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Wednesday 8 December 2004

**Journal
des débats
(Hansard)**

Mercredi 8 décembre 2004

**Standing committee on
general government**

Liquor Licence
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**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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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 8 December 2004

Mercredi 8 décembre 2004

The committee met at 1558 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. Pursuant to standing order 78, are there any comments, questions or amendments to any sections of the bill and, if so, to which section? Any questions or comments?

Seeing none, shall sections 1 to 3 carry? In favour? Against? Carried.

I believe we have an amendment to section 4. I would ask the PA, Mr Ted McMeekin, to read this amendment.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): I move that subsection 34.1(1.1) of the Liquor Licence Act, as set out in section 4 of the bill, be amended,

(a) by striking out "licensed premises" in clause (a) and substituting "the premises"; and

(b) by striking out "licensed" in clause (b).

The Chair: Would there be any comments or questions?

Mr Peter Kormos (Niagara Centre): Section 3, which just passed unamended, speaks of:

"No person shall,

"(a) remain on licensed premises after being required to vacate the premises...."

Now section 4 of the bill is being amended. Rather than having consistent language—"remain on licensed premises after being required to vacate the premises"—it appears to be saying, in effect, "remain on the premises after being required to vacate the premises."

I suppose the natural question is, why?

Mr McMeekin: Why the amendment or why the inconsistency?

Mr Kormos: First, why the amendment?

Mr McMeekin: If you like, Mr Chairman, I'll try to answer that.

The Chair: Certainly, Mr McMeekin.

Mr McMeekin: The police don't want to have their powers limited only to licensed facilities. There are in

fact other kinds of premises. Mr Rae, when he was out—I don't know if you were here, Mr Kormos, when he spoke at some length about some other facilities that would specifically apply: after-hours clubs, what they call booze-can clubs etc. These are particularly difficult for the police because they don't have any authority or jurisdiction at this point.

The lamentable situation is that sometimes acts of violence or worse occur in these clubs. It's been exceptionally problematic in certain neighbourhoods. Mr Rae spoke eloquently to that.

Based on that intervention and the intervention of the Police Association of Ontario and others, we felt it was absolutely incumbent upon us to bring forward this amendment, which, by the way, has been checked out with legal counsel and thought to be quite appropriately in place, as amended.

Mr Kormos: As a matter of fact, I did read the Hansard of Councillor Rae's submissions, the exchanges he had with members of the committee and his observations about various types of premises—the second-floor phenomenon inter alia. But then I'm concerned about what jurisdiction the province has—you've got to help, I suppose, over on this side of the room—in terms of the Liquor Licence Act and unlicensed premises other than a premise upon which liquor is being served in which there's an inherent jurisdiction—right?—because of the Liquor Licence Act, and it's unlicensed. That, in and of itself, gives the police jurisdiction or gives the state jurisdiction to intervene, as compared, let's say, to a private home that isn't being run as a commercial operation. Are we to conclude that "premises" as you've described it only applies to premises to which the Liquor Licence Act would apply? Because, although they are not licensed premises, it's premises upon which alcohol is being served in a commercial way.

Mr McMeekin: That's a legal question.

The Chair: Can we get someone from the ministry to answer?

Mr Kormos: If I could hear the answer and, depending on the answer, maybe it's sufficient, or perhaps just one or two more inquiries.

The Chair: Do you want to state your name?

Ms Rosemary Logan: Rosemary Logan, counsel to the Ministry of Consumer and Business Services. How this comes into play is that section 34.1, as it currently exists, already gives the police the power to clear

premises that are not licensed where there's a violation of the Liquor Licence Act or regulations. So it does pull it in the way Mr Kormos suggested. This additional subsection will just give them the authority to not let the people come back when they've been asked to leave.

Mr Kormos: In that regard, are sections 3 and 4 of the bill basically parallel worlds—one, as it applies to licensed premises and the authority the police have or the jurisdiction the province requires because they are licensed, and the other, that totally different but parallel world of places that are not licensed in which offences are occurring?

Ms Logan: Yes, that's correct.

Mr Kormos: And it's as simple as that?

Ms Logan: Yes.

Mr Kormos: I'm saying that because I'm obviously concerned, perhaps inappropriately, about the power to clear premises being used by police—and I'm not going to enumerate the possibilities—for instance, to vacate premises, let's say in the context of—was it raves that were preoccupying people a couple of years ago, where there wasn't alcohol being served but ecstasy and various drugs like that that were being utilized? Surely the Liquor Licence Act doesn't purport—no, that's a bad example, because nobody is going to necessarily object to the police clearing a place where people are illegally using drugs. You understand what I'm saying? Places where people might gather that constitute a nuisance to the neighbours but it not being a licensed place, of course, and not being a place where liquor licence offences are being committed, other people and I might want assurance that there's nothing here that's going to give police power in addition to what you intend to give them in terms of their being able to go to—I don't know, I'm trying to think of a rather banal example like a bingo hall or a prom. A prom: Isn't that so wonderfully 1950s and so benign? A prom or things like that; I want assurance there's nothing here that is going to give the police the authority to regard those as premises for the purpose of clearing them under the Liquor Licence Act.

Ms Logan: It's only for situations where there's a violation of the Liquor Licence Act, and it's just intended to allow them to effectively carry out the authority they already have in part under section 34.1 to clear premises.

Mr Kormos: Thank you kindly.

The Chair: Any other questions or comments? Seeing there are no more questions or comments, those in favour of the amendment submitted by the government? Against? Seeing none, it is carried.

Shall section 4, as amended, carry? Carried.

Moving on to section 5 through section 7, shall these three sections carry? They are carried.

Shall the title of the bill carry? It is carried.

Shall Bill 96, as amended, carry? Carried.

Shall I report the bill, as amended, to the House?

I have one question. Mr Kormos?

Mr Kormos: Not a question but some comments. I want to make it clear that I'm not supporting the legislation. I recognize that there were participants by way of

public input that covered the map—no two ways about it. I also appreciate the references to, let's say, Montreal and indeed some references to other jurisdictions—Australia among others—where people talked about what a wonderful experience they had buying their wine and taking it to the restaurant with them. However, I want to pay specific attention to the submissions by Mothers Against Drunk Driving and UNITE HERE, the hotel and restaurant employees union.

I'm not suggesting that anybody, for instance, by supporting the bill, holds Mothers Against Drunk Driving in any less regard than anybody else. I'm not suggesting that at all. I hold them in high regard. They have fought a very difficult fight, but in the course of fighting, they have changed public opinion; they really have. You and I are old enough, Chair, to understand exactly what that means in terms of changing public opinion about drunk driving. Regrettably, it seems to me, when you look at what's going on out there, that the message may well have been absorbed by our generation but still not quite as thoroughly absorbed by younger generations, and that's incredibly regrettable because of the huge costs that drunk driving tolls in terms of lives and injuries. I give great weight to the comments of Mothers Against Drunk Driving and their very simplistic observation that the greater access you provide and the lower the cost of the alcohol, the more consumption there is going to be. End of story. I don't think that's refuted by anybody.

That causes me concern. Again, my concern is, who is crying out for this legislation? I know that some elements in the hospitality industry say this is going to improve the strength of that sector, which was hard hit by SARS and now by the rising Canadian dollar. I go to Montreal as often as I can, and the first couple of times I went there I went to Prince Arthur and bought the cheap bottle of wine at the dépanneur and took it to the restaurant. I soon realized this was no big deal, because the reason you had the little corner stores right there on Prince Arthur—it was restricted to the one area. Quite frankly, I didn't go to Montreal in the first place because of the fact you could bring your own wine; I go for either Moishe's or Schwartz's. I'd think twice about going to Montreal—or Wolensky's, with the pressed salami sandwiches, quite a ways up on the northeast corner of the mountain. I don't go to Montreal because of bring-your-own-wine; I'm hard-pressed to just anecdotally think that there's anybody who goes to Montreal because of the bring-your-own-wine phenomenon. The fact is, I acknowledge, that most of Montreal is into the bring-your-own-wine jurisdiction. I don't think that bring-your-own-wine is going to be a compelling marketing device for tourists to come to either Toronto or Ontario. I don't think that bring-your-own-wine is going to be in any way an enticement for people to come to this jurisdiction. So I don't agree with the proposition that this is going to have an incredible impact on that hard-hit hospitality service industry.

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The other observations to which I give great weight are the submissions by UNITE HERE. I specifically refer

to the very specific statement by Paul Clifford, president of Local 75 of UNITE HERE, where he notes that there are “8,500 hospitality workers in racetracks, hotels, restaurants, bars and foodservice establishments in the GTA, Windsor, Niagara Falls”—Niagara area, where I come from—“and elsewhere. UNITE HERE has a total of 20,000 members throughout Ontario.

“In widespread discussion with our members and with non-union food and beverage service workers, I have not met a single one who favours this legislation.”

Mr Clifford also, on behalf of his membership, notes what I’ve had occasion to observe, that 15% of a corkage fee is a lot less than 15% of a \$30 or \$40 or \$50 bottle of wine. Those servers, those women and men who work incredibly hard, earning destitution wages—they really do. Their hourly wage is insignificant—almost, dare I say it, irrelevant; they work for tips. I’m not saying that’s the way it should be; I’m just saying that’s the reality. I can’t help but join with Mr Clifford in his observation that the phenomenon of bring-your-own-wine—and I’ll talk about how widespread it could become—is not in any way beneficial to servers, but for the argument that, “If people can bring their own wine, they will go out more frequently to restaurants.”

I don’t know. I had dinner at a reasonably upscale steak house last night and was disappointed at the number of people who were there. In observing the people who were there, I didn’t see them as the types who would determine whether or not to go to Bigliardi’s dependent upon whether or not George would let them bring their own bottle of cheap wine. It’s not that kind of market and, quite frankly—dare I say it—I suspect, though I can’t say I’ve ever participated or been personal witness to it, that in a whole lot of good eating places, if a regular customer wants to bring a very special bottle of wine that he or she may have acquired through one of these wine clubs or picked up on a junket to Europe, it happens from time to time, and nobody is the worse for wear.

So I have to give effect to the observations made by UNITE HERE on behalf of their membership. I note that there isn’t, and they point out that there isn’t, a specific reference to a corkage fee in people’s response. In the committee hearings as well, that’s assumed. But there is no regulation of the amount of the corkage fee. Their suggestion that the whole corkage fee should belong to the server I think is a wonderful one, because it’s the server who’s doing the uncorking.

I also note that they are emphatic that the province should respond to the concerns of service workers. Service workers, servers, are getting ripped off for their tips across this province. I became aware during the Hilton Toronto Airport strike by those workers that when customers are going to the Airport Hilton—and I tell you, it’s not a unique practice; other operators do a similar thing. When a large group, for instance, has a banquet in the banquet hall—I made reference to this in the chamber—and they see the 15% service charge, the people who are buying dinner for 100, 200, 300 people, wedding receptions, sports receptions, sign the cheque with the

15% service charge assuming that that’s the tip, so nobody bothers passing the basket. In small-town Ontario, down in the Legion Hall or at the Lions Club or at the Slovak Hall, you’re liable to see the breadbasket being passed around. Everybody throws in a loonie or two, and this is for the folks in the kitchen and the servers. But in commercial places, the people sign the tab saying “15% service charge.” I was shocked to learn that Airport Hilton workers did not get that service charge, even though everybody who was signing the tab, logically, irrefutably, presumed that that was in lieu of tip and that was going to the workers.

So the second point that Paul Clifford made to this committee, as you’ll remember, was a guarantee that the corkage fee is the property of the servers and no one else. That’s a reflection of and grows from their concern about how workers in this industry are getting ripped off for tips.

I’m also aware of how workers in other establishments in this province are forced to pool their tips, which is fair enough. But then the employer—these are cash tips; this isn’t the 15% service charge. You pool them so that your coworkers in the kitchen and in the back end can get their share of tips, and the busboys and busgirls—buspeople? You also have employers who are taking 50% of those, believe it or not. We don’t have any protection in this province to protect the tips, the gratuities, of servers and other restaurant service industry workers.

I’m opposing the bill. I’m voting against it here and in the chamber. I’m not sure it’s the panacea that its advocates say it’s going to be.

Do the majority of Ontarians favour the bill or oppose the bill? The majority of Ontarians probably don’t really care, in the total scheme of things. This hasn’t been prominent on the radar screen; I have no hesitation in saying that. In the government’s focus groups, I can just instinctively presume that when the prospect of bring-your-own-wine is brought up in a focus group, a whole lot of people say, “Hey, that sounds like a good idea,” or, “Hey, that sounds like a good idea because it was a lot of fun to do it when I was over on Prince Arthur Street in Montreal. We got really drunk up on the cheap wine, but we weren’t driving because of course we were close to the hotel district. We had a great time; it was a wonderful occasion.” So I suspect that in the government’s focus groups, if and when bring-your-own-wine has been brought up, nobody has railed against it because, at first blush, it seems like fairly innocuous legislation. Having said that, this is no way to develop reform around the service industry, around the hospitality industry and around Liquor Licence Act reform—piecemeal like this.

Already we’ve got beer, wine and spirits in corner stores; we do. This government did what, as I recall, the Liberal government of 1987 to 1990 didn’t dare do. We’ve got beer and wine in corner stores. Drive down Highway 24 in Vineland; there’s the Avondale with the LCBO sign right beside it, and then the Beer Store sign right beside the LCBO. This is under the guise of these

tourist stores. This is in Vineland, where, I agree, people are on tour, but they're travelling Highway 8 and visiting the wineries. I just find it rather peculiar. So we've got beer and wine in corner stores. Again, if that was part of the agenda—and I'm not sure it was; it was sneaked in through the back door—then create a package and let's debate that and let's see what public response is to it.

As I say, there's been nobody protesting out in front of Queen's Park, saying, "Don't pass bring-your-own-wine legislation," but the concerns expressed on the part of those workers, the concerns expressed on the part of MADD, and the anecdotal input of Webers, for instance, or any other number of restaurateurs—because many of them have said, "Yeah, we'll participate," or, "We don't care because it's optional," and I agree with that. "We don't care; it's optional." As many of them as have said, "Yeah, we'll participate," or, "We don't care because it's optional and we may or may not do it," have said, "No, we don't think it's a good idea."

The other observation is that the restaurant industry—and you take a look at the food you buy and eat in most restaurants, whether it's upscale or downscale—works with a very, very tight profit margin. Take a look at the turnover and survival of restaurants. It's a tough, tough business; it's a tough industry. Millions of dollars are lost every year by entrepreneurs who go into the restaurant industry, especially in the big city of Toronto, where the demands and the standards that you have to meet are very high. It's a tough industry. The profit margins on the food alone are marginal—I guess that's why they're minimal.

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Restaurateurs will tell you that they've been whacked by increased electricity costs, and they could be whacked by increased heating costs this winter. Most restaurateurs candidly will tell you that they make their money on the spirits. That's why the waiter wants you to have that pre-dinner drink. That's why the waitress wants you to have the Grand Marnier after dinner, along with the dessert. The dessert is another big markup item—or the appetizers, the escargots. It's incredible: eight or nine bucks for a little plate of escargots, and really all you want is the garlic-flavoured butter. You can buy a tin of those escargots over at Pusateri's for \$4.99. But don't put them in a microwave, because they explode like popcorn. You've got to put them under the broiler. Again, this is where restaurants make their money.

I'm not denigrating the people who are going to support the bill. I suspect the bill will pass. I hope it doesn't cause grievous harm, but I'm not sure it's going to do any positive good, especially in contrast to the impact on the phenomenon of drunk driving and overconsumption of booze and on those workers.

The Chair: Mr Martiniuk, do you have comments or questions?

Mr Gerry Martiniuk (Cambridge): Yes, Chair. I won't bore you with my culinary travels, but I'd like to address three matters. I know MADD has credibility with all of us and it obviously is a concern when they point

out what they consider the flaw in the reasoning in regard to this bill, that it could cause higher consumption and, therefore, possible deaths on the road. That's always to be taken into account.

Second, I think the government has made a mistake in not dealing with the whole package of the reform of the Liquor Licence Act. I believe that the service and use of liquor as a drug in our society must be governed by government. I think this bill should have been dealt with as part of the total reform. That has not been done and I'm afraid that it therefore suffers for it.

Last, I take particular exception to section 2 of the bill dealing with the suspension of licence, which traditionally has been done by two individuals who are appointed and trained as quasi-judicial officers, hearing evidence. The case was usually prosecuted—if I may use that word in the informal sense—by the registrar. Now we are removing the two appointed officials acting in a quasi-judicial matter and we are going to take the prosecutor, who is the registrar, and he is now to hear the evidence and make, I assume, a quasi-judicial determination on his own evidence. I think this sets a dangerous precedent.

I understand the police testimony. They wanted more expedition, and there are sometimes difficulties on their jobs. There are always difficulties on our jobs. That's no reason to take away persons' rights without due process, and I believe that this section may do so.

Mr McMeekin: I suspect that Mr Kormos is right when he says that there is very little opposition to the bill. He's certainly right when he indicates that no one is lining up on the lawns of Queen's Park to articulate their cogent opposition to it. In fact, I want to suggest here today that our experience has been quite the opposite. We've had a number of people—very credible people—come forward. Even the couple who were in opposition articulated some good points worth looking at.

The particular angst of Mothers Against Drunk Driving—and we concur—was that the proposed overall review of the Liquor Licence Act is not happening as quickly as they'd like. We, frankly, had anticipated that the previous government, which put the advisory group in place, would have moved on that. That didn't happen, and as a result, when we came to government—we weren't wandering around the halls at Queen's Park wondering what needed to happen—we looked at those things that were ready to move forward, and we're pushing ahead with those, to widespread applause, I want to suggest, particularly from police and community perspectives. We have undertaken to give a covenant to look specifically at the Liquor Licence Act and do a comprehensive and very necessary review of that, which will be commencing in the new year. We've talked about that, Mr Chairman, so that needs to be put on the record.

The other thing that I think needs to be said is that this government isn't prepared to let excellence become the enemy of the good. We're anxious to move ahead with those provisions that make patent good sense. This bill is an effort to balance what we think are progressive

reforms. We've heard, virtually universally, from those who have come out to make representation and those who have taken the time to comment publicly to us, that they want to see these progressive reforms made. But we've not only done that; we've tried to balance that with public safety.

I think we would be remiss if we didn't specifically flag the very noble efforts on the part of the police community, whose obligation is to serve and protect and who have a vested interest in ensuring that violence doesn't occur at clubs. They said, with respect to the provisions to remove licences, that these are an absolutely necessary avenue, that some of the violent acts that occur at some premises could recur if people returned to the site and/or the environment which creates that very explosive situation is allowed to continue. They spoke very well to that.

I just want to recall for members of the committee—I know we have a while before the vote takes place in the House—that Bruce Miller said, “Bill 96 would implement several changes that would have a positive impact on community safety.” He's speaking on behalf of the Police Association of Ontario. I think that's important. I think the Police Association of Ontario, you know, all those who have the obligation, like the Ontario Association of Chiefs of Police, who also came out and spoke quite positively about the bill—we have an obligation to listen to them when they talk about public safety; when they talk about the necessary provisions that, to date, have been absent; when they come forward to courageously commend a government, any government—this government happens to be the government they're commending—for taking the action they've been calling for for years. Going back to Bruce Miller, “We believe that any concerns over the bring-your-own-wine proposal can be addressed through consultation and adequate regulations.” I think that's significant.

We heard from Kyle Rae, the local councillor, whom I referenced earlier. We heard from Taxiguay. He was a fascinating individual who came forward with some insights and with a passion that was unmistakable, a concern about public safety. Here's a man who, I suspect, has invested considerable amounts of his own resources, with a fundamental philosophy about protecting public safety, coming forward and saying he wants to stand with the government.

Mr Martiniuk's colleague Tim Hudak, who was the Minister of Consumer and Business Services, is on record as saying, “I'm in favour of bring-your-own. Let's look at best practices. I think it's good for consumers and good for tourism.” His northern colleague—is Muskoka still in the north or not; I'm not sure—Norm Miller said, “I support this idea and voiced the opinion when I participated in the minister's liquor licence advisory committee last year. I believe that the general public will support allowing more flexibility in the rules regarding wine in restaurants. I also believe that the choice of taking a part bottle of wine home promotes a more responsible consumption of wine.”

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Not only do your two colleagues believe that, sir, but the Police Association of Ontario, the chiefs of police and many others have come forward and said that not only is it progressive but prudently responsible, long overdue and the kind of protection that Ontario residents deserve.

On the issue of employees and such, I think I shared my own penchant at an earlier meeting of the committee. I have a daughter who goes to McGill, and we avail ourselves of the bring-your-own-wine provision there. I'm very conscious, as a participant in that program, of my obligation to those who serve well—I don't automatically tip everybody—the obligation to make sure that they're—

Interjection.

Mr McMeekin: Well, I have a daughter who works in the service industry, so I'm one of those guys who tips 25%, 30%. I think that's important to do. It's a matter of education. Tipping is a voluntary act, and there are some pretty silly, boring people out there who don't understand the importance of good service and, sadly, walk out of restaurants without affirming the good service that's been given by our brothers and sisters, unionized and otherwise, who are there serving.

It's an ongoing education. In fact, Mr Seiling, who was here on behalf of the Greater Toronto Hotel Association, spoke quite eloquently to the need to be engaged with the workers who are, in turn, engaged with the service industry around providing some assurance that this would not necessarily be to their disadvantage.

He also noted, I think appropriately, that it is a voluntary program. He talked a bit about competition and business and how he thought there would be perhaps small numbers taking up the option. I think our experience in other jurisdictions shows that between 5% and 6% actually avail themselves of the option. That too is voluntary. There will be business decisions around that. That will be subject to worker-employer discussions, I'm sure, and I don't think we want to intervene in that directly. I don't think there's anybody in this committee room who would be saying the government should be inflicting itself on employer-employee discussions with respect to that.

We're trying to balance progressive reforms with enhanced public safety. There is widespread evidential support that that's exactly what this bill accomplishes. There's the longitudinal commitment to more comprehensive reform of the Liquor Licence Act, which this government, unlike the previous government, is prepared to entertain and move forward with. All in all, I think the minister and the staff, who have engaged themselves tirelessly in this process and have invited all kinds of comment, have been rewarded with comment, and the changes that they've made, and that we together have struggled to make, and the change we made today, augur well for Ontarians for some time to come, and we'll get on with the comprehensive reform we need.

On behalf of the government, those are some comments I would make with respect to this bill.

The Chair: We will now proceed with voting that I report the bill, as amended, to the House.

Mr Kormos: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Dhillon, McMeekin, Qaadri, Rinaldi.

Nays

Kormos, Martiniuk.

The Chair: It is carried.

This concludes the clause-by-clause session, and I will report the bill, as amended, to the House.

I want to thank every one of you for your co-operation. I believe that since Monday I have faxed to every member copies of letters I received, just for information. One of the letters was from the Ottawa-Gatineau restaurant association, supporting this bill.

Thank you very much, gentlemen. This meeting is adjourned.

The committee adjourned at 1635.

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