

Protection of Privacy

Mr. Terry O'Connor (Halton): Mr. Speaker, the subject before the House is one of essential and fundamental importance to all Canadians. It is one which has become associated, both symbolically and in actuality, with the freedom of each individual to be left alone. Privacy at the option of the individual must be protected, as it is one of the essential personal rights of a free and democratic society. This premise is recognized by most members of this House, with the one or two notable exceptions we have heard from this afternoon, and also by a large majority of Canadians. It is, therefore, astonishing to the general public to learn that it is only now, in 1973, decades after the capability to eavesdrop by electronic methods became possible, that we are finally taking steps to control its use. That the potential, and in some cases the actual abuse of such gadgetry, has been allowed to exist unchecked and uncontrolled for so long is a sad commentary on past parliaments and past ministers of justice.

One of the subjects under discussion in this bill which interests me the most is what has become known as "the indirect evidence principle". This concerns whether evidence resulting from an illegal wiretap as opposed to the tape or the transcript of the tape itself may be used in evidence against an accused at a trial. The minister, having had this right deleted by the Committee on Justice and Legal Affairs, has made vigorous efforts to persuade public opinion that indirect evidence should be admissible in spite of the illegality of the wiretap. The minister has been singularly unsuccessful in his attempts to change public opinion. A cursory examination of editorial and other comment, including letters to the editor and so forth, from across the country has been almost uniformly against such attempts. The minister has even been criticized for attempting to reverse the will of this committee which proposed the amendment unsatisfactorily to him.

I suggest it is somewhat unfair to criticize the minister at this stage of the proceedings. Surely, each of the parliamentary steps toward final enactment has a substantive purpose and can be used by any member of this House to make what changes he deems necessary. If any single stage is merely a rubberstamp of initial stages, then we are wasting our time and such a step should be eliminated. Nor can I agree with the somewhat alarmist view of the *Montreal Gazette* which headlined its lead editorial last Thursday with the words "Lang Must Be Stopped". I suggest the minister is not a mad scientist out to destroy the world with his amendment. I feel, rather, that he probably falls into the category of ministers described by the hon. member for Verdun (Mr. Mackasey) on television last week when he referred to some ministers as being under the control of their senior officials.

As to the substantive aspects of his position in respect of this amendment, I suggest he is dead wrong. He will not have my support nor, I hope, the support of the majority of the members of this House. The assumption has generally been that the rule permitting indirect evidence would apply only to the police: That is, the police only may make use of the exceptions to the general prohibition in the statute against wiretapping. As the hon. member for Ottawa West (Mr. Reilly) pointed out, a closer examination of the wording of the statute would indicate this is not the case.

[Mr. Reilly.]

The bill permits applications for electronic surveillance permits to be made by peace officers and public officers. Under the Interpretation Act "public officer" includes:

—any person in the public service of Canada

(i) who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power, or

(ii) upon whom a duty is imposed by or under an enactment;

By giving the very broad meaning enunciated by this Interpretation Act to the words "public officer" we can see that they could include customs and excise tax officers, enforcement people, income tax investigators, and even prison guards or game wardens. Those are all people who, under the broad definition of the section, should be included as "public officers". Thus, with this extremely wide variety of persons permitted under the statute to avail themselves of the permits, providing they make the appropriate application through an agent or the Attorney General, it is incumbent upon us to devise rules and strictures which are onerous and which provide every protection to the individual from the abuse of the exemption allowed under this bill.

• (1640)

It has been said that in Canada we enjoy outstanding police forces which would be little inclined to disobey the law and that there would be little to fear from abuse of the indirect evidence privilege if the minister's amendment were to carry. Police forces and other public officers are, for the most part, no doubt well-intentioned public servants. Thus, I would suggest that if this is the case they would have no hesitation whatsoever in accepting an amendment which does nothing more than require them to follow a simple procedure designed to guarantee protection of the civil rights of each and every Canadian. This simple procedure involves making an application through one of the many agents, which the Attorney General or the Minister of Justice will be able to appoint, who in turn will sign the application so that it may be taken before a judge *ex parte*. Then, upon completion of a simple affidavit, the elements of which are clearly set out in the statute, the public officer or peace officer will be granted the permission to wiretap within the restrictions of the order set out by the court.

I suggest that this procedure could be carried out quickly with a minimum of red tape and a minimum of delay. The attitude and actions of the minister and others against the elimination of the provision permitting indirect evidence from an illegal tap makes me, and I believe many others, suspicious because we feel the incidence of illegal taps will be high. If this were not the case, they would see no substantial hindrance to justice in requiring this simple procedure to be followed. Proponents of the use of indirect evidence cite the recent Ansano case in Toronto where the electronic eavesdropping devices led to the conviction of a group of heroin importers. They cite this case as though it would not have been solved if the amendments before the House were, in fact the law. This is a lot of nonsense. The police had more than sufficient time to apply for the necessary authorization had this step been required by law. Having done so, the full evidence, both direct and indirect, resulting from the use of these