

so we do not need to add an evidentiary rule to enforce that conduct.

The evidentiary rule, in any case, is a most inadequate and improper way, it seems to me, of dealing with a supposed wrongdoing by a policeman, which is what is focused on here. Even if there was a wrongdoing, as a result of which at some point in time the information obtained led to a very substantial piece of evidence—such as a murder weapon with fingerprints on it, with the ballistics matching—should we let the accused go, who is obviously guilty of that murder, as a way of punishing, supposedly, some unknown law enforcement officer? If we know who the law enforcement officer is, we can sentence him to five years in prison, so we do not need any additional rule. It is a strange attitude about our law enforcement process, in any case. It is more punishing to society, it seems to me, to let the murderer go than to punish the policeman.

In addition, there is an extremely important procedural reason for not introducing this kind of technicality which a defence counsel could raise. He would be invited to go on a fishing expedition in regard to every piece of evidence admitted in an important case, because he would be entitled to prove or, in effect, force the prosecution to prove, a negative, that being that nowhere, ever, at any time was there a wiretap that led to this evidence being obtained—an illegal wiretap, it is true, but he would be entitled to fish for a wiretap in order to find out whether it was a legal wiretap.

So, if a gun is introduced in evidence in a case where no one has heard of a wiretap, defence counsel would be entitled, it seems to me, to ask where and how the gun was found. There would be no question of its being relevant. The fingerprints, ballistics, and everything would be there making it clearly admissible, but defence counsel would be entitled to say to the police officer, "Not only do I want you to tell me where you found the gun, but I want everyone who had anything to do with this case to come here and show that this gun was found in a way that had nothing to do with a wiretap, because if it had I want to find out whether it was a legal wiretap." There would be an extraordinary fishing expedition possible. If the witness said he found the gun through a search of a house, defence counsel would be entitled to ask why the house was searched. If the answer was, "We had reason to believe . . ." then, of course, defence counsel would say, "Ah, where did you get your reason to believe that?" and delve into the whole range of five years of police investigation.

It may be that the police searched the house because they thought there was heroin in it, in which case they would have to give their reasons for thinking there was heroin. They might have gone to the house in search of heroin and, to their surprise, found the gun. You can see what I am driving at. There would be interminable delays in court, and the moment the judge becomes impatient he will say, "Now look, defence counsel, you are fishing too much, and I am going to stop you!" That, of course, would lead to the court of appeal deciding that the defence was deprived of its right to determine whether or not evidence was admissible, and might upset that result.

It is the delay in court, which would result from such a technical rule, that really disturbs me greatly.

Senator Choquette: What if that evidence were obtained by third degree methods, would it still be valid and admitted by the court?

Hon. Mr. Lang: Under our law, yes.

Senator Croll: It is up to the judge to admit it or not to admit it.

Hon. Mr. Lang: If it is relevant, it is admissible.

Senator Croll: He may say that it is relevant evidence, but because it was obtained by beating the man, or other such action, he would not want to admit it. That happens every day in our courts.

Hon. Mr. Lang: I used the word "admissible"; he may admit it.

Senator Croll: All right.

Senator Sparrow: Mr. Chairman, it seems to me the minister is concerned with having this bill go through in a certain time. I think he said it would take a year or more to pass this legislation if it is not passed this session. We have never had such a bill before us prior to this one. We have never had such a law for well over 100 years. Now, all of a sudden, there is some great urgency in having it passed. I should like the minister to be specific as to what part of this bill is so urgent that it be passed within the next week or two.

I assume now, as I always have, that the House of Commons is certainly a very responsible body, and will certainly be responsible in bringing this bill back to us again should we amend it. If this bill is amended by the Senate, it goes back to the House of Commons and they can either accept or reject the amendment. If they reject it, it will come back to us. It does not mean, as I see it, that the bill is lost in this session of Parliament.

If there is some urgency in having this bill passed in this session of Parliament, then I think the House of Commons would certainly be responsible enough to see that it is passed within a very short period of time.

Senator Croll: Mr. Chairman, if there is no one else offering, I am prepared now to move that the clause be struck out. I do have a seconder.

The Chairman: Would you give us the number of the clause?

Senator Croll: We should see what our law clerk, Mr. Hopkins, has to say about it. It struck me that the only way to deal with it would be to strike out the whole section. Subsections (1) and (2) should be struck out. I do not think section 3, on page 19, really affects this.

Hon. Mr. Lang: That is clause 3 of the bill, and it is not related to this point.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Section 178.23 is a reference to a section in the Criminal Code and it is covered by this clause 2 of the bill. I think the best way to remove it would be by lines, saying: "On page 18, strike out lines 16 to 44, inclusive."

The Chairman: It is moved by Senator Croll, seconded by Senator Hastings:

On page 18, that lines 16 to 44, inclusive, be deleted.