

*Criminal Code*

sure that some 58 copies of a highly sensitive document are being circulated to God knows whom, including file clerks, secretaries and so forth.

In England, in no particular case of interception is the number in excess of three or four carefully chosen officers. They have the duty to select and transcribe only those parts of the material that are relevant to the inquiry in hand. The quantity of relevant material that is thus transcribed varies from case to case. It can be extensive, but in the great majority of cases it bears a small proportion to the total material recorded by the machines. The material that is not selected and transcribed is destroyed. Of particular importance in a nation of 55 million people, with regard to interceptions with respect to security services there are only two officers who have access to that kind of intercepted material. I commend that as a policy which the Solicitor General should adopt.

The final point I have to make is of great concern to all hon. members, and it has to do with how far the provisions of this bill and, for that matter, the provisions of the Criminal Code of Canada with respect to the Protection of Privacy Act should apply to members of parliament. The committee to which I have referred dealt with that specific question, and in paragraph 124 it reported the following:

Questions have recently been asked in the House of Commons about the propriety of intercepting the communications of members of parliament. We have therefore taken advice upon this matter and considered it. The essential point is whether the interception of a Member of Parliament's letters or telephone would constitute a breach of privilege. This is of course for the House itself to determine.

That is something which is under consideration now by the Special Committee on Rights and Immunities of Members of Parliament under the chairmanship of Mr. Speaker. The report goes on to say the following:

So far as we have been able to discover, a Member of Parliament is not to be distinguished from an ordinary member of the public, so far as the interception of communications is concerned, unless the communications were held to be in connection with a Parliamentary proceeding.

This is an important phrase which should be considered by the special committee.

● (2022)

Dealing with the question of the interception of members' letters, the British House of Commons expressed itself clearly in a resolution in 1735. This was contained in a report of the secret committee of the House of Commons in 1844. I will not bore the House with the quotation of those words; simply I commend the quotation from the report of the privy councillors who examined this question in 1957 in England. They concluded that this seemed to be a clear recognition by the House of the right of the secretary of state to intercept members' postal packages by the use of an express warrant. So far as we know, this recognition has never been subsequently rescinded or modified.

Then the committee went on to consider how the power to intercept communications should be used in the future. At page 154 of their report, the objections were laid out with respect to civil liberties questions which have been raised. The

[Mr. Nielsen.]

objections can be summarized as follows: First, the powers of interception are in the hands of state officials. They are exercised in secret, and the extent of the exercise and the purposes for which the powers are exercised are not publicly known. Second, there is some apprehension that the powers may be used to invade private rights and to interfere with the liberty of the subject unnecessarily. Third, the circumstances in which the powers may be exercised do not give to the subject any reasonable opportunities for protest or objection. These are all very valid points.

Paragraph 137 of the report of the privy councillors reads as follows:

We have examined the exact circumstances in which the powers of the secretary of state have been exercised, in order to see what is the extent of the interference with the privacy of the individual or his liberty, and whether such interference ought to be prohibited for the future, or whether it is necessary or justifiable in the interests of the citizens as a whole that the procedure in force at the present time should continue. The freedom of the individual is quite valueless if he can be made the victim of the law breaker. Every civilized society must have power to protect itself from wrongdoers. It must have powers to arrest, search and imprison those who break the laws. If these powers are properly and wisely exercised, it may be thought that they are in themselves aids to the maintenance of the true freedom of the individual.

It is therefore most important to observe that from the evidence tendered to us, it is plain that the exercise of the power to intercept communications by the secretary of state has never been regarded as a general power, but as a power, carefully restricted to special and well-defined circumstances and purposes, and hedged about with clearly formulated rules and subject to very special safeguards.

That point was made by the hon. member for Peace River.

I should like to deal with the report of the committee of privy councillors, appointed to inquire into the interception of communications in England, by placing on the record one or two of their summary of conclusions and recommendations. One of the most important was that they recommended that in no circumstances should material obtained by interception be made available to any body or person whatever outside the public service. That safeguard is not in the bill before the House. I urge the Solicitor General to cause the government to introduce that safeguard into the bill.

In its deliberations the committee considered a particular case respecting the interception of communications to a solicitor in England, where the results of that communication were transmitted to the bar council. I am sure the Solicitor General should limit the dissemination of information gathered by the interceptive processes, such as that suggested in this bill, to the public service and the public service only. That is where it should stop.

Another rather important recommendation of this report was that the committee was satisfied that interception should be highly selective and that it should be used only where there is good reason to believe that a serious criminal offence has been or is being committed, or that security interest is involved. Also that committee concluded that only a minimum number of people should have access to intercepted material, either in its original or in its selected form, and that this number is very small. Again I point out to the Solicitor General that the practice in England restricts that kind of information to two officials. I ask him to compare that with