

## **Holocaust Denial and the Abuse of Education** **Raphael Cohen-Almagor<sup>1</sup>**

in Joanna Długosz-Jóźwiak *et al* (eds.), *Festschrift Joerden* (Europa-Universität Viadrina Frankfurt Oder, 2023).

### **Preliminaries: Personal words**

I wish to open with some personal words. I have known Jan for a quarter of century. We met three times at conferences and were in touch on various other occasions, collaborating on writing projects, exchanging views and supporting one another in various ways. We first met Jan in 1995 at an International Symposium: *Biotechnological Challenges for Law & Ethics* that Jan had organized together with Joachim Hruschka and Sharon Byrd at one of the most beautiful places in the world: Bellagio, Italy. It was a small gathering of scholars, with only plenary sessions and a lot of time to meet and mingle. The people at The Rockefeller Center are known for their kind hospitality. The days were long but we had five breaks each day to enjoy the Italian cuisine. Jan and I met talked a few times during the workshop but our most meaningful conversation took place on the concluding banquet as we were standing in line, waiting to get our food. The atmosphere was festive. The evening was warm and the discussion became personal. We talked the entire evening and got to know each other. The more I knew about Jan, the more I wanted to know. This tall, overpowering man has a capacity to listen. Among the issues we discussed was the Holocaust, and how it influenced my life. Such a conversation between a German and an Israeli is not easy. Jan was sensitive and thoughtful. He opened me up to express inner thoughts that I do not share with many people. I grew to like Jan and told him I'd very much like to keep in touch.

Second time we met in Jerusalem. I reciprocated by inviting Jan to an international conference that I organised: *Medical Ethics at the Close of the 20th Century*, at The Van Leer Jerusalem Institute in 1998. It was a very busy conference with dozens of guests and hundreds of participants, and I was the only person in the conference who connected all the dots. It was absolutely crazy. I did not sleep properly for four days, as my adrenalin was pumping. Within this craziness I found the time to sit with Jan and have a long talk. Jan was grateful for the invitation and expressed his appreciation for taking part in this international gathering and for the opportunity to visit the majestically beautiful Jerusalem. Jerusalem is a unique city. As a careful academic, I uniquely use the word "unique" as there are very few places in the world that are truly unique. Jerusalem is one of these places.

Third time was in Poland. Jan invited me to deliver the Opening Lecture at a small conference he organised titled *Ethical Liberalism in Contemporary Society* at Collegium Polonicum, Slubice, Poland in 2007. Every morning during the days of the conference, Jan crossed the bridge that connects between Slubice and Frankfurt-Oder, and returned in the evening. I walked with him part of the walk and we had time to engage in our long talks, talking about academia, families, politics, history, law, life. As ever, I was left with a taste for more. We continue to converse by emails as we followed each other's career.

And now Jan is 70-year-old. This is a milestone to celebrate. When I received the invitation to take part in this *Festschrift* I did not hesitate for one moment. I am genuinely honoured to be part of it. I decided to write about three of the topics Jan and I continuously conversed for the past 26 years: The Holocaust, education and law.

### **Introduction**

Hate speech is defined as a bias-motivated, hostile, malicious speech aimed at a person or a group of people because of some of their actual or perceived innate characteristics. It expresses discriminatory, intimidating, disapproving, antagonistic and/or prejudicial attitudes toward those characteristics which include sex, race, religion, ethnicity, colour, national

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<sup>1</sup> This is partly based on an article that was originally published in *American Journal of Education*, 114(2) (February 2008): 215-241. All websites were accessed during June 2021.

origin, disability, or sexual orientation.<sup>2</sup> Hate speech is intended to injure, dehumanize, harass, debase, degrade, and/or victimise the targeted groups, and to foment insensitivity and brutality towards them.

Hate speech presents itself in many different forms including direct talk, symbols contained in parades and cross burnings and, more recently, internet web sites. It is speech that conveys a message of inferiority, is usually directed against a member/s of historically oppressed groups, and is persecutory, hateful, and degrading.

Hate speech in its various forms should be taken seriously because it is harmful. It could potentially silence the members of target groups, might cause them to withdraw from community life, and interferes with their right to equal respect and treatment. Hateful remarks are potentially so hurtful and intimidating that they might reduce the target group members to speechlessness or shock them into silence. The notion of silencing and inequality suggests great injury, emotional upset, fear and insecurity that target group members might experience. Hate might undermine the individual's self-esteem and standing in the community.<sup>3</sup>

This article is opened by explaining a specific type of hate speech: Holocaust denial. I will establish that Holocaust denial *is* a form of hate speech. The article is concerned with the expression of this idea by educators. I make some constructive distinctions that will help in crystallizing our treatment of teachers who are Holocaust deniers. Should we allow Holocaust deniers to teach in schools? I will attempt to answer this question through a close look at the Canadian experience in dealing with such educators. In this context, the article probes the leading case of James Keegstra. I will argue that hate mongers cannot assume the role of educators. Educating and preaching hate come one at the expense of the other. You can either educate or preach hate. You cannot do both.

### **Holocaust Denial**

What do we mean by "Holocaust denial"? Why does this form of speech constitute hate? If you ask a person on the street what does she know about the Holocaust, and she answers that she has never heard of it, this is not Holocaust denial. Denying reality is not a form of hate. And even if she seems to know, this is not necessarily a form of hate. The component of hate depends on the content of the speech and the intention of the speaker.

Disputing certain historical facts is also not a form of hate and I doubt whether it can be considered as Holocaust denial. If one argues that five million, not six million, were murdered during 1938-1945, based on a study of sorts done on Jewish demography in Europe, this is an issue that can and should be discussed in the open in order to discover a possible new facet of the truth.<sup>4</sup> If one brings evidence showing that an alleged massacre did not happen, or happened on a different date, or more people were killed in it than we know, or that an alleged war criminal was not in an alleged place during the time, these are all issues that should be probed and discussed. All this does not constitute Holocaust denial, nor a form of hate.

Moreover, generally speaking, people are entitled to hold and express vilifying and outrageous views, to voice their dislike of other people, to use derogatory words and discriminatory adjectives against others. We do not enjoy it; we feel it is wrong, and we feel

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<sup>2</sup> R. Cohen-Almagor, "Fighting Hate and Bigotry on the Internet", *Policy and Internet*, 3: Iss. 3, Article 6 (2011).

<sup>3</sup> See Richard Moon, *The Constitutional Protection of Freedom of Expression* (Toronto: University of Toronto Press 2000): 127; R. Moon, "The Regulation of Racist Expression," in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance: Essays in Honor and Memory of Yitzhak Rabin* (Ann Arbor: University of Michigan Press, 2000): 182-199; R. Cohen-Almagor, "Harm Principle, Offense Principle, and Hate Speech," in Cohen-Almagor, *Speech, Media, and Ethics* (Houndmills and New York: Palgrave-Macmillan 2005): 3-23.

<sup>4</sup> For discussion of J.S. Mill's Truth Principle and its importance in generating a tolerant atmosphere for unconventional expressions, see J.S. Mill, *Utilitarianism, Liberty, and Representative Government* (London: J.M. Dent, 1948); R. Cohen-Almagor, "Why Tolerate? Reflections on the Millian Truth Principle", *Philosophia*, 25, Nos. 1-4 (1997): 131-152, and Cohen-Almagor, "JS Mill's Boundaries of Freedom of Expression: A Critique", *Philosophy*, 92(4) (October 2017): 565-596.

outraged confronting such statements. Still liberals believe that such speech is protected under the Free Speech Principle and is sheltered in the shade of tolerance. The way to fight against such discriminating and damaging opinions is by more speech, not by silencing and censoring speech. This, indeed, is the essence of tolerance.

Having said that, Holocaust denial constitutes a special category of speech that does not necessarily merit protection in all places, certainly not in the classroom. It is far from being innocent. Holocaust denial is a form of hate speech because it willfully promotes enmity against an identifiable group based on ethnicity and religion. It is designed to underestimate and justify murder, genocide, xenophobia and evil. Holocaust denial assumes a form of legitimacy to racism in its most evil manifestation to date, under the guise of pursuit of "truth". It speaks of an international Jewish conspiracy to blackmail Germany and other nations, to exploit others and to create Israel. It depicts a picture by which Jews conspired to create a hoax, the greatest fabrication of all times. Adolf Hitler did not plan a genocide for the Jews but wished instead to move them out of Europe. No gas chambers ever existed. This is an invention of the Jews to dramatize the mere "fact" that in every war there are casualties; WWII was no different. People from many countries were killed. Many of them were Germans. And yes, Jews were killed. And also people from other religions.

According to the deniers, the Holocaust is the product of partisan Jewish interests, serving Jewish greed and hunger for power. Some Jews disguised themselves as survivors, carved numbers on their arms and spread atrocious false stories about gas chambers and extermination machinery. It was not Germany that acted in a criminal way. Instead, the greatest criminals are the Jews. The Jews were so evil that they invented this horrific story to gain support around the world and to extort money from Germany. For their extortion and fabrication, for creating the greatest conspiracy of all times, they deserve punishment, possibly even death. Jews are demonic and crooked people who deserve to die for making up this unbelievable tragedy. In effect, the ultimate purpose of Holocaust denial is to legitimize violent antisemitism.

Thus, those who deny the Holocaust are anti-Jewish. It is demeaning to deny the Holocaust for it is to deny history, reality, and suffering. Holocaust denial might create a climate of xenophobia that is detrimental to democracy. It generates hate through the rewriting of history in a vicious way that portrays Jews as the anti-Christ, as destructive forces that work against civilization. Hateful messages desensitize members of the public on very important issues. They build a sense of possible acceptability of hate and resentment of the other which might be costlier than the cost of curtailing speech. Hate speech, in its various forms, is harmful not only because it offends but because it potentially silences the members of target groups and interferes with their right to equal respect and treatment. Hateful remarks are so hurtful that they might reduce the target group member to speechlessness or shock him/her into silence. The notion of silencing and inequality suggests great injury, emotional upset, fear and insecurity that target group members might experience. Hate undermines the individual's self-esteem and standing in the community.<sup>5</sup>

The historical and cultural context is obviously of great significance. Propagating Holocaust denial in Canada is quite different from propagating this idea in Germany. We hope that Germans will hardly be persuaded by such propaganda. Germany prohibits Holocaust denial due to its sensitivity to the horrors of the Nazi era. Section 130 of the 1985 German Penal Code prohibits denial or playing down of the genocide committed under the National Socialist regime (§ 130.3), including through dissemination of publications (§ 130.4). This includes public denial or gross trivialization of international crimes, especially genocide/the Holocaust. Holocaust denial was outlawed as an 'insult' to personal honor (i.e.

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<sup>5</sup> Richard Moon, *The Constitutional Protection of Freedom of Expression* (Toronto: University of Toronto Press, 2000); Raphael Cohen-Almagor, "Holocaust Denial Is A Form of Hate Speech", *Amsterdam Law Forum*, 2(1) (2009): 33-42; Stephen L. Newman, "Should Hate Speech Be allowed on the Internet? A Reply to Raphael Cohen-Almagor", *Amsterdam Law Forum*, 2(2) (2010): 119-123; Raphael Cohen-Almagor, "Countering Hate on the Internet – A Rejoinder", *Amsterdam Law Forum*, 2(2) (2010): 125-132.

an ‘insult’ to every Jew in Germany) and a penalty was set under the 1985 law of up to one year in prison or a fine.<sup>6</sup>

In 1994, Germany passed a law, making Holocaust revisionism, in and of itself, a criminal offence. The German Constitutional Court ruled that freedom of speech was not a defence available to groups propagating the "Auschwitz lie."<sup>7</sup> The 1994 law increased the penalty to up to five years imprisonment. It also extended the ban on Nazi symbols and anything that might resemble Nazi slogans. In 1995, a Berlin state court convicted a leader of Germany's neo-nazi movement for spreading racial hatred and denigrating the state by telling people visiting the Auschwitz concentration camp that the Holocaust was a fiction.<sup>8</sup> However, in 2019 Foreign Minister Heiko Maas said: “Our culture of remembrance is crumbling... Right-wing populist provocateurs diminish the Holocaust, knowing that such a breach of taboo will garner maximum attention.”<sup>9</sup> Maas said that in the face of the growing popularity of the Alternative for Germany (AfD) whose leaders diminish the importance of the Nazi era with the aim of rejuvenating national pride. Alexander Gauland referred to the Nazi era as a “speck of bird poop” in Germany’s otherwise admirable history, while Björn Höcke called Berlin’s Holocaust memorial a “monument of shame” and defended Holocaust deniers. AfD members, while visiting the Sachsenhausen’s gas chambers questioned whether people were actually killed in this notorious place.<sup>10</sup> They seem to believe that the industrial slaughter of millions of people by the Nazis is a fabrication, a conspiracy to smear Germany.

Some other European countries adopted legislation criminalizing the Nazi message, including denial of the Holocaust. These include Austria (article 3h of the Verbotsgesetz, "Prohibition Statute", 1947), Belgium (Belgian Negationism Law), the Czech Republic, France, Liechtenstein, Lithuania, the Netherlands, Poland, Romania, Slovakia, Spain and Switzerland (article 261bis of the Penal Code).

Many of these countries also have broader laws against libel or inciting racial hatred. France, another country that is highly sensitive to WWII, passed the Gayssot law (named after French MP J. C. Gayssot) in 1990. The law punishes by heavy fines or imprisonment any "public expression of denial of the Genocide perpetrated on the Jews by the Nazis during WWII." This law was used to condemn the infamous denial academic, Robert Faurisson,<sup>11</sup> as well as some of his followers, notably the philosopher Roger Garaudy, in 1999.<sup>12</sup> Article R645-1 of the French Penal Code prohibits the public display of Nazi uniforms, insignias and emblems.<sup>13</sup>

Great Britain likewise does not criminalize Holocaust denial or the public display of Nazi symbols. In February 2006, British historian David Irving was found guilty in Vienna of denying the Holocaust of European Jewry and sentenced to three years in prison in accordance with the Austrian Federal Law on the prohibition of National Socialist activities.

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<sup>6</sup> Michael J. Bazyler, “Holocaust Denial Laws and Other legislation Criminalizing Promotion of Nazism”, *Yad VaShem* (2021), <https://www.yadvashem.org/holocaust/holocaust-antisemitism/holocaust-denial-laws.html>

<sup>7</sup> *Holocaust Denial Case* 90 BVerfGE 241 (1994), translated in Donald P. Kommers, *Constitutional Jurisprudence of the Federal Republic of Germany* (Durham, N.C.: Duke University Press, 1997): 382-387.

<sup>8</sup> Alexander Tsesis, *Destructive Messages* (NY and London: New York University Press, 2002): 188.

<sup>9</sup> Emily Schultheis, “Teaching the Holocaust in Germany as a Resurgent Far Right Questions It”, *The Atlantic* (April 10, 2019), <https://www.theatlantic.com/international/archive/2019/04/germany-far-right-holocaust-education-survivors/586357/>

<sup>10</sup> *Ibid.*

<sup>11</sup> David Goldberg, "Protecting Wider Purposes: Hate Speech, Communication, and the International Community," in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance*: 257-260.

<sup>12</sup> Text of the law may be found in French in [www.jura.uni-sb.de/france/Law-France/I90-615.htm](http://www.jura.uni-sb.de/france/Law-France/I90-615.htm); <http://www.phdn.org/negation/gayssot/>. For a useful discussion on French historical revisionism, see Pierre Vidal-Naquet, *A Paper Eichmann (1980) - Anatomy of a Lie*, available at <http://www.anti-rev.org/textes/VidalNaquet92a/> (in English).

<sup>13</sup> Michael J. Bazyler, “Holocaust Denial Laws and Other legislation Criminalizing Promotion of Nazism”.

Irving denied the existence of gas chambers in National Socialist concentration camps in several lectures held in Austria in 1989. Under the State Treaty of 1955 for the Re-establishment of an Independent and Democratic Austria, which Austria concluded with France, the United Kingdom, the USA and the USSR, Austria undertakes to prevent all Nazi propaganda. The Prohibition Statute forms part of the Austrian Constitution.<sup>14</sup>

Canada has a long history of hate speech and Holocaust denial. This is partly due to the tireless activities of one of the most prolific Holocaust deniers in the world, Ernst Zündel, who from 1977 until 2003 had resided in Canada and made Toronto his international headquarter.<sup>15</sup> His website was arguably the most valuable resource for Holocaust deniers on the Net.<sup>16</sup> In 2000, Zündel moved to the United States, where he ran a website and lived with his third wife, Ingrid Rimland. In 2003, he was arrested for overstaying his visa. He was sent back to Canada, where Zündel was detained him as a threat to national security, and after a lengthy legal process was deported to Germany in 2005. A state court in Mannheim convicted him in 2007 on 14 counts of inciting hatred and one count of violating the memory of the dead. Zündel was sentenced to five years in prison but he was released in 2010. Zündel died in 2017.<sup>17</sup>

So it happened that some of the most notorious Holocaust deniers in Canada were also teachers. Do Holocaust deniers have free expression as teachers and educators? Should liberal democracy allow its teachers to uphold and promote **any** conception of the good? Is teaching and hate commensurate and compatible?

### Academic Freedom at Schools

The analysis of this intricate subject involves the following considerations:

Context: It is appropriate to distinguish between teachers of history and teachers of anything but history. History teachers may be required by the curricula to discuss the Holocaust. On the other hand, Mathematics teachers are not expected to discuss this issue at all. If and when they do, they sidetrack from the subjects they are qualified to teach even though there is a reasonable expectation that they constrain themselves to the matter they were qualified to teach. History teachers may present different interpretations of history and, thus, there might be room to argue that they may introduce revisionist argument in class and thereby evoke a debate about history, interpretations, narrative, racism, anti-Semitism, and bias. In any event, when they introduce Holocaust denial in class, they are expected also to present the mainstream history that forcefully argues, supported by verified data, for the existence of the Holocaust. I assume that presenting just Holocaust denial when discussing the horrors of WWII is not in line with the established curricula in Canadian public schools.

Type of school: The emphasis of the last sentence was on public schools where teachers are paid by the government, where you have the leverage of funding. The government may prescribe certain guidelines and ask teachers to adhere to fundamental values. Private schools may generate their own funding, hence could modify their curricula and create their own agenda. These agendas should be clarified for the parents and students. In private schools, after such clarification, Holocaust denial might be the only interpretation of history presented in class. Again, I would expect the school management to highlight this before parents enroll their children in such a school so as to allow them decide whether this is the education they seek for their offsprings. Of course, as parents' influence is greater in private schools than in

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<sup>14</sup>. "Holocaust denier Irving is jailed", *BBC News* (February 20, 2006), <http://news.bbc.co.uk/2/hi/europe/4733820.stm>

<sup>15</sup>. Ernst Zündel, <https://www.splcenter.org/fighting-hate/extremist-files/individual/ernst-zundel>

<sup>16</sup>. <http://www.zundelsite.org/>

<sup>17</sup> Ernst Zündel, "Holocaust Denier Tried for Spreading His Message, Dies at 78", *NY Times* (August 7, 2017), <https://www.nytimes.com/2017/08/07/world/europe/ernst-zundel-canada-germany-holocaust-denial.html>

public schools, they could insist on not having a Holocaust denier in class, and the school management will be required to pay close consideration to their demand.

**Students' identity:** Holocaust denial involves not only a challenge to all we know about history and truth. It does not only question well-known facts and historical data. It also involves hate, harm, and offence. We can assume that Jewish students would be highly uncomfortable in a class where Jews are presented as liars, thieves and conspirators who exist to exploit the world. Therefore, a pertinent consideration is the presence of Jewish students in the school concerned. This is not to say that Christian students are not offended by such hateful speech. This is only to say that Jewish students are more likely to suffer offence when subjected to such teachings.

**Students' age:** The students' age is relevant. The younger they are, their vulnerability is higher. They are more susceptible to manipulation. Their ability to resist their teachers is relatively limited, and the influence the teacher enjoys over them is markedly higher. High school students may try to refute Holocaust denial, not accepting it as a given. This is unlikely to happen in primary schools.

**Student-teacher relations:** a relevant consideration is the teacher's reaction when confronted with students who challenge his/her views and do not accept them at face value. Does the teacher allow argumentation in class, counter-arguments, and different interpretations of history, or does he insist that the students parrot the Holocaust denial mantras, and punish those who resist the denier's "truth"? Given that Holocaust deniers present themselves as the prime champions of free expression, marketplace of ideas and the search of truth that enable their activities, we can *prima facie* assume wide latitude for discussion. But if this is not the case, and students are intimidated from voicing counter-truths, and are even punished for insisting on holding the conventional truth, then there is a room for intervention to stop the one-sided, hateful interpretation of history.

**Locus:** Another relevant distinction is between teachers who discuss their ideas about the existence of the Holocaust at school, and teachers who do not discuss their ideas at school. There might be teachers who are Holocaust deniers only in their private lives, who do not make their views on the subject publicly known. If this is the case, they should be allowed to teach as long as no grounds are found for discriminating against students of Jewish beliefs, and/or students whose views on the Holocaust are different from theirs.

**Extracurricular activity:** A further distinction is between teachers who do not discuss their ideas, but are known for having such ideas, who are notorious for the activities in this sphere, and Holocaust deniers who remain tacit in their belief. There might be teachers who are Holocaust denial activists, yet for various reasons mentioned above (teach sciences; understand that they should follow the curricula; sensitive to education sponsored by the public purse), they refrain from bringing their views into class. Yet Jews and possibly students of other religious beliefs might feel intimidated by the sheer presence of those teachers at school. One can assume that a Jewish student will not feel welcome in a place where prominent a Holocaust denier teaches. Teachers, in most cases, enjoy far more power and influence than students. Their ability to manipulate, to play power games, to influence, is by definition superior to the ability of students.

### **James Keegstra**

Does freedom of expression mean you can say anything to anyone? If not, what can you say and to whom? Do free speech and academic freedom provide leeway to deviate from the prescribed curricula to preach hate and to teach racism and discrimination? James Keegstra would push his freedom of expression to the limit and eventually forced the Supreme Court of Canada to answer these difficult questions.

Keegstra initially taught his areas of specialization: automotives and industrial arts. As with other staff members in the school of Eckville, Alberta, he was asked to expand his teaching horizons and to teach a wide range of subjects: social studies, law, mathematics, and science to both junior and senior high school classes.<sup>18</sup> He taught classes from 1968 to the early 1980s. In 1980, he won the mayoralty of Eckville. In 1982, he was fired from his fourteen-year position at the school on the grounds of failing to follow the education department's social studies curriculum. His main deviation was that he taught the curriculum of the Institute for Historical Review, an institute that was founded initially with the purpose to "review" one historical truth, i.e. the Holocaust.<sup>19</sup> Keegstra made many statements denigrating and smearing Catholics but his focus was on Jews. For almost ten years, he taught his students that there was an all-encompassing Jewish conspiracy to undermine Christianity and control the world. His version of the world was one in which the major centers of power were controlled by Jews: the banks, the media, the universities, Hollywood, most publishers and, of course, politics. Keegstra's students were expected to recite these teachings in class and on exams. If they did not, they were marked down for it.<sup>20</sup>

The power of indoctrination which teachers have over their students was clearly apparent in this case. Students that were interviewed about their views and beliefs saw international Jewish conspiracy as historical fact. This idea was not only legitimate; it was an accurate depiction of reality.<sup>21</sup>

Robert Mason Lee, who researched Keegstra's influence at his school, described Keegstra as a person who enjoyed the respect of his students and their parents. Only few chose to contradict the teacher-mayor with the plain and skilled speech, who backed his statements with "facts" and quotes from Christian teachings. He was so eloquent and persuasive that he seemed credible to his students who accepted his interpretations of historical events. These events were illuminated by a new, different light when explained by Keegstra.<sup>22</sup> One of his students, the winner of the school's highest graduating award commented: "I'm trying so hard to be open-minded and they're close minded".<sup>23</sup>

Keegstra was so sure of himself that he submitted an essay titled "Judaism and Its Role in Society from 1776-1918", written by one of his students, to his superintendent, R.K. David. The student wrote that the Jews were complicit in a number of nefarious organizations; that they wished to control the world through welfare states and bloody revolutions; that they wanted to establish their own "world order"; that they wished to group all governments together into one world dictatorship. They are, therefore, "truly a formidable sect", working through deception and false tales to achieve their ends. "They are powerful and must be put in their place".<sup>24</sup> This piece was a testament not only to Keegstra's teachings, but also to his sense of trust in the system in which he worked. He thought his superiors condoned and approved his teachings.

In his first warning letter to Keegstra, Superintendent David wrote that he had not intended to muzzle Keegstra's academic freedom nor to limit his intellectual integrity. Controversial interpretations were not to be suppressed but all positions were to be presented in as unbiased a way as possible.<sup>25</sup> It is a contested question whether tolerance should protect vicious anti-Semitism that speaks of world Jewish conspiracy to control the world and that

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<sup>18</sup>. David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair* (Toronto: Doubleday, 1985): 17.

<sup>19</sup>. <http://www.ihr.org>

<sup>20</sup>. David Matas, *Bloody Words* (Winnipeg: Bain & Cox, 2000): 50.

<sup>21</sup>. Allison Reyes, "Freedom of Expression and Public School Teachers," *Dalhousie J. of Legal Studies*, 4 (1995): 44.

<sup>22</sup>. Robert Mason Lee. "Keegstra's Children", *Saturday Night*, 100 (May 1985): 38-46.

<sup>23</sup>. William Hare, "Limiting the Freedom of Expression: The Keegstra Case", *Canadian J. of Education*, 15(4) (1990): 377.

<sup>24</sup>. David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*, Appendix, Document 11: 213-223.

<sup>25</sup>. Letter from R.K. David to Keegstra (December 18, 1981), in David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*, Appendix, Document 1: 197-198.

denies the Holocaust. The ability of thinking students in class to express other points of views was extremely limited in Keegstra's class, even more so when they knew that there would be academic consequences to their stubbornness in rejecting his ideas.

After numerous warnings, in December 1982 the School Board decided to dismiss Keegstra. The reasons for the dismissal were Keegstra's failure to comply with Alberta Education's prescribed curriculum, and his failure to modify his teaching and/or approach to reflect the desires of members of the local community and the Board of Education.<sup>26</sup>

In May 1983, the National Film Board Holocaust documentary *Memorandum* was shown in Keegstra's school. Donald Brittain, the film director and writer, came to answer questions about the film and its troubling episodes, showing concentration camp cruelty. No questions were asked. One of the 250 students who were present in the showing estimated that some 80 percent of his fellow grade eleven students denied that the Holocaust occurred and believed in a world Jewish conspiracy. Keegstra commented that the film "was a documentation of hate. I would challenge its authenticity".<sup>27</sup>

Further evidence showed that a generation of students accepted Keegstra's views about the international Jewish conspiracy in almost all its details. Keegstra's students came to believe that Judaism and Christianity were mortal enemies; that the Talmud is a perverted and evil book, and that Jews have been taking over the world.<sup>28</sup> For his students, Keegstra was the major, if not only, source of information about Jews. Very few of the students had ever seen a Jew. There were no Jews in Eckville, and very few in rural Alberta. Almost all of Alberta's Jews, some 10,000 people, lived in Edmonton and Calgary, far away from the Eckville area.<sup>29</sup>

When Keegstra appealed against his dismissal to the Board of Reference, the School Board's legal representative, Richard McNally, made important observations on the impact of Keegstra's bigotry on his students, saying that the audience was captive, comprised of young and impressionable minds (classes 9 to 12), adding that "even grade twelve students are not as mature as might be thought, when dealing with such value laden material".<sup>30</sup> McNally rightly noted that the possibility of harm to grade nine students exposed to such teachings is even more manifest: "The minds of students and their personalities are society's raw materials with which the future is fashioned. To have a doctrine of hate taught to students is not only a betrayal of the trust and respect accorded teachers, but is a betrayal of the hopes of society for a better future".<sup>31</sup>

In October 1983, Keegstra was defeated in the Eckville mayoral contest by a 278 to 123 vote margin.<sup>32</sup> In January 1984, Keegstra was charged with unlawfully promoting hatred against an identifiable group as defined under s. 319(2) of the *Criminal Code*. Keegstra argued that this charge violated his freedom of expression under s. 2b of the *Charter* in that he was prevented from speaking his mind.<sup>33</sup> Keegstra outside the classroom was by far more supportive of free expression than inside the classroom.

In February 1984, a three-person Teaching Profession Appeal Board upheld the Alberta Teachers' Association decision to terminate Keegstra's ATA membership, and to

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<sup>26</sup>. Allison Reyes, "Freedom of Expression and Public School Teachers": 43; David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 207-208.

<sup>27</sup>. David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 167.

<sup>28</sup>. *Ibid.*: 63.

<sup>29</sup>. *Ibid.*, *Ibid.*

<sup>30</sup>. *Ibid.*: 114.

<sup>31</sup>. Board of Reference (March 1983), 2, p. 301, quoted in David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 114-115.

<sup>32</sup>. *Ibid.*: 177.

<sup>33</sup>. Section 2 of the Charter holds: "Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association."

Cf. <http://laws.justice.gc.ca/en/charter/>



recommend the suspension of his license. In April, his license was revoked, making it impossible for Keegstra to teach in an accredited school in Alberta.<sup>34</sup>

Keegstra saw the Jews as being responsible for every historical atrocity that had ever taken place: wars, revolutions, depressions. They all were the result of the Jewish relentless attempt to achieve world power. He suggested to his students that Jews formed a worldwide conspiracy to promote their own cause. Keegstra had described Jews as "revolutionists," "treacherous," "impostors," "communists," "secret," "sneaky," "manipulative," "deceptive," "subversive," "barbaric," "sadistic," "materialistic," "money-loving," "power-hungry", and "child killers". Jews purportedly "created the Holocaust to gain sympathy". The Jews had assassinated Abraham Lincoln and Franklin D. Roosevelt. The Jews were behind the Russian and French Revolutions as well as the Industrial Revolution, and the 1930s Depression. They had started both World Wars. Keegstra also taught that hundreds of years ago, a Jewish group held a "Feast of Reason" during which young girls were murdered and their blood poured over the bodies of prostitutes.<sup>35</sup> The Jews created Marxism and modern capitalist economics. The Jews had perpetrated the Holocaust hoax to blackmail support for the establishment of Israel. Further, the IRA had been a communist organization and the troubles in Ireland had been fomented by German Jews.<sup>36</sup> Keegstra advised the students that they were to accept his views as true unless they were able to contradict them. Encyclopedias were viewed as "false" or "tainted". Students who echoed his views generally received better grades than those who didn't. Keegstra made the statements in public, in his capacity as a teacher. He made them to attack Jewish peoples and not in any effort to generate discussion for public benefit. Now, in his subjective mindset, his advice and ideas might well be "discussion for the public benefit". I argue that objectively this is not for the public benefit, whatever Keegstra may think.

Section 319(2) of the Canadian *Criminal Code* states:

**Wilful promotion of hatred** - Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- a.) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- b.) an offence punishable on summary conviction.

Keegstra was convicted by a jury in a trial before McKenzie J. of the Alberta Court of Queen's Bench. Prior to his trial, Keegstra applied to the Court of Queen's Bench in Alberta for an order quashing the charge on a number of grounds, the primary one being that his right to free expression was infringed. The application was dismissed by Quigley J., and Keegstra was thereafter tried and convicted. He then appealed his conviction to the Alberta Court of Appeal, raising the same *Charter* issues. The Court of Appeal unanimously accepted his argument, and it is from this judgment that the Crown appealed to the Supreme Court.

*R. v. Keegstra*<sup>37</sup> and *R. v. Andrews and Smith*<sup>38</sup> were decided concurrently by the Supreme Court in 1990. The Court upheld by a four to three margin the constitutional validity of the crime of wilfully promoting hatred. It also upheld the antihate provisions of the *Canadian Human Rights Act* in the *Taylor* case,<sup>39</sup> which had been joined with *Keegstra* and *Andrews* for hearing. In *Keegstra*, the majority of the Supreme Court agreed that a crime that prevents communication (even communication that promotes hatred) is an infringement of freedom of expression as defined in s. 2b of the *Charter*. However, the majority stated that freedom of expression could be limited under s. 1 of the *Charter* where the expression involves the

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<sup>34</sup>. David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 177.

<sup>35</sup>. *Ibid.*: 114, 180.

<sup>36</sup>. *Ibid.*: 60-74.

<sup>37</sup>. *R. v. Keegstra* [1990] 3 S.C.R. 697.

<sup>38</sup>. *R. v. Andrews and Smith* [1990] 3 S.C.R. 870.

<sup>39</sup>. *Canada (Human Rights Commission) v. Taylor* [1990] 3 S.C.R. 892. See Irwin Cotler, "Holocaust Denial, Equality and Harm: Boundaries of Liberty and Tolerance in a Liberal Democracy," in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance*: 151-181.

promotion of hatred against an identifiable group.<sup>40</sup> The Supreme Court limited Keegstra's freedom of expression because of the harm that can flow from hate propaganda. The Supreme Court stated that the objective of criminalizing the promotion of hatred is an attempt to reduce racial, ethnic, and religious tensions (and possibly violence) in society. The majority of the Supreme Court, therefore, concluded that, "few concerns can be as central to the concept of a free and democratic society as the dissipation of racism, and the especially strong value which Canadian society attaches to this goal must never be forgotten in assessing the effects of an impugned legislative measure".<sup>41</sup>

It is pertinent to note that Section 7 of the Canadian *Charter* holds: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice," while section 15(1) dictates: "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."<sup>42</sup> In turn, section 27 holds: "This *Charter* shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians".<sup>43</sup>

Chief Justice Dickson, who delivered the opinion of the Court, said that hate propaganda seriously threatened both the enthusiasm with which the value of equality is accepted and acted upon by society and the connection of target group members to their community. The Court said that "hate propaganda contributes little to the aspirations of Canadians or Canada in either the quest for truth, the promotion of individual self-development, or the protection and fostering of a vibrant democracy where the participation of all individuals is accepted and encouraged."<sup>44</sup> It depicted Keegstra as inflicting injury on his target group, the Jews, and as striving to undermine worthy communal aspirations. The language used by the Court to describe Keegstra was far from neutral or objective. Chief Justice Dickson explicitly stated that there could be no real disagreement about the subject matter of the messages and teachings communicated by the respondent, Keegstra: it was deeply offensive, hurtful, and damaging to target group members, misleading to his listeners, and antithetical to the furtherance of tolerance and understanding in society. Those who promoted hate speech were described as "hate mongers" who advocated their views with "inordinate vitriol." Their aim was to "subvert" and "repudiate" and "undermine" democracy, which they did with "unparalleled vigour." Since their ideas were "anathemic" and "inimical" to democracy, the Court viewed them with "severe reprobation." Dickson C.J. asserted that expression can work to undermine Canadians' commitment to democracy where it is employed to propagate ideas anathemic to democratic values. Hate propaganda worked in just such a way, arguing as it did for a society in which the democratic process was subverted and individuals were denied respect and dignity simply because of racial or religious characteristics. This brand of expressive activity was thus wholly inimical to the democratic aspirations of the free expression guarantee. In this manner, the Court characterized Keegstra as the enemy of democracy who did not deserve the right to free speech to undermine fundamental rights of others.<sup>45</sup>

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<sup>40</sup>. Section 1 of the Charter holds: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." [justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-cddl/#:~:text=The%20Canadian%20Charter%20of%20Rights%20and%20Freedoms%20protects%20a%20number,of%20our%20country's%20greatest%20accomplishments](http://justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-cddl/#:~:text=The%20Canadian%20Charter%20of%20Rights%20and%20Freedoms%20protects%20a%20number,of%20our%20country's%20greatest%20accomplishments)

<sup>41</sup>. *R. v. Keegstra* [1990] 3 S.C.R. , at 787.

<sup>42</sup>. The Canadian Charter of Rights and Freedoms.

<sup>43</sup>. *Ibid.*

<sup>44</sup>. *R. v. Keegstra* [1990] 3 S.C.R.

<sup>45</sup>. Cf. *R. v. Keegstra* [1990] S.C.J. No. 131, at 763-769. See also David Dyzenhaus and Arthur Ripstein (eds.), *Law and Morality* (Toronto: University of Toronto Press, 1998), chap. 9; Richard Moon, "The Regulation of Racist Expression," in R. Cohen-Almagor (ed.), *Liberal Democracy and the Limits of Tolerance*, *op. cit.*, pp. 182-199; Evelyn Kallen and Lawrence Lam, "Target for Hate: The

In her dissent, Justice McLachlin expressed concern that a ban on hate speech might mean that scientists would think twice before researching and publishing results suggesting differences between ethnic or racial groups. She wrote:

Scientists may well think twice before researching and publishing results of research suggesting difference between ethnic or racial groups. Given the serious consequences of criminal prosecution, it is not entirely speculative to suppose that even political debate on crucial issues such as immigration, educational language rights, foreign ownership and trade may be tempered. These matters go to the heart of the traditional justifications for protecting freedom of expression.<sup>46</sup>

Well, scientists need to be careful of what they are saying. It is not enough to simply air bogus claims. Claims should be based on some evidence. If they are patently false, the result of biases and prejudices, they have very little room in research and class. But this is not the issue here, as Keegstra cannot be called a "scientist", and his students were not mature people who could critically evaluate his views and provide counter-arguments. Keegstra abused his authority. His students had to follow their teacher or be penalized.

There was no marketplace of ideas in Keegstra's classes. They were systematically biased to inculcate the Jewish conspiracy theory. Keegstra did not welcome open-mindedness, critical thinking and debate. None of the viable "trustworthy" sources to which Keegstra directed his students proposed a different viewpoint than his. When students ventured to draw on sources other than those of which Keegstra approved, their work was either not assessed at all or assessed adversely.<sup>47</sup> There was no point doing independent research because the "other" books, those that were not authorized by Keegstra, were said to be censored by conspirators.<sup>48</sup> What Keegstra wanted to achieve was more adherents to his views. He did not want rational critics. He wanted parrots.

Indeed, Keegstra undermined the critical approach to education. He was not an educator but an indoctrinator. The parent responsible for initiating the complaint that eventually led to the decisive action against Keegstra closed her letter to the superintendent by saying: "As our children are being sent to school for education, not indoctrination, I appeal to you to dismiss Mr. Keegstra from teaching those classes in which our children will be enrolled".<sup>49</sup>

Justice McLachlin compared Keegstra's sayings to Rushdie's *Satanic Verses*. She argued against the criminal restriction of hate promotion not by focusing on its value but rather by pointing out how difficult it is to draw a line separating hate promotion from other forms of expression. She was concerned that the line might be drawn in the wrong place, and of the potential "chilling effect" on legitimate speech. People might be reluctant to publish material, even valuable material, that should not, and probably would not, be restricted because they are unwilling to take the risk that it might fall within a criminal prohibition that does not have a clear and uncontested scope.<sup>50</sup> With respect, I do not think these are the most important issues. The question is not merely of free expression. The issue under concern is not only Keegstra's right to vilify the Jews. The forum is important. It is not merely a question

Impact of the Zündel and Keegstra Trials on A Jewish-Canadian Audience," *Canadian Ethnic Studies*, 25(1) (1993): 9-24. For critique of the *Keegstra* decision, see Terry Heinrichs, "Censorship as Free Speech! Free Expression Values and the Logic of Silencing in *R. v. Keegstra*"; Stefan Braun, *Democracy off Balance* (Toronto: University of Toronto Press, 2004): 26-29; Stephen Newman, "Ahenakew's views are wrong, but so is silencing him", *Globe & Mail* (July 13, 2005).

<sup>46</sup>. *R. v. Keegstra* [1990] S.C.J. No. 131.

<sup>47</sup>. David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 61-62, 66.

<sup>48</sup>. *Ibid.*: 98.

<sup>49</sup>. Letter from Susan Maddox to R.K. David (October 11, 1982), Appendix, Document 6, in Bercuson and Wertheimer, *A Trust Betrayed*: 203-206.

<sup>50</sup>. *R. v. Keegstra* [1990] S.C.J. No. 131; 3 S.C.R. 697. See also Richard Moon, *The Constitutional Protection of Freedom of Expression*: 136-137.

of introducing "another truth" in the marketplace of ideas. It is also a question of education, whether this is the kind of education we want our children to receive. It is also a question of offence. The students were captive audience in Keegstra's hands, and were punished if they failed to accept his views. They were not free to criticize or to question his opinions. If there was chilling effect, it was on the students' ability to develop and express independent thinking, critical of Keegstra's bigotry.

Another relevant question is the effects that revisionist teaching has on the teachings of fellow teachers. In effect, Keegstra was saying: Forget everything you were told before. Ignore all that is taught by other teachers. All they say is patently false. I bring you the truth. Should history and social studies teachers be allowed to teach falsehoods and dress major events of modern history with twisted interpretations that betray historical facts, falsifying their origins and outcomes? Isn't this misuse of public money? Can this be called "education"?

Keegstra was a social science teacher at a public school and was paid by public money. He had to adhere to certain curricula but abandoned it altogether because it was "biased", the result of Jewish manipulation. Public school teachers assume a position of influence and trust over their students and must be seen to be impartial and tolerant. They are inextricably linked to the integrity of the school system, and exert considerable influence over their students. For some students, they serve as role models. Keegstra's students, classes 9 to 12, were clearly influenced by his persona and impressed by his anti-establishment teachings. I mentioned that there were no Jews in Eckville. After Keegstra's dismissal it was claimed that Keegstra would not have been tolerated for long if there had been Jewish students in his classes, exposed to his bigotry, and prepared to complain to their parents.<sup>51</sup> Keegstra was very open and clear in his blatant anti-Semitism and in describing the Holocaust as a hoax. Keegstra's replacement, Dick Hoeksema, said many students and some fellow teachers defended Keegstra's views: "I would say World War II started because Hitler invaded Poland and they'd (students) say, 'No, Hitler liberated Poland,' " Hoeksema told Robert Mason Lee. "I was starting to think that I was crazy. That I was the only person who thought this way."<sup>52</sup>

Keegstra was widely hailed as a good and "forceful teacher". His classroom management skills have earned near-universal praise. This suggests the dispiriting conclusion that this appraisal has lost its essential meaning. The judgment was based on the fact that Keegstra maintained discipline; it was not related to any consideration of the knowledge, skills and attitudes being learned by his students.<sup>53</sup>

## Conclusions

Teachers occupy a unique position of trust in democratic societies, and they must handle such trust and the instruction of young people with great care.<sup>54</sup> Teachers work in sensitive areas in which they shape the minds of young people toward the society in which they live, toward history and politics. Teachers are situated in a crucial crossroads, spending many hours with students and have the potential of becoming their role models. They play an important role in inculcating values and ideas. Teachers may present in classes controversial issues and they are not invariably required to remain neutral regarding them. They may display strong enthusiasm on the subject at hand. They may have an agenda. Indeed, I do not believe it is possible *not* to have an agenda in teaching. By the very making of the curricula, by the process of selection of readings, by the way teachers present the issues, they create an agenda. They promote certain ideals, they undermine others, they direct and lead the way for students to follow.

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<sup>51</sup>. David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 69.

<sup>52</sup>. David Burke, "Searching for truth in confusing times", *Whistler Question* (October 5, 2005).

<sup>53</sup>. William Hare, "Limiting the Freedom of Expression: The Keegstra Case", *Canadian J. of Education*, 15, No. 4 (1990): 377, 386; David Bercuson and Douglas Wertheimer, *A Trust Betrayed: The Keegstra Affair*: 100.

<sup>54</sup>. Cf. *Sterzing v. Fort Bend Independent School District*, 376 F. Supp. 657 (S.D. Tex. 1972), at 661.

The search for truth is certainly desirable. It is achieved by presenting different, often conflicting, conceptions and beliefs. The concern for truth does not mean promoting *one* truth, but clashing different truths in the marketplace of ideas, and allowing students scope to seek and adopt the truth which appeals to them the most. Education does not mean indoctrination, nor is it free from responsibility. The responsible teacher is required to contest his/her own beliefs and allow students to do exactly the same thing. When teaching about nature and the planet in which we live, teachers may mention the Flat Earth Society.<sup>55</sup> But teachers should inform their superiors, and their superiors, in turn, should inform the students' parents, if they intend to concentrate all or most of their teaching around this Society's worldview. Then, parents can decide whether this is what they want their children to know about the world in which we live, or rather send their children to another school, where time is devoted to science in a more conventional way, in accordance with coherent methodology. In any event, such teaching should, at the very least, monitored closely and remain open for scrutiny and counter arguments.

Teaching malice and falsehood, hatred and dubious conspiracy theories is a different matter altogether. It is not only that tax money should be spent in a more prudent way, as the above example illustrates. Such teachings are, simply put, not educational. They do not espouse any values that democracies should promote, and the search for truth is red herring to plant seeds of disrespect, disharmony, discrimination and discredit against the target group in question. Holocaust deniers thus pose a special pedagogic problem. They have chosen hate and lies over reason and facts. Their tone is evasive, sometimes threatening. Protected by ideas of free expression, academic freedom and liberal tolerance, combined with bureaucratic ineptitude and moral myopia, Keegstra was allowed to teach students hatred for nearly ten years. He shaped a generation of young, impressible minds with lies, malice and hatred.

To be sure, Keegstra and his likes did not pose a tangible threat to the Jewish community or to the stability of the nation. However, parents do not send their young to school to learn unfounded theories, and to subject their minds to racial bigotry and hateful propaganda. Students need to feel comfortable in schools, where they spend a good portion of their days. They need not feel intimidated because of their origins, or because they fail to parrot the "right" views. Every individual has the right to a school system free from bias, prejudice and intolerance.<sup>56</sup>

In *Ross v. New Brunswick School Dist. No. 15* (1996) Justice La Forest said:

A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it.<sup>57</sup>

Let me end by referring to another pertinent court case, *Trinity Western University*, concerning discrimination against non-Christians and gays. The plea was to disallow the educational program of this private university, associated with the Evangelical Free Church of Canada, as long as its teachers espoused discriminatory views.<sup>58</sup> The Supreme Court ruled (eight to one) that the Christian beliefs of the teachers-in-training were irrelevant; only discriminatory conduct toward homosexuals would disqualify them from holding jobs in the

<sup>55</sup>. [http://www.alaska.net/~clund/e\\_djublonskopf/Flatearthsociety.htm](http://www.alaska.net/~clund/e_djublonskopf/Flatearthsociety.htm)

<sup>56</sup>. *Peel Board of Education and O.S.S.T.F. (Fromm) Re Peel Board of Education and Ontario Secondary School*, 105 L.A.C. (4th) 15 Ontario (March 8, 2002): 57.

<sup>57</sup>. *Ross v. New Brunswick School Dist. No. 15* (1996): 856.

<sup>58</sup>. *Trinity Western University v. College of Teachers* [2001] 1 S.C.R. 722, 2001 SCC 31; 2001 C.R.R. LEXIS 3. For further discussion, see "History of free speech in Canada" (2022), [https://www.secret-bases.co.uk/wiki/History\\_of\\_free\\_speech\\_in\\_Canada](https://www.secret-bases.co.uk/wiki/History_of_free_speech_in_Canada)

BC public schools. The British Columbia College of Teachers (BCCT), a regulatory body, had ruled that the TWU's "community standards," which teachers-in-training were obligated to affirm, was discriminatory and for that reason it had denied TWU accreditation. The Supreme Court distinguished between the beliefs of TWU teachers and their conduct, ruling that the BCCT had denied TWU accreditation on the basis of irrelevant considerations.

The Court explained that the freedom to hold beliefs is broader than the freedom to act on them. Students attending TWU were free to adopt personal rules of conduct based on their religious beliefs provided they did not interfere with the rights of others. Any restriction on freedom of religion had to be justified by evidence that the exercise of that freedom would have a detrimental impact on the public school system. Absent concrete evidence that training teachers at TWU fostered discrimination in the public schools, the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected. TWU's Community Standards were not sufficient to support the conclusion that the BCCT should anticipate intolerant behaviour by graduates of TWU's teacher education program in the public schools. The Court concluded that if a teacher in the public-school system engaged in discriminatory conduct by acting on beliefs that were homophobic, that teacher could be subject to disciplinary proceedings before the BCCT.

The language of hatred is destructive. It does not have a place in any setting, particularly not in an education setting that should encourage plurality of opinions, free debate and civility based on the maxims of respect for others, and not harming others. People should know history and learn from it in order to ascertain that appropriate lessons are learnt, and that the phenomenon of genocide is learnt as a past historical fact that has no currency at present. Empathy, kindness, harmony and understanding are in much need in our troubled world.