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## Legislation carries some scary powers

As part of its green energy legislation, the McGuinty government is poised to shred the right to privacy that all citizens enjoy in their lawyer's offices solicitor-client privilege. It is described in a 2001 decision of the Supreme Court of Canada as being "fundamental to the justice system in Canada."

Late last month, Ontario Energy Minister George Smitherman introduced Bill 150, the Green Energy and Green Economy Act. It makes an energy audit compulsory for the sale (and some leases) of every residential property in Ontario.

I was very critical of these proposed audits in last week's column, calling them an unprecedented and unnecessary government intrusion into the free marketplace.

But the energy audits are not the only offensive part of the legislation. Last week I heard from my colleague Peter T. Fallis, a lawyer in Durham, Ont. Fallis sounded the alarm about the scary inspection powers contained in Bill 150.

It says that the deputy minister may designate anyone to be an inspector under the legislation.

At any reasonable time, an inspector may, without a search warrant, enter any place where he or she believes that there are documents relating to an offer to sell or to lease a residence. This would include a lawyer's office, a real estate office, and with a search warrant even a private home.

The inspector has the right to demand to see any documents that are relevant to the home energy audit and take them away for the purpose of making copies. The inspector may also require any person to assist with an inspection.

A contravention of the act, including a failure to co-operate with a search, is punishable by a penalty of up to \$10,000. Corporations can be fined up to \$25,000.

In the context of criminal law, the Federation of Law Societies and the Law Society of Upper Canada have adopted a protocol on law office searches where police arrive with a search warrant to inspect client files. Under this protocol, lawyers will typically claim that the files are covered by solicitor-client privilege. At that point, the seized files are sealed and the issue of confidentiality is later decided before a judge, after hearing arguments by the lawyer, the client, and the attorney general.

No such protection is written into the Green Energy Act. Law and real estate offices can be searched and client files can be seized and copied without a search warrant or any official oversight just to obtain a copy of an energy audit.

Back in 2001, then Supreme Court of Canada Justice John Major explained why solicitor-client privilege is so important in our society. In the case of David McClure, he wrote, "The integrity of the administration of justice depends upon the unique role of the solicitor who provides legal advice to clients within this complex system. At the heart of this privilege lies the concept that people must be able to speak candidly with their lawyers and so enable their interests to be fully represented."

Ten years earlier, then Chief Justice Antonio Lamer wrote, "protection for solicitor-client communications is based on the fact that the relationship and the communications between solicitor and client are essential to the effective operation of the legal system."

As I read Bill 150, no thought appears to have been given to solicitor-client privilege. If the bill is enacted in its present form, it is bound to result in years of litigation. I think it's time to scrap Bill 150 and start all over again.