



April 13, 2012

Mr. William Short
Clerk, Standing Committee on Justice Policy
Room 1405, Whitney Block
Queen's Park
Toronto ON M7A 1A2

Dear Sir:

**Re: Bill 34, 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, 2012***

I am writing on behalf of the Toronto Lawyers Association ("TLA") in regard to Bill 34.

TLA has in excess of 3,000 members, all of whom are practising lawyers in Toronto. In addition to being the "Voice of Toronto Lawyers", TLA operates several facilities in Toronto courthouses. These include the regional courthouse library at 361 University Avenue and the lawyers' lounges, robing rooms and consultation rooms at 361 University Avenue, 393 University Avenue and 330 University Avenue. TLA members must, of course, gain entry to these courthouses in order to use the library, lounges and other TLA facilities. They must also gain entry to these and, in fact, all Ontario courthouses in order to carry out their duties as counsel. Accordingly, TLA and its members have a direct interest in any change to the security procedures for courts in Ontario.

TLA has reviewed the submissions made to the Standing Committee by the County and District Law Presidents Association in its letter dated April 9, 2012. TLA supports the arguments raised in that letter, and has the following additional submissions.

TLA objects strongly to the provisions of Bill 34 dealing with court security. In particular, the amendments to the *Police Services Act* would provide police officers with extremely broad powers to question and search anyone who wishes to enter a courthouse, including lawyers. This is a radical departure from the current practice in Toronto, whereby lawyers who have a valid identification card issued by either the TLA or Law Society of Upper Canada are exempted from security screening. TLA is not aware of any incidents or issues that would prompt a change in these procedures. Even if there were to be occasions where individuals have misrepresented themselves to be lawyers, the proper response would be to ensure proper identification procedures. Giving the police an untrammelled power to search is not the appropriate remedy.

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The title of Part X of the *Police Services Act* (the “Act”) is “Court Security”. Section 137 of the Act (currently the only section in Part X) states that the responsibility of the applicable police services board is to:

1. Ensure the security of judges and of persons taking part in or attending proceedings.
2. Ensure the security of the premises during the hours when judges and members of the public are normally present.
3. Ensure the secure custody of persons in custody who are on or about the premises.
4. Determine appropriate levels of security for the purposes of paragraphs 1, 2 and 3, above.

The powers given to police by the proposed sections 138-140 of the Act are far-reaching and unrestricted. TLA believes they go beyond what is necessary to ensure the “appropriate level of security” required by section 137.

The provisions that most concern TLA are those that permit a police officer to do the following:

1. Require a person who is entering or attempting to enter premises where court proceedings are conducted or who is on such premises,
 - i. to produce identification, and
 - ii. to provide information for the purpose of assessing whether the person poses a security risk.
2. Search, without warrant,
 - i. a person who is entering or attempting to enter premises where court proceedings are conducted or who is on such premises,
 - ii. any vehicle that the person is driving or in which the person is a passenger, and
 - iii. any other property in the custody or care of the person.

The search power in paragraph 2 is particularly troubling. Not only is it inconsistent with the government’s duty to protect material that is subject to solicitor/client privilege, it may well be unconstitutional in exposing not only lawyers, but all members of the public, to unreasonable searches.

Section 138 would allow a police officer to search the lawyer, the lawyer’s briefcase, and even the lawyer’s car. This risks the disclosure of privileged material and may compromise a lawyer’s duty to his or her client. Should Bill 34 be passed without amendment, a lawyer will have to be concerned about what he or she is bringing to the courthouse (or even to the courthouse parking lot), given that the material will be subject to search.

The provisions of Bill 34 also fail to recognize the lawyer’s duty as an officer of the court. All lawyers in Ontario have sworn an oath to uphold and improve the administration of justice. Further, Rule 4.06(3) of the *Rules of Professional Conduct* includes a specific obligation to assist in maintaining the security of court premises. Bill 34, however, would essentially ignore this aspect of being an officer of the court.

The current version of Bill 34 does not exempt any person from the application of the proposed sections 138-140 of the Act. It may be that the legislation is not meant to apply to counsel. If so, such intention must be made clear to those who will be enforcing it. The only way to clarify this is to include an exemption in the legislation. An exemption must be added in order to ensure that the power to search is not abused, to prevent the intimidation of counsel acting for clients who are facing prosecution by the state, and to protect solicitor/client privilege.

In conclusion, TLA urges the Standing Committee to recommend that Bill 34 be amended so that lawyers are exempted from the operation of sections 138-140, provided that they show proper photo identification, including identification cards issued by TLA, the Law Society of Upper Canada or the applicable local law association.

Yours truly,

A handwritten signature in black ink, appearing to read "C. Matthews", written in a cursive style.

Christopher J. Matthews
President, Toronto Lawyers Association

CJM:tk