

## Hate Propaganda Laws (Criminal Code sections 318-320) as they would be amended by Bill C-250

Sources: <http://laws.justice.gc.ca/en/C-46/42050.html> with provisions of C-250 added.  
(C-250 as passed by the House of Commons)

Notes: C-250 adds words to Sections 318.(4) and 319.(3) only.

Changes are shown in **RED**

### *Hate Propaganda*

#### Advocating genocide

**318.** (1) Every one who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

#### Definition of "genocide"

(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(a) killing members of the group; or

(b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

#### Consent

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

#### Definition of "identifiable group"

(4) In this section, "identifiable group" means any section of the public distinguished by colour, race, religion, ethnic origin **or sexual orientation.**

R.S., c. 11(1st Supp.), s. 1.

#### Public incitement of hatred

**319.** (1) Every one 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.

#### Wilful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group 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.

#### Defences

(3) No person shall be convicted of an offence under subsection (2)

(a) if he establishes that the statements communicated were true;

(b) if, in good faith, **the person** expressed or attempted to establish by

argument an opinion on a religious subject or an opinion based on a belief in a religious text;

(c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

(d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Exemption from seizure of communication facilities

(5) Subsections 199(6) and (7) apply with such modifications as the circumstances require to section 318 or subsection (1) or (2) of this section.

Consent

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

Definitions

"communicating"  
«communiquer»

(7) In this section,

"communicating" includes communicating by telephone, broadcasting or other audible or visible means;

"identifiable group"  
«groupe identifiable»

"identifiable group" has the same meaning as in section 318;

"public place" «endroit public»

"public place" includes any place to which the public have access as of right or by invitation, express or implied;

"statements"  
«déclarations»

"statements" includes words spoken or written or recorded electronically or electro-magnetically or otherwise, and gestures, signs or other visible representations.

R.S., 1985, c. C-46, s. 319; R.S., 1985, c. 27 (1st Supp.), s. 203.

[Warrant of seizure](#)

**320.** (1) A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is hate propaganda shall issue a warrant under his hand authorizing seizure of the copies.

Summons to occupier

(2) Within seven days of the issue of a warrant under subsection (1), the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

Owner and author may appear

(3) The owner and the author of the matter seized under subsection (1) and alleged to be hate propaganda may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the matter.

Order of forfeiture

(4) If the court is satisfied that the publication referred to in subsection (1) is hate propaganda, it shall make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

Disposal of matter

(5) If the court is not satisfied that the publication referred to in subsection (1) is hate propaganda, it shall order that the matter be restored to the person from whom it was seized forthwith after the time for final appeal has expired.

Appeal

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

(a) on any ground of appeal that involves a question of law alone,  
(b) on any ground of appeal that involves a question of fact alone, or  
(c) on any ground of appeal that involves a question of mixed law and fact,  
as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XXI, and sections 673 to 696 apply with such modifications as the circumstances require.

Consent

(7) No proceeding under this section shall be instituted without the consent of the Attorney General.

Definitions

(8) In this section,

"court" «tribunal»

"court" means

(a) in the Province of Quebec, the Court of Quebec,

(a.1) in the Province of Ontario, the Superior Court of Justice,

(b) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(c) in the Provinces of Prince Edward Island and Newfoundland, the Supreme Court, Trial Division,

(c.1) [Repealed, 1992, c. 51, s. 36]

(d) in the Provinces of Nova Scotia and British Columbia, in Yukon and in the Northwest Territories, the Supreme Court, and

(e) in Nunavut, the Nunavut Court of Justice;

"genocide" «génocide»

"genocide" has the same meaning as in section 318;

"hate propaganda"

«propagande haineuse»

"hate propaganda" means any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under section 319;

"judge" «juge»

"judge" means a judge of a court.

R.S., 1985, c. C-46, s. 320; R.S., 1985, c. 27 (2nd Supp.), s. 10, c. 40 (4th Supp.), s. 2; 1990, c. 16, s. 4, c. 17, s. 11; 1992, c. 1, s. 58, c. 51, s. 36; 1998, c. 30, s. 14; 1999, c. 3, s. 29; 2002, c. 7, s. 142.

[Warrant of seizure](#)

**320.1** (1) If a judge is satisfied by information on oath that there are reasonable grounds for believing that there is material that is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, that is stored on and made available to the public through a computer system within the meaning of subsection 342.1(2) that is within the jurisdiction of the court, the judge may order the custodian of the computer system to

(a) give an electronic copy of the material to the court;

(b) ensure that the material is no longer stored on and made available through the computer system; and

(c) provide the information necessary to identify and locate the person who posted the material.

Notice to person who posted the material

(2) Within a reasonable time after receiving the information referred to in paragraph (1)(c), the judge shall cause notice to be given to the person who posted the material, giving that person the opportunity to appear and

be represented before the court and show cause why the material should not be deleted. If the person cannot be identified or located or does not reside in Canada, the judge may order the custodian of the computer system to post the text of the notice at the location where the material was previously stored and made available, until the time set for the appearance.

Person who posted the material may appear	(3) The person who posted the material may appear and be represented in the proceedings in order to oppose the making of an order under subsection (5).
Non-appearance	(4) If the person who posted the material does not appear for the proceedings, the court may proceed <i>ex parte</i> to hear and determine the proceedings in the absence of the person as fully and effectually as if the person had appeared.
Order	(5) If the court is satisfied, on a balance of probabilities, that the material is available to the public and is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, it may order the custodian of the computer system to delete the material.
Destruction of copy	(6) When the court makes the order for the deletion of the material, it may order the destruction of the electronic copy in the court's possession.
Return of material	(7) If the court is not satisfied that the material is available to the public and is hate propaganda within the meaning of subsection 320(8) or data within the meaning of subsection 342.1(2) that makes hate propaganda available, the court shall order that the electronic copy be returned to the custodian and terminate the order under paragraph (1)(b).
Other provisions to apply	(8) Subsections 320(6) to (8) apply, with any modifications that the circumstances require, to this section.
When order takes effect	(9) No order made under subsections (5) to (7) takes effect until the time for final appeal has expired.

2001, c. 41, s. 10.