) or design thinking (Pal et al., 2021) process, which focuses on citizens assessing policy value, perspectives, and satisfaction through methods such as citizen or client focused survey's, citizens groups, citizen jury's or focus groups (Hendriks, 2020; Pal et. al, 2021).

Dark Side of Policy Making

Other factors could have influenced policy failure besides causal chain and community engagement breakdowns. The dark side of policy analysis (Howlett, 2020) where policy takers evade or undermine policy initiatives, can be self serving or politically motivated, and may have contributed to failure. For example, prosecution services and police may reject hate crime legislation because proving criminal intent and hate motivation requires more work and resources. Political resistance to enhanced legislation is a consideration.

Gender Based Analysis (GBA+) / Intersectionality Based Policy Analysis (IBPA)/ Indigenous Lens

It is in the public interest to ensure that any policy evaluation or analysis regarding legislative policy should incorporate Gender Based Analysis (GBA), Intersectional Policy Based Analysis (IPBA) and an Indigenous lens. Using these policy instruments assists in obtaining broad understanding of policy implications within populations with multiple intersectionality's (Pal et al., 2021). Intersectionality asserted that individuals may have several identities and will respond to experiences differently depending on social location and power (Hankivsky et al., 2014; Pat et al., 2021). To illustrate, research by Hankivsky et al. (2014) asserted that IBPA uses features such as history, politics, lived experiences, knowledge, and intersecting locations to bring about insights, knowledge, solutions, and action to enhance policy analysis. Similarly, GBA+ practice stipulated that the multiple identities of citizens require consideration as policy impacts them differently. Similarly, an Indigenous lens is required by the federal government, and more importantly, confirmed by many Supreme Court of Canada decisions outlined by McIvor (2021). Legislative policy making must incorporate IPBA, GBA+ and an Indigenous lens during

policy analysis, learning and evaluation; however, no evidence exists that this occurred in the UK or Canada examples.

Conclusion

Canadian citizens deserve smart decision making from government which is grounded in evidence-based data, community values, and knowledge to develop sound policy to affect paradigmatic change within our organizations, political systems, and policy makers (Moyson et al., 2017; Pals et al., 2021). It involves policy actors learning and applying knowledge to institutionalize policy aims (Moyson et al., 2017). Policy making includes many steps such as defining the problem, design, engagement, policy options, research, and implementation. Hate crime legislation, although esoteric to the average citizen, serves our vulnerable communities; however, no research, policy analysis, policy learning or policy evaluation that engages and welcomes citizen perspectives occurred. In a society historically built on the ideology of white supremacy, it is difficult to avoid the question: would poor policy analysis have occurred if white men were the primary targets of hate crime?

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