

September 25, 2004

The Hon. Michael Bryant
Attorney General
Ministry of the Attorney General
720 Bay Street, 11th floor
Toronto, ON M5G 2K1

Dear Mr. Bryant:

**Re: "She was asking for it" t-shirt
Gender excluded from hate propaganda law**

As you know, women and girls are not afforded protection under the *Criminal Code* hate propaganda law. When you were in opposition, you held a press conference at Queen's Park in October 2000 to denounce the appearance at Skydome of the misogynist rap performer, Marshall Mathers (Eminem). The Attorney General at the time, Jim Flaherty, expressed his interest in stopping Mathers under the hate propaganda laws, but had been provided with a legal opinion advising this was not an option because the law does not include women. Both of you were responding to a complaint I had filed with the hate crimes unit of the Toronto Police Service, and I was gratified that the situation was taken so seriously.

This discriminatory and harmful situation has not changed in the intervening four years, although last April the federal government passed *Bill C-250*, an act that amended the hate propaganda law to include those identified by their "sexual orientation". The shocking thing about the passage of *Bill C-250*, is that it went through a review by the Standing Committee on Justice and Human Rights, public hearings held by that Committee, and review and approval by the Senate, without anyone bothering to amend the law to include gender, although this oversight was brought to the justice committee's attention. In fact, Svend Robinson, the NDP MP who introduced this private member's bill, outright refused to amend it to include gender, because he said there wasn't enough support for it. When the bill was passed, Jack Layton, leader of the federal NDP, praised it as a victory for equality, having ignored an appeal to intervene to have the bill amended to include gender. Mr. Layton's attitude towards equality is apparently flexible.

I've worked on this issue for many years, attempting to get politicians to change the law. Having been unsuccessful, I applied to the Court Challenges Program in May 2002 for funding to take the federal government to court to force them to change the law to include gender. (The application was denied, although a legal expert told me a first-year law student could get that section struck down as unconstitutional.) The estimated budget for the challenge was \$50,000. In other words, if I had \$50,000, I could BUY access to that law, but since I don't, the federal government can continue to deny women protection under the hate propaganda law. This situation does, of course, contravene our Section 15 *Charter* right, the one that says:

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.

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This is a *right* the Standing Committee on Justice and Human Rights was able to overlook during their review and approval of *Bill C-250*.

I am writing now because the issue of the "She was asking for it" t-shirt once again illustrates the need for this law to be changed. I reviewed the Ontario *Human Rights Code* in the hope that it might provide an option for action against the store in St. Catharines that sold the shirts, but it does not appear to. With no protection there, and no protection in the *Criminal Code*, women are extremely vulnerable to hate propaganda, and at risk for the violence hate propaganda causes. I am therefore requesting that the Ontario government take a leadership role in getting the *Criminal Code* amended, and/or revise the *Human Rights Code* to fill the gap for the citizens of this province.

Perhaps the provincial Standing Committee on Justice Policy could study the issue and invite public input. Surely, with the legal expertise that exists in this province, we could find solutions, or cause enough controversy to force the federal government to act. The fact is, that women are not generally aware of the situation, and that the federal government has so little regard for our rights and personal safety. A little public outrage could be very effective in convincing federal politicians to reconsider the situation.

Thank you for your past action on Marshall Mathers. I hope we can count on you to pursue this issue now that the Liberal government is in power.

Sincerely,



Valerie Smith

Cc: The Hon. Dalton McGuinty, Premier
The Hon. Jim Bradley, Minister of Tourism and Recreation
The Hon. Sandra Papatello, Minister Responsible for Women's Issues
Jim Flaherty, MPP
David Oraziette, MPP, Chair, Standing Committee on Justice Policy
Joseph Tascona, MPP, Attorney General Critic, Conservative
Peter Kormos, MPP, Attorney General Critic, NDP
Elizabeth Witmer, MPP, Women's Issues Critic, Conservative
Marilyn Churley, MPP, Women's Issues Critic, NDP
Gillian Dooley, Executive Director, Women's Place, St. Catharines
Scott Newark, Vice Chair and Special Counsel, Office for Victims of Crime
Priscilla de Villiers, Special Advisor, Office for Victims of Crime
Melanie Cishecki, Executive Director, MediaWatch
Cynthia Watson, Partner, Watson McMahan
Jack Layton, MP