

**Address by Marilou McPhedran,  
Chief Commissioner of the  
Saskatchewan Human Rights Commission  
to the  
Bicentennial Celebration Banquet for Black History  
Month,  
presented February 9, 2008 in Regina, by  
The Saskatchewan African-Canadian Heritage Museum**

Senator and Mr. Merchant, Minister Tell, Professor Reese and other honoured guests, let me begin by thanking our MC, Judy Kobsar, for that friendly introduction, as well as expressing appreciation to my colleague from the Commission, Reggie Newkirk, along with the co-chair of this evening's celebration, Christine Lwanga, for their invitation to join you this evening for a dual celebration of February as Black History Month in Canada and the bicentennial of the abolition of transatlantic slave trade, as recognized in the 2007 Resolution adopted by the UN General Assembly<sup>1</sup>, reaffirming the *Universal Declaration of Human Rights* enacted by the UN 60 years ago.<sup>2</sup>

But did you know that this year – 2008 – is a bicentennial of another crucial aspect of abolishing slavery? What happened 200 years ago that contributed to the Underground Railroad for runaway slaves making it into Canada? I speak of the 1808 deadline set by American law that marked the beginning of a dozen more years of anti-slavery law reform - pushing the United States to a place of genuine commitment to abolishing slavery. Like virtually all laws that bring about positive social change, the 1808 deadline did not happen simply because law makers just decided one day to pass the law! Whether in England, other European countries engaged in slavery, or colonial North America, what was true then is equally true today: citizens have as much or more to do with the making of positive social change through laws. And that is just one reason why I salute ALL of you for being here this evening to celebrate the Bicentennial of the abolition of the transatlantic slave trade and to support the Saskatchewan African-Canadian Heritage Museum. Let me speak briefly about what happened around the time of the American Revolution to illuminate some of the origins of the Underground Railroad into Canada.<sup>3</sup>

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<sup>1</sup> A/Res/61/19

<sup>2</sup> United Nations Resolution 217 A (III)

<sup>3</sup> I am indebted to Paul Finkelman, the President William McKinley Distinguished Professor of Law and Public Policy at Albany Law School, in Albany, New York, who provided much of this information on the American slave trade in speech notes he prepared for the University of Saskatchewan 'Chains and Links' human rights conference that I chaired in November 2007.

Before the American Revolution, the British government gave special protection to the Royal Africa Company, which brought more slaves to the American colonies than any other single entity. The American Revolution (1775 – 1783) freed many slaves who escaped in the confusion of the war – some finding their way to Canada, principally Nova Scotia.

Speaking of Nova Scotia, I'm going to interrupt myself to tell you about *The Book of Negroes* - an amazing book written by Canadian Lawrence Hill, a son of Dan and Donna Hill. Lawrence's dad, Daniel Hill III, was the first chief commissioner of Ontario's human rights commission – he was a hero of mine when I was in law school. And here's another anniversary: Dan's parents founded Ontario's Black History chapter in 1978 - 30 years ago. *The Book of Negroes* is an important but virtually unknown Canadian historical immigration document from the 19<sup>th</sup> century that actually exists, and Lawrence Hill has used it to weave a compelling tale, narrated by a Black slave heroine who proved to English society that horrors such as branding were part of the slave trade. This book gives us new information about 3,000 freedom-seekers who left New York for Nova Scotia and other British colonies near the end of the American Revolution.<sup>4</sup> In exchange for their service to the empire, Black Loyalists were promised liberty and land. In his compelling book, Hill tells us how what they received was little better than the circumstances they left behind: poverty, hunger, disease and servitude. Some returned to Africa out of disappointment and defeat.<sup>5</sup>

I hope you will read *The Book of Negroes*, but let's get back to linking law reform on slavery in the USA to Black History Month in Canada...

By 1774, in his first draft of the Declaration of Independence, Thomas Jefferson said that the King of England had "waged cruel war against human nature itself,

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<sup>4</sup> Many slaves were recruited as soldiers on the promise of their freedom after the war. It's estimated that some 5,000 black soldiers fought for the Revolutionary cause and more than 20,000 black soldiers fought on the British side.

<sup>5</sup> For more information on Black Loyalists in Canada, please see visit <http://blackloyalist.com/canadiandigitalcollection/>

violating its most sacred rights of life and liberty" by perpetuating the African slave trade.<sup>6</sup> Jefferson's criticism of the King was removed from the Declaration, but, in fact, historians have found little evidence that Jefferson or other early American leaders were committed to ending slavery – and to the extent they were, it was mostly on economic, not moral, grounds. Here again, the social movement dedicated to positive social change through law reform was led primarily by concerned citizens – much like those here tonight.

At the American Constitutional Convention of 1787, soon after the war had ended, southern delegates demanded that slavery be protected in the new country's constitution. And out of the political machinations of that time came what has been termed the "Dirty Compromise" – an agreement between delegates from New England and the Deep South to allow importing and trading in slaves to continue in the new United States of America – until 1808, when Congress would be allowed to impose a tax not exceeding \$10 per slave. Although this was a start toward abolition, it was a shameful one; it was expected that the Deep South population would grow fastest, so that by 1808, these southern states would have enough political power to block an abolition bill (which had to pass both the Congress and Senate and be signed by whoever was president by then). Even though the lawmakers had used the Dirty Compromise to avoid abolition, pressure from the abolition movement continued and in 1794 Congress prohibited the use of any U.S. port or shipyard for the purpose of fitting out or building any ship to be used in the slave trade, and also prohibited ships sailing from U.S. ports from trafficking in slaves to foreign countries.

But, as many of you here tonight know so well: a step forward for social justice often triggers a step backward...

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<sup>6</sup> Summary View of the Rights of British America (1774), in Julian Boyd, et al., eds., The Papers of Thomas Jefferson (Princeton, 1950) 1:130. Autobiography of Thomas Jefferson (1821), reprinted in Adrienne Koch and William Peden, The Life and Selected Writings of Thomas Jefferson (New York, 1944) 51.

In 1800 Georgia and South Carolina balked at the new law – and before the 1808 deadline, had imported about 100,000 new slaves from Africa. Congress responded by passing new laws designed to limit American participation in the trade, but Congress did not have the political power to stop the trade itself. The laws passed before the 1808 deadline focused on ships, sailors, and investors; none focused on helping slaves illegally imported into the United States. In 1806, Thomas Jefferson, who had long opposed the trade (but not slavery itself) reminded the nation in his Annual Address that on January 1, 1808 the Constitutional suspension of Congressional power on abolition would finally expire. And so in March 1807, Congress gave all slave traders nine months to close down their operations in the United States. To quote my primary source on the American slavery abolition laws, law historian Professor Paul Finkelman:

So, what would the nation do with slaves, illegally brought to its shores? Reflecting [President] Jefferson's states' rights ideology, his hatred of free blacks, and his refusal to spend money unless absolutely necessary, the law provided that any slaves illegally found in the United States would be treated according to the law of the state in which they were found – or brought to. In practice this meant the hapless Africans would become slaves in the United States, and that the states would profit from the illegal trade by selling the Africans.

Years of mounting pressure resulting from citizens' realization of the hypocrisy of the 1807 law prompted Congress in 1818 to pass an amendment that produced more effective changes, making prosecutions easier because anyone in possession of an African-born slave had to prove that the slave was in the United States at least five years before. The "Africanness" of a slave would be considered evidence against an owner, and the law shifted the onus of proof onto the owner to produce evidence that he had not imported the slave.

Economic incentives played an important role in the slow process of abolition. Yet another new law, just a year later (1819), was the start of the “African Squadron”, which patrolled the waters off the coast of Africa to try to stop the slave trade at its source, and brought in the new rule that illegally imported slaves be returned to Africa (usually to Liberia), rather than being sold in the United States. The United States government promised a \$25 bounty, to be shared by the crew, for every slave rescued from traders, and a bounty of \$50 per slave to any informant whose information led to the recovery of illegally imported slaves. Before the 1819 Act, the economic incentives had worked the other way: confiscated slaves were sold in the U.S. with ship crews and informants sharing in the proceeds of the sale. So 1819 marked a big shift – finally an American law authorized spending money to help Africans escape slavery.

Lastly, a law passed in 1820 brought in another powerful incentive: the hangman’s rope. African slave trading by Americans – or by non- Americans found on American ships - was re-defined as piracy, punishable by death.<sup>7</sup>

And now I want to link the bicentennial of American law reform on slavery to a rather new aspect of Black History Month, because today is “Hockey Day in Canada”. Does that seem like an odd connection? Well, not if you have read the wonderful book, *Black Ice: The Lost History of the Colored Hockey League of the Maritimes, 1895-1925!*

Brothers George and Darril Fosty spent years researching *Black Ice*, documenting the contributions of Canadian Blacks to hockey, including their style of play in the late 19th Century that superceded the style being played by whites at that time. For instance, did you know that Henry "Braces" Franklyn was the first "flopping" goalie? It would be more than 50 years before Jacques Plante

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<sup>7</sup> The 1820 Act was only to operate for 2 years but in 1823, Congress made it permanent, although no one was put to death for slave trading piracy until Abraham Lincoln became president.

popularized the style in the NHL. Furthermore, the slap shot was first seen in the Colored Hockey League and not again in the NHL for a half century.

Even the names of the teams in the 'Coloured Hockey League' reflected the Underground Railroad origins of many of the players. For example, Hammond Plains, a community with the largest contingent of people who could trace their origins to the Underground Railroad, named their team the "Moss Backs" referring to the side of a dead tree on which moss grows. At night, guided only by the stars, Black slaves fleeing north to Canada often traveled by touch through dense woodlands, feeling the sides of trees and determining where the moss grew. This allowed those fleeing to remain on course, for, as all slaves knew well, moss grows on the north side of a tree – and freedom in Canada was to the north.

And the Halifax team was named "the Stanley". Newspapers of the time had reported on a movement within the upper echelons of British society to promote the idea of educated Blacks returning to Western Africa in an attempt to "uplift" the primitive masses and to ensure British Empire control over the region. Arguing that it would be more feasible for Blacks, rather than Whites, to follow in the footsteps of Lord Stanley - the great explorer who had ventured deep into the Congo - these elitists believed that an army of "Black Stanleys" could stabilize the region and achieve the greatest benefits for the British cause. By naming the team "the Stanley" the Black league leaders had made both a political and satirical statement – mockery not well received by white Haligonian society.

The Fosty brothers go beyond hockey in their Black history research:

From the earliest days of British North America and the landing of the Black Loyalist forces in Nova Scotia, through to the War of 1812, and beyond, Black regiments served with distinction along the borderlands separating the British and their Canadian counterparts from the Americans. During the American attack on Canada in 1775 and the subsequent siege of Quebec City, it was a Black Canadian regiment, who comprised part of the "undaunted fifty," who defeated the Americans beneath the Citadel of Quebec. <sup>8</sup>

We are here tonight celebrating an important anniversary and I want to alert you to another one that is coming next month: March 21<sup>st</sup> is International Day for the Elimination of Racial Discrimination. It is the day set aside by the United Nations to commemorate the people killed and wounded at a peaceful anti-apartheid demonstration outside Sharpeville, South Africa in 1960. In Saskatchewan, it is the day when we join with nations around the world to promote a society free from all forms of racism.

Sadly, racial discrimination remains one of Saskatchewan's most serious and challenging problems. It permeates all aspects of public and community life, impacting on the social and economic strength of our province. Many people are still denied benefits, opportunities and respect because of their race or ancestry.

At the Saskatchewan Human Rights Commission, it is our mandate to prevent and combat racism and discrimination. One of the ways in which we are doing this is through involvement in the Canadian Coalition of Municipalities Against Racism.

The goal of this Coalition is to establish a network of Canadian municipalities interested in sharing experiences in order to improve their policies to fight racism,

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<sup>8</sup> <http://www.hockeyforum.com/nhl-forum/7346-fostys-black-ice-valuable-contribution-hockey-history.html> and <http://www.theblackiceproject.com/blackiceproject/index.cfm>



discrimination and xenophobia. Participation in the Coalition requires municipalities to commit to a plan of anti-racism action, covering areas such as education, housing, employment and cultural activities. They will then integrate the action plan into their municipal strategies and policies. The role of the municipality as a policy-maker is viewed as a key component to influencing the anti-racism strategies of grassroots, provincial and federal agencies.

The Canadian initiative is based on the International Coalition of Cities Against Racism, launched by UNESCO in 2004. The International Coalition is establishing an anti-racist network of cities in Africa, Latin America and the Caribbean, North America, Asia-Pacific and Europe. A European coalition of more than 15 cities has already committed to a concrete plan of action.

In 2005, the City of Saskatoon became one of the first municipalities to join the Canadian coalition and this year, the meeting of the Canadian Coalition will be held in Saskatoon. I want to ask for your help, because I have written to Saskatchewan mayors asking them to declare March 21<sup>st</sup> to be their city's Day for the Elimination of Racial Discrimination. If you are so inclined, please indicate to the mayor of your city – and I know that many people here this evening are from different cities in our province - that you would like to see this step taken. I have no doubt that your voice will make a difference.

In closing my remarks this evening, I want you to know that I chose to emphasize the importance of citizens in using law reform as an important tool to bring about positive social change – with the abolition of slavery as a compelling example for Black History Month – not only because I am a lawyer who believes in the positive power of law. Many of our most important human rights mechanisms were not put in place by lawyers – they were created due to pressure from citizens who engaged our democracy in pursuit of social justice, citizens who never gave up on their beliefs.

In 1947, Saskatchewan enacted the first Bill of Rights of any jurisdiction in North America – even before the UN adopted the Universal Declaration of Human Rights sixty years ago. In 1972, the Saskatchewan Bill of Rights became Part I of the Saskatchewan Human Rights Code and, in 1979, the Saskatchewan Human Rights Commission, which I am now honoured to serve, was established.

While there is always room for improvement, please consider the role that commissions play for those in our society who cannot afford their own lawyers or who otherwise would have no voice against discrimination in employment, housing or public services. Our commission is also engaged in proactive, collaborative ventures with Saskatchewan businesses committed to employment equity. But human rights commissions across Canada are under attack in the national and some local media, including a guest editorial in a major Saskatchewan paper today.

In closing, I ask you to remember the value of human rights at home – right here in Saskatchewan – because, to quote Eleanor Roosevelt:

Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. ...

Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

Thank you for having me here this evening.