

SUPERIOR COURT OF JUSTICE

(Toronto Region)

B E T W E E N:

HIS MAJESTY THE KING

-and-

WILLIAM WHATCOTT

Crown's Written Submissions

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PART I: OVERVIEW

1. In the early months of 2016, William Whatcott was highly motivated to inspire hate; he believed the gay lifestyle was an abomination and believed he was at war with the “homosexual agenda”. So, he devised a carefully thought-out plan, an assault as he would call it, to strike at the dark forces of his enemy.

2. His strike involved infiltrating the 2016 Toronto Pride Parade and handing out flyers disguised in condom wrappers. These flyers recycled the same themes from flyers he had distributed in Saskatchewan in 2001 and 2002: the gay community is a powerful menace in society; gay men are filthy, dirty, and diseased; gay men abuse and indoctrinate children. The Supreme Court of Canada (SCC) explained how these themes delegitimize and vilify gay men, send the message that gay people are inferior, and inspire hate. The SCC identified numerous hallmarks of hatred in the Saskatchewan flyers; the same hallmarks of hate are present in the 2016 flyers.

3. Much of Whatcott’s evidence was incredible and unreliable. He was argumentative, unreasonable, evasive and contradictory. He admitted to a history of dishonesty and that he feels entitled to lie when there is a tactical reason to do so. His flyer constitutes hate propaganda, and his evidence should not raise a reasonable doubt that he wilfully promoted hatred. The totality of the evidence establishes that Whatcott knew his message inspired hate; he had been warned about this three years earlier, he admitted he knew his flyer contained a hallmark of hate, the flyer is blatantly hate, and he had a motive to promote it.

PART II: THE LAW OF WILFUL PROMOTION OF HATRED

4. Under s. 319(2) of the *Code*, it is an offence to communicate statements, other than in private conversation, that wilfully promote hatred against any identifiable group.

The elements of the offence are:

1. the accused communicated statements (in this case the flyer);
2. the flyer was distributed publicly;
3. the flyer promoted hatred;
4. the promotion of hatred was against an identifiable group; and
5. if the flyer promoted hatred, the respondent did so wilfully.

R. v. Whatcott, [2023 ONCA 536](#), at para. 10

5. Only the third (promotion of hatred) and fifth elements (*mens rea* of wilfulness) of the offence are in dispute.

A. The Harm that s. 319(2) is Meant to Prevent

6. In *Keegstra*, the SCC described how the objective of s. 319(2) is to prevent the serious harms caused by hate propaganda. The Court identified that hate propaganda causes two sorts of injury. First, there is harm done to members of the target group. Dickson C.J. wrote that a “[A] response of humiliation and degradation from an individual targeted by hate propaganda is to be expected.” Hate propaganda erodes the human dignity of the members of the target group and has a “severely negative” impact on the group’s sense of self-worth and acceptance.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at paras. 60-61, 80

7. The second harmful effect of hate propaganda is its “influence upon society at large.” As Dickson C.J. put it, “individuals can be persuaded to believe almost anything

if information or ideas are communicated using the right technique and in the proper circumstances". He recognized that "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." He concluded:

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 (citation omitted).

The threat to the self-dignity of target group members is thus matched by the possibility that prejudiced messages will gain some credence, with the attendant result of discrimination, and perhaps even violence, against minority groups in Canadian society.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at para. 62

B. The Meaning of Hatred" in s. 319(2)

8. The *Criminal Code* does not define "hatred". In *Keegstra*, the SCC considered its meaning in the context of s. 319(2). Dickson C.J. explained that the term "hate propaganda" denotes "expression intended or likely to create or circulate extreme feelings of opprobrium and enmity against a racial or religious group." The term "hatred" connotes "emotion of an intense and extreme nature that is clearly associated with vilification and detestation." Hatred is "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.” The sense in which hatred is used in s.319(2) is circumscribed so as to cover only the most intense form of dislike.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at paras. 17, 115-117

9. The SCC has also expounded on the meaning of “hatred” in the context of human rights legislation prohibiting expressive activity which exposes persons to hatred on the basis of a prohibited ground. In *Whatcott*, Rothstein J stated:

In my view, "detestation" and "vilification" aptly describe the harmful effect that the [Human Rights] Code seeks to eliminate. Representations that expose a target group to detestation tend to inspire enmity and extreme ill-will against them, which goes beyond mere disdain or dislike. Representations vilifying a person or group will seek to abuse, denigrate or delegitimize them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience.

Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#), at para. 41

10. In *Whatcott*, the SCC provided guidance on the “types of expression and devices used to expose groups to hatred.” These “hallmarks of hatred” were summarized in a non-exhaustive list by the Canadian Human Rights Tribunal in *Warman v. Kouba* as follows:

- 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.
- 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.

Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#), at paras. 44-45
Warman v. Kouba, [2006 CHRT 50](#), at paras. 24-81

C. The *Actus Reus* and *Mens Rea*

i) The *actus reus*

11. It is not disputed that Whatcott publicly communicated statements and that the identifiable group was gay men. The remaining question on the *actus reus* is whether the flyer constitutes hatred.

12. In their decision on the appeal of this case, the Ontario Court of Appeal (ONCA) set out “the substantive test for what constitutes hate speech”. Sossin JA stated: “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.”

R. v. Whatcott, [2023 ONCA 536](#), at paras. 62, 75
Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#), at para. 35
Mugesera v. Canada (Minister of Citizenship and Immigration), [2005 SCC 40](#), at para. 103

13. The Crown is not required to prove that actual harm resulted from the communication in question. The intention of Parliament was to prevent the risk of serious harm and not merely to target actual harm caused.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at paras. 113-114
Mugesera v. Canada (Minister of Citizenship and Immigration), [2005 SCC 40](#), at para. 102

ii) **The mens rea**

14. The mental element of s. 319(2) is satisfied on proof that the accused subjectively desired the promotion of hatred or foresaw such a consequence as certain or substantially certain to result. While recklessness will not suffice, the *mens rea* requirement includes wilful blindness.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at paras. 109-114
R. v. Buzzanga and Durocher, [\[1979\] O.J. No. 4345](#) (C.A.), at para. 45
R. v. Harding, [\[2001\] O.J. No. 4953](#) (C.A.), leave ref'd [2002] S.C.C.A. No. 95

15. The word “promotes” indicates active support or instigation: the hate-monger must intend or foresee as substantially certain an active stimulation of hatred against an identifiable group.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at para. 59
R. v. Popescu, [2020 ONCJ 427](#), at para. 54

16. The *mens rea* denoted by “willful” must be kept distinct from motive or purpose in committing the act. The Crown need not prove that the accused was motivated to promote hate – only that the accused intended, knew, or was willfully blind that his communication did so. Keeping these concepts separate is important. A proven motive – in this case animus towards gay people and a desire to strike against the “homosexual agenda” – can

be important evidence of intent. As Watt J stated, if a person has a reason to do something, the trier of fact may find that person did the thing intentionally.

R. v. Candir, [2009 ONCA 915](#), at para. 72

17. The determination of intent rests on a contextual assessment, having regard to the circumstances surrounding the making of the statement. In *Keegstra*, the SCC observed 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 on the statements made.” In *Mugasera*, the SCC again noted: “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.” In other words, intent to promote hatred can usually be inferred from the finding that the statements advanced by an accused constitute hatred.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at para. 117

Mugesera v. Canada (Minister of Citizenship and Immigration), [2005 SCC 40](#), at para. 105

PART III: APPLICATION TO THIS CASE

A. Whatcott’s Self-Serving Evidence Should Not Be Accepted and Does Not Raise a Reasonable Doubt

18. Whatcott was not a credible witness. His self-serving evidence should be rejected and should not leave the Court with a reasonable doubt.

19. **First**, Whatcott has both a history of dishonesty and a motive to lie. He acknowledged that on his Pride entry form, he lied about his name, gave fictitious contact information, registered a made-up organization, and lied about the message that he

intended to spread. Even more troubling than the fact of the dishonesty is Whatcott's justification for it. When it was put to him that Dr. Farrow says there is a Christian duty not to lie, Whatcott replied: "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." According to Whatcott, he will lie for tactical purposes. Especially in a war. He testified that he is currently at war, and that this trial is part of that war.

Transcript, May 27, 2026, pp. 43-44

20. Whatcott further admitted that he was untruthful when he wanted something and knew that if he told the truth he wouldn't get it.

Transcript, May 27, 2026, pp. 44-45

21. Whatcott also admitted to being careless with the truth. For example, he admitted that he told the police that the images (plural) in the flyer came from "medical websites", but that in reality he was not sure they did (especially the image that came from cutedeadguys.net). He justified the discrepancy by saying that the source is not as important as the accuracy.

Transcript, May 27, 2026, pp. 55-58

22. Whatcott further testified that he is not concerned about breaking rules which he does not respect. He said that he did not have a problem with the fact that he was breaking the Pride Parade rules because he "didn't particularly respect their rules or the parade."

Transcript, May 27, 2026, p. 25

23. **Second**, Whatcott testified in two different fashions in chief and in cross-examination. When asked questions by the Crown in cross-examination, Whatcott became combative and did not answer the questions directly.

24. One example was when he was cross-examined about the hallmarks of hate from his previous flyers. Whatcott evaded the Crown's questions. He did not answer the questions directly but chose instead to espouse his views that everything in the flyer was based on fact, and that his religious beliefs justified his actions.

Transcript, May 28, 2026, pp. 18-20, 23-24, 28-31, 35

25. Another example was when he was questioned about his choice to use the word "sodomite". In his evidence in chief, he acknowledged that the word was potentially pejorative and "not necessarily meant to be a compliment." In cross-examination, however, when it was put to him that he understood the pejorative connotation of the word, his answers were evasive. Rather than acknowledge what he had said in-chief, he responded: "It's a Biblical word and God does not agree with sodomy." He ultimately agreed that gay people do not like being called sodomites and that he understood the word was pejorative. But the next day when asked again to acknowledge that "sodomite" is pejorative, he again evaded the direct question and instead talked about the word's accuracy and that it was a descriptor for sinful and harmful behaviour. This was typical of his responses in cross-examination.

Transcript, May 27, 2026, pp. 50-51; May 28, 2026, p. 50

26. **Third**, Whatcott's evidence changed between in-chief and cross-examination on a critical topic: his motive for marching in the parade and handing out flyers. He testified in

chief that he marched in the parade “mainly” because it was tax-funded and he had a right to be there; to make a political statement; and because there were a couple hundred thousand attendees who “all needed the good news”. In cross-examination, however, he agreed that he was there to “strike the dark forces” of Pride, an answer consistent with his belief that he is at war. Further, he employed deceptive tactics to enter the parade in order to gloat to his followers, a fact omitted in chief but abundantly clear on the record. His subsequent gloating online directly contradicts his assertion that Christian charity motivated his actions.

Transcript, May 27, 2026, pp. 21, 25, 48-49

27. **Fourth**, Whatcott’s answers were patently unreasonable. As is set out below, his 2016 flyer obviously employs the same hallmarks of hate that were the subject of the 2013 SCC ruling. The 2016 flyer sends the message that gay men are filthy, a powerful menace, it weaponized facts from true sources, and it vilified gay men as pedophiles. When confronted with this reality, Whatcott evaded the answer and then claimed that none of the hallmarks were present.

Transcript, May 28, 2026, p. 48

28. **Fifth**, Whatcott speculated when testifying, most notably on the cause of death of “AIDS Fatality Picture Left”, an image he claimed he found on Google. Despite obvious issues with his knowledge of the photograph, and that the actual cause of death is indiscernible from the photo, he maintained that the body had died of AIDS and refused to acknowledge otherwise.

Transcript, May 28, 2026, pp. 33-36

29. As a result, it would be dangerous for the Court to believe (or be left in a state of reasonable doubt by) the self-serving components of Whatcott's evidence; specifically that he did not know (or was wilfully blind) that the communication was substantially certain to promote hate.

30. As will be outlined below, Whatcott knew that sections of his flyer were problematic; he knew he was employing hate-inspiring representations. Whatcott believes he is at war and the enemy is the gay community and its homosexual agenda. He attended Pride to strike against his enemy. And then he gloated about that victory to his followers online.

B. The Crown Has Proved its Case Beyond a Reasonable Doubt

i) The flyer constituted hate

31. The statements communicated by Whatcott were strong expressions of hatred against gay men. They resonated with themes long used to justify the maltreatment and disenfranchisement of members of this vulnerable group. The message conveyed in the flyer is that gay men are unhealthy, unwholesome and repellant; dangerous to children; antithetical to natural law, without social value, and destructive of mainstream heterosexual matrimony.

32. As the ONCA said, the analysis "ultimately focuses on whether [the flyer] objectively exposes the group to hatred, read as a whole, with a view to the context and circumstances surrounding the expression." A reasonable person, aware of the context and circumstances surrounding the expression, would view the flyer as promoting hatred.

a) *The flyer contains many hallmarks of hate*

33. Like the flyers considered by the SCC in *Whatcott*, this flyer employs multiple hallmarks of hatred to portray gay men as dirty, dangerous, and threatening to the social order and well-being of others. It makes negative generalizations and delegitimizes the gay community.

34. Importantly, the flyer is not to be considered piecemeal – it must be considered holistically. The initial trial judge’s analysis fell into error because it “focused on the words and images in the flyer, considered in isolation, but did not engage in any analysis about the subtext and message of the flyer *as a whole*.”

R. v. Whatcott, [2023 ONCA 536](#), at para. 76 (emphasis in original)

- (i) The expression portrays the targeted group as a powerful menace taking control of major institutions in society

35. The message conveyed by the flyer is that gay people and their “homosexual agenda” have taken control of the government, Canada’s education system, and mainstream media, and that this powerful menace threatens our safety and well-being.

36. Justin Trudeau is described as the leader of a party “with a long and sordid history of homosexual activism and both enabling and actively participating in child sexual abuse.” The flyer aligns former Liberal Premier Kathleen Wynne with “her buddy” Benjamin Levin, and describes how Levin’s “paw prints are all over Ontario’s perverted sex education curriculum telling impressionable 6 year olds they can switch their gender and 13 year olds they can make the decision when to have anal sex.” The powerful

menace hallmark is further reinforced by the warning that “Wynne is ramming this perverted propaganda down parent’s and children’s throats...”

37. The flyer asserts that the national media is also complicit. It alleges that the media hid Bill Graham’s alleged relationship with an underage male because “[f]or Canada’s major media outlets pro-homosexual correctness is more important than the welfare of exploited boys”.

(ii) Group portrayed as preying upon children and other vulnerable people

38. The message in the flyer is that gay men are dangerous towards children in two ways: i) they are predators who sexually abuse children; and ii) they indoctrinate children with their “sordid” and “perverted” propaganda.

39. The flyer details allegations of sexual abuse and pedophilia in relation to public figures. It connects the “sordid history of homosexual activism” to child sexual abuse. Whatcott’s evidence was that “this is homosexual activism within the Liberal Party of Canada and Ontario [and] they’ve certainly engaged in that”. He testified that in his view, there is a prevalence of child abusers and pedophiles in the homosexual subculture. His message purposely linked gay men to child abuse.

Transcript, May 27, 2026, p. 34; May 28, 2026, p. 52

40. Addressing the flyer’s allegations of pedophilia and child sexual abuse, the ONCA found that the flyer “highlights stories of men who are public figures and have been accused of these crimes. It will be open to the trier of fact to determine whether these

stories, when read in context with the rest of the flyer, paint gay men as criminals and predators, suggesting they are a threat to society.”

R. v. Whatcott, [2023 ONCA 536](#), at para. 80

41. The flyer attempts to expose the alleged dangers of homosexuality. Considered within the context of the flyer as a whole, the allegations about child sexual abuse, exploited boys, incest, and child pornography strongly evoke that yet another danger of homosexuality is that gay men are dangerous to children. As will be detailed below, this stereotype about gay men is a trope that has long been used to justify discrimination.

(iii) Group is portrayed as devoid of redeeming qualities

42. The flyer depicts gay men as devoid of redeeming qualities, squalid, inferior, unnatural and without value. The flyer states: “Homosexuality is incompatible with human nature. Disease, death and confusion are the sad and sordid realities of the homosexual lifestyle.” This is reinforced by inflammatory and graphic photos. The pamphlet further claims that “the clear evidence contained in this package shows Canada’s new sexual ethic is contrary to natural law and no good will come from it.”

43. Acceptance of gay men is depicted as destructive of social values and institutions. The advancement of gay rights is portrayed as a “destructive journey towards sexual anarchy and homosexual inspired oppression.” It is described as “the rejection of God’s 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.”

- (iv) Purportedly reputable sources are relied on to support negative and inflammatory generalizations about the target group.

44. The flyer promotes the idea that gay sexual practices lead to serious disease and death. Medical assertions and photographs are used to support this premise. The message conveyed is that gay sex is unhealthy and life-threatening. Photographs purporting to show cases of “genital warts in the mouth”, “anal warts”, and an “AIDS fatality” would be seen by reasonable people as alarming, frightening and repulsive. That was the point of including them.

45. The Crown does not dispute that there is some truth to Whatcott’s medical claims. But including kernels of truth does not insulate the flyer from being hate propaganda. Rather, hate propaganda often includes references from reportable sources and verifiably true facts -- hate-mongers weaponize these true facts to add credence to their negative generalizations. The flyer provides alarmist statistics taken out of context and uses particularly inflammatory photos – including one from cutedeadguys.net – to depict the “sad and sordid realities of the homosexual lifestyle”.

46. Over-relying on the veracity of the flyer’s medical claims led the initial trial judge to error. The ONCA found: “Because of this focus on the truth of the medical claims, the trial judge failed to engage in any broader analysis about the stereotyping of gay men as diseased and dangerous, and the ways this might resemble some of the hallmarks of hatred he concluded the flyer was lacking, including presenting gay men as a danger to society.” As will be set out below, these purported “medical facts” resonate with stereotypes that are grounded in false myths about the “gay plague” of AIDS and the correlative view that gay men are dangerous spreaders of disease.

R. v. Whatcott, [2023 ONCA 536](#), at para. 80

47. The pamphlet conveys that the gay community is undeserving of fair and equal treatment because it is a toxic and destructive force that endangers the values and well-being of the rest of society. It portrays gay life as a life of danger, disease and debauchery, without any redeeming value. It further conveys that the only way to avoid the “sordid realities of the homosexual lifestyle” is for gay male sexual practices to stop. Claiming that a group is undeserving of fair and equal treatment in our society dehumanizes and delegitimizes its members. These ideas reflect the most intense vilification and detestation.

b) The flyer employs longstanding tropes to justify discrimination

48. The hateful nature of the messaging in this case is intensified by its relevant context: a longstanding history of hatred and discrimination against members of the gay community, and the relatively recent recognition of their equality rights and protection as a vulnerable group. In the past, religious doctrine has been used to justify hateful, homophobic views. Laws have sanctioned egregious inequality and unfair treatment of members of the gay community. Homophobic myths and stereotypes have permeated and continue to permeate the collective conscience; for example, beliefs that gay men are predatory, diseased, promiscuous, unnatural, immoral and corrosive of “wholesome” heteronormative societal values.

49. Dr. Mulé testified about three general tropes that have long been used to justify negative treatment and discrimination of the gay community: the **religion/immorality**

trope, which holds that homosexuality is unnatural and immoral; the **health** trope, which holds that gay men are carriers of disease; and the **criminality** trope, which harkens back to a time when homosexuality was criminalized and accuses gay men of wanting to have sex with children, and of trying to recruit children into their gay lifestyle.

50. The analysis of whether the flyer promotes hatred must consider the use it makes of these tropes. The ONCA found: “When read with an understanding of common anti-gay stereotypes and tropes used to support discrimination, the text and images of the flyer take on more significance than particular statements or claims on their own”.

R. v. Whatcott, [2023 ONCA 536](#), at para. 80

51. Dr. Mulé explained how the flyer contained each of the three tropes he identified. He pointed out that flyer relied on the **religious/immorality** trope to denigrate people who engage in homosexual sex as unnatural and immoral because their behaviour is contrary to natural law and human nature. He also pointed to the pejorative use of the biblical word “sodomy”, as to be called a “sodomite” conjures a perception of engaging in something that is inappropriate or immoral.

52. Dr. Mulé also identified the health trope in the flyer, evoked by a combination of text and images. His evidence was that the **health** trope serves as a fear-inducing warning of engaging in gay sex. He noted Whatcott’s choice to describe the diseases as becoming “epidemic in the homosexual subculture” gives it a framing that harkens back to the days where homosexuality was part of the Diagnostic and Statistical Manual of Mental Disorders (DSM), and gay sex was seen as a dirty and diseased activity.

53. Dr. Mulé considered the flyer's use of "sordid" in the phrase "Disease, death, and confusion are the sad and sordid realities of the homosexual lifestyle". His evidence was that the choice to use the word "sordid" – a word that Whatcott admitted he had carefully chosen – speaks to salaciousness; a form of wrongdoing, engaging in something that is dirty; something abnormal. He testified that "sordidness" has roots in gay denigration, as the gay community has historically been framed that way. This also links back to the flyer's depiction of gay men engaging in risqué behaviour like engaging in oral sex in public.

54. Regarding the **criminality** trope, Dr. Mulé testified about the very negative stereotype placed on gay men that they can't be trusted around children and youth because of their sexual proclivities. He pointed out a number of times the flyer engages this trope: the numerous accusations at least alluded to about high-profile politicians engaging in same-sex acts and sexual abuse of children; the links to pornography, incest, and recruiting. His evidence was that this ties back to the longstanding negative narrative that gay and bi men are dangerous towards children. As described above Whatcott admitted that he intended to link "homosexual activism" to child abuse.

55. Dr. Mulé noted that this particular stereotype has had significant repercussions. For example, the stereotype has made it problematic for gay men to be teachers, or to provide social services to youth. And it has created issues when two gay men want to adopt a child.

56. Dr. Mulé's evidence was that the cumulative effect of the flyer's use of the tropes is to perpetuate the longstanding negative narrative of how the gay community has been

framed over time. The flyer's message is antithetical to the hard work that has been done to get the community past this.

57. The flyer's use of common tropes that perpetuate negative stereotypes against gay men underscores the presence of multiple hallmarks of hatred. The only reasonable conclusion, applying the objective standard mandated by the jurisprudence, is that the flyer promoted hatred against gay men.

ii) Whatcott intended to promote hate

58. As noted above, intent to promote hatred can usually be inferred from the establishment of the elements of the *actus reus*. A person who publicly communicates hate propaganda usually intends the consequence of promoting hatred, or knows that promoting hatred is substantially certain to result.

R. v. Keegstra, [\[1990\] 3 SCR 697](#), at para. 117

Mugesera v. Canada (Minister of Citizenship and Immigration), [2005 SCC 40](#), at para. 105

59. This case is no different. The 3,000 flyers distributed by Whatcott constitute hate propaganda. He distributed them knowing they would actively stimulate hate against gay men.

a) *Whatcott's communication was blatant hate*

60. As outlined above, the flyer was obviously hate speech. Whatcott carefully thought out its messaging. He employed multiple hallmarks of hate. He employed multiple tropes. He combined graphic imagery of disease and death. He knew his flyer was not welcome

at Pride and concealed it in a condom package so that people would take it. Any reasonable person would conclude that his message was hate.

b) Whatcott admitted knowledge that his flyer vilified gay people

61. Whatcott was questioned about his use of the word “sordid” and his recycled wording of disease and death from his previous flyers. He agreed that he intended to use “sordid” as dirty, filthy, vile, squalid in describing “the homosexual lifestyle.” The SCC was clear: the use of denigrating language such as filth and dirty to represent gay men as unclean tells a reasonable reader that gay men are inferior.

Transcript, May 28, 2026, pp. 20-21

Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#), at para. 188

62. The following exchange took place:

30	Q. And you knew that just this alone, filth, sorted, dirty, that is problematic when it comes to 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.

Transcript, May 28, 2026, pp. 24-25

63. Having agreed that the SCC put him on notice that calling gay people dirty, etc. was problematic, the following question and answer occurred:

20 | A. Oh, they gave me guidance on how to stay out
of legal trouble.

 Q. But instead what you do is you employ those
same motifs, those same words, gays being squalid, filthy,
25 | diseased, right?

 A. That certainly wasn't the whole tenor of my
flyer, no.

 Q. You appreciate though that just one piece of
hate can making something hate, right?

30 | A. That'll be for the judge to determine.

Transcript, May 28, 2026, p. 26

64. Whatcott agreed in cross-examination that he knew that his flyer employed this hallmark of filth, or sordidness, and he knew that doing so vilified gay men.

c) The SCC told Whatcott that his devices inspire hate

65. When cross-examined about the other hallmarks of hate cited by the SCC at *Whatcott*, para. 187 (portraying gay men as a powerful menace; using vilifying and derogatory representations like comparing gay men to pedophiles; using respected sources to lend credibility to negative generalizations), Whatcott denied that they were present. However, the only conclusion on the evidence is that he was aware that these devices were hate-inspiring and he chose to use them in his 2016 flyer.

66. Whatcott carefully chose to employ the same tropes as he had in the Saskatchewan flyers. He used the exact same “hate-inspiring” motifs that the SCC expressly told him expose gay people to hatred. For example:

- The SCC said that one hallmark of hatred was to portray that target group as a menace that could threaten the safety and well-being of others. His 2016 flyer clearly portrays the gay community and their “homosexual activist” agenda as a threatening menace.
- The SCC said it was “hate-inspiring” to represent that gay people are trying to expose children to their “filth and propaganda”, and that teachers are describing sodomy to teenage students. The 2016 pamphlet represents that gay people are ramming “perverted propaganda” down children’s throats, teaching anal sex to 13 year olds, and that “impressionable 6 year olds” are being told they can switch genders.
- The SCC said it was “hate-inspiring” to represent that gay people are filthy or dirty. The flyer clearly sends the message that gay men are dirty and diseased, a message which was reinforced by inflammatory photos.
- The SCC said it was delegitimizing to compare gay people to pedophiles. The 2016 flyer clearly compares gay men to pedophiles and links “homosexual activism” to child abuse.

Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#), at paras.187-90

67. Whatcott was explicitly told by the SCC that “equating homosexuals with carriers of disease, sex addicts, pedophiles and predators who would proselytize vulnerable children” exposes the group to detestation and vilification – that is, hate. His 2016 flyer still equates gay men with carriers of disease, sexual perversion, pedophiles and predators who would proselytize impressionable children. He knew his flyer would expose gay men to hate.

Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#), at para. 190

d) Whatcott was motivated to promote hate

68. Whatcott’s evidence was that he believes the gay lifestyle is an “abomination” – in other words, something that is disgusting, loathsome, exceptionally vile, worthy of disgust and hatred. He callously calls gay men “homosexuals” and “sodomites”, even though he acknowledges the pejorative connotation of the terms. He believes gay men are diseased. He believes their “subculture” has a prevalence of child abusers and pedophilia.

Transcript, May 28, 2026, pp. 51-52

69. Whatcott’s animus towards the gay community is a powerful motivator for his hateful communication. His intention can be inferred from that motive.

e) Whatcott believes he is at war

70. As noted above, Whatcott testified that he is in a war against the “homosexual agenda”. He viewed his plan to infiltrate the parade and hand out flyers as part of that war. In his own words, he infiltrated the “homosexual shame” parade in order to “strike

the dark forces” of Pride. He waged a “truth assault”. He took this “special forces” and “commando” action because he is at war, which is why he gloated about his action after the fact.

Transcript, May 27, 2026, pp. 46-49; May 28, 2026, p. 57
Exhibit 6: FreeNorthAmerica blog posts

71. The way he sought to achieve his victory in the war against the homosexual agenda was to foment hate against homosexuals. When considering the whole of the circumstances, including the content of the flyers, his previous warnings about hate-inspiration from the SCC, and his own words about what he knew and what he did, the only logical conclusion is that his goal in distributing hate propaganda was to promote hatred against gay people.

f) Conclusion

72. The flyer’s repeated and visual representation of gay men as diseased, as pedophiles, as powerful menaces, constitutes line after line of hate speech. While it can usually be inferred that a person who publicly communicates hate propaganda intends to promote hate, in this case there is evidence to further support that inference. Whatcott knew that the contents of his message vilified gay people and inspired hate – he was in the unusual position of having been told as much by the SCC. That knowledge belies any suggestion of a Christian intent to simply spread the Gospel, as does the fact that he gloated about his deception and infiltration to his followers afterwards. As he told his followers, his goal was to strike at the dark forces of Pride. He knew his flyer would stir up hatred against what he views as the filthy and immoral gay community. He distributed

hate propaganda as his battle in the war against the “homosexual agenda”. He spread 3,000 messages of hatred, and promoting hate was his intent.

SCHEDULE A: AUTHORITIES TO BE CITED

R. v. Whatcott, [2023 ONCA 536](#)

R. v. Keegstra, [\[1990\] 3 SCR 697](#)

Saskatchewan (Human Rights Commission) v. Whatcott, [2013 SCC 11](#)

Warman v. Kouba, [2006 CHRT 50](#)

Mugesera v. Canada (Minister of Citizenship and Immigration), [2005 SCC 40](#)

R. v. Buzzanga and Durocher, [\[1979\] O.J. No. 4345](#) (C.A.)

R. v. Harding, [\[2001\] O.J. No. 4953](#) (C.A.), leave ref'd [2002] S.C.C.A. No. 95

R. v. Popescu, [2020 ONCJ 427](#)

R. v. Candir, [2009 ONCA 915](#)