Online Hate Speech Against Gender Variance - A Canadian Perspective

By

Lila Thiessen

Under the supervision of

Dr. Harpreet Aulakh

An Honours Project submitted

in partial fulfillment

of the Degree requirements for the degree of

Bachelor of Arts - Criminal Justice Honours

Mount Royal University

May 2024

MOUNT ROYAL UNIVERSITY

CALGARY, AB. CANADA

Territorial Land Acknowledgement

Mount Royal University is located in the traditional territories of the Niitsitapi (real people) and the people of Treaty 7, which includes the Siksika, the Piikani, the Kainai; and the Tsuut'ina, and the Îyârhe Nakoda. We are situated on land where the Bow River meets the Elbow River, and the traditional Blackfoot name of this place is Mohkinstsis, which we now call the City of Calgary. The City of Calgary is also home to the Métis Nation.

Abstract

Hate crime in Canada has recently been on the rise, most notably regarding race, religion, and sexual orientation. The fourth most common hate crime in Canada is hate against sex and gender. While there is extensive research on targeted hate crimes against race, religion, and women, only recently has there been research conducted on hate against gender variance. Internet hate crime has also become a pressing issue with the ever-increasing importance of modern technology. This research paper aims to look into internet hate crime from a Canadian perspective by summarizing current and potential legislation, key arguments made against such legislation, and the unique characteristics of online communication. It concluded that combating internet hate speech is best done through education, rehabilitating offenders, reforming current internet and Canadian legislation, and creating more opportunities for victims to report their victimization.

Acknowledgements

I would like to thank everyone who supported me throughout the months of working on this project. Thank you mom for pushing me to continue working on my thesis, and being my number one supporter throughout my university journey. To my grandparents who have been constantly encouraging me and were always curious about my topic, thank you for being so open to learning and being positive role models in my life. To my lovely companions J.W., A.M., and D.W. for making me smile, you were the reasons I was able to get through this final semester, thank you so much. To the rest of my friends, coworkers, and professors, your unwavering support has made you the best people I could ever rely on. I would especially like to thank Dr. Harpreet Aulakh for her patience, advice, and clarity this last year. I have greatly enjoyed being guided by you and my passion for criminal justice is largely thanks to your teaching and subject expertise.

I will never forget the love and support each of you have given me, thank you all.

Lila Thiessen

Table of Contents

Introduction

The rise of the internet has allowed for the emergence of crimes never imagined previously. Cyberhate in the form of speech is just one of the many crimes formulated by the ever-growing use of the internet. While hate speech has always been a point of controversy in the legal system, modern technology has made it a more complex issue to tackle. Since 2018, reported hate crimes in Canada have been increasing exponentially. In 2021, reported hate crimes increased by 27% from 2020 (Statistics Canada, 2024). Although statistics show hate crime is becoming an increasing issue, the flaw with trusting them is that most hate crime goes unreported. This is especially prominent for hate speech conducted online, where several unique attributes of the Internet protect the identities of perpetrators (Martin, 2021). Chara Bakalis (2016) estimates that “only 9% of online hate crime is investigated” (Bakalis, 2016, p. 87). Most reported hate crime in Canada is against race, religion, and sexual orientation. Another group that is a common victim of hate crimes are minorities in sex and gender, which saw a 26% increase between 2020 and 2021. Hate crimes against sex and gender can include, but is not limited to women, transgender people, and non-binary people. Cisgender men can also experience hate crimes due to their gender, albeit much rarer.

In 2024, Statistics Canada released a document detailing “Online hate and aggression among young people in Canada". 62% of young people aged 15 to 24 get their news and information from social media, compared to 18% of older Canadians. More than 70% of young people have been exposed to online hate, in forms of disinformation and misinformation. The overall number of online hate crimes has increased from 2018 to 2022, from 92 reported incidents in 2018 to 219 incidents in 2022. Of the incidents, 82% were violent and 18% were non-violent. Young women and girls were more often targeted for online bullying, however, boys were slightly more likely (53%) to be the victims of police-reported cyber-hate crimes.

Those accused of cyber-hate crimes were more often young males, with 87% of people charged with or suspected of online hate crimes being men or boys.

While there is a lot of research dedicated to hate crimes against race, religion, sexual orientation, and women, there is less dedicated to deconstructing hate crimes against gender and sex nonconformity. This research paper aims to explore gender variance in the justice system, how the judicial system prosecutes hate crimes against gender, and how hate crime is evolving with the presence of internet connectivity.

Methodology

The purpose of this study is to investigate the aspect of online hate crime particularly against sex and gender identity. The study examines Canadian laws and policies concerning hate crime, and how the law defines the difference between hate, freedom of expression, and hate crime. It uses case studies to exemplify the impact of hate crime laws further and analyzes if there is a need for laws that specifically counter cyber-hate crimes.

Having the purpose in mind, this paper was developed using one main research question, and three secondary research questions.

RQ1: What is the current state of gender identity hate speech regulations in Canada?

RQ2: How is online hate crime defined by the Canadian justice system?

RQ3: How have hate crime laws evolved with the presence of modern technology?

RQ4: What are common ways online hate crime is conducted and prosecuted within the Canadian justice system?

This paper investigates the legal frameworks addressing hate crimes, discrimination, and cyber hate crimes. It examines the effectiveness of laws related to gender identity in curbing hate crimes, particularly online. The study delves into recent Canadian legal developments, such as Bill C-16, that safeguard gender identity, and considers potential enhancements to these laws,

such as clearer definitions or supplementary non-legal strategies. It reviews historical efforts to protect gender identity, especially within human rights laws, and outlines the primary arguments from critics of such laws. The research assesses whether hate crime statutes benefit individuals with non-conventional gender identities and expressions. Additionally, it analyzes how internet users define hate crimes and the delicate balance between free speech and illegal hateful conduct. Ultimately, the goal of this paper is to find ways to include queer perspectives in hate crime legislation and bring new perspectives on how to address online hate speech.

While there has been extensive discussion about hate crime laws in Canada, there has been a lack of research dedicated to hate against gender identity. With the drastic change in the world due to modern advances in technology, it is also important to analyze trends in internet hate crime to better understand how to prevent it. The research design for this paper uses an exploratory method to look at the subject of internet hate crimes against gender identity. It uses case studies, previous literature, and public perceptions of hate crime legislation to develop a cohesive conclusion. This paper uses an integrative method to bring in past theory and literature and use modern gender and queer theory to explain how it could be explored further. This project, however, fails to explore the impact intersectionality has on gendered hate crime. For example, research shows that black, transgender women face a higher amount of threats, stalking, and assaults than white transgender women (Ashley, 2019). Given the expansive nature of this subject, a comprehensive examination was beyond this project's scope. A distinct research inquiry and methodology would be more conducive to a detailed investigation of intersectionality’s effects. As of the year of this study, Canada does not have any landmark cases related to cyberhate against gender variance and is overall lacking any cases about gender identity that are publicly available from the higher courts. As online hate speech legislation is a

relatively new judicial topic in Canada, this project may be better explored and expanded when the system has had time to adjust to new legislation.

Data Collection Methods and Sources

This paper uses secondary data for its research. Data collection was primarily conducted through an examination of Canadian legal precedents involving online hate crimes, media coverage of such incidents, and scholarly articles that have undergone peer review or are categorized as grey literature. Case studies were sourced from the Canadian Legal Information Institute (CanLII) and the Supreme Court of Justice's official website, focusing on landmark cases that have shaped the legal perspective on hate crime. Additionally, this research includes a comprehensive review of academic discourse focused on internet hate crimes. It critically examines the spectrum of scholarly opinions regarding the necessary measures to effectively address and mitigate such offenses. The research methodology included a review of cases citing sections 318 and 319 of the Canadian Criminal Code, which was instrumental in the data-gathering phase.

Statistics Canada as a search term was helpful in finding papers that have cited recent statistics on hate crimes or literature that used quantitative analyses of hate crimes. For finding peer-reviewed literature, the use of Google Scholar, Mount Royal University's online library database, and any Canadian journals that are specifically for research on internet crime or hate crimes was significant in the research process. Locating articles in the reference list of literature already reviewed was meaningful in finding quality literature. Grey literature was located using relevant government websites, such as the Parliament of Canada, the Criminal Code, and Statistics Canada.

For finding literature, search terms like "hate", "hatred", "hate crime laws", "Canadian cyber-hate", "Bill C-16", "Bill C-36", "Bill C-63", other relevant provincial and federal bills,

names of cases, “non-binary hate speech”, names of Canadian public figures who are outspoken about gender identity issues like Jordan Peterson, and names of any municipal and provincial legislations specifically about discrimination or hate was used.

Data Analysis

Thematic analysis was employed to find common themes in literature and legislation. Literature on gender theory allowed a better understanding of the pressing issues that Canada should address when making legislative decisions. Analyzing media provided insights into the public perception and general notion of hate crime legislation in Canada. Themes in cases and case law aided in understanding perspectives on hate speech from a judicial standpoint. By conducting a thematic analysis, a synthesis matrix was used through Excel to organize the literature. Questions were created to understand the correct themes and meanings in each source used.

Even though Canada is multicultural and has a strong, reliable judicial system, the country has a very divisive stance on hate crime legislation. Despite efforts to prosecute extreme hate speech, many victims choose not to report their victimization, or if they do, most cases never reach the Canadian courts. New legislation such as Bill C-16 and Bill C-36 are helping define how to prosecute hate crimes. However, as previous literature states, there is still a need for extensive research into gender variance, how such individuals interact with the justice system, and whether current legislation is adequate in giving equal rights to those outside the gender binary.

Following an overview of the methodology employed in this project, the paper is structured into three main sections: the first section analyzes the concept of gender variance, the second section details the legislative framework of hate crimes in Canada, and the third section dissects the patterns and regulatory approaches to internet hate crimes. The paper explores

gender variance first in order for the reader to understand the definitions used across the rest of the paper as well as why gender studies are important to study in the criminal justice context. With foundational knowledge created, the paper follows up by dissecting Canadian hate crime legislation with an emphasis on legislation related to gender identity. As knowledge of legislation is built, internet and social media site hate crime regulations are highlighted, comparing its differences to Canadian legislation.

What is Gender Variance?

Gender variance can be defined as any identity that does not fall within the biological definitions of man and woman. Many terms fall under gender variance, including transgender, non-binary, genderqueer, queer, or agender. While each term is defined differently, all can be summarized under the umbrella term of gender variance. As stated by the Canadian Institutes of Health Research (2023), gender is a separate term from sex, individuals can be biologically a woman, man, or intersex, but can identify their gender differently than what their sex is. The labels transgender and non-binary are the most prominent labels in Canadian legislation for gender variance and are used to include gender identity as a protected ground in the Criminal Code and Canadian Human Rights legislations.

Variance in gender identity has existed for millennia, with cultures across the world showcasing unique expressions and interpretations of gender. Such topics of gender identity, as highlighted by the rich historical and cultural depictions of gender, are not a new phenomenon. An example articulated by James Pickles (2019) is the Fa'afafine people from Samoa, a third gender that exists alongside traditionally binary genders in the country. Fa'afafine people could be interpreted as transgender, however, their sexual attraction is not easily translatable into the Western context. In Samoa, sexual identities like gay or heterosexual do not exist the way they do in the West, as individuals are identified by their gender presentation rather than the sexual

practices they engage in. While there is a notion that transgenderism is a medicalized and disordered term in the West, there is little evidence to suggest Fa'afafine people are gender dysphoric or wish to change the appearance of their bodies surgically. There is also no available data available on targeted violence against Fa'afafine in Samoa. Vasey and Vanderlaan (2010) state that Samoan family members remark on how fortunate they are to have Fa'afafine in the family, enabling "Fa'afafine to have high levels of acceptance within Samoan society" (Pickles, 2019, p. 47).

Another example of diverse gender expression outside the Western context is Yoruba families in Nigeria. As reviewed by Oyewumi (2002), The traditional Yoruba family can be described as non-gendered, with the power centers in the family as non-gender specific. Within a typical Yoruba family, the name for children is *omo*, or offspring, with no identifiable words denoting boy or girl. "Husband" and "Wife" are not connected to man or woman, and families are organized based on seniority rather than gender. All family members in the lineage are called omo-ile, and are individually ranked by birth order, and all in-marrying females are known as iyawo-ile, who are ranked by order of marriage. The mother's position in Yoruba families is the only gendered role identity, with the mother as the pivot in which familial relationships are delineated and organized. Mother-child units are described as womb siblings, similar to the "sister" role in Western society, however, it is not gender specific but rather based on an understanding borne out of a shared experience.

Over the last few centuries, a historically European viewpoint of gender has become widespread worldwide. Such widespread popularity can be attributed to colonization and the cultural impacts of European intellectual thinking. A eurocentric viewpoint of gender identity, in which people are viewed as a man or a woman and never anything else, has traditionally been the standard by which North America legislates and defines gender. Gender variance in the Western

context is often defined by labels, and those who do not define their gender are often disadvantaged. Transgender and non-binary identities have only recently been recognized as a protected group under the Canadian Criminal Code and Human Rights legislations.

In Canada, gender variance existed well before the nation's inception. Indigenous nations have historically recognized gender outside the binary of man and woman with the term Two-spirit. As stated by Pickles (2019), Two-spirits were born as a third gender, housing masculine and feminine spirits inside one body. Historically, Two-spirits were viewed as highly gifted and spiritual people, often acting as shamans or healers. They also often performed “spiritual, ceremonial, medical, and economic roles" (p. 49). As stated by Robinson (2019), Indigenous nations around North America had distinct names for third and fourth genders, an example being Ojibwe (Chippewa) having four genders, inini (masculine male), okwe (feminine female), agokwe (feminine male), and agwinini (masculine female).

The concept of Two-spirit was erased by colonization in the 1700s when European settlers assimilated the Indigenous population towards Christianity and Christian values, which condemned any gender expression outside of female and male. Wesley Thomas (1997) states that assimilation through residential schools eradicated the unique gender expressions of Indigenous by 1930. Pickles notes Indigenous men in a relationship with Two-spirit people were categorized as homosexuals, while Two-spirit people were forced to choose between female or male identification. Canadian settlers interpreted Indigenous acceptance of Two-spirit identities as moral inferiority and used it to justify their genocide and theft of Indigenous land, culture, gender systems, and religion (Pickles, 2019).

The term Two-spirit has seen a resurgence with modern Indigenous people as Western terms like non-binary, gay, lesbian, queer, and trans become more well-recognized in Canadian society. Two-spirit as a term is used to pay homage to gender diversity and to critique

“colonialism, queerphobia, racism, and misogyny both within wider society and LGBTQ movements” (Pickles, 2019, p. 50).

Queer hate in Canada historically traces to Christian colonialism. According to the Canadian Centre for Gender and Sexual Diversity (CCGDS) (2019), the first recorded case of homophobia in Canada occurred in 1648, where a Sulpician priest accused a soldier of being gay, placing the soldier on trial and sentenced to be executed. The soldier was spared only due to Jesuit priests, who instead offered the soldier to become the executioner of Canada (then called New France). This was one of many cases of homosexuality being judicially condemned in the country, as homosexuality was an offense considered severe enough for the death penalty. In 1859, anyone found committing homosexual activities could be convicted of a sex act, then named buggery, and gross indecency. It took over a century for homosexuality to be granted exemption from the Criminal Code. The CCGDS (2019) also notes trans rights movements in the 20th century were largely faced with societal pushback, but despite this, LGBTQ+ activism flourished and gained significant momentum during this period. Prominent queer activists helped eradicate homosexual buggery laws and ultimately pushed Canada to declare gender variance a protected ground in legislation.

Historical and contemporary examples of gender diversity have helped facilitate the modern viewpoint of gender variance within Canada. While there have been many advances in deconstructing barriers within Canada to express one's identity outside the binary, such as allowing “X” on identity documents over F(female) and M(male) (Robinson, 2019), Canada still relies on the gender binary to govern and control its society. Due to centuries of Orthodoxy controlling how Canadian policies are implemented, complete inclusivity of gender variance may seem like a distant, utopic, and near-impossible goal. One step towards that goal may be to

eradicate the stigma, hate, and barriers individuals outside the gender binary face within Canadian society.

This section discussed current and past expressions of gender identity across the world, with an emphasis on Two-spirits as an example of historical non-binary gender in Canada. The history of gender in Canada plays an important context in the reasons why there is an abundance of hate speech against gender identity in the 21st century. The history of legislation targeting queer identities reveals the systemic obstacles they encounter in Canada. It's clear that to dismantle these barriers, protective measures for queer communities are essential. In the absence of such safeguards, the prevalence of hate could escalate. The following section explores the adverse interpretations of gender variance legislation in Canada.

Hate of Gender Variance in Canada

Over the turn of the 2020s, gender variance has become a contentious topic in Canadian politics. The stigmatization of individuals with gender variance has become a large topic of concern for all political sides. An example is provincial leaders in Saskatchewan and Alberta committing to implementing policies that restrict the capabilities of individuals expressing gender variance. In 2023, the Saskatchewan government passed Bill 137, which makes parental consent required for anyone under 16 to use a different gendered-related name or pronoun at school (CBC, 2023). According to Saskatchewan Premier Scott Moe, the Bill was passed to give parents the "right, not opportunity, to support their children in the formative years of their life". A similar law will be introduced in Alberta in the fall of 2024 (French, 2024), where Premier Danielle Smith will introduce directives that would restrict access to hormone therapy for individuals under 15 years old, and require parental consent for children under 15 who wish to change their name or pronouns. Smith also proposed a ban on female transgender athletes from competing in women's sports and mandated an opt-in system for sexual education (Braid, 2024).

The introduction of these policies can be attributed to the cultural divide in opinions towards gender identity. Prominent Canadian speakers against gender variance often use the argument that children are not intellectually and physically developed enough to make choices concerning their identity, and should not be given the right to bodily autonomy. Examples of other legislation restricting choices for youth include drug consumption, driving, sexual consent, and employment. Another popular argument against unique gender expression is that the LGBTQ+ community often promotes promiscuity and adult topics, making such communities unsafe for children. An example of such promiscuity could be drag performances, where performers dress in often exaggerated versions of gender for large crowds of people. Historically, drag shows were performed in adult-only environments, where drag performers could express themselves however they wanted to without scrutiny. Nudity and vulgarity were expected during these shows, as with any place that is restricted to adults. As stated by Rupp et al. (2010), at its inception, drag shows were usually performed in LGBTQ+ safe environments, with the majority of performers identifying with queer labels and identities. As knowledge about drag and the evolution of society to become more accepting of queer identities grew, so did the scope of drag performances. As of the 21st century, drag performances have become more prominent in non-queer spaces, with many drag artists also performing in family-safe areas and events. A common family-safe drag event across the world is drag queen story hours, where drag queens read children's stories and participate in activities with children. The themes of many story time programs are about celebrating individuality and creativity, where children are encouraged to share stories of individuality, with some drag story hours, such as in the Calgary Public Library, making children design a costume that they want, and not one defined by binary gender (Calgary Public Library, 2024). Such events are held to promote gender and LGBTQ+

acceptance within children, while also allowing children to enjoy fun and engaging activities led by someone showing a form of artistic expression they might have never seen before.

Critics of drag performances argue that drag is still highly connected to promiscuity and vulgarity, and allowing children to watch and converse with drag performances is dangerous. Drag shows could make children believe such promiscuity is acceptable to do at a young age, thus making children more prone to sexual victimization. Frequently, critiques of drag story times are informed by false information about the content drag queens are showcasing to the children, such as believing the librarians are talking about sex and sexuality without parents knowing.

Another argument against showing drag to children is articulated by Julia Malott (2023), who states that drag queens are not ideal queer role models, as they portray gender to the unnatural extremity. Mallot states that drag queens teach children that there is a comedic value in femininity and that girls or boys who have desires to express gender uniquely may feel that there is something freakish and shameful about their inclinations. Mallet states that caricatures are not acceptable forms of expanding a child's understanding of diversity.

Although there have always been critics of LGBTQ+ expression and performance, radical viewpoints against unique gender expression have recently become more commonplace. One of the most notorious talking points from critics is that drag artists are groomers, and are only performing to prey on and manipulate young children. The popularity of the stance has made many drag events unsafe environments for both performers and children who partake in the events, as radical critics often promote protests, sometimes even threats of violence, at these events. Protests against drag queen story hours were gaining traction in 2023, with cities across Canada experiencing a large wave of negative pushback against libraries allowing drag queens to read to children. For example, the Calgary Public Library's event titled "Reading with Royalty"

received weeks of pushback from protesters during 2023, with many libraries having people appearing with signs and chants against drag queens and gender variance. Due to these protests, Calgary approved a bylaw where protesters must maintain a distance of at least 100 meters from a library (Franklin, 2023).

A growing feminist movement against transgender people, commonly called TERF (Trans-Exclusive Radical Feminism) has also become increasingly absolute and conservative in their beliefs about gender variance, despite often having progressive viewpoints on women's rights and politics. As outlined by Pearce et al. (2020), One of TERF's most popular talking points is that women will feel unsafe in environments meant exclusively for women if biological men start joining and involving themselves in them. TERFs feel that biological men will never be able to fully experience life as women, as men are different in physical attributes, personality, and have adapted to the patriarchal standards by which most of the world is governed. Most biological men in Western society grew up in an environment that gives them privilege over women, thus they cannot fully understand how womanhood is shaped differently than manhood. TERF's arguments against transgender women rely on gender conceptualizations of women as fragile compared to biological men, who are viewed to have superior physical intrepidity. Pearce et al. note that by interpreting women as uniquely vulnerable to the threat of male violence, TERFs are supporting the misogynistic notion that women are the weaker sex needing protection by men, from men. This directly contradicts radical feminism which advocates for female equity and liberation from the patriarchy.

As seen with recent legislation pushed by provincial leaders in Saskatchewan and Alberta, such critiques are highly influential in creating legislation in Canada. Prominent Canadian speakers have helped facilitate the moral panic surrounding the need for legislative changes on sex and gender changes for young people. Jordan Peterson, a professor emeritus from

the University of Toronto, has been an adamant critic of gender variance, placing a strong stance against “political correctness”. Outlined by Cossman (2018), in 2016 Peterson launched an attack against Bill C-16, a bill intended to provide equal protection of the law to transgender and non-binary Canadians. Peterson claimed that Bill C-16 was dangerous as, in his interpretation, it would criminalize the misuse of gender pronouns. Peterson’s stance was that Bill C-16 posed a serious infringement of free speech, as it would “mandate the use of politically approved words and phrases” (p. 44). Peterson’s prominence on the internet and Canadian news has helped highlight his viewpoints to a wider audience, making his critiques highly influential in Canadian society and politics. His prominence has helped facilitate the argument that criminalizing hate speech is an unjust infringement of the freedom of expression.

Stances against gender variance coincide with traditionalist Conservative beliefs, where anyone outside the gender and sexual binary is given fewer rights for bodily autonomy. Such ideologies can be traced back to the colonization of Canada towards Christianity. Even though Canada is multicultural and Christianity is not practiced by a large percentage of the country (46.7% of Canada’s population do not consider themselves Christian) (Statistics Canada, 2022), Christian beliefs are still ingrained in our legislation and cultural practices. Cultural traditionalism in politics leans heavily towards the notion that Canada must be maintained as a Christian country.

The judicial system is no exception to reinforcing gender construct. One example is Canada’s prisons separate offenders by gender, therefore to be incarcerated means conforming to the gender binary. Rehabilitation efforts, while extremely important for the well-being of offenders, are lacking for those with unique gender expression. According to the Government of Canada (2014), federal prisons in Canada have several programs that address offenders' criminal behaviors, including correctional programs that target risk factors directly linked to criminal

behaviour. Correctional Programs are based on the Risk-Need-Responsivity model, where the "level of intervention should match the level of risk, programs should address criminogenic risk factors" (Government of Canada, 2021) and interventions should consider the learning styles of offenders. Correctional Services offers such programs to men, women, and Indigenous offenders. Canada's prison system allows transgender people to be placed into a prison based on their gender identity rather than their anatomy (Harris, 2018), however, most prisons lack a resolution for those who do not identify within the gender binary.

Pickles (2019) mentions that "hate crime in the area of LGBT is usually defined as a homophobic or transphobic hate crime" (p. 39), which provides little space to conceptualize the experiences of people who do not fit into these concepts. Including gender identity in the hate-speech conversation ensures that transgender and non-binary people have the same protections as everyone else in Canada (Cossman, 2018, p. 49). Prior research concludes that hate speech regulations will be important in promoting equal protection for gender variance in Canada.

This section reviewed contemporary gender issues in Canada, with an emphasis on political talking points based on transgender and non-binary legislation. It delved into critics of queer identities, analyzing various reasons as to why Canadians might not want gender variance becoming a protected ground in human rights legislation. The current state of hate crime legislation in Canada has not been influenced by the judicial system alone, opinions from the public play a crucial part in what policies are implemented in all levels of government. The prominence of critics against gender identity, has created a unique form of cultural ideologies in which gender variance is seen as a threat to the very nature of humanity. Such critiques have influenced legislation to be passed that has removed centuries of queer liberation and advocacy. In the same light, however, the growing concern for the queer communities safety has made governments consider adding distinct wording in current legislation to make sure that those with

gender variance experience the same democratic rights as the rest of Canada. The next section of this paper explores how Canada defines hate in its legislation.

Defining Hate Speech and Hate Crimes

Definiting hate speech is complex, as there are many different interpretations as to what extend speech should be allowed in a free and democratic society. Harell (2010) notes that freedom of speech is a fundamental value in democratic politics, however the extent to which the population must tolerate certain conducts of speech is a more complex topic, and to which extent is legislating free speech within the lines of a democratic country. All democratic societies have to define what it means to be "politically tolerant" of certain speech, and to what extent shall hate speech be prosecuted.

Hate Speech

In Canada, definitions of hate speech and hate crimes vary. Hate speech is not by definition illegal, as most forms of speech fall under the freedom of expression. The parameters of the incited speech must fall under the Criminal Code for it to be considered an offense. The Criminal Code has a precise definition of hate crime, under s.318, s.319 (hate propaganda laws) and s. 430 (mischief law).

The Supreme Court helped define the difference between hate, hate speech, and hate crime after the enactment of the Canadian Charter of Rights and Freedoms, through two distinct cases, R v Keegstra and Canada (Human Rights Comission) v Taylor. These two cases are analyzed further in the next section of this paper. Not all hate speech shall be considered a hate crime, and not all hate crime is conducted in the form of speech. The relation between the two is best expressed by the definition of hate crime within the Canadian Criminal Code.

Under sections 318 and 319.2 of the criminal code, hate speech can fall under public incitement of hatred, willful promotion of hatred, willful promotion of antisemitism, and hate

propaganda. Section 318(1) states that “Every person who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term of not more than five years”. S.318(2) defines genocide as acts committed with the intent to destroy an identifiable group.

A notable supreme court case related to S.318 is Mugesera v. Canada (Minister of Citizenship and Immigration). According to the judgment (2005 SCC 40), Leon Mugesera was a Rwandan politician who, in 1992, spoke to about 1,000 people at a meeting in Rwanda. The meeting's participants, including Mugesera, were members of a hardline Hutu political party who opposed the end of the Rwandan Civil War. Between the period of the civil war (1990 to 1994) more than half a million Tutsi and moderate Hutu were brutally killed and raped by Hutu militias. The murders of the Tutsi during the Rwandan Civil War have been globally recognized as a genocide. An analysis of Mugesera’s speech found that Mugesera intended to target Tutsi, encouraging hatred and violence against the group. In extremely violent language, Mugesera conveyed that they must exterminate the Tutsi, or else they would face being exterminated by them. Due to this speech, Rwandan authorities issued an arrest warrant against Mugesera, who in turn fled the country. In 1993, Mugesera and his family were approved for permanent residence in Canada, however after the revelation of his speech, which constituted “an incitement to murder, hatred and genocide, and a crime against humanity”, a deportation order was issued against Mugesera and his family.

The Supreme Court ultimately decided to uphold the deportation, as the court found that Mugesera had the requisite mental intent to promote genocide, thus committing the criminal offenses enshrined in s.318 and s.319 of the Criminal Code. The Supreme Court reaffirmed that a genocide does not have to occur for s.318 to be a valid offense, rather promoting violence against an identifiable group can be valid through speech only.

Hate Crimes

Section 430(4.1) of the Criminal Code states that it is an offense to Commit mischief motivated by bias, prejudice or hate based on…gender identity or expression..". Mischief is associated with the destruction of private property or computer data. Theoretically, non-violent internet hate crimes, in the form of destruction of computers, data, or other related technology could be prosecuted under this section. However, there has yet to be any cases that have gone to the higher courts related to online crime under s. 430.

Hate-motivated crime is outlined as an aggravating factor (increases conviction severity) under s. 718.2(a)(i) of the Criminal Code. This section states that a court that imposes a sentence shall be increased to account for "evidence that the offense 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".

Out of the four sections on hate crime in the Criminal Code, s. 318 is an indictable offense with a maximum term of imprisonment of five years. Section 319(1) and 319(2) can be an indictable offense with a maximum imprisonment of two years or a summary conviction of a fine not more than $5000 or a maximum term of imprisonment of six months, or both. Section 430(4.1) can be sentenced as an indictable offense with a maximum imprisonment term of 10 years of a summary conviction with a maximum imprisonment term of 18 months. Section 718.2(a)(i) can be added as an aggravating factor to increase the sentence of the perpetrator.

This section of the paper aimed to explain the Canadian Criminal Code, highlighting sections pertaining to hate speech and hate crime. Sections 318 and 319 outline prosecutable hate speech, section 430(4.1) details punishable hate crime, and section 718.2 explains conditions for hate motivation as an aggravating factor. Using Mugesera v Canada, this section provided information on how the judicial system uses the Criminal Code to define and prosecute hate

propaganda. To create a clearer, more concrete definition of hate speech, the Criminal Code should define hate to ensure that there is a legal basis for addressing such offenses. The Criminal Code defines identifiable groups as “any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability”. The distinct differences of hatred of each identifiable group begs the question of if there are proper measures highlighted in the Criminal Code to help combat unique forms of hate crimes toward each unique identifiable group. For instance, those with gender variance likely have different experiences with hatred than a person of a distinguishable race. Those with unique gender expression and identity may feel their experiences with hatred are not prioritized enough to be prosecutable. Despite the specificity of the Criminal Code, the rarity of prosecutions raises questions about its effectiveness. This suggests that there may be a need to reevaluate and possibly reform the way hate crimes are delineated within the Criminal Code to improve the identification, prosecution, and prevention of these offenses. Distinctly identifying hatred between identifiable groups may be a viable solution in clarifying what hatred means and to what extent hateful actions are legally allowed. Using the basis of freedom of expression found in the Canadian Charter of Rights and Freedoms might help advance the evaluation of public incitement of hatred. The next section of this paper delves further into court cases related to the Canadian Charter of Right and Freedoms, as well as how internet regulations can coregulate with Canada’s hate speech regulations. It first explores the history of the Charter, then continue into analyzing landmark cases related to the freedom of expression.

History of Federal Hate Speech Regulations - Constitution Act, Bill of Rights, and the Canadian Charter

The Constitution Act

The first written form of Canada's rights protections was the Constitution Act of 1867, originally enacted as the British North America Act. Sharpe and Roach (2021) state that before the enactment of the Charter of Rights and Freedoms, Canada's constitution had two elements, a government modeled by the principles of "British parliamentary democracy" (p. 4), and federalism. The Constitution Act states that Canada is to have "a constitution similar in Principle to that of the United Kingdom". This statement is reflected by Canada's traditions and practices that mimic British legislation, which continue to govern Canada to this day. The central focus of this element of the constitution is the supremacy of parliament, where elected representatives have unlimited power to make the law. The importance of fundamental rights and freedoms and basic legal rights are recognized for their importance, however, the Parliament is the institution that decides their meaning and scope. With the Constitution Act, protecting fundamental rights through judicial review of laws was exercised by the courts, however, this was considered the exception, not the rule. The second element of the constitution, federalism, is defined as the division of legislative powers between the federal government and the provinces. As Canada is a diverse nation, federalism was imposed to accommodate such differences in culture across provinces and communities. Canada's interpretation of federalism may be seen as a form of minority protection, as seen with the autonomy of Quebec and the creation of French bilingualism legislation. A major flaw with the Constitution Act was the lack of protection for minorities and marginalized communities from discrimination. Laws that directly discriminated against minority groups were commonplace, for instance, the criminalization of homosexuality, the forbiddance of employing Canadians based on their race (e.g., "Chinamen"), and the removal

of voting rights for women. It was not until the period after the Second World War when an international awareness of human rights issues became prominent, that Canada became more tolerant of enacting legislation that protected individuals from unduly discrimination.

The Charter of Rights and Freedoms

The Canadian Bill of Rights was enacted in 1960, serving as another statutory protection of fundamental rights. The Bill of Rights was stated to be an "act for the recognition of protection of human rights and fundamental freedoms" (Government of Canada, 1960). The Bill of Rights was an ordinary Act of Parliament and did not form part of the Constitution, therefore judges were authorized to invalidate duly enacted laws (Sharpe and Roach, 2021). The Bill also only applied to federal laws, thus any actions of provincial governments were immune from its application (Sharpe and Roach, 2021). These two points made the Bill of Rights differ from the Constitution Act of 1867, which prioritized parliament supremacy with little acknowledgment of judicial review. In Section 1 of the Bill of Rights, protection from discrimination is stated that "in Canada, there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex" (Government of Canada, 1960).

The Bill of Rights has had little importance in Canada's legislative measures since the enactment of the Charter of Rights and Freedoms. Enacted in 1982, the Charter has served as the foundation of Canada and its society's rights and freedoms since then. Section 2(b) of the Charter states:

Everyone has the following fundamental freedoms:

freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Under the Charter, freedom of expression is fundamentally protected in Canada. Individuals can express their ideologies or morals without fear of prosecution. Section 2(b) is not

an absolute right, therefore infringements are permissible under defined circumstances. Section 1 of the Charter states "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Enacted laws can violate the charter if it can be argued that such a law is necessary to promote a free and democratic society. Throughout the Charter's existence, many individuals have gone to court to claim that hate crime laws violate their freedom of expression. One of the first important cases regarding hate crime laws was R v Keegstra (1990), where an Alberta grade school teacher was charged with unlawfully promoting hatred against an identifiable group by teaching white supremacist and antisemitic ideologies to his students. Keegstra argued that section 319(2) of the criminal code unduly infringed on section 2(b) of the Charter. Such an argument was highly debated in the lower courts and the Supreme Court, with the Supreme Court ultimately deciding that the infringement was justified under section 1 of the Charter. Deciding by a split vote of 4-3, the majority stated that allowing such blatant hate crimes to go unpunished should not coincide with a free and democratic society. A free and democratic society embraces "respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society" (R. v. Oakes, 1986). Section 1 of the Charter serves as a balance between the people's interests and the interests of a democratic society. An analysis of section 1 provides courts a basis to decide whether laws passed by the government serve to benefit Canada's population as a whole. The influence of hate propaganda surpasses the direct victim of the crime. If the propaganda is communicated using the right technique and in the proper circumstances, individuals can be persuaded to believe anything. Hate can spread quickly and rigorously, impacting society as a whole. The Supreme Court

justified its decision based on the pretense that only hate speech in the extremity shall be criminalized. In R v Keegstra, three Supreme Court judges disagreed that section 319.2 of the Criminal Code was a justified infringement of section 2(b). Beverly McLaughlin, the judge who wrote the dissent, expressed that criminalizing hate speech would disintegrate well-intentioned debates and diverse intellectual thinking. In McLaughlin's words, the freedom of expression is "a value essential to the sort of society we wish to preserve" (R. v Keegstra, 1990). Criminalizing hate speech would therefore restrict Canadians from expressing unique opinions and creativity, in turn stifling the progress of our country. McLaughlin states that the freedom of expression should "protect expression which challenges even the very basic conceptions about our society".

A similar Supreme Court case to R v Keegstra, Canada (Human Rights Commission) v Taylor (1990) helped define what hatred means in the Canadian context, and what is considered a justifiable infringement of s. 2(b) of the Charter. The case involved John Ross Taylor and the Western Guard Party, who were distributing cards inviting people to call a telephone number that played recorded messages containing statements denigrating the Jewish race and religion. The Canadian Human Rights Commission received complaints about these messages and established a tribunal. The tribunal found that the messages constituted a discriminatory practice under section 13(1) of the Canadian Human Rights Act, which prohibits telephonic communication of any matter likely to expose a person or group to hatred or contempt based on race or religion.

The tribunal ordered Taylor and the Western Guard Party to cease this practice. However, they continued, leading to a finding of contempt in court. Taylor served a one-year sentence of imprisonment. The case eventually reached the Supreme Court of Canada, where the main issue was whether section 13(1) of the Act violated the right to free expression under section 2(b) of the Canadian Charter of Rights and Freedoms.

The Supreme Court of Canada ruled that while section 13(1) did infringe upon the freedom of expression, it was a reasonable limit on this freedom. The court held that the provision's objective to prevent the harm caused by hate propaganda was of significant importance and that the provision was not overly broad or too vague. In this case, the Supreme Court defined "hatred", as proposed in section 13(1) of the Canada Human Rights Act, as " unusually strong and deep-felt emotions of detestation, calumny and vilification".

It is important to consider that speech is not a violent offense, however, it can be conducted in a manner that directly promotes violence. Hate speech on its own is not a criminal offense if conducted privately. The parameters for to what extent hate speech is punishable are found within s.319(1) and s.319(2) of the Criminal Code. Section 319(1) states that any speech in a public place that incites hatred is punishable as a summary or indictable offense. Section 319(2) states that willful promotion of hatred must be conducted outside of private communication to be considered an offense.

Valid defenses for perpetrators of hate crimes are found under s.319(3.1). A perpetrator of hate speech may be found innocent if they can prove that their statements are objectively true, they expressed the statement in good faith, or if the statement is relevant to any subject of public interest. Defining defenses for hate under the Criminal Code makes it so that guilty verdicts are only made when the offender was intentionally, with malice, inciting hatred on an identifiable group. Such defenses make wrongful convictions rarer and guilty verdicts less morally ambiguous.

Online hate speech could be viewed as public incitement of hatred and could be charged under s.319(1) of the Criminal Code. As seen with R v Keegstra, Canada (Human Rights Commission) v Taylor (1990), and Mugesera v Canada, hate crime can be prosecuted even if it is not physically violent and infringes on section 2(b) of the Charter. Although online hate speech

has become more prominent, prosecution of offenders has been few and far between as the judicial system struggles to keep up with the ever-evolving nature of the internet and computer technology. The nature of online connectivity makes prosecuting hate speech more complex, as there are specificities not found within offline hate crimes. Alexander Brown (2018) in his article titled *What is so special about online (as compared to offline) hate speech?* states that online hate crime is often defined by its anonymity, invisibility, and community, and instantaneousness. Anonymity is one of the most prominent features of online speech, as it provides an opportunity for people to say what they think without fear of backlash, or negative responses merely because of their physical appearance. Online speech also has the quality of invisibility, as it usually lacks the face-to-face dimension of offline speech. As stated by Brown, online hate speech operates without the normal social cues of empathy and censure that keep harmful behaviour in check. Immediate impacts of the hate speech are not seen by the perpetrator. One of the biggest draws to the internet is the availability of communities, being able to connect with people all around the world with similar interests and values. Hate groups can attract individuals easily via the internet, thereby increasing the reach of hate speech and hateful ideologies. The availability of community on the internet allows for people who would otherwise feel isolated, to band together and spread messages deemed hateful to the majority of society.

Brown notes that while anonymity, invisibility, and community all make up part of online hate crime, they are not what actually differentiates online hate speech from offline hate speech. All three instances can be replicated in the offline world, and while not at a large scale, are still impactful to victims of such hate speech. Instantaneousness is what truly differentiates online hate speech from its offline counterpart. The internet encourages forms of speech that are "spontaneous in the sense of being instant responses, gut reactions, unconsidered judgments, off-the-cuff remarks, unfiltered commentary, and first thoughts" (p. 304). There is an inherent

impulsiveness when using the internet allows for intrinsic, hateful thoughts to flourish and reach wide audiences of users. Social media allows people to post the instant a negative thought may appear in their consciousness, while if social media didn't exist, they may have had more time to reflect on their emotions. The internet even encourages its instantaneousness, as it will often reward users with recognition, short-term fame, and wide-scale validation.

Because of the instantaneousness of online hate speech, this may be the reason as to why the judicial system struggles to prosecute instances of it. Instant posting makes it so that their intentions might not be seen as a valid form of evidence. For offenders of crimes to be prosecuted, the courts must be able to prove that the offender had the *mens rea* (intent) and *actus reus* (action) to commit the crime. For hate speech in particular, courts must prove that the offender committed the act with malice and not because of their ignorance of the harm of their speech. The Crown must also prove that the hate speech is not objectively true, and that the speech did not happen during private conversation. For example, online hate speech conducted through SMS or Direct Messaging (DM) on social media, would not be prosecutable in usual circumstances. The question still remains if there is a way to find the true *mens rea* of instant social media posting. Offenders could make the defense that their impulsivity blurred their self-control.

The harm of online hate speech is often correlated to its scalability and permanence. Even though it is often assumed that an individual’s identity online is completely different from their one offline, it does not mean that the attack of an individual’s self online is less harmful than if it were to happen in real life. Oftentimes, people showcase their true, real version of themselves online, as they feel more safe to do so than if they were to show that side to themselves offline. Therefore, to attack one's identity online often means attacking an individual on a much more personal level. Online abuse can also become much more large-scale than in real life, as its

instantaneousness makes online targeted speech more rapid, vulgar, and unpredictable. The permanence of the internet and its comments make it harder for victims to dismiss targeted harassment. Take for instance if someone were to make a hateful remark to an individual offline, the victim may be able to shrug it off and inevitably forget such an occurrence happened. If the same remark were to happen online, the victim would be constantly reminded that this statement exists, as the internet never truly removes comments once they are posted, no matter which format it was conducted. While various mechanisms exist to customize and filter online content, the complete elimination of inadvertent exposure to offensive material is nearly unattainable. Social media platforms, for instance, are engineered to continuously present users with fresh content, thereby maintaining user engagement and prolonging their time spent on the site. This perpetual content cycle on social media platforms increases the likelihood that, upon extensive scrolling, users may encounter material that deviates from their specified preferences. Consequently, there is a risk of users inadvertently coming across objectionable content within their feeds, despite not actively seeking such material. Internet algorithms also make it so content that is more controversial is pushed, as users are more prone to engage in content that incites extreme emotions. While the internet has been invaluable in creating meaningful communities, knowledge, and connectivity across the world, it has also created a problem where hate speech has become more attainable. Combating online hate speech has largely relied on internet companies and governmental bodies to regulate and prosecute perpetrators.

There's a common conception that the lawless nature of the internet makes prosecuting hate speech much more complicated and near impossible. In Canada, there have been few cases involving online hate speech that have eventually led to a guilty conviction of the perpetrators. There is also the problem of ambiguity between punishable hate speech and hate speech that is rightfully protected by section 2(b) of the Charter. Other countries may also have different

standards in how they prosecute hate crimes, so Canadian victims may never receive justice due to perpetrators living in different areas of the world. Internet companies are also largely run in other countries than Canada, with the most popular ones like Google, Facebook, and Twitter/X operating in the United States. The difference in hate crime legislation does make prosecuting online hate speech more complex. However, there are many ways governmental bodies and internet companies can help combat the presence of online hate speech and the lack of perpetrators being prosecuted. Due to the concerns about the prominence of illegal activity occurring online, most internet sites and providers have adopted policies, making the promise to remove or regulate instances of hateful content being posted on their websites. An example is YouTube stating that hateful content is strictly prohibited, with content encouraging "violence against individuals or groups based on their protected group status" being against their hate speech policy (YouTube, 2019). If content is posted on YouTube that violates this policy, it will be removed. If a channel has 3 videos removed due to hate speech within a 90-day window, then the channel will be terminated. Similar policies exist across most websites, with Facebook community guidelines stating they "remove hate speech", and Twitter/X hateful conduct policy stating that they "prohibit the promotion of hate content" (2023). Internet host applications, such as Cloudflare, while not having exact policies on hate speech, have been willing to remove their distributed denial-of-service (DDoS) protection for hateful websites. As stated by Cloudflare (2024), a DDoS attack is a cyber-attack where the attacker uses many infected computers to send a lot of internet traffic to a target, like a website or online service. This is done to overload the target and make it unavailable to normal users. DDoS attacks happen at a constant rate for most websites, therefore protection against the attacks is crucial to keep the site alive.

Despite the common notion that hate speech cannot be effectively regulated on the internet, internet companies have extraordinary power to remove and monitor what's being

posted on their applications. They have the power to choose what should or should not be allowed on their platform. The power of choice, however, can be a double-edged sword, as many internet companies choose to allow hateful speech to permeate their website. The creation of these types of sites largely correlates to the opinion that speech should not be regulated due to the likelihood of an individual's freedom of expression being tarnished and restricted. As stated by Jonathon Penney (2017), worldwide concerns of a “chilling effect” (the concept that legal frameworks, regulatory measures, or governmental monitoring might inhibit individuals from utilizing their rights or participating in lawful behaviors) have helped make internet communication less controlled and regulated over this concern.

Some of the most notable “free-speech” websites include but are not limited to Chan websites like 4Chan and 8Chan. 4Chan was a website created to be an alternative discussion forum for those who felt their opinions were being censored on other internet websites. Although the 4Chan hate speech policy is relatively lacking, there are still enforcements created to make sure the website does not only become a place of hateful and vulgar content.

4chan's rules, as of 2024, state that “You will not upload, post, discuss, request, or link to anything that violates local or United States law”, and that racist posts are not allowed outside of /b/ (4Chan, n.d.). 4Chan is split into several distinct forums”, where individuals can communicate with each other about similar topics and interests. 4chan's /b/ forum is referred to as the “Random” forum, where anything and everything can be posted besides blatant illegal content. One of the most notorious movements to come out of 4Chan is Gamergate, where a swarm of 4Chan users, and subsequently many other users of the internet, started attacking prominent feminists in the gaming industry who called for equal female representation in games. Despite 4Chan lenient policies, it is common to see free speech activists view 4Chan as restrictive in its regulations. After 4Chan banned the topic and raids related to the Gamergate

movement from their website in 2014, 8Chan was created as an alternative forum to 4Chan, where even fewer restrictions and regulations were enforced. The site ended up as a common ground for radical free-speech activists. With its lenient policies concerning hate speech and hate crimes, the site became a center for alt-right radicalization, most prominently with the presence of QAnon (far-right movement centered around the conspiracy theory that the world is controlled by Satan worshiping pedophiles, with the only person able to defeat them being former United States president Donald Trump (Anti-Defamation League, 2022)) antisemitism, and Islamophobia. 8Chan was ultimately removed from the clear web after the Christchurch shootings, where anti-hate crime activists urged Cloudflare, the main DDoS protection and web host service to deplatform the site. The Christchurch shooting was a targeted attack against two mosques in New Zealand. The perpetrator of the shootings posted a live stream of his actions and Islamophobic manifesto onto 8Chan prior to killing 51 people praying in the mosques. The internet is notably split up by two worlds, the Clearnet, where anyone with internet access can view sites and illegal content is strictly forbidden, and the darknet, where you need a specialized browser to connect to, and where illegal and/or banned Clearnet sites are allowed to be accessed by any willing internet users. 8Chan still exists in the dark web, however it does not have the reach it once did during the 2010s. The hate speech extremity that existed on 8Chan proves that an online environment without speech policies will lead to harmful real-life consequences.

This section of the paper aimed to explain the history of the Charter of Rights and Freedoms, and the use of the freedom of speech concerning landmark Supreme Court cases. This section also explored internet regulations. To this day, the definitions of hate found in R v Keegstra and Canada (Human Rights Commission) v Taylor are often used across all forms of legislation and policymaking. These cases are dated near the enactment of the Charter in 1982, making their definitions lacking the contemporary context of hate-related issues within the

judicial system. Parliament and the judicial system should explore defining hate beyond the definitions found within historical court cases, with an emphasis on addressing hate against identifiable groups. With the ever-growing nature of technology, there needs to be a stronger emphasis on defining and highlighting the presence of internet hate speech. Figuring out patterns of hatred against gender variance online, by studying the reasons why people disdain unique gender expression, and rigorously fact-checking misinformation, may help subside the growing hate crimes against gender identity and expression. Discouraging instantaneousness and impulsivity online, analyzing the most effective manner in doing such, may help further the initiative of combating online hate speech.

Human Rights Legislations

Sharpe and Roach (2021) state that during the postwar period, human rights codes emerged and acted as important tools for the right to be free from discrimination. Human rights codes were initially implemented at the provincial level for protection against discrimination of race and religion. As society's awareness of other forms of discrimination grew, human rights codes have evolved to include age, gender, and disability. Within human rights legislation, Human Rights Codes emerged during the postwar period and played an important role in combating forms of discrimination before the Charter. As of the enactment of the Charter in 1982, all human rights legislation must follow what is currently laid out as fundamental rights and freedoms within the Charter. As each province has unique human rights codes, what is defined as protected human rights varies by province. Gender identity, in particular, is protected under all provinces and territories' human rights codes. Gender expression is protected in all provinces except Manitoba and all territories except the Northwest Territories (Canadian Centre for Diversity and Inclusion, 2018). According to the Canadian Human Rights Commission (2010), the difference between gender identity and gender expression is highlighted in the codes

that distinguish the two. For example, the Ontario Human Rights Commission defines gender identity as an individual's internal experience with gender. It can be their sense of being a man, woman, or anything else on the gender spectrum. Gender expression is how an individual publicly presents their gender. Examples of gender expression are the individual's chosen name or pronouns.

Most provincial human rights codes have similar protected grounds and terminology, however, to more clearly understand what they entail, examples are highlighted in the next few sections.

Alberta Human Rights Act

For the province of Alberta, the human rights committee defines gender as "woman, man, cisgender, transgender, two-spirit, non-binary, or intersex". Gender identity may be "a person's internal, individual experience of gender", and gender expression is defined as "varied ways a person expresses their gender". The Alberta Human Rights Commission states that "employers, landlords, and service providers cannot discriminate against a person because of their gender, gender identity, or gender expression". Protected grounds in the Human Rights Act include publications/signs that are displayed toward the public, goods available to the public, tenancy, employment, and membership in unions. Equal pay is also protected under the act, in Article 6: "(1) Where employees of both sexes perform the same or substantially similar work for an employer in an establishment the employer shall pay the employees at the same rate of pay. Any pay differentials must be based on factors other than gender. " However, there are no explicit mentions of protecting gender outside the binary in this statement.

British Columbia Human Rights Code

British Columbia (B.C.) Human Rights Code protects an individual's sex from discrimination, which includes "being a man, woman, inter-sexed or transgender". B.C. also

protects individuals based on gender identity and gender expression. Article 4 of the Code states, "If there is a conflict between this Code and any other enactment, this Code prevails". This implies that if someone were to hate someone based on their gender identity directly, then they are to be prosecuted regardless of if another Canadian act allows such statements to be made. The Code also states in Section 2 that "subsection (1) does not apply to a private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code." In other words, Section 2 allows hate speech to be conducted privately. If the same hatred were to be conducted in public or against another person in public, it would violate the Act. Under Section 21, any individual or group that believes a person has "contravened this Code may file a complaint with the tribunal in a form satisfactory to the tribunal" (Government of British Columbia, 2024).

Saskatchewan Human Rights Code

The Saskatchewan Human Rights Code defines gender identity as a prohibited ground of discrimination. Protected grounds cannot be discriminated against from employment, housing, education, accommodations, public services, publications, contracts, or professional associations.

Canada Human Rights Act

The Federal Human Rights Code defines discrimination as the unjust or prejudicial treatment of individuals or groups based on characteristics such as race, age, religion, gender, and so on. As stated in section 2 of the code, The purpose of the code is to expand Canadian law within the jurisdiction of Parliament to ensure that every person has the same chance as others to pursue the life they desire and are capable of achieving and receiving appropriate support for their needs in harmony with their responsibilities and rights as society members. Human rights violations can fall under either the federal or provincial human rights legislation, with the federal government regulating certain employers and service providers, including federal agencies,

chartered banks, airlines, TV/Radio stations, interprovincial communications and transportation companies, and First Nation governments. The current grounds of discrimination include gender identity and gender expression as of 2016 with the passing of Bill C-16. Bill C-16 was amended to add “gender identity and gender expression to the list of prohibited grounds of discrimination”. Bill C-16 also made amendments to the Criminal Code to extend the protection against hate propaganda to “any section of the public that is by gender identity or expression and to clearly set out that evidence that an offense was motivated by bias, prejudice or hate based on gender identity or expression” (Parliament of Canada, 2016).

Under Section 13 of the Canadian Human Rights Act, communicating hate messages on the telephone or through the Internet was considered a discriminatory practice. However, on June 26th, 2013, Bill C-304 repealed the Section, by reason of ensuring “there is no infringement on freedom of expression guaranteed by the Canadian Charter of Rights and Freedoms” (Parliament of Canada, 2013, p. 2). The backlash of Section 13 largely stemmed from an incident where two conservative Canadian pundits, Ezra Levant, and Mark Steyn, published Islamophobic material in Maclean’s magazine and Western Standard. The backlash from their material caused Steyn and Levant to position themselves as victims of “human rights machinery with unjustifiable powers”. Steyn and Levant's complaints successfully repealed s. 13 with the support of the majority Conservative federal government at the time (D'Orazio, 2015).

In 2021, Bill C-36 was created as a proposed amendment to the Criminal Code, Youth Criminal Justice Act, and Canadian Human Rights Act. As outlined in the first reading of the bill by the Parliament of Canada (2021), if enacted the bill would amend the Criminal Code’s definition of hatred to mean “the emotion that involves detestation or vilification and that is stronger than dislike or disdain”. The Bill would also re-introduce section 13 of the Canadian Human Rights Act, with s.13(1) stating it would be a “discriminatory practice to communicate or

cause to be communicated hate speech by means of the Internet or other means of telecommunication", and s.13(2) stating "a person who communicates or causes to be communicated hate speech continues to do so for as long as the hate speech remains public and the person can remove or block access to it". S. 13(3) states that a person does not communicate hate speech only that they "indicate the existence or location of the hate speech" or "host or cache the hate speech or information about the location of the hate speech".

In 2024, Bill C-63 was proposed to enact the Online Harms Act, amend the Criminal Code, and amend the Canadian Human Rights Act. As stated in the first reading by the Parliament of Canada (2024), the purpose of the Online Harms Act is to "promote the online safety of persons in Canada, reduce harms caused to persons in Canada as a result of harmful online content" and that users of social media services respect what is laid out in this Act. The Online Harms Act would establish the Digital Safety Commission of Canada, which would administer and enforce the act. The Act would also create the position of Digital Safety Ombudsperson of Canada, and establish the Digital Safety Office of Canada. Amendments to the Criminal Code would include creating a hate crime offense "of committing an offense under the Act", creating a recognizance to "keep the peace relating to hate propaganda and hate crime offenses", redefining hatred for the purpose of the new offense, and increase the maximum sentences for hate propaganda offenses.

Amendments to the Canadian Human Rights Act would include providing it is a "discriminatory practice to communicate or cause to be communicated hate speech by means of the Internet or any other means of telecommunication". The Act would clarify the types of internet services covered by the Act, change the required steps for sending notifications, so that all notifications are sent directly to one specific law enforcement agency that is named in the rules, extend the period of preservation of data, and extended the limitation period for the

prosecution of an offense. Under this act, harmful content is detailed mostly by child exploitation but also includes content that foments hatred, content that incites violence, and content that incites violent extremism or terrorism.

This segment of the paper was designed to highlight the nuances of human rights legislation at the federal and provincial levels of government. It also analyzed newly proposed bills that seek to render hate speech laws more comprehensive and flexible, in light of the burgeoning digital sphere and the increasingly acknowledged spectrum of gender identities within Canadian society. Bill C-16 was significant in developing gender identity and expression into the Criminal Code and human rights legislation. If enacted, Bill C-36 and Bill C-63 could replicate a similar impact on internet hate speech that Bill C-16 had for gender variance.

Discussion

Freedom of Expression and Hate Speech

It is important to consider that hate speech has had a lasting impact on Canadian society, and without regulating it in some form, there would be serious consequences to the structure of Canada's democracy. Statistics show that hate speech in Canada has been on the rise, and has already made lasting impacts politically and socially. The uproar against gender variance across the Western world has made provinces like Alberta and Saskatchewan consider regulating the rights of those with unique gender identities and expressions. Although such regulations are allowed due to the Charter's "notwithstanding clause", where parliament can override sections of the Charter for "five-year terms when passing legislation" (CBC, 2023), such laws directly contradict the values underlined in the Charter and the Human Right Acts. The backlash against gender variance can be due in part to the nature of discussion on the internet, as its instantaneousness makes "taboo" opinions and conversations more widespread. Canada has a clear definition of hatred, hate speech, and has created the line between prosecutable hate speech

and speech that falls within s. 2(b) of the Charter. Federal and provincial human rights acts make a distinction between discrimination and harassment, however, it has limited scope in how it can prosecute offenders as violations of human rights acts are deemed non-criminal.

Analyzing current legislation on hate speech, gender identity and gender expression have only recently been implemented as protected grounds in Canada. The recency of these implementations makes it difficult to determine if they have been effective in reducing hate crimes against gender variance. Internet crime regulations are even newer, with proposals in effect but not yet implemented, such as Bill C-36 and Bill C-63. Looking into the current trends in hate crime reported by Statistics Canada, it seems like legislation has not been effective at mitigating the upward trend in hate crime since 2018. Critics of prosecuting hate speech have often deemed that the freedom of expression should be an absolute right, and stifling speech due to the perceived vulgarity of the speech is unduly authoritarian. The balance between freedom of expression and hate speech is one of contentious debate, and there is no objective answer to what the best solution is. There will never be legislation that appeals to everyone, therefore the judicial system and governments must make a rational choice, one where democracy, diversity, inclusion, and equity are valued over protecting undemocratic hateful speech.

Online websites and service providers must also decide to reflect the democratic process, keeping hateful messages regulated and controversial debates within the realm of good intentions and objectively true statements. The widespread of false information is one of the leading exposures to online hate crime. Internet companies and providers have the most power to regulate instances of false information, as they likely have more expertise in technology, how their algorithms function, and how communication happens on the site than the government could ever understand.

Canada's judicial system has only a limited scope in what they can regulate online, as the internet is a worldwide phenomenon. Canada can prosecute individuals who are confined by the Canadian legal system, however, anyone outside the country is out of the hands of the government. As stated previously, legislation is perhaps not the most effective solution in combating online hate speech, but it can serve as a basis for what standards Canadians must hold when conversing with others online.

Florence Ashley, a law professor at the University of Alberta, contests the notion that hate crime laws are effective in mitigating violence against gender variance. They note that many perpetrators of hate crimes are either ignorant of hate speech laws or don't care about the repercussions of their actions. Hate crime laws in Canada have not had measurable impacts on violence against identifiable groups, and are disproportionately used against members of marginalized populations. For a hate crime law to be effective, it must be widely publicized with associated sentences excessively punitive. Ashley states that "changing societal perceptions and public outcry…are more effective" (p. 27) and that "addressing manipulative heterosexuality will be pivotal to trans emancipation" (p. 31). Addressing manipulative heterosexuality would include challenging the notion that femininity is inferior to masculinity. Instead of sentencing perpetrators to jail, Ashley states that perpetrators should face extensive education on transgender realities as well as counseling to reduce recidivism (Ashley, 2018).

Choice Ubangha has a similar viewpoint on hate crime legislation, stating that education is the most effective solution in combating the ever growing threat of hate crimes against democratic values. Ubangha reviews current regulatory mechanisms for controlling hate speech and points out their limitations. Ubangha's paper suggests that educating society's citizens can be more effective in regulating hate speech than other forms of regulation, due to the inherent limitations of the internet. The focus on education over regulation is presented as a more viable

solution for the long-term management of hate speech in the cyberspace. Although internet companies have the power to mitigate hateful content on their website, removing such speech entirely off the internet is an impossible goal. Invariably, there will persist online environments that advocate for 'unrestricted expression,' within which the dissemination and acceptance of coarse content is permitted. The most trusted and least restrictive measure internet companies could do is to adamantly and fervently reduce misinformation, and find a way to mitigate the instantaneousness of postings by users of their site.

Underreporting Victimization

Another concern highlighted in this paper is the lack of reporting victimization, especially considering online hate crimes. Consider millions of Canadians use the internet every day, even though there are no definite statistics on the amount of hate speech conducted by Canadians online, there are likely much more hate speech committed than the small hundred of cases prosecuted in 2022. Underreporting victimization is one of the largest barriers to implementing hate speech regulation effectively. The Parliament of Canada quotes Shalini Kunanar who states that within the LGBT+ community, "people are hesitant to report online hate because of a fear of police and their systematic mistreatment historically, so they don't come forward" (Housefather, 2019, p. 19-20). There needs to be better efforts to help victims feel comfortable enough to report cases, no matter how small the case may be in the grand scheme of hate speech convictions. Alberta has been successful in implementing an anonymous hate speech reporting tool named StopHateAB.ca. This initiative was designed to address the gap in reporting incidents of hate and bias (Alberta Hate Crimes Committee, 2015). Chaudhry (2021) states that the tool is effective in multiple ways, for one it helps share information about the occurrence of hate beyond what is considered punishable by the Criminal Code, and secondly, it brings community engagement, allowing individuals of all backgrounds to understand the experiences

of targeted groups. Such reporting tools specifically for online hate speech could be useful to understand the scope of hatred, no matter if the speech was severe enough to be prosecuted.

The recommendations from this study are to decentre literature from advocating for further legislation and hate speech regulation from the government. There needs to be a bigger focus on educating perpetrators of hate speech offenses. Instead of hiding the real effects of hate crime by only implementing offenses for extreme cases, there needs to be more advocates and incentives to denounce speech that the Criminal Code does not control. An extensive initiative to locate and fact-check false information on the internet could help reduce the spreading of hateful messages deemed as the truth. Internet companies and government agencies could work alongside each other to promote democratic values and remove potential false information, instead of placing the accountability on the victims to go to the police, as victims might not feel their requests are severe enough for perpetrators to be prosecuted. Incentives for victims to instead report to anonymous tools such as StopHateAB.ca could help decrease the effect of the dark figure of crime, exposing the true impact of online hate speech. Lastly, it is essential to promote inclusivity regarding gender variance by moving away from an exclusively binary understanding of gender within the educational system. By fostering an environment where students can explore their gender identity from a young age, and by incorporating gender studies into curricula, Canada can create a more comprehensive and equitable educational experience.

This discussion aimed to highlight potential solutions to hate speech targeting gender variance outside of regulations and legislation. Online hate speech against gender variance could be best reduced through removing barriers to reporting victimization, educating society on gender related issues and terms, and extensively monitoring and fact checking misinformation online. While legislation will still be a necessity in advocating for gender equality, measures

outside of creating policy need to be further explored by Canada's parliament and judicial system.

Conclusion

This study seeked to investigate the differences in gender treatment within the legal system, examine the prosecution of hate crimes, how Canada could prosecute hate crimes targeting gender variance, and analyze the development of hate crimes in the context of increasing online connectivity. It looked into to definitions of gender and hate within Canadian society and discussed alternative solutions to addressing hateful speech.

Limitations and Future Research

As legislation for online hate crime is still in its developmental stage, understanding its effectiveness is not something that can be fully analyzed at the time when this paper was written. Education around gender identity and gender expression is also relatively new, understanding what is best for everyone under the gender variance umbrella is impossible, as it's unfair to assume those with gender variance voice the same opinions as scholars and the government. Future research should look into surveying those of gender variance to get a holistic perspective on Canadian legislation, hate crime, and how it affects their day to day lives.

Quantitative research on anonymous reporting tools, and the dark figure of crime particularly for online hate speech should be done to fully understand the impact of individuals underreporting their victimization. An exhaustive look into corporations' individual hate speech policies and how effective they are in reducing hate speech should also be done in the future to fully understand the extent to which online hate speech permeates the internet.

This paper's research intends to further the understanding of terms that are often misunderstood. As of 2024, discussions surrounding hate speech, gender identity and expression, and online technology have become increasingly contentious. Amidst the discordance of

opinions, it becomes challenging to discern unbiased information from misinformation. One undeniable truth is that hate speech can directly restrict and scare marginalized populations from voicing their needs and opinions within a society. As the world continues to become more dependent on digital technology, it is imperative that we understand technology's sociological and judicial impact objectively as well as how a democratic society should address impulsive and hateful online messages.

References

Alberta Hate Crimes Committee. (2015). *Stop Hate AB – Documenting Hate Incidents in Alberta*. https://stophateab.ca/

Anti-Defamation League. (2022, October 28). *QAnon*. https://www.adl.org/resources/backgrounder/qanon

Ashley, F. (2018, Winter). Don't be so hateful: The insufficiency of anti-discrimination and hate crime laws in improving trans well-being. *The University of Toronto Law Journal*, *68*(1), 1-36. University of Toronto Press.

Bakalis, C. (2016, Aug 18). Regulating Hate Crime in the Digital Age. *The Globalization of Hate: Internationalizing Hate Crime?*, 263-276. Oxford Academic. https://doi.org/10.1093/acprof:oso/9780198785668.003.0017

Braid, D. (2024, January 31). Braid: Smith's rules for gender surgery, sex ed and parent rights come under fierce attack. *Calgary Herald*. https://calgaryherald.com/opinion/columnists/braid-danielle-smith-transgender-surgery-sex-ed-parental-rights-attack

Brown, A. (2018). What is so special about online (as compared to offline) hate speech? *Ethnicities*, *18*(3), 297-326. Sage Publications. doi.org/10.11do77/1468796817709846

Calgary Public Library. (2024). *Reading With Royalty*. Calgary Public Library. https://calgarylibrary.ca/events-and-programs/programs/reading-with-royalty/

Canada (Human Rights Commission) v. Taylor [1990] 3 SCR 892

Canadian Centre for Diversity and Inclusion. (2018, January). *Overview of Human Rights Codes by Province and Territory in Canada*. Canadian Centre for Diversity and Inclusion. https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf

Canadian Centre for Gender and Sexual Diversity. (2019). *Queer and Trans History of Canada.* Our History Initiative. https://ccgsd-ccdgs.org/wp-content/uploads/2020/10/CCGSD_Textbook_June11-compressed.pdf

Canadian Human Rights Act (R.S.C., 1985, c. H-6)

Canadian Human Rights Commission. (2010, March 1). *Discrimination: what can you do about it?* Your Guide to Understanding the Canadian Human Rights Act. https://www.chrc-ccdp.gc.ca/en/resources/your-guide-understanding-the-canadian-human-rights-act-page1

Cloudflare. (2024). *What is a distributed denial-of-service (DDoS) attack?* https://www.cloudflare.com/learning/ddos/what-is-a-ddos-attack/

Community Guidelines. (n.d.). Facebook. https://www.facebook.com/help/477434105621119

Cossman, B. (2018, Winter). Gender identity, gender pronouns, and freedom of expression: Bill C-16 and the traction of specious legal claims. *University of Toronto Law Journal*, *68*(1), 37-79. University of Toronto Press Journals. https://doi.org/10.3138/utlj.2017-0073

Criminal Code (R.S.C., 1985, c. C-46)

D'Orazio, D. (2015). The Demise of Section 13 of the Canadian Human Rights Act: Reappraising the 'Battle for Free Speech. *Carleton University Institutional Repository*. https://doi.org/10.22215/etd/2015-10861

4Chan. (n.d.). *Global Rules*. https://www.4chan.org/rules

Franklin, M. (2023, March 28). Reading with Royalty event in Calgary draws another protest. *CTV News Calgary*. https://calgary.ctvnews.ca/protest-over-calgary-library-drag-event-continues-1.6332608

French, J. (2024, February 1). Alberta premier says legislation on gender policies for children, youth coming this fall. *CBC*. https://www.cbc.ca/news/canada/edmonton/danielle-smith-1.7101595

Government of British Columbia. (2024, April 16). *Human Rights Code*. BC Laws. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96210_01

Government of Canada. (2014, April 24). *Correctional process*. Working with offenders. https://www.canada.ca/en/correctional-service/programs/offenders/correctional-process.html

Government of Canada. (2021, December 20). *Correctional programs*. Programs for offenders. https://www.canada.ca/en/correctional-service/programs/offenders/programs/correctional-programs.html

Government of Canada. (2023, May 8). *What is gender? What is sex?* Canadian Institutes of Health Research. https://cihr-irsc.gc.ca/e/48642.html

Harell, A. (2010). The Limits of Tolerance in Diverse Societies: Hate Speech and Political Tolerance Norms Among Youth. *Canadian Journal of Political Science*, *43*(3), 407-432. Cambridge University Press. doi.org/10.1017/S0008423910000107

Harris, K. (2018, February 7). Canada's prison system overhauls transgender inmate policy. *CBC*. https://www.cbc.ca/news/politics/transgender-inmates-csc-policy-1.4512510

Housefather, A. (2019, June). Taking action to end online hate: Report of the Standing Committee on Justice and Human Rights. *Parliament of Canada*. https://www.ourcommons.ca/Content/Committee/421/JUST/Reports/RP10581008/justrp29/justrp29-e.pdf

Malott, J. (2023, August 2). Julia Malott: Drag queen story hour is not the way to teach children about diversity. *National Post*. https://nationalpost.com/opinion/drag-queen-story-hour-is-not-the-way-to-teach-children-about-diversity

Martin, J. (2021). Eliminate Hate: Hate Crimes and Hate Speech in Canada. *The Journal of Intelligence, Conflict, and Warfare*, *3*(1), 33-46. https://doi.org/10.21810/jicw.v3i1.2361

Mugesera v. Canada (Minister of Citizenship and Immigration) [2005] 2 SCR 100

Oyewumi, O. (2002). Conceptualizing Gender: The eurocentric foundations of feminist concepts and the challenge of African epistemologies. *Jenda: A Journal of Culture and African Women Studies*, *2*(1). https://www.africaknowledgeproject.org/index.php/jenda/article/view/68

Parliament of Canada. (2013, June 26). *Private Member's Bill C-304 (41-1) - Royal Assent - An Act to amend the Canadian Human Rights Act (protecting freedom) - Parliament of Canada.* https://www.parl.ca/DocumentViewer/en/41-1/bill/C-304/royal-assent

Parliament of Canada. (2016, May 17). *Government Bill (House of Commons) C-16 (42-1) - First Reading - An Act to amend the Canadian Human Rights Act and the Criminal Code - Parliament of Canada*. https://www.parl.ca/DocumentViewer/en/42-1/bill/c-16/first-reading

Parliament of Canada. (2021, June 23). *Government Bill (House of Commons) C-36 (43-2) - First Reading - An Act to amend the Criminal Code and the Canadian Human Rights Act and to make related amendments to another Act (hate propaganda, hate crimes and hate speech)*. https://www.parl.ca/DocumentViewer/en/43-2/bill/C-36/first-reading

Parliament of Canada. (2016, May 17). *Government Bill (House of Commons) C-16 (42-1) - First Reading - An Act to amend the Canadian Human Rights Act and the Criminal Code - Parliament of Canada*. https://www.parl.ca/DocumentViewer/en/42-1/bill/c-16/first-reading

Pearce, R., Erikainen, S., & Vincent, B. (2020, Aug 10). TERF wars: An Introduction. *The Sociological Review*, *68*(4). Sage Journals. https://doi.org/10.1177/0038026120934713

Penney, J. W. (2017, May 26). Internet surveillance, regulation, and chilling effects online: a comparative case study. *Internet Policy Review*, *6*(2). doi.org/10.14763/2017.2.692

Pickles, J. (2019, September). LGBT Hate Crime: Promoting a Queer Agenda for Hate Crime Scholarship. *Journal of Hate Studies*, *15*(1). ResearchGate. doi.org/10.33972/jhs.161

Province of Alberta. (2023, April 1). *Alberta Human Rights Act*. Alberta Human Rights Commission. https://albertahumanrights.ab.ca/media/1utjxb3e/alberta-human-rights-act.pdf

R. v. Keegstra [1990] 3 SCR 697

Robinson, M. (2019, May 24). Two-Spirit Identity in a Time of Gender Fluidity. *Journal of Homosexuality, 67*(12), 1675–1690. https://doi.org/10.1080/00918369.2019.1613853

Rupp, L. J., Verta, T., & Shapiro, E. l. (2010, June). Drag Queens and Drag Kings: The Difference Gender Makes. *Sexualities*, *13*(3), 275-294. SAGE CRKN Collection. doi.org/10.1177/1363460709352725

Saskatchewan Human Rights Commission. (2018). *The Saskatchewan Human Rights Code, 2018 being Chapter S-24.2 of the Statutes of Saskatchewan, 2018*. https://saskatchewanhumanrights.ca/wp-content/uploads/2020/03/Code2018.pdf

Sharpe, R. J., & Roach, K. (2021). *The Charter of Rights and Freedoms*. Irwin Law.

Statistics Canada. (2022, November 14). *Ethnocultural and religious diversity – 2021 Census promotional material.* Census Community Supporter Toolkit. https://www.statcan.gc.ca/en/census/census-engagement/community-supporter/ethnocultural-and-religious-diversity

Statistics Canada. (2024, February 27). *Online hate and aggression among young people in Canada*. The Daily. https://www150.statcan.gc.ca/n1/daily-quotidien/240227/dq240227b-eng.htm

Statistics Canada. (2024, March 13). *Police-reported hate crime, 2022*. The Daily. https://www150.statcan.gc.ca/n1/daily-quotidien/240313/dq240313b-eng.htm

Thomas, W. (1997). Navajo cultural constructions of gender and sexuality. In S. E. Jacobs, W. Thomas, & S. Lang (Eds.), *Two-spirit people: Native American gender identity, sexuality, and spirituality* (pp. 156–173). Champaign, IL: University of Illinois Press.

Ubangha, C. (2016, April 12). Hate Speech in Cyberspace: Why Education is Better than Regulation. *Social Science Research Network*. http://dx.doi.org/10.2139/ssrn.2865053

Vasey, P. L., & VanderLaan, D. P. (2010). Avuncular tendencies and the evolution of male androphilia in Samoan Fa'afafine. *Archives of Sexual Behaviour*, *39*(4), 821-830. APA PsycInfo. https://doi.org/10.1007/s10508-008-9404-3

X. (2023, April). *X's policy on hateful conduct*. Twitter Help Center. https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy

YouTube. (2019, June 5). *Hate speech policy*. YouTube Help. https://support.google.com/youtube/answer/2801939?sjid=14355968042261961535-NC

Zimonjic, P. (2023, September 29). Saskatchewan and the notwithstanding clause explained. *CBC*. https://www.cbc.ca/news/politics/moe-saskatchewan-notwithstanding-explained-1.6982715