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## **Giving all victims a voice: The unique challenges facing victims of hate crimes and anti-Semitic acts**

Submission of the Office of the Federal Ombudsman for Victims of Crime  
to the Inquiry Panel of the Canadian Parliamentary Coalition to Combat  
Antisemitism

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## Table of Contents

	<b>Page</b>
<b>Hate Crimes</b>	<b>2</b>
Scope of the problem	<b>2</b>
<b>Anti-Semitism as a form of hate crime</b>	<b>3</b>
Underreporting	<b>4</b>
Prosecution	<b>6</b>
<b>Unique Challenges Facing Victims of Hate Crime</b>	<b>7</b>
Effects on the larger community	<b>7</b>
Appropriate victim services	<b>8</b>
Long-term impacts	<b>9</b>
<b>Conclusion</b>	<b>11</b>

The following report is being submitted on behalf of the Office of the Federal Ombudsman for Victims of Crime (OFOVC). OFOVC was created in 2007 by the Minister of Justice and the Minister of Public Safety to help victims of crime and their families. The OFOVC responds to calls, emails and letters from victims of crime and works to ensure that the federal government meets its responsibility to victims. The Ombudsman may issue reports, including recommendations to the federal government, on issues that impact negatively on victims of crime.

Since its creation in 2007, the OFOVC has had limited experience with victims of hate crimes. However, recent work by the Department of Justice and others highlights the serious impact hate crimes can have on victims and their communities as well as the need to address a number of important and related issues.<sup>1</sup> This submission raises a number of these issues in order to stimulate important discussion and encourage public dialogue. While the report focuses on the impact of hate crimes generally, as there is little information available about the impact of hate crimes on the Jewish community specifically, we believe many of the principles can be applied to all victims of hate crimes, including victims of Anti-Semitism.

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<sup>1</sup> For example, *An Exploration of the Needs of Victims of Hate Crime*. Rep. Department of Justice Canada, 27 Aug. 2009. Web. 23 Sept. 2009. [www.canada.justice.gc.ca](http://www.canada.justice.gc.ca) and Hill, Dr. James. *Working with Victims of Crime: A manual applying research to clinical practice*. Rep. Ottawa: Ministry of Justice Canada, 2009.

## **Hate Crimes**

Hate crimes refer to criminal offences which are motivated by hatred towards an identifiable group, including religion, race, nationality, language, colour, or sexual orientation. Hate crimes and hate propaganda are a means of portraying a group as inferior because of particular differences.

Year after year, hate groups and their members victimize populations across Canada. Since the late 1980's, Canada has seen an increase and flourishing of activity of hate groups.<sup>2</sup> Hate crimes can be committed by individuals or organized groups. Offences can range from property damage, to harassment, to personal assaults and homicide. However, in recent years the Internet has also been identified as a new medium in which hate groups can increasingly and effectively promote their beliefs and literature.

In Canada, it is a criminal offence to advocate genocide (s.318), to publicly incite hatred (s.319) and to commit mischief in relating to religious and cultural property (s.430 (4.1) and (4.2)). It is also considered as an aggravating factor at sentencing if the offence was motivated by: bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical ability, sexual orientation, or any other similar factor (s.718.2 (a) (i)). The violation of these laws undermines the norms and values of Canadian society, which grant citizens the right to live and express themselves freely without fear of discrimination.

Hate crimes are a unique offence because while the offender(s) or offence may target one person, the intention is to harm that which an individual represents; in essence, the victims' larger community. This may promote fear among other members of the victims' community, be it racial, religious or otherwise.

### ***Scope of the problem***

Accurate statistics on the number of hate crimes committed annually in Canada are difficult to obtain. Statistics Canada's 2004 report *Hate Crime in Canada*<sup>3</sup> helps provide some insight. The following are some of the highlights of the report:

- According to the 1999 General Social Survey (GSS), Canadians indicated that about 4% (273,000) of all self-reported criminal victimization incidents were believed by the victims to be motivated by hate.
- Data collected in the 2002 Ethnic Diversity Survey suggest that 5% of Canadians are worried or very worried about becoming the victim of a crime because of their race, ethnicity, language and/or religion.

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<sup>2</sup> "Research-Hate Crimes." *Victims of Violence*. Victims of Violence. Web. Sept. 2009. <[www.victimsofviolence.on.ca](http://www.victimsofviolence.on.ca)>.

<sup>3</sup> Dauvergne, Mia, Katie Scrim, and Shannon Brennan. "Hate Crime in Canada." *Canadian Center for Justice Statistics*. Statistics Canada, June 2008. Web. Sept. 2009. <<http://statscan.ca>>.

- Of the 928 hate crime incidents recorded in a pilot survey of 12 major police forces in Canada in 2001 and 2002, the majority were motivated by race/ethnicity (57%), followed by religion (43%) and sexual orientation (10%).
- Of those hate crimes reported to police, the majority involved offences against the person (52%) followed by property offences (31%) and other offences (17%), such as hate propaganda.
- Almost one-third of the crimes were considered violent hate crimes, which included threats and physical force; about one-in-five victims of violent hate crime had a weapon used against them. One quarter of victims of a violent crime suffered an injury.
- In cases where the relationship of the accused to the victim was identified, the majority of victims did not know their perpetrator (83%). A further 15% of victims stated that the accused was a casual acquaintance or a business relationship.

Most recently, a 2007 Statistics Canada report, *Police-reported hate crime in Canada*<sup>4</sup> found that crimes motivated by hatred toward a particular group decreased thirteen percent over the previous year; from 892 in 2006 to 785 in 2007<sup>5</sup>. The report also indicated that about half of all police-reported hate crimes were mischief offences, such as acts of graffiti on public property. Every three in ten hate crimes involved violence, usually minor assault or uttering threats, in which the victim suffered little to no physical harm. There has been, on average, one hate-motivated homicide annually, or 23 such murders between 1991 and 2007.<sup>6</sup>

However, it is important to keep in mind that for the statistics that do exist, numbers may be lower than anticipated due to under-reporting by victims and a lack of national standardization with regards to how police classify hate crimes.

### **Anti-Semitism as a form of hate crime**

Anti-Semitism has a long-standing global history, and can be defined as the hatred of those who belong to the Jewish faith, and hostility directed towards the Jewish people, solely based on their identity as a member of the Jewish community.

Religion is the second most common target for hate crimes (race-ethnicity being the first). Of religiously-motivated hate crimes, over half of the victims are Jewish.<sup>7</sup> Of

<sup>4</sup> <http://www.statcan.gc.ca/pub/85-002-x/2009002/article/10844-eng.pdf>

<sup>5</sup> The decrease was largely the result of fewer hate crimes reported by police in Montréal and Toronto but these drops were somewhat offset by increases in Edmonton (+17) and Hamilton (+13).

<sup>6</sup> Phil Walsh and Mia Dauvergne, "Police-reported hate crime in Canada, 2007," Statistics Canada

<sup>7</sup> Phil Walsh and Mia Dauvergne, "Police-reported hate crime in Canada, 2007," Statistics Canada

the hate crimes reported by the police services participating in a pilot survey conducted by the Canadian Center for Justice Statistics, one quarter were Anti-Semitic in nature, involving either Jewish people or institutions. Despite the decrease reported by Statistics Canada, incidents targeting the Jewish faith continue to account for about two-thirds of all hate crimes motivated by religion. As Manuel Prutschi points out, "Hatred has been propagated and incited, institutions and other property have been vandalized, synagogues and schools have been firebombed and cemeteries desecrated, while individuals and groups as well as the community as a whole have been harassed, threatened and attacked."<sup>8</sup>

Some research has shown that acts of Anti-Semitism rise during difficult times in the economy due to negative profiling of Jewish people by hate groups which renders them targets of resentment.<sup>9</sup> This supports a similar theory that hate crimes increase following catastrophic events. Although not necessarily targeting the Jewish community, a rise in hate crimes followed closely after the September 11 terrorist attacks in the United States. Fifteen percent of the hate crime incidents recorded by police following this event were associated with the terrorist attacks, three quarters of these incidents occurring within the two months following the attack.

### ***Underreporting***

There is some debate about the underreporting of hate crimes. Some studies have suggested that hate crimes are underreported to the police<sup>10</sup>, finding that **less than one half** of hate crime victimizations were brought to the attention of the police (45%).

Others have suggested hate crimes are more likely to be reported than non-hate crimes because in nearly one-half of all hate crime incidents, the perpetrator was a stranger, and victims are more likely to report to police if the offender is not known. In addition, a greater proportion of hate crimes are violent in nature and the seriousness of an offence influences whether the victim reports their victimization to the police.<sup>11</sup>

The trend of underreporting is generally true for all victims of crime, but research suggests reporting is even lower for victims of hate crimes. Recent reports from Statistics Canada indicate that 60% of hate crimes are not reported to the

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<sup>8</sup> Prutschi, Manuel. "Anti- Semitism in Canada." *Jewish Political Studies Review* 4th ser. 16.3 (2004). *Jerusalem Center for Public Affairs*. Web. 30 Sept. 2009. <<http://jcpa.org>>.

<sup>9</sup> Mock, Karen. "The Nizkor Project". September 30th 2009 <[www.nizkor.org/ftp.cgi/people/m/mock.karen/perspectives-on-racism](http://www.nizkor.org/ftp.cgi/people/m/mock.karen/perspectives-on-racism)>.

<sup>10</sup> Levin, Jack, and Jack McDevitt. *Hate Crimes*. Massachusetts: Da Capo, 1993. Print.

<sup>11</sup> Janhevich, D. Hate Crime in Canada: An Overview of Issues and Data Sources. Canadian Centre for Justice Statistics. Ottawa 2001. XIE, Ottawa: Canadian Centre for Justice Statistics

police<sup>12</sup> whereas the 2004 Statistics Canada report, *Criminal Victimization in Canada*, found that only 34% of all general victimizations were reported to the police.<sup>13</sup>

Victims may be hesitant to report hate crimes for a number of reasons, including not wanting to identify themselves as member of a targeted group. Researchers have found that victims may also be reluctant to report crimes to police for fear of secondary victimization, because they are apprehensive of what the reaction of the police may be, or because they feel that they will be blamed by the public for bringing the crime upon themselves. Other reasons given for not reporting hate crimes include the belief that the crime is not important; the idea that it is unlikely the police will catch the perpetrators; that the person may be embarrassed about being a victim; and/ or the person does not see what occurred as a crime.<sup>14</sup>

The Ontario Hate Crimes Community Working Group to the Attorney General found that there is a perception among some communities that there is little point in reporting hate incidents to the police; that some fear negative consequences of reporting and others “...are not able to access justice, because their experience of hate activity is often not considered a hate crime or they do not see reporting as a viable option.”<sup>15</sup>

The number of reported hate crimes in any given area may also be influenced by the presence or absence of specialized hate crime programs, hate crime units, hot lines or special outreach initiatives. For example, in 2007, the highest rate of reporting of hate crimes was in Calgary, where law enforcement had previously initiated a program in 2001 to encourage reporting of these crimes.

Statistics are further limited because surveys only measure certain kinds of crime. For example, some statistics do not include offences against businesses or institutions, such as a synagogue, or hate crimes committed against those younger than 15 years of age. The latter point may be significant since youth, defined as between the ages of 12 and 17, account for up to 32 percent of accused persons.<sup>16</sup>

The lack of national standards for the collection of hate crimes statistics by police services is another problem, as police may not identify hate-motivated crime in a consistent manner across Canada. Police statistics depend on a victim first identifying the incident as a hate crime (which may or may not be accurate) and then determining through investigation whether the claim is substantiated. In

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<sup>12</sup> Phil Walsh and Mia Dauvergne, “Police-reported hate crime in Canada, 2007,” Statistics Canada

<sup>13</sup> Maire Gannon and Karen Mihorean, *Criminal Victimization in Canada, 2004*, Statistics Canada Volume 25, Number 7. <http://www.statcan.gc.ca/pub/85-002-x/85-002-x2005007-eng.pdf>

<sup>14</sup> Hill, Dr. James. *Working with Victims of Crime: A manual applying research to clinical practice*. Rep. Ottawa: Ministry of Justice Canada, 2009.

<sup>15</sup> “Addressing Hate Crime in Ontario,” Final Report of the Hate Crimes Community Working Group to the Attorney General. 2006. P.28

<sup>16</sup> Phil Walsh and Mia Dauvergne, “Police-reported hate crime in Canada, 2007,” Statistics Canada

certain cases, the motivation for the crime may not present itself as the only factor in a case, in which case the classification of a particular crime can vary according to the information captured and interpreted by law enforcement. For example, a case of an assault where the assailant uttered a racial slur may be recorded simply as an assault by one police service and as an assault motivated by hate by another.

### ***Prosecution***

The gathering of accurate statistics is further complicated by the difficulties in successfully prosecuting hate crimes. In order to prosecute a hate crime in Canada, the Crown first has to prove the offence was committed and then definitively show that it was motivated by hate. In this scenario, it may not be enough that an offender uttered a racial slur while assaulting someone. The Crown has to prove the offence was motivated by hatred of a person's culture or religion. This may be difficult to understand from a victims' perspective.

Generally, the numbers of successful prosecutions under the "hate crime" provisions of the Criminal Code are low. Between 1994 and 2004, there were 12 prosecutions and 6 convictions under s.318 (advocating genocide); there were 93 prosecutions and 32 convictions under s.319 (incitement to hatred).<sup>17</sup> No convictions for s.430.4.1 (mischief) were recorded during this time and at least 23 cases between 1996 and 2006 applied hate as an aggravating factor in sentencing.<sup>18</sup>

There is some debate about the benefits of specific hate crime legislation. Some argue that hate crime legislation gives a false sense of security to the public because we are led to believe that perpetrators will be punished for their actions, however in reality the low conviction rate shows how difficult it is to prove a crime was motivated by hate. The nature of many hate crimes, such as vandalism, and the fact that many are committed by strangers with little or no connection to the victim, make it difficult for law enforcement to identify the offenders. These kinds of crimes whether they are hate motivated or not, remain challenging for police to solve.

Others have expressed concern that hate crime legislation may increase rather than prevent bias, and some worry it could produce a backlash against minorities.

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<sup>17</sup> *An Exploration of the Needs of Victims of Hate Crime*. Rep. Department of Justice Canada, 27 Aug. 2009. Web. 23 Sept. 2009. <[www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)>. p.16

<sup>18</sup> *An Exploration of the Needs of Victims of Hate Crime*. Rep. Department of Justice Canada, 27 Aug. 2009. Web. 23 Sept. 2009. <[www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)>. p.16.

## Unique Challenges Facing Victims of Hate Crime

The current body of literature that exists on this topic is generally very limited in its ability to explain the particular experiences of hate crime victims, however there are some unique challenges that must be addressed in these cases.

### *Effects on the larger community*

One challenge faced uniquely by victims of hate crime is the ripple-effect each individual crime can have on members of any given community. Crimes committed on the basis of discrimination inflict a great amount of pain across communities and increase the isolation of minority communities. “The consequences of acts of hate are profound and far-reaching...Acts of hate stigmatize and marginalize already stigmatized and marginalized individuals and groups.”<sup>19</sup>

Victims of hate crimes are generally targeted because they are associated with a particular community. They may face prejudice and discrimination on a regular basis and the offence reinforces the threat to them and their community. There is a clear message behind hate crimes that the victims are not welcomed or accepted in society. This undoubtedly has an impact on community members who, as a result, may have heightened levels of anxiety and fear for their own security. These effects are often not taken into consideration in a criminal justice system which measures harm done through the physical damage of the actual offence (i.e. damaged property, a broken arm).

Canada’s justice system is also currently incapable of recognizing the impact these types of crimes have on the entire community, making it difficult or impossible for the system to consider the true impact of the crime. For this reason, the Government should consider amending the *Criminal Code* to allow for community victim impact statements, as has recently been proposed with legislation regarding white collar crimes. Section 380.4(1) of Bill C-52 says

...for the purpose of determining the sentence to be imposed on an offender, or whether the offender should be discharged under section 730, in respect of an offence referred to in subsection 380(1), the court may consider a statement made by a person on a community’s behalf describing the harm done to, or losses suffered by, the community arising from the commission of the offence. The statement must identify the community on whose behalf the statement is made and explain how the statement reflects the community’s views.

Community victim impact statements, which are supported by the in Ontario Hate Crimes Community Working Group to the Attorney General, can be used now with

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<sup>19</sup> “Addressing Hate Crime in Ontario,” Final Report of the Hate Crimes Community Working Group to the Attorney General. 2006. P.35

the consent of the judge, but an amendment to the *Criminal Code* would send a strong message to reinforce this is an important option for these communities.

Impact statements could also be used to help educate offenders about the impact of their actions. This is not to say that those involved in hate crimes would necessarily be moved by such statements, but young people in particular who may not fully comprehend the impact of their actions may benefit. In some cases, particularly those involving young offenders, facilitated victim offender dialogue could assist both a victim and his-her community and the offender.

### ***Appropriate victim services***

Certainly, victims of hate crimes face all the same challenges victims of non-hate crimes do, such as a lack of services and awareness of those services in their community. In general, research shows that less than 10 percent of all victims access formal victim services, relying instead on informal supports like family and friends. This has particular implications for victims of hate crime where secondary trauma to the entire community may also impact these informal support systems. In these cases, the ability of victim's family or community to offer support may be affected by their own feelings of victimization. Similarly, a hate crime may affect a member of the victim's community not even living within the victim's immediate area.

In some cases, victims of hate crime may be referred back to their communities for support. However, if a victim of a hate crime is only referred to organizations within the community to which they belong, they may be made to feel that it is only within their community that they are supported. On the other hand, there are several characteristics that make community-based organizations a more viable option and first point of refuge for victims seeking support. They tend to be accessible and are knowledgeable of the victim's and the community's needs. They provide culturally appropriate and sensitive responses, and have expertise to tailor services to meet such needs.<sup>20</sup>

Because it is unlikely that specialized services will be created for victims of hate crimes, due to the low numbers of victims who would access those services, more needs to be done to improve training of existing victim service workers. "Given that the current generic services for all victims are very limited in scope and victim needs are generally not being met, it may not be realistic to expect specific services to address the special needs of these victims who represent a small sub-group."<sup>21</sup>

Improved training, as well as increased coordination in the investigation and prosecution of hate crimes, would be beneficial to victims. These changes would

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<sup>20</sup> "Addressing Hate Crime in Ontario," Final Report of the Hate Crimes Community Working Group to the Attorney General. 2006. P.27.

<sup>21</sup> *An Exploration of the Needs of Victims of Hate Crime*. Rep. Department of Justice Canada, 27 Aug. 2009. Web. 23 Sept. 2009. <[www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)>. p.28

give victim service workers a better understanding of the experience of victims of hate crimes. One participant in the Department of Justice research on the needs of victims of hate crimes said, "The reality is that we have to significantly improve services available to all victims before we can consider providing specialized services to individual groups of victims."<sup>22</sup>

The Ontario Hate Crimes Community Working Group to the Attorney General recommended that services available to victims of hate crimes and hate incidents be substantially enhanced and expanded, including making hate crime victims a priority for victim services.<sup>23</sup> They said the Ontario Victim Service Secretariat (OVSS)

...falls seriously short in dealing specifically with victims of hate crimes and hate incidents. First, many community-based organizations, groups and vulnerable communities are simply unaware of the services available to victims of hate crime. Secondly, the current services are inadequate to meet the specific needs of many communities and victims hate crime and hate incidents...the OVSS indicated that its efforts are limited by the small number of hate crimes victims whom the police bring to its attention, according to its mandate.<sup>24</sup>

Training for victim service workers should focus on what a hate crime is, who it might affect, how it affects a person, how a victim service worker can help a victim of hate crime, and referral resources. The recent publication of a new chapter on hate crime in the Department of Justice's *Working with Victims of Crime: A manual applying research to clinical practice* by Dr. James Hill may be useful in this regard.

Victim services can also play an important role in helping victims understand the prosecution and justice process. If a victim feels an assault was motivated by hate but this is either not argued by the Crown prosecutor or the judge rejects the argument, it will be important for victims to know this and to understand the reasons why. Victims may also require special assistance in preparing victim impact statements.

Victim services may also be able to help victims understand why certain things in the justice system may be required, especially in cases where something may fall out of line with their religious or cultural practices. For example, some religions (i.e. Orthodox Jews) are opposed to autopsies, but they are necessary in cases of homicide. Victim services could help the family understand the process and why it is

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<sup>22</sup> *An Exploration of the Needs of Victims of Hate Crime*. Rep. Department of Justice Canada, 27 Aug. 2009. Web. 23 Sept. 2009. <[www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)>. p.28

<sup>23</sup> "Addressing Hate Crime in Ontario," Final Report of the Hate Crimes Community Working Group to the Attorney General. 2006.

<sup>24</sup> "Addressing Hate Crime in Ontario," Final Report of the Hate Crimes Community Working Group to the Attorney General. 2006. P.27

necessary. Some cultures and religions may have strong beliefs about the interaction of men and women and if victim services were aware of these issues, they could help ensure the victim's beliefs are respected to the extent possible in the justice system.

If the needs of victims of hate crimes can be met, a positive message will be sent to the targeted individual and their community that there is a group within the larger Canadian society who does care and can provide assistance. Victim service workers must understand that a victim may perceive themselves as a victim even if the evidence does not support it or it is not the view of the police, the Crown or even the worker him-herself. A pamphlet or brochure they could share with victims that outlines the provisions in the *Criminal Code* which relates to hate crimes might be a helpful tool for victim service workers.

### ***Long-term impacts***

Like many other crimes, hate crimes have a lasting effect on the victims beyond the criminal act itself. Victims of hate crimes, like victims of all crimes, feel less secure, and often blame themselves. They may also have a feeling of lower self-worth, which leads to problems in personal relationships, as well as many other personal issues such as anxiety, depression, or an increase in the use of drugs or alcohol.<sup>25</sup>

While victims of all crimes share certain common reactions, there are unique issues attributed to victims of a hate crime. Victims of hate crime tend to report more distress; as well they tend to report higher levels of fear, depression, and anxiety.

Victims of hate crime were chosen as victims by the perpetrator based on characteristics that ultimately define their identity, such as physical appearance or religious beliefs. These are, for the most part, not something the victim can or would want to change, and as such they may continue to feel like they are at risk of similar or repeat victimization. This can make it more difficult for them to regain their sense of safety and security. According to research, 19 percent of past hate crime victims said that they were worried or very worried about suffering subsequent hate-crime victimization, compared to 4 percent of individuals who had been the victim of a crime other than a hate crime.<sup>26</sup>

Victims of hate crime may suffer setbacks in their personal life as they find it very difficult to overcome the incident. Following their attacks, victims of hate crime tend to see the world as a more dangerous place, and see their possibility of victimization as higher than they had prior to the attack.<sup>27</sup>

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<sup>25</sup> Hill, Dr. James. *Working with Victims of Crime: A manual applying research to clinical practice*. Rep. Ottawa: Ministry of Justice Canada, 2009. Print

<sup>26</sup> Warren Silver et al. "Hate crime in Canada," Statistics Canada, 2004.

<sup>27</sup> Hill, Dr. James. *Working with Victims of Crime: A manual applying research to clinical practice*. Rep. Ottawa: Ministry of Justice Canada, 2009. Print

## **Conclusion**

Hate crime is a serious issue that undoubtedly impacts far more Canadians than is currently reflected statistically, and which must be addressed.

Beyond being underreported, hate crimes are difficult to prosecute in Canada, making it difficult to address the issue of discrimination through legal means alone. Because the criminal justice legislation is largely reactive, and hate crime legislation can only respond to a specific incident, the system itself can never fully remedy the ongoing and underlying issue of hate/ bias.<sup>28</sup>

As victims of a form of hate crime, Anti-Semitism victims are targeted because they represent something larger, and not as a result of any personal or individual characteristics. As a direct result, the crimes committed against hate crime victims affect not only the direct victims, but also instil fear in the victims' entire community, sending a message that they are unwanted and a possible future target.

Given the unique characteristic of hate crimes, it should follow that victims have access to appropriate victim services which address not only the immediate needs of the individual victim, but the impact on the community as a whole. Currently, this is not the case. There is a clear gap when it comes to assisting victims of hate crimes in Canada, due at least in part to a lack of clear understanding of the particular aspects of their situation. This could be remedied going forward by putting more emphasis on providing education and training to victim service workers who could then use this knowledge to provide more tailored and appropriate services. Additionally, resources should be allocated to finding integrated and effective solutions to meeting the specific needs of victims of hate crimes.

Finally, even with the modifications to victim services and/or hate crime legislation discussed in this paper it is unlikely that the issue of hate crime will be eradicated. The issue is complex and no one particular answer will address all aspects. Ultimately, we must, as a nation, work towards building a stronger culture of inclusion and tolerance in our communities, in our schools and in our homes.

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<sup>28</sup> *An Exploration of the Needs of Victims of Hate Crime*. Rep. Department of Justice Canada, 27 Aug. 2009. Web. 23 Sept. 2009. <[www.canada.justice.gc.ca](http://www.canada.justice.gc.ca)>.