

*Government Orders*

explanations because whatever we do here you can be sure will be argued in criminal courts for many years to come.

A mistake made at this stage, using 20-20 hindsight, one error in judgment on our part could result—and I am guessing—in millions and millions of dollars of litigation in the criminal courts. It is extremely important at this second reading stage and the exercise at committee that we do it properly.

Another item I wanted to mention is a far-sighted proposal. The government recognizes, as do parliamentarians, that investigative techniques may evolve. We are thinking about new technology and it may well be that it would be inappropriate for the state to use those new techniques. This section provides that where the state proposes to embark on a surveillance or monitoring exercise using any of these undefined new techniques, a warrant is available for that. Usually it will be the police who will present their proposal for monitoring to a judge and a judge will then approve. This proposal will then regulate a field which perhaps has not even evolved yet. We are certainly dealing with the image of Big Brother here. I think that inserting a provision in the code now to deal with these types of things in the future is probably very useful.

• (1830)

There are sections dealing with tracking and monitoring devices. There are also sections dealing with, as I mentioned earlier, the body pack situation where the undercover policeman needs to know that his colleagues are monitoring him or her as he or she proceeds with the undercover work. I note for the record the section requiring the evidence to come from these body packs, this type of surveillance, is meant to protect the policeman or the undercover person. This evidence cannot be used in court for the charge for which the investigation has been undertaken.

However the proposed provisions do permit that evidence to be used where charges relating to bodily harm with respect to the undercover person are laid. I have noted, as have others, that the evidence is not usable for perjury in the event that the accused perjures himself or herself. I would for the record note that the

legislative committee should be considering the use of that body pack derived evidence for perjury charges under the Criminal Code should that eventuality arise.

The next area has already been addressed by colleagues in the House. It pertains to protection of privacy for cellular telephone calls. I had introduced a bill concerning this two or three months ago. The purpose of the bill was to provide the same privacy protection to cellular telephone calls as already exists for regular line based magnetic acoustic telephone transmission.

The government has taken a different route and I am interested in its rationale. Rather than making all telephone conversations carried by a telephone carrier private and undisclosed, non-tappable and non-interceptable, the government has provided that any interception that is done maliciously or for gain will be an offence. That has to do with the interception.

If you happen to be scanning and intercept a cellular call—some say it is just a radio transmission—then the fact that you do it innocently and not for malice or gain would not be an offence. However a second section states that where you disclose what you have intercepted, that disclosure would be an offence. That is the approach of the government.

It raises a couple of more questions. One of them is the charging section where it says it is an offence to disclose the contents of a cellular call. It says that it is an offence to disclose the mere existence of the telephone call. This is a potential problem because we are not talking about the contents of the call, we are talking about its existence.

Someone who is overhearing one of these calls intentionally or not, may simply say to a friend: "Hey, I am just picking up this phone call". In fact, under the terms of this section as now drafted that appears to be an offence. I am not sure that is what we intend. I want to have a closer look at that to make sure that we are not creating criminal offences which we did not intend.

I am very pleased to see that all of these different changes which are overdue have been placed in this bill. At least there is legislation to try to rectify omissions and gaps in current legislation.