

Protection of Privacy

The Acting Speaker (Mr. Laniel): Order. The Minister of Justice (Mr. Lang) is rising on a point of order.

Mr. Lang: Mr. Speaker, I sat here with some patience while the hon. member, no doubt rather innocently but nevertheless erroneously, suggested I moved an amendment in the committee, which I did not do; but I really must object to his repeating, as he did in the committee, these words as though it were a statement that I was making to the Attorneys General. In the committee I pointed out his error to him when he made the very same statement. What he is reading from is a quotation that I was referring to from the Uniformity Commissioners' report of a year ago. Perhaps it is unnecessary to quote this point again at this time.

● (2110)

Mr. Atkey: Mr. Speaker, I had intended to refer to the Uniformity Commissioners' report, but perhaps I should first point out that the amendment in committee was not moved in the minister's name but was moved on his instructions as outlined in a memorandum sent out on his approval. Let me point out that in a letter directed to the Attorneys General the Minister of Justice suggested—

The Acting Speaker (Mr. Laniel): Order, please. I regret to interrupt the honourable member but I must inform him that his time has expired.

Mr. Atkey: Mr. Speaker, I rise on a point of order to suggest that I wish to move a subamendment to the amendment proposed by the minister in motion No. 13. Perhaps I might be permitted to continue for about five minutes in order to give the rationale for this subamendment.

The Acting Speaker (Mr. Laniel): Order, please. In view of the fact that the honourable member's time has expired, I must remind him that he can continue only with the unanimous consent of the House. Does the House give the honourable member unanimous consent?

Some hon. Members: Agreed.

Mr. Atkey: Thank you, Mr. Speaker. To indicate the spirit of compromise that we on this side of the House have attempted to adopt in respect of this very difficult question, I should like to indicate our concern with some of the matters raised by the minister. These concerns are felt on all sides of the House and the minister has referred to them frequently. I intend to move a subamendment to motion No. 13. Before doing so I should like to refer to the rationale behind this proposed subamendment. I do not move it in any way to detract from the present form of the bill which proposes to render inadmissible evidence procured solely from an illegal wiretap.

It is recognized that in the administration of justice and the enforcement of the law it may happen under our complex procedures that an Attorney General or his agent, a Solicitor General or his agent, may accidentally make a mistake and inadvertently fail to comply with one of the many complex provisions involved in applying for an authorization. I think it would be quite acceptable to permit indirect evidence obtained as a result of such a situation.

[Mr. Lang.]

I think it would be quite acceptable to the opposition that when an honest attempt had been made to obtain authorization from a judge, and somehow or other there was a defect in form or an irregularity in procedure—not being a substantive defect or irregularity—in that case it would be justifiable to allow indirect or direct evidence providing it satisfied the requirements contained in the minister's motion No. 13 as to relevancy and justice. This would be acceptable provided the result did not mean that injustice was done.

In the hope that some of the concerns expressed by the minister and by honourable members of the committee in respect of a situation where the police had honestly attempted to comply with the procedures of this law will be met. I am proposing a subamendment. It will not cover situations where the police have deliberately flouted these procedures or have ignored them; in those situations the price must be paid and the fruits of their efforts should be inadmissible whether it is direct or indirect evidence. I should therefore like to move an amendment to the minister's proposed amendment. I think this will cover some of the concerns expressed by a number of members of this House. I think we must look at wiretapping, which is illegal, as something not only illegal but immoral. I do not think we on this side of the House can sanction or reward efforts which are clearly illegal and which flout the law, or allow the fruits of such efforts to be introduced during a prosecution of an individual no matter how heinous the alleged crime that individual has committed. If the police of this country follow the procedures in the law in respect of wiretap evidence, there will be no problem.

Therefore, I move, seconded by the hon. member for Fundy-Royal (Mr. Fairweather)—

Mr. Knowles (Winnipeg North Centre): How can it be seconded by an hon. member who is not here?

Mr. Atkey: I am sorry. I move, seconded by the hon. member for Peace River (Mr. Baldwin):

That motion No. 13 be amended by deleting therefrom the words "is relevant and that to exclude it as evidence may result in justice not being done in the matter to which the proceedings relate," and substituting therefor the following:

"(a) is relevant,

(b) is inadmissible by reason only of a defect of form or an irregularity in procedure, not being a substantive defect or irregularity, in the application for or the giving of the authorization under which such private communication was intercepted or by means of which such evidence was obtained, and

(c) that to exclude it as evidence may result in justice not being done,"

Mr. MacGuigan: Mr. Speaker, I do not want to speak specifically on the amendment proposed by the hon. member as I have an amendment I intend to move.

The Acting Speaker (Mr. Laniel): Order, please. Unless the hon. member intends to speak on the acceptability of the proposed amendment, I shall put the amendment to the House at this time. I will then recognize the hon. member. The hon. member for St. Paul's (Mr. Atkey) has proposed the amendment which the House has just heard. I will now recognize the hon. member for Windsor-Walkerville (Mr. MacGuigan).