

Could Discriminatory Verbal Abuse (for example of a Muslim woman wearing hijab) be Criminal Harassment or Mischief?

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Although the law on this issue is relevant to discriminatory verbal abuse on any prohibited ground, this article focuses on the specific issue of whether, under existing law, verbally abusing a Muslim woman for wearing hijab may amount to Criminal Harassment or Mischief. There is an increase in discrimination against Muslims generally, and Muslim women who wear hijab in particular. For example, on December 18th, 2015 Eric Grenier of CBC reported, “Canadians see Donald Trump’s Muslim-ban idea not so differently from Americans, polls indicate.” On November 20th, 2015 CityNews reported that in a Toronto subway train station, racist comments were yelled at Muslim women, and one of the women was pushed.

Under existing law, a single act of discriminatory verbal abuse may qualify as Criminal Harassment. For example, in *R. v. Medeiros*^[1], the accused plead guilty to yelling at an unknown Muslim woman “Muslims are terrorists” and “pigs.” Subsequently, the accused sought to strike that guilty plea, but the trial judge refused. He was sentenced to jail. He appealed on the basis that the admitted facts would not support the Criminal Harassment offence.^[2] The Summary Appeal Court, however, disagreed and held that *the* random and hostile way the accused approached the complainant in a public park, the offensive content of his insulting and threatening language directed at the complainant, the fact that the appellant said these things while “yelling” at her, and her immediate reaction of complaining to her husband about what had just happened, collectively supported the accused’s

admission that the complainant reasonably feared for her safety as a result of the accused's conduct despite it being a single incident^[3].

The single act of discriminatory verbal abuse or conduct may also support the charge of Mischief even with respect to interference with the right to use public property such as a sidewalk.^[4] For example, in *R v Brazau*^[5], involving a Muslim victim, in addition to hate crime charges, the charge of mischief was also laid in respect of the use of sidewalk. In convicting the accused, Justice Clements held that the victim's use and enjoyment of a public thoroughfare was compromised by the accused's conduct. The accused's persistent refusal to comply with a simple request that he stop taking photographs and his aggressive, intimidating and in-your-face photo taking was in itself an interference with the victim's lawful enjoyment and use of the sidewalk.^[6]

Of course, not every verbal abuse may be criminal. The purpose of this article is to provide information and not advice. Moreover, the use of criminal law may not necessarily be always appropriate to resolve such issues. The fact, however, that discriminatory verbal abuse may amount to Criminal Harassment or Mischief should cause everyone pause to reflect.

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[1] 2014 ONSC 6550 (SCJ)

[2] Ibid at paragraphs 1 & 28

[3] Ibid at paragraphs 31 & 32

[4] See R. v. Biggin 1980 CarswellOnt 1340 (Ont.CA) at paragraphs 6-8

[5] [2014] O.J. No. 1117 (OCJ)

[6] Ibid at paragraphs 89