

House of Representatives
Supplementary Order Paper

Wednesday, 28 September 2011

**Video Camera Surveillance
(Temporary Measures) Bill**

Proposed amendments

Charles Chauvel, in Committee, to move the following amendments:

Clause 3

To omit clause 3(c) and substitute

- (c) to introduce a requirement for a video camera surveillance warrant for the lawful use of covert video surveillance as part of, or in connection with, a search.

Clause 4

To insert in to section 4 - Interpretation

arms means any firearm, airgun, pistol, restricted weapon, imitation firearm, or explosive (as those terms are defined in section 2 of the Arms Act 1983), or any ammunition

constable has the same meaning as in section 4 of the Policing Act 2008

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

Customs officer has the meaning given to it in section 2(1) of the Customs and Excise Act 1996

District Court Judge means a Judge appointed under the District Courts Act 1947

enforcement officer means any of the following persons:

- (a) a constable:
(b) any person authorised by an enactment to exercise a power of entry, search, or seizure:

evidential material, in relation to a particular offence, means evidence or any other item, tangible or intangible, of relevance to the investigation of the offence

Judge means a District Court Judge or a Judge of the High Court

law enforcement agency means any department of State, Crown entity, local authority, or other body that employs or engages enforcement officers as part of its functions

precursor substance has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

Clause 5

To omit clause 5 and substitute the following clause

- (1) This section applies to the use of covert video camera surveillance as part of, or in connection with, a search, if that use occurs before the close of the day that is 1 year after the date on which this section comes into force.
- (2) The use of covert video camera surveillance as part of, or in connection with, a search is lawful, and does not of itself render the search unreasonable, if the requirements of this Act are complied with.
- (3) This section is subject to **section 6**.

New clauses 6 to 11

To insert the following heading and clauses after clause 5

Video camera surveillance warrant

6 Activities for which video camera surveillance warrant required

Except as provided in **section 7**, an enforcement officer who wishes to undertake covert video surveillance must obtain a video camera surveillance warrant.

7 Video camera surveillance warrant need not be obtained for the covert use of video camera for activities by an enforcement officer in some situations

- (1) An enforcement officer who is in any 1 or more of the situations set out in subsection (2) may use a video camera covertly for a period not exceeding 48 hours from the time the video camera is first used without obtaining a video camera surveillance warrant, if—
 - (a) he or she is entitled to apply for a video camera surveillance warrant in relation to those situations; but
 - (b) obtaining a video camera surveillance warrant within the time in which it is proposed to undertake the surveillance is impracticable in the circumstances.
- (2) The situations are as follows:
 - (a) the enforcement officer has reasonable grounds—
 - (i) to suspect that an offence punishable by a term of imprisonment of 14 years or more has been, is being, or is about to be committed; and
 - (ii) to believe that covert use of the video camera would obtain evidential material in relation to the offence:
 - (b) the enforcement officer has reasonable grounds—
 - (i) to suspect that any 1 or more of the following circumstances exist;
 - (i) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property,
 - (ii) there is risk to the life or safety of any person that requires an emergency response; and
 - (ii) to believe that covert use of the video camera is necessary to prevent the offending from being committed or continuing, or to avert the emergency:
 - (c) the enforcement officer has reasonable grounds to suspect that the person is carrying arms, or is in possession of them, or has them under his or her control and —
 - (i) any 1 or more of the following circumstances exist:
 - (A) he or she is in breach of the Arms Act 1983; or
 - (B) he or she, by reason of his or her physical or mental condition (however caused);-
 - (AA) is incapable of having proper control of the arms, or
 - (BB) may kill or cause bodily injury to any person; or
 - (C) that, under the Domestic Violence Act 1995, –

- (AA) a protection order is in force against the person; or
 - (BB) there are grounds to make an application against him or her for a protection orders; and
- (ii) the enforcement officer believes on reasonable grounds that covert use of the video camera is necessary to facilitate the seizure of the arms:
- (d) the enforcement officer has reasonable grounds—
 - (i) to suspect that an indictable offence in relation to arms or an offence against the Arms Act 1983 has been committed, or is being committed, or is about to be committed; and
 - (ii) to believe that covert use of the video camera would obtain evidential material in relation to the offence:
- (e) the enforcement officer has reasonable grounds—
 - (i) to suspect that an offence has been committed, or is being committed, or is about to be committed in relation to a controlled drug specified or described in Schedule 1, Part 1 of Schedule 2, or Part 1 of Schedule 3 of the Misuse of Drugs Act 1975, or to a precursor substance specified or described in Part 3 of Schedule 4 of that Act; and
 - (ii) to believe that covert use of the video camera would obtain evidential material in relation to the offence:
- (f) the enforcement officer has reasonable grounds—
 - (i) to suspect that a person is in possession of any 1 or more of the following: –
 - (A) a controlled drug;
 - (B) a precursor substance;
 - (AA) a package in relation to which a Customs or other enforcement officer has replace all or a portion of any controlled drug or precursor substance;
 - (BB) evidential material in relation to the commission of an offence under section 6(1)(a) or 12AB of the Misuse of Drugs Act 1975; and
 - (ii) to believe that covert use of the video camera is necessary to facilitate the thing's seizure.

Application for a video camera surveillance warrant

8 Application for video camera surveillance warrant

- (1) An application for a video camera surveillance warrant may be made only by an enforcement officer, and must contain, in reasonable detail, the following particulars:
 - (a) the name of the applicant;
 - (b) the provision authorising the making of an application for a search warrant in respect of the suspected offence;
 - (c) the grounds on which the application is made;
 - (d) the suspected offence in relation to which the video camera surveillance warrant is sought;
 - (e) the name, address, or other description of the person, place, vehicle, or other thing that is the object of the proposed surveillance;
 - (f) a description of the evidential material believed to be able to be obtained by use of the video camera;
 - (g) the period for which the warrant is sought.
- (2) If the enforcement officer cannot provide all the information required under subsection (1)(e) and (f), the application must instead state the circumstances in which the surveillance is proposed to be undertaken in enough detail to identify the

parameters of, and objectives to be achieved by, the proposed covert use of the video camera.

- (3) The applicant must disclose in the application—
 - (a) the details of any other applications for a search warrant, or a video camera surveillance warrant, or a residual warrant that the applicant knows to have been made within the previous 3 months in respect of the person, place, vehicle, or other thing proposed as the object of the surveillance; and
 - (b) the result of that application or those applications.
- (4) The applicant must, before making an application for a video camera surveillance warrant, make reasonable inquiries within the agency in which the applicant is employed or engaged for the purpose of complying with subsection (3).

9 Conditions for issuing video camera surveillance warrant

The conditions for issuing a video camera surveillance warrant are that there are reasonable grounds —

- (a) to suspect that an offence has been committed, or is being committed, or will be committed in respect of which any enactment authorises the enforcement officer to apply for a warrant to enter premises for the purpose of obtaining evidence about the suspected offence; and
- (b) to believe that the proposed covert use of the video camera will obtain information that is evidential material in respect of the offence.

Issuing of video camera surveillance warrant

10 Who may issue video camera surveillance warrant

A video camera surveillance warrant may be issued by a Judge, on application under section 8, if he or she is satisfied that the conditions set out in section 9 are met.

11 Form and content of video camera surveillance warrant

- (1) Every video camera surveillance warrant must—
 - (a) be directed to every enforcement officer who has authority to carry out the activities authorised by the video camera surveillance warrant; and
 - (b) specify a period, of no more than 60 days after the date on which the warrant is issued, for which it is in force.
- (2) A video camera surveillance warrant may be subject to any other conditions specified in the warrant that the Judge issuing it considers reasonable.
- (3) Every video camera surveillance warrant must also contain, in reasonable detail, the following particulars:
 - (a) the name of the Judge issuing the warrant and the date of issue;
 - (b) the provision authorising the making of an application for a search warrant in respect of the suspected offence;
 - (c) the name, address, or other description of the person, place, vehicle, or other thing that is the object of the proposed surveillance;
 - (d) the evidential material relating to the suspected offence that may be obtained by covert use of the video camera;
 - (e) that an enforcement officer carrying out the activities authorised by the warrant may use any assistance that is reasonable in the circumstances;
 - (f) that an enforcement officer carrying out the activities authorised by the warrant may do any or all of the following, using any force that is reasonable in the circumstances to do so, in order to install, maintain, or remove the video camera, or to access and use electricity to power the video camera:

- (i) enter any premises, area, or vehicle specified in the warrant:
 - (ii) break open or interfere with any vehicle or other thing:
 - (iii) temporarily remove any vehicle or other thing from any place where it is found and return it to that place.
- (4) Despite subsection (3)(c) and (d), if the Judge has not been provided in the application, or otherwise, with the information specified in those provisions because the applicant is unable to provide it, the warrant must instead state the details of the circumstances in which the surveillance is to be undertaken in enough detail to identify the parameters of, and objectives to be achieved by, the covert use of the video camera.
- (5) Despite subsection (1)(b), a Judge may issue a further video camera surveillance warrant in respect of the same suspected offence in regard to which the Judge, or another Judge, has previously issued a surveillance device warrant.

Evidential material relevant to other offences

12 Admissibility of evidential material relevant to other offences

- (1) Subsection (2) applies if, in the course of carrying out activities authorised by a video camera surveillance warrant or while lawfully using a video camera in relation to an offence, a person obtains any evidential material in relation to an offence —
 - (a) that is not the offence in respect of which the warrant was issued or in respect of which the video camera was lawfully put into use, as the case requires; but
 - (b) in respect of which a video camera surveillance warrant could have been issued or a video camera could have been lawfully used.
- (2) The evidential material referred to in **subsection (1)** is not inadmissible in criminal proceedings by reason only that the video camera surveillance warrant that authorised the activity that obtained the material was issued in respect of a different offence or, as the case requires, that the material was obtained from the covert use of a video camera that was put into use in respect of a different offence.

Explanatory Note

This Supplementary Order Paper introduces amendments to the Video Camera Surveillance (Temporary Measures) Bill that will safeguard the rule of law because the government has not drafted a Bill that will do so. This Supplementary Order paper appropriately empowers enforcement officers, through clear articulation of Parliament’s purpose, with meaningful and reasonable powers for the undertaking of their activities without challenging the New Zealand Bill of Rights Act 1990 while continuing to place the safety and security of New Zealanders first.