

PROHIBITED BEHAVIOUR ORDERS BILL 2010 — SPECIFIED PERSONS

1035. Hon SALLY TALBOT to the parliamentary secretary representing the Attorney General:

I refer to the recently passed Prohibited Behaviour Orders Bill 2010.

- (1) In relation to clause 10(3)(c), what are the criteria for identifying a person as a “specified” person?
- (2) Will persons being considered by a court to be specified persons be informed and made a party to the deliberations of the court in making a PBO?
- (3) What right of appeal will a specified person have to prevent his or her photograph or other details being published on the website or elsewhere?
- (4) Which clause or clauses of the PBO bill —
 - (a) enable a court to decide that a person is a specified person;
 - (b) set out the criteria to be used by the court to identify a person as a specified person;
 - (c) enable the publication of a specified person’s photograph on the website by the CEO; and
 - (d) enable the publication of details other than a photograph of the specified person to be published on the website?
- (5) Is the photograph and/or other details of a specified person subject to republishing as allowed for in clause 34(8)?

Hon MICHAEL MISCHIN replied:

I thank the member for some notice of this question.

- (1) A decision whether to impose any particular constraint as part of a PBO is at the discretion of the court hearing the application. In reaching a decision to impose any constraint, a court must follow the framework set out in clause 8. In other words, it must be satisfied that the two threshold relevant offences exist; that the person was likely to commit another relevant offence unless constrained; and that making an order imposing such constraints was appropriate in all the circumstances. Before deciding to impose a particular constraint, including one of the nature described in clause 10(3)(c), a court would need to be satisfied of the test set out in clause 10(2) that it was “reasonably necessary” to impose such a constraint to reduce the likelihood of a constrained person committing a relevant offence. If a court were satisfied of that necessity, it would then be required to make a general assessment of the appropriateness of making a PBO imposing such a constraint, having regard to the matters set out in clause 9(1) and (3). Clause 9(3)(g) permits a court to have regard to any matters the court considers relevant when making that final decision. In considering granting a PBO imposing a constraint of the nature described in clause 10(3)(c), clause 9(3)(g) would clearly permit a court to take into account the impact on third parties in determining the appropriateness of the PBO.
- (2) In satisfying itself as to the reasonable necessity of the constraint and its appropriateness in all the circumstances, a court would of course have regard to evidence placed before it. If a constraint were to restrict a person’s capacity to associate with a third party, that third party could be called as a witness by the prosecutor or person against whom the order was sought. Further, in all civil proceedings, a person who is not a party to proceedings but who may be adversely affected by those proceedings will be entitled to independently seek leave to be heard in those proceedings in accordance with the inherent powers and procedures of the relevant court.
- (3) The person would have the same rights of appeal in accordance with the inherent powers and procedures of the relevant court as would apply to any person who is adversely affected by an order of the court.
- (4) (a)–(b) See response to part (1).
(c)–(d) Clause 34(2)(d) provides for the process for the publication of the constraints imposed by a PBO. If the court were satisfied that it was reasonably necessary and appropriate in all the circumstances to do so, the court could conceivably frame a constraint of the kind described in clause 10(3)(c) restricting the constrained person from associating with a named person or a person identified in a photograph. It is impossible to ever predict with certainty how a court will exercise its discretion, but the most likely situation in which the government would foresee a court accepting that it was reasonably necessary and appropriate in all the

circumstances to frame a constraint so as to include a photograph of a third party would be when that third party was also subject to a PBO restricting their association.

- (5) Anything that is permitted to be published pursuant to clause 34(2) may be republished pursuant to clause 34(8).

The PRESIDENT: Ordinarily, I might have asked the parliamentary secretary to go back to the Attorney General and make the answer a little more concise, but the question was anything but concise. Under this circumstance, I think the length of the answer is reasonable, but, obviously, if that pattern continues, members will see that the number of questions will be restricted.