

Key Messages

Court security is an issue that the CDLPA takes very seriously, and we appreciate the efforts of local police services boards and front line staff which ensure the safety of our Members, and others, in provincial courthouses.

We continue to act in partnership in the development of public policy on matters associated with court security, including the discussion on Bill 34, and do so on behalf of our Members and our clients.

We recognize that the government has obligations to modernize legislation, however the CDLPA insists that the powers of Bill 34 if enacted without amendment allow for the search without warrant of our Members and such a search may include privileged information.

It is the view of the CDLPA that it is neither reasonable nor necessary to include lawyers in the search powers contemplated by Bill 34, as it relates to courthouses.

Accordingly, the CDLPA is seeking amendment to Bill 34 that would exempt all lawyers from the search procedure upon presentation of a valid Law Society of Upper Canada identification card.

Overview

On February 22, 2012, the Minister of Community Safety and Correctional Services introduced Bill 34; *Security for Courts, Electricity Generating Facilities, and Nuclear Facilities Act, 2012* ("the Act").

The introduction of this legislation was motivated by the findings of Former Chief Justice Roy McMurtry, who was selected by the McGuinty Government to review and report back on the Public Works Protection Act ("PWPA") following activities and authorities given to law enforcement agents during the 2010 G20 Summit in Toronto. Additionally the Ontario Ombudsman's criticism on the implementation of powers under the PWPA during this same period helped inform the content of the Act.

Acting upon the recommendations of Chief Justice McMurtry, Bill 34 if passed will repeal and replace the PWPA and amend the Police Services Act ("PSA"). In repealing the PWPA, the government is seeking to restrict and reduce the categories of infrastructure in which extraordinary powers can be exercised by law enforcement agents. The PWPA currently allows the province to define those categories in regulation. Regulation changes oftentimes lack transparency and public awareness – as evidenced by the G20. Bill 34 would limit the categories of infrastructure, which became increasingly broad over time, and require a legislative amendment to the Act if the government sought to introduce a new category. In requiring an amendment, it necessarily triggers a public process of debate and resolves the issue of transparency.

In amending the Police Services Act, the government seeks to designate security officers at defined facilities as peace officers with the power to request any person seeking to enter these premises to produce identification, provide information for the purposes of assessing a person's risk and search (upon consent) any person, property or vehicle entering or on the premises without warrant.

Issue

The County and District Law President's Association ("CDLPA") has serious concerns with the provisions of Bill 34 which would give authority to court agents to search without warrant its Membership upon entering or approaching a courthouse. In prescribing such authority, the powers of search extend to property in the position of its Membership which ultimately may include the search of privileged information. It is the position of the CDLPA that it is neither reasonable nor necessary to include lawyers in the search powers contemplated by the Act.

The CDLPA is seeking an amendment to the proposed legislation that would establish the practice, currently accepted in courthouses across the province, of exempting lawyer's who present a valid Law Society of Upper Canada identification card from the search provisions of the Act.

Process

Bill 34 has passed Second Reading in the Ontario Legislature and is currently before the Standing Committee on Justice Policy. The responsibility of the Committee is to comment, ask questions and/or propose amendments to various sections of the legislation. The Committee can also invite public comment and participation to assist them in their consideration of the bill. For the purposes of Bill 34, the Standing Committee on Justice Policy has invited written comment from the public and will receive direct presentations from twelve organizations seeking to represent their interests in either amending or offering support toward the current content. The CDLPA is one such organization and will present to the Committee at 4pm on April 19th. Following presentations, the Committee schedule is as follows:

- The research officer provides a summary of presentations by 5pm, April 23, 2012
- That amendments be filed with the clerk of the Committee by 5pm, April 24, 2012
- That the Committee meets on Thursday, April 26, 2012 for clause-by-clause consideration of the Bill.
- Following clause-by-clause review, the Bill is reported back to the Legislature and ordered for Third Reading. At this point, amendments are no longer accepted and debate on the Bill is restricted to the content as submitted.
- Following debate, a motion is put forward by the Speaker to vote on the legislation and, if passed, to receive Royal Assent and become Law.

Analysis

Government bills, even in Minority governments tend to pass. The Bill will be supported by the Liberals and the Progressive Conservative Party ("PCP") has also indicated its support ensuring this outcome. That being said, during Second Reading debate, there were strong indications by the PCP and the NDP that they would like to see amendments to the legislation, citing amongst other concerns, questions similar to those that will be addressed by the CDLPA during presentation to the Committee. Though government bills tend to pass, there is ample opportunity to amend the legislation.

Committee Member Teresa Armstrong: What I'd like to know in detail when this act goes to committee is what kind of assessments will be done, what kind of questions will be asked before we give the powers, in this case that I'm talking about, to court security guards. People do have the freedom to enter a courthouse, to be part of the justice system and make sure it's a fair and equitable law.

Committee Member Paul Miller: We are concerned about schedule 2, which gives too much power to court security officers that they don't need. Why should security have the power to ask any individual who wants to enter the courthouse, "Why are you here?" Do they have the power to search their cars in the parking lot? That's a question too.

Summary

The brief period in which the CDLPA will be able to exert influence on the outcome of Bill 34 prescribes a focused but limited campaign. The Bill's advanced status insists that the Executive and Membership general act with immediacy, and seek every opportunity to leverage existing connections at the Ministry level to put forward their concerns.