

EXPRESSIONS OF RACIAL HATRED AND RACISM IN CANADA: AN HISTORICAL PERSPECTIVE

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This paper retraces the events that led to the demand for criminal legislation against hate propaganda in Canada. It then summarizes the findings of the Parliamentary Report that recommended the amendments which today form the hate propaganda sections of the Criminal Code. The Report's scope was limited to an examination of hate propaganda in Canada, and the author argues not only that this scope was too narrow, but that its limitations led to the Report's erroneous conclusion that racial hatred in Canada was limited to extremist groups marginal to Canadian society. The author examines the evidence of discrimination in Canadian society from government sanctioned discrimination, which forms a part of our history, to modern evidence that shows the attitudes underlying this have not changed. This expanded scope of inquiry emphasizes that there is a real need for the legislative proscription of hate propaganda.

Ce travail retrace les événements qui ont menés à la demande de dispositions législatives criminelles contre la propagande haineuse au Canada. Ensuite, ce travail résume les conclusions du Rapport Parlementaire qui a recommandé les amendements qui constituent aujourd'hui les sections du Code Criminel portant sur la propagande haineuse. La portée du Rapport s'est limitée à un examen de la propagande haineuse au Canada et l'auteur soutient que non seulement cette portée était trop étroite, mais que ces limites ont mené à la conclusion erronée du Rapport que la haine raciale au Canada est limitée aux groupes extrémistes marginaux de la société canadienne. L'auteur examine les preuves de discrimination dans la société canadienne à partir de la discrimination sanctionnée par le gouvernement, ce qui forme une partie de notre histoire, jusqu'à des preuves modernes qui démontrent que les attitudes sous-jacentes n'ont pas changé. La portée élargie de cette enquête accentue le fait qu'il existe un besoin réel pour la proscription législative de la propagande haineuse.

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I. Introduction

The twentieth century has seen much debate over racism and hate propaganda in Canada. In 1965 the federal government appointed a special committee, the Cohen Committee, to study and report upon the problems related to the dissemination of hate propaganda in Canada. The Committee found little evidence of mainstream racism, but historical analysis and more recent studies paint a grimmer portrait of the state of racism in Canadian society.

Before the topic of racism in Canada can be explored, certain phrases need to be defined. Throughout this paper I refer to the terms "racism," "racial prejudice," "racial discrimination," "expressions of racial hatred," and "hate propaganda." Banton provides a basic definition of racism:

[R]acism is the doctrine that a man's behaviour is determined by stable inherited characteristics deriving from separate racial stocks, having distinctive attributes and usually considered to stand to one another in relations of superiority and inferiority.¹

Racism is the belief that one race is superior to another, and this belief is associated with attitudes and acts toward the "inferior" race(s).² The attitudes associated with racism comprise "racial prejudice." More specifically, racial prejudice refers to attitudes, normally of a pejorative nature, towards individuals or groups, many of these attitudes being formed independent of and unresponsive to actual contact and experience with the targeted individuals and groups.³ "Racial discrimination" involves concrete acts whereby differential treatment is meted out according to perceived racial differences or differential effects are caused by facially equal treatment.⁴ These definitions beg the question, "What is a race?" As it is popularly used, the term "race" is more a sociocultural concept than a biological one.⁵ Groups of people are often designated as a race regardless of their genetic characteristics. For example, ethnic groups (Germans, French, Chinese) and religious groups (Muslims, Buddhists, Jews) are often designated as races.⁶ In this paper, the phrase "expressions of racial hatred" is used synonymously with the term "hate propaganda," as both refer to the dissemination of a malevolent doctrine of vilification and detestation of a group of individuals based on racial, religious or ethnic identification.

It is not uncommon for Canadians to believe that their nation is largely free of racism, that Canada is living proof that different races can live harmoniously

¹ M. Banton, "The Concept of Racism" in S. Zubaida, ed., *Race and Racialism* (London: Tavistock Publications, 1970) 18 at 19.

² H. Nelson & R. Jurmain, *Introduction to Physical Anthropology*, 4th ed. (St. Paul, MN: West Publishing Company, 1988) at 203.

³ J. Peoples & G. Bailey, *Humanity: An Introduction to Cultural Anthropology*, 1st ed. (St. Paul, MN: West Publishing Company, 1988) at 40-42.

⁴ M.G. Somers, *Hate Propaganda and Freedom of Expression in a Multicultural Society* (LL.M. Thesis, York University, 1993) at 5 [unpublished] and *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 at 172-74.

⁵ H. Nelson & R. Jurmain, *supra* footnote 2 at 194.

⁶ *Ibid.*

within the framework of a single state, and that Canada is an example to be held up to the rest of the world because of these characteristics. As proof of the tolerance of Canadian society, people point to Canada's policy of multiculturalism. Adopted by the government in 1971, this policy has four goals:

First, resources permitting, the government will seek to assist all Canadian cultural groups that have demonstrated a desire and effort to continue to develop a capacity to grow and contribute to Canada, and a clear need for assistance . . . Second, the government will assist members of all cultural groups to overcome cultural barriers to full participation in Canadian society. Third, the government will promote creative encounters and interchange among all Canadian cultural groups in the interest of national unity. Fourth, the government will continue to assist immigrants to acquire at least one of Canada's official languages in order to become full participants in Canadian society.⁷

In essence, multiculturalism's aim is to make Canada a pluralistic mosaic. It eschews the process of assimilation and instead embraces the integration of all groups into the Canadian community, so as to ensure that those who wish to maintain their distinctive cultural identities may do so.

With the adoption of the *Canadian Charter of Rights and Freedoms*⁸ in 1982, the policy of multiculturalism gained constitutional status. Section 27 of the *Charter* states: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." Ostensibly, the policy of multiculturalism is accorded great importance in Canadian society today.

Prior to 1971 and the adoption of the policy of multiculturalism, the government took other steps to protect minority groups. One such step was the amendment of the *Criminal Code*⁹ so as to proscribe the spreading of hate propaganda.¹⁰ The remainder of this paper examines the process which led to

⁷ Pierre Elliot Trudeau, Canada. H.C., *Debates*, (6 Oct. 1971) at 8545-8548. This articulation of the policy of multiculturalism given by the Prime Minister in the House of Commons and the later enactment of the *Canadian Multiculturalism Act*, S.C. 1988, c.31 was the government's official response to the recommendations contained in Canada, Report of the Royal Commission on Bilingualism and Biculturalism, Book IV, *The Contributions of the Other Ethnic Groups* (Ottawa: Queen's Printer, 1969).

⁸ Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c.11 [hereinafter *Charter*].

⁹ Criminal Code, R.S.C. 1985, c. C-46 [hereinafter *Code*].

¹⁰ Prior to the enactment of the hate propaganda sections of the *Code*, even before the introduction of human rights codes, discriminated against segments of the populace resorted to litigation to remedy discriminatory laws and private acts. This litigation met with mixed results. For example, see *Union Colliery Co. of B.C. Limited v. Bryden*, [1899] A.C. 580, *Cunningham and A.-G. for B.C. v. Tomey Homma and A.-G. for Canada*, [1903] A.C. 151, *Quong-Wing v. The King* (1914), 49 S.C.R. 440, *Christie v. York Corporation*, [1940] S.C.R. 139, *Johnson v. Sparrow* (1899), 8 Que. Q.B. 379, *Loew's Theatres v. Reynolds* (1921), 30 Que. K.B. 459, *Franklin v. Evans* (1924), 55 O.L.R. 349, *Rogers v. Clarence Hotel Co.*, [1940] 3 D.L.R. 503, *King v. Barclay and Barclay's Motel* (1961), 35 W.W.R. (N.S.) 240, *Re Drummond Wren*, [1945] O.R. 778, and *Noble and Wolf v. Alley*, [1951] S.C.R. 64.

the enactment of the hate propaganda sections of the *Code*. As well, the presumption that Canada is a nation nearly free of racism is examined through an historical analysis of the treatment of visible minority groups in Canada. Finally, new developments and studies pertaining to the state of racism in modern Canada are assessed.

II. The Demand for Criminal Legislation

Organized hate group activity has a long history in Canada. In the early 1920s and 1930s, many racist and anti-Semitic fascist organizations took root throughout the nation. These groups struck a popular chord by blaming minority groups and democracy for the economic stagnation of the depression.¹¹

This upsurge in racist sentiment was quickly quelled by Canada's entry into the Second World War and the resulting revelation of the Holocaust. The disclosure of the systematic genocide of the Jewish people by the Nazis during the Second World War motivated a delegation of the Canadian Jewish Congress to appear before a 1953 joint committee of the House of Commons and the Senate, that was dealing with revisions to the *Code*.¹² Despite the vigorous attempts of the Canadian Jewish Congress to lobby the government for legislation proscribing religious and racial hate propaganda, nothing was done.

It was not until 1963, following an overt revival of Nazism in Canada, that strong lobbying for an anti-hate law began in earnest.¹³ An N.D.P. member of Parliament in the 1964 House of Commons, Mr. David Orlikow, asked the Minister of Justice, Guy Favreau,

Has the Minister given consideration to the hate literature which is now being distributed in various cities? Does the government consider that there is at the present time legislation which will prohibit this kind of literature being distributed through the mails . . . ?¹⁴

The Minister responded,

. . . the possibility of amending the *Criminal Code* was referred to the criminal law section of the conference of uniformity of legislation in Canada in 1962.

It reported that while the objective sought to be attained was eminently desirable, no recommendation was made because no formula devised would deal adequately with the problem without affecting the general freedom of expression of opinion in an adverse way.¹⁵

¹¹ K. Dubick, "Freedom to Hate: Do the *Criminal Code* Proscriptions Against Hate Propaganda Infringe the *Charter*?" (1990) 54 Sask. L. Rev. 149 at 152-53.

¹² S.S. Cohen, "Hate Propaganda — The Amendments to the *Criminal Code*" (1970) 17 McGill L.J. 740 at 767.

¹³ *Ibid.* at 768. The 1960's revival of Nazism and Nazi-like propaganda in Canada is recounted in great detail in Special Committee on Hate Propaganda, *Report* (Ottawa: Queen's Printer, 1966) (Chair: M. Cohen) at 11-25.

¹⁴ *House of Commons Debates* (Vol. I, 1964) at 132.

¹⁵ *Ibid.* at 133.

Despite these comments by the Minister of Justice, he eventually did yield to increasing pressure and, in January of 1965, he announced the appointment of a special committee, whose chairman was Dean Maxwell Cohen of McGill University's Faculty of Law. The Cohen Committee's mandate was to study the problems associated with the spread of hate propaganda in Canada.

III. The Cohen Report

The Cohen Committee released its unanimous report in November of 1965. In the introduction, the Committee examined the appropriate scope of free speech in Canada. While acknowledging that the individual's freedom of expression was a cornerstone of the Canadian way of life, the Committee also stressed that individual rights cannot be supported in absolute terms, especially when those rights threaten vital community interests.¹⁶

The Committee also doubted that man's rationality would always allow him to distinguish truth from falsity. The Committee cited the successes of modern advertising, the persuasiveness and invasiveness of modern media, and the success of Nazi propaganda in pre-World War Two Germany as the empirical bases of its skepticism.¹⁷

Next, the Committee examined the extent of the hate propaganda problem in Canada. It defined "hate propaganda" as material whose "main characteristics ... are a generally irrational and malicious abuse of certain identifiable minority groups in Canada."¹⁸ The Committee then proceeded to determine whether the spread of hate propaganda constituted a threat so substantial to Canadian society that it warranted legislative action.

It found that none of the existing racist organizations represented an effective political or propaganda force. Indeed, the Cohen Committee ascertained that racial hatred was limited to marginal extremist groups. Nevertheless, it concluded that the potential danger presented by the activities of such organizations warranted some degree of legislative intervention. The Committee concluded that:

However small the actors may be in number, the individuals and groups promoting hate in Canada constitute 'a clear and present danger' to the functioning of a democratic society. For in times of social stress such "hate" could mushroom into a real and monstrous threat to our way of life ...

In the Committee's view the "hate" situation in Canada, although not alarming, clearly is serious enough to require action. It is far better for Canadians to come to grips with this problem now, before it attains unmanageable proportions, rather than deal with it at some future date in an atmosphere of urgency, of fear and perhaps even of crisis.¹⁹

¹⁶ Special Committee on Hate Propaganda, *Report* (Ottawa: Queen's Printer, 1966) (Chair: M. Cohen) at 6-7 [hereinafter Cohen Report].

¹⁷ *Ibid.* at 8.

¹⁸ *Ibid.* at 11.

¹⁹ *Ibid.* at 24-25.

After determining the social-psychological effects of hate propaganda, the Committee concluded that it should be proscribed because of the risk of three consequences: the potential for civil disorder due to an adverse victim reaction to hate propaganda, damage to victims' reputations due to the dissemination of hate propaganda, and the psychological stress suffered by victims of hate propaganda.²⁰

The Committee went on to consider whether existing legislative measures could be used to stem the tide of hate in Canada. The Committee analyzed the *Code* offences of sedition,²¹ unlawful assemblies and riots,²² causing a disturbance,²³ defamatory libel,²⁴ and spreading false news.²⁵ For numerous reasons the Committee found that these *Code* provisions did very little to protect groups from the harms of hate propaganda.²⁶

The Committee primarily focused on areas within federal jurisdiction. Consequently, the impact of human rights legislation (much of which is within the provincial sphere) on hate propaganda was not examined in detail. However, as a last resort, the Committee examined federal legislation other than the *Code* to determine if there was any other existing legislation which could effectively combat hate propaganda. What was then s.7 of the *Post Office Act*²⁷ granted the Postmaster-General wide powers to prevent the mailing of any material he reasonably believed to be obscene, blasphemous, or seditious. The main problem with this legislative provision was a practical one: how does one detect hate propaganda in the mail?²⁸

Ultimately, the Cohen Report recommended that the problem of hate propaganda warranted legislative intervention. The Committee ascertained that existing legislation that could be used to control the dissemination of racial hatred was deficient in numerous ways. As a result, it recommended that the *Code* be amended to include the offences of the advocacy of genocide, the public incitement of hatred likely to lead to a breach of the peace, and the wilful promotion of hatred. The amendments proposed by the Committee were, with

²⁰ *Ibid.* at 27-31.

²¹ Currently contained in ss.59-61 of the *Code*.

²² Currently contained in ss.63-66 of the *Code*.

²³ Currently contained in s.175 of the *Code*.

²⁴ Currently contained in s.298-301 of the *Code*.

²⁵ Currently contained in s.181 of the *Code*.

²⁶ Cohen Report, *supra* note 16 at 36-49.

²⁷ *Post Office Act*, s.7, R.S.C. 1970, c.P-14 [hereinafter *Post Office Act*].

²⁸ Canada Post utilized s.7 of the *Post Office Act* and cut off Ernst Zundel's mail service on the grounds that he had been using the mails to spread anti-Jewish propaganda. Canada Post's action prevented Zundel, a well-known hate propagandist, from receiving mail but it could not prevent him from sending mail anonymously. In 1982, Zundel persuaded Canada Post to reinstate his mail service. The Crown corporation gave no reasons for its decision. ("National General News" *Canadian Press* 85 (28 February 1985) (QL).)

a few minor changes, adopted and presented to Parliament as Bill C-3. Dean Maxwell Cohen notes:

In the voting on the Bill in the House the Conservatives and the Creditistes were mostly against the Bill while some N.D.P. and Liberals also were opposed, but significantly a very large proportion of the House was absent on the Third Reading where the vote was 89 to 45, with 127 not voting or absent from the Chamber. In the Senate no Hearings were held, but there was determined debate and a serious but unsuccessful effort was made to have the Bill referred, before enactment, to the Supreme Court of Canada on the ground that it might be in conflict with the Canadian Bill of Rights and possibly other constitutional or statutory principles. In any event, although party lines were crossed in the voting, the Bill passed the Senate and received Royal Assent on June 11, 1970.²⁹

As stated earlier, the Cohen Committee concluded that racial hatred in Canada was limited to marginal extremist groups. They came to this conclusion because their focus was on an extreme symptom of racism: the creation and dissemination of hate propaganda. While it may be true that only marginal extremist groups produce and distribute hate propaganda, that does not necessarily mean that racial hatred is limited to these groups. Racist publications are not the only evidence of racism in Canada. Further evidence of racism may be found by considering the position of some of Canada's visible minority groups, historically and currently, and by considering other manifestations of race-based discrimination in government laws and actions and societal attitudes and practices.

IV. *The Treatment of Visible Minority Groups in Canada*

A. *Aboriginal Canadians*

The mistreatment of Canada's aboriginal peoples began with the arrival of European colonizers. In New France, slavery of aboriginals became an established institution as early as the seventeenth century.³⁰ After the abolishment of slavery, an attempt was made to assimilate native peoples through the operation of church boarding schools, whereby native youth were often forcibly removed from their communities and instructed in the inferiority of their race and cultures.³¹

²⁹ M. Cohen, "The Hate Propaganda Amendments: Reflections On A Controversy" (1971) 9 Alta. L. Rev. 103 at 111.

³⁰ S. Barrett, *Is God a Racist? The Right Wing in Canada* (Toronto: University of Toronto Press, 1987) at 300. See also, O.P. Dickason, *Canada's First Nations* (Toronto: McClelland & Stewart Inc., 1992) at 13, 87, 158 and 195.

³¹ M.G. Kline, "Child Welfare Law, Ideology and the First Nations" (Faculty of Law, Osgoode Hall Law School, 1990) at 8-11 [unpublished]. See also, L.R. Bull, "Indian Residential Schooling: The Native Perspective" (1991) 18 Can. J. Nat. Educ. 1, N.R. Ing, "The Effects of Residential Schools on Native Child-Rearing Practices" (1991) 18 Can. J. Nat. Educ. 65, and O.P. Dickason, *supra* footnote 30 at 333-38.

A recital of the deplorable way in which the European colonizers of Canada treated Canada's native people would lead most rational people to question the morality, at least by today's standards, of Canada's "pioneers." It must be remembered that European traders and colonizers thought of Canada's indigenous people as "savages."³² Because they considered native peoples a lower form of humanity, the Europeans believed that, when dealing with natives, they were absolved from many of the ethical and moral constraints observed when dealing with fellow Europeans. As stated by Somers:

Stereotypes have an important function in the maintenance of racism. Between 1500 and 1900 A.D., the stereotype of Native people as savage served to justify racial discrimination against Native Canadians and the dispossession of their lands. Dispossession and its legacy have created a powerful/powerless relationship between whites and Native peoples in Canada.³³

The slavery of native peoples, the dispossession of their lands,³⁴ and the forced enrollment of native youth in residential schools were all acts of official racism against Canada's aboriginal peoples. The legacy of this official racism can be seen by the fact that native people today "have the lowest incomes, the poorest health, and the highest rates of unemployment of any single group in the country."³⁵ Moreover, they are under represented in the educational system.³⁶

Most troubling, perhaps, is the fact that a number of recent Royal Commission and Justice Inquiry reports seem to indicate that official racism aimed at Canada's indigenous peoples is flourishing in Canada today. The Royal Commission on the wrongful prosecution and conviction of Donald Marshall for murder concluded that the criminal justice system was not "color blind" and actually failed Marshall in part because he was native.³⁷

³² The European colonization of North America was based on a model which recognized European sovereignty in lands discovered by its subjects which were occupied by "infidels" and "savages". Thus, the basis of the Europeans' superior rights to North America was the aboriginal populations' supposed cultural inferiority (R.A. Williams, "Sovereignty, Racism, Human Rights: Indian Self-Determination and the Postmodern World Legal System" (1995) 2 Rev. Const. Studies 146 at 162 and 163.)

³³ M.G. Somers, *supra* footnote 4 at 27. As noted by Albert Memmi, "racism is the racist's way of giving himself absolution." (A. Memmi, "Attempt at a Definition" in *Dominated Man: Notes Toward a Portrait* (Boston: Beacon Press, 1969) 185 at 194.)

³⁴ For a more detailed account of the dispossession of land from Canada's indigenous population, see O.P. Dickason, *supra* footnote 30 at 176-420.

³⁵ V. Valentine, "Native Peoples and Canadian Society: A Profile of Issues and Trends" in R. Breton, J. Keitz, V. Valentine, eds., *Cultural Boundaries and the Cohesion of Canada* (Montreal: The Institute for Research on Public Policy, 1980) at 47.

³⁶ S. Barrett, *supra* footnote 30 at 300.

³⁷ Nova Scotia, *Royal Commission on the Donald Marshall Jr., Prosecution: Report* (Halifax: McCurdy's Printing and Typesetting, December, 1989) (Chair: T.A. Hickman).

The Manitoba Judicial Inquiry into the deaths of Helen Betty Osborne and John Joseph Harper³⁸ found that racism was prevalent against natives within the justice system. John Joseph Harper, the Executive Director of the Island Lake Tribal Council, was killed in a confrontation with a Winnipeg police officer. The Report of the Judicial Inquiry concluded that the police officer was motivated to confront Harper primarily because of Harper's race.³⁹ Despite this fact, the officer was absolved of any wrongdoing by the Police Department's Firearms Board of Inquiry. The police officer was known to say afterwards, "[t]he natives drink and they get in trouble. Blaming the police for their troubles is like an alcoholic blaming the liquor store for being open late."⁴⁰ McKenna makes the following observations in regard to the evidence presented at the Manitoba Judicial Inquiry:

Witnesses testified to police officers' expressions of derogatory racist remarks against Indians during the course of their duties . . . A journalist...also testified to the Inquiry of a joke that made the rounds of the Public Safety Building in Winnipeg after the shooting of Harper by Winnipeg Police. To the question "[h]ow do you wink at an Indian? . . . [t]he answer was a pantomimed pull of a trigger." The Commission said of the Winnipeg Chief of Police, "Chief Stephen's readiness to disregard racism is disturbing" . . . [The Commission noted] a lack of concern and action by the Chief on the incidence of racism within his department[.]⁴¹

As a result of these observations, McKenna concludes as follows:

I submit that the evidence heard by the Commission revealed not only racist attitudes but public expressions of racial hatred against Indians by police officers. There is evidence, too, that such expressions of racial hatred were condoned by high ranking officers who had the authority to take disciplinary measures but did not do so.⁴²

Other justice inquiry reports have also found that many police officers bring an attitude of racial superiority to their duties as evidenced by their manner of dealing with native people. For instance, Judge Sarich, who authored the Cariboo-Chilcotin Justice Inquiry Report, found that many police officers unquestionably accepted allegations made against natives, while keeping a closed mind to anything they raised in response.⁴³

Even when individual police officers do not bring racist attitudes to their job, there is systemic discrimination in policing. One example of this systemic

³⁸ Manitoba, Public Inquiry into the Administration of Justice and Aboriginal People, *Report: The Deaths of Helen Betty Osborne and John Joseph Harper*, vol. 2 (Winnipeg: Queen's Printer, 1991) (Commissioners: A.C. Hamilton & C.M. Sinclair).

³⁹ *Ibid.* at 5.

⁴⁰ *Ibid.*

⁴¹ I.B. McKenna, "Canada's Hate Propaganda Laws—A Critique" (1994) 26 *Ottawa L.R.* 159 at 171-72.

⁴² *Ibid.* at 172.

⁴³ *Report on the Cariboo-Chilcotin Justice Inquiry* (British Columbia), Judge Anthony Sarich, Commissioner (1993), at 10-11.

discrimination is found in the phenomena of over-policing and its impact on higher aboriginal crime rates:

Police use race as an indicator for patrols, for arrests, detentions... For instance, police in cities tend to patrol bars and streets where aboriginal people congregate, rather than the private clubs frequented by white business people . . . This does not necessarily indicate that the police are invariably racist (although some are) since there is some empirical basis for the police view that proportionately more Aboriginal people are involved in criminality.

But to operate patrols or to allocate police on . . . [this] basis . . . can become a self-fulfilling prophecy: patrols in areas frequented by the groups that they believe are involved in crimes will undoubtedly discover some criminality; when more police are assigned to detachments where there is a high Aboriginal population, their added presence will most assuredly detect more criminal activity.

Consider, for instance, the provincial offence of being intoxicated in a public place. The police rarely arrest whites for being intoxicated in public. No wonder there is resentment on the part of Aboriginal people arrested simply for being intoxicated. This situation very often results in an Aboriginal person being charged with obstruction, resisting arrest or assaulting a peace officer. An almost inevitable consequence is incarceration . . . Yet the whole sequence of events is, at least to some extent, a product of policing criteria that include race as a factor and selective enforcement of the law.⁴⁴

The most recent Royal Commission Report on Aboriginal Peoples in Canada concluded that the justice system has failed native people. This Report found that aboriginal people in Canada are less likely to get bail, tend to spend more time in pre-trial detention, spend less time with their lawyers and, if convicted of an offence, are more likely to be incarcerated than non-natives.⁴⁵ It has long been well documented that native peoples are over represented in jails⁴⁶ but, since 1974, the over-representation of natives in Canadian prisons has increased.⁴⁷

⁴⁴ T. Quigley, "Some Issues in Sentencing of Aboriginal Offenders", in *Continuing Poundmaker and Riel's Quest, Presentations made at a Conference on Aboriginal Peoples and Justice*, comp. R. Gosse, J.Y. Henderson, and R. Carter (Saskatoon: Purich Publishing, 1994) 273 at 273-74.

⁴⁵ Canada, Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada*, (Ottawa: Minister of Supply and Services Canada, 1996) at 28 [hereinafter *Bridging the Cultural Divide*].

⁴⁶ See, for example, S. Barrett, *supra* footnote 30 at 300 and M. Jackson, *Locking Up Natives in Canada*, Report of the Canadian Bar Association Committee on Imprisonment and Release (1988); reprinted in U.B.C. L.R. 23 (1989) 198 at 215 [hereinafter *Locking Up Natives*]. Some of the more startling 1988 statistics include: 10% of the federal penitentiary population is native, but they only constitute 2% of Canada's whole population. In the Prairies, natives constitute 5% of the total population but 32% of the penitentiary population. For some western provincial correctional systems the numbers are even more telling. For instance, in Saskatchewan, native people represent 6-7% of the population but make up 60% of provincial prison admissions (*Locking Up Natives*, *supra* footnote 46 at 215).

⁴⁷ *Bridging the Cultural Divide*, *supra* footnote 45 at 28-29.

B. African Canadians⁴⁸

Slavery in Canada was not reserved only for the aboriginal population. The first black slaves arrived in Canada in 1608; by 1705 their number exceeded 4,000.⁴⁹ Slavery actually lasted longer in Canada than it did in the northern United States. In fact, many black people escaped slavery in Canada for freedom in New England.⁵⁰ Finally, in 1793, the Legislative Assembly of the Province of Upper Canada passed *An Act to Prevent the Further Introduction of Slaves and to Limit the Term of Enforced Servitude Within this Province*, S.U.C. 1793, c.8. From the Act's title one incorrectly assumes that the legislators of the Province of Upper Canada recognized the error of their ways because, although the statute prohibited the further introduction of slaves into Upper Canada, it declared that those who were already slaves remained so and their children would be born slaves and not be freed until they reached the age of twenty-five.⁵¹ It was not until 1833 and the passing of an *Act for the abolition of slavery throughout the British Colonies*, (U.K.) 1833 3 & 4 Will 4, c. 73 that slavery was finally abolished in Canada.

Like the natives, the suffering of black people in Canada as a result of official racism did not end with the abolishment of slavery. Again, just as with the natives, schools were used as tools in the government's policy of racism against people of African origin in Canada. In 1849, school segregation was established by the *Act for the better establishment and maintenance of public schools in Upper Canada* S.U.C. 1849, 22 Vict. c. 65. In fact, it was not until 1965 that the last segregated school in Ontario closed.⁵²

It may be thought that such acts of official racism simply do not occur in today's Canada. However, relationships between predominantly white police forces and black citizens in Toronto and Montreal are currently at very dangerous and volatile levels. As stated by McKenna:

The large demonstration of black Canadians in Toronto [in 1992] following the acquittal of Los Angeles police officers charged with beating Rodney King [a black American motorist] was provoked, in part, by a sense of grievance among black Canadians about the harassment and lack of respect shown to them by police and other members of the community.⁵³

Racism has had a profound impact on the lives of African Canadians. Empirical evidence of this impact can be found in the 1981 and 1986 census, which both reveal that black workers with the same level of education earn, on average, seventy percent of what white workers earn and eighty-five percent of

⁴⁸ For the purposes of this paper, "African Canadians" includes all members of the black community.

⁴⁹ D. Hill, *Human Rights in Canada: A Focus on Racism* (Canadian Labour Congress, 1977) at 7.

⁵⁰ R. Winks, "The Canadian Negro: A Historical Assessment —Part I" (1980) J. of Neg. His. 283 at 288.

⁵¹ W.S. Tarnopolsky, "The Control of Racial Discrimination" in O. McKague, ed., *Racism in Canada* (Saskatoon, Saskatchewan: Fifth House Publishers, 1991) 179 at 180.

⁵² D. Hill, *supra* footnote 49 at 7.

⁵³ *Supra* footnote 41 at 173-74.

what Asians earn.⁵⁴ Discrimination also plays a part in the jobless statistics for African Canadians. In 1984, the Economic Council of Canada found that job offers favored whites over blacks by a three to one ratio.⁵⁵

C. Asian Canadians⁵⁶

The history of Asians in Canada has been one of manipulation and betrayal. This legacy began with the arrival of Chinese labourers in the 1800s to work on the Canadian Pacific Railway. After the railway was completed in 1885, the government of Canada imposed a head tax on every new Chinese immigrant. This head tax amounted to fifty dollars per person and by 1903 increased to five hundred dollars per person to discourage further Chinese immigration.⁵⁷

In 1908 the federal government reduced East Indian immigration by mandating that anyone who immigrated to Canada from India had to do so by continuous passage, a nearly impossible feat at that time.⁵⁸ Nevertheless, in 1914, the ship *Komagatu Maru* arrived in Vancouver with four hundred Sikhs aboard. But the immigration officials would not admit the passengers. As a result, after waiting two months in the harbour with sick, hungry and dehydrated men, women, and children on board, the ship set sail. Only twenty-two people on board, all of whom had previously lived in Canada, were allowed ashore.⁵⁹

Of those Chinese, Japanese, and East Indian people who overcame the substantial obstacles erected by the Canadian government and actually immigrated to Canada, they arrived to find that they and their Canadian-born children could not vote. As stated by Somers:

In 1895 the government of British Columbia denied the right to vote to Canadians of Chinese, Japanese and East Indian heritage. By doing so, the province also effectively barred them from the federal franchise, since the *Dominion Elections Act* automatically denied the federal vote to anyone who did not have the right to vote provincially. This restriction was not lifted for Chinese and East Indian Canadians until 1947. Japanese

⁵⁴ L. Sweet, "The Hate that Shames Canada" *The Toronto Star* (22 February 1992) A1.

⁵⁵ *Ibid.* Again, it can be argued that statistics on income levels and joblessness do not definitively prove racism. However, it should be noted that the Supreme Court of Canada has recently acknowledged that discrimination almost always has adverse economic consequences. The Court held that economic discrimination is inherently connected to discriminatory social and political attitudes which have prevailed in the past and continue in the present (*Egan v. Canada* (1995), 124 D.L.R. (4th) 609 at 673-74 (S.C.C.) [hereinafter *Egan*]). In *Egan*, the Court made use of statistics, specifically suicide rates, to show that homosexuals have been, and continue to be, targets of discrimination. It can be argued that other types of statistics, such as economic statistics, are also legitimate indicators of discrimination.

⁵⁶ For the purposes of this paper "Asian Canadians" includes members of the Chinese, Japanese and Indo-Pakistani communities.

⁵⁷ B. Bolaria and P. Li, *Racial Oppression in Canada* (Toronto: Gramond Press, 1985) at 86.

⁵⁸ D. Hill, *supra* footnote 49 at 10.

⁵⁹ T. Ferguson, *A White Man's Country* (Toronto: Doubleday Canada, 1975) at 16.

Canadians had to wait until 1948. While in force, this law also barred these groups from certain occupations for which licenses were required, since having one's name on a voters' list was a prerequisite for obtaining a license. Meanwhile, of course, members of these groups were still subject to taxation.⁶⁰

One of the most infamous examples of official racism in Canada was the internment of Japanese Canadians during World War II. In February 1942 the federal government ordered the expulsion of 22,000 Japanese Canadians living on or near the Pacific Coast. These Canadians were stripped of their property and confined in detention camps all in the name of national security. Despite this rationale, in 1944 Prime Minister Mackenzie King acknowledged that not one Japanese Canadian had committed any acts of sabotage during the war.⁶¹ In her book, *The Politics of Racism*, Sunahara footnotes that the abuse directed at Japanese Canadians did not begin with their internment in 1942 but

[was] the culmination of a long history of discrimination resulting from Canadian social norms that cast Asians in the role of second-class citizens.

Stripped of their political rights, Asians had traditionally been politically castrated targets for the rhetoric of B.C. politicians seeking scape-goats for the province's ills. The war only provided an ideal atmosphere for the seeds of repression to flourish.⁶²

The official racism perpetuated by the government has left a legacy of racial hatred in Canadian society. For instance, in the 1970s and 1980s, "paki-bashing" was a pastime in which many teenagers claimed to participate.⁶³ Moreover, in the fall of 1976, a brawl broke out between whites and East Indians in a Canadian Pacific work train near Edmonton when the East Indians discovered that their sleeping car had a racial slur painted on it.⁶⁴ Most recently, in the early 1990s, derogatory stickers depicting stereotypical images of Oriental and East Indian persons in a red circle with a red line through the circle were produced and distributed in Saskatchewan.⁶⁵ Clearly, members of the Asian community are still targets of racial hatred in Canada.

V. New developments and New Studies

In recent years a new weapon, the Internet, has emerged in the arsenal of the hatemonger. This new weapon allows access to hate propaganda with the ease

⁶⁰ M.G. Somers, *supra* footnote 4 at 40.

⁶¹ D. Hill, *supra* footnote 49 at 10.

⁶² A.G. Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: James Lorimer & Co., 1981) at 161.

⁶³ D. Hill, *supra* footnote 49 at 5. "Paki-bashing" is the physical assault of members of the Indo-Pakistani community by a group of people that is usually motivated by racial animus.

⁶⁴ *Ibid.* at 5.

⁶⁵ *Saskatchewan (Human Rights Commission) v. Bell* (1991), 88 D.L.R. (4th) 71 (Sask. Q.B.) [hereinafter *Bell*].

of pushing a button. The Internet has been embraced by those who love to hate. Rabbi Abraham Cooper of the Simon Wiesenthal Centre says that there are, at present, 75 hate groups on-line.⁶⁶

Many neo-Nazis, including Canadian ones, view the Internet as a golden opportunity to spread their message of intolerance. George Burdi is one such individual. Burdi is a twenty five year-old Canadian living in Windsor, Ontario. He is the lead singer for the rock band *Rahowa*, an acronym for Racial Holy War. As its name implies, it is a white supremacist rock band whose lyrics constitute hate propaganda. In addition to his musical pursuits, Burdi has established a magazine, an Internet home page, and a weekly electronic newsletter, all of which promote his cause. He is viewed by many to be one of the most influential leaders of the white power movement. In his words, "[w]e have big plans for the Internet . . . It's uncontrollable, [i]t's beautiful-uncensored."⁶⁷

Indeed, Burdi may be correct in his assertion that keeping hate propaganda off the Internet may be technologically impossible. Germany's largest Internet provider, Deutsche Telekom, recently attempted to block access to a Santa Cruz company that maintains certain well-known hate propagandists' World Wide Web sites. Within days, free speech proponents, such as many American universities, duplicated these Web pages. To block these mirror sites in Germany, Deutsche Telekom and other providers would have to block access to everything on the Internet from these universities, a drastic step that many Internet providers are not willing to take.⁶⁸

⁶⁶ S. Talty, "Spinning Hate's World Wide Web" *The Edmonton Journal* (17 March 1996) F3.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.* A recent American case contains an excellent review of expert evidence concerning the Internet and the ability to block content on it. This case is *American Civil Liberties Union v. United States*, Nos. CIV. A. 96-963, CIV. A. 96-1458, 1996 WL 311865 (E.D.Pa., June 11, 1996) [hereinafter *ACLU*]. In *ACLU*, provisions of the *Communications Decency Act of 1996*, which constitutes Title V of the *Telecommunications Act of 1996*, Pub. L. No. 104-104, s. 502, 110 Stat. 56, 133-35 [hereinafter *CDA*] were challenged on constitutional grounds. These provisions of the *CDA* made it a criminal offence to send or create, by means of a telecommunication device or interactive computer service, any communication which is "indecent" or "patently offensive" to minors (s. 502 *CDA*). The Court held that the terms "indecent" and "patently offensive" were impermissibly vague and therefore, the legislative provisions were unconstitutional (this ruling was affirmed by the United States Supreme Court in *United States v. American Civil Liberties Union*, 117 S. Ct. 2329 (1997)). In terms of its discussion of the Internet, *ACLU* emphasizes the fact that, from its inception, the Internet was designed to be a decentralized, self-maintaining series of redundant links between computers and computer networks, capable of rapidly transmitting communication without direct human involvement or control. It has the automatic ability to re-route communication if one or more individual links are unavailable. Since there is no centralized storage unit, control point, or communications channel for the Internet, it is not technologically feasible for a single entity to control all of the information on it. The only way to effectively block information on the Internet is to block everything coming from an impugned source, because if one of the links to a source is blocked, the system automatically finds another link to complete the connection (*ACLU*, *supra* footnote 68 at 13-69.)

Is hate propaganda via the Internet and other means reaching a receptive audience or are hate messages being resoundingly rejected by Canadians today? Several studies and polls since the Cohen Report suggest that racism remains a significant problem in modern Canada. In its 1989 annual report, the Canadian Human Rights Commission stated:

The demons of racial and cultural prejudice have never been either officially or unofficially exorcised from Canadian society. We may, on occasion, have been marginally more enlightened than our southern neighbours, but instances of racism and intolerance are deeply etched in the historical record and, for that matter, not hard to find in the daily newspapers.⁶⁹

This conclusion is bolstered by a 1995 report prepared for the Department of Justice, which estimated that there were approximately 60,000 hate crimes committed in nine urban centres in Canada in 1994.⁷⁰ The report states that, of those that were reported, 61% of hate crimes were directed against racial minorities, 23% were directed against religious minorities, 5% were directed against ethnic minorities, and 11% were directed against gays and lesbians.⁷¹

In January 1992, an immigration department survey showed that one third of the people polled agreed that it was important to "keep out people who are different from most Canadians."⁷² An Angus Reid poll prepared for Employment and Immigration Canada found that 43% of people polled in August 1989 felt that there were too many immigrants coming to Canada.⁷³ At that time, 71% of immigrants were coming from predominantly nonwhite source countries.⁷⁴ In 1991 another Angus Reid poll concluded that most Canadians felt less comfortable with Indo-Pakistanis, Sikhs, West Indian Blacks, Arabs, and

⁶⁹ Canadian Human Rights Commission, *Annual Report 1989* (Ottawa: Ministry of Supply and Services Canada, 1990) at 22.

⁷⁰ Canada, Department of Justice, *Disproportionate Harm: Hate Crime in Canada* (Working Document) by J.V. Roberts (Research, Statistics and Evaluation Directorate, Policy Sector, 1995) at xii and 28 [hereinafter Roberts' Report]. A crime is only classified as a "hate crime" when, the act is based, in whole or in part, upon the victim's race, religion, nationality, ethnic origin, sexual orientation, gender or disability. Offences committed under the hate propaganda sections of the *Code* are not considered "hate crimes." Instead, that label is reserved to describe offences like mischiefs, assaults, uttering threats, robberies, and break and enters — in other words, traditional criminal law offences, where the offender is motivated by a characteristic of the victim that identifies the victim as a member of a group towards which the offender feels some animosity. It should be noted that a significant percentage of hate crimes are violent in nature. For instance, of the hate crimes reported to police in Toronto in 1993, 37% were assaults and 77% of those assaults were directed at racial groups (see Appendix A, tables 8 and 9, at 66-67 of Roberts' Report).

⁷¹ *Ibid.* at xi.

⁷² "Poll showed hostility to immigrants" *The [Toronto] Globe and Mail* (14 September 1992) A4.

⁷³ Angus Reid Group Inc., *Immigration to Canada: Aspects of Public Opinion*, (Report prepared for Employment and Immigration Canada, Winnipeg, October, 1989), IM-074-11-89, 4-20.

⁷⁴ Immigration Canada, *Immigration to Canada: A statistical overview* (Employment and Immigration Canada, Ottawa-Hull, November, 1989), IM 062, 9-23.

Muslims. The same study found that 32% of Canadians polled felt it was better if immigrants forgot their cultural backgrounds as soon as possible.

Other opinion polls reveal even more startling results. A CTV — Angus Reid poll conducted in October 1994 stated that 13% of Canadians think that some races are naturally superior to others.⁷⁵ On March 5, 1982, the Multiculturalism Minister Jim Fleming released figures from a Gallup poll on racial attitudes in Canada. The poll results showed that 31% of Canadians would support organizations that worked towards preserving Canada for whites only. 12% of those polled would cut off all non-white immigration to Canada.⁷⁶ Consequently, it is not surprising that polls have shown that 60% of Canadians believe racism is increasing and 25% have labelled it one of the nation's most pressing problems.⁷⁷

Conclusion

The Cohen Committee concluded that racial hatred in Canada was limited to extremist groups marginal to Canadian society. Yet the historical analysis undertaken in this paper demonstrates that racial hatred is traditional and not as marginal a phenomena as the Cohen Committee found it to be. "[T]he tolerance we know is historically only a thin and recently applied veneer on Canadian society."⁷⁸ As stated by McKenna:

This challenges the orthodox assumptions that extremist groups are a minimal threat to Canadian society because their message will be offensive to, and rejected by, mainstream Canadian society. If the average Canadian has already internalized attitudes of racial hatred, fed historically with a steady diet of official racism and racial hatred, extremist messages have a rather more receptive audience than the orthodox view would have us believe. The threat to public order and to target groups is, accordingly, heightened.⁷⁹

Hate propaganda perpetuates barriers to the dismantling of systemic racial discrimination.⁸⁰ It does this not because employers, teachers, landlords, and police are likely to be active consumers of hate propaganda. It is the existence of hate propaganda in general society that makes this effect possible. As noted by Matsuda, herself a member of a visible minority group:

Research in the psychology of racism suggests a related effect of racist hate propaganda: At some level, no matter how much both victims and well-meaning dominant-group members resist it, racial inferiority is planted in our minds as an idea that may hold some truth. The idea is improbable and abhorrent, but because it is

⁷⁵ "National General News" *Canadian Press* 94 (10 November 1994) (QL).

⁷⁶ Ministry of State Multiculturalism, *Race Relations and the Law* (Ottawa: Ministry of Supply and Services Canada, 1983) at 37.

⁷⁷ "National General News" *Canadian Press* 93 (21 March 1993) (QL).

⁷⁸ A.G. Sunahara, *supra* footnote 62 at xi.

⁷⁹ I.B. McKenna, *supra* footnote 41 at 166.

⁸⁰ *Ibid.* at 182.

present repeatedly, it is there before us. "Those people" are lazy, dirty, sexualized, money-grubbing, dishonest, inscrutable we are told. We reject the idea, but the next time we sit next to one of "those people," the dirt message, the sex message, is triggered. We stifle it, reject it as wrong, but it is there, interfering with our perception and inter-action with the person next to us. In conducting research . . . I read an unhealthy number of racist statements. A few weeks after reading about a "dotbusters" campaign against immigrants from India, I passed by an Indian woman on my campus. Instead of thinking, "What a beautiful sari," the first thought that came into my mind was "dot busters."⁸¹

If a member of a visible minority group who has dedicated a great deal of her academic life to the study of the pernicious effects of racism can be affected by hate propaganda, albeit in a transitory way, the vulnerability of every member of society to the subtle effects of hate propaganda is made more clear. Perhaps a landlord, at even an unconscious level, will prefer renting to a white couple as opposed to an East Indian couple after being subjected to a "dot busters" campaign. Thus, while it may be correct that only marginal extremist groups produce and distribute hate propaganda, racial hatred in modern Canada extends beyond these extremist groups and the effect of hate propaganda cannot be easily discounted.

⁸¹ M.J. Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" in M.J. Matsuda, C.R. Lawrence, R. Delgado & K.W. Crenshaw, eds., *Words That Wound* (Boulder, Colorado: Westview Press, Inc., 1993) 17 at 25-26. The "dot" in "dotbusters" refers to the "bindi," a cosmetic red dot traditionally worn by Indian women on their foreheads to signify that they are married and their husbands are alive. In modern India the bindi has lost its traditional significance and is worn by married and unmarried women alike.