

*Protection of Privacy Bill*

tions with our friends, loved ones or business associates over the telephone without the conversations being intercepted and perhaps recorded for an ulterior purpose. Therefore, I am sure that all members of the House and most people of this country agree that legislation making wiretapping and electronic eavesdropping illegal and making the selling, possession or use of these devices a criminal offence ought to be wholeheartedly supported by every right thinking Canadian.

What causes us concern is the definite exceptions to the prohibition against wiretapping and electronic eavesdropping. Let me enumerate a few exceptions. First, the Solicitor General, on his own behalf, through a peace officer or a person designated by him, may go to a judge of the superior court and ask for authorization to bug somebody's telephone, to eavesdrop in a person's home or in any other place where the person may be carrying on a private conversation.

The Standing Committee on Justice and Legal Affairs will need to ascertain the criteria which the judge must use in deciding whether he will approve or deny such authorization. In some circumstances that will not be difficult. If the person whose conversations are to be intercepted has a criminal record or is known to be associated with a gang of narcotics smugglers, say, it will not be difficult for the judge to approve the application. But there will be border line cases. The evidence placed before the judge will be only the evidence presented by the peace officer or person designated by the Solicitor General. He will hear only such information as those who want to apprehend the person, charge him and see him convicted, want to place before him. This means that the privacy of many innocent persons could be invaded.

Even worse, the Solicitor General may, without the judge's authorization, issue a temporary permit for 36 hours for the interception of conversations of persons on whom he wants his officers to spy. In that case there will be no judicial scrutiny of any application for interception, because the judge, jury and executioner will be the Solicitor General and he alone will decide whether for 36 hours your telephone, Mr. Speaker, mine or somebody else's is to be tapped. He alone will decide whether a bugging device is to be attached to a person's car, home or conference room. This is a tremendous responsibility for parliament to give to any man, even though he be Solicitor General of this country.

The attorneys general of the provinces also are exempt from the prohibitions against wiretapping and eavesdropping. They are to be given the same powers as the Solicitor General. They, too, through a peace officer designated by them can apply to a judge for authorization to eavesdrop. They, too, may grant temporary permits without first going to a judge. They may do this entirely at their own discretion and on their own initiative. The attorney general of a province may have the home of any citizen bugged and any business premise wiretapped. He and he alone has the right to decide whether electronic eavesdropping will be carried out.

• (2040)

One of the problems parliament has always had with the Criminal Code is that while parliament passed the

[Mr. Douglas.]

Criminal Code and amends it from time to time, except for those matters which are solely under federal jurisdiction, the administration of the Criminal Code lies within the jurisdiction of the attorneys general of the provinces. While Parliament can pass legislation dealing with the criminal law of Canada, it has no power to call to account those who administer that law except in respect of items which come solely within federal jurisdiction. Therefore, Parliament has to be very careful about the kind of power it gives to attorneys general.

When we give power to a minister of the Crown who is a member of this parliament, we can call him to account. When we give power to the Solicitor General or the Minister of Justice, we have at least the right to question them, bring them before a committee of the House and make them give an accounting of the manner in which they have exercised that power. However, when we give power to an attorney general we have no such authority.

If anyone wants an example of this type of power can do, he has only to go back to October, November and December of 1970. This parliament passed the Public Order (Temporary Measures) Act. It not only gave sweeping powers to the solicitor general and minister of justice but it gave those powers to the attorneys general of the provinces. That legislation permitted arrest without charge and detainment without trial. It made no provision for guaranteeing that persons arrested would be allowed to communicate with legal counsel or with their families.

The then minister of justice, I think quite conscientiously, said that these basic liberties would be observed. But, Mr. Speaker, they were not observed. Nearly 500 persons were arrested without charge and detained without trial. There were proven cases of police brutality. These were fully investigated by the Civil Liberties Association. When day after day we asked the minister of justice about it, like Pilate he washed his hands and said, "Direct your questions to the minister of justice of the province of Quebec. Parliament gave him this power." The Minister of Justice said the Quebec minister of justice was not accountable to him and that that minister was exercising the powers which Parliament had given to him. Parliament had no control over what he did with those powers, even if he abused them. That experience ought to make every member of this House very hesitant about the kind of power we give to ministers over whom we have no control and whom we cannot call to account.

What we are doing here is saying that an attorney general of a province has the same power as the Solicitor General. He has the authority himself, through one of his intermediaries, to go to a judge and ask for authorization to tap a telephone or bug a home, office or conference room. Even more serious, he has the authority to do this on his own, without authorization from the court, for a period of 36 hours. No one should tell me the attorney general has to issue a report at the end of the year. How are you to going to force him to report?

When I asked the Minister of Justice this afternoon how he is going to guarantee a report, the minister said the legislation is silent on that point. I suspect the government will also be silent on it. There is no way you can make a provincial attorney general issue a report or bring him to account. All he has to do at the end of the year is say there