will be before the courts long before the lawyer knows that his office is being bugged.

We are not only worried about bugging, Mr. Speaker; we are worried about derivative evidence. By that I mean evidence gathered as a result of listening in either through illegal bugging or legal bugging of which you are unaware. That is where the infringement of the freedom of the subject comes in.

● (1630)

In effect, this amendment means that if the authorities have up to three years to notify the person who has been the object of electronic surveillance, they have in fact abolished the notice altogether, as all orders will likely read that the rights shall exist for three years and no notice will be forthcoming until the last day of the third year, and by that time perhaps the people involved might have passed on to another land.

To make matters worse the courts have ruled under the old act—and this is what concerns me—that the failure to give notice did not make the evidence inadmissible at a trial against a person whose rights are being challenged by the all-powerful state. I want to emphasize that. The courts have ruled—and I will read some cases now—that the fact that they did not give a person notice of electronic surveillance did not make the evidence inadmissible. I attended a seminar of the Canadian Bar Association at which there was a lawyer who gave an excellent academic paper on the subject.

Clause 9(1) of the bill dealing with section 178.13 at pages 47 and 48 and subclause (1.1) are of some help, but even if there is an illegal wiretap against a solicitor in communication with his clients, the judge can still rule that evidence as admissible, for clause 10(2) states that the evidence will be made admissible, with or without authorization notice, if a judge is of the opinion that the communication is relevant to a matter at issue in the proceedings, or there has been merely a defect in form. I might digress and say to the *Hansard* reporters that they have in their hands a copy of what I am saying at the present time, except for the few phrases or sentences that I may add. The judges should not have this discretion, in my opinion, and it has been my experience as a trial lawyer, particularly today, that the judges generally rule and exercise their discretion in favour of the Crown.

Hon. members must remember that the Crown has the money, the Crown can buy the brains. The little citizen who is charged by the Crown can only get what he can afford. For example, in serious murder trials where the plea is insanity and you have to get a psychiatrist, at $5,000 a day the little man cannot afford a psychiatrist.

Now I come to the next part which I do not like with reference to bugging. I refer to the admissibility of derivative evidence. Under the new amendments to section 178.16 of the code, any evidence obtained, either directly or indirectly, as the result of an intercept, regardless of whether the private communication is inadmissible, becomes admissible. In addition, a judge or magistrate may receive in evidence an illegal private communication, if he deems it to be relevant to a matter at issue in the proceedings.

In this particular revision the government has clearly separated from current American trends and appears to have opted for the English tradition of admitting everything and anything that is relevant to an issue. I was told that at the last trial I had in January. There is some difference even from the English tradition. This obstacle having been removed, the Canadian courts will have much greater liberty in this area, and the time consuming deliberations on admissibility noted in certain recent cases will be eliminated.

There are many cases in which it has been held that not only was the evidence admissible but all derivative evidence from wiretaps was ruled admissible. For example, a lawyer might be talking to his client and his client tells him he is charged with a drug offence.

I raised a question today about four boys living together, one of whom had drugs in his suitcase under his bed. He likes a little drag of marijuana before he goes to sleep but, because they are all living together, they are all charged together. The three who may be innocent may call their lawyer and say to him, "We knew the marijuana was under the bed or in the overshoe." Thus the derivative evidence goes in. That becomes pretty difficult for the defence, and pretty difficult to defend the liberty of the subject. It will take more than the eloquence of the Minister of Justice (Mr. Basford) to prove to me and to my friends of the Canadian Bar Association that this is good law.

Some hon. Members: Hear, hear!

Mr. Woolliams: No appeal has yet succeeded in reaching the Supreme Court of Canada. The case of Johnnie Dale McDonald (alias John Adam Dante, John D. McDonald) versus the Queen, an appeal from the British Columbia Court of Appeal, embraced secondary issues concerning the extent to which the Crown may invade solicitor-client privilege, but the court refused leave to appeal on June 29, 1976. Had the appeal succeeded, one question of major interest in regard to wiretapping, that is, privilege under section 178.16(5), might have been resolved.

By an important determination at the provincial appeal level in the Queen versus Violet Rose Douglas the Ontario court of appeal has held that authorizations to intercept at a specific address, naming a specific party, do not cover interceptions of unknown persons at such address, and that transcripts of intercepts must be "word for word" or they are inadmissible. The particular application of this decision was to sections 178.12 and 178.16 of the code. That has been of some help.

In a Saskatchewan case heard early in 1977, the Queen versus Patricia Dawn Trickett, of January 13, 1977, the Saskatchewan district court, Maher, D. C. J.—by the way, may I pause for a moment to say that I graduated with him, so naturally I was quite interested in his decision—it was determined that even though the accused was not named in the wiretap authorization, the intercepted conversation was, in part, with a named person and concerned an offence for which the authorization was granted. In other words, what Jack Maher ruled in that decision in Saskatoon was a little different