

Problems: The Committee accepts the need for continued hate literature legislation, but it believes that there have been problems with the current provisions in the Criminal Code. For one thing, it requires that the Crown prove that the accused specifically intended to promote hatred through distribution of the literature.

Consistent: A number of witnesses appearing before the Committee urged that the Criminal Code be amended to deal with this problem. The 1982 Vancouver Symposium on Race Relations and the Law urged that the requirement for specific intent be removed from the Code. This amendment would be consistent with the rest of the criminal law where specific intent is the exception and not the rule. The proof of intent has made it difficult for Attorneys General to prosecute in the past. But once this amendment is enacted by Parliament, the Attorneys General should have less difficulty in instituting successful prosecutions.

RECOMMENDATION:

Justice Canada should prepare amendments to Section 281.2(2) of the Criminal Code so that it is no longer necessary to show that an accused specifically intended to promote hatred, in order to obtain a conviction.

RECOMMENDATION

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ELIMINATE THE NEED FOR THE CONSENT OF ATTORNEYS GENERAL TO PROSECUTE INCITEMENT OF HATRED CASES

Protect: One of the provisions recommended by the Cohen Committee and incorporated into the Criminal Code to protect freedom of expression was the requirement that the provincial Attorneys General consent to any hate propaganda prosecution.

Abused: Now that we have an entrenched Charter of Rights, it can be used to shield any Canadian who feels he is being improperly prosecuted under the hate propaganda provisions. The Committee believes that the consent requirement has outlived its usefulness and should be eliminated.

Open: The elimination of this requirement will open the way for any Canadian to launch a private prosecution against a peddler of hate literature. This amendment was urged by many witnesses and endorsed by the Vancouver Symposium on Race Relations and the Law.

RECOMMENDATION:

Justice Canada should prepare amendments to S.281.2(6) of the Criminal Code so that the consent of the provincial attorneys general is no longer required for a prosecution in cases of public incitement of hatred.