

and that they were relevant to a matter of public interest, the public discussion of which was in the public interest.

Now subsection (4) of section 267A merely involves a forfeiture proceeding. This is not in an unusual form. This relates to the forfeiture of the material. The actual forfeiture provision contained in subsection (4) is not among the specific recommendations of the Cohen Report.

**E. Russell Hopkins (Law Clerk and Parliamentary Counsel):** It recommended that in general terms, however. Is that not so? It did recommend that legislative action be taken in respect of forfeiture.

**The Chairman:** Yes, in forfeiture under 267 you get a seizure of the actual propaganda itself, which is the means by which the offence is committed which could be a sign, a loud-hailer, a public address system, or could even be a television station for that matter.

**Mr. Scollin:** This is a subsidiary one and follows obviously from the principle of the others.

Now section 267c was again not among the express recommendations of the Criminal Code, but on page 71, and this is relevant to subsection (4) in 267B, they say:

We recommend that study be given to the matter of the seizure of hate materials and of their confiscation after conviction.

This matter of confiscation after conviction is referred to at subsection (4) of 267c which deals basically with the procedure of the trial and the offensive nature of the material without any question of a person being convicted. As I indicated earlier this follows the provisions in 150A which added to the Criminal Code in 1959 to take care of the seizure of obscene material or crime comics. It follows exactly the pattern of that section.

Under subsection (1) there has to be an information on oath showing reasonable grounds to believe that there is a publication within the jurisdiction of the court copies of which are kept for sale or distribution in premises within that jurisdiction and that it is hate propaganda. For the first time the words "hate propaganda" are used and this is defined on the last page of the bill, page 4, at subsection (8), paragraph (c) where it says:

"hate propaganda" means any writing, sign or visible representation that advocates or promotes genocide or the com-

munication of which by any person would constitute an offence under subsection (2) of section 267B;

Now it is restricted to writings, signs and visible representation so that there is that slight narrowing from the word "statements" as defined in 267B, subsection (5), paragraph (c), which relates to spoken or written words, gestures, signs and so on.

So, hate propaganda is defined to cover publications that would either advocate or promote genocide or would constitute an offence, if communicated under section 267B(2).

Section 267c(2) provides for the issuing of a summons to the occupier, so that he can attend, if he wants to, and show cause why the material should not be forfeited.

Subsection 3 gives a right to the owner and author to appear and argue against the making of an order.

Subsection 4 provides that if the court is satisfied at the end of the hearing that the publication is within that prohibited definition, it can confiscate the publications, and the attorney general of the province would be responsible for disposing of them.

Subsection 5 says that if a judge is not so satisfied, then the material is restored as soon as the appeal period has elapsed.

Subsection 6 sets out the appeal from the making of an order or the refusing of an order on a question of law alone, a question of fact alone, or a question of mixed law and fact. And the form of an appeal is as if it were against a conviction in the case of an indictable offence under Part XVIII of the Code to the Court of Appeal for the province.

Subsection 7 is a protection against any further action being taken by way of prosecution, where the court has made an order. This order would be either under subsection 4, that the material be forfeited, or under subsection 5, where the material is not ordered confiscated but ordered returned. The provision is that without the consent of the attorney general of the province no proceedings shall be instituted or continued charging advocating or promoting of genocide under section 267A or either of the offences under section 267B.

**The Chairman:** This is to give some control over multiplicity of actions?