

May 10, 2017 - 14 Iyar 5777

HOLOCAUST REMEMBRANCE MORE EFFECTIVE THAN LEGAL RECOURSE: LAW SOCIETY PANELIST

By **Frances Kraft** - May 9, 2017



Holocaust survivor Edith Gelbard spoke at the remembrance day program held at Osgoode Hall. TIM FRASER PHOTO

Holocaust remembrance and commemoration are more effective than legal recourse in combating Holocaust denial, lawyer Mark Freiman told more than 175 people at a Holocaust Remembrance Day program on April 25 at Osgoode Hall in Toronto.

The former president of the Canadian Jewish Congress, along with criminal lawyer Sam Goldstein, spoke on a panel about "When Holocaust denial becomes hate speech." Amanda Hohmann, national director of B'nai Brith Canada's League for Human Rights and author of its Annual Audit of Antisemitic Incidents, moderated the discussion.

The Holocaust remembrance program, an annual event put on by the Law Society of Upper Canada and the League for Human Rights, also featured an address by Edith Gelbard, a child survivor whose experience inspired Kathy Kacer's book, *Hiding Edith*. Law Society bencher Julian Falconer, B'nai Brith Canada CEO Michael Mostyn and Cantor Aaron Bensoussan also participated in the two-hour program.

"When someone comes forth and talks about Holocaust denial, it is our responsibility to hold events like this and have people like Edith coming forward, and to teach every new generation that this happened," Goldstein said.

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Falconer, in his welcoming remarks, said that, "with the recent spike in anti-Semitic rhetoric and action, as well as other forms of racist and discriminatory language and behaviour, this conversation is more important than ever."

In 2015, Hohmann said, Holocaust denial made up only five per cent of incidents reported to the League for Human Rights. In 2016, it represented more than 20 per cent.

"Holocaust denial is hate speech and intrinsically anti-Semitic," Freiman said. At the same time, he added, that doesn't mean it is punishable as hate speech in Canada, as "hate crime" is an "inexact term."

Holocaust denial is a crime in Germany and France, perhaps because of their wartime histories, Goldstein suggested. But in Canada, he explained, as long as anti-Semitic remarks are not telling people to commit violence, they remain protected speech.

The topic of what can be done to fight Holocaust denial under Canadian law is complex, Hohmann said. Panellists discussed a variety of legal remedies that are available in Canada, but that may not apply in all cases.

The two Canadian laws that address hate crimes deal with spreading “false news” and inciting hatred and advocating genocide, Goldstein said. However, he added, the Supreme Court, in dealing with Ernst Zundel’s case in the early 1990s, “found that the false news section of the Criminal Code infringes our right to freedom of expression.”

Freiman said that “rigorous understanding” of the facts — and counterposing facts to Holocaust denial and incorrect statements — is “the most important thing we can do.” Although, he noted, getting a detailed understanding of what happened during the Holocaust is getting harder and harder as the older generation passes away.

Gelbard, 84, has been speaking publicly about her history for the past 17 years, following an initial request from her grandson to speak at his school. The Vienna native, whose family fled to Belgium and then France, said she was speaking on behalf of the 1.5-million children who were burned and gassed during the Holocaust.

Gelbard said she had “a very nice life” until Hitler annexed Austria in 1938. Her family escaped hurriedly after a Nazi recognized Gelbard’s father, a businessman and semi-professional soccer player, when checking his papers, and warned him there would be a roundup of Jewish men the following day.

Gelbard spent part of the war in a children’s home in Moissac, a French town that was later honoured by Yad Vashem for protecting Jewish children. She was reunited with most of her immediate family after the war. Her father, who had survived Auschwitz, died the day after he was liberated.

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