

**Mr. Scollin:** Yes, to prevent an abuse of process, or a multiplicity of actions.

**Senator Laird:** But you can proceed with the consent of the attorney general?

**Mr. Scollin:** Yes.

**Senator Laird:** Does not that, in a sense, eliminate the defence of *autrefois convict* and *autrefois acquit*?

**Mr. Scollin:** No one has been convicted. All that has happened is that they have made an order for the forfeiture of publications.

**The Chairman:** I think you have an alternative. You can go under section 267B(2) and then under (4). If you convict there, then you can get an order for confiscation under subsection (4); or, you can go against the thing itself here. I would imagine what it is intended to do is to stop, say, 100 people coming in and wanting to start the action all over again. What might happen is this. I can conceive of a case where you might get a quantity of publications seized and then, at a later date, you find out they have printed more. Then, under those circumstances, the attorney general could, if he felt it proper, permit a second action to go after the second group. This is what I would imagine it is for.

**Senator Laird:** Quite.

**The Chairman:** Now, that completes the review of the bill. Do we have some questions?

**Senator Laird:** Under section 267c(6) was it necessary to spell out the grounds of appeal in that fashion? Are those grounds not available in any appeal—that is, law, fact, mixed law and fact?

**Mr. Scollin:** No. To take just one illustration, the right of appeal of the Crown is limited to a question of law. There could be no appeal on a question of fact.

**The Chairman:** And that would apply to a private prosecutor?

**Mr. Scollin:** The accused would be entitled, with leave from the court of appeal, to appeal on a question of mixed law and fact. This gives an absolute right to appeal.

**Senator Laird:** I wondered why you spelled it out, and that is a good explanation.

**Mr. Scollin:** If you look at sections 583 and 584 of the Criminal Code, they are the sec-

tions which set out the present rights of appeal to the Court of Appeal in an indictable offence, and they are narrower than these. And this pattern was established, again, in 1959 in the case of obscene materials, and we have followed it through.

**Senator Bourque:** At the last meeting I asked a question as to the definition of hate literature: Where does hate literature begin? How can you judge it? To one man it may be hateful, and to another it may be nothing. You are all lawyers at this table and you understand all these facts, but I am only a layman and I would like to know just what hate literature really is.

**Mr. Scollin:** Well, hopefully the bill is as readily understood by a layman, because—

**Senator Bourque:** It is a hard question, I know, but you know what I mean, and I would like to have it made clear in my own mind what constitutes hate literature, because often many things are said that are not meant. A mother could be mad at her boy and say, "I'll kill you!", but she has no intention of killing him. There could be things said even among friends. Someone could say to me, "You damned Frenchman!" He may be my very best friend, and has no intention of meaning that. But would that be taken as constituting a saying that is hateful, or what?

**Mr. Scollin:** Surely, this is really a layman's law, because, as it states:

...by communicating statements in any public place, incites hatred or contempt against any identifiable group where such incitement is likely to lead to a breach of the peace,

One may not be able to define or categorize hate literature, but if you read the material that appears on, for example, pages 266, 268 or 269 of the Cohen Report—any of these things at the back—you might find a great deal of difficulty in making up a legal definition of it; but one hopefully would say a layman would recognize this for what it is, and that these are statements that did in fact incite hatred and did incite hatred against an identifiable group. These are statements that do, in fact, incite hatred, and they do incite hatred against an identifiable group.

**Senator Bourque:** But there are so many elements. It may be language, it may be jealousy, it may be almost anything. It may be in commerce or trade. As a layman, I really could not come to any conclusion as to what