

*Government Orders*

• (1320 )

It is clearly up to Parliament to ensure that the system functions efficiently and effectively and in a manner that conforms to the requirements of the charter. This bill is directed to that end.

**Mr. Russell MacLellan (Cape Breton—The Sydneys):** Mr. Speaker, I thank the members on the other side of the House for their warm greeting.

I must say that I have concerns about this legislation. I think that in a lot of ways the general thrust of the legislation is to be commended and is in fact constructive. Nevertheless, I think there are portions of this bill which cause considerable harm and are really counter-productive to what we want to achieve in this country.

The parliamentary secretary discussed privacy and how with the use of cellular phones and cordless phones, which can also be monitored, the government is striving for more privacy. It is legislating privacy where none can of course be reasonably expected to exist.

However, in the other aspect, with the utilization by the police and the authorities of wire-tapping, just the opposite has happened. What we really have is a schizophrenic piece of legislation. The government is striving for the rights of privacy with respect to cellular phones, but in fact privacy may be seriously breached with respect to wire-tapping.

I would like to emphasize that this bill deals with two aspects: the police use of electronic surveillance methods and the introduction of the protection of radio-based communications and cellular phone calls. We have the two different standards for the two different pieces and parts of this legislation.

To underline my concern about the privacy question I want to quote none other than Mr. Justice La Forest who, in a recent Supreme Court case, said: "A society which exposed us at the whim of the state to the risk of having permanent electronic recordings made of our words every time we opened our mouths may be superbly equipped to fight crime but would be one in which privacy no longer has any meaning". This is a concern. Privacy indeed may not have any meaning.

I want to mention a couple of aspects with respect to the first area, which is the police use of electronic surveillance methods, to underline my concern. Under the existing law the prosecutor has to prove that a

wire-tap authorization was carried out lawfully, which I think is a good burden of proof. The onus is on the Crown to prove that the wire-tap authorization was carried out lawfully and so it should be.

However, what we have under this legislation is a major change. We have the creation of a reverse onus. The burden is now on the accused. Under this bill the wire-tap would be presumed lawful unless the defence could somehow prove otherwise. It is a major change.

I have a second concern with respect to the wire-tapping part. Under the present situation the police must now satisfy a judge that a wire-tap is absolutely necessary. With this piece of legislation this bill would free police to tap phones if they believe it would prevent a serious crime. This is a massive loophole that could be used in almost any situation. It would allow police to invade personal privacy without any accountability to a judge, prosecutor or superior.

• (1325 )

I can understand the need to protect people. I can understand when a crisis arises and the police have to make a decision to stop a crime which is about to happen or protect some person, maybe even a fellow police officer against future recrimination or assault. My concern, however, with respect to the fact that the police can now tap phones if they believe it would prevent a serious crime is that they do not have any accountability. On page 8 of the bill, it says:

A police officer may intercept by means of any electromagnetic acoustic mechanical or other device, a private communication where:

(a) a police officer believes on reasonable grounds that the urgency of the situation is such that an authorization could not with reasonable diligence be obtained under any provision of this part;

(b) the police officer believes on reasonable grounds that such an interception is immediately necessary to prevent an unlawful act which would cause serious harm to any person or property;

(c) either the originator of the private communication of the person intended by the originator to receive it is the person who would perform the act that is likely to cause the harm or is the victim or intended victim of the harm.

The police need to be able to prevent crime and we do not want to hamstring our police forces. Fighting crime today is not an easy operation. Criminals also have the same technological advances, the same networking and are also very much aware of their rights. We have to allow the police to be able to do their jobs properly. As