The Court Security Act

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I. INTRODUCTION

THIS PAPER WILL EXAMINE THE DEVELOPMENT of *The Court Security Act*.[1] Since April 2000, this *Act* has provided the legislative authority and framework for the perimeter security system in place at the Law Courts buildings in Winnipeg.

This *Act* was the subject of controversy and public debate from the time of its inception. Bill 9 was introduced on the 25 April 2000 and by the next day, the bill had received Royal Assent and was in force. The regulations became effective the following day.

The public debate focused on, among other things, the expedited route the *Act* took through the Legislative Assembly. In this case, the opposition chose not to use any delaying tactics to impede the passage of the *Act*. This paper will explore what provided the motivation for its quick passage.

According to the Manitoba Minister of Justice, the issue of courthouse security is one of public policy; an issue best decided by the Legislature. In his words, it must be recognized that emotions surround court proceedings for witnesses, victims and accused. Those involved in the process must be made to feel safe and secure and be able to pursue justice without intimidation.[2] The provisions of the legislation, therefore, need to be analysed to determine whether they secure the safety of all interested parties.

In conclusion, the "fast tracking" of the legislation will be discussed and the question will be posed whether methods such as these are appropriate and capable of coexisting with a political system which is viewed by the public as legitimate.

Unlike most instances when legislation is introduced for a nebulous mix of personal, social and political reasons, the driving force behind this piece of

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1 Bill 9, *The Court Security Act*, 1st Sess., 37th Leg., Manitoba, 2000 (S.M. 2000, c.1) [hereinafter *Court Security*].

2 Manitoba Legislative Assembly, News Release, "Legislation Proposed to Support Court Security Measures" (25 April 2000).

legislation was narrow—the legitimacy and foundation of the security measures in place had been called into question. Between December of 1999 and April of 2000, a series of court decisions declared that the perimeter security program in place at the Winnipeg courthouses[3] was not legally valid because it was not grounded in a legislative framework. As the minister himself points out, the government went to work drafting the legislation almost immediately upon realizing that the validity of the court security system was being threatened.

II. BACKGROUND

IN AUGUST OF 1998, THE MANITOBA GOVERNMENT announced it would be implementing a more strict court security program.[4] It was at this time that the "walk though" metal detectors and scanning devices used for searching briefcases, bags and purses were introduced.[5] In addition, several public entrances were closed to ensure that everyone entering would be subject to the measures.

Up until this time, security at the courthouse consisted of the presence of Sheriffs' officers who were in charge of general surveillance. They were available in case a violent or disturbing incident occurred or if their presence was specifically requested inside a courtroom during a proceeding.

The new system was undertaken at the suggestion of the Manitoba Courts Security Advisory Committee, a committee comprised of judges of the Court of Queen's Bench and Provincial Court as well as representatives from government departments, including the Department of Justice.[6] The purpose of this new

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3 When the security system was first implemented and was challenged, the only courthouse in Winnipeg was the Law Courts Building at 408 York Avenue, which contains the Court of Appeal, the Court of Queen's Bench, the Provincial Court, as well as a public library and offices. In 2000, construction on a second courthouse was completed at 1501 Chevrier Boulevard and some of the later decisions do make reference to this location as well. For convenience, I will be referring to the main building on York Avenue.

4 "Tougher Court House Security to be implemented in Winnipeg Monday" *Presswire* (12 August 1998).

5 Specifically, all persons must first empty their pockets and security personnel visually inspect the contents. Next, each person passes through a scanner that detects metal objects. If the detector is set off, hand held scanners are used to locate the metal object. The individual must also present bags, purses, and briefcases to be inspected by use of a fluoroscope. Signs are posted which alert people to the procedures that will occur upon entering the courthouse. *R.* v. *Lindsay* (1999), 137 Man. R. (2d) 68 (Q.B.) at para. 6, online: QL [1999] M.J. No. 190 at para 6 [hereinafter *Lindsay* cited to Man. R.].

6 *R.* v. *Gillespie* (1999), 142 Man. R. (2d) 96 (C.A.) at para. 4, online: QL [1999] M.J. No. 562 at para. 4 [hereinafter *Gillespie* (1999)cited to M.J.]. Also referred to as the Law Courts Security Committee. *Lindsay*, *ibid.* at para. 51.

system was to locate objects that may be used as weapons and capable of causing harm.. If an individual refused to submit to the new security procedures they would be asked to leave the building. Lawyers, court workers, and justice officials were excused from these procedures.

The security system was the subject of media attention again only one month later.[7] On 15 September 1998, the first day the new system was officially in place, Gordon Gillespie, a 61 year-old retired Revenue Canada employee who was due in court, refused to have his belongings searched as he entered the Law Courts Buildings.[8]

On 18 September, Mr. Gillespie was again required in court and his counsel advised the court that Mr. Gillespie would not submit to a search and, therefore, he would not be in attendance that day. On each day he failed to appear, a warrant was issued for Mr. Gillespie's arrest. He was arrested shortly after the warrant was issued on 18 September 1998.

On 1 October, Mr. Gillespie filed a motion requesting the following: an order quashing the warrant for arrest issued 15 September 1998; an order quashing the recognizance entered into 18 September 1998; an order prohibiting the courts from proceeding with any outstanding charges; and a declaration that the courthouse security system violated Mr. Gillespie's rights to be secure against unreasonable search and seizure.[9]

This matter was joined with that of David Lindsay for hearing before the Manitoba Court of Queen's Bench in April 1999. David Lindsay had earlier submitted to a security check but had done so under protest, arguing that the procedures were unconstitutional. He requested an injunction prohibiting the searches as they were presently conducted and ordering the removal of the security equipment and devices.[10]

In reviewing the relevant case law, Justice Steel of the Manitoba Court of Queen's Bench articulated the test adopted by the Supreme Court for a search to be considered reasonable. Law must authorize the search, either specifically in a statute or by a common law rule. The law itself must be reasonable and the search must be carried out in a reasonable manner. The focus of the applicants' argument was based upon the first prerequisite—that no statutory basis existed

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7 Mike Mcintyre, "Law Courts Security Sparks Challenge" *Winnipeg Free Press* (24 September 1998).

8 He had been charged with breaching his probation and appearances on 15 and 18 September 1998 related to separate charges of this offense. The previous week he had been removed from the Legislative building when the bomb squad had to be called in to search his briefcase. *Ibid.*

9 *Lindsay*, *supra* note 5 at para. 13.

10 *Ibid.* at para. 3.

for the court security procedures—and it is this element that eventually gave rise to the passing of *The Court Security Act*.

Since it was admitted that there was no specific statutory basis, the judge examined the common law for a basis of authority. Justice Steel concluded that courts have an inherent jurisdiction to ensure unimpeded access to the courts as well as to ensure that justice is administered in an orderly and effective manner once individuals are inside the courthouse.[11] In doing so, she also rejected the argument of the applicants that this inherent jurisdiction is limited to the door of the courtroom in which a given judge may preside because it is too narrow and not warranted by the relevant case law.[12]

On the second point, Justice Steel decided that given the totality of circumstances, the searches are reasonable. She focused on the balance that must be achieved between the competing values at stake; here, the rights of the individual and the nature and the degree of intrusion, the nature of the threat to the public safety, the effectiveness of the measures taken, and the reasonable expectation of privacy.[13] In reviewing the evidence before the court she found that the searches were justified and effective in decreasing the number of "weapons."

She found it unnecessary to decide on the third requirement.[14] As a result the relief sought by both applicants was dismissed and, specifically, no declaration was made regarding the constitutionality of the system.[15] Both applicants appealed to the Manitoba Court of Appeal.

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11 *Ibid.* at para. 24. Justice Steel quoted the S.C.C. in *B.C.G.E.U. v. British Columbia (Attorney General)* where they upheld the actions of the British Columbia Chief Justice and asserted that the rule of law, which is the very foundation of the *Charter of Rights and Freedoms*, demands free and unimpeded access to the courts. Justice Steel concluded that the courts must have the inherent jurisdiction to protect the abuse of their process and therefore that the Court of Queens Bench, as a superior court of record, has the inherent jurisdiction to "control its processes by instituting a general courthouse security program." *Ibid.* at para. 55.

12 *Ibid.* at para. 46.

13 The reasonableness of that law depends on the totality of the circumstances. With regard to the efficacy of the search, Justice Steel noted the statistics that had been accumulated since the introduction of the security system. She further reviewed recent incidents at the courthouse to conclude that the security system was indeed a public necessity and not "overkill" as argued by the applicants. Given that each member of the public (except those with clearance) are searched, and technology is employed to visually inspect the contents of bags and to determine the existence and location of metal objects, the intrusiveness of the search is not unreasonable. *Ibid.* at paras. 73, 78, and 99.

14 The applicant did not submit to a search and therefore there was no evidence before the court as to the appropriateness of the procedures used.

15 The applicants raised a s. 15 argument based upon "geographical discrimination" in that other courthouses outside of Winnipeg did not have similar security systems and generally

The appeal was heard 22 November 1999 and judgment was delivered on 24 December. David Lindsay failed to appear at the hearing and his appeal did not proceed,[16] but the arguments forwarded by counsel for Gordon Gillespie were heard before Justices Philp, Twaddle and Monnin. Philp J.A., in writing for the court, examined the authorities relied upon by Justice Steel in reaching her decision.

The Court of Appeal held that Justice Steel erred in holding that the security program was authorized by law because there "is nothing on the record to establish that the court, or a judge thereof, exercised the jurisdiction in recommending or approving the implementation of the program" and therefore the ad hoc committee appointed to review the matter cannot be "clothed with jurisdiction" without some enabling legislation.[17]

The Court concluded that the authority for such a security program cannot be said to be grounded in any statutory or regulatory regime and cannot fall under the common law powers of sheriffs or peace officers. This program was implemented by Sheriff Services and Manitoba Justice and resulted in arbitrary searches of entrants to the courthouse. Thus, it goes beyond any common law powers to preserve the peace or prevent crime that may be inherent to sheriffs.

The Court of Appeal was careful to not say the searches were unnecessary, but instead focused on their legal validity. The Court quashed the warrant for arrest of Mr. Gillespie and issued an order declaring that the intrusive searches conducted at the Law Courts Building violate an individual's right to be protected from unreasonable search and seizure as guaranteed in the *Canadian Charter of Rights and Freedoms*.[18] Despite Crown Counsel's request, the court was not persuaded to temporarily suspend the declaration of invalidity until the Legislature could enact new legislation, or amend existing legislation, to bring the searches in line with constitutional requirements. The basis of this decision was that no statutory provision had been struck down; instead, the program had been struck down for want of a statutory or common law foundation.[19]

The security system was only minimally interrupted as a few days later the Chief Justice of the Court of Queen's Bench, Benjamin Hewak, issued a court order that allowed the searches to continue despite the ruling from the Court

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used procedures much like those that had been used at the courthouse prior to August 1998. This argument was unsuccessful.

16 David Lindsay's appeal was apparently allowed by consent on the 31 January 2000. I was unable to find a reported decision but I assume its disposition is dealt with by the decisions relating to Gordon Gillespie.

17 Gillespie, *supra* note 6 at para. 21 – 22.

18 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

19 Gillespie, *supra* note 6 at para. 41.

of Appeal.[20] While a Court of Queen's Bench does not normally have authority over a higher court, limited exceptions are made when the issue is one of security.[21] The court order was to remain in force until legislation was created or a higher court overturned the order.

The day after the order was made, another appeal by Gillespie was launched. The Court of Appeal heard argument on 25 January 2000 and they were once again faced with the issue of the validity of the courthouse searches. This time, the argument focused upon a consideration of the authority of the court order issued by Chief Justice Hewak. Chief Justice Hewak applied for intervener status but was denied. The Court of Appeal did allow his counsel to appear as *amicus curiae* on the issue of the Chief Justice's jurisdiction. A motion had been filed by the Attorney General asking that the appeal be struck out, and submitting that the "order of Hewak C.J.Q.B. was in the nature of an *ex parte* order and the matter should be returned to the Court of Queen's Bench for reconsideration."[22]

The Court agreed, as a matter of policy, that the Court of Appeal should not hear appeals from *ex parte* orders unless the appeal has first been a motion in the a Queen's Bench court. Yet, they decided that in a case like the one at bar, where it is the very jurisdiction of the judge that is in question, that policy would not apply.

The Court reserved decision and it was not until 20 April 2000 that the final chapter in this courtroom battle came to a close. The majority of the Manitoba Court of Appeal quashed the order of the Manitoba Court of Queens Bench that had re-instated the courtroom security system. In their decision, the Court was careful to focus on the jurisdiction of Chief Justice Hewak and to not discuss the reasonableness of the order or, more importantly, the reasonableness of the searches that the order authorized. The Court concluded that the order made fell outside the court's inherent power because it was one of general application, without a time limit, and because it was not made in response to a specific situation, but to change the law.[23]

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20 The Court of Appeal's decision was rendered on the 24 December 1999, the courthouse was closed over the holidays and the Court of Queen's Bench signed the order on the 28 December 1999. The next day was when the courthouse was to reopen following the Christmas break. It is estimated about 1000 people were allowed to enter the facility without being searched after the decision of the Court of Appeal was handed down. Mike Mcintyre, "Mandatory Searches Return to courthouse" *Winnipeg Free Press* (29 December 2000).

21 *Ibid.*

22 *R. v. Gillespie* (2000), 145 Man. R. (2d) 229 (C.A.), online: QL [2000] M.J. No. 218 at para.12[hereinafter *Gillespie* (2000)].

23 *Gillespie* (2000), *ibid.* at para. 32. In a lengthy dissent by Scott, C.J., he found that Hewak, C.J. was legitimately within his authority to grant the order, given the unique and exigent

The Attorney General had requested that in the event that the order of Hewak C.J.Q.B. was found to be invalid, the Court should grant a stay of its decision and allow six months for the Legislature to enact a statute that would authorize the search of individuals entering the courthouse. The Court reiterated what it had said in the earlier appeal—that this would be inappropriate – and concluded that no law was being struck down but only an order that allowed procedures to continue that weren't legitimately rooted in statutory or common law authority.[24] Once again, the security system at Winnipeg court facilities was temporarily suspended. Five days later, it was legislative intervention, not the courts, which would reinstate security measures to the Winnipeg courthouse.[25]

III. Introduction and Debate of the Act

On 25 April 2000, the Act was given first reading in the Assembly by the Honourable Mr. Gord Mackintosh (Minister of Justice and Attorney General). Through an examination of what is said by different political parties and actors at different stages in the legislative process, it is possible to gain insight into the motivation and policy reasons behind an Act. The nature and quality of debate surrounding an Act allow those outside the process to gain an important perspective on legislation that can't be gained viewing the final product. The debates surrounding this *Act* provide such insight.

The same day it was introduced, the *Act* (at that time, Bill 9) was read for the second time. During the second reading, some background to the proposed legislation is given by the minister. As well, comments and impressions of the opposition parties are heard for the first time.

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circumstances. Additionally, in the interest of public safety, he would be prepared to grant a stay of up to two months to allow the appropriate legislative action.

[24] Essentially, by reserving their decision for 3 months, the Court of Appeal did allow sufficient time for the government to draft legislation and it was ready to be tabled immediately following their decision.

In a lengthy dissent by Chief Justice Scott C.J., and Monnin J., they agreed that the Court of Appeal had jurisdiction to hear the appeal before it. They submit that security is an essential element of judicial independence and that the need to provide a secure environment for the administration of justice is of great importance and the system is essential to the protection of pubic safety. They went on further to hold the security system is reasonable and should be upheld and added that if the order was quashed they would be prepared to grant a stay of two months so that the Legislature could take the appropriate action.

[25] Again, because the interruption in searches occurred over a holiday weekend, the number of individuals allowed to enter the facility without being searched was minimal.

The minister first expresses his gratitude to the Official Opposition Justice critic and the Leader of the Liberal Party for consenting to the "early introduction passage" of the legislation. It becomes clear in the second reading that the government is not guilty of "fast tracking" the bill against the will of opposition parties; in fact, all parties represented in the Legislative Assembly were in agreement that the nature of the legislation warranted its quick passage.

It is evident that a draft copy of the *Act* had been discussed with members of the other political parties prior to its introduction in the Legislative Assembly and their support gained at a prior meeting. Both Darren Praznik, Justice Critic for the Official Opposition Conservative Party, and Dr. John Gerrard, leader and sole MLA of the Liberal Party, were "very cooperative" in recognizing the importance of the expedited passage of the legislation.[26] After this meeting, one minor change was suggested and accepted to ensure that, once introduced, the bill would pass without delay or further alteration.[27]

During the second reading, the minister discussed the events and legal battles, which were the impetus for the *Act* and then commented on the underlying public policy, which is the foundation for the *Act's* provisions. In the words of the Minister of Justice, "this legislation is not just about public safety or the safety of those in the Law Courts Buildings. It is also to ensure that justice proceed unimpeded, without intimidation." The minister contends that this *Act* "strikes an appropriate balance between protecting the members of the public, victims, witnesses, employees of the courts and the judiciary and allow[s] people access to the courthouse with items of a personal nature not intended to be used as weapons."[28]

Comments of Darren Praznik demonstrate the support the Conservative Party has for the legislation and its expedited passage. Mr. Praznik emphasized that this is a rare exception to the normal course of processing legislation and it is due to unique circumstances that the quick passage of the legislation is appropriate.

Dr. John Gerrard, while agreeing to the "fast tracking," raised several legitimate concerns with the *Act*, namely, its lack of respect for individual rights and cultural sensitivities in certain situations, the delays which may result from the security measures being implemented, the lack of a holding mechanism for those items which cannot be brought in to the building, and the lack of information available to the Assembly on the current procedures used in other jurisdictions.

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[26] Interview with the Honorable G. Mackintosh, Minister of Justice and Attorney General (4 November 2000) [hereinafter Mackintosh].

[27] I wasn't able to get any details about this change, only that it was "not substantial". *Ibid.*

[28] Legislative Assembly, Manitoba, *Debates* (25 April 2000).

Both Mr. Praznik and Dr. Gerrard were well informed about the provisions of the *Act* and appeared to understand the relevant issues and implications. Their comments were relatively brief, most likely due to their prior review and discussion of the legislation in the private meeting.[29]

Perhaps the most interesting of the Hansard material on this *Act* is the discussion that took place in the Standing Committee on Law Amendments, 26 April 2000. This Committee hearing is the forum in which public comment is possible. In fact, Manitoba guarantees public participation at the Committee stage, recognizing that this is often the only role that private citizens can play in the formulation or acceptance of legislation.

Unfortunately, only one member of the public arrived to speak to the Committee. His concerns with the legislation were voiced and justifications were offered. He criticized the government for the bill's quick passage and lack of public notice for the open hearings.[30] The concerns focused on the definition of weapon, the inconsistent, and often unfair, enforcement which could arise from the ambiguous wording of section 4(4),[31] the injustice inherent in the "fast tracking" of the legislation, and the lack of public comment which resulted, the intimidating appearance of the security officers and screening system used at the Courthouse, and the failure of the government to recognize the necessity of a holding area or depository service for those people who are refused entry because they have a prohibited item in their possession.

In response to the concerns raised by this citizen, the minister emphasized that most of these concerns—particularly the definition of a weapon and the implementation of the *Act*—would be dealt with appropriately through

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29 Dr. J. Gerrard spoke intelligently about several relevant issues but did get interrupted when he strayed off topic and began talking about casinos being established without public consultation. *Ibid.*

30 Perhaps this is an area of our legislative process that requires reform. There does not appear to be any mechanism in place for public notice of these committee meetings in which members of the public may voice concern. With highly publicized issues, citizens become aware through the media. Otherwise, it is only the highly informed, involved citizens who will know when committee meetings will be held. While, theoretically, this arena for public comment is a valuable aspect of the legislative process, its effectiveness is questionable. Also, as the private citizen, Mr. Pollock, pointed out, it was Easter weekend; he only learned of the committee meeting the day before by "fluke" because he was in the legislative building. He emphasized the importance of public input and suggested many people would have been interested in speaking on the *Act* had they been informed of the hearing date and time.

31 Section 4(4) of the *Act* provides that a person may be refused entry to the courthouse if they are in possession of a weapon (who is not authorized by regulation or by a security officer to possess such a weapon) or refuse to be screened for a weapon. A weapon is defined as a firearm or anything else that could be used to cause injury or death or be used to threaten or intimidate a person (s. 1).

regulations which would accompany the *Act* and indicated that the regulations would "put forward a test for reasonableness."[32]

In response to the accusation of "fast tracking" the legislation, the minister pointed out that the controversy and public attention surrounding this issue had been growing since the first Court of Appeal decision in December 1999, and particularly since January 2000 when he had announced the government's intention to table legislation which provided the legislative authority for the security system. In other words, it was no secret that the legislation was going to be created. The minister relied on statistics to emphasize the need for the quick passage of the *Act* and expressed his belief that the legislation effectively balanced the rights of the individual against the right of the public to safety.

Mr. Praznik empathized with the citizen and echoed his concerns that in applying the legislation and training the security officers, consistency and reasonableness of search procedures should be priorities. He added, however, that these were administration concerns to be dealt with in the regulations.

Dr. John Gerrard, too, empathized with the citizen and repeated many of the concerns he himself had raised in the Assembly when the *Act* was being given second reading. He went on to intelligently question the citizen and, later, Mr. Mackintosh on several issues indicating his understanding and knowledge of the most pertinent issues surrounding the bill. It also becomes clear from the discussion in the meeting of the Committee that draft regulations were prepared and ready to be implemented upon the *Act* receiving Royal Assent.

Following debate and public comment, the Honourable Minister of Justice made two undertakings. First, he promised to investigate the possibility of a redress mechanism for those people who disagree with a decision of the security personnel. He also undertook to look into the feasibility of establishing some type of holding system for those items that cannot be allowed into the courthouse. Both proposals were investigated and have since been implemented.[33]

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[32] Legislative Assembly, Manitoba, *Debates* (26 April 2000) (The Standing Committee on Law Amendments) [hereinafter *Debates* 26 April 2000]. The regulations (s.2(2) of C295-48/2000) authorize an officer to allow a person possessing a weapon if that officer had a reason to believe that that person will not use the weapon to cause harm or threaten a person.

[33] In a conversation with Irene Hamilton, the Assistant Deputy Minister of Justice, she stated that regarding these two undertakings; the depository service is currently provided. An individual who is told they are carrying something deemed prohibited can request to leave it in an envelope with a clerk and pick it up upon leaving. The use of this service has substantially diminished since the new policy was first implemented. As for the appeal procedure, if an individual takes issue with a decision made by the security personnel as to whether something is characterized as a weapon and allowed in, the Sheriff Officer's supervisor is called over to review the decision. If the supervisor agrees with the decision made by the

The report of the Standing Committee on Law Amendments was then received in the Assembly, the *Act* was given third reading, and it passed. Finally, Royal Assent was granted on 26 April 2000, just one day after the *Act* was introduced to the House.

IV. Provisions of the *Act*

THE *ACT* ITSELF IS SHORT, CLEAR AND EASY TO READ. This is consistent with a recent trend in Manitoba legislation in favour of plain language over legalese. Brevity and clarity relate to the intended audience of the *Act*. The legislation's chief purpose is the implementation of security measures at Winnipeg courthouses. It will primarily be a reference for Sheriff's officers and other security personnel. It, therefore, makes sense that the provisions and, in particular, the regulations, not be written in ambiguous or confusing language.

A comparison of the English and French versions of the legislative provisions is essential as they are both equally authoritative. While the French version will generally mirror the English version with no material differences, there may be subtle variations. It must be remembered that language translation is not a precise science and, at times, a corresponding word in French may not exist for each English word. The translator must do their best to produce a provision, which conveys, as closely as possible, the same meaning as in the original draft. Moreover, the French version is often more explanatory. This is what one would intuitively expect as translators will generally ask for clarification and elaboration on the provisions written in English. For these two reasons, the French provision versions are often longer and more detailed than their English counterparts. The provisions in this Act are no exception.[34]

After a thorough examination, the most significant difference found between the English and French versions of this *Act* is found in its s. 7. While the English version permits a security officer to use "reasonable force" in refusing a person entry to a court area or to evict a person from such an area, the French version permits a security officer to use such force as they see fit. Obviously, the latter is

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officer, the individual may either leave the premises or leave the item in the depository. This is the extent of immediate action available to the individual. If the decision of the supervisor is also disagreed with, the individual can write a letter to the Department of Justice who will review the situation. A final step is available if the department decision is not satisfactory to the individual. They can write a letter to the provincial government ombudsman who will again review the situation. Interviews with Irene Hamilton, Assistant Deputy Minister of Justice (6 & 14 November 2000).

[34] One illustrative yet minor example: the English version of s. 5(2) reads "[a] security officer may evict a person from a court area if the person (a) refuses to be screened for weapons; " and the French version of s. 5(2)(a) reads "if a person refuses to be screened for weapons by the agent who is authorized to verify that they are not in possession of weapons."

a much more discretionary and subjective standard. It is also quite a departure from the requirement of "reasonableness" existing in the English version.[35]

The Justice Minister mentioned in Hansard debate, after he was questioned directly on this point, that he had looked to the regimes in place in other jurisdictions for guidance in drafting this legislation. He named the Prince Edward Island Supreme Court legislation as well as that of Nova Scotia and the Supreme Court of Canada.[36] An examination of these legislative frameworks shows some broad similarities with the Manitoba *Act*.

Mr. Mackintosh emphasized that many drafts of the legislation were written before it was finally introduced to the Assembly. He also said that while legislation from other jurisdictions was certainly considered, the Manitoba *Act* is unique, "home grown Manitoban," and built on the experiences and issues here.[37] He went on to state that he had also considered the *Charter* and its potential impact before formulating the *Act's* provisions. Guidance was also taken from security procedures used in other public arenas such as airports.[38] Moreover, he relied heavily upon the recommendations of constitutional law experts and the advice of the Manitoba Courts Security Advisory Committee. Clearly, the minister wanted to ensure that once in place, this legislation was not going to be easily displaced by future court challenges.

V. REGULATIONS

THE *ACT* DOES NOT DEAL WITH ANY OF THE MOST contentious issues that surround the debate over courthouse security. It very simply and plainly does what it set out to do – provide the legislative framework for a courthouse security system. It is this missing basis of authority that was demanded by the court decisions.

While the framework is effective and accomplishes its purpose, it is brief and leaves all details of definition, implementation, and application to the regulations. This division is no doubt a result of the need to have the legislation drafted and passed quickly. It is also consistent with a general trend toward legislation forming a framework for discretion, while substantial authority and power is delegated to others through accompanying regulations.

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35 This is surprising given that, unlike with many words there is a single corresponding word for reasonable in French (raisonnable). While this may have been a simple result of human error, it is also possible (if one agrees that translators may often ask for elaboration or clarification) that this latter interpretation more closely resembles what the drafter's intended.

36 *Debates* (26 April 2000), *supra* note 32.

37 Mackintosh, *supra* note 26.

38 *Ibid.*

Considering the controversy and debate surrounding this piece of legislation, it is not surprising that the legislators left the contentious issues unsettled at the time the bill passed through the Legislature.

While the bill is clear and concise, its brevity reveals the delegation of power inherent in its provisions. For example, a large part of the debate and public opposition to the bill related to the definition of a weapon. The *Act* leaves this detailing to the regulations—precisely the answer given by The Honourable Minister of Justice at each instance when faced with opposition on this point in the Legislative Assembly and from the public in Committee hearings. While these regulations were apparently drafted at the time the *Act* was passed, it does not appear that they were reviewed by either of the opposition parties or the public prior to the *Act's* passage.

When one examines the regulations, it becomes clear that they contain the "heart" of the legislation. It is in these short provisions that court areas, and more importantly, restricted areas, are designated. As well, the regulations detail who is permitted to possess weapons in the court areas and those people who are permitted to enter restricted areas.

Perhaps most important is the regulation which allows for a security officer to allow a person into a court area with what would technically be deemed a weapon if the security officer has reason to believe that the person will not use the weapon to cause death, serious harm or intimidation.[39] By containing this discretionary exception, the regulations accomplish what was promised repeatedly by the Honourable Gord Mackintosh—that is, that the *Act* would contain allowances for those people entering the court areas with certain articles to be treated reasonably and it would give the security officers room to use their discretion and judgment in these circumstances.

At the same time, it is this discretion that concerned the public and bred a redress mechanism. By leaving these controversial areas initially unclear, the bill was able to pass quickly and the security program was reinstated in the Courthouse without significant delay.

VI. Media

The legal and legislative manoeuvrings that were used in this back and forth battle to insure that the security system remained in place became a regular story in the local media. From the first introduction of the security system in September 1998, the media documented the course of what would eventually result in the *Act*. The court proceedings, subsequent government action, and public reaction were followed.

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[39] *Debates* (26 April 2000), *supra* note 32.

In early 2000, as the second appeal to the Court of Appeal was being heard, the Justice Minister confirmed to media sources that new legislation would be tabled to clarify and solidify the law mandating security mechanisms at the courthouse. From then on the stories focused on the purpose of the legislation, the introduction of the *Act*, its subsequent passage, and finally, its Royal Assent.

The "fast tracking" of the bill was a part of the news coverage but was not the dominant story. Perhaps, because it was acknowledged publicly by the Minister of Justice and the members of the opposition parties that fast passage was necessary in the interest of public safety. As the subject matter of the *Act* was a procedure that affected an estimated 2000 people daily, it was covered more extensively than other pieces of proposed or new legislation.

It is this extensive coverage that the Honourable Mr. Mackintosh uses to justify the lack of explicit public notice of the Committee hearings. The process was, in his view, adequately covered in the media and the government's intention to table such legislation quickly was announced in January, months prior to its passage. While the merits of this argument are clear, one must also consider the familiarity of the general public with the legislative process. It is very possible that many people affected would not know when, how or who to contact to determine if there was a form for public comment on the bill.

VII. CONCLUSION

THE ACT, BY S. 13, COMES INTO FORCE on the day it receives Royal Assent. It, therefore, has been in effect since 26 April 2000, one day after it was introduced to the Assembly and only one week after the Court of Appeal decision came down which invalidated the court order reinstating the security system. A new court challenge is unlikely and the security system remains in place today. Some questions remain—are the values of public safety and unimpeded justice sufficient to warrant the passage of this legislation without clear evidence of danger, substantial debate, or public participation in the process? And more importantly, are the use of these expedited means by our politicians threatening the legitimacy of their positions?

As for the lack of public input into the process, the intention of the government to table such legislation as soon as possible was widely publicized. This course of action, that is, the legislative framework, was also repeatedly referred to in the court decisions as the missing element in validating the system. The lack of public comment in the process, while no doubt exacerbated by the tight timeframe, is perhaps more a result of the lack of provisions in place to ensure adequate notice of Committee hearings. Certainly, it is arguable that ensuring the quick passage of this *Act* was warranted. Unfortunately, the significant civil rights issues that permeate this matter of security and safety were not adequately explored. While mentioned briefly in debate and Committee, substantial discussion of these concerns was lacking.

It is essential that the appropriate balance be achieved between individual rights and the protection of society as a whole. In the rush to reinstate the security system, it is questionable whether this balancing was sufficiently examined here. Undoubtedly, had there been more time and notice, valuable public comment from civil rights organizations would have been entertained by legislative representatives and further insight into these important concerns would have been possible.