

religion should in any way be a part of the subject-matter for the bill. The bill clearly does not make it a matter in which the law should intervene. We merely suggest that in identifying a group which is subject to attack, the identifiable tag of religion would be a useful one in the bill. In our submission this in no way interferes with the discussion of religious matters. One cannot attack a group which is identifiable on a religious basis on the standard grounds of non-religious attack. That is what we are saying.

Mr. Saul Hayes, Q.C. (Executive Vice-President, Canadian Jewish Congress): I should like to add a word there, if I may. We say in our brief that we did not go into the question of defining Jews, but the 1961 census shows that there were 250,000 Jews in Canada who identified themselves as members of the religious confession, but of these only 170,000 identified themselves as also members of a Jewish ethnic group. With considerable respect—and it is not just an idle phrase—in the opinion you have just read, Mr. Chairman, I think it is an error of definition to assume that the word “ethnic” covers the Jewish community. Moreover, during the passage of the United Kingdom Race Relations Act there was considerable discussion when the word “religion” was left out, and I think the same error was perpetrated. The bill was motivated, not to protect the Jewish community, but to protect the large influx of Asians and Negroes who had come to the United Kingdom. When the issue was debated it was felt that the word “ethnic” embraced everybody, that you must be a member of an ethnic group. In the case of the Jewish community it is not so, as revealed in the census.

I think the definition used in England was, by an ironic twist, the same one that you had, Mr. Chairman, and that is the Oxford Dictionary definition, whereas the American dictionaries, Webster's, the Universal, all give the more current definition, which is that “ethnic” is describing a racial group.

The Chairman: Or national.

Mr. Hayes: Or a national group. That would not fit the peculiarities of the Jewish community. This bill is not and never was meant to be a bill solely for the protection of the Jewish community. There might have been an application on the part of many communities to make it such, but in fact it was not. Therefore, in attempting to draft a bill we had to consider all groups.

While I have the floor, I would like to address myself to Senator Choquette, who made a very relevant point earlier about French Canadians. This is slightly metaphysical, because nobody really knows. It may be that if in the early part of this century, or after the First World War, there had been this type of bill, with all the protection of free speech which we think is included, which would have prevented attacks on French Canadians, perhaps the seeds of the present situation would not have sprouted to such a great extent, and I think it is possible to argue that giving more thought to this type of education, which would have been derived from the criminal law, might have created a different sociological atmosphere from the one we now see.

Senator Carter: I would like to make sure of one point. Mr. Herman gave a lot of evidence this morning, and exhibits, which referred to Jews in some respects as a religion, and in other respects as an ethnic group, because of the cartoons which emphasized the hooked nose and stuff like that.

If this bill were passed into law as it stands at the present time, and if this sort of things occurred in the future, such things as were illustrated this morning, would Jews have any protection? Would it afford any protection of the Jews as a group?

Mr. Herman: We think it would. In the first place, it would have the educational effect on the community, the community would know that it is contrary to public policy to defame a group as a group, or to incite disorder or incite to a breach of peace against that group.

In the second place, if they did defame this group, they could be punished for it, if, in accordance with the opinion of the jury, they are guilty of defaming that group. That punishment would occur in the same way as a man is punished for defaming an individual, as Senator Roebuck pointed out.

Therefore, both from an educational point of view—that is, creating the kind of public opinion that it is contrary to public policy to defame groups, which would prevent many people from doing so, repeating this sort of defamation; and from the checks and the reins that the law has, they certainly would be punished and likely would not do it a second time if they were punished once. Therefore, from both these points of view, we feel that this law would have a beneficial effect.