

CITATION: R. v. Whatcott, 2026 ONSC 3605
COURT FILE NO.: CR-19-70000064-0000
DATE: 20260916

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
HIS MAJESTY THE KING	)	<i>Scott Patterson and Jennifer Epstein, for the</i>
	)	Crown
- and -	)	
	)	
WILLIAM WHATCOTT	)	
	)	
	)	Accused
	)	<i>Dan Stein and Mindy Caterina, counsel for</i>
	)	the Accused
	)	
	)	HEARD: May 25, 26, 27, 28, and June 3,
	)	2026

MOLLOY J.:

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A. INTRODUCTION

[1] On July 3, 2016, William Whatcott, along with six of his followers, marched in Toronto’s Gay Pride Parade. He applied in advance and obtained a permit for his group to participate in the parade by falsely representing them as the “Gay Zombies Cannabis Consumers Association” and falsely identifying himself as Robert Clinton. In the application form, Mr. Whatcott falsely told the organizers that his contingent consisted of “zombies who are gay and who smoke pot” and that their message was “to have fun” but to do so “responsibly and safely.” He said they would provide “zombie safesex packets” to “encourage zombies to be safe when having sex or when playing with blood sports.” Although required to get advance approval for any handouts, he did not provide a sample of his flyer to the parade organizers.

[2] On parade day, the group arrived wearing skin-tight lime-green spandex body suits with matching green hooded masks covering their heads and faces. In addition, each of them accessorized their outfits with various rainbow-themed items, Mr. Whatcott's being a tutu in rainbow colours and a rainbow-striped superhero cape. Each of the zombies carried a large shoulder bag containing packages of what appeared to be condoms, but which instead contained a folded-up flyer printed on both sides with what is alleged in this case to be anti-gay messaging. As they continued along the parade route, the Gay Zombies handed out 3,000 of these packages.

[3] One recipient of such a package complained to the Toronto Police Service, as a result of which Mr. Whatcott (whose name and contact information are on the flyer) was charged with inciting hatred against gay men, contrary to s. 319(2) of the *Criminal Code*.

[4] The charge against Mr. Whatcott proceeded to trial in October 2021, at the conclusion of which he was acquitted.¹ The Crown appealed. There were three grounds of appeal argued before the Court of Appeal, but the Court ruled on only one of them: the trial judge's ruling refusing to hear opinion evidence from Professor Nick Mulé, an expert on the history of anti-gay discrimination and how such discrimination is often perpetrated. At the time of the ruling, the trial was scheduled to proceed before a jury. The trial judge reasoned that the proposed evidence, while relevant, was not necessary to the jury's deliberations and the cost/benefit analysis favoured excluding it. The Court of Appeal found that the trial judge erred in excluding this evidence and ordered a new trial. The Supreme Court of Canada denied leave to appeal.²

[5] Prior to the date scheduled for the retrial, my colleague McArthur J. heard two evidentiary motions brought by the Crown – one relating to the admissibility of the opinion evidence of Professor Mulé, and the other relating to the admissibility of evidence of prior discreditable conduct. At the time these motions were heard in the fall of 2025, the understanding was that the retrial would be with a jury.

[6] On the prior discreditable conduct issue, McArthur J. held that the Crown could lead evidence of two flyers Mr. Whatcott had distributed in Saskatchewan in 2001/2002 and an excerpt of the Supreme Court of Canada decision finding that those flyers exposed gay people to hatred contrary to the Saskatchewan human rights legislation.³ However, she dismissed the Crown's application to introduce into evidence nine blog postings by Mr. Whatcott in 2018-2019, after the 2016 Pride March activities giving rise to the charges now at issue.⁴

[7] In separate reasons, and in an addendum to those reasons, McArthur J. ruled that the expert opinion evidence was admissible. She summarized that ruling as follows:

Professor Mulé is qualified as an expert to testify about the following three matters: 1) the historical tropes, stereotypes, and dog-whistle devices used to

¹ *R. v. Whatcott*, 2021 ONSC 8077 [*Whatcott 2021 (Trial)*].

² *R. v. Whatcott*, 2023 ONCA 536, 168 O.R. (3d) 81 [*Whatcott 2023 (Appeal)*], leave to appeal refused, [2023] S.C.C.A. No. 421.

³ *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467, at paras. 182-193 [*Whatcott 2013 (Human Rights)*].

⁴ *R. v. Whatcott*, 2026 ONSC 568 [*Whatcott 2026 Pretrial Rulings*].

denigrate gay people, 2) the impact of those tropes, stereotypes and dog-whistles on the gay community, and 3) the presence of any tropes, stereotypes or dog-whistles in the flyer. The cost-benefit analysis favours admission of Professor Mulé's evidence in these three delineated areas. To be clear, Professor Mulé is not permitted to go further, and opine as to whether any tropes, stereotypes, or dog-whistle devices in the flyer amount to or promote hate.⁵

[8] The retrial commenced before me on May 25, 2026, the accused having elected to be tried by judge alone (as he ultimately did at his first trial as well). The evidence included extensive Agreed Statements of Fact ("ASF") and exhibits filed on consent, including a will-say statement containing the opinion of an expert on Theology and Christian Thought and the flyers Mr. Whatcott distributed in Saskatchewan in 2001/2002. In addition, there were two *viva voce* witnesses: Professor Nick Mulé (the expert who the trial judge had ruled was not necessary at the first trial) and Mr. Whatcott himself (who did not testify at the first trial).

[9] In the course of the trial, it would have been open to me, if I saw fit, to depart from any of the rulings made by McArthur J. in her pre-trial decisions. I did not do so. I agree entirely with her reasoning and nothing arose during the trial to alter that view. If anything, given that I did not have a jury, the case for hearing the evidence was even stronger and the potential downside was negligible.

[10] As predicted by the Court of Appeal in its decision, and based on its summary of the evidence in the first trial, the evidentiary record before me appears to have been quite different from the evidence in the first trial. In particular, I had the benefit of seeing and hearing Mr. Whatcott testify. The Saskatchewan flyers were before me, Mr. Whatcott was questioned about them, and he testified about the impact of the 2013 Supreme Court of Canada decision on the choices he made in preparing the material for the 2016 Gay Pride parade.

[11] I also had the benefit of hearing the expert evidence of Professor Mulé, although I do not think that constituted a significant change from the evidence in the first trial. Goldstein J. did not find Professor Mulé's evidence to be irrelevant to the issues before him. Rather, he concluded that it was unnecessary as the members of the jury would be familiar with the history of discrimination against gay men, and also held that the cost-benefit analysis favoured excluding it.

[12] Obviously, I have not reviewed the evidence from the first trial and there may have been other differences, but these are the ones that are readily apparent.

[13] As noted by Professor Mulé, the concepts of gender and sexual diversity are fluid, and the language and acronyms used to describe this community have changed over time. Currently, the full acronym in popular use is "LGBT2-SQI" – Lesbian, Gay, Bisexual, Transgender, Transsexual, 2-Spirit, Queer, and Intersex. Sometimes a "plus" is also added. For the sake of convenience in these Reasons, I will refer to "gay men" and the "gay community" as they were the primary targets of the leaflets distributed by Mr. Whatcott.

⁵ *R. v. Whatcott*, 2026 ONSC 569 and 2026 ONSC 2207, at para. 16 [2026 Pretrial Rulings].

[14] Based on the evidence in the trial before me, I am satisfied beyond a reasonable doubt that the flyer distributed by Mr. Whatcott and his fellow Zombies promoted hatred of gay men, as defined in the case law, and also that Mr. Whatcott wilfully distributed the flyer knowing this to be the case. His purported religious reasons for his conduct do not constitute a defence under the *Criminal Code* or at common law. I therefore find him guilty as charged. My reasons for reaching these conclusions are set out below.

B. THE ISSUES

[15] Mr. Whatcott is charged under s. 319(2) of the *Criminal Code*, which states:

Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of...an indictable offence...

[16] I agree with the Crown's submission that the offence can be broken down into five constituent elements:

- (i) the accused communicated statements;
- (ii) the statements were communicated publicly;
- (iii) the statements promoted hatred;
- (iv) the promotion of hatred was against an identifiable group; and
- (v) if the communication promoted hatred, the accused did so wilfully.

[17] Several of the constituent elements were admitted by the defence. The flyers distributed at the Gay Pride Parade in 2016 were communications and made in public, as opposed to being in private conversation. It is clear from the evidence of Mr. Whatcott that he was the author of the flyer and that he handed them out at the parade. It is also admitted that gay men are an identifiable group, within the meaning of the legislation.

[18] Both parties agree that there are two issues for me to determine, each of which the Crown must prove beyond a reasonable doubt:

- (1) Did the flyer promote hatred against gays?
- (2) If so, did Mr. Whatcott wilfully promote such hatred?

[19] Against this backdrop, I will now turn to the factual record before me.

C. THE CONTENT OF THE FLYERS

[20] The flyer consisted of one sheet of paper, densely printed on both sides with text and accompanying colourful pictures.

Page One

[21] The top of the first page features a colour photograph of two young men, shown from the waist up. They are shirtless and both are facing the camera. One man is behind the other and has his arms wrapped around the other man, clasped just above the waist of the man in front. The image has been altered to add zombie-like, glazed eyes for both men, with blood dripping from their mouths. Beneath that picture in large print are the words, "Gay Zombies want you to practice safe sex!"

[22] Below the "zombie" photos, there are two photographs on the left side of the page, with text boxes on the right side purporting to explain what is in the picture. The first of these photographs is a grotesque depiction of a male anus with large anal warts. The text box states that studies in Vancouver and San Francisco have found "nearly 100%" of HIV+ homosexuals and 67% of HIV- homosexuals are infected with HPV of the rectum," which is then said to lead to anal warts and anal cancer. The text then lists 12 diseases "homosexuals are at high risk of acquiring" and says that some of them are almost exclusively homosexual and that others "such as Gonorrhea and Syphilis" which were traditionally heterosexual were "becoming epidemic in the homosexual subculture."

[23] Immediately below the "anal warts" photograph is a picture of what appears to be a severely emaciated dead body covered with lesions. The text box to the right of the picture describes this as an "AIDS fatality" and says that homosexuals "falsely believe" the new anti-viral medications used to treat HIV prolong life dramatically; that every year 15,000 people in North America die from AIDS; and that the new drugs have serious side effects, some of which are life-shortening.

[24] The third box purports to show three photographs of a person named Walt Heyer: first as a young boy, then as an adult young woman, then as an older man. The text box states that Walt underwent hormone therapy and surgery to transition to being a woman and then after eight years "turned to Jesus Christ and embraced his manhood once again." He is said to have married a woman and to be living happily as a man. The text then warns, "If you are struggling with gender confusion don't let homosexual activist therapists lie to you and tell you, you can be a gender other than your birth gender."

[25] The first page then finishes with a paragraph stating that homosexuality is against the "natural law" and "incompatible with human nature." It states, "Disease, death and confusion are the sordid realities of the homosexual lifestyle." It then states that the Gay Zombies are concerned about the welfare of "all potential homosexual pride attendees" and want them to have the accurate information and abstain from homosexuality. Contact information is then provided for Mr. Whatcott.

Page Two

[26] The content on page two is primarily political and religious in nature.

[27] At the top of the page, there are two photographs. The one on the left is a head and shoulders photograph of then Prime Minister Justin Trudeau, with his mouth open in an oval form, as if singing. To the right of that is a close-up shot of the mouth of an unidentified man, which is open in the same shape. His lips are covered with sores. There is a paragraph of text below the photographs. The text describes the sores on the unidentified man's mouth as being "genital warts". Other aspects of the text refer to the Prime Minister as "a chronic attendee of homosexual pride parades" and to his political party as having "a long and sordid history of homosexual activism and both enabling and participating in child sexual abuse." The paragraph goes on to assert that "homosexuals at the Toronto Pride parade have been known to engage in oral sex on each other in public." It is unclear if this is a general allegation about gay men or one that specifically alleges public oral sex at the Pride Parade. The paragraph closes by stating that the "unfortunate homosexual" in the picture above demonstrates that "oral sex on strange men" is not risk free.

[28] The second section of page two features a photograph of former Liberal Defence Minister, Bill Graham. There is a text box to the right of the photo which alleges that Mr. Graham "sodomized a 15 year old male prostitute" and mainstream media outlets failed to report that his "boyfriend" was an underage male prostitute due to their "political correctness" being more important to them than "the welfare of exploited boys." The text box closes by noting that Bill Graham voted for same sex marriage and to lower the age of consent for sodomy to 14 and then states, "Conflict of interest?"

[29] The third section has two photographs side-by-side. The text to the right of the photographs describes them as, "Lesbian Liberal Premier Kathleen Wynne and her buddy (who sat beside her at the Toronto homosexual pride parade) former Deputy Education Minister, now convicted child pornographer with an incest fetish, Benjamin Levin." The text then goes on to say that "Benjamin's pawprints are all over Ontario's perverted sex education curriculum" and that Wynne is "ramming this propaganda down parent's and children's throats."

[30] These first three sections with accompanying photographs are then followed by two paragraphs of text as follows:

Canada has embarked on a destructive journey towards sexual anarchy and homosexual inspired oppression. The fruit of sexual anarchy is the rejection of God's life plan of life long heterosexual matrimony and replacing the virtues of chastity, fidelity, unconditional love, and life long commitment to one's spouse, with promiscuity, polyamory, pornography, and homosexuality. The clear evidence contained in this package shows Canada's new sexual ethic is contrary to natural law and no good will come of it.

The rejection of true marriage is also in direct opposition to God's law and it is our duty to warn you that those who choose to rebel against the god who created them, do so to their eternal peril. For those reading this Gospel package we also want to let you know that there is a God who loves you, and who is real, and who has made a way for you to come to Him.

[31] There is then a sentence urging those who are tired of their sins to contact Bill Whatcott, and his contact information is listed. The leaflet ends with a quotation from the New Testament about Christ having suffered for the sins of man (1 Peter 2:21-24).

D. OTHER EVIDENCE AT TRIAL

[32] There was little disagreement with respect to the factual evidence, most of which was introduced as ASFs, or by simply filing documents on consent. Two experts provided evidence, one who testified in person and one for whom a will-say statement was filed on consent. In addition, William Whatcott testified on his own behalf.

1. Agreed Facts and Documents

[33] The history of the Toronto Gay Pride parade and its nature were part of the agreed facts at trial, as was the role of the Gay Zombies Cannabis Consumers Association and how they obtained permission to participate in the parade in 2016. Mr. Whatcott admitted that he filled out the necessary forms and did not seek permission to hand out the flyers.

[34] Thousands of people attended the parade. The spectators were from diverse groups and included people of all sexual orientations, ages, races, and genders, but were predominantly supporters of the LGBTQ2-SI+ community. The two-sided flyer distributed by the Gay Zombies was an exhibit.

[35] After the parade, Mr. Whatcott posted on his website, FreeNorthAmerica.ca, an article entitled "Whatcott Christian Commandos Infiltrate Toronto Shame Parade". The text and accompanying photographs were marked as Exhibit 6 at trial. The article sets out biblical quotations at various places. Mr. Whatcott described his group as the "Elite Top Secret Special Forces Crack Christian Commando Anti-Sodomite Counter Intelligence Unit" and said that they had achieved a "glorious victory for the Gospel of Jesus Christ" by delivering the leaflet disguised as a "safe sex package". The text of the leaflet was originally included, but ultimately the website stated that the content was "reluctantly removed to comply with court order". There were multiple photographs of the Gay Zombies, and other participants in the parade, including "naked sodomites". Under one of the photographs of a Gay Zombie handling out the "safe sex package" was this caption:

Here is one of my commandos delivering Biblical, medical and sociological truth on the harms of homosexuality. Sadly, in order to deliver this much needed truth he had to disguise himself as a "gay" zombie because the parade was too intolerant to accept him as an "out of the closet" Christian man who speaks the truth about homosexuality.

[36] One of the photographs shows a group of men marching in the parade scantily clad in S&M-type costumes carrying a banner reading "The Toronto Sisters of Perpetual Indulgence." The caption under that photo reads, in part,

The Sisters of Perpetual Indulgence promote hate and show a level of disrespect towards Christians that would get Christians charged with a "hate crime" if we

were to emulate their nastiness and behave in a similar fashion towards homosexuals or any other minority.

[37] After Mr. Whatcott was arrested with respect to this charge now before me, he gave a statement to police which was conceded to be voluntary.

[38] A separate ASF (Exhibits 7-10) provided information about a human rights complaint that was filed against Mr. Whatcott for promoting hatred against the gay community relating to flyers he distributed in Saskatchewan in 2001 and 2002. A human rights tribunal found him guilty of breaching human rights legislation with respect to those flyers, and the case eventually went to the Supreme Court of Canada. The ASF explains what happened in the case and attaches the flyers in question as well as portions of the 2013 Supreme Court decision upholding the tribunal's decision on two of the flyers, but not the third.

2. Religion Expert - Will-Say Statement Filed on Consent

[39] Dr. Douglas Farrow testified as a defence expert witness at the first trial on this charge. At the trial before me, rather than have him testify in person, counsel consented to the filing of his evidence in the form of a will-say statement.⁶ Dr. Farrow is a Professor of Theology and Christian Thought and is eminently qualified to testify as an expert in that field.

[40] Dr. Farrow wrote that Christian theology is based on the Old Testament and the New Testament, from which flow a belief system that "people flourish when they live according to God's plan, but they encounter problems when they do not."⁷

[41] Under this religious ideology there is a "divine plan" that the "foundation for a human society to flourish is the marriage of one man and one woman."⁸ Pursuing an alternate plan, including homosexuality, leads to corruption and death. A four-fold understanding of law informs Christian teachings: (1) eternal law (the plan and purpose of God the Creator); (2) natural law (the rational person's ability to use reason to recognize and understand the Creator's order); (3) civil law (the law of the community which recognizes that people can make laws in accordance with natural law); and (4) revealed or divine law (as revealed by Moses, Jesus, and the scriptures).

[42] Natural law requires pursuing the good and avoiding the evil. Since God's plan includes lifelong, monogamous, procreative marriage, any other activity is viewed as a sin against God and nature. This includes, but is not limited to, homosexual acts.

[43] Dr. Farrow states that, "The duty to warn others is prevalent in Christian tradition."⁹ However, "intentionally attacking, insulting, or denigrating a person can be construed as being outside the duty to warn."¹⁰ Further, the "duty to warn should not include trickery and deceit."¹¹

⁶ Exhibit 15.

⁷ Exhibit 15, at para. 8.

⁸ Exhibit 15, at para. 9.

⁹ Exhibit 15, at para. 18.

[44] According to Dr. Farrow, in Christian tradition “dark forces” could reference “evil or wickedness.”¹² Sinners should repent and turn to Jesus as saviour.

[45] Dr. Farrow points out that neither the Bible nor mainstream Christian tradition hold that being gay is a sin. However, the recognition of gay marriage is against the natural law, and natural law can make civil law unjust. “[W]here societal law contradicts natural law, it has no binding force on the conscience.”¹³ However, Christian tradition does not encourage hate, which is the opposite of love.

3. Social Science Expert - Testimony of Dr. Nick Mulé

[46] Dr. Nick Mulé is a practicing psychotherapist and a professor at York University with cross-appointments in the School of Social Work; School of Gender, Sexuality, and Women’s Studies; Faculty of Liberal Arts and Professional Studies; and Faculty of Health. He was tendered by the Crown as an expert social scientist qualified to provide opinion evidence in three areas: (1) the historical tropes, stereotypes, and dog-whistle devices used to denigrate gay people; (2) the impact of those tropes, stereotypes, and dog-whistles on the gay community; and (3) the presence of any such tropes, stereotypes, or dog-whistle devices in the flyers distributed by Mr. Whatcott.

[47] Dr. Mulé’s expertise in these areas was recognized by the Court of Appeal for Ontario and by McArthur J. in the pre-trial motions in this case. He has lectured, taught, and written on these subjects for many years and is well-qualified to provide opinion evidence. Although Dr. Mulé’s written opinion and supplementary opinion were provided for my assistance and marked as lettered exhibits at trial, it is his testimony at trial that constitutes his evidence in this case. Although Dr. Mulé was permitted to testify in these areas, he was not permitted to offer an opinion as to whether any of the tropes, stereotypes, or dog-whistles he saw in the leaflet would promote hatred. That is a question solely for the trier of fact.

[48] Dr. Mulé identified three areas in which tropes have been used to demean gay men: (1) religion, (2) law and criminality, and (3) health (both physical and mental). These may sometimes overlap.

[49] Religious tropes include the notion that gay sex is unnatural and immoral and will be punished by God. Sometimes the words “sodomite” or “sodomy” are used as pejorative terms to connote immorality.

[50] The criminality trope can be used to describe gay men as predators, and disproportionately pedophiles.

[51] He described two ways in which the health trope is used against the gay community. Historically, homosexuality was listed as a psychiatric disorder in the DSM. Although it has

¹⁰ Exhibit 15, at para. 19

¹¹ Exhibit 15, at para. 19.

¹² Exhibit 15, at para. 20.

¹³ Exhibit 15, at para. 24.

since been removed, the term “homosexuality” still carries with it a stigma related to it being considered a disordered state of mind. Gay conversion therapy has been debunked scientifically, but there are still some who continue to insist that being gay is something that can be, or even should be, cured. The health trope also characterizes gays as carriers of disease and, overlapping with religious tropes, that these illnesses are visited upon gay people by God as retribution for their sinful lives.

[52] Dr. Mulé identified many of these tropes in the leaflet Mr. Whatcott was handing out at the Gay Pride parade, including:

- a. gay men as carriers of disease;
- b. references to a “subculture” or otherness;
- c. references to the gay lifestyle as being sordid;
- d. the use of pejorative terms like sodomy and homosexual;
- e. references to pedophilia, recruiting children to become gay, and feeding false information to children who then change their genders; and
- f. repeated strong religiosity and references to sinful conduct.

4. The Testimony of William Whatcott

[53] I will not attempt here to summarize the entirety of Mr. Whatcott’s testimony at trial, but will merely set out the evidence I find most salient.

[54] At the beginning of his evidence, Mr. Whatcott described his background and what brought him to this point in his life. He had a troubled childhood and his father was not involved in his life. He dropped out of high school and wound up in foster care. For a time, he was addicted to drugs and homeless. He described himself as “promiscuous” and a “habitual liar.”¹⁴

[55] He said he found Jesus Christ when he was 18 and got his life together by the time he was 21. He went back to school and became a registered nurse. He was a visiting nurse in the 1990s in Toronto, caring for many patients who had AIDS/HIV.¹⁵ He is no longer working as a nurse. There was no evidence as to why or when that career ended. He is now a school bus driver and part-time carpet cleaner in Calgary.

[56] Mr. Whatcott self-identifies as a “conservative evangelical” who believes the Bible to be the word of God and authoritative. He believes that sex is sinful unless between one man and one woman within a lifelong marriage. He describes himself as a “political activist with a Christian agenda” and believes he has a duty to proselytize.

¹⁴ Transcript of Proceedings, May 27, 2026, at p. 3, lines 22-23.

¹⁵ Transcript of Proceedings, May 27, 2026, at p. 8, lines 8-30.

[57] Mr. Whatcott admitted that he created the flyer and that he and his group handed out 3000 of them at the 2016 Gay Pride parade in Toronto. He also admitted that he filled out the application form for the Gay Zombies to march in the parade and that he filled it with false information knowing that if he told the truth, they would not have been given permission to participate.

[58] He testified that he read the Supreme Court of Canada's 2013 decision in his Saskatchewan human rights case and believed that he had steered clear of any content that would "get him in trouble". He said what he learned from reading the decision was: "to tone down the vitriol"; "not to refer to homosexuals as pedophiles"; not to make specific calls for discrimination against gay people; to stick to the facts; and that it was okay to quote the Bible and to debate the morality of sexual behaviour.¹⁶

[59] He showed the proposed leaflet to about 100 people he knew, including some who were lawyers and ministers, and none of them had any problems with it. He did not seek out an impartial legal opinion about it, nor did he consult the police or a Crown Attorney.

[60] Mr. Whatcott acknowledged that he knew the labels "homosexual" and "sodomite" were considered to be pejorative and were offensive to many in the gay community. Nevertheless, he used those terms in his leaflet because he considered them accurate and, with respect to "sodomite", because it was used in the Bible.¹⁷

[61] Mr. Whatcott acknowledged he told lies in the course of getting permission for the Gay Zombies to participate in the 2016 Gay Pride parade. On cross-examination he was confronted with the will-say statement of Dr. Farrow that there is a Christian duty not to engage in trickery and not to lie, to which he responded:

It's not an absolute prohibition, for a tactical purpose one can do it. Certainly in wartime, it's used and I viewed this as a spiritual war and an act of activism.¹⁸

[62] Mr. Whatcott also conceded that, instead of lying to get into the parade, he could have simply gone to the Church Street celebrations and handed out leaflets, or his safe sex packages. However, he said the means he chose was "more efficient."¹⁹ When asked if he chose to participate in the parade in the manner he did because he wanted the opportunity to "gloat", he said, "I certainly shared what I did and I was happy with the result" and then conceded that "maybe gloat would be a fair word" to describe the text and photographs he put on the internet after the parade.

[63] Mr. Whatcott testified that it was his "duty as a Christian to warn people not to rebel against God."²⁰ He stated during his examination in chief that his purpose in attending the Gay

¹⁶ Transcript of Proceedings, May 27, 2026, at pp. 16-21.

¹⁷ Transcript of Proceedings, May 28, 2026, at p. 50, lines 13-19.

¹⁸ Transcript of Proceedings, May 27, 2026, at p. 44, lines 13-16.

¹⁹ Transcript of Proceedings, May 27, 2026, at p. 47, line 29.

²⁰ Transcript of Proceedings, May 27, 2026, at p. 40, lines 1-3.

Pride parade was “to share the gospel with the parade attendees and participants and to make a political statement.”²¹ Later, still in chief, he said,

[Mainly] because it is political and I believe that Christians would ignore it to their peril. Also, it is taxpayer funded, so I should be able to participate like anyone else . . . there’s certainly a couple hundred thousand attendees and they all needed the good news, they’re, they’re unchurched and I got 3,000 gospel flyers into their hands.²²

[64] However, in cross-examination, he described the Gay Zombie’s actions as “an infiltration” and agreed with the characterization in his website posting that his purpose in attending the parade was “to strike at the dark forces of the Toronto homosexual shame parade.”²³

[65] Throughout his testimony Mr. Whatcott maintained that the statements he made in the leaflet were true and accurate. In his statement to the police, Mr. Whatcott told them that the images he included of gay men who had died of AIDS or had various sexually transmitted diseases came from medical websites. However, he admitted on cross-examination that at least one of the images was not from a medical source as it had embedded within it a watermark showing its source – a website named “cutedeadguys.net”. This is decidedly not a reputable medical source. When this was pointed out, he responded, “For me, the source of them is not as important as the accuracy.”²⁴

E. APPLICABLE LEGAL PRINCIPLES

1. General Principles

[66] Mr. Whatcott is charged under s. 319(2) of the *Criminal Code*, which states:

319(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[.]

[67] There are two main legislative ways in which promoting or inciting hatred against others is dealt with in our society: (1) through human rights legislation and (2) under the *Criminal Code of Canada*. While there is some overlap between these two regimes, particularly with respect to what constitutes “hatred”, there are also some key differences, the most important of which is the element of intent (or *mens rea*). Human rights legislation is focussed on the victims of the hatred. It is the effect of the hate that is at issue, rather than the intention of the perpetrator.²⁵ This is in

²¹ Transcript of Proceedings, May 27, 2026, at p. 21, lines 27-28.

²² Transcript of Proceedings, May 27, 2026, at p. 25, lines 5-14.

²³ Transcript of Proceedings, May 27, 2026, at p. 49, lines 1-5.

²⁴ Transcript of Proceedings, May 27, 2026, at p. 58, lines 2-3.

²⁵ *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, at pp. 549-50; *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, at pp. 931-932.

direct contrast to the criminal offence regime where the intention of the perpetrator is an essential element of the offence.

[68] While the effect of hate is not irrelevant to a criminal offence analysis, the main focus is on the accused – whether his actions constitute the offence as charged and whether he had the requisite level of intent. The *Criminal Code* seeks to punish the wrongdoer who promoted the hatred; human rights legislation seeks to compensate the victim of the hatred. However, it must also be recognized that the underlying purpose of both regimes is to eliminate hatred against identifiable groups.

[69] To some extent, both the *Criminal Code* and human rights anti-hate provisions inherently infringe upon freedom of expression. However, it is also generally recognized that human rights legislation may limit freedom of speech more broadly than the hate provisions of the *Criminal Code*.²⁶ This is appropriate given the weight of the penalties and stigma associated with a criminal conviction.

[70] Finally, the standard of proof between the two regimes is quite different. A human rights violation is established on a balance of probabilities, whereas an offence under the *Criminal Code* provisions must be proven beyond a reasonable doubt. Thus, despite some overlap in the general concepts of hate and promoting hatred, care must be taken to ensure that an analysis under the *Criminal Code* provisions applies the higher standard required for a criminal conviction.

2. The Meaning of “Hatred” in the Context of s. 319(2)

[71] The constitutionality of s. 319(2) of the *Criminal Code* was upheld by the Supreme Court of Canada in 1990 in *R. v. Keegstra*.²⁷ The accused in that case was a high school teacher in Alberta. In the early 1980s, he taught the children in his classes that Jewish people were, among other things, “sadistic”, “money loving”, “power-hungry”, “child killers”, who were responsible for “depressions, anarchy, chaos, wars and revolution” and were “inherently evil”.²⁸ He was charged (under s. 319(2) (then s. 281.2(2)) of the *Criminal Code*) with promoting hatred against Jewish people and was convicted of that offence by a jury. Mr. Keegstra challenged the constitutionality of the provision, arguing that it was a breach of his right to freedom of expression under s. 2 of the *Charter*. That issue wound its way to the Supreme Court of Canada, which determined that, although the provision was an infringement of freedom of expression, it was saved under s. 1 of the *Charter*. The majority decision, authored by Dickson C.J.C., held that s. 319(2) was a proportionate response to an important legislative objective. Underlying the majority’s finding of constitutionality is their interpretation of “hatred” within the context of s. 319(2), which goes beyond the broad dictionary definition of the word.²⁹ The majority held that

²⁶ *Taylor*, at pp. 935-936.

²⁷ *R. v. Keegstra*, [1990] 3 S.C.R. 697.

²⁸ *Keegstra*, p. 714.

²⁹ *Keegstra*, pp. 777-778.

“the sense in which ‘hatred’ is used in s. 319(2) does not denote a wide range of diverse emotion, but is circumscribed to cover only the most intense form of dislike.”³⁰

[72] The word “hatred” is not defined in the *Criminal Code*. The Supreme Court of Canada held in *Keegstra* that the word must be interpreted within the context of the provision and only encompasses the most extreme form of expression, so as not to infringe unduly on freedom of expression. Chief Justice Dickson elaborated on the contextual interpretation of “hatred” as connoting an “emotion of an intense and extreme nature that is clearly associated with vilification and detestation.” He adopted the interpretation used by Cory J.A. in *R. v. Andrews*, which included “detestation, enmity, ill-will and malevolence.”³¹ He then stated:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.³²

[73] The Supreme Court in *Keegstra* cautioned triers of fact from finding things that are personally offensive or distasteful to be hatred within the meaning of s. 319(2), stating:

The danger that a trier will improperly infer hatred from statements he or she personally finds offensive cannot be dismissed lightly, yet I do not think that the subjectivity inherent in determining whether the accused intended to promote hatred, as opposed to an emotion involving a lesser degree of antipathy, represents an unbridled license to extend the scope of the offence. Recognizing the need to circumscribe the definition of “hatred” in the manner referred to above, a judge should direct the jury (or him or herself) regarding the nature of the term as it exists in s. 319(2). Such a direction should include express mention of the need to avoid finding that the accused intended to promote hatred merely because the expression is distasteful.³³

[74] The concept of hate speech has also been analyzed in the context of human rights legislation. As I have noted above, the analysis in human rights cases is not always directly transferable to an analysis of the same language or principles in the criminal law context. Nevertheless, the examination of what constitutes “hatred” in human rights cases is useful to an analysis of the meaning of “hatred” under s. 319(2). In particular, I have taken into account the Supreme Court of Canada’s decision upholding the Saskatchewan Human Rights Commission’s finding that flyers distributed by Mr. Whatcott in Saskatchewan in 2001 and 2002 constituted the promotion of hatred against gay men in breach of s. 14 of the *Saskatchewan Human Rights Code*.

³⁰ *Keegstra*, p. 778.

³¹ *R. v. Andrews* (1988), 65 O.R. (2d) 161, at p. 179, quoted in *Keegstra*, at p. 777.

³² *Keegstra*, at p. 777.

³³ *Keegstra*, at p. 778.

[75] In large measure, *Whatcott 2013 (Human Rights)* tracks the Court's earlier decision in *Taylor*, one of the trilogy of hate speech cases released at the same time in 1990 (along with *Keegstra* and *Andrews*). In *Taylor*, the issue was the constitutionality of a provision in the *Canadian Human Rights Act* making it a discriminatory practice to send telephone messages that were likely to expose a group to hatred or contempt on the basis, *inter alia*, of race or religion. The majority decision in *Taylor* was also authored by Dickson C.J.C. It mirrors much of the same language from *Keegstra* in describing what is meant by "hatred".

[76] In *Whatcott 2013 (Human Rights)*, the Supreme Court confirmed that "the *Taylor* definition of "hatred", with some modifications, provides a workable approach to interpreting the word "hatred" as it is used in prohibitions of hate speech."³⁴ The Court then outlined three main prescriptions which, if followed, would reduce the risk that the *Taylor* definition would result in an overly subjective and inconsistent approach. The third of those prescriptions is unrelated to the criminal context because it focuses on the impact of the speech on victims rather than its intent. However, the other two principles do apply, as follows:

First, courts are directed to apply the hate speech prohibitions *objectively*. In my view, the reference in *Taylor* to "unusually strong and deep-felt emotions" (at p. 928) should not be interpreted as imposing a subjective test or limiting the analysis to the intensity with which the author of the expression feels the emotion. The question courts must ask is whether a reasonable person, aware of the context and circumstances surrounding the expression, would view it as exposing the protected group to hatred.

Second, the legislative term "hatred" or "hatred or contempt" is to be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or other harmful effects.³⁵

[77] The Crown, in their written submissions at the conclusion of the trial before me, cited (at para. 12) a portion of the Ontario Court of Appeal's decision in this case holding that the determination of whether something constitutes "hatred" is an objective test. Sossin J.A. referred to the definition of hatred as set out by Dickson C.J.C. in *Keegstra* and then held:

This determination should be made *objectively*, the question being whether a reasonable person, aware of the context and circumstances surrounding the expression, would view it as exposing or tending to expose the target group to hatred: see *Whatcott (SCC)*, at para. 35, citing *Owens v. Saskatchewan (Human Rights Commission)*, 2006 SKCA 41, 267 D.L.R. (4th) 733, at para. 60.³⁶

[78] In their written submissions, defence counsel took the position that the Crown erred in its statement of the test, noting that this was a formulation taken from human rights case law and

³⁴ *Whatcott 2013 (Human Rights)*, at para. 55.

³⁵ *Whatcott 2013 (Human Rights)*, at paras. 56 and 57.

³⁶ *Whatcott 2023 (Appeal)*, at para. 62.

that Sossin J.A. cited human rights decisions as supporting this objective test. The defence then went on to argue that it would be an error to depart from the criminal standard articulated in *Keegstra*.

[79] In my view, I am bound by the decision of the Court of Appeal for Ontario. It is clear that Sossin J.A. was referring to what constitutes “hatred” within the meaning of s. 319(2) of the *Criminal Code* when he talked about the objective aspect of that test. I recognize that in applying principles of *stare decisis* I can depart from a decision of the Court of Appeal if it is inconsistent with a decision of the Supreme Court of Canada.³⁷ However, I do not see the Court of Appeal decision in *Whatcott 2023 (Appeal)* as being inconsistent with *Keegstra*. In *Keegstra*, Dickson C.J.C.’s definition of what constitutes “hatred” under the *Criminal Code* was essentially the same as he adopted in the companion case of *Taylor* under human rights legislation. In *Whatcott 2013 (Human Rights)*, the Supreme Court dealt with the appellant’s argument that the *Taylor* test should be reassessed, in part because the concept of “hatred” is inherently subjective and there would therefore be no consistency in its application from case to case. Rothstein J. disposed of that argument by finding that the definition of “hatred” should not be considered subjectively, stating as follows:

Subjectivity is not unique to the application of standards within human rights legislation. As long as human beings act in the role of judge or arbitrator, there will be a subjective element in the application of any standard or test to a given fact situation. In the words of Cardozo J.: “. . . the traditions of our jurisprudence commit us to the objective standard. I do not mean, of course, that this ideal of objective vision is ever perfectly attained” but rather, inescapably, that “[t]he perception of objective right takes the color of the subjective mind”: *The Nature of the Judicial Process* (1921), at pp. 106 and 110.

In response to this reality, courts develop legal principles for the purpose of providing a method of dealing with similar issues consistently. They follow precedent by looking to the manner in which a principle or standard was applied in comparable fact situations. Where the applicable standard or test is an objective one, courts and tribunals apply it on the basis of how a reasonable person in the same position or circumstances would act or think.

In the present context, the courts have confirmed that when applying a prohibition based on hatred, the outcome does not depend on the subjective views of the publisher or of the victim of the alleged hate publication, but rather on an objective application of the test: see *Owens (C.A.)*, at paras. 58-59; *Kane v. Alberta Report*, 2001 ABQB 570, 291 A.R. 71, at para. 125; *Elmasry v. Rogers Publishing Ltd. (No. 4)*, 2008 BCHRT 378, 64 C.H.R.R. D/509, at paras. 79-80; and *Whatcott (C.A.)*, at para. 55. The courts pose the question of whether, “when considered objectively by a reasonable person aware of the relevant context and circumstances, the speech in question would be understood as exposing or tending to expose members of the target group to hatred”: *Owens (C.A.)*, at para. 60. In

³⁷ *R. v. Sullivan*, 2022 SCC 19, [2022] 1 S.C.R. 460.

the course of this assessment, a judge or adjudicator is expected to put his or her personal views aside and to base the determination on what he or she perceives to be the rational views of an informed member of society, viewing the matter realistically and practically.

Even Cardozo J., despite his acknowledgement of the inherent subjectivity involved in the judicial process, concedes that the objective ideal “is one to be striven for within the limits of our capacity” and warns that “[a] jurisprudence that is not constantly brought into relation to objective or external standards incurs the risk of degenerating into . . . a jurisprudence of mere sentiment or feeling” (p. 106). Although developing legal principles, following precedent and applying objective standards will not completely eliminate subjectivity from the adjudicative process, these common law traditions reflect an awareness of the problem and provide a ground for appeal in cases of unjustifiable departure.³⁸

[Emphasis added]

[80] These are concepts that apply equally to the adjudication of criminal cases as they do to human rights cases. Keeping an objective mind and applying community standards does not depart from the criminal standard, nor does it negate any of the other elements of the criminal offence of promoting hatred. The standard remains proof beyond a reasonable doubt and *mens rea* remains a required element that must be proven by the Crown. However, there is considerable overlap in the approach to defining what constitutes hate in the criminal context and in the human rights context, even though other aspects of the two regimes are quite different.

[81] The Court in *Whatcott 2013 (Human Rights)* also drew upon case law subsequent to *Taylor* dealing with the interpretation of “hatred”, including the Canadian Human Rights Tribunal’s decision in *Warman v. Kouba*, which provided a non-exhaustive list of what it described as the “hallmarks of hatred”.³⁹ Any given hallmark is neither a necessary nor sufficient condition to define hatred, but they are a useful list of the kinds of things encompassed by the definition of “hatred”. These hallmarks include:

- (a) The targeted group is portrayed as a powerful menace that is taking control of the major institutions in society and depriving others of their livelihoods, safety, freedom of speech and general well-being.
- (b) The messages use true stories, news reports, pictures and references from purportedly reputable sources to make negative generalizations about the targeted group.
- (c) The targeted group is portrayed as preying upon children, the aged, the vulnerable, etc.

³⁸ *Whatcott 2013 (Human Rights)*, at paras. 33-36.

³⁹ *Warman v. Kouba*, 2006 CHRT 50, at paras. 24-81.

- (d) The targeted group is blamed for the current problems in society and the world.
- (e) The targeted group is portrayed as dangerous or violent by nature.
- (f) The messages convey the idea that members of the targeted group are devoid of any redeeming qualities and are innately evil.
- (g) The messages communicate the idea that nothing but the banishment, segregation or eradication of this group of people will save others from the harm being done by this group.
- (h) The targeted group is de-humanized through comparisons to and associations with animals, vermin, excrement, and other noxious substances.
- (i) Highly inflammatory and derogatory language is used in the messages to create a tone of extreme hatred and contempt.
- (j) The messages trivialize or celebrate past persecution or tragedy involving members of the targeted group.
- (k) Calls to take violent action against the targeted group.

[82] Although not definitive, I find these hallmarks useful in determining whether the communications in this case constitute hate speech in line with *Whatcott 2013 (Human Rights)*.

[83] It is also helpful to bear in mind the purpose of the relevant *Criminal Code* provisions. The Supreme Court ruled on that issue in *Keegstra*, noting that there are two sorts of injury that legislation dealing with hate propaganda seeks to ameliorate. The first is the harm done to members of the target group and the second is the harm done to greater society. The Chief Justice held:

In my opinion, a response of humiliation and degradation from an individual targeted by hate propaganda is to be expected. A person's sense of human dignity and belonging to the community at large is closely linked to the concern and respect accorded the groups to which he or she belongs (see I. Berlin, "Two Concepts of Liberty", in *Four Essays on Liberty* (1969), 118, at p. 155). The derision, hostility and abuse encouraged by hate propaganda therefore have a severely negative impact on the individual's sense of self-worth and acceptance. This impact may cause target group members to take drastic measures in reaction, perhaps avoiding activities which bring them into contact with non-group members or adopting attitudes and postures directed towards blending in with the majority. Such consequences bear heavily in a nation that prides itself on tolerance and the fostering of human dignity through, among other things, respect for the many racial, religious and cultural groups in our society.

A second harmful effect of hate propaganda which is of pressing and substantial concern is its influence upon society at large. The Cohen Committee noted that individuals can be persuaded to believe "almost anything" (p. 30) if information or ideas are communicated using the right technique and in the proper circumstances (at p. 8):

... we are less confident in the 20th century that the critical faculties of individuals will be brought to bear on the speech and writing which is directed at them. In the 18th and 19th centuries, there was a widespread belief that man was a rational creature, and that if his mind was trained and liberated from superstition by education, he would always distinguish truth from falsehood, good from evil. So Milton, who said "let truth and falsehood grapple: who ever knew truth put to the worse in a free and open encounter".

We cannot share this faith today in such a simple form. While holding that over the long run, the human mind is repelled by blatant falsehood and seeks the good, it is too often true, in the short run, that emotion displaces reason and individuals perversely reject the demonstrations of truth put before them and forsake the good they know. The successes of modern advertising, the triumphs of impudent propaganda such as Hitler's, have qualified sharply our belief in the rationality of man. We know that under strain and pressure in times of irritation and frustration, the individual is swayed and even swept away by hysterical, emotional appeals. We act irresponsibly if we ignore the way in which emotion can drive reason from the field.

It is thus not inconceivable that the active dissemination of hate propaganda can attract individuals to its cause, and in the process create serious discord between various cultural groups in society. Moreover, the alteration of views held by the recipients of hate propaganda may occur subtly, and is not always attendant upon conscious acceptance of the communicated ideas. Even if the message of hate propaganda is outwardly rejected, there is evidence that its premise of racial or religious inferiority may persist in a recipient's mind as an idea that holds some truth, an incipient effect not to be entirely discounted (see Matsuda, *op. cit.*, at pp. 2339-40).⁴⁰

[84] Although the object of the legislation is a factor in interpreting the language used, there is no requirement for the Crown to prove actual harm or hatred directed to any member of the target group as a result of the subject communication. Parliament intended to limit the risk of the

⁴⁰ *Keegstra*, at pp. 746-748.

serious harm caused by hate propaganda.⁴¹ As stated by the Supreme Court of Canada in *Mugesera*:

[Section 319 of the *Criminal Code*] does not require proof that the communication caused actual hatred. In *Keegstra*, this Court recognized that proving a causal link between the communicated message and hatred of an identifiable group is difficult. The intention of Parliament was to prevent the risk of serious harm and not merely to target actual harm caused. The risk of hatred caused by hate propaganda is very real.⁴²

3. The Level of Intent Required Under s. 319(2)

[85] The required mental element for this offence is that the accused must have “wilfully promoted” hatred. It is this element that most clearly distinguishes s. 319(2) of the *Criminal Code* from the hate-speech provisions in human rights legislation. It is not enough for the Crown to prove that the subject matter communicated meets the definition of “hatred”, the Crown must also prove beyond a reasonable doubt that the accused wilfully promoted that hatred. This test requires me to consider both words – “wilfully” and “promotes”.

[86] The word “promotes” refers to “active support or instigation.” As stated by Dickson, C.J.C. in *Keegstra*:

Given the purpose of the provision to criminalize the spreading of hatred in society, I find that the word "promotes" indicates active support or instigation. Indeed the French version of the offence uses the verb "foment", which in English means to foment or stir up. In "promotes" we thus have a word that indicates more than simple encouragement or advancement. The hate-monger must intend or foresee as substantially certain a direct and active stimulation of hatred against an identifiable group. As for the term "identifiable group", s. 318(4) states that an "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin. The act to be targeted is therefore the intentional fostering of hatred against particular members of our society, as opposed to any individual.⁴³

[Emphasis added]

[87] The Supreme Court of Canada held in *Keegstra* that the word “wilfully” in s. 319(2) requires more than negligence or recklessness and is satisfied “only where an accused subjectively desires the promotion of hatred or foresees such a consequence as certain or substantially certain to result from an act done in order to achieve some other purpose.”⁴⁴

⁴¹ *Keegstra*, at p. 758.

⁴² *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, 2005 SCC 40, at para. 102.

⁴³ *Keegstra*, at pp. 776-777.

⁴⁴ *Keegstra*, at p. 774.

[88] There is a difference between “wilfully” doing something and the motivation or purpose in doing so. It is not necessary for the Crown to prove that the accused was motivated to promote hate, or that his purpose in the communication was to promote hate. It is sufficient that the accused knew his communication would promote hate or was wilfully blind to that substantially certain result. That said, although motive is not a required element, the presence of motive can often assist in determining whether the act was done knowingly or intentionally. As stated by Watt J.A., “Evidence that a person has a motive to do an act . . . is relevant to prove that the person with the motive did the act, and did so intentionally.”⁴⁵

[89] It is also well-established that the trier of fact may draw an inference that a sane and sober person intends the natural and probable consequences of his actions. This may also be a useful approach in determining whether the Crown has proven that the accused acted wilfully to promote hatred. As stated by the Supreme Court of Canada in *R. v. Seymour*:

Common sense dictates that people are usually able to foresee the consequences of their actions. Therefore, if a person acts in a manner which is likely to produce a certain result it generally will be reasonable to infer that the person foresaw the probable consequences of the act. In other words, if a person acted so as to produce certain predictable consequences, it may be inferred that the person intended those consequences.⁴⁶

F. ANALYSIS

1. Overview

[90] A contextual, wholistic approach is required to determine whether Mr. Whatcott is guilty of the offence charged. This includes an analysis of: (1) the steps he took prior to the Pride Parade; (2) the manner in which he chose to participate; (3) the means he took towards that end; (4) the content of the flyers he distributed; (5) how he distributed them; and (6) his words and actions shortly afterwards. In summary:

- (1) This event required substantial planning – selecting the location, writing the flyers, arranging the elaborate costumes, finding other volunteers, arranging transportation, and folding the flyers into small squares and heat sealing them into packets that looked like condoms.
- (2) Mr. Whatcott chose to distribute the flyers while actually marching in the Pride Parade in Toronto. He had to travel to Toronto from Vancouver for that purpose. It is unknown where the other members of his group originated.
- (3) Mr. Whatcott and his cohort dressed as a group of “gay zombies” in flamboyant costumes, co-opting the rainbow symbol for their accessories. To gain entry to the parade he lied about the nature of the organization and its

⁴⁵ *R. v. Candir*, 2009 ONCA 915, 257 O.A.C. 119, at para. 72.

⁴⁶ *R. v. Seymour*, [1996] 2 S.C.R. 252, at para. 19; see also *R. v. Spence*, 2017 ONCA 619, 353 C.C.C. (3d) 446, at para. 45.

goals, as well as providing a fictitious identity and contact information. He also failed to comply with the rules of the parade, particularly with respect to pre-approval of any material to be distributed.

- (4) The content of the flyers is partly about the health risks associated with gay men, partly about their sinful ways and criminal conduct, and partly about government figures said to have been associated with the gay agenda in a negative way. Gay men are portrayed as immoral and a danger to children. It is thinly disguised scare-mongering and loaded with toxic imagery. However, it also includes calls for sinners to repent and messages that God loves them.
- (5) The flyers were distributed to anyone and everyone at the parade, including spectators along the side of the parade route.
- (6) At the completion of the parade, Mr. Whatcott gleefully posted photos of his group, with messaging to his followers that he conceded constituted gloating.

[91] Looking at the whole picture, Mr. Whatcott, by his actions, has demonstrated a deep animus towards members of the gay community, notwithstanding his testimony that he wants only to save their souls by having them repent their sins. He is far from a simple Christian missionary seeking to convert sinners. He is an activist and an attention-seeker. He loves the spectacle of what he did, he enjoyed the attention, and he continues to do so.

[92] Many of the things included in his flyer, standing alone, are merely offensive and would not amount to hate. However, the combined effect of the whole flyer, the lengths to which Mr. Whatcott went to deliver his “message”, the range of people he gave it to, and his gloating after the fact all support my ultimate finding that his intention in handing out the flyers at the parade was to vilify gay men. He knew that would be the effect of his actions.

[93] Although it is important to look at the evidence as a whole, the analysis also involves breaking the case down into its constituent elements and examining each of these pieces separately. That analysis follows.

2. Mr. Whatcott’s Credibility

[94] In their submissions at the end of the trial, defence counsel described Mr. Whatcott’s testimony as being frank, candid, and truthful. I agree that there were times in Mr. Whatcott’s testimony when he was frank and when he conceded the truth of points being put to him in cross-examination. Some of the things he said were true. However, I do not accept that he was necessarily always truthful. The defence written submissions state:

[Mr. Whatcott] swore on the Bible to tell the truth. It is not often that we have evidence in our courts that such an oath would actually mean something to a

witness. Here, we have that, from a witness who has dedicated the latter part of his life to his faith.⁴⁷

[95] I do not accept this submission as a general proposition, nor as it relates to Mr. Whatcott in particular. It has not been my experience, after over three decades as a trial judge, that Christian witnesses who swear an oath on the Bible are any more likely to be telling the truth than non-religious witnesses who make a solemn affirmation to tell the truth. The purpose of the oath or affirmation, in my view, is to bring home to the witness the solemnity of the occasion and the importance of being truthful. However, I have no more confidence in the veracity of a witness who swears on whatever holy book they choose than I do for those witnesses who simply promise to be truthful. I have seen complete and proven liars in all categories. Further, in my view it would be inconsistent with the *Canada Evidence Act* and established case law to accept the proposition that the evidence of any witness is more likely to be true because he is religious.⁴⁸ In any event, I also have no real evidence before me that Mr. Whatcott has “dedicated the latter part of his life to his faith”. I do not know what he has done to dedicate his life to his faith. He has certainly been on a crusade against people in the gay community, whom he considers to be acting contrary to Christian principles, but I would not equate that to someone who has dedicated his life to his faith. I reject the suggestion that his alleged dedication to faith should be taken into account as supporting his overall credibility as a witness.

[96] Further, in one of his moments of candour, Mr. Whatcott acknowledged he felt no moral responsibility to be truthful. Christian principles require truthfulness, whether a person is under oath or not. In his will-say statement, Dr. Farrow stated that Christians should not engage in “trickery” and that “a Christian is obligated not to lie.”⁴⁹ When this evidence as to Christian values was put to Mr. Whatcott in cross-examination, he sought to qualify it by saying that it was “not an absolute prohibition” and that for a tactical purpose, for example in wartime, it is acceptable to lie. He said he viewed his actions at the Gay Pride Parade as part of “a spiritual war.”⁵⁰

[97] Mr. Whatcott acknowledged having told numerous blatant lies in the application he filed to get permission for the “Gay Zombies” to march in the parade. He justified those lies as being necessary for him to get what he wanted. He said he saw the Gay Zombies’ participation at the parade as being an “infiltration”⁵¹ and that they were there to “strike at the dark forces of the Toronto homosexual shame parade.”⁵² He agreed with the Crown on cross-examination that he was there to strike at the “dark forces” of the parade and that none of that would have been possible if he told the truth.⁵³ He also admitted that this approach carried through to the trial.

⁴⁷ Defence Written Submissions, at para. 130.

⁴⁸ *Canada Evidence Act*, R.S.C., 1985, c. C-5, s. 14(2); *R. v. Taylor*, 2026 ONCA 165, at paras. 89-92; *R. v. Santhosh*, 2016 ONCA 731, at paras. 40-50.

⁴⁹ Exhibit 15, at para. 19.

⁵⁰ Transcript of Proceedings, May 27, 2026, at p. 44, line 14.

⁵¹ Transcript of Proceedings, May 27, 2026, at p. 48, line 32.

⁵² Transcript of Proceedings, May 27, 2026, at p. 49, lines 1-6.

⁵³ Transcript of Proceedings, May 27, 2026, at p. 49, lines 10-16.

[98] At the conclusion of Mr. Whatcott's testimony in cross-examination, he confirmed that this "war" he is fighting, which he previously testified justified his lying, included the trial itself. The following exchange occurred:

Q. We started yesterday when I was asking you questions about your dishonesty.

A. Mm-hmmm

Q. And – you have to say yes or no.

A. Oh, yes.

Q. And you said that you're in a war, a spiritual war, do you remember that?

A. Right.

Q. And what you meant is you're in a war against gay oppression, gay forces.

A. The homosexual agenda, it's a cultural war.

Q. And this trial is part of that war, correct?

A. I believe it is.⁵⁴

[99] In short, Mr. Whatcott believes himself to be entitled to lie in order to advance what he considers to be a justified spiritual war against the dark forces of the gay community. He believes this trial to be part of that war. The fact that he swore an oath on the Bible has nothing to do with whether he was or was not telling the truth.

3. Did the Communication in this Case Constitute Hatred?

[100] I summarized the content of the flyer in paragraphs 20-31 above and will not repeat it here. The question is whether this subject matter constituted hate speech towards gay men, bearing in mind the extreme nature of what constitutes "hate" as defined in *Keegstra*.

[101] The "hallmarks of hatred" referred to in some of the case law (see paragraph 81 above) are helpful in the analysis. It is not necessary for all of these hallmarks to be present to meet the definition of hate. It may even be possible to find hate speech that does not meet any of these criteria. However, the presence of such indicia is one of the many factors that can be helpful in determining how to characterize the communication at issue. In this case, many of the hallmarks are present.

[102] The first hallmark, identified in the list as (a), relates to the targeted group being portrayed as a powerful menace that is taking control of major institutions in society. The second page of the flyer is largely devoted to making this case. It depicts four politicians. Justin

⁵⁴ Transcript of Proceedings, May 28, 2026, at p. 57, lines 15-29.

Trudeau, the then Prime Minister and head of the Liberal Party in Canada is described as a “chronic attendee” at Gay Pride and his party is described as having a “sordid history of homosexual activism and actively participating in child sexual abuse.” The words used are extreme.

[103] The photograph of Mr. Trudeau is placed to the left of a photograph of a man’s mouth with the lips forming an oval and which is said to portray genital warts on the mouth of a gay man. The photograph chosen for Mr. Trudeau was deliberately selected because his mouth is in the same oval formation. That inference is obvious.

[104] The pamphlet next depicts former Liberal Minister of Defence, Bill Graham and accuses him of sodomy of a minor. It also accuses him of conflict of interest for having voted in favour of same sex marriage and lowering the age of consent for sodomy to 14. According to the pamphlet, the mainstream Canadian media did not report on these offences because they have been co-opted by political correctness.

[105] Finally, the Premier of Ontario, Kathleen Wynne is depicted along with her “buddy” the Deputy Minister of Education. The flyer describes the Deputy Education Minister as being a “child pornographer with an incest fetish” and says his “paw prints are all over” the Ontario “perverted sex education curriculum.” Ms. Wynne is described as a lesbian who is “ramming this perverted propaganda down parent’s and children’s throats.” The flyer then states that Canada has “embarked on a destructive journey towards sexual anarchy and homosexual inspired oppression.” The message conveyed is that “homosexuals” have taken over the government of Canada, the Liberal Party of Canada, the government of Ontario, and the education system, and stifled the mainstream media. These powerful people are then said to be forcing a legislative agenda to support their own “perverted” ideas, to the detriment of children and Christians. This falls squarely within one of the strongest hallmarks of hate.

[106] Example (b) in the hallmarks of hate is the use of “true stories”, news reports, and “reputable sources” to make negative generalizations. There are many such references, including quotations from the Bible, statistical data, and the “real life” story of one person who changed his gender and later regretted it (complete with photographs). This is not the most extreme example of a hallmark of hate, but it is present.

[107] Category (c) is allegations that the targeted group is preying upon the vulnerable. The flyer portrays gay men as pedophiles who prey upon children. It describes gay people as having caused the education system to tell “impressionable 6 year olds they can switch their genders” and 13-year-olds that they can decide for themselves when to have anal sex. The flyer asserts that “homosexual activist therapists” lie to their patients and tell them they can change the gender they were assigned at birth. It suggests that the governing party of Canada is “both enabling and actively participating in child sexual abuse.”

[108] There are some elements of category (d), which is blaming the targeted group for current problems in society and the world, but these references are relatively minor. The flyer warns that the gay agenda is contrary to God’s law and “no good will come from it.” Likewise, there are a few references that would fall within (h), which related to de-humanizing the target group or

comparing them to animals or excrement. The flyer refers to the Deputy Education Minister as having his “pawprints” all over the curriculum, rather than fingerprints. There are many references to disease and a “sordid” lifestyle.

[109] I find it difficult to relate category (f) to this flyer. This hallmark of hate refers to “messages that convey the idea that the targeted group are devoid of any redeeming qualities and innately evil.” There are no references in the flyer to gay people being “innately evil.” It is their conduct that is called into question. That said, the conduct itself is certainly said to be inherently evil and destructive to society. Although there is no mention of gay men having “no redeeming qualities,” there is certainly no reference to anything remotely positive about the gay community or its members. The only possibly positive statements about gay men are that there is a God who loves them and if they repent their sins and come to God, they will “receive the free gift of eternal life.” However, it is also clear that unless they remove themselves from the gay community and stop having same-sex relationships, this is not something they can ever achieve.

[110] Regardless, I confess to not truly understanding what the reference to “no redeeming qualities” in category (f) actually means. To my way of thinking, it is possible to think that a person has no redeeming qualities without hating them. Likewise, it is possible to hate somebody while recognizing he has some redeeming qualities. I am therefore unsure how this hallmark is to be applied.

[111] Elements (g), (j), and (k) are not present to any meaningful degree. There are no calls for the gay community to be eradicated or persecuted. There is also no reference to past discrimination being deserved or trivialized. Apart from references to child sexual abuse and pedophilia, there is no overt language characterizing gay men as being violent or dangerous by nature. I emphasize, however, that although the presence of such content would be an indicator of hate-speech, these are not pre-requisites to communications being characterized as promoting hatred.

[112] Finally, in my opinion the flyer contains many examples of highly inflammatory and derogatory language, which are referred to in category (i) of the hallmarks of hatred. The words “sodomy” and “homosexual” are used persistently throughout the flyer, even though its author (Mr. Whatcott) knows that within and outside the gay community these are considered to be pejorative and offensive. After displaying graphic and repugnant photographs of what are alleged to be anal warts on one man and the dead body of another man said to have died of AIDS, the flyer states, “Disease, death, and confusion are the sad and sordid realities of the homosexual lifestyle.” The flyer accuses the gay community of substituting Christian values and heterosexual marriage with “promiscuity, polyamory, pornography, and homosexuality.”

[113] Viewed as a whole, including the themes presented and the words and imagery used, the flyer communicates a theme of disease, filth, and the destruction of Christian values. It characterizes the gay community as powerful and menacing, particularly to children. According to the flyer, the government, the education system, the mainstream media, and psychotherapists are under the control of people with this “sordid” lifestyle, who use their power to advance this sinful and harmful agenda. Although each page of the flyer ends with an exhortation to gay men to repent and come to God, the overall message conveyed is one of vilification.

[114] I find there is a clear tone of hatred.

[115] I have also considered the presence in the flyer of the “gay tropes” identified by Dr. Mulé in his expert testimony. There is considerable overlap between these tropes and the “hallmarks of hate”, but they are not identical. The three identified tropes are the religious/immorality trope, the health trope, and the criminality trope. All three relate to homophobic myths and stereotypes about gay men that have been used historically to justify outright discrimination and exclusion. All three tropes are not only present, they are the central themes of the flyer.

[116] The health trope is the central focus of the first page, although it also appears more peripherally on the second page as well. The message on the first page is that physical disease, death, and psychological harm are the “sad and sordid” realities visited upon gay people. The gruesome doctored photograph of two “zombified” young boys at the top of the page evokes pestilence by depicting white eyes and blood dripping out of their mouths. Next, Mr. Whatcott included a repulsive photograph of anal warts, accompanied by statistics of gay men who have this disorder, that it leads to anal cancer, and a list of numerous other diseases to which gay men are said to be particularly susceptible.

[117] The second photograph, meant to depict death, is even more gruesome. Although Mr. Whatcott told the police in his voluntary statement after his arrest that this photo came from a medical website, in fact it came from a website entitled “cutedeadguys.net”. Mr. Whatcott insisted this man died of AIDS, although he has neither any idea who he was nor the circumstances in which he died. The corpse appears to have undergone an autopsy or is in the process of that procedure. The head is thrown back and the torso appears to have been eviscerated, cut open from the waist to just below the chin. The face appears to be black and the top of the head is red, which could be either a scarf, skin, or exposed brain matter. Mr. Whatcott’s opinion that this was an AIDS fatality was based on his diagnosis of blotches on the skin as Kaposi’s Sarcoma, a form of cancer often associated with late-stage AIDS. Regardless of whether this is accurate, this particular photograph was included, in my opinion, purely for its shock value. It is scare-mongering, dehumanizing, and disrespectful.

[118] The third example of the health trope on page one of the flyer relates to emotional or psychological harm that can follow gender affirming surgery. I have referred to this elsewhere in these reasons and will not repeat it here. It falls within the trope. The fact that “homosexuality” was once believed to be a psychiatric illness feeds into this stereotype, making it all the more hurtful and hateful.

[119] The criminality trope appears on the second page of the flyer with references to recruiting children to the “gay lifestyle”, child sexual abuse, and pedophilia. The clear inference is that criminality is associated with a gay lifestyle.

[120] The religion/immorality trope appears throughout the flyer. Mr. Whatcott portrays same-sex relationships as against nature and God’s law. He exhorts “homosexuals” to repent their sins to obtain salvation. This theme is pervasive.

[121] Even without reference to the “hallmarks of hate” and the gay tropes referenced by Dr. Mulé, I would have concluded this communication written by Mr. Whatcott constituted a communication of hate within the meaning of s. 319(2) of the *Criminal Code*. The entire focus of the flyer is to denigrate the gay community. The text about a sordid lifestyle riddled with disease is accompanied by gratuitously gruesome photographs, insinuating that this is the future for anyone who engages in that lifestyle. The flyer links criminality and the gay culture, stating that innocent children are at risk. It alleges that the gay community has infiltrated politicians and the media, who are complicit.

[122] Much of the language in the flyer is loaded – e.g. sodomy, sordid, perverted, homosexual. Mr. Whatcott repeatedly describes homosexuality as against natural law and God’s law and that “no good will come from it.” He threatens gay men with “eternal peril” if they do not repent. I consider the message conveyed by the flyer as a whole to be a detestation and vilification of gay men. They are scorned, reviled, and treated as sub-human. This goes beyond distaste, dislike, or merely being offensive. It is intense and extreme. It is hatred.

[123] Further, in my opinion, a reasonable person, aware of the circumstances and context of this communication, would also conclude that was a communication that would expose gay men to hatred.

[124] Mr. Whatcott conceded that he communicated the flyer publicly and that it is directed towards an identifiable group (gay men). I am satisfied beyond a reasonable doubt that the subject matter of this communication constitutes hatred. Therefore, the criminal act required to constitute the offence under s. 319(2) is established. The next question is whether Mr. Whatcott had the requisite level of intent to constitute this offence – whether he “wilfully promoted” hatred by distributing these flyers.

4. Did Mr. Whatcott Wilfully Promote Hatred?

(i) Overview

[125] I will briefly summarize some of the legal principles to provide context for my analysis. A more complete legal analysis is set out in paragraphs 85-89 of these Reasons.

[126] The Supreme Court in *Keegstra* held that the mental element of “wilfully” in s. 319(2) is “satisfied only where an accused subjectively desires the promotion of hatred or foresees such a consequence as certain or substantially certain to result from an act done in order to achieve some other purpose.”⁵⁵ Both parties accept this definition.

[127] Likewise, the parties agree that “promoting” hatred means that the hate-monger must “intend or foresee as substantially certain a direct and active stimulation of hatred.”⁵⁶ This involves the spreading of hate by “active support or instigation.”⁵⁷

⁵⁵ *Keegstra*, at pp. 774-775.

⁵⁶ *Keegstra*, at p. 776.

⁵⁷ *Keegstra*, at p. 776.

[128] It is often difficult for the trier of fact to reach into the mind of the accused and determine what he subjectively intended when he acted in a certain way. Sometimes the subjective intent can be determined by what the accused has admitted in court or said to others. There is some evidence of that nature in this case. In his evidence in chief, Mr. Whatcott testified that his intent was to spread the word of God and to convert homosexuals away from their lives of sin, thereby saving their souls. On the other hand, in cross-examination, he said he took the action he did to strike at the dark forces and that he considered himself at war against these dark forces, which permits him to lie where necessary to achieve his objectives. He is neither a credible, nor reliable, witness. However, based on his evidence as a whole and his gloating after the fact, I believe his subjective intention was to promote hatred against gay men. I do not believe his testimony that his intention was to save their souls, nor does his evidence cause me to have a reasonable doubt as to his true intentions.

[129] Often, the trier of fact can infer intent based on the accused's actions themselves and the fact that a sane and sober person can be assumed to have intended the natural or inevitable consequences of his actions.⁵⁸ Thus, to use an extreme example, an intent to kill can be inferred if a person holds a gun to somebody's head and pulls the trigger. The more obvious or clear the consequences of the actions, the easier it is to draw the inference of intentional conduct. In this case, given the nature of the communication, it is obvious that there would be an incitement of hatred. Further, Mr. Whatcott's knowledge of the Supreme Court of Canada's ruling in *Whatcott 2013 (Human Rights)* provided him with ample reason to understand that the consequences of his words would be to promote hatred and, for whatever reason, he went ahead and distributed it anyway.

[130] It is not necessary to prove a motive for an accused, but where a motive is established, this can assist in determining intent. Here, I find that the Crown has established Mr. Whatcott has a deep animus towards the gay community and this fueled his actions in distributing the flyer.

[131] The defence submits that if Mr. Whatcott was truly intending to promote hatred against gay people, it makes no sense that he would have distributed it directly to gay people at the Gay Pride Parade. Logically, they argue, this would mean he was promoting the target group to hate itself.

[132] The answer to this apparent conundrum comes directly from Mr. Whatcott himself. He testified that he and his group passed out the flyers to everybody and anybody at the parade. He expected that the vast majority of people there would be "unchurched" and said he "truly believe[d] the gospel is good for everybody."⁵⁹ However, when asked who he was specifically targeting, he said, "My target is, like a shotgun, it's literally everyone from Jeffrey Dahmer to Mother Theresa."⁶⁰ Mr. Whatcott deliberately distributed the flyers to the general public attending the parade, regardless of whether they were members of the gay community. He had other far less hateful options if he truly wanted to save the gay community from "sin".

⁵⁸ *Seymour*, at para. 19; *Spence*, at para. 45.

⁵⁹ Transcript of Proceedings, May 28, 2026, at p. 3, lines 19-20.

⁶⁰ Transcript of Proceedings, May 28, 2026, at p. 5, lines 9-10.

[133] He could have stood at the side of Yonge Street and distributed the flyers to participants actually marching in the parade, who would have been more predictably gay themselves. He was asked why he did not simply attend with his group at the events on Church Street (booths, beer gardens, people milling about) rather than marching in the parade, and he responded that marching was more efficient.⁶¹ However, it also required lying to get permission to march. Going to the lengths he did (with the costumes, disguises, marching banner and the like) seems to me to be a very extreme way to get his message across if his only intention was to save souls. In any event, it is clear that he intended to, and did, distribute his flyers to everyone and therefore knew that people who were not gay would also receive them.

(ii) Inferred Intent

[134] In my view, the flyer contains language that was obviously hateful towards the gay community and its overall effect is to demean and vilify them. There is a basis to infer the intent of wilfully promoting hatred simply because of the obviously hateful and demeaning content in the flyer. In my view, a reasonable person knowing the context would come to that conclusion. As stated by the unanimous Supreme Court of Canada in *Mugesera*:

In *Keegstra*, at p. 778, this Court found that “[t]o determine if the promotion of hatred was intended, the trier will usually make an inference as to the necessary *mens rea* based upon the statements made.” In many instances, evidence of the mental element will flow from the establishment of the elements of the criminal act of the offence. The speech will be such that the requisite guilty mind can be inferred.⁶²

[135] However, Mr. Whatcott’s understanding of the effect of this communication is even more clear because of what he learned from his previous human rights violation in Saskatchewan. When Mr. Whatcott was writing the Gay Zombies flyer he distributed in July 2016, he was in the unusual position of having already been told by the Supreme Court of Canada what kind of communications attacking the gay lifestyle would be considered to be hate speech. The Supreme Court found that two of the flyers Mr. Whatcott sent to residents of Saskatchewan met the definition of hatred. Those two flyers were labelled as Flyer D and Flyer E and attached as an addendum to the decision. They were also exhibits at the trial before me.

[136] The Court commented on how the flyers contained many of the hallmarks of hate, which it had identified earlier in its decision. Mr. Whatcott acknowledged having read the Supreme Court of Canada’s decision several times and said he believed he had “toned down his vitriol” and that he would therefore not be in trouble for his Gay Zombies flyer.⁶³

[137] Whether Mr. Whatcott believed he was committing a criminal offence is not the test. He said that in his own opinion the 2016 flyers were compliant with the decision in *Whatcott 2013*

⁶¹ Transcript of Proceedings, May 27, 2026, at p. 47, line 29.

⁶² *Mugesera*, at para. 105.

⁶³ Transcript of Proceedings, May 28, 2026, at pp. 23-24, lines 32, 1.

(*Human Rights*) and did not constitute hate. That is an opinion of law, and mistake of law is not a defence if the flyers were hateful, as I have found them to be.⁶⁴

[138] The question, however, is whether Mr. Whatcott set out to wilfully promote hatred or if he was wilfully blind about the hateful effect of the flyers. The content of the Saskatchewan flyers, what he knew the Supreme Court said about them, and what Mr. Whatcott then turned around and put into the Gay Zombie flyers is illuminating on this point.

[139] The Supreme Court's findings upholding the Tribunal's decision about the flyers being hate includes the following at para. 187:

Passages of Flyers D and E combine many of the “hallmarks” of hatred identified in the case law. The expression portrays the targeted group as a menace that could threaten the safety and well-being of others, makes reference to respected sources (in this case the Bible) to lend credibility to the negative generalizations, and uses vilifying and derogatory representations to create a tone of hatred: see *Kouba*, at paras. 24-81. It delegitimizes homosexuals by referring to them as filthy or dirty sex addicts and by comparing them to pedophiles, a traditionally reviled group in society.⁶⁵

[140] It is useful to compare what the Supreme Court of Canada said in 2013 was hate to what Mr. Whatcott then wrote in his 2016 Gay Zombies flyer. In 2016 he again highlighted the menace of the targeted group that could threaten the well-being and safety of others, particularly children. He went even further, portraying key politicians and the mainstream national media as being co-opted into advancing this agenda. Again, he purported to back up his assertions with respected sources, such as the Bible and medical statistics. Again, he tied homosexuality to pedophilia and used the word “sordid” to describe their lifestyle (which he conceded in cross-examination meant the same thing as “dirty and filthy”).⁶⁶

[141] The Supreme Court wrote (at para. 188):

Some of the examples of the hate-inspiring representations in Flyers D and E are phrases such as: “Now the homosexuals want to share their filth and propaganda with Saskatchewan's children”; “degenerated into a filthy session where gay and lesbian teachers used dirty language to describe lesbian sex and sodomy to their teenage audience”; “proselytize vulnerable young people”; “ex-Sodomites and other types of sex addicts”; and “[h]omosexual sex is about risky & addictive behaviour!” The repeated references to “filth”, “dirty”, “degenerated” and “sex addicts” or “addictive behaviour” emphasize the notion that those of same-sex orientation are unclean and possessed with uncontrollable sexual appetites or behaviour. The message which a reasonable person would take from the flyers is

⁶⁴ *R. v. Jones*, [1991] 3 SCR 110, at p. 117.

⁶⁵ *Whatcott 2013 (Human Rights)*, at para. 187.

⁶⁶ Transcript of Proceedings, May 28, 2026, at pp. 20-21, lines 25-31, 1-11.

that homosexuals, by virtue of their sexual orientation, are inferior, untrustworthy and seek to proselytize and convert our children.⁶⁷

[Emphasis added]

[142] Once again, the comparison with what Mr. Whatcott wrote in 2016 is telling. Again, he attacked the school curriculum for including information about same-sex relationships in its sex education classes. Again, he highlighted that this was unclean and sordid. Again, he wrote that children were being recruited into this “sordid” lifestyle.

[143] The Supreme Court of Canada held (at para. 189):

The flyers also seek to vilify those of same-sex orientation by portraying them as child abusers or predators. Examples of this in Flyers D and E would include: “Our children will pay the price in disease, death, abuse . . .”; “Sodomites are 430 times more likely to acquire Aids & 3 times more likely to sexually abuse children!”; and “[o]ur acceptance of homosexuality and our toleration [sic] of its promotion in our school system will lead to the early death and morbidity of many children.”⁶⁸

[Emphasis added]

[144] Notwithstanding this ruling from the Supreme Court, Mr. Whatcott again portrayed gay men as child abusers and predators in his 2016 flyer. He again provided statistics about disease and morbidity in the gay community, although not the same ones. Instead of saying children would pay the price in “disease, death and abuse” (as he did in the flyers referred to in 2013), he said children would be abused and recruited into the gay lifestyle and that “disease, death and confusion are the sad and sordid realities of the homosexual lifestyle.” These are the same messages, couched in slightly different words.

[145] In 2013, the Supreme Court concluded as follows:

Whether or not Mr. Whatcott intended his expression to incite hatred against homosexuals, in my view it was reasonable for the Tribunal to hold that, by equating homosexuals with carriers of disease, sex addicts, pedophiles and predators who would proselytize vulnerable children and cause their premature death, Flyers D and E would objectively be seen as exposing homosexuals to detestation and vilification.⁶⁹

[Emphasis added]

⁶⁷ *Whatcott 2013 (Human Rights)*, at para. 188.

⁶⁸ *Whatcott 2013 (Human Rights)*, at para. 189.

⁶⁹ *Whatcott 2013 (Human Rights)*, at para. 190.

[146] Thus, the Supreme Court of Canada made no ruling on whether Mr. Whatcott intended to incite hatred against gay men, but held that from an objective viewpoint, the messages themselves constituted hate.

[147] Intent is not an essential element for a human rights code violation, but it is an essential element of the offence before me. The problem for Mr. Whatcott on the issue of intent is that he acknowledged in his testimony before me that he had read this Supreme Court decision multiple times. Given the Supreme Court's ruling that these earlier messages would objectively be seen as meeting the definition of inciting hatred, and the similarity in the messaging between the Saskatchewan flyers and the Gay Zombies flyer, it is difficult for Mr. Whatcott to avoid the inference that he knew full well that the messages in the 2016 flyer constituted hatred, and that he distributed them anyway.

[148] Indeed, having considered Mr. Whatcott's testimony at trial and carefully comparing the similar messaging in the flyers, I find this inference to be inescapable. Although Mr. Whatcott may have, as he claimed, toned down the vitriol in the Gay Zombies flyers, the vitriol he used was nevertheless inflammatory, and this time he accompanied his hate speech with graphic imagery of the fate he claimed awaited all those who participated in this "sordid" lifestyle.

[149] I found Mr. Whatcott to be evasive in his testimony when cross-examined on this issue. While acknowledging that he understood what the Supreme Court had said, he repeatedly rejected the suggestion that this could be hate because he believed the words he wrote to be true (often referring to his experience as a nurse and his religion) and because he considered the Supreme Court's characterization to be subjective. For example, when cross-examined about the photograph of the corpse he included in the Gay Zombies flyer and to his reference to "sordid" lifestyle as being the same as saying "filthy and dirty" (which the Supreme Court of Canada found to be hateful language), the following exchange occurred:

Q. And, again, right, you now employ the filthy, dirty, squalid motif, right? In this flyer.

A. I believe sodomy is unhygienic and opens people up to a number of risks of sexually transmitted diseases.

Q. Sir, I'm asking if you employed that ...

A. No, I don't think so.

Q...hallmark of hate in this flyer. You don't think the word sordid employed that?

A. No. It's a sordid lifestyle, that's how I see it. I don't see it as being hate. I believe that's truthful, the way I see it.

Q. So your evidence is you didn't employ any of these hallmarks of hate.

A. Correct.

Q. So, if I keep asking you about this, you'll say, "I didn't do that," right?

A. I don't believe this flyer's hate-speech. I believe it's the gospel and truth and I believe that it's unwise to engage in same-sex practices.⁷⁰

[150] It is clear to me that Mr. Whatcott simply disagrees with the Supreme Court of Canada's decision as to what constitutes hate speech. He considers that to be their subjective opinion. His own view is that his flyer is free speech and because he believes it to be factually correct and in accordance with his interpretation of the Bible, he does not accept that it promotes hatred.

[151] Mr. Whatcott, in short, believes himself to be above the law. He wilfully distributed this communication to the public notwithstanding the ruling by the Supreme Court because he believed himself to be right and the Supreme Court wrong.

[152] At the very least, Mr. Whatcott was wilfully blind to the fact that reasonable people, understanding the context of the Gay Zombies flyer, would view these messages as a vilification of gay men that would expose them to hatred. Mr. Whatcott knew this because the Supreme Court of Canada found as much. He admitted this in cross-examination, as follows:

Q. I'm asking about the lesson, the message, the guidance you got from the Supreme Court of Canada. They said to you deploying these tropes of filth, of dirty, that's problematic, that can be hate, they said that clearly to you, right?

A. That's certainly the message from the Supreme Court of Canada.

Q. And you knew that just this alone, filth, sordid, dirty, that is problematic when it comes to the vilification of gays.

A. It is, it's difficult navigating this, this type of law.

Q. So you're on, you're on notice that this is problematic, right?

A. Yeah.⁷¹

[153] Following this exchange, Mr. Whatcott acknowledged that he did not take any steps to determine if the 2016 flyer would constitute hate, other than to show the text to some of his followers, some of whom happened to be lawyers. He did not seek legal advice from a lawyer, he did not ask the police, he did not ask anyone at the Crown Attorney's office, and he did not seek the permission of the Toronto Gay Pride march organizers. In other words, he had reason to believe from the highest court in Canada that this kind of communication constituted hate speech and he took no steps to find out whether his new version would be treated as such.

⁷⁰ Transcript of Proceedings, May 28, 2026, at pp. 36-37, lines 20-32, 1-7.

⁷¹ Transcript of Proceedings, May 28, 2026, at pp. 24-25, lines 2-9, 28-32, 1-2.

[154] Instead, he chose to disguise himself and his entourage. He chose to disguise the flyer by hiding it in what appeared to be a condom package and to then hand it out publicly. In my opinion, that constitutes wilful blindness and is sufficient to satisfy the intention requirement of s. 319(2) of the *Criminal Code*.

(iii) Animus and Subjective Intent

[155] However, in my view, Mr. Whatcott's level of intent goes further than wilful blindness – he acted deliberately in distributing a flyer that he knew constituted hate speech.

[156] I agree with the Crown's submission that Mr. Whatcott has demonstrated a deep animus towards gay men. He has described the gay lifestyle as an "abomination" and refers to it as the "homosexual sub-culture." He uses the word "sodomites" to refer to gay men, although he knows the word is considered offensive and pejorative. He justifies his own use of it because it is derived from the Bible. He knows that "gay" is the term preferred by members of that community, and knows that "homosexual" is considered by them to be pejorative, but continues to use "homosexual" because it is "accurate."⁷² He showed callous disregard for how this would be perceived by people in the gay community. He said, "These are my preferred terms." When the Crown drew an analogy between those words and the use of racial epithets, Mr. Whatcott responded:

I certainly think that if you're going to, like, use the N word, that's nothing but ignorant. I, I think there's much more nuanced and moral connotations with the homosexual lifestyle. That's why I have a problem comparing sexual behaviour to race. I don't agree the two are synonymous.⁷³

[157] Although Mr. Whatcott purports to not hate gays and says he is devoted to saving their souls, his actions speak otherwise. Likewise, although his flyer states on the first page, "The 'Gay Zombies' are concerned about the spiritual, psychological and physical welfare of all potential homosexual pride attendees so we want to give you this accurate information and encourage you to abstaining from the homosexuality", the balance of the flyer is vitriol and vilification. It is a rant about everything Mr. Whatcott believes to be wrong and "sordid" about the gay community, from spreading disease, to manipulating the government, to corrupting and recruiting children, to sexually assaulting children. It belies any true or genuine concern about the well-being of gay people or their souls.

[158] Mr. Whatcott testified that he and his commandos "actually had fun sharing our zombie safe-sex packages."⁷⁴ The day after the 2016 Pride Parade, Mr. Whatcott posted a blog on his website "Free North America." He included several photographs of his entourage at the parade, along with commentary. The post appears to have initially included the text of the flyers, which was subsequently removed and replaced with the words "Reluctantly removed to comply with court order." The headline is "Whatcott Christian Commandos infiltrate Toronto Shame Parade" and a caption under the photograph of the Zombies in question reads:

⁷² Transcript of Proceedings, May 28, 2026, at p. 51, lines 2-9.

⁷³ Transcript of Proceedings, May 28, 2026, at p. 51, lines 15-20.

⁷⁴ Transcript of Proceedings, May 27, 2026, at p. 46, lines 9-10.

Here is my Elite Top Secret Special Forces Crack Christian Commando Anti-Sodomite Counter Intelligence Unit leaving the Sherbourne Subway Station disguised as the “gay Zombies Cannabis Consumers Association” to infiltrate and strike the dark forces of the Toronto Homosexual Shame parade and bring about a glorious victory for the Gospel of Jesus Christ, by delivering 3000 “Zombie Safe Sex” packages to parade-goers.⁷⁵

[Emphasis added]

[159] Although initially cloaking himself as a concerned Christian, in cross-examination Mr. Whatcott described himself as being at war against the homosexual agenda. His intention was to “strike against the dark forces” of Gay Pride. In his blog to his followers after the parade, he referred to his fellow “zombies” as “my elite, top secret special forces crack Christian commando anti-sodomite, counter-intelligence unit.” Those are his own words. He considered himself a combatant against the forces of evil. I see Mr. Whatcott’s frequent use of the imagery of war as another indication of his intention in distributing the flyer. He sought to attack the gay community, not to convert them.

[160] Further, the carnival-like costumes he and his “commandos” wore to conduct this “truth assault” were a mockery rather than a genuine attempt to persuade sinners to repent. These were not respectful Christians come to help guide people away from unhealthy sexual practices or to convince gay men to repent their sins and find God. These were “commandos” on the attack against gay culture, with hatred and mockery.

[161] In his blog, Mr. Whatcott refers to the flyer as delivering “accurate truth about the harms of the homosexual lifestyle” and comments on the “massive police and security presence.” He reported that the Gay Zombies “were embraced by the parade and the police” and “had no opposition” to the distribution of the flyers “until 11:00 p.m. Sunday night when the first lesbian called and swore at Bill Whatcott after she read her ‘Zombie Safe Sex’ package.”

[162] In cross-examination about his blog, Mr. Whatcott said “I certainly shared what I did and I was happy with it.”⁷⁶ He conceded that “gloating” would be a fair word to describe it.⁷⁷

(iv) Mens Rea is Established

[163] Thus, there are many routes to finding the Crown has proven the requisite *mens rea* required for this offence. First, a reasonable person would view the flyers as exposing or tending to expose gay men to hatred and would infer Mr. Whatcott had deliberately fomented that hatred.

[164] Second, Mr. Whatcott was on notice from the Supreme Court of Canada that the flyer he was distributing contained hate-speech and he chose to deliver it anyway. In those circumstances he either desired the promotion of hatred or must have realized this to be a certain or

⁷⁵ Exhibit 6, at p. 1.

⁷⁶ Transcript of Proceedings, May 27, 2026, at p. 48, lines 11-12.

⁷⁷ Transcript of Proceedings, May 27, 2026, at p. 48, lines 13-15.

substantially certain result. All these routes lead to the conclusion that Mr. Whatcott wilfully promoted hate.

[165] Third, in all of the surrounding circumstances – including the events leading up to the parade, Mr. Whatcott's chosen method of distributing his flyers, the content of the flyers themselves, Mr. Whatcott's own understanding of what the Supreme Court of Canada said in 2013, his clear animus towards the gay community and his own testimony and demeanour at trial – I am satisfied beyond a reasonable doubt that Mr. Whatcott intentionally distributed these flyers for the purpose of promoting hatred against gay men.

[166] He may also have had other motivations. He may have felt that his actions were justified by his interpretation of the Bible. He was also clearly seeking attention for himself. As noted in the dissenting decision in *Keegstra*, the martyr complex is often associated with this kind of hateful behaviour because of the attention it generates for the hate-monger. This was one of the reasons the dissenting judges would have found no rational connection between the criminalization of hate speech and the stated objectives of the legislation. McLachlin J. (as she then was) wrote:

In my view, s. 319(2) of the *Criminal Code* falls in this class of case. Section 319(2) may well have a chilling effect on defensible expression by law-abiding citizens. At the same time, it is far from clear that it provides an effective way of curbing hate-mongers. Indeed, many have suggested it may promote their cause. Prosecutions under the *Criminal Code* for racist expression have attracted extensive media coverage. Zundel, prosecuted not under s. 319(2) but for the crime of spreading false news (s. 181), claimed that his court battle had given him "a million dollars worth of publicity": *Globe and Mail*, March 1, 1985, p. P1. There is an unmistakable hint of the joy of martyrdom in some of the literature for which Andrews, in the companion appeal, was prosecuted:

The Holocaust Hoax has been so ingrained in the minds of the hated "goyim" by now that in some countries . . . challenging its validity can land you in jail.

(R. v. Andrews (1988), 1988 CanLII 200 (ON CA), 65 O.R. (2d) 161, at p. 165 (C.A.).)

Not only does the criminal process confer on the accused publicity for his dubious causes -- it may even bring him sympathy. The criminal process is cast as a conflict between the accused and the state, a conflict in which the accused may appear at his most sympathetic. Franz Kafka was not being entirely whimsical when he wrote, "If you have the right eye for these things, you can see that accused men are often attractive" (*The Trial* (1976), at p. 203).⁷⁸

[Emphasis added]

⁷⁸ *Keegstra*, at pp. 852-853.

[167] Thus, there may have been multiple motivations for Mr. Whatcott's conduct. However, the presence of other motives does not negate the fact that he wilfully distributed these flyers for the purpose of promoting hatred.

[168] The Crown proved *mens rea* beyond a reasonable doubt.

G. AVAILABLE DEFENCES

[169] The *Criminal Code* provides specific defences available for offences charged under s. 319(2). In this case, the defence relies upon s. 319(3)(b) and (c) as being potentially applicable, depending on the Court's findings of fact.⁷⁹ Those provisions state:

319 (3) No person shall be convicted of an offence under subsection (2) [...]

(b) if, in good faith, the person expressed or attempted to establish by an 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[.]

[170] In *Keegstra*, the Supreme Court held that, given the restricted definition of the requirements of s. 319(2), it would be rare for the promotion of hatred to be characterized as being in good faith or based on an honest and reasonable belief, stating:

A careful reading of the s. 319(3) defences shows them to take in examples of expressive activity that generally would not fall within the "wilful promotion of hatred" as I have defined the phrase. Thus the three defences which include elements of good faith or honest belief -- namely, s. 319(3)(b), (c) and (d) -- would seem to operate to negate directly the *mens rea* in the offence, for only rarely will one who intends to promote hatred be acting in good faith or upon honest belief. These defences are hence intended to aid in making the scope of the wilful promotion of hatred more explicit; individuals engaging in the type of expression described are thus given a strong signal that their activity will not be swept into the ambit of the offence. The result is that what danger exists that s. 319(2) is overbroad or unduly vague, or will be perceived as such, is significantly reduced. To the extent that s. 319(3) provides justification for the accused who would otherwise fall within the parameters of the offence of wilfully promoting hatred, it reflects a commitment to the idea that an individual's freedom of expression will not be curtailed in borderline cases. The line between the rough and tumble of public debate and brutal, negative and damaging attacks upon

⁷⁹ To be clear, the defence of truth provided for in s. 319(3)(a) is not relied upon in this case.

identifiable groups is hence adjusted in order to give some leeway to freedom of expression.⁸⁰

[Emphasis added]

[171] The specific defence raised in *Keegstra* was s. 319(3)(a), which provides that no person could be convicted if he establishes that the statements communicated were true. The Court held that the overlap between s. 319(2) and the defences is less pronounced for the defence of truth under s. 319(3)(a) and that this defence was more likely than the others to excuse the wilful promotion of hatred. The Court then ruled that imposing a burden on an accused to prove the truth of his communication was not a violation of his constitutional right to be presumed innocent. Rather, given that the accused wilfully promoted hatred, it was a reasonable limit to impose upon him the burden of proving the truth of his words.⁸¹

[172] The Court also recognized that, in many of these cases, the hateful communications “are not susceptible to a true/false categorization, existing instead as ideas or opinions in the mind of the communicator.”⁸² It was argued in *Keegstra* that this made the truth defence difficult to rely upon and therefore supported an argument that s. 319(2) was an unjustified restriction on freedom of speech. The Court recognized that there would be cases where truth could not be proven, or where the accused may have negligently or even innocently believed something to be true, when it was not. Nevertheless, the defence under s. 319(3)(a) would not be available and the Court had no difficulty with that given that the defence only arises after the wilful promotion of hatred has been proven beyond a reasonable doubt, with a stringent test for what constitutes hatred.

[173] The Court in *Keegstra* had little to say about the defences relied upon by Mr. Whatcott, other than that they are largely subsumed by the stringent requirements to find guilt under s. 319(2).

[174] In this case, under s. 319(3)(c) the accused must demonstrate that the statements he made were: (1) “relevant to a subject of public interest”, (2) that the discussion of it “was for the public benefit”, (3) “he believed them to be true”, and (4) his belief was based “on reasonable grounds.” These are cumulative grounds. All must be present for the defence to apply.

[175] It is arguable that some of the statements in the flyer were relevant to a subject of public interest, for example the content of school sex education curriculum. However, even if one of the statements in the flyer constituted hate, that would be sufficient, and the case cannot be made that every hateful statement and innuendo in the flyer was a matter of public interest. Nevertheless, this particular part of the test has some marginal merit to it.

[176] The same cannot be said for the second requirement that the discussion of these issues was “for the public benefit.” I have found that Mr. Whatcott distributed this flyer with the

⁸⁰ *Keegstra*, at pp. 779-780.

⁸¹ *Keegstra*, at p. 791.

⁸² *Keegstra*, at p. 792.

intention of promoting hatred against gay men. It is therefore not a discussion “for the public benefit.” Indeed, promoting hatred is the opposite of discourse for the public good.

[177] Mr. Whatcott may or may not have believed everything in his flyer was true. He certainly said that in his testimony at trial, but he also said that he is at war against the dark forces of homosexuality and that his religion permits him to lie in these circumstances, which he expressly said applied to the trial itself. His credibility is therefore questionable, particularly on this issue. Also, many of the statements are opinions or interpretations, which makes truth a difficult concept. In any event, even if Mr. Whatcott genuinely believed in his own mind that everything he wrote was true, that belief is not reasonable. This level of objectivity is already built into the requirements of the offence itself. As I have already determined, a reasonable person would find these statements to be promoting hatred against gay men.

[178] Allegations that gay men are sordid, dirty, disease-ridden, and prone to pedophilia are simply not objectively reasonable, which is the requirement under s. 319(3).⁸³ As an example, Mr. Whatcott used the photograph of the dead person from “cutedeadguys.net”. Mr. Whatcott had no reason to believe the body pictured was an AIDS fatality. Even if I accepted Mr. Whatcott’s evidence that he personally believed that the person depicted died of AIDS, that is not a reasonable conclusion when the evidence is considered objectively. Even if he was HIV+ or had symptoms of AIDS, there are a large variety of things that could have caused his death. It simply cannot be said that he died of AIDS. This is but one example of Mr. Whatcott coming to manifestly unreasonable conclusions. There are other examples throughout the flyer. This illustrates the point made in *Keegstra* that often the finding of promoting hatred based on an objective test will result in negating a defence available under s. 319(3).

[179] Therefore, the defence under s. 319(c) does not excuse Mr. Whatcott’s criminal conduct.

[180] Likewise, the requirements for the defence under s. 319(3)(b) cannot be established. To avail himself of this defence, Mr. Whatcott must demonstrate that he was “acting in good faith and that he expressed or attempted to establish by argument an opinion on a religious subject.”

[181] The Court noted in *Keegstra* that the s. 319(3) defences reflect “a commitment to the idea that an individual’s freedom of expression will not be curtailed in borderline cases.”⁸⁴ I do not consider this case to be “borderline” nor to fall within any of the statutory defences provided in s. 319(3).

[182] It is not surprising that religious beliefs, even those that are sincerely held, will not provide a defence to a *Criminal Code* offence. This is wholly consistent with decades of Canadian case law. As stated by the Court of Appeal for Ontario in *Church of Scientology and The Queen*(No. 6):

In Canada, there are many instances where the sincerely held beliefs of members of particular religious groups or sects have been held to be ineffectual defences to the alleged breaches of laws of this country. In *R. v. Lewis* (1903), 1903 CanLII

⁸³ *R. v. Harding* (2001), 57 O.R. (3d) 333 (ON CA), at para. 39.

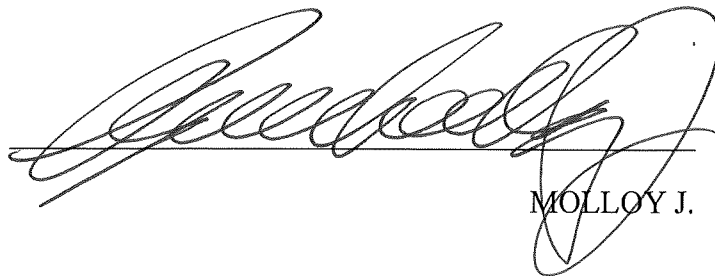
⁸⁴ *Keegstra*, at p. 780.

112 (ON CA), 7 C.C.C. 261, 6 O.L.R. 132, this court held that a conscientious objection to medical treatment because of the belief in the doctrines of the sect known as "Christian Scientists" is not a "lawful excuse" for failing to provide medicines and medical aid under the *Code*. In *R. v. Chomokowski* (1973), 1973 CanLII 1489 (MB CA), 11 C.C.C. (2d) 562, [1973] 5 W.W.R. 184, a Jehovah's Witness who believed that he would give his breath only to God and not to the police was convicted for refusing to provide a breath sample for breathalyzer testing. See also *R. v. Reed* (1983), 1983 CanLII 3516 (BC SC), 8 C.C.C. (3d) 153, where the accused was convicted of causing a disturbance contrary to the *Code*, by shouting at and disturbing an assembly of persons meeting for religious worship, despite his belief that as a dissenter from the Jehovah's Witnesses he had a right to express his freedom of conscience and religion and to denounce the Jehovah's Witnesses. In *R. v. "Bear's Shin Bone"* (1899), 1899 CanLII 111 (NWT SC), 3 C.C.C. 329, 4 Terr. L.R. 173, an Indian who married twice, according to the marriage custom of his tribe, was convicted of bigamy. (p. 471).⁸⁵

[183] Given the factual findings I have made, Mr. Whatcott cannot be said to be acting in good faith. He was acting for the purpose of promoting hatred against gay men. Regardless of what interpretation Mr. Whatcott chooses to place on the words in the Bible, he has cited nothing that requires Christians to engage in the promotion of hatred against anyone. His statements went far beyond characterizing gay men as being in breach of God's teachings about sexual mores. He knew that what he said would be considered hate speech, and he chose to spread it anyway. The flyer contains far more than "an opinion on a religious subject". It is a vilification of the entire gay community, and it was distributed to promote hatred against them. This does not fall within the good faith religious defence.

H. CONCLUSION

[184] The tests for both the criminal conduct (the *actus reus*) and the criminal intention (*mens rea*) are established based on the stringent criteria established by the Supreme Court of Canada in *Keegstra* and subsequent cases. I am satisfied beyond a reasonable doubt of these elements. There are no statutory or common law defences available in the circumstances of this case based on the evidence before me and my findings of fact on the offence itself. I therefore find Mr. Whatcott guilty of promoting hatred as charged.



MOLLOY J.

Released: September 16, 2026

⁸⁵ *Church of Scientology and The Queen (No. 6) Re* (1987), 31 C.C.C. (3d) 449 (Ont. C.A.), at p. 471. See also: *Bennett v. Canada (Attorney General)*, 2011 FC 1310, at para. 133; *R. v. Blackmore*, 2018 BCSC 367.

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DATE: 20260916

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HIS MAJESTY THE KING

– and –

WILLIAM WHATCOTT

Accused

REASONS FOR JUDGMENT

Molloy J.

Released: September 16, 2026