

# MALCOLM ROSS' INFLUENCE IN SCHOOL DISTRICT 15

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I am emboldened to comment on this report because I have read and written about some of the legal and historical issues in the trials of Ernst Zundel and James Keegstra,<sup>1</sup> and have read the mammoth transcripts of both of Zundel's trials. But I am an historian, not a lawyer. I have commented in Vancouver newspapers on the preposterous falsehoods of local Holocaust deniers; I have also been a participant in efforts to educate secondary school students in the verities and the issues of this unique case of genocide. Consequently my commentary will say less about the law than about internal contradictions, evasions or imprecisions, and lacunae in the Board of Inquiry report.<sup>2</sup> I also am not persuaded by the report's assumptions about the pervasive influence of Malcolm Ross. It is quite possible that my views would be different if the report had provided more of the evidence in the 23 volume transcript, which I have not read.

Unfortunately the report is flawed by its misuse of the word racism as a synonym for the antipathy towards Jews which is usually called anti-Semitism. Even this term is inappropriate, although it is almost inescapable. Jews are defined by religion and culture, not by race. They do not constitute a separate race, the Semites. They are in the same gene pool as the larger number of western Europeans. Nor, contrary to myth and cartoon, do their physiognomic features distinguish them clearly from the European population. The same, of course, is true for Canada and the United States. There are races in the world but the Jews are not one.

This is an important point. The Nazis claimed on totally unscientific grounds that Jews were a separate race, that is, they were obsessed with measurements of external appearance and ignored the genetic evidence. One of the reasons the Nazi attempt to exterminate the Jews was unique among instances of genocide was that the grounds were supposedly "racial." The word race should be used for Jews only in quotation marks in order to indicate that it is inappropriate. Those who use it without quotation marks in effect accept the Nazi criteria and are either careless, ignorant or malicious, perhaps all three. In the Board of Inquiry report,

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<sup>1</sup>L.E. Hill, "The Trial of Ernst Zundel: Revisionism and the Law in Canada" (1989) 6 Simon Wiesenthal Center Annual 165. See also B.P. Elman, "The Promotion of Hatred and the *Canadian Charter of Rights and Freedoms*: A Review of *Keegstra v. The Queen*" (1989) XV:1 Canadian Public Policy - Analyse de Politiques 72.

<sup>2</sup>*Attis v. Board of Education of District 15* (1991), 121 N.B.R. (2d) 1, (*sub nom. Attis v. New Brunswick School District No. 15*) 15 C.H.R.R. D/339 (Human Rights Board of Inquiry). [References hereinafter are to the edition reported in this *Journal* at 238.]

the reason is obviously carelessness.

Once this point is explained, most people can grasp it and will also accept it. At the same time they should also learn about the religious and cultural attributes of Jews and the bewildering numbers of combinations in which these can be found. A stereotypical Jew is hard to find, but prejudice lumps them all together. Such prejudices apparently moved the offending students in the school central to the report.

The report claims that “[i]t is clear ... that it is Malcolm Ross’ activities that are the initial cause for this complaint.”<sup>3</sup> In fact, the evidence in the report indicates that the cause of the complaint was the harassment of the Jewish children in the school by other students. The report does not claim that what Ross wrote had been read by the students who acted or spoke in a frightening and prejudiced way in school or at school events to the Jewish children. To the contrary, the report explicitly states that:

Although there was no evidence that any of the students making anti-Jewish remarks were directly influenced by any of Malcolm Ross’ teachings, given the high degree of publicity surrounding Malcolm Ross’ publications it would be reasonable to anticipate that his writings were a factor influencing some discriminatory conduct by the students.<sup>4</sup>

This wording is presumably deliberately vague about a crucial point. The report had already admitted lack of evidence that Ross had taught his ideas in the classroom or anywhere else in the school. This statement, however, seems to admit that there was no evidence that any of the culpable students had even read Ross’ writings. And the report adduces no proof that the publicity about Ross’ beliefs had influenced them.

Yet the author of the report believes it “reasonable” that “... his writings were a factor...” This is unconvincing reasoning about the main arguments in the case. Probably Ross’ ideas were talked about – reported by word of mouth so that they confirmed already existent prejudices. It seems unlikely that Ross was the original source of these prejudices. Nevertheless, the “Board of Inquiry has no hesitation in concluding that the public statements and writings of Malcolm Ross have continually over many years contributed to the creation of a poisoned environment within School District 15 which has greatly interfered with the educational services provided to the Complainant and his children.”<sup>5</sup> One can accept that the environment was poisoned and that this disturbed the education of the complainant’s children, but that Ross’ activities created the situation still seems

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<sup>3</sup>*Ibid.* at 252 [omitted].

<sup>4</sup>*Ibid.* at 264-65.

<sup>5</sup>*Ibid.* at 260.

very questionable.

My reluctance to concede Ross' influence may derive from distance and lack of an opportunity to read the transcript; perhaps virtually everyone in New Brunswick accepts that he is indeed influential and that the Board of Inquiry's conclusions are inescapable. But the chief reasons for challenging these conclusions derive from matters mentioned but not discussed in the report. The first concerns the question whether radical or fundamentalist Christianity is powerful in New Brunswick, whether many of its advocates are anti-Jewish, and whether this Christian antipathy to Jews may have influenced the students who harassed the Jewish children in the school. If this were true, then Ross' influence, the poisoning effect of his activities, might have been much less important than the report claims.

A similar set of questions arises about the possible presence of more politically charged hostility to Jews, advocated by the Church of Jesus Christ Christian Aryan Nations, or run-of-the-mill Holocaust deniers, like Ernst Zundel and James Keegstra. Their beliefs certainly overlap those of Malcolm Ross. Presumably if they had constituted a public presence, the Board of Inquiry would have mentioned them. But do they have supporters in the families of some of the students who wore and scribbled swastikas or shouted "Heil Hitler"?

Finally, there is the treatment of Ross and his ideas in the press. During the Keegstra trial and the first Zundel trial, Vancouver newspapers printed without comment or correction virtually any addled assertion expressed by them or their followers at the trials. Since they had the witness stand for longish periods the utterly uncritical reportage had the effect of lending credence to their claims. Furthermore, the papers featured some deeply ignorant but rather clever columnists who insidiously suggested that where there was so much smoke, there must be fire, that the Holocaust deniers could hardly be completely wrong. A number of us in the community and at the universities wrote letters to the editor, and then longer articles, challenging and refuting these columnists and those whose testimony for Keegstra and Zundel had been so flamboyantly, prominently and disturbingly reported.

What has happened in New Brunswick? The report provides evidence that Ross was quoted, his letters were published, his views were discussed, and that they were challenged. Since informed citizens did contradict Ross' ignorant perversions of the truth about Jews, Judaism, Zionism, the Holocaust, and many other matters, what credence can we give to the report's insistence on his ability to poison the educational environment? Most of the numerous letters to the School Board in 1986-1987 reportedly wanted it to act against Ross. Thus the poisoning of the atmosphere seems to have been less in Ross' favour than against him. How can the report maintain, then, that the publicity about Ross had been the chief factor in stimulating the harassment in the schools? Adults who read the

papers were largely against him. Only students, who seem not to have read or heard him, were involved in the bullying in the schools.

If more adults condemned him than supported him, why didn't the School Board discipline the children who were harassing the Jewish students? The report makes clear that the School Board did not take any disciplinary action against Malcolm Ross between 1978 and 1988,<sup>6</sup> but does not explain whether students were disciplined, and if so, under what rules this happened or when. Apparently the focus shifted so much to Ross that discriminatory behaviour by students in the schools was almost ignored. This shift of focus by a kind of internal logic requires that much be made of Ross' influence on the students through the publicity he obtained. But it is difficult to imagine teenagers paying much attention to these questions in the newspapers or on television. Furthermore, the only study of the effects of the press coverage on the first Zundel trial claims that Canadians were not swayed by it to increased support for him.<sup>7</sup> Why was the situation so different in New Brunswick with Ross, who cannot have had the same publicity before the hearing, when he reportedly had such an extensive influence, that he would have obtained during it?

The Board of Inquiry report tells us little about the frequency of the expression of those prejudices amongst the school children, and mentions only three main types: the scribbling "on blackboards, walls, and books"<sup>8</sup> or wearing of the swastika; the shouting of "Heil Hitler" accompanied by the raised-arm salute; and the malicious suggestion to Jewish children that the presence of Ross at the school posed a physical threat to them. It is understandable that the children were frightened and that their parents were irate at any of this harassment. But surely its frequency must be collated somehow with the chronology of Ross' public expressions or appearances in order to sustain the claim that the atmosphere of the school district was poisoned by him. Furthermore, the report states in one place that "as many as twenty students, at one time or another, participated."<sup>9</sup> Yet elsewhere the number is described as "not many."<sup>10</sup> When children torment one another only a few are necessary, and twenty against one or two is so disproportionate that "not many" is inappropriate and insensitive. At the same time, if there were really "not many," is the report's claim justified that Ross' influence was great and that the atmosphere was poisoned?

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<sup>6</sup>*Ibid.* at 261.

<sup>7</sup>G. Weimann & C. Winn, *Hate on Trial: The Zundel Affair, the Media, Public Opinion in Canada* (Oakville: Mosaic Press, 1986).

<sup>8</sup>*Supra*, note 2 at 248.

<sup>9</sup>*Ibid.* at 247.

<sup>10</sup>*Ibid.* at 265.

The report supports the complainant's claim that the teachers in the classrooms and on the playground, the principal, and the School Board did not deal decisively with these problems at the level where they occurred, and in the variety of ways that would have seemed suitable. The report mentions that "some teachers and principals involved were helpful in providing support and assistance."<sup>11</sup> But they were also frequently insensitive to the pain suffered by the victims and their actions were inept or ill-designed. Yet the report is very vague about solutions or proposals: the problems should have been actively identified, teachers provided with resources or assisted, or "qualified people ... brought together to address the problem."<sup>12</sup> Something is missing.

In Vancouver, policies are in place from the School Board forbidding words, deeds or symbols which can stimulate racial or "racial" hatred. Principals and teachers have the power to prevent students from wearing swastikas to school or on the premises, to punish students for writing slogans on the blackboards or anywhere else, from taunting or harassing other students verbally. Presumably if children themselves are afraid to face or report their tormentors, a parent who learns of their troubles can demand action of the school and obtain it. The teachers and principals will attempt to stop this kind of thing. The parent in New Brunswick did not obtain such satisfaction and it is no wonder that he pushed harder as a consequence, but remarkable that he had the stamina to pursue the matter through the legal rounds that followed.

The question remains why the teachers and principal did not discipline the guilty students for their discriminatory harassment. Was it because they could not catch them? This seems unlikely. The report indicates their numbers but not that their names were known. Was there no disciplinary code applicable to these incidents? Or was it because they lacked the will to apply the code? And were the reasons for that reluctance possibly because the teachers or the community sympathized with Ross' views? Was the source of the unwillingness to act against the perpetrators because of the School Board's failure "to pass a motion condemning bigotry and racism" on 22 April 1987? Or because "a member of the School Board publicly stated that Malcolm Ross' opinions were well documented and he had done his homework, thus appearing to support Mr. Ross' discriminatory views?"<sup>13</sup> This evidence in the report arouses suspicions about the climate of opinion in the community. The report mentions "that the evidence, as to the reasons for the motions not passing, is insufficient to warrant finding the actions were discriminatory."<sup>14</sup> The report does not comment on the

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<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.* at 239.

<sup>14</sup>*Ibid.* at 264.

extraordinary remarks, quoted by the complainant, of the member of the School Board who thought Ross had done his homework. The report does, however, discuss the School Board's reference to Ross' views as "... controversial rather than discriminatory."<sup>15</sup> Then the report apparently accepts this dodge on the grounds that the Board took disciplinary action against Ross. But on the evidence of the report itself, which summarizes some of Ross' views, that Judaism is the enemy, that Jews are part of an international conspiracy, that they are part of a great Satanic movement, and that they have lied about the numbers of Jews murdered in the Holocaust,<sup>16</sup> Ross' views are not merely controversial or discriminatory. They are false.

It is nonsense, then, to say that he had documented his views and done his homework. Such a claim is based on the view that reading the writings of anyone and citation of their works is as good as reading and citing anyone else. That is the method of Keegstra and Zundel. Critical scholarly method makes it possible to separate legitimate and credible sources from falsifiers and liars. Ross did not and does not do this. Because he does not, he violates the canons of his profession. Professionals have qualified and are licensed for a job, but the license can be lost or taken away, or they can be fired without losing their license. A teacher may be controversial for many reasons. But if a teacher propagates manifestly vicious falsehoods, that is not controversial. It is unprofessional.

This is the situation with Ross. The controversy is only about the continuation of his employment, and that is controversial because he propagated the falsehoods outside of the venue of his employment. The Board of Inquiry found an elegant solution to the problem by ordering that Ross be given leave of absence without pay for eighteen months and then be appointed to a non-teaching job if one is available. This in effect judges him guilty of professional misconduct and takes away his license to teach in the classroom. The Board of Inquiry also ordered that the Department of Education review the *Schools Act*<sup>17</sup> in consultation with the New Brunswick Teachers' Association to consider the possibility of defining professional conduct, presumably to facilitate punitive action in the future on professional grounds but without such enormous difficulty.

The report illustrates nicely the danger of confusing professional conduct with the conduct possibly expected by the community. A teacher's falsification of what is known to be true is rather different from the argument in the report that teachers are role models and that their off-duty behaviour should be consonant with the values of the community. A number of cases are cited about teachers

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<sup>15</sup>*Ibid.* at 262.

<sup>16</sup>*Ibid.* at 258-59.

<sup>17</sup>R.S.N.B. 1973, c. S-5.1.

whose activities outside of the school premises were so offensive to the community that punishment, even loss of employment, was justified.<sup>18</sup>

In the *Ross* case the misconduct or bad behaviour was the expression of his beliefs verbally and in print. The Board of Inquiry report claims that these beliefs had a deleterious effect on the atmosphere in the school and the treatment of some students by others, an argument which seems to me not proven. But the claim, backed by the B.C. case<sup>19</sup> and a few others, is the basis for the report's proposed remedy prohibiting Ross from "publishing, writing or selling" anything containing his ideas about Jews, Judaism and Zionism.

However, the Court of Queen's Bench of New Brunswick found on 31 December 1991<sup>20</sup> that this prohibition violated Ross' rights under the *Charter*.<sup>21</sup> Ross can once again write and publish what he likes. Neither the Board of Inquiry, which wanted to prevent Ross from publishing, nor the Court of Queen's Bench which rejected that solution, had the mandate to judge Ross' writings as hate literature within the *Criminal Code*,<sup>22</sup> and the Attorney General of New Brunswick had earlier declined to prosecute Ross on such a charge. At least there will no longer be any need to monitor him in the classroom.

We cannot know whether action by the school authorities against the students who stimulated "racial" hatred would have stopped them and would have relieved their victims. Such action would probably not have placated parents for whom Malcolm Ross had become an unacceptable presence in the school.

A further obvious way to have dealt with the problem in the schools would have been to educate the children about the different forms of prejudice and their histories, about the iniquities that arise from them, including genocide and its most horrifying manifestation, the attempted extermination of the European Jews by the Nazis. The report of the Inquiry does not mention that the School Board, or principal, or the teachers attempted such remedial action until recently, when a

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<sup>18</sup>One of the cases concerned married teachers; the husband photographed his wife nude and published it in a magazine. The School Board suspended both of them for six weeks. The Supreme Court of B.C. called their action "abnormal" and stated that it "amounted to misconduct." The teachers owed "a duty of good behaviour to the School Board as the employer but also to the local community at large and to the teaching profession." But the judge reduced the suspension to a month *Abbotsford School District 34 Board of School Trustees v. Shewan* (1986), 70 B.C.L.R. 40 (S.C.) at 64. I personally find this judgment alarming and preposterously prudish.

<sup>19</sup>*Ibid.*

<sup>20</sup>*Attis v. Board of Education District 15* (1991), 121 N.B.R. (2d) 361 (Q.B.).

<sup>21</sup>*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

<sup>22</sup>R.S.C. 1985, c. C-46.

section on the Holocaust was added to the modern history course.

If the remedial action had been taken and had been successful, so that Jewish students were no longer harassed and did not feel threatened, Malcolm Ross might still have remained in the classroom. His employment there should surely have come into question if he had expressed to the students the beliefs contained in his writings, including letters to the newspaper, and during the television appearances which attracted so much attention to himself. What he said in the classroom would have to have been kept separate from his publicly expressed beliefs, and if he had not done so, then there would have been clear grounds for firing him. His publications do stimulate "racial" hatred: he identifies Jews as the enemies of Christians. But he avoided teaching these beliefs, and his teaching provided no grounds for dismissal. Thus his case is quite different from that of James Keegstra; there was a wealth of evidence of Keegstra's indoctrination of students in his beliefs in the classroom. Of course what Ross himself had kept separate, the Board of Inquiry did not, and on reasonable grounds, resulting also in what seems to me justice.

In my view the School Board failed to fulfil its prescribed duties all right, but first and foremost because it did not discipline and control and educate the students who acted so outrageously toward the Jewish students in the school. If a code does not exist now to permit such disciplining by the principal and teachers, one should be introduced soon.

The School Board also failed a part, probably the majority, of its constituency, the community, when it did not pass a motion condemning "racism" and bigotry. When a member spoke approvingly of Ross' views, he may only have spoken for himself, but the Board of Inquiry does not record a condemnation from his fellow members. Surely this explains why the School Board did not discipline Ross earlier, and did not fire him when they had the chance, and why the problem landed with the Board of Inquiry.

Although the Board of Inquiry's orders were largely appropriate and justice was done to Ross by the Review Board, subject to the revision of the Court of Queen's Bench, the argument was not entirely persuasive about his influence and the precedents cited for disciplining him seem to me only awkwardly relevant. Rather than the sanctions of some imagined standard of community morality I prefer a conception of professionalism which encompasses life on the job as well as off it, but avoiding much emphasis on the role model supposedly sought by the community and required in the school for the students. Bizarre, unfounded and vicious attacks on others would seem to be unallowable characteristics of whatever notions of professionalism or a role model we hold.