

*Private Members' Business*

First of all, hate propoganda is an offence that is defined under Common Law. Under our legal system, however people are not prosecuted under Common Law but our Criminal Code is based on Common Law. People are prosecuted for offences that are specifically defined or codified the Criminal Code.

This is one of the principles of our criminal law. Law professors tell us you can do anything in Canada, provided there is no law against it. That is one of the first things you learn at law school, in criminal law. Therefore, this problem, and the hon. member was right to remind us, must be considered within the context of the Criminal Code.

The current provisions of the Criminal Code stem from a study which was carried out in 1965. In January of that year, Hon. Guy Favreau, the then minister of Justice, had appointed a Special Committee to study and report upon the problems related to the dissemination of hate propaganda in Canada.

This Committee, also known as the Cohen Committee, completed its study in 1965 and recommended a number of amendments to the Criminal Code. Anxious to harmonize the new legislation with the major tenets of the Convention on the Prevention and Punishment of the Crime of Genocide, as well as the International Convention on the Elimination of All Forms of Racial Discrimination, and in line with the Cohen Committee recommendations, Parliament included in 1965 in the Criminal Code a number of provisions concerning hate propaganda.

If I mention these international conventions, Madam Speaker, it is because there is a close relationship between the current provisions of our Criminal Code and the provisions of International Law as it existed at the time.

These provisions deal with advocating genocide, public incitement of hatred, and wilful promotion of hatred. Section 318 of the Criminal Code criminalizes advocating genocide. Everyone who advocates genocide is liable to imprisonment for a term not exceeding five years. No proceeding for an offense under this section may be instituted without the consent of the Attorney General of Canada.

Madam Speaker, I wish to emphasize that these are exceptional provisions. This is not the kind of provisions

which we find in most of the offences mentioned in the Criminal Code. There is a reason for that. In fact, in the case of hate propoganda, an additional review is required. Before legal action can be taken, there must be a political examination, so to speak—and again, I use quotation marks—but there must also be a political will to act before charges can be brought.

In other words, at this level the persons must be committed to suing the person or persons concerned or the organization, according to the values stated or judged, or the prevailing circumstances.

The subsection 319 (1) of the Criminal Code mentions the people publicly inciting hatred. The base of the offence is the incitation to hatred in a public place—and this is the important part of the article—in a way “likely to lead to a breach of the peace” The term “public place” is defined in the Code as including any place to which the public has access as of right or by invitation, express or implied”. Those who break the law in this regard are liable to imprisonment for a term not exceeding two years.

The subsection 319 (2) of the Code covers the case of persons who, by communicating statement, wilfully promote hatred.

• (1430)

This violation differs from the previously mentioned one in that it is not necessary for the wrongdoing to be likely to lead to a breach of the peace. Moreover, the statements must be communicated other than in private conversation. Because there are limits to what the legislator can do and to what we can do as a society, Madam Speaker, I think that common sense would dictate that we at least not seek to regulate in that matter. Private conversations should not be regulated either. That is pure common sense.

As regards the latter violation, Parliament adopted means of ensuring freedom of expression is protected for, in our society, Madam Speaker, every individual liberty is measured against the liberty of others. Let us not forget that freedom of expression, as described in the Canadian Charter of Rights and Freedoms, in section 2 b) of the Charter in particular, is what serves to counter-balance these provisions of the Criminal Code prohibiting hate propoganda.