giving of an authorization for the interception of a private communication and that the situation requires that the interception commence before an authorization could, with reasonable diligence, be obtained. However, under such emergency procedure, an application for an authorization or approval would have to be made as quickly as possible.

Consideration was given by the Standing Committee to whether the authorization to intercept communications should be granted by a judge, a responsible minister, or by some combination of the two. Testimony before the committee was divided on this issue. As I have noted, the proposed legislation is that an application would have to be made to a judge of a superior court for an authorization. It is suggested that a judge is able to consider the application from a position of impartiality and thus bring to these procedures an assurance that they are not used freely and without control by law enforcement officers.

On the other hand, it is said that this is not the proper role for a judicial officer, because the application is ex parte, and he is not in a position to judge in the usual sense; that an attorney general is politically responsible for his conduct and can be subject to questioning should any controversy arise about the manner in which he has discharged his responsibility. The proponents of this view point out this is not so in the case of a judge who cannot be questioned and is obliged to remain silent in the event some criticism is levelled; he must remain as a judicial person, impartial and unable to engage in controversy or explanations.

• (1550)

The bill proposes a new approach to the law relating to admissibility of evidence which has been illegally obtained. At the present time, the test of admissibility of evidence in criminal proceedings is whether the evidence is relevant to the issue before the court and no regard is had for the question of how the evidence was obtained. The Standing Committee on Justice and Legal Affairs recommended a change in the existing law in so far as it related to the unauthorized interception of private communications. However, the committee went on to recommend that any evidence discovered or derived from an inadmissible statement could be received in evidence.

This is the approach which has been taken in the proposed legislation. There are competing points of view and on each side of this question there are arguments, many of which have been forcefully presented both to the standing committee during its deliberations and afterwards to the Minister of Justice when this legislation was first proposed to the last session of this House. I feel sure that both sides of the question will be examined again by the Standing Committee, but in the meantime I believe I should set out here some of the salient points on the two sides.

The provisions of section 178.16(1) amount to a rule of evidence applicable to all criminal proceedings and to all civil proceedings and other matters whatsoever respecting which the Parliament of Canada has jurisdiction. Arguments which have been advanced by those people who favour the introduction of this rule are of two types. The first relates to participation by the government and the courts in illegal conduct. It is said that by acquiring and using evidence illegally obtained, the whole law enforcement and judicial process becomes tarnished and that respect for it diminishes. On the other hand, it is argued that a law which permits a preliminary finding of illegality in the manner of obtaining evidence to stop consideration of facts otherwise admissible and germane to the issue of truth likewise brings disrespect for the administration of justice.

But the principal argument advanced in the United States in favour of the exclusionary rule, where it has been in effect for more than 50 years, is that it will deter law enforcement officials from illegal behaviour and will have the long-term effect of encouraging greater conformity by invoking the moral and educational force of the law.

The arguments advanced against the adoption of the exclusionary rule appear to be based on the premise that the true function of the administration of justice is to establish truth in matters coming before the courts and that a court should not be refused access to facts relevant to the search for truth. This is not to be confused with the confession rule because there evidence is refused on the theory it might not be true. The civilized conduct of criminal trials must not be confined by mechanical or artificial rules. The inquiry which must be made here is whether the exclusionary rule is merely apparent rejection of approval of illegal conduct without effect or whether it is necessary control. A detailed examination of this question can be made before the standing committee, but I would like to note that until just recently there was no provision in the United States that the federal government is liable for damages for illegal interception by its employees. When the exclusionary rule was invoked there and implemented, the deterrent effect of tortious liability was not available. The legislation I propose does contain amendments by which the federal government would be vicariously liable. The opponents of the rule argue that the United States experience is clear evidence that the rule is not effective as a deterrent force.

In the legislation I propose, there are three ways by which unlawful or unauthorized interception should be deterred. In the first instance, the conduct is criminal bringing with it the sanctions I have mentioned. Second, the individual wrongdoer is liable in damages, both actual and punitive. This liability extends to the federal government for damages flowing from the illegal acts of its employees. The third deterrent force proposed is the exclusionary rule, but its opponents argue that the other two sanctions are sufficient. It is on that question we no doubt will have further comment. Before an intercepted private communication could be used in a trial, notice of the intention to use it, together with a transcript of the contents, would have to be given to the accused person.

A disclosure of the existence of a private communication or the contents thereof would be prohibited except where the disclosure is made in the course of giving evidence under oath, in connection with duties related to a criminal investigation, in the course of normal operation of a telecommunication system, or where a disclosure to a peace officer is intended to be in the interest of the administration of justice.