



## TRANSIT POLICE

### HATE/BIAS INVESTIGATIONS

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## POLICY

### Definitions

BCHC – British Columbia Hate Crimes, an integrated unit within RCMP “E” Division that is a provincial resource that provides operational support and guidance to police agencies throughout British Columbia on hate crime investigations.

BCPPS – The BC Provincial Policing Standards, as amended from time to time.

Criminal Code – *Criminal Code of Canada*, RSC 1985, c. C-46, as amended from time to time.

DEMS – Digital Evidence Management Solution used by Transit Police.

GO – General Occurrence report in PRIME.

Hate/Bias Incident – A hate, prejudice or bias incident that may be motivated by the same factors as a Hate Motivated Crime but does not meet the elements of a criminal offence. As with a Hate Motivated Crime, the local police of jurisdiction is responsible for investigating the Hate/Bias incident.<sup>1</sup>

Hate Motivated Crime – Is a criminal offence committed against a person or property, which is motivated by hate, prejudice or bias against an ‘identifiable group’. *S. 718.2 of the Criminal Code (Other Sentencing Principles) are applicable to hate motivated crimes, in particular s. 718.2(a) and (e) as set out in s. 8 (1) of this policy. Common examples of crimes that may be hate motivated include assault, uttering threats (in person and online), criminal harassment, and mischief<sup>2</sup> (e.g., spray painting a place of worship with racial or prejudicial comment). NOTE: See definition for mischief below for more information.*

Hate Propaganda Offences – An act or event that meets the elements of ss. 318, 319(1) or 319(2) of the *Criminal Code*, or an incident assessed in the context of those offences (*such offences include, for example, events advocating genocide, or public incitement of hatred, or the willful promotion of hatred against an identifiable group*). Consent of the provincial/territorial Attorney General is required to lay a charge under ss. 318 or 319 of the *Criminal Code*.

<sup>1</sup> BC Hate Crimes Information Sheet.

<sup>2</sup> Any mischief of damage to property used primarily by a specific Identifiable Group for religious, educational or other purposes should be investigated as a hate crime. S. 430(4.1) of the *Criminal Code* automatically recognizes hate against an Identifiable Group as a motivating factor to this category of mischief.

Mischief relating to religious property, educational institutions, etc. – Pursuant to s. 430 (4.1) of the *Criminal Code*:

*“(4.1) Everyone who commits mischief in relation to property described in any of paragraphs (4.101)(a) to (d)<sup>3</sup>, if the commission of the mischief is motivated by bias, prejudice or hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression or mental or physical disability,*

*(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or*

*(b) is guilty of an offence punishable on summary conviction.”*

Identifiable Group – Any section of the public distinguished by race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor.<sup>4</sup>

JPD – The Jurisdictional Police Department.

Member – Designated Constables (all ranks), a Deputy Chief Officer or the Chief Officer of the Transit Police.

Metro Vancouver Transit Police (“Transit Police”) – The operating name of the South Coast British Columbia Transportation Authority Police Service (Designated Policing Unit and Designated Law Enforcement Unit).

Section (“S.” or “s.”) – Abbreviation used throughout the policy.

## Authority

1. Members’ investigation of hate/bias incidents and hate motivated crimes will be pursuant to the provisions of the *Criminal Code*, the law, BCPPS, and Transit Police policy and procedures.

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<sup>3</sup> For s. 430(4.1) of the *Criminal Code*, “property” for the purposes of subsection (4.1) means:

*“(a) a building or structure, or part of a building or structure, that is primarily used for religious worship — including a church, mosque, synagogue or temple —, an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery;*

*(b) a building or structure, or part of a building or structure, that is primarily used by an identifiable group as defined in subsection 318(4) as an educational institution — including a school, daycare centre, college or university —, or an object associated with that institution located in or on the grounds of such a building or structure;*

*(c) a building or structure, or part of a building or structure, that is primarily used by an identifiable group as defined in subsection 318(4) for administrative, social, cultural or sports activities or events — including a town hall, community centre, playground or arena —, or an object associated with such an activity or event located in or on the grounds of such a building or structure; or*

*(d) a building or structure, or part of a building or structure, that is primarily used by an identifiable group as defined in subsection 318(4) as a residence for seniors or an object associated with that residence located in or on the grounds of such a building or structure.”*

<sup>4</sup> S. 718.2 of the *Criminal Code*.

## General

2. Transit Police will ensure the effective identification and investigation of hate/bias incidents and hate motivated crimes, and provide appropriate support and response to the victim and affected communities.<sup>5</sup>

## PROCEDURES

### Member Responsibilities

#### Identifying Hate Motivated Crimes

3. Hate motivated crimes are different from other types of criminal offences because a person or property is victimized based on at least one identifying characteristic, such as race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor. Often, no single factor will be sufficient to determine that a criminal incident is motivated by hate/bias toward the victimized person. Members will investigate hate/bias incidents to determine if the elements of any criminal offences are met.
4. Members will attempt to identify hate motivated crimes by assessing various pieces of information, which tend to indicate a specific hatred of the victimized person or property. These types of factors may be considered, but not limited to, in this assessment:
  - a. Statements of suspect that indicate hatred, prejudice or bias;
  - b. The display of any symbols, graffiti, or any comments, acts or gestures that are associated with hate groups;
  - c. Whether the offence coincided with a holiday, event, or date of significance to the victim or suspect group;
  - d. The perception of the victim, or the victim's community of the motivation behind the offence;
  - e. The perception of witnesses to the motivation behind the offence;
  - f. Historical conflict that exists between the victim's group and the suspect's group;
  - g. Whether the suspect has been previously involved in similar incidents;
  - h. Whether the suspect is a member of or associated to, a group or organization known for its hatred or conflict toward the victim's group;
  - i. Whether several occurrences have occurred in the community with victim's from the same group; and
  - j. Whether the offence occurred at the same time, or shortly after an identified hate group was active in the community.

*Note: Members are to refer to Appendix "A" of this policy for resources materials of the BC Hate Crimes (including FAQs and related Criminal Code sections).*

5. Transit Police recognizes that some hate/bias incidents may not be criminal offences. When a thorough investigation determines that a criminal offence has not occurred, the investigating Members will ensure that the hate/bias incident is

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<sup>5</sup> This policy developed pursuant to requirement of BCPPS 6.1.1(7).

properly documented. This may help support other remedies including, but not limited to, human rights and civil rights protection legislation, harassment education or community-building efforts.

- (1) Members are to be mindful that it is critically important to fully investigate a hate/bias incident, acting within lawful authority and in compliance with policy, for the following reasons:
  - a. identification of suspects may prevent further incidents, and prevent escalation to criminality/violence;
  - b. identification of suspects is valuable intelligence;
  - c. hate motivated crimes, hate/bias incidents can cause trauma, fear, humiliation and depression for victims;
  - d. hate motivated crimes, hate/bias incidents negatively affect senses of community and individual safety; and
  - e. hate motivated crimes, hate/bias incidents are highly impactful to the public that Transit Police serves, often reported by media, and a thorough investigation is important to public trust.

#### Investigating Hate Motivated Crimes

6. Hate Motivated Crime incidents are to be investigated consistent with general criminal investigation procedures, with Member additional attention, as follows:
  - (1) Member to notify a Supervisor and request specialized investigative assistance (e.g., Transit Police - General Investigation Unit ("GIU"), JPD Hate Crime Investigator or BCHC) if needed to thoroughly investigate the incident;
  - (2) Investigation is to be prioritized by the Member;
  - (3) All evidence at the scene is to be protected by Members and evidence seized as exhibits (including pamphlets and other literature, and secured video);
  - (4) Graffiti or other related markings/symbols at the scene that indicated hate, bias or prejudice are to be photographed or digitally recorded by Members and uploaded to DEMS;
    - a. Consider if the JPD Forensic Identification Unit should be requested to attend and assist; and
    - b. Once evidence is secured, request the property owner to attend and have the graffiti removed and, if on public property, the Member will contact the municipal government to request that they remove. This action will prevent continuation of the hate/bias messaging/harm to others in the community.
  - (5) Members to provide and/or seek support to the victim in accordance with the procedures for victim services (refer to Transit Police policy chapter [OM050 – Victim Services](#));
    - a. Members may also request the assistance of the Transit Police – Indigenous Liaison Officer or Mental Health Liaison, as appropriate to the incident;

(6) For the incident GO, the investigating Member to:

FIPPA S.15 - Harm to Law Enforcement

- 7. The investigating Member will document the relevant evidence that supports and/or refutes the hate/bias allegation.
  - 8. For criminal offences where the evidence exists that the offence involved hate motivation, the Member will clearly state in the Report to Crown Counsel (“RTCC”) synopsis and the RTCC narrative that the offence involves (or may involve) this type of offence when requesting charges, including the reasons for that determination.
- (1) In preparing the RTCC, Members are to be mindful of the Sentencing Principles in s. 718.2 of the *Criminal Code*, specifically (a) and (e):

*“A court that imposes a sentence shall also take into consideration the following principles:*

*(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, without limiting the generality of the foregoing:*

*(i) evidence that the offence 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, or on any other similar factor, ”...*

*(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.”*

FIPPA S.15 - Harm to Law Enforcement

S. 718.2 of the *Criminal Code* applies when a criminal offence has been substantiated, a RTCC is being submitted recommending a charge, and the offence is believed to be motivated by hate, prejudice or bias against an Identifiable Group.

- (2) Members will add a separate text page to the RTCC with the following naming convention header to assist Crown:

### FIPPA S.15 - Harm to Law Enforcement

In this paragraph, Members will summarize all the factors that may indicate the suspect's motivation was hate, prejudice or bias against an Identifiable Group, and how the investigator came to that conclusion. Below are some practical investigative considerations when looking at the motivation behind hate crimes:

- Background/context;
- Victim observations/actions;
- Suspect observations/actions;
- Victim statements;
- Witness statements/observations; and
- Suspect statement.

- (3) Members are also to consider s. 722 of the *Criminal Code*, which allows for submission of "victim impact statement" and the inclusion of such statements with the RTCC.
- (4) RTCCs for hate crimes are to be submitted as soon as practicable.

### Supervisor Responsibilities

9. The Supervisor will:
- (1) Ensure that the investigating Members have sufficient time and resources to investigate the incident;
  - (2) Monitor the investigation to ensure it is completed in a timely manner;
  - (3) Refer the investigation to GIU if the requirements of the investigation require additional resources or expertise. The Supervisor may also consider whether advice or assistance from the JPD or BCHC is required; and

### FIPPA S.15 - Harm to Law Enforcement

### Investigation Section Responsibilities

10. Unless otherwise so determined by the Inspector Investigation, the Criminal Investigation Unit Sergeant will be assigned as the police service's Hate Crime Liaison Officer.
11. The Hate Crime Liaison Officer will review the GO for each hate/bias investigation,

for intelligence purposes and support to GIU as requested.

12. If the investigation or Criminal Investigation Unit Sergeant review determines that a community group(s) may be at risk or if any other community concerns related to the hate/bias investigation were identified, the Hate Crime Liaison Officer or designate will seek advice from the BCHC and the JPD.
13. The Hate Crime Liaison Officer will keep the Inspector Investigation informed of any incidents of concern, trends, training needs or other issues of concern related to Transit Police response to hate/bias investigations.

### Hate Crime Prevention

14. The investigating Members, in consultation with the Inspector Investigation and Inspector Operations Support, will ensure that relevant organizations within the community and the media are informed of hate crime situations, where practicable and appropriate.
  - (1) Resources such as the Transit Police Media Relations Officer, Communications Team, and Community Engagement Team may be requested to assist with such outreach and communication.
15. The Operations Support Section will liaise with JPDs and other community organizations as appropriate and practicable, to develop strategies to prevent the repetition of hate/bias incidents and criminal offences, and to counter the activities of organized hate groups.
  - (1) The Inspector Operations Support Section or higher rank may also liaise with the BC Human Rights Commission, as appropriate.

### BC Hate Crimes

16. The BCHC is an integrated unit within the RCMP "E" Division that is a provincial resource to police agencies. Members will consider whether support/assistance from the BCHC would be beneficial to their investigation involving hate/bias incidents and hate crimes **FIPPA S.15 - Harm to Law Enforcement**. Refer to Appendix "A" for resource materials from BCHC.

### References:

*BC Provincial Policing Standards*

BC Hate Crimes Resource Materials (Mandate, FAQs and *Criminal Code* Sections, Quick Reference Guide)

*Criminal Code of Canada*, RSC 1985, c. C-46

Transit Police policy chapter [OM050 – Victim Services](#)

APPENDIX "A" FOLLOWS ON NEXT PAGE