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Thursday 26 April 2012

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Jeudi 26 avril 2012

**Standing Committee on
Justice Policy**

Security for Courts, Electricity
Generating Facilities
and Nuclear Facilities Act, 2012

**Comité permanent
de la justice**

Loi de 2012 sur la sécurité
des tribunaux, des centrales
électriques et des installations
nucléaires

Chair: Laura Albanese
Clerk: William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 26 April 2012

Jeudi 26 avril 2012

The committee met at 0914 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY
GENERATING FACILITIES
AND NUCLEAR FACILITIES ACT, 2012
LOI DE 2012 SUR LA SÉCURITÉ
DES TRIBUNAUX, DES CENTRALES
ÉLECTRIQUES ET DES INSTALLATIONS
NUCLÉAIRES

Consideration of the following bill:

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 / Projet de loi 34, 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 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Vice-Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I call this meeting to order, the Standing Committee on Justice Policy. I now welcome back our clerk, Mr. William Short.

Chers collègues, j'appelle à l'ordre cette réunion du Comité permanent de la justice du Parlement de l'Ontario.

Before we have any further business, I'd just like to acknowledge the presence of Mr. Randy Hillier, who has been duly subbed in for Mr. Rob Milligan. I'd now direct the clerk to please remedy his name tag.

Yes?

Ms. Soo Wong: He's subbing for somebody too.

Interjection.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer, for that notification. Do you have one of these slips?

Mr. David Zimmer: Yes.

The Chair (Mr. Shafiq Qaadri): Yes, it seems to be here. That's fine.

If there is no further business, I'll now invite members to please begin clause-by-clause consideration. Is that all right?

Mr. Randy Hillier: Chair?

Mr. Shafiq Qaadri: Yes, Mr. Hillier?

Mr. Randy Hillier: I move that we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of Bill 34 until this committee has deliberated on whether this legislation breaches the independence of the judiciary.

The Vice-Chair (Mr. Shafiq Qaadri): May I just confirm: "to adjourn"?

Mr. Randy Hillier: Yes, to adjourn.

The Vice-Chair (Mr. Shafiq Qaadri): We need a copy of that motion. Are there any speakers for or against before we move to the vote on adjournment of the committee? Yes, sir.

Mr. Randy Hillier: I would like to speak to it, but I think it would be proper to have the motion in front of everybody before—

Mr. David Zimmer: Are you wasting time again?

Mr. Randy Hillier: No, no. This is important deliberation.

Mr. David Zimmer: You're wasting time. Let's deal with this. They subbed me on to this committee. I worked last night to brief myself. I got all ready to work.

Mr. John Yakabuski: David is angry. We'd better capitulate here.

Mr. Randy Hillier: Should we have a motion that angry, cantankerous, old MPPs get booted off the committee?

Ms. Soo Wong: Are you speaking about you?

Mr. Randy Hillier: That's right.

The Vice-Chair (Mr. Shafiq Qaadri): If it's agreeable to the committee, instead of once again deferring our discussion till the photocopies arrive, perhaps we can begin the discussion. The floor is open. Mr. Hillier, if you'd like to begin, you're welcome.

Mr. Randy Hillier: Well, really, without having the motion in front of them, it's going to be a little bit—

The Vice-Chair (Mr. Shafiq Qaadri): Fair enough.

Mr. Randy Hillier: I would like to speak to the motion, but I would like to have the motion in front of the members so that they can see clearly and understand clearly what the discussion is about.

The Vice-Chair (Mr. Shafiq Qaadri): Certainly. Mr. Miller.

Mr. Paul Miller: Thank you, Mr. Chair. Obviously, we're not thrilled about the holdup, but we certainly understand that some of the amendments came in quite late, and the government has asked if they could further study them to analyze them better so they can make a

proper and whole decision on the way we're going. We don't have a problem with further analysis of the situation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller.

Any speakers from the government side? We yet again await the photocopies.

Thank you, colleagues. The most recent motion presented by Mr. Hillier is now being distributed. I would now invite speakers. Once again, we're at about 28 minutes or so from the vote, and we'll adjourn at 10 minutes to or earlier for the vote. Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair. This bill, Bill 34: You can clearly see what the intent and the expectations are, but I think there needs to be cause to look at how this is going to impact all people, especially in the courtrooms. I'd like to just read a little bit from the Canadian Ethical Principles for Judges, and it's on judicial independence.

0920

"Judges must exercise their judicial functions independently and free of extraneous influence...."

"Judges should encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary...."

"Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians.... Judicial independence thus characterizes both a state of mind and a set of institutional and operational arrangements."

What I'm getting at here is—and I believe there are about 400 courthouses in the province, somewhere in that neighbourhood, with many different judges. Under this legislation, any judge's freedom to enter the courtroom, enter the building, is subject to search—subject to search of his private belongings, his vehicle and whatever else he may have. This clearly can't be the intention of Bill 34, but that's the way it's written at the present time. Any judge's independence of travel and movement is subject to restrictions by a security guard in a courtroom or near a courtroom. I think that just hasn't been considered.

Of course, in this legislation, in Bill 34, anybody can be identified or exempted or excluded or included at some future date by regulation. Of course, we know that that regulation—who's in and who's out—will not come back before legislators for discussion and debate. I think it's quite incumbent upon us all to make sure that Bill 34 does not create another set of circumstances like what happened with the G20 conference in Toronto, where there was poor implementation, no scrutiny of the regulation that was enacted for that G20 summit by legislators, or political oversight of any manner. It caused significant harm, not just to the government of the day; it caused significant harm to our province and our society.

I think we really need to look at how this bill may in the future impact the independence of the judiciary, and I believe we should make arrangements for this committee to actually study how it will impact the independence of the judiciary.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Just to remind committee members, members have approximately up to 20 minutes to speak on this particular motion.

I'll move to the next speaker, to the NDP. Monsieur Singh.

Mr. Jagmeet Singh: Thank you very much. Just with respect to the independence of the judiciary, I wholeheartedly agree that the judiciary should maintain its independence. It's one of the key components to an effective judiciary that they maintain their independence both politically, without undue influence, and be able to maintain a thoughtful, rational approach to the application of the law.

With respect to their movements in the courthouse, I agree that there is no clear law or exemption or regulation that provides for that power for the judiciary the way the bill is crafted now. I do note that one of the motions before this committee, that moves to strike schedule 2 and substitute it with an amended version of the Manitoba security act, does include a specific regulation regarding the judicial powers. I'll just read it in just to provide an example of how we can maintain independence of the judiciary. If you have the motion in front of you, it's section 145—

Mr. Randy Hillier: I don't have the motion.

Mr. John Yakabuski: It's "Judicial powers unaffected"?

Mr. Jagmeet Singh: Yes, "Judicial powers unaffected."

Mr. Randy Hillier: Oh.

Mr. Jagmeet Singh: It says:

"No derogation

"Re judicial powers

"145(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings, or to have unimpeded access to premises where court proceedings are conducted."

This directly addresses the issue that my colleague raises, that the judiciary should be independent in their movement and have unimpeded access to the court proceedings or the court premises. In terms of unofficial or informal accommodation that's been occurring, it's well respected as well as common-law authority that judges do have the authority to impose their own level of security in each courthouse. That common-law power would exist regardless of Bill 34. There is a common-law authority that judges do have that discretion in their courtrooms.

But this additional piece in the Manitoba legislation which I've amended to fit into Bill 34 would clarify in legislation and would have that power crystallized so that there would be no confusion or no lack of clarity on that issue. I think that it's an important issue, and I think that this motion, the NDP motion, would address that issue sufficiently and provide for those powers so that the judiciary does remain independent and have complete access to the courthouse.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. Are there any other speakers? Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Just for the record, it was dropped to us at the last minute, and—

Interjections.

Ms. Soo Wong: I can't hear.

Mr. Lorenzo Berardinetti: This was dropped to us at the last minute, just for the record. That's why I mention that. This was just given to us at the last minute. Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. Mr. Hillier?

Mr. Randy Hillier: Yes, there was a little bit of noise, and I didn't get to hear it clearly. I would like to ask the NDP—I've got your amendments here. What specific amendment is it, so we can actually read it?

Mr. Paul Miller: Okay, we're going to look. Just hang on, Randy.

Mr. Randy Hillier: I think, Chair, this is also why I was looking to adjourn the committee from the clause-by-clause considerations until we actually have some deliberation on this matter.

The Vice-Chair (Mr. Shafiq Qaadri): I appreciate the rationale. Are we ready to vote on this particular motion?

Mr. John Yakabuski: I haven't spoken.

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: I've got to prove to my constituents that I was actually here this morning.

Mr. David Zimmer: I'll vouch for you.

Interjections.

Mr. John Yakabuski: Now I'm on the record, correct?

The Vice-Chair (Mr. Shafiq Qaadri): We each have our goals, Mr. Yakabuski. Please proceed.

Mr. John Yakabuski: Oh, great, great. Look, I appreciate my colleague Mr. Hillier's motion and also the input from Mr. Singh from the NDP. I apologize; I didn't hear Mr. Berardinetti because I was talking to Mr. Singh at the time.

He raises an interesting question, and I also understand and agree with Mr. Singh that if this is not defined somewhere else in law, it is the common-law principle about the supremacy of the judiciary within their own courts.

However, it is not something that was discussed or talked about in this bill, nor has it been addressed, unlike the Manitoba statute, the Court Security Act, subsection 8(1) which clearly states:

“Judicial powers unaffected

“8(1) Nothing in this act derogates from or replaces the power of a judge, master, or judicial officer to control court proceedings.”

So it is defined and codified in the law in Manitoba, but it is not addressed in Bill 34. I'm not a legal expert, nor do I have to be to sit on this committee, but I do think that Mr. Hillier's motion with respect to determining whether or not this is codified somewhere else in law,

that the judiciary is supreme within their own coat—within their own court—and their coats, probably, too—that they are supreme within their own court. Perhaps it would be also possibly defined in common law or set by precedent in common law, so that perhaps we should get some kind of clarification. I appreciate the motion and I think that it's a valid one.

0930

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski, and just before opening the floor to Mr. Miller, I just want to be clear: The motion is to defer clause-by-clause consideration but to reconvene today at 2 p.m. for further consideration.

Mr. Miller?

Mr. John Yakabuski: Does it say that?

The Vice-Chair (Mr. Shafiq Qaadri): The motion presenter said.

Mr. Paul Miller: In reference to Mr. Hillier's request, the one that you were looking at, Randy, is 5.5. It's four pages. With his legal background, Mr. Singh has done a superb job on this, with the assistance of legislative counsel. I think you'll find it very informative and very good. It's 5.5, if you want to address that. And we will get copies of all our amendments to you if you don't get them, so you can further study them.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. As I understand it, all members do have copies. That was actually the original holdup.

I can see the committee would like to speak more. I just notify you that we have about six minutes or so before we will recess. If you would like to entertain the motion to vote on, I am willing to do so.

Ms. Wong.

Ms. Soo Wong: I want to get some clarification. The motion in front of us did not state the time of reconvening. I just heard you saying, Mr. Chair, that you want to reconvene this committee at 2 o'clock. Does it not mean the motion should reflect that?

The Vice-Chair (Mr. Shafiq Qaadri): That's a valid point. Mr. Hillier, would you like to clarify when you would like it—

Mr. Randy Hillier: That would be fine. If you want to re-table the motion with—

Mr. David Zimmer: Just leave it the way it is.

The Vice-Chair (Mr. Shafiq Qaadri): We have to procedurally deal with this motion. Should you need to make changes to specify whether it's today or next week, that would require not only a second motion but more photocopies.

Mr. Paul Miller: Mr. Chair?

The Vice-Chair (Mr. Shafiq Qaadri): Yes, Mr. Miller.

Mr. Paul Miller: So the motion that Mr. Hillier has presented—and Ms. Wong said that she's concerned about the 2 o'clock restart. So is this an all-day motion, or are we going to come back and do the same thing again at 2 o'clock and you're going to put another motion in? What's the status here?

The Vice-Chair (Mr. Shafiq Qaadri): My clerk spoke earlier with Mr. Hillier, and I understand we extracted the intention being of reconvening here at 2 p.m. today. Is that correct, Mr. Hillier?

Mr. Randy Hillier: Yes, that's correct.

The Vice-Chair (Mr. Shafiq Qaadri): That is the motion that we now have before us.

Mr. Paul Miller: So he will put another motion in at 2, probably? Is that what you're—

Interjection.

Mr. Paul Miller: Okay. I get the drift. I get the drift. Thank you, Chair.

The Vice-Chair (Mr. Shafiq Qaadri): Just procedurally, should you wish to adjourn, Mr. Hillier, until next week, we will need to vote on this motion. Then you'll need to amend this motion and then re-present this motion.

Mr. Randy Hillier: Say that again? You lost me there for a moment.

The Vice-Chair (Mr. Shafiq Qaadri): We need to vote on this.

Mr. Randy Hillier: Yes.

The Vice-Chair (Mr. Shafiq Qaadri): Presumably, it will not carry, for example.

Mr. Randy Hillier: Right.

The Vice-Chair (Mr. Shafiq Qaadri): Then you will need to create another motion specifying exactly when you would like to have the adjournment expire, meaning later today or next week, and then re-present it, entering interim photocopies and then voting.

Mr. Randy Hillier: Okay. Listen, why don't we take a 20-minute recess and consider that and—

Mr. David Zimmer: Let's just vote.

The Vice-Chair (Mr. Shafiq Qaadri): If that is the will of the committee, it's allowed by procedure.

Mr. Randy Hillier: Okay. Go to the vote.

Ms. Soo Wong: Mr. Chair, can I just make a comment? I came here to work this morning. I had every intention to go clause-by-clause, but at the last minute we have these submissions. I respect that. But let's not defer, have another recess and come back. We're here for a purpose, folks. I'm here for a purpose. I want to be very clear: If we're going to move a motion to adjourn, that's fine with me for today, but I want it to be absolutely clear, when I'm going to be voting on a motion, is it coming back at 2 o'clock or are we coming back next Thursday? I want it to be very clear what I'm voting for.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. While we certainly appreciate your intentions, Ms. Wong, we do have a motion before the floor that needs to be voted on before we can recess, so I would invite the committee to entertain this particular motion now.

The clarification is, because as it was presented, though not stated, it is 2 p.m. reconvening.

Mr. David Zimmer: It doesn't say that.

The Vice-Chair (Mr. Shafiq Qaadri): It does not say that.

Mr. John Yakabuski: It does not say what?

The Vice-Chair (Mr. Shafiq Qaadri): Since we seem to have gotten ourselves into a bit of a tangle, I will invite the honourable William Short to please clarify.

The Clerk of the Committee (Mr. William Short): To clarify for everybody, the motion that's on the floor right now would be, assuming it carried, to have clause-by-clause consideration delayed until the committee deliberated on whether or not the legislation breaches the independence of the judiciary. That could mean that we come back at 10 o'clock; that could mean we come back at 2 o'clock today; that could mean we come back next week.

If a member wants to move a clause to have us come back at a certain time, that would be either an amendment to this motion, or we vote on this motion and then someone would introduce a new motion saying that we come back whenever. As this motion stands right now, we would just be pushing aside clause-by-clause until another time.

Interjection.

The Clerk of the Committee (Mr. William Short): The member can withdraw the motion—no, the motion is on the floor. So we're dealing with the motion as it is right now.

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Miller.

Mr. David Zimmer: Point of order—

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Miller.

Mr. Paul Miller: Listen, if people want to further study this situation—because there were a lot of amendments that came in late last night, and it's only fair that people should have an opportunity to review them. But I do not want to be coming back at 2 o'clock. Either you're adjourning for the whole day or you're not, so this motion, obviously, will be defeated. If Mr. Hillier wants to put in another motion, we'll entertain it, but at this point we're dealing with that one? Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): We have Mr. Zimmer, then Mr. Yakabuski, then Ms. Wong, in that order. Mr. Zimmer.

Mr. David Zimmer: I'd like to move an amendment to Mr. Hillier's motion. The amendment would add, following "judiciary," the words "the committee hearings shall be adjourned to the week"—what's the week starting Monday?

Mr. John Yakabuski: April 30.

Mr. David Zimmer:—"the week beginning April 30, 2012."

The Vice-Chair (Mr. Shafiq Qaadri): That is interpreted as a friendly amendment. Is it the will of the committee that we acknowledge that? All in favour of that particular amendment addition? All opposed? The amendment carries.

Now I would invite voting upon the original, but now amended, motion. Is that the will of the committee? All those in favour of the motion presented by Mr. Hillier, as amended? Those opposed? Motion carries.

This committee now stands adjourned till next Thursday.

The committee adjourned at 0938.

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