



ISSN 1180-5218

**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Monday 6 December 2004

**Journal
des débats
(Hansard)**

Lundi 6 décembre 2004

**Standing committee on
general government**

Liquor Licence
Amendment Act, 2004

**Comité permanent des
affaires gouvernementales**

Loi de 2004 modifiant la loi
sur les permis d'alcool

Chair: Jean-Marc Lalonde
Clerk: Tonia Grannum

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Room 500, West Wing, Legislative Building
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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 6 December 2004

Lundi 6 décembre 2004

The committee met at 1556 in room 151.

**LIQUOR LICENCE
AMENDMENT ACT, 2004
LOI DE 2004 MODIFIANT LA LOI
SUR LES PERMIS D'ALCOOL**

Consideration of Bill 96, An Act to amend the Liquor Licence Act / Projet de loi 96, Loi modifiant la Loi sur les permis d'alcool.

The Chair (Mr Jean-Marc Lalonde): I call this meeting to order. First of all, on behalf of the standing committee on general government, I'd like to wish you all welcome to this public hearing on Bill 96, An Act to amend the Liquor Licence Act. Also, I would like to remind everyone that people have until 4 o'clock tomorrow afternoon to submit an amendment to the act.

MADD CANADA

The Chair: We will proceed immediately with the first presenter, Mothers Against Drunk Driving Canada, Mr Andrew Murie, chief executive officer. Good afternoon. Mr Murie, you have 15 minutes. You can take the whole 15 minutes or leave some time at the end for questions by the members of this panel. You can proceed.

Mr Andrew Murie: Thank you, and I'd like to thank the committee members for giving MADD Canada an opportunity to speak on Bill 96.

Before I comment directly on Bill 96, I want to step back and vent some of our organization's frustration with liquor licence reform in this province.

In 2002, our organization, with many other stakeholders, spent a lot of time giving input as an advisory group on proposed recommendations to the Liquor Licence Act. I am baffled and I am not pleased that Bill 96 is not the liquor licence reform we were expecting. I view Bill 96 as cherry-picking a few reforms that you perceive as the flavour of the month.

Some of the recommendations from the advisory group included: introduce a new, tiered system evaluating liquor sales licences, including mandatory liability insurance; change the existing system of special occasion permits; enhance server training programs; introduce new grounds for the suspension and revocation of a liquor licence; consider the social responsibility background for candidates for the AGCO board.

A lot of these points, plus others, were also recommended by the Ontario Public Health Association in their letter of November 13, 2002, which is attached to my presentation notes as well.

On the specific issue of bring-your-own-bottle, the advisory group recommended that there was a need for controls to be put in place and a need for broader public input before the group was prepared to offer a recommendation.

Therefore, when it was announced that Minister Watson was considering introducing legislation to allow bring-your-own-wine, BYOW, we were left wondering what the motivation was for this announcement. Our organization has made it very clear that we are in favour of liquor licence reform, but not piecemeal reform.

MADD Canada is not in favour of BYOW because there is a wide body of evidence by the World Health Organization and others that there is a direct relationship between the price of alcohol and consumption rates. Lower prices of alcohol tend to lead to more alcohol-related harms, including impaired driving.

The other issue is that Minister Watson claimed there is great public support for BYOW. The advisory group has advised the government to seek out broader support on this issue, not just an ad hoc poll the minister conducted through his office.

MADD Canada, through SES Research, polled a random sample of Ontarians on May 29 and May 30, 2004.

Question 1 read: "As you know, the Ontario government is proposing new liquor laws that will allow people to bring their own bottles of wine to restaurants. Do you strongly support, somewhat support, somewhat oppose or strongly oppose a bring-your-own-wine policy for restaurants in Ontario?" The results of this question: 19% of Ontarians strongly support BYOW, 25% somewhat support it, 14% somewhat oppose it, 27% strongly oppose it, 9% were unsure of their support or opposition, and another 7% had no response to that question.

Our second question was: "Do you think a bring-your-own-wine policy for restaurants would increase or decrease or have no impact on the number of people who drink and drive?" The results of this question: 43% of Ontarians felt there would be an increase in the number of people who drink and drive, 2% felt there would be a decrease, 48% felt there would be no impact, 6% were unsure, and 1% had no response to that question.

As you can see by the SES poll, there is no great support for bring-your-own-wine. The Bill 96 legislation should not be a priority for this government.

I also don't buy into the concept that just because not a lot of restaurants will choose to have a BYOW policy, it is then OK to move forward with this legislation. If there is not widespread public support for BYOW, why is this government considering a legislative change that the empirical evidence shows might increase alcohol-related harms in our community?

My last point on Bill 96 is on the issue of liability insurance. Since it is not a requirement of the Liquor Licence Act for a licensee to have liability insurance, BYOW introduces a new question of who's responsible. Under the present Liquor Licence Act, it is really clear that the licensee and the server have the responsibility of not serving patrons beyond the point of intoxication. For example, if I were to bring to a BYOW restaurant special selections from my private wine collection, am I now in control of the product? I will start to dictate to the server who gets served and in what amount. The line that used to be black and white is now grey. My question to you is, has this government fully explored all the legal implications of liability? I would also highly recommend that the mandatory liability insurance issue be dealt with immediately.

On the reform of increasing fines for serving minors, it's a step in the right direction. It falls well short of dealing with the issue of underage drinking. The advisory committee looked at such issues as increasing the requirement to two pieces of identification and for the AGCO to increase compliance checks to ensure that licensed establishments are not serving minors. Without proper ID checks and enforcement levels, increasing fines will have relatively little impact.

In closing, I would like to ask this government to put aside Bill 96 and advise the minister to consider a full reform of the Liquor Licence Act with representation from all stakeholders.

Attached to my notes are the letter from the Ontario Public Health Association and our two press releases dealing with bring-your-own-wine. Thank you.

The Chair: Thank you. We will proceed with questions. We have approximately two and a half minutes left for each caucus. Any questions from the official opposition?

Mr Gerry Martiniuk (Cambridge): Yes, sir. As I understand MADD's position, it is simply that this particular reform should be part of a broader general reform of the Liquor Licence Act?

Mr Murie: Yes, sir.

Mr Martiniuk: Were you promised this? There seems to be an indication in the attachments to your brief—the press release of June 10, 2004—that certain promises were made to you in regard to general reform of the act. Would you like to comment on that?

Mr Murie: Sure. When we met with the minister prior to any legislative reforms, we again stressed that we liked the recommendations from the advisory group and we

were promised that we would be kept in the loop on any changes to the Liquor Licence Act. So we were quite surprised when bring-your-own-wine was announced without any heads-up for our organization or any consultation on that.

Mr Martiniuk: Thank you.

The Chair: Ms Churley.

Ms Marilyn Churley (Toronto-Danforth): Let me start by saying how much we all appreciate the very important work you do, and thank you for coming forward with your concerns. We haven't heard a lot on the concerns side; we've heard a lot on the support side.

In that vein, I just wanted to ask, have you had an opportunity to look at all at places like Montreal and Quebec, for instance, to see if any of the regulations and things they have in place could make a difference if this were to go ahead? It probably will, because they do have the majority here. If it were to go ahead, is there anything you would suggest that might improve it for you?

Mr Murie: Yes. One of the things that we've always said would improve this legislation would be a set high corkage fee. That way, you're not really lowering the price of alcohol; rather, you're bringing more wine from collectors or prize wine, where there's less likely to be dangerous consumption levels.

Ms Churley: I see. It's along the lines that lower prices cause more drinking, and we all know that's so.

The Chair: Now the government side.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Mr Murie, thank you. I'm the father of three teenaged girls, two of whom drive, and one for whom I just paid \$800 to have lessons on defensive driving, so I appreciate this. If there's a fathers against drunk driving, I'd certainly be a charter member of that. Thank you for the work you do.

Just by way of information-sharing, as the recently named parliamentary assistant, the minister has asked me to engage in a fuller, more comprehensive review in the new year, so we will be doing that. The former minister—I think it was Minister Hudak—is on record as supporting the changes here.

I'm wondering, though, did you happen to catch or know of the presentation of the Police Association of Ontario the other day?

Mr Murie: No, I didn't see that presentation, although I understand it was very favourable. But I went back and talked to the OPP officer who served on the advisory committee, Inspector Larry Moody, and he confirmed for me that he agreed with our philosophy that this should not be a few reforms but a total liquor licence reform. Again, that's from the perspective of the police representation of the OPP.

Mr McMeekin: I appreciate that.

Let me just share with you part of what the police association said to some rather pointed questions. They said they could advise the committee members that they had "checked with other jurisdictions across Canada, and police associations have told us that they haven't seen any negative impact on community safety as long as

proper regulations are in place.” You’d probably agree with that. “In conclusion, in our view Bill 96 would implement several changes that would have a positive impact on community safety.”

So it’s moving ahead with those recommendations that the minister feels we can move on, acknowledging that we need a more comprehensive approach, and also an emphasis on community safety. Can you comment on the community safety aspects in the bill for us?

Mr Murie: I think the one on the minors is a step in the right direction. But clearly, all the research shows that just having tougher sanctions doesn’t work. Any good legislation needs public awareness and enforcement, whether by the AGCO or police. That’s a big part. That’s how you make these types of things work. I have no doubt that if the legislation is highly enforced and highly policed, it can be effective and reduce the community harms I’m speaking of. But it also has the risk, if not properly supervised and not properly legislated, that it can have those negative things. None of us wants to read about one of those in the paper.

Mr McMeekin: We sure don’t.

Again, I just want to thank you and your group for your tremendous work. Keep it up.

Ms Deborah Matthews (London North Centre): Let me echo what the others have said about the good work you do. I wonder if you could comment on the take-home-the-rest component of the legislation. Do you have an opinion on that aspect?

Mr Murie: Yes, we’ve always been supportive of that. We’ve been clear on that right from day one. Rather than people finishing off alcohol they don’t need, it makes sense to bring the rest of that home, if you seal it and it’s properly controlled. We’ve never had an issue with that part of it.

The Chair: Thank you for taking the time.

Just before we proceed, I’d like to point out that according to the minutes of the subcommittee, the two persons at 5 o’clock and 5:30 will only have 10 minutes for their presentation.

UNITE HERE ONTARIO COUNCIL,
LOCAL 75

The Chair: The next presenter will be Mr Paul Clifford, president-administrator of UNITE HERE Ontario Council, Local 75. Thank you for taking the time to come and address the committee. You can proceed. As you are aware, you have 15 minutes, of which you can take the whole 15 minutes or leave some time at the end for questions.

Mr Paul Clifford: Thank you for inviting me to deputate. Maybe I could start at the beginning with a couple of questions. I didn’t produce a written statement because I wanted to get some clarification on two aspects of the bill.

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The first one is, it’s my understanding from reading the bill that there’s no distinction made between the kinds

of licensed establishments. I think we normally would think about it in terms of impacting free-standing restaurants, but in terms of hotels, room service, banquet halls—my understanding is that it covers any licensed establishment, not just a restaurant. Is that true? Could somebody help me with that?

Mr McMeekin: There will be a separate adjunct licence that will be required. That will obviously be part of the regulations. We don’t want to proceed with something that is by definition nonsensical. The spirit of the legislation and the regulations will be very much one of keeping control and ensuring that there aren’t abuses of alcohol.

Mr Clifford: It matters to us. Maybe farther on down the road we could talk a little bit about it, because we have members not only in free-standing restaurants but also in hotels. Obviously, how this is applied to in-room dining or banquet facilities or whatever else would have some additional concerns for us.

The second one: The previous speaker talked about the corkage fee, but I didn’t see anything in the legislation itself that addresses a service charge or a corkage fee. I did want to make some remarks about that, but I didn’t understand how it would or could work.

Mr McMeekin: As I understand it, we’ve had a fair bit of discussion about it. Any corkage fee would be an independent business decision, something the proprietor would look at. As you may know, the whole program is voluntary. In Alberta, apparently only about 6% of licensed establishments actually took up the possibility of doing this bring-your-own-wine, a very small take-up rate.

Mr Clifford: Thank you for the clarification. I think I’ll pursue that second one. In my reading of the materials, one of the glaring omissions was that there was no real mention of the impact on the workers in the industry, the people providing the service. We’re talking about literally tens of thousands of people employed in the industry who actually provide the service and who are really the front line in terms of—you know, there aren’t enough police or law enforcement people to enforce this and make sure it works in a way that’s responsible, in the way the previous speaker talked about. I want to highlight that and give you some perspective on how I believe this will impact servers and the workers who have to work under this.

Just by way of background, my local is 8,500 workers, and we’re part of a union of 20,000 across Ontario. In the hospitality part of our union, probably about a third of our members are what we would call front-of-the-house. I have to tell you honestly that I have not run into a member in this line of work who supports the legislation as a worker. I think the areas of concern fall into two: One is the concern about the increased difficulty in standing up to customers who might say they want more, so it’s the area of public safety, and the second is the actual impact on their pocketbook.

On both of them, one of the things you need to remember is that we have a saying in our industry that

when you're a hospitality worker, you have two bosses: You have your employer, but you also have the customer. The reason is that they both provide you the income to maintain your livelihood.

In terms of the bring-your-own-wine impact on safety, the server, as the previous speaker said, is in a more vulnerable position. In a way, they actually have to stand up to their boss, to somebody providing their livelihood, and cut them off. It's more difficult to do that when the customer has brought in the wine and said, "This is my wine and I want more." The server, who depends on that customer for a tip, has to say, "No. You're cut off. No more." It makes it very, very difficult for workers providing the service to say no under this regime.

The second concern is an economic one. Liquor servers make less money per hour than other workers. Why? Because it's expected that they get a gratuity. In the province, the minimum wage for liquor servers who are also food servers is \$6.20 an hour. Working full-time, 40 hours a week—which very few people do—if you just look at the wage component, that brings somebody to about \$13,000 a year. That's not enough for an individual to live on, let alone support a family. The government has raised that recently but is potentially taking away the income from wine service under this situation. If I serve 10 bottles of wine at \$30 a bottle and I get 15% of that in a shift, that's 45 bucks I could lose if there's no guaranteed service charge or no guaranteed corkage fee attached to the service of that wine bottle. We could potentially see a significant loss of income to the people providing the service.

I said before that I haven't found anyone who supports it. On the other hand, if this is going forward, I would make two strong recommendations: One is that there be a mandatory service charge or corkage fee, and second, that should be the property of the worker providing the service. That takes them out of being vulnerable to the pressures of the customer on the one hand, and on the other hand it offsets the loss of income from the gratuity you would get on the price of the wine being served. It provides some relief for the reduction of their income and provides them some security in terms of enforcing the law.

Those would be my strong suggestions, if this is destined to go forward, that there be those two changes made to the bill. I don't know if it would be in this, how you would locate it or construct those changes, but those would be my strong suggestions.

The Chair: Thank you. We have enough time for two questions; three minutes left. I'll go to Ms Churley from the NDP.

Ms Churley: Thank you very much for your presentation. Have you had a chance to look at what has happened in Montreal and other jurisdictions that have had this in place for a while, in terms of your concerns?

Mr Clifford: I haven't looked at the other jurisdictions, no.

Ms Churley: I think your recommendations are sensible. Particularly, we're all aware of what happened to workers in the hospitality field during SARS, which

they've never really fully recovered from, and the minimum wage is so low.

I have a great concern about this as well. I'm not sure why the government—perhaps it will come up—is not making a corkage fee mandatory. I understand it's going to be voluntary. I don't know the pros and cons of that, why some choose to do it and others don't, but I'd be interested to hear what the government has to say.

I would support your recommendations. I'm just not sure how it works in other jurisdictions. I don't know if studies have been done on that, if the workers, for instance, in Montreal or Alberta or other places where they have this—if those kinds of suggestions you're making are in place.

Mr Clifford: I'd be happy to do some research. I do know—

Ms Churley: The government can do that; they've got the money and the resources.

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Mr Clifford: I'm familiar with—this is going back a little while, but I believe the state of Illinois at one point had legislation that said a service charge was the property of the worker providing the service. I think that's appropriate.

The Chair: From the government side, Mr McMeekin.

Mr McMeekin: Just a quick comment. Rod Seiling spoke on behalf of his association the other day, and because this issue came up then as well, he suggested that there would obviously—he said "obviously"; it was his word—need to be some discussion between management and the workers around how a percentage of the corkage fee would be built in to replace potential lost tips. He seemed to have that pretty well thought out, as I recall.

Mr Clifford: Well, for example, at the Sheraton Centre hotel, if there's a bottle brought in, there is a guaranteed corkage assigned to it and a formula for distributing it to the workers involved in the service of it. We're union, so we'd negotiate it where we have members, but if that can be extended across the province for everybody in the sector, I have no objection to that.

Mr McMeekin: That was exactly the type of thing that Mr Seiling was talking about. He indicated that, particularly in the context of working with unions, the formula would have to be something that is negotiated.

Mr Clifford: The problem is that the unionization rate, particularly in the restaurant industry, is very, very low. That was part of the reason I was asking about what kind of establishment is contemplated being covered by this. I would be happy to work on this with Mr Seiling or Mr Mundell or anyone else.

The Chair: Thank you very much. I just want to clarify one point about your concern. A customer cannot go into a restaurant and bring his own bottle if he is not taking a full-course meal, so there is still a gratuity coming in from the meal. Patrons of bars and taverns will not be allowed to bring their own wines.

Mr Clifford: Just to clarify, was that an option, or was it that "participating restaurants would have the discretion to require minimum food orders"?

The Chair: Yes, restaurants.

Mr Clifford: “Would have the discretion to require minimum food orders.”

The Chair: Minimum food orders: You’ve got it there.

Mr Clifford: They “would have the discretion to require minimum food orders.” It’s in the question and answer.

Mr McMeekin: I would suggest respectfully, Mr Chairman, that any restaurant that isn’t going to have a minimum food order and is going to let somebody bring wine in without a corkage fee isn’t going to be in business very long.

Mr Clifford: Yeah.

The Chair: Our time is up, Mr Clifford. Thank you very much for taking the time and bringing up your concern.

ONTARIO RESTAURANT HOTEL AND MOTEL ASSOCIATION

The Chair: Our next presenters will be Terry Mundell, Tony Elenis and Michelle Saunders, with the Ontario Restaurant Hotel and Motel Association. Welcome to the committee. We appreciate the time you’re taking to make your presentation. You can proceed. You heard the time you have—15 minutes—of which you can take the whole 15 minutes or leave some time at the end for questions.

Mr Terry Mundell: Thank you very much, Mr Chairman and members of the committee, for this opportunity to speak with you today. My name is Terry Mundell and I’m the president and CEO of the Ontario Restaurant Hotel and Motel Association. With me is my colleague Michelle Saunders. It’s my pleasure to have the opportunity to speak with you this afternoon regarding Bill 96, An Act to amend the Liquor Licence Act.

The Ontario Restaurant Hotel and Motel Association is a non-profit industry association that represents the foodservice and accommodation industries in Ontario. With over 4,100 members province-wide, representing more than 11,000 establishments, the ORHMA is the largest provincial hospitality industry association in Canada. Ontario’s hospitality industry comprises more than 3,000 accommodation properties and 22,000 foodservice establishments, 17,000 of those which are licensed to serve alcohol in Ontario.

Bring-your-own-wine has been a challenging issue for our industry, with some strong supporters and some adamant opposition, as well as differing opinions about appropriate implementation models and risk-management strategies. But there is some general consensus on bring-your-own-wine and take-home-the-rest. A survey of our members province-wide revealed that the majority of our members do not intend to offer either of these services to their clientele. Our members strongly indicated their belief that neither bring-your-own-wine nor take-home-the-rest will result in increased sales and that both policies will result in increased liability insurance rates.

Although many of our members have a variety of concerns regarding bring-your-own-wine, the association does support the government’s proposal to make this enabling legislation, to permit operators the opportunity to choose the services that best serve their establishment and their clientele.

The ORHMA does continue to have concerns with the impact bring-your-own-wine will have on operator liability and liability insurance costs. As the ORHMA also has some concerns with the government’s proposal to allow patrons to take home partially consumed bottles of wine and as the ORHMA expects that many of our concerns will be addressed in regulation, we urge the government to consult with the industry when developing regulations, regulations that will clarify an operator’s obligations and mitigate their liability.

For example, rather than simply requiring the licensee to recork a partially consumed bottle of wine, the government may compel operators to place a seal over the recorked bottle or to place the recorked bottle in a sealed bag similar to those used by courier companies.

While the ORHMA understands that it’s the government’s intention to allow only commercially produced wines and to prohibit homemade wines, the association respectfully suggests that consideration be given to perhaps a marking system so licensees can clearly identify appropriate bottles.

The ORHMA also recommends that corkage fees not be regulated.

The ORHMA also suggests that the government design and implement a formal education and training process so that licensees, servers, consumers, alcohol inspectors and the broader enforcement community have a clear and common understanding of their obligations, responsibilities and rights under the Liquor Licence Act.

This bill, however, is about more than bring-your-own-wine and take-home-the-rest. It also includes three other amendments to the Liquor Licence Act. I will briefly address each of these three amendments.

First, the bill proposes to give the registrar of the Alcohol and Gaming Commission the power to issue immediate interim suspensions of licences when it is deemed in the public interest.

The safety of our patrons, responsible service and community safety are vital concerns to our operators. The ORHMA recommends clarity in the wording of the legislation to define the types of circumstances and conditions that would lead to or permit the registrar to issue an interim suspension, such as an immediate risk to community and individual safety.

The ORHMA also recommends that the AGCO be required, when requested by a licensee under this provision, to hold a hearing within 48 hours to determine if that interim suspension should continue.

The association also recommends that operators not be held responsible for incidents that happen outside of their establishments.

Second, the ORHMA has no concerns with the amendment to create an offence for failing to leave a

licensed premises when required by a police officer to do so or for returning the same day after being asked to leave, save and except when that person is the licensee.

Third, the bill also proposes to increase the minimum fines for licensees and non-licensees for the provision of alcohol to minors. This includes minors who consume alcohol.

The issue of underage drinking is a very serious concern for our industry, as the technology to produce fraudulent identification becomes more sophisticated and more readily accessible.

The ORHMA respectfully suggests that a small monetary fine is not a sufficient deterrent for our youth, and true and meaningful deterrents and consequences must be put in place. The ORHMA recommends that the government help mitigate operators' and servers' liability by clearly articulating steps an operator or server must undertake to fulfill their due diligence in preventing underage drinking. This will help move the yardstick forward on both the government's and the industry's efforts to prevent underage drinking.

However, beyond Bill 96, the ORHMA is more specifically concerned with the broader reforms to the Liquor Licence Act. Our association believes that broader reforms to the legislation are necessary to bring about real and meaningful change to the licensing, enforcement and hearings process.

The ORHMA was pleased recently to have had the opportunity to meet with the Minister of Consumer and Business Services to present him with some specific recommendations for amendments. We understand that the government is considering introducing legislation next year that will bring about reforms to the industry.

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The ORHMA believes that a comprehensive review of the Liquor Licence Act is warranted immediately and looks to the government for their support in making broader reforms to the Liquor License Act that will bring about positive changes.

Our areas of concern include, but are not limited to: the disintegration of the relationship between licensees and the AGCO inspectors; inconsistencies in interpretation and inspection standards amongst inspectors; wholesale pricing; escalating costs; gallonage fees; and cross-subsidization of retail promotion and taxation policies, to name a few. These matters are significant, and the ORHMA urges the government to address them as soon as possible and to include the industry in those discussions.

Operators, sommeliers, bartenders and servers bring a wealth of experience to the table and respectfully request and deserve a voice. Members of the committee, thank you very much for your time.

The Chair: Thank you, Mr Mundell. I will proceed with questions. We have seven minutes left. I'll go to the government side. Mr Duguid.

Mr Brad Duguid (Scarborough Centre): Mr Mundell, good to see you again. You were talking about concerns about increased liability. Our information from

Alberta and Quebec, which have both bring-your-own-wine and take-home-the-rest policies, and British Columbia, which just has take-home-the-rest policies, is that they've seen no increased liability there at all. Do you have any other evidence of jurisdictions where there has been increased liability, or is Ontario somehow different from these jurisdictions and you think that the result would be different?

Mr Mundell: I think the broader concern for us at this point in time is that we've not been able to ascertain directly from those insurance companies that there will be no impact on liability. We understand what's happened in other jurisdictions; we've not been able to get direct correlation to Ontario on that.

Mr Duguid: Is it a serious concern of yours right now, or is it something that's—

Mr Mundell: Liability—I'm sorry.

Mr Duguid: I'm not really sure where the concern is coming from if, in practice in other jurisdictions, there hasn't been a problem there.

Mr Mundell: We've seen beverage alcohol liability insurance in our industry double, triple, quadruple for many of the operators in Ontario. It doesn't matter really where you are; it is anywhere in the province. You see fees that go from \$25,000 and \$35,000 a year to \$100,000 a year in an industry that has after-tax average profits of 5%. It's an uncontrollable cost which is a significant hit on the bottom line, so there's a huge concern about liability issues in general, period, in the industry. We're concerned that this may compound that.

Mr Duguid: OK. You talked about a marking system for bottles, and I'm just curious about what you meant by that and how you'd perceive that rolling out.

Mr Mundell: I think the key to any of these new types of programs is to make sure that they're easily understood by consumers, by servers, by licensees and by the enforcement community. Some sort of easily recognizable marking on a bottle which would be eligible to bring into an establishment that everybody understands, one system across Ontario that's easily identifiable, would, from an understanding perspective from all of those different parties, be a significant advancement.

Mr Duguid: I'm just trying to understand: It's a marking system for bottles that are being taken out, taken home? Is that what you're talking about?

Mr Mundell: You want to have a system to make sure, first of all, that the product that you allow in the establishment is LCBO-only type product, right?

Mr Duguid: Yes.

Mr Mundell: That's the issue. So for us what we don't want to have happen is somebody bring in a bottle of homemade which may have a higher alcohol content. So how do you put a system in place that has one marking scheme which identifies that product quite easily for consumer-licensee-server right across the board?

Mr Duguid: My understanding is that homemade will not be permitted, but your comments on the marking system—

Mr Mundell: We're really looking for something which is easily understood by all.

Mr Duguid: OK. Thanks very much.

Mr Martiniuk: I want to deal with the suspension of licence. At the present time, two members of the board, individuals who are appointed and are acting quasi-judicially, make the decision for the temporary suspension of a licence and then there's a full hearing of the board within 15 days. The intent of this statute is to change that, removing the two members and substituting the prosecutor or the registrar. He does the prosecution; now he's going to adjudicate and act quasi-judicially in hearing his own evidence that he's presenting—a rather peculiar situation to put a person in, but let's forget about that for a moment.

We were advised that the board, even if they meet within the 48 hours, which is part of your testimony, reserve judgment, sometimes for considerable lengths of time. I am concerned that the substitution of the registrar and the 15 days, with possible reserved judgments, would put many of your members in jeopardy. Would you like to comment on that? How have you directed your mind to that problem?

Mr Mundell: Thank you very much for the question. In fact, we are very concerned about that. That's why we've recommended that within 48 hours the licensee, at their discretion, have the opportunity to get a hearing to decide whether that interim suspension was warranted.

Your question also goes to a broader concern we have, which is the issue around the AGCO being both the judge and jury. Recently, this government, when looking at the securities commission—Management Board Chair Phillips talked about the issues around that group's ability to be both judge and jury and in fact looked at separating them. In terms of a formal review going down the road, we think the government needs to take a very serious look at that. The whole hearings process continues to be of considerable concern to us.

Mr Martiniuk: Thank you.

The Chair: Our time is up. I would like to thank you very much for taking the time to bring your concern to the attention of the committee.

The next group is the Kitchener Downtown Business Association, with Mr Marty Schreiter. Not here?

ONTARIO ASSOCIATION
OF CHIEFS OF POLICE,
ALCOHOL AND GAMING COMMITTEE

The Chair: The next group is the alcohol and gaming committee of the Ontario Association of Chiefs of Police, Mr Rob Shaw. Detective Inspector Shaw is the Chair. On behalf of the committee, welcome to our hearing. You probably heard the time you have, 15 minutes, all of which can be used by you, or you may leave some time at the end for questions. You can proceed.

Mr Rob Shaw: Mr Chair and members of the committee, thank you for the invitation to speak here.

My name is Rob Shaw. I'm a detective inspector with the Ontario Provincial Police. I'm currently assigned to the investigation and enforcement bureau of the Alcohol

and Gaming Commission of Ontario as the director of liquor enforcement. I'm here in my capacity as the Chair of the alcohol and gaming committee of the Ontario Association of Chiefs of Police.

One of the mandates of my committee is to study and evaluate legislation or proposed legislation pertaining to liquor laws. Our committee has reviewed the changes to the Liquor Licence Act proposed in Bill 96, and the following are our views regarding each of the changes proposed in Bill 96.

I'll speak first to giving the registrar the power to issue immediate interim suspensions of licences in the public interest. We support this change as an enhancement to public safety in licensed establishments. We would like to see this provision used in serious individual cases where there is a threat to public safety. We would also like to see it utilized when multiple notices to revoke a licence have been issued by the AGCO and it is clear that there is no further incentive for a licensee to comply.

For example, there are licensees who currently have multiple—as many as 10—notice of proposal to revoke their licence for infractions of the Liquor Licence Act and regulations. They keep delaying the hearings process. Knowing they are eventually likely to lose their licence, there is no incentive for them to operate in compliance. While they delay the hearings, they continue to operate in the manner that is most profitable to them, with virtually complete disregard for the law. An interim suspension would remedy this situation and force a hearing within 15 days.

Second, amending sections 34 and 34.1 of the Liquor Licence Act to prohibit persons who have been required to leave a licensed premises by a police officer from remaining on the premises and from returning to the premises until the following day, unless authorized by a police officer: We support this amendment insofar as it goes. It will be a useful tool for police, but it does not include an arrest authority. For example, if a bar patron refuses to leave when ordered by police or returns the same day, they can be issued an offence notice under this new section. However, they cannot be arrested and removed from the bar under the authority of these sections unless they fail to identify themselves. An arrest authority for non-compliance would enhance the intended purpose of the sections.

Thirdly, doubling the minimum fines related to underage drinking: We support this change as a positive move in combatting underage drinking. We fully support that.

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Fourth, permitting patrons of licensed premises to bring their own wine and take home the rest: We have no objection, in principle, to allowing patrons to bring their own wine to a licensed establishment that has a bring-your-own-wine endorsement added to their licence.

Our committee did have concerns about how this legislation would be crafted, not having seen a draft of the regulations. The licensee needs to retain responsibility for service, and thereby over service and service to minors, of bring-your-own-wine in the same manner as

any other liquor they serve on the premises. It's recommended that patrons would have to surrender custody of the wine to the licensee, who would uncork and serve the wine and retain the obligation and right to refuse service to an intoxicated patron.

If patrons are to be permitted to take home the rest, the bottles must be resealed in such a manner that once they're outside the premise, the resealed bottle is readily identifiable as such and cannot be opened by hand. This is required so that a patron leaving with a resealed bottle cannot be confused with someone walking down the street with an open bottle or driving with an open part-bottle of liquor.

Concerns were raised regarding potential cases where a patron has brought their wine and then been cut off because they've become intoxicated. Does the licensee give them the remaining wine to depart with? Would that not be serving an intoxicated patron? While probably not a common occurrence, it does put a licensee in a difficult position without clear direction. It is suggested that the legislation address this issue by including that intoxicated patrons will not be permitted to remove the remaining wine from the premises and the licensee may dispose of it.

We have had discussions with the office of the Minister of Consumer and Business Services and believe the regulations will address the concerns raised by our committee. The committee would like the opportunity to review and provide comments on the draft regulations when available.

In summary, the Association of Chiefs of Police supports the provisions within Bill 96 that empower the registrar to issue interim suspensions, increase police powers to deal with public order issues in licensed establishments, and double minimum fines for minor related offences. We believe all of these measures will assist in enhancing public safety. The bring-your-own-wine provision has raised some concerns. We believe that if these concerns are addressed with appropriate regulations, there will be no impact on public safety or policing resources.

We understand that Bill 96 is the first phase of Liquor Licence Act reform. Our committee is reviewing the Liquor Licence Act and will be making recommendations for further reforms as part of the next phase. Some of our areas of interest are: making a liquor licence a privilege rather than a right, thereby placing the responsibility on applicants to prove they should have a licence rather than the reverse; developing a thorough application process, with increased local input, to more appropriately assess risk, including a full due diligence investigation if required, prior to the issuance of a licence; eliminating minor regulatory infractions that draw enforcement resources away from public safety issues, for example regulating inducements and pricing; and expanding the current definition of "intoxicated in a public place" or creating a new section to empower police to deal with persons causing a disturbance due to consumption of alcohol, short of making a criminal arrest.

We look forward to further consultations as LLA reform progresses. I'd like to thank the committee members for the opportunity to appear today and express the views of the Ontario Association of Chiefs of Police. I'd be pleased to answer any questions you have.

The Chair: We have approximately eight minutes left, so it will be divided with approximately two and a half minutes per caucus. I will go to the official opposition side.

Mr Martiniuk: Thank you very much for your representations here today. I am somewhat confused, however. Let's deal with item 1 of your presentation. As I understand the law as it presently stands, two board members can make the decision to suspend the licence under the present legislation. All this legislation does is substitute the registrar, rather than the two board members, to make that decision. There hasn't been any change in rights: additional rights given or rights taken away. All we have done is taken the two board members and substituted the registrar. You seem to think that's a radical change. I'd like you to explain to me why it will assist chiefs of police.

Mr Shaw: Currently, sir, the requirement is for two board members to hear the interim suspension. So when we have a serious case where there's a threat to public safety—and typically those issues have been severe violence or open drug dealing or those types of issues in bars—we have to find two board members who are available to sit and hear it and organize that hearing before them, and then we have to find two additional board members who are available within 15 days to have a second hearing. Frequently, we don't have that ability. It is the process of trying to make that happen—

Mr Martiniuk: OK. You got me to start with, because the 15 days has to take place, as I understand it, under the statute, and there's no change. It still has to take place under the new amendments. All that has changed is that rather than finding the registrar—you used to have to find two board members, and that has led to difficulties, in your personal experience?

Mr Shaw: Yes, it has. It has also led to difficulties in putting a case together within that time, where the registrar has the authority—a police officer could swear to an information in front of the registrar, and it's a more expedited process than pulling together a hearing with two board members. They still have the same right that within 15 days there is a full hearing. It would simply make the process work, in our experience, much faster and enhance our ability to provide public safety.

Mr Martiniuk: Thank you, sir.

The Chair: Ms Churley?

Ms Churley: Thank you very much for your presentation. I wholeheartedly agree with some of your recommendations in terms of community safety and community issues on page 4. They're very good recommendations.

I wanted to come back briefly to page 2, where you say you have no objection to the BYOW but that you have some concerns about how the legislation would be crafted. Do you have specific recommendations to the

government in terms of how it should be crafted? There's a lot of talk about regulations, and I just wonder if you have any suggestions.

Mr Shaw: As I provided in the written submission, our suggestion would be that when an endorsement is issued on a licence, if a patron brings their own wine, on entering the restaurant they should turn custody of that wine over to the serving staff and should be served by the staff, not keep it with them.

Ms Churley: Beyond that, you're pretty comfortable with it otherwise, but you'd like to see what the other—

Mr Shaw: Yes, we would like to see the regulations. My understanding is that our concerns will be addressed. We just haven't seen the draft regulation.

Ms Churley: The other thing is that I'm interested in what you said in C on page 4, that if somebody is intoxicated, they should not be allowed to take their wine with them. One of the things I've often thought is that even as it is now, when you buy wine on the premises, you will see—and I've been guilty of this, though not while driving. I've been guilty at times of buying a good bottle of wine in a restaurant and maybe having that extra glass because it's a good bottle of wine and I can't take it with me. I have to either drink it there or not drink it at all. I would like to see a situation where, to avoid that, any bottle of wine can be recorked properly, not just bring-your-own but bottles on the premises. If you spend \$50 or \$100 or whatever on a bottle of wine, there won't be that temptation to drink it up because you can't take it with you. Do you have a comment on that?

Mr Shaw: On the first portion, I would comment that it's currently an offence to sell liquor to an intoxicated person, whether that's a full bottle or a glass. The concern that was raised was that if they become intoxicated and they have additional wine they've brought with them—if we wouldn't sell them additional liquor, why would we give them their wine to take home? That's why our recommendation was that if they do become intoxicated, the licensee has the right to withhold it and not give it to them to leave with. Second, you're talking about take-home-the-rest in any circumstance, much like Alberta or BC. All I can say on that is that, having contacted Alberta and BC in our deliberations on this, they have no problem with that system. They allow any licensee to take home the rest.

Ms Churley: Whether it's served from the premise or bring-your-own, it's recorked properly and they can bring it home, whatever is unfinished?

Mr Shaw: Yes.

Ms Churley: Is that part of this legislation?

Mr Shaw: I don't believe it is; it's only those with endorsements.

Ms Churley: That's what I thought too. That's something we should take a look at.

The Chair: Thank you, Ms Churley. I'll go to the government side. Ms Matthews?

Ms Matthews: I'm asking my colleague if he wants to clarify that take-home-the-rest question.

Mr Shaw: I think the confusion was that in this legislation, my understanding is that you can only take home

the rest in those places that have a bring-your-own-wine endorsement, unlike BC and Alberta.

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Mr McMeekin: Yes, that's correct, and it applies to both wine that you bring in or wine that you purchase there.

The other comments you made, particularly about the person being intoxicated, I think we need to look at that. I know the minister is very aware of it and he appreciates very much your input on that.

The Chair: Sorry, Ms Churley, I was looking at the time when you asked that question and I didn't hear it properly.

Ms Churley: No, I understand.

The Chair: Ms Matthews.

Ms Matthews: I just want to explore something, your point number 2, that it's not currently an offence to not leave when you've been asked to leave a restaurant or bar. Is that right?

Mr Shaw: It is an offence; it's not an arrestable offence. Currently, under the Liquor Licence Act, the only two arrestable offences are being intoxicated in a public place or any offence in failing to identify yourself with that. So, in effect, if you order someone to leave, which is your authority as a police officer, and they refuse to, this section is saying that you can issue them an offence notice for it and you can charge them.

Ms Matthews: And the proprietor can't order somebody out?

Mr Shaw: The proprietor can, yes. And if they fail to leave, that would be trespassing; it's a separate section.

Ms Matthews: I see. But a police officer can't order them to.

Mr Shaw: He's not an agent unless he's acting as an agent of the owner.

Ms Matthews: OK. Thank you very much.

Mr McMeekin: Just for clarification, there will be an endorsement required to bring your own wine. There will not be an endorsement required to take it home. In fact, restaurants will have that choice. That's good news, because it addresses very specifically the concern you have about an intoxicated patron. The restaurant, as a matter of policy, could say, "We're not going to allow them to take home the rest."

Mr Shaw: Thank you.

The Chair: Thank you, Mr Shaw. I would encourage you, if you have any amendments to send to the committee, you have to do it by 4 o'clock tomorrow afternoon. I can see that you have some concerns, so we would appreciate it very much.

SPADINA/QUEEN/PETER/RICHMOND
COMMUNITY ASSOCIATION

KING-SPADINA
RESIDENTS' ASSOCIATION

The Chair: Now I would ask if anyone is here from the Kitchener Downtown Business Association. Have

they arrived yet? If not, I would call on the next group, the Spadina/Queen/Peter/Richmond Community Association and King-Spadina Residents' Association. There are four of you, so I will ask that before you speak, if you could identify yourself for our record purposes. Thank you, and on behalf of the committee, welcome to the public hearing.

Ms Liz Sauter: I'm Liz Sauter from the Spadina/Queen/Peter/Richmond Community Association.

Mr Wayne Scott: My name is Wayne Scott, and I'll be presenting our primary presentation this afternoon on behalf of the group.

Ms Rose Bayer: I'm Rose Bayer, one of the representatives of the King-Spadina Residents' Association.

Mr Don Rodbard: I'm Donald Rodbard, one of the founders and a director of the King-Spadina Residents' Association.

The Chair: Thank you. You can proceed.

Mr Scott: We certainly appreciate the opportunity to present our views on Bill 96 to the committee. The bill deals, in a small way, with matters that we find very concerning.

Our associations directly represent residents, as opposed to hotel owners, restaurant owners and other players in the hospitality industry, in the entertainment district of downtown Toronto. This population currently numbers in the thousands and is growing quickly. In addition, we indirectly represent many thousands of other residents with an interest in positive change to the Liquor Licence Act who cannot be here today.

You see the names of the associations we represent. The King-Spadina Residents' Association is a voluntary association of existing neighbourhood associations, condominium communities and individual residents in and around the area covered by the city of Toronto King-Spadina official plan.

Also with us today is the Spadina/Queen/Peter/Richmond Community Association, a voluntary association of residents as well as retailers and businesses in that block in the city.

Both organizations care about the evolving urban neighbourhood and we want to make sure it remains a safe and vibrant place to live. Together, we represent the voice of mixed development, as planned and encouraged by the city. The chart below, which I will not read, gives you some idea of the range of participants in this community who are represented by the associations here today.

Next, I'd like to speak to the perspective that we bring to our presentation. The vast majority of input that we've heard deals with restaurants and, in some cases, hotels. We actually bring a very different perspective, and that is the perspective of residents and the impact of nightclubs as licensed facilities on the neighbourhood.

In our case in particular, we deal with a number of issues that stem from an unprecedented concentration of nightclubs in the King-Spadina area. I say "unprecedented"; it's certainly unprecedented in the city of Toronto, and I believe unprecedented across Canada and

perhaps beyond. Some of these facilities operate only as nightclubs, typically opening on weekends—Thursday, Friday and Saturday, perhaps. Others operate as casual restaurants during the week and adjust their operations to attract club patrons on the weekend. In all cases, these operations are characterized by an emphasis on alcoholic beverage service, on dim lighting and excessively loud music. We describe these licensed facilities generally as high-impact entertainment facilities.

In the King-Spadina area there are more than 80 such nightclubs and club-like facilities approved and operating in an area of approximately one square kilometre. Since licence information is not readily available to the public, we don't have an accurate total of the occupancy approved for these establishments. However, estimates put the total at in excess of 20,000 patrons. Police estimate that the area attracts between 20,000 and 30,000 visitors on club nights, and this is in an area that's approximately one square kilometre. As you can appreciate, the impact of this concentration of establishments dedicated to drinking and dancing is significant and often, by their own report, overwhelms the ability of the police to maintain order in our neighbourhood.

The next point I'd like to make is that there is no distinction under the Liquor Licence Act between a restaurant and a nightclub. The licence application process for a restaurant and for a nightclub with a capacity of up to 3,000 patrons—and there is one with that capacity in our neighbourhood—is exactly the same. The licence obtained to operate a traditional restaurant offering full table service at lunch and dinner can subsequently be used, with no review or amendment, to operate a full-blown nightclub in the same premises. The occupancy calculation, at least in the city of Toronto, is the same for both kinds of use and requires only six square feet of licensed space per occupant.

It's our view that both the approval process and enforcement of the act require change. That we have this level of nightclub concentration in one urban neighbourhood is evidence by itself that the approval process is flawed. While the overall business approval is the responsibility shared by both the Alcohol and Gaming Commission of Ontario and the local municipality, the AGCO has a unique and critically important role at the licence approval stage. Bill 96 does not address the approval process. For the information of this committee we have attached appendix 1 to this submission, highlighting several important changes that we believe must be made to the process of approving licences under the Liquor Licence Act. I do not intend to read appendix 1, but I encourage members of the committee to read that.

Similarly, enforcement is a responsibility shared by the AGCO enforcement branch—we've just heard from the head of that branch—and the local police force. Neither agency has the resources necessary to adequately enforce the number of nightclubs currently licensed in the King-Spadina area. In addition, they face important constraints and limitations under the current laws, regulations and standard practices of both the AGCO and

the courts. Mr Shaw referred to a couple of those. Bill 96 does address two important aspects of enforcement. This is a positive step, in our view, but only a small step compared to the need.

Let me turn to the proposals contained in Bill 96 itself, and these are in the order in which they appear in the bill.

First, the BYO amendment: As restaurant patrons we have no objection to this BYO amendment as an additional option for both restaurant owners and patrons in the enjoyment of wine and food together. However, we have very serious reservations about extending this provision to nightclubs. The current act and regulations prohibit happy hour pricing of alcohol as a means to attract customers, presumably because it encourages excessive alcohol consumption. We heard from the representative of MADD earlier that there's strong research that establishes that correlation. However, our concern is that nightclubs could use this new provision, bring-your-own-wine, as a new happy hour and with the same effect. Since the current act does not distinguish between restaurants, which receive a substantial portion of their revenue from food service, and clubs, which get almost all revenue from beverage service plus cover charges, we believe that additional changes will be required in the act and regulations to ensure that this abuse does not happen. We strongly encourage the government to consider and include such changes.

1700

The second change, the interim suspension of licence, which has received some discussion here this afternoon: We strongly support this change as an appropriate provision to deal with the issue of public safety on a timely basis, and also to deal with other serious issues that we experience on an ongoing basis in our area, in the public interest.

Sections 34 and 34.1, the requirement not to remain after being required to leave, and no re-entry until the next day: Again, we strongly support these changes as giving police a clearer basis for enforcement. The resources of both the AGCO enforcement branch and the Toronto Police Service are stretched by the concentration of clubs in our area, and this would assist their activity.

In 52 division of the Toronto Police Service, which includes the entertainment district, personal assaults have increased in 2004 over 2003. This is an environment in Toronto overall in which personal assaults have declined in the same period. Reasonable and balanced changes such as these will enable police officers to address assaults and other violations more effectively.

Section 34.1 is the same, and we support it for the same reasons.

Section 61: A minimum fine increase for serving minors—patrons under 19 years of age. In our opinion, the fines levied for offences under the Liquor Licence Act generally are not large enough to be a deterrent to nightclub owners, especially those operating large clubs. We strongly support this change and ask the government to go further by implementing a schedule of minimum

finest that increase with the licensed capacity of the establishment.

We recommend that the proposed minimum fine apply to a licensee with occupancy of up to 99 patrons—that's the proposed fine of \$1,000—and that the minimum fine be increased by \$1,000 for each 100 patrons allowed under the licence. This provision would protect small-restaurant owners but would apply a fine proportionate to the offence for large-club operators and make that fine material.

You see before you an illustration of such a schedule that might be extended and apply truly meaningful fines to operators who make tens of thousands of dollars of profit each night of operation.

On the other hand, we see no particular reason to try and apply heavy-handed and punitive fines to individuals, and so we support the second part of this provision for fine increases, as proposed.

Once again, we appreciate the opportunity to present our views to this community, and we'd be prepared to answer any questions you may have.

The Chair: We have exactly four minutes left, and we'll go to two parties, two minutes each.

Ms Churley: Thank you very much for your very thorough presentation. You clearly have done your homework on this. It's good to hear the perspective from residents, because mostly we've heard from interest groups.

I'm just trying to understand your position on this. There seems to be a lot of focus on bring-your-own-bottle, although there are other aspects to this which you spoke about more.

As you read the legislation that exists right now, there are regulations to come that this could be extended to or is already—it's just my own ignorance here in terms of this—to nightclubs as well as restaurants. It was my understanding that it only applies to restaurants and that there has to be food involved with this bring-your-own.

Mr Scott: Certainly we have not seen any draft regulation, and our position right now, as best we understand it, is that there is no distinction under the Liquor Licence Act between restaurants and clubs. There is a requirement for clubs to be able to serve food if that is ordered by the patrons, but there is no requirement to serve food.

Ms Churley: There's discretion. The way it's written, it's to the discretion on the part of the patron.

Mr Scott: Yes. So our concern is, if the bring-your-own-bottle provision is not clearly identified with restaurants as opposed to all licensed establishments, it could be abused. Under the current legislation and regulations, we see no discernible differentiation between nightclub operators and restaurants. So that's the basis for our concern about this provision.

Ms Churley: Very quickly, on page 3 you talk about, "Neither agency has the resources necessary to adequately enforce...." Can you expand a bit on that, on what's going on? Are you not getting return calls or people aren't getting there in time or what?

Mr Scott: Well, all of the above. Let me illustrate this by statements made by Chief Fantino in a public meeting

in early October. This was to a meeting of the Toronto Entertainment District Association, comprised of business owners in the entertainment district. We were all invited as guests of that association. Chief Fantino said that on club nights the entertainment district becomes the nerve centre for police enforcement across the Toronto area, and that there is a disproportionate number of police officers brought in because of the requirement for enforcement. Nevertheless, one of the things we experience as residents is noise, and response to noise complaints is essentially nonexistent because the resources are not available. The police informally, individual officers on the street and their supervisors, have told us they cannot consistently enforce the law in this area. So we have Chief Fantino on the record, and many officers who work in this area off the record confirming that it's a real challenge for them.

The Chair: Thank you, Ms Churley. I have time for one question. Mr Duguid?

Mr Duguid: Just quickly, given there's not a lot of time, I wanted to go into your concerns about the bring-your-own-wine and nightclub issue, because I'm trying to figure out how it would be in the interest of a nightclub to allow somebody to bring their own wine in when they don't serve any food or anything like that? It's like, "Just come in, use my establishment for free and leave with your wine." It has to be served, it has to be poured by a server, so it's not like they could walk around with their bottle of wine in their hand or anything like that. I'm just trying to see where you're coming from on this.

Mr Scott: Quite apart from the reality of operation in a nightclub—I don't know how long it's been since you've been in some of these large facilities—

Mr Duguid: No comment.

Mr Scott: The club operators, although there are lots of them there, are actually in a very competitive business. They use every opportunity they can to create an advantage, to create volume, especially on the less busy nights such as Thursday. I can imagine a bring-your-own-wine night. Included in the cover charge is corkage, and it gets the patrons in the door, so it's that kind of scenario. They're prepared to make the trade-off between losing the sale of some wine with patrons in the door consuming alcohol after they've finished the wine. That's our concern.

Mr Duguid: So your concern is about when they leave with the half-empty bottle, that they'll be consuming it outside? I'm trying to think of what the downside is to it. They're going to consume regardless of whether they buy it there or whether they bring their own.

Mr Scott: Should there be any circumstance in which a club patron actually takes a partial bottle out of one of these clubs, then I would be concerned about them reopening it, because we see the consumption of beer in the parking lots after the club closes, on a regular basis, and we see broken bottles in the neighbourhood. The club patrons are not universally bad people, but after a couple of hours in an intense environment of sound and lots of

alcohol, they have less regard for the law than we would like for most of our citizens.

Mr Duguid: I thank you for your comments. I know your neighbourhood can be very challenging sometimes with regard to this. Thank you for the good work you do there to make sure you bring it to the authorities' attention when it needs to happen.

The Chair: Our time is up. Thank you for taking the time. Our next presenter will be Petit Dejeuner, Johan Maes. Just before we start with this presentation, I made a mistake I have to correct. The deadline is really tomorrow at 4 o'clock for amendments, but it applies to members only, not individuals who want to submit an amendment.

1710

PETIT DEJEUNER

The Chair: Mr Maes, thank you for taking the time. You have a total of 10 minutes. You could take the whole 10 minutes or leave some time to the members for questions.

Mr Johan Maes: Thank you very much. I would like to thank you for the opportunity to state my interest in this room regarding Bill 96. I have a restaurant that just acquired a liquor licence six months ago. I also have a catering company that serves a fairly large amount of alcohol to weddings etc. I believe it would be a good thing to sort of allow that to be left to our discretion as to when and how—you know, to the business we have.

I think it's a positive movement because customers will maybe increase their knowledge a little bit more about what they drink and what they match it with and will maybe become more responsible that way. I think it's also a good thing for restaurants to minimize their inventory, especially for new businesses, including myself, that have a hard time setting up—renovations and the cost of having a liquor licence is fairly large—and therefore to have a longer time to build up a better inventory.

I'm not sure if I'm correct in understanding this, but are we also allowed to dictate when the BYOW is presented? I could, for example, decide no on Saturday. Is that correct?

Mr Lou Rinaldi (Northumberland): Whatever you want.

Mr Maes: I think it's a good thing also for tourism in Ontario. Being from Europe, I think we really enjoy going to restaurants and bringing our own bottle, because I can show my friends my interests. I can go out for a smaller amount of money and therefore enjoy my time more and more often.

Also, being an owner, I believe it's fairly hard. We have to implement this with caution, I think, because of the liquor licence security act. It was mentioned a few times before. Take home the rest: When do I decide when a customer is over the limit, and how do I tell this customer, "Here's the rest of your bottle of wine. Take it into the taxi and you can open it there, if you like,

yourself"? I don't know. Is that going to happen? If I tell somebody, "You've had enough," which happens not often but has happened in my establishment, for sure, can I tell him he's not allowed to take the bottle? Is this the sort of legislation that I have to—once I offer to take home the rest, do I always have to give it that way? That would be my larger concern.

The corkage fee: My suggestion would be—for our place, if that's possible—to try and sort of give a fee per person. If you're a group of four people and you want to go out to a restaurant, you will spend more money than a group of one. A lot of people in my neighbourhood, King and Jarvis, come for dinner by themselves. I don't believe they should be paying as much as a table of four, who then should not be benefiting from the contrary, which makes it almost as affordable to me to do BYOW or to actually just buy the bottle and then a service charge on top, and pay a liquor tax on top of that. You know, \$3.50 a glass would give me \$22 per bottle, and a markup for a reasonable bottle is—I'm not too greedy—almost the same, sometimes a little less, sometimes a little more. But I don't think it's a horrible thing for restaurants, anyhow.

I also think customers would have to be coached on the importance of the waiters. I believe that's a big issue: their not being able to make the same amount of tips, or at least having a huge concern about that. If there is any way—who is going to do this coaching? Is it something the government will inform the public about? So whoever serves you that night, if you bring your own bottle, isn't going to make as much money. Their minimum wage is \$6.20, as was said before. They serve, on average, maybe 10 tables, 30 people at once, and then they go home with absolutely very little money, which means that I, as an owner, am going to have a much harder time finding good staff. The staff are out there, and they're very willing to work, but they also have the opportunity to do a second education and do something else to fill up their time.

I also think that we, like the restaurants that participate in this, might also build up a crowd of customers who are not always so—they don't spend a lot of money, let's say. I hope they will now drink some wine. I don't know how that's going to work out in the end.

Lastly, I guess it's just to make sure that we, as owners, and also the staff, get the appropriate training to—like Smart Serve; is that going to be updated? Will we kind of know about it? Is it something that the restaurants will be informed about?

That's pretty much my presentation.

The Chair: Thank you, Mr Maes. We have four minutes left, which would give two minutes for the government side and the official opposition. Mr Rinaldi?

Mr Rinaldi: Thank you very much for coming here today. Just for the record, is your facility here in Toronto?

Mr Maes: Yes.

Mr Rinaldi: It is?

Mr Maes: The King and Jarvis area.

Mr Rinaldi: That's good. Can you just maybe explain which—certainly, it's not part of the bill right now, but your proposal for a corkage fee: \$10, and an additional \$3.50 per glass. I mean, I didn't quite get it when you were explaining it. So it would be an initial charge of \$10, and then—

Mr Maes: As an owner, I still have to buy glasses, I still have to employ the waiter who then washes them and serves them, who sort of like handles my dishwasher, who has to handle the glasses. Or I rent a dishwashing machine from a company where I pay a monthly fee.

Again, I don't want to have the person by himself not coming in because he has to pay more money for one bottle of wine; he could bring a smaller bottle, or something. But I also want to make sure that the amount of work done by my staff is paid for and not necessarily out of my pocket.

Mr Rinaldi: OK. That's good. Thank you.

The Chair: Thank you. Mr Martiniuk? Ms Churley?

Ms Churley: Where is your restaurant? Jarvis—

Mr Maes: At King and Jarvis.

Ms Churley: OK. It's always nice to know, when people come in, where their restaurant is. Now we know.

These are good recommendations. It's nice to hear from an owner of an establishment. My question is this: Some are saying the corkage fee should be regulated, others are saying it shouldn't be. I think it needs to be. I think you've got to be able to have people bringing in their own wine. You've got to find a way to be able to make that money. How is it going to work? Supposing they don't regulate it, the restaurants that choose to do this? Do you think there will be problems in terms of the competition if it's not regulated; one restaurant may not charge it at all or charge less than the other one? Is that your fear here?

Mr Maes: Of course. The restaurant industry is very competitive. A friend of mine is a chef at the Fifth, which is a fairly large restaurant in the city, and their price of wine averages probably about six or seven times the price of my wine. They shouldn't have to pay—it's not that they shouldn't have to, but they should have the choice of charging, for example, a \$75 corkage fee if their average wine is based at \$100 a bottle. My average wine is based at \$27 a bottle. I shouldn't have to charge \$75 a bottle to open it. I think it's very much in the sort of class of restaurants that we find ourselves, and in the amount of investment that we have done in our establishment, of course. It's up to the owners to decide, because I think it would be very, very hard for the government to say, "This is how much you charge." I would like to see this as a popular thing in the city and not as an "I can't afford it" kind of thing.

Ms Churley: OK. Thank you.

The Chair: Thank you, Ms Churley, and thank you, Mr Maes, for taking the time to address the committee.

Mr Maes: It's a pleasure. Thanks.

The Chair: The next group, I believe, was cancelled, Easy Way Accommodations Ltd.

1720

RECTORY CAFÉ

The Chair: We will proceed with the next one, the Rectory Café. Would Mr Mark Samuel be around? Yes. Good afternoon, and thank you again for taking the time. You have 10 minutes, of which you could take the whole 10 minutes or leave some time for the question period at the end of your presentation.

Mr Mark Samuel: I have a few handouts here.

The Chair: OK.

Mr Samuel: Thank you, Mr Chair, for the opportunity to be here. It's my first time partaking in this sort of consultative process. My main industry is actually the steel industry, and being in the restaurant business is my pastime, my passion and my hobby.

The Rectory Café came into existence two years ago, out on Ward's Island. I appreciate that we probably represent the little guy in this process; we're certainly one of the smaller presenters you'll have today. We're also unique in that we are, in many ways, the outpost restaurant or organization. We're stuck over on Toronto Island, which has many logistics issues. It also has unique competitive issues: There is no other restaurant that services the community in the wintertime, and in the summertime, it's really chip shops over at Centreville and the yacht clubs.

In general, with regard to the proposed bill, we are in support of it. I have two partners in the restaurant, and we've had extensive dialogue on this. We've also talked with the community out on Ward's Island, because you don't do much on the island without involving the community. We had an art gallery opening last week and used it as an opportunity to canvass them as to whether they'd support this kind of approach.

Most of the dialogue did not focus on enforcement issues. It was more on consumer issues, as you can imagine; they're frankly a very empowered community over there. They very much like the idea of choice that the bill represents, and they could very much see themselves patronizing our restaurant to a greater extent, once they felt they could take ownership of that part of the process and also reduce their bill size in coming to us, although our wine list is really a range between \$22 and \$32, so it's not egregious anyway.

So we really believe, for the island community, that we're going to get more support out of them and more frequent visits from them, and we certainly believe we can use it as a tool on our slower nights, Monday through Friday, to add to our business and then perhaps choose not to make use of it on the weekends, when we traditionally have more volume.

Our other clientele are the tourists who come over in the summer, and it's been a frequent request of us, especially by foreign tourists, for the last couple of years: "Is this not something that you offer in this province?" They're quite surprised to hear that we don't.

In terms of more direct business aspects, other than bringing people in the door, which is obviously important

to us, the other thing that's important to us is being able to limit our costs. To some extent, if bring-your-own-wine is able to reduce the burden on us to have inventory of our own, that frees up capital within our small little business to do other things and make renovations and improve our business. So we're looking forward to that.

We're also shoehorned into a tiny little building over there, as a lot of smaller restaurants are, and storage space is at a premium. We see this freeing up storage space and, in our particular arrangement, it might also lead to a reduction of our rent. So, again, it will be a cost saving for us.

I spoke also in the brief on taking home the rest. I appreciate that's not particularly in front of us right now, but we are in support of it. The community is also in support of that—they like the flexibility that represents—and we believe it's going to encourage more responsible drinking because, at the moment, we witness every day the couple who sit at the table until the bottle is dry, as opposed to, if they had the option of taking that bottle home, they might drink one or two glasses before they left.

On corkage, we're in support of leaving the market to determine what those fees will be. I agree with the gentleman before that it really does depend on what kind of restaurant you're running and what your price list is on your wines. The market will dictate what it will bear in that area. We absolutely believe that it needs to be voluntary legislation, and giving the choice to the restaurants is the same as giving choice to the consumer. I think there will be a certain percentage that it fits—we'll happen to be one of those restaurants where it does—and for those where it doesn't, the market will decide that. Thank you.

The Chair: Thank you very much. We have approximately five minutes to go—you took only five minutes for your presentation—and it is up to the official opposition side: either Mr Martiniuk or Mr Yakabuski.

Mr John Yakabuski (Renfrew-Nipissing-Pembroke): I don't really have any questions, because you've answered the questions I would have and you're in support of taking home the rest. That's exactly what my position was. I would rather see someone taking home the rest than making sure they drank it all in the restaurant. In fact, it encourages responsible drinking.

Mr Samuel: In our particular situation, as I said, we are a bit of an outpost, and there are other restaurants in Ontario that are a bit of an outpost and a long way from a location where you can purchase the wine. I'm sure those communities will appreciate the opportunity to take that bottle home as well and drink it responsibly at a later date.

The Chair: Ms Churley?

Ms Churley: Your last point was a point I made earlier. Actually, I've been guilty, as I said, not of drinking and driving but of finishing off a bottle because I paid a lot of money for it. I think it's human nature, if you've just spent a bunch of money, that you don't want to waste anything you used that money for. So I think that, in a sense, is a very positive thing. I could see myself doing that.

The question for me—you've made a very compelling case why this is a good idea—is again on the corkage fee. You have no competition on the island. In fact, I think there have been occasions where people—I have friends over there—have run out of wine at home and then have to come to your place to get a bottle. You say it should be left up to the restaurants to determine themselves. Can you see—it wouldn't happen to you—in some situations where it's voluntary, where those who can afford to take a bit of a loss on that could have some advantages over some of the smaller restaurants that would have to charge a substantive corkage fee to be able to make a reasonable profit?

Mr Samuel: Well, it really goes back to the philosophy of the free market. I really believe that the market will determine what you can get away with in terms of pricing your food, your non-alcoholic and your alcoholic, and it always has. It's no different what composite price we put on our price list today versus what we offer as a corkage fee going forward.

Ms Churley: Do you have employees?

Mr Samuel: We're very seasonal, according to how many people choose to cross that little water barrier between us and the mainland. We have five in the winter and 46 in the summer.

Ms Churley: How do you deal with the concerns that have been expressed here by representatives of the workers about how the minimum wage is very low and concerns about what happens to the tips for them?

Mr Samuel: I'm glad you raised that. I don't believe the tips would necessarily be an issue. I think that servers are a very empowered group who know how to speak their mind and how to dialogue with management. They're not an oppressed group by any means. They vote with their feet, and if they're not happy with the circumstances they have at your restaurant, they tend to go elsewhere—unfortunately rather quickly. So I think an arrangement would be made.

I'd be interested to see what comes forward with the bill, if there are any recommendations in that area. But absent that, it would generate a dialogue between management and employees, and there would be some determination of revenue-sharing, either of the corkage fee directly or some other mechanism.

The Chair: I have time for one question from the government side.

Ms Matthews: I don't really have a question, but I want to thank you for this presentation, and I would like to suggest to the Chair, although I know this is not a travelling committee, that I think we perhaps ought to travel to the restaurants that have been represented here today. So let me just make that recommendation to the Chair.

The Chair: And bring your own bottle.

Mr Samuel: We have a cozy fireplace too.

Ms Matthews: I just think we could do our job better if we were able to see these things first-hand.

Mr Samuel: Well, we welcome the committee to join us at any time over at the Rectory. Our doors are always open for you.

The Chair: Thank you, Ms Matthews, and thank you, Mr Samuel, for your presentation. I appreciate it very much.

Mr Samuel: Thank you, Chair. Thank you all.

1730

ONTARIO COMMUNITY COUNCIL ON IMPAIRED DRIVING

The Chair: Has the group from the Kitchener Downtown Business Association arrived yet? They haven't? We'll go to the next one, the Ontario Community Council on Impaired Driving. We have two persons: Anne Leonard, executive director; and Shelley Timms. Before you proceed, if you could give your name for the record.

Ms Shelley Timms: Good afternoon. I'm Shelley Timms, and I am chair of the education committee for OCCID, as we call it more simply.

The Chair: Welcome to the committee.

Ms Anne Leonard: I'm Anne Leonard. I'm executive director for the Ontario Community Council on Impaired Driving. I'm just here to support Shelley.

The Chair: Welcome to you too.

Ms Timms: Thank you to all the members for hearing us. We are a group of stakeholders and community partners. The goal is prevention and education initiatives to eradicate drunk driving, to prevent injuries and to save lives in Ontario.

By way of background, our education committee reviewed the Liquor Licence Act in the spring of 2004, particularly after the BYOW initiative was introduced in March. We had a few concerns at that time, and we were concerned as to whether or not it would include homemade wines, where the BYOW would take place, training issues of servers, and the number of bottles per party.

We sent a letter to Minister Watson on June 10, 2004; a copy is attached for your review. We raised these concerns as well as some other gaps we noticed in the Liquor Licence Act, which included the lack of insurance as a condition on the licence, as well as whole-bottle purchases. We also had an opportunity to meet with Minister Watson in June 2004.

With respect to Bill 96, particularly dealing with the BYOW aspect, we're pleased to see that it's limited to existing licences, in particular restaurants, because it is our understanding that it is limited to restaurants. This allows that servers will be trained, Smart Serve particularly, but in any other kind of server training, which is essential in this situation.

We're satisfied that it's limited to commercial wines, but we have to note that our stakeholders are concerned regarding the perception that it will be less expensive to purchase wine because it will be BYOW and that some people might drink more. We note that are corkage fees, but we suggest that there has to be an education and an awareness campaign so the public understands that this is about choice and not about cost.

With respect to the take-home-the-rest aspect, this encourages people to stop drinking if they know they can take home the bottle. We are pleased to see that; it applies directly to our mandate. It's good that it applies to BYOW as well as restaurant purchases, so we're pleased to see that as well. The best option, we have to say, is that drinking and driving should not be combined, but this is a step in the right direction.

It's very important, however, that there is a public campaign on safe and legal transportation of alcohol. Many people are not aware of how they are supposed to transport their alcohol at this point, and it's essential that that campaign is brought out, both for motorized vehicles and watercraft.

With respect to the enforcement issues, the increased provisions are also a step in the right direction. However, we have to state that there are more resources needed. I'm sure this committee doesn't want to hear about more resources needed, but it's true. There are more inspectors needed, and better training. At this time, we have very inconsistent inspections. If you were to listen to the anecdotes from across this province, you would see that some say they have a great relationship with their liquor inspector, some never see their liquor inspector, and some have a terrible relationship with their inspector. We are suggesting that there has to be increased and better training so that there is consistency across the board.

With respect to the fact that it could be an arrestable offence to refuse to leave if asked, we support that. However—and I don't have the answers for you today—what happens to the person once they do leave needs to be considered. I ask you to remember that last spring a gentleman was essentially tossed out of a bar in Toronto and froze to death literally feet from the front door of that particular bar. That is a concern that has to be addressed. One possible aspect of it is safe transportation policies.

We also understand that there is going to be an ongoing review of the Liquor Licence Act, and we want to address the issue of insurance not being a condition of licence at this time. We strongly encourage that. If everyone remembers, there was the case of the Hunt and Sutton Group that occurred in Barrie some three or four years ago that achieved a lot of publicity at the time. It involved a woman who was working for her employer at a wine and cheese Christmas party and who was ultimately involved in a crash and suffered a brain injury. It became apparent, as the trial went on, that a pub was also a co-defendant in that particular action—she had gone to the pub after the Christmas party—but that pub was both bankrupt and without insurance.

It is a privilege to hold a liquor licence in this province. They're involved in a substance that alters and impairs judgment and perception, and an intoxicated person is a risk to himself or herself as well as to innocent third parties, particularly if they're driving. Licensed establishments benefit from the sale of alcohol and therefore, we submit, have a huge responsibility.

There are other examples of mandatory insurance in this province, particularly the compulsory automobile insurance act, as well as professional insurance being

required by such groups as lawyers, doctors and accountants. So over the course of the review, we strongly urge that this particular aspect be remedied.

We've also addressed very briefly the whole-bottle purchases in our letter. In some situations, we've noted, particularly nightclubs in downtown Toronto, a group can buy an entire bottle of scotch or brandy and serve it themselves. The server is not involved in the service of this whole bottle. As a result, it's impossible to track and monitor, which is an obligation, as supported under Smart Serve. It's impossible to know how many people are drinking what drinks. We would ask that that gap also be remedied.

I think that covers all of our submissions. We thank you for the time.

The Chair: Thank you. We have nine minutes left; I will give three minutes to each party. It is up to the NDP.

Ms Churley: Thank you for your presentation. It's good that your group and MADD came forward, because of course we're all having a lot of fun with this issue, and you remind us that although a majority of people drink responsibly and a majority of owners serve responsibly, we know all too well that there are those who abuse this substance and cause a lot of damage and pain. It's important for us to remember that during this discussion.

I don't think I have any questions for you, other than to ask if you have been invited—you've met with the minister—to participate in the writing of the regulations for this bill, which are to follow, but also for further changes to the Liquor Licence Act.

Ms Timms: We've not yet been invited, but we have developed a relationship and are having ongoing discussions.

Ms Churley: Good. Thank you very much.

The Chair: Does the government side have a question? Mr Duguid.

Mr Duguid: I don't have a specific question in mind, just to thank you again for being here today. We agree on most of the points you've raised, if not all of them, I think.

The issue you raised about insurance is an intriguing one to me. I haven't heard that raised before. You've mentioned one case. You do say in your submission that you are not aware of others but there may well be others out there. I would really appreciate it if you'd bring that forward when we do move forward with the review. It surprises me that there's not a requirement that they have insurance.

Ms Timms: Frankly, it surprised me when I discovered it as well.

Mr McMeekin: First of all, my apologies. I got called out to discuss another piece of legislation at cabinet committee. It had lost quorum, which is why I had to be there.

I just want to thank OCCID for their presentation. I had the good fortune, as the parliamentary assistant, to spend about five hours with your group one evening, listening to the concerns and making some pretty copious notes. So you are indeed correct: We are listening very

carefully, with a view to building on the relationship we have, and really appreciate the invitation, as well as the good input and, most important, the wonderful work you're doing in Ontario. Thank you.

The Chair: Any further questions from the government side? If none, Mr Yakabuski?

Mr Yakabuski: I too want to commend you on the fine work you do in educating people about the problems associated with impaired driving and all that that creates. I also appreciate the submissions you have made. Hopefully, as these regulations get drawn, groups such as yourself—and I'm sure they will, because I think we need to have a cross-section of people involved in drafting these regulations to ensure that a balance is found. So

far, I think it's been pretty good, but I think there's work to be done and I hope you'll be part of it. Thank you very much.

The Chair: Thank you, Mr Yakabuski.

Again, ladies, we really appreciate the time you have taken to come and address the group. All those presentations or submissions are recorded, and they will appear in the Hansard of the committee.

That is the end of our presentations today. I want to remind the committee that we will proceed with the clause-by-clause on Wednesday, December 8, immediately after routine proceedings. This meeting is now adjourned.

The committee adjourned at 1741.

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