

and morals to make it rather difficult to attempt to confiscate some of the material which is reproduced in the Cohen Report. Section 150 of the Criminal Code deals with obscene matter and crime comic. Subsection (8) says:

For the purposes of this act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

Senator Lang: That is the "shall include" section, is it not?

Mr. Scollin: That is true, and there is still I suppose some lingering doubt whether the Supreme Court has treated this as the beginning and end of obscenity of whether in fact it is still open, under the *Brodie* case, to argue that this definition is not exhaustive. If a lawyer can express a layman's view, I would think that the word "obscenity" is so closely tied in with sex and morality, general sexual morality, or immorality, that it would not be regarded now as covering such material as this.

Senator Fergusson: Would not some of these things be considered so?

Mr. Scollin: "Obscenity" is the exploitation of sex or sex plus, and there is either sex alone, or sex plus cruelty or violence.

Senator Lang: You do not get very many convictions under that section now. The more obvious meaning of "obscenity" today—

Senator Bourque: I would not wish anyone to think that I was trying to embarrass Mr. Scollin, but I am sure he is too intelligent to think that I would try to embarrass him. He said he is here to explain the law, to give to a layman what is the law. This is my question—where you put forth a question, it still remains—there is nothing defined as to just what is "hate literature". That is very fundamental to me. I have to know what I am going to do, how I am going to judge things, how I am going to take them into consideration. To me this is the most important point in the whole affair.

Senator Laird: Mr. Chairman, could I speak to that point?

The Chairman: Please do.

Senator Laird: For example, let us take this situation. My ethnic origin happened to be Scotch.

Senator Lang: Shame!

Senator Laird: The Scotch race has been the subject matter of a good many jibes. Just supposing there is enough said by any individual or by more than one individual about the stinginess of the Scotch race, to stir up a breach of the peace. Is that sort of thing intended to be covered by this bill? What do you say, Mr. Scollin? You are obviously sympathetic.

Mr. Scollin: A chap would have the defence of truth, under subsection(3).

Senator Fergusson: That is a very good answer.

Senator Laird: Assuming it were not true and that you could not establish the truth of it, is it a defence, in your opinion?

Senator Lang: You might say that of incitement of Scotch to controlling all financial situations in Canada.

Senator Laird: You could not plead truth to that.

Senator Fergusson: Unfortunately.

Senator Bourque: You could say you wish it were true.

Mr. Scollin: I do not think that this is the type of thing which is covered by a term such as "incitement" or hatred or contempt," nor would I think that the Scotch really fall within "colour, race or ethnic origin." I do not think this is the type of thing the bill is directed to—Scotchmen, Englishmen, Irishmen.

Senator Lang: On a question of privilege, Mr. Chairman, I claim the same ancestry. We have the ethos.

The Chairman: I would think that it covers any group at all, even though it may not be the group being present or being threatened, any group at all—whenever the court is satisfied that whatever is being said or written or printed or whatever is done, was intended or has the effect of either causing people to hate people or be contemptuous towards them, then an offence is committed.

Senator Lang: If I may come back to the actual clause, I would like to hear Mr. Scol-