

Hate Crimes and Group Activity in Canada

Mark Sandler

When I arrived in Fredericton I expected to be asked questions such as 'just how bad is hate group activity in Canada?' and "how does freedom of speech limit the application of the criminal law to hate propaganda?" Instead, the first question I was met with was "what do you think of Professor Yaqzan and his comments about the male-female relationship?" Though I had not intended to address Professor Yaqzan, my combative nature and my strongly held views compel me to weave some comments about him, in some subtle way, into my presentation.

I will attempt here to persuade you of three things. First, few appreciate the prevalence of hate group activity in Canada. Second, the criminal law is the most appropriate vehicle to combat hate group activity in Canada. Third, freedom of speech does not prevent democracy from dealing with the willful promotion of hatred and racially motivated crimes. Whereas legitimate defenders of freedom of speech raise legitimate concerns about inhibiting this basic freedom, freedom of speech is also being used by the racists in our midst to disguise the true nature of their activity, and to seek immunity for hate propaganda that undermines the very fabric of our society.

On 1 July 1990, I had the misfortune of witnessing a Neo-Nazi rally held in Metcalfe, Ontario near the nation's capital. One hundred to two hundred and fifty Neo-Nazi "skinheads" congregated in a blasphemous celebration of Canada Day. Racists came together from Toronto, Montréal, Hamilton, Eastern and Western Canada, the United States, England and elsewhere. An English rock group put hate lyrics to music. Wearing army fatigues and brandishing weapons, the attendees photographed those of us who were present to counter-demonstrate against them.

Several months later, in September 1990, in Provost, Alberta, members of "Aryan Nations", a racist Alberta organization, burned crosses, bore semi-automatic weapons and chanted "Death to the Jews". There were those of us who thought, "In Canada, you say?"

We have seen over the last few years, not only increased levels of racism, anti-Semitism and homophobia, but also more extreme violence in the wake of those attitudes. For example, in the last five years there have been desecrations of synagogues, mosques and religious day-schools in Fredericton, Québec City, Montréal, Hamilton, Calgary, Winnipeg, Saskatoon, Edmonton, Richmond, British Columbia, and elsewhere. This was a crime largely unheard of until several years ago, at least on the scale that now exists.

There are many groups and individuals present in Canadian society who harbour extreme racist views and who bear responsibility for the violence. One of these groups is the "Church of the Creator". This group, largely unknown to Canadians, provides an illustration of the nature and danger of hate group activity in Canada. Ben Klassen, its founder, was born in the Ukraine. He moved to Mexico, resettled in Saskatchewan, taught school there and then worked as an electrical engineer in California. He then became a successful real estate agent in Florida, where he was elected as a Republican to the Florida State Legislature and served as the Florida Chairman of George Wallace's 1968 presidential campaign. He was initially affiliated with the ultra-right John Birch Society, but lurched even further to the right, ultimately accusing George Wallace of intentionally courting African-American support, terming this a betrayal, and denouncing the John Birch Society as a "smoke-screen for the Jews". In 1973 he founded the "Church of the Creator", a white supremacist organization, later to be based on a compound in North Carolina.

In 1991, the Klanwatch Intelligence Report (compiled by the Southern Poverty Law Centre) reported that Klassen had spent the last two years enlisting the most militant racists that the movement had to offer - prisoners and skinheads. He had chosen an imprisoned felon to be the next leader of the COTC, appointed a security chief to train members in weapons use and police communications, and bestowed the title of "Reverend" upon skinheads who had been charged with violent crimes, including armed robbery and attempted murder.

The COTC's slogan is "RaHoWa" - Racial Holy War. Its publications declare that there will be a racial holy war in which the Jews and the "mud races" of the world will be wiped from the face of the earth. "No longer can the mud races and the white races live on the same planet and survive. It's now either them or us. We want to make damn sure that it is we who survive. The planet is from now on all ours".

Recognizing the appeal of racist doctrine to criminals, Klassen targeted prisons as his primary recruiting ground. He used American freedom of religion guarantees to gain entry for his newspaper and books which became popular reading material in prisons. The COTC's newsletters and books trace familiar racist themes: The Federal Reserve Board is purportedly run by an avaricious international gang of Jewish jackals who control the world, its money and its economy. The COTC literature justifies the use of criminal force, concluding that "when law and persuasion no longer protect our rights to survival then we must... turn on our tormentors with a furious vengeance and destroy them down to the very last man... For every one of ours they kill, we will exact ten times their number starting with the Rabbis". Barend Stryvon of South Africa was honoured by Klassen for "wading into a crowd of niggers a couple of months back, guns blazing, smiling from ear to ear, killing six and wounding seventeen...", edging out for honours a man who killed five Asian children in a California school yard.

The COTC's recognition grew within the white supremacist movement - particularly among its youngest and most violence-prone adherents. Neo-Nazi skinheads began congregating for indoctrination and weapons training. Many were older teenagers - "exceptional boys" according to Klassen. He stated that "we will take young men... and prepare them to break Jews like match sticks, not just physically but intellectually".

As the rhetoric grew, the violence grew. A list of violent acts that have been attributed to COTC would be extensive; suffice it to say that as recently as July of this year, federal and local police agents in Los Angeles arrested eight individuals connected with the Church. They were accused of plotting to instigate a race war by bombing a church, assassinating Rodney King, the victim of the notorious video-taped beating by Los Angeles police, and planning a series of assassinations of prominent figures in the Jewish and African-American communities. During the arrests, police seized pipe bombs and machine guns. In October, one member was convicted on sixteen counts of selling and transporting illegal weapons. One was found guilty of conspiracy, one pleaded guilty to conspiring to manufacture and sell sixteen stenn machine gun receiver tubes for gun kits, and six remain in jail awaiting trial.

Before he committed suicide, Klassen admitted in his newsletter that he used the cloak of religion to enhance his organization's credibility, gain constitutional protection provided to churches, and avoid "the tyrannical and voracious Jewish tax collectors".

In 1991 Klanwatch reported that COTC had followers in twenty states and eight foreign countries. We have the dubious distinction of having in our midst the Church of the Creator-Canadian branch, and there is every reason to believe that it intends to be as violent and as racist as its American counterpart. It became active in 1990. Its first leader is a contemptible Cretan man named George Burdi, alias Rev. Eric Hawthorne. He is twenty-three years old and college educated. He heads a racist rock band, not surprisingly called RaHoWa. His menacing looks and his relative sophistication have earned him appearances on the popular media, and especially daytime talk shows. COTC's Canadian members have engaged in paramilitary training, secured weapons and been charged with various criminal offenses, some of which are ongoing. The head of COTC's "security legions" in Canada was reputed to be Eric Fischer, a former sergeant in the Canadian Airborne.

The COTC has acted in association with the Heritage Front, undeniably Canada's most notorious hate group, led by Wolfgang Droege, well known in the Toronto community as an ex-convict and a former member of David Duke's Knights of the Klu Klux Klan. In September 1989, Droege and other fascists travelled to Libya at the request of Colonel Khadafy's Intelligence Branch and may have received Libyan funding for Canadian projects at the time. The Heritage Front has been involved in ongoing court battles over its racist telephone hotlines - a propaganda technique shared by the COTC, John Ross

Taylor (imprisoned for such activity) and other racist groups and individuals. The Heritage Front has sponsored various racist activities in Toronto (some co-sponsored by the COTC) including a speaking engagement by Tom and John Metzger, leaders of the California-based White Aryan Resistance. In October 1990, a Portland, Oregon jury returned a \$12.5 million verdict against the Metzgers, their racist organization and two skinhead followers in connection with the murder of an Ethiopian immigrant by skinheads in 1988. The Metzger's civil liability was based upon their incitement to racial violence.

It is beyond the scope of this presentation to further document the extent of hate group activity in Canada. However, the message is clear. Whether one focuses on the Klu Klux Klan, Aryan Nations, The Heritage Front, The Aryan Resistance Movement, the Nationalist Party or the Church of the Creator, one sees a commonality of purpose: recruitment of skinheads and other young adults; increasing resort to violence; the use of racist literature to promote the cause; and, most disturbing, some networking between Canadian racist groups and in turn with American and worldwide counterparts, such as the Metzgers being invited to speak at various locations in Canada (they were ultimately deported); financial contributions by the American COTC to members charged in Canada; Canadian racists attending a paramilitary compound in Idaho for training; the distribution of literature in Metcalfe, Ontario, emanating from Texas, California, Holland, France, England, Australia, South Africa as well as Canadian locations.

Who are the people who carry the racist banner? Who provides the philosophical underpinning for what these groups are doing? How does an 18-year old skinhead become indoctrinated to the racist message that is being delivered? Ernst Zundel and Malcolm Ross and other propagandists who masquerade as historians are, in reality, simply the Goebbels of our times.

Ernst Zundel was charged under a little section of the Criminal Code of Canada known as "spreading false news". Unlike James Keegstra or white supremacists Smith and Andrews, Zundel was not charged under the section of the Code designed to prohibit hate propaganda, because the Attorney General of Ontario had to consent to such a prosecution, and at that time the Attorney General was not prepared to consent. So, a private citizen found this section of the Criminal Code, which had not been used for this purpose before, and caused Zundel to be charged. The charge related in part to Zundel's publication of a pamphlet entitled "Did Six Million Really Die?", denying the Holocaust.

Some contend that by prosecuting Ernst Zundel, one confers more publicity upon him than he otherwise deserves. Second, the opinion is expressed that Zundel is "a crackpot, a loner. Why prosecute him for his genuine views, however absurd?" Third, it

is contended that freedom of expression prevents the criminal suppression of his conduct. These contentions perpetrate myths and dangerous myths.

Lest it has been lost in the constitutional debate that followed his trials, Ernst Zundel was convicted twice by juries of his peers, of willfully spreading false news. Before the Criminal Code section was struck down by the Supreme Court as too broad and more evasive than necessary, two juries (the second, after a trial free from reversible error) concluded beyond a reasonable doubt not only that Zundel published things that were false, namely denying the Holocaust and alleging a Jewish conspiracy to promote the "myth" of the Holocaust, those juries were also satisfied beyond a reasonable doubt that Zundel knew what he was publishing was false. The Code required proof of no less. No juror has ever concluded that Zundel genuinely believes a word of what he says.

This is hardly surprising to those of us steeped in the history of hate propaganda. During the Tsarist regime in Russia, a publication entitled the Protocols of the Elders of Zion purported to document meetings held by Jewish leaders who conspired to overthrow the world. These forgeries were used as persuasive tools to re-write history and justify the oppressive measures that were being taken against the Jewish community. The Protocols formed part of the centrepiece of the Third Reich's propaganda machine which again justified the evils directed toward the Jewish community. The Protocols continue to be used today as a philosophical underpinning for anti-Semitism. There is nothing new in the distortion of history, but why does it take place? Because it permits Zundel, in a more sophisticated way to say "I don't hate Jews, I like Jews. I am just reporting on historical facts and debating history. What is wrong with debating history?"

However, when one looks at Zundel's methodology the lie is exposed. Zundel testified at his first trial that he relied on various independent sources for his genuinely held beliefs. He stacked up books which purportedly provided independent support for his views. However, cross-examination by the Crown Attorney revealed that these books were all published by Neo-Nazi, pseudo-historical entities such as Liberty Press and the Institute for Historical Review, each involving many of the same racist players. These books, which superficially appeared to emanate from independent sources, in fact emanated from one source.

Second, Zundel relied upon legitimate authority, on scholars who were well known and respected. However, examination of the excerpts taken from these authorities demonstrated that he deliberately misquoted sources or excised unfavourable passages.

Zundel's methodology was not sloppy, it was deliberate. The initial reaction of the media was "why would he do that, what is his motivation, he must be a crackpot. If he is a

crackpot, he probably believes what he says". In cross-examination Zundel was exposed as the publisher of a book entitled *The Hitler We Love and Why*. He published under a pseudonym, using his two middle names, Christof Friedrich, to disguise his identity. His motive for distorting history then became obvious: here was a man who wanted to resurrect the legitimacy of the Third Reich by denouncing the Holocaust as a myth and the Jews as conspirators. Zundel's continued association with Neo-Nazi leaders in Germany and Canada demonstrate his role in that movement.

What does all this have to do with freedom of speech? I always understood freedom of speech to be freedom to express one's views, one's thoughts, one's beliefs, however uncomfortable. I submit that freedom of speech is not the freedom to deliberately lie to express one's non-views, one's non-beliefs and one's non-thoughts. Deliberate falsehoods are the antithesis of freedom of speech. It is unfortunate that Mr. Zundel's case spun on the constitutional inadequacies of a section in the Criminal Code that was not designed to address hate promotion because, otherwise, Zundel would have been put exactly where he belongs, behind bars.

Has Zundel been given millions of dollars of free publicity? With respect, the concern here should not be confined to people who have not heard of Ernst Zundel prior to the trial. Zundel was disseminating the material throughout the world, to many countries, in many languages, and was acknowledged by the experts to be the world's foremost distributor of anti-Semitism. Accordingly, it is incorrect to contend that a successful prosecution would cause more harm than benefit because of publicity it brought Zundel.

Equally as important, an attitudinal study was done after Zundel's first trial. It showed that those who heard of the Zundel trial were generally more sensitized to issues of racism, bigotry and anti-Semitism than they were before the trial. Notwithstanding the media's views, which were quite vigorously expressed, and the views of various civil libertarians, the reality was very different than their perception. Ironically, the one problem that the attitudinal study did show was that members of the Jewish community perceived there to be more anti-Semitism as a result of the trial than less. In other words, some members of the Jewish community itself were wrong about the beneficial effects of this trial.

These points are illustrated by consideration of James Keegstra's case. As a grade nine teacher of social studies in Eckville, Alberta, Keegstra taught his students that Jews were evil and responsible for most of the evil in the world. He suggested to his students that Jews formed a worldwide conspiracy to promote their own cause. Jews were described as "treacherous, subversive, sadistic, money-loving, power-hungry, and child killers". Jews purportedly "created the holocaust to gain sympathy". Homework and essay assignments required his students to parrot back Keegstra's anti-Semitism. Keegstra was charged, and ultimately convicted, with willfully purporting hatred,

contrary to the hate propaganda section of the Criminal Code. So were Donald Andrews and Robert Smith, leaders of the Nationalist party of Canada, a white supremacist organization distributing virulently anti-black, anti-Pakistan, anti-Semitic materials. Malcolm Ross, well known to you, should have been charged under the hate propaganda section of the Criminal Code as well.

The Criminal Code section has withstood constitutional scrutiny. Its infringement upon freedom of speech was raised by counsel for Keegstra, and Smith and Andrews. The Supreme Court of Canada, through then Chief Justice Dickson, delivered one of its most articulate judgements. It held that, whereas the section does infringe upon freedom of speech, this infringement is reasonably necessary in a free and democratic society.

The harms associated with hate propaganda are so significant that they outweigh the limited entrenchment upon freedom of speech that section entails. As the Court noted, there are two types of injuries caused by hate propaganda. First, there is the harm done to members of the target group. Persons belonging to a racial or religious group under attack are humiliated and degraded. That derision, hostility and abuse encouraged by hate propaganda have a severely negative impact on the individual's sense of self-worth and acceptance. This impact may cause target group members to take drastic measures in reaction, perhaps avoiding activities which bring them into contact with others. Second, hate propaganda can influence society at large. The act of dissemination of hate propaganda can attract individuals to its cause and, in the process, create serious discord between various cultural groups and society. Even if the message of hate propaganda is outwardly rejected, the premise of racial or religious inferiority upon which the message is based may persist in a recipient's mind as an idea that holds some truth. Hate propaganda seriously threatens both the enthusiasm with which the value of equality (to which the Charter is committed) is accepted and acted upon by society, and the connection of target group members to their community.

The Court recognized that hate propaganda marginalizes the vulnerable members of our community. They are not the subjects of persuasion, they are victims. If this material is freely disseminated without fear of criminal sanctions, those community members are doubly victimized. They are afraid to add their voices to the dialogue, and the irony is that they are unable to exercise their freedom of speech in what has been described as the marketplace of ideas. They are slapped down because of their membership in a group.

Chief Justice Dickson reflected the danger that this material plants in an impressionable person's mind. Much of this material is persuasive to those who do not have the resources to refute it. One needs only to return to Zundel. He brought forth a series of experts to demonstrate death camps really did not exist. It happened that one had a

criminal conviction in France for promoting anti-Semitism, so the validity of his opinion went down the drain. Another, a pseudo-engineer, who opined that it was physically impossible for there to be gas chambers, has since been exposed in the United States as a fraud. The Crown had the resources to demonstrate these frauds. However, the bolder the lie the more pervasive they become to the impressionable. If Zundel can publish an article which says that the Red Cross has opined that only a limited number of people died at the hands of the Nazis, it must be so. How could he publish such a statement if it were not true? There must be some validity to his position. However, it turned out that the Red Cross did not say those things. Zundel lied. The Red Cross proved the lie in court. But, who would know if it had not been exposed and dealt with in open court by a Crown Attorney with the resources to confront and defeat Zundel?

The use of the hate propaganda section of the Criminal Code avoids the one unseemly aspect associated with Zundel's trials. Zundel's trials did become something of a sideshow because Holocaust survivors were paraded forward to prove the existence of the Holocaust. The section under which Zundel was charged demanded no less. When Keegstra, Smith and Andrews were charged under the appropriate section, no such proof was required of the prosecution. The prosecution simply proved that these accused were willfully promoting hatred against an identifiable group. Again, Keegstra's trial illustrated that the public was sensitized to issues of anti-Semitism and racism rather than desensitized.

In summary, hate propaganda has to be addressed. We have a moral responsibility to do so. Whether it be anti-Semitic, anti-black or homophobic, one cannot be silent. A "let's do nothing" attitude, with the hope that this material will not persuade and enlist youngsters to the cause is a most dangerous position to take.

The Americans have a great deal of difficulty criminalizing hate propaganda in light of their constitution and the fundamental difference in their approach to freedom of speech. However, there is an approach taken in the United States that commends itself to us here in Canada. Numerous American jurisdictions have enacted laws which punish more severely crimes which are racially motivated. The United States Supreme Court recently evaluated the constitutionality of penalty enhancement statutes and upheld them. The court held that the particular law under consideration punished conduct, not thought or speech. A defendant's belief and associations can be taken into account in sentencing if they are not abstract, but are related to the crime. In other words, a defendant is not punished for his or her thoughts or beliefs, he or she is punished for the actions based on those thoughts or beliefs. In Canada, we impose a mandatory one year term of imprisonment on someone who commits an offence while using or in possession of a firearm. Our Criminal Code should similarly compel a custodial sentence of increased duration for racially motivated crimes.

Second, is a racist desecrates a synagogue or other religious institution in Canada, he or she is charged with mischief to private property. This is the same section under which a person is charged for breaking the antennae off a car as a prank. Charging someone who desecrates a religious institution or a place of worship with the offence of mischief seriously undervalues the seriousness of that criminal activity. Various American jurisdictions have now enacted offenses known as "Institutional Vandalism". These specifically criminalize the desecration of religious institutions, cemeteries and other institutional targets of violent racists. Surely this can be done in Canada. Surely the time has passed for prosecuting No-Nazis who desecrate our religious by charging them with mischief. I am proud to say that these American approaches, which do commend themselves, are based upon model legislation drafted by the Anti-Defamation League of B'nai Brith.

What does all this have to do with Professor Yaqzan? Yaqzan asserts that girls should be taught that while hugging and kissing might be adequate experiences for them, they are simply a prelude to sexual intercourse for boys, and cannot be carried on indefinitely. When a boy invites a girl to his bedroom, especially after meeting her for the first time, she should consider it an invitation for sexual intercourse.

These and other comments made by Yaqzan are undoubtedly ignorant, sexist and show little sense of reality. I would be concerned if I were a woman left alone in a room with Professor Yaqzan, because the logical implication of his comments would appear that a man cannot be alone in a room with a woman without sexually assaulting her. Nonetheless, it is not every disgusting, sexist, ignorant comment that can or should be the subject of criminal law. The reason why the hate propaganda section of the Criminal Code survived constitutional scrutiny is because it narrowly confines the justifiable use of criminal sanctions to punish the willful promotion of hatred. As well, as the legislation presents stands, women are not included as an identifiable target group. A compelling argument can be made that the section ought to be amended to criminalize the willful promotion of hatred based upon gender or sexual orientation.

Professor Yaqzan has not committed a crime. However, he may have created a "poisoned environment" for his students. For example, whether Malcolm Ross did or did not espouse his racist attitudes and Holocaust denial in his classroom really is not the point. Whether Paul Fromm who taught in Mississauga, Ontario did or did not espouse his repugnant views and talk about his attendances at Heritage Front meetings really is not the point. Professor O'Driscoll at the University of Toronto authored a book recently published that speaks of a Jewish conspiracy. The book is co-authored by a fellow named His Excellency, J.J. Wills. Impressive credentials. A little digging determined that His Excellency J.J. Wills is, in reality, John Ross Taylor, former head of the Nationalist Party, convicted and imprisoned for contempt of court by reason of his continued anti-Semitic telephone hotlines. Taylor is one of the longest standing members of the Neo-

Nazi movement in Canada. Again, whether O'Driscoll did or did not espouse these views in his class is not the point. Academic freedom is the issue. In a multi-cultural society, students are entitled to insist that they not be taught by those who promote racism and those who seek to undermine basic human values and equality. Students are entitled to be taught in an unpoisoned environment. It will be for others to determine whether Professor Yaqzan has created a poisoned environment in his classroom.