

*Private Members' Business*

the conflict between freedom of speech and the interest of the state in criminalizing speech injurious to the public.

Before proceeding to speak to the bill it is important to say a bit about the current law. At the present time the Criminal Code prohibits, first, advocating or promoting genocide against any section of the public distinguished by colour, race, religion or ethnic origin. That is section 318.

Second, it prohibits inciting hatred against a protected group by communicating in a public place statements which are likely to lead to a breach of the peace. That is subsection 319(1).

Third, it prohibits communicating statements, other than in private conversation, which wilfully promote hatred against a protected group. That is subsection 319(2).

Fourth, the Criminal Code provides for the seizure and forfeiture of hate propaganda kept on the premises for sale or distribution. Those are subsections 320(1) and (4).

Fifth, it provides that a person charged with advocating genocide is liable to five years imprisonment if charged with the offence of public incitement, or hatred, or the offence of communicating statements which wilfully promote hatred. A person is liable to two years imprisonment if prosecuted by way of indictment or to six months and/or a \$2,000 fine if prosecuted by way of summary proceedings.

The Criminal Code also provides for four special statutory defences which an accused may raise if prosecuted for wilfully promoting hatred: if the statements communicated were true; if the statements expressed or attempted to establish by argument in good faith an opinion upon a religious subject; if the statements made were on a subject of public interest which on reasonable grounds were believed to be true; and pointing out in good faith for the purpose of removal matters producing or tending to produce feelings of hatred.

Except for the offence of public incitement to hatred, the consent of the provincial attorney general is required to obtain a seizure or to initiate a prosecution under the Criminal Code's hate propaganda provisions. The hate propaganda provisions of the Criminal Code were examined by the Supreme Court of Canada in the case of *Regina v. Keegstra*. The judgment was rendered in December 1990.

The Supreme Court of Canada determined that communications which wilfully promote hatred against an identifiable group conveyed a meaning and were thus an expression within the meaning of paragraph 2(b) of the Canadian Charter of Rights and Freedoms.

The court further noted that the prohibition set out in subsection 319(2) of the Criminal Code was directed at words that have as their content and objective the promotion of racial or religious hatred.

Inasmuch as the purpose of the provision was to restrict the content of expression "by singling out particular meanings that are not to be conveyed", the Supreme Court of Canada determined that subsection 319(2) infringed the guarantee of the freedom of expression in paragraph 2(b) of the Canadian Charter of Rights and Freedoms.

The court ruled that the presence of hate propaganda in Canada was sufficiently substantial to warrant concern. The court recognized that hate propaganda could cause two types of injuries: first, harm done to the target group by for example provoking a retaliatory response or causing the target group to avoid activities and withdraw from participation in activities with non-group members and, second, influence upon society at large by attracting individuals to hold these views and to create discord and disharmony among these groups in society at large.

● (1805)

The court upheld subsection 319(2) of the Criminal Code which deals with wilfully promoting hatred. It upheld it as a reasonable limit on the guarantee to the freedom of expression within the meaning of section 1 of the Canadian Charter of Rights and Freedoms.

Subsection 318(4) defines the expression identifiable group as meaning "any section of the public distinguished by colour, race, religion or ethnic origin". Expanding the definition would broaden the type of speech that would be caught by the hate law and therefore could potentially put the hate propaganda provisions at risk. This is very significant.

The Supreme Court of Canada noted in the *Keegstra* case that subsection 319(2) was designed to extend a measure of protection to visible and religious minorities so as to prevent their being exposed to hate messages and to promote racial and religious tolerance.

Expanding the definition of identifiable group to include another characteristic such as the one proposed in Bill C-214 would undoubtedly broaden the narrow purpose of protecting visible and religious minorities approved by the Supreme Court of Canada in the *Keegstra* case. It is not clear to me whether adding what is proposed in Bill C-214 would have the effect of protecting children from killer cards and board games as there must be shown an incitement to hatred or promotion of hatred.

The proposed change here would broaden the definition of identifiable group without succeeding in its attempt to protect children from nefarious materials. As a result, the hate propaganda provisions as amended by Bill C-214 could be more