

Considering gender-based violence as a form of hate: A socio-legal examination

Myrna Dawson, PhD¹
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¹ Centre for the Study of Social and Legal Responses to Violence, University of Guelph

Support for impacted communities: This report examines gender-based violence during the pandemic in British Columbia. We recognize this information will be deeply disturbing for many people in our province to hear. This issue, while critical to examine, is extremely challenging, especially for people who have experienced or witnessed instances of gender-based violence and abuse. British Columbians who experience distress at reading this report or who need immediate help can access a list of crisis lines and emergency mental health supports we have compiled on our website at: bchumanrights.ca/support

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Executive summary

British Columbia's Office of the Human Rights Commissioner's (BCOHRC) *Inquiry into hate in the COVID-19 pandemic* includes a focus on, and consideration of, gender-based violence (GBV) as a form of hate (and hate crime). It is believed that this is the first time an inquiry has included this focus in Canada and one of few globally. It is a focus that is timely and long overdue.

This report informs this consideration by addressing four key objectives:

- To describe why it is important to at least consider GBV as a form of hate (including hate crime);
- To outline existing and potential mechanisms to consider GBV as a form of hate, including related historical and current hate crime patterns in Canada;
- To discuss the benefits, challenges and related critiques of including GBV as a form of hate as discussed in the literature; and,
- To identify priorities for further consideration of GBV as a form of hate going forward.

Following a brief introduction in Section I, the report sets the context for why it is timely and long overdue to consider GBV as a form of hate in Canada, and globally, in Section II. This second section introduces some of the commonalities GBV as a form of hate shares with other more commonly recognized targets of hate, characteristics that are built upon in more detail later in the report. This section also discusses some issues about the larger environment in which this report was written, which are also built upon in more detail in subsequent sections. These issues relate to terminology and scope of the report as well as where it is located within the larger body of work on hate and hate crime.

Section III examines current and potential mechanisms for including GBV as a form of hate, beginning with the global context and then, more narrowly, on the Canadian context and mechanisms currently available in this country to address GBV as a form of hate focusing on the current protected/identifiable groups of sex, sexual orientation and gender identity or expression. This is followed by a brief discussion of misogyny as a potential motivation for hate, as well as a consideration of GBV as a form of hate in specific contexts. Finally, this section describes patterns in hate crime in Canada, highlighting what we know (and do not know) about how sex, sexual orientation and gender identity or expression are treated in Canada's hate crime framework in terms of reporting, recording, prosecuting and sentencing. Data sources are described and critiqued. The conclusion is that victim experiences of hate are complex and largely unknown in Canada, particularly for women and girls. Therefore, little if anything is known about GBV as a form of hate, a situation that is not unique to Canada.

Section IV discusses the benefits and challenges of treating GBV as a form of hate, largely drawing from international research that has examined how existing or potential protected characteristics could be used to do so. Benefits are presented first, including (1) the symbolic impact of including GBV as a form of hate, (2) increased public education and awareness about

GBV, (3) the emphasis on individual and community impacts of GBV, and (4) enhancing the safety and agency of women. The challenges and related critiques are then covered. They include the following: (1) symbolism is weak without enforcement, (2) criminal legal systems would be overburdened, (3) resource intensiveness of emphasizing GBV as hate, (4) challenge of training legal actors, (5) GBV is already addressed by existing legislation, (6) fewer supports for victims of GBV, (7) GBV is different than other hate crime, (8) emphasis on penalties rather than alternative approaches, and (9) unintended consequences for victims of GBV.

Section V concludes with 14 research, policy and/or practice priorities for BC's Human Rights Commissioner to consider, including one overarching priority for moving forward in four key areas. Some priorities may fall outside the purview of the BCOHRC but could be advocated for with the relevant levels of government. This is not an exhaustive list, but one that highlights some key issues identified in the literature reviewed for this report.

I. Introduction

During 2020, the first year of the COVID-19 pandemic, hate crimes² reported to police increased by 37 percent compared to 2019, with the largest per capita increases documented in Nova Scotia, British Columbia and Saskatchewan (Wang & Moreau, 2022: 3). Concerned with these increases, BC’s Office of the Human Rights Commissioner (BCOHRC) launched an inquiry into hate incidents in the COVID-19 pandemic,³ specifically drawing attention to the increase in gender-based violence.⁴ The BCOHRC noted that “during the height of the COVID-19 lockdown in Canada, gender-based violence was more severe and more frequent, with abusers’ tactics becoming more violent with a higher risk of lethality.” This trend is one reason for the inquiry, which includes a focus on gender-based violence (GBV) as a form of hate (and hate crime). It is believed that this is the first time an inquiry has included this focus in Canada and one of few globally. It is timely and long overdue.

At the time of writing this report, several separate processes were underway to respond to or better understand recent mass killings⁵ of exclusively or predominantly women that clearly demonstrated, at least in part, hate motivated by sex⁶.

- On June 13, 2022, the convicted male offender in what is now commonly referred to as the Toronto van attack (Ontario) was sentenced for killing eight⁷ women and two men and injuring 16 others on April 23, 2018. The perpetrator admitted that he drew his inspiration from men who used violence as retribution for “being unable to get laid,”

² The Uniform Crime Reporting (UCR) Survey collects information on police-reported hate crime, defined as “a criminal violation against a person or property motivated by 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 any other similar factor.”

³ See [BCOHRC’s Inquiry into hate in the pandemic](#) for full information on the inquiry.

⁴ In Canada, GBV is officially defined as “any violence directed towards or against someone due to their gender expression, gender identity or perceived gender.” It can be physical, psychological, or sexual in nature and is recognized to disproportionately impact women and girls with violent experiences compounded by intersecting identities (e.g., Indigeneity, race, sexuality, geography, ability, etc.). For more detail, see the [Government of Canada’s Gender-Based Violence Strategy](#).

⁵ Definitions of mass homicide vary, typically by number of victims killed; however, the most common definitions include three or four victims killed (Petee et al. 1997; Duwe 2000) in one or more locations in a short period of time without a cooling-off period (i.e., no lengthy break between killings) (Malmquist 1980; Krouse and Richardson 2015). This includes mass killings of family members, most frequently female partners and children, which are often referred to as familicide or domestic homicide rather than mass killings (for more information on domestic and non-domestic mass killings, see Boyd, 2021).

⁶ ‘Sex’ is the term used in related Canadian legislation, as will be discussed below.

⁷ A ninth victim, a female, who had remained in the hospital since the attack, died on October 28, 2021, succumbing to the injuries she sustained in the attack (see [‘These lives were precious’: Toronto van attacker sentenced to life in prison](#)). The killer had already been convicted for the attempted murder of this victim and was sentenced to life for this killing, with the judge stating: “You killed this woman the same way you killed the other 10 people, and I am imposing a life sentence.”

the so-called incel⁸ online subculture of men united by sexual frustration and a hatred of women.⁹

- On June 28, 2022, the Office of the Chief Coroner of Ontario completed its inquest into one of the worst instances of intimate partner femicide in Canadian history, which involved the killings of three women by one man on September 22, 2015, in Renfrew County, Ontario.¹⁰ The jury delivered 86 recommendations aiming to address intimate partner violence and femicide.¹¹ The scope of the inquest was to “explore the circumstances of their deaths, focusing on the dynamics of gender-based intimate partner violence and femicide in rural communities.”¹² In sentencing the perpetrator, currently serving life in prison, the judge stated: “...he is a violent, vindictive, calculating abuser of women, who on September 22, 2015, took his hatred to its ultimate climax and committed triple murders...” (*R. v. Basil Borutski, 2017 ONSC 7762*).
- Throughout June and continuing for most of 2022, the Mass Casualty Commission¹³ in Nova Scotia is examining the events leading up to and surrounding the killings of 13 women and nine men on April 18–19, 2020, by one man. His killing spree began with violence perpetrated against his female partner, which was reportedly not the first instance of violence against her. Details continue to emerge, and connections are being examined between GBV and mass killings, including the role of misogyny, roughly defined as the hatred of women (McCulloch & Maher, 2022).¹⁴

Despite these and several other recent, high-profile killings of women and girls in Canada, some linked to misogynist men’s movements and/or terrorism (discussed in more detail below), there continues to be limited attention paid to, or recognition of, GBV as a form of hate in Canada. This situation is surprising given that one of the most cited cases of hate crime motivated by sex, at least in westernized countries, occurred in Canada in 1989, most often referred to as the Montreal massacre (discussed further below). This case has been, and continues to be, used to discuss the expansion of the hate crime framework to sex (or gender¹⁵) in other countries (Eglin & Hester, 2003; Lawrence, 1999a; Pendo, 1994; Wolfe & Copeland, 1994).

⁸ The author of this report has opted not to capitalize “incel” which would denote a proper name or official title thereby giving this network more respect than it deserves. The term “incel” is short for involuntary celibacy, and largely describes virtual networks of men who fail to establish intimate relationships with women, which has become an environment ripe for the promotion and sharing of deeply misogynistic ideologies. Those who have conducted research on incels indicate that it is a violent political ideology based on a new wave of misogyny and white supremacy (Zimmerman et al., 2018: 1).

⁹ See [Toronto van attack suspect says he was ‘radicalized’ by online ‘incels’](#).

¹⁰ See [Renfrew femicide inquest: Focus on safety not punishment, witness implores](#).

¹¹ See [Ontario should declare intimate partner violence an epidemic, inquest jury says](#).

¹² See [Chief Coroner reveals scope of inquest into the deaths of Culleton, Kuzyk and Warmerdam](#).

¹³ See the [Mass Casualty Commission’s website](#) for more information.

¹⁴ For more information on various roundtable discussions related to GBV and intimate partner violence as contributing and contextual factors, see [An Update from the Commissioners – July 14, 2022](#).

¹⁵ The terms “sex” and “gender” are often used interchangeably internationally in the hate crime literature, leading to some confusion (Haynes and Schewpe, 2020). As stated on the Women and Gender Equality Canada website,

Furthermore, sex, which is one of the characteristics most often associated with GBV, has been a protected category in hate crime legislation in Canada since it was created.¹⁶ Sexual orientation and gender identity or expression can also be the focus of GBV, including as a form of hate. Sexual orientation was first officially recognized in Canada's hate crime framework in 1996, and more recently, in 2017, gender identity or expression was added.¹⁷ Symbolically, the inclusion of these characteristics in Canada's hate crime legislation is crucial because it sends a message to the public that society will not tolerate such acts. However, beyond this, how often are acts motivated by hate toward one's sex, sexual orientation or gender identity or expression reported or recorded as a hate crime? How often are such acts prosecuted or sentenced using hate-based offences in Canada? More importantly, in terms of this report, how often are such acts, when a form GBV, motivated by hate and recognized as such?

To consider these questions, this report will:

- Describe why it is important to at least consider GBV as a form of hate (including hate crime);
- Outline existing and potential mechanisms to consider GBV as a form of hate, including a summary of historical and current hate crime trends and patterns in Canada;
- Outline the benefits, challenges, and related critiques of including GBV as a form of hate as discussed in the literature; and
- Identify recommendations for further consideration of GBV as a form of hate going forward.

“sex” refers to the biological and physiological characteristics that define males, females and intersex persons. “Gender” refers to the roles and behaviours that society associates with being female or male (for more detail, see [What is gender-based violence?](#)).

¹⁶ The *Criminal Code* refers to identifiable groups rather than protected categories. An identifiable group is defined 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.” More detail on specific legislation is provided below.

¹⁷ Bill C-16 added “gender identity or expression” to the *Canadian Human Rights Act* and the section of the *Criminal Code* that targets hate crime and hate speech, including sentencing for hate crimes (Walker 2016).

II. Why consider gender-based violence as a form of hate?

On December 6, 1989, a lone white male, armed with a gun, entered École Polytechnique at the Université de Montréal, Quebec, and successfully carried out his mission – to kill women *because* they were women and, in his view, feminists, for whom he expressed his hatred. He left 14 women dead and 14 women and men injured before killing himself. Feminist activists, advocates and researchers were quick to identify the role of misogyny¹⁸ at the time (Berard, 2005: 56; Pendo, 1994). This was evident in the perpetrator’s actions prior to the mass killings, which were succinctly summarized by Lawrence (1999b) in testimony provided on hate crime legislation before the U.S. House Committee on the Judiciary below¹⁹:

[The perpetrator]²⁰ killed 14 women in a crowded classroom after separating the men and sending them out into the corridor. Before shooting, he told the women students “you’re all a bunch of feminists.” He left behind a three-page statement in which he blamed feminists for spoiling his life. He listed the names of fifteen publicly known women as the apparent objects of his anger. [The perpetrator’s] crime plainly fits the model of classic bias crimes: his victims were shot solely because they were women and, from his point of view, could well have been a different group of individuals, so long as they were women...

Lawrence (1999b) refers to this case as “an iconic example of a crime motivated by hatred of sex (p. 25); however, this mass femicide has never been officially recognized as such, although the City of Montreal recognized it as an anti-feminist attack in 2019, 30 years after the killings.²¹ Perhaps if the perpetrator had lived to be prosecuted, his actions would have been treated as a hate crime motivated by sex, but more recent cases suggest otherwise.

On April 23, 2018, nine women and two men were killed and 15 others injured in what is most often referred to as the Toronto van attack – killings perpetrated by a self-identified member of incel, the misogynistic men’s movement. The perpetrator was recently sentenced, so full sentencing remarks were not available, but based on media reports, hate motivated by sex does not appear to have been considered an aggravating factor.²²

¹⁸ There are varying definitions of misogyny which has tended to mean a bias or prejudice against, or hatred of, women. More recently, Manne (2018) extends this definition of misogyny to capture social systems or environments where women face hostility and hatred because they are women in a man’s world.

¹⁹ This case also served as the impetus for some states to recognize that not acknowledging sex or gender as a bias crime was an injustice to women (Hodge, 2011).

²⁰ The author of this report adheres to the practice of not naming the perpetrators in these cases.

²¹ Haynes and Schweppe (2020) pose the question as to whether crimes committed against people because they are feminists should be constructed as misogynistic crimes, referring to the Montreal massacre as the example.

²² Due to a recent Supreme Court of Canada ruling that consecutive sentences are unconstitutional, the offender’s sentence for 10 counts of first-degree murder and 16 counts of attempted murder will be served concurrently. Prosecutors had attempted to have each death carry a 25-year sentence consecutively so that the perpetrator would not have been eligible for parole for 250 years. Because of the Supreme Court of Canada ruling, the killer will be eligible for parole in 25 years.

Just short of two years after the Toronto van attack, another lone white male, armed with multiple guns, wreaked havoc across several rural communities in Nova Scotia on April 18–19, 2020. Beginning with violence perpetrated against his female partner – part of ongoing violence perpetrated against her – and ending with the deaths of 13 women and nine men, the perpetrator was subsequently killed by police. While details continue to emerge as part of the ongoing mass casualty commission process,²³ it is clear that hatred for women was, at least in part, one of the contributors, although whether this will be officially recognized remains to be seen.

Mass killings are not the only types of incidents that involve the hatred of women, however.

In July of 2018, an 18-year-old woman and a 10-year-old girl were killed and another 13 people injured in the Danforth (Toronto) shootings.²⁴ In their investigation, police found evidence of the perpetrator’s preoccupation with killing fantasies and some links to the misogynistic incel group.²⁵ Then on February 24, 2020, the murder of one woman and the attempted murder of another woman led to the arrest of a Toronto youth (who remains unnamed) who is believed to be the first Canadian subject to incel-related terrorism charges. It is one of a handful of known cases in Canada where serious acts of violence have been linked to incels.²⁶ Such connections would not always be publicly known and/or come to light in police investigations, however.

The above high-profile killings are disturbing on their own, yet this does not include the many other individual women and girls killed every other day in our country (Dawson et al., 2021). A significant portion of these killings are motivated by hatred, also often involving multiple deaths (e.g., familicides; see Boyd et al., 2022), but are rarely referred to as mass killings (Boyd, 2021). Nor does this picture include the decades-long travesty surrounding missing and murdered Indigenous women and girls. A significant proportion of the violence was motivated by a combination of sex and racially motivated hatred (MMIWG, 2019), and documented systemic misogyny, particularly by police (Misra & Major, 2022; MMIWG, 2019), is behind the lack of progress on dealing with the issue. Individual and systemic misogyny is not limited to Indigenous communities, however, with recent research underscoring the abuses of Black women by police (Misra & Major, 2022; see also Maynard, 2017).

One of the most stark and disturbing examples of individual and systemic misogyny, coupled with racism, is that of a Canadian serial killer from British Columbia, who was convicted of the second-degree murder of six women but linked by DNA to at least 21 more women found dead and likely many more (Bourgeois, 2018). Preying on the most marginalized of women from Vancouver’s Downtown Eastside, his killings spanned about two decades, largely because his victims came from a “space of indigeneity and prostitution (alongside abject poverty, criminality, mental illness and addiction), providing the rationale and justification for state inaction, inaction

²³ See the [Mass Casualty Commission’s website](#) for more information.

²⁴ See [Woman and girl dead, 13 other people injured in Danforth shooting in Toronto](#).

²⁵ Toronto Police Service (2019) *Danforth Shootings, Toronto, Ontario, July 18, 2018*.

²⁶ In May 2020, terror charges were laid against the 17-year-old male, who cannot be identified under the *Youth Criminal Justice Act*, after a stabbing at a Toronto massage parlour, which ended in the death of one woman and left another woman seriously injured. Initially charged with first-degree murder and attempted murder, he was later charged with two terrorism offences. The case is still before the courts and none of the allegations have been proven. See [Experts disagree on violent threat posed by incels in Canada](#).

that cost at least 68 women their lives” (Bourgeois, 2018: 394). This systemic misogyny, coupled with racism and classism, worked together with the killer’s racist misogyny evidenced by reports that he “perceived the women as representing the worst of society, and he felt a personal responsibility to ‘rid the world of its evil ways’” (Bourgeois, 2018: 395). These killings were never officially discussed as GBV as a form of hate but clearly demonstrate how the combination of multiple social identities contributes to increasing invisibility for some victims of hate.

While women and girls are disproportionately impacted by some forms of GBV, including as a form of hate, sexual minority²⁷ populations are also disproportionately victimized and invisibilized. For example, in 2019, a Toronto serial killer was sentenced to life in prison for eight counts of the first-degree murder of eight men from Toronto’s gay village which occurred from 2010–2017.²⁸ In addition, the still unsolved killing of Alloura Wells, a biracial and transgender woman found in Toronto’s Rosedale Ravine in 2017, underscores the marginalization and vulnerability of individual victims as well as their communities.²⁹ These two cases also represent GBV, likely as a form of hate, although never recognized as such.³⁰

The above summary of select cases focuses only on deaths, not the many other forms of everyday acts of hate, including GBV, perpetrated against women, girls and sexual minorities (e.g., Barrett & St. Pierre, 2013; Bates, 2016; Whitehead et al., 2021). For example, on June 3, 2019, a woman, 35, and her eight-month-old daughter were victims of a knife attack in a parking lot outside a Sudbury shopping mall by a stranger, a 28-year-old male.³¹ Before a bystander could intervene, the woman was stabbed in the neck, severing her artery. Her child sustained multiple bruises from being struck while the knife was in the perpetrator’s hand. Thankfully, neither was fatally injured. The perpetrator told police that he decided he was going to kill a woman and her child that day, that he was a member of the incel movement, and that he had been inspired by the perpetrator of the Toronto van attack. He was reported as saying, “I was angry at white women. I like white women, but they won’t f--- me. So, I wanted to see what it felt like (to kill a female child) ... I had my mind set. I was going to kill a child and was waiting for the right opportunity.” He was sentenced to life in December 2021. It is not clear if hate was considered an aggravating factor at sentencing.

The most recent mechanisms used for perpetrating violence and abuse are the varying forms of hate and online misogyny that are on the rise (Barker & Jurasz, 2019; Farrell et al., 2019; Ging & Siapera, 2019), targeting primarily women and girls, and particularly those with more public

²⁷ Statistics Canada defines “sexual minority” as persons whose sexual orientation is gay, lesbian, bisexual, pansexual, two-spirit, asexual or any sexual orientation that is not heterosexual.

²⁸ See [Toronto serial killer Bruce MacArthur sentence to life in prison](#).

²⁹ See [Toronto police made ‘series of mistakes while investigating death’ of Alloura Wells: interim chief](#).

³⁰ Both cases were also the subject of an independent review (see [Ombudsman’s Statement on Missing and Missed: Report of the Independent Civilian Review into Missing Persons Investigations by the Honourable Gloria J. Epstein](#)).

³¹ See [Man who hated women sentenced to life for trying to kill mom, baby in Sudbury, Ont.](#)

roles (e.g., politicians, journalists, human rights defenders) (Cuthbertson et al., 2019; Wagner, 2020),³² a situation that is exacerbated if they are racialized.³³

Considering this dismal – and shameful – portrait of Canada and its (lack of) response to GBV as a form of hate, it begs the question: why are women and girls specifically, historically and today, consistently overlooked in the context of hate crimes, despite theoretically being protected in our hate crime legislation for decades? Why is GBV, which is often motivated by hate based on sex, sexual orientation, or gender identity or expression, not more frequently the focus of hate crime responses by legal actors in Canada and, arguably, anywhere in the world?

As will be discussed in more detail below, research shows that police-recorded hate crimes motivated by sex of the victim are one of the smallest categories documented, a consistent pattern over time. This is also the case in other jurisdictions where sex (or gender) is included as a protected group (e.g., U.S.). This has led many to ask whether woman-hating is any different than race- or religion-based hate. As Brown (2004) succinctly queried almost two decades ago, considering the issue in New Zealand, are biases motivated by sex any more enigmatic, impenetrable or stagnant of a social problem than race or religion bias? The answer is no. When focusing on GBV as a form of hate specifically, the same question can be asked about the characteristics of sex or sexual minority status. Again, the answer is no. One explanation for their relative invisibility is that GBV against women and girls is believed to be addressed, at least theoretically, in law as domestic violence or sexual violence; however, such laws often ignore same-sex relationships.³⁴ Regardless, we need to ask, should it or can it be addressed by both?

Research shows that victims of GBV share many similarities with other more recognized targets of hate crime, such as those who are victimized because of their race and/or religion. This includes similar negative and long-lasting impacts of violence against individual victims as well as their broader communities. Because hate crimes target both individuals as well as their entire community, such acts have been referred to as message crimes that demonstrate to those targeted that they are not wanted or valued (Erentzen & Schuller, 2020; Iganski, 2001; Perry & Alvi, 2011). This aptly describes the message for many victims of GBV, especially women and sexual minorities, who may also share one or more characteristics across various socio-demographics (e.g., Black women, Indigenous women, lesbian women, transwomen, older women), professional groups (e.g., politicians, journalists, human rights defenders), and/or other characteristics (e.g., women with disabilities, immigrant, newcomer, or refugee women). In short, as Carney (2001) argues, hate crimes often involve victims with an immutable characteristic (e.g., sex), the interchangeability of victims (e.g., any woman will often do) and communal fear within the targeted group (e.g., evident in how women and girls structure their everyday activities and routines to try to avoid risk of victimization, although not all groups of

³² [Female politicians speak out about sexist, violent cyberbullying](#) and [Relentless online abuse of female MPs raises concern for safety of staff](#).

³³ With respect to politicians, see [‘It’s political violence’: What women and racialized candidates face on the campaign trail](#). With respect to journalists, see [Canada: Saba Eitizaz Hit With Yet Another Online Trolling Campaign](#).

³⁴ This may explain why sexual orientation-motivated hate is more often recorded than sex-motivated hate, as will be discussed further below.

women and girls have equitable access to resources to do so). So again, why is GBV, or various forms of GBV, not considered hate crime?

Similarly, GBV often includes repeated and/or excessive violence, leading to greater psychological trauma, and accompanied by a reluctance or failure to report their victimization (see Duggan, 2021: 106). In fact, in reviewing the literature on fear of crime, Henson and Reyns (2015) argue that sex/gender may be “quite possibly the strongest and most widely accepted predictor of the fear of crime” (p. 95). Simply put, the documented incidence and prevalence of violence against women and girls is a daily message to all women that they must “stay in their place” (Pickup et al., 2001: 20). This occurs to such a degree that it has been described as “sexual terrorism” (Sheffield, 1992) and, more recently, “domestic terrorism” (Pain, 2014).

GBV as a form of hate, then, is evident in society and demonstrates similar impacts to other hate crimes even if not recognized in official statistics or in the courts and even when enshrined in law. Given this, the question of how GBV may be treated within the hate crime framework is discussed next. However, several issues are highlighted, beginning with the larger context within which this report was written:

First, when considering the inclusion of GBV as a form of hate, it has been noted above that some jurisdictions, including Canada, already have the capacity to do so because various related characteristics such as sex, sexual orientation and gender identity or expression are protected or are identifiable groups. However, as will be shown, these characteristics are rarely the focus of Canadian law or legal actors. Therefore, the discussion in this report will often refer to the *inclusion of*, or *emphasis on*, these characteristics as a mechanism for responding to GBV as a form of hate to capture that, even when included in law, these categories largely remain invisible.

Second, much of the historical and current literature examining GBV as hate has focused on sex, gender, misogyny, male violence against women, and/or specific offences that disproportionately impact women and girls (e.g., domestic violence, rape/sexual assault, femicide).³⁵ This is due, in part, to the historical resistance to including sex or gender as a protected characteristic in many countries or world regions, even when other characteristics such as sexual orientation and transgender or gender identity are included.³⁶ Furthermore, in the current climate, research has shown that there has been more acceptance, at least by official bodies, of sexual orientation and, more recently, gender identity or expression as motivations for hate crime (Haynes & Scheppe, 2020). Therefore, this report will reflect the fact that there has been a long-standing historical

³⁵ Largely separate bodies of literature have examined hate crimes motivated by sexual orientation, and literature is in its infancy, but rapidly growing, on hate crimes against transgender populations. To date, this research has focused less on GBV as a form of hate with respect to intimate partner and domestic violence.

³⁶ For example, in England and Wales, there are currently five characteristics recognized in hate crime laws: race, religion, sexual orientation, disability and transgender identity. In a recent consultation by the UK Law Commission (2021), three options for reform were considered with respect to sex or gender: (1) full recognition on same basis as other characteristics; (2) partial recognition with certain offences and contexts excluded; and (3) no recognition of sex or gender in either aggravated offences or enhanced sentencing (p. 188). The final recommendation of the commission was that sex and gender should not be added.

and contemporary reluctance to treat sex – and hate motivated by one’s sex – within hate crime frameworks, or GBV as a form of hate, and an issue that has been examined for several decades.

Relatedly, in various contexts, language differs in terminology with “animus,” “bias,” “hostility,” and so on used to capture acts motivated by hate in various countries or jurisdictions. It is not the goal of this report to discuss the detailed legal distinctions across these terms and related legislation; rather, the goal is to understand whether, why and how various jurisdictions have considered GBV as a form of hate in general and how this might inform any future steps in the Canadian context.

Third, when embarking on this project, it was recognized that the body of literature was voluminous and diverse, crossing various disciplines, over many decades, and with varying definitions of hate, including hate speech. While it is recognized that much hate speech can also be seen as a form of GBV, it was not within the scope of this report to include this equally large body of literature in depth. For a recent overview of the legal aspects of hate speech in Canada, readers are invited to review Gill (2020). There will be some limited discussion of online hate, which is often abusive and violent, however.

Fourth, as noted above and highlighted by much of the empirical evidence in this report, regardless of the motivation(s) for hate crime, it is increasingly recognized that hate is not siloed – a victim can be targeted for more than one identity. That is, individuals and communities targeted by hate-motivated acts often live at the intersection of various overlapping oppressions and discriminations, including, but not limited to, sexism, colonialism, racism, ableism, homophobia and transphobia (Chakraborti & Garland, 2012). However, most available data, and specifically official, administrative data, does not adequately document the intersectionality of hate crime experiences. Furthermore, when it is recognized that victims are targeted because of more than one identity, sex is often one of those identities but not given equal focus, if noted at all.

For example, Perry (2014) has shown that bias-motivated violence against Muslims and those perceived to be Muslim, as well as GBV against women, is frequent, underscoring the intersectionality of religion, race and gender that makes women vulnerable to complex patterns of hate and violence (see also Chakraborti & Zempi, 2012). However, sex is often ignored or marginalized when other more readily understood – and accepted – hate categories like race and religion are present. Similarly, hate targeting Black women or Asian women occurs, and is often experienced, at the intersection of racism and sexism, but race rather than sex or gender is typically emphasized. This has been underscored by recent work on Black femicide in the United States (Threadcraft, 2021), by recent acts of hate and violence perpetrated against Asian women³⁷ and by related research (Hwang & Parreñas, 2021). This is similar in some respects to the experiences of Indigenous women and girls and sexual minorities whose lives have been impacted by racism, sexism and colonialism. In short, hate is not unidimensional, even though it is most often treated as such.

³⁷ See [Why Asian women are uniquely vulnerable to violence in Canada and the U.S.](#) and [US has long history of violence against Asian women.](#)

Fifth, it is recognized that, regardless of motivation, all hate crimes are seriously under-reported, under-recorded and under-prosecuted in most jurisdictions where legislation exists, including Canada (Bryan & Trickett, 2021; Perry, 2016).³⁸ For example, data from Statistics Canada showed that, in 2019, nearly one quarter million people reported they were victims of hate-motivated incidents in one year, but fewer than one percent were investigated as such. However, historically and today, violence and abuse of women and girls, the disproportionate victims of GBV, have been ignored in society and in law. In addition, despite social and legal transformations in the past several decades, women, girls and sexual minorities continue to face inadequate responses from those institutions meant to help them, often experiencing “secondary victimization,” particularly in cases of sexual violence (e.g., Brooks & Burman, 2017; Kelly, 1988) and intimate partner violence (Johnson & Dawson, 2011; Wykes & Welsh, 2009). As such, this report contends that, as a bare minimum, society must consider the potential of including, or emphasizing, GBV as a form of hate. This consideration is equally and perhaps more important than other targets of hate given the historic normalization and minimization of these forms of violence.

In summary, as will be shown in this report, the inclusion of sex and sexual minorities as a focus of hate crime in Canada has been present, but limited, for sexual minorities and largely absent for hate motivated by sex, and specifically involving violence against women and girls. It remains to be seen how hate motivated by gender identity or expression will be treated in practice since it was only added to relevant legislation in 2017. What is clear is that GBV is rarely, if ever, responded to as a form of hate on its own or in relation to these characteristics. In June of 2021, the federal government announced that it would take action to further protect Canadians against hate speech and hate crimes; however, their new anti-hate law was delayed when the election was called.³⁹ In February 2022, it was reported that a new version of Bill C-36 would be reintroduced as soon as possible.⁴⁰ The proposed legislation is to include an emphasis on communicating hate speech online and various other amendments such as adding a definition of “hatred” in the *Criminal Code*, drawing from Supreme Court of Canada decisions. Discussions surrounding Bill C-36 appear to focus mainly on racial and religious hatred. It is not yet clear if GBV as a form of hate will be part of this new legislation; however, if public engagement is sought, Canadians will have the opportunity to provide input about the proposed approach.

³⁸ This fact was also the focus of a recent *The Globe and Mail* investigation reported on in March and April of this year (e.g., [Alleged hate crimes rarely investigated by police, report claims](#)).

³⁹ For more information, see [Government of Canada takes action to protect Canadians against hate speech and hate crimes](#).

⁴⁰ See [Liberals to reintroduce anti-hate bill ‘as soon as possible,’ minister says](#).

III. Current and potential mechanisms for including gender-based violence as hate and patterns in hate crime in Canada

A. Global context

Hate crime frameworks or legislation vary significantly globally as well as within countries (e.g., United States) or world regions (e.g., Europe). Differences range from whether such legislation exists at all to the groups who are protected, related offences and/or sentencing options available (Perry, 2016; van der Aa et al., 2021). In the United States, for example, at the federal level,⁴¹ sexual orientation, gender⁴² and gender identity are included among the protected groups; however, different bias motivations can be recognized at the state level.⁴³ Similarly, in Europe, race, national/ethnic origin and religion are more commonly protected, followed by sexual orientation and colour (van der Aa et al., 2021). Less popular grounds for protection are sex, gender identity, mental/physical disability, age and language; however, in Europe, van der Aa et al. (2021) highlight that some of these classes are becoming more prominent. For example, they note that gender identity is clearly becoming more important and “could be considered an emerging trend in Europe” with sex remaining a less popular ground (p. 175). In Canada, hate is covered by federal legislation, specifically the *Criminal Code* and the *Canadian Human Rights Act*, which reduces variation in legislation across the country with similar protections contained in human rights legislation in the provinces and territories.⁴⁴

⁴¹ See the [United States Department of Justice](#).

⁴² At the U.S. federal level, the term “gender” is used. On the U.S. Department of Justice website, one example is given for each type of hate-motivated bias. For gender, the example is as follows: *A woman took a handgun into a fitness center, entered the men’s locker room, and fired numerous shots. Two men were killed, and one other man was injured in the shooting. The killer’s blog revealed that she had planned the attack for some time and harbored a deep hatred for men for rejecting her all of her life.* The selection of this example of gender-motivated bias is perplexing since mass killings are an almost exclusively male phenomenon. Recent figures from the United States show that women comprised only six percent of shooters when gender of the shooter was known (see [Mass Shootings in America](#)). The author of this report argues that this can be seen as a form of institutional or systemic misogyny as defined by Manne (2018) that results from a patriarchal or sexist value system.

⁴³ Despite a new federal hate crime law that was signed by U.S. President Joe Biden in 2021, there is no uniform definition of hate crime across states, and it is still up to individual states to decide what should be considered a hate crime. According to a review by the Anti-Defamation League in 2020, most states have protections for race, ethnicity and religion. Only two-thirds of the states considered sexual orientation, gender or disability in their classification of hate crimes, and only one-third included gender identity (see [Biden signed a new hate crimes law — but there’s a big flaw](#)).

⁴⁴ However, there remain variations, particularly for those working in the criminal legal system, as noted by information contained on the Department of Justice website, [Disproportionate Harm: Hate Crime in Canada](#), which shows that definitions of hate crime vary across the country. For example, in bias crime guidelines, sex or gender is not mentioned by municipal police forces in Ottawa and Winnipeg, the Ontario Provincial Police, Correctional Service of Canada, and Edmonton indicates “sexual characteristic” for which the definition is open to wide interpretation. There were no references to policing guidelines in British Columbia.

The global variation across hate crime legislation often arises, at least in part, from decisions that are politicized⁴⁵ coupled with a lack of specific criteria to define hate crimes, leading to wide (mis)understandings and interpretations. These politicized processes have also resulted in sex and sexual minorities being less frequently protected classes, if protected at all, and more often considered as second- (or, arguably, third-) tier groups (Jeness, 2003). Similarly, the reporting, recording, prosecuting and/or sentencing of hate crimes are also politicized processes, with significant discretion available to decision-makers, if the hate crimes are reported at all. This means that data quality and legal responses vary considerably across groups even when such protections are enshrined in law as is the case in Canada. Overall, then, regardless of whether there are mechanisms in place to do so, there has been a reluctance to recognize GBV as an act of hate based on one's sex, sexual orientation, gender identity or expression, or on its own. As briefly highlighted above and in more detail below, this is the case even though GBV has been shown to share many of the same elements and impacts as more commonly recognized hate crimes motivated, for example, by one's race or religion. However, these motivations are also not mutually exclusive, as discussed next.

1. The intersectionality of hate crime

Recognizing the role of multiple and overlapping identities and oppressions highlighted by intersectional theorists (Crenshaw, 1989, 1991; Collins & Bilge, 2016), GBV, including as a form of hate, is exacerbated for some women, girls and sexual minorities specifically. However, in such instances, sex or sexual minority status has seldom been prioritized or considered equal to race or religion when discussing intersecting motivations for hate. For example, with the documented rise in alt-right and white supremacist movements, acts of hate, including violence, by these groups are most often portrayed as racist rather than sexist or misogynist despite existing and documented interconnections across these types of ideological hate (McCulloch & Maher, 2022). In fact, in radical groups, as well as across mainstream culture, misogyny⁴⁶ is growing in both power and presence in alt-right and white supremacist online groups, although only recently drawing attention due to several high-profile events in Canada, discussed above, and in other countries.

Similarly, hate-motivated violence against Indigenous, Black, Asian and other racialized minority women and girls has been well documented but seldom linked to sex or sexual minority status (Perry, 2014). The need for an intersectional lens when understanding GBV as hate (and, arguably, all hate) is crucial (MMIWG Inquiry, 2019; see also Chakraborti & Garland, 2012 for

⁴⁵ This refers to the way in which policy development and administration often arise out of interactions between social groups, who possess varying levels of power in society, and political institutions.

⁴⁶ As noted above, there are no consistent or agreed upon definitions of misogyny (Haynes and Scheppe, 2020). Drawing from Manne, this report defines misogyny as “the system that operates within a patriarchal social order to police and enforce women’s subordination and to uphold male dominance” (p. 33). As such, misogyny is to be understood as the practical realization of a sexist value system (Manne, 2018). This type of hate crime, then, is expressed through unlawful threats, harassment, physical violence and sexual assault, often used as corrective acts meant to put women and sexual minorities, particularly those who do not adhere to gender norms proscribed by patriarchy social structures, back in their place and to maintain their subordinate status (Perry, 2001).

fuller discussion). Such an examination must consider what motivations victims feel are present and a priority. This issue will be returned to below.

In summary, globally, the ongoing problem of individual and systemic violence experienced by women, girls and sexual minorities has seemingly been resistant to decades of social and legal efforts to prevent such violence. As a result, it is important to consider all possible mechanisms that may enhance responses and, more importantly, prevent further increases in GBV, and its severity, as has been documented during the COVID-19 pandemic in Canada (Bucerius et al., 2021; CFOJA, 2022) and globally (Carrington et al., 2020; Kourti et al., 2021; Oxfam, 2021; Piquero et al., 2021; Viero et al., 2021). To do so, a basic understanding of what Canada's hate crime framework comprises is warranted, including how it relates to GBV as hate, briefly outlined next.

B. Canadian context

Canada might be considered one of the more progressive countries when it comes to legislation and protections for hate and hate crimes. In contrast to many other countries or world regions, sex, sexual orientation and gender identity or expression are protected characteristics or designated identifiable groups in various legislation. For example:

- The *Canadian Charter of Rights and Freedoms* states in section 15(1) that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”⁴⁷

Given that members of such groups are guaranteed protection from discrimination, it is expected that any human rights or criminal law initiatives to combat hate (acts against people or property) should, at the very least, protect members of these same groups. “Sex” is one of the characteristics most often associated with GBV, with women and girls recognized locally and globally as disproportionate victims, especially with respect to intimate partner violence and sexual violence (Johnson & Dawson, 2011; WHO, 2002).

- The *Canadian Human Rights Act* (CHRA) states that: “For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.”

Sex is again included as well as sexual orientation and gender identity or expression, all of which are relevant to experiences of GBV. Therefore, the CHRA represents one avenue through which GBV might be treated as hate. Each province and territory also

⁴⁷ The Supreme Court of Canada has held that non-residence, marital status, sexual orientation and Aboriginality-residence are grounds analogous to those enumerated in [section 15 \(1\)](#).

has human rights legislation that prohibits discrimination based on numerous similar grounds.

- Finally, the *Criminal Code* criminalizes specific kinds of activities as either crimes of hate propaganda or hate crimes.

There are three hate propaganda offences:

- (1) It is an offence under subsection 318(1) of the *CCC* to advocate or promote genocide against an identifiable group and, more specifically, to call for, support, encourage or argue for the killing of members of a group based on colour, race, religion, ethnic origin, or sexual orientation. “Identifiable group” is a defined term in the *Criminal Code* (subsection 318(4)).
- (2) It is an offence under subsection 319(1) to incite hatred against an identifiable group in a public place that is likely to lead to a breach of the peace. Specifically, “Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or (b) an offence punishable on summary conviction.”
- (3) It is an offence under subsection 319(2) to willfully promote hatred against an identifiable group to property that is primarily used for a religious purpose, or certain other kinds of property that are primarily used by an identifiable group, where the mischief is committed out of bias, prejudice or hatred against an identifiable group. This can include by making statements (other than in private conversation). The Crown prosecutor can proceed either by indictment or by summary process. The maximum penalty is imprisonment of not more than two years.

Regarding hate crime, there is one specific offence:

- (1) Subsections 430(4.1) and (4.101) of the *Criminal Code*, of mischief to property that is primarily used for a religious purpose or certain other kinds of property (such as educational institutions or community centres) that are primarily used by an identifiable group, where the mischief is committed out of bias, prejudice or hatred against an identifiable group. Before 12 December 2017, this offence was defined only in subsection 430(4.1) and was restricted to property primarily used for religious worship.

In addition to the above, hate as an aggravating factor at sentencing was included in the *Criminal Code* in 1995 under Bill C-4, along with several sentencing reforms. The relevant part of section 718.2 reads:

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, and, 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 any other similar factor.

More specifically, sex, sexual orientation and gender identity or expression are prohibited discriminatory motives which can trigger enhanced criminal penalties. Any offence, from vandalism to homicide, may be punished more harshly where there is evidence that the crime was motivated by hatred toward the victim's group.

This sentencing option provides a mechanism by which society can recognize and highlight GBV as a form of hate, underscoring the societal condemnation of such acts for victims of specific crimes, but also of the entrenched hostile and prejudicial attitudes that support violence against women and girls (VAWG) and violence against sexual minorities (Maher et al., 2015). It is rarely used, as will be shown below; however, this mechanism may be the most appropriate existing option for responding to GBV as a form of hate, an issue discussed in more detail later.

C. Misogyny as a motivation for hate

Misogyny has also been considered as a potential motivation for hate crime by some jurisdictions (for its recent focus in the United Kingdom, see Zempi & Smith, 2022). Proponents of this approach argue that prioritizing misogyny as a categorization, rather than sex or gender, recognizes the specific risks and vulnerabilities faced by women and girls due to individual and structural patriarchal oppressions (Gill & Mason-Bish, 2013; Mason-Bish & Duggan, 2019). The idea of including misogyny as a hate crime is not new, but with recent incel-motivated killings of primarily women, it has received more attention globally. This has been considered largely in jurisdictions where sex (or gender) is not currently included in legislation but sexual orientation and/or gender identity or expression are already included. This was the case in the United Kingdom, where this proposal was recently rejected,⁴⁸ although it is still being considered in Scotland.⁴⁹

Others argue that it would be constitutionally inappropriate to include misogyny in hate crime legislation to the exclusion of other gendered forms of hate, with the inclusion of more neutral characteristics such as sex or gender being more constitutionally sound (Haynes & Scheppe, 2020: 289-290). Furthermore, from a practical perspective, it is argued that since few know what misogyny means, and there is no consistent or agreed upon definition, it would make this more difficult to address as a hate crime than, for example, sex or gender (Duggan, 2021; Mullany & Trickett, 2018).

However, including misogyny as a hate crime has occurred at the policing level, even without related legislation. For example, in the United Kingdom, the College of Policing guidance encourages police to record other forms beyond the five characteristics identified in legislation

⁴⁸ See [Crime bill: MPs reject proposal to make misogyny a hate crime](#).

⁴⁹ See [Scots give backing to make misogyny a hate crime](#).

(Chakraborti, 2018). As a result, in 2016, Nottinghamshire Police became the first force in the United Kingdom to treat misogynistic street harassment as a form of hate (Mason-Bish & Duggan, 2019; Mullany & Trickett, 2018).⁵⁰ Other police forces have been attentive to this guidance by focusing on violence against alternative subcultures and sex workers (Chakraborti, 2018). For example, Campbell and Sanders (2021) draw from two research projects involving three police forces, including Merseyside, which pioneered the approach of including sex workers in hate crime policies to address “whorephobia”⁵¹ conceptualized as an important contributor to high levels of violence against sex workers (p. 2).⁵² In their book *Sex Work and Hate Crime: Innovating Policy, Practice and Theory*, Campbell and Sanders (2021) discuss why it is helpful to respond to violence against sex workers as a hate crime and describe the development and implementation of this model, and its implications for law and policing.

It is recognized, however, that there is a general lack of studies that examine the incidence and prevalence of misogynistic hate crime (but see Hagerlid, 2021; Mason-Bish & Duggan, 2019) even though the need for more empirical evidence in this area was identified two decades ago (McPhail, 2003). Thus, the debate lacks empirical evidence from which to draw. To begin to fill this gap, Hagerlid (2021) examined key questions, providing initial evidence as follows: (1) misogynistic hate crimes are perpetrated more by strangers⁵³; (2) Women who experience misogynistic hate crime experience higher levels of fear compared to women with no prior experience as victims or women who were victims of non-bias crime; and (3) women’s higher fear of crime (compared to men) is, at least in part, the result of the message effect of misogynistic hate crimes.

Globally, there has been a call for misogyny to be seen as a possible gateway to terrorism and to pay more attention to misogyny and its interrelationship to all other forms of terrorism (United Nations Development Programme, 2021). In the Canadian context, misogyny has recently been embedded as a form of violent extremism with the addition of misogynist groups to listings of terrorist entities (FINTRAC Special Bulletin, 2021). It might make sense, then, to also discuss misogyny as a type of ideological hate that disproportionately impacts women and girls, given their inclusion as a protected status has had little real impact on addressing the root causes of VAWG and GBV. Further, Hoffman et al. (2020) contend that incel-related attacks primarily occur in Canada and the United States and are, as such, more a North American phenomenon.

⁵⁰ See also [Sue Fish: The ex-police chief who fights to stop misogynist cops](#).

⁵¹ Whorephobia can be defined as the fear or the hate of sex workers (Schaffauser 2010). A sex worker herself, she writes: “Sex workers like me would argue that it also embraces paternalistic attitudes that deem us a public nuisance, spreaders of disease, offenders against decency or unskilled victims who don’t know what is good for them and who need to be rescued. In its most violent form, whorephobia kills. Sex workers are far more likely to be murdered than the rest of the population” (as cited in Campbell and Sanders, 2021).

⁵² The recent killings of eight sex workers in Asian massage parlours in Atlanta, Georgia, underscore the intersectionality of hatred toward race and gender in the context of sex work.

⁵³ The author of this report questions whether this finding stems from the fact that those targeted by strangers are more likely to identify hate incidents as such compared to those targeted by those close to them (i.e., domestic violence).

D. Gender-based violence as a form of hate in specific contexts

GBV as a form of hate may also be included as specific crimes or in specific contexts. For example, researchers have identified various contexts in which women, girls and/or sexual minorities may be specifically targeted as victims of GBV for which the hate crime framework may be appropriate. These might include femicide; sexual violence, including rape or sexual assault; sex trafficking; prostitution/sex work⁵⁴; culturally framed violence⁵⁵; forced marriage; female genital mutilation; domestic/intimate partner violence; criminal harassment; strangulation; and coercive, controlling behaviours. Some of these have been addressed above in the section on misogyny (e.g., sex work).

For example, focusing on the most extreme cases discussed above, various high-profile femicides and one attempted femicide occurred in Canada recently that could have seen the perpetrators charged with hate crimes motivated by sex. Five cases involved perpetrators and victims who did not know one another. The sixth case involved a male perpetrator who killed three former female partners. In each of these six cases, there was evidence of hatred of all women, and at least two appeared to be facilitated by a culture of systemic misogyny by police specifically. Two cases ended with the perpetrators being killed by police. The remaining four cases were heard by the courts. None of these cases included hate as an aggravating factor at sentencing to enhance criminal penalties.

Why was the hate crime framework not used to charge these perpetrators?

When we try to answer this question, which we do later in this report, we also have an answer for why some jurisdictions do not include sex, gender, VAWG or GBV within the hate crime framework at all or, if included in some manner, why it is rarely a motivation that appears in police-reported statistics or is recognized by the courts. The overall argument is that this situation stems from common beliefs about such violence, and its normalization within a patriarchal society, including law, especially if in the context of intimacy. As a result, GBV is never linked to or treated as being motivated by hate (or misogyny) or produced by systemic misogyny.

In contrast, Latin America has led the way in focusing on femicide offences, in some cases as a form of hate. Some countries have classified a death as femicide when it happened “as a result of her condition as a woman,” which is the case in Colombia (Law 1257 of Colombia), or when “motives of hate or contempt for her as a female” are factors in the outcome, as is the case in El Salvador (Decree No. 520 of 2010 of El Salvador). Mexican and Honduran legislation has established that a crime rises to femicide when the death was produced for “gender-related reasons” (Decree of June 13, 2012, of Mexico; Decree No. 23-2013 of Honduras). In Argentina, femicide includes hate motivated by gender or sexual orientation, and in Guatemala and

⁵⁴ Consistent with the UN approach, both prostitution and sex work are acknowledged, using the former to recognize the sexual exploitation of women and girls and the latter to recognize and promote the rights of sex workers (UNODC, 2018: 36).

⁵⁵ This refers to the killing of women or girls that is framed within a particular cultural context, such as honour-based femicide or dowry-related femicide, but are forms of violence with similar root causes and contributors to violence against women and girls across cultures (see [Types of Femicide](#)).

Nicaragua, femicide offences include those motivated by misogyny (Sarmiento et al., 2014: 54). Some have questioned the impact of such legislation, however, beyond its symbolism (Carrigan & Dawson, 2020), if not implemented as intended.

In the North American context, femicide is not a recognized offence. However, at the time of writing this report, the London (Ontario) Police Services Board voted to draft a letter to the federal government to have femicide included in the *Criminal Code* to make it easier to charge as a hate crime.⁵⁶ Launched in 2017, the Canadian Femicide Observatory for Justice and Accountability has also worked to underscore femicide as a distinct type of killing or offence that warrants separate attention, including as a form of hate where appropriate (see also Dawson & Carrigan, 2021).⁵⁷

E. Patterns in hate crime in Canada

This section provides a brief overview of patterns in hate-motivated crime and violence with an emphasis on comparing how sex, sexual orientation or gender identity or expression are treated compared to other more commonly recognized hate targets in Canada (e.g., race or religion). This is currently the only way to examine the presence of GBV as a form of hate in Canada, and most countries, since GBV is not itself included in any hate crime frameworks. The question addressed in this section, then, is how often hate crimes motivated by these characteristics are reported, recorded, prosecuted and/or sentenced as hate crimes. In short, does Canada recognize these forms of hate motivation in practice? The answer is no with respect to sex and more often, but still limited, with respect to sexual orientation. It is not clear yet with respect to gender identity or expression since this has been a more recent focus of hate crime legislation. However, in Europe, as already noted, gender identity has been gaining ground, arguably moving beyond sex or sexual orientation with respect to its recognition as a form of hate, described as an “emerging European trend” (van der Aa et al., 2021: 175). This is an indicator of progress for transgender populations while underscoring the entrenched, longstanding reluctance to view sex as a motivation for hate and a lack of any further progress for the recognition of sexual orientation-motivated hate, as will be shown below.

This section draws heavily from four resources:

- (1) **Statistics Canada annual reports on police-reported hate crime:** These reports describe the most recent patterns in police-reported hate crime in Canada, drawing from data collected using the Uniform Crime Reporting Survey. These reports include the number of hate crime incidents reported by police, including victim, accused and incident characteristics. The UCR defines hate crimes as “*Police-reported hate crime is defined as a criminal violation against a person or property motivated by 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 any other similar factor*” (Wang & Moreau, 2022). Collected since 2005, these data are

⁵⁶ See [London Police Services Board looking to push federal government to add femicide to Criminal Code](#).

⁵⁷ For a full list of annual reports, see http://www.femicideincanada.ca/cfoja_reports.

based on incidents substantiated by police investigations using strict legal criteria⁵⁸ to determine whether the incident was motivated by hate and, if so, the type of motivation. In the first instance, however, police-reported data depends on whether victims are willing to report hate crimes, which is represented in the next data source.

(2) Statistics Canada’s General Social Survey on Canadians’ Safety (GSS):

Information on self-reported victimization is collected every five years and asks a sample of Canadians aged 15 years and older if they had been a victim in the previous year of any of a series of offences. If respondents indicate that they had been, they are then asked if they believed that the incident had been motivated by hate and, if so, to state the motivation(s). These data, then, are based upon the perceptions of the individuals reporting the incident itself and the motivation. This survey provides information on incidents that often have not come to the attention of police.

(3) Comparative research by Erentzen and Schuller (2020): This research was recently published in the *Canadian Journal of Criminology and Criminal Justice*, providing a recent and comprehensive analysis of patterns in self-reported hate crime and factors associated with reporting to police using the Victimization Incident File of the General Social Survey, Cycle 28 (discussed above). The authors compare their findings to patterns in police-reported data.

(4) Case law research by the Department of Justice Canada (2007, 2020): The authors of these two reports review published case law that applied subparagraph 718.2(a)(i) of the *Criminal Code*, or what was discussed above, as hate as an aggravating factor at sentencing. The first report by Lawrence et al. (2007) focuses on 1977–2006 and the second report by Provost-Yombo et al. (2020) focuses on 2007–2020. The authors of the second report also conducted a separate search for the four hate crime offences that are specifically criminalized in the *Criminal Code* (subsections 318(1), 319(1), 319(2) and 430(4.1) of the *Criminal Code*) which have specific sentences built into them (for full methods, see Provost-Yombo et al., 2020).

Other data sources are drawn upon where noted, and specifically for documenting patterns in hate crimes targeting gender identity or expression, given that some of the above data sources do not allow for such an examination at this time. These data issues will be discussed in more detail at the end of this section. But first, a note on reporting hate crime.

1. Reporting of hate crime victimization

Much of our current knowledge about the incidence and prevalence of hate crimes, and patterns in crime more generally, is based on official police-reported data published annually by Statistics Canada. This situation is similar in other countries with official reporting mechanisms (e.g., Australia, United States). However, a common criminological term, the “dark figure of crime” is well known and refers to crime that is not reported to police (Skogan & Maxfield, 1981). The

⁵⁸ It is not readily apparent what these strict legal criteria are, however. It is also likely that there is significant variation across the country.

dark figure of crime is exacerbated for hate crimes, which are reported less often than non-hate offences (Pezzella et al., 2019). Studies have shown that decisions to report hate crimes to police often depend on one's interest and ability to report, willingness and ability of police to investigate, and the existence of mandated hate crime data collection (McVeigh et al., 2003; Jenness & Grattet, 2005). In addition, Erentzen and Schuller (2020) found that reporting also depends on whether victims have trust in police and/or what level of satisfaction they have with police if they had prior contact.

The above predictors of reporting crimes more generally are also relevant for women and sexual minorities, particularly with respect to GBV. For example, with respect to women and girls, who are largely victimized by those close to them, there is limited recent empirical research in Canada exploring victim-offender relationship and reporting rates (but see earlier research by Kaukinen, 2002a, 2002b, 2004; Gartner & MacMillan, 1995) and even less exploring this issue in the context of hate crimes. However, it has been well-documented that victims of intimate partner violence and non-stranger sexual assault are less likely to report than victims of crime perpetrated by strangers (Akers & Kaukinen, 2009; Sabina & Ho, 2014; Schuller & Erentzen, 2016).

This situation is exacerbated for victims with overlapping oppressions, who are subject to racism and discrimination or are already over-policed and under-protected. In addition, new immigrants or refugees may view the police with suspicion or distrust due to experiences in their country of origin (Cherney & Chui, 2010; Roder & Muhlau, 2012; Sargeant et al., 2014) or recent experiences with police in Canada (Hyman et al., 2006; Nilsson et al., 2008). Similarly, sexual minorities may also withhold reporting hate crime to police out of concerns that police will not take them seriously or due to fears that they will face further victimization from police (Cogan, 2002; Herek, Cogan & Gillis, 2002; Dunbar, 2006). Hate crime victims who reported their experience but felt they were not taken seriously were much less likely to report subsequent victimization (Chakraborti et al., 2014).

Given the above, the findings discussed in the next section should be considered minimum estimates, particularly for those crimes less often seen as hate-motivated, including GBV, and specifically sex-motivated hate crime.

2. Police-reported patterns

The first year of the pandemic (2020), which is also the year for which the most recent figures are available, produced the largest number of criminal incidents motivated by hate since comparable data were available in 2009. Drawing from the most recent publication, *Police-reported hate crime in Canada, 2020* (Wang & Moreau, 2022), such incidents increased by 37 percent compared to the previous year. The largest increases (80%) were documented for those targeted for their race or ethnicity (p. 3). As noted, the largest per capita (i.e., rate) increases were experienced in Nova Scotia (+70%), British Columbia (+60%) and Saskatchewan (+60%), followed by Alberta (+39%) and Ontario (+35). In 2020, crimes motivated by hatred of a sexual orientation accounted for 10 percent, consistent with previous years, while those targeting other

factors such as sex/gender, language, disability and age, in total, comprised seven percent (Wang & Moreau, 2022: 7). These proportions also remained similar to previous years.

Looking at patterns over a longer period of time, consistent trends have been noted, with race-based (50%) and religion-based hate crime (25%) remaining most common, followed by hate motivated by sexual orientation (15%–20%) (Erentzen & Schuller, 2020: 65). In contrast, and as documented in 2020, hate crimes motivated by sex were rarely recorded in police-recorded hate crimes statistics. In fact, they represent such a small proportion of police-recorded incidents that they are typically collapsed together with other allegedly rare motivations for hate (5%–10%) such as language and disability (Erentzen & Schuller, 2020: 8; see also Dauvergne & Brennan, 2013; Allen, 2014; Leber, 2017). However, these numbers include only those incidents reported to or that came to the attention of police and deemed by police to be a hate crime, reportedly using legal criteria (Moreau, 2021: 5). It will also depend on the police service's level of expertise to do so. As will be discussed below, this is problematic when considering sex or GBV as a form of hate.

Specifically, as shown in Table 1, police-reported statistics from 2006–2020 demonstrate that sex has never comprised more than three percent of reported hate crimes. Furthermore, while the number of hate-motivated crimes has tended to increase over the past 15-year period, the proportion of sex-based motivated crimes has not. The proportion of hate crimes motivated by sexual orientation is consistently higher than that of sex, but figures have also not increased during this period for this group. It was not possible to determine motivation by gender identity or expression for the full period below. However, the most recent report on hate crimes noted that during a 10-year period (2011–2020), 65 hate crimes targeting gender identities other than male and female were reported to police (Wang & Moreau, 2022: 19). It is not always clear from reports used to compile Table 1 whether sex and gender identity or expression were included in the same category. This issue will be returned to in the discussion of data gaps and challenges at the end of this section.

Table 1: Number and proportion of hate crimes motivated by sex and sexual orientation, 2006–2020^a

Year	Sex		Sexual orientation		Annual total
	N	%	N	%	N
2006	5	< 1	80	9	892
2007	2	< 1	79	10	785
2008			159	15	1,036
2009			188	13	1,473
2010	7	< 1	218	16	1,401
2011	- ⁵⁹	-	240	18	1,332
2012	-	-	185	13	1,414
2013	-	-	186	16	1,167
2014	22	2	155	12	1,295
2015	12	-	141	10	1,362
2016	24	2	176	12	1,409
2017	32	2	204	10	2,073
2018	54	3	186	10	1,817
2019	56	3	265	14	1,951
2020	46	2	259	10	2,669

^a Numbers compiled from annual reports on police-reported hate crimes published by Statistics Canada, 2006–2020. Annual totals capture all police-recorded criminal incidents that were motivated by hate in each year.

3. *Self-report patterns*

The problematic nature of police-reported statistics is exemplified by the General Social Survey on Canadians’ Safety (Victimization), which showed that only about one-third of hate crime victims in Canada report their experiences to police (Moreau, 2012: 8). For example, drawing from Erentzen and Schuller (2020), Table 2 below shows that, among those who self-reported that they were victims of a hate crime, 49 percent believed they were targeted due to race, 32 percent due to sexual orientation, 22 percent due to sex, 16 percent due to age, 10 percent due to religion, five percent due to language, and 39 percent believed they were targeted for another unspecified identity (e.g., disability, political affiliation, country of origin).

Compared to police-reported statistics, then, self-reported data are similar for race-motivated hate (50% compared to 49%), but lower for hate motivated by religion (25% compared to 10%). The latter means that police-reported hate motivated by religion is higher than self-reported data. More problematic is that police-reported data are under-reported compared to self-reported data for sex (<3% compared to 22%) and sexual orientation (15%–20% compared to 32%). Differences may be explained, in part, by the fact that self-reported data are based on perceived hate motivation by victim and their willingness to report as discussed above.

⁵⁹ Unknown because “sex” included with “other” which captures mental or physical disability, language, sex and other similar factors (e.g., occupation or political beliefs). In 2011, the “other” category comprised four percent of all hate crimes; in 2012, six percent of all hate crimes; and, in 2013, five percent.

Table 2: Hate-motivated crime by characteristic, comparing police-reported and self-reported data (January 2, 2014 to January 17, 2015)^a

Hate-motivated crime by characteristic	Self-reported data	Police-reported data
Race	49%	50%
Religion	10%	25%
Sexual orientation	32%	15–20%
Sex	22%	<3%
Age	16%	--
Language	5%	--
Unspecified identity	39%	--

^a Figures compiled from Erentzen and Schuller (2020) and rounded to nearest whole figure.

The distribution of hate experiences is differentially experienced by women and men, however.

Whereas 53 percent of self-reported hate crime victims were men⁶⁰, they comprised a larger proportion of those reportedly targeted because of their race (69%), religion (68%) and language (75%), but a lower proportion of victims targeted because of sexual orientation (38%), age (31%), or sex (12%). As such, this means that women comprised a larger proportion of self-reported sexual orientation-based offences (62%), age-based hate crimes (69%) and most of the sex-based offences (88%), which are categories almost never recorded by police (Erentzen & Schuller, 2020: 72, 76). Not surprisingly, while sexual assault offences were largely unreported in almost all categories of hate crime, they accounted for more than one fifth of self-reported sex-based hate crimes (22%). Sex-based hate crimes were also largely, and more often than other hate crimes, crimes of violence with nearly 80% involving some form of interpersonal violence. This is higher than violence documented in race-based hate crime (60%) and religion-based hate crime, the latter of which involved more property offences (60%) (Erentzen & Schuller, 2020: 77).

4. Prosecutions and convictions

As noted above, sex is included in Canada’s sentencing provisions (s.718). Specifically, s.718.2(a) of the *Criminal Code* provides that, on sentencing, a court shall also consider whether “a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender...,” including “(i) evidence that the offence was motivated by bias, prejudice or hate” based on grounds including sex, sexual orientation, gender identity or expression or any other similar factor.⁶¹ However, sex has rarely been the focus of this provision, despite high rates of male VAWG and GBV, although admittedly, data are also largely non-existent.

In general, Perry (2016) reported that successful prosecutions under hate crime provisions were low overall for all victims of hate crime. For example, between 1994 and 2004, there were 12

⁶⁰ While men are reported to be the majority of hate crimes victims, this distribution shows that females are 47%, or almost half of the victims.

⁶¹ See [Criminal Code \(R.S.C., 1985, c. C-46\)](#).

prosecutions and six convictions under s.318 (i.e., advocating genocide) and 93 prosecutions and 32 convictions under s.319 (i.e., incitement to hatred) (p. 597). There were no reported convictions for s.430.4.1 (i.e., mischief). At least 23 cases between 1996 and 2006 had hate applied as an aggravating factor in sentencing, and while not noted, it is likely that few if any of these related to sex or sexual minorities as a motivating factor given patterns identified above.

In summary, in Canada, the proportion of prosecutions and convictions whereby hate is motivated by these characteristics is unclear but expected to be rare given patterns noted in police-recorded hate crime motivated by sex and sexual orientation described above as well as in other research (McPhail & Di Nitto, 2005; Gill & Mason-Bish, 2013; Walters et al., 2017). For example, McPhail and DiNitto (2005) found that Texas prosecutors were concerned about the inclusion of the gender category because of the politicized nature of doing so and the potential for more punitive outcomes for perpetrators. They also did not identify gender-bias hate even when clear evidence appeared to be present, and more concerning, many were not even aware it was included as a status category in hate crime law. In general, then, prosecutors did not view the hate crime paradigm as a useful tool in charging crimes (McPhail, 2004), which was attributed to four primary reasons (directly quoted from McPhail & DiNitto, 2005: 1177):

- (1) A hate crime charge adds an extra evidentiary burden in proving motive that the underlying charge alone does not require.
- (2) Prosecutors view the world through a colorblind lens and, thus, prefer not to focus on the individual identities of either perpetrators or victims.
- (3) Prosecutors perceive that hate crime enhancements increase their risk of losing the case by possibly confusing or dividing the jury.
- (4) Prosecutors tend to compare each potential hate crime against “typical” hate crimes, such as cross burnings or swastika paintings or highly publicized cases. They have no such reference for a gender-bias crime.

It is not clear if these same reasons may be relevant in Canada with no research examining this issue to date. However, a review of the published case law in Canada sheds further light on the courts’ response to hate motivated by sex and sexual orientation, discussed next. Gender identity or expression was not added until 2017, so it is too early to understand whether and how often it might be considered an aggravating factor at sentencing.

5. *Published case law*

Two studies undertaken by the Department of Justice examined the way courts have applied hate as an aggravating factor at sentencing (subparagraph 718.2(a)(i) of the *Criminal Code*) (Lawrence et al., 2007; Provost-Yombo et al., 2020). The goals were to identify the most common characteristics of offenders and victims, the most frequent grounds of victimization (or hate motivation) and the reasoning behind the decisions.

In the first study, covering almost three decades of case law (1977–2006), Lawrence et al. (2007) concluded that “hatred of sex was one of the least commonly addressed grounds and the victim

and the offender were always either strangers or relative strangers to one another” (p. viii). Specifically, they found only two cases that dealt with hatred towards sex, and both were for women who were strangers or shared “tenuous” acquaintances with the perpetrator (p. 24).⁶² The authors noted that it was possible that in cases where sex-motivated hatred was an element, and specifically violence against women (VAW) by male partners, section 718.2(a)(ii) might be employed, which stipulates that “evidence that the offender, in committing the offence, abused the offender’s spouse or common-law partner” (p. 26) (see Grant, 2017, 2018) instead of section 718.2(a)(i).

In contrast, there were 11 cases of sexual orientation-motivated hate crime found in case law. This was double what had been recorded by police during this period and represented the second-highest proportion in case law (22%) after race (39%). The authors speculated that this may be due, in part, to the fact that such cases are more serious offences, at least those reported to police, and usually more violent.⁶³ The overall conclusion of this first report, then, was that “violence against women has been categorized by the courts, in legislation and in public discourse as a special classification of victimology more related to relationships of power between the victim and the offender, rather than as sub-set of victimology structured by the hate motivation of the offender” (p. 26).

Paralleling findings of the earlier report and covering a period of 15 years, the second report showed that sex continued to remain largely invisible in published hate crime case law as grounds of victimization using s.718(a)(i). The authors did note that there was “an increase in published case law on hate committed on grounds of sex, specifically against females” (five cases, or 8% of case law). This is more than double the number of such cases published between the years 1977 and 2006 (two cases, or 4%) in about half the time, but still one of the least commonly represented in case law.

In three of the five recent cases, the sentencing judge applied subparagraph 718.2(a)(i) of the *Criminal Code*, concluding that hatred based on sex was an aggravating factor at sentencing. Although the Department of Justice report did not directly identify which cases were being referred to, from a review of the list of reported cases, it is believed that two of the three cases are as follows.

First, in *R. v. Stevovic 2007 BCPC 0264*, the offender was found guilty on one count of uttering threats to cause death or bodily harm in an October 2006 incident. The victim and the offender, 22, were “complete strangers” who “encountered each other in the parkade of a mall as the victim was just leaving her car and going to the stairs to enter the mall. The facts of the case are as follows:

The offender was walking towards her. Mr. Stevovic appeared to the victim to be friendly. He said, “Can I ask you a question?” The victim said, “Sure.”

⁶² The specific details of these two cases were not provided.

⁶³ Recall, however, as noted in self-reported data examined by Erentzen and Schuller (2020), sex-based hate crimes were more likely to involve physical violence than most other hate crimes, including those motivated by an individual’s sexual orientation. This did not lead to an increase in cases based on sex-motivated hate.

Mr. Stevovic then said, “I have some flavoured condoms. Want to try one?” The victim did not respond and began to walk again toward the stairway. Mr. Stevovic then said, “Nice tits, I’d like to fuck you.” The victim responded by taking out her cell phone and telling the offender she was calling the police. Mr. Stevovic asked, “Want me to call for you?” By this point, the victim had connected to 9-1-1 but was unaware at the time that the operator could not hear her. She showed Mr. Stevovic the phone and said, “I have the police on the line. Mr. Stevovic the said, “You’d better not be calling the police, or you’re dead.” He was wearing a hoodie and put the hood up over his head and stated to the victim, “I’m going to kill you after I rape you” and then mouthed the words, “You’re dead.” Mr. Stevovic began walking away towards the vehicle exit. The victim was also moving towards the same exit in order to get better reception on her phone. Mr. Stevovic looked over his shoulder as they were both walking in that direction and said, “You’d better not be following me.” He then jogged away out of the parkade.

The offender also had a previous conviction for what was described by the Crown as a “serious assault over an extended period” of time in 2003 on his then girlfriend which involved holding her down, spitting on her, stuffing a sock in her mouth and preventing her from leaving the family home. When she escaped once, he carried her back.

In the current case, a psychiatric report was also cited that referred to two complaints by females that he had made “lewd comments and gestures.” In an assessment provided to the court, it stated:

His motivation for his recent behaviour is not entirely clear, but it appears he has negative attitudes towards women which he has no concern about or insight into. For example, during the interview he complained that he was unjustly convicted and elaborated, “Plus the judge was a girl and the prosecutor was a girl.” There may have been family influences that have shaped such attitudes. His father has been convicted of assaulting his mother...”

The judge accepted the argument that the offence in question was motivated by bias, prejudice or hate based on sex, writing:

“It is clear the accused continues to view women with a misogynistic eye. He has a history of assault against a female and now has a conviction for threatening a female stranger. The reports make clear that he is unlikely to benefit from counselling due to a lack of insight and understanding.”

In the second case, *R. v. Chebeir 2018 QCCQ 1578*, the offender pleaded guilty to one count of criminal harassment after being charged related to two incidents. In the first incident, he posted comments on a feminist group’s social network page in which a hyperlink directed readers to an article about the perpetrator of the Montreal massacre and a photograph of him, followed by

#JeSuisMarc. Second, he later posted similar comments and content with a private message to the administrator in which the following text was included:

“One day you will pay for the evil you do to people! We will avenge you Ö [name of Montreal massacre perpetrator]. Praise you Ö [name of Montreal massacre perpetrator].”

The judge wrote:

In the context of the present offence, the gravity of the behaviour is indisputable. The tragedy to which Mr. Chebeir refers in his messages has marked the history of our society. It is clearly the result of hatred towards women. By invoking this tragedy, identifying with its perpetrator and directing the messages to such organisations, Mr Chebeir was necessarily aware of the impact that would be created. Indeed, the impact on the administrators, the members of these organisations and on these organisations was significant. Even today, the fear remains. ... Despite the opinion of the treating physician, the Tribunal agrees with the probation officer that Mr. Chebeir is at risk of reoffending. A significant problem persists, whether it is described as hatred of women or as an adverse bias against women.

In the other two cases, subparagraph 718.2(a)(i) of the *CCC* was not applied.

For example, in *R v. Rogers 2020 ONCJ 288*, the offender was convicted for uttering threats (section 264.1(2)) and mischief (430(4)), after phoning an anti-violence against women organization in Ontario, and leaving a message that stated: “I have planted a bomb at 797 York Street. It will explode on Wednesday at 11 a.m.” Although the Crown introduced the motivation of “hate, bias or prejudice towards women,” the judge concluded that this was not proven beyond a reasonable doubt, further stating:

“On the unique circumstances of this, however, I find that the unusual interaction that occurred during the trial, and [a female staff member of the agency]’s own conclusions about this interaction as set out in her Victim Impact Statement support the plausible theory or reasonable possibility that Mr. Rogers was not motivated by hate, prejudice or bias, but rather was motivated by personal animus directed at [the female staff member of the agency].”

In all five cases, the hatred was targeted against women and, when the offences were found to be motivated by a hatred towards sex, the victim and offender were strangers or recent acquaintances.

With respect to sexual orientation, the second report noted a decrease in case law by more than half in comparison to the first report. Specifically, only four cases (7%) were found with sexual orientation as the grounds of victimization (compared to 11 cases in the earlier period).

The authors concluded that sex continues to be relatively invisible in case law and the representation of case law related to sexual orientation appears to parallel declines (at that time) in police-reported data. New identity groups appeared, however, as allowed by the “other similar factors” contained in the legislation, specifically those based on political beliefs, the homeless, and against police officers. The authors of both reports noted that study limitations stemmed from the fact that published case law does not represent all adjudicated cases, but more often those that are precedent-setting or are related to more serious crimes. However, because national statistics do not capture aggravating factors at sentencing, this provides some information about the patterns in whether and how courts are addressing these cases. Furthermore, it is also likely that because sex so seldom appears in case law as a victimization ground, it would be more likely to end up in reported case law as precedent-setting.

As a case in point, in 2019, *R. v. Sears and St. Germaine 2019 ONCJ 104* was the first case in Canada in which women (and Jewish people) were specified as a targeted group in a conviction under the *Criminal Code* hate propaganda provisions.

Underscoring how other more commonly recognized hate motivations are often prioritized over sex, in a more recent case, *R. v. Gillard 2022 ONCJ 164*, hate motivated by both race and gender (“gender” is the word used by the judge) was recognized by the court. The incident involved the offender physically assaulting a Muslim woman, pulling off her hijab and throwing it onto the floor. While both gender and race were noted as hate motivations, the words of the judge support the pattern of prioritizing other forms of hate motivations over sex:

“...the words Mr. Gillard used when assaulting Ms. Mahamed, in addition to the pulling of her hijab and throwing it on the floor, is particularly odious and exacerbated the targeted racialized gendered focus of his violence. His words verbalized an exercise of denigration based on race and religion that the Crown, the victim, and the Community Victim Impact statement speak to as Islamophobia.”

Hate as an aggravating factor at sentencing is also available in other countries with some (limited) focus on GBV, including the United States. For example, in *State of Massachusetts v. Aboulez*, the court accepted as evidence of hate “an established pattern of verbal and physical abuse (including female slurs) by the offender, and threats to kill his partner if she ever left him or sought a restraining order against him.” In a New Hampshire case, a judge noted that the defendant had a documented history of physically and mentally abusing women and sentenced him under the state’s bias crime statute (cited in Jordan, 1994; no case reference provided). The author highlighted this case as a good example of how prosecuting GBV as hate by using the protected characteristic of gender has dual benefits for the victim and for society. The defendant had five prior convictions of domestic assault but had served no jail time. When convicted under the hate crime statute, he was sentenced to two to five years in state prison; therefore, by using the gender category, the judge gave the defendant an appropriate sentence that would not have occurred without the hate crime statute.

6. *Data collection and quality*

The above discussion underscores that the protected characteristics most likely to be related to GBV as hate are largely absent from police-recorded data and case law, meaning they are mostly invisible to law enforcement and the courts. In contrast, the self-reported data described show that these groups often perceived themselves to be victims of hate crime at significantly higher levels which may stem, in part, from lower reporting rates. The fact that they less often report to police likely reflects their knowledge about the lack of recognition of their experiences as hate motivated and the expectation that they will be responded to as such. While the patterns are illuminating, especially with respect to the invisibility of GBV as a form of hate, there are significant data challenges and gaps. Most relevant to the focus of this report are two key issues: the confusion/conflation of sex, gender and gender identity or expression; and the lack of an intersectional lens to adequately capture the complexity of experiences of hate crime victims, particularly those motivated by sex and sexual minority status.

First, sex (or gender) and gender identity or expression are increasingly collapsed together in official data, including police-recorded data, which underscores an issue noted by the case law reports and continues to be critiqued by social scientists, including data experts, and legal scholars (e.g., Dawson & Carrigan, 2021; Gribble et al., 2022; Richie, 2019; Sullivan, 2020). Both Department of Justice reports noted that, while sex and gender are different concepts,⁶⁴ they were often confused in common understandings and in the courts. They found that in published case law, sex and gender appeared to be used interchangeably despite “sex” being the protected characteristic, leading to the authors’ conclusion that in 718.2(a)(i) the ground of “sex” includes crimes motivated by hatred of either sex or gender (Lawrence et al., 2007; 24). It appears that this confusion at one time extended to sex and gender identity or expression, which was understood as such by Canadian courts and human rights tribunals. However, this (should have) changed with the addition of gender identity or expression as a protected characteristic in 2017.

It is crucial to distinguish sex and gender identity or expression, not only for data collection, but also for understanding motivations, risks and impacts for women and sexual minorities which may share commonalities, but also differences (Hodge, 2011). For example, will the recognition and/or enforcement of gender identity or expression face the same challenges as have clearly been documented for sex? If not, why not? Furthermore, given inaccuracies in reporting and lack of data, the true scope of hate crimes against the transgender community remains unknown (Gauthier et al., 2021). This situation cannot be addressed if sex and gender identity are not kept as the distinct characteristics that they are. This is also reflected in the fact that sex, sexual orientation and gender identity or expression are listed as separate protected characteristics in hate crime legislation.

⁶⁴ Similar to Women and Gender Equality Canada discussed above, the authors define “sex” as the biological descriptor of being physically male or physically female whereas gender is typically understood to mean the set of social meanings that are attached to being male or female (i.e., societally prescribed gender roles related to constructions of masculinity and femininity).

Second, and highlighted by most researchers on hate crime, is the hidden diversity in each category of hate-motivated violence, whether it is sex, sexual orientation, race or religion. That is, it is increasingly being recognized that hate is not siloed – a victim can be targeted for more than one identity. The problem with both police-reported and self-reported data is that neither adequately allows for the documentation of the intersectionality of hate crime experiences. For example, police-reported hate crime typically captures a single motivation for a hate-based offence and, while GSS self-reported data allows respondents to select as many hate motivations as applicable, the complexity of their experiences makes it difficult to apply a fully intersectional approach in the analysis.

As demonstrated in the study by Erentzen and Schuller (2020), 60 percent of the respondents selected two or more identities. Focusing on the most common police-reported motivations of race, religion and sexual orientation, the study also showed that, when only one self-reported motivation was selected, after race (70%), sex was the next most common motivation (12%). As such, when victims are targeted because of more than one identity, sex is likely frequently one of those identities, but again rarely focused upon.

For example, as already discussed, Perry (2014) has shown bias motivated against Muslim women, which underscores the intersectionality of religion, race and gender, suggesting that women may be more vulnerable to complex patterns of bias-motivated violence (see also Mason-Bish & Zempi, 2019). This is supported by the most recent police statistics which show hate crimes against Indigenous and Muslim populations were more likely than other hate crimes to involve female victims (Wang & Moreau, 2022: 22). These figures capture the sex of the victim, however, and not whether they perceived one or both identities to be the motivation.

Similarly, violence against a lesbian may be motivated by homophobia or misogyny so how it is perceived as hate by the victim and recorded by official data is important (Chakraborti & Garland, 2012). Relatedly, Duggan (2021) discussed how lesbian women’s intersectional experiences may remain invisible because their gendered and/or sexualized differences are not dominant in either domain. In another study of women with intellectual disabilities, McCarthy (2017) found that for these women, disability hate crime, “mate” crime and domestic violence all merge, as their gender, disability and relationship status with the offender all contributed to the forms of violence to which they were subjected. Overall, then, sex may often be ignored or marginalized when other more readily understood – and accepted – categories like race and religion are present.

In summary, documenting patterns in hate crimes drawing from various Canadian resources shows that victim experiences of hate are complex and largely unknown in Canada, particularly for women and sexual minorities. Little, if anything, is known about GBV as a form of hate as a result. It is clear from self-reported data that women most often feel they are targets of sex-motivated hate given that 88 percent of those self-reporting sex-based hate crimes were female victims (and 98 percent of those offences involved a male perpetrator) (Erentzen & Schuller, 2020). As such, many female victims may interpret acts of GBV as sex-based hate crime, which suggests the need for a more detailed and systematic exploration of this complex question given their low representation in police-reported data, compared to other targets of hate. This is just

one reason why society must consider whether, and when, GBV should be considered hate crime, including the benefits and challenges as discussed next.

IV. Understanding the benefits and challenges of treating gender-based violence as a form of hate

During the past several decades feminists, social scientists and/or legal scholars have debated and discussed the inclusion or, more aptly, the exclusion of sex or gender in many countries' hate crime legislation or, where it is included, its lack of recognition in practice. The literature is clear on the benefits and challenges of including, or emphasizing, GBV as a form of hate (or sex/gender), often emphasizing different elements of the same issue. As a result, some of the discussion below may appear repetitive, but it is necessary to capture the complexity of the arguments.

While the focus is on GBV as a form of hate, it bears consideration as to whether some of the arguments described below may also be applicable to other hate-motivated targets but were not raised at the point of their inclusion in hate crime frameworks. In other words, why are some of the arguments relevant for sex- or gender-motivated violence but were/are not for other targets?

A. Benefits

1. The symbolic impact of including gender-based violence as hate

A common argument for the inclusion of or emphasis on GBV as a form of hate within the hate crime framework is the symbolic power and impact of doing so even if the actual practice of treating these forms of violence as hate does not occur as frequently as warranted (Gerstenfeld, 2018; Jenness & Grattat, 2001). By doing so, it is argued that hate crime legislation sends the message to the public that such crimes are unacceptable – both the individual acts as well as the bias or prejudice that motivated the acts against specific groups. Furthermore, its inclusion underscores that this violence is condemned because it leads to significant harm to individuals, groups and communities, simultaneously highlighting that more appropriate and positive community values and norms are required (Hodge, 2011). In short, including GBV as a form of hate crime sets a higher bar for the expected behaviours of a community and its citizens who, because of such incidents and legal responses (if any), are given the opportunity to reflect on their own potentially problematic beliefs. As such, the application of hate crime laws and the often-increased sanctions emphasize for victims and broader society that GBV is not to be tolerated (Duggan, 2021; Perry & Alvi, 2011). This, in turn, has the potential to increase education and awareness, discussed next.

2. Increased public awareness and education about GBV

Emphasizing GBV as a form of hate would provide greater opportunities for increasing public awareness and education (Hodge, 2011). Specifically, it would allow for deeper discussions about the root causes of GBV, its seriousness and prevalence, and how it is exacerbated for some groups of women, girls and sexual minorities. This would broaden understandings of GBV from

a private, individual problem to a broader societal issue, with contributors at multiple levels, and more consistent with the public health approach to violence prevention (e.g., Heise, 1998). In contrast, omitting GBV from hate crime frameworks reinforces the myth that these forms of violence are less serious than hate-motivated harms against other groups whose victimizations are portrayed as more public, political and, therefore, more severe (Angelari, 1994).

Increased attention to education and awareness would also challenge long-standing and well-documented attitudes, beliefs and stereotypes which have served as significant obstacles, and arguably the key obstacle, to the effective prevention of GBV (Flood & Pease, 2009). These attitudes, beliefs and stereotypes are held by individuals and, perhaps more concerning, are entrenched in our institutions, social structures and processes. Underscoring when, and how often, GBV is motivated by hate can expose these attitudes and more clearly identify far-reaching individual and systemic misogynist attitudes that facilitate and maintain historical and current levels of GBV (Gill & Mason-Bish, 2013). For example, while experts recognize that sexual assault is motivated by issues of power and control, the public and the courts continue to largely see these acts as resulting from sexual desire or need for sexual gratification (Hodge, 2011). Similarly, when a man abuses or kills his female partner, the public, the media and the courts continue to understand and portray this violence as “a problem in the relationship,” “love gone wrong” or a “loss of control” rather than what it often is – violence motivated by hate (Dawson, 2006; Fairbairn & Dawson, 2013; Hodge, 2011).

In short, emphasizing GBV as a form of hate, where appropriate, would allow for a deeper consideration of its core contributors, which exist at multiple levels. It would further underscore that GBV is equally, if not more, supported by societal structures and processes with entrenched misogyny than it is by individual actions. Moreover, an emphasis on the historical and contemporary normalization of many forms of GBV, particularly against women and girls, would also underscore the legal severity that surrounds this violence (Brown, 2004), often minimized, particularly if it occurs between intimate partners (Dawson, 2006; Hessick, 2007). Finally, such legislation highlights the discriminatory and symbolic aspects of this violence as a social reality for specific groups of victims as well as the real impacts of GBV for the communities to which they belong, the latter of which is discussed next.

3. Emphasizing individual and community impacts of GBV, including as a form of hate

Hate crime legislation focuses on the impacts of such acts for the individuals targeted as well as the communities in which they belong, whether it be racial, religious or sexual communities. As such, treating GBV as hate would show the breadth and scope of these negative impacts and consequences for individual victims, including any injuries, as well as the community of victims more broadly (Duggan, 2021). For example, individual incidents of GBV, such as sexual assault or intimate partner violence, also have well-documented negative and damaging impacts on other women in the community, on children and on broader society as discussed above (Johnson & Dawson, 2011). Each act of GBV underscores every woman’s particular vulnerability to such violence, mostly at the hands of men, in public and in private. This is due, in part, to knowledge that much of this violence has its origins in discriminatory and ideological attitudes that devalue

and often support hatred of women as members of a particular group (Brown, 2004: 608). Such impacts are not broadly understood or recognized, however, and could be emphasized using the hate crime framework.

4. Enhancing the safety and agency of women

Regulating GBV as hate is necessary to enhance women's agency, specifically in the public domain, allowing them equal access to civil society (Duggan, 2021: 121) as well as ensuring safety in their private environments. For example, D'Souza et al. (2018) showed that the nature and impact of hate speech significantly silences not just those directly targeted, but all women, which may deter them from participating in public life and having equal access to civil society. For example, they argue that regulating gender hate speech, and particularly online hate speech, is necessary to enhance women's agency, particularly in the public domain, allowing them equal access to civil society while remaining safe. While this report focuses on GBV as a form of hate and not more broadly on hate speech, it is recognized that much violence and abuse does occur online and is a form of GBV that would have similar or more damaging impacts.

B. Challenges

Some of the arguments against including or emphasizing gender-motivated violence as hate, or at least those that suggest caution, are overlapping, but each bear separate consideration as they highlight specific elements to challenge the benefits identified above. These challenges are not without their own critiques, however, as also noted below.

1. Symbolism is weak without enforcement

Focusing on the symbolic impact discussed above, it is argued that without enforcement, the power and impact of including or emphasizing GBV as hate will be weak to non-existent. More specifically, if prosecuting such crimes as hate are to send a message, then failing to prosecute also sends a message that says society does not consider such acts or behaviours as serious or worthy of a response (Gerstenfeld, 2018). In addition, without accompanying education, training and resources to support real action, this simply provides politicians with the opportunity to stand against such acts with little investment. Put simply, "hate crime legislation is good political capital for little expense" (Hodge, 2011: 104).

To date, as noted above, enforcement is weak for all forms of hate-motivated crimes, but particularly for sex and sexual minorities, prosecution figures are low (Walters et al., 2017). This is also the case in Canada, where GBV can be addressed with hate crime legislation given existing protected characteristics, but this seldom occurs, as documented above, and the characteristics themselves are also rarely the focus of law. In summary, then, it is argued that the potential power and impact of symbolism as an argument for inclusion of GBV is weak without the awareness, education and/or resources for actual enforcement of the law. As Jacobs and Potter (1998) highlighted in the United States, hate crime laws in general may represent "more of a political desire to keep the general population happy as opposed to having any real impact on harm education or crime prevention" (p. 67–68). This appears to be particularly relevant in Canada with the inclusion of sex. Therefore, given that women and/or sexual minorities are the

primary victims of GBV, the risk is that recognizing GBV as hate would serve the same purpose with little impact. One might ask, though, if this was a consideration for other forms of hate motivation for which enforcement has also remained low.

2. Criminal legal systems would be overburdened

The sheer number of victims – and primarily female victims are identified in this argument – has been raised as an objection to including sex (or gender) among protected categories (Berard, 2005; Jenness & Grattet, 2005). Often referred to as the “floodgates” or “overflow” argument, proponents draw attention to several ways that including or emphasizing GBV as a form of hate – typically discussed with reference to the inclusion of sex/gender – would overwhelm the criminal legal system (Hagerlid, 2021). This could occur in two ways. First, even if not all GBV was included to preclude potential overflow, the complexity of identifying which cases were hate-motivated would still place significant pressures on legal actors in terms of time and resources (Berard, 2005; Jacobs & Potter, 1998). As such, while service providers and advocates acknowledged that GBV as hate could be part of the pattern of domestic violence, they remained concerned about low conviction rates and the related burden of proof, particularly relevant for those with overlapping oppressions and marginalization (Gill & Mason-Bish, 2013). Second, opening hate crime legislation up to sex or more vigorously pursuing GBV as hate would open the door to demands for provisions based on other identities, further overloading the system (Jenness & Grattet, 2005).

There are several critiques of these arguments. First, and most obviously, one might argue that the expectation of a floodgate of cases involving GBV as hate is proof in and of itself that GBV should be a focus for hate crime legislation or, where it is already possible, more often recorded and prosecuted as a hate crime than is currently the case. Relatedly, if one assumes this is correct, it must be asked, when has a crime, particularly a violent crime, not been considered worthy of an appropriate response by virtue of its sheer volume? Arguably, some forms of VAWG, such as domestic violence and various types of sexual assault and harassment, may be good examples of where this has occurred, given these crimes experience such low response rates (Johnson & Dawson, 2011). However, in general, if an act or behaviour is considered a crime or a hate crime, it should be treated as such regardless of how often it occurs.

Second, challenging the assumption that there would be a slew of cases overwhelming the system, where it is possible to pursue sex/gender-motivated violence as hate, this has not occurred. Canada is a case in point. As such, even when some of these classes or identities are already included in hate crime frameworks, it has not overburdened the criminal legal system. In fact, the opposite is true, which is a problem in and of itself. In the United States, for example, some prosecutors did not even know that gender was a protected characteristic (Hodge, 2011; McPhail & DiNitto, 2005). It is expected that this is likely similar in Canada, but research has yet to examine this question.

Third, this argument does not recognize that to include or emphasize GBV as a hate crime does not mean that all GBV will be treated as such. At best, those who argue this do not understand the issues involved and, worse, they are using this argument as a scare tactic to deter support for

doing so. Like other hate-motivated acts of violence, there would be a limited set of cases whereby gender-motivated hatred can be clearly shown as the driving motivation or even part of the motivation. This would require that the perpetrators clearly expressed hatred and contempt for women in some way, which might include evidence of high levels of brutality, fatal violence, a series of victims and/or other criteria that was deemed to denote hate (Berard, 2005; Duggan, 2021), which will be discussed further below.

Fourth, there is no evidence that it would be more difficult to establish GBV as a form of hate than the burden of proof for other hate crimes. The lower prosecution rates for all hate crimes suggests that possibility, although it could also suggest the lack of recognition of hate crimes as well.

Finally, with respect to opening the door to many other factors, this is already possible in Canada where “other similar factors” is included in the legislation. In fact, as Perry (2016) argues, Canada is seemingly unique by including this reference, which allows for hate targets who have been historically discriminated against as well as “emerging” identities not currently named in the legislation (p. 593). As a case in point, at the time of her writing, gender identity or expression were not included in the legislation; however, as noted above, these two characteristics were added in 2017. There is no evidence, then, that “other similar factors” has invited numerous other groups to argue for hate motivations.

3. Resource intensiveness of emphasizing GBV as a form of hate

Related to the floodgates’ argument, is the argument that the extent of resources required to address GBV as hate would be significant given the sheer number of potential cases that may need to be considered (Hodge, 2011; Gerstenfeld, 2018). When discussing any criminal justice initiative, or prevention initiatives more generally, the need for adequate resources is typically part of the discussions. This is no less true when considering the inclusion of or emphasis on GBV as hate. Similar criticisms relevant to the “floodgates argument” apply here, though. For example, resources should not determine what is responded to as a crime or treated as a hate crime if it is clearly motivated by hate. Furthermore, if significant resources are required, this may stem from the lack of clarity in the legislation and/or vague to no criteria to determine what is to be considered GBV as a form of hate. With clear laws and criteria, not all GBV would be categorized as such, reducing the extent of resources required, with a significant proportion of cases continuing to be handled through current mechanisms to deal with what is perceived to be non-gender-motivated violence against women and/or sexual minorities.

4. Challenge of training legal actors

One aspect of the time and resources required is related to the recognized challenge of training legal actors to understand and be capable of identifying GBV as a form of hate when it occurs. This challenge is exacerbated by the entrenched and well-documented sexism that continues to reign in the still largely patriarchal legal system (Angelari, 1994; Duggan, 2021). Given that it has been shown by numerous studies that criminal legal actors often fail to understand the power and control aspects of GBV (e.g., coercive-controlling tactics), what is the likelihood that they can be trained to recognize GBV that is hate-motivated? Similarly, despite feminists and others’

best efforts, victim-blaming attitudes continue to dominate in the legal system even after years of social and legal transformations (van der Bruggen & Grubb, 2015). As such, there would have to be a greater emphasis on the extent and *quality* of training. For example, as noted by Perry (2016), in Canada and the United States, of the 12 weeks to six months of training received by new police recruits, less than 20 hours focuses on diversity training, which could cover a variety of topics, but little to no time is dedicated to hate crimes (p. 596).⁶⁵ Ontario and British Columbia reportedly have provincial teams targeting hate crime and extremism, comprised of multiple police services; however, it is unclear how much of their time is spent on hate motivated by sex, sexual orientation or gender identity or expression, even when it is violence, including when it is GBV.

5. Gender-based violence already addressed by existing legislation

Given that there are various offences that capture different forms of GBV, it is argued that existing laws already address the disproportionate impact of GBV on women specifically, such as offences that relate to sexual assault and domestic violence. The ability to add GBV offences outside the hate crime framework falls within this argument, as illustrated by the UK Law Commission (2021), who recently concluded that this was a better option than including sex and gender as a protected characteristic. Specifically, they wrote: “Instead, more target options outside the hate crime framework – such as a possible offence of public sexual harassment – should be considered to address some of the specific concerns that have driven calls for misogyny to be included with hate crime laws” (p. 127).

Notwithstanding the argument that existing laws have been deemed ineffective in many ways by research too voluminous to include here, research globally has documented that much GBV is not treated as serious within the criminal legal system, even when such violence ends in death (referred to as the “domestic discount” or “intimacy discount”) (e.g., Dawson, 2016; Rapaport, 1994). More important is the fact that, for most hate crime offences, the underlying offence is already punishable by the general criminal law; therefore, if this fact does not invalidate other types of hate crime, why would it invalidate GBV as a form of hate? A second and equally important critique is that these existing laws for the most part fail to highlight the discriminatory aspects of these crimes, which could be done more effectively through hate crime frameworks.

6. Fewer supports for victims of GBV

A concern voiced by some anti-VAWG organizations and advocates internationally is that this move would dilute existing responses to violence experienced primarily by women, such as intimate partner violence and sexual violence (Maher et al., 2015). For example, since police deal with many hate crimes, not just those related to GBV, they may not have the needed expertise and knowledge to deal with GBV as a form of hate against women or sexual minorities. A critique of this argument is twofold. First, it could be argued that many police and other legal actors do not currently have sufficient expertise and knowledge to adequately respond to various

⁶⁵ It is not clear if this is on-average figures; however, it is expected that this is the case, with variation across the country and across police forces. For example, Perry (2016) goes on to note that there are opportunities for police to take up training through a variety of avenues that may be taken up by some early or throughout their careers.

forms of GBV with existing mechanisms and laws. Second, if one is to consider some forms of GBV as hate, this does not mean that all GBV will be considered as such. In fact, it may be that a starting point is to consider only some types of cases/perpetrators (e.g., excessive violence, demonstrated prior hate towards women, serial rapist) or some offences (e.g., femicide, rape/sexual assault) more often perceived to be GBV motivated by hate. As such, the majority of GBV may not fall into the hate crime framework at first and possibly not at all, depending on how the legislation is written.

7. Gender-based violence is different than other hate crime

The argument that GBV is different than other hate crimes is a common one and multi-faceted. Each element of this argument is discussed briefly, followed by some potential critiques. As a recent illustrative example, the UK Law Commission (2021) recently recommended that sex and gender not be included in hate crime laws in England and Wales because “crimes connected with sex and gender characteristics raise unique issues that are not present to the same extent in relation to the existing five characteristics protected in hate crime laws” (p. 127). Some of these assumed differences are outlined below. It should be noted that most of these arguments apply to gender-motivated hate against women and girls more than crimes against sexual minorities, as discussed.

i. Women are not a minority

It is argued that women do not constitute a minority and, as such, should not be included in hate crime legislation. However, it could be argued that some women, depending on overlapping identities, do comprise a minority (e.g., Indigenous or Black women in Canada). This argument also assumes that those most often represented in hate crime statistics continue to represent a minority which, with changing demographics of the population in Canada, particularly in urban centres, may no longer be the case and would also vary regionally. Finally, women may not be a minority in numbers, but they are a minority in power, given historical and ongoing oppression and sexism in a patriarchal society and in law.

ii. Women and the “intimacy problem”

Hate crimes are most often understood as involving strangers (Mason et al., 2014; Stanko, 2001), whereas VAWG or GBV is most often perpetrated by those known to the victims (e.g., male partners or family members). Referred to as the “intimacy problem” (Gelber, 2000), there are several critiques of this argument. First and foremost, there is the assumption that these types of cases – intimate partner violence specifically – more often involve interpersonal conflict rather than hate or misogyny, which is not empirically supported. In fact, it is recognized that GBV, and male VAWG specifically, has deep historical, cultural and legal roots that often can be categorized as hate (Sarmiento et al., 2014). As such, is it any more difficult to view a man who rapes and murders his wife as a hate crime than the rape and murder of a woman by a stranger as she walks home from work? If the answer to that question is yes, we must deconstruct and challenge why that is the case.

Second, this argument begs the question of why hate crimes are more often perceived to involve strangers and whether, in fact, they do (Burman et al., 2009). For example, Walters and Hoyle (2011) have argued that this stereotype of hate crime leaves out “the messier and sometimes intractable disputes between neighbours, colleagues, and other acquaintances...” (p. 8). For example, Mason’s (2005) research found that with the London Metropolitan Police, more than 80 percent of homophobic hate crimes were perpetrated by people known to the victim. This information was not readily apparent in Canada’s police-reported data, and Erentzen and Schuller (2020) examined the link between victim-perpetrator relationship and reporting behaviour, but not the distribution of victim-perpetrator relationship on its own or according to type of motivation. More research is needed to examine this variable, which is expected to challenge the notion of hate crime as, typically, stranger-perpetrated acts. However, given the lack of recognition in literature examining non-stranger hate crimes, cited above, the “intimacy problem” is a challenge that will need to be overcome when considering GBV as a form of hate.

Third, a significant proportion of VAWG does not involve a perpetrator known to the victim, and even in those cases, GBV is rarely seen as a form of hate. More than two decades ago, Gerber (2000) argued that “the inclusion of the stranger factor in some hate crime definitions demonstrates the singular success of the normalization of much violence against women.” However, the challenge of the intimacy element does not override or negate women’s shared experiences of hate (see also Gill & Mason-Bish, 2013; Haynes & Schweppe, 2020).

iii. Women are not interchangeable

The impact of a hate crime is felt not just by individual victims with a particular identity but by the communities who share that identity, because the victim could have been anyone who was a member of that group. A key impact of hate crimes, then, is that other members of the community live in fear that it could happen to them. Because women and girls often have prior relationships with the perpetrator, it is argued that women and girls are not “interchangeable” because “not any woman (or girl) would do.” However, as noted above, women fear for their own safety when another woman in the community is the victim of a violent crime, whether the attacker is known to the woman or is a stranger. Furthermore, not all female victims of violent crime have a prior relationship with their attackers and even when they do, their perpetrators do not always restrict their violence to specific and individual women.

iv. GBV is motivated by power and control

Feminists have worked hard to increase education and awareness about the way in which VAWG, particularly in their relationships with men, is motivated by a desire for power and control (e.g., the Duluth model⁶⁶). They have achieved some success in doing this because it is the more common belief that power and control, rather than hate, is the motivation in cases of domestic violence. For example, McPhail and DiNitto (2005) found that prosecutors saw power

⁶⁶ The Duluth (Minnesota) model (or the Domestic Abuse Intervention Project, DAIP) was one of the first multi-disciplinary programs designed to address the issue of domestic violence. The feminist theory underlying this model is that men who use violence in their relationships do so to exercise power and control over the victim (see Pence & Paymar (1993)).

and control (and, sometimes, love) rather than hate as the chief motivations for GBV for both male violence against female partners and sexual violence. An emphasis on the motivation of power and control represents progress from a time when such violence was most often seen as a “domestic problem” or attributed to mental illness of the individual perpetrator. However, are power and control mutually exclusive of hate? Can motivations co-exist? And could it not be argued that one’s desire to impose power and control over an individual is, in part, an expression of hate? As succinctly summarized by McPhail and DiNitto (2005):

“...the superficial adoption of the term *power and control* by prosecutors demonstrates a lack of a deeper understanding of VAW. For fueling VAW is misogyny for women as a group, and this includes discriminatorily selecting females for attack, a hallmark of hate crime. Viewing VAW as *only* because of motivations of power and control leads to a failure to see multiple causations of VAW and precludes the adoption of the perspective that VAW is a hate crime. Adopting a hate crime perspective does not negate including motivations of power and control. But using only the power and control lens limits a fuller understanding of VAW and girls and innovative approaches to addressing it” (p. 1180).

8. *Emphasis on penalties rather than alternative approaches*

Some research has found that those who are against or at least cautious about including or emphasizing GBV as a form of hate are concerned about the likelihood that this approach will increase the punitive impacts on perpetrators (Hodge, 2011; McPhail & DiNitto, 2005), including some prosecutors and feminist advocates. For example, some support reforms responding to GBV as a form of hate, especially when dealing with domestic violence offences, but not if it means lengthened prison terms. Such opposition is based on the grounds that increased sanctions are not perceived to deter crime or offenders and, furthermore, that such sanctions are typically imposed on perpetrators from marginalized groups already over-criminalized and over-represented in prison populations.

To counter the emphasis on penalties, alternative non-penalty-based approaches are emphasized in some literature (e.g., restorative justice approaches, civil remedies). For example, a decade ago, Gavrielides (2012) discussed how the consideration and examination of restorative justice approaches to hate crime was underdeveloped. In his three-year examination in the United Kingdom using field research and interviews, Gavrielides (2012) found that restorative justice might offer one type of mechanism that would help “break down the fears, stereotypes, and causes of hate crime,” particularly for more minor acts which could lead to serious future acts without early intervention (p. 3640). More recently, examining LGBT+ people, Walters et al. (2021) found a preference for restorative justice (RJ) approaches over enhanced sentencing (ES) when forced to choose, with the former seen to be more effective at reducing future offences and supporting victims. However, there were “greater than average levels of support for the use of ES for hate crime, which was predicted by previous experiences of hate crime, perceptions of threat, and feelings of anger” (p. 80). Further analyses showed that RJ approaches elicited less anger and sadness and higher levels of satisfaction than the ES intervention.

The above arguments and related research highlighting current concerns with enhanced sentencing and discretionary application of the law by police and courts is also evident, with increasing calls in Canada and globally to defund police and a growing prison abolition movement (e.g., see Chartrand, 2021; Pasternak et al., 2022; Wortley & Owusu-Bempah, 2022). As such, it may be more apt to say there is a need for *better* responses to hate crime, including those that emphasize public awareness and education, rather than *more* laws and *more* criminalization. However, these arguments apply to all forms of hate that lead to penalty enhancements and not just those that would accrue if there was a greater emphasis on GBV as a form of hate. Whatever approach is adopted, then, GBV as hate needs to be addressed like other forms of hate.

9. *Unintended consequences for victims of GBV*

There is a history of unintended consequences for victims of GBV, and intimate partner violence specifically. That is, despite what are arguably good intentions, victims often end up negatively impacted instead of protected by so-called improvements to laws. For example, in Canada, between 1983 and 1986, the federal and provincial solicitors general implemented policy directives requiring police to charge in cases of wife assault (Ad Hoc Federal-Provincial-Territorial Working Group, 2003). Although there remains no national intimate partner violence (IPV) charging policy in Canada, the official purpose of the policy directive was to improve the system's ability to protect women who were subjected to assault by male partners, recognizing it as a serious violation of the law. It requires police to lay charges in all cases where there are reasonable grounds to believe that an offence has occurred (Ad Hoc Federal-Provincial-Territorial Working Group, 2003). It was anticipated that this policy shift would lead to an increase in male perpetrators criminally charged for violence against their female partners. However, there was also an unexpected increase in the number of women charged in IPV cases, either as sole perpetrators or as dual perpetrators with their alleged abusers (Chesney-Lind, 2002; DeLeon-Granados et al., 2006; Durfee, 2012; Pollack et al., 2005; Poon et al., 2014).

As such, if GBV is included or emphasized as a form of hate, parameters would be vital to ensure that those victims whom the legislation was meant to protect were protected. Related to this is the valid concern that to prosecute some forms of GBV as hate may have emotional and practical impacts for some victims (Gill & Mason-Bish, 2013). For example, this would force some victims to confront the fact that someone who is supposed to love them has committed a hate crime against them. One critique of this argument is that such victims may already feel the level of hostility or hate directed at them given that the case and their history with the perpetrator have met the criteria for GBV as a form of hate, but research with victims/survivors would be required to understand further.

V. Conclusion and priorities moving forward

In Canada, during the past decade, there have been countless killings of women, with demonstrated misogynistic motives, grounded in, and facilitated by, sexist, patriarchal and misogynist ideologies. Seldom have these incidents been discussed as or attributed to GBV as hate or considered hate crime by those working in the legal system, by politicians, by the media or by broader publics. Given this, it is expected that the bulk of GBV motivated by hate perpetrated against women, girls and/or sexual minorities, both on and offline, has largely remained under the radar. This raises the question asked at the beginning of this report, why GBV as a form of hate rarely if ever qualifies as hate crime, even when related characteristics are included in legislation to do so, and significant commonalities exist with more recognized targets of hate crime. The answer to this question is crucial since acts of hate, including GBV, impact one's health and well-being as well as participation in both private and public life.

As shown in this report, historically and still today, there has been resistance to the enforcement of general laws related to VAWG and GBV, especially intimate partner violence and sexual violence. As argued by Hodge (2011), this resistance often stems from attitudes, beliefs or stereotypes that do not align with laws or which run counter to what are seen as normal behaviours (p. 95). Arguably, this is one key obstacle to the prevention of GBV in general: that is, the historical and current patriarchal institution of law and its entrenched attitudes, beliefs and stereotypes about women's and men's roles in society, along with the normalization of VAWG, especially in their relationships with men. As a result, the social change impact of existing laws has been weak, so why would we expect the hate crime framework to be any different in its outcomes if the use of this mechanism for GBV was emphasized going forward?

This report contends that, to date, it has been purely symbolic to include sex as a protected characteristic in Canada, given how few hate crimes are recorded and prosecuted with this motivation. Sexual orientation-motivated hate has received more consistent, but also limited, focus. It remains to be seen how gender identity or expression will be treated, since it was only recently incorporated into legislation. Arguably, though, the hate crime framework has failed most victims of hate crime. In understanding why it should still be considered for GBV, it is important to underscore that "the extent to which law can provide an effective impetus for social change varies according to the conditions present in a particular situation" (Vago, 2013: 312). According to Vago (2013), some of these conditions are how much information is known about the legislation in question, whether there is a clear and concise statement in the legislation that precludes varying interpretations and how responsive are those tasked with enforcing and implementing the law. While there are valid arguments for and against the inclusion of or emphasis on treating GBV as a form of hate, what is largely absent from these bodies of literature is systematic, empirically based evidence examining many of the issues discussed (Hagerlid, 2021).

As a result, drawing from Vago (2013) and recognizing the lack of knowledge about GBV as a form of hate in Canada and globally, this report outlines a set of research, policy and practice priorities for BC's Human Rights Commissioner to consider in the inquiry into hate in the

COVID-19 pandemic to further (or arguably begin) the conversation about the role of hate in GBV in four areas:

- A. To enhance monitoring of GBV as a form of hate;
- B. To examine common understandings of GBV as a form of hate;
- C. To improve existing legislation and/or mechanisms related to GBV as a form of hate; and
- D. To improve responsiveness to GBV as a form of hate.

Underscoring each priority discussed below is one overarching priority for any further examination of GBV as a form of hate.

P1: Collaborate with and listen to experts in GBV and VAWG across sectors and disciplines when considering GBV as a form of hate (and hate crime)

Significant and real collaborations must occur with those most knowledgeable about GBV and VAWG when considering GBV as a form of hate, including survivors/victims. Collaborating with and listening to those who hold the most knowledge means recognizing the varying types of expertise available, specifically those who have and continue to work in this field with victims and survivors on the front lines, and/or the survivors/victims themselves (Nourpanah & Dawson, 2022). GBV is not just a legal issue; it is a social, public health and human rights issue and, thus, requires discussions among various stakeholders from across multiple sectors. Historically, and still today, those voices, individuals and organizations who possess the most knowledge about GBV and VAWG have not been included in high-level consultations about how one can develop more nuanced and effective social and legal responses to GBV. On the rare occasions that they have been, their views have not been prioritized for action by those in power. One example is the long-standing call for a national action plan on violence against women and gender-based violence, which our country still awaits.⁶⁷ In part, this report contends that this is why change has yet to occur. Therefore, if we wish to seriously consider GBV as a form of hate, including both the benefits and challenges, their role in this process is crucial.

A. Priorities to enhance monitoring of gender-based violence as hate

PA1: Use accurate terminology when discussing GBV as a form of hate

Clear terminology is important moving forward that directly reflects those groups identified in Canadian legislation with respect to GBV as a form of hate motivated by sex, sexual orientation and/or gender identity or expression. This report describes current mechanisms available to identify and respond to GBV as a form of hate. In Canada, there is the capacity to do so now using three key characteristics identified in legislation – sex, sexual orientation and/or gender identity or expression. With these three protected groups clearly and separately identified in legislation, enhancing our knowledge about GBV as a form of hate means that we should be

⁶⁷ For more information see the [Roadmap for the National Action Plan on Violence Against Women and Gender-Based Violence](#).

clear about what type of GBV motivation is being discussed or examined – sex-motivated hate, sexual orientation-motivated hate, or hate motivated by gender identity or expression. There is a reason why these are separate and distinct categories in legislation and why largely separate bodies of literature exist to understand their experiences with hate. While there may be some commonalities in the origins of the GBV experienced by all three groups, especially since perpetrators are almost exclusively male, and there are intersections across these groups, there may also be crucial differences which will be missed if collapsed together. Some of the root causes and contributors may also be distinct. Understanding how GBV may stem from hate requires that we allow for such distinctions in our examinations and in our development of policy and prevention initiatives.

PA2: Accurately track and monitor GBV as a form of hate

Current data mechanisms for documenting the reporting, recording, prosecuting and sentencing of GBV as hate must be examined and enhanced to achieve an accurate documentation of its incidence and prevalence. Current data allows for only a limited understanding of some of the experiences of hate crime victims and rarely captures the complexities of these experiences. The above comparisons of police-recorded and self-reported data show that official reports are missing a large proportion of such experiences, including the impact of intersecting identities (discussed more below), which occurs across all hate crime victims. However, given the documented lack of recognition of sex-motivated hate specifically, the situation is even more challenging in terms of enhancing data collection. As discussed above, when sex is one of the motivations for hate alongside other more recognized motives, it is often obscured in data and related discussions. Given the enormity of the task to achieve more accurate data, this report suggests beginning with smaller pilots in one or more jurisdictions to assess the feasibility of current instruments, their applicability to GBV as a form of hate and to assess what would be required to enhance data collection, data quality and subsequent responses.

In doing so, specific attention needs to be paid to online GBV as a form of hate. While academic insight into cyber or online hate has evolved rapidly, online GBV, including as a form of hate, has not been the focus of adequate attention (KhosraviNik & Esposito, 2018). While the dangers and risks of the digital world are well acknowledged and growing, we still lack a clear understanding of what it is like for women and/or sexual minorities to navigate cyberspace, the risks involved and how (and whether) platforms and legal actors respond to their experiences when reported (Duggan, 2021). For example, West Coast Leaf (2014) provides a detailed examination of five types of cyber misogyny defined as “diverse forms of gendered hatred, harassment, and abusive behaviour directed towards women and girls online” (p. 5). The five areas were “revenge porn,” non-consensual sharing of intimate images among youth, child sexual exploitation, cyberstalking and gender-based speech online. They summarize the current legal responses and recommendations for ways to strengthen laws to protect women, girls and other vulnerable communities. More research is needed in this area, with attention to how these forms of online activities are or are not forms of GBV, as currently conceptualized in Canada, including GBV as a form of hate.

One aspect of online hate against women and girls specifically that has received some attention due to the high-profile cases discussed above is incel-related online (and offline) forms of abuse and violence. In Canada, there has been some recent attention to radical right-wing behaviours online (Scrivens et al., 2020), the role of the internet in facilitating violent extremism (Gaudette et al., 2020) and right-wing extremist movements (Perry & Scrivens, 2016, 2019), but little attention has been dedicated to the impacts of these phenomena for women and girls. While these forums and online activities may be seen as the more radical side of online abuse, they impact mainstream culture, particularly young adults and young men, in both direct and indirect ways that subsequently impact women, girls and sexual minorities that need to be better understood.

PA3: Accurately account for the complexities of experiences of hate as multidimensional

All types of data – qualitative and quantitative – should be used to capture the complexities of GBV as a form of hate (and all hate crime). What is known about hate crime in Canada largely relies on large-scale administrative/survey data such as Statistics Canada’s Uniform Crime Reporting Survey and the General Social Survey on Canadians’ Safety, as outlined above. While these data provide information on incidence and prevalence about hate crimes, including those related to characteristics that may be associated with GBV as a form of hate, the picture is incomplete. This is concerning given that governments, policy makers and/or funders use data to guide the identification of priorities. Therefore, if data do not provide a complete picture of the reality of people’s lives, funding will not be distributed fairly, and policies will not reflect the situations that they are meant to address. To date, for many policy decisions in general in Canada and globally, quantitative data has been prioritized which has specific impacts for the gender data gap specifically (for a full discussion, see Fuentes & Cookson, 2020), including what we know about GBV as a form of hate.

As discussed above, hate is not siloed or one dimensional; rather it is a complex experience that may often encompass hate motivated by two or more identities. Current data rarely capture the intersectionality of these experiences. It was also shown that when there are multiple identities targeted by hate, sex is often one of those motivations but rarely identified if other more prominent motivations for hate are present. To address these data gaps, more qualitative (and narrative) data are needed as well as data that captures more directly the experiences of victims in their own voices, as well as the efforts to respond by legal actors in their own voices. Only by getting more detailed information about such experiences and efforts to respond (or resistance to responding) can we understand how to develop more effective preventions. Examining and replicating in Canada some of the existing qualitative-focused research would move us in that direction (e.g., with respect to victims, Chakraborti, 2018; Hagerlid, 2021; Gauthier et al., 2021; Mason-Bish & Duggan, 2019; West Coast Leaf, 2014; with respect to responding sectors, Bryan & Trickett, 2021; Hodge, 2011; McPhail & DiNitto, 2005; Scrivens, 2011).

PA4: Determine whether and how GBV as a form of hate differs from hate motivated by sex, sexual orientation or gender identity and expression

Discussions need to consider whether and how gender-based violence as a form of hate is different from hate motivated by sex, sexual orientation or gender identity or expression. If GBV is to be considered as a form of hate, more nuanced understandings of what we mean by GBV is needed. For many, depending on context, GBV brings to mind violence between intimate partners or male sexual violence against women and girls. However, drawing from research, Chakraborti and Garland (2012) identify various types of victimizations that occur because individuals were perceived by their victimizers to have veered too far astray from accepted gender norms, which could also be conceived of as GBV. For example, gay and transgendered people may be targeted because they are seen to challenge dominant gender norms, or male goths may be victimized because they are seen as too effeminate. As Chakraborti and Garland (2012) write: “In these instances, vulnerability is exacerbated through social conditions, prevailing norms, and people’s reactions to ‘difference’” (p. 508). Are these forms of GBV, or do they represent hate motivated by sexual orientation or gender identity or expression? Should these types of cases be considered GBV as a form of hate akin to a woman who is repeatedly abused by her male partner or violence perpetrated between same-sex partners? Are they the same as a woman who is sexually assaulted at a party by several male perpetrators? These types of clarity are vital when considering GBV as a form of hate and how it might occur to prevent unintended consequences, enhance effective monitoring and improve our ability to effectively respond.

B. Priorities for identifying common understandings about gender-based violence as a form of hate

PB1: Document legal actors’ understandings of GBV as a form of hate

Research must be conducted to better understand whether and how legal actors perceive GBV as a form of hate. Early research in the United States demonstrated that those who work within the legal system were unsure how gender-bias crimes fit into the hate crime framework (Hodge, 2011; McPhail & DiNitto, 2005). It is expected that the situation will be similar in Canada, although little research has examined these questions. As such, some priority research questions are: (1) Why is GBV rarely (if ever) recorded and/or prosecuted as hate crime in Canada? (2) What do police, crown attorneys, and judges say about GBV as a form of hate? (3) From the perspective of legal actors, how do crimes such as domestic violence and sexual assault fit within the hate crime framework?

Some early work by Scrivens (2011) examined police officers’ perceptions of gender-motivated violence in Canada. Interviews with a small sample of police officers showed that the majority did not see hypothetical cases of VAWG as hate crime. The author argued that this largely had to do with the impact of victim-perpetrator relationships (i.e., the intimacy problem discussed above), vague or alternative motives (i.e., prioritized over GBV or sex, for example) and definitional constraints related to legal terminology. In addition, the typical image of a hate crime victim, as well as police experiences with hate-related legislations and frameworks, had an impact. These types of examinations are crucial for understanding responses or resistance to

treating GBV as a form of hate before moving forward and to inform efforts to improve awareness and education. Once there is a better understanding of perceptions, professional education and training should focus on helping legal actors understand the complexities of GBV and its potential to be motivated by hate.

PB2: Document perceptions of anti-VAWG and GBV front line workers about the links between hate crimes and GBV

It is a priority to begin to document the perceptions of those who work with women and other victims of GBV, including as a form of hate. While anti-VAWG and GBV organizations and advocates are experts who must be consulted in this process, as stated in the first priority, it is also important to document their understandings and potential misconceptions about considering VAWG or GBV as a form of hate. As noted above, some research has shown they are concerned such a move would eliminate the resources dedicated to more general GBV offences, reduce prosecution and conviction rates or simply confuse legal responses, negatively impacting gains that have been made. This is a valid concern. It has also been noted that some are resistant to the notion of domestic violence, specifically, being motivated by hate, whereas others support such notions. However, research that has examined their views is minimal with no studies being identified in the Canadian context. Therefore, given the emphasis on their expertise as underscored by P1, this priority is important to also understand their attitudes and beliefs about the overall links between hate and GBV.

PB3: Document survivors'/victims' understandings of GBV as a form of hate

Research must be conducted to better understand whether and how often survivors/victims perceive their experiences of GBV as a form of hate, including if they wish (or wished) to pursue their case as a hate-motivated offence. Few studies have examined the perceptions of survivors/victims and whether they would want to pursue their cases as motivated by hate. This priority seeks to avoid what has often occurred in criminal justice “innovations” that assess what victims would want without asking victims. For example, if pursuing cases as hate motivated, what would survivors/victims need to support them? Recent work in Sweden (Hagerlid, 2021) and the United Kingdom (Mason-Bish & Duggan, 2019) has contributed to better understandings of women’s perceptions of misogynistic hate, showing that based on women’s experiences, not all VAW is experienced as misogynistic hate crime (Hagerlid, 2021). More and better understandings of these nuances are crucial.

PB4: Document public understandings of GBV as a form of hate

Research must be conducted to better understand how members of the public perceive and understand the motivations for GBV, including as a form of hate. Once there is a better understanding of public understandings of GBV as a form of hate, primary prevention initiatives (e.g., public education campaigns) can focus on helping members of the public understand the complexities of GBV and its potential to be motivated by hate. Similar to all other sectors, this would include using key indicators that help to set the parameters of what is meant by GBV as a form of hate. This is discussed in more detail in the next section.

C. Priorities to improve existing legislation and/or mechanisms related to gender-based violence as hate

PC1: Examine aggravating (and mitigating factors) at sentencing in cases of GBV

Jurisdictions need to begin to track aggravating factors that impact sentence outcomes, including for hate crime and specifically for GBV-related offences. There are no provincial/territorial or national efforts to track aggravating (or mitigating) factors that impact sentences in cases of GBV (or for any offences) which would allow for a better understanding of the factors that impact judicial decisions, including whether existing hate motivations for violence were present, considered and recognized. As noted above, under subparagraph 718.2(a)(i), sex, sexual orientation and gender identity or expression are prohibited discriminatory motives which can trigger enhanced criminal penalties. However, little is known beyond the case law cited above about when and what types of hate motivations are factored into sentencing decisions. Specific to this report, when do sex, sexual orientation or gender identity or expression, as they relate to GBV as a form of hate, factor into such decisions, if ever? In determining “law in practice,” such information is crucial to understanding the impact of such sentencing amendments before moving forward with new legislation and policies.

For example, also relevant to GBV in general, subparagraph 718.2(a)(ii) provides that it is now a mandatory aggravating factor in sentencing if “there is evidence that the offender, in committing the offence, abused the offender’s intimate partner or a member of the victim or the offender’s family.” While there has also been little effort to examine the impact of this amendment, in recent research, Grant (2017, 2018) demonstrated that there has been some application of this section since it was enacted in 1996, but some further clarification is needed around its scope, particularly as it relates to non-cohabitating intimate partners, and its relevance to intimate partner sexual violence, the latter type of cases appearing to be most resistant to its impact. This type of analysis is also needed to examine the role of hate as an aggravating factor in cases of GBV or, at minimum, whether and how hate as a motivation is discussed and recognized (or ignored or discounted) in law.

PC2: Develop clear criteria for identifying GBV as a form of hate

Clear criteria must be identified that can be used to identify GBV as a form of hate. It is evident from the research above that legal actors and the general public lack the knowledge required to accurately identify and/or respond to GBV as a form of hate. For example, in her study in New Jersey, Hodge (2011) could not provide “concrete examples of the type of evidence that investigators and prosecutors have used to decide whether a crime rises to the level of a gender-bias offence, or how prosecutors have connected the bias element to a case of domestic violence or rape to obtain a gender-bias conviction” (p. 110). Given that Canada has arguably had the ability to respond to GBV as a form of hate for several decades, our context is conducive to identifying what has been and should be required to do so. This could entail identifying an initial list of agreed-upon indicators of what constitutes GBV as a form of hate and/or focusing on specific offences which may be more likely to be recognized as GBV as a form of hate (e.g., rape/sexual assault, femicide). This work could also draw from and build upon indicators used to

identify hate crimes against other more recognized targets (e.g., race, religion), although it is not clear what those criteria are.

For example, while femicide is not recognized as a criminal offence in Canada, it is in other countries, capturing the killings of women and girls *because* they are women and girls, based on sex/gender-related motives or indicators. While some argue that femicide is always a hate crime, it is recognized that some killings comprise greater evidence of hate motivated by sex or gender than some other killings of women and girls. Supporting this contention, with the goal of more accurately identifying femicide, the United Nations recently released a statistical framework that identifies elements that will be used as an initial list to begin to determine if killings had gender-related motivations.⁶⁸ One of the eight characteristics is whether “the killing of a woman or girl constituted a gender-based hate crime, i.e., she was targeted because of a specific bias against women on the part of the perpetrator(s).” The discussion that surrounds this characteristic may be a useful starting point for understanding GBV as a form of hate in Canada, as stated below:

The variable “hate crime” refers to homicides of women committed by perpetrators that are motivated by hatred, which means that the perpetrator intentionally targets a woman because of a bias against this perceived group of people, or misogyny. Such crimes may or may not be committed out of direct animosity towards the victim, but hate crime displays hostility towards the group or community to which the victim belongs. The message conveyed by the offender, whether intentionally or not, sends a signal not only to the individual victim, but also to other persons who feel that they are at risk of being labelled and treated like the victim. Signs of a hate crime can be recognizable by the specific modus operandi or context of the homicide. The following situations are illustrative of homicides targeting women that are motivated by hate or bias towards women or specific groups of women: an attack on a woman who was previously engaged in activism in support of women’s rights; an attack on a woman by a perpetrator who used insults and offensive words towards her for being a woman; an attack on a female group/organization; an attack (or series of attacks or killings) that primarily targets women; an attack on a (LGBTI) woman by a perpetrator who used insults and offensive words towards her sexual orientation or gender identity, in written format or in other ways; an attack on a woman by a perpetrator who had used messages of hatred against women, in written format or in other ways; an attack on a woman by someone known to her (such as a colleague or neighbour), in which she is the direct victim of the perpetrator’s animosity, which is underpinned by wider misogyny; an attack on a woman by a perpetrator who belongs to a hate group that specifically targets women.

As illustrated above, the arguments surrounding the identification of femicide more clearly are similar to arguments emphasizing the need to legally define and classify GBV as a form of hate

⁶⁸ See [UN approves new statistical framework to measure and characterize femicide for more effective prevention measures](#).

(Adebjörk, 2020). McPhail (2002, 2004) and McPhail and DiNitto (2005) outline what some of these elements or factors may include, or how they may form the basis of arguments to do so, as follows:

- (1) Gender-based epithets that commonly target a woman's sex;
- (2) The fact that domestic violence is often directed against women when they are pregnant, when their sex is most apparent and when they are particularly vulnerable;
- (3) The way in which patterns of VAW can be established through the perpetrator's serial beatings of female partners and/or the documentation of multiple restraining orders;
- (4) The way in which, when one woman is victimized, women in the surrounding community often become more fearful;
- (5) The way in which sex is a characteristic that cannot be changed to avoid being targeted similar to other hate crime categories;
- (6) That often the perpetrator is not looking for the next "person" to harm, but the next "woman";
- (7) That hate crimes and VAW are used for both proving masculinity and male bonding.

In summary, for GBV incidents to be recognized as hate and prosecuted as such, clear indicators must be outlined (see also Andersson & Mellgren, 2016; Mason-Bish & Duggan, 2020). In addition to the above elements, the identification of other indicators could draw from and include criteria used by the successful prosecution of cases in jurisdictions where this form of bias or hate was recognized (i.e., so-called hallmark cases).

D. Priorities to improve responsiveness to respond to gender-based violence as hate

PD1: Develop and deliver comprehensive training to legal actors

Comprehensive training must occur for legal actors to educate them about the ways in which GBV as a form of hate can occur and be identified. It is known that GBV in general is not consistently a high priority for police in western jurisdictions (see Dowling et al., 2018), a situation that is arguably true globally. However, various countries, including Canada, are increasingly being forced to face the sexist and racist inequalities inherent in their policing institutions, structures and practices (Bryan & Trickett, 2021) which may impact the recognition of various hate characteristics. However, the documented lack of response to GBV as a form of hate can also stem from the comfort level of the individual officers, which can be influenced, in turn, by whether there is a dedicated hate crime investigation and prevention unit, hate crime-specific training and/or cultural diversity training programs.

Even with the clear indicators discussed above, the lack of quality, regular training will continue to produce police officers who may not perceive hate crimes as a priority, or if they do, they will not have the ability to identify what these acts are and why. In doing so, the existing cultures of

sexism, racism, homophobia and other biases inherent to many police organizations must be addressed (Perry, 2016). This requires “effective hiring of majority and minority officers with a keen grasp of progressive social dynamics” and those “with postsecondary education, particularly those with liberal arts and social science degrees” (Perry, 2016: 595). Further, education and training could make accessible more comprehensive understandings and theoretical explanations that explain how GBV as a form of hate can be motivated by hegemonic forms of masculinity, toxic masculinity and so on.

PD2: Develop and promote public awareness and education campaigns

Public education campaigns need to begin to highlight what GBV as a form of hate looks like and how one can identify it. The perception of GBV as less serious than other types of violence has been entrenched in societies where violence against women, girls and sexual minorities is normalized and minimized. As such, without increasing awareness and education about GBV as a form of hate, it is likely that any legislation, or emphasis on its inclusion on its own or in relation to sex and sexual minorities, will fail without addressing these attitudes. As others have suggested (e.g., Hodge, 2011), it is recommended that public education campaigns teach the public about GBV as a form of hate, including the primary victims, and how it can be identified. These types of campaigns could also help inform victims about the recourses available to them within the community and the criminal legal system.

Research continues to show that victims of GBV, and specifically victims of sexual and domestic violence, continue to face distinct challenges because, among members of the public and legal actors, rape myths and stereotypes about intimate partner violence continue to be common. Public education campaigns could begin to address these myths and stereotypes, working to have members of society better understand this form of violence as equal in seriousness to and containing elements of hate, like other types of hate crime. Such campaigns would also help educate across sectors that gender-based crimes, such as domestic violence and sexual assaults, do often fit within the hate crime framework, contrary to assumptions. This education should include examples of cases that have been shown to have evidence of hate in a manner that can more clearly identify what this violence looks like and why it is seen as hate motivated (Hodge, 2011; Maher et al., 2015).

Public education could also include writing op-eds or editorials to explain in accessible language how GBV can be motivated by hate, linking information to cases that draw local, regional, national and/or international attention (McPhail & DiNitto, 2005). Social media campaigns can also be used for educating the public. For example, at the time of writing this report, a woman in her 20s died after being lit on fire on a Toronto bus by a 35-year-old man who is believed to be a stranger the victim.⁶⁹ The headlines about this event suggested that this was a random attack. However, in a tweet by the Canadian Femicide Observatory for Justice and Accountability, the randomness of this was challenged as follows: “When a man lights a woman on fire, it is not a ‘random attack’. It is not ‘random’ that he selected a woman. He selected a woman on purpose. That is not random.” Police have indicated that they are investigating the attack as a suspected

⁶⁹ See [Women lit on fire in ‘random’ attack on Toronto bus; man arrested, police say](#).

hate crime. Details are slow to emerge, but it is likely a sex-motivated hate crime with the potential of one or more other motivations for hate yet to emerge. Focusing on the elements that make this case a hate crime, if and when information becomes available, will be important to public education and awareness.

PD3: Ensure the Task Force on Hate Crime includes GBV as a form of hate

GBV as a form of hate, as well as the protected characteristics of sex, sexual orientation and gender identity or expression, must be included as part of the focus of the upcoming Task Force on Hate Crime. In March of this year, the Canadian Race Relations Foundation (CRRF) and the Chiefs of Police National Roundtable announced the creation of a Task Force on Hate Crimes, co-chaired by the CRRF and the RCMP.⁷⁰ The focus of this task force is on “increasing awareness of the scope, nature and impact of hate crimes across Canada and to create national standards to better support targeted communities across the country...this would include police training, effective engagement with victims and communities, and supporting hate crime units across the country.” The release from the CRRF referenced the “too many heartbreaking instances including London, Quebec City and in Toronto.”

While not specified in the release, the events referenced were as follows: (1) in London (ON), a Muslim family was killed in what police and prosecutors are calling a hate-motivated attack on June 6, 2021, which left three females (a daughter, mother and grandmother) and one male (father) dead and another male injured (son);⁷¹ (2) in Quebec City, six Muslim men were shot dead in a Quebec City mosque on January 29, 2017, by an armed white nationalist terrorist;⁷² and (3) in Toronto, 11 women and two men were killed and 16 others injured by a self-identified misogynist, as discussed above in the Toronto van attack. Given the total number of female victims (N=14) and male victims (N=9) across these three incidents, many with intersecting identities that may motivate hate, it is recommended that both sex and the intersections of sex with other hate motivations be a part of the task force mandate for improvements in both public awareness and better standards for reporting. Sex as a motivating factor for hatred must receive greater attention than it has historically and today.

Further, as noted earlier, the largest discrepancies between police-reported and self-reported data were for sex (<3% compared to 22%) and sexual orientation (15%–20% compared to 32%). In contrast, compared to police-reported statistics, self-reported data are similar for race-motivated hate (50% compared to 49%), but lower for hate motivated by religion (25% compared to 10%). Differences may be explained, in part, by the fact that self-reported data are based on perceived hate motivations by the victim as well as their willingness to report, as discussed above. Regardless, these patterns underscore the need to focus on hate crime more broadly, but a specific emphasis on sex and sexual minorities is required and recommended, including GBV as a form of hate.

⁷⁰ See [Announcing launch of national task force to address hate crimes in Canada](#).

⁷¹ See [‘We don’t want people to forget’: How communities are remembering a Muslim family killed 1 year ago](#).

⁷² See [Remembering the Québec City mosque attack: Islamophobia and Canada’s national amnesia](#).

E. Summary

In summary, this report has underscored the absolute and relative invisibility of GBV as a form of hate in both law and in society globally, particularly for women and girls, but also for sexual minorities. In Canada, existing provisions which could respond are not being used. Public and professionals appear to be almost completely unaware of the extent of this type of hate-motivated violence, despite recent high-profile cases. As a result, there have been no moves to address this phenomenon despite its increasing presence, both physically and online.

This global exclusion or lack of emphasis on VAWG or GBV as a form of hate has been referred to as “striking” (Haynes & Schweppe, 2020); performing a significant normalizing function, making sexual harassment, rape, sexual assault and domestic violence “just life for women and girls” (Brown, 2004; 597); “a selective depreciation of their victimization” (Jacobs & Potter, 1998: 8); and demonstrating the “institutionalized nature of gender inequality” (Pendo, 1994: 158). This invisibility is also evident in the fact that the focus on GBV as a form of hate in this inquiry is the first known to occur in Canada and one of few globally.

As Hodge (2011) noted, and it remains true today, there are few if any studies that have demonstrated whether the inclusion, or enforcement, of characteristics in hate crime legislation reduces the number of bias-motivated acts. In other words, whether they have a specific or general deterrent impact remains unknown. However, this is true for all those who are theoretically protected by our hate crime framework. By obscuring GBV as a form of hate, our governments and our criminal legal systems are perpetuating the myth that GBV is an “individual and privatized form of violence, unequal to the public and political harm suffered by racial or religious minorities” (Perry, 2001). Over two decades ago, Jacobs and Potter (1998) argued persuasively that there is no coherent intellectual basis for excluding (or not emphasizing, as in Canada) hate motivated by sex any more than racist hate crimes, given the significant evidence that women are targeted individually and as a group in many contexts. As such, the continued failure to adequately capture these forms of hate or misogyny in the hate crime framework is a “testament to the gendered power structures in society that determine which gender dictates the law” (Duggan, 2021: 122).

With respect to Canada and some states in the United States, as Jenness (2003) describes it, “gender has found a home in legal discourse on hate crime legislation, but it remains in the guest house of that home” (cited in McPhail & DiNitto, 2005: 1179). Indeed, the current treatment of these forms of violence portrays such acts as not deserving the same recognition as other forms of hate-motivated violence. Continuing to disregard GBV as a form of hate in this way speaks volumes not only to the millions of women, girls and sexual minorities who are victims of such violence but also to the millions of women, girls and sexual minorities who fear such victimization.

In closing, it is recognized that legislation which targets problematic behaviours can only do so much and that real change needs to come at structural and practical levels. It is clear, however, that more GBV is hate motivated than currently reflected in Canadian statistics and in published case law. Therefore, GBV as a form of hate remains marginalized in hate crime legislation –

where such cases are notably rare, especially related to sex – just as violence against women, girls and sexual minorities continues to remain marginalized in society more generally. The government of Canada’s pending actions to further protect Canadians against hate speech and hate crimes can correct for oversight moving forward.

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