

Protection of Privacy

● (1630)

I really ask what great value is served by that. I can only see one negative aspect, that if you do not get a notice at some point in time, you know there are no legal authorizations of electronic devices against you so you can rest easy that for the three previous months you have not been the subject of this kind of investigation. We are talking about the area of legal authorization, and there is no question of giving notice and then taking advantage of other sections of the law to pursue an illegal use of these devices. In the case of the illegal use of these devices, there is no question of notice being required under the section because it clearly deals with authorization. The section itself has a number of problems, including the fact that notice is required to be given to the subject of surveillance, and in some cases there is a great difficulty in knowing exactly who the subject of surveillance is in relation to a particular electronic intrusion. The person whose conversation may have been under investigation or whose activities are under investigation may not have ended up at the place where the electronic intrusion is placed.

That is the kind of possibility that exists, and yet he would presumably have to receive notice. The major problem is that investigations by the police into the most serious levels of crime are sometimes extremely long and difficult matters. They can last a number of years, not just a number of days, weeks or months, and it may well be that an electronic intrusion is required at a certain stage in the procedure of such an investigation. The very last thing that justice would require is that the person under a continuing investigation be advised by the police that that investigation is going on. In some cases this could completely destroy the whole effort and process of our law enforcement officers to bring to justice the person whose conduct they are investigating. In some cases it is known that police in their investigation could get to the point where they could lay a charge in regard to some lesser offence but will none the less take the proper decision to continue the investigation and not lay the charge because laying the charge would have revealed that the investigation was underway. This indicates how important it is that there be no such indication of an investigation taking place.

It should be noted also that we do not require the police to give notice to citizens of other forms of investigation which they are undertaking or of investigations which they have undertaken and discontinued. One could make an argument regarding why such a procedure is not desirable, but especially in regard to investigations made in these circumstances where there was sufficient concern about the possible committing of an offence by the person in question that authorization was granted and he is now to be given notice of the fact that authorization has taken place. As indicated, these investigations in some cases go on for several years. In the section as it is presently worded, the only thing that can be done is for the judge within 90 days to either require the notice or extend the determined period of time. It is doubtful whether he would be able to extend it long enough to cover the situation where an investigation has continued a long time. In addition, it means going back to the courts. When

[Mr. Lang.]

no useful purpose is served, I wonder whether we should go back to the courts in this manner and take up more of their time in this process.

There is the case of the smuggling of heroin into Canada where an investigation had gone on for two years or so. After several years, the police were able to move in and obtain first hand evidence of drug trafficking on the part of particular criminals, who subsequently received long sentences. In this case, the police officers employed electronic devices at some early stage in the investigation which took two years to come to its culmination. If a report had had to be given, a notification to the suspects of the fact that they were under investigation and the police therefore were on to them, this would certainly have been adequate warning to them. The possibility of detection would have ended, not only of them in the commission of the serious offence of trafficking and possession of heroin, but in addition an adequate warning would have been given to them so that they could have disposed of the drug in other ways and got it successfully into Canada. In that case, this was prevented because of the long and careful investigation which involved an electronic intrusion at an early stage of the case.

I ask hon. members to consider that kind of problem. There could be many such cases. I ask them most earnestly to consider this matter and weigh it against the advantage they see in a report going to the person who is under surveillance. Therefore, I ask the support of hon. members, some of whom may or may not have been in the committee, in looking at the difficulty which has been caused in the investigative processes if this kind of notice is required. I ask hon. members to support the conclusion at which I arrived which led me to move the deletion of this section because the harm to the cause of law enforcement far outweighs any advantage that can be read into the reporting provisions. Accordingly, I ask hon. members to support this amendment in my name.

Mr. Ron Atkey (St. Paul's): Mr. Speaker, this is yet another attempt by the Minister of Justice (Mr. Lang) to overturn an amendment adopted by a majority vote in the Committee on Justice and Legal Affairs. The vote that he is seeking to overturn this time was carried in that committee by ten votes to eight. I am afraid that the minister has missed the point of the amendment. I thought this may have happened in the committee, but having heard the minister this afternoon, I am convinced that he missed the point.

The main purpose of the notice requirement is to keep the whole system honest, to keep the system forthright, to cause the Attorney General or his agents or the Solicitor General or his agents to think twice before proceeding with an application under section 178.12 or the emergency section 178.15. It is yet another important check of the use of the dangerous device of electronic surveillance. Far from attempting to put an unnecessary roadblock in the way of law enforcement, it is an important device by which the machinery of justice in its use of electronic surveillance can be brought out into the open after the event, and with certain adequate safeguards that meet virtually all of the objections which have been raised by the minister.