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Monday 3 October 2005

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Lundi 3 octobre 2005

Standing committee on justice policy

Comité permanent de la justice

Private Security and
Investigative Services Act, 2005

Loi de 2005 sur les services privés
de sécurité et d'enquête

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Monday 3 October 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Lundi 3 octobre 2005

The committee met at 1003 in room 228.

PRIVATE SECURITY AND INVESTIGATIVE SERVICES ACT, 2005

LOI DE 2005 SUR LES SERVICES PRIVES DE SECURITE ET D'ENQUETE

Consideration of Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999 / Projet de loi 159, Loi révisant la Loi sur les enquêteurs privés et les gardiens et apportant une modification corrélative à la Loi de 1999 sur le Tribunal d'appel en matière de permis.

The Chair (Mr. Shafiq Qaadri): Good morning, ladies and gentlemen and members of the committee. I would now like to call the standing committee on justice policy to order to begin clause-by-clause consideration, as you're well aware, of Bill 159, An Act to revise the Private Investigators and Security Guards Act and to make a consequential amendment to the Licence Appeal Tribunal Act, 1999. The clerk has distributed the copies of various amendments received, which you are also no doubt in possession of. As well, I'd like to welcome on our collective behalf Mr. Ralph Armstrong, legislative counsel, who is here to assist us in our clause-by-clause consideration of this bill.

I would now put forward a question to the committee: Are there are any general comments, questions or amendments to any section of the bill and, if so, to which section? Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you, Chair. I just want to make this observation: The concern—and I'm convinced it's a concern of everybody on the committee—is that this bill, once passed and once proclaimed, could have the effect of eliminating I'd say at least 50% of the existing security guard positions by virtue of the new licensing requirements. There have been, in the course of speaking with participants in the hearings, discussions about grandparenting and about creative forms of testing de facto currently licensed security guards.

When we last met, I recall very specifically indicating that it was important that this committee resolve those matters, in my view, before the bill is reported back to the House. I appreciate that a whole lot has been left to regulation and, while regrettable, it's not uncommon. I appreciate that the government has talked about two levels of security guard, although it seems to me that if in fact the government wanted to pursue a sophisticated regulatory scheme around security guards, there's room for far more than two levels, in view of the type of work that's contemplated being regulated. I'm cognizant in particular of amendment number 3, although for the life of me I'm not sure how it will assist us in addressing the issue of massive unemployment.

My position at this point is simply this: If a person has been licensed as a security guard and retains that licence—in other words, hasn't done anything by way of improper performance of their duties—that person should be entitled to the basic licence under the new regime. I accept that in all likelihood that would apply to the most passive form of security work, what we've talked about as being night watchperson type of security work or monitoring electronic surveillance equipment, where there is no interaction between that security person and the public, at least insofar as doing parapolicing, like arrests.

Ms. Sandals worked hard, in my view, trying to get a handle on the concept of alternative forms of testing, testing in terms of actual conduct as compared to written testing. We were told in a very casual way that that could be done with respect to 30,000-plus security guards across the province of Ontario in relatively short order. But I just find it remarkably hard to believe how that could be achieved with 30,000-plus security guards.

We had a couple of your basic, good, hard-working security personnel appear before us. Remember Mr. Caron here in Toronto and the folks down in London, who talked about their incredibly low wages and the fact that they weren't out there using security guard work as an interim job between academic background and policing, that they wanted to be security guards. They liked doing it and they felt that they were competent at it. In the case of Mr. Caron, he talked about taking all sorts of upgrading courses and so on. He didn't indicate how much utility he derived from them. As I say, I would dearly love to hear from the government an assurance that a licensed security guard, as of today, will have a level of licensing as a security guard once this bill is proclaimed.

The problem that was being addressed was the type of security personnel that has become far more prevalent, the privatized police, and I disagree ideologically with that. Rather than encouraging the growth of private po-

lice forces, we should be funding public police services. But at the same time, I acknowledge that, especially at the municipal level, scarce tax dollars are unlikely to increase in volume because of the utilization of the property tax base, an inherently unfair tax base.

The concern around the issue was the type of para-police that interact with the public in terms of effecting arrests and utilizing restraint, be it physical—we haven't really addressed the issue, or even whether this committee is interested in making decisions about whether or not any of the categories of security guard licences should permit the use of weapons, be they batons or firearms, or restraints like handcuffs, or I suppose any variation of handcuffs. But that was the type of security work that we were interested in.

It seems to me that nobody has ever expressed a concern or a problem around the passive security guard and his or her role in the workplace. Nobody has ever expressed a concern. Even the focus on criminal record searches—as I had occasion to note in response to one of the presenters in London, it's caveat emptor. Surely an employer is concerned, or should be, about whether or not a person he or she hires as a security guard has a criminal background. But quite frankly, they may be less concerned about a 15-year-old impaired driving charge than they are about an aggravated assault charge or the obvious and ever-frightening concern around people who are sexually aggressive pedophiles, among others.

1010

As I say, I would dearly love to have the government give me some level of comfort, but I am hard-pressed to want to see this sent back to the House unless there's some assurance given to those existing hard-working security guards that they're not going to find themselves out on the street. Oh, retesting, retesting, retesting. Let's be candid: It isn't the type of test that's of concern; it's the fact that they're being tested. You've got people who have—look, they based their lives on what the realities were at the time, and I just don't want to be a part of pulling the rug out from underneath them. I have great concerns about that.

The Chair: Are there any further general comments, questions?

Mr. Garfield Dunlop (Simcoe North): Just one very quick comment, Mr. Chair. I have a concern with the amount of work on this bill that will be done by regulation. I know that it's not the first time there's been a lot of regulation for bills to be sent to and approved by. But I'm curious; I'd like the government to respond at some time—maybe not now but at some point today, if possible. I'd like to know if the justice committee, or if there will be any type of hearing on the wording of the regulations that you bring forth, or will this just be done strictly by the ministry staff and implemented through the gazette process at a future date?

It was my hope anyhow that the Shand inquiry and a lot of the recommendations from that would have been addressed directly in this bill, and of course they're not. So if it's possible for the parliamentary assistant to respond as to whether or not the justice policy committee or any other body would get an opportunity to review the regulations and possibly even some type of hearing so that the people who had addressed the committee on the bill would actually be able to respond to the regulations as well. That's all I had, Mr. Chair.

The Chair: Are there any further general comments?

Mrs. Liz Sandals (Guelph–Wellington): Thank you, Mr. Dunlop and Mr. Kormos, for those comments.

In fact, if you look at the bill, it does address a majority of the recommendations made by the Shand inquiry. I'm pleased that you mentioned the Shand inquiry because, while clearly this was a topic where we haven't updated the rules since back in the mid-1960s, I think the Shand inquiry brought some focus to that.

What the Shand inquiry clearly pointed out in its recommendations is that there are a large number of people, perhaps numbering in the 20,000s, who are currently acting as private investigators, as private security, who are not licensed. There are another 30,000 people who are acting as private investigators or security guards who are working for a company that is licensed, but we really have no idea whether they have training that is appropriate or not.

What we heard from some of the folks who are acting as security guards currently, the people who came before us, is that they seem to have excellent training. We would encourage that and support it, and we appreciate the work that those folks have done, in many cases taking courses of their own volition to make sure that they had basic training and then went on to get further training in areas that interested them.

But what we also know is that there are literally thousands of people out there who are currently acting who have no training. As appealing as the practice of grandfathering is, we would be flying in the face of the Shand inquiry if we simply ignored that body of evidence which says that there are a large number of people out there who are currently operating with no training and that we need to get a handle on that.

In terms of the fact that there is a lot in regulation: Yes, there is. That is deliberate because in my past history, prior to becoming an MPP, I was subject to a lot of cases where governments tried to put everything in the legislation and did it badly.

There is a great advantage in putting the details, when they are as complex as they are with this issue, in regulation. That allows for two things. It allows for the people who are serving on the advisory committee—and a lot of the people we heard from are serving on the advisory committee, including, I believe, the Steelworkers' union. So it's not that the workers are unrepresented.

The people who actually have the expertise are working on the advisory committee and drafting the regulations, which I would suggest is far more appropriate than any of us MPPs sitting here trying to decide when you should use force or what uniform you should wear or who should do this or who should do that. I think it is much more appropriate that the experts work on the

advisory committee and negotiate with the registrar the details of those regulations. There is a place where the stakeholders in the industry are working on the details.

I think we will see, as this evolves, that we have the capacity to consult with the industry to get the details right, and over time, as the world unfolds, as it inevitably will, we will be able to update the regulations to make sure that they stay current and that we aren't back here in another 10 or 20 years, saying that this is totally out of date.

The Chair: Are there any further comments?

Mr. Kormos: I just want to note that the Hansard of the standing committee on justice policy of October 3, 2005, in the 10 a.m. sitting, should be preserved so that, in the event that Mrs. Sandals should be fortunate enough to sit as a member of the opposition here at Queen's Park and finds herself in a position where she is railing against the government of the day at its tendency and proclivity for using regulation as a means of writing legislation, government members of the committee can, at that time, quote back to Mrs. Sandals her very words on the Hansard from the standing committee on justice policy of October 3, 2005, in the 10 a.m. sitting, her passion and enthusiastic support for passing but shell or skeleton legislation and leaving the rest of it to a behind-the-scenes, behind-closed-doors regulatory process. Just a comment, Chair.

Again, I wish you well. You notice that I'm wishing you a sufficiently lengthy parliamentary career to enable you to sit in opposition so you'll enjoy the unique pleasure of having your words read back to you.

Mrs. Sandals: I thank you for your concern for my longevity.

Mr. Dunlop: So what I'm hearing from the parliamentary assistant is that there will not be an opportunity. Only those people who are fortunate enough to be on the advisory panel and who made deputations will be able to comment on the regulations; the others will not be. Is that what I'm hearing from you today?

Mrs. Sandals: My sense is that the advisory panel is being quite broad in terms of who it's talking to. So I think those who need to be heard will be heard.

The Chair: Any further comments, questions or issues? Hearing none, we'll now move to consideration of motions with respect to section 1. Are there any motions before the committee?

Mrs. Sandals: I move that the definition of "business entity" in section 1 of the bill be struck out and the following substituted:

"'business entity' includes a corporation, partnership or sole proprietorship; ('entreprise')".

If I may comment briefly, the purpose of this is to make sure that while the list of examples here are included in the definition of "business entity," one could take a broader view, and other forms, if they present, of business entities could be also considered. So this has the effect of slightly broadening the definition of business entity and make it more flexible.

The Chair: Is there any further debate?

Mr. Kormos: In fact, what it does is eliminate the definition of "business entity," because clearly—I mean, it's not rocket science. I don't dispute the need to reconsider it, because it is—what do they call it?—tautological. Yes. Because clearly those things that you speak of—corporations, partnerships, sole proprietorships—are by their very nature business entities, so to say "business entity" means "business entities" is tautological and of no value in terms of definition. What you've done is said "business entity," and by saying "includes," while fair enough, we knew that to begin with.

1020

So exactly what was it that you had in mind? Again, I'm not being suspicious; I'm just wondering what it was that you had in mind. At the end of the day, maybe we should just be eliminating this clause, this portion of part I, "business entity," because there are so many other parts of the act where you prefer to let the words speak for themselves. We talked about them. We talked about "bouncer." I'm not sure if you've included in your package of amendments a definition of the word "bouncer." We're relying on the common understanding of the word "bouncer," or a chucker-out, as I recall, speaking for itself.

You don't, for instance, in your amendment number 3, when you talk about guarding or patrolling—again, we're going to talk about that when we get to it. I think it's an interesting effort at trying to clean up the problems in the existing section, but you don't define "guarding" and "patrolling." You're going to let the common usage of the words be used to interpret what "guarding" means and what "patrolling" means. I'm wondering why you're even bothering with "business entity." Why don't you just leave it alone? Where "business entity" is in the act, it seems to me that it's a sufficiently clear bit of English, that it speaks for itself, and there's little served by saying "'business entity' includes." Of course it includes, but by simply saying "includes," you haven't defined "business entity" then. Do you understand what I'm saying? You haven't helped anybody reading the act that they wouldn't be able to do without having any definition of "business entity," because a business entity is a business entity.

Mrs. Sandals: I think Mr. Kormos and I are perhaps in agreement that what we have here is a definition of "business entity" that allows for a reasonable list of common usages but points out some of the more prominent usages.

Mr. Kormos: Is that for really stupid people who are reading the bill who wouldn't even begin to contemplate that "business entity" includes a corporation?

Mrs. Sandals: I would not want to comment on who might want to read the bill.

Mr. Kormos: Bless you, Ms. Sandals.

The Chair: Any further comments or questions?

Mr. Dunlop: I would agree somewhat with Mr. Kormos. If it includes a corporation, partnership or sole proprietorship, what else would it include? I'm curious what that would be.

Mrs. Sandals: For example, you could have a consortium of some sort, which might want to be a registered employer.

Mr. Dunlop: Why wouldn't we put that in there, then?

Mrs. Sandals: The point is that you could go on and on, so we've highlighted the number that are the most likely, but there are other possibilities, and we don't want to exclude them.

Mr. Kormos: I wonder if there's staff here who could help explain, because I'm ready to live with their answer. Is there any benefit to having this defined at all, as compared to merely saying "business entity"? The non-definition of saying "includes"—and I appreciate it's not really a non-definition, but in the first place, you identified "business entity" clearly; you didn't want to be restrictive. I understand that. But what's the value of defining "business entity" at all, rather than letting the common use, plain use, regular use of the words prevail?

The Chair: Ms. Sandals, I take it that we have government staff—

Mrs. Sandals: If that's acceptable, Mr. Chair, that would probably expedite it going back and forth between Mr. Kormos and I.

The Chair: That's fine. Welcome. Please identify yourself for Hansard and proceed.

Mr. Dudley Cordell: My name is Dudley Cordell. I'm a lawyer with the Ministry of Community Safety and Correctional Services.

I think the motion does contain a definition, that the words "corporation, partnership and sole proprietorship" give readers a sense of what the term is intended to mean. I also think that in the future there may be new types of corporate organizations that arise, and this gives a certain flexibility to the definition. That's my reason.

The Chair: Mr. Kormos.

Mr. Kormos: Sir, please don't go. Don't go. I agree with you. I understand what you're doing, and I'm not criticizing it. But we've got other areas of the bill where we've got interesting words like "bouncer" which are not the subject matter of a specific definition. That one is perhaps slang in its origins, but nonetheless, you know what a bouncer is. A bouncer's a bouncer. Why aren't drafters of legislation similarly capable of saying, "business entity," and that means business entity? Where are you from to not think that a corporation, partnership or sole proprietorship is a business entity? I suspect you're contemplating some of these weird and wonderful—lawyers, for instance. They've created the new non-liability lawyers' semi-corporations—

Mr. Cordell: Limited liability partnerships?

Mr. Kormos: Yes. You're contemplating stuff like this, new business entities, new types of corporate entities. I'm getting free advice from you. I want to learn. What value is there in defining it at all, as compared to merely letting "business entity" speak for itself?

Mr. Cordell: Well, first of all, I think that "business entity" is not as well known a definition as "bouncer." Second, we've given ourselves regulation-making authority to define what a "bouncer" is in case people find that it's not a well enough understood term. I think that given that business entities are subject to a whole bunch of regulation in this act, along with individual guards and private investigators, there is a good deal of merit in setting out this type of definition.

This is not unique to this type of legislation; it's quite common in legislation to create broad definitions of this type. This is not at all unusual.

Mr. Kormos: I agree. It's not unusual. I'm just wondering why we don't break the mould, liberate ourselves. Thank you kindly.

The Chair: Are there any further comments?

Mrs. Sandals: I think we should vote.

The Chair: Seeing none, we'll now proceed to the consideration of section 1 of the bill.

Mr. Kormos: No, sir.

Mrs. Sandals: We have to do this amendment, and then there's another amendment before we get to the whole section.

The Chair: Yes. All those in favour of this particular motion, government definition cited on page 1? All those opposed? I declare the motion carried.

Are there any further motions dealing with section 1?

Mrs. Sandals: I move that section 1 of the bill be amended by adding the following definition:

"'Minister' means the member of the executive council to whom the administration of this act is assigned under the Executive Council Act; ('ministre')".

This is simply put in to hang your hat on assigning who the minister is. The minister of our ministry has variously been called Solicitor General, public safety and community safety, so this just provides us with the flexibility to clarify which minister administers the act.

The Chair: Any further comments?

Mr. Kormos: I think it's an entirely appropriate amendment from the government's perspective, because who knows? With the bent that this government has, there could well be a ministry of privatized policing services as a companion to the ministry of privatized health and the ministry of privatized firefighting services. I think the government is covering its tail—

Mr. Dunlop: That's good.

Mr. Kormos: Well, think about it. The government is covering its tail in terms of being very specific. Here's an instance where, in my view, the definition is entirely appropriate and needed, especially with the privatization bent of this government.

Look at the P3 hospitals, Chair. They promised they wouldn't privatize hospital construction: promise broken.

The Chair: Is there any further debate on this particular motion?

Mr. Dunlop: I agree with the motion.

The Chair: Seeing no further debate, we'll now move to consideration. All those in favour of government definition motion 2 regarding section 1? All those opposed? I declare that motion carried.

We'll now proceed to consideration of that section. Shall section 1, as amended, carry? Any opposed? Carried.

We'll now proceed to consideration of the various motions for section 2. Are there any motions for section 2? Mrs. Sandals.

1030

Mrs. Sandals: I move that subsections 2(4) and (5) of the bill be struck out and the following substituted:

"Security Guards

"(4) A security guard is a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property.

"Same

"(5) Examples of the types of work referred to in subsection (4) include,

"(a) acting as a bouncer;

"(b) acting as a bodyguard; and

"(c) performing services to prevent the loss of property through theft or sabotage in an industrial, commercial, residential or retail environment."

What we have done here is actually taken what I think is the current practice in the old act, which is to move the reference to guarding or patrolling from the examples section back into subsection (4) to the actual definition of a security guard. We believe that for many of the people who have raised concerns that they might inadvertently have been included in the act, which wasn't the government's intention, this will clarify that when we talk about people who are security guards, we're talking about people who primarily guard or patrol. An example of where this was raised would be the issue of the night manager at a hotel, who does a whole lot of things all night, but certainly does not primarily guard and patrol. They primarily do a whole lot of other things.

The Chair: Is there any further debate or comments? Mr. Kormos.

Mr. Kormos: With respect to subsection (4), I understand what the government is trying to do and the problem it's trying to overcome. However, when you go down to subsection (5), in particular clause (c), I put to you that you have defeated your purpose. Just as "include" is not exhaustive of the types of functions that fall within the definition, it's exclusive, in terms of saying that notwithstanding subsection (4), if a person performs services to prevent the loss of property though theft or sabotage in an industrial, commercial, residential or retail environment, he or she is a security guard, notwithstanding that he or she may not do work that consists primarily of guarding or patrolling.

Do you understand what I'm saying? On the one hand, the broad definition says "guarding or patrolling," and I understand what you want to do: You want, then, to have the active, closer to parapolicing type of role, as compared to night watchperson. However, you go on to say that a bouncer who doesn't guard or patrol, but who is a bouncer by definition, is a security guard. You're categorically saying, "Examples of the types of work referred to in subsection (4) include ... acting as a bouncer...." Quite frankly, do bouncers guard or patrol? They guard and sometimes patrol, I suppose, but then that takes us to the person monitoring an electronic surveillance system, whose sole job is that when they see a red light go on saying that a door is ajar, they're to call the police or somebody else. They're not patrolling. Again, without a definition of what "guarding" means, because guarding has many connotations—our first and immediate sense of "guard" is a person who stands there, like the Wells Fargo guy with the money truck guarding the money. I'm not sure we don't have a problem.

My concern, though, is, "Examples of the types of work referred to in subsection (4) include...." So you have this broad, general definition in subsection 2(4), and you say, but in any event, "acting as a bouncer" puts you in subsection (4); "acting as a bodyguard" puts you in subsection 2(4); and "(c) performing services to prevent the loss...."

So I'm concerned that you've still got the guy up on the 22nd floor who's the security expert, who designs security systems, whether they're paper systems internally within the corporation—the farthest thing in the world from what we're thinking about as a security guard and the sorts of things that we heard when we talked to the banking people. They were here, and we talked to the insurance people about these internal loss-prevention programs, where they're building the systems, not doing the actual hands-on checking of your lunch bucket when you leave the plant to make sure you didn't take a crescent wrench out with you or a set of snap ring pliers or what have you.

I see what you've done, but I'm worried that by not similarly applying that qualification to subsection 2(5)—it seems that if subsection 2(5) were simply eliminated and these roles, "bouncer," "bodyguard"—because they're undefined, so we rely on, I guess, whatever it is that you call it, the plain English use of the words or the plain understanding. It's clause (c) "performing services to prevent the loss of property...." I applaud what you've tried to do with subsection 2(4), but by retaining clause 2(5)(c), it seems to me that you include a whole broad range of people who we didn't want to include, people doing the high-level security systems design. It's just a question.

The Chair: Thank you, Mr. Kormos. Any further comments?

Mrs. Sandals: Yes, just in response, this subsection 2(5) does not say "notwithstanding" or "except" or "in opposition to" or "in difference to." Therefore I believe it should be read as an "and," so that it's, "A security guard is a person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property," and that includes "performing services to prevent the loss of property."

So if you're talking about somebody who guards and patrols "for the purpose of protecting persons or property," this merely clarifies that this would include people who are doing this "in an industrial, commercial, resi-

dential or retail environment." It doesn't set up a "notwithstanding."

I must note on the bouncer issue that I thought you read a wonderfully clear definition of "bouncer" from the Oxford English Dictionary into Hansard the other day, which captured exactly who bouncers are. I would suggest to you that bouncers are also not a "notwithstanding," because I think bouncers, within that definition that you read the other day, do in fact guard for the purpose of protecting the persons and property within the bar. When it is clear that the persons and property within the bar are perhaps in some danger, then they get into their chucker-outer role.

The Chair: Thank you for the comments.

Mr. Kormos: That's the whole point. I have no concern about the plain English interpretation of the words, which is why you don't define them. The problem is that you didn't agree with that when it came down to "business entity." Now you're suggesting that that's the case when it comes to "bouncer."

Look, we've still got a problem, though, because clearly, by including bouncer and bodyguard, you're making sure that those roles are covered under the act, even if they don't otherwise fall within the act by virtue of definition. That's your purpose in putting them in there. It isn't to be illustrative. You wanted to make sure that you captured bouncers and bodyguards. You didn't want somebody to be able to raise an argument saying "But he or she is only a bouncer, and therefore not subject to the rules." I understand that.

That's why you put "include" in here. The purpose of "include" in this application is not so much to be illustrative as it is to make sure that certain types of jobs are necessarily included, even though, if the definition in subsection 2(4) alone were applied, there would be some doubt or there could be argument. You want to avoid any argument as to whether or not bouncers are included. That's why you say "includes." You didn't put it there to be illustrative, as you did in "'business entity' includes" as compared to "means," and I understand why you included bouncer and why you included bodyguard. You're including bodyguard because you wouldn't have to say "includes bodyguard" if the subsection (4) definition automatically and irresistibly and without any possible debate included bodyguards. There would be no need to put "includes bodyguards." There would be no need to put "includes bouncer."

1040

But the problem is paragraph (c). I hear what you're saying. With respect, I disagree with you in terms of how this statute is going to be interpreted, or at least how it's going to be argued. Far be it from me to say how it's going to be interpreted, because that's up to—in this case, I suppose it would be a justice of the peace ruling, who range from very good to very bad in the province of Ontario because of the political patronage that has prevailed in appointments of justices of the peace, as compared to meritocracy.

You do what you want, but I think you're risking spreading out a net, because there would be no need for clause (c) at all. As a matter of fact, I'm going to move an amendment to the amendment. Kormos moves that paragraph (c) of subsection (5) of government motion number 3 be deleted. I've written that down here for the clerk. I know that's not the most accurate language to use, but I think it sufficiently identifies the issue here. If I may speak to that amendment now.

The Chair: The committee has before it a motion from Mr. Kormos, an amendment to the amendment. He moves paragraph (c) of subsection (5) of government motion number 3 be deleted. We'll now proceed to consideration of this particular amendment motion.

Mr. Kormos: There's supposed to be two Ss there in front of "subsection (5)". My hurried writing.

Look, you don't need subsection (5) any more because presumably "guarding or patrolling for the purpose of protecting persons or property"—forget about the "performing services," but "for the purpose of protecting persons or property" surely means to "prevent the loss of property through theft or sabotage in an industrial, commercial, residential or retail environment." The only thing that's different is "performing services to," which would make this distinguishable from "guarding or patrolling;" in other words, services above and beyond guarding or patrolling or as distinct from guarding or patrolling.

I'm just trying to err on the side of caution, and I'm going to leave it at that. I'm not going to belabour the point. I am asking for a recorded vote. I want to protect the in-house security, the wizards at the computer panels who design systems, people who do that kind of internal work that we don't contemplate and I don't think we ever did contemplate regulating. People in corporations and private persons are entitled to hire the best computer geeks they can find, by all means, but we surely don't want to regulate those people as security guards. I don't think so. That's why I'm seeking the support for this amendment to your amendment, Ms. Sandals.

The Chair: Is there any further debate or consideration on the amendment to the amendment?

Mrs. Sandals: Yes. I will not be supporting the move to delete because I think it's quite clear that what we're saying here is that a security guard, if you take subsections (4) and (5) together, is a person who is primarily "guarding or patrolling for the purpose of protecting persons or property," and that includes people who are guarding or patrolling in order to "prevent the loss of property through theft or sabotage" in those various settings that are enumerated. So I think that's quite clear and not open to misinterpretation. It will not be justices of the peace who will be dealing with the issue of who needs a licence. I would think it would be the registrar who would be dealing with the issue of who needs the licence.

The Chair: Any further comment?

Mr. Kormos: That warrants some clarification. Surely prosecutions under this act are going to be done under the Provincial Offences Act, aren't they?

Mrs. Sandals: Yes.

Mr. Kormos: Where I come from, it's JPs who hear those, and the occasional provincial judge, if they can swing it. It's sometimes a very busy court because of the chronic understaffing and under-resourcing of our criminal justice system. There is an inadequate level of staffing at the Ministry of the Attorney General, a serious need for yet more appointments to the bench and scarce crown resources.

The Chair: Is there any further consideration on this NDP motion, which we're designating as motion 3(a)?

Mr. Kormos: Recorded vote.

The Chair: A recorded vote on the NDP amendment to the amendment, designated as 3(a).

Ayes

Dunlop, Kormos.

Nays

Brown, Brownell, Delaney, Sandals.

The Chair: I declare the amendment to the amendment defeated.

We'll now move again to consideration and further debate on government motion 3. Is there any further debate?

Mr. Kormos: I'm going to make it clear that I'm unable to support this amendment because of the inclusion of paragraph (c) and, frankly, the inclusion of "bouncer," which is undefined in the bill, which leaves it with the OED definition, if that's the definition the court chooses to apply as compared to Webster's or whatever. So I won't be supporting this amendment.

The Chair: Is there any further consideration or debate on government motion 3?

Mr. Kormos: A recorded vote, please.

The Chair: We'll now move to the consideration.

Ayes

Brown, Brownell, Delaney, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare motion 3 carried.

Are there any further motions referring to section 2?

Mrs. Sandals: I move that clauses 2(7)(d) and (e) of the bill be struck out and the following substituted:

"(d) insurance adjusters licensed under the Insurance Act while acting in that capacity, and their employees while acting in the usual and regular scope of their employment;

"(e) insurance companies licensed under the Insurance Act and their employees while acting in the usual and regular scope of their employment;"

This simply clarifies that when we look at the exemption for the insurance industry, we are including the employees of the licensed insurance companies. It was not our intent to accidentally catch them up as requiring licenses.

The Chair: Is there any debate or consideration on government motion 4?

Mr. Kormos: As I understand it, this is simply a grammatical exercise. Because of the way that the language was structured, it could give rise to misinterpretation. Is that correct?

Mrs. Sandals: We love to be clear.

Mr. Kormos: For once. I'm so pleased to support you, Ms. Sandals, in this unique effort at clarity on the government's part.

The Chair: Is there any further debate on this particular government motion 4? Seeing none, we'll now proceed to the vote. All those in favour of government motion 4? Any opposed? I declare that motion carried.

Are there any further motions regarding section 2?

Mrs. Sandals: I would like to make a motion to add a new subsection. I move that section 2 of the bill be amended by adding the following subsection:

"'Peace officer'

"(9) For the purpose of clause (7)(c),

"'peace officer' means a person or a member of a class of persons set out in the definition of 'peace officer" in section 2 of the Criminal Code (Canada)."

As we heard from our previous hearings, there was some concern around just what we meant by peace officer, and we're clarifying that in fact it is in the Criminal Code, and that people cannot willy-nilly add to the definition of peace officer, that we do in fact mean the Criminal Code definition.

1050

The Chair: Any further consideration of government motion 5?

Mr. Kormos: Could we get the definition of "peace officer" in section 2 read for us?

Mrs. Sandals: I don't have it here, but I could at least give you a list of the major people who are included within that definition, if that would be helpful.

Mr. Kormos: I've got a Criminal Code in the office.

Mrs. Sandals: Pardon?

Mr. Kormos: I've got a Criminal Code in the office. I keep one with me at all times.

Mrs. Sandals: In case of need?

Mr. Kormos: Some people carry a Bible. I carry the Criminal Code.

Mrs. Sandals: Hey, look at this.

Mr. Cordell: I'm reading from an e-mail I sent, not directly from the Code, but I just basically cut and pasted off the Web site. So to the extent that the federal Web site is up to date or not up to date, this is the version that's on their Web site:

"'peace officer' includes

"(a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer and justice of the peace,

"(b) a member of the Correctional Service of Canada who is designated as a peace officer pursuant to part I of the Corrections and Conditional Release Act, and a warden, deputy warden, instructor, keeper, jailer, guard and any other officer or permanent employee of a prison other than a penitentiary as defined in part I of the Corrections and Conditional Release Act,

"(c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,

"(d) an officer or a person having the powers of a customs or excise officer when performing any duty in the administration of the Customs Act, the Excise Act or the Excise Act, 2001,

"(e) a person designated as a fishery guardian under the Fisheries Act when performing any duties or functions under that act and a person designated as a fishery officer under the Fisheries Act when performing any duties or functions under that act or the Coastal Fisheries Protection Act,

"(f) the pilot in command of an aircraft

"(i) registered in Canada under regulations made under the Aeronautics Act, or

"(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft registered in Canada under those regulations,

"while the aircraft is in flight, and

"(g) officers and non-commissioned members of the Canadian Forces who are

"(i) appointed for the purposes of section 156 of the National Defence Act, or

"(ii) employed on duties that the Governor in Council, in regulations made under the National Defence Act for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;"

The Chair: Thank you, Mr. Cordell, for the definition of "peace officer." Is there further debate?

Mr. Kormos: Thank you very much. I appreciate that. I should have had that and I didn't.

The Criminal Code definition, then, uses the language "includes," as you will recall. Your definition is interesting because it says "means," and "means" applies only to the list of persons enumerated in the "includes." So even though the Criminal Code is a little more open-ended—think about it: Is this where the Criminal Code is a little more open-ended because it says "includes"? You're exhaustive.

Let's put it this way: Had you wanted to use the Criminal Code definition of "peace officer" in section 2 of the code—but you had also wanted to throw in "building inspectors"—you would amend this by having your definition, "'peace officer' means a class of persons set out in the definition of 'peace officer' in section 2 of the Criminal Code, and includes a municipal building inspector." You understand what I'm saying?

So even though a municipal building inspector wasn't a peace officer within the definition of "peace officer" under section 2 of the Criminal Code, you could make him or her a peace officer for your purposes by saying "and includes," just as earlier on in this section you argued for a definition of "security guard" that said includes bouncer, bodyguard, and "performing services to prevent the loss of property" etc. Clearly, you don't want to include any other people than what are included—not just included, but contained—in the list of included parties in the section 2 definition in the Criminal Code of "peace officer." God bless.

Mrs. Sandals: And that would be precisely why we wrote it the way we wrote it. Thank you for that explanation.

Mr. Kormos: You're welcome. Quite right, because you could have added more.

Mrs. Sandals: Because we did not wish to include building inspectors etc. to our list.

Mr. Kormos: Earlier you did want to include bouncers, bodyguards and persons "performing services to prevent the loss of property." I appreciate it. I just want to make sure we've got the distinction here, so we understand that somebody who reads this down the road understands what is going on here. I want them to be very, very clear.

I'm going to support your amendment, because I think it's a healthy first start.

The Chair: Mr. Dunlop?

Mr. Dunlop: Just a clarification, and maybe the parliamentary assistant, Ms. Sandals, can help me with this. Why would this definition not be included right in the original definitions at the beginning? Why would you add a subsection (9)? Why would it not be defined at the very beginning under "Definitions"?

Mrs. Sandals: I'm not sure it's a big deal, but it's put in the section where it's relevant.

Mr. Dunlop: I just felt it would be the proper way to do it. Maybe there's a reason that I'm not aware of. I'll support it. I'm not against it. I'm just wondering why it wouldn't be in the original definitions.

Mr. Kormos: That's a good point.

Mrs. Sandals: But not one worth debating.

Mr. Kormos: Well, hold on.

Mr. Ralph Armstrong: May I speak?

The Chair: Please, legislative counsel.

Mr. Armstrong: Ralph Armstrong, legislative counsel office. As a drafter, you do all kinds of things. Some things strike you one way, some of them strike you another. My recollection is that "peace officer" does not appear in this bill in any other place, so there was a certain merit in putting it right in that one section, close by. You can read along, see it, and not see it at the beginning and expect it to pop up a bunch of times. This is done this way in a bunch of acts. In other acts, it only appears once; you only use it in the definition section at the beginning.

If you're asking me if I have a big book where it appears that it has to be done this way, no, I don't, sir. It's what I do.

The Chair: Thank you, Mr. Armstrong, for that clarification.

Mr. Kormos: Drafting legislation has got to be one of the most remarkable and challenging things that human beings do. It will never be computerized, for the reasons you just said. So if that's what Mr. Armstrong says is the case, if it's a matter of the signature of the legislative counsel being contained in that bill in terms of his or her style and preference and just what feels good or what seems right—it's like the English language, I suppose, where there are certain things that are more appropriate than others, not because it's written in a book somewhere but simply because it flows better, it makes more sense—at the end of the day, sounds good to me.

Mr. Armstrong: If I may take the liberty of thanking the members on behalf of my office, I would like to take it. Thank you.

The Chair: Thank you, Mr. Armstrong.

Is there any further debate or commentary on government motion 5? Seeing none, we'll now proceed to the vote. All those in favour of government motion 5? All those opposed? Seeing none, the motion carries.

Shall section 2—

Mr. Kormos: Chair—

The Chair: Yes, Mr. Kormos.

Mr. Kormos: Now we get to debate section 2, as amended.

The Chair: Yes, we now proceed to the debate and consideration of section 2, as amended.

Mr. Kormos: I will not be supporting section 2. It is key, clearly, to the bill. I continue to have grave concerns about the failure of amendment number 3 to achieve the goal that I had originally hoped the government had. I believe, particularly in the definitions around "security guard" in subsections (4) and (5), that there remains far too much ambiguity, with the risk of including people in the bill we have no business including. I won't be supporting it, and I'll be calling for a recorded vote.

1100

The Chair: Is there any further debate or consideration on section 2, as amended? Seeing none, we'll now proceed to the vote. Shall section 2, as amended, carry?

Ayes

Brown, Brownell, Delaney, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare section 2, as amended, carried.

We'll now proceed to consideration of section 3. Are there any motions before the committee with reference to section 3? Mr. Kormos?

Mr. Kormos: I'm sorry, there are no motions on my behalf, and I might have jumped the gun because somebody else may have an impromptu, unfiled one.

The Chair: Are there any motions before the committee for section 3? Seeing none, we will debate section 3.

Mr. Kormos: I'd appreciate a little bit of background. You talk about the appointment of a registrar of private investigators and security guards. The current registry system for security guards, the licensing system, falls under whom?

Mrs. Sandals: Sorry, what do you mean by "whom"? It falls under the Ministry of Community Safety and Correctional Services, and we currently have a registrar appointed. I don't believe this changes anything. This just represents a continuation of the current governance scheme. Is that what you were asking?

Mr. Kormos: I just wanted to know if this was an additional—

Mrs. Sandals: This is the current situation. This was to be inherited from the existing situation.

Mr. Kormos: This is the existing patronage structure, rather than a new one.

Mrs. Sandals: Exactly.

The Chair: Is there any further debate on section 3? Seeing none, we'll now move to the consideration and vote on section 3. All those in favour of section 3? All those opposed? I declare this section carried.

We'll now move to consideration of section 4. Are there any motions before the committee?

Mr. Dunlop: I move that section 4 of the bill be amended by adding the following subsection:

"Training required

"(2) No licence shall be issued unless the registrar is satisfied that the applicant has passed the prescribed examinations or has attained the prescribed standards of a level of training appropriate to the class of licence being applied for."

I thought, based on the Shand inquiry and the recommendations there, that something should be added around this concerning training, and I'd ask the committee to support this.

The Chair: Is there any further debate or consideration on PC motion 6?

Mrs. Sandals: While intuitively this is certainly the intent, which is that one requires appropriate training and appropriate examination, and we have no argument with that intent, we're a little bit concerned that the passing of this motion might have an unintended consequence, which is an interpretation that if you take the training and if you pass the exam, you would be automatically entitled to a licence. If you look over at section 13 of the bill, there is quite an extensive list of reasons for which the registrar may refuse to grant a licence based on, I guess, what you could encapsulate as possibly unsavoury history if the applicant happens to fall into a number of a categories. We would be very concerned by putting that reference in section 4, where all you're doing is listing the major types of licences and then going on and saying starkly that there's an implication that if you've got the

exam under control, then you're entitled to a licence, when in fact that's not the intent at all. Certainly, the training and examination are a precondition of the licence, but they are not the only conditions for a licence. We're a little bit concerned about reading that in isolation and what might be read into it.

While we certainly agree that the intent of the whole act is to ensure that people have appropriate training, appropriate skills as approved by the test, we don't want to accidentally, as it were, undo that.

Mr. Dunlop: Simply, I felt that this should be flagged early—very similar to the thoughts that legislative counsel had brought up earlier when he talked about one-timing it. I felt it was important here to at least identify the fact that the list of people being issued a licence should have some kind of training, and I thought it would be nice to have that under legislation. I don't think it eliminates the fact that any unsavoury characters could actually be disqualified later on under section 13, but I felt it was the proper thing to do and I'll be asking for a recorded vote on it.

The Vice-Chair (Mr. Bob Delaney): Any further comments?

Mrs. Sandals: Sorry. I'm just trying to find—because this is in a sort of weird place. If you look at the mandatory requirements under subclause 10(1)(b)(iii), it says, "the person has successfully completed all prescribed training and testing." So if I can go back and read the preamble and jump to the end, when you put it together:

"No person is eligible to hold a licence under this act unless,

"(iii) the person has successfully completed all prescribed training and testing."

We're not arguing the intent of what you're saying there. We agree with it and would argue that that's already covered in the act.

Mr. Dunlop: Are you saying that would be dependent upon the registrar under section 10?

Mrs. Sandals: No, because it says under "Mandatory requirements" that "No person is eligible to hold a licence unless ... the person has successfully completed all prescribed training and testing," which is what you're asking for. It then goes on. If you look at section 11, it talks about application. In section 12 it talks about—I've lost section 12. Somewhere there's got to be a little heading here—rules for getting your licence. But in particular, when you go into section 13, it then has the expanded "Registrar may decline."

It does not give the registrar, in my read at least, the authority to waive testing, which is, I think, what you're getting at. The authority of the registrar is to expand the exclusions, which is that even if you completed the testing, if you don't have a clean criminal record, if you've got some unsavoury connections as laid out in section 13, the registrar may go beyond requiring the training and testing. I think that's what you're trying to achieve here, which is that the act requires that the training and testing are mandatory.

Now it does go on to say at one point in the act that if you are currently employed as a guard, you can go direct to testing; if you've already got the training, you can go direct to testing; if you're already an employee, you can go direct to testing. So the circumstances where you can go direct to testing, minus the training, is laid out in the act, but the act does not give the registrar the authority to say, "You have to have a test" and "You don't have to have a test."

So I think your intent here is already well covered. I think we're agreeing in terms of intent; we're just arguing about how you get at the wording. We believe the wording is already there.

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The Vice-Chair : Comments? Mr. Kormos.

Mr. Kormos: Yes. Staff here might help. I appreciate and I support the intent of the amendment. The language, "unless the registrar is satisfied," as compared to the absolute language of section 10, or as compared to "a licence shall issue" when these conditions are met—does using or incorporating the word "satisfied" limit anybody's redress in that it gives the registrar more discretion than a mandatory provision; in other words, "a licence shall issue if" or "no person shall hold a licence unless"? Those are absolute; there's no ambiguity.

When you use language like "unless the registrar is satisfied," does that give more power to the registrar in the same way, for instance, that you're more inclined to appeal from an administrative process—you have a capacity to appeal a misinterpretation of law but not a finding of fact, if I've got that right?

The Vice-Chair: Comments?

Mr. Kormos: Is there anything special about the word "satisfied"?

The Vice-Chair: Shall we vote on the proposed—

Mr. Dunlop: Can I, Mr. Chair?

The Vice-Chair: Mr. Dunlop.

Mr. Dunlop: I'm curious. Will the registrar not be the only person issuing a licence?

Mrs. Sandals: By definition in law, I think the licence is issued by the registrar. I presume that on the card which the security guard was showing us in London it's got the registrar's signature. So, in law, the registrar issues the licence.

Mr. Dunlop: I know you're not going to support it. I just thought that my motion strengthened the whole section. If you're not happy with it, don't worry about it.

The Vice-Chair: Further comments?

Shall the proposed amendment to subsection 4(2) carry? Those in favour? Opposed? I declare the amendment lost.

Shall section 4 carry?

Mr. Kormos: One moment.

The Vice-Chair: Mr. Kormos, are there any comments on section 4?

Mr. Kormos: I don't have a quarrel with section 4 in and of itself, but for the fact that this was an opportunity for the government in its legislation to indicate that clearly there were going to be specific licences for

specific roles being performed by security guards, with an acknowledgement of the incredible variety of roles that security guards play. I'm not just talking about the two-tiered or three-tiered regulatory licensing system.

It's regrettable; that's all I'm saying. I'm not going to vote against the section, but it's regrettable that this section wasn't used as an opportunity to demonstrate the wide range of work that's being performed: the role of a bouncer being far different from the role of a retail floorwalker; far different from the role of an industrial security guard who has to familiarize, or should familiarize, himself or herself with all of the potential dangers in an industrial setting; and far different from the parapolice hired to work in gated communities or in business improvement areas.

This could have been an opportunity to do that; it doesn't. And, again, I'll be addressing the failure of the bill to identify those different roles as we get closer to the end.

The Chair: Any further debate on section 4?

Mrs. Sandals: Simply to point out that in section 54, governing regulations, the very first regulatory authority is to make regulations "prescribing classes of licences," then going on to make sure that the training and testing requirements for those classes of licences obviously do those distinctions. So there is certainly within the bill the regulatory authority to do exactly what you want.

The Chair: Any further consideration or debate on section 4? Seeing none, we'll now proceed to the vote. Shall section 4 carry? All those opposed? I declare section 4 carried.

Mr. Kormos: Chair, if I may, I am satisfied that sections 5, 6, 7 and 8 can be dealt with as a block.

The Chair: Thank you, Mr. Kormos. If that is the committee's will, we will consider sections 5, 6, 7 and 8 as a block. Is there any debate or consideration of those particular sections? Seeing none, we'll proceed to the vote. Shall sections 5, 6, 7 and 8 carry? Any opposed? Seeing none, I declare sections 5, 6, 7 and 8 carried.

We'll now move to consideration of section 9. Are there any motions before the committee?

Mrs. Sandals: I move that section 9 of the bill be amended by adding the following subsection:

"Protected witnesses

"(2) No person who holds a licence to act as a private investigator or security guard shall act or hold himself, herself or itself as being available to act with respect to,

"(a) locating a person known or suspected by the licensee to be a member of a witness protection program; or

"(b) gathering information about any person known or suspected by the licensee to be a member of a witness protection program for the purpose of enabling the person to be located."

I think that it's relatively obvious from the language that is used here that, at the moment, there is no prohibition that prevents someone from hiring a private investigator to try and find somebody who is the subject of a witness protection program. The intent of this is to say, "Yes, we have licensed you as a private investigator; yes, we have licensed you as a security guard, but the authority within that licence does not extend to doing investigative work that would lead to the interference with the protection of that witness," so that we are not licensing private investigators in particular to, in the vernacular, track down people who are under a witness protection program.

Mr. Kormos: You can't help but be sympathetic to the amendment, and it's an interesting one. You say that there has never been a statute, that there's never been a prohibition on licensed private—we have so little information about private investigators. There just seems to be no interest whatsoever from that community in the proposed statute. I assume this because there's probably, from their perspective, not going to be a whole lot of difference in the standards that they have to adhere to. I'm only assuming that, because there was no interest whatsoever.

Again, I don't know how big that industry is. I have no idea. In the old days, before no-fault divorces, these guys were photographers down in the motel strip by the lake there, the lakeshore. That was before most people's times here.

Why are we taking it upon ourselves to build a prohibition that, I agree, has as its goal the protection of people in witness protection programs? That's the operative word: "protection."

First of all, in Ontario—and this only came about when Chief Blair and the Attorney General had a press conference a few weeks ago. In the press conference, they got questioned about exactly what Ontario's witness protection program is. It wasn't quite like the television stuff you see. It wasn't quite like the federal witness protection program with new identities, and I'm paraphrasing. It seemed more like a bus ticket to Kingston and a voucher for $50 at the local Wal-Mart. That's the extent to which Ontario does witness protection programs. We don't have a new identify sort of stuff—new driver's licence, the American John Gotti mafia—what was the movie? Goodfellas, right? He was in the witness protection program. That sort of thing: the relocation and all that stuff. We just don't have that provincially.

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I know we have that structure being conducted federally. Why are we taking it upon ourselves? If there's to be legislation, surely it should be broader legislation saying that it is an offence to attempt to track down or identify a witness protection witness. It could be just that we're seizing the opportunity to, in this instance, make sure that security guards and private investigators don't do it. But has this been looked at from a broader perspective, in terms of—we're not, for instance, forbidding journalists. I'd put a good journalist up against a private investigator any day of the week. We're not excluding bikers from doing it—Hell's Angels types. A computer-savvy Hell's Angels type is as capable of doing that as any private investigator because it seems that there are very few secrets nowadays.

Are there other prohibitions? Are other people prohibited from doing this? And why are we doing it in this bill? Or is it as simple as saying, "We're seizing the opportunity to at least create a penalty for private investigators doing it"?

Mrs. Sandals: If I may respond, first of all, the provincial witness protection program does in fact include issuing new identities and new driver's licences, so it would be similar to the federal program in terms of new identities. But that aside, this would obviously apply to people under the federal or provincial witness protection program because we haven't distinguished. So just to deal with that.

In terms of other prohibitions, I'm not an expert on acts regarding journalists, but I'm not sure we have the journalists' licensing act; we do have before us the private investigator licensing act, so we're dealing with private investigators and security guards.

The Chair: Are there any further comments?

Mr. Dunlop: I'm curious about this part, though. To the parliamentary assistant, Ms. Sandals: What you're saying is that a licensed private investigator cannot come into contact with someone who's under a witness protection plan. Is that what you're saying here with this amendment?

Mrs. Sandals: If I can put this in plain English, the plain English intent, I believe, is that a private investigator—and it would typically be an investigator more so than a security guard—cannot knowingly try to destroy the new identity, to locate—that's "locate"—a person whom they believe to be under a witness protection program. If you're licensed to be a private investigator in Ontario, the authority which you have as a private investigator does not include hiring yourself out to try and locate people who are under a witness protection program.

Mr. Dunlop: OK, that's the intent of it, but there's nothing saying that someone who's a private investigator can unknowingly actually track down someone—how is he or she to know that someone is under a witness protection program?

Mrs. Sandals: That's why it says "know or suspect." Clearly, this is something that would depend on the circumstances, but I'm guessing that you might imagine a situation where somebody says, "We'd like to find person X, and the last we saw of them was on the stand at such and such a trial." This might be the first clue to make you suspect that perhaps this person is under a witness protection program, if that's your last lead. Clearly, there would be other circumstances where people would not necessarily know. Maybe that person has gotten themselves in some new trouble in their new identity and somebody would be trying to locate them for some other purpose. But for the purpose of attempting to locate a person who is protected, then that would be prohibited.

Mr. Dunlop: I'm just interested in the answer to this. It's got nothing to do, really, with the bill. I'm just curious: Is there actually a list of people who are in a witness protection plan that would be available to a private investigating firm? I'm not saying where they're located, but their actual names before they were relocated?

Mrs. Sandals: I would hope that if there is such a list, it would be confidential. Sorry; that's my reaction. It doesn't seem like information that we would want to be sharing with the world.

Mr. Dunlop: That's exactly my point here. A good private investigator, if he doesn't know if there's a list available, could actually, if he didn't contact the right people in the police service, stumble on to somebody who was under the witness protection plan completely not knowing that they were in that plan.

Mrs. Sandals: Yes. I think that's why the act tries to talk about somebody who is known or suspected by the licensee, i.e. the investigator.

Mr. Dunlop: Quite frankly, he could plead ignorance of that and go on and do his investigation.

Mrs. Sandals: Yes, so we'd have to look at the documentation and the circumstances around the individual case. This is something that you would clearly have to interpret on a case-by-case basis.

Mr. Dunlop: I'm just thinking of the private eye shows I've seen on TV. I can't imagine them going and saying, "Oh, I know that person, and I will no longer investigate them." I doubt that's going to happen.

Mrs. Sandals: Maybe we all watch too much TV.

Mr. Kormos: If the witness protection program is a witness protection program, then you shouldn't be able to locate these people in any event, as you've already suggested. If they can be located, then it's a pretty crappy witness protection program and of little comfort to the person who's seeking protection. Because, once again, if a private investigator can locate them, a journalist can locate them, the 14-year-old computer geek, Charlotte's kid next door down on Denistoun Street, can locate them, then the whole thing is quite irrelevant.

Look, I know what the section purports to do. You don't want biker gangs to have the luxury of hiring a private investigator to speed things up so that they don't have to waste time between cocaine deals and can get right down to business. But it's bothersome, because it raises a red flag about the integrity of the witness protection program if you're telling private investigators, "Don't try to find somebody in the witness protection program and blow their cover," because it implies—do you understand what I'm saying?—that that witness protection program ain't worth the paper it's written on, so to speak. So I suppose if Barbara Amiel turns on Conrad and goes into the witness protection program, I can't hang around Holt Renfrew trying to locate her. But then, no, I can, because I'm not a licensed investigator. So I can locate her, burn her, blow the whistle and expose her.

God bless, but I don't think the section is, quite frankly, much more than window dressing at this point. If we've got problems with the witness protection program and people finding people in the witness protection program, we should be dealing with that in a broader

sense, and certainly not so much at the provincial level, but at the federal level.

The Chair: Further debate?

Mrs. Sandals: Just to add that what this certainly does clarify is that private investigators who are licensed are not being licensed to carry out an investigation which is counterproductive to the intent of the state, which is to try and protect the witness from being located. So we're just saying that we do not want the private investigator carrying out investigations contrary to the interests of the state in this particular protection issue.

The Chair: Further debate?

Mr. Kormos: Just a prediction: This is one of those sections, mark my words, where, when at the end of the year the government tallies up its law and order agenda, they will say, "And we passed significant legislation to protect people in witness protection"—

Mr. Dunlop: They would never do that, not this government.

Mr. Kormos: Mark my words, Garfield. You've been around here long enough. They'll say, "We passed significant legislation to protect people in witness protection programs." Mark my words. This section is all about that announcement by whoever the Attorney General of the day happens to be.

1130

The Chair: Any further debate? Seeing none, we'll now move to consideration. Shall government motion 7, in reference to section 9, carry? All those in favour? All those opposed? Seeing none, it's carried.

Shall section 9, as amended, carry? Carried.

We will now move to consideration of section 10. Is there any debate on section 10? Are there any motions before the committee on section 10? Seeing none, we'll now move to consideration of section 10. All those in favour of section 10? Any opposed? Seeing none, carried.

We will now move to consideration of section 11. Are there any motions before the committee for section 11? Ms. Sandals.

Mrs. Sandals: I move that clause 11(2)(c) of the bill be struck out and the following substituted:

"(c) his or her consent for the registrar to conduct or have local police conduct a background check, including information regarding convictions and findings of guilt;"

This simply clarifies that the registrar may, in line with current practices, undertake the background check directly, without involving local police. The original intent of this clause was to expand the registrar's possibilities, which are either to do the background check through his office or to go to the local police. We need to make sure the registrar's authority remains captured in the act.

The Chair: Any consideration on motion 8?

Mr. Kormos: The need for a police record search is beyond dispute. The problem is that we're talking about a background check. You may or may not have experienced, through your constituency offices or otherwise, the nature of information that's revealed in a background check. It includes not only convictions, it includes charges for which there have been acquittals, it includes police contacts, it includes unsubstantiated allegations. It's a very difficult and fine line for the police to play because, of course, if they're being called upon to provide anything other than a clean, straightforward criminal record check, far be it from the police to start editing it. They don't want, down the road, to have a finger pointed at them for failing to report the contact around, let's say, a child sexual assault, even though no charges were laid and nothing came of it. Domestic disputes appear in police background checks. All I'm raising now is the concern around the lack of direction—and probably that's something best left to the privacy commissioner—to police services across this province around what information to include or not to include.

Also, because it doesn't appear to be here, the safeguard when you're doing a full background check is for the party themselves to have to submit the background check. That way they can, should they read it and decide that that 19-year-old suicide attempt—think about it; that's on a background check—when the police were called because you were 19 years old and your girlfriend or boyfriend left you after three weeks and you thought it was the end of the world—well, teenagers do attempt suicide under those circumstances. I use that illustration because that's one that I dealt with in my riding most recently. That then appears on a person's background check because the police did have a contact. Of course, the police attended and they did everything that they should do, end of story. The safeguard is to permit the party submitting the background check to see it before it's submitted and decide whether or not they're going to rely upon that background check to support their application for licensing, for instance. I'm not sure that that safeguard is here, because it's the capacity for the registrar to apply for. In other words, you're signing a consent to the registrar and to the police service saying, "You can divulge this information to the registrar."

It's a very difficult scenario, and one that's still unresolved here in the province. I'm not aware of other jurisdictions and how they've resolved it. I certainly don't think that a 19-year-old's suicide attempt should be the subject matter of a police background check 15 years later when they're applying for a security guard licence, end of story. If there are safeguards here where the records check is the property of the applicant, I'd like you to show them to me. I'd feel a higher comfort level, as compared to the—

The Chair: Thank you, Mr. Kormos. Further commentary on motion 8?

Mrs. Sandals: Simply to add that the issue in this particular amendment is, do the local police have to do them all or can the registrar directly access the information on CPIC? But having said that, there is nothing to preclude the individual, if they are concerned about what may show, to go and seek their own background check on CPIC, and if they don't like what is still showing up there, to go and seek a pardon. To give an example, it's not unusual for people who may have some teenage pot-

related convictions on their record to go and secure a pardon for that before they go submitting for employment. So there's nothing to preclude the individual from doing that if they're concerned that some past indiscretion which is no longer of concern is dealt with before submitting it. Nevertheless, in terms of licensing people to do security work and private investigation work, we do need to have the means to make sure that the registrar has access to the accurate information about their criminal background.

This is not to say that if you have, for example, recorded that there was an incident when you were 13 where something happened, that that would preclude you from getting a license. The registrar has discretion in terms of looking at it and saying, "This was an incident in the teenage years. There has been an exemplary record since." That would not necessarily deny the persons the licence.

The Chair: Further debate on motion 8?

Mr. Kormos: Indeed, an old pot conviction might be valuable if you were security staff at a Neil Sedaka concert, for instance. But you don't get the point: A pot conviction can be erased, you're right, for the purpose of it being produced with a pardon. In other words, it won't be a part of that record anymore. It still exists; it doesn't disappear. However, for a suicide attempt, the phenomenon of being the victim will appear on a police background check because that's a police contact. If one was the victim of a sexual assault, one risks having that information produced on a police background check. Again, there's no consistency, in the modest bit of research that I've done into it, from police service to police service.

I hear what you're saying. The problem is that most people don't realize that's what's going to show up until after it shows up; then they swallow their bubble gum, right? People don't anticipate that that teenage suicide attempt is going to be on what they colloquially call a "records check" or "background check." They assume it has to do with arrests and convictions. They assume that.

This is why I'm still saying I'm not going to oppose it, but I'm just using this opportunity to raise this issue very much on the record. I really think it's a matter of great concern, especially when we reflect on how we want to regard people or how we don't want to stigmatize people with mental health problems or people who have been victims of crimes. Again, obviously I'm talking about crimes like sexual assault, where there's a sense of stigma attached to being the victim. It's not a matter of broadcasting it on the airwaves, but even a potential employer—and hopefully a registrar's office would use sensitivity.

All I'm saying is, it's a problem. You're right, it has nothing to do per se, except that it would be nice to see in legislation requiring records checks some protection by making the record the property of the applicant, rather than the person obtaining it with their consent.

The Chair: Any further debate on motion 8? Seeing none, we'll now move to consideration. All those in favour of government motion 8? All those opposed? I declare the motion carried.

Shall section 11, as amended, carry? All those in favour? All those opposed? Section 11 carries.

1140

Mr. Kormos: Mr. Chair, I invite you to proceed from sections 12 through 14.

The Chair: If that's the will of the committee, I invite commentary on sections 12, 13 and 14. Seeing none, I will now move to block consideration. Shall sections 12, 13 and 14 carry? All those in favour? All those opposed? Sections 12, 13 and 14 carry.

We'll now move to consideration of section 15. Are there any motions before the committee?

Mrs. Sandals: I move that clause 15(1)(b) of the bill be amended by striking out "his or her" and substituting "the."

The intent of this amendment, while it might seem trivial, is that, as it reads at the moment with "his or her licence," that would only apply to individuals. With "the licence," it would apply to both individuals and business entities, the businesses that are licensed.

The Chair: Any further debate or commentary on motion 9? Seeing none, we'll now move to consideration of motion 9. All those in favour? All those opposed? I declare motion 9 carried.

Shall section 15, as amended, carry? I declare that section carried.

With the committee's indulgence, we can move to block consideration of sections 16 to 37, inclusive.

Mr. Kormos: No, Chair, sections 16 to 22, inclusive, please.

The Chair: I'll accept that. Sections 16 to 22, inclusive: Seeing no objections, is there any debate on those particular sections? Seeing none, shall sections 16 to 22, inclusive, carry? All those in favour? All those opposed? Seeing none, sections 16 through 21, inclusive, carry.

We'll now move to consideration of section 22.

Interjections.

The Chair: Did I miss one?

Mr. Kormos: Fair enough. Go ahead. Let's do 22. I'm going to support it. I'm not going to suggest that I have anything by way of debate around it.

The Chair: Is there any motion before the floor on section 22? Seeing none, we'll move to the vote. Shall section 22 carry? Carried.

We'll now move to consideration of section 23.

Mr. Kormos: It is incredible that, in a regulatory regime designed to license and set standards for security guards and private investigators, the government would include in its bill warrantless searches. There's just, in my view, no room in a democratic nation for warrantless searches. The Criminal Code and criminal law provide for any number of instances of entry where there's true emergency, where lives are at stake, etc., and to contemplate warrantless searches—and I appreciate the language: "by reason of exigent circumstances it would be impracticable to obtain the warrant."

The JP's on a bender and unavailable until after the weekend; there is no JP in town because they're all at a convention at the Delta hotel in Ottawa; I didn't have any search warrant forms for the JP to sign; if I didn't knock down the door and obtain the item now, the party might have burned it or destroyed it. We don't do warrantless searches in these sorts of circumstances. I know that they've appeared from time to time in bills, and from time to time the government—for instance, on the marijuana grow-op, the government was very good about pulling the warrantless searches. Do you remember that, Mr. Dunlop?

I want to indicate that I will be voting against this section and will be asking for a recorded vote. I know it doesn't apply to a dwelling place and it recognizes the sanctity of the dwelling place, but for a corporate body, for instance, their business office is their dwelling place.

The Chair: Is there any discussion on section 23? Seeing none, we'll proceed to the vote.

Mr. Kormos: Recorded vote.

Ayes

Brown, Brownell, Flynn, Sandals.

Nays

Dunlop, Kormos.

The Chair: I declare section 23 carried.

Again, with the committee's indulgence, I'd ask for block consideration of sections 24 to 38 inclusive. Are there any objections? Seeing none, I open to floor for debate on sections 24 to 38.

Mr. Kormos: I note that once again this takes us up to the wacky section 35, which I expected the government to amend. Although it protects the floorwalker, the undercover security guard, from having to wear a uniform, it does not protect that person from the requirement that, on request, that person identify himself or herself as a security guard and, on request, produce his or her licence. Nor does it address the concern raised by the security guard who spoke to us in London about the privacy issue.

Again, not all security guards are going to be doing the same kind of security work. We know that police officers—it was a lengthy process, as I recall it—it seems to me across Ontario now wear identification as a matter of course. But that hasn't always been by way of names; it's been by way of number, amongst other things.

I just think it's wacky that if a person is doing so-called undercover work as a security guard—we had security personnel speak to this, to the committee—if you suspect that they're a security guard, you can go up to them and say, "Are you a security guard?" And they have to go, "Yes." Then you say, "By the way, pal, let's see your licence," and they've got to produce it to you, otherwise they've committed an offence under the act.

I use floorwalkers in a retail establishment first and foremost. Somebody suggested, "Well, that might be a good deterrent," because if you knew there was the security guard tailing you, then you wouldn't boost things. That speaks for itself. If you think there's a security guard there, of course you don't boost things. But if you ask the person and they don't comply by identifying themselves as a security guard, you either boost it—not you, but people in general—or you use your discretion. But surely there are other more complex circumstances where security guards are doing protection of property or protection of persons work, where we shouldn't expect a security guard to have to identify himself or herself as a security guard if they're doing certain types of activities. I just don't know why the government didn't respond to that.

The other concern is around the identification. Ms. Sandals may be rushing to point out the standard of the licence. I'm sure the licence will be defined or described in the regulations, but is that going to include, for instance, surnames of people as compared to identification numbers?

I appreciate the problems. We want the whole issue to be transparent. We want security guards to be accountable. At the same time, I want to protect the woman—not that I want to single out women as people who need protection—who maybe has had regrettable experiences with stalkers and who's got some wacko who wants her identification so as to track her down. Once again, for eight or nine bucks an hour, it's not worth it. We're not talking about the active parapolicing type of security guards, the ones who are out there performing policing work, who may perhaps be expected to be held to a standard more akin to police officers. We're talking about somebody making eight bucks an hour, keeping food on their and, more often, on their kids' table. What are we doing to protect those people—we had that concern addressed to us in London—and what are we doing about the bizarre scenario of the undercover security person who doesn't have to wear a uniform, but you can finger him or her by simply saying, "Are you a security guard?" and they have to answer?

1150

The Chair: Further comment on block consideration of sections 24 to 38? Mrs. Sandals.

Mrs. Sandals: Simply to note in terms of the floorwalker, first of all, if we look at section 34 around private investigators, recognizing that private investigators may, in fact, be working totally undercover, that is allowed. So if somebody is acting undercover as a private investigator, there is not a requirement for identification—only if they are representing themselves as a private investigator at the time. For private investigators working undercover, there would be an exemption.

With respect to the issue of the floorwalker, it would seem that at the point that somebody goes up and says, "I've figured out you're the floorwalker," they've blown their cover at this point anyway. That is, the purpose, which is to be the unnoticed fly on the wall, has already been blown by the person who said, "I've figured out who you are." It isn't like there's some breach of security

here; it has already been breached in the sense that they've been "made," if I can sort of use the street talk thing.

In terms of the privacy issue, I think there are a lot of things where, if you are in the business of interacting with the public, which we seem to have a security guard doing, and representing oneself as having some protective role, then part and parcel of that is that you do need to be willing to identify who you are if you're going to carry out that role. But I would note that when we were looking at that particular license at the London hearings, I did in fact look at it because I was interested as to what personal information was on that license.

The license had the name; it did not have an address, it did not have any contact information. In producing the license, all that you have offered up is the name. You are not offering up information beyond the name, which would allow you to stalk, follow home or pick out of the phone book—whatever—that person, because there was no information other than the license number, the registrar's signature and the name of the holder that would be useful. It did not have an address or a birth date or all those other things that you might think of as identifying information on it.

Mr. Kormos: Again, I'm not going to belabour the point, but gosh, you can't even get a flight attendant's last name, for obvious reasons. They prefer that only their first names are used to avoid people identifying them in any number of ways or manners. The world has changed dramatically; we all know that. In any number of businesses, call centres that you do business with, you can't get a last name for a person. Even if you want to speak to his or her manager and complain about how that person, in your view, mishandled something, there are no last names, for that very same reason.

I hear what you're saying, but all I'm saying is I heard what the security guard said, the woman who was before us. I think it's something that the government should look at very carefully in the regulatory process.

Mrs. Sandals: On the other hand, if you are a floorwalker and you're about to escort somebody out of the store, call the police, whatever, then there would seem to be some reasonable public expectation that that person should be able to show some official authorization indicating that they are a duly licensed security guard and entitled to be doing what they are doing.

That proof of authority, if you will, to say, "I'm sending you over here to this room to be questioned because I think you're shoplifting" or "I'm escorting you out of the building," that duly authorized proof that you are what you're representing yourself to be is the licensed card from the registrar. So I understand that people might be concerned, but if you're going to have that sort of interaction with the public, what the Shand inquiry tells us is that you must then be prepared to be able to identify that you are what you're representing yourself to be.

Mr. Kormos: Again, precisely the point. Not all security guards are doing the same kind of work. I already said that we accept—all of us, I think—that parapolice, people doing police or quasi-police work, are held to a higher standard, a standard closer to policing.

A woman earning eight bucks an hour sitting at an entryway to a plaza—I can't even begin to imagine or exhaust all the circumstances. I'm saying that for eight bucks an hour, she may well warrant some consideration in the extent to which she has to identify herself by way of, let's say, a surname. All I'm saying is that the government should reflect on this in its regulatory process and consider that, once again, in the multiple classifications, there may well be different standards required for the level of identification.

The Chair: Is there any further debate on block considerations of sections 24 to 38? Seeing none, we'll now proceed to the vote. All those in favour of block sections 24 to 38? All those opposed? I declare those sections 24 to 38 carried.

I advise the committee that we have before us a proposal for a separate new section 38.1. Are there any motions before the committee?

Mr. Dunlop: I move that the bill be amended by adding the following section:

"Reports on use of force

"38.1 A licensee shall keep a record, containing all prescribed particulars, of all incidents in which the licensee used force while acting as a private investigator or security guard, and shall furnish a copy of the record annually to the minister on or before the prescribed date."

During the committee hearings we heard a number of times, it was brought up, about the use of force and the concerns the general public has with security guards or private investigators using force. I felt that it would be proper to enshrine it in the legislation, as opposed to some regulation later on, and to make it clear along with the other parts of section 38 as well.

I'd ask the committee to support this. I believe that it would be very, very helpful for the ministry to be able to monitor from the licensees any number of times that use of force had actually taken place. In some cases, there might not be a cause for any use of force, but I think if you look at the overall intent of the bill and what private security guards and private investigators do, as opposed to police services, it would be good over a long period of time to have a record on the use of force.

The Chair: Any further debate on PC motion 10?

Mrs. Sandals: One of the things that didn't exist in the past and which the Shand inquiry recommended and which we have followed through on is an extensive complaints and investigation process. In fact, we were just talking about the power of investigators under this act when investigating security breaches, or at least breaches of the law, so that there is now a complaints process which has been put in place which has extensive powers for the registrar to initiate an investigation, an extensive complaints resolution process, powers for the registrar to remove a licence if it's found out that people or businesses that have been licensed are acting inappropriately.

None of this ever existed before, and what that complaints and investigations process will allow is that when there has been an inappropriate use of force, the person who is subject to the inappropriate use of force will be able to lodge a complaint. The registrar, by definition, because the registrar will be the focus of all the complaints, will be able, through the complaints process, to have information about the inappropriate use of force.

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If it should become necessary at some later date to have a register of every use of force, then that would be possible under the regulation, but at this point I think we would feel that we need to, first of all, get some experience with complaints around the inappropriate use of force because that's, after all, what we're all concerned about: that we have a way of collecting information about the inappropriate use of force. That already exists under the complaints and investigation language.

Mr. Dunlop: I know you're zeroing in on the complaints section, but what I'm saying here in this motion is that I feel it would be appropriate for anyone holding a licence in any particular area to actually be able to report on a yearly basis the number of times. Many of these cases may never need to be complained about or even reported in any other way, but it's an opportunity for the ministry to take a look at each licence at the end of each year and be able to monitor the number of times that an individual holding a licence has actually had to report it.

If you're starting out fresh with a new bill and a new intent in the legislation, I think it's appropriate that we monitor something as important as use of force. We all know that the use of force is a very important issue with the police services when it comes to this bill. I'm not saying for one second that the complaints division section under the registrar doesn't have an appropriate place, but I do think that when use of force is such an important issue around the bill, the licensee should, on the honour system, be able to provide a list each year on the number of times he's actually had to use force.

I ask for a recorded vote on this as well, Mr. Chair.

The Chair: Is there any further debate or consideration on this motion? Seeing none, we'll now proceed to the vote.

Ayes

Dunlop.

Nays

Brown, Brownell, Delaney, Flynn, Sandals.

The Chair: I declare this motion defeated.

We'll now move to consideration of section 39. Are there any motions before the committee? Seeing none, we'll proceed to the vote. All those in favour of section 39?

Mr. Dunlop: Recorded vote.

Ayes

Brown, Brownell, Delaney, Flynn, Kormos, Sandals.

Nays

Dunlop.

The Chair: I declare section 39 carried.

We'll now move to consideration of section 40. Are there any motions for the committee?

Mrs. Sandals: This is simply a translation glitch. I move that the French version of paragraph 4 of section 40 of the bill be struck out and the following substituted:

"4. Agent, dans une acception autre que celle d'agent de sécurité."

Le Président: Merci, madame Sandals. Nous procédons au vote.

Is there any further debate on this particular item? Seeing none, all those in favour of government motion 11? None opposed. Carried.

We'll now move to, with your indulgence, block consideration of sections 41 to 52, inclusive. Seeing no objection and no further debate, all those in favour of block consideration of sections 41 to 52, inclusive? All those opposed? I declare those particular sections carried.

Now, consideration of section 53: Are there any motions for the committee?

Mr. Dunlop: New subsection 53(1.1): I move that section 53 of the bill be amended by adding the following subsection:

"Matters that must be included

"(1.1) The code of conduct must include standards respecting,

"(a) when a private investigator or security guard may use force and the level of force that may be used in carrying out his or her work;

"(b) activities, normally performed by a police officer, that may not be performed by a private investigator or security guard; and

"(c) when a private investigator or security guard is obligated to call in the services of either the Ontario Provincial Police or the local municipal police service, or both."

The Chair: Is there any further commentary on PC motion 12? Mrs. Sandals.

Mrs. Sandals: Again, the code of conduct is going to be specified in regulation, and what should be in the code of conduct will be done in consultation with the stakeholders. So I believe that we will already be able to deal with that.

But I've got some particular concerns about the matters that are specified here, in particular item (c), which talks about specifying in the code of conduct "when a private investigator or security guard is obligated to call in the services of either the Ontario Provincial Police or the local municipal police service, or both." Going back to my previous comment about regulations and enshrining things in legislation, I actually have a bit of a horror of legislation which tries to do one

size fits all for the entire province, when it may be quite inappropriate. It seems to me that when it would be logical to call the police—when you know that the nearest police station is five minutes away or two minutes away or whatever—in an urban situation could be dramatically different from when you would call the police if you were dealing with a situation in northern or rural Ontario, where the nearest police station could well be 30 minutes or an hour away, and if you happened to be dealing with this in February, there may be a blizzard and nobody's getting here for three days until the road gets plowed. So I've got a bit of a horror in setting up an expectation that we can be totally black and white about what should probably be a local judgment call depending on the local circumstances that present themselves.

There is the facility to do the code of conduct in regulation. I am very much concerned about getting to this degree of prescriptiveness in legislation, quite frankly, without consulting our stakeholders, because we have not consulted the stakeholders about this degree of prescription.

Mr. Dunlop: It was my understanding, in listening to the Ontario Provincial Police Association and the PAO, that in both of their presentations they asked for these types of amendments to be made to strengthen—they need an opinion on this, as far as I'm concerned. They want to know where they stand in relation to the code of conduct.

Clearly, you're not going to support this, but I'll ask a question back to the parliamentary assistant: Is it the intent of the minister to establish a code of conduct?

Mrs. Sandals: Absolutely.

Mr. Dunlop: So why wouldn't we, in that case, then, have "shall" in there instead? Why is it "may" instead of "shall" in 53(1)? I'm just backing up to the code of conduct in 53(1): "The minister may, by regulation, establish a code of conduct." Why wouldn't it be, "The minister shall, by regulation, establish a code of conduct"?

Mrs. Sandals: Because I think you'd normally tend to give some flexibility in terms of the timing around when that's going to happen.

Mr. Dunlop: I'm hoping it's going to happen. If you're saying it's going to happen, I hope it's going to happen immediately, not 10 years from now or something like that. I'm curious as to why we even have that in there if it's "may." I'm trying to strengthen the responsibility of the police services in relation to what this bill means to their responsibilities.

Mrs. Sandals: In terms of police responsibilities, police responsibilities are laid out under the Police Services Act. This does not describe police responsibilities; the Police Services Act describes responsibilities. But it is quite normal to say in legislation that the minister may prescribe a regulation, so there's nothing particularly unusual about that language.

The Chair: Is there further consideration or debate on PC motion 12? Seeing none, we'll now move to consideration.

Mr. Dunlop: Recorded vote, please.

Ayes

Dunlop, Kormos.

Nays

Brown, Brownell, Delaney, Flynn, Sandals.

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The Chair: I declare PC motion 12 defeated.

We'll proceed to consideration of section 53. Shall section 53 carry? All those opposed? I declare section 53 carried.

We'll now move, with the committee's indulgence, to block consideration of sections 54 to 58, inclusive. Is there any debate on these sections? Seeing none, all those in favour of sections 54 to 58? All those opposed? I declare those blocked sections carried.

We will now move to the housekeeping items.

Shall the title of the bill carry? Seeing no debate on that, the title of the bill carries.

Shall Bill 159, as amended, carry?

Mr. Kormos: It is regrettable that this long-awaited opportunity to protect the public with an updated Private Investigators and Security Guards Act has been proceeded with, in my view, in such a hasty way, because it has failed the public and workers in this industry in a few very significant ways.

First and foremost, I believe it is premature to pass this bill in committee, never mind send it back to the House, until 30,000-plus security guards in Ontario have some clear understanding of whether or not they're going to have a job the day after this bill is proclaimed.

I'm not trying to pretend by any stretch of the imagination—I'm going to talk about the parapolice in just a minute—that the people out there doing parapolicing, the people in the blacked-out windows of the pseudo police cars, with the guard dogs, the patrol dogs and the Cool Hand Luke dark sunglasses—look, part of the industry is genuinely problematic and there have to be standards for people who are engaged in that type of parapolicing: company training and testing.

But we're talking about a whole other world as well. We're talking about plain old security guards—if he or she doesn't mind me saying so—who are working in a historically low-wage industry, who are there because they've lost other jobs that were taken away from the communities they live in, whether it's northern Ontario or the south. We've seen what happens to people who lose their jobs in the mill or in the steel plant. Security guard is one of the options for these people.

They've clearly passed muster in terms of the basic standards regarding character, because they're licensed. They clearly have managed to work and keep those licences because they've still got those licences and they're still working. I believe there is a type of security guard work—what I and others have called that very passive level of security guard work—that doesn't require as onerous a standard, as onerous a testing, as

onerous a training program as the parapolicing. We may well have a standard that's higher than the current one, but in the course of achieving that end, I do not want to see anywhere from 15,000-plus people lose their jobs here in Ontario. It's easy to say we can have them submit to performance testing, but you and I both know that for a whole lot of folks, especially older folks, that in and of itself is a daunting exercise.

I'm not prepared to support this bill for completion here in this committee until we have a strong, clear assurance to those security guards. I say the way to do it is to grandparent all of them as that first level of passive security guard. That to me would be consistent with everything this committee and the government want to do around this area.

The final area is with respect to what's happening here in terms of a regime being created that will institutionalize private policing. I regret the growth of private policing. I understand the history: I understand the history of Pinkerton's and the Rockefellers and shooting down striking coal miners. The history of policing had its origins in North America as private police for capital interests—very much so. But the justice thing came about as the development of a public police force. Regrettably, because of funding shortages for municipalities, more and more elements of that municipality have to rely upon private policing. This bill institutionalizes that, and will encourage the development of parapolice, private policing—to the detriment, I am convinced at the end of the day, of public police.

Those are my concerns, as they remain, about the bill.

Mrs. Sandals: Just let me briefly respond by saying that the Shand inquiry pointed out a number of serious structural problems within this industry. We need to respond; we are responding.

One of those issues was a huge differentiation in the training, the skill level and the integrity, quite frankly, of various participants in the industry. While Mr. Kormos is absolutely right, that there are all sorts of people out there who are doing a great job, unfortunately it's impossible to sort out who is doing a great job, who has an appropriate skill level, who is following an appropriate code of conduct until we actually get into the industry and deal with this on a case-by-case basis. That is why we are insisting that everybody will need to go through some form of testing.

As I've mentioned previously, the Steelworkers are represented on the advisory committee, so there is absolutely nothing that would prevent the representatives of the existing guards working with the advisory committee to find some sort of skills-base testing that could be applied to those who are already in the industry. But that's a conversation that they are going to have to have—the workers' representatives with the advisory committee. But in terms of doing some sort of blanket grandfathering, that would run exactly contrary to the purpose of the act.

I do want to assure people that there is extensive regulatory authority which lets us determine classes of security guards and determine the training and testing which is appropriate, and that allows us to, as you said, look at those people who are at the watcher end versus those people who are having confrontations with the public, and make sure that we can do that through the regulatory authority. Let me assure you that the government is quite concerned that we not have a lot of firms who are doing parapolicing, and that is precisely why we are bringing in a bill that has teeth, because we no more want to see parapolicing or private policing in the community than you do.

Mr. Dunlop: I just had one further comment. Very briefly, I am disappointed. It has taken 40 years to get to the stage where we're having an amended bill or a new bill on the private security guards. I think it's disappointing—to me, anyhow—that with the Shand inquiry and the 22 recommendations they came forward with, so many of the details of those recommendations are left up to regulation. I find that part disappointing. I'm not sure at this particular time where our caucus will stand on this bill, whether we'll be supporting it in the House or opposing it.

I've heard the government, when they were opposition, say so many times, "Why do we have so many regulations?" And yet here we are today; basically, the whole bill is relying upon regulation. I just want to put that on the record.

The Chair: Is there any further debate?

Mr. Kormos: A recorded vote.

The Chair: Recorded vote. Shall Bill 159, as amended, carry?

Ayes

Brown, Brownell, Delaney, Flynn, Sandals.

Nays

Dunlop.

The Chair: I declare Bill 159, as amended, carried. Shall I report the bill, as amended, to the House?

Mr. Kormos: A recorded vote.

The Chair: Recorded vote.

Ayes

Brown, Brownell, Delaney, Flynn.

Nays

Dunlop, Kormos.

The Chair: Is there any further business before this committee?

Mr. Kormos: Thank you, Chair; thank you to research for the security brief.

The Chair: Thank you, Mr. Kormos. This committee stands adjourned.

The committee adjourned at 1219.

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Mr. Dudley Cordell, counsel,
Ministry of Community Safety and Correctional Services

Clerk / Greffier
Mr. Katch Koch

Staff / Personnel
Mr. Ralph Armstrong, legislative counsel