

speaker from expressing himself. It has no quality of what is called "prior jeopardy" in American legal terminology. Only a properly constituted court of law is qualified to deal with it when charges are laid after the speech is made or the article published. The full procedural requirements must, of course, as in all our criminal courts be completely adhered to. Neither policeman nor magistrate can interfere in advance and forbid any actions or words. All this is left to the courts and to the courts alone to decide. Talk of a "gag-law" or of capricious and dictatorial banning of speakers or articles is irresponsible and unwarranted in the face of the clear provisions of the bill.

#### Permission of the Attorney General:

We should point out to the Committee the remarks of Chief Justice Wells of the Ontario High Court of Justice in a recent public address in Toronto.

#### Chief Justice Wells said:

... when, however, it (i.e. 'international defamation which is sometimes used to the disadvantage and hurt of the Jewish people') reaches the extremes which it has done in our own experience and lives it would seem to demand something more and the power of the state must, I think, be invoked to protect any group which is subject to the vilification which has been expressed from time to time in various parts of the world...

#### He went on to say:

I would personally advocate the necessity of obtaining the consent of one of the Attorneys General of a province or of the Attorney General of Canada...before such charges should be proceeded with. As long ago as 1938 Chief Justice Duff, in dealing with problems not too different from the defamation of a racial minority, pointed out that already under the law, the right of public discussion is subject to legal restrictions and these he based upon considerations of decency and public order and the protection of various private and public interests, which for an example, are protected by the laws of defamation and sedition. He defined 'freedom of speech' by quoting some words of Lord Wright in a famous judgment where he said that 'freedom of speech is freedom governed by law.'

#### Chief Justice Wells also said:

... it is vitally important that when some law to regulate attacks of this sort is finally put in legislative form, it should be one which will hold the balance between fair speech and freedom of expression on the one hand, and ordinary decency on the other.

It may well be that Chief Justice Wells' suggestion as to an Attorney General's fiat being a condition precedent to a prosecution is one which should be given effect to.

#### Definition of Identifiable Groups:

We have a question to posit on the definition of identifiable groups: the category of "religion" has been omitted from the list of descriptive qualifications in Bill S-5. This in our view is a serious omission. It was present in the recommendations of the Report of the Special Committee and we can find no adequate reason for its removal. We understand the reluctance of the drafters to include religion if they had the idea that religious controversy would in some way be inhibited or constrained. This is in no way intended. Nothing in the bill in any way restrains the discussion of religious views, doctrine, dogma or conviction. It is hatred or contempt against the people who are embraced by the religious definition. Criticism of Judaism, Mormonism, Catholicism, Buddhism, or Islam could not possibly come under such a provision. It is when members of such religious groups are subjected to hatred and contempt quite apart from their beliefs and convictions that it is felt the protection is needed. It is not enough to say that religion is something anyone can change for himself. For most of us our religious affiliation is something we are born into and which we cherish deeply, not to be shed or cast aside lightly. It is as much a part of our character, personality, and identity as our race and nationality, possibly more so. We have no objections to our religious views and practices being publicly discussed and argued, even criticized. There are a host of views held by various religions on a wide variety of subjects—all of which are constantly discussed in the public forums and which we fervently hope will continue to be discussed as long as our present political system lasts. But when charges are made, for instance, that Jews require human blood for ritual purposes, surely this kind of abusive defamation of a group should be covered in the legislation.