

Mr. MacGuigan: Mr. Speaker, I wish to speak to this proposed amendment. However, I see that the hon. member for Broadview (Mr. Gilbert) has indicated an intention to rise on a point of order.

● (2120)

Mr. Gilbert: I rise on a point of order, Mr. Speaker. The motion was moved by the Minister of Justice (Mr. Lang). The spokesman for the Conservative Party then spoke and introduced a subamendment. Surely the spokesman for the New Democratic Party should now have a turn to speak.

The Acting Speaker (Mr. Laniel): Order, please, I am sure the hon. member will have an opportunity to speak, but it is for the Chair to recognize hon. members. Whoever the Chair sees first is recognized. The hon. member sought the floor. It is up to hon. members to stand and indicate their intention to speak, and they will be recognized in turn. Two hon. members cannot be recognized at the same time.

Mr. MacGuigan: Mr. Speaker, I would be very happy to defer to the hon. member opposite, if this is agreeable to the House, provided I may rise after him.

Mr. Stuart Leggatt (New Westminster): Mr. Speaker, first I should like to thank the hon. member for his gracious deferral. I think he is a very fairminded and broadminded member. He may very well change his views on this matter after he hears what I have to say. For some time I had wished to congratulate the Minister of Justice (Mr. Lang) when he brought forward the original bill because I thought for a while that we had a liberal and progressive Minister of Justice. This was my opinion at the time I first looked at Bill C-176 as originally printed and debated on second reading, because at that time the minister had the courage to bring forward what could have been one of the most important additions to Canadian jurisprudence, that is, to at least sneak in this principle of excluding from court evidence illegally obtained. Unfortunately, somewhere along the line his resolve crumbled as we came to the committee stage: he at least sponsored and supported a motion that would bring about the withdrawal of a very good provision that any indirect evidence obtained would be inadmissible.

I think it is significant that the English bar has had this particular principle under study for some time. It is my understanding that it will be given favourable consideration in that House in the not too distant future. It is an important principle in a special way. It says to the inhabitants of any country that the law is there for all persons and not just for the government so that it might be applied against them. The law must be equal for all of us. The amendment presented successfully by the hon. member for St. Paul's (Mr. Atkey) said that we want the law applicable to all.

In his remarks the minister suggested that this is not a case of rewarding the police for obtaining illegal evidence; but surely the minister must admit, and everyone in this House must admit, that you encourage the police to participate in illegal activity when you admit the fruits of that activity. There is no answer to that proposition. Therefore, when we talk about the rule of law and order

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and respect for the law, the way to have respect for the law is to have laws which are capable of respect. We must not have rules of evidence which would allow illegally obtained evidence to be brought in through the back door.

This is really not such a significant departure from the general rule, in any event. The minister seemed to indicate that somehow we are making a massive departure from principle. For a long time the courts of the British empire refused to admit confessions. Surely confessions are relevant. Surely we could have had a principle whereby we would let in the confession and allow the jury to decide whether they believed it. But a long time ago a very wise judge decided that where a confession was obtained by threat or promise, it should be excluded. If we apply the principle always used in respect of confessions, I do not see how anyone in this House with a legal background can fail to support the principle behind the hon. member's successful amendment that would exclude illegal and circumstantial evidence. There is no reason we cannot apply the same principle in this case.

Another point the Minister of Justice made was, what would happen if criminals deliberately engaged in some kind of conspiracy to use a wiretap and some smart defence lawyer came into court and said there was some kind of illegal evidence? There is an old principle of equity that one cannot come to court without clean hands. Anyone who engages in the activity of excluding evidence is obviously using subterfuge. I am surprised the minister would raise that kind of a red herring, because clearly it is a red herring. I am not surprised that at the urging of the minister the various Attorneys General of the country have decided to go along with his view on this suggestion to allow illegally obtained evidence into court.

I am not surprised, because they have a slightly different responsibility than we have in this House. They have a responsibility for the prosecution of those brought to trial. I do not blame them, I suppose, in this instance for trying to make life a little easier for themselves. They have that particular responsibility. We have a special responsibility to all of society to make sure that the laws we pass in this House are laws which are respected and not laws that lessen the respect of society for the rules that govern it. If we decided to accept the logic of the minister and to encourage the police to use illegal activities in order to obtain evidence, then we would be doing nothing to support the rule of law. If we think in terms of liberty and the rights of the individual and wish to have that kind of society, then we do not need laws which would allow illegal activity to be introduced into court. We do not need to encourage the police to conduct themselves in that way.

I should like to say a few words about the subamendment. I have had a few brief moments in which to look at it. I will have to be a little equivocal about it at this stage, but I am concerned about what is and what is not technical. What the hon. member for St. Paul's has introduced is an attempt to allow legally obtained evidence, which was rendered illegal because of some technicality, to be evidentiary. I am not sure, for example, when a defence attorney is successful in throwing out a charge because it is not a charge known to the law, basically, whether he is making a very technical argument: it is very obvious that it should be thrown out. Remember that the resources