

*Criminal Code*

Mr. Speaker, I should like to move on to something that excites me even more, in terms of misrepresentation. I presented three motions on electronic surveillance. In that regard I am talking about the invasion of privacy of the individual. I do not want to repeat what I said about the medical clinic or law firm, except to say that in order to catch one person by telephone, all the conversations of perhaps 35 doctors and their patients can be listened to for two or three months and everything can go in as evidence. That is total invasion of privacy. The same thing may take place in reference to lawyers. I should like to refer to a well-known authority in this connection, Mr. Speaker. In "Phipson on Evidence", ninth edition, at page 203, appears the following:

A client (whether party or stranger) cannot be compelled, and a legal adviser (whether barrister, solicitor, the clerk or intermediate agent of either, or an interpreter, *Du Barré v. Livette*, 1 Peake 108) will not be allowed without the express consent of his client, to disclose oral or documentary communications passing between them in professional confidence. This rule applies to the case where the legal adviser is provided under the Legal Aid and Advice Act, 1949—

The rule is established for the protection of the client, not of the lawyer; and is founded on the impossibility of conducting legal business without professional assistance, and on the necessity, in order to render that assistance effectual, of securing full and unreserved intercourse between the two—

Why is that rule there, Mr. Speaker? It must always be remembered that when the state lays a charge against an accused—whether it is murder, manslaughter or whatever—the state can gather evidence through its police officers who have the authority to do so and who have the technical know-how, the fingerprinting equipment, ballistic experts, and so on. Money is no object. The little fellow whose guilt has to be proved beyond a reasonable doubt, however, only has a lawyer interrogating police officers, trying to make sure that the facts going before the jury are the type that would permit the jury to find him not guilty. That is the purpose of that rule on privileged communications. It is for the protection of the people, not the lawyers and doctors. When they change the law and say it is not permissible unless a judge rules it within his discretion, that does away with that protection.

Under the common law we had far more protection than in the legislation that is suggested by the minister, which is supposed to change the common law to give more protection to the citizens of this country. Surely the minister could have accepted some of our amendments. Now he leaves it to the discretion of the judge.

● (1540)

With what kind of evidence will our judges deal? The judge will have discretion with respect to evidence which flows from the conversation itself and with respect to evidence not derived from the wiretap. But the entire question of the wiretap is to come under the discretion of the judge. The judge is bound by the decision of the Supreme Court of Canada, the highest court of the land, which has said that if the matter is relevant to the issue, it is admissible. My amendment would have made not admissible evidence obtained from an illegal wiretap. Personally, I believe evidence derived from, or as a result of a wiretap, should not be admissible. Only in this way can we protect the due process of law. Now you know why we fought so strenuously against the changes the minister proposes.

[Mr. Woolliams.]

I said the other day the rule of law is our only protection. There is no doubt that arbitrary power is today resented and feared to an even greater extent than in the late nineteenth century in the democratic states of the western world. The rule of law presupposes the absence of arbitrary power and so gives the assurance that the individual can ascertain with reasonable certainty what legal powers are available to government if there is a proposal to affect his private rights. A person who takes the trouble to consult his lawyer ought to be able to ascertain the legal consequences of his own acts and what are the powers of others to interfere with these acts.

The reason lawyers are apt to be critical of powers of delegated legislation and of the exercise by bodies other than the regular courts of judicial decision is in the uncertainty which these powers are alleged to produce. It is true enough that on many matters the law as administered in the ordinary courts is difficult to ascertain with any assurance. But in public law this uncertainty is accentuated by the bulk and detail of statutory instruments which are enacted by the departmental ministers as well as by the impossibility of predicting how, in the event of a dispute, discretion will be exercised, whether the last word rests with a tribunal or with a minister.

We heard today that the Minister of Finance (Mr. Macdonald) is to change retroactively the law applying to life insurance policies. Many of our little wage earners buy life insurance policies. Some of the money goes toward risk, the rest toward savings. If the policyholder needs a second or third mortgage for a house, because he may have one or two more children than he anticipated having, he borrows against the policy. Now the Liberal government has said that any money the policy earns becomes taxable immediately on the policyholder's getting a loan. We oppose that kind of law, just as we oppose the kind of law this bill will become, if passed in its present form. I was shocked at the Minister of Finance's arrogance in making his statement. He said, "We tax corporations. Now we shall tax the little people as well." The party opposite always tries to make out it is the friend of the little man. Look at what it has done.

The rule of law, Mr. Speaker, is based upon the liberty of the individual and has as its object the harmonizing of the opposite notions of individual liberty and public order. The notion of justice maintains a balance between these notions. There is an important difference between the rule of law as the supremacy of law over the government, and the concept of the rule of law as the supremacy of law in society generally. The first concept is the only feature common to the western nations, connoting as it does the protection of the individual against arbitrary government. But it is fundamental that there must exist some technique for forcing the government to submit to the law. If such a technique does not exist, the government itself becomes the means whereby the law is achieved.

If we allow evidence obtained from illegal wiretaps to be admissible in court, the entire administration of justice will fall into disrespect. We tried to make this point to the minister, but he refused to accept our views. He would not listen. As I say, it