

*Computer Crime*

processes information, the law does not recognize programs as property which can be stolen. Indeed, many managers and programmers in the computer industries swap programs so regularly that any legal attempt to combat software piracy would be very difficult. This problem has led some to advocate that the best form of protection is for companies to beef up their own security techniques by introducing protective codes.

Another alternative based on self-help is an attempt to bind those with whom one deals under agreements to treat software packages as trade secrets. This option would give an owner recourse in contract against unauthorized disclosures by customers and employees, but does not address the problem of how to deal with parties beyond the limits of the agreement. On the other hand, software is very expensive and shows little sign of falling in price. If software innovation is to continue, I believe some form of legal protection is needed.

The third situation for which no legal recourse appears to exist is the unauthorized use of computer time and services. In the often-quoted Alberta case, *Regina v. McLaughlin (1979)*, two students and part-time employees gained access to a computer without authorization, examined some university data, interfered with the input of data, and acquired confidential passwords of other users. The three were charged with theft of telecommunications services under Section 287 of the Criminal Code. McLaughlin's conviction under this section was subsequently overturned by the Alberta Court of Appeal which found that a computer system was not a telecommunications facility.

Their decision was upheld by the Supreme Court of Canada in July of 1980. In that decision, Mr. Justice Estey stated:

Had Parliament intended to associate penal consequence with the unauthorized operation of a computer, it no doubt would have done so in a section of the Criminal Code or other penal statutes in which the term which is now so permanently embedded in our language is employed.

One of the other students involved was convicted under the mischief provisions of the Criminal Code because a computer shutdown or crash resulted from his unauthorized tampering. It is important to realize, however, that for the mischief provisions to apply, there must be obstruction and interruption of, or interference with, the operation of property. If the crime had been committed without causing the crash or some other tangible damage, the conviction would likely not have been upheld.

Similarly, the theft provision of the Code requires that exclusive possession must be taken of that which is stolen for "theft" to have occurred. If a program is stolen by terminal access, the "original" can remain in possession of the owner and the thief does not acquire exclusive possession. In this way the owner is not deprived "temporarily or absolutely" of his property.

The Department of Justice has been examining the issue of computer crime for quite a number of years now. Every so often we are told that legislation will be introduced "within the next few months". In October of 1980, the Justice Minister announced the Government would be introducing legislation prohibiting the theft of computer time and services, as well as

the unauthorized alteration or erasure of computer data. Little more was heard at that time on the subject.

In June of 1982, after I began to circulate my draft Bill among industry officials, academics, and other interested people, the Department of Justice again revealed that they were studying the area of computer crime and would be introducing a number of amendments in their omnibus Criminal Code Bill relating to the problem.

At that time, officials of the Department indicated it would be October before the Bill would see the light of day in this House. October has since come and gone. The current Minister of Justice (Mr. MacGuigan) has recently informed me that he will be introducing a criminal law amendment Bill sometime during the next session of Parliament. Mr. Speaker, if the length of the session of Parliament to date is any indication, no one knows when action will be taken to deal with this very serious problem.

It appears that one of the difficulties that the Department of Justice is encountering is owing to their hesitation to apply ancient property rights to modern information sources. To define information as property raises the fundamental issue of whether or not information should be treated as a protected resource. While I agree that there is a definite need to maintain a balance between the producers of information and the necessity of having information flow freely in society, I believe that theft of information must be dealt with by criminal law.

The importance of the information industry is growing very rapidly in Canada. To ensure that society can take advantage of the benefits of computer technology, it does not seem unreasonable to expect the law to provide producers of information with at least a minimum of legal protection from computer abuse. These companies will be reluctant to invest time and money in research and development if the results of their efforts can be stolen without recourse.

Mr. Speaker, I want to pay tribute to my colleague, the Hon. Member for Bow River (Mr. Taylor) because the Bill that I am introducing today is, to a very great extent, a refinement of legislation that was introduced by him to deal with a situation similar to the McLaughlin case. It is a refinement as well of what appears to be the Government's approach to this particular issue. What I have done is to opt for the ad hoc approach by proposing selective amendments to two acts, the Canada Evidence Act and the Criminal Code.

In general, my Bill proposes three things: first, an amendment to the Canada Evidence Act that would permit computer printouts to be treated in evidence as original documents; second, an amendment ensuring that the theft of computer software and computer data be considered a crime under the Criminal Code; and third, new provisions making misuse, alteration, damage, manipulation, or destruction of computer software or data by unauthorized personnel punishable under the mischief section of the Code.

I will try to conclude my remarks as quickly as possible, Mr. Speaker.