The Committee wishes to reiterate its conviction that, while these extraordinary new methods of investigation, detection and prevention of crime become an increasingly important means for preserving the safety and democratic institutions of the people of Canada, no power which has been granted to any government since the beginning of this nation is more capable, if misused, of destroying the Constitution similar in principle to that of the United Kingdom, and all of the vital processes of democracy which accompany those principles. The Committee is unwilling to recommend that this power be capable of use by any government agency, whether provincial or federal, in the absence of means for judicial redress if the power is misused. The Committee therefore recommends that no right to apply for authorization to conduct interception of communications or surreptitious electronic device surveillance be conferred by Parliament on any Minister in any jurisdiction in which there is not a right of recovery vested in the citizens of that jurisdiction similar in scope and intendment to the causes of action outlined above. These causes of action would be an integral and essential part of any federal legislation which grants the power to apply for authorization to employ these methods to the Attorney General of Canada. The legislation granting power to a responsible provincial Minister to apply for authorization to intercept communications should be framed so as to extend its provisions to any province upon the ascertainment by the Governor in Council that effective civil remedies exist, as outlined above, for individual redress against the abuse of these methods of investigation by the provincial government, its employees, and law enforcement personnel or peace officers under operational control of the Crown in right of that province. Given the fact that Parliament is the body which must decide how far controlled use of wiretapping and surreptitious electronic device surveillance may be extended, it is unfortunate that it may constitutionally precluded from creating the safeguards against their abuse, the existence of which forms a necessary condition precedent to the Committee's recommendation that controlled law enforcement use be allowed. The formula for ensuring that such protections for civil liberties exist which is recommended by the Committee is perhaps without much precedent—but the implications of government initiated and controlled interception of communications and surreptitious electronic device surveillance without the broadest measure of safeguards, are themselves absolutely unprecedented.

The Committee suggests that the Uniformity Commissioners could here, as in the wider problems of protection of privacy previously discussed, make a valuable contribution to our jurisprudence by devising uniform provincial civil remedies specifically designed as complementary to federal legislation, for the purpose of providing the necessary controls over abuse of the extraordinary power to intercept communications or to conduct surreptitious electronic device surveillance.

In addition, several provinces have had the problem of protection of privacy under review recently, and have indicated that provincial legislation is contemplated once the scope and reach of federal legislation is known. Leadership by those provinces which, as a result of studies undertaken on provincial initiative, possess a familiarity with the nature of this problem, could result in the rapid production of one or two model acts which could be adopted across Canada and which could function until, or even replace the need for, the eventual drafting of a uniform act by the Uniformity Commissioners. The Committee recommends that these avenues be explored by the Government with the provinces.