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Monday 8 December 2014

Standing Committee on General Government

Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2014

Chair: Grant Crack
Clerk: Sylwia Przezdziecki

Assemblée législative de l'Ontario

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Journal des débats (Hansard)

Lundi 8 décembre 2014

Comité permanent des affaires gouvernementales

Loi de 2014 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

Président : Grant Crack
Greffière : Sylwia Przezdziecki

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Hansard Reporting and Interpretation Services
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Monday 8 December 2014

Lundi 8 décembre 2014

The committee met at 1400 in committee room 2.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2014

LOI DE 2014 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 35, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2014 / Projet de loi 35, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2014 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mr. Grant Crack): Good afternoon, everyone. I'd like to call the meeting of the Standing Committee on General Government to order. I'd like to welcome all members of the committee, the Clerk's office, Hansard, legislative research and, of course, our presenters as well.

This afternoon we're here to hear three deputations from stakeholders from the community regarding Bill 35, which is An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2014. This afternoon, as I said, we will hear from three presenters. Each presenter will have five minutes to address the committee, followed by three minutes from each party of questioning, comments, that sort of thing.

ONTARIO POWER GENERATION

The Chair (Mr. Grant Crack): It's my great pleasure to welcome, from Ontario Power Generation, Mr. Paul Nadeau and Mr. Carlton Mathias this afternoon. Welcome, gentlemen. You have five minutes.

Mr. Paul Nadeau: Good afternoon. My name is Paul Nadeau. I am the vice-president in charge of security and emergency services for Ontario Power Generation. I am accompanied today by Carlton Mathias, assistant general counsel for OPG.

Having been previously consulted by the Honourable Roy McMurtry and having had the opportunity to present to the steering committee on justice policy in April 2012, Ontario Power Generation is pleased that electricity generating facilities, and nuclear facilities in particular, continue to be recognized in Bill 35 as requiring enhanced security protection.

It is Ontario Power Generation's position that the protection afforded to electricity generating facilities by Bill 35 meets with the best interests of the people of Ontario. It does so by providing electricity-generating utilities with clarity regarding the powers and authorities upon which our officers may rely while respecting the rights of private citizens.

In our April 2012 presentation to the justice policy steering committee, OPG requested that consideration be given to clarifying authorities in relation to dealing with persons engaged in suspicious activities. The committee clearly listened to our concerns, and those issues have been effectively dispositioned in Bill 35.

In closing, Bill 35 provides clear and concise guidance, reducing risk to the security of Ontario's electricity generation facilities, while striking a balance with the rights of the public. Ontario Power Generation fully supports the passing of Bill 35.

I wish to thank the committee for allowing us the opportunity to speak this afternoon, and we are available to answer any questions you may have.

The Chair (Mr. Grant Crack): Thank you very much. That is a record: two minutes out of five. Congratulations.

Mr. Paul Nadeau: I can read it again if you want.

The Chair (Mr. Grant Crack): So we will start traditionally with the members of the official opposition. Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, gentlemen, for joining us today. I happened to be at those hearings way back then in April 2012, so we're going steady on this one. That was maybe a more interesting process, because it would appear that most of the contentious issues or the concerns that you had as a huge generator of nuclear power in this province—and we did have your president and CEO, Tom Mitchell, here a couple of weeks ago on the public accounts committee, I guess.

Would it be fair to say, then, that all of the concerns that you have are addressed in the new legislation and that you're not looking for any other amendments to this bill?

Mr. Paul Nadeau: That's correct, yes.

Mr. John Yakabuski: Then I have no further questions. I don't know if my colleague—

Interjection: No, I'm good.

Mr. John Yakabuski: We're on the same page here. I believe that every amendment that was put forward by the opposition, ourselves, for this bill was incorporated into the bill. I appreciate the co-operation of the government side on that, so hopefully we'll get this done fairly quickly. Thank you for coming today.

The Chair (Mr. Grant Crack): Thank you very much. We'll move to the NDP. Mr. Singh.

Mr. Jagmeet Singh: Thanks for being here. You mentioned in your opening remarks the rights of the public and striking a balance. What are the rights of the public that have been balanced out in this bill?

Mr. Paul Nadeau: The public, when they come on our property, can expect to be stopped; to be asked for identification; if necessary, to be searched; and that's about the extent of it. The previous legislation that was in place, the PWPA, to be exact, talked about work on the approaches to the facilities. This bill absolutely keeps our security officers on the property at all times. They have no authority to exercise any sort of stopping vehicles, identifying people "outside the fence," as I described it I think in my last appearance. So the activities are taking place solely on our property. That's what I meant by "respects the rights of the public."

Mr. Jagmeet Singh: Fair enough. That would answer my question about how a balance is struck; so the balance being struck in that powers are conferred to folks just inside the boundaries of the electricity-producing facility and not outside it on the approach to it?

Mr. Paul Nadeau: That's correct.

Mr. Jagmeet Singh: Okay. I have no further questions. Thank you.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Singh.

We shall move to the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you for being here this morning just to express your complete support of the revised bill. It's good to know that all the comments that we heard in the previous one are incorporated and you're now happy and there's nothing new that you want to—so thank you for taking the time to be here in person and present to us.

Mr. Paul Nadeau: Thank you.

The Chair (Mr. Grant Crack): Thank you very much, gentlemen. Any closing remarks? We do have time.

Mr. Paul Nadeau: No.

Mr. John Yakabuski: It doesn't get any easier than that—

Mr. Paul Nadeau: That's right. We'll take it.

The Chair (Mr. Grant Crack): Sorry. We do have one. Mr. Dickson.

Mr. Joe Dickson: Thank you. I'd like to correct the record. It's not this morning; it's this afternoon.

Interjection: It's been a long week.

The Chair (Mr. Grant Crack): That is correct.

Mr. John Yakabuski: That's okay, Joe. In a few hours, it'll be the evening.

Mr. Joe Dickson: I guess I've been asking questions of OPG for 30 to 35 years through city council out there and through regional council etc. My only concern is—and it's the NIMBY, not in my backyard, concern. When I walk out of my upper bedroom—my wife's bedroom—on to the upper deck, I'm sitting on Lake Ontario at the bottom of Ajax and I'm looking at the plant. I can turn around and drive the other way, in about 12 minutes, to get to the other plant, Darlington. You've gone through the process with Durham Regional Police Service—

Mr. Paul Nadeau: Correct.

Mr. Joe Dickson: —and that's all in place now etc. So my only concern is, is there enough here for you to do the job properly?

Mr. Paul Nadeau: Yes, absolutely.

Mr. Joe Dickson: Thank you.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Dickson, and thank you both for coming this afternoon.

Mr. Paul Nadeau: Thank you.

The Chair (Mr. Grant Crack): It is this afternoon, correct?

Mr. John Yakabuski: Thank you, gentlemen.

Interjections.

The Chair (Mr. Grant Crack): Okay. Let's have a little bit of order. It's great that we're co-operating for sure.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair (Mr. Grant Crack): Now we have with us, from the Canadian Civil Liberties Association, Ms. Pillay, general counsel and executive director. We welcome you this afternoon. You have five minutes.

Ms. Sukanya Pillay: Thank you very much. My name is Sukanya Pillay. As mentioned, I'm the general counsel and executive director of the Canadian Civil Liberties Association. On behalf of my organization, I would like to thank all of you for the opportunity to be here today and to comment on Bill 35.

In the interests of time, I'm going to restrict my comments to schedule 2, and my comments will focus on the portions of the bill that relate to courthouse security.

We recognize at the CCLA the importance and indeed the duty of government to ensure safety, security and to protect the public. This is foremost in all of our minds, particularly in light of recent tragic events in this province and in our country, yet there remain crucial fundamental democratic principles at stake which interplay with our need to ensure courthouse security in particular.

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These are: (1) the open court principle, which is a cornerstone of a fair and functional justice system in a free and democratic society; and (2) the right in the Canadian Charter of Rights and Freedoms to be free from unreasonable search and seizure, a right which we know is engaged by the exercise of police powers, including the right to demand information or to search a person or place, and a right with which this bill must comply.

We reiterate the findings of the Supreme Court of Canada on the crucial importance of the open court principle in a democratic society, which ensures access of citizens to courts and opportunity therefore to comment on how courts operate and proceedings that take place in them.

The open court principle, by enabling transparency, is a critical component to the integrity of the judicial process, a bulwark against arbitrary decision-making, and it ensures accordance with the rule of law. As such, courthouse security, which is essential, must be implemented in a manner which does not impede or create barriers to the open court principle. Rather, courthouse security must be done in a manner which reinforces the open court principle.

Getting specifically, then, to our recommendations under schedule 2, subsection 138(1), paragraph 1, we're very concerned about the general power entrusted to court security officers, which requires a person entering or attempting to enter a court proceeding or court premises to identify himself. In our view, this is an overbroad power and it is unjustifiable absent any individualized suspicion of a specific security threat. We find that this creates an unacceptable constraint upon public access to courts.

Secondly, the power entrusted to officers to ask an individual to provide information in order to determine if they're a threat—we also believe that this is an overbroad power. It creates, essentially, a power of mandatory interrogation that could be used conceivably to inquire into various aspects of an individual's life. Members of the public should not have to subject themselves to a fishing expedition or even to rebut some unwanted presumption prior to entering a courtroom or court premises. So we are concerned about that.

Thirdly, the bill also provides for the search of a vehicle. We find again that this is tantamount to a warrantless vehicle search, and, as with the other two indicia that I've already discussed this afternoon, this creates an invasive search power which, in our view, is by no means justified. Practically speaking, an individual, once they got out of their car and entered the court premises or the premises where the court proceedings would take place, would still be subject to the very same security checks as any individual who arrives at that courthouse, whether on their bicycle or by foot. So there's no real sense and there's no real justification here as to why this would enhance security.

Having said that, I would say that the way forward would be to look at what's being done in other jurisdictions. I would point out that the Ontario bill has created powers that far exceed the powers in other jurisdictions. In our submissions, we have attached Manitoba legislation, which we believe is very helpful in terms of the way forward and in terms of very measured approaches to courthouse security.

Just to sum up, I would highlight that having looked at the security measures at play in other provinces and territories, we note that apart from Ontario none of the legislative frameworks give security officials a general power to demand information or to authorize vehicle searches, and only half the jurisdictions give officials the authority to demand identification upon entry, which, as I have already said, we believe engages section 8 of the charter and would be considered unreasonable.

Practically speaking, the other jurisdictions do allow bans on weapons and we would agree with all of that. Thank you.

The Chair (Mr. Grant Crack): Thank you very much. We shall move to Mr. Singh, from the third party.

Mr. Jagmeet Singh: How much time do I have?

The Chair (Mr. Grant Crack): Three minutes.

Mr. Jagmeet Singh: Thank you.

Thank you so much for your wonderful presentation. I just want to cut right to some of the points. Would you agree, then, that the same criticism that applied to the PWPA, which was that some of the powers conferred were too broad and too vague, which resulted in the civil rights violations—that some of those same problems exist in the current legislation with the areas that you've pointed out?

Ms. Sukanya Pillay: Thank you very much for your question. Yes, that's precisely what we would argue. As you know, the CCLA was very much in favour of what we saw as an antiquated and unconstitutional act being repealed. We're happy to see that, but we are concerned about some of the same provisions being carried over into the realm of courthouse security.

Mr. Jagmeet Singh: Specifically, you mentioned—I want to highlight this because I think it's very informative. In your comparison, you compared nine other provinces and one territory. In that comparison, you found that none of these jurisdictions conferred the power to compel someone to provide information before they were able to enter a courthouse.

Ms. Sukanya Pillay: Just to clarify: Yes, none of them gave a general power to provide information.

Mr. Jagmeet Singh: And only half of them provided the power to require identification or require one to identify one's self.

Ms. Sukanya Pillay: That is what we found, correct.

Mr. Jagmeet Singh: Okay. The open court principle, essentially, as you indicated, is a hallmark of a free and democratic society. That's something that you mentioned. In the interest of transparency, if one was to believe in the idea of transparency, having access to an open court would forward or enhance the principle of transparency in our court system. Is that correct?

Ms. Sukanya Pillay: Absolutely.

Mr. Jagmeet Singh: Something that would act as a barrier, something that would discourage people to attend court, like provisions that require you to identify yourself and be subject to a fishing expedition, potentially, if used that way, would have a chilling effect on the ability to enter a courthouse or to access courthouses.

Ms. Sukanya Pillay: I believe so, and I believe that it would also have a deleterious impact on the trust that is required between the courts and the public.

Mr. Jagmeet Singh: Wonderful. Just to make it very clear, the CCLA's position on the broad power to require people to identify themselves is that it could apply to perhaps someone who was the victim of a crime, who is in the courthouse or is entering a courthouse and doesn't want, perhaps, to give their name so that people in line might not—you know, they might not want to have their name or identity revealed to people who might overhear it in the line. There might be other identity concerns that people might have.

Do you believe that this requirement to identify yourself and to provide information broadly would, in fact, create a barrier to accessing courts?

Ms. Sukanya Pillay: We do, for the simple reason that apart from any individualized suspicion, it would be an unjustifiable intrusion into an individual's privacy. There's no need to ask for it. It can create a barrier, and therefore we're opposed to it.

Mr. Jagmeet Singh: And the general powers of the police would exist anywhere, so if someone was acting in a manner where there was reasonable grounds to investigate or to have an investigative detention, those general powers of the police exist in a courthouse, outside of the courthouse, anywhere in Ontario.

Ms. Sukanya Pillay: Yes, you're correct. I would add to that as well that we are in favour of all the screening processes and we are very much in favour of security and public safety. The only thing that we would say is: Let's carry out that security in a way that reinforces the open court principle and doesn't constrain it.

Mr. Jagmeet Singh: Wonderful.

The Chair (Mr. Grant Crack): Good. Thank you very much. I appreciate it.

We'll move to the government side. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you for being here. I listened to you carefully. You're concerned about the bill and the general powers that it gives, but it's not mandatory. The bill clearly states that it's having the ability to exercise a power if it is reasonable to do so. Would you see any situations or a particular hearing in a court where this is not reasonable?

Ms. Sukanya Pillay: I think that the way the legislation is worded, it could very much turn into an on-the-ground, systematic practice of always asking for this information. There's nothing to show that having the name of an individual who enters a courtroom is going to enhance security in any way.

I think the proper question is to ask: Is this necessary? I would remind the committee members respectfully that it has been shown through our jurisprudence that these sorts of powers do engage section 8 of the charter. So therefore, it's not enough that they would contribute to security or could be reasonable; what's required is that they must be shown to be absolutely necessary and a minimal impairment. In our view, neither of those two things are shown.

Mr. Bas Balkissoon: So the biggest concern you have, really, is that you worry that this could become routine for every particular case that's in the court.

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Ms. Sukanya Pillay: I'm worried that it could become routine, and I'm also worried that it does not conform with section 8 of the charter. Most importantly, I would say, because that is where we would feel the impact immediately, is that it would have a negative impact on the open court principle.

Mr. Bas Balkissoon: How do you see this bill in comparison to what exists today? Would you prefer to keep the status quo?

Ms. Sukanya Pillay: I think that this bill does important things by recognizing the need to uphold security, very much by repealing the act, as MPP Singh has just said. But I think that if you look at the Manitoba legislation, you can achieve security without creating overly broad, unjustifiable powers. The three powers in particular that I have iterated are the powers with which we are concerned, and we would ask that those be looked at by this committee.

Mr. Bas Balkissoon: If I could summarize, then, your main concern would be that it becomes routine. If it is only exercised when it's reasonable, you're okay with that.

Ms. Sukanya Pillay: My main concern is that you're creating, right off the bat by the passing of this legislation, an overly broad power. It's overly broad and it's unjustified. If the power was when there is a reasonable, individualized suspicion that somebody might be a security threat and then you are asking for information, that's very different than the language of the bill as it currently exists.

Mr. Bas Balkissoon: Then how would you change the language of the bill, other than striking out?

Ms. Sukanya Pillay: I would use the language I just used.

Mr. Bas Balkissoon: You have only struck it out. You have not suggested language, and that's my concern.

Ms. Sukanya Pillay: I think we did suggest language, actually. It's included in our submissions.

Mr. Bas Balkissoon: I'm looking at the page, and it's all strike-outs.

Ms. Sukanya Pillay: Let me just find the page and show it to you. I think it's page 8.

We've struck it out and proposed different language: "to submit to a security screening search … for the purposes of locating any prohibited weapons." Then we've gone on to say, "This security screening may include…." Then we've taken out the, in our view, offending provisions with respect to vehicles and identification.

Mr. Bas Balkissoon: Right. If I look at that, it's prescriptive. As the world changes, every time security out there needs something new, they'll have to come back here. This bill has been in discussion for a couple of years.

Ms. Sukanya Pillay: May I just point out, as was already mentioned—

The Chair (Mr. Grant Crack): Final comment.

Ms. Sukanya Pillay: Sorry?

The Chair (Mr. Grant Crack): He's over his time, but I'll allow you to finish and then we'll move over.

Ms. Sukanya Pillay: Thank you. I would just say that the existing police powers are already there. We already have the powers. There is no need to enhance it with overly broad powers that might impede the open court principle.

The Chair (Mr. Grant Crack): Thank you very much. We shall move to the official opposition. Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Ms. Pillay, for joining us today. I have a different view than you on this. I look at this bill—I was here for the original bill and how the amendments were made—and what I see here is a progressive ramping up or escalation of the security procedures that may or may not be used under certain circumstances, if you look at number 1, number 2, number 3, progressing into reasonable force, if necessary.

The general public understands that they are subject to the possibility to be identified—the possibility. I've never been asked for identification in a court; I've never seen anybody asked. However, if they know the possibility exists, I'd like to believe that that's a preventive measure in itself. If you're thinking of going to a courtroom to conduct yourself in a way that wouldn't be acceptable, and you know that these are the provisions that are in there: (a) we can ask who you are and ask you to answer some questions to determine if you're a risk; (b) then we can actually search you, search your vehicle; (c) then we can actually use reasonable force, if necessary—I think it's a very reasonable way of assessing a risk, determining if it exists and then dealing with it.

To the comments by my colleague Mr. Singh: If you are a victim, you have the opportunity to speak to a court officer and say, "Listen, I've been through this. I would really prefer, off-camera, not to be requested for this kind of security check." It's not necessarily a verbal check; it could be production of identification, which is a driver's licence or a picture ID. It doesn't threaten you with someone behind you in the line.

I think the changes that have been made have been reasonable. We expect to have some restrictions on our freedoms when they're designed to protect the general public. I think that what we have in this bill strikes a very, very good balance.

I understand that your organization starts from a different point of view. You believe in civil liberties; it's in your title. You're expected to argue against this. But I honestly believe that what the government has done here has achieved a pretty good balance. You show me where this is genuinely a threat, and I may change my mind.

Ms. Sukanya Pillay: Thank you for the opportunity to address—am I allowed to address the comment?

Mr. John Yakabuski: Absolutely.

The Chair (Mr. Grant Crack): Technically, you've got 22 seconds, but continue.

Ms. Sukanya Pillay: Okay. I'll be brief, then. Not only do we believe in civil liberties, and proudly, but we also believe very much in security. We look to the government to make sure that we are secure and safe.

However, being secure and safe, and not changing this great country, means that we remain a free and democratic country. Our freedom is something that we have to guard jealously, as our courts have told us—and indeed, the principles on which this country is founded.

I think the minute we start morphing into a sort of police state or surveillance state where we can no longer walk around freely and walk into a courtroom, and enjoy walking into that courtroom to see what it is, we are changing who we are and what we fundamentally believe in.

Open courts go to the heart of a democracy. There is no—

Mr. John Yakabuski: There is nothing closed—

Ms. Sukanya Pillay: There is nothing gained by getting the name of an individual walking in. That does not mean, if the individual walking in would not be subject to security screening—that does not mean, if that individual walking in gives the officer some reason to have an individualized suspicion, that they cannot ask for their information.

What it means is that as a general rule, the public has unfettered and free access to the courts, which goes to the heart of our democracy.

Mr. John Yakabuski: They ask you for your name when you buy a patch cord at Future Shop, and people gladly give it.

Ms. Sukanya Pillay: They don't ask you for your name when you walk into a mall. They don't ask you for your name when you walk into a movie theatre. They don't ask you for your name.

These are critical questions that our citizenship and our government have to take, particularly as we face new security threats. Until something is demonstrated, we need to be careful about the security that we impose. Thank you.

The Chair (Mr. Grant Crack): Thank you very much, Ms. Pillay. That was very informative. We appreciate it. Thanks for taking the time.

CRIMINAL LAWYERS' ASSOCIATION

The Chair (Mr. Grant Crack): We have, from the Criminal Lawyers' Association, Mr. William Thompson as a representative. Welcome, Mr. Thompson.

Mr. William Thompson: Thank you. My name is William Thompson. I'm here this afternoon as a repre-

sentative of the Criminal Lawyers' Association. Thank you for the opportunity to speak with you today.

The Criminal Lawyers' Association has more than 1,200 members across Ontario, making it one of the largest specialty legal organizations in Canada. The association was founded in 1971 and acts as the voice of the criminal defence bar in this province.

The association regularly intervenes in the Court of Appeal and the Supreme Court of Canada to provide its perspective when important criminal justice and civil liberties issues are to be decided.

Our members are keenly interested in Bill 35 because the courthouses of this province are our workplace. It's important to our members, our clients, witnesses and the broader public that courthouses be both safe and open.

We have three main concerns with the proposed legislation. First, the warrantless search powers authorized by the bill go beyond what is reasonably necessary to protect court security and are likely to create a barrier to access. I won't go into detail with this point because, really, it's echoing the submissions that Ms. Pillay just made.

We agree that it may be necessary to have limited searches of all members of the public and their belongings as they enter a courthouse, to ensure that they're not carrying weapons.

However, the powers to require people seeking admittance to a courthouse to identify themselves, to provide unspecified information about themselves to satisfy an officer that they are not a risk, and to have their vehicles—that they're only marginally associated with—subjected to warrantless, suspicionless searches, do not substantially improve safety and are likely to dissuade members of the public, especially those already marginalized, from attending court proceedings. These new powers risk shifting the operating principle from one in which courthouses are presumed to be open to all to one in which members of the public have to justify their presence. This can be seen in the parallel powers under schedule 2 and schedule 3 of the bill, despite courthouses and nuclear facilities being very different places and with very different relationships to the general public.

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The Criminal Lawyers' Association supports the proposed amendments put forward by the Canadian Civil Liberties Association to address this concern.

Second, there is no provision in the bill for a system of prior security clearance for anyone other than judges or justices of the peace. It's of particular importance to our members as defence counsel that there be a reliable, consistent and fair approach to access to courthouses for two reasons. At a principled level, any system that leaves the question of whether to subject defence counsel to searches entirely to the discretion of individual court officers risks harming the appearance that all parties to the justice system stand on an equal footing. A discretionary search power that applies to lawyers will inevitably be applied unequally as between crown and defence counsel, if for no other reason than court officers being more familiar with crown counsel. A system of prior security clearance is important to avoid that disparity in treatment. At a more practical level, a system of prior clearance improves court efficiency by ensuring that counsel are not unexpectedly caught by time-consuming security procedures.

Our third concern is the absence of a definition for "premises in which court proceedings are conducted." This is important because the phrase provides the geographic limits on the warrantless search powers afforded by this bill. At first blush, the question of where a courthouse begins and ends might seem simple; in practice, it is not. Many courthouses in Ontario are located in space that's shared with other uses, including municipal offices and even commercial space.

Perhaps the gnarliest example is the College Park courthouse here in Toronto. At College Park, the Ontario Court of Justice occupies the second floor of a commercial building that also houses a Winners, two Tim Hortons, a food court, a fancy ballroom, a shopping mall, offices and residential units. If the Legislature's intention is for the extraordinary search powers authorized by this bill to begin when the elevator doors open on the second floor, that needs to be made more clear.

I note that the Manitoba Court Security Act that Ms. Pillay referenced addresses this issue by defining "court area" as "a building, part of a building, or space used by a court and designated by regulation as a court area...." We recommend adopting a similar provision in this bill.

In conclusion, on behalf of the CLA, I ask that you adopt the recommendations of the Canadian Civil Liberties Association to limit the authorized search powers to those necessary for enforcing a ban on weapons, add a provision for a system of prior clearance for officers of the court and, finally, if the more extensive search powers are to remain, to add a clear definition of their geographic scope.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Thompson. That was right on five minutes. Thanks.

We'll move to the government. Mr. Balkissoon.

Mr. Bas Balkissoon: Thank you very much for being here and giving us your input.

The Chair (Mr. Grant Crack): Thank you very much. We'll move to the official opposition. Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Mr. Thompson, for joining us this afternoon. I certainly understand your concerns, but I don't agree with them. I do believe that it's a reasonable request. Defence lawyers do represent one part of the justice system, but I don't see why—other than they don't like the fact that they have to be treated, in their minds, differently than the judges. Again, it is a possibility that they'll be asked for this information; it is not an absolute. If you're there representing people often enough, I'm sure there'll be a certain amount of familiarity, but I think the option has to be there.

There could be a lot of things going on in a criminal lawyer's life. They're no different than everybody else. They're subjected to the same challenges in life as everybody else. There could be some challenges there. There

could be some problems. Court security has to deal with them as well. I respect your view, but I believe that the bill has got the issue right. It won't make your people happy all the time, but I think at the end of the day, our system is not going to collapse because you folks might be asked to identify yourselves. But thank you very much for joining us.

Mr. William Thompson: The concern that the Criminal Lawyers' Association has is not so much with the requirement to identify ourselves, because in fact that is exactly what is currently the sort of ad hoc procedure with respect to prior security clearance.

As it presently stands in most courthouses in which there are any security procedures at all at the front door, that procedure can be bypassed by providing a valid law society—

Mr. John Yakabuski: Like a Nexus card.

Mr. William Thompson: Yes, exactly, valid law society identification.

Mr. John Yakabuski: We're not issuing Nexus cards to the criminal defence lawyers.

Mr. William Thompson: The position of the Criminal Lawyers' Association is that, to ensure that the system continues to work, these additional powers that are being created by this bill be subject to some system of prior clearance. I would say that the existing system works just fine. That is that you get exempted from it by demonstrating that you are in fact a valid member of the Law Society of Upper Canada. If that's inadequate for some reason, then some other system of prior security clearance might well be appropriate.

But the important thing is to allow for a reliable, equally applied system that all counsel know is going to be in place in advance so that both the appearance of an equal playing field be continued, and also the practical issue of scheduling it to ensure that—

Mr. John Yakabuski: The crown lawyers are not exempt any more than you are.

Mr. William Thompson: At a practical level, where the—

Mr. John Yakabuski: No, no, no. In the bill, the crown lawyers are not exempted any different than you are. It is only the judges and the justices.

Mr. William Thompson: At a practical level, where the decision to apply these additional powers is left to the discretion of individual court security officers, inevitably—

Mr. John Yakabuski: These personnel, I suspect, are going to be trained. We don't pick them off the street that morning. They don't come in that morning and we say, "You start screening the folks coming in here." They're trained.

Mr. William Thompson: Where the decision is left to the discretion—

Mr. John Yakabuski: You're assuming now somehow that you're going to be treated unfairly versus the crown lawyer, that you as a defence lawyer would be treated differently than a crown lawyer. I don't think you can make that assumption.

Mr. William Thompson: As a practitioner who has been in many courthouses in this province, I can tell you that it is inevitable. Without attributing any ill will to court security officers, because I've always been treated very well by court security officers—

Mr. John Yakabuski: I suspect you will continue to be treated well.

Mr. William Thompson: But the inevitable consequence of defence counsel having practices across the province and appearing in courthouses across the province, versus crown counsel being, generally speaking, associated with a particular courthouse and, therefore, in that one courthouse all the time—that creates a very different relationship with court staff. As a result, if the Legislature leaves the decision about when and where to apply these heightened security screening procedures to the discretion of individual court security officers, inevitably it will be applied unequally between the two parties.

The Chair (Mr. Grant Crack): Thank you very much. I appreciate it. That was double the time.

Mr. Singh.

Mr. Jagmeet Singh: Thank you very much for your insight. I apologize for some of the ignorance that exists in the committee sometimes.

In terms of the courtroom security, just to focus in on the provisions of it which are overly broad and vague—you're familiar, I'm assuming, with the Public Works Protection Act and the civil liberty violations that flowed from that piece of legislation?

Mr. William Thompson: Yes.

Mr. Jagmeet Singh: The exact same problems that the opposition raised, including the Conservatives, about the G20 violations were largely—Justice McMurtry was very clear that the problems lay in the fact that the powers conferred by the legislation were too broad, they were vague, and they were not specific. Those same problems now can be applied to the current piece of legislation. Do you agree with that?

Mr. William Thompson: Many of the concerns do. I guess I would highlight the concern with respect to the geographic ambit of the new powers that are created under this bill; that in terms of the warrantless and suspicionless search of motor vehicles, there's no particular limitation within this bill that associates that with the actual physical location of a courthouse.

Mr. Jagmeet Singh: Put more simply, there were many provisions in the PWPA that were, in fact, unconstitutional, that went against the Constitution, that went against the charter. Similarly, as the CCLA has indicated—I'm asking you if you agree—this law that's proposed is also in some respects unconstitutional. It violates the Charter of Rights, providing arbitrary powers to search and arbitrary powers to demand information.

Mr. William Thompson: There are certain circumstances where I think it would violate the Constitution. Certainly both the Supreme Court and the Ontario Court of Appeal have found questioning to constitute search

and seizure under section 8. So where that is conducted without any reasonable basis or even a suspicion, it could well be found to be in violation of the charter.

Mr. Jagmeet Singh: Potentially, the government is proposing unconstitutional law. They're proposing laws which violate the charter, and this is an opportunity for us to fix those potential problems.

Mr. William Thompson: I think it's very important to fix the problems so that they don't have unconstitutional application.

Mr. Jagmeet Singh: And just to clarify your point on counsel: If the discretion to allow certain members of the bar, certain lawyers to enter a courthouse without any additional requirements, i.e., identity or providing information to assess the risk threat—if there is no clear provision on how to do that, it will be applied differentially between someone who one knows and has a relationship with versus someone whom one has not seen before. That's essentially what you were—

Mr. William Thompson: That's the concern: that when you leave the decision about how to apply these powers to the discretion of the individual officers, inevitably it will be applied differently to different people.

Mr. Jagmeet Singh: And currently, any time a lawyer enters a courthouse, you provide your identification that identifies you as a member of the law society. Often, security officials look at that card and allow you to enter. Without having a clear protocol as to whether that's acceptable or whether there's an alternative that's perhaps more onerous—but whatever that protocol is, that it apply equally to both crowns and prosecution will provide that appearance of justice in that both parties are being treated fairly and equally—without having that regulated or clearly laid out in this law, it opens a door to potential violations or potential discrimination or potential unfair application of this discretion.

Mr. William Thompson: Yes, and—

The Chair (Mr. Grant Crack): Final comment, quickly.

Mr. William Thompson: —and the need to have that process to be prior to a lawyer arriving at the courthouse steps so that appropriate steps can be taken to ensure that they've complied with whatever requirements are there to gain entry into the courthouse.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Thompson, for coming before the committee.

That does conclude the public hearings portion of Bill 35. I would like to remind members of the committee that amendments are due at the deadline of 6 p.m. this evening. As such, we shall begin clause-by-clause tomorrow morning at 9 a.m.

There's no further business of the committee to conduct this afternoon. This meeting is adjourned.

The committee adjourned at 1443.

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