

Protection of Privacy

problems that arise in our society as a result of organized crime. He also recognizes that it is necessary to have a somewhat broader extension than he was proposing at that time.

In effect, what we have before us is not a shotgun approach by the government, it is a careful approach. If it errs, it errs on the side of safety and caution rather than rushing in to adopt what might turn out to be a very arbitrary limitation on the possibilities of legitimate police wiretapping in our society.

I was a member of the justice committee which considered this matter under special reference several years ago. To the best of my recollection I supported the recommendation which was made at that time, and I still support it. This does not mean I am without considerable difficulty in respect of the hon. member's amendment.

The committee said, after urging that the crimes should be named, and I would, by the way, accept that as a very desirable principle:

In addition, these methods of investigation should be employed in the suppression of narcotics trafficking and in the control of syndicated crime.

The committee was not acting as a drafting body at that time; it was presenting a concept of syndicated or organized crime. I would submit that Mr. Atkey, as drafter, has not met the fairly heavy onus of defining for us what "organized crime" means. This is not a light problem. The first question that arises is what precisely is syndicated crime. It is very hard to give a satisfactory answer to this question. Whether our consideration is in terms of the phrase "syndicated or organized crime," the committee used the phrase "syndicated crime", and Mr. Atkey—

Some hon. Members: Order, order.

Mr. MacGuigan: I am sorry, Mr. Speaker. The amendment by the hon. member for St. Paul's refers to the phrase "organized crime" but this does not go any distance toward helping us see what the exact ambit is, or what factors the courts would be expected to apply in deciding whether certain actions fall within "organized crime". Does it depend on the number of persons involved and, if so, what number? Does it depend on the time frame of the activity and, if so, what length? Perhaps it should be a mixture of the number of persons and the time frame, but if so how does one determine the nature of the mixture? Is geography relevant? Are three men running a bookmaking establishment out of an apartment in Hamilton involved in organized crime? If not, would the same three men operating in partnership out of three different cities, say Hamilton, Calgary and Vancouver, fall within the phrase "organized crime"? At what point, for example, does using the mails to defraud, or engaging in a fraudulent manipulation of stock exchange transactions, the nature of which is not included in the list of crime presently, become organized?

I know, of course, that the phrase "organized crime" is in common usage, but it is a colloquial phrase that may be suitable for administrative use by investigative bodies, or suitable in ordinary conversation, but I seriously question whether it is suitable for legislation to be passed by this House. It was with considerations of this kind in mind that, even though the Department of Justice would have

[Mr. MacGuigan.]

had fully in mind the recommendation which the committee made, it was decided that the only workable solution was to define the offence as an indictable offence. In other words, this is the best limitation which it was thought could be put on the definition of an offence. This formula resulted in an elimination of provincial offences and federal summary conviction offences. It was considered that this was the narrowest that the definition could be made and still prove effective in answering the problem.

It will not now, for instance, be possible to get authorization in relation to a person suspected of using his telephone to make indecent or harassing telephone calls, because both offences are punishable on summary conviction.

Mr. Atkey: It is the same under this bill.

Mr. MacGuigan: Yes, that is true, but that was the point I was making.

Continuing with the discussion on the amendment, in addition to the problem with the phrase "organized crime", there also are some problems in respect of the list of specific offences. For example, the amendment includes trafficking in narcotics under the Narcotic Control Act, but not possession for the purpose of trafficking. It does not include the offence of trafficking in speed and other drugs dealt with under the Food and Drugs Act. I have no doubt that these omissions are deliberate, but this is an indication of the fact that the ambit is not as great as many members would wish. No mention is made of counterfeiting.

There is the concept of pattern of offence, but what does this phrase mean? What constitutes a pattern? The use of such phrase in relation to the phrase "organized crime", could be seen as simply piling vagueness upon vagueness. While it is true that the criminal law desirably should be specific in respect of mentioning crimes, it should also be as specific as possible in respect of definition.

I suggest that the amendment proposed by the hon. member for St. Paul's also raises the same problem for, while he criticizes the bill, his amendment contravenes the same rules because it, too, is vague. I believe it is not a solution to the problem which we recognize as well as does the hon. member for St. Paul's.

Mr. Stuart Leggatt (New Westminster): Mr. Speaker, I rise to support the amendment proposed by the hon. member for St. Paul's (Mr. Atkey). I think the position we take on wiretapping has to a great extent been weakened. I think we should have more courage, although I believe this to be a step in the right direction; the limiting of offences.

It was interesting to hear today on the news that two solicitors in Quebec reported that a wiretap was found in their offices. No one knows where the wiretapping devices came from but both barristers were engaged in the practice of criminal law. This is a very serious thing. With that in mind, I looked at the bill this morning and asked myself whether what we are discussing in this House would prevent that kind of abuse. What I want to show is that if this bill passes in its present form that kind of abuse would not be corrected.