

Bill 14, *The Body Armour and Fortified Vehicle Control Act*

B R E T T K O D A K

I. INTRODUCTION

In 2009, for the third consecutive year, Manitoba held the dubious title as the most murderous province in Canada with a murder rate of 4.66 per 100,000 in population.¹ By contrast, the national average was substantially lower at 1.81 per 100,000.² In recent years, the City of Winnipeg has seen an increase in gang-related violence, with a growing number of incidents involving firearms.³ These criminal organizations have become so brazen in their activities that a number of innocent bystanders have been caught in the crossfire.⁴ Many in law enforcement believe that the easy access gang members have to equipment such as body armour and bulletproof vests contributes to the proliferation of reckless attitudes with little regard to consequences.⁵

In recent years, body armour has been seized by law enforcement in various raids around Manitoba.⁶ While law enforcement agencies in Manitoba have yet to encounter criminals using fortified vehicles, at least four such vehicles, outfitted with thick steel panelling and bulletproof windows, have been seized in British

¹ “Homicide offences, number and rate, by province and territory”, online: Statistics Canada <<http://www40.statcan.ca/101/cst01/Legal12b-eng.htm>>.

² *Ibid.*

³ “Growing gun and gang problems plaguing Winnipeg, say police” (15 June 2009), online: CBC News <<http://www.cbc.ca/news>>; Tom Brodbeck, “A failed war on gangs”, *Winnipeg Sun* (29 July 2009), online: The Winnipeg Sun <http://www.winnipegsun.com/news/columnists/tom_brodbeck/2009/07/29/10296266-sun.html>.

⁴ See Mike McIntyre, “Victim’s family hungry for justice”, *Winnipeg Free Press* (28 July 2009) A4; “Teen caught in crossfire of gang shooting: trial” (11 April 2007), online: CBC News <<http://www.cbc.ca/news>>.

⁵ British Columbia Ministry of Public Safety and Solicitor General, News Release, 2009PSSG0026-000506, “New Act Restricts Sale and Possession of Body Armour” (20 October 2009) [BC News Release].

⁶ See “Evidence at Bandidos trial leads to Winnipeg” (13 May 2009), online: CBC News <<http://www.cbc.ca/news>>; Chris Kitching “26 arrested in Manitoba drug bust”, *Winnipeg Sun* (21 October 2009).

Columbia since late 2008, leading to the prediction they are not that far from Manitoba's future.⁷ In July 2010, the *Body Armour Control Act* ("the B.C. Act")⁸ came into effect in British Columbia. The legislation was a response to the brazen criminals wearing bulletproof vests that police were routinely encountering on the streets.⁹ Similar legislation also made its way through the Legislative Assembly of Alberta at the same time Bill 14, *The Body Armour and Fortified Vehicle Act*¹⁰ was being tabled in Manitoba.¹¹ Upon introduction of Bill 14, the Honourable Andrew Swan, Minister of Justice and Attorney General for Manitoba, held a press conference along with Winnipeg Police Chief Keith McCaskill and Royal Canadian Mounted Police Assistant Commissioner Bill Robinson.¹² Both men hailed the proposed bill as an effective way to reduce crime and help law enforcement, as "[l]imiting access to these tools makes it harder for criminals to gain an advantage over police and peace officers."¹³ This paper will examine Bill 14, its journey through the Legislative Assembly of Manitoba, and the potential issues arising from the bill.

II. SUMMARY OF BILL 14

The stated purpose of the *Act* is "to help prevent crime by ensuring that body armour and fortified vehicles are used only by persons who have a legitimate need for them."¹⁴ Under Part 2 of the *Act*, permits are required to both possess and sell body armour. To obtain a possession permit, an individual must submit a permit application setting out the reasons why he or she requires the body armour, in addition to paying a permit fee.¹⁵ Permits are granted at the discretion of the director, who is defined in the *Act* as "the person appointed under the *Civil Service Act*¹⁶ as the director for the purposes of the *Act*."¹⁷ The director is authorized to

⁷ "Here's What the Province Has Done to Combat Gangs", online: British Columbia Ministry of Public Safety and Solicitor General <http://www.gov.bc.ca/fortherecord/gangs/ga_safety.html?src=/safety/ga_safety.html>.

⁸ SBC 2009, c 24 [*BC Act*].

⁹ Kim Bolan, "Jamie Bacon stocked up on bulletproof vests", *Vancouver Sun* (26 October 2009), online: Global BC <<http://www.globaltvbc.com/Jamie+Bacon+stocked+bulletproof+vests/2147372/story.html>>.

¹⁰ Bill 14, *The Body Armour and Fortified Vehicle Control Act*, 4th Sess, 39th Leg, Manitoba, 2010 (assented to 17 June 2010), SM 2010, c 12 [*Act*]. Throughout this paper, will be referred to as "Bill 14," "the bill," and "the Act."

¹¹ Bill 12, *Body Armour Control Act*, 3rd Sess, 27th Leg, Alberta, 2010 (assented to 22 April 2010) [Bill 12].

¹² "Law proposed to ban body, vehicle armour" (26 March 2010), online: CBC News <<http://www.cbc.ca/news>>.

¹³ *Ibid.*

¹⁴ *Act*, *supra* note 10, s 2.

¹⁵ *Ibid.*, s 4(2)

¹⁶ *The Civil Service Act*, CCSM c C110.

refuse permits if applicants fail to demonstrate a need for the body armour or if the character or past conduct of an applicant deems the issuance of a permit as contrary to public interest.¹⁸ Under the *Act*, those who wish to sell body armour must submit a written application to the director for a seller's license. Prospective sellers must also pay a fee and agree to various background checks, the results of which may be determinative of the success of the application.¹⁹ Once a possession permit or a seller's license is issued, the *Act* grants the director wide discretion in the cancellation of permits and licenses.²⁰

Part 3 of the *Act* deals with fortified vehicles and requires a valid fortified vehicle permit to legally own or drive such a vehicle.²¹ Written applications must specify the reasons why the applicant needs to own or drive a fortified vehicle, as well as detailed specifications of the fortifications of the vehicle in question.²² Similar to the body armour permit and license, this permit requires the payment of a fee and agreement to extensive background checks.²³ The grounds for cancelling a fortified vehicle permit are identical to those for body armour permits and licenses.²⁴ The *Act* grants inspectors broad powers of enforcement by allowing them to request the driver of a vehicle to pull over for inspection if there are reasonable grounds to believe that the vehicle is fortified.²⁵ Upon stopping a vehicle, the inspector is able to take photographs, measurements, or conduct any other tests deemed necessary in determining whether or not the vehicle is fortified.²⁶ If it is determined that the vehicle is fortified and the driver is unable to produce a valid permit, the vehicle must be seized.²⁷ At this time, the owner is faced with two options: pay the detention costs and fortification removal costs, upon which time the vehicle will be returned to them; or, forfeit the vehicle to the Crown, who will then destroy the vehicle.²⁸

The penalties for committing an offence under the *Act* vary for individuals and corporations. Individuals face a maximum fine of \$10,000 and/or a maximum jail sentence of three months.²⁹ For corporations, the maximum fine increases to

¹⁷ *Act*, *supra* note 10, s 1.

¹⁸ *Ibid*, s 5.

¹⁹ *Ibid*, s 9(2).

²⁰ *Ibid*, s 12(1). Permits and licenses may be cancelled by the director if "it is no longer in the public interest for the holder to have the permit or license."

²¹ *Ibid*, s 13(1).

²² *Ibid*, s 14(2).

²³ *Ibid*.

²⁴ *Ibid*, s 17(1).

²⁵ *Ibid*, s 26(1).

²⁶ *Ibid*, s 26(3).

²⁷ *Ibid*, s 18(1).

²⁸ *Ibid*, ss 21(1), 21(3), 22.

²⁹ *Ibid*, s 29(3).

\$25,000 and individuals within the corporation who aided in the commission of the offence may face the penalties pertaining to individuals, as specified above.³⁰

The *Act* recognizes the use of this type of equipment is required by law enforcement and first responders to carry out their duties. As a result, the *Act* provides body armour permit exemptions for police officers, firefighters, paramedics, sheriffs, and correctional officers.³¹ Exemptions for fortified vehicle permits are provided for police officers as well as government employees who use such vehicles in the course of their employment.³²

III. RELATED LEGISLATION

A. Manitoba

In Manitoba, *The Fortified Buildings Act*³³ has been in effect since 16 June 2005. In a 2009 Government of Manitoba news release, Minister Swan stated that thirty-four buildings including gang hangouts and drug houses have had their fortifications removed as a result of this legislation.³⁴ *The Fortified Buildings Act* allows the government to order the closure or removal of a building's fortifications if such fortifications are deemed unnecessary.³⁵ The preamble identifies three concerns which led to the legislation:

- a) fortification of buildings can prevent emergency response personnel and law enforcement officials from gaining access to those buildings in an emergency;
- b) fortification of buildings can pose a threat to the safety of the individuals inside by making it difficult to escape in an emergency; and
- c) fortified buildings are sometimes used by individuals involved in crime or other activities that disrupt the peace and safety of communities and neighbourhoods.³⁶

B. British Columbia

British Columbia was the first province in Canada to regulate the sale of body armour through the *Body Armour Control Act* ("the *B.C. Act*"),³⁷ which came into force on 1 July 2010. Upon introduction of the proposed legislation, British Columbia Solicitor General Kash Heed explained the need for such action: "Police see it all too often. By taking away criminals' sense of security, we decrease the

³⁰ *Ibid*, s 29(4)-29(5).

³¹ *Ibid*, s 3(2).

³² *Ibid*, s 13(2).

³³ CCSM c F153 [*FBA*].

³⁴ Government of Manitoba, News Release, "Province Announces Milestone Marked in Safer Communities Program" (4 December 2009), online: Government of Manitoba News Releases <<http://news.gov.mb.ca>>.

³⁵ *Ibid*, s 6(1)-6(2).

³⁶ *Ibid*, Preamble.

³⁷ *BC Act*, *supra* note 7.

potential for violence in public settings.”³⁸ Leading up to the introduction of the legislation, Vancouver was witnessing a full-fledged gang war. In the first quarter of 2009 there were over thirty shootings in and around Vancouver left twelve people dead and sixteen injured.³⁹ Police had also begun to encounter gang members who had fortified their vehicles.⁴⁰ Additionally, the RCMP released a report in early 2009 which showed that 2008 saw the most murders in British Columbia’s history, part of which was attributed to the province becoming a hub for organized crime.⁴¹ Bill 14 in Manitoba was modelled after this legislation and shares most of the same provisions, however the *B.C. Act* does not regulate fortified vehicles. Instead, the Government of British Columbia subsequently introduced Bill 16, *Armoured Vehicle and After-Market Compartment Control Act*.⁴² As well as regulating fortified vehicles, the legislation covers the installation of secret compartments in vehicles, which can be used to conceal drugs or firearms.⁴³ Bill 16 received Royal Assent on 3 June 2010 and will come into force on a date fixed by Proclamation.⁴⁴

C. Alberta

Modelled after the *B.C. Act*, the Legislative Assembly of Alberta passed Bill 12, the *Body Armour Control Act*. The legislation received Royal Assent 22 April 2010 and is set to come into force on a date fixed by Proclamation.⁴⁵

IV. THE JOURNEY OF BILL 14 THROUGH THE LEGISLATIVE ASSEMBLY

A. First Reading

Bill 14 was moved by the Minister Swan and seconded by the Honourable Dave Chomiak, Minister for Innovation, Energy, and Mines. Bill 14 was introduced to fulfill the commitment of the Government of Manitoba to prevent criminal organizations from using fortified vehicles and body armour to threaten public safety in Manitoba, as contained in the 2009 Throne Speech. At the same time, Bill 14 also recognized that law enforcement personnel require such equipment to carry

³⁸ BC News Release, *supra* note 5.

³⁹ Greg Joyce, “Vancouver police display AK-47, handguns in announcing more gang arrests” *Canadian Press* (6 March 2009).

⁴⁰ “Another armoured gang car taken off the streets of Metro Vancouver” *Canadian Press* (2 January 2008).

⁴¹ Chad Skelton, “2008 B.C.’s deadliest year: report” *National Post* (5 March 2009) online: National Post <<http://www.nationalpost.com/news/2008+deadliest+year+report/1358262/story.html>>.

⁴² Bill 16, *Armoured Vehicle and After-Market Compartment Control Act*, 2nd Sess, 39th Leg, British Columbia, 2010 (assented to 3 June 2010), SBC 2010, c 8 [Bill 16].

⁴³ British Columbia Ministry of Public Safety and Solicitor General, News Release, 2010PSSG0027-000479, “Act to Restrict Armoured Vehicles, Secret Compartments” (28 April 2010).

⁴⁴ Bill 16, *supra* note 42.

⁴⁵ Bill 12, *supra* note 10.

out their duties.⁴⁶ The motion to adopt the first reading of Bill 14 was adopted by the House.⁴⁷

B. Second Reading

The second reading of Bill 14 occurred on 31 May 2010. A total of five Members of the Legislative Assembly (“MLAs”) spoke to the bill. Minister Swan was the first to speak to Bill 14. He presented the bill as a comprehensive scheme to regulate who can possess and sell body armour and own and drive fortified vehicles.⁴⁸ Minister Swan explained that the bill is needed because police officers in Manitoba are beginning to encounter an increasing number of gang members wearing ballistic body armour.⁴⁹ He also further explained that the fortified vehicle portion of the bill is proactive as law enforcement in Manitoba has yet to encounter criminals using fortified vehicles, but the emergence of fortified vehicles in other jurisdictions leads officials to believe they will be used in Manitoba in the near future.⁵⁰ According to Minister Swan, regulation of fortified vehicles is necessary because they present a unique threat to public safety. The extra weight the vehicles carry from fortification can cause braking issues, additional injuries in collisions, and presents problems to first responders and police officers when attempting to extract individuals from such vehicles.⁵¹

Next to speak to the bill was Mr. Kevin Lamoureux, Liberal MLA for Inkster. His main concerns with the bill were that it did include exemptions for conservation officers and that in his opinion, the New Democratic Party (“NDP”) government was failing to address the underlying causes of crime. Mr. Lamoureux began by asking for leave of the House to pose a question dealing with exemptions for conservation officers, which was quickly denied.⁵² At this time, Mr. Lamoureux began criticizing the NDP government for failing to honour House tradition by denying him leave to pose a question.⁵³ He also had choice words for one specific member of the House: “The question that I want to put to the minister was in regards to conservation officers to see, in fact, how this might impact conservation officers. And, Mr. Speaker, the member from Wolseley ‘yeps’ from his seat like some wild animal.”⁵⁴

⁴⁶ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, vol LXII No 21 (26 March 2010) at 503 [*Debates* (26 March 2010)].

⁴⁷ *Ibid.*

⁴⁸ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, vol LXII No 53 (31 May 2010) at 2568-2569 [*Debates* (31 May 2010)].

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid* at 2569.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

After withdrawing his statement regarding the member from Wolseley, Mr. Lamoureux eventually spoke about the bill, pointing out that as a result of discussions he had with peace officers throughout Manitoba, he realized that some of the most dangerous situations are those encountered by conservation officers while attempting to enforce poaching laws.⁵⁵ He accused Minister Swan of suffering from ‘Perimeteritis’ by failing to consider rural Manitoba by not extending the body armour permit exemption to conservation officers, who regularly deal with individuals who are carrying loaded firearms.⁵⁶

The majority of Mr. Lamoureux’s time speaking on this bill was devoted to chastising the NDP government for failing to address youth crime and for their poor handling of Child and Family Services.⁵⁷ He explained that it is the government’s failure to deal with the root causes of crime, which leads to the need for laws like Bill 14. Mr. Lamoureux’s comments were heavy on criticism and light on solutions. The only specific solution offered was “our young people need to be involved.”⁵⁸

The Honourable Dr. Jon Gerrard, Leader of the Manitoba Liberal Party and Liberal MLA for River Heights, was next to speak on Bill 14. Dr. Gerrard had many concerns with the bill and used his time to address them. He began by pointing out the similarity between Bill 14 and the *Fortified Buildings Act* and questioned why Minister Swan failed to table evidence of the effectiveness of the *Fortified Buildings Act* as a tool to assess the potential success of Bill 14.⁵⁹ Dr. Gerrard went on to suggest that perhaps there was no such evidence and that Bill 14 was just a public relations measure aimed at making the government appear tough on crime.⁶⁰

Further, Dr. Gerrard stated that certain parts of Bill 14 were too invasive and that Manitoba was becoming a police state under the NDP government, with personal freedoms being eroded in the name of security.⁶¹ The first of his specific concerns dealt with non-criminals who wish to possess body armour for a legitimate purpose, but who are not covered by an exemption. He gave examples of such individuals, which included those who work in core areas at night, crime reporters, and private security guards, and questioned why such individuals should have to pay a fee to protect themselves.⁶² Dr. Gerrard felt the Bill would do harm by driving the trade of body armour further underground and that it would be “toothless” due to the online availability of body armour products.⁶³ Next, Dr. Gerrard tackled the Bill’s definition of body armour, which is defined in Bill 14 as:

⁵⁵ *Ibid* at 2570.

⁵⁶ *Ibid* at 2571.

⁵⁷ *Ibid* at 2571-2574.

⁵⁸ *Ibid* at 2573.

⁵⁹ *Ibid* at 2575.

⁶⁰ *Ibid* at 2574-2579.

⁶¹ *Ibid*.

⁶² *Ibid*.

⁶³ *Ibid*.

(a) a garment or item designed, intended or adapted for the purpose of protecting a person from projectiles discharged from a firearm, as defined in section 2 of the *Criminal Code* (Canada); or (b) a prescribed garment or item.⁶⁴

Dr. Gerrard expressed concerns that many protective products for sports and job sites would unnecessarily fall under Bill 14 due to the presence of Kevlar in their composition, which is also present in the body armour meant to be regulated by Bill 14.⁶⁵

Moving to the fortified vehicle portion of Bill 14, Dr. Gerrard expressed concern with the powers conferred on the government stipulated in Bill 14. First, he called for a clearer explanation of ‘reasonable grounds’ in section 26, which grants inspectors the power to pull over any vehicle if they have reasonable grounds that it is fortified.⁶⁶ Next, Dr. Gerrard also expressed concern with section 35, which would release the Crown from liability for all negligence with respect to the *Act* so long as they acted in good faith.⁶⁷ In Dr. Gerrard’s opinion, Bill 14 should contain recourse for citizens who have their vehicles unnecessarily destroyed as a result of the *Act*.⁶⁸ Dr. Gerrard concluded his remarks by slamming the NDP government for their handling of Child and Family Services, echoing the statements of Mr. Lamoureux that issues surrounding child protection are at the root of crime and those issues should be addressed by the government.⁶⁹

The debate on the second reading of Bill 14 resumed on 15 June 2010 with the first remarks delivered by Mr. Kelvin Goertzen, Progressive Conservative (“PC”) MLA for Steinbach. Mr. Goertzen began by pointing out that while similar legislation was already in effect in British Columbia, the organized crime problem in that province was quite different than in the situation in Manitoba.⁷⁰ Police in British Columbia had already encountered fortified vehicles prior to the introduction of the *B.C. Act*, while there were no reports of such vehicles in Manitoba.⁷¹ Mr. Goertzen conceded that he would be supportive of the bill if the motivation behind it were to be proactive, but he still expressed suspicions that Bill 14 was a political move by the NDP government due to public criticism regarding the gang problem in Manitoba.⁷² Next, Mr. Goertzen brought up the issue of non-criminals owning fortified vehicles in Manitoba by sharing the story of one of his constituents, who owns a war tank which he puts in parades and shows on Remembrance Day.⁷³ Under Bill 14, the owner would be forced to obtain a permit.

⁶⁴ *Act*, *supra* note 10, s 1.

⁶⁵ *Debates* (31 May 2010), *supra* note 47 at 2576.

⁶⁶ *Ibid* at 2577.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid* at 2578-2579.

⁷⁰ *Ibid* at 3036-3039.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid* at 3037.

Mr. Goertzen concluded his remarks by criticizing Minister Swan and the NDP government for their lack of innovation on the issue of crime prevention. He claimed that while Manitobans would undoubtedly support Bill 14, they would quickly ask what else the government was doing to fight crime as in Mr. Goertzen's opinion, the NDP government "is out of ideas."⁷⁴

The last member of the House to speak on Bill 14 was Mr. Larry Maguire, PC MLA for Arthur-Virden. Mr. Maguire supported the bill, but expressed suspicions that it would just be a tax grab by an NDP government that has run out of ideas on crime prevention, yet wanted to maintain the appearance that they were doing something.⁷⁵ Mr. Maguire had specific concerns regarding the penalties under Bill 14. He claimed that criminal organizations like the Hells Angels would have no problem paying a \$10,000 fine, or even the \$25,000 fine applicable to corporations if they were somehow deemed to be a corporation for the purposes the *Act*.⁷⁶ Criminal organizations with deep pockets may not view the fines as a deterrent, thereby defeating the purposes of such mechanisms.

In the end, the second reading of Bill 14 was adopted by the House. Bill 14 was then referred to the Standing Committee on Justice.⁷⁷

C. Committee Stage

The committee stage provides a valuable opportunity for members of the public to provide input on a bill, which can ultimately lead to amendments. On this occasion, no members of the public registered to speak to Bill 14.⁷⁸ After Mr. Swan briefly outlined the general concept of the bill in his opening statement, Mr. Goertzen used his opening statement to express his support for the bill while remaining suspicious of its motives, hoping they were genuine and not merely political.⁷⁹ Since Mr. Goertzen had only a couple of questions about the bill, the Committee did not proceed through the bill clause by clause. Mr. Goertzen's first question was in regards to the constituent discussed during second reading who owned a military tank used in Remembrance Day events. Mr. Goertzen posed a question asking if that constituent, and other Manitobans in similar situations, would have to make an application under the *Act*.⁸⁰ Mr. Swan responded by saying that he had indeed looked into this issue and in his opinion, the best way to deal with those who collect, restore, and display fortified vehicles is through regulation.⁸¹ He continued

⁷⁴ *Ibid* at 3039.

⁷⁵ *Ibid* at 3039-3040.

⁷⁶ *Ibid*.

⁷⁷ *Ibid* at 3040.

⁷⁸ Manitoba, Legislative Assembly, *Standing Committee on Justice*, vol LXII No 2 (15 June 2010) at 26 [Committee].

⁷⁹ *Ibid* at 26.

⁸⁰ *Ibid*.

⁸¹ *Ibid*.

by saying that while such individuals would still be required to file an application in order to prevent loopholes from being created, if a permit was granted, it would not have associated fees.⁸² Mr. Goertzen's second question dealt with satisfactory public notification of the *Act* coming into effect and specifically, the notification of private security guards throughout the province who would fall under the *Act* and may not be aware.⁸³ Mr. Swan assured Mr. Goertzen that in addition to the public being notified directly and given reasonable time to prepare for the *Act*, private security agencies registered with the province would also be notified separately.⁸⁴

There were no amendments to Bill 14 at the committee stage or at the report stage.

D. Third Reading and Royal Assent

Mr. Goertzen and Mr. Lamoureux spoke at this stage but the majority of their comments failed to deal directly with Bill 14. While both MLAs were in support of the bill, they used their time to once again criticize the NDP government for failing to address the underlying issues surrounding crime prevention such as youth justice, the NDP's handling of Child and Family Services, and the provincial court system.⁸⁵ Both men also took time to criticize Mr. Swan for failing to accept the challenge for a public debate on crime prevention, which was issued by Mr. Lamoureux during the second reading of Bill 14.⁸⁶

Bill 14 received Royal Assent on June 17, 2010 and will come into force on a date fixed by proclamation.⁸⁷

V. ANALYSIS

A. Media Coverage and Public Reaction

The media coverage of Minister Swan's news conference in which he introduced Bill 14 did not appear to convince Manitobans of the proposed legislation's merits. The public response to the introduction of Bill 14 was largely negative and suspicious, as evidenced by comments left on the Winnipeg Free Press story covering the news conference. In the words of a poster named 'McLeod:' "This move by the NDP is purely a scare tactic. They want naive citizens of our province to believe there are gangs of hoodlums and outlaw bikers driving around in armoured personnel carriers with automatic weapons just waiting to wage war with the citizens. Nothing could be further from the truth;" and 'Briniak:' "Almost like

⁸² *Ibid.*

⁸³ *Ibid* at 27.

⁸⁴ *Ibid.*

⁸⁵ Manitoba, Legislative Assembly, *Debates and Proceedings*, vol LXII No 63 (16 June 2010) at 3117-3119 [*Debates* (16 June 2010)].

⁸⁶ *Ibid.*

⁸⁷ *Ibid* at 3232.

they're making crime laws just so they can say their (sic) tough on crime when in reality they don't want to step on anyone's toes."⁸⁸

B. Effectiveness of Bill 14

While there is a valid purpose behind Bill 14, the legislation will likely have little effect on crime in Manitoba. Crime rates, including murder, are already high in Manitoba which demonstrates that criminals do not require body armour or fortified vehicles to carry out violent acts. Although law enforcement in Manitoba may be encountering body armour, such incidents appear to be outliers rather than the norm. Additionally, those who acquire body armour for criminal purposes are unlikely to do so via legitimate over-the-counter merchants. Criminals would most likely acquire body armour through the underground trade or on the Internet, where they can buy from American or out-of-province sellers. In response to Alberta's *Bill 12*, the president of an Edmonton military distributor described the simple task of acquiring body armour online, "in 10 minutes I'm going to find (online) someone sitting at their kitchen table who will order it, get it to their address in Armpit, Montana, box it up and ship it to me."⁸⁹ The task is made easier when one finds a retailer who ships directly to Canadian addresses.

C. The Crown's Limited Liability

Dr. Gerrard raised valid concerns with Bill 14 during second reading which should have merited further debate, specifically section 35 which releases the Crown from liability for negligence, and the Charter issues arising from the bill. Section 35 of the *Act* reads:

No person may commence or maintain an action or other proceeding against the Crown, the director, an inspector or any other person engaged in the administration of this Act

(a) in respect of any act done in good faith, or any neglect or default, in the performance or intended performance of a responsibility or in the exercise or intended exercise of a power under this Act; or

(b) for compensation for any damage, injury or loss in value caused by or during, or arising from, the removal of any fortification from a vehicle or the destruction of a forfeited vehicle.⁹⁰

The obvious concern with this section is the hypothetical scenario where the Crown will exercise good faith, an error will be made, and a fortified vehicle will be wrongly destroyed, with the owner will be unable to take action. The liability protection offered by section 35 does not appear to be in line with the policy/operational dichotomy in governmental tort liability.⁹¹ Policy decisions

⁸⁸ "Province moves to ban body armour, armoured vehicles", *Winnipeg Free Press* (26 March 2010) online: Winnipeg Free Press <<http://www.winnipegfreepress.com/breakingnews/Province-moves-to-ban-body-armour-armoured-vehicles-89279307.html>>.

⁸⁹ "Critics call Alberta's body armour crackdown toothless", *Canadian Press* (15 May 2010).
⁹⁰ *Act*, *supra* note 10, s 35.

⁹¹ Philip H Osborne, *The Law of Torts*, 3d ed (Toronto: Irwin Law, 2007) at 209 [Osborne].

made by government agencies are generally not actionable while operational decisions generally are.⁹² However, since the Supreme Court of Canada's decision in *Cooper v. Hobart*,⁹³ a potential litigant whose fortified vehicle was wrongly destroyed by the government likely would not be able to establish the requisite proximity between themselves and the director. However, some form of recourse should be available to individuals under such circumstances, even if it is simply a means to earn public trust in the inspection and enforcement program of the *Act*.

D. Bill 14 and the *Charter*

While there were likely a number of MLAs doubting the position previously stated by Dr. Gerrard, there is some merit to his concerns about the erosion of personal freedom.⁹⁴ This legislation will likely face a constitutional challenge for violating section 7 of the *Canadian Charter of Rights and Freedoms*.⁹⁵ Section 7 of the *Charter* reads:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.⁹⁶

Under the *Act*, any citizen denied a body armour permit faces penal sanctions if they seek to protect themselves regardless. While the scheme allows permits to be granted to those who demonstrate a need, it also allows the denial of permits because of a failure to demonstrate a need or based on one's "character" or "past conduct."⁹⁷ Thus, an individual who has a legitimate need for body armour may be denied a permit simply because the government disagrees. To successfully challenge the *Act* as a violation of section 7 of the *Charter*, an individual ("the challenger") would have to show: a) a right guaranteed by section 7 has been violated; b) the violation was not in accordance with the principles of fundamental justice; and c) the violation cannot be justified as a reasonable limit under section 1 of the *Charter*.⁹⁸ Any potential section 7 *Charter* challenge to the *Act* would likely be brought by an individual who was denied a permit. The right to security of the person provided by section 7 of the *Charter* has been interpreted to include the right to protect one's body. Sopinka J. in *Rodriguez v. British Columbia (Attorney General)*⁹⁹ stated:

⁹² *Ibid.*

⁹³ [2001] 3 SCR 537.

⁹⁴ *Debates* (31 May 2010), *supra* note 61.

⁹⁵ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*].

⁹⁶ *Ibid.*, s 7.

⁹⁷ *Act*, *supra* note 10, s 10.

⁹⁸ Joel Bakan et al, *Canadian Constitutional Law*, 4th ed (Toronto: Emond Montgomery, 2010) at 1161 [*Constitutional Law*].

⁹⁹ [1993] 3 SCR 519, 107 DLR (4th) 342 [*Rodriguez*].

There is no question, then, that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity are encompassed within security of the person, at least to the extent of freedom from criminal prohibitions which interfere with these.¹⁰⁰

Sopinka J.'s characterization of the right to "security of the person" is notable because it not only identifies that choices and control over one's body are covered by section 7, but also that a part of that right is the freedom from laws which interfere with these choices and control. Establishing that the *Act* violated the right to security of the person would be fairly straightforward. In *R. v. Morgentaler*,¹⁰¹ the Supreme Court of Canada found that provisions which limited access to abortion were a threat to the health and safety of pregnant women. The analogy could be made that provisions which limit access to body armour are a threat to the health and safety of individuals in danger of violence. The challenger could argue that by giving the government the power to deny individuals the protection of body armour, the *Act* infringes on one's right to protect their body.

Next, it must be determined whether the violation is in accordance with the principles of fundamental justice.¹⁰² The principles of fundamental justice can be found in the basic tenets of our legal system.¹⁰³ One of these principles is that laws should not be overbroad. Lamer C.J. described the overbreadth analysis in *R. v. Heywood*:¹⁰⁴

In the case of overbreadth the means are too sweeping in relation to the objective. Overbreadth analysis looks at the means chosen by the state in relation to its purpose. In considering whether a legislative provision is overbroad, a court must ask the question: are those means necessary to achieve the State objective? If the State, in pursuing a legitimate objective, uses means which are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated because the individual's rights will have been limited for no reason. The effect of overbreadth is that in some applications the law is arbitrary or disproportionate.¹⁰⁵

The objective of the *Act* is to prevent crime.¹⁰⁶ It attempts to achieve this objective by effectively outlawing body armour unless one is granted a permit. To mirror a scenario in *Heywood*,¹⁰⁷ the effect of the legislation is that it could be applied to a man who was convicted of a gang crime aggravated by consumption of alcohol in his teenage years. Even if subsequently free of crime, and not considered to be a danger to the public, he could still be denied a body armour permit while working as a nightclub doorman at the age of forty. Similarly, a law-abiding individual who has received threats or someone who works in a crime-ridden area may be barred

¹⁰⁰ *Ibid* at 584.

¹⁰¹ [1988] 1 SCR 30, 44 DLR (4th) 385 [*Morgentaler*].

¹⁰² *Constitutional Law*, *supra* note 98.

¹⁰³ *Re BC Motor Vehicle Act*, [1985] 2 SCR 486, 24 DLR (4th) 536 at 512-513.

¹⁰⁴ [1994] 3 SCR 761, 120 DLR (4th) 348 [*Heywood*].

¹⁰⁵ *Ibid* at 48-49.

¹⁰⁶ *Act*, *supra* note 10, s 2.

¹⁰⁷ *Heywood*, *supra* note 104 at 62.

from legally wearing body armour if they are unable to effectively demonstrate their need for it. Thus, demonstrating that the limitation on the right to security of the person is much broader than is necessary to accomplish the valid objective of preventing crime.

The Supreme Court of Canada has found that violations of section 7 of the *Charter* are rarely justified under section 1.¹⁰⁸ Justification becomes even more difficult when the violation is due to the legislation being overbroad because it means that the legislation would fail the minimal impairment portion of a section 1 analysis even though crime prevention is a pressing and substantial objective.¹⁰⁹

VI. CONCLUSION

The *Act* is flawed for many reasons. First, it will likely do little to prevent crime. Those who are committing offences while wearing body armour will rarely think twice when the only consequence is an additional minor charge, which will likely be dropped. Additionally, it is unlikely criminals purchase body armour from dealers who would be licensed under the *Act*. Rather, it is more probable they acquire such equipment in the same manner they obtain firearms—through the untraceable underground market. In turn, this black market trade will continue to expand using body armour regulation as its fuel. Criminals who obtain their body armour through legitimate means do so through online merchants who ship to Canada. Second, the *Act* is in line for a *Charter* challenge in its current state. While it may have been surprising that Dr. Gerrard was the only MLA to raise serious personal freedom concerns, what was more unexpected was that his concerns were not substantially addressed.

A more effective way to keep body armour away from criminals is to push the federal government to modify the *Criminal Code*.¹¹⁰ Under the new law, anyone who wears or possesses body armour during the commission of a crime would face a more serious charge. This would ensure that the criminal use of body armour is dealt with legally without simultaneously affecting those individuals who choose to wear body armour for non-criminal purposes.

While it may be true that politicians attempt to look out for the public's best interests, perhaps, the nature of politics instead forces lawmakers to pander to voters by appearing to take a stand on issues—whatever the case, the passage of Bill 14 through the Legislative Assembly of Manitoba could not have gone more smoothly, despite the fact that the bill blatantly restricts an individual's personal freedoms. The hypothetical section 7 challenge undertaken in this paper was a mere introduction of the discussion that may, or perhaps will, take place in a court of law.

¹⁰⁸ *Ibid* at 69.

¹⁰⁹ *Ibid*.

¹¹⁰ *Criminal Code*, RSC 1985, c C-46.