

PROTECTING THE PRIVACY OF INNOCENT PERSONS

It must be recognized that the use of the power to intercept communications will result in the unintended but unavoidable transcription of the thoughts and speech of many innocent persons. The dragnet quality of interception must be avoided where possible and the prospective harm ameliorated wherever it occurs to the greatest extent that is consistent with the enforcement of the law.

One reliable means by which to avoid unnecessary invasion of the privacy of innocent persons is to limit the interception temporally and spatially.

The Committee recommends that any initial interception be authorized for not more than 14 days or until a specific conversation sought is obtained, whichever occurs first. If the surveillance is productive, or probable cause exists to believe that it will prove to be productive within the following 14 days, it should be allowed to continue, subject to re-application to the judge granting the order, and approval thereof. The Committee is unable to establish any arbitrary limit beyond which non-productive surveillance may not be extended. The Committee recommends that the 14-day period be designated primarily for the purpose of causing a periodic review of the situation by the judge granting the order and recognizes that effective restraints upon the continued use of surveillance in a manner inconsistent with the intentment of the law must proceed from considerations of judicial review of the situation, and from political visibility and public accountability, rather than from any legislative formula determined in advance of the fact.

The Committee recommends that every request made to and every authorization issued by the judge be specific as to the information sought, the criminal activity involved, the location to be placed under surveillance, and to the extent ascertainable, the name or names of the persons to be subjected to surveillance.

Regardless of the care taken to avoid the involvement of innocent persons, this is bound to occur with an unfortunate frequency. The primary concern in this circumstance is to avoid the use or disclosure of personal information relating to such persons in any circumstances. Although the acquisition of such information cannot be avoided, the unauthorized or improper use or disclosure of such information is a part of the proposed federal and provincial rights of action in tort, as well as a criminal act, as recommended above.

If personal information obtained through an interception of communications does occur on a magnetic tape or in a transcript intended for use in a criminal prosecution, the problem remains of what to do about it. Incalculable damage to reputation and the personal lives of innocent persons may occur unless extreme care is taken in this area. The Committee recommends that a hearing for editing be held, in camera, prior to the criminal trial for court-supervised deletion of irrelevant recorded or transcribed material which may be damaging, embarrassing or otherwise invade the privacy of any person not before the court, and for deletion of relevant material where the prejudicial effect upon the privacy or reputation of any person not before the court outweighs its value in the interest of the proper administration of justice between the Crown and the accused. Further, the Committee recommends that in those cases where relevant evidence which is prejudicial to the privacy or reputation of any person not before the court is required to be introduced in