

Protection of Privacy

the principle is the same. We should not be extending that kind of principle to legislation such as this.

I have had personal experience where, for instance, officials of the Department of National Revenue have backed up a two-ton stake truck to the door of the office of a lawyer in my riding and have carted away all his files and his safe in order to examine them. Another example, which the hon. member for Skeena (Mr. Howard) raised in this House as well as myself, was the case in which officials of the Department of National Defence together with the RCMP swooped down on a sleepy alpine village in northern British Columbia and invaded the privacy of well over 20 homes, all without a writ of assistance. With that kind of power there seems to be little need for electronic surveillance to be permitted in cases, for instance, under the Income Tax Act which would be permitted without the amendment of the hon. member for St. Paul's (Mr. Atkey).

Yesterday the minister used a very interesting phrase. Perhaps it was a quotation he was using. He said that it is not a game where liberty triumphs when the police are defeated. I agree with that, but it seems to me to be a little inflammatory in a debate such as this, because that sort of a cliché can be reversed and be just as true. There is something else I wish to mention with regard to evidence illegally obtained. It has to do with the Crown's prerogative in the prosecution of all cases. It is in the interest of justice—this appears in all legal textbooks—that the Crown in prosecuting a criminal case should place all evidence before the court whether that evidence is for or against an accused person. However, in my experience, and I have been involved on both sides of the fence in the courts, the Crown does not follow that precept. What the Crown in fact does is to introduce the degree of evidence sufficient to obtain a conviction, and goes no further. Even if one could find the fairest of all Crown counsel, the experience on my part at any rate has been that the police, when they place a case before Crown counsel, often leave out evidence which they genuinely do not believe to be of importance in obtaining a conviction. So there is no guarantee that evidence obtained by wiretap will suffer any better fate.

The minister says that the amendment of the hon. member for St. Paul's is narrow. He compared the wiretapping situation with the search warrant situation. In my opinion they are not the same at all. The minister made a great pitch about the fishing expedition which could be embarked upon by defence counsel.

Mr. Deputy Speaker: Order, please. I regret to interrupt the hon. member, but the time allotted to him has expired. He may continue his remarks with the consent of the House. Is this agreed?

Some hon. Members: Agreed.

Mr. Nielsen: I have just two more points to make, Mr. Speaker. The first has to do with the remarks of the minister concerning fishing expeditions by defence counsel. I agree with the member of the New Democratic Party who resumed his seat just before I rose: it is a very simple matter, and all counsel has to do is either object at the time the attempt is made to introduce this kind of evi-

[Mr. Nielsen.]

dence by the Crown, and it is normally introduced at that portion of the trial in any event and would not be held over—

Mr. Lang: Fishing with regard to any evidence.

Mr. Nielsen: Fine. The minister concedes the point I was about to make in respect of introducing the wiretap evidence at the Crown stage of the case. The minister referred to any evidence at all. Let me deal with that. Only one question need be asked once this bill becomes law and that is: Was the evidence or the conversation, whatever it might be, obtained pursuant to the provisions of this legislation? That is all that has to be asked and the police officer or whoever else it might be has to say either yes or no. If he says yes, it is all admissible. If he says no, then you embark upon a course of questioning to establish whether or not the evidence was obtained properly; and if it was not, it should not be admitted.

I see it as being that simple, at any rate. You would do this in the same way you would test a certificate of access either in a narcotics case, in a case of impaired driving or whatever. I see the minister shakes his head. However, that is my view of it. I have yet to be convinced by his arguments, as obviously he has yet to be convinced by mine. It is far better to let defence counsel go on fishing expeditions than have an unbridled licence to law enforcement agencies and others to go on fishing expeditions on the private telephone lines of citizens. That is what would happen, because we are not simply speaking here about police officers or about peace officers; we are speaking about the enforcement provisions in all sorts of other statutes.

● (1640)

The last point that I want to make is by way of a warning once again. I placed a series of questions on the parliamentary order paper some time before July. The one to which I shall refer is question No. 1849. Those questions were answered in *Hansard* of July 11, 1973. These were questions that I placed on the order paper with respect to the activities of the Police and Security Planning and Analysis Group which comes under the jurisdiction of the Solicitor General (Mr. Allmand). Paragraph (d) of question No. 26 was as follows:

(d) has the Security Advisory Committee considered or developed a scheme (under Defence Research Board Shirley's Bay) to utilize the central telephone system in Ottawa to keep under surveillance in Ottawa and, if so, was this done at the suggestion of Col. Dabros of the Police and Security Planning and Analysis Group, formerly the Security Planning and Research Group.

I do not believe that establishment is any longer at Shirley's Bay, and only in that respect might the question be relevant. The simple answer to that question, if it was not being done, should have been a resounding and emphatic no. But the answer to it, at page 5501 of *Hansard* for that day, is:

It is not considered in the public interest for reasons of national security to disclose the details of security and intelligence activities.

By that negative answer every Canadian, certainly in the Ottawa area, has cause to wonder whether the inference which is inherent in the question is in fact the case. If it is not being done, and if no such plan is ready to be