

*Protection of Privacy Bill*

because being in society requires acceptance of some responsibilities by him and intercourse with his fellow citizens. Each individual requires individual privacy to nourish his individual creativity, to preserve his personality balance and develop his individuality. There are parallel needs in group activity and in the growth and development of each individual and group in society. There is a constant search for the proper balance between the needs for privacy and for disclosure.

In order to achieve the greatest freedom for an individual in society, there must be a proper balance with respect to the gathering and disclosure of information by government. A small area of secrecy for government is necessary to preserve the integrity of secret information and the privacy of internal policy-making processes, but those processes must be made public when the need for secrecy has gone. In any event, there must be sufficient publicity of government matters so that the people will be able to form proper judgments in political matters based on the facts. It is in this context that I propose this legislation which recognizes in individuals the right of privacy and which will protect an invasion of those rights.

A study of electronic surveillance and invasion of privacy was commenced in the Department of Justice some years ago to further work which had been done by committees of the Canadian Bar Association. This subject was debated at the 1968 Annual Convention of the Canadian Bar Association, at the conclusion of which the resolution adopted was presented to the then minister of justice.

There have been a number of private members' bills going back for seven or eight years which proposed legislation dealing with this subject matter. Some of those private members' bills were referred to the Standing Committee on Justice and Legal Affairs, together with a general direction that the committee consider and report on the subject matter of electronic eavesdropping on November 25, 1968. That same order of reference directed the committee to recommend legislative action. The order of reference was continued by further order on November 21, 1969. The committee reported to the House on March 11, 1970. During the course of its deliberation it heard evidence from a number of witnesses and considered a number of submissions made in writing.

I think it would not be inappropriate for me to say that the committee deserves commendation for the work which it did and I should like, too, to say that the many people who made submissions to the committee and subsequently to my department or those who appeared for the purpose of giving evidence should be recognized as having made responsible contributions to the democratic process.

The legislation which is now proposed is almost identical to the bill which was introduced by the Minister of Finance (Mr. Turner), my predecessor as minister of justice, on June 28, 1971. An opportunity has been granted to the hon. members of this House and to all citizens of our country to consider the proposals and to make known their views with respect to these proposals. A good number of them have been considered in the Department of Justice, and I imagine that all of the members here have had full opportunity to consult with their constituents about these proposals.

[Mr. Lang.]

The bill before the House would make it an offence, for the first time, wilfully to intercept a private communication by means of electromagnetic, acoustic, mechanical, or other devices. A private communication is any oral communication, or telecommunication, made under circumstances in which it is reasonable for the originator thereof to expect that it will not be intercepted by any person other than the person intended by the originator to receive it. Intercept means to listen to, record, or acquire a communication, or acquire its substance, meaning or purport. An offender would be liable to imprisonment for five years.

It would also be an offence to possess, sell, or purchase any electromagnetic, acoustic, mechanical or other device, or any component thereof, knowing that the design thereof renders it primarily useful for surreptitious interception of private communications. Conviction for this offence could bring imprisonment of up to two years.

A third new offence would be with respect to the disclosure of any information obtained by a person by means of an unlawful interception; or by disclosure, without proper authority, of information obtained lawfully. A sentence of up to two years imprisonment is provided for this offence.

The two basic exceptions to the general prohibition against interception of private communications would be in cases, first, where the interception or seizure is directed towards prevention or detection of espionage, sabotage, or any other subversive activity directed against Canada, or detrimental to the security of Canada, and where such interception or seizure is necessary in the public interest; or second, where an authorization has been obtained from a judge of a superior court of criminal jurisdiction in aid of a criminal investigation.

Provision is also made in the bill for certain other exceptions. Interceptions would be excused where a person intercepts with the consent of only one of the parties to a communication, or where the interception is necessarily incidental to the ordinary duties of a person engaged in providing a telephone, telegraph or other communication service to the public.

Before a judge grants an authorization to intercept a private communication, he must be satisfied that (a) other investigative procedures have been tried and have failed; (b) other investigative procedures are unlikely to succeed; or (c) the urgency of the matter is such that it would be impractical to carry out the investigation of the offence using only other investigative procedures.

Any application for an authorization must be in writing and signed by a peace officer or public officer specially designated for that purpose by the Solicitor General of Canada or an attorney general of a province. Authorization can only be granted in respect of indictable offences, and the interception so authorized will not be valid for more than 30 days. There is, however, provision for renewal if the judge is satisfied by further evidence that it is necessary.

Provision is made for an emergency permit to intercept for a period not in excess of 36 hours if an attorney general or the Solicitor General of Canada or a peace officer or public officer designated in writing by him is satisfied that circumstances exist that would justify the