

Minister of Justice
and Attorney General of Canada



Ministre de la Justice
et Procureure générale du Canada

The Honourable/L'honorable A. Anne McLellan

Ottawa, Canada K1A 0H8

MAY 03 2001

Ms. Valerie Smith
P.O. Box 119
Unit 3
4500 Kingston Road
Toronto, Ontario M1E 2N9

Dear Ms. Smith:

Thank you for your correspondence of March 4, 2001, concerning the hate propaganda provisions contained in the *Criminal Code* of Canada.

The *Criminal Code* prohibits:

- advocating or promoting genocide against an “identifiable group,” that is, any section of the public distinguished by colour, race, religion, or ethnic origin (section 318);
- inciting hatred against an “identifiable group” by communicating in a public place statements which are likely to lead to a breach of the peace (subsection 319(1));
and
- communicating statements, other than in private conversation, to wilfully promote hatred against an “identifiable group” (subsection 319(2)).

The *Criminal Code* defines “identifiable group” as any section of the public distinguished by colour, race, religion or ethnic origin. There have been suggestions that the list of “identifiable groups” be broadened to include sexual orientation. Others, such as yourself, have suggested including women. Others have proposed that the definition be expanded to cover all groups protected under section 15 of the *Canadian Charter of Rights and Freedoms*.

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As you may be aware, the Supreme Court of Canada found in the 1990 *R. v. Keegstra* case that the hate propaganda provisions infringe on the freedom of expression guaranteed by section 2(b) of the *Canadian Charter of Rights and Freedoms*, but upheld the provisions because, as they currently apply, they are a reasonable limit demonstrably justified in a free and democratic society under section 1 of the Charter. Before deciding on amending the hate propaganda provisions, we need to ensure that the amendment will not disturb the delicate balance that currently exists in these provisions between two conflicting and valuable purposes: the freedom of expression and the need to protect vulnerable groups in our society. These matters are presently under consideration.

Thank you again for expressing your views with regard to this issue.

Yours sincerely,



A. Anne McLellan