

Senator Buckwold: I do not mean you personally, but will your department, in fact, instruct judges on how to interpret these rules?

Hon. Mr. Lang: We do not instruct judges in that way. I really mean to say that lawyers not connected with the Department of Justice will, no doubt, when necessary, be making these points with the judges.

Senator Buckwold: Let us go into this question of having the authorization "in writing". I can envisage some judges—unless the rules are pretty clearly defined for them—indicating that, in fact, before anything can happen someone will personally have to have a document in writing giving the authorization. You have indicated that that is not necessarily so. Would an instruction like that be given?

Hon. Mr. Lang: Not really, because, while that is my opinion, it is, of course, a judge in the end, at some point, and not necessarily the judge giving the authorization but another judge, who will have to determine, or might have to determine, whether an authorization was properly in existence.

Senator Buckwold: Do you not foresee some problems in that area? Let us say there is a designated judge who is away that night and somebody is on call, like a doctor is on call. You phone at four o'clock in the morning and the substitute designee is perhaps not quite as aware of the situation and, in fact, insists upon somebody, who could be some time away, picking up a written authorization.

Hon. Mr. Lang: That is no different from the problem we always have with the law, in that once it is written it is in the hands of judges to deal with it. We have an intention which we give to the law when we write it. We expect the judges to find that intention in the words that have been written. If they do not, we have to change the law. That is the usual thing. All one can really do is say: Here is what one expects them to find in the words, and therefore they will find it.

Senator Laird: May I ask a supplementary to that, while it is on my mind? Is there any provision, Mr. Minister, in this act, for approval of surveillance *ex post facto*?

Hon. Mr. Lang: Not as it is now written, no.

Senator Buckwold: Mr. Chairman, can I just finish my last question, carrying this on? Because this worries me.

Do the chiefs of police feel that there could be problems in the communication process with judges?

Mr. Adamson: Yes, I do, sir. In answering for the group, I feel that this is a problem. If it were as Mr. Lang said, and they were given broad interpretation, fine; but I think one judge will interpret differently from another, and I see some great problems here. That is why I suggested the eight hours, making us still fully accountable, making us go back to the judge immediately, but giving us the opportunity to install the surveillance, and then go to him. I fail to see how we can avoid our responsibilities, or do anything wrong. We are liable both criminally and civilly in this matter, and this is a prohibitive part of it, also, the same as the 90-day disclosure.

Senator McIlraith: Mr. Chairman, could I ask another general question?

It is my recollection that the attorneys general had not been heard by the House of Commons committee. They

had asked to be heard, or some of them had, and were not. Can either you or the minister refresh my memory on that point? I just do not know what the situation is.

Hon. Mr. Lang: Mr. Chairman, I do not know that they actually requested to be heard. One or the other of them did indicate that they thought more time should be given for them to consider the implications, specifically, of the exclusion of evidence rule, so that, in effect, in my view, has been cured by the subsequent action in the House of Commons.

Senator McIlraith: On this question of the emergency provision, or the absence of an adequate emergency provision, did they express any views in writing on that, recently?

Hon. Mr. Lang: No, I do not think so. I do not think we really saw anything from them on that.

Mr. D. H. Christie, Associate Deputy Minister of Justice: The main concern, senator, was with the exclusionary rule; that was their basic and main concern. They all wrote the minister objecting to the proposed bill as it was reported out of the Standing Committee on Justice and Legal Affairs.

Senator McIlraith: But the narrow emergency rule that was in—that is not in now—when that last change was made, they had not had an opportunity to be heard on at all, had they?

Hon. Mr. Lang: No, they had not.

Mr. Adamson: Mr. Chairman, if I may just add something to this, I have had no opportunity to talk to Mr. Bales about this. The bill, as you know, was passed on December 4, and we asked for an invitation to attend here. I have not discussed it. I do not know if our attorney general knows the ramifications of this completely. I have had no time to do so, though I certainly intend to do so.

Senator Croll: You have had a long time to put him in the picture. We have been playing with this for three years. He ought to know what it is all about.

Mr. Adamson: Senator Croll, the 90-day disclosure was not in here until the last few days in the house, I suggest.

Senator Croll: He should have had it by telephone two minutes after you knew it. He is your attorney general; he is the man you turn to.

Senator McIlraith: I am just addressing myself to the narrow point of the absence of an emergency rule. I am a bit concerned, because it came in very late in its present form, that there has not been sufficient opportunity for the ones who, in our political system, have the responsibility for the administration of justice, when we are making a drastic change in the administration of justice, to have their say. This aspect of it is really the administration of justice, as distinct from something purely substantive, by itself. Yet we are legislating without their having any chance to be heard on this narrow point at all. I do not grant them the right to be heard on the more substantive matters. I think we have to take our responsibilities on that without them; but in this grey area we have a responsibility in some part of it, and they have statutory or constitutional responsibilities for the administration of justice. When we have a section like this, that is purely concerned with the administration of justice, and we are