

But even if this were the case, the ability of the accused to discharge that onus might very well fail. The imposition of such an onus is contrary to section 2 of the Bill of Rights, for therein it is provided that no law of Canada shall be considered or applied so as to deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty.

Now, I have briefly outlined my basic objections to this legislation, but I would like honourable senators to know that these objections are shared by these eminent authorities who appeared before the committee. I should therefore like to refer briefly to a few of their remarks to substantiate what I have said.

Firstly, I want to quote from the presentation made by Mr. Park, Vice-President of the Civil Liberties Association, who in his brief said:

Many useful utterances in a democratic society incite what could be described, at the very least, as bitter feelings. The dividing line between creative tension and destructive hate will often be very difficult to draw. For example, if a French-Canadian nationalist were to denounce English Canadians for the exploitation of French Canada could it be said that he was inciting "hatred or contempt" of English-speaking Canadians? If an Indian were to heap blame for his poverty upon the white man, could he be said to be inciting "hatred or contempt" for white people?

Whether or not one agrees with the kinds of views which we have used in the foregoing examples, it would be unfair, unwise, and undemocratic to make them illegal. Yet, we run the risk that the formulation, "hatred or contempt", could lead to precisely such a result.

Moreover, we fear that the defences which are provided in the section may not be adequate to protect many legitimate exercises of free speech. The defence of truth will have very little application in view of the fact that most utterances in the political arena deal with opinion rather than fact. The immunity conferred upon subjects of "public interest" gives the courts far too much power to set the framework of democratic political polemics.

Professor Walter Tarnopolsky, in his article which was referred to by Mr. Park, said this:

The dangers inherent in the new offences proposed by Bill S-49 (as it was

then) are even more serious when one considers Section 267C. It provides that a publication, copies of which are kept for sale or distribution, may be seized under warrant issued by a judge 'who is satisfied by information upon oath that there are reasonable grounds for believing' such publication is 'hate propaganda', i.e. a 'writing, a sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under Subsection 2, section 267B'. The owner and author of the publication seized may appear to be heard, but 'if the court is satisfied that the publication is hate propaganda' it may order its forfeiture. Booksellers beware! Clearly, all copies of "Mein Kampf" would have to be moved if kept only for sale for members of a Political Science class. What about Alan Paton's "Cry the Beloved country"? Doesn't it wilfully promote hatred against the dominant white race in the Union of South Africa? What about the writings of James Baldwin? Is it not possible that some judges would be 'satisfied' that some of his works constitute wilful promotion of hatred against white Americans?

That type of concern is reflected in the testimony of many witnesses. As we read further he says:

Thus, it is clear that Sections 267B and C involve great risks to the free speech of a wide variety of people, many of whom bear no resemblance to the Nazis or hate mongers who sparked this bill.

Then we have Professor Harry W. Arthurs, who says:

—we should not be persuaded to surrender our freedom in order to make ourselves secure against the dangers which may never come to pass...I feel penal legislation is the wrong way to attack hatemongering.

This was reflected in the thinking of all the witnesses. He continues:

Second, as our experience with communism indicates, if we outlaw certain forms of speech, however distasteful, we may simply drive the speakers underground.

Still later he says:

Third, while I concede that an effort has been made to draft the bill tightly, I share with many people the genuine fear