

***Fitna* as criminal hate propaganda**

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Fitna is a 16-minute long video by Dutch far-right, xenophobic politician Geert Wilders that seeks to demonize the Muslim community using classic hate propaganda techniques. Wilders is currently on trial in the Netherlands for criminal incitement of hatred against Muslims and *Fitna* forms part of the evidence in the case against him.

What follows asks the questions:

- i) what does Canadian criminal law say about anti-Muslim hate propaganda? and,
- ii) would dissemination of *Fitna* in Canada be criminal?

For the reasons below, I think that existing criminal law provides some measure of protection against the most extreme forms of hate propaganda directed against the Muslim community here in Canada. Comparing the state of the law and the contents of *Fitna*, I believe that the dissemination of *Fitna* in Canada would be a criminal act in that it would contravene the prohibition against the willful promotion of hatred on the basis of religion found in s. 319(2) of the *Criminal Code* (link: http://laws.justice.gc.ca/eng/C-46/page-6.html#codese:319-ss:_2_).

By way of professional background, over the course of the past 20-years, I have been heavily involved in the monitoring of hate group activity in Canada and abroad. Since 2001, I have successfully investigated, filed, and co-litigated 15 cases concerning the spread of Internet hate propaganda before the Canadian Human Rights Tribunal. Given that the test for criminal prosecution of the promotion of hatred exceeds what would violate the *Canadian Human Rights Act*, it goes without saying that I believe Internet dissemination of *Fitna* in Canada would also violate domestic human rights law and thus will not be considered further here.

Before examining the specific facts surrounding *Fitna*, it is important to understand the existing state of the law regarding anti-Muslim hate propaganda that *has already* been found to violate s. 319(2) of the *Criminal Code*. In 1997, Mark Harding distributed pamphlets and telephone messages composed of virulent attacks on the Muslim community alleging all manner of calumny. Following trial, Harding was convicted on 19 June 1998 in Toronto by Chief Justice Linden of the Ontario Court (Provincial Division) of three counts of the willful promotion of hatred (*R. v. Harding* (1998), 45 O.R. (3d) 207). The case was subsequently upheld on appeal to the Superior Court (31 January 2001) (see: <http://www.canlii.org/en/on/onsc/doc/2001/2001canlii28036/2001canlii28036.html>) and also the Ontario Court of Appeal (17 December 2001) (see: <http://www.canlii.org/en/on/onca/doc/2001/2001canlii21272/2001canlii21272.html>). In 2002, the Supreme Court of Canada denied Mr. Harding leave to appeal his conviction.

As cited by the Superior Court in their appeal judgement at paragraphs 9-10, Chief Justice Linden in his decision at trial considered the nature of the material that the accused Mr. Harding had distributed in the community:

[9] ...He began by summarizing [at p. 213 O.R.] the contents of the pamphlets and the telephone message as follows:

- (a) The prevailing theme is that Muslims as a group are dangerous people capable of acts of violent terrorism and great cruelty.
- (b) Muslims are intolerant of other faiths and pose a threat to such groups. In particular, they are rabidly anti-Semitic and anti-Christian.
- (c) Muslims have perpetrated horrific acts of violent terrorism throughout the world in the name of their religion.
- (d) Canadian Muslims are no different from their brethren in other countries, but they dishonestly masquerade as pacifists. They are “like raging wolves in sheep’s clothing, inside they are full of hate, violence, and murder.”
- (e) It is the objective of all Canadian Muslims to overtake this country. A “holy war” is being waged. When Muslims succeed with this goal, they will brutalize those who do not accept their religion.

[10] He then concluded that these materials deliver a message of hatred within the meaning of s. 319(2). He said [at pp. 213-14 O.R.]:

Muslims are depicted as persons who readily commit heinous atrocities for the sake of their religious beliefs.

Mr. Harding posits a world-wide Muslim conspiracy theory to the effect that all Muslims are united in the goal of overtaking the societies in which they live, and subjecting those who do not embrace their ways to violent oppression. He warns that Canadian Muslims are no different, but that they deceive us as to their true nature and intentions. The clear message is that Muslims pose a dangerous and insidious threat to the security and well-being of Canadians.

The feelings promoted by this material amount to “the most intense form of dislike”. The logical implication of the message conveyed is that Muslims are detestable people, deserving of our contempt. The material targets all Muslims, and warns the reader not to be fooled by their duplicity.

It goes further and invites the reader, in non-specific terms, to take defensive action against the threat of violence posed by Muslims as a group. The inevitable conclusion is that Muslims are deserving of ill-treatment on the basis of group-affiliation.

As noted, this is the existing state of the law with regard to the types of anti-Muslim hate messages that constitute the willful promotion of hatred in contravention of s. 319(2) of the *Criminal Code*.

I now move to a comparison of *Fitna* with the tests outlined above. Having viewed the video, and in light of my lengthy professional experience in examining such material, I believe without doubt that it constitutes classic hate propaganda. In order to understand the full context of *Fitna*, it’s helpful to summarize the stereotypical hate messages that are conveyed. These are presented in chronological order as they appear in the video:

Fitna hate messaging

- 00:19 – imagery suggests that Muslims are terrorists (Muslim male depicted holding black bomb with Islamic crescent marking)
- 00:48 – Koran portrayed as supporting Muslim terrorism – this is then followed by footage of 9/11 planes hijacked by young Muslim males flying into World Trade Centre (WTC)
- 01:25 – image of woman and audio of 9/11 telephone call where woman is terrified she is going to die - people seen jumping from WTC
- 01:45+ - scenes from Spanish train station bombings in Madrid superimposed with images of Muslim males preaching killing and genocide of non-Muslims
- 02:15+ – music used to enforce message of tragedy, grotesque images of bombing victims and destroyed train, corpses lined up in a row
- 02:48+ - Koran portrayed as supporting burning non-Muslims alive, video and audio translation purporting to show Muslim preacher advocating murder of Jews by beheading with crowd of Muslim men cheering him on
- 03:50+ - images of Muslim girl aged 3 stating (translation subtitles) that Allah has said that Jews are apes and pigs
- 04:17+ - images of burned corpses being dragged along the ground (possibly images from 1993 of US airmen being dragged through the streets of Mogadishu, Somalia after two US helicopters were downed)
- 04:25+ - imagery of 2005 London bus bombings where 52 people died and four young Muslim men were responsible
- 04:37+ - more video and translation with Muslim male calling for slaughter of Jews followed by images of armed Muslim children in uniform marching
- 04:45+ - images of Muslims holding signs reading in English, “BE PREPARED FOR THE REAL HOLOCAUST!”, “God bless Hitler”, Muslim men engaging in Nazi sieg heil salute
- 05:05+ - Koran again portrayed as calling for slaughter of non-believers – Dutch-language video and newspaper reports regarding the murder of anti-Muslim politician Theo van Gogh, Muslim male murderer of von Gogh stating that he would commit the murder again if he had the chance and invoking Allah
- 06:00+ - video of demonstration and off-camera male speaker arguing people should take the murder of von Gogh as an example of action and again calling for murder, images of Muslims carrying bloody knives in public, shot of Dutch newspaper headline screaming “HITLIST” of purported targets of Dutch Muslims
- 06:20+ - images of Muslim on TV again calling for slaughter with melodramatic music swelling in background, murder of a prisoner by Muslim males shown including subsequent images of severed head dripping in blood
- 07:20+ - Muslim male stating that apostates should be killed, images of press coverage of death threats against various perceived targets such as Salman Rushdie and Hirsi Ali
- 08:00+ - Koran portrayed as advocating fight against non-believers, subsequent images purport to show five separate Muslim males advocating Islamic world domination, including 08:20+ - video of Iranian President Mahmoud Ahmedinejad arguing for Islamic world domination followed by three other unidentified Muslim males preaching the same including specifically Muslim rule over the United States, Britain, Europe as well as the rest of the world – then images of protest sign arguing same
- 09:15+ - sign images suggesting Islam represents attacks against Western freedoms and Islamic world domination

09:30+ - video purports to then address specific Muslim threat against Holland – frightening music coupled with dark storm clouds superimposed over Muslim mosque minarets, threat of mosques taking over traditional Dutch communities, Muslim women in burqas will invade, Muslims are engaged in takeover through excessive breeding, frightening shot of male Muslim stroking the hair of a presumed white Dutch woman (traditional anti-miscegenation, anti-black hate messaging, ‘they’re targeting our women’), male Muslim shown stating he will kill his mother or sister if they have sexual relations with non-Muslims, another male Muslim stating that adultery and homosexuality considered crimes by Islam

11:00+ - imagery portraying frightening multiplication of mosques as Muslims take over Holland

11:15+ - voice of Muslim male purporting to have stated in Dutch mosque that political parties, liberalism, democracy are to be condemned, women adulterers to be stoned

11:40+ - if Muslims take over Holland, gays will be executed, blood soaked children shown with knives with message that children will be tortured, women will be tortured, beheaded, hung, executed by bullets to the head

12:30+ - images of Dutch language newspaper headlines with stories about Muslim takeover, calls for murders of women, Muslims planning terrorist attacks, that they are against democracy, that the number of honour killings are exploding in Holland, Muslim children in Holland learn violence in school, Muslims are taking over and destroying Western traditions, they have prepared suicide commandos, Muslims preach and engage in violence against Dutch gays, engage in genital mutilation of girls, Al-Qaeda is advocating murder of Geert Wilders, the Koran is a “license to kill”

14:00+ - Koran should be desecrated

14:20+ - Muslims are taking over, Islam has no respect for you, Islam wants to rule and “seeks to destroy our Western civilization”, argues that Nazism and Communism were defeated and now Islam must be defeated, “Stop Islamisation”, “Defend our freedom”

14:58+ - imagery and audio with message that Islam is a ticking time bomb (reprise of opening image of Muslim male holding burning fuse bomb on shoulder), (15:10+) that bomb will eventually explode (ominous imagery and audio of storm, thunder, and lightning strike – 16:30+ video closes with repeat of same after credits end)

From the above, it can clearly be seen that the hate propaganda contained in *Fitna* is the mirror image of that found to violate s. 319(2) in the *Harding* case, namely that:

- (a) The prevailing theme is that Muslims as a group are dangerous people capable of acts of violent terrorism and great cruelty.
- (b) Muslims are intolerant of other faiths and pose a threat to such groups. In particular, they are rabidly anti-Semitic and anti-Christian.
- (c) Muslims have perpetrated horrific acts of violent terrorism throughout the world in the name of their religion.
- (d) *Fitna* is even broader than the *Harding* messages in that it is not just Canadian Muslims that are full of hate, violence, and murder, but all Muslims worldwide.
- (e) *Fitna* is again broader than the *Harding* messages in that all Muslims are shown as having the objective of taking over not just Western countries, but the world as a whole. A “holy war” is being waged. When Muslims succeed with this goal, they will brutalize those who do not accept their religion.

The parallel message disseminated in the *Harding* case was that Muslims pose a dangerous and insidious threat to the security and well being of Canadians while in *Fitna* it is to all non-Muslims worldwide. To quote Chief Justice Linden from *Harding*:

The feelings promoted by this material amount to “the most intense form of dislike”. The logical implication of the message conveyed is that Muslims are detestable people, deserving of our contempt. The material targets all Muslims, and warns the reader not to be fooled by their duplicity. It goes further and invites the reader, in non-specific terms, to take defensive action against the threat of violence posed by Muslims as a group. The inevitable conclusion is that Muslims are deserving of ill-treatment on the basis of group-affiliation.

The material distributed by Harding helped set the current bar for religious hate propaganda that crosses the criminal line in Canada. Both it and *Fitna* are blatant and bigoted attacks on our Muslim neighbours that debase their creators more than their targets. Based on all of the above, as with the material in the Harding case, I believe that dissemination of the *Fitna* video in Canada would also constitute the willful promotion of hatred in violation of s. 319(2) of the *Criminal Code*.