

entry to premises for the purpose of carrying out inspections to ensure compliance with regulatory schemes, or to search for evidence of a contravention of a statute. Of concern here is the protection of legitimate privacy interests which may be at risk during a search or seizure.

The amendments proposed in this bill seek to balance these privacy interests with the need to ensure compliance with regulatory schemes. The aim has been to provide for the greatest degree of control on the discretion of government officials consistent with effective regulation. For this purpose, statutory powers of entry authorizing an inspection have been treated differently from powers of entry authorizing a search.

In brief, inspectors under various statutes—and ones that come to mind quickly are the migratory bird regulations and regulations dealing with certain aspects of the fishing industry—may still enter for the purposes of seeing that compliance is taking place; but the amendments to the statute will provide that where evidence is being sought to find a breach of the statute, where there is to be a charge, trial and conviction process, a judicial warrant would be necessary to enter the premises.

An inspection occurs when entry is for the purpose of ensuring compliance, as I have indicated, with a regulatory scheme. For example, under the Pest Control Products Act, amended by clause 21 of the bill, an inspector can enter any premises where he reasonably believes there is a control product to which the act applies for the purposes of carrying out such inspections as are necessary to carry into effect any of the provisions of the act. The amendment to this particular act, and most of the other acts covered in Part I, will require a warrant when such an inspection is carried out in a dwelling house.

The reason for drawing a distinction between commercial and other premises and a dwelling house is that there is a legitimate expectation of privacy in a dwelling house—something about a man's home being his castle.

A person engaged in a closely regulated industry expects to be inspected regularly in his or her commercial premises.

**Hon. Royce Frith (Deputy Leader of the Opposition):** *Sic transit gloria.* A man's home is his castle, or whatever.

**Senator Nurgitz:** That is a new one.

As I was trying to explain before some weighty principle got in the way—

**Senator Frith:** Before some Latin scholar interrupted you.

**Senator Nurgitz:** Before some broken Latin scholar got in the way, a person engaged in a closely regulated industry expects to be inspected regularly in his or her commercial premises. This same expectation ought not to be there for a dwelling house, where historically more rigorous safeguards have been recognized.

A search occurs when entry is for the purpose of seeking evidence of a contravention of a statute. The amendments in Part II of this bill are a direct result of the Supreme Court

decision that many of you will be aware of in the case of *Hunter vs. Southam*.

A number of federal statutes, such as the National Parks Act and the Environmental Contaminants Act, which already contain search powers will be amended to require a warrant. The circumstances where a warrant is not required are specifically spelled out. When the delay necessary to obtain a warrant would result in danger to human life and safety or the loss or destruction of evidence, the search may take place without a warrant. The determination of whether or not these circumstances exist will be reviewable by the courts. There are also limitations on the use of force in executing a search warrant. When the person with the warrant is not a peace officer force can only be used if it is specifically authorized in the warrant and the person is accompanied by a peace officer.

● (1540)

In some of the provisions in Part II—the Fisheries Act, the Environmental Contaminants Act, etc.—separate inspection powers have been added. This is intended to ensure that the administrators of these acts will have an adequate range of powers clearly delineated according to whether a search or an inspection is required, to ensure effectual administration of the legislation consistent with the Charter.

I would like to deal briefly with the National Defence Act referred to in Part III. The major thrust of amendments to the National Defence Act is to bring the system of military justice closer to the ordinary criminal law. The Minister of Justice has pointed out that the government accepts the view expressed by some of the judges in the Supreme Court of Canada case of *McKay vs. The Queen*, that differences in the protections available under military law must relate to the specific needs of military life and organization. Briefly, the amendments in this bill will provide that an accused in a trial under the Code of Service discipline has the benefit of any defence available under the Criminal Code or any other federal statute; end double jeopardy where a person has been previously acquitted, convicted or punished by a service tribunal, a civil court in Canada or a court of competent criminal jurisdiction in another country; provide for specific authority for searches relating to military personnel; and provide for a right to bail or interim release for those awaiting trial or appealing a conviction.

The amendments to the Canadian Human Rights Act, which is dealt with in Part IV of the bill, take into account allegations that the procedure for appointing tribunals conflicts with the guarantee of procedural fairness in section 7 of the Charter. Under the new scheme provided for in this bill, the Commission will continue to screen complaints to determine if the appointment of a tribunal is warranted. However, the actual appointment of the members of the tribunal will be handled by an independent officer—that is, the president of the tribunal. In this way it is hoped to eliminate any possible perception that the Commission is making a finding of guilt before appointing a tribunal.

As I mentioned earlier, the more controversial equality issues of Part V are dealt with in the discussion paper on