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**STAR/IJB INVESTIGATION**

# Spread hatred. Face courts. Repeat. Why Canada's 'weak' laws are failing to address the rise of hate

As Canada's hate problem reaches new heights, its justice system has failed to dissuade hate spreaders who repeatedly target vulnerable groups.

By **Robert Cribb**, **Inori Roy**, **Charlie Buckley** and **Mashal Butt**

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*WARNING: This article contains disturbing subject matter, including quotations of alleged hate speech.*

Inside a downtown Toronto courthouse this past October, Bill Whatcott chatted politely with supporters, his white hair buzzed short, a fanny pack hanging from his hip.

Stepping into the courtroom, the 54-year-old held the door for others before taking his seat to face a charge of wilful promotion of hatred, the latest in a string of hate speech allegations stretching back nearly two decades.

The self-identified evangelical Christian activist estimates he has distributed at least half a million flyers, the majority targeting abortion and homosexuality. A 2013 Supreme Court decision described language used in some of his flyers as "hate-inspiring."

Two provincial tribunals and Canada's highest court have found he violated hate-related human rights legislation.

But despite numerous hearings and, by his estimate, more than 30 stays in custody for his speech, Whatcott has remained undeterred.

"I'm not gonna apologize for any of my flyers ... I'd rather sit in jail," he told Toronto police in a 2018 video interview played for his trial last fall.



Canada's [hate problem is reaching new heights](#), but its justice system has failed to dissuade prolific purveyors of hate and discrimination who repeatedly target vulnerable groups, an Investigative Journalism Bureau/Toronto Star investigation has found.

The three men featured in this story have faced up to four separate hearings — whether criminal, civil, or under human rights legislation — for alleged acts of hatred or discrimination. Each has been found by a court or tribunal to have engaged in hateful or discriminatory behaviour, received penalties or orders to stop, and then proceeded to carry out similar acts in open defiance.

“These repeat offenders don’t take hate seriously because they don’t think the judicial system takes it seriously,” says Ena Chadha, a leading human rights lawyer and former chief commissioner of the Ontario Human Rights Commission.

To Chadha, our laws are “too obsolete and weak” to address hate.

“If the judicial system appears powerless to curtail this, as we see in times of crisis like the pandemic where racist attacks have flourished, it feels like we’re enabling them and emboldening them.”



Across Canada in 2020, law enforcement reported 2,669 crimes believed to be motivated by bias, prejudice or hate, including public incitement of hatred, uttering threats and assault. The annual total was the highest since comparable data became available in 2009 and up 37 per cent over 2019, including increases of 92 per cent in anti-Black, 152 per cent in anti-Indigenous and 301 per cent in anti-East/Southeast-Asian hate crime reports nationally. Toronto police say there was an “unprecedented” growth in the city, where the most targeted victim group was the Jewish community.

Reports of public incitement of hatred more than doubled between 2014 and 2020, to 111 from 40.

John David Popescu, a repeat Sudbury political candidate, was twice found guilty of wilful promotion of hatred, most recently in 2020, after targeting Ontario's first openly gay premier, Kathleen Wynne, stating that “God's wrath is on all who show compassion to her kind and commands good government to put her to death.”

Kevin J. Johnston, a podcast host and former mayoral candidate in Mississauga and Calgary, was found in 2019 to have defamed a Muslim restaurateur after calling him an “economic terrorist.” Last July, he was found in contempt of court for continued attacks in violation of a judge's order. Within weeks of the contempt ruling, he remained defiant.

“The courts are being used as a weapon against we the people for no reason other than they want us to shut up,” Johnston said in an online video posted in August and quoted by the court at sentencing. “Which, in good conscience, I simply cannot do.”

Johnston became a fugitive from justice earlier this month after failing to appear in Calgary and Toronto to serve back-to-back sentences for separate convictions. He was arrested Jan. 4 by U.S. officials while attempting to cross the Saskatchewan-Montana border on foot, according to Calgary Police.

“They're not going to back down, typically, regardless of the sentence imposed,” says Barbara Perry, director of the Centre on Hate, Bias and Extremism at Ontario Tech University.

“It's not just intransigence ... I think they look at it as a badge of honour.”

Perry says that the search for policy solutions is a continuing challenge.

“Many of us have thrown up our hands.”



### **'Full of hate'**

Years before his criminal trial in Ontario, Whatcott stood before the B.C. Human Rights Tribunal after [handing out flyers](#) claiming that Morgane Oger, a transgender candidate in the province's 2017 election, was lying about her gender identity. Whatcott's flyers, the published decision describes, ended with a call to action: "do not vote for Ms. Oger or the NDP."

She lost by 415 votes.

Before a ruling was reached on whether he violated Oger's human rights, Whatcott was already flouting the tribunal's authority. On hearing days, he stood outside handing out flyers repeating claims central to the complaint and declaring that he "fully expects to be fined tens of thousands of dollars in this process and eventually jailed, as he will never comply."

Oger says she hasn't received a penny of the \$55,000 the tribunal ordered Whatcott to pay her — a claim he doesn't dispute.

"In my mind, that flyer was election literature," says Whatcott, who says he has taken steps to appeal the tribunal's decision. "I'd do that one all over again exactly the way I did it."





It wasn't his first such case.

In 2005, a Saskatchewan tribunal found that by distributing flyers including some reading "homosexuality is an abomination," Whatcott violated the province's Human Rights Code. He successfully appealed the decision in 2010, but three years later, the Supreme Court of Canada reaffirmed findings of hate for two of the three flyer designs.

"By its very nature, [hate legislation is] subjective," Whatcott says. "It's really hard to know what speech violates and what doesn't until you get slapped."

On trial in Ontario this past fall, Whatcott sat quietly as lawyers argued about flyers distributed at the 2016 Toronto Pride Parade that sparked five years of civil and criminal proceedings.

According to an agreed statement of facts in the criminal case, Whatcott and five others attended the parade dressed head-to-toe in green bodysuits and masks.

Dubbing themselves "Gay Zombies," the group distributed "safe sex packets" that appeared to hold condoms but instead contained graphic flyers disparaging homosexuality.

After the parade, former deputy premier George Smitherman and activist Christopher Hudspeth filed a [\\$103-million class action claim](#) against Whatcott. The suit alleged civil conspiracy to injure, defamation and intentional infliction of mental distress on behalf of marchers, recipients of the flyers and Liberal Party figures, some of whom are mentioned in the materials.

Toronto lawyer R. Douglas Elliott attended the parade and later represented the plaintiffs. A practicing Christian, he rejects any connection between Whatcott's words and the religion's message.

"(Whatcott) perverts my faith," he said. "Love thy neighbour as thyself is one of the fundamental principles of Christianity, and there's nothing loving about Bill Whatcott's behaviour. It's full of hate."

In 2017, a judge struck out the plaintiffs' statement of claim with leave to refile not as a class action, a step they decided against after a criminal investigation based on similar allegations showed progress.

The civil allegations were never proven in court.

Whatcott surrendered to police in 2018 to face a criminal charge of wilful promotion of hatred in relation to the 2016 flyers, to which he pleaded not guilty.

In his police interview and later with this investigation, Whatcott spoke about his “street kid” youth, his religious awakening at 18 and his work as a nurse in the 1990s, at one point claiming to have provided care to hundreds of terminally ill HIV/AIDS patients, some in the same Toronto neighbourhood where, decades later, he would hand out the allegedly homophobic flyers.

When asked by police for his response to those who feel they were harmed by the flyers, Whatcott replied: “Grow up.”

The people who haven't yet grown up are a key reason Hudspeth made formal complaints: Youth struggling with their sexuality who face harmful messages.

“I was forced through conversion therapy ... I heard these kinds of hateful messages on a regular basis,” he recalls. “I don't want anyone to have to listen to that ... I don't want another kid to take their life over it.”

Steep penalties are the only solution, Elliott said.

“You cut off the money. You cut off their access to the internet. You cut off their right to publish ... you deprive them of the tools to cause the harm,” he says, adding that while imprisonment could make them martyrs, there is no other choice.

“I say, bring on the lions.”

### **The grey zone**

In a December online hearing, Whatcott sat swaying in his chair as he listened to the verdict.

Justice Robert F. Goldstein said in his reasons for decision that there was evidence that Whatcott's intention may have been to create an “uproar,” featuring content the judge described as “obviously offensive to many people.”

But it was not proven beyond a reasonable doubt that he wilfully promoted hate, Goldstein ruled.

“I have found him not guilty because the flyer is in the grey zone between legitimate expression and hate speech,” the reasons read. “Our values as a free society and our centuries-old legal tradition requires that our system not criminalize those who hold views that are merely obnoxious and unpopular.”

After decades of legal complaints, jailings and human rights penalties for expressing his controversial beliefs, Whatcott remains innocent of all hate allegations before Canadian criminal courts.

“(Goldstein) followed the law,” Whatcott said in an interview following the decision. “And for that, I'm grateful.”

Whatcott's relief was short-lived. On Christmas Eve, he got word from his Toronto lawyer, John Rosen, that the Crown was appealing the decision.

“If God wants this to go to the Supreme Court ... I'll just be as faithful as I can be and being mindful that I am a very flawed human being,” Whatcott said. “This is something that I think I was called to do so I'll try to do it as faithfully as I can.”

Rosen, who has represented organizations opposing hate speech, says attacking hate through criminal courts is challenging because of a lack of clarity on what constitutes a hateful act and the high bar required for a successful prosecution.

He has a proposed fix: Strengthen provincial human rights legislation to more vigorously penalize violators. Rather than fines that are often impossible to collect, legislative change should empower tribunals to order the behaviour to stop under threat of criminal contempt.

“There are ways to do this with a scalpel rather than a large mallet.”

### **In God's name**



In 2009, Sudburian Popescu was convicted on charges of wilful promotion of hatred and, according to press reports from the time, given a suspended sentence and 18 months of probation. Then, in 2020, he was again convicted of wilful promotion of hatred after producing and distributing DVDs targeting Kathleen Wynne.

At trial, Popescu admitted his statements were hateful, but argued they contained “‘Godly’ or ‘Biblical’ hatred and therefore should not be criminalized.”

The Criminal Code protects opinions that are based on a “belief in a religious text.”

The court disagreed with Popescu.

“Mr. Popescu has not quoted directly from the Bible,” the reasons for judgment read. “Instead, Mr. Popescu has promoted his hateful world view in the guise of a religious decree.”

He was sentenced to 30 days in jail and two years probation. But Popescu has made clear he is unwilling to change in the face of criminal judgment.

The 2020 judgment reads that between then and his 2009 hate conviction, he was charged with “similar offences” in 2015 — charges that were later withdrawn for “no reasonable prospect of conviction.”

Regardless of the outcome of that 2015 case, Popescu made clear at his 2020 trial that he would continue to spread the same message against homosexuals, the judgment describes.

And in an interview, Popescu remained unmoved.

“Their decision is based on legal precedent, not particularly on what the Bible says,” he says. “In order to call this a criminal charge, they are really criminalizing the word of God.”

It’s impossible to know the full scope of Canada’s hate problem. Only a tiny fraction of incidents are ever recorded by police, and fewer still lead to a conviction.

Statistics Canada estimates that in 2019, roughly 78 per cent of incidents in which a Canadian said they were victimized by hate

crime were not reported to police. The agency has also reported that between 2013 and 2018, 82 per cent of police-reported hate crime incidents brought no criminal charge, and roughly eight per cent led to a conviction.

Even when complaints are filed and charges are laid, human rights lawyer Chadha and others say the justice system is failing.

“The Criminal Code is too narrowly focused, not aligned with human rights principles and there are inconsistent approaches across jurisdictions, leaving vulnerable communities — like racialized people, LGBTQ+, religious minorities and people with disabilities — exposed to real danger,” she says.

### **‘This guy holds himself above the rule of law’**



Calgary podcaster Johnston’s materials don’t display the same religious fervour as Whatcott’s or Popescu’s. But the self-described conservative journalist appears equally dismissive of court orders and judgments.

In 2017, Peel Regional Police charged Johnston with a hate crime in connection with “numerous incidents” and involving “information published on various social media sites.”

That year, according to reports from the time by Mississauga News, Johnston posted videos online offering a \$1,000 reward for recording Muslim students praying in Peel schools, and in 2016, Mississauga Mayor Bonnie Crombie filed a criminal complaint after a website co-owned by Johnston allegedly published an article claiming she is trying to convert her city to Islam “so they can kill her son just for being gay.”

Johnston pleaded guilty to a criminal hate charge late last year.

In an interview this week, he said he only pleaded guilty, in part, because he didn’t want to spend any more money on the Ontario justice system “which itself is not a justice system, it is merely a money-making interference in the lives of people like me.

“When the courts are being used to deter people from exercising their Charter and constitutional rights, the courts are the ones who are breaking the law,” he said.

Johnston rejects racist and homophobic characterizations of him as creations of the “left wing media,” calling himself a moderate, the country’s best public speaker and a “very, very, very, intelligent man who goes out of his way to know what’s going on.”



The target of his most prominent case has been Mohamad Fakhri, a Lebanese-Canadian Muslim and the CEO of Paramount Fine Foods.

In May 2019, an Ontario judge found that Johnston defamed Fakhri, whom Johnston had referred to as a supporter of terrorism in what the published decision describes as “hate speech at its worst.”

The civil defamation suit ended in a \$2.5-million judgment against Johnston. He didn't pay.

“I refuse to pay anybody who defeats me in a lawsuit, whether it be a proper victory or not,” Johnston said in an April 2021 livestream later quoted by the plaintiffs.

At the same time, Johnston routinely seeks donations from his online audience to fund his legal battles.

For example, a post last year on a Facebook page hosting his livestreams reads, “Tyranny MUST be defeated in #Canada – Please tell everyone you know that this MUST END! ... Donate Today.”



Even after Johnston was found to have committed six acts in contempt of court for his continued defamation of Fakhri late last year, the court's reasons for sentence read that he “doubled down” in the days before sentencing, submitting an affidavit to “prove Mr. Fakhri's links to international Muslim terrorism.”

He also filed his own \$100 million lawsuit against Fakhri, his lawyers, Calgary mayoral candidates, prominent Canadian politicians and others. Last week, the claim was dismissed by an Ontario judge.

“Johnston has a very high appetite to provoke the justice system,” says Toronto lawyer Jonathan Lisus, who represented Fakhri in the civil case and was named in Johnston's suit. “One reason he did it was so that he could repeat his defamatory statements ... which he did.”

At sentencing this past fall, the court wrote that “there is no basis to have any confidence that Mr. Johnston will voluntarily comply with the court's injunction.”

He was given 18 months in jail and directed to pay \$226,816.50 to cover most of the plaintiffs' legal costs, an amount the court said was “reprehensibly maximized” by Johnston's “derisive and abusive approach” that drew out the proceedings.

Johnston was supposed to surrender to court officers in Toronto on the morning of Jan. 4 after finishing serving weekends in a Calgary remand centre on a separate conviction. But he never showed, triggering an Ontario-wide warrant for his arrest.

The same day, he was arrested by Montana border officials and has since been returned to law enforcement in Canada, said his Toronto lawyer, Ian McCuaig. Days ago, Johnston was released from custody to stay with a friend in Edmonton, according to press reports.

In a written statement, Johnston said he crossed the border seeking political asylum “due to the treatment I have experienced over the last five years because of political persecution by the Canadian Government,” which he claimed to include more than 266 court appearances and five months of prison time for holding his “conservative views.”

In an interview, Johnston said he will comply with his outstanding court orders in Alberta where he says he has been told he faces another 30 to 120 days of jail time.

But he intends to fight his 18-month sentence, calling the ruling an “absolute mockery of the entire court system ... They want a man with a broken spirit. That’s not what they’re going to get.”

Lawyers on both sides of the Johnston case say they’ve never seen anything like it.

Niklas Holmberg, who was on Fakh’s legal team, says Johnston’s imperviousness to court orders demanding he refrain from hateful speech against Fakh sets a new bar.

“He holds himself above the rule of law ... And he seems to be pretty irredeemable in that way. He just chooses to run.”

And McCuaig, who has represented Johnston over the past year, says the case illustrates Canada’s shortcomings in dealing with growing hate and discrimination.

“We’re doing a bad job. But more jail time is not the answer. It is not a legislative problem ... We need more discussion and debate,” he said. “Everyone sits on their hands and shuts up and the only people talking about these things are the fringe. That makes them attractive. People have these ideas and questions and the only source of information drawing their attention are those trying to pull us apart.”

In his victim impact statement and in an interview with this investigation, Fakh, who was recently awarded the [Order of Canada](#), said Johnston’s public statements against him have triggered death threats, four years of legal battles costing him \$500,000 and a shaken faith in Canada’s justice system.

“Haters see people like [Johnston] getting ahead, or getting away, so they feel free,” he says. “These gaps have to close.”

Even with Johnston in custody earlier this month, the targeting continued, says Fakh.

After Johnston was seized by authorities, one of Fakh’s young sons found Johnston’s then-latest online posting telling his Facebook followers his life is at risk from a religious “fatwa on my head” and asking for donations to help him continue his legal fight.

“The look from (my son’s) eyes looking at me and saying, ‘But he still didn’t stop, and nothing is stopping him,’” says the father of three. “It breaks my heart.”

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*With files from Dania Ali, Alyssa Bravo, Thomas Desormeaux, Lexia Khan and Alexander Schummer / Ryerson University*



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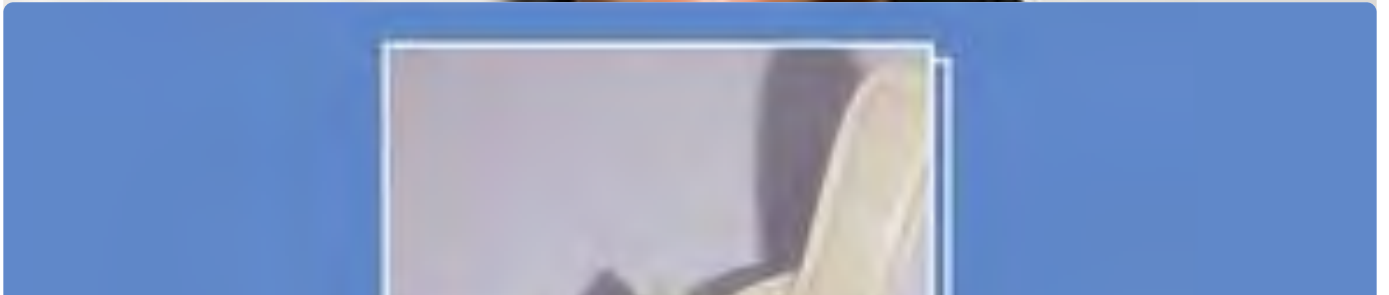
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