File No. 21118

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

HER MAJESTY THE QUEEN
Appellant

- and -

JIM KEEGSTRA
Respondent

- and -

CANADIAN JEWISH CONGRESS, WOMEN'S LEGAL EDUCATION AND ACTION FUND, INTER-AMICUS, B'NAI BRITH, CANADIAN CIVIL LIBERTIES ASSOCIATION, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF ONTARIO, and ATTORNEY GENERAL OF MANITOBA
Interveners

AND

File No. 21034

(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)

BETWEEN:

DONALD CLARKE ANDREWS and ROBERT WAYNE SMITH
Appellants

- and -

HER MAJESTY THE QUEEN
Respondent

CANADIAN JEWISH CONGRESS, WOMEN'S LEGAL EDUCATION AND ACTION FUND, INTER-AMICUS, B'NAI BRITH, CANADIAN CIVIL LIBERTIES ASSOCIATION, ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF QUEBEC, and ATTORNEY GENERAL OF MANITOBA
Interveners

FACTUM OF THE WOMEN'S LEGAL EDUCATION AND ACTION FUND

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PART I: STATEMENT OF FACTS

1. The Women's Legal Education and Action Fund (LEAF) offers no comment on the facts as outlined by the Appellants and Respondents herein, except to say that the facts as found below fall within section 281.2(2).

PART II: POINTS IN ISSUE

2. The constitutional questions are as framed by this Court pursuant to the Order of Dickson C.J.C. dated August 1, 1989.

PART III: ARGUMENT

3. LEAF respectfully submits that for the purpose of constitutional analysis the wilful public promotion of group hatred is as much an issue of equality as of expression because the promotion of group hatred erodes the equality rights of the members of the target group.

4. LEAF respectfully submits that the wilful public promotion of group hatred falls outside the protective ambit of section 2(b) of the Canadian Charter of Rights and Freedoms ("Charter") because it is a discriminatory practice and a violent form of expression.

5. Should this Court decide to the contrary and reach section 1, LEAF respectfully submits that section 281.2(2) of the Criminal Code restricts expressive rights minimally, if at all, as it effectively furthers equality. The limits it imposes are demonstrably justified in a free and democratic society that has equality as a constitutional guarantee.

I. HATE PROPAGANDA PROMOTES INEQUALITY. BECAUSE SECTION 281.2(2) [NOW SECTION 319(2)] OF THE CRIMINAL CODE PROTECTS AND PROMOTES EQUALITY, IT IS SUPPORTED BY SECTION 15 OF THE CHARTER.

6. This Court has identified equality as one of the underlying values and principles of a free and democratic society, the genesis of

the rights and freedoms guaranteed by the Charter, and the ultimate standard against which the objects of all legislation must be measured.

R. v. Oakes, [1986] 1 S.C.R. 103 at 136

7. This Court has said that the section 15 guarantee "is the broadest of all guarantees in the Charter. It applies to and supports all other rights guaranteed by the Charter."

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at 185

8. In Andrews v. Law Society of British Columbia, supra, Wilson J. stated at 154 that "s. 15 is designed to protect those groups who suffer social, political and legal disadvantage in our society". In assessing whether a group is discriminated against within the meaning of section 15, this Court in R. v. Turpin et al., [1989] 1 S.C.R. 129 at 1331 directed inquiry into "the larger social, political and legal context" and at 1333 enumerated "indicia of discrimination such as stereotyping, historical disadvantage or vulnerability to political and social prejudice."

9. In the larger context, group-based hatred promotes group disadvantage and, as such, is a practice of discrimination. Group-based enmity, ill-will, intolerance and prejudice produce exclusion, denigration and subordination. Stereotyping and stigmatization of historically disadvantaged groups through hate propaganda shapes their social image and reputation, often controlling the opportunities of individual members more powerfully than their individual abilities do.

The Report Arising out of the Activities of the Ku Klux Klan in British Columbia (The McAlpine Report) (1981) at 61-66

"Equality Now!" The Report of the Special Parliamentary Committee on Participation of Visible Minorities in Canadian Society (1984) at 35-40

"Hatred and the Law", Report of the Special Committee on Racial and Religious Hatred, Canadian Bar Association, (1984) at 8-12

Group Defamation Submissions to the Attorney-General of Ontario (The Lawlor Report) (1984) at 95-97

"Hate Propaganda", Working Paper 50, Law Reform Commission of Canada, (1986), at 32 and 39

Life Together: A Report on Human Rights in Ontario (The Symons Report) (1971)

10. LEAF submits that for the purpose of constitutional analysis, the wilful public promotion of group hatred is properly understood as a practice of inequality. For example, anti-Semitism promotes the inequality of Jews on the basis of religion and ethnicity. White supremacy promotes inequality on the basis of race, colour and sometimes ethnic origin. As argued more fully below, hate propaganda is not mere expression of anti-Semitic or white supremacist opinion. It is a practice of discrimination similar to sexual harassment and other discriminatory acts that take a verbal form, such as signs reading "Whites Only" or advertisements stating that a position is open only to men.

11. Section 281.2(2) criminalizes the wilful public promotion of hatred against groups identified by "colour, race, religion or ethnic origin". Section 15 of the Charter guarantees freedom from discrimination on the same enumerated grounds. Both generate out of the same historic systemic discrimination affecting the same groups as were victimized by hate in the cases at bar.

12. Government sponsored hatred on group grounds would violate section 15 of the Charter. Parliament promotes equality and moves against inequality when it prohibits the wilful public promotion of group hatred on these grounds. It follows that government action against group hate, because it promotes social equality as guaranteed by the Charter, deserves special constitutional consideration under section 15.

13. Quigley J. recognized in R. v. Keegstra (1984), 19 C.C.C. (3d) 254 at 268 that the wilful public promotion of group hatred "negates or

limits the rights and freedoms of such target groups, and in particular denies them the right to the equal protection and benefit of the law without discrimination."

14. LEAF therefore submits that section 15 provides the constitutional basis for section 281.2(2). Since section 281.2(2) protects and promotes equality as comprehended by the Charter, it deserves special constitutional consideration under section 15, prior to any consideration under section 1.

II. THE WILFUL PUBLIC PROMOTION OF GROUP HATRED AS CRIMINALIZED UNDER SECTION 281.2(2) IS NOT PROTECTED UNDER SECTION 2(b).

A. COLLISION OF VALUES AND RIGHTS UNDER SECTION 2(b)

15. This Court has recognized that the rights and freedoms guaranteed by the Charter are not absolute, and are subject to limitations even before a section 1 inquiry is undertaken.

> Operation Dismantle Inc. et al. v. Her Majesty the Queen et al., [1985] 1 S.C.R. 441 at 489
>
> Jones v. The Queen, [1986] 2 S.C.R. 284 at 300

16. LEAF submits that each provision of the Charter must be read in light of or in the context of the others, prior to any recourse to section 1. This preserves the Charter's integrity, the purpose of all its provisions and the distinctive role of section 1.

17. This Court has held that freedom of expression is not absolute. In Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455 Dickson C.J. stated at 463 and 467:

> All important values must be qualified, and balanced against, other important, and often competing, values. This process of definition, qualification and balancing is as much required with respect to the value of "freedom of speech" as it is for other values.
>
> . . . Sometimes these other values supplement, and build on, the value of speech. But in other

> situations there is a collision. When that happens the value of speech may be cut back if the competing value is a powerful one. (emphasis added)

18. This Court has inextricably linked the value of equality with the concept of a free society. In R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 Dickson C.J. stated at 336 that: "A free society is one which aims at equality with respect to the enjoyment of fundamental freedoms and I say this without any reliance upon s. 15 of the Charter." This suggests that the value of equality is embedded within section 2(b) without reliance upon section 15. When read with section 15, the conclusion is inescapable that freedom of expression must be interpreted in a manner consistent with the equality rights of others..

19. LEAF submits that in the cases at bar this Court is faced with the "collision" of competing values referred to in Fraser, supra. In these circumstances, freedom of expression ought to accommodate the guarantee of equality.

20. LEAF further submits that all freedoms and rights in the Charter must be interpreted and applied in accordance with section 27 thereof, in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

> R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713 at 752
>
> R. v. Big M. Drug Mart, supra, at 360-61

21. The wilful public promotion of group hatred contradicts and erodes the multicultural heritage of all Canadians, which section 27 affirms as a fundamental characteristic of Canadian society.

B. CONTENT REGULATION UNDER SECTION 2(b)

22. In Irwin Toy Ltd. v. Quebec, [1989] 1 S.C.R. 927 this Court enunciated a test to be used to determine whether any particular activity is protected by section 2(b). Dickson, C.J. said at 978:

> . . . the first step in the analysis is to determine whether the plaintiff's activity falls within the sphere of conduct protected by the guarantee. Activity which (1) does not convey or attempt to convey a meaning, and thus has no content of expression or (2) which conveys a meaning but through a violent form of expression, is not within the protected sphere of conduct. (emphasis in original)

23. LEAF submits that hate propaganda combines content and form. "Colour, race, religion or national origin" is content. The wilful public promotion of hatred is closer to form. Similar content to that conveyed by the Respondent Keegstra and Appellants Andrews and Smith is widely conveyed throughout society, but only becomes criminal when it takes the form of the wilful public promotion of group hatred on the enumerated grounds.

24. LEAF submits that the wilful public promotion of group hatred, while conveying meaning, is a violent form of expression and therefore is not protected by section 2(b).

25. LEAF submits that neither physical contact nor force are necessary to constitute a violent form of expression. For example, in the labour context false statements, threats and veiled threats by words and acts have been held to constitute violence.

> Esco Operating Corporation v. Kaplan, 258 N.Y.S. 303, 144 Misc. 646 (N.Y. Sup. 1932) at 309

26. The violent and threatening nature of the wilful public promotion of hatred was recognized by the Cohen Committee in its "Report of the Special Committee on Hate Propaganda in Canada" as follows at 24:

> . . . What matters is that incipient malevolence and violence, all of which are inherent in "hate" activity, deserves national attention.

27. This Court in Irwin Toy, supra, at 970 declined to exhaust the forms of expression that may or may not be protected. Presumably, a practice of inequality like racial segregation would not become

protected expression because it conveys a meaning, even if not always violently. Enforcement of inequality need not be violent to be coercive. An official denial of equality rights to disadvantaged groups violates the Charter as clearly as does violence.

28. More particularly, the wilful public promotion of group hatred is a violent form of expression because it is an integral link in systemic discrimination which keeps target groups in subordinated positions through the promotion of fear, intolerance, segregation, exclusion, disparagement, vilification, degradation, violence and genocide. In this sense, it goes beyond "imprudent speech". Its violent nature ranges from immediate psychic wounding and attack to well documented consequent physical aggression.

> Matsuda, M. "Public Response to Racist Speech: Considering the Victim's Story", (1989), Michigan Law Review 2332
>
> Delgado, R. "Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling" (1982), 17 Harvard Civil Rights Lib. L.R. 133
>
> "They Don't All Wear Sheets: A Chronology of Racist and Far Right Violence, 1980 - 1986", (C. Lutz comp.), (1987)

29. Cory J.A. (as he then was) observed the connection in R. v. Andrews (1988) 65 O.R. 2(d) 161 when he said at 179: "When expression does instill detestation it . . . lays the foundation for the mistreatment of members of the victimized groups."

30. Through section 281.2(2), Parliament recognized that the wilful public promotion of group hatred is an act, an injury, and a consequence in itself. It is not merely an intention to act. To promote group hatred is, at a minimum, to act to further the social definition of the group as inferior, unequal and rightly disadvantaged.

31. At the very least, it amounts to harassment on the basis of group membership. This Court has accepted that harassment, including the environmental form, is a practice of inequality resulting in legally

recognized harm and loss, even when it consists of words. It is a form of discrimination, even if the action is words. Regulating harassment is not regulating the content of expression, although the expression has content. This Court treats inequality garbed as expression as inequality.

> Janzen and Govereau v. Platy Enterprises Ltd. et al., [1989] 1 S.C.R. 1252
>
> Robichaud v. Canada, [1987] 2 S.C.R. 84

32. LEAF respectfully submits that the content/form distinction in Irwin Toy, supra, is more properly viewed as a continuum, with pure regulation of content at one end and violent forms of expression at the other. Therefore, courts should take a sensitive approach which would be more nuanced and practical than the doctrinal morass resulting from the American speech/action distinction urged by the Appellants Andrews and Smith.

33. In the alternative, should this Court find it necessary to proceed to the next step in the Irwin Toy analysis, LEAF submits that the purpose of the legislation is not to restrict freedom of expression but to promote equality. Further, while LEAF acknowledges that not all the consequences of group hate are "physical", neither are they confined to the mind. Social inequality is a group status, and as such is a major physical consequence of group hate.

34. LEAF submits that the effect of section 281.2(2) is not to restrict protected expression, because the wilful public promotion of group hate is inconsistent with the purposes for which expression is protected. It is submitted that the Respondent Keegstra and Appellants Andrews and Smith have not met the burden of proof put upon them to show that their expression has been restricted contrary to the reasons for which freedom of expression is protected.

35. The principles and values underlying the protection of freedom of expression were summarized by this Court in Irwin Toy, supra, as follows at 976:

> (1) seeking and attaining the truth is an inherently good activity; (2) participation in social and political decision-making is to be fostered and encouraged; and (3) the diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in an essentially tolerant, indeed welcoming, environment not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed.

36. The wilful public promotion of group hatred inhibits truth-seeking, because it intimidates disadvantaged groups from asserting the truth. Rather than encouraging community participation, group defamation restricts the participation of disadvantaged groups by undermining respect for them and spreading fear. If the individuals who engage in hatemongering are thereby fulfilled, it is at the expense of others. Human flourishing is constrained by the atmosphere of fear and contempt engendered by hate propaganda.

37. LEAF further submits that another effect of the wilful public promotion of group is to chill the speech of the target groups. As recognized by Quigley J. in R. v. Keegstra, supra, at 268:

> . . . s. 281.2(2) of the Code cannot rationally be considered to be an infringement which limits "freedom of expression", but on the contrary it is a safeguard which promotes it. The protection afforded by the proscription tends to banish the apprehension which might otherwise inhibit certain segments of our society from freely expressing themselves upon the whole spectrum of topics, whether social, economic, scientific, political, religious, or spiritual in nature. The unfettered right to express divergent opinions on these topics is the kind of freedom of expression the Charter protects.

38. In the further alternative, in Irwin Toy, supra, this Court did not have to consider colliding constitutional rights. LEAF submits that in cases of colliding Charter rights, this Court should ask, in its consideration of purpose and effect, whether the purpose of the legislation is to promote valid state interests and, if so, whether its

effect is contrary to the reason expression is protected. The purpose of promoting equality, a constitutionally entrenched guarantee, deserves greater judicial consideration than non-constitutional interests, such as the protection of consumers in Irwin Toy.

> House of Commons Debates, April 7, 1970 at 5577-78; April 9, 1970 at 5699; April 13, 1970 at 5790; November 17, 1969 at 889; November 17, 1969 at 883-84.

39. In the result, it is submitted that the wilful public promotion of group hatred falls outside the sphere of conduct protected by section 2(b) of the Charter.

III. IN THE ALTERNATIVE, SECTION 281.2(2) SHOULD BE UPHELD UNDER SECTION 1 OF THE CHARTER.

40. It is submitted that the task of section 1 in the cases at bar is to balance the tension between any harms which flow from regulating expression under section 281.2(2) and the harms which, unregulated by law, are actualized through the wilful public promotion of group hatred. LEAF submits that the importance of promoting equality, including equal access to expression by disadvantaged groups, and the absence of any significant infringement of freedom of expression, significantly weighs the balance in favour of upholding section 281.2(2) under section 1 of the Charter.

41. In Irwin Toy, supra, this Court at 990 and 993-94 distinguishes between situations where the government mediates between different groups with competing interests and those situations where government is the singular antagonist of the individual whose right has been infringed. In the cases at bar, the Respondent Keegstra and Appellants Andrews and Smith cast themselves as victims of government, when in reality they are the aggressors in a social conflict between unequal groups. Section 281.2(2) advances the interests of the disadvantaged while hatemongers advance the interests of the advantaged.

42. This Court also acknowledged at 990 that "Where the legislature mediates between the competing claims of different groups in the

community, it will inevitably be called upon to draw a line marking where one set of claims legitimately begins and the other fades away". LEAF respectfully submits that Parliament has made a reasonable assessment as to where the line, in the case of disadvantaged groups, is most properly drawn and this Court ought not to "second guess" that assessment.

43. The relative burdens of the parties under section 1 should be assessed in this context. LEAF submits that the Respondent Keegstra and Appellants Andrews and Smith must justify limiting the equality rights of disadvantaged groups just as the Crown must justify limiting freedom of expression.

44. In applying section 1, this Court is guided by the values and principles essential to a free and democratic society. These include, inter alia, respect for the inherent dignity of the human person, commitment to social justice and equality, and respect for cultural and group identity. This Court has recognized that it may become necessary to limit rights and freedoms in circumstances where their exercise would be inimical to the realization of collective goals of fundamental importance.

R. v. Oakes, supra, at 136

Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038 at 1056

45. It is submitted that the wilful public promotion of group hatred is antithetical to these essential values and principles, and that the requirements of "pressing and substantial concern" and proportionality are met.

R. v. Edwards Books and Art Ltd., supra, at 768

46. It is generally accepted that section 281.2(2) springs from the recommendations of the Cohen Committee. Quigley J., in terms that expressly recognized equality-seeking goals, characterized the objective of the provision in R. v. Keegstra, supra, as follows at 271:

> The object of the legislation is obviously to control hatemongers from spreading their hatred to others and to give some protection to the target groups that the law heretofore did not protect. . . . [It is also] to create a public conscience or a minimum standard for expected behaviour in Canadian society. This legislation manifests such a purpose and has as its objective the protection of certain segments of society from the wilful promotion of hatred and the injurious consequences thereof.

47. In Edwards Books and Art Ltd., supra, this Court was concerned at 779 to avoid use of the Charter as "an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons." The legislation at bar has such an object; invalidating it would be such a misuse.

48. In Slaight Communications Inc. v. Davidson, supra, this Court recognized that under section 1 an inequality interest (not one of recognized constitutional dimension) can outweigh a section 2(b) right. This Court was "concerned to avoid constitutionalizing inequalities of power in the workplace and between societal actors in general." (emphasis added) Similarly, in Canadian Newspapers v. Canada, [1988] 2 S.C.R. 122 this Court used section 1 in finding that the interest of sexual assault victims in withholding their names and identities from the media outweighed an infringement of section 2(b). Section 1 owes no less to rights of constitutional dimension. This Court's observation in Slaight at 194 applies directly: "constitutionally protecting freedom of expression would be tantamount to condonation of an abuse of an already unequal relationship."

49. LEAF submits that legislative action taken to deter the wilful public promotion of group hatred goes some way to redress the imbalance of power between advantaged and disadvantaged groups. Protection from hate propaganda is necessary to protect freedom of expression and the inherent dignity and worth of all human beings in society.

50. LEAF submits that both the promotion of section 15 equality rights and the preservation and enhancement of Canada's multicultural heritage under section 27 are pressing and substantial concerns.

51. A proscription against the wilful public promotion of group hatred is rationally connected to the objectives of equality and the preservation and enhancement of the multicultural heritage of Canada.

52. LEAF submits that section 281.2(2) does little, if any, damage to freedom of expression because the wilful public promotion of group hatred is contrary to the principles and values which this Court has stated underlie the protection of freedom of expression. Any limit on freedom of expression is slight when compared with the deleterious effect the wilful public promotion of group hatred has on target groups, their members, and society as a whole.

53. LEAF urges this Court to reject the argument of the Respondent Keegstra and Appellants Andrews and Smith that protection of the most offensive expression is the test of protected expression under the Charter. Instead, the expression of the most unequal must be protected. The application of section 281.2(2) to the wilful public promotion of group hatred is limited to disadvantaged groups in accordance with Andrews v. Law Society of British Columbia, supra, thus minimizing any impairment of freedom of expression.

54. LEAF submits that reliance on the "marketplace of ideas" as the appropriate protection for disadvantaged groups unless direct physical harm results from expression is in error. For a marketplace of ideas to function, there must be equality, including equal ability to speak and be heard. In the case of children in a classroom, as in Keegstra, the free marketplace of ideas does not exist because equality between students and teachers does not exist. The power imbalance, with its opportunity for abuse, renders the concept inappropriate.

Statement of Facts, Factum of the Appellant, Her Majesty The Queen at 2

55. Further, because equality does not exist in Canadian society as a whole, the use of "the marketplace of ideas" concept to assess permissible limits on freedom of expression is fundamentally flawed when considering that the wilful public promotion of hatred is targeted against disadvantaged groups. Advantaged groups "own" a disproportionate share of freedom of expression by virtue of their greater share of power and wealth. In a marketplace where some have a greater ability to speak and be heard than others, it is more likely that the ideas of the advantaged will emerge out of the competition of ideas, rather than the truth.

> A.B. Volume 10 at 2058 - 2070 (Exhibit 82, a student essay)

56. Finally, it is submitted that Kerans J.A. in R. v. Keegstra (1988), 43 C.C.C. (3d) 150 erred in determining that section 281.2(2) is overly broad in that it does not require the successful promotion of hatred. The reasoning of the Ontario Court of Appeal in R. v. Andrews, supra, is to be preferred.

57. As outlined above, the wilful public promotion of group hatred in and of itself constitutes a harm. To wait for further consequences of that harm to manifest themselves in society is to ignore the lessons of history.

> Doskow, Ambrose and Jacoby, Sidney, "Anti Semitism and the Law in Pre-Nazi Germany", Contemporary Jewish Record 498.

58. LEAF respectfully submits that the historical connection between racism and violence is a record against which to consider a legal response to racist speech. The fact that six million Jews were murdered in a public campaign of group hate promoting racial superiority should guide this Court in developing the law of freedom of expression and the treatment of the wilful public promotion of hatred under the Charter.

IV. SECTION 11(d) OF THE CHARTER IS NOT INFRINGED BY SECTION 281.2(3)(a) [NOW SECTION 319(3)(a)] OF THE CRIMINAL CODE

59. LEAF adopts the arguments of the Appellant Her Majesty the Queen with respect to this question.

60. LEAF further submits that section 281.2(3)(a) is mischaracterized as a reverse onus provision. Pursuant thereto defendants are not required to disprove an element of the offence, but rather are offered a defence to it. Generally hate propaganda is false, however, no constitutional command prescribes that falsity be an element of the offence to be proved by the Crown. It is constitutionally sufficient that Parliament provide that defendants may, as a defence, prove the truth of their utterances.

V. IN THE ALTERNATIVE, SECTION 281.2(3)(a) CAN BE UPHELD UNDER SECTION 1 OF THE CHARTER

61. LEAF adopts the arguments of the Appellant Her Majesty the Queen with respect to this question.

PART IV: NATURE OF ORDER SOUGHT

62. It is respectfully submitted that the constitutional questions posed be answered as follows:

Question #1: No
Question #2: Yes
Question #3: No
Question #4: Yes

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Kathleen E. Mahoney

Linda A. Taylor

Of Counsel for the Women's Legal Education and Action Fund

PART V: LIST OF AUTHORITIES

		Factum Page Reference
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2.	Canadian Bar Association, "Hatred and the Law", Report of the Special Committee on Racial and Religious Hatred (1984).	2
3.	Canadian Newspapers v. Canada, [1988] 2 S.C.R. 122.	12
4.	Cohen Committee, "Report of the Special Committee on Hate Propaganda in Canada"	6
5.	Delgado, R. "Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling" (1982), 17 Harvard Civil Rights Lib. L.R. 133.	7
6.	Doskow, Ambrose and Jacoby Sidney, "Anti Semitism and the Law in Pre-Nazi Germany", Contemporary Jewish Record, 498.	14
7.	Esco Operating Corporation v. Kaplan, 258 N.Y.S. 303, 144 Misc. 646 (N.Y. Sup. 1932).	6
8.	Fraser v. Public Service Staff Relations Board, [1985] 2 S.C.R. 455.	4, 5
9.	House of Commons Debates, April 7, 1970 at 5577-78; April 9, 1970 at 5699; April 13, 1970 at 5790; November 17, 1969 at 889; November 17, 1969 at 883-84.	10
10.	Irwin Toy Ltd. v. Quebec, [1989] 1 S.C.R. 927.	5, 6, 8, 9, 10
11.	Janzen and Govereau v. Platy Enterprises Ltd. et al., [1989] 1 S.C.R. 1252.	8
12.	Law Reform Commission of Canada, "Hate Propaganda" Working Paper 50, (1986).	3
13.	Jones v. The Queen, [1986] 2 S.C.R. 284	4
14.	Lawlor Report, Group Defamation Submissions to the Attorney-General of Ontario, (1984).	3
15.	Lutz-C. "They Don't All Wear Sheets - A Chronology of Racist and Far Right Violence, 1980-1986".	7

16. Matsuda, M. "Public Response to Racist Speech: Considering the Victim's Story", (1989), Michigan Law Review 2332. 7

17. McAlpine Report, The Report Arising out of the Activities of the Ku Klux Klan in British Columbia, (1981). 2

18. Operation Dismantle Inc. et al. v. Her Majesty the Queen et al., [1985] 1 S.C.R. 441. 4

19. R. v. Andrews (1988) 65 O.R. 2(d) 161 (Ont. C.A.) 7, 14

20. R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295. 5

21. R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713. 5, 11, 12

22. R. v. Keegstra (1984), 19 C.C.C. (3d) 254 (Alta. Q.B.) 3, 9, 11, 13

23. R. v. Keegstra (1988), 43 C.C.C. (3d) 150 (Alta. C.A.) 14

24. R. v. Oakes, [1986] 1 S.C.R. 103. 2, 11

25. R. v. Turpin et al., [1989] 1 S.C.R. 1296. 2

26. Robichaud v. Canada, [1987] 2 S.C.R. 84. 8

27. Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038. 11, 12

28. Special Parliamentary Committee Report on Participation of Visible Minorities in Canadian Society, "Equality Now!", (1984). 2

29. Symons Report, Life Together: A Report on Human Rights in Ontario, (1971). 3