

*Criminal Code*

the public of Canada sees, how anyone who is determined to subvert the Government of Canada, whether it be another foreign government or whether it be genuinely subversive elements within Canada, should be allowed to use our mails to get away with that with impunity. The valid question is with respect to the person or body or organ of government which can give power to do that. In this part of the legislation, that power rests in the Solicitor General rather than in the courts. Some members of the opposition have attempted to make the argument that this is not appropriate.

I want to recall that this issue in a very slightly different context has been before parliament for quite some time. I think it was in 1969 that the Standing Committee on Justice and Legal Affairs first had a reference on the subject of wiretapping. At that time the committee had a very difficult time deciding who should grant such authorization. Whichever way you decide that question—whether you go to the courts or decide to leave it all in the hands of the Solicitor General, as many members of the committee wanted to do at that time for all cases of electronic eavesdropping, whichever way you decide, it is a very narrow decision to be made. Very good arguments can be made in favour of either position. On the one hand you can argue that the courts are the traditional protectors of our liberty, and on the other hand you can argue that because of ministerial responsibility it is better to put that onus squarely on the government in a way that they cannot escape it.

I think I should say that many of the remarks of the hon. member for Perth-Wilmot were beside the point. He talked about the kind of problem that has become apparent recently in law enforcement in Canada with respect to the activities of the RCMP and other police. We are aware of those and we deplore them and have set up a royal commission to attempt to discover the truth. But the fact is, those are not governmental activities in the sense that they are directed by the government. The opposition case—if there is any case—with respect to such activities, directed at the government, can only be that the government did not take sufficient responsibility. I do not agree with that case, but that has to be their argument.

Mr. Speaker, here is a case where the government is taking responsibility. That is precisely the purpose of this legislation. The Solicitor General on behalf of the government, takes responsibility in cases of this kind for the issuance of authorization. Therefore, any arguments which attempt to invoke any popular feeling today against police activities are beside the mark. They do not refer to what can happen under this legislation.

That was a slight digression, Mr. Speaker, in the course of telling you about the consideration of this question previously by this parliament. The justice committee considered it in 1969. It came into the House with the protection of privacy legislation and, of course, that legislation has been amended several times since. On each occasion it was considered by the House and then by the Standing Committee on Justice and Legal Affairs. Again I say it is a very close decision whichever way you go.

[Mr. MacGuigan.]

I do not think we have to decide that question today in the context of this bill for the following reason. The government is proposing legislation which is sunset legislation—it will expire after the report of the McDonald commission is presented. It is really up to the McDonald commission to settle this question.

It seems to me that at the moment parliament must follow the precedent it has established in the area of wiretapping and electronic eavesdropping. It must follow that precedent and adopt the same procedures here as were approved by parliament at that time. I would think that any other course would be irresponsible on the part of the government. Until the McDonald commission reports, I think the government has the clear duty to follow the procedure which parliament has set up in this parallel case. In other words, we are not dealing with an eternal principle here but with a mechanism which will be subject to review at the time of the report of the McDonald commission. In the interim we must follow existing procedures.

It may be that if the McDonald commission recommends to the contrary with respect to the authorizing authority, we will then have to go back and review the wiretapping legislation and see if such a change should be there as well. Surely we do not want to act in a precipitous way, however, without the benefit of their expertise.

This is a stop gap measure, Mr. Speaker. It is not a final determination of the issues. As a stop gap measure the government has followed not only the best existing precedents but the only existing precedents. There really is no alternative to the provision which this bill places before us at the present time.

The only remaining matter on which I wish to comment is the question of why we proceed now—why we go ahead without awaiting the report of the McDonald commission on the whole thing. Some opposition speakers, in particular the hon. member for Perth-Wilmot, have said, “When we raise questions about things that are before the McDonald commission you say you have to await the report of the commission, but when we want to raise something you argue we are being inconsistent in taking this up now.”

Mr. Speaker, the kind of issues they have been raising are matters concerning the guilt or liability of individuals. Those are matters which have to be determined by the commission. They are not appropriate matters for parliament to decide.

We are now confronted with a matter in which the government, through the Solicitor General, has shown a gap in the law which can allow drugs to be circulated by first class mail, and which can allow national security to be imperiled. We simply cannot wait, without legislation, on a matter of this kind now that the gap has been discovered. We cannot wait until the McDonald commission reports. We must have something in place. When the McDonald commission reports, that will be a different story and we will have to reconsider the whole matter. The government's good faith in this matter is shown by the fact that this is sunset legislation and that it will come to a conclusion at the appropriate time after the presentation of that report.