

## **Background notes for Ontario Attorney General Chris Bentley Meeting - July 21, 2009**

### **Amending the Criminal Code Hate Propaganda Law to Include “Sex” or “Gender”**

#### **Background**

In 1985, the federally-mandated Special Committee on Pornography and Prostitution reported “ample evidence” that women were the targets of hate material, a conclusion the Committee reached after holding cross-country hearings. They recommended, among other things, that the federal government change the *Criminal Code* hate propaganda laws to extend protection to women. Almost 25 years later, this critical legislative change still has not been made.

Currently, Section 319 of the *Criminal Code* prohibits the public incitement of hatred against a limited list of “identifiable groups”, those being set out in Section 318(4) as “any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation”. Sexual orientation was added in 2003 under Private Member’s Bill C-250, introduced by NDP MP Svend Robinson. At the time, federal politicians flatly refused requests to include “sex” in Bill C-250, the word that needs to be added to extend protection to girls and women. (The word “sex” is gender neutral and the change would also protect boys and men.)

The public incitement of hatred is illegal under the *Criminal Code* because it is acknowledged to be a contributing factor in the promotion of violence and discrimination against the target group. Women and girls are subjected to extraordinary levels of violence, but politicians have refused to add the female half of the population to the list of protected groups.

#### **Exclusion is unconstitutional**

The omission of “sex” or “gender” from the definition of identifiable groups violates Section 15 of the Charter of Rights and Freedoms. Section 15 states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

#### **Violence against girls has reached alarming levels**

Two studies carried out in Ontario schools last year, one conducted by Toronto’s School Community Safety Advisory Panel, and the other by the Centre for Addiction and Mental Health (CAMH), found that sexual harassment and sexual assault of girls are occurring at alarming rates. The school safety Panel stressed that the problem required immediate attention.

Following up on the Panel’s report, the Toronto Star ran an article on discussions with girls from five Toronto high schools. The girls reported being subjected to a barrage of hateful comments – they are routinely called skank, ho (whore) and slut – as well as being grabbed on the breast or backside “at any time in the halls”. One 14-year-old student said, “You hear stuff like ‘What’s up, bitch?’ and ‘Hey, ho’ every other second”.

Dr. David Wolfe of the CAMH warns that, “All these behaviours, from physical violence to verbal harassment, can be harmful and have serious effects on their well-being.”

## Ontario's Safe Schools Action Team

In response to these reports, the Hon. Kathleen Wynne, Minister of Education, asked the Safe Schools Action Team to review the issues of gender-based violence, homophobia, sexual harassment, and inappropriate sexual behavior by students towards other students. The Action Team's report, *Shaping a Culture of Respect in Our Schools: Promoting Safe and Healthy Relationships*, focused on recommendations to prevent and address these problems. It acknowledged the influence of the media in helping shape anti-social attitudes and behaviour:

It is widely acknowledged that content showing violence, including gender-based violence, is a staple of much media programming. Such content frequently models negative relationships and perpetuates stereotypes. Research indicates that prolonged exposure to such material can encourage imitation, stimulate violent or aggressive behaviour, cause emotional desensitization towards victims, and reduce the inclination to intervene to help victims or seek help on their behalf.

Misogynist forms of expression are rampant in the media, one reason being that there is very little in the way of federal or provincial legislation to prevent their mass proliferation. Unlike other vulnerable groups subjected to abusive forms of expression, women are excluded from the protection of the *Criminal Code* hate laws and, in Ontario, they have little protection under the *Ontario Human Rights Code*. In a 2006 ruling on a complaint filed regarding misogynist rap CDs sold by a national distributor, the Ontario Human Rights Commission claimed the products did not fall under their jurisdiction, although the case analysis report acknowledged that "Some of the lyrics are violent, hateful and abusive towards women and are clearly contrary to the values of the Code". The complainant cited lyrics by popular, mainstream performers Snoop Dogg, 50 Cent, Eminem, Ja Rule and Jay-Z. Not only do these performers sell tens of millions of CDs internationally, but they have been given the music industry's highest honours, which effectively sanctions misogyny in the minds of youth.

### A fence of protection for the vulnerable

Prosecutions under the *Criminal Code* hate propaganda laws are infrequent, but the law clearly acts as a deterrent to the widespread dissemination of hateful expression and can be used to prevent hate mongers from entering Canada. Bernie Farber, CEO of the Canadian Jewish Congress and a court-designated expert on hate crimes, calls Canada's hate laws a "fence of protection" for vulnerable groups. This protective fence is granted to others, but not to women.

### Private Member's Bill - Liberal MP Borys Wrzesnewskyj, Etobicoke Centre

For the past several years, Liberal MP Borys Wrzesnewskyj has tried to correct the situation by introducing a Private Member's Bill that would amend Section 318(4) of the *Criminal Code* to read, "In this section, 'identifiable group' means any section of the public distinguished by colour, race, religion, ethnic origin, sex or sexual orientation." He has tried repeatedly to get this Bill passed, but the Conservatives have blocked his attempts every time and the Bill has never progressed beyond First Reading.

### Federal Liberal Party Election Promise – 2008

The Ontario Public School Boards' Association Violence in the Media Coalition, along with other influential organizations such as the Canadian Teachers' Federation and the Ontario Federation of Labour, lobbied the federal Liberal party on this issue in the months leading up to the last election. In response, the Liberal party included changing the hate propaganda law in their election platform.

In their policy document *Richer, Fairer, Greener: An Action Plan for the 21st Century*, the Liberals promised that their efforts to fight violence against women would "**begin with an amendment to the *Criminal Code* to include 'gender' in the hate propaganda provisions to help end societal acceptance for those who would incite hatred against women**".

## **Endorsements for amending the law**

For over twenty years, diverse groups have offered their endorsement for this important change to the Criminal Code, including:

Liberal Party of Canada—2008 Election platform

Liberal MPs – Borys Wrzesnewskyj, Sukh Dhaliwal, Judy Sgro, Jasmin Ratansi, Sue Barnes, Lloyd St. Amand – Parliament Hill press conference (April 19, 2007)

Canadian Teachers' Federation (2007)

Ontario Federation of Labour (2007)

Ontario Public School Boards' Association Violence in the Media Coalition (2007)

Canadian Centre for Abuse Awareness

Elementary Teachers' Federation of Ontario

Ontario Teachers' Federation

Ontario Catholic School Trustees Association

Ontario English Catholic Teachers' Association

Ontario Federation of Home & School Association

Ontario Principals' Council

Ontario Provincial Police

Ontario Secondary School Teachers' Federation

Ontario Student Trustees' Association

Polish Canadian Women's Federation (2007)

James Flaherty, Attorney General of Ontario (2000)

Ontario Office for Victims of Crime (2000)

Ontario MPP Michael Bryant, Liberal Attorney General Critic (2000)

B'nai Brith League for Human Rights (1994)

Raymond Hnatyshyn, Minister of Justice (1987)

Law Reform Commission of Canada (1986)

Canadian Advisory Council Status of Women (1985)

Special Committee on Pornography and Prostitution (1985)

National Action Committee Status of Women (1983)

## **Action requested from Attorney General Bentley**

1. Attorney General Bentley to send letter to the federal Justice Minister requesting that the law be amended (see attached Borys Wrzesnewskyj PMB for wording)
2. Attorney General Bentley to raise this issue at the next meeting of provincial and territorial justice ministers and gain their support to pressure the federal justice minister to amend the law

July 15, 2009

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Section Home

[Français](#) • [Table of Contents](#) • [Print format](#)

## C-254

First Session, Thirty-ninth Parliament,  
55 Elizabeth II, 2006

HOUSE OF COMMONS OF CANADA

# BILL C-254

An Act to amend the Criminal Code (hate propaganda)

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FIRST READING, MAY 4, 2006

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MR. WRZESNEWSKYJ

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## C-254

Première session, trente-neuvième législature,  
55 Elizabeth II, 2006

CHAMBRE DES COMMUNES DU CANADA

# PROJET DE LOI C-254

Loi modifiant le Code criminel (propagande haineuse)

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PREMIÈRE LECTURE LE 4 MAI 2006

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M. WRZESNEWSKYJ

## SUMMARY

This enactment expands the definition of “identifiable group” in relation to hate propaganda in the *Criminal Code* to include any section of the public distinguished by its sex.

## SOMMAIRE

Le texte modifie la définition de « groupe identifiable » concernant la q propagande haineuse dans le *Code criminel* pour y inclure toute section du différencie des autres par le sexe.

Also available on the Parliament of Canada Web Site at the following address:  
<http://www.parl.gc.ca>

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1st Session, 39th Parliament,  
55 Elizabeth II, 2006

1<sup>re</sup> session, 39<sup>e</sup> législature,  
55 Elizabeth II, 2006

HOUSE OF COMMONS OF CANADA

CHAMBRE DES COMMUNES DU CANADA

## BILL C-254

## PROJET DE LOI C-254

R.S., c. C-46

An Act to amend the Criminal Code (hate propaganda)  
Her Majesty, by and with the advice and consent of the  
Senate and House of Commons of Canada, enacts as  
follows:

**1. Subsection 318(4) of the *Criminal Code* is  
replaced by the following:**

Definition of  
“identifiable group”

(4) In this section, “identifiable group” means any  
section of the public distinguished by colour, race,  
religion, ethnic origin, sex or sexual orientation.

Loi modifiant le Code criminel (propagande haineuse)  
Sa Majesté, sur l'avis et avec le consentement du Sénat L.R., ch.  
et de la Chambre des communes du Canada, édicte :

**1. Le paragraphe 318(4) du *Code criminel* est  
remplacé par ce qui suit :**

(4) Au présent article, « groupe identifia- ble » désigne  
toute section du public qui se différencie des autres par la  
couleur, la race, la religion, l'origine ethnique, le sexe ou  
l'orien-tation sexuelle. Définitio  
identifial

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