

Protection of Privacy

police when evidence is adduced in that fashion. I do, however, share the view that the police ought not to engage in illegal activity in obtaining evidence, in the conduct of obtaining evidence on our behalf in law enforcement. That is why we have placed in this bill a very significant sanction indeed to discourage the police or anyone else from using electronic devices to intrude upon privacy.

The basic provision in the bill makes this a crime with a punishment of up to five years in prison—a punishment which might well be used against anyone who invades, without regard to the rights of an individual, his privacy. That is a significant penalty and the main bulwark of our safety, after this bill becomes law, that our privacy will not be invaded.

Why then, not add the additional sanction of keeping the evidence out? I would ask hon. members to turn their attention to the kind of situation in which we might find ourselves. Let us suppose a person is accused of murder and there is a murder weapon—the most relevant of evidence in relation to that crime—with ballistics matching the bullet which was found in the victim, with fingerprints on the weapon which matched the fingerprints of the accused in the dock. If the law were to stay as it has been reported from the committee, that murder weapon could not be admitted in evidence if it was found as a result of information which in any way came from the use of an illegal electronic intrusion or wiretap. That would be true whether the information which led to the finding of the gun was obtained by the police, which is unlikely, or by a private individual's illegal wiretapping.

We are asked, therefore, to see that a court is denied relevant evidence in a case that may be extremely important to law and order, to the cause of justice in our society, to the cause of deterrence of crime, because of something in the background which led to that evidence being adduced. I do not believe that any policeman will lightly use an electronic device without an authorization as provided by the bill when facing a potential five-year jail sentence which we provide for the illegal use of such devices in the legislation.

Do we want to see a court find a murderer not guilty because a key piece of evidence is kept from that court because of some rule relative to the admissibility of that evidence—not a rule that goes to the basic proposition that that evidence is needed in the court, but which we put in place for quite a different reason? I emphasize, Mr. Speaker, that I am looking particularly at evidence which may be obtained in an indirect fashion. Who knows what “indirect” means? How far “indirect” may we trace? Evidence may be obtained in an indirect fashion as a result of an illegal intrusion by someone in society at large, perhaps a criminal, and yet we would be deprived of that evidence in court because of the illegality of the intrusion which was part of the background facts which led to the finding of the evidence, evidence which is unassailable, which is clear—the gun itself.

I therefore urge hon. members to consider my amendment which proposes that a judge in such a situation may examine the evidence, notwithstanding the fact that there may be a taint of illegality in regard to its source; and when it is relevant and when he believes it is in the

[Mr. Lang.]

interests of justice to do so, he may admit that evidence in the proceedings before him when he is concerned that to exclude it as evidence may result in justice not being done. Surely in those circumstances we ought to want him to be able to admit that evidence in the proceedings before him. Surely we would be doing damage to the whole approach to justice and the approach that people take to justice in our courts if we deprive the court of that evidence in such circumstances.

I have a further concern about a rule that provides for exclusion of evidence that is relevant, and that is the possibility of defence counsel making use of that rule to take a great deal of time in court to determine whether there is anything in the background which suggests that something associated with a taint of illegal wiretapping exists. I am talking about a case in which there is nothing before the court to indicate any wiretapping at all, and evidence is introduced. How will we stop defence counsel in such a case insisting on the right to cross-examine either the witnesses or police at hand, or other police summoned for the purpose to get a full scale of denials that there was any wiretapping in any way, at any time, anyhow, that had any effect on the case?

What if a judge in such a trial said to defense counsel, “I am not going to let you take our time to try to smoke out whether there was any wiretapping”? I am postulating a case in which there is no wiretapping evidence at all, yet the time of the court may be taken up hour after hour because of the insistence of the defence on the right to cross-examine endlessly, because of the rule that evidence, even if associated indirectly with wiretapping, cannot be admitted. Defence counsel would therefore be obligated to see whether there was even any indirect relationship between the evidence before the court and any wiretapping. If the trial judge were to stop him short in that cross-examination—as we know may happen at some time—a court of appeal could well reverse a verdict of guilty in such a case and send the case back on the ground that the trial judge had not allowed sufficient latitude in cross-examination.

● (2040)

In order to discourage illegal wiretapping we have introduced a five-year jail sentence in cases where wiretapping is undertaken illegally.

Mr. Atkey: The sentence will only apply if you catch the offenders.

Mr. Lang: I am sure hon. members do not underrate the ability of defence counsel to cross-examine in an attempt to ascertain if wiretapping was used, even in cases where there is no suggestion of wiretapping having been used. Those who oppose the amendment, I suggest, are showing no concern for the time of the court and the possibility of reversal in cases involving serious charges merely because the trial judge has not permitted counsel to pursue endlessly the quest for something that he has not yet found but which he thinks may be lurking in the background.

Mr. Nielsen: Mr. Speaker, may I ask a question?

Mr. Lang: Not at this point, if the hon. member does not mind. In addition, I wish to suggest one other serious