

Ministre de la Justice
et Procureur général du Canada



Minister of Justice
and Attorney General of Canada

L'honorable/The Honourable Martin Cauchon

Ottawa, Canada K1A 0H8

MAY 20 2003

Ms. Valerie Smith
P.O. Box 90598
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Toronto, Ontario M1J 3N7

Dear Ms. Smith:

Thank you for your correspondence of February 14, 2003, seeking the expansion of the application of the hate propaganda provisions to include groups distinguished by gender.

As my predecessor indicated to you in her correspondence of May 3, 2001, the hate propaganda provisions were challenged under the *Canadian Charter of Rights and Freedoms* in the *R. v. Keegstra* case. In its 1990 decision, the Supreme Court upheld these provisions with a four to three majority. All seven judges found the provisions to be contrary to the freedom of expression guaranteed by section 2(b) of the Charter. Four judges found them justified under section 1 as a reasonable limit in a free and democratic society, while three judges found them not justified, and therefore unconstitutional. An amendment to those provisions must be made only when we are confident that such an amendment will not disturb the delicate balance between two conflicting values: freedom of expression and the protection of vulnerable groups.

There are other *Criminal Code* provisions that address hatred against women. It can be argued that obscenity is a form of hatred against women. The *Criminal Code* contains provisions that specifically ban "obscene" materials, which are defined in subsection 163(8) of the Code as those materials that involve the undue exploitation of sex or of sex and violence, crime, horror, or cruelty.

Section 163 of the Code makes it illegal to make, print, publish, distribute, circulate, sell, or expose obscene material to public view, or to possess it for purposes of publication, distribution, circulation, sale, or display. Section 167 makes it illegal to present obscene performances, and section 168, to mail obscene material. Anyone found guilty of any of these offences is subject to a maximum penalty of two years' imprisonment.

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Hatred against women can also be expressed by counselling others to commit violence against women. Counselling assault or murder, or any other offence, is itself an offence, whether or not the counselling results in the commission of the offence.

Furthermore, it is an aggravating factor for sentencing purposes when an offence against a woman is motivated by hatred based on gender.

Before making the amendment you suggest, we would want to ensure that there is sufficient evidence of promotion of hatred against women or hate crime based on gender to make the prohibition of hate propaganda based on gender a pressing and substantial objective that could justify a limit on freedom of expression. The Department of Justice Canada is monitoring the situation.

Thank you again for your continued interest in this matter.

Yours sincerely,



Martin Cauchon