

COMBATTING HATE?:
A SOCIO-LEGAL DISCUSSION ON
THE CRIMINALIZATION OF HATE IN CANADA

by
Senaka K. Suriya

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

Master of Arts

Department of Law
Carleton University
Ottawa, Ontario

May 11, 1998
© copyright
1998 Senaka K. Suriya



**National Library
of Canada**

**Acquisitions and
Bibliographic Services**

**395 Wellington Street
Ottawa ON K1A 0N4
Canada**

**Bibliothèque nationale
du Canada**

**Acquisitions et
services bibliographiques**

**395, rue Wellington
Ottawa ON K1A 0N4
Canada**

Your file Votre référence

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-32382-X

ABSTRACT

Decades of political dealings as well as judicial exchanges on law-making pertaining to hate in Canada have resulted in the creation of hate crime legislation. The contemporary debates on hate usually focus on the legalities of this hate crime legislation. This research, however, using a liberal consensus approach as well as a conflict approach, critically explores whether the criminalization of hate effectively combats hate in Canada.

ACKNOWLEDGEMENTS

It has not been easy attempting to complete this research project at a distance from the Department of Law, Carleton University, considering the benefits of the stimulating discussions and setting of the Department of Law. Reflecting back, however, I have been blessed with many supportive friends, colleagues and teachers. Professor Neil Sargent (my research supervisor), Professor Ron Saunders (my second reader), Professor Barry Wright, Professor Brettel Dawson, Professor Barry Leighton, Sandy Rochon and other members at the Department of Law, Professor Dennis Forcese (my external examiner), Professor Tara Goldstein, Robert Bowers, Kelly Buckley, Allison Fader, Ferdinand Krauss, Amelia Marshy, Vincenzo Mazzurco, Russell Prime and Rashna Wadia cannot escape special mention.

Most importantly, I dedicate this research to my mother and late father who made many sacrifices during my childhood to provide me with life, happiness and education.

TABLE OF CONTENTS

ABSTRACT	i
ACKNOWLEDGEMENTS	ii
TABLE OF CONTENTS	iii
1. INTRODUCTION	1
2. THEORETICAL PERSPECTIVES	8
2.1 Liberal Consensus Perspective	9
2.2 Conflict Perspective	13
3. HATE CRIME LAW	21
3.1 Introduction	21
3.2 Origins	22
3.3 Unsuccessful Use of Seditious Libel	25
3.4 Modern Legislative Reforms	28
3.4.1 Bill C-3: Specific Crimes	33
3.4.2 Case Law as a Precursor to Bill C-41	41
3.4.3 Bill C-41: Sentence Enhancement	44
3.5 Conclusion	50
4. EFFECTIVENESS OF THE LAW	51
4.1 Introduction	51
4.2 Review of the Case Law	52
4.3 Technical Reforms	60
4.3.1 Requirement of Wilfully	61
4.3.2 Attorney General's Consent	62
4.4 Freedom of Speech	64
4.5 Alternate Explanation	66
5. CONCLUSION	77

Appendix	82
CASES	86
STATUTES AND BILLS	89
REFERENCES	90

1. INTRODUCTION

Ernst Zündel, the Toronto Holocaust denier, was once again in newspapers in December 1997. He was appearing in front of the Canadian Human Rights Tribunal to defend the allegation of the Toronto Mayor's Committee on Community and Race Relations that his web site could expose Jews to hatred¹. Approximately two weeks before this affair, a gang of teenage boys and girls in Saanich, B.C., was at the centre of public attention for murdering fourteen year old Reena Virk, an "overweight" "dark-skinned" girl of "East Indian" origin. The gang members have since been charged with second-degree murder and aggravated assault². Less than three weeks before

¹ Sam Pazzano, 1997, "Zundel `inviting violence'", 1997(December 12) *The Toronto Sun* 58.

According to the Canadian Human Rights Commission, this case represents the first time a human rights tribunal is considering a complaint alleging a hate message on the Internet. See Canadian Human Rights Commission, 1997, "Tribunal Resumes Internet Hate Hearings", 1997(December 1) *Communiqué* 1. Also see Philp Rosen, 1997, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 6 & 11 for an additional account.

² Miro Cernetig, *et al.*, 1997, "Reena Virk's short life and lonely death: Brutality of attack horrifies community", 1997(November 27) *The Globe and Mail* A1 & A12; Andrew Purvis, 1997, "A teenager's brutal assault and drowning raise in a quiet Canadian town". 150(24)/December 8 *Time*.

this murder case hearing, Councillor Gordon Chong was elected to the new megacity council of Toronto during the November, 1997, Ontario municipal elections; he received nation-wide publicity for his remarks that the Roma people were "Gypsies" who exist by 'pickpocketing', 'pimping' wives and daughters and 'bumming' around at the expense of the social-welfare-net³. All of these individuated acts of hate made news, distancing the Canadian society at large from them.

Canadians would like to regard themselves as members of a kinder and gentler society, blaming bigotry and hostility in the society on a minority of narrow-minded individuals. However, according to a *Decima Poll* published in the *Maclean's* of December 27, 1993, seventy-two percent of Canadians think that racial minority groups ought to adopt Canadian cultural values and forget their own traditions⁴, implying that the cultural values of racial minorities are not Canadian. These attitudes cannot be completely isolated from exhibited behaviours as they are inextricably interwoven together⁵. Margaret Cannon

³ Dick Chapman, 1997, "Gypsies 'exist on crime'", 1997(August 21) *The Toronto Sun* 4; Scot Magnish, 1997, "We're not crooks, says king", 1997(August 22) *The Toronto Sun* 4.

⁴ Brian Bergman, 1993, "A nation of polite bigots?", 1993(December 27) *Maclean's* 42-43; William W. Black, 1994, *B.C. Human Rights Review: Report on Human Rights in British Columbia*, Vancouver, B.C.: Ministry Responsible for Multiculturalism and Human Rights at 8.

⁵ Mark Nakamura, 1983, "Should We Ban Racist Hate Groups?", 6(2) *Multiculturalism* at 28; Fernandez, Cassandra, Donna Costanzo, *et al.*, 1997, *Hate:*

characterizes this racism as "the invisible empire" of Canada, because it is a way of life, of thinking and of acting; it is found where Canadians work, live, play and raise their children⁶. Importantly, peoples' attempts to 'outCanadian' each other happen not only on the basis of race, but also in relation to national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or various other factors. Although faceless, and by appearance fairly inconsequential, this nature of hatred consequentially affects the daily life of individuals⁷.

The often stated solution to hatred is the criminalization of hate. Hate crime laws are often presented as a serious commitment on the part of the

Communities Can Respond. Toronto: Community Advisory Committee on Anti-Hate and Anti-Racism of the Municipality of Metropolitan Toronto at 12; Canadian Association of Chiefs of Police, 1996, *Hate Crimes in Canada: In Your Back Yard*, Ottawa at 5.

⁶ Margaret Cannon, 1995, *The Invisible Empire: Racism in Canada*. Toronto: Random House of Canada; Also see Richard Moon, 1992, "Drawing Lines in a Culture of Prejudice: R. v. Keegstra and the Restriction of Hate Propaganda". 26(1) *University of British Columbia Law Review* at 135.

⁷ Wayne N. Renke, 1994, [Book Review of] "Web of Hate: Inside Canada's Far Right Network". 32(4) *Alberta Law Review* at 837.

However, the Comité d'intervention contre la violence raciste states these aspects of hatred are generally interpreted as a relatively minor or benign form of 'racism', or as a basic human attitude that is fairly inconsequential. See Quebec, 1992, *Violence and Racism in Quebec: Summary of the Report by the Comité d'intervention contre la violence raciste*, Montreal [a committee consisting of members from the Maghreb Research and Information Centre, the Quebec Human Rights Commission, the Quebec wing of the Canadian Jewish Congress and the Ligue des droits et libertés] at 13.

Canadian justice system to combat hate. As Luke McNamara points out, Canada has even gained a reputation as a world leader for its hate crime laws⁸. Is this reputation deserved? Is it misguided by a "halo effect" bestowed on hate crime laws which exist only on paper? **This study, therefore, examines whether the criminalization of hate effectively combats hate in Canada.**

Hate crime offenses were added for the first time to the Canadian *Criminal Code* in 1970 through *Bill C-3*. Subsequent provisions were added to the *Criminal Code* in 1995 through *Bill C-41*. While *Bill C-3* created the specific hate crime offenses of "advocating genocide", "public incitement of hatred", and "wilful promotion of hatred". *Bill C-41* did not create any new hate crime offenses. *Bill C-41* rather dealt with aggravating or mitigating circumstances relating to a crime or a criminal upon sentencing, if "bias, prejudice or hate" were found in the commission of crime. Together, the provisions introduced through these two bills represent the current Canadian position on hate crime.

In this research, this current position on hate crime is discussed from two theoretical perspectives: a liberal consensus perspective and a conflict perspective. The second chapter introduces these two theoretical perspectives

⁸ Luke McNamara, 1994. "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 198.

as a precursor to the subsequent chapters.

The liberal consensus perspective is predominantly used in hate crime research. Hate crime as specified in the Canadian *Criminal Code* presupposes liberal consensus assumptions of the criminal law. It assumes that hate crime law develops out of a broad-based normative consensus within society over the values that are reflected in the criminal law. Questioning the validity of hate crime laws becomes pointless as laws are viewed as a reflection of a preexisting normative consensus against ethno-racial and other forms of hate motivated violence in society.

Considering hate crime law as given limits our understanding of the criminalization of hate; we fail to explore the contested role of hate crime laws in the society. In fact, if we use only the liberal perspective to understand hate, we risk allowing law to shape our view of society and ignore the fact that hate constitutes more than breaking the criminal law. Since it is not useful for the purpose of this study to use a multitude of theories, the most promising theories were initially selected to address the inadequacies of the liberal consensus perspective. These alternate theories will be brought together under one umbrella term in this study and called the conflict perspective.

While some conflict theorists argue that the basis for conflict is class, there are other conflict theorists who argue that although class is a very

important factor, power is accumulated unevenly not only on the basis of class, but also on the basis of race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or other stratifying factors. Despite these varied theoretical positions, all theories in the conflict perspective commonly share the position that conflicts rather than consensus best account for the nature of social reality. Hate crime law develops out of competition at the level of norms as well as at the level of individual interests, power and resources. These different theoretical points of the conflict perspective provide a strong framework for a discussion of the criminalization of hate, challenging the underlying assumptions of the liberal perspective.

The third chapter introduces readers to the above mentioned hate crime laws in Canada, reviewing the judicial and legislative measures that have been developed to protect individuals and groups against the effects of hate. The critical analysis of hate crime laws is left for the fourth chapter.

In the fourth chapter, it is argued that the liberal and conflict perspectives bring to light different views on the nature and the extent of hate victimization in Canadian society, and the role and the extent of the pervasiveness of hate crime laws in Canadian society. As a result, both perspectives provide rather different answers to the question of the effectiveness of Canadian hate crime laws.

The final chapter suggests a tentative answer to the research question of this study: the criminalization of hate by itself is not effective in combatting hatred in Canada.

2. THEORETICAL PERSPECTIVES

Official Canadian responses to hate crime are based on an ideology founded on liberal consensus. Hate crime is often discussed from this liberal consensus perspective. The overall result of this is that the strengths and limitations of the criminalization of hate cannot be adequately understood without exploring some of the parameters of this liberal consensus. There is also the need to look beyond a liberal consensus perspective for other possible explanations. Studying the criminalization of hate from other perspectives can help us to see more clearly the strengths and limitations of the criminalization of hate. The conflict perspective as articulated in this chapter fills this need to explore an alternate perspective. In other words, in this study, the issue of the criminalization of hate in Canada will be explored through:

1. the liberal consensus perspective, and
2. the conflict perspective.

These two perspectives hold different positions not just on the nature of hate crime itself, but also on law-making, law-breaking and law-enforcement aspects of hate crime. More importantly, drawing from unique

points in each approach, this research will uncover a variety of issues not otherwise exposed in critiquing the criminalization of hate in Canada.

2.1 Liberal Consensus Perspective

The liberal consensus perspective can be best described as traditional. It focuses on the formalistic rules and process-oriented aspects of law, proclaiming order⁹. Official Canadian responses to crime have almost always fit within this legal perspective -- both historically¹⁰ and currently. Central to the formalistic rule and process orientation of Canadian criminal law is the principle called "the rule of law"¹¹. This principle emphasizes

the supremacy of regular law as opposed to the influence of arbitrary power, excluding the existence of arbitrariness.

⁹ R.P. Saunders, "Traditional Legal Perspectives" in R.P. Saunders, and C.N. Mitchell (eds.), 1990, *An Introduction to Criminal Law in Context*, Toronto: Carswell at 37-38; Tullio Caputo, et al. (eds.), 1989, *Law and Society: A Critical Perspective*, Toronto: Harcourt Brace Jovanovich at 1-2.

¹⁰ See Peter W. Hogg, 1985, *Constitutional Law of Canada*, Toronto: Carswell. However, some have suggested that crime has not always been viewed this way even in this century. See Jerold S. Auerbach, 1983, *Justice Without Law?*, New York: Oxford University Press.

¹¹ The concept of the rule of law is often found in constitutional law discussions. Canadian constitutional law is viewed as depending on three major doctrines, namely responsible government, parliamentary supremacy and the rule of law. See Donald A. MacIntosh, 1989, *Fundamentals of the Criminal Justice System*, Toronto: Carswell at 3; Richard J. Van Loon and Michael S. Whittington, 1987, *The Canadian Political System: Environment, Structure and Process*, Toronto: McGraw-Hill Ryerson at 167-169.

prerogative, or even of wide discretionary authority on the part of the government; equality before law, excluding the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens¹².

There are two tenets of the rule of law principle: the supremacy of regular law and the equality of all before the law. These tenets help to portray Canadian criminal law as neutral and impartial.

In addition, the equality of all before the law is illustrated as a rational guarantee of protection to everyone in society, applying to victims as well as to accused persons. In other words, this rational guarantee must be understood as a delicate balance between the protection of the rights of accused persons against wrongful accusations and the protection of the public from harm while maximizing individual liberty. According to the Law Reform Commission of Canada:

[c]oping with crime is a two-sided problem for a just society. Crime uncoped with is unjust: to the victim, to potential victims and to all of us. Crime wrongly coped with is also unjust: criminal law -- the state against the individual -- is always on the cutting edge of the abuse of power. Between these two extremes justice must keep a balance¹³.

¹² Quoted from A.V. Dicey in Donald A. MacIntosh, 1989, *Fundamentals of the Criminal Justice System*, Toronto: Carswell at 7.

¹³ Canada, Law Reform Commission of Canada, 1977, *Our Criminal Law* (A Report), Ottawa at 1.

Fundamental to these views of neutrality and rationality is an *a priori* pluralistic assumption that the society is made up of individuals who share a common set of values about the ways in which society should be organized. In a democratic structure no one is in a position to impose demands over others. As Neil Sargent points out,

the social relations between individuals and groups within society always take place against the backdrop of a broad societal consensus about the fundamental values that are of most importance within that society. In other words, even where there may exist significant conflicts of interests between different individuals or groups, nevertheless most individuals and groups within society will still share a common commitment to the fundamental social values around which society is ordered. This normative consensus is the glue which holds society together ... and operates to ameliorate the otherwise socially disruptive consequences of both interpersonal and inter-group conflicts¹⁴.

Accordingly, the role of the state under this system acts as a legitimate neutral political forum that stands above disputing individuals where conflicts are arbitrated according to the rule of law¹⁵.

Important to the rule of law concept is the notion of formal laws.

¹⁴ Neil Sargent, 1998, *Notes on understanding the role of law in responding to white collar and corporate Crime*, Ottawa: Department of Law, Carleton University.

¹⁵ See Robert S. Ratner, *et al.*, 1987, "The Problem of Relative Autonomy and Criminal Justice in the Canadian State", in Robert Ratner and John McMullan (eds.), 1987, *State Control: Criminal Justice Politics in Canada*, Vancouver: University of British Columbia Press at 89-90, 98; R.P. Saunders, "Traditional Legal Perspectives". in R.P. Saunders and C.N. Mitchell (eds.), 1990, *An Introduction to Criminal Law in Context*. Toronto: Carswell at 37-38.

emphasising social order. Formal laws develop out of a broad-based normative consensus within society over competing individual interests¹⁶. Accordingly, formal law rules are formalized normative values. The enactment of criminal law as formal law rules is a symbolic affirmation of societal normative values. The breaking of criminal law rules denotes the breaking of societal normative values, and it is considered purposeless and irrational. Accordingly, society at large is not engaged in breaking criminal law rules. Criminal law-breaking is a criminally deviant behaviour.

A socially harmful behaviour in itself, according to James Inverarity, Pat Lauderdale and Barry Feld, would not automatically be considered as deviance. Despite societal attempts to designate many behaviours as deviant, only a few behaviours are eventually labelled as deviance¹⁷. Even fewer are designated as criminal deviance. Accordingly, in this liberal consensus view hate crime behaviours are not the norm; hate crime behaviours are not actions of the society at large.

Instead, hate conduct is seen as the actions of "underclass," "pathological" groups consisting of irresponsible deviants with the instigation of outside agitators and conspiratorial leaders. As a result, this liberal

¹⁶ Tullio Caputo, *et al.* (eds.), 1989, *Law and Society: A Critical Perspective*, Toronto: Harcourt Brace Jovanovich at 1-2 & 7-8.

¹⁷ James M. Inverarity, *et al.*, 1983, *Law and Society: Sociological Perspectives on Criminal law*, Boston: Little, Brown and Company at 5-6.

consensus perspective stresses the importance of the enforcement of the societal norms which denounce the repugnancy of hate through the rehabilitation of inadequately-socialized, randomly-scattered deviant individuals¹⁸. In the context of hate crime, these criminally deviant individual offenders are people who participate in an act which is included in the *Criminal Code* provisions dealing with hate motivated behaviours. The criminalization of hate from a liberal consensus perspective operates both to stigmatize and deter hate motivated behaviours on the part of criminally deviant offenders who commit hate crimes, and at the same time operates to symbolically reinforce the values reflected in the criminal law.

2.2 Conflict Perspective

The conflict perspective consists of a range of theories. Central to the conflict perspective is the position that group conflicts are an integral part of society. Criminal laws do not develop out of a broad-based normative consensus that is shared by most societal groups within society; but rather out of group conflicts based on competing individual and group interests.

¹⁸ For similar reasoning, see Dhiru Patel, 1980, *Dealing with Interracial Conflict: Policy Alternatives*, Montreal: The Institute for Research on Public Policy at 2. Also see Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press at 8.

Accordingly, the conflict perspective argues that criminal law rules are not formalized broad-based normative values. The nature of values embodied in the criminal law rules, however, are perceived differently within the conflict perspective from one particular theory to another.

The theories which fall within the conflict perspective can be divided into two camps. They are either Marxist or non-Marxist. Marxist conflict theories argue that capitalist societies are structured around the class conflict between the capitalist class and the working class over the control of the means of production, leaving all other forms of conflicts peripheral to the class conflict¹⁹. Non-Marxist conflict theories in contrast argue that Canadian capitalist society is made up of a number of fundamental conflicts between groups, not all of which are parallel to each other, but rather can be in conflict with one another.

Georg Simmel, Thorsten Sellin, Edwin Sutherland, George Vold, and Austin Turk made a major contribution to this non-Marxist approach.

¹⁹ Ronald Hinch, 1992, "Conflict and Marxist Theories", in Rick Linden (ed.), 1992, *Criminology: A Canadian Perspective*, Toronto: Harcourt Brace Jovanovich Canada, 277-284; Judy Fudge, 1991, "Marx's Theory of History and a Marxist Analysis of Law", in Richard F. Devlin (ed.), 1991, *Canadian Perspectives on Legal Theory*, Toronto: Emond Montgomery Publications Limited; Robert S. Ratner, *et al.*, 1987, "The Problem of Relative Autonomy and Criminal Justice in the Canadian State", in Robert Ratner and John McMullan (eds.), 1987, *State Control: Criminal Justice Politics in Canada*, Vancouver: University of British Columbia Press at 91-93 and 98; Michael J. Lynch and W. Byron Groves, 1989, *A Primer in Radical Criminology*, New York: Harrow and Heston at 22-25.

However, it was the contribution of George Vold in 1958 through his *Theoretical Criminology* that has been widely regarded as a landmark contribution to conflict theory in criminology²⁰.

Central to the theory of Vold is his notion of group dynamics in society. He argued that:

[t]he social-psychological orientation for conflict theory rests on social interaction theories of personality formation and the 'social process' conception of collective behaviour. Implicit to this view is the assumption that man always is a group-involved being whose life is both a part, and a product of his group associations. Implicit also is the view of society as a congerie[s] of groups held together in a shifting but dynamic equilibrium of opposing group interests and efforts.

This continuity of group interaction, the endless series of moves and counter-moves, of checks and cross-checks, is the essential element in the concept of social process. It is this continuous on-going of interchanging influence, in an immediate and dynamically maintained equilibrium, that gives special significance to the designation of 'collective' behaviour, as opposed to the idea of simultaneously behaving individuals. ... The end result is a more or less continuous struggle to maintain, or to defend, the place of one's own group in the interaction of groups, always with due attention to the possibility of improving its relative status position. Conflict is viewed, therefore, as one of the principal and essential social processes upon which the continuing on-going of society depends²¹.

²⁰ Ronald L. Akers, 1994, *Criminological Theories: Introduction and Evaluation*, Los Angeles: Roxbury Publishing Company at 18; George Vold, 1958, *Theoretical Criminology*, Oxford: Oxford University Press.

²¹ George Vold, 1958, *Theoretical Criminology*, Oxford: Oxford University Press at 203-204.

As Ronald Akers points out, the position that the whole process of law-making, law-breaking and law-enforcement is implicated in conflict among groups is essential in understanding this conflict theory of Vold²². Hate crime as law-breaking is simply one aspect of this on-going process of group conflict. Furthermore, according to Vold,

the whole political process of law making, law breaking, and law enforcement becomes a direct reflection of deep-seated and fundamental conflicts between interest groups and their more general struggle for the control of the police power of the state. Those who produce legislative majorities win control over the police power and dominate the policies that decide who is likely to be involved in violation of the law²³.

In other words, hate crime law can not be discussed in isolation from group conflict dynamics. Breaking hate crime law does not necessarily mean acts of individual deviance which challenge societal normative values. Breaking hate crime laws can also be seen as a rational and meaningful response to group conflicts. Under this perspective, accounting for hate conduct can be more meaningfully explained in two different ways, using

²² Ronald L. Akers, 1994, *Criminological Theories: Introduction and Evaluation*, Los Angeles: Roxbury Publishing Company at 18 and 160.

²³ George Vold, 1958, *Theoretical Criminology*, Oxford: Oxford University Press at 208-209. However, it should be noted that legislative majority should not be interpreted as popular vote; interest groups have power to control the outcome of legislation processes. For a discussion of interest groups in Canada, see Richard J. Van Loon and Michael S. Whittington, 1987, *The Canadian Political System: Environment, Structure and Process*, Toronto: McGraw-Hill Ryerson Ltd at 402-434.

Dhiru Patel's elaborations: a social-forces approach and an institutional-structural approach.

According to Patel, the social-forces approach perceives

collective violence as generally inevitable under certain historical or social conditions and only moderately useful in alleviating such conditions: it is caused not so much by deviants as by relatively impersonal social conditions like the presumably neutral problems of migration, family structure, urban overpopulation, or historical underprivilege of minorities, which lead to "breakdown," "relative deprivation," "alienation," and so on²⁴.

This approach suggests that hate is not a necessary feature of society but is generated inevitably under certain social conditions²⁵. Hate is not directed against any particular group *per se*, but it is rather a result of economic and political competition or conflict, and thus tends to increase when times are hard²⁶. In other words, hate is seen as a reaction of frustrated people under tough economic times or personal insecurities and is to be perceived as an unavoidable condition. Accordingly, the emphasis in this approach is on some

²⁴ Dhiru Patel, 1980, *Dealing with Interracial Conflict: Policy Alternatives*. Montreal: The Institute for Research on Public Policy at 2.

²⁵ For similar reasoning, refer to Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press at 8.

²⁶ Although articulated in the context of the causes of prejudice, see Elliot Aronson, 1992, "Causes of Prejudice", in Robert M. Baird, and Stuart E. Rosenbaum (eds.), 1992, *Bigotry, Prejudice and Hatred: Definitions Causes and Solutions*, Buffalo: Prometheus Books at 112-115.

modifications to law and policy through token 'tinkering', without making drastic changes to the existing socio-political and economic system²⁷.

In contrast to the social-forces approach, the institutional-structural approach perceives

collective violence as basically structured, purposeful, rational, and politically meaningful. Thus, this view stresses the normality, legitimacy, and efficacy of violence as a rational strategy in the struggle for power employed only after non-violent strategies have failed or when societal structures are incapable of accommodating basic demands. Hence, this perspective views such violence as caused basically by those in power who systematically exclude other groups²⁸.

Hate activities, under this reasoning, are the products of the basic institutional-structural framework of society itself that has built into the patterns of (unequal or stratified) social relationships and supporting ideologies²⁹. Moreover, hate is embedded in the structures of society that reflect the overall relations of power and is reproduced generation after

²⁷ Dhiru Patel, 1980, *Dealing with Interracial Conflict: Policy Alternatives*, Montreal: The Institute for Research on Public Policy at 2.

²⁸ Dhiru Patel, 1980, *Dealing with Interracial Conflict: Policy Alternatives*, Montreal: The Institute for Research on Public Policy at 2.

²⁹ Refer to Dhiru Patel, 1994, *Speaking Notes on Context, Nature, Scope and Definition of Hate Crime*, Ottawa: *Workshop on Police Response to Hate/Bias Crime*, April 22-23, 1994, [by the Solicitor General of Canada Secretariat and Carleton University].

generation by virtue of the continuity of the social system itself³⁰. The state and its institutions, consequently, are not seen as neutral political fora that stand above disputing parties where conflicts are arbitrated as in the liberal understanding. Indeed, whether by design or practice, institutions structurally propagate hate or hate violence.

Unlike the 'token tinkering' with law and policy stated in the social-forces approach, the institutional-structural approach advocates increasing power and resources to the marginalized in society in solving hate³¹. In general, all remedies advocated under this perspective include the removal of fundamental institutional-structural barriers faced by marginalized groups. Some authors even advocate the removal of capitalism altogether, presenting it as the main cause for the problem³².

³⁰ Barrett has made this comment with reference to racial ideology, although it is adopted here in the context of hate. See Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press at 7. Similarly, the society at large can be explained as a host as well as a producer of the ideology of hate.

³¹ Dhiru Patel, 1980, *Dealing with Interracial Conflict: Policy Alternatives*, Montreal: The Institute for Research on Public Policy at 3.

³² Arguing from a Marxian perspective, these authors maintain that the problems of inequality stem from capitalism. The capitalist state in Marxism is regarded as the direct promoter of class rule preempting class conflict. The state is the basis of class-biased instruments of manipulation as well as an arena for class struggle, but functions primarily to support the long-term reproduction of capital by facilitating capitalists. The legal apparatus is an instrument of ruling-class domination. As a result, changes in law and policy are carried out in the vested interests of capitalism, rather than equality. Refer to Robert S. Ratner, *et al.*, 1987, "The Problem of Relative

In contrast to the emphasis on the criminalization of deviant individual criminal offenders in the liberal consensus perspective, both the social-forces approach and the institutional-structural approach advocate that fundamental shift toward more equal social relationships is required to lessen conflicts. In other words, societal hate conduct cannot be individuated. Moreover, as Jack Levin and Jack McDevitt strongly assert, hate conduct cannot be merely reduced to the handiwork of deviant individuals, but rather it must be viewed as the daily activities of mainstream society. This places the responsibility for the predicament of hate on the mainstream society itself, rather than on a few deviant individuals³³.

Autonomy and Criminal Justice in the Canadian State", in Robert Ratner and John McMullan (eds.), 1987, *State Control: Criminal Justice Politics in Canada*, Vancouver: University of British Columbia Press at 91-94, 98; David A. Gold, *et al.*, 1975a, "Recent Developments in Marxist Theories of the Capitalist State", 27(5) *Monthly Review* 29-43; Michael J. Lynch and W. Byron Groves, 1989, *A Primer in Radical Criminology*, New York: Harrow and Heston at 22-26 for details.

³³ Jack Levin and Jack McDevitt, 1993, *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*, New York: Plenum Press at xi.

3. HATE CRIME LAW

3.1 Introduction

Events which led to the enactment of hate crime laws in Canada were very much a domestic political affair, although a significant force underlying the Canadian criminal law (in general) is based on centuries of English criminal law. Hate crime as currently defined in Canada was added to the *Criminal Code* in 1970 for the first time through *Bill C-3*, creating specific criminal offenses of "advocating genocide", "public incitement of hatred", and "wilful promotion of hatred"³⁴. These criminal offenses remain unchanged in the current *Criminal Code*. Additional provisions were added to the *Criminal Code* in 1995 through *Bill C-41*³⁵. Unlike *Bill C-3*, *Bill C-41* did not create any new crime offenses. *Bill C-41* prescribed that longer sentences be

³⁴ *Bill C-3* was given Royal Assent on June 11, 1970. The amendment is listed as *An Act to amend the Criminal Code*, R.S.C. 1970 (1st Supp.), c. 11, amending R.S.C. 1970.. c. C-34.

³⁵ *Bill C-41: An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, as passed by the House of Commons on June 15, 1995, and given Royal Assent on July 13, 1995. By Order in Council P.C. 1996-1271 (August 7, 1996), other than subsection 718.3(5) and sections 747 to 747.8 of these provisions came into force as of September 3, 1996.

imposed by the courts if "bias, prejudice or hate" were elements of or motivating factors for a crime. These provisions remain unchanged in the current *Criminal Code*. In short, the hate crime offense provisions which were introduced through these two bills constitute the current *Criminal Code* position.

3.2 Origins

The English statutory offence of *De Scandalis Magnatum*³⁶ in 1275 is considered as the legal origin of 'hate crime'. This statutory offence was introduced to criminalize the spread of false news or tales against "the King and any great men of the realm"³⁷. Three centuries later, in 1606, in the case of *De Libellis Famosis*³⁸, the English Court of the Star Chamber, created a new common law offence of libel. Given the high level of violence which people were accustomed to in English society at the time, the Star Chamber was concerned with two objectives: to protect public persons of higher social

³⁶ *De Scandalis Magnatum*, 1275, 3 Edw. 1, c. 34 (U.K.).

³⁷ See Law Reform Commission of Canada, 1986, *Hate Propaganda* (Working Paper 50), Ottawa at 3; and Law Reform Commission of Canada, 1985, *Defamatory Libel* (Working Paper 35), Ottawa at 3. It should be noted that the views of the Law Reform Commission of Canada are based on the theoretical assumptions of the liberal approach.

³⁸ *De Libellis Famosis* (1606), 77 E.R. 250 (Star Chamber).

classes from attacks, and to provide an alternative to duelling as an honourable way to defend one's reputation against unjust attacks³⁹. In light of the primary purpose of *De Libellis Famosis* -- to penalize actions against public persons and to eliminate circumstances which put their rule at risk -- it appears that the ruling elite (which included the bench of the Star Chamber) was implicated in developing this law to protect themselves. This appears to be one source of what became known as seditious libel.

Century later, according to *The King v. Osborn*⁴⁰ in 1732, the criminal law had expanded to cover group defamation. Osborn had published accusations that certain Jews who had recently arrived from Portugal and were living near Broad Street in London had burned to death a Jewish woman and her child because the father of the child was a Christian. The accusation mobilized mobs to violently attack Jews in different parts of the city. The court found Osborn guilty, not of libel *per se*, but rather of publishing something tending to incite the public to breach the peace⁴¹. The overriding

³⁹ Mark R. MacGuigan, 1966, "Seditious Libel in England", in Cohen, Maxwell [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 79-80.

⁴⁰ *The King v. Osborn* (1732), 2 Barn. K.B. 166, 94 E.R. 425; W. Kel. 230-231, 25 E.R. 584-585; 2 Sawns. 532, 36 E.R. 717.

⁴¹ See David R. Fryer, 1964, "Group Defamation in England", 13(1) *Cleveland-Marshall Law Review* at 46-47; Mitchell Gropper, 1965, "Hate Literature: The Problem of Control", 30(3) *Saskatchewan Bar Review* at 186-187; Stephen Cohen, 1971, "Hate Propaganda - The Amendments to the Criminal Code", 17 *McGill Law*

concern was to prevent actions which would breach the public peace, rather than providing protection to Jews.

Meanwhile, further provisions were developed through *Fox's Libel Act* in 1792⁴² and *Lord Campbell's Act*⁴³ in 1843. These acts dealt with libel. The Canadian parliament adopted the provisions of *Lord Campbell's Act* into *An Act respecting the Crime of Libel*⁴⁴ in 1874, revising the law later to become *An Act respecting Libel*⁴⁵ in 1886. This English tradition of criminal defamatory libel was continued in Canada until the first Canadian *Criminal Code*⁴⁶ in 1892.

Defamatory libel as defined in the first Canadian *Criminal Code* has remained substantially unchanged⁴⁷. However, in comparison to the parallel

Journal at 741-742; Law Reform Commission of Canada, 1986, *Hate Propaganda* (Working Paper 50), Ottawa at 4.

⁴² *The Libel Act*, 1792, 32 Geo. III. c. 60 (U.K.). See Law Reform Commission of Canada, 1985, *Defamatory Libel* (Working Paper 35), Ottawa at 3-5.

⁴³ *The Libel Act*, 1843, 6 & 7 Vict., c.96 (U.K.). Refer to Law Reform Commission of Canada, 1985, *Defamatory Libel* (Working Paper 35), Ottawa at 3-5.

⁴⁴ *An Act respecting the Crime of Libel*, S.C. 1874, c. 38.

⁴⁵ *An Act respecting Libel*, R.S.C. 1886, c. 163.

⁴⁶ *The Criminal Code*, 1892, S.C. 1892, c. 29.

⁴⁷ *Criminal Code*, R.S.C. 1985, c. C-46.

Any subsequent reference to the *Criminal Code* will include all current amendments unless it is otherwise footnoted.

Section 298 reads:

(1) A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt of ridicule, or that is designed to insult the person of or concerning whom it is

period of English criminal law, the scope of Canadian criminal defamatory libel had been limited to libel directed against a person, without providing protection for groups having common characteristics such as race, religion, colour and ethnic origin⁴⁸.

3.3 Unsuccessful Use of Seditious Libel

Having witnessed Nazi genocide and attempts to annihilate certain social and ethnic groups, one would assume that there was a strong consensus in favour of protecting such groups following the World-War II years in Canada. On the contrary, the response was not so positive.

In *Boucher v. The King*⁴⁹, Aimé Boucher was charged with seditious libel

published.

- (2) A defamatory libel may be expressed directly or by insinuation or irony
- (a) in words legibly marked upon any substance; or
 - (b) by any object signifying a defamatory libel otherwise than by words.

⁴⁸ As the Quebec Superior Court stated in *Ex parte Genest v. R.* (1933), 71 R.J.Q. 385-393, although physical persons as well as public bodies, corporations, societies and companies are covered under the definition of "person" in section 2 of the *Canadian Criminal Code*, groups having common characteristics such as race, religion, colour and ethnic origin are not covered under the libel definition. In other words, Canadian criminal defamatory libel provides no protection for groups having common characteristics such as race, religion, colour and ethnic origin. See Stephen Cohen, 1971, "Hate Propaganda - The Amendments to the Criminal Code", 17 *McGill Law Journal* at 765.

⁴⁹ *Boucher v. The King* (1949), [1950] 1 D.L.R. 657-694 (S. C. C.).

for distributing leaflets entitled "Quebec's Burning Hate for God and Christ and Freedom" in December, 1946. The leaflets contained inflammatory words concerning the Catholic Church and the government of Quebec. Boucher was convicted by a jury and sentenced to one month imprisonment⁵⁰.

On appeal by Boucher, the Supreme Court of Canada did not dispute whether Catholics were victimized or whether the leaflets promoted feelings of ill-will and hostility between different classes of such subjects. The majority of Supreme Court judges held that in order to constitute a seditious intention or conspiracy there must be evidence of the intention to promote ill-will. Furthermore, the Court held that hostility must be for the purpose of producing disturbances against or resistance to the authority of the lawfully constituted government⁵¹. Accordingly, the Supreme Court of Canada overturned the lower court conviction of Boucher and rejected the common law definition of seditious intention as described by Sir James Fitzjames

⁵⁰ Then, listed under section 133, 133A, and 134 of the *Criminal Code*. Currently, listed under sections 59, 60 and 61.

⁵¹ *Boucher v. The King* (1949 & 1950), [1951] S.C.R. 265-345 (S. C. C.); *Boucher v. The King* (1949), [1950] 1 D.L.R. 657-694 (S. C. C.); *Boucher v. The King* (1950), [1951] 2 D.L.R. 369-422 (S. C. C.); F. A. Brewin, 1951, "Case Comment [on] *Boucher v. The King*", 29 *Canadian Bar Review* 193-203; Robert E. Hage, 1970, "The Hate Propaganda Amendment to the Criminal Code", 28 *University of Toronto Faculty of Law Review* at 64; Mitchell Gropper, 1965, "Hate Literature: The Problem of Control", 30(3) *Saskatchewan Bar Review* at 188; Stephen Cohen, 1971, "Hate Propaganda - The Amendments to the Criminal Code", 17 *McGill Law Journal* at 761-765.

Stephen which stated that:

seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of, Her Majesty, her heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of Justice, or to execute Her Majesty's subject to attempt otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects⁵².

The consequence of the restrictive interpretation of seditious libel was that the promotion of feelings of ill-will and hostility between different classes was not considered as seditious. In other words, the definition of English seditious libel at common law as described by Sir James Fitzjames Stephen was rejected in Canada.

Ardent advocates of free speech considered the decision of *Boucher v. The King* as a victory⁵³. Dismissing the absolute free speech notions, a delegation of the Canadian Jewish Congress (CJC) in March 1953 appeared

⁵² This was first laid down by Sir Stephen in his *Digest of the Criminal Law* in 1877. It has been since quoted in many textbooks. See F. A. Brewin, 1951, "Case Comment [on] *Boucher v. The King*", 29 *Canadian Bar Review* at 194-195; Maxwell Cohen [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 38.

⁵³ B. G. Kayfets, 1970, "The Story Behind Canada's New Anti-Hate Law". 3(4) *Patterns of Prejudice* at 5.

before a Joint Committee of the Canadian House of Commons and Senate on the revision of the *Criminal Code*. The CJC delegation stressed the importance of outlawing hate mongering presented under the pretence of free speech. In addition, the CJC delegation requested that the formerly held definition of sedition involving the incitement to violence against different classes of Her Majesty's subjects be restored in the criminal law. The Joint Committee, however, proposed no changes to the law⁵⁴.

3.4 Modern Legislative Reforms

The issue of hate mongering surfaced again in 1963 with "a steady dissemination of hate propaganda, mainly anti-Jewish, anti-Negro and neo-Nazi in nature"⁵⁵. The CJC decided to use these hate mongering activities to mount a public campaign, stressing the need for anti-hate legislation. The campaign of the CJC managed to attract considerable public attention and sympathy. Two private member's bills against genocide and hate literature

⁵⁴ B. G. Kayfets, 1970, "The Story Behind Canada's New Anti-Hate Law", 3(4) *Patterns of Prejudice* at 5; Melvin Fenson, 1964-65, "Group Defamation: Is the Cure Too Costly", 1(3) *Manitoba Law School Journal* at 269-270.

⁵⁵ Maxwell Cohen [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 12 and 260-271; Borovoy, A. Alan, 1985, "Freedom of Expression: Some Recurring Impediments", in Rosalie S. Abella and Melvin L. Rothman (eds.), 1985, *Justice Beyond Orwell*, Montréal: Les Éditions Yvon Blais at 140.

were discussed in the House of Commons in February of 1964 and were a direct result of the CJC's public campaign⁵⁶. These bills were titled as *Bill C-21* -- "An Act respecting Genocide"⁵⁷ and *Bill C-43* -- "An Act to amend the Post Office Act (Hate Literature)"⁵⁸. The bills were debated during a second reading without coming to a vote, and a motion was adopted to refer them to the Standing Committee on External Affairs. The Standing Committee stated that due to time constraints the subject matter could not be dealt with before the end of the Second Session of the Twenty-Sixth Parliament, and it recommended the reintroduction of the subject early in the next parliamentary session. This recommendation was not implemented⁵⁹. However, the bills were reintroduced as *Bill C-30* and *Bill C-43* on April 8, 1965. In addition to these two bills, on the same day, another private member's bill entitled *Bill C-16* -- "An Act to amend the Criminal Code (Disturbing the public peace)"⁶⁰ was introduced. However, in May of 1965

⁵⁶ See B. G. Kayfets, 1970, "The Story Behind Canada's New Anti-Hate Law", 3(4) *Patterns of Prejudice* at 5; Walter S. Tarnapolsky, 1967, "Freedom of Expression v. The Right of Equal Treatment", 3(Centennial Edition) *University of British Columbia Law Review* at 45-46.

⁵⁷ *Bill C-21, Hansard*, 1964 at 5356-60, 5658-62, 5977-85. First reading on February 20, 1964.

⁵⁸ *Bill-43, Hansard*, 1964 at 9156-62, 9397-400. First reading on February 20, 1964.

⁵⁹ See Walter S. Tarnapolsky, 1967, "Freedom of Expression v. The Right of Equal Treatment", 3(Centennial Edition) *University of British Columbia Law Review* at 45-46.

⁶⁰ *Bill C-16, Hansard*, 1965 at 91. First reading on April 8, 1965.

Parliament was dissolved and an election was called⁶¹. Consequently, the bills died on the order paper.

Meanwhile, in January 1965, the Minister of Justice, the Honourable Guy Favreau, had appointed a high profile Special Committee under the Chairmanship of Maxwell Cohen who was then the Dean of the McGill University Law Faculty to undertake a study on hate propaganda. Given the extra-parliamentary nature of the Special Committee, its work was not affected by the calling of the election. Its report, known as the *Report of the Special Committee on Hate Propaganda in Canada* or the "Cohen Committee Report"⁶², was presented to the new Minister of Justice, the Honourable Lucien Cardin, in November, 1965.

The Cohen Committee Report stated that:

Canadians who are members of any identifiable group in Canada are entitled to carry on their lives as Canadians without being victimized by the deliberate, vicious promotion of hatred against them. In a democratic society, freedom of speech does not mean the right to vilify. The number of organizations involved and the numbers of persons hurt is no test of the issue: the arithmetic of a free society will not be satisfied with oversimplified statistics demonstrating that few are casting stones and not many are receiving hurts. What matters is that incipient malevolence and violence, all of which are inherent in "hate"

⁶¹ B. G. Kayfets, 1970, "The Story Behind Canada's New Anti-Hate Law", 3(4) *Patterns of Prejudice* at 6.

⁶² Maxwell Cohen [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*. Ottawa: Queen's Printer and Controller of Stationery.

activity, deserves national attention. However small the actors may be in number, the individuals and groups promoting hate in Canada constitute 'a clear and present danger' to the functioning of a democratic society. For in times of social stress such "hate" could mushroom into a real and monstrous threat to our way of life⁶³.

The Cohen Committee recommended the creation of "hate" crime offenses in the *Criminal Code*. This was considered the beginning of an important change of direction respecting the need for legislative protection to guard against hate.

The Cohen Committee revisited the definition of English seditious libel at common law as described by Sir James Fitzjames Stephen which was rejected in *Boucher v. The King*, and argued that there were five kinds of seditious libel:

(1) those against the person of the Monarch, the Government, or Constitution, or Parliament or the administration of justice; (2) those against the existing order of Church and State; (3) those in disturbance of the peace; (4) those which raise discontent or dissatisfaction among the citizenry; (5) those which provoke ill-will and hostility between various classes of citizens.⁶⁴

⁶³ Maxwell Cohen, [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 24.

⁶⁴ Maxwell Cohen [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 38.

Emphasizing the fifth kind, the Cohen Committee recommended the creation of specific hate offenses because Canadian criminal law at the time could not provide a sufficiently effective legal basis to prevent and combat hate propaganda against groups⁶⁵.

The Cohen Committee Report was presented to the new Minister of Justice in November 1965. However, it was not tabled in the House of Commons until April 10, 1966. Seven months later on November 10, 1966, *Bill S-49*, a bill based on the recommendations, was introduced in the Senate. This Bill was debated in the Senate, but it was neither passed in the Senate nor given any attention in the House of Commons⁶⁶.

Bill S-49 was reintroduced in the Senate as *Bill S-5* in the autumn of 1967. Once again the Bill failed in the Senate. The Bill was reintroduced as *Bill S-21* in 1969. At this time, a new government was in power with a sizable majority under the leadership of Pierre Trudeau, a member of the earlier mentioned Cohen Committee. The Senate passed *Bill S-21* with

⁶⁵ Maxwell Cohen [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 38 and 59-60; Also refer to Maxwell Cohen, 1971, "The Hate Propaganda Amendments: Reflections on a Controversy", 9 *Alberta Law Review* 103-117.

⁶⁶ See Walter S. Tarnapolsky, 1967, "Freedom of Expression v. The Right of Equal Treatment", 3(Centennial Edition) *University of British Columbia Law Review* at 46; Maxwell Cohen, 1971, "The Hate Propaganda Amendments: Reflections on a Controversy", 9 *Alberta Law Review* at 110; B. G. Kayfets, 1970, "The Story Behind Canada's New Anti-Hate Law", 3(4) *Patterns of Prejudice* at 6.

various changes in the spring of 1969⁶⁷. Finally, in the autumn of 1969, *Bill S-21* was introduced in the House of Commons as *Bill C-3*, and it received Royal Assent on June 11, 1970.

3.4.1 Bill C-3: Specific Crimes

The Bill added specific hate propaganda offenses to the *Criminal Code*⁶⁸. These "hate" offenses are listed currently under sections 318 to 320 of the *Code*, creating three distinct categories, namely:

- a. "advocating genocide".
- b. "public incitement of hatred". and
- c. "wilful promotion of hatred".

Offenses under these categories must be directed against an "identifiable

⁶⁷ See Stephen Cohen, 1971, "Hate Propaganda - The Amendments to the Criminal Code", 17 *McGill Law Journal* at 769-770; Maxwell Cohen, 1971, "The Hate Propaganda Amendments: Reflections on a Controversy", 9 *Alberta Law Review* at 110; B. G. Kayfets, 1970, "The Story Behind Canada's New Anti-Hate Law". 3(4) *Patterns of Prejudice* at 6-7.

⁶⁸ *Bill C-3* was given Royal Assent on June 11, 1970. The amendment is listed as *An Act to amend the Criminal Code*, R.S.C. 1970 (1st Supp.), c. 11, amending R.S.C. 1970.. c. C-34.

There were other unsuccessful bills introduced by private members such as *Bill C-21* in 1964, *Bill C-30* in 1965, *Bill C-16* in 1965 and *Bill C-117* in 1965. Refer to Stephen Cohen, 1971, "Hate Propaganda - The Amendments to the Criminal Code", 17 *McGill Law Journal* at 769.

group". Section 318(4) of the *Criminal Code* states that

"identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

Section 318 of the Canadian *Criminal Code* defines the offence of genocide⁶⁹:

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

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

- (a) killing members of the group; or
- (b) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

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

Subsection 319(1) of the *Criminal Code* defines the offence of public incitement of hatred:

(1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

⁶⁹ *Criminal Code*, R.S.C. 1985, c. C-46.

Note that the entire definition of genocide as defined in the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (1948. 78 U.N.T.S. 278) has not been adopted in section 318 of the Canadian *Criminal Code*. For a comment on what has been left out of section 318, see Law Reform Commission of Canada, 1986. *Hate Propaganda* (Working Paper 50), Ottawa at 27-29.

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Subsection 319(2) of the *Criminal Code* defines the offence of wilful promotion of hatred:

- (2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of
- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
 - (b) an offence punishable on summary conviction.

Subsection 319(3), limits the application of wilful promotion of hatred:

- 319(3) No person shall be convicted of an offence under section (2)
- (a) if he establishes that the statements communicated were true;
 - (b) if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject;
 - (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 believes them to be true; or
 - (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

The wilful promotion of hatred (in comparison to public incitement of hatred), however, requires the consent of the Attorney General to proceed to

trial. With reference to section 319(2), section 319(6) states:

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

Unique to the criminalization of hate is the protection of identifiable groups⁷⁰.

The rationale behind identifiable groups is that a single act directed at one individual victimizes more than just that individual⁷¹. A hate victim is selected for victimization on the basis of the perceived group of in which the individual is a member⁷². This form of selection, according to Marvin Kurz, makes hate victimization non-random⁷³. According to Cynthia Petersen, a

⁷⁰ See section 318(4) for "identifiable group".

⁷¹ Maxwell Cohen, [Chairman], 1966. *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 24.

⁷² Perception is reality. Whether the identity of the victim matches the identity perceived by the assailant is irrelevant. For example, Alain Brosseau, Ottawa's most well-known gay-bashing victim tragically losing his life was a heterosexual man. See Ottawa-Carleton Regional Police Bias Crime Unit and the Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities, 1995, *Brief submitted to the House of Commons Standing Committee on the Justice and Legal Affairs respecting Bill C-41, and Act to Amend the Criminal Code (sentencing) and other Acts in consequence thereof*, Ottawa at 12; David Pepper and Carroll Holland, 1994, *Moving Toward a Distant Horizon: The Public Summary of the Final Report of the Action Plan Project funded by the Ottawa Police Services Board*, June 1993 - March 1994, Ottawa at 2.

⁷³ Rachel Giese, 1995, "Hating the Hate Crimes Bill: Bill C-41 isn't about fighting prejudice - it's about revenge", 29(4) *This Magazine* at 9.

single hate act victimizes an entire community of people, compounding on their pre-existing oppression⁷⁴. Extending beyond the arguments of Kurz and Peterson, Kevin Berrill argues that violence directed at groups is an 'act of terrorism' in which the terrorist attack is intended to violate and isolate not only the victim but an entire group⁷⁵. As a result, a hate victim cannot be individuated to one individual; a hate crime victim is a deindividuated victim with a group identity. Accordingly, a hate victim can be best described as a deindividuated non-random victim⁷⁶. It can be argued that the creation of criminal laws against "advocating genocide", "public incitement of hatred", and "wilful promotion of hatred" was a recognition of the deindividuated non-random nature of hate victimization. For this reason alone, the notion of protection of groups was controversial. Opponents of the legislation portrayed the "identifiable group" as a special law provision protecting particular groups of the society.

⁷⁴ Cynthia Petersen, 1991, "A Queer Response to Bashing: Legislating Against Hate", 16(2) *Queen's Law Journal* at 248; Also see Richard Moon, 1992, "Drawing Lines in a Culture of Prejudice: R. v. Keegstra and the Restriction of Hate Propaganda", 26(1) *University of British Columbia Law Review* at 138.

⁷⁵ For Berrill's position, refer to Ottawa-Carleton Regional Police Bias Crime Unit and the Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities, 1995, *Brief submitted to the House of Commons Standing Committee on the Justice and Legal Affairs respecting Bill C-41, and Act to Amend the Criminal Code (sentencing) and other Acts in consequence thereof*, Ottawa at 2.

⁷⁶ The term deindividuated non-random victim is introduced here by the author of this research.

The Cohen Committee recommended that language and national origin be included within the definition of identifiable group⁷⁷. The drafters of the legislation felt that given the bilingual and bicultural nature of the country at that time, this inclusion could lead to difficulties⁷⁸. Accordingly, *Bill C-3* excluded both language and national origin from identifiable group.

Private Member's bills such as *Bill C-204* on December 18, 1968 to add "age", and *Bill C-326* on June 27, 1990 and *Bill C-247* on June 19, 1991 to add "sex" and "sexual orientation" to the identifiable group provision of section 318(4) were introduced. However, the bills failed after first reading in the House of Commons⁷⁹.

Meanwhile, since the enactment of the *Canadian Charter of Rights and*

⁷⁷ It should be noted that Recommendation 5(c) of the Cohen Committee states that:

"identifiable group" means any section of the public distinguished by religion, colour, race, language, ethnic or national origin.

See Maxwell Cohen [Chairman], 1966, *Report to the Minister of Justice of the Special Committee on hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary at 70.

⁷⁸ Refer to Robert E. Hage, 1970, "The Hate Propaganda Amendment to the Criminal Code", 28 *University of Toronto Faculty of Law Review* at 66.

⁷⁹ Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 14-15; Jeffrey Ross, 1994, "Hate Crime in Canada: Growing Pains with Canadian Legislation", in Mark S. Hamm, 1994, *Hate Crime: International Perspectives on Causes and Control*, Cincinnati, OH: Anderson Publishing at 157.

*Freedom*s as part of the Canadian Constitution effective in 1982⁸⁰, the expansion of the definition of identifiable group has become a matter of discussion. Section 15(1) of the *Charter* states that:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability⁸¹.

In addition, the Charter section 15(2) states that:

Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Special Committee on Pornography and Prostitution attempted to change the definition of identifiable group under section 318(4). This Special Committee recommended that the definition of identifiable group be

⁸⁰ Canada (1985), *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), R.S.C. 1985, Appendix II, No. 44 (Hereafter referred to as *Charter*).

⁸¹ The meaning of equality in this subsection is limited by the Charter section 1 to the "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". In addition, in *Bhadauria v. Board of Governors of Seneca College*, the Supreme Court of Canada with reference to section 32(1) held that the *Charter* does not protect against the activities of the private sector. Nevertheless, the *Charter* has become a standard in discussing equality. See *Bhadauria v. Board of Governors of Seneca College*, [1981] 2 S.C.R. 181-195 (S. C. C.).

expanded to include the categories of sex, age, and mental or physical disability⁸². In addition, the Law Reform Commission of Canada in 1986 regarded the open-ended provision of section 15(1) of the *Charter* to be the most suitable for an expanded definition of identifiable group, covering "sexual orientation" and other "ad hoc" groups⁸³. However, the *Bill C-3* definition of identifiable group remains unchanged in the *Criminal Code*. Consequently, the scope of "advocating genocide", "public incitement of hatred", and "wilful promotion of hatred" as currently listed under sections 318, 319(1) and 319(2) of the *Criminal Code* remains unchanged since 1970.

In *R. v. Keegstra* in 1990, the Supreme Court of Canada in upholding the constitutional validity of the hate crime provision under section 319(2) of the *Criminal Code* stated that

⁸² See Canada, 1985, *Pornography and Prostitution in Canada: The Report of the Special Committee of Pornography and Prostitution*, Ottawa: Supply and Services Canada, Vol. 1 at 317-323.

Nearly a decade after this Special Committee report was released, there are those who question whether the provisions introduced through *Bill C-49* (which was known as the 'Rape Shield Legislation') has expanded the definition of identifiable group. However, neither *Bill C-49* provisions nor *Bill C-3* provisions has any direct or indirect references to each other. As a result, it is inaccurate to assert that *Bill C-49* has directly or indirectly included sex or gender in the definition of identifiable group. See *Bill C-49: An Act to amend the Criminal Code (sexual assault)*, as passed by the House of Commons on June 15, 1992 or sections 271, 272 and 273 of the *Criminal Code*. Also, see Glenn A. Gilmour, 1994, *Hate-Motivated Violence*, Ottawa: Research and Statistics Directorate, Department of Justice at 32-33.

⁸³ Law Reform Commission of Canada, 1986, *Hate Propaganda* (Working Paper 50), Ottawa at 32.

[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. The derision, hostility and abuse encouraged by hate propaganda therefore have a severely negative impact on the individual's sense of self-worth and acceptance⁸⁴.

This case law position has affirmed the entry of identifiable groups as a part of Canadian criminal law, upholding the fact that a single act directed at one individual victimizes more than just that individual. However, what is uncertain is that whether this case law position has expanded the definition to cover a wider identifiable group.

3.4.2 Case Law as a Precursor to Bill C-41

The mid-1970s marked the beginning of another wave of racist group activity in Canada, and it saw the propagation of hatred against Jews and Blacks as well as East Indians, Catholics, French and Native peoples. Some of the flagrant forces in this period were the Edmund Burke Society, the Nationalist Party of Canada, the Western Guard Party and the Ku Klux Klan.

⁸⁴ The Supreme Court of Canada in *R. v. Keegstra*, [1990] 3 S.C.R. at 746 in reversing the decision rendered by the Alberta Court of Appeal (1988) which held that sections 319(2) and 319(3)(a) the *Criminal Code* violated both the right to freedom of expression as guaranteed in section 2(b) and the presumption of innocence as guaranteed in section 11(d) of the *Canadian Charter of Rights and Freedoms*. See chapter four of this research for further information on *R. v. Keegstra*.

In comparison to the use of leaflets in the earlier wave of the 1960s, multiple mediums such as leaflets, books, telephones, audio/video cassettes and even computer hook-ups were used in spreading hate⁸⁵. As much as hate was disseminated to a wider audience through more sophisticated means, it gave rise to a wide-ranging debate seeking solutions to the spread of hate in Canadian society. However, neither the governing party nor the official opposition in the Canadian Parliament was enthusiastic in bringing legislative changes to the *Bill C-3* provisions.

Interestingly, in *R. v. Ingram and Grimsdale*⁸⁶ in 1977, the courts appears to have developed an alternate method as a response to hate. Shamshudin Kanji, the victim, a native of Tanzania, was new to Toronto. One day, when he was standing on the subway platform for the next train, Alexander Ingram and Thomas Grimsdale launched an unprovoked attack, pushing him onto the subway tracks. Kanji severely fractured both his legs and suffered severe damage to his knees. He was hospitalized for several months. Ingram and Grimsdale were convicted of assault causing bodily harm and sentenced to 16 and 21 months respectively. The Crown appealed the sentences, and the prison terms were increased to 30 and 24 months respectively. On appeal, the

⁸⁵ Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 1-2.

As mentioned earlier in the chapter, a wave of hate was seen in early 1960s.

⁸⁶ *R. v. Ingram and Grimsdale* (1977), 35 C.C.C. (2d) 376-380 (Ont. C.A.).

Ontario Court of Appeal clearly stated that

[i]t is a fundamental principle of our society that every member must respect the dignity, privacy and person of the other. Crimes of violence increase when respect for the rights of others decreases, and, in that manner, assault such as occurred in this case attack the very fabric of the society. ... An assault which is racially motivated renders the offence more heinous. Such assaults, unfortunately, invite imitation and repetition by others and others incite retaliation. The danger is even greater in a multicultural, pluralistic urban society. The sentence imposed must be one which expresses the public abhorrence for such conduct and their refusal to countenance it⁸⁷.

This decision directs that racial hatred is an aggravating factor to be considered in determining the appropriate sentence, recognizing the importance of respecting the multicultural and pluralistic make up of Canadian social fabric. Such a position on sentencing was further accepted in *R. v. Lelas*⁸⁸, *R. v. Simms*⁸⁹ and *R. v. Curtis Peters*⁹⁰. Moreover, *R. v. Atkinson, Ing and Roberts*⁹¹, a gay bashing case, made it clear that aggravating considerations were not limited to racial assault incidents. The overall result

⁸⁷ *R. v. Ingram and Grimsdale* (1977), 35 C.C.C. (2d) 376-380 (Ont. C. A.) at 379.

⁸⁸ *R. v. Lelas* (1990), 41 O.A.C. 73-78; *R. v. Lelas* (1990), 58 C.C.C. (3d) 568-576 (Ont. C. A.).

⁸⁹ *R. v. Simms* (1990), 66 C.C.C. (3rd) 499-509 (Alta. C. A.); *R. v. Simms and Swanson* (1990), 114 A.R. 19-27 (Alta. C. A.).

⁹⁰ *R. v. Curtis Peters*, Unreported, September 23rd, 1993 (Ont. C. Prov. Div.).

⁹¹ *R. v. Atkinson, Ing and Roberts* (1978), 43 C.C.C. (2d) 342-345 (Ont. C. A.).

of these judgements is the further recognition that a hate crime victim is a deindividuated non-random victim. Therefore, the significance of the specific criminal offenses of "advocating genocide", "public incitement of hatred", and "wilful promotion of hatred" has in one sense through sentencing been extended to all criminal offenses by the case law.

3.4.3 Bill C-41: Sentence Enhancement

Some legal scholars, as well as many criminal justice practitioners, were uneasy with this extension of deindividuated non-random victims into the criminal law⁹². According to them, hate violence is just another crime -- no more serious or worthy of special attention than any other crime. In this reasoning, murder is murder, and assault is assault, regardless of whether the offender was motivated by hatred against a class of people⁹³. Nonetheless, the idea of the deindividuated non-random victim was gaining further legitimacy.

⁹² Nevertheless, the Canadian Association of Chiefs of Police (CACCP) in its 1993 Annual General meeting adopted a resolution in favour fighting against hate motivated violence. See Canadian Association of Chiefs of Police, 1996, *Hate Crimes in Canada: In Your Back Yard*, Ottawa at 44.

⁹³ Peter Finn, 1988, "Difficult to Define, Difficult to Prosecute", 3(2) *Criminal Justice* at 20.

Publications such as *Is God a Racist: The Right Wing in Canada*⁹⁴, *Web of Hate: Inside Canada's Far Right Network*⁹⁵, *Report on Hate Group Activity in Ontario: Environmental Scan*⁹⁶ and *Hate Groups in Canada: Impact and Challenges*⁹⁷ indicated that individuals and groups subscribing to hate are not limited to a handful of individuals⁹⁸ In April 1994, some law enforcement

⁹⁴ Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press.

⁹⁵ Warren Kinsella, 1994, *Web of Hate: Inside Canada's Far Right Network*, Toronto: HarperCollins Publishers.

⁹⁶ Ruth Pitman, et al., 1993, *Report on Hate Group Activity in Ontario: Environmental Scan*, Toronto: Solicitor General of Canada Ontario Regional Office.

⁹⁷ Martin Thériault, 1993, *Hate Groups in Canada: Impact and Challenges* [Unpublished draft which was released for comments during the Workshop on Police Response to Hate/Bias Crime in Ottawa, April 22-23, 1994]. Ottawa: Solicitor General of Canada Secretariat.

⁹⁸ Refer to the Appendix for a detailed list.
For a set of reasons for the underestimation of hate crimes, see Julian V. Roberts, 1995, *Disproportionate Harm: Hate Crime in Canada, An Analysis of Recent Statistics*. Ottawa: Research, Statistics and Evaluation Directorate of the Department of Justice Canada.

Some attempts were also made to collect statistics concerning these individuals and groups engaged in hate motivated crimes through legislation. On June 8, 1993, a private member's bill namely *Bill C-445: An Act to provide for the collection of statistics respecting incidents investigated by police forces where those incidents manifest evidence of bias against certain identifiable groups*, was sponsored by Ms. Shirley Maheu, M.P. According to the "Explanatory Note" of the bill, its purpose was:

to have police forces across the country collect statistics that would indicate the number of incidents investigated by them that were wholly or partly motivated by bias against those sections or individual members of the public distinguished by colour, race, religion, sexual orientation or ethnic origin and that would identify the sections or persons who were the target of bias in each such incident.

As the House of Commons adjourned for the summer of 1993, the Bill died on

officials who attended the *Workshop on Police Response to Hate/Bias Crime* in Ottawa⁹⁹ portrayed the situation as an epidemic¹⁰⁰.

Bill C-41: An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof -- a bill designed to enshrine the principle into the *Criminal Code* that a longer sentence could be imposed by courts if hate motivation were an aggravating factor -- was introduced in June of 1994, and was passed by the Parliament in June of 1995¹⁰¹. The most relevant sections relating to hate crime in the bill were subsections 718.1 and 718.2.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into

September 8, 1993. Similar to many other private member bills, the bill was not given any further attention.

⁹⁹ A selected group of participants were invited to this workshop which was sponsored by the Solicitor General of Canada Secretariat and organized by Carleton University.

¹⁰⁰ Some authors argue that extreme metaphors such as "epidemic" justify new laws where plights do not in fact exist. See James B. Jacobs and Jessica S. Henry, 1996, "The Social Construction of a Hate Crime Epidemic", 86(2) *Journal of Criminal Law and Criminology* 366-391.

¹⁰¹ *Bill C-41: An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, First reading by the House of Commons on June 13, 1994, as passed by the House of Commons on June 15, 1995, and given Royal Assent on July 13, 1995. By Order in Council P.C. 1996-1271 (August 7, 1996), other than subsection 718.3(5) and sections 747 to 747.8 came into force as of September 3, 1996.

It should be noted that although *Bill C-41* is commonly known as the 'hate crime legislation', the bill implements a variety of other reforms to the *Criminal Code* respecting sentencing (mainly by amending Part XXIII).

consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor¹⁰².

These sections did not create any new crimes, but simply codified the existing sentencing practices that had been developed in the above mentioned cases of *R. v. Ingram and Grimsdale*, *R. v. Lelas*, *R. v. Simms*, *R. v. Curtis Peters* and *R. v. Atkinson, Ing and Roberts*¹⁰³. Nevertheless, from the very outset of the

¹⁰² American statutes have included a combination of race, colour, religion, national origin, sex, gender, ancestry, ethnicity, disability, sexual orientation, age, political affiliation, creed, mental disability and blindness, although no single statute has included all the groups. For a collection of other definitions, see Equality for Gays and Lesbians Everywhere, 1994, *EGALE Submissions to House of Commons Standing Committee on Justice and Legal Affairs: re[garding] Bill C-41 - Hate Crimes*, Ottawa at Appendix 1.

The exact judicial interpretation of "any other similar factor" as specified under subsection 718.2(i) is yet to be seen. However, in light of the *R. v. Atkinson, Ing and Roberts* (1978), 43 C.C.C. 342-345 (mentioned earlier in this chapter) decision which states that aggravating considerations were not limited to racial assault incidents, it is most likely that the subsection will be interpreted as an inclusive clause.

¹⁰³ Allan Rock, 1995, "Bill C-41 does not create a new 'hate crime'", 1995(May 13/Final) *The Ottawa Citizen* A8; Anne Dawson, 1995, "Federal Hate-Crime Bill Approved", 1995(June 16) *The Toronto Sun* at 5; Equality for Gays and Lesbians Everywhere, 1994, *EGALE Submissions to House of Commons Standing Committee on Justice and Legal Affairs: re[garding] Bill C-41 - Hate Crimes*, Ottawa at 7; Institute for Jewish Affairs and American Jewish Committee, 1995, "Canada", *Antisemitism World*

introduction of the bill it was controversial, creating a division within the governing Liberal Party caucus¹⁰⁴. The bill soon became known as 'hate crime legislation', although the bill did not exclusively focus on hate crime. While the bill covered race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor, some opponents of the bill focused on the inclusion of sexual orientation. They attempted to portray the bill as a gay rights bill¹⁰⁵. In fact, the inclusion of sexual orientation was equated to the promotion of "homosexuality". Elevating heterosexuality to the morally high ground, the opponents labelled non-heterosexuality as 'unCanadian', 'unnatural', 'wrong', 'immoral' and 'paedophilia'¹⁰⁶. All the Reform Party members and four

Report 1995 at 20; Martha Shaffer, 1995, "Criminal Responses to Hate-Motivated Violence: Is Bill C-41 Tough Enough?", 41(1) *McGill Law Journal* at 210; Sheldon Alberts, 1994, "Crime bill sparks fight over gay Rights", 1994(November 27) *The Calgary Herald* at A5.

¹⁰⁴ Jane Taber, 1994, "Hate-crime bill divisive within Liberal Caucus", 1994(November 8) *The Ottawa Citizen*.

¹⁰⁵ Lloyd Robertson (host), 1994, "A federal government plan to beef up Canada's hate laws came under attack today by some backbenchers of the very party putting the plan forward", *CTV News*, November 17; Edward Greenspon, 1994, "PM resolves to quell revolt over gay rights: Chrétien fed up with protests by Grit MPs against Bill C-41", 1994(November 23) *The Globe and Mail*; Sean Durkan, 1994, "Mountain and molehills", 1994(November 27) *The Ottawa Citizen* 4.

¹⁰⁶ Paul E. Foeseht, 1994, "Justice Minister out of Touch with Mainstream Canadian Values", Reform Party News Release on November 17, 1994, House of Commons; Joan Bryden, 1995, "Four Liberals vote against hate-crime bill", 1994(June 16) *The Ottawa Citizen* A3; Sheldon Alberts, 1994, "Crime bill sparks fight

Liberal Party members openly voted against the Liberal government bill¹⁰⁷.

The events which led to the enactment of *Bill C-41*, however, were not steered by governments. Instead, the communities most affected by hate crimes directed them¹⁰⁸. The most visible advocates of *Bill C-41* were the B'Nai Brith of Canada, the Canadian Jewish Congress (CJC), the Toronto Mayor's Committee on Community and Race Relations, the Urban Alliance on Race Relations, Centre de Recherche-Action sur les Relations Raciales (CRARR), Equality for Gays and Lesbians Everywhere (EGALE), the Coalition for Lesbian and Gay Rights in Ontario (CLGRO), the 519 Church Street Community Centre and the Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities.

over gay Rights", 1994(November 27) *The Calgary Herald* A5.

Attempts to equate paedophilia with sexual orientation are unjustified as paedophile behaviour is a criminal offence which has nothing to do with one's sexual orientation. See Equality for Gays and Lesbians Everywhere, 1994. *EGALE Submissions to House of Commons Standing Committee on Justice and Legal Affairs: re[garding] Bill C-41 - Hate Crimes*. Ottawa at 13.

¹⁰⁷ Joan Bryden, 1995, "Four Liberals vote against hate-crime bill", 1995(June 16) *The Ottawa Citizen* A3.

¹⁰⁸ Ottawa-Carleton Regional Police Bias Crime Unit and the Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities, 1995, *Brief submitted to the House of Commons Standing Committee on the Justice and Legal Affairs respecting Bill C-41, an Act to Amend the Criminal Code (sentencing) and other Acts in consequence thereof*. Ottawa at 2.

3.5 Conclusion

This chapter has reviewed the legal measures that have been developed to protect individuals and groups against the effects of hate in Canada. Early English case law supported the creation of libel as a common law offence. While libel was used and expanded primarily to protect the ruling elite, it eventually did serve as a means of protecting other individuals and groups against hatred on occasion. However, the Canadian legal system was unwilling to expand protection against the hatred of groups. Even in the face of hate activities in the post-World-War II era, the Canadian Parliament and the judiciary seemed reluctant to provide legal protection. It was not until 1970 that the legislative process implemented the recommendations of the Cohen Committee of 1965 through *Bill C-3*. These criminal provisions for the first time in Canadian history recognized a range of deindividuated non-random victims under the definition of "identifiable group". Subsequently, the courts have been expanding protection to deindividuated victims -- not directly -- but through sentencing considerations and practices. *Bill C-41*, which was commonly known as 'hate crime legislation', simply codified such existing sentence enhancement practices. Overall, the journey to provide protection against hatred for individuals and groups in Canada has been a difficult one. The question, therefore, is how effective have the achievements of this journey been? It is to this point that we must now turn our attention and discuss the effectiveness of the hate crime laws.

4. EFFECTIVENESS OF THE LAW

4.1 Introduction

Since the *Bill C-3* provisions became a part of the Canadian *Criminal Code* almost three decades ago, there have been only three cases with successful convictions out of a total of five prosecutions¹⁰⁹. Section 318 on Advocating genocide has been used once. However, the attempt to convict William James Marcus, Theron Skryba and Joseph Edward Lockhart under section 318 for their Manitoba Knights of the Ku Klux Klan activities was unsuccessful¹¹⁰. Section 319(1) on public incitement of hatred has never been used. Section 319(2) on wilful promotion of hatred has been used four times.

As there has not been a serious enough event compatible with genocide or advocating genocide in recent Canadian history, no one seems to seriously

¹⁰⁹ Sanjeev Anand, 1997, "Expressions of Racial Hatred and Criminal Law: Proposal for Reform". 40(2) *Criminal Law Quarterly* at 224.

¹¹⁰ For an account on Marcus, Skryba and Lockhart affair, see Warren Kinsella, 1994, *Web of Hate: Inside Canada's Far Right Network*, Toronto: HarperCollins Publishers at 32-48; Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 16. In addition, an unidentified source indicated that further information on these individuals can be found in case pockets 91-21872, 91-21871 and 91-21873.

expect the enforcement of section 318 on advocating genocide. This expectation seems to be realistic. However, it is unrealistic to argue that the incitement of hatred has not happened in public. It seems to be that the definition of section 319(1) on the public incitement of hatred as it stands is unusable in such events. In order to make section 319(1) workable, significant modifications to it would have to be introduced. Given this context, section 319(2) on the wilful promotion of hatred is seen as the most appropriate offence in combatting hate.

4.2 Review of the Case Law

*R. v. Buzzanga and Durocher*¹¹¹ in 1979 was the very first case prosecuted under section 319(2) on wilful promotion of hatred. Robert Buzzanga and Wilfred Durocher, two Franco-Ontarians, were accused of having wilfully promoted hatred against the French Canadians in Essex County, Ontario, by distributing anti-French-Canadian handbills in January 1977. The handbills were entitled "Wake up Canadians Your Future Is At Stake!", and the message contained statements such as "you are subsidizing separatism whether in Quebec or Essex County", "who will rid us of this subversive group if not

¹¹¹ *R. v. Buzzanga and Durocher* (1979), 101 D.L.R. (3d) 488-509 (Ont. C. A.); *R. v. Buzzanga and Durocher* (1979), 49 C.C.C. (2d) 369-390 (Ont. C. A).

ourselves?" and "the British solved this problem once before with the Acadians, what are we waiting for ...?"¹¹². The intention of the handbills was to provoke reaction among French Canadians to escalate support for a French School to be built in the region.

During the initial trial in Windsor, Buzzanga and Durocher were found guilty as charged. However, on appeal, the Ontario Court of Appeal held that the intention of Buzzanga and Durocher to provoke a reaction among French Canadians did not correspond to the intention to promote hatred required by the word "wilfully". The court clarified that the meaning of "wilfully" was not restricted to the intention to promote hate, but it encompassed the means as well as the final objective where the accused persons foresaw that it was certain or substantially certain to result from an act one committed in order to achieve some other purpose. However, the meaning of "wilfully" excluded recklessness¹¹³. The Ontario Court of Appeal found Buzzanga and Durocher not guilty.

*R. v. Keegstra*¹¹⁴ was the first case in which a conviction was obtained

¹¹² For the full content of the handout, see *R. v. Buzzanga and Durocher* (1979), 101 D.L.R. (3d) 488-509 (Ont. C. A.) at 494; *R. v. Buzzanga and Durocher* (1979), 49 C.C.C. (2d) 369-390 (Ont. C. A.) at 375.

¹¹³ *R. v. Buzzanga and Durocher* (1979), 101 D.L.R. (3d) 488-509 (Ont. C. A.); *R. v. Buzzanga and Durocher* (1979), 49 C.C.C. (2d) 369-390 (Ont. C. A.); Law Reform Commission of Canada, 1986, *Hate Propaganda* (Working Paper 50), Ottawa at 10.

¹¹⁴ *R. v. Keegstra* (1984), 19 C.C.C. (3d) 254-283 (Alta. Q. B.).

under a *Bill C-3* provision. James Keegstra was a teacher in Eckville High School, Alberta, from 1968 until his dismissal in 1982¹¹⁵. His teachings

attributed various evil qualities to Jews. He thus described Jews to his pupils as "treacherous", "subversive", "sadistic", "money-loving", "power hungry" and "child killers". He taught his class that Jewish people seek to destroy Christianity and are responsible for depressions, anarchy, chaos, wars and revolution. According to Mr. Keegstra, Jews "created the Holocaust to gain sympathy" and, in contrast to the open honest Christians, were said to be deceptive, secretive and inherently evil. Mr. Keegstra expected his students to reproduce his teachings in class and on exams. If they failed to do so, their marks suffered.¹¹⁶

In January 1984, Keegstra was charged under section 319(2) of the *Criminal Code* with "wilful promotion of hatred"¹¹⁷. In November 1984, the Alberta Court of Queen's Bench rendered a judgement that the hate propaganda provisions of the *Criminal Code* were not in violation of the freedom of expression principle guaranteed in the *Charter*, and Keegstra's trial was set to

¹¹⁵ Keegstra was also the former mayor of Eckville as well as an executive member of the Social Credit Party. See David R. Elliott, 1985, "Anti-Semitism and the Social Credit Movement: The Intellectual Roots of the Keegstra Affair", 17(1) *Canadian Ethnic Studies* at 78; David Bercuson and Douglas Wertheimer, 1985, *A Trust Betrayed: The Keegstra Affair*, Toronto: Doubleday Canada at 17-18.

¹¹⁶ *R. v. Keegstra* (1990), 61 C.C.C. (3d) 1-127 (S. C. C.) at 12.

¹¹⁷ *R. v. Keegstra* (1984), 19 C.C.C. (3d) 254-283 (Alta. Q. B.). It should be noted that section 319(2) was then listed as section 281.2(2).

begin on April 9, 1985¹¹⁸. In July of 1985, the Alberta Court of Queen's Bench found Keegstra guilty as charged and imposed a \$ 5,000 fine (allowing 30 days to pay it)¹¹⁹.

On appeal, in June 1988, the Alberta Court of Appeal overturned the charges against Keegstra on the basis that the wilful promotion of hatred in section 319(2) of the *Criminal Code* did in fact violate the right to freedom of expression as guaranteed by the *Charter*¹²⁰. In December of 1990, overturning the Alberta Court of Appeal decision, the Supreme Court of Canada upheld section 319(2) of the *Criminal Code* as a reasonable limit on the freedom of expression as guaranteed by the *Charter*¹²¹.

After dealing with procedural aspects referred to it by the Supreme Court of Canada, the Alberta Court of Appeal in March 1991 quashed the conviction of Keegstra but ordered a new trial¹²². Keegstra's new trial began in March of 1992, and the jury at the Alberta Court of Queen's Bench trial

¹¹⁸ Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 18.

¹¹⁹ Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 18.

¹²⁰ *R. v. Keegstra* (1988), 60 Alta. L.R. (2d) 1-31 (Alta. C. A.).

¹²¹ *R. v. Keegstra* (1990), 61 C.C.C. (3d) 1-127 (S. C. C.); *R. v. Keegstra*, [1990] 3 S.C.R. 697-869 (S. C. C.).

¹²² Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 19.

found Keegstra guilty as charged under section 319(2) of the *Criminal Code*. Although the *Criminal Code* allows for a two year imprisonment, the court imposed a \$ 3,000 fine, with 30 days to pay it, and upon failure to pay the fine, a term of 90 days imprisonment would be imposed¹²³. Keegstra's appeal case was heard again in the Alberta Court of Appeal.

In September 1994, the conviction of Keegstra was quashed on a procedural irregularity in relation to the jury¹²⁴. The Attorney General of Alberta appealed the decision to the Supreme Court of Canada. In February of 1996, overturning the decision of the Alberta Court of Appeal, the Supreme Court of Canada restored the Alberta Court of Queen's Bench conviction of Keegstra¹²⁵. Finally, in an appeal of sentence by Keegstra to overturn the sentence of the Alberta Court of Queen's Bench, in September 1996, the Alberta Court of Appeal sentenced Keegstra to one year suspended sentence, a

¹²³ Ibid.

¹²⁴ *R. v. Keegstra* (1994), 23 Alta. L.R. (3d) 4-62 (Alta. C. A.); Canadian Press Newswire, 1994(September 8), "Legal experts say let Keegstra case die (Alberta)"; *Maclean's*, 1994, "New trial for a hatemonger?", 107(38) *Maclean's* 21; Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 19.

¹²⁵ *R. v. Keegstra*, [1996] 1 S.C.R. 458-461 (S. C. C.); *R. v. Keegstra* (1996), 105 C.C.C. (3d) 19-21 (S. C. C.); Leonard Stern, 1996, "Keegstra a hate-monger, top court rules", 1996(February 29) *The Gazette* (Montreal) A1/Front; Canadian Press, 1996, "Keegstra conviction stands Supreme Court restores verdict of hate-crime trial", 1996(February 29) *The Toronto Star* A2; *Western Report*, 1996, "Jim Keegstra returns to obscurity: the supreme court ends 12 of legal wrangling and pronounces him guilty", 11(9)/March 18 *Western Report* 22; *Canadian Jewish News*, 1996, "Keegstra saga comes to a happy conclusion", 36(46)/March 21 *Canadian Jewish News* 24.

year probation and 200 hours of community service¹²⁶.

The second case where a conviction was obtained was *R. v. Andrews*¹²⁷. Donald Andrews and Robert Smith belonged to the Nationalist Party of Canada, a "white nationalist political organization" which advanced white supremacy. Andrews was the party leader and Smith was the party secretary. Both members were responsible for publishing and distributing the bi-monthly *Nationalist Reporter* which was the primary subject matter of the prosecution. It contained statements such as "race-mixed planet are only working against God's and nature's original will", "Toronto's violent crime rate is increasing -- almost directly in proportion to the increase in immigrants from the Caribbean, India, Pakistan and blacks from the U.S.", "almost all illegal aliens and refugees" coming to Canada are "clourds" who do not believe in democracy and harbour a hatred for white people, "stop the International Jewish Communist conspiracy", the "Holocaust Hoax" challenge can land you in jail, and "Zionist Economic Power [is] Growing". The acts specified in the offence occurred between December 1980 and March 1984. In January 1985.

¹²⁶ *R. v. Keegstra* (1996), 44 Alta. L.R. (3d) 16 (Alta. C. A.); *R. v. Keegstra*, 1996(September 26), # 13544 - Memorandum of Judgement (Alta. C. A.); Canadian Press Newswire, 1996(September 26). "Keegstra sentence increased by appeal court (to one year suspended)"; Canadian Press, 1996, "Keegstra's sentence increased: But appeal court ruling too lenient, Jews say", 1996(September 27) *The Gazette* (Montreal) A11.

¹²⁷ *R. v. Andrews* (1990), 61 C.C.C. (3d) 490-505 (S. C. C.); *R. v. Andrews* (1988), 43 C.C.C. (3d) 193-228 (Ont. C. A).

Andrews and Smith were charged under section 319(2) of the *Criminal Code* with the offence of the wilful promotion of hatred.

Once again, in December 1985, both were found guilty¹²⁸. The trial judge sentenced Andrews to one year and Smith to seven months imprisonment. On appeal, in July of 1988, the Ontario Court of Appeal held that the *Criminal Code* provisions prohibiting wilful promotion of hatred did not violate the right to freedom of expression as specified in section 2(b) of the *Charter*. However, the Ontario Court of Appeal reduced the sentences respectively to three months and one month imprisonment¹²⁹.

Andrews and Smith appealed the decision of the Ontario Court of Appeal on the basis that section 319(2) violated their rights to freedom of expression as guaranteed by the *Charter*. In December of 1990, upholding the decision of the Ontario Court of Appeal, the Supreme Court of Canada held that "the rights and freedoms" set out in section 1 of the *Charter* are subject to "reasonable limits prescribed by law as can be democratically justified in a free and democratic society". and thereby the prohibition against wilful promotion

¹²⁸ *R. v. Andrews* (1988), 43 C.C.C. (3d) 193-228 (Ont. C. A.); Sanjeev Anand, 1997, "Expressions of Racial Hatred and Criminal Law: Proposal for Reform", 40(2) *Criminal Law Quarterly* at 221; Philip Rosen, 1996, *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament at 21.

Section 319(2) was then listed as 281.2.(2).

¹²⁹ *R. v. Andrews* (1988), 43 C.C.C. (3d) 193-228 (Ont. C. A) at 220.

of hatred under section 319(2) was valid. The appeal was dismissed¹³⁰.

The third case resulting in a conviction was *R. v. Safadi*¹³¹. In this case, Michel Sleiman Safadi (the accused) sent a total of 45 letters to religious groups, various police and government agencies and various people of Lebanese descent in the province of Prince Edward Island (P.E.I.). Safadi made the letters appear as if they originated from a Jewish source. The letters attacked Christianity in general, Jesus Christ, Mary and the Holy Spirit in particular, as well as government institutions using highly provocative and disgusting language. In July of 1993, the P.E.I. Supreme Court Trial Division held that Safadi promoted hatred against Jews and convicted him of wilfully promoting hatred¹³². In September of 1994, the Appeal Division affirmed the conviction of the Trial Division¹³³.

There is no other case which resulted in a conviction under the wilful promotion of hatred provision. This brings the total number of convictions under all three hate crime provisions to three. In other words, by section

¹³⁰ *R. v. Andrews* (1990), 61 C.C.C. (3d) 490-505 (S. C. C.).

¹³¹ *R. v. Safadi* (1994), 121 Nfld. & P.E.I.R. and 377 A.P.R. 260-262 (P.E.I. S. C. App. Div.); *R. v. Safadi* (1993), 108 Nfld. & P.E.I.R. and 339 A.P.R. 66-83 (P.E.I. S. C. Tri. Div.).

¹³² *R. v. Safadi* (1993), 108 Nfld. & P.E.I.R. and 339 A.P.R. 66-83 (P.E.I. S. C. Tri. Div.) at 67.

¹³³ *R. v. Safadi* (1994), 121 Nfld. & P.E.I.R. and 377 A.P.R. 260-262 (P.E.I. S. C. App. Div.) at 261.

319(2) standards, Jim Keegstra, Donald Andrews, Robert Smith and Michel Sleiman Safadi are the only four individuals who have advanced hatred in Canada for nearly three decades. This record provides strong evidence of the ineffectiveness of section 319(2)¹³⁴.

4.3 Technical Reforms

The liberal consensus perspective premise is that hate crime law provisions are formalized normative values; hate crime law provisions are a symbolic affirmation of normative values, designating hate conduct as socially unacceptable behaviour. Despite the fact that there are some conflicts between different individuals or groups, most individuals and groups within Canadian society share a common commitment against hatred.

Inherent in this notion of normative consensus is the view that hate crime offenders are only a deviant minority; the society at large by virtue of being the majority cannot be deviant. Naturally, the deviant minority is

¹³⁴ David Bercuson and Douglas Wertheimer, 1985, *A Trust Betrayed: The Keegstra Affair*, Toronto: Doubleday Canada at xiii; Derek Raymaker and David Kilgour, 1992, "The Freedom to Promote Hate: What we Learned from Jim Keegstra and Malcolm Ross", 41 *University of New Brunswick Law Journal* at 329; Jeffrey Ross, 1994, "Hate Crime in Canada: Growing Pains with Canadian Legislation", Mark S. Hamm (ed.), 1994, *Hate Crime: International Perspectives on Causes and Control*, Cincinnati, OH: Anderson Publishing at 155; Luke McNamara, 1994, "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 207.

unappreciative of the criminalization of hate through the enactment of laws. However, the society at large is supportive of the criminalization of hate. Therefore, in light of the strong evidence of ineffectiveness of section 319(2), the solution suggested is not to question the purpose of hate crime provisions, but rather to make them more enforceable in practice.

4.3.1 Requirement of Wilfully

The definition of "wilfully" as clarified in *R. v. Buzzanga and Durocher*¹³⁵ has been seen as a hurdle in obtaining a conviction under section 319(2) on the wilful promotion of hatred. As a result, the Special Committee on Visible Minorities in Canadian Society in 1984 recommended the removal of "wilfully" as a requirement from section 319(2)¹³⁶. However, the Special Committee on Racial and Religious Hatred of the Canadian Bar Association (CBA) opposed the abolition of the requirement of "wilfully" from the provision. A year later, dissenting from the position of the CBA Committee recommendation, the Special Committee on Pornography and Prostitution

¹³⁵ *R. v. Buzzanga and Durocher* (1979), 101 D.L.R. (3d) 488, 49 C.C.C. (2d) 369 (Ont. C. A.).

¹³⁶ See Canada, House of Commons, 1984. *Equality Now!: Report of the Special Committee on Visible Minorities in Canadian Society*, Hull, Quebec: Supply and Services Canada at 70-71.

recommended the removal of "wilfully"¹³⁷. Despite the recommendation in favour of change, the requirement of wilful intent remains unchanged.

4.3.2 Attorney General's Consent

The requirement of the Attorney General's consent has also been viewed by some commentators as a second obstacle to the enforcement of section 319(2). As Sanjeev Anand points out, despite the startling similarities between the statements in the *National Reporter* which were the primary subject matter in *R. v. Andrews* and the statement of Alexander McQuirter (one of the Ku Klux Klan leaders) on British Columbia television and radio, the consent of the Attorney General of British Columbia was not granted to proceed under section 319(2) against Alexander McQuirter¹³⁸. Similarly, both Ernst Zündel and Malcolm Ross advanced hatred against Jews as in the above mentioned *R. v. Keegstra* case. However, as a result of the failure to obtain the consent of the Attorney General, neither Zündel nor Ross were ever prosecuted under section 319(2). Zündel was prosecuted and found guilty

¹³⁷ See Canada, 1985, *Pornography and Prostitution in Canada: The Report of the Special Committee on Pornography and Prostitution*, Ottawa: Supply and Services Canada, Vol. 1 at 317-323.

¹³⁸ Sanjeev Anand, 1997, "Expressions of Racial Hatred and Criminal Law: Proposal for Reform", 40(2) *Criminal Law Quarterly* at 220-222.

under section 181 of the *Criminal Code* for "wilfully publishing a statement that he knew to be false"¹³⁹. The actions of Ross in New Brunswick were found to have violated section 5(1) of the New Brunswick *Human Rights Act*¹⁴⁰. Accordingly, the argument has been advanced that the effectiveness of section 319(2) can be improved through removing the need for the Attorney General's consent as specified in section 319(6)¹⁴¹.

The Special Committee on Visible Minorities in Canadian Society in 1984 recommended the removal of the consent of the Attorney General to prosecute under section 319(2) on wilful promotion of hatred¹⁴². However, the Special Committee on Racial and Religious Hatred of the Canadian Bar Association (CBA) recommended that the need to obtain the consent of the Attorney General not be removed on the basis that it serves to prevent

¹³⁹ *R. v. Zundel* (1990), 37 O.A.C. 354-393 (Ont. C. A.); *R. v. Zundel* (1990), 53 C.C.C. 161-209 (Ont. C. A.); *R. v. Zundel*, [1992] 2 S.C.R. 731-844 (S. C. C).

¹⁴⁰ *Human Rights Act*, S.N.B. 1990, c. 30. *Attis v. Board of Education District 15* (1991), 121 N.B.R. (2d) 1; *Attis v. Board of Education District 15* (1991), 121 N.B.R. (2d) 361-379 (N. B. Q. B.); *Attis v. New Brunswick School District No. 15* (1991), 15 C.H.R.R. D/339-D/362 (N. B. Human Rights Board of Inquiry).

¹⁴¹ Canada, 1985, *Pornography and Prostitution in Canada: The Report of the Special Committee on Pornography and Prostitution*, Ottawa: Supply and Services Canada, Vol. 1 at 317-323; Louise Johns, 1995, "Racial Vilification and ICERD in Australia", 1995(March) *E Law* (an e-journal).

¹⁴² See Canada, House of Commons, 1984, *Equality Now!: Report of the Special Committee on Visible Minorities in Canadian Society*, Hull, Quebec: Supply and Services Canada at 70-71.

frivolous prosecutions¹⁴³. A year later, dissenting from the position of the CBA Committee recommendation, the Special Committee on Pornography and Prostitution recommended the removal of the Attorney General's consent¹⁴⁴. Nevertheless, the requirement of the consent of the Attorney General under section 319(2) has remained unchanged.

4.4 Freedom of Speech

A more central problem to the criminalization of hate from a liberal consensus perspective is the tension which exists between the right to freedom of speech and the rights of groups to be protected from speech which promotes hatred. As the discussion of the case law showed, each case in which a prosecution was brought under section 319(2) for wilful promotion of hatred was challenged by the defence on the grounds that it violated the accused's right to freedom of speech.

Thomas Berger argues that freedom of speech is the necessary

¹⁴³ See Canadian Bar Association Special Committee on Racial and Religious Hatred, 1984, *Hatred and the Law*, Ottawa at 13-14.

¹⁴⁴ See Canada, 1985, *Pornography and Prostitution in Canada: The Report of the Special Committee on Pornography and Prostitution*, Ottawa: Supply and Services Canada, Vol. 1 at 317-323.

condition of all other freedoms¹⁴⁵. Yet, there is no truly free marketplace of ideas as individuals do not have equal access to forums of speech¹⁴⁶, and some forums of free speech are aimed at propagating hate. Commentators have pointed out that the freedom to propagate hate is not so much a freedom as it is a socially destructive ideology¹⁴⁷. As Alan Shefman points out, what is so important to a vibrant democracy is not this abhorrent and hateful speech¹⁴⁸. Hate speech restricts the free speech of its target¹⁴⁹. Nevertheless, it is this abhorrent and hateful speech which finds its way in many sophisticated

¹⁴⁵ Thomas R. Berger, 1981, *Fragile Freedoms*, Toronto: Clarke, Irwin at 134. Also see Alan Borovoy, 1985, "Freedom of Expression: Some Recurring Impediments", in Rosalie S. Abella and Melvin L. Rothman (eds.), 1985, *Justice Beyond Orwell*, Montréal: Les Éditions Yvon Blais, 140-143. Refer to Dinesh D'Souza in professing his rationale based on the American Constitution First Amendment to Canadians in Matthew Christian Vadum, 1996, "Q & A: Dinesh D'Souza", 1996(October 8) *The Mike* 6.

¹⁴⁶ Elisabeth Eid, 1994, *Combatting Hate Speech: A Review of Federal Legislative Mechanisms* [working draft], Ottawa, [A paper presented in Ottawa during the *Workshop on Police Response to Hate/Bias Crime* by the Solicitor General Canada Secretariat and Carleton University in April, 1994] at 4.

¹⁴⁷ Dexter J. Dias, 1987, "A Licence to Hate: Incitement to Racial Hatred and the Public Order Act 1986", 1987-88(4) *Socialist Lawyer* at 20.

¹⁴⁸ Alan Shefman, 1994, *A Strategic Approach to Hate Propaganda - An Analytical Framework*, Thornhill, Ontario: Human Rights Training and Consulting, [A paper presented in Ottawa during the *Workshop on Police Response to Hate/Bias Crime* by the Solicitor General Canada Secretariat and Carleton University in April, 1994].

¹⁴⁹ Ian McKenna, 1994, "Canada's Hate Propaganda Laws - A Critique", 9(1) *British Journal of Canadian Studies* at 27.

venues under the bandwagon of freedom of speech¹⁵⁰. Therefore, the real challenge under the liberal consensus perspective is to criminalize hate speech without limiting freedom of speech; the delineation of boundaries between hate speech and freedom of speech is the problem.

4.5 Alternate Explanation

In contrast to the liberal consensus perspective, the conflict perspective argues that hate crime law does not develop out of a broad-based normative consensus within society over competing individual interests, but rather develops out of the competition of groups at the level of norms as well as at the level of individual interests, power and resources. Accordingly, it is possible in a society where hate views are widely and strongly held on a more general level, to produce hate crime law condemning hate. In fact, as discussed in the previous chapter, there was no strong consensus either in the Canadian Parliament or in the society at large pushing for the implementation of the Cohen Committee recommendations as law.

The events which led to the enactment of hate crime laws were initiated and steered by the communities most affected by hatred.

¹⁵⁰ Karen Mock, 1995, "Combatting Racism and Hate in Canada Today: Lessons of the Holocaust", 29(4) *Canadian Social Studies* at 143.

Consequently, although *Bill C-3* provisions became law, they cannot be equated to a broad-based normative consensus against hatred. Thus, the question arises as to whether it is realistic to expect the enforcement of section 319(2) as a broad-based normative consensus which they never were¹⁵¹.

As Vold pointed out, it is not just the law-making process that is implicated in conflict among groups: law-breaking as well as law-enforcement aspects are implicated in conflict among groups¹⁵². Accordingly, the reasons for only a handful of convictions under section 319(2) may be deeper than just technical inadequacies of the existing offence, and may be traced to the existence of deep-seated and fundamental conflicts among groups within Canadian society at the level of the law enforcement process itself. Consequently, what is realistic to expect is the non-enforcement of section

¹⁵¹ Jeffrey Ross argues that having failed to prevent *Bill C-3* from being passed, a series of events took place in the interim to lessen the likelihood of using *Bill C-3* provisions through enacting alternative sanctions against those who engage in the same type of activity for which the *Bill C-3* provisions were designed. According to Ross, the enactment of section 13 of the *Canadian Human Rights Act* in 1977 is one such example. See Jeffrey Ross, 1994, "Hate Crime in Canada: Growing Pains with Canadian Legislation", in Mark S. Hamm (ed.), 1994, *Hate Crime: International Perspectives on Causes and Control*, Cincinnati, OH: Anderson Publishing at 155.

¹⁵² George Vold, 1958, *Theoretical Criminology*, Oxford: Oxford University Press at 208-209.

319(2) as normative consensus¹⁵³. Thus, given the existence of allegations against police racism and discrimination¹⁵⁴, it has been argued by some commentators that part of the blame lies on the law-enforcement personnel for not catching hatemongers. Other commentators have pointed to the role of the Attorneys General in deciding whether to prosecute¹⁵⁵, and the apparent

¹⁵³ David Bercuson and Douglas Wertheimer. 1985. *A Trust Betrayed: The Keegstra Affair*, Toronto: Doubleday Canada at xiii; Luke McNamara. 1994. "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 207; Jeffrey Ross. 1994. "Hate Crime in Canada: Growing Pains with Canadian Legislation". Mark S. Hamm (ed.), 1994, *Hate Crime: International Perspectives on Causes and Control*, Cincinnati, OH: Anderson Publishing at 155 and 165.

¹⁵⁴ See Québec, Commission des droits de la personne du Québec. 1988. *Comité d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques: Rapport final* [also known as Bellemare Report], Ministère des communications du Québec; Nova Scotia, Royal Commission on the Donald Marshall, Jr.. Prosecution. 1989. *Commissioners' Report: Finding and Recommendations*, Halifax: Nova Scotia Government Printer; Ontario, 1989, *The Report of the Race Relations and Policing Task Force* [Also known as "1989 Clare Lewis Report"], Toronto; Manitoba, 1991, *Public Inquiry into the Administration of Justice and Aboriginal People*, Winnipeg: Queen's Printer; Québec. 1992, *Report of the Task Force of the Minister of Public Security of Quebec on Relations between the Black Communities and the Montreal Urban Community Police Department* [also known as Corbo Report], Montreal; Stephen Lewis. 1992. *Report to Premier Bob Ray* [37 page letter dated June 9, 1992], Toronto; Allan G. Andrews. 1992. *Review of Race Relations Practices of the Metropolitan Toronto Police Force*, Toronto: Audit Department, Municipality of Metropolitan Toronto; Glenda P. Simms. 1993, *Beyond Fear: A Review of the Policy and Procedures Related to the Drug Raid at 22 Gould St. Ottawa on September 26, 1991* [A report prepared for the Ottawa Police Services], Ottawa; Andrew Griffin, 1994, "CSIS and the Heritage Front not such strange bedfellows". 1994(August 31) *The Ottawa X Press* 6; Dale Brazao. 1994, "JEWISH CONGRESS: CSIS ties spark demand for probe", 1994(August 15) *The Ottawa Citizen* A4.

¹⁵⁵ Jeffrey Ross argues that while hate crimes take place everyday in Canada, charges are rarely laid. See Jeffrey Ross, 1994, "Hate Crime in Canada: Growing Pains with Canadian Legislation", in Mark S. Hamm (ed.), 1994, *Hate Crime: International*

lack of strong judicial support for the hate crime provisions¹⁵⁶, as reasons for the lack of successful convictions under section 319(2). However, this still begs the question whether society at large is any more enthusiastic than the law-enforcement personnel, the Attorneys General or the judges in criminalizing hate.

Let us, for example, assume that the Attorney General's consent requirement is removed and the standing to bring prosecutions is given to affected groups and individuals. Surely, the number of prosecutions would increase¹⁵⁷. However, there is no guarantee that the society at large will demand speedy trials, strong judicial condemnation of hate and financial support for affected groups and individuals to bring hatemongers to trial. In other words, the length of time, the divided and weak judicial support, and the financial costs involved in a prosecution as in the Keegstra case will continue. As a result, it is most likely that the increase in the number of prosecutions may become a short-lived phenomenon. In any event, there is

Perspectives on Causes and Control, Cincinnati, OH: Anderson Publishing at 162. Also see Louise Johns, 1995, "Racial Vilification and ICERD in Australia", 1995(March) *E Law* (an e-journal).

¹⁵⁶ Bruce P. Elman, 1994, "Combatting Racist Speech: The Canadian Experience", 32(4) *Alberta Law Review* at 630; Karen Mock, 1992, "Combatting Hate: Canadian Realities and Remedies", 2(3) *Human Rights Forum* at 12.

¹⁵⁷ Tamsin Solomon, 1995, "Antisemitism as Free Speech: Judicial Responses to Hate Propaganda in Zundel and Keegstra", 13(1) *Australian-Canadian Studies* at 23.

nothing to suggest that even if there were an increase in the number of prosecutions that there would be a significant increase in convictions.

It is possible that the Attorneys General have prosecuted hatemongers under section 319(2) whenever a conviction is most promising. The factual similarities of cases comparing the conducts of Donald Andrews and Robert Smith with Alexander McQuirter or Ernst Zündel with Malcolm Ross may not be the points which are most pertinent to a successful conviction, but the most important factors might be the conflicting interests of competing parties in the society at large in a given time and context. Furthermore, the commonly demonstrated reluctance to institute criminal proceedings may, at least partly, be attributable to the desire to prevent hatemongers from winning support for their causes of hatred in the court of public opinion¹⁵⁸.

Even before *Bill C-3* was introduced, Graham Hughes argued that.

[i]f the views expressed by the accused are aberrational and held in general contempt in the society[,] it seems very unlikely that to subject him to prosecution would excite very much sympathy for him. Of course it may be said in such a society there may not be much need anyway for legislation of this sort. If, on the other hand, racist views are widely and strongly held in the community[,] then no doubt such prosecutions would excite sympathy for the accused, but this seems largely an academic point since in such a community the passage of legislation would seem very unlikely. The sensitive situation would be precisely the one in which legislation of this kind is likely to occur, namely in a society where racist views are strongly condemned

¹⁵⁸ Luke McNamara, 1994, "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 206.

by the official morality and the private morality of the majority of citizens but are nevertheless held by a sizable or significant minority. Here there is certainly some discernable possibility of prosecutions of this kind fortifying rather than diminishing the strength of racist sentiment¹⁵⁹.

Three decades later, some authors continue to doubt whether prosecutions have merely provided a forum for hatemongers to spread hatred¹⁶⁰. Although it is difficult to determine whether prosecution publicity has advanced the cause of hatemongers, it is certainly difficult not to ignore the publicity that they have received for themselves and their causes of hate¹⁶¹. Daniel Gamble argued that prosecution publicity makes hatemongers wealthier and well-known, attracting new recruits¹⁶². In a society such as Canada where hate is embedded in mass-culture through art, music, politics, humour and many other forms, prosecution publicity may even bring mass

¹⁵⁹ Graham Hughes, 1966, "Prohibiting Incitement to Racial Discrimination", 16(2) *University of Toronto Law Journal* at 365.

¹⁶⁰ Evelyn Kallen, 1991, "Never Again: Target Group Responses to the Debate Concerning Anti-Hate Propaganda Legislation", 11 *Windsor Year Book of Access to Justice* at 47-48.

¹⁶¹ Luke McNamara, 1994, "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 206-207.

¹⁶² Daniel Gamble, 1995, *Hate Groups and the Media*, Ottawa: Department of Sociology, Carleton University [unpublished research in progress, July 20, 1995]; Manuel Prutschi, 1992, "The Zundel Affair", in Alan Davis, 1992, *Antisemitism in Canada: History and Interpretation*, Waterloo: Wilfrid Laurier University Press 249-277.

sympathy for hatemongers. As a result, hatemongers may even prefer prosecution in order to receive publicity.

Unless there is a very clear hate incident with mass disapproval, the arguments for the freedom of speech are relatively easier to sell in a court of public opinion than the arguments against hateful speech. Accordingly, those who suggest wording changes to *Bill C-3* provisions to make them effective miss the point that it is not the wording which prevents convictions; it is the on going competition over the enforcement and legitimacy of *Bill C-3* provisions which prevent convictions.

In contrast to *Bill C-3* provisions, *Bill C-41* provisions are relatively easy to enforce; under *Bill C-41* provisions, it is difficult for an accused person to drum up support in the name of the freedom of speech as "bias, prejudice or hate" by itself is not criminalized by these sections. The provisions prescribe that longer sentences be imposed by the judges, if bias, prejudice or hate were elements of or motivating factors for a crime. In other words, until a crime is proven beyond a reasonable doubt, bias, prejudice or hate need not be used as elements in proving the offence. As mentioned in the previous chapter, even before *Bill C-41* provisions become a part of the *Criminal Code*, this practice was put to use through the cases of *R. v. Ingram and Grimsdale*, *R. v. Lelas*, *R. v. Simms*, *R. v. Curtis Peters* and *R. v. Atkinson*, *Ing*

and *Roberts*¹⁶³. Since the proclamation of the *Bill C-41* provisions as law, this case law position has gained more acceptance. *R. v. Claude Joseph Robinson*¹⁶⁴ and *R. v. Burdi*¹⁶⁵ are two recent examples of such sentencing.

Martha Shaffer, however, argues that *Bill C-41* sentencing practice does not specifically address hate motivated violence. If hatred is a motive, it is considered only as a factor in sentencing, not as a hate crime by itself. She argues that this method of sentencing does not represent a strong denunciation of hate-motivated violence¹⁶⁶. According to her, the provision should either specify a penalty increase for each underlying offence or impose a penalty distinct from that of the underlying offence¹⁶⁷. In addition, she argues that the *Criminal Code* should be amended to increase the maximum

¹⁶³ *R. v. Ingram and Grimsdale* (1977), 35 C.C.C. (2d) 376-380 (Ont. C.A.); *R. v. Lelas* (1990), 41 O.A.C. 73-78; *R. v. Lelas* (1990), 58 C.C.C. (3d) 568-576 (Ont. C. A.); *R. v. Simms* (1990), 66 C.C.C. (3rd) 499-509 (Alta. C. A.); *R. v. Simms and Swanson* (1990), 114 A.R. 19-27 (Alta. C. A.); *R. v. Curtis Peters*, Unreported, September 23rd, 1993 (Ont. C. Prov. Div.); *R. v. Atkinson, Ing and Roberts* (1978), 43 C.C.C. (2d) 342-345 (Ont. C. A.).

¹⁶⁴ *R. v. Claude Joseph Robinson*, Appeal No. 9603-0483 Sentencing Judgment, Sentence Appeal Book filed on November 26, 1996 (Alta. C. Q. B.); Also see *Western Report*, 1996, "The wrong motive to have: a murderer draws 30 additional months in prison for his apparent racism", 11(35)/September 23 *Western Report*.

¹⁶⁵ *R. v. Burdi*, 1997, 98 O.A.C. 1-3 (Ont. C. A.).

¹⁶⁶ Martha Shaffer, 1995, "Criminal Responses to Hate-Motivated Violence: Is Bill C-41 Tough Enough?", 41(1) *McGill Law Journal* at 202-203.

¹⁶⁷ Martha Shaffer, 1995, "Criminal Responses to Hate-Motivated Violence: Is Bill C-41 Tough Enough?", 41(1) *McGill Law Journal* at 207-208.

See section 85 of the *Criminal Code* for an analogous example.

sentence for all designated offences when the offences were motivated by hatred¹⁶⁸. However, it is unlikely that Shaffer's ideas could have been implemented in *Bill C-41*. The passage of *Bill C-41* was one of the most difficult amendments to law in recent history. As a result, despite imperfections, *Bill C-41* is a major achievement; at its worst, in comparison to *Bill C-3* provisions, *Bill C-41* provisions are enforceable.

Mere relative enforceability of *Bill C-41* provides authenticity to the notion of the deindividuated non-random victim which was initially introduced through *Bill C-3*. Central to the idea of a deindividuated non-random victim is that a single act directed at one individual victimizes more than just that individual; a hate victim is selected for victimization on the basis of the perceived group of which the individual is a member, making hate victimization non-random. A single hate act victimizes an entire community of people, compounding their pre-existing oppression and reminding them to anticipate similar experiences in the future. However, the notion of a deindividuated non-random victim has remained at the periphery of Canadian criminal law as there were only three convictions under *Bill C-3* provisions. In time, when more convictions are obtained under *Bill C-41*, the notion of deindividuated non-random victim will hopefully become a basic principle of

¹⁶⁸ Martha Shaffer, 1995, "Criminal Responses to Hate-Motivated Violence: Is Bill C-41 Tough Enough?", 41(1) *McGill Law Journal* at 208.

This approach is adopted in several U.S. states.

criminal law and be understood.

The meaning of hate motivated offence convictions, however, is subject to limitations. The focus of hate crime offence convictions is on hate crime offenders; the issues of victims are discussed in relation to hate crime offenders¹⁶⁹. As Colin Sumner points out, "once constituted, legal systems do not produce law, but exist as The Law. An ideology of legality develops which celebrates and elevates The Law to an exalted status"¹⁷⁰. In hate crime law discussions, the issues of hate are seen in terms of obtaining convictions against individual offenders. What this viewpoint does not reveal is what it does: the hate crime offences which are based on the norm-deviance philosophy designate only a small number of people in the society as hate crime offenders¹⁷¹. As a result, the society at large is not perceived as being engaged in violence; hate is not a product of the society at large. Ian McKenna argues it is this ideological view of the liberal consensus perspective that is the dominant view in Canada; this means that hate conduct in

¹⁶⁹ Luke McNamara, 1994, "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 207.

¹⁷⁰ Colin Sumner, 1979, *Reading Ideologies: an investigation into the Marxist theory of ideology and law*, London: Academic Press Inc at 293.

¹⁷¹ See Law Reform Commission of Canada, 1987, *Report on Recodifying Criminal Law* (Revised and Enlarged Edition of Report 30), Ottawa at 8 for why criminal laws designate only a small number of people as criminals.

Canadian society is invariably seen as a product of extremist groups¹⁷². Luke McNamara argues that the issue of hate must be addressed in a broader social and historical context¹⁷³. According to Wayne Renke, attempts to put a face to perpetration minimizes both the depth and complexity of hate in Canada. He argues that the important elements in Canadian hate conduct are more faceless, more inarticulate, and more deadly¹⁷⁴. In other words, the criminalization of hate may in fact normalize many forms of hate in Canadian society. From this perspective, the criminalization of hate is not effective.

¹⁷² Ian McKenna, 1994. "Canada's Hate Propaganda Laws - A Critique", 9(1) *British Journal of Canadian Studies* at 15.

¹⁷³ Luke McNamara, 1994, "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* at 208.

¹⁷⁴ Renke, Wayne N., 1994, [Book Review of] "Web of Hate: Inside Canada's Far Right Network", 32(4) *Alberta Law Review* at 837.

5. CONCLUSION

The *Criminal Code* contains the relevant provisions pertaining to the criminalization of hate. The first set of provisions was added to the *Criminal Code* in 1970 through *Bill C-3*, creating the specific hate crime offences of "advocating genocide", "public incitement of hatred", and "wilful promotion of hatred". These hate crime offenses remain unchanged and are currently listed under section 318 to 320. The second set of provisions was added in 1995 through *Bill C-41*, prescribing that longer sentences be imposed by the courts if "bias, prejudice or hate" were elements of or motivating factors for a crime. The most pertinent of these sentencing provisions to the criminalization of hate are listed under subsections 718.1 and 718.2. In other words, the criminalization of hate is achieved through specific criminal offences and sentence enhancement.

Central to the idea of hate crime is that whereas a hate victim is selected for victimization on the basis of the perceived group of which the individual is a member, a single act directed at one individual of the group victimizes more than just that individual. This nature of selection makes hate victimization non-random. Inherent in this particular non-randomness is that

any given hate act violates not only the victim but an entire group of members. As a result, a hate victim cannot be individuated to one individual; a hate crime victim is a deindividuated victim with a group identity. Therefore, a hate victim can be best described as a deindividuated non-random victim.

Traditionally, the discussions on criminal law dealt with individual offenders and individual victims. When group dimensions were discussed, group members were reduced to a collection of individuals. Prior to the introduction of hate crime laws, an attack against an entire group of members with a collective identity was not legally recognized. Since the introduction of hate crime laws, the collective identities of victims have been recognized through the principle of the deindividuated non-random victim. When the criminalization of hate is discussed, it is this deindividuated non-random victim which is the one seeking protection.

The *Criminal Code* provisions on hate crime presuppose the liberal consensus assumptions of the criminal law, focusing on the formalistic rules and process oriented aspects of the Canadian legal system. Considering hate crime law only as formalistic rule and process, however, limits our understanding of the criminalization of hate. As a result, this study has exposed the underlying assumptions of the liberal consensus perspective in the criminalization of hate. Realising the inadequacy of the liberal

explanations, it has been necessary to supplement them using the conflict perspective. The explanations given in the conflict perspective as articulated in this research provide a different set of reasoning on hate which is significantly different from the liberal consensus perspective.

The liberal consensus perspective's premise is that the social relations between individuals and groups within society take place against the backdrop of a broad societal consensus against hatred. Despite the existence of significant conflicts of interests between different individuals or groups, most individuals and groups within society share a common commitment against hatred. It is in this context that hate crime law provisions have been seen as formalized broad-based normative values, defining acceptable and unacceptable social behaviour.

The conflict perspective assumes that group conflicts are an integral part of society. Contrary to the idea that hate crime law develops out of broad-based normative consensus within society over competing individual interests, hate crime law develops out of the competition of groups at the level of norms as well as at the level of individual interests, power and resources. This skews norms as well as individual interests, power and resources in law-making.

The events which led to the development of hate crime law were steered by the communities most affected by hate. The communities most

affected were successful in using not only their own power and resources, but also using the power and resources of the Canadian society at large to create a consciousness against aberrant and deviant hate offenders. Although this consciousness was not comparable to a broad-based normative consensus within the society strongly condemning hate, it was sufficient enough to pass for the broad-based normative consensus in bringing about changes to the Canadian *Criminal Code* through *Bill C-3*.

Although *Bill C-3* provisions became law, after nearly three decades, there have been only three cases with successful convictions. As Vold pointed out, it is not just the law-making process that is implicated in conflict among groups: law-breaking as well as law-enforcement aspects are also implicated in conflict among groups. By this reasoning, the ineffective enforcement of hate crime law is a reflection of an attempt of different competing groups to maintain the upper hand and control the process of law-enforcement.

If we follow back the notion of competition to the level of norms as well as to the level of individual interests, the actions against the spread of hateful speech can be presented as a restriction against the freedom of speech. Where freedom of expression is a relatively easy sell in the court of public opinion, the enforcement of actions against the spread of hatred through the courts of justice becomes a difficult task. As a result, from the conflict perspective, the distinction between 'in court' and 'out of court' is not a

noteworthy reference. It is this support articulated through the court of public opinion which is turned against in order to neutralize section 319(2). Accordingly, no matter what wording changes are introduced to section 319(2), the idea of freedom of speech will take the upper hand in the court of public opinion.

Implicated in legalities, the focus of hate crime offence convictions is on hate crime offenders. At the same time, the criminalization of hate designates only a small number of people in the society as hate crime offenders. As a result, the criminalization of hate may give the false sense of security that the society at large is not engaged in hate conduct, confirming the dominant view that hatred in Canadian society is a product of extremist groups. The important elements in Canadian hate conduct are endemic in and are more faceless, more inarticulate, and more deadly. This should be a disturbing finding to all Canadians concerned with a just society. In other words, the criminalization of hate appears to in fact normalize and cover up many forms of hate in Canadian society.

Therefore, the criminalization of hate must be implemented neither as a stand alone strategy nor as a first resort. Implemented as a part of a comprehensive response in combatting hate, the criminalization of hate can be useful. The criminalization of hate by itself is not effective in combatting hatred in Canada.

Appendix

*Is God a Racist: The Right Wing in Canada*¹⁷⁵, *Web of Hate: Inside Canada's Far Right Network*¹⁷⁶, *Report on Hate Group Activity in Ontario: Environmental Scan*¹⁷⁷ and *Hate Groups in Canada: Impact and Challenges*¹⁷⁸ describe 'Who's Who' in the Canadian web of hate. A large portion of these descriptions deal with individuals and groups who are engaged in criminal or quasi-criminal activities. Stanley Barrett, however, in *Is God a Racist: The Right Wing in Canada* also describes the 'Who's Who' that fall outside criminal and quasi-criminal activities. He calls these societal elements the fringe right, while classifying individuals and groups who engage in criminal and quasi-criminal

¹⁷⁵ Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*. Toronto: University of Toronto Press.

¹⁷⁶ Warren Kinsella, 1994, *Web of Hate: Inside Canada's Far Right Network*, Toronto: HarperCollins Publishers.

¹⁷⁷ Ruth Pitman, et al., 1993, *Report on Hate Group Activity in Ontario: Environmental Scan*, Toronto: Solicitor General Canada Ontario Regional Office.

¹⁷⁸ Martin Thériault, 1993, *Hate Groups in Canada: Impact and Challenges* [Unpublished draft which was released for comments during the Workshop on Police Response to Hate/Bias Crime in Ottawa, April 22-23, 1994], Ottawa: Solicitor General Canada Secretariat.

activities as the radical right¹⁷⁹.

The radical right refers to "those individuals who define themselves as racists, Fascists and anti-Semites, and [those] who are prepared to use violence to realize their objectives"¹⁸⁰. The fringe right refers to those "who oppose Third World immigration, foreign aid, homosexuals' rights, and the changing sexual norms of the society, but who at the same time do not condone physical violence and reject all accusations that they are Fascists, racists and anti-Semites"¹⁸¹.

The radical right according to Barrett includes.

Aryan Nations, Black and Red Front, British Party Canada, British Israel, British People's League (and Party), Canadian Action, Canadian Anti-Soviet Action Committee (CASAC), Canadian National Party, Canadian Nazi Party, Canadian Youth Corps, Christ Is the Answer Inc., Christian Defence Council, Christian Fellowship Assembly, Christian Mutual Defence Fund, Church of Creativity, Committee for Free Speech Canada.

¹⁷⁹ Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press at 8-10. Kinsella does not make this distinction as he discusses only the radical right, the "most extreme elements of various neo-Nazi and white supremacist groups - that is those who advocate the use of violence or non-democratic means against the established order". Refer to Warren Kinsella, 1994, *Web of Hate: Inside Canada's Far Right Network*, Toronto: HarperCollins Publishers at 5.

¹⁸⁰ Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press at 9.

¹⁸¹ Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press at 9-10.

Concerned Parents of German Descent. Direct Action. Ezra Pound Institute of International Studies. German Freedom Fighters, German-Jewish Historical Commission. House of Freedom (and Free Speech). Hungarian Freedom Fighters Federation. Identity, KKK: Canadian Knights of the Ku Klux Klan, KKK: Invisible Empire, Knights of the Ku Klux Klan (British Columbia branch), KKK: National Knights of the Ku Klux Klan (Ontario), KKK: Imperial Knights of the Ku Klux Klan (British Columbia), KKK: Confederate Klans of Alberta. National Advancement Party. National Association for the Advancement of White People (NAAWP), National Citizens Alliance. Nationalist Party of Canada. Nationalist Socialist Alliance. National Socialist Liberation Front. National Socialist Movement of Canada. National Socialist (Nazi) Party. National Socialist Party. National Socialist Party of Canada. National Socialist Underground. National Social Party. National Unity Party. National White Americans Party. Natural Order (and Faith), North American Labour Party. Realist Party. Samisdat Publishers Ltd, Social Credit Association of Ontario Inc.. Union of Fascists (Canada). United Anglo-Saxon Liberation Front. Western Guard. Western Guard Universal. White Canada Council. White Canada Party. White Canada Christian/Patriots Rights Association. White Legion. White Nationalist Revolutionary Army and White People's Vigilantes¹⁸².

The fringe right according to Barrett includes.

Action Canada. Alliance for Christian Laymen. Alliance for the Preservation of English in Canada (APEC). Alternative Forum. Anti-Bolshevik Youth League. Campaign Life. Campus Alternative. CAFE (1): Canadian Alliance for Free Enterprise. CAFE (2): Canadian Association for Free Expression. Canadian Anti-Communist League. Canadian Crime Fighters Association. Canadian Defence League. Canadian Ex-Servicemen for One

¹⁸² This listing is based on the Appendix of Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press. However, also refer to Warren Kinsella, 1994, *Web of Hate: Inside Canada's Far Right Network*, Toronto: HarperCollins Publishers.

Canada, Canadian Friends of Free China Association, Canadian Institute of Guardianship, Canadian Intelligence Service, Canadian League, Canadian League of Rights, Canadian Liberty League, Canadian Loyalist Movement, Canadian Party of Ontario, Canadians for One Canada, Canadian Unison Society, Canadian Unity and Freedom Federation, Catholic Registrar, Catholics Against Terrorism, Christian Action Movement, Christian Against Terrorism, Christian Nationalist Party, Church Watch, Citizens for Foreign Aid Reform (C-FAR), Civilized Family Life Committee, Coalition for Life Committee, Coalition for Life, Committee to Stop Bill 7, Confederation of Church and Business People, Cornerstone Alliance, Edmond Burke Society, Family and Freedom Foundation, Frazer Institute, Freedom Council of Canada, Friends of Rhodesia Association, Human Action to Limit Taxes (HALT), Ideal Party, John Birch Society, League Against Homosexuals, Libertarian Party, Major C.H. Douglas Society, *McGill Magazine*, The Michael, Moderate Majority, Moonies, National Citizens' Coalition, National Foundation for Public Policy Development, New Right, New Right Coalition, Orange Order, Positive Parents of Canada, Pro-Family Coalition, Pro-Life Party of Canada, Province of Toronto Society, Renaissance (several branches), Right to Life Association, Social Credit (several small branches), *Speak-up*, *University of Toronto Magazine*, Western Canada Concept Party, Western Socialist Workers' Party, Women Alive, Young Americans for Freedom (YAF) and Young Canadians for a Christian Civilization¹⁸³.

¹⁸³ The Appendix of Stanley R. Barrett, 1987, *Is God a Racist: The Right Wing in Canada*, Toronto: University of Toronto Press.

CASES

Attis v. Board of Education District 15 (1991), 121 N.B.R. (2d) 1-90B (N. B. Human Rights Board of Inquiry).

Attis v. Board of Education District 15 (1991), 121 N.B.R. (2d) 361-379 (N. B. Q. B.).

Attis v. New Brunswick School District No. 15 (1991), 15 C.H.R.R. D/339-D/362 (N. B. Human Rights Board of Inquiry).

Bhadauria v. Board of Governors of Seneca College, [1981] 2 S.C.R. 181-195 (S. C. C.).

Boucher v. The King (1949 & 1950), [1951] S.C.R. 265-345 (S. C. C.).

Boucher v. The King (1949), [1950] 1 D.L.R. 657-694 (S. C. C.).

Boucher v. The King (1950), [1951] 2 D.L.R. 369-422 (S. C. C.).

Ex parte Genest v. R. (1933), 71 R.J.Q. 385-393 (Qué. S. C.).

R. v. Andrews (1988), 43 C.C.C. (3d) 193-228 (Ont. C. A.).

R. v. Andrews (1990), 1 C.R. (4th) 266-284 (S. C. C.).

R. v. Andrews (1990), 61 C.C.C. (3d) 490-505 (S. C. C.).

R. v. Atkinson, Ing and Roberts (1978), 43 C.C.C. 342-345 (Ont. C. A.).

R. v. Burdi, 1997, 98 O.A.C. 1-3 (Ont. C. A.).

R. v. Buzzanga and Durocher (1979), 101 D.L.R. (3d) 488-509 (Ont. C. A.).

R. v. Buzzanga and Durocher (1979), 49 C.C.C. ((2d)) 369-390 (Ont. C. A.).

R. v. Claude Joseph Robinson, Appeal No. 9603-0483 Sentencing Judgment, Sentence Appeal Book filed on November 26, 1996 (Alta. C. Q. B.).

- R. v. Curtis Peters*, 1993(September 23) Proceedings at Plea (Ont. C. Prov. Div.).
- R. v. Ingram and Grimsdale* (1977), 35 C.C.C. (2d) 376-380 (Ont. C. A.).
- R. v. Keegstra* (1984), 19 C.C.C. (3d) 254-283 (Alta. Q. B.).
- R. v. Keegstra* (1988), 60 Alta. L.R. (2d) 1-31 (Alta. C. A.).
- R. v. Keegstra*, [1990] 3 S.C.R. 697-869 (S. C. C.).
- R. v. Keegstra* (1990), 61 C.C.C. (3d) 1-127 (S. C. C.).
- R. v. Keegstra* (1994), 23 Alta. L.R. (3d) 4-62 (Alta. C. A.).
- R. v. Keegstra*, 1996(September 26). # 13544 - Memorandum of Judgement (Alta. C. A.).
- R. v. Keegstra*, [1996] 1 S.C.R. 458-461 (S. C. C.).
- R. v. Keegstra* (1996), 105 C.C.C. (3d) 19-21 (S. C. C.).
- R. v. Keegstra* (1996), 44 Alta. L.R. (3d) 16-24 (Alta. C. A.).
- R. v. Lelas* (1990), 41 O.A.C. 73-78 (Ont. C. A.).
- R. v. Lelas* (1990), 58 C.C.C. (3d) 568-576 (Ont. C. A.).
- R. v. Safadi* (1993), 108 Nfld. & P.E.I.R. and 339 A.P.R. 66-83 (P.E.I. S. C. Tri. Div.).
- R. v. Safadi* (1994), 121 Nfld. & P.E.I.R. and 377 A.P.R. 260-262 (P.E.I. S. C. App. Div.).
- R. v. Simms* (1990), 60 C.C.C. (3rd) 499-509. (Alta. C. A.).
- R. v. Simms and Swanson* (1990), 114 A.R. 19-27 (Alta. C. A.).
- R. v. Zundel* (1990), 37 O.A.C. 354-393 (Ont. C. A.).
- R. v. Zundel* (1990), 53 C.C.C. 161-209 (Ont. C. A.).

R. v. Zundel, [1992] 2 S.C.R. 731-844 (S. C. C.).

The King v. Osborn (1732), 2 Barn. K.B. 166, 94 E.R. 425.

The King v. Osborn (1732), W. Kel. 230-231, 25 E.R. 584-585.

The King v. Osborn (1732), 2 Sawns. 532, 36 E.R. 717.

STATUTES AND BILLS

Canada, *An Act respecting Libel*, R.S.C. 1886, c. 163.

Canada, *An Act respecting the Crime of Libel*, S.C. 1874, c. 38.

Canada, *Bill C-3: An Act to amend the Criminal Code*, R.S.C. (1st Supp.), c. 11, amending R.S.C. 1970, c. C-34.

Canada, *Bill C-41: An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, as passed by the House of Commons on June 15, 1995, House of Commons.

Canada, *Bill C-445: An Act to provide for the collection of statistics respecting incidents investigated by police forces where those incidents manifest evidence of bias against certain identifiable groups*, First reading, June 8, 1993, House of Commons.

Canada, *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), R.S.C. 1985, Appendix II, No. 44.

Canada, *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

Canada, *Constitution Act, 1982*, R.S.C. 1985, Appendix II, No. 44.

Canada, *Criminal Code*, 1892, S.C. 1892, c. 29.

Canada, *Criminal Code*, R.S.C. 1985, c. C-46.

New Brunswick, *Human Rights Act*, S.N.B. 1990, c. 30.

U.K., *De Libellis Famosis* (1606), 77 E.R. 250 (Star Chamber).

U.K., *De Scandalis Magnatum*, 1275, 3 Edw. 1, c. 34 (U.K.).

U.K., *The Libel Act*, 1792, 32 Geo. III, c. 60 (U.K.).

U.K., *The Libel Act*, 1843, 6 & 7 Vict., c.96 (U.K.).

United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, 1948, 78 U.N.T.S. 278.

REFERENCES

- Akers, Ronald L., 1994, *Criminological Theories: Introduction and Evaluation*. Los Angeles: Roxbury Publishing Company.
- Sheldon Alberts, 1994, "Crime bill sparks fight over gay Rights". 1994(November 27) *The Calgary Herald* A5.
- Anand, Sanjeev, 1997, "Expressions of Racial Hatred and Criminal Law: Proposal for Reform". 40(2) *Criminal Law Quarterly* 215-242.
- Andrews, Allan G., 1992, *Review of Race Relations Practices of the Metropolitan Toronto Police Force*. Toronto: Audit Department, Municipality of Metropolitan Toronto.
- Aronson, Elliot, 1992, "Causes of Prejudice". in Baird, and Rosenbaum (eds.), 1992, *Bigotry, Prejudice and Hatred: Definitions Causes and Solutions*. Buffalo: Prometheus Books. 111-124.
- Auerbach, Jerold S., 1983, *Justice Without Law?*. New York: Oxford University Press.
- Baird, Robert M. and Stuart E. Rosenbaum (eds.), 1992, *Bigotry, Prejudice and Hatred: Definitions Causes and Solutions*. Buffalo: Prometheus Books.
- Barrett, Stanley R., 1987, *Is God a Racist: The Right Wing in Canada*. Toronto: University of Toronto Press.
- Bercuson, David and Douglas Wertheimer, 1985, *A Trust Betrayed: The Keegstra Affair*. Toronto: Doubleday Canada.
- Berger, Thomas R., 1981, *Fragile Freedoms*. Toronto: Clarke, Irwin.
- Bergman, Brian, 1993, "A nation of polite bigots?". 1993(December 27) *Maclean's* 42-43.
- Black, William W., 1994, *B.C. Human Rights Review: Report on Human Rights in British Columbia*, Vancouver, B.C.: Ministry Responsible for Multiculturalism

and Human Rights.

Borovoy, A. Alan, 1985. "Freedom of Expression: Some Recurring Impediments", in Rosalie S. Abella and Melvin L. Rothman (eds.), 1985, *Justice Beyond Orwell*, Montréal: Les Éditions Yvon Blais, 125-160.

Brazao, Dale. 1994, "JEWISH CONGRESS: CSIS ties spark demand for probe". 1994(August 15) *The Ottawa Citizen* A4.

Brewin, F. A., 1951, "Case Comment [on] Boucher v. The King". 29 *Canadian Bar Review* 193-203.

Bryden, Joan. 1995, "Four Liberals vote against hate-crime bill". 1994(June 16) *The Ottawa Citizen* A3.

Canada, Canadian Human Rights Commission. 1997. "Tribunal Resumes Internet Hate Hearings". 1997(December 1) *Communiqué* 1.

Canada, Department of Justice. 1994, *Reforming the General Part of the Criminal Code: A Consultation Paper*, Ottawa.

Canada, House of Commons. 1984. *Equality Now!: Report of the Special Committee on Visible Minorities in Canadian Society* [also known as the Daudlin Committee Report], Hull, Quebec: Supply and Services Canada.

Canada, Law Reform Commission of Canada. 1977. *Our Criminal Law* (A Report). Ottawa.

Canada, Law Reform Commission of Canada. 1985. *Defamatory Libel* (Working Paper 35), Ottawa.

Canada, Law Reform Commission of Canada. 1986. *Hate Propaganda* (Working Paper 50). Ottawa.

Canada, Law Reform Commission of Canada. 1987, *Report on Recodifying Criminal Law* (Revised and Enlarged Edition of Report 30), Ottawa.

Canada, 1985, *Pornography and Prostitution in Canada: The Report of the Special Committee of Pornography and Prostitution*, Ottawa: Supply and Services Canada, Vol. 1 at 317-323.

Canadian Association of Chiefs of Police, 1996. *Hate Crimes in Canada: In Your Back Yard*. Ottawa.

Canadian Bar Association Special Committee on Racial and Religious Hatred, 1984. *Hatred and the Law*, Ottawa.

Canadian Jewish News, 1996. "Keegstra saga comes to a happy conclusion". 36(46)/March 21 *Canadian Jewish News* 24.

Canadian Press Newswire, 1994(September 8). "Legal experts say let Keegstra case die (Alberta)".

Canadian Press Newswire, 1996(September 26). "Keegstra sentence increased by appeal court (to one year suspended)".

Canadian Press, 1996. "Keegstra conviction stands Supreme Court restores verdict of hate-crime trial". 1996(February 29) *The Toronto Star* A2.

Canadian Press, 1996. "Keegstra's sentence increased: But appeal court ruling too lenient. Jews say". 1996(September 27) *The Gazette* (Montreal) A11.

Cannon, Margaret, 1995. *The Invisible Empire: Racism in Canada*. Toronto: Random House of Canada.

Caputo, Tullio, et al. (eds.), 1989. *Law and Society: A Critical Perspective*. Toronto: Harcourt Brace Jovanovich.

Cernetig, Miro, et al., 1997. "Reena Virk's short life and lonely death: Brutality of attack horrifies community". 1997(November 27) *The Globe and Mail* A1 & A12.

Cohen, Maxwell [Chairman], 1966. *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada*, Ottawa: Queen's Printer and Controller of Stationary.

Cohen, Maxwell, 1971. "The Hate Propaganda Amendments: Reflections on a Controversy", 9 *Alberta Law Review* 103-117.

Cohen, Maxwell, 1994. "Hate laws prove reasonable limit". 1994(May 15) *The Ottawa Citizen* A7.

Cohen, Stephen, 1971. "Hate Propaganda - The Amendments to the Criminal Code", 17 *McGill Law Journal* 740-791.

Colvin, Eric, 1986. *Principles of Criminal Law*. Toronto: Carswell.

Dawson, Anne, 1995. "Federal Hate-Crime Bill Approved". 1995(June 16) *The Toronto Sun* 5.

Devlin, Richard F. (ed.). 1991, *Canadian Perspectives on Legal Theory*. Toronto: Emond Montgomery Publications Limited.

Dias, Dexter J., 1987. "A Licence to Hate: Incitement to Racial Hatred and the Public Order Act 1986". 1987-88(4) *Socialist Lawyer* 20-21.

Durkan, Sean, 1994. "Mountain and molehills". 1994(November 27) *The Ottawa Citizen* 4.

Eid, Elisabeth, 1994. *Combatting Hate Speech: A Review of Federal Legislative Mechanisms* [working draft]. Ottawa. [A paper presented in Ottawa during the *Workshop on Police Response to Hate/Bias Crime* by the Solicitor General of Canada Secretariat and Carleton University in April, 1994].

Elliott, David R., 1985. "Anti-Semitism and the Social Credit Movement: The Intellectual Roots of the Keegstra Affair". 17(1) *Canadian Ethnic Studies* 78-89.

Ellis, Rodney, 1993, "Texas Must Not Let Hate Crimes Go Unpunished". 56(11) *Texas Bar Journal* 1146-1147.

Elman, Bruce P., 1994, "Combatting Racist Speech: The Canadian Experience". 32(4) *Alberta Law Review* 623-666.

Equality for Gays and Lesbians Everywhere, 1994, *EG.ALE Submissions to House of Commons Standing Committee on Justice and Legal Affairs: re[garding] Bill C-41 - Hate Crimes*. Ottawa.

Fenson, Melvin, 1964-65. "Group Defamation: Is the Cure Too Costly". 1(3) *Manitoba Law School Journal* 255-281.

Fernandez, Cassandra, Donna Costanzo, et al.. 1997. *Hate: Communities Can Respond*. Toronto: Community Advisory Committee on Anti-Hate and Anti-Racism of the Municipality of Metropolitan Toronto.

- Finn, Peter. 1988. "Difficult to Define. Difficult to Prosecute". 3(2) *Criminal Justice* 19-23 & 47-48.
- Foeseth, Paul E.. 1994, "Justice Minister out of Touch with Mainstream Canadian Values". Reform Party News Release on November 17, 1994. House of Commons.
- Fryer, David R.. 1964. "Group Defamation in England". 13(1) *Cleveland-Marshall Law Review* 33-51.
- Fudge, Judy. 1991. "Marx's Theory of History and a Marxist Analysis of Law". in Richard F. Devlin (ed.), 1991. *Canadian Perspectives on Legal Theory*. Toronto: Emond Montgomery Publications Limited. 151-175.
- Gamble, Daniel. 1995. *Hate Groups and the Media*. Ottawa: Department of Sociology, Carleton University. [unpublished research in progress, July 20, 1995].
- Giese, Rachel. 1995. "Hating the Hate Crimes Bill: Bill C-41 isn't about fighting prejudice - it's about revenge". 29(4) *This Magazine* 7-9.
- Gilmour, Glenn A.. 1994. *Hate-Motivated Violence*. Ottawa: Research and Statistics Directorate, Department of Justice.
- Gold, David A., et al.. 1975a, "Recent Developments in Marxist Theories of the Capitalist State". 27(5) *Monthly Review* 29-43.
- Gold, David A., et al.. 1975b, "Recent Developments in Marxist Theories of the Capitalist State: Part 2". 27(6) *Monthly Review* 36-51.
- Edward Greenspon. 1994. "PM resolves to quell revolt over gay rights: Chrétien fed up with protests by Grit MPs against Bill C-41". 1994(November 23) *The Globe and Mail*.
- Griffin, Andrew. 1994. "CSIS and the Heritage Front not such strange bedfellows". 1994(August 31) *The Ottawa X Press* 6.
- Gropper, Mitchell. 1965. "Hate Literature: The Problem of Control". 30(3) *Saskatchewan Bar Review* 181-202.
- Hage, Robert E.. 1970. "The Hate Propaganda Amendment to the Criminal

Code". 28 *University of Toronto Faculty of Law Review* 63-73.

Hinch, Ronald. 1992. "Conflict and Marxist Theories". in Linden, Rick (ed.), 1992. *Criminology: A Canadian Perspective*. Toronto: Harcourt Brace Jovanovich Canada 267-291.

Hogg, Peter W., 1985. *Constitutional Law of Canada*. Toronto: Carswell.

Hughes, Graham. 1966. "Prohibiting Incitement to Racial Discrimination". 16(2) *University of Toronto Law Journal* 361-368.

Institute for Jewish Affairs. 1992. "Canada". *Antisemitism World Report 1992* 105-108.

Inverarity, James M., et al., 1983. *Law and Society: Sociological Perspectives on Criminal Law*. Boston: Little, Brown and Company.

Jacobs, James B. and Jessica S. Henry, 1996. "The Social Construction of a Hate Crime Epidemic". 86(2) *Journal of Criminal Law and Criminology* 366-391.

Johns, Louise. 1995. "Racial Vilification and ICERD in Australia". 1995(March) *E Law* (an e-journal).

Kallen, Evelyn. 1991. "Never Again: Target Group Responses to the Debate Concerning Anti-Hate Propaganda Legislation". 11 *Windsor Year Book of Access to Justice* 46-73.

Kayfets, B. G., 1970. "The Story Behind Canada's New Anti-Hate Law". 3(4) *Patterns of Prejudice* 5-8.

Kinsella, Warren, 1994. *Web of Hate: Inside Canada's Far Right Network*. Toronto: HarperCollins Publishers.

Levin, Jack and Jack McDevitt, 1993, *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*. New York: Plenum Press.

Lewis, Stephen. 1992. *Report to Premier Bob Ray* [37 page letter dated June 9, 1992], Toronto.

Linden, Rick (ed.), 1992, *Criminology: A Canadian Perspective*, Toronto: Harcourt Brace Jovanovich Canada.

Lynch, Michael J. and W. Byron Groves, 1989. *A Primer in Radical Criminology*. New York: Harrow and Heston.

MacGuigan, Mark R., 1967, "Proposed Anti-Hate Legislation: Bill S-5 and the Cohen Report, 15 *Chitty's Law Journal* 302-306.

MacIntosh, Donald A., 1989, *Fundamentals of the Criminal Justice System*, Toronto: Carswell.

Manitoba, 1991, *Public Inquiry into the Administration of Justice and Aboriginal People*. Winnipeg: Queen's Printer.

McKenna, Ian, 1994. "Canada's Hate Propaganda Laws - A Critique", 9(1) *British Journal of Canadian Studies* 15-43.

McNamara, Luke, 1994. "Criminalizing Racial Hatred: Learning from the Canadian Experience", 1(1) *Australian Journal of Human Rights* 198-210.

Mock, Karen, 1992. "Combatting Hate: Canadian Realities and Remedies", 2(3) *Human Rights Forum* 11-13.

Mock, Karen, 1995. "Combatting Racism and Hate in Canada Today: Lessons of the Holocaust", 29(4) *Canadian Social Studies* 143-146.

Moon, Richard, 1992, "Drawing Lines in a Culture of Prejudice: R. v. Keegstra and the Restriction of Hate Propaganda", 26(1) *University of British Columbia Law Review* 99-143.

Nova Scotia, Royal Commission on the Donald Marshall, Jr., Prosecution, 1989. *Commissioners' Report: Finding and Recommendations*. Halifax: Nova Scotia Government Printer.

Maclean's, 1994, "New trial for a hatermonger?", 107(38) *Maclean's* 21.

Ontario, 1989, *The Report of the Race Relations and Policing Task Force* [Also known as "1989 Clare Lewis Report"], Toronto.

Ontario Ministry of the Solicitor General and Correctional Services, 1994, "Police Standards on Hate/Bias Motivated Crimes and Hate Propaganda Offenses", January 19 *Backgrounder*.

Ottawa-Carleton Regional Police Bias Crime Unit and the Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities. 1995. *Brief submitted to the House of Commons Standing Committee on the Justice and Legal Affairs respecting Bill C-41, and Act to Amend the Criminal Code (sentencing) and other Acts in consequence thereof*. Ottawa.

Patel, Dhiru. 1980. *Dealing with Interracial Conflict: Policy Alternatives*. Montreal: The Institute for Research on Public Policy.

Patel, Dhiru. 1994. *Speaking Notes on Context, Nature, Scope and Definition of Hate Crime* [at the Workshop on Police Response to Hate/Bias Crime. Ottawa. April 22-23. 1994]. Ottawa: the Solicitor General of Canada Secretariat and Carleton University.

Pazzano, Sam. 1997. "Zundel `inviting violence'". 1997(December 12) *The Toronto Sun* 58.

Pepper, David and Carroll Holland. 1994. *Moving Toward a Distant Horizon: The Public Summary of the Final Report of the Action Plan Project funded by the Ottawa Police Services Board*. June 1993 - March 1994. Ottawa.

Perrier, David, 1992. "An Introduction to Criminal Law". in Joel E. Pink and David Perrier (eds.). 1992. *From Crime to Punishment: An Introduction to the Criminal Law System*. Toronto: Carswell 1-12.

Petersen, Cynthia. 1991. "A Queer Response to Bashing: Legislating Against Hate". 16(2) *Queen's Law Journal* 237-260.

Pitman, Ruth. *et al.*, 1993. *Report on Hate Group Activity in Ontario: Environmental Scan*. Toronto: Solicitor General Canada Ontario Regional Office.

Prutschi, Manuel. 1992. "The Zundel Affair". in Alan Davis. 1992. *Antisemitism in Canada: History and Interpretation*. Waterloo: Wilfrid Laurier University Press.

Purvis, Andrew, 1997, "A teenager's brutal assault and drowning raise in a quite Canadian town", 150(24)/December 8 *Time*.

Québec, Comité d'intervention contre la violence raciste. 1992. *Violence and Racism in Quebec: Summary of the Report by the Comité d'intervention contre la violence raciste*. Québec: Commission des droits de la personne du

Québec.

Québec. Commission des droits de la personne du Québec, 1988. *Comité d'enquête sur les relations entre les corps policiers et les minorités visibles et ethniques: Rapport final* [also known as "Bellemare Report"], Ministère des communications du Québec.

Québec, 1992. *Report of the Task Force of the Minister of Public Security of Quebec on Relations between the Black Communities and the Montreal Urban Community Police Department* [also known as "Corbo Report"], Montreal.

Ratner, Robert S., et al., 1987. "The Problem of Relative Autonomy and Criminal Justice in the Canadian State", in Robert Ratner and John McMullan (eds.), 1987, *State Control: Criminal Justice Politics in Canada*, Vancouver: University of British Columbia Press, 85-125.

Raymaker, Derek and David Kilgour, 1992. "The Freedom to Promote Hate: What we Learned from Jim Keegstra and Malcolm Ross". 41 *University of New Brunswick Law Journal* 327-332.

Renke, Wayne N., 1994. [Book Review of] "Web of Hate: Inside Canada's Far Right Network". 32(4) *Alberta Law Review* 835-840.

Roberts, Julian V., 1995. *Disproportionate Harm: Hate Crime in Canada. An Analysis of Recent Statistics*, Ottawa: Research, Statistics and Evaluation Directorate of the Department of Justice Canada.

Robertson, Lloyd (host), 1994. "A federal government plan to beef up Canada's hate laws came under attack today by some backbenchers of the very party putting the plan forward". *CTV News*, November 17.

Rock, Allan, 1995, "Bill C-41 does not create a new 'hate crime'", 1995(May 13/Final) *The Ottawa Citizen* A8.

Rodrigues, Gary P., 1993. *Crankshaw's Criminal Code of Canada, R.S.C. 1985: Words and Phrases*, Scarborough, Ontario: Carswell Thompson Professional Publishing.

Rosen, Philp, 1996. *Hate Propaganda*, Ottawa: Research Branch of the Library of Parliament.

Rosen, Philp. 1997. *Hate Propaganda*. Ottawa: Research Branch of the Library of Parliament.

Ross, Jeffrey, 1994, "Hate Crime in Canada: Growing Pains with Canadian Legislation". in Mark S. Hamm (ed.). 1994. *Hate Crime: International Perspectives on Causes and Control*. Cincinnati, OH: Anderson Publishing.

Sargent, Neil, 1998, *Notes on understanding the role of law in responding to white collar and corporate crime*. Ottawa: Department of Law, Carleton University.

Saunders, R.P., and C.N. Mitchell (eds.). 1990. *An Introduction to Criminal Law in Context*. Toronto: Carswell.

Saunders, R.P., 1990, "Traditional Legal Perspective" in Saunders, R.P., and C.N. Mitchell (eds.). 1990. *An Introduction to Criminal Law in Context*. Toronto: Carswell, 37-38.

Shaffer, Martha, 1995, "Criminal Responses to Hate-Motivated Violence: Is Bill C-41 Tough Enough?". 41(1) *McGill Law Journal* 199-250.

Shelman, Alan, 1994. *A Strategic Approach to Hate Propaganda - An Analytical Framework*. Thornhill, Ontario: Human Rights Training and Consulting. [A paper presented in Ottawa during the *Workshop on Police Response to Hate/Bias Crime* by the Solicitor General of Canada Secretariat and Carleton University in April, 1994].

Simms, Glenda P., 1993. *Beyond Fear: A Review of the Policy and Procedures Related to the Drug Raid at 22 Gould St. Ottawa on September 26, 1991* [A report prepared for the Ottawa Police Services], Ottawa.

Solomon, Tamsin, 1995. "Antisemitism as Free Speech: Judicial Responses to Hate Propaganda in Zundel and Keegstra", 13(1) *Australian-Canadian Studies* 1-32.

Stern, Leonard, 1996, "Keegstra a hate-monger, top court rules". 1996(February 29) *The Gazette* (Montreal) A1/Front.

Sumner, Colin, 1979, *Reading Ideologies: an investigation into the Marxist theory of ideology and law*, London: Academic Press.

Taber, Jane, 1994, "Hate-crime bill divisive within Liberal Caucus".

1994(November 8) *The Ottawa Citizen*.

Tarnapolsky, Walter S.. 1967. "Freedom of Expression v. The Right of Equal Treatment". 3(Centennial Edition) *University of British Columbia Law Review* 43-68.

Taylor, Eddie, 1995. "Hanging up on Hate: Contempt of Court as a Tool to Shut Down Hatelines". 5 *National Journal of Constitutional Law* 163-182.

Thériault, Martin. 1993. *Hate Groups in Canada: Impact and Challenges* [Unpublished draft which was released for comments during the Workshop on Police Response to Hate/Bias Crime in Ottawa, April 22-23, 1994]. Ottawa: Solicitor General Canada Secretariat.

Vadum, Matthew Christian. 1996. "Q & A: Dinesh D'Souza". 1996(October 8) *The Mike* 6.

Van Loon, Richard J. and Michael S. Whittington, 1987. *The Canadian Political System: Environment, Structure and Process*. Toronto: McGraw-Hill Ryerson Ltd.

Vold, George. 1958. *Theoretical Criminology*. Oxford: Oxford University Press.

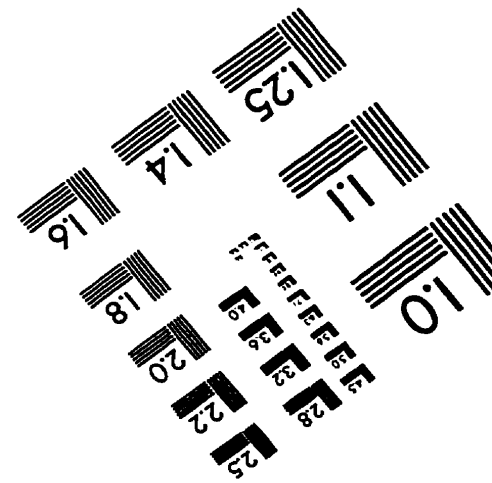
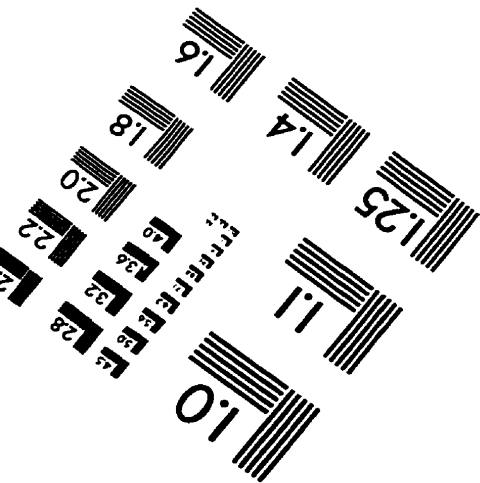
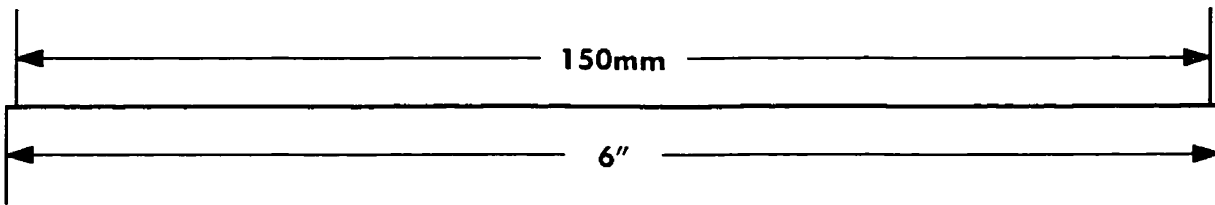
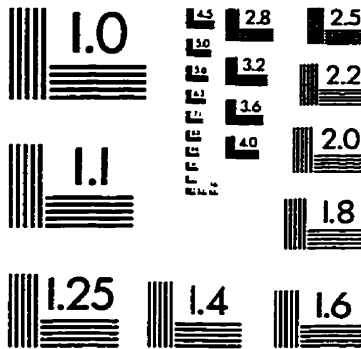
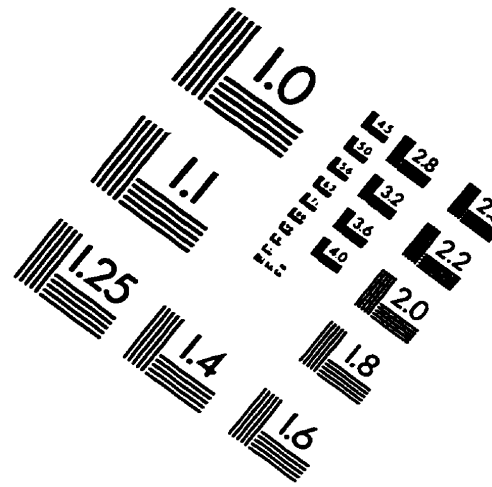
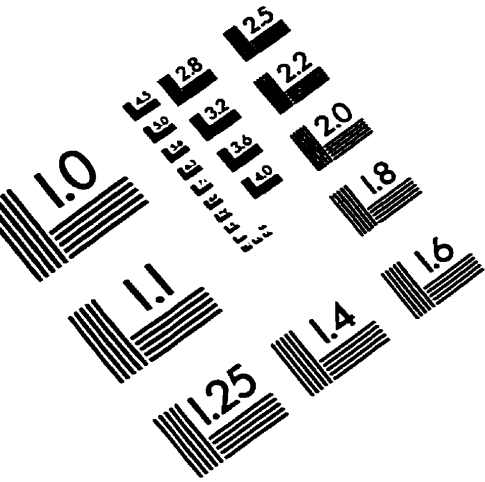
Vold, George B. and Thomas J. Bernard, 1986. *Theoretical Criminology*. Oxford: Oxford University Press.

Wachterhauser, Brice R., 1988. "Prejudice and Reason". in Baird, and Rosenbaum (eds.), 1992. *Bigotry, Prejudice and Hatred: Definitions Causes and Solutions*. Buffalo: Prometheus Books, 139-144.

Western Report, 1996. "Jim Keegstra returns to obscurity: the supreme court ends 12 of legal wrangling and pronounces him guilty". 11(9)/March 18 *Western Report* 22.

Western Report, 1996. "The wrong motive to have: a murderer draws 30 additional months in prison for his apparent racism". 11(35)/September 23 *Western Report*.

IMAGE EVALUATION TEST TARGET (QA-3)



APPLIED IMAGE . Inc
 1653 East Main Street
 Rochester, NY 14609 USA
 Phone: 716/482-0300
 Fax: 716/288-5989

© 1993, Applied Image, Inc., All Rights Reserved