

February 23, 2007

The Hon. James Flaherty
Minister of Finance
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Flaherty:

Re: Amending the *Criminal Code* hate propaganda law to include gender

On July 31, 2006, I wrote to you asking that you honour the commitment you made while you were Attorney General of Ontario and ask the federal government to expand the definition of identifiable groups to include gender. To date, I have received no response from your office and there has been no public action from the Conservatives on this issue. I am therefore writing to inform you of additional developments, in the hope that your government might include this as part of its 2006 election promise to “act decisively to ensure that all Canadians – particularly the most vulnerable members of society – can live in safe, healthy communities”.¹

I don't see this particular issue in the Conservative party's 2006 election platform, but I don't see film piracy there either, and the Globe and Mail recently reported that Justice Minister Rob Nicholson will be studying that issue.² Surely, if the Justice Minister can find time in his busy schedule to investigate how film companies are suffering from the terrible scourge of camcorders, he can find time to investigate the issue of misogynist hate propaganda and do what the Conservatives promised while seeking election, i.e., protect the vulnerable so we can live in safe, healthy communities.

Bill C-254 (formerly Bill C-385)

In May 2005, Liberal MP Borys Wrzesnewskyj (Etobicoke Centre) introduced a Private Member's Bill (C-385) to expand the definition of “identifiable group” in the hate propaganda law to include women. Speaking in the House of Commons, Mr. Wrzesnewskyj said: “By enacting this change to the *Criminal Code*, Parliament can begin to address the serious issue of promoting hatred and violence against women. This is an amendment that should have been made long ago. I hope my colleagues on all sides of the House will support this worthy and overdue initiative.”³

In an attempt to get the Bill passed, Mr. Wrzesnewskyj proposed adoption of the following motion later that year: That... Bill C-385 be deemed to have been read a second time, referred to committee of the whole, reported without amendment, concurred in at report stage, read a third time and passed. “This is especially appropriate,” he said, “as in two weeks we will be marking the 14th anniversary of the massacre that took place at Montreal's l'École Polytechnique.”⁴

¹ *Stand up for Canada*, Conservative Party of Canada Federal Election Platform 2006

² *Justice critic to meet with law officials on film piracy*, Globe and Mail, February 8, 2007

³ House of Commons Debates, Hansard, May 11, 2005

⁴ House of Commons Debates, Hansard, November 23, 2005

I regret to inform you that **this motion was defeated by Conservative politicians**, and so girls and women remain unprotected from those who promote hatred and violence against us. To his credit, Mr. Wrzesnewskyj persevered and reintroduced the Bill again in May of 2006 as Bill C-254.

Ontario Public School Boards Association (OPSBA) Media Violence Coalition

On January 17, 2006, the OPSBA media violence coalition held a press conference at Queen's Park, an event that received considerable national press coverage. One of their recommendations was:

The Federal Minister of Justice amend the Criminal Code public incitement of hatred laws to conform to Section 15 of the Charter of Rights and Freedoms, thereby granting protection to girls and women

In speaking at the press conference, Rhonda Kimberley-Young, President of the Ontario Secondary School Teachers' Federation, said:

Public incitement of hatred is acknowledged as a contributing factor in encouraging violence against a target group. **We believe that leaving girls and women off the list compromises their safety.** ... We are adding the voice of the media violence coalition to a long list of individuals and organizations, that includes groups as diverse as the National Action Committee on the Status of Women, the Special Committee on Pornography and Prostitution, Law Reform Commission of Canada, and James Flaherty, Attorney General of Ontario, among others. (emphasis added)

This coalition includes the Ontario Public School Boards' Association, Canadian Centre for Abuse Awareness, Elementary Teachers' Federation of Ontario, Ontario Catholic School Trustees' Association, Ontario English Catholic Teachers' Association, Ontario Federation of Home & School Associations, Ontario Principals' Council, Ontario Provincial Police, Ontario Secondary School Teachers' Federation, and Ontario Student Trustees' Association.

Given such broad-based and current support for this legislation, I urge you, once again, to honour the promise you made when you were Attorney General of Ontario. In a letter to me dated December 20, 2000 (copy enclosed) you said:

"I will continue to ask the federal government to expand the definition of identifiable groups to include gender.

"We must have the tools to bring to justice those who spread hatred against others. It is time for the federal government to provide such tools to prosecute those promoting hatred against women by amending the Criminal Code. The public has a right to be safe."⁵

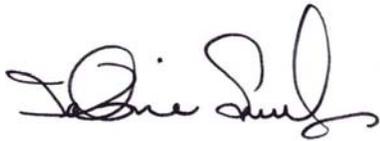
⁵ Letter to Valerie Smith from Attorney General Jim Flaherty, December 20, 2000

Page 2
The Hon. James Flaherty
February 23, 2007

Not only does the public have a right to be safe, Mr. Flaherty, the public has a right to expect that politicians will act on the promises they make.

I look forward to hearing from you.

Sincerely,



Valerie Smith

Attachments

1. *Justice critic to meet with law officials on film piracy*, Globe and Mail, February 8, 2007
2. Letter to Valerie Smith from Attorney General James Flaherty, December 20, 2000
3. *MPP Raps Rapper's Violent Message*, Michael Bryant News Release, October 25, 2000
4. *Media Violence – Not a Pretty Picture*, OPSBA news release, January 17, 2007
5. The Public Has a Right to be Safe, brief submitted to James Flaherty, July 31, 2006

cc The Hon. Steven Harper, Prime Minister
The Hon. Rob Nicholson, Attorney General
The Hon. Bev Oda, Minister of Canadian Heritage and Status of Women
The Hon. Stéphane Dion, Leader, Liberal Party of Canada
Borys Wrzesnewskyj, MP
Dan McTeague, MP
Marlene Jennings, MP, Attorney General Critic
Belinda Stronach, MP, Chair, Liberal Women's Caucus
Jack Layton, MP, Leader, NDP
The Hon. Michael Bryant, Attorney General of Ontario
The Hon. Sandra Pupatello, Minister Responsible for Women's Issues, Ontario
John Tory, MPP, Leader, Conservative Party of Ontario
Robert Runciman, MPP, Attorney General Critic, Ontario
Ontario Public School Boards Association Media Violence Coalition

Posted AT 3:53 AM EST ON 08/02/07

Justice critic to meet with law officials on film piracy

ALEX DOBROTA
FROM THURSDAY'S GLOBE AND MAIL

OTTAWA — Calls to criminalize camcording in movie theatres have reached Parliament this week, as one opposition MP vowed to embark on a fact-finding mission to assess the magnitude of the DVD-piracy problem in Canada.

Liberal justice critic Marlene Jennings said she would meet with law-enforcement officials, theatre operators and movie-industry representatives. Jennings will then decide whether to push the government to include the offence of camcording in theatres in the Criminal Code.

Justice Minister Rob Nicholson will also study the issue, said his spokeswoman, Geneviève Breton. "The minister is aware of the problem of DVD piracy and the role of camcording in contributing to that problem," Breton said in a statement.

Both Jennings and Nicholson have received letters from industry lobbyists urging them to stiffen penalties for pirates.

Related to this article

Follow this writer 

- Add ALEX DOBROTA to my e-mail alerts 

Latest Comments 

- The Toronto Star published an article by a lawyer a couple of...
- The Canadian legal industry would consider up to 5 years in jail...
- Judy Green says: "Who cares if rich Hollywood types don't get..."
- Colin Broughton from Edmonton writes that "for the USA to paint..."
- 18 reader comments | Comments closed



Their comments come on the heels of a Globe and Mail report last month that uncovered lax copyright laws in Canada. For a third year in a row, the U.S. government has lumped Canada with Russia and China on a piracy "watch list."

In theory, camcording movies in a theatre is an offence under the Copyright Act punishable with up to \$1-million in fines and up to five years in prison, according to the Department of Justice.

But prosecutors must first prove a culprit's intent to commercialize the recording in order to obtain an indictment under that act.

And police rarely charge moviegoers who sneak a camcorder in a theatre, said Gary Osmond of the Canadian Motion Picture Distributors Association (CMPDA).

For instance, Osmond has been monitoring a group of pirates currently operating in Montreal theatres. While Montreal police stopped one of the group's members in December as he was recording a screening of Martin Scorsese's *The Departed*, officers could not simply arrest the man, Osmond said.

"The camcorder had been so brazen as to tell the manager, 'There's no law, there's nothing you can do to me,'" said Osmond, himself a retired RCMP officer.

An added difficulty stems from the fact that the Copyright Act is federal legislation and can be enforced only by the RCMP, Osmond said. Enshrining piracy as an offence in the Criminal Code would empower local police to tackle pirates operating smaller-scale ventures that often pass under the RCMP's radar.

In one such example, a pirate has started to peddle DVDs to staff in a hospital, Osmond said, refusing to disclose the name or location of the hospital so as not to compromise the ongoing investigation.

The Motion Picture Association of America claims that in 2005 piracy cost American studios \$6.1-billion (U.S.). In Canada, the CMPDA estimates that its members lost \$118-million the same year.

Only last year, police seized 120,000 counterfeit DVDs in raids across the country. More than half were new releases not yet available on DVD that could be traced to a camcorder file, Osmond said.

But some observers remained skeptical.

One law professor said the calls to get tough on camcorder piracy serve only to draw attention away from the movie industry's inability to deal with theft from insiders who start circulating movie copies before their official release.

"Much of the problem . . . is an internal issue, not a camcorder issue," said Michael Geist, the research chair in Internet and e-commerce law at the University of Ottawa.

With respect to movies pirated with a camcorder, "we already have in Canada laws that deal with this issue," he said.

© Copyright 2007 CTVglobemedia Publishing Inc. All Rights Reserved.

CTVglobemedia

globeandmail.com and The Globe and Mail are divisions of CTVglobemedia Publishing Inc., 444 Front St. W., Toronto, ON Canada
M5V 2S9

Phillip Crawley, Publisher

FEB 19 2001

Attorney General and
Minister Responsible for Native Affairs

The Hon. James M. Flaherty

Procureur général et
Ministre délégué aux affaires autochtones

L'hon. James M. Flaherty



Ministry of the Attorney General
11th Floor
720 Bay Street
Toronto ON M5G 2K1
Telephone: (416) 326-4000
Facsimile: (416) 326-4016

Ministère du Procureur général
11^e étage
720, rue Bay
Toronto ON M5G 2K1
Téléphone: (416) 326-4000
Télécopieur: (416) 326-4016

DEC 20 2000

Ms. Valerie Smith
Box 119, 4500 Kingston Road
Toronto, ON
M1E 2N9

Dear Ms. Smith:

Thank you for your letter regarding Eminem performing in Ontario.

Domestic violence is a serious matter. Advocating such behaviour is utterly reprehensible.

Federal hate crime legislation offers protection only on the basis of race, religion and ethnicity. This current inadequacy of the *Criminal Code* would make it difficult to proceed with a prosecution for an alleged hate crime relating to gender.

The Ontario government has taken a leadership role in protecting women from domestic violence. I have written to the Federal Minister of Justice, the Honourable Anne McLellan, calling for amendments to be made to section 319 of the *Criminal Code*. I will continue to ask the federal government to expand the definition of identifiable groups to include gender.

We must have the tools to bring to justice those who spread hatred against others. It is time for the federal government to provide such tools to prosecute those promoting hatred against women by amending the *Criminal Code*. The public has a right to be safe.

Thank you again for writing and for your words of support.

Sincerely,

James M. Flaherty
Attorney General
Minister Responsible for Native Affairs

THE ATTORNEY GENERAL CRITIC



FOR IMMEDIATE RELEASE

October 25, 2000

MPP RAPS RAPPER'S VIOLENT MESSAGE

Crack down on artists who advocate violence and hate - Bryant

Queen's Park: - Liberal Attorney General Critic Michael Bryant is urging the Harris government to crack down on recording artists who advocate violence and hate. The M.P.P. for St. Paul's is referring to the arrival in Toronto of the notorious rapper Eminem, who is set to perform Thursday evening at SkyDome.

"Nobody wants to curb free speech but some of this rapper's songs cross the line. Some of the lyrics suggest that violence against women is 'cool' - even funny. It's time for the Attorney General to investigate and if necessary, prevent Eminem's concert on Thursday, or prosecute if any crimes take place." says Bryant.

Bryant is suggesting a number of steps that the A-G could take in dealing with the appearance of Eminem, including bringing an injunction to stop the rapper's show on the basis that his performance would be violating the *Criminal Code* and prosecuting the rapper under the hate crime, indecency or obscenity provisions of the *Criminal Code* if necessary.

Valerie Smith, who brought her complaint against Eminem to the Toronto Hate Crimes Unit, says "this guy is advocating hatred and violence against women. It's time for the Harris government to stop talking tough about cracking down on domestic violence and start *doing* something about it."

Bryant is also calling for preventive measures to ensure that parents have a say in what their kids listen to. Right now in Ontario, a child of any age can purchase whatever CD they want - no matter how violent or offensive. "I doubt that parents would want some of these songs in their kids' hands, so let's leave it up to them to decide. We need to start regulating music the same way we do movies. If you're not old enough, you can't buy it without a parent," Bryant says.

Bryant is asking the Harris government to regulate the sale of CDs and tapes in Ontario. For products labelled "Parental Advisory Explicit Content," Bryant suggests they be sold only to those 18 years of age or older with proof of ID. The Liberal Attorney General Critic also wants the Tories to consider mandatory criteria through joint regulation of movies, video games, and music products. Currently in Ontario, CDs and tapes are self-regulated by the industry.

-30-

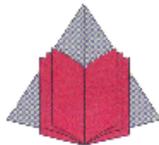
Contact:

Michael Bryant, M.P.P. St. Paul's
416-325-7292

Debora Steggles
416-325-7292


[Home](#)>[Media Services](#)>[Current Releases](#)>2007

News Release



Communiqué

January 17, 2007

FOR IMMEDIATE RELEASE

Media Violence – Not a Pretty Picture Putting Children in Harm’s Way

Toronto, January 17, 2007 - Violence in the media is pervasive. The destructive influence of violent music videos, video games, music lyrics, the Internet, and television programs is absorbed daily by our children and youth and is directly linked to safety in schools and in our communities. A coalition from trustee, parent, teacher federation, principal and student organizations from both public and Catholic systems, has been working together to build effective strategies to confront the problem.

“There is no question that parents and professionals who work with children and adolescents are gravely concerned about the potential harmful effects of media violence,” said Dr. Peter Jaffe, professor at the Faculty of Education, Centre for Research and Education on Violence against Women and Children, University of Western Ontario. “Media Violence is increasing and becomes more graphic every year.”

Solutions to the problem of media violence and its consequences rest in large part in prevention and education. Work initiated by the coalition is underway on newly-developed media literacy resources for kindergarten to grade 12 students that are aligned with curriculum expectations for learning in Ontario.

“As educators, we can help students become more aware of the negative impacts of media violence by teaching them the skills involved in critical literacy,” said Emily Noble, president of the Elementary Teachers’ Federation of Ontario.

Government can also play a critical role. Legislation is rarely a perfect solution but changes to current laws could assist with respect to enforcement and regulation as well as sending a message that as a society there are some things that just won’t be tolerated.

Our coalition strongly recommends that:

- the Federal Minister of Justice amend the Criminal Code public incitement of hatred laws to conform to Section 15 of the Charter of Rights and Freedoms, thereby granting protection to girls and women
- the Federal government amend the Broadcasting Act to establish a watershed hour of 9:00 p.m., applicable to both radio and television, for material intended for adult audiences to limit exposure to violence by young people.
- the provincial governments introduce a legislated age-based classification system for music recordings similar to the system that currently exists for films, music videos and video games.

“Changes to legislation by no means constitute comprehensive solutions to the problems identified,” said Rhonda Kimberley-Young, president of the Ontario Secondary School Teachers’ Federation. “But they will, if introduced, supplement and reinforce what the coalition is trying to do on behalf of children with regard to prevention and education about

the effects of media violence.”

The coalition of concerned organizations includes: the *Ontario Public School Boards' Association*, *Canadian Centre for Abuse Awareness*, *Elementary Teachers' Federation of Ontario*, *Ontario Catholic School Trustees' Association*, *Ontario English Catholic Teachers' Association*, *Ontario Federation of Home & School Associations*, *Ontario Principals' Council*, *Ontario Provincial Police*, *Ontario Secondary School Teachers' Federation*, and *Ontario Student Trustees' Association*.

- 30 -

For more information, please contact:

Jeff Sprang

OPSBA Communications
(416) 340-2540

Pierre Cote

OSSTF Communications
(416) 751-8300

Larry Skory

ETFO Communications
(416) 962-3836

“THE PUBLIC HAS A RIGHT
TO BE SAFE”

SUBMISSION TO
THE HON. JAMES FLAHERTY

RE

AMENDING THE CRIMINAL CODE HATE PROPAGANDA LAW TO
INCLUDE GENDER

“Of course, the fact that we have hate propaganda legislation that prohibits hate propaganda on certain grounds but excludes gay and lesbian people sends out the very clear message that somehow we are less than equal. The failure to include gay and lesbian people sends out the message that we are in fact second class citizens in our own country. That, as well, is clearly not acceptable.” (MP Svend Robinson)

July 31, 2006

Submitted by
Valerie Smith
P.O. Box 90598, Markham Eglinton Post Office
Toronto, Ontario M1J 3N7
Email: valsmith@fradical.com
Web site: www.fradical.com

TABLE OF CONTENTS

INTRODUCTION	3
EMINEM - SKYDOME CONCERT, OCTOBER 2000	4
BILL C-250 - AN ACT TO AMEND THE HATE PROPAGANDA LAW	6
EXCLUDING WOMEN IS UNCONSTITUTIONAL	7
EVIDENCE OF NEED	7
ENTERTAINER DECLARATION	8
CONCLUSION	8
APPENDIX I - RECOMMENDATIONS MADE TO AMEND HATE PROPAGANDA LAW	9

Exhibits:

- **Canadian High Commission, Jamaica, Entertainer Declaration**
- **Letter from The Hon. James Flaherty, Attorney General of Ontario, December 20, 2000**
- **Bryant Raps Rapper's Violent Message, MPP Michael Bryant news release, October 25, 2000**

Introduction

The *Criminal Code* currently prohibits the incitement of hatred against "identifiable groups", those being any "section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation". Adding "sex" or "gender" to the protected groups has been recommended for the past twenty years by the National Action Committee on the Status of Women (1983), Canadian Advisory Council on the Status of Women (1985), Special Committee on Pornography and Prostitution (1985), Law Reform Commission of Canada (1986), Raymond Hnatyshyn, Minister of Justice (Bill C-54 1987), B'nai Brith League for Human Rights (1994), James Flaherty, Attorney General of Ontario (2000), and MPP Michael Bryant, Ontario Liberal Party Attorney General Critic (2000). James Flaherty and Michael Bryant are now, respectively, the federal Minister of Finance and the Attorney General of Ontario.

The impact of hate propaganda is discussed in the Supreme Court of Canada's decision upholding the constitutionality of the hate propaganda law (*Keegstra*):

Parliament's objective of preventing the harm caused by hate propaganda is of sufficient importance to warrant overriding a constitutional freedom. Parliament has recognized the substantial harm that can flow from hate propaganda and, in trying to prevent the pain suffered by target group members and to reduce racial, ethnic and religious tension and perhaps even violence in Canada, has decided to suppress the willful promotion of hatred against identifiable groups. Parliament's objective is supported not only by the work of numerous study groups, but also by our collective historical knowledge of the potentially catastrophic effects of the promotion of hatred. Additionally, the international commitment to eradicate hate propaganda and Canada's commitment to the values of equality and multiculturalism in ss. 15 and 27 of the Charter strongly buttress the importance of this objective.

Section 319(2) serves to illustrate to the public the severe reprobation with which society holds messages of hate directed towards racial and religious groups. It makes that kind of expression less attractive and hence decreases acceptance of its content. Section 319(2) is also a means by which the values beneficial to a free and democratic society in particular, the value of equality and the worth and dignity of each human person can be publicized.

... while other non-criminal modes of combating hate propaganda exist, it is eminently reasonable to utilize more than one type of legislative tool in working to prevent the spread of racist expression and its resultant harm. To send out a strong message of condemnation, both reinforcing the values underlying s. 319(2) and deterring the few individuals who would harm target group members and the larger community by communicating hate propaganda, will occasionally require use of the criminal law.

Even while dissenting, Justice McLachlin acknowledged the impact on target groups:

To view hate propaganda as "victimless" in the absence of any proof that it moved its listeners to hatred is to discount the wrenching impact that it may have on members of the target group themselves...

Keegstra was also referenced in the Supreme Court of Canada's decision upholding the constitutionality of the *Criminal Code* obscenity law (*Butler*²), which the SCC did in order to protect women from the harm caused by obscenity. The intervener's factum filed with the SCC by the Attorney General of Ontario stated:

¹ *R v. Keegstra*, Supreme Court of Canada, 1990

² *R v. Butler*, Supreme Court of Canada, 1992

As this Court concluded in Keegstra, supra, "It is indisputable that the emotional damage caused by words may be of grave psychological and social consequence".

As this Court held in Keegstra, "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".

In sum, it is submitted that what this Court quoted with approval regarding hate propaganda applies a fortiori to obscenity:

The potential psychological and social damage ... both to a desensitized majority and to sensitive minority groups, is incalculable.

These documents acknowledge the harm caused by hate propaganda, yet the federal government has, so far, refused to offer women protection from it. This is not just an oversight, but a deliberate exclusion. In 1993, MP Sheila Finestone was told during a national conference on television violence in Toronto that women were excluded from the protection of the hate propaganda law. She expressed surprise at this, yet when she was subsequently appointed Minister Responsible for the Status of Women, did nothing to change it. In 2000, Justice Minister Anne McLellan ignored a request from the Attorney General of Ontario to change the law to add gender, and when the federal government amended the hate propaganda law in 2003 to add "sexual orientation", a request to add women to the law was refused by the MP who introduced the Bill.

As a member state of the United Nations, Canada is obliged to uphold the *Universal Declaration of Human Rights*³, the *Declaration of the Elimination of Discrimination Against Women*⁴ and the *Declaration on the Elimination of Violence Against Women*⁵. Further, Canada is a signatory state to the *Convention on the Elimination of All Forms of Discrimination Against Women*⁶, the *International Covenant on Economic, Social and Cultural Rights*⁷ and the *International Covenant on Civil and Political Rights*⁸. Since women have been deliberately excluded from the *Criminal Code* hate propaganda law, it appears past federal governments have been somewhat less than committed to these documents.

Eminem - SkyDome Concert, October 2000

In October 2000, when violent rapper, Eminem (aka Marshall Mathers), was scheduled to appear at Toronto's SkyDome, a complaint was filed with the Toronto Police Service hate crimes unit because of the misogyny in his lyrics. Although gender is not included in the protected groups, it was hoped that a court would "read" gender into the law in the same manner that a court had previously "read" sexual orientation into a different law.

The letter was copied to, among others, James Flaherty, Attorney General of Ontario and Michael Bryant, Attorney General critic for the Ontario Liberal Party. In response, Mr. Bryant held a press conference at Queen's Park denouncing Eminem's lyrics and urging the provincial government to "crack down on music that advocates violence and hate".⁹ He identified steps that could be taken by Attorney General Flaherty to deal with the scheduled appearance, such as:

- *bringing an injunction to stop the rapper's show on the basis that he would be violating the Criminal Code by going ahead and performing; and*

³ *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 (1948).

⁴ *Declaration on the Elimination of Discrimination Against Women*, GA Res 2263 (XXII) (1967).

⁵ *Declaration on the Elimination of Violence Against Women*, GA Res 48/104 (1993).

⁶ *Convention on the Elimination of All Forms of Discrimination Against Women*, GA Res 34/180 (1979).

⁷ *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI) (1966).

⁸ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171.

⁹ *Bryant Raps Rapper's Violent Message*, Michael Bryant news release, October 25, 2000

- *prosecuting the rapper under the hate crime provisions of the Criminal Code or the indecency or obscenity provisions*¹⁰

When questioned by reporters later that day outside the Legislature, Mr. Flaherty told them that he had already instructed his staff to contact the federal government to see whether Eminem could be prevented from entering the country because of the violence against women he advocates.¹¹ According to Paul Rosenberg, Eminem’s manager, no country had ever attempted to bar the performer, so this was unprecedented.

*Then punch a bitch in the nose
Until her whole face explodes
There's three things I hate:
girls, women and bitches...*

Eminem lyrics

Mr. Flaherty told reporters, “I personally don’t want anyone coming to Canada who will come here and advocate violence against women.”¹² He also said that the federal hate crimes law should be changed so it could be used against artists and others who promote hatred toward women.¹³ “We’ve been asking the federal government to expand the definition of identifiable groups to include sexual orientation and to include gender,” he said. “They haven’t done it... and now we’re faced with a situation where someone may come to Ontario and may advocate violence against women... That’s a problem.”¹⁴

Unfortunately, Mr. Flaherty was unsuccessful in stopping Eminem because of the exclusion of women from the hate propaganda law. In a letter he wrote:

Federal hate crime legislation offers protection only on the basis of race, religion and ethnicity. This current inadequacy of the Criminal Code would make it difficult to proceed with a prosecution for an alleged hate crime relating to gender.

I have written to the Federal Minister of Justice, the Honourable Anne McLellan, calling for amendments to be made to section 319 of the Criminal Code. I will continue to ask the federal government to expand the definition of identifiable groups to include gender.

We must have the tools to bring to justice those who spread hatred against others. It is time for the federal government to provide such tools to prosecute those promoting hatred against women by amending the Criminal Code. The public has a right to be safe.¹⁵ (emphasis added)

At the time of the controversy, MP Stockwell Day was campaigning in a federal election as leader of the Canadian Alliance. When asked for a comment by reporters, he said, “I am not strong on censorship but when it comes to somebody who at least, from what I hear, promotes things such as domestic violence, I don’t have a whole lot of time for that. It wouldn’t bother me and I certainly wouldn’t interfere at the federal level if the province of Ontario was to deny entry to someone like that.”¹⁶ Liberal Justice Minister Anne McLellan was also campaigning, but when contacted by reporters, refused to comment.¹⁷

In 2005, Mr. Day responded to the issue of misogynist rap music with these comments, “The government has been negligent about this issue. Please be advised that I will urge them to take action.”¹⁸

¹⁰ Ibid

¹¹ *Eminem plays despite outcry from politicians*, National Post, October 27, 2000

¹² *Bar rap star from country, Ontario urges*, Toronto Star, October 26, 2000

¹³ *Ban Eminem from Canada: Minister*, Ottawa Citizen, October 26, 2000

¹⁴ Ibid

¹⁵ Letter to Valerie Smith from The Hon. James Flaherty, Attorney General of Ontario, December 20, 2000

¹⁶ *Eminem plays despite outcry from politicians*, National Post, October 27, 2000

¹⁷ Ibid

¹⁸ Letter to Valerie Smith from MP Stockwell Day, September 28, 2005

Bill C-250 - An Act to Amend the Hate Propaganda Law

In September 2003, the House of Commons passed *Bill C-250* (formerly *Bill C-415*), an amendment to the hate propaganda law that added "sexual orientation" to the protected groups. This was a Private Member's Bill introduced by NDP MP, Svend Robinson. A request to NDP leader Jack Layton to have the Bill amended to include women was ignored, while a similar request made directly to Svend Robinson was refused outright with this explanation:

*I support the inclusion of "gender" in the law on hate propaganda, but unfortunately it was very clear that there was nowhere near the level of support for this change needed to move ahead in the House of Commons... I was certainly not prepared to table a bill that had absolutely no hope of support, when I do have some chance of getting through the more narrow bill including "sexual orientation".*¹⁹

This attitude is very disturbing. Politicians are elected to do the right thing, not the easy thing, plus he simply ignored the safety and equality rights of women in order to get his bill passed. Mr. Robinson now has protection from hate propaganda, but women and girls don't. To add insult to injury, NDP leader Jack Layton, one of the founding members of the White Ribbon campaign, a men's anti-violence group, issued a press release when *Bill C-250* was passed saying, "It is a natural update of the criminal code's hate-crimes section and another victory for equality". Apparently, Mr. Layton's concept of equality doesn't include women or ensuring that legislation passed by the House of Commons conforms to the equality guarantee in the *Charter*. Disappointing, to say the least.

During debates in the House of Commons, Mr. Robinson made the following comments

I hasten to add that in the future I would strongly support expanding this provision even further to include, for example, the grounds of sex, and physical and mental disability, to include the provisions that are covered by section 15 of the Charter of Rights."

...I would note it [the Bill] is important because the impact of hate literature is very destructive. Hate propaganda is very destructive."

*Of course the fact that we have hate propaganda legislation that prohibits hate propaganda on certain grounds but excludes gay and lesbian people sends out the very clear message that somehow we are less than equal. The failure to include gay and lesbian people sends out the message that we are in fact second class citizens in our own country. That as well is clearly not acceptable.*²⁰

He acknowledged that excluding certain groups from the law sends out a "very clear message" that those groups are "less than equal" and "second class citizens", but had no problem assigning women to that status. In October 2003, Mr. Robinson said in an email, "I wish to re-state that it is my intention in the next session of the House to introduce a Private Members Bill to include both gender identity and sex in the hate propaganda sections of the *Criminal Code*."²¹ He had an opportunity to protect women from hate propaganda when his Bill was going through Committee, but he refused to act. Promising to do it in the future is just not good enough. And, since he wasn't re-elected, it turned out to be a completely useless promise.

MP Vic Toews also spoke during the debates and offered the following comments:

...I would point to two specific concerns in the bill which must be addressed and which form the grounds of my opposition to the legislation.

First, the legislation would extend protection from hate propaganda to some groups while excluding others. While the bill would add sexual orientation to the list of groups who may claim protection from hate literature, a number of other Canadians who may be targeted for

¹⁹ Letter to Valerie Smith from MP Svend Robinson, January 20, 2003

²⁰ House of Commons Debates, Hansard, May 29, 2002 re *Bill C-415*

²¹ Email to Valerie Smith from MP Svend Robinson, October 7, 2003

reasons of age, health, disability, social status or a number of other characteristics would not be afforded the same protection.

What concerns me is not only the piecemeal way we are approaching the law, but the exclusion of a number of vulnerable groups in our society that are routinely subject to discrimination and inequality.

To address the issue there are two possible solutions. First, the definition of identifiable group could be expanded along the lines of our current standard in the Charter of Rights and Freedoms. The Charter currently extends protection from discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Amending the definition in this manner has been suggested in the past. In April, 1985 the Special Committee on Pornography and Prostitution recommended the definition be broadened to include sex, age, and mental or physical disability. **The Law Reform Commission of Canada recommended the same so the provisions would be consistent with the Charter of Rights and Freedoms. A broader definition would be consistent with international standards such as the Universal Declaration of Human Rights which guarantees that everyone is entitled to rights and freedoms: -- without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²² (emphasis added)**

Excluding Women is Unconstitutional

The omission of 'sex' from the definition of identifiable groups violates Section 15 of the *Charter*, a violation that cannot be justified. The *Charter of Rights and Freedoms* is the supreme law of Canada and included in the *Charter* is protection of equality rights at Section 15(1) which states:

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 disability.

Most members of the House of Commons ignored this when they passed Bill C-250, thereby sending a "very clear message" that women are "less than equal" and "second class citizens".

Evidence of Need

Women are routinely the subject of misogynist forms of expression. During the Eminem controversy, for example, a *Globe and Mail* editorial described his lyrics as "sick-making; they express an odious hatred of women,"²³ yet he performed at SkyDome before 20,000 young fans. He is one of the most popular recording artists in the world, having sold millions of CDs. And, he is just one of many similar violent rappers, so the influence of this genre of music is significant.



Because of the enormous popularity of violent rap, the abusive attitudes and language have spread into other aspects of society. Bell Mobility, for instance, introduced a line of spoken word cell phone ring tones called "Pimp Tones" that featured abusive language and threatened or featured violence against women, while Chrysler hired pimp rapper,

Snoop Dogg, to appear in advertisements. This embrace of misogynist products and performers by large, mainstream corporations sends the message that abusing women is socially acceptable.

²² House of Commons Debates, Hansard, May 29, 2002 re Bill C-415

²³ *Confronting Eminem*, *Globe and Mail* editorial, October 27, 2000

"Hunting for Bambi" is another egregious example of hateful expression. In the United States, a company claims to offer men an opportunity to hunt naked women and shoot them with paintball guns, although "purposely shooting at persons not wearing clothing may result in significant bodily injury".²⁴ Physically harming real, live women is now being packaged as a "sport". Videos of women being hunted and shot are sold on line and the content of the web site is vile, as evidenced by the above illustration which appears on the Hunting for Bambi site. (Initially dismissed by some as a hoax, three years later the web site remains active and videos are still offered for sale on two web sites.)

Because the Canadian hate propaganda law is narrowly focussed, it's unlikely the change will result in a flood of prosecutions, especially since charges must be approved by the Attorney General. However, we should be able to prevent virulent misogynists like Eminem from coming to Canada. White supremacist hate rock bands are stopped at the border, while creators and sellers of hate rock music are prosecuted in Canada. Changing the law will only mean that women have the same protection as other vulnerable groups, something guaranteed to us under the *Charter*.

Section 319(2) serves to illustrate to the public the severe reprobation with which society holds messages of hate... It makes that kind of expression less attractive and hence decreases acceptance of its content.

Supreme Court of Canada

It should also have a much-needed chilling effect on Canadian companies that currently traffic unimpeded in products that promote violence and hate against women. After the law was amended to include sexual orientation, for example, organizers cancelled the Ontario concerts by Jamaican dancehall artist, Beenie Man, scheduled for London and Toronto, "due to ongoing concerns and pressures regarding Beenie Man's controversial lyrical

content".²⁵ Some of Beenie Man's lyrics advocate violence against gays and lesbians. The same month (August 2004), Egale Canada issued a press release calling on Judy Sgro, Canada's Immigration Minister, to deny entry to another performer, Sizzla, because of similar concerns over his lyrics, and their release cited the recently-amended *Criminal Code* hate propaganda laws.²⁶

Entertainer Declaration

In response to the homophobic lyrics of some performers, the Canadian High Commission in Jamaica introduced an Entertainer's Declaration that performers from that country are required to sign before they can come to Canada. "All entertainers going to Canada are required to sign a declaration that states that the entertainer will not engage in activities in Canada that will break the Canadian *Criminal Code*, or engage in or advocate the hatred of persons because of race, national or ethnic origin, colour, religion, sex or sexual orientation," states a release sent from the High Commission to the Jamaica On Line Star.²⁷ "Sex" is included in this document, but unfortunately, the Declaration is only required for Jamaicans, so it does nothing to prevent misogynist performers from other countries from coming to Canada.

Until the hate propaganda section is amended to include women, the government could order the Entertainer Declaration to be applied universally, so that performers from all countries who wish to work in Canada have to sign it.

Conclusion

While in opposition, Vic Toews supported amending the hate propaganda law to conform to Section 15 of the *Charter* and offer protection to all Canadians, not just selected groups. Stockwell Day stated that the government has been negligent on the issue of hateful rap music that targets women, and he promised to

²⁴ *Brass Eagle Inc. Responds to "Hunting for Bambi"*, Brass Eagle Inc. news release, July 15, 2003

²⁵ *Beenie Man Shows Cancelled*, Toronto Sun, August 27, 2004

²⁶ *Songs of Hatred Not Welcome*, Egale Canada news release, August 25, 2004

²⁷ *No entry without signing*, Jamaica On Line Star, July 1, 2005

urge the government to take action. When he was Attorney General of Ontario, James Flaherty asked the federal justice minister to amend the hate propaganda law to include women. These men are now, respectively, Attorney General, Minister of Public Safety, and Minister of Finance, three of the most influential Ministers in the federal government. I will close with Mr. Flaherty's comments on the issue and ask him to act on his promise:

"I will continue to ask the federal government to expand the definition of identifiable groups to include gender.

"We must have the tools to bring to justice those who spread hatred against others. It is time for the federal government to provide such tools to prosecute those promoting hatred against women by amending the Criminal Code. The public has a right to be safe."

Appendix I - Recommendations Made to Amend Hate Propaganda Law

1983: National Action Committee on the Status of Women recommended to the Special Committee on Pornography and Prostitution, that "the 'hate propaganda' section of the *Criminal Code* be amended to include sex as an 'identifiable group', and that the section should be further amended by removing the necessity of the consent of the Attorney General before proceeding with an offence." (*Report of the Special Committee on Pornography and Prostitution*, Supply and Services Canada, 1985)

1985: Canadian Advisory Council on the Status of Women has recommended to the federal government, as far back as 1985, that *Criminal Code* hate laws should be broadened to include the word "sex" or "gender" as an identifiable group. (Letter to Valerie Smith from Glenda Simms, President, CACSW, June 23, 1994)

1985: Special Committee on Pornography and Prostitution made four recommendations in their Report for changes to the hate propaganda section of the *Criminal Code*, including adding gender and removing the requirement for consent by the Attorney General for a prosecution. (*Report of the Special Committee on Pornography and Prostitution*, Supply and Services Canada, 1985)

1986: *Working Paper* on hate propaganda, Law Reform Commission of Canada proposed that the section in the *Criminal Code* governing hate literature include protection on the grounds of sex. (*Report on the Powers of the Ontario Film Review Board*, Ontario Law Reform Commission 1992)

1987: A proposal to broaden the hate propaganda section of the *Criminal Code* to include "sex" in the categories of identifiable groups was included in *Bill C-54, An Act to amend the Criminal Code and other Acts in consequence thereof*, introduced by Raymond Hnatyshyn, Minister of Justice. The Bill died on the order paper. (*Report on the Powers of the Ontario Film Review Board*, Ontario Law Reform Commission 1992)

1994: Marc Sandler, senior legal counsel, B'nai Brith League for Human Rights, told a symposium on hate crimes that women, gays and lesbians should be offered the protection of current prohibitions against promoting hatred (*They hate hate*, Toronto Sun, October 19, 1994)

2000: Ontario Attorney General, Jim Flaherty, wrote federal Justice Minister, Anne McLellan, calling for amendments to be made to section 319 of the *Criminal Code* to expand the definition of identifiable groups to include gender. (Letter to Valerie Smith from The Hon. James Flaherty, Attorney General of Ontario, December 20, 2000)

	Government of Canada	Gouvernement du Canada
	High Commission of Canada	Haut-commissariat du Canada
Immigration Section, 3 West King's House Road, P O Box 1500, Kingston 10, Jamaica Tel: (876) 926-1600 Fax: (876) 511-3480 Website: www.international.gc.ca/jamaica or www.ec.gc.ca		

The application for a Temporary Work Authorization to perform in Canada refers.

1. The purpose of this letter is to state that I, _____ (print name), have read and fully understand the provisions of the *Canadian Criminal Code*, *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act* outlined below.
2. I will not engage in activities in Canada that contravene these provisions.
3. I will not engage in or advocate the hatred against persons because of their race, national or ethnic origin, colour, religion, sex, or sexual orientation.
4. I further understand that contravention of Canadian laws may lead to prosecution and, if convicted, I may be rendered inadmissible to Canada. Inadmissible persons may not receive visas to enter Canada.

Canadian Criminal Code

S 319 (1) Public incitement of hatred – 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
(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
(b) an offence punishable on summary conviction

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society

2. Everyone has the following fundamental freedoms:
 - a) freedom of conscience and religion;
 - b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - c) freedom of peaceful assembly; and
 - d) freedom of association.

The Canadian Human Rights Act

2. The purpose of this Act is to extend the laws in Canada to give effect, within the

Canada

- 2 -

purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

12. It is a discriminatory practice to publish or display before the public or to cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation that

(a) expresses or implies discrimination or an intention to discriminate, or

(b) incites or is calculated to incite others to discriminate

if the discrimination expressed or implied, intended to be expressed or implied or incited or calculated to be incited would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

Signed: _____

This date _____

at The Canadian High Commission, Kingston, Jamaica.