> violence against an identifiable group, and in our understanding of Canadian law this already may be proscribed by the present rules in the Code governing sedition (although this is not absolutely certain). But the social interest in the preservation of peace in the community is no less great where it may not be possible for the prosecution to prove that the speaker actually intended violence against a group, or where the wrath of the recipients is turned, not against the group assailed, but rather against the communicator himself, and the breach of the peace takes a different form from that which he was likely to intend. In either case, of course, do we wish to suggest that the attackers who themselves commit a breach of the peace should not be criminally liable, and there is little doubt that they are already liable under existing criminal law. But the gap in the law today derives from the fact that it does not penalize the initiating party who incites to hatred and contempt with a likelihood of violence, whether or not intended, and whether or not violence takes place. (Report, page 63)

The third provision—section 267B(2) as it would become—deals with what is called group defamation. It is important to bear in mind the requirements of this offence:

a) the action of promoting hatred or contempt must be wilful; that is, a deliberate and intentional act, b) the statement must be untrue, and, c) the statement must be one which the accused did not believe on reasonable grounds to be true, or the public discussion of which would not be for the public benefit.

If a defamatory statement is deliberately made about an identifiable group within the definition of the bill, and the person issuing this statement can show no reasonable grounds to believe it true, and if its public discussion is not for the public benefit—what possible protection is owed to such gratuitous and malignant sowing of hatred? If a person knows his tale is false and does not care a whit for the repercussion of the statement, if it has no relevance to the public interest and brings hatred and contempt upon a racial, ethnic or religious group—surely he should face the consequences of this act? The honest statement is protected while the dishonest and malicious one constitutes an offence.

These defenses in our view are safeguards that offer full protection to freedom of speech and freedom of expression. If statements are true, we are fully content that they be made without let or hindrance; if discussion of such statements is in the public interest and if it be found that the speaker or writer had reasonable grounds to believe them true, we are satisfied that there should be no interference with them. These are defenses that are already present in the Criminal Code in respect of defamatory libels and we do not quarrel with their inclusion in this legislation. We go further—we would oppose legislation that does not have these built-in safeguards to protect the full and free debate of social issues centering on the uninhibited discussion of controversial social issues.

Some critics complain of the onus being on the accused to give evidence to support these defenses. This is in keeping with the rules in all defamation cases, the onus being on the accused to establish the truth of his statements. Surely it is not up to the person maligned to prove that he is not guilty of the charges any opponent may dream up?

We would like at this juncture to return to the defense of truth as mentioned earlier. There are a variety of offences known to our law involving defamation and the use of language, where the truth of the statements cannot be used as a defense. These include seditious libel, (section 60 of the Criminal Code), scurrility (section 153) and obscenity (section 150). The broadcasting regulations of the Board of Broadcasting Governors which forbid the broadcasting of "any abusive comment or abusive pictorial representation on any race, religion or creed" (*Canada Gazette* Part II, vol. 98, Feb. 12, 1964, page 172) do not contain this defence either.

By raising this we do not mean to suggest that this defence is not in place. We approve it and have said so in this submission. We are raising it to point out that this bill contains a vital safeguard which is not available as a defense in numerous other offences under our Criminal Code and government regulations.

No "Gag-law":

We wish to make an additional observation. The Report of the Special Committee on Hate Propaganda and the provisions of Bill S-5 do not envisage prior censorship. This bill places no "prior restraint" upon speakers or writers. No public official or policeman has the right to ban any written material or to prevent a