

*Criminal Code*

always use the term wiretapping or interception because, as I said a few moments ago, those are exactly the same concepts underlying Bill C-26, if it is approved by the House, and the legislation on electronic surveillance as well as the Criminal Code amendments which were passed by this House in the spring of 1977. In what respect is this clause 2 so interesting for those who want to protect fundamental liberties in this country? Once again, Mr. Speaker, I would like to return to the reasons which prompted the government to introduce last spring, and now in the case of Bill C-26 provisions which allow the police to intervene in areas that were traditionally reserved and where they had no means whatsoever to stand in the way of organized crime. Because, once again, it is still the principle and concept of maintaining balance between fundamental liberties and organized crime prevention which is present in all those provisions and which allows to police, under strict guarantees, either to intercept an oral communication or, in the present case, to intercept a written communication.

The danger pointed out by the hon. member for Calgary North in the bill which he introduced in the House, a bill which has still not been passed on second reading, Bill C-227, was precisely due to his concern that, when legal safeguards are included in the consent given to police forces to intercept an oral communication, those safeguards were not adequate and thus opened the door to potential abuses by police forces if the courts were unable to expose, if necessary, an illegal action of those police forces while it was still possible for the attorney general to submit under the amendment presented in the spring of 1977 some direct or indirect evidence as a result of illegal wiretapping and that the wiretapping itself was not relevant to the prosecution.

I replied to the hon. member, in my intervention of March 3, 1978 as he will remember, that I felt that the provision contained in section 178.16 of the Criminal Code, now in effect and which reads as follows: When the judge thinks the introduction of this evidence might damage the image of justice, he is in a position to refuse this evidence coming directly or indirectly from illegal wiretapping. So, as I said, this new concept has not been tested by the Supreme Court, which explains why I raise it once again, so that in due time the people who will have to interpret it know exactly what it means, namely that the introduction of this concept protected and sanctioned the relevance at the trial of the wiretapping itself. Consequently, police corps would be ill-advised to take the opportunity of a so-called open door in the provisions of the Criminal Code to tap illegally while they know very well that if they could get a direct or indirect evidence through illegal wiretapping they would never be able to introduce it in the trial without taking the risk of this illegal wiretapping being used by the counsel for the defence saying it damages the image of justice.

So it is, Mr. Speaker, a legal subtlety, a subtlety of evidence; I realize and recognize this. But I think this provision is so

[Mr. Lachance.]

fundamental that I consider it to be my duty to rise twice in the span of two weeks and explain twice this very concept on two related areas so that in due time, when the Supreme Court will be called upon to interpret it, it will do so in the most enlightened way with everything available since the judges of the Supreme Court must hopefully read *Hansard*—if not, this is more or less assumed—so they will know exactly what was the intention of the legislator when he incorporated this provision of in the law, in the Criminal Code.

● (1522)

So, Mr. Speaker, to come back to the bill now before us, Bill C-26, we find again this very provision under subclause (2) to which I was referring earlier, which reads as follows:

- (2) The judge or magistrate presiding at any proceedings may,
  - (a) notwithstanding subsection (1), refuse to admit evidence obtained directly or indirectly as a result of information acquired by interception of a communication in the course of post that is itself inadmissible as evidence . . .

where he is of the opinion that the admission thereof would bring the administration of justice into disrepute.

Mr. Speaker, at the risk of repeating myself, I suggest this is fundamental. It is fundamental because any interception by the police that would not have been authorized according to the procedures set out in this bill, namely the warrant that must be issued by a judge with all the legal guarantees that accompany it, this provision allows the evidence, the interception itself, even if the evidence resulting directly or indirectly therefrom is only being introduced as evidence, to cross-examine a policeman in the witness box and ask him: But where did you get that evidence? And then the judge, Mr. Speaker, under the principle of relevancy and because of this provision, has to allow the question. And then, the witness must answer: Your Honour, we have obtained this evidence through mail interception. Was this a legal operation? And then the witness has to explain if this interception was legal or illegal to demonstrate that he has not tarnished the image of justice in using and presenting that evidence.

Mr. Speaker, I know that the hon. member for Calgary North is becoming very nervous. So I encourage him to take part in this debate if he wishes a little later and then we shall be able to denounce the illegal use of an interception in that trial and eventually bring the police officer before the court on different grounds, for having contravened the provisions of what will eventually become a law, Bill C-26.

So, if I insist so much on that aspect, Mr. Speaker, it is only to explain that what might appear at the beginning to be a vague concept—to tarnish the image of justice—what might be considered a legal subtlety, is in fact one of the most basic guarantees that have been included in amendments to the Criminal Code last spring and that are included again in Bill C-26 to prevent police forces from abusing their powers and feeling entirely protected against any prosecution. Without that guarantee it would not be possible to submit as evidence