Criminal Code Amendment

Mr. S. Perry Ryan (Spadina): Mr. Speaker, while the hon. member for Kootenay West (Mr. Herridge) stated on February 24 last that the question of wire tapping was the concern of a number of people as far back as 1924, when many modern devices had not been invented, still it remained for the hon. member for Brant-Haldimand (Mr. Pennell), who is now our Solicitor General, to initiate some concrete proposals with respect to the subject. He originally introduced Bill C-103 in 1964, and we saw it again on the order paper as Bill C-72 in 1965. This is essentially the same bill as the hon. member for Winnipeg North (Mr. Orlikow) introduced as Bill C-33 in this session.

Bill C-33, as you know, Mr. Speaker, was debated during private members' hour just two weeks ago. The bill we presently have at hand, No. C-45, introduced by the hon. member for York-Scarborough (Mr. Stanbury), is essentially the same bill as the original one introduced by the Solicitor General, save that it does incorporate some very definite improvements. It covers all private communications that are intercepted by, I presume, any mechancial or electronic, or possibly even natural device or instrument, whereas Bill C-33 dealt only with wilful interception, by means of an instrument, of any telephone or telegraph communications.

Personally I like Bill C-45 very much better and am all in favour of the principle that its sponsor seeks to have adopted. But I do not think the sponsor himself really anticipates that his bill will be passed in its present form, as there are many legal and technical niceties to be taken care of and considered before a really workable statute can be enacted by parliament.

• (5:20 p.m.)

I feel that a further amendment should be made to the Criminal Code to define the words "private communication" and to define the words "intended receiver" in particular. It seems to me that the ordinary meaning of these words should be explained and in some measure perhaps both enlarged and restricted. For instance, a secondary sender in certain circumstances might be an intended receiver and yet have no business recording a private communication.

I agree with the hon. member for Durham (Mr. Honey) who spoke in the debate on Bill No. C-33 on February 24 last, when he said that a judge of a superior court of criminal jurisdiction should not be the only judicial officer to whom an application could be made under the proposed new section 429A of the Criminal Code. I feel definitely that law enforcement officers and others entitled to make applications such as are proposed should not have to travel unnecessary miles, put in the required time and pay the necessary expenses to wait upon a superior court judge.

I believe a better amendment to the Criminal Code would be one which would provide the following words at the commencement of proposed section 429A:

> a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction".

A court of criminal jurisdiction is already defined in this way under the interpretation section of the Criminal Code, which is section 2(10) thereof:

> (a) a court of general or quarter sessions of the peace, when presided over by a superior court judge or a county or district court judge, or in the cities of Montreal and Quebec, by a municipal judge of the city, as the case may be, or a judge of the sessions of the peace,
>
> (b) a magistrate or judge acting under Part XVI, and
>
> (c) in the province of New Brunswick, the county court;

I believe that the inclusion of the words "court of criminal jurisdiction" would improve the proposed amendment. I know from practice in the province of Ontario, as does the hon. member for Durham, that it would be far more practical to make an application, along the lines proposed, to a county court judge.

I should like to point out to members of the house that a search warrant can be obtained by any peace officer on application to a lowly justice of the peace. A search warrant allows an invasion of a person's privacy which is equally as devastating or perhaps more devastating than a wire tap.

In looking further at the proposed addition of section 429A to the Criminal Code I feel that although the right of all individuals to private communication should not be interfered with lightly, the requirement that an applicant must produce to the judge "reasonable grounds to believe that evidence of an indictable offence punishable by imprisonment of ten years or more may be obtained by the interception and so on" does not sufficiently cover the field of the more serious crimes. Personally I do not feel that the wording "ten years" is the right wording there. I would reduce the period to five years.

In England the test is any serious crime which would likely bring three years imprisonment. I would suggest that in Canada the