

*Measures Against Crime*

ment's intention in the proposed amendments to sweep aside, as some would suggest, the protection of private conversations or the safeguards for ensuring them. None of the amendments does that. The criminal sanctions remain. The civil recourses remain. Most important, the judicial supervision of authorizations remains. To obtain an authorization, the police must bring before a judge concrete evidence supported by affidavits showing that there is ample reason to believe an offence has been or is about to be committed. The judge must be satisfied that an authorization would be in the best interests of justice and that no other means of investigation is practicable. This is no simple procedure, Mr. Speaker.

Those who criticize our proposals as ones that will sanction the misuse of electronic surveillance are, I think, ignoring the reality of these safeguards. They would appear to be showing lack of faith in the integrity of our police forces and to be raising doubts about the ability of our judges to examine the merits of a request for an authorization. I do not share this doubt or lack of faith. Consequently, I do not fear that repeal of the notification provision or the change respecting the admissibility of derivative evidence will open the floodgates of illegal wiretapping.

On the other hand, I am satisfied that the existing law on these two points may well be impeding and will continue to impede effective police investigation of criminal activities, especially those of an organized and sophisticated nature. It is equally allowing known criminals to elude justice despite the weight of the evidence.

On the question of notification, the present rule requiring written notice to be given within 90 days after the surveillance of a person has terminated seriously inhibits the use of electronic surveillance, especially of organized crime. The notice alerts the target before the complex investigation can be successfully completed. I would note, for hon. members, that electronic surveillance is the only technique of criminal investigation in which there is a requirement for the authorities to advise a suspect that he is under investigation.

With respect to the derivative evidence rule, it is resulting in serious and unjustified delays in criminal trials. It is also allowing known criminals to elude conviction by having real evidence of a crime, derived as a result of an invalid authorization, excluded from the trial. There is some justification for excluding an illegally intercepted communication itself. I can see none for the exclusion of real evidence derived from such an interception where such evidence is both relevant and persuasive as to the commission of an offence.

The "fruit of the poisoned tree" doctrine of United States jurisprudence is not part of the common law of Canada, and is criticized even in that country. I think the present provision in the privacy legislation which incorporates it should be removed. As Wigmore, the great American authority on evidence, has noted, the exclusionary rule makes justice inefficient and coddles criminals by serving neither to protect potential victims nor to punish the offending officer. Rather, it punishes society by the release of criminals in our midst.

**Mr. Fairweather:** Oh, oh!

**Mr. Basford:** I am just quoting Wigmore, Mr. Speaker.

**Mr. Fairweather:** What about the Law Reform Commission?

**Mr. Basford:** The Law Reform Commission did not, in its model, comment on evidence. The rules are in the present privacy act, Mr. Speaker.

**Mr. Fairweather:** You have repudiated it.

**Mr. Basford:** It is to overcome these kinds of problems that we are proposing several important amendments to the privacy legislation. These amendments, I should note in conclusion, have received the full support of the provincial attorneys general, not all of whom, hon. members will be aware, are members of my political persuasion.

● (1540)

The proposed amendments to the protection of privacy legislation will go some distance to assist the police in their ordinary investigation of criminal activities. However, the work and results of the Quebec Organized Crime Commission have demonstrated the importance of and the need for investigative machinery beyond the traditional operations of the police if we are successfully to uproot widespread organized crime in Canada.

First, such crime networks can and do extend their tentacles beyond a particular province. Second, potential witnesses to such criminal activities are most reluctant to co-operate with the authorities on the usual voluntary basis because they live in terror of the consequences of such co-operation. Third, as the Quebec Organized Crime Commission has shown, or as reading of the law enforcement reports of British Columbia will show, there is real value in developing an increased public awareness of the existence and insidious nature of organized crime. The public spotlight is frequently the weapon most feared by crime bosses.

Last year, as hon. members know, the legal validity of the Quebec Organized Crime Commission was challenged in the courts, it being argued that such bodies may be legally established only under federal criminal law. This question is still before the Supreme Court of Canada. Beyond this, it was demonstrated during hearings of the Quebec commission that it is essential for any such commission to have power to reach witnesses and documents in other provinces. Finally, if this special machinery is to be established, it is imperative to ensure that it operates in a manner that secures real and uniform legal safeguards for the rights of persons being questioned or investigated.

For these reasons, the bill includes amendments to the Criminal Code to authorize a province to establish a special crime inquiry commission as necessary, with both effective powers and proper legal safeguards. It provides for common powers and safeguards throughout the country. The legislation also is flexible in leaving to each provincial attorney general the ability to determine the particular approach to take in investigating criminal activities with a formal, full-scale inquiry or with a less formal examination of the matters. Both these measures, I am satisfied, are consonant with the four principles that I outlined at the outset of this speech.