

'hate propaganda'. The Attorney-General of Ontario has stated his view that the existing provisions of the Criminal Code cannot stop this despicable flow of speeches and writings. Certainly, here is an example of a situation where the individuals' freedom of expression must give way to the broader interests of social cohesion and racial and religious freedom...

It is my concern that too much stress has been laid upon the privileges of the individual, as an isolated person, an island unto himself, and not enough upon the duties and obligations which are his as a member of that society. In my view, it is the "rights" of society that are experiencing a subtle but continual erosion, and individual liberty, far from diminishing, is expanding to the detriment of the collective safety and welfare.

I realize, of course, that this is not a popular position to take before a gathering of lawyers. Traditionally, and properly, the role of the lawyer has been to protect the interests of the individual, and his historical rights and immunities. Such a role is no more than natural; after all, the lawyer is retained by a person or by a group of persons for that very purpose. He is trained from the first that it is not only his prerogative but his duty to keep his client out of the clutches of the law. The state, acting on behalf of the individual, defends. The whole tradition of the common law justly favours the man accused of an offence; and the first lesson law students are taught is that it is far better that one hundred guilty men go free than that one innocent man be punished for a crime he did not commit.

I do not quarrel with these principles. Indeed, I subscribe to them without reservation. However, what does concern me is that, in carrying out its time-honoured responsibilities, the legal profession is at times prone to lose sight of the public welfare. May I remind you that it is our duty to see that the interests of the community, as well as those of the individual, are recognized and protected.

The real difficulty, of course, is to maintain a proper balance between personal rights and the common welfare. To achieve anything approaching such a balance has always been a formidable task. It is destined, however, to become an even greater one unless we take care to

ensure that the fundamental right of the community to protection is not dissipated by exaggerated solicitude for the immunities of its members...

My principal object this evening, has been to bring to your attention the need for the legal profession to be as jealously vigilant of the public welfare as it has traditionally been of the welfare of the individual. Without question or doubt, one of the greatest principles in our criminal jurisprudence is that which ensures that a man is presumed to be innocent until he is proven guilty beyond a reasonable doubt. I wholeheartedly and sincerely subscribe to that rule. But there is another fundamental and essential principle that operates in our criminal philosophy, and it is this: the criminal law exists not for the protection of the individual as such, but for the protection of society as a whole.

In these days, I fear that too little attention is paid to this latter principle. It is our duty and responsibility—all of us engaged in the administration of justice—to ensure that it is honoured and preserved.

The Bill and its Safeguards:

The bill at present before you substantially follows the report of the Special Committee on Hate Propaganda save in two respects. No one to our knowledge opposes the ban it proposes to place on genocide or counselling genocide, it being in substantial agreement with the United Nations recommendations on this subject, and it commends itself to the conscience of all civilized nations.

The section on incitement to violence proposed in Bill S-5, which would then be under section 267B (1), is a refinement of other provisions already included in the Criminal Code. In very large measure some of the critics of this section proceed on a preconceived notion of what it says, not having taken the trouble of reading its text. The taking of an action likely to lead to a breach of the peace is a criterion known in the criminal law. Under this section it is not what is said that is crucial but whether it is linked with a breach of the peace—a situation, as stated, familiar to our law.

The Report of the Special Committee throws light on the need for this section:

... It is readily apparent that it should be unlawful to arouse citizens deliberately to