SP-38

ISSN 1710-9477

Legislative Assembly
of Ontario

Second Session, 38th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 38e législature

Official Report of Debates (Hansard)

Tuesday 5 December 2006

Journal des débats (Hansard)

Mardi 5 décembre 2006

Standing committee on social policy

Ministry of Government Services
Consumer Protection and Service
Modernization Act, 2006

Comité permanent de la politique sociale

Loi de 2006 du ministère
des Services gouvernementaux
sur la modernisation des services
et de la protection
du consommateur

Chair: Ernie Parsons
Clerk: Trevor Day

Président : Ernie Parsons
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Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
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Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

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

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 5 December 2006

Mardi 5 décembre 2006

The committee met at 1601 in committee room 1.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Ernie Parsons): I will call the meeting to order. I would first of all note that this is now my second day as Chair and I have not fully matured in the role. I have read a book called Committee Chairing for Dummies, so I think I'm prepared for any questions as long as I get 10 minutes to read the book again.

Mr. Peter Kormos (Niagara Centre): That's appropriate to us as members, I suppose.

The Chair: I don't think I'll go there.

I would ask your forbearance with me if I'm a little slow or I make a decision that you're not in agreement with but far too polite to raise the issue with me.

The first item we need is a new individual representing the government on the subcommittee. Is there a nomination?

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale): I move that the membership of the subcommittee on committee business be revised as follows: that Mr. Peter Fonseca be appointed in place of Ms. Wynne.

The Chair: Any discussion or debate?

Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford): What was that, again?

The Chair: Mr. Fonseca will be the representative on the subcommittee.

Interjections.

The Chair: Shall that carry? Carried.

MINISTRY OF GOVERNMENT SERVICES CONSUMER PROTECTION AND SERVICE MODERNIZATION ACT, 2006

LOI DE 2006 DU MINISTÈRE DES SERVICES GOUVERNEMENTAUX SUR LA MODERNISATION DES SERVICES ET DE LA PROTECTION DU CONSOMMATEUR

Consideration of Bill 152, An Act to modernize various Acts administered by or affecting the Ministry of Government Services / Projet de loi 152, Loi visant à moderniser diverses lois qui relèvent du ministère des Services gouvernementaux ou qui le touchent.

The Chair: We're ready to do clause-by-clause. There have been no amendments put forward for sections 1 to 7 inclusive. Shall there be any debate on the issue?

Mr. Kormos: There's a whole lot of stuff in this bill, no two ways about it. At the same time, the thrust of the bill, insofar as most of us are concerned, is with respect to the Land Titles Act and the land titles and land registry system, and a response to the so-called identification theft that has resulted in some very serious frauds on innocent victims. That's number one.

Number two, with respect to the gift cards, there is not much to talk about here in committee, because that's all reserved to regulation.

The area that has erupted as one of the most contentious in this legislation is the area around funeral homes. I want to indicate that that's where much of our focus will be, on the area of land titles and on the area of funeral homes. Again, the alcohol stuff is going to be done by regulation. It's not transparent in that it's not in the bill per se. So I just want to indicate that that's where our focuses are going to be, on the land titles stuff and on the funeral home stuff.

The Chair: Further debate? Mr. Tascona?

Mr. Tascona: I'm ready to proceed. It's a very lengthy bill, as you know, and we just want to make sure we know where you are, Mr. Chair, and we're comfortable.

The Chair: I'm with you.

Mr. John O'Toole (Durham): I just have a comment. I just want to acknowledge that it's highly exceptional in the 10 or 11 years that I've been here that Minister Phillips has on three separate occasions had correspondence with caucus members, which I think has been helpful. I want to put that on the record, and it's a positive compliment. He's working, it looks like, behind the scenes with the stakeholders in the land title insurance and mortgage fraud. In the issue around schedule D, in the funeral section, it's been very helpful.

It's my understanding that this package I have is all the amendments. Where are the opposition amendments? Are they here?

Mr. Tascona: Yes, they're in there.

Mr. O'Toole: They're not in here.

Mr. Tascona: We'll share them.

Mr. O'Toole: I've got only one set. I need a set of those, to be sure.

I appreciate being able to put that on the record, Chair, representing my constituents in the riding of Durham, because the funeral home business felt disadvantaged with the change in the rules. This was dealt with by a justice's report—the Adams report, I think—as well as in Bill 209, a previous bill. The differences between traditional funerals as well as the role of the cemeteries in that act and the funeral home act—I just want to put it on the record because I may not be able to stay for all of the amendments today. I want to mail that out to my constituents.

The Chair: Any other debate?

Mr. Kormos: Chair, we're dealing with—

The Chair: Sections 1 to 7.

Mr. Kormos: Sections 1 through 7, inclusive; yes, sir.

The Chair: Yes. The question is, do the members wish to deal with one motion dealing with sections 1 to 7, inclusive? Agreed.

Then, I will ask, shall sections 1 to 7 carry? Carried.

That moves us to section 8. There is a government motion on 8(1), moved by—

Mr. Vic Dhillon (Brampton West–Mississauga): I move that the definition of "Internet gaming business" in section 1 of the Consumer Protection Act, 2002, as set out in subsection 8(1) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"'Internet gaming site' means an Internet site that accepts or offers to accept wagers or bets over the Internet."

The Chair: Do you wish to speak to your amendment?

Mr. Dhillon: This is, I believe, a technical amendment to clarify the scope of the prohibition.

The Chair: Any other discussion?

Mr. Kormos: This warrants a little bit more than that. The original definition was "'Internet gaming business' means a supplier that accepts or offers to accept wagers or bets over the Internet." Now you're talking about an Internet gaming site, which is in many respects one remove from the actual corporate body. So what does that do in terms of the balance of the amendments and the section itself?

Mr. Dhillon: Thank you, Mr. Kormos. Based on consultation with our stakeholders, all of them, they felt that the "Internet gaming business" term was very ambiguous and the better term "Internet gaming site" is the more appropriate one to go with.

Mr. Kormos: Chair, if I may, of course, they're two very different things. Perhaps some of the policy people would help us with this, because I really want to know. The site is very different from the business, the operating mind, if you will. So if we can get some help with this.

Mr. Dhillon: Yes. Can we have—

The Chair: If you would state your name prior to responding.

Ms. Deborah Brown: I am Deborah Brown. I am with the Ministry of Government Services.

Mr. Kormos, the purpose of changing it from "Internet gaming business" to "Internet gaming site" was that we wanted to be able to clarify that the prohibition applies to the advertising of websites and not the advertising of the parent companies. For example, if there was a parent company that was advertising, we did not want to include them in the prohibition; only the actual site that may be part of their company.

Mr. Kormos: I appreciate that. I can understand that. So you want to prohibit the advertising of the actual www.blowyourbrainsoutwiththisweekspaycheque.com site. But you still want to permit a company to advertise Poker—what are some of the names of these? I don't know—

Mr. O'Toole: Poker-dot.

Mr. Kormos: Poker-dot. So Poker-dot can put up big billboards that say, "Poker-dot-dot." You know what's implicit in that, right? That's not the name of the site, but we know that at some point or another—do you understand what I'm saying?

Ms. Brown: I understand what you're saying.

Mr. Kormos: Is it fair to say that the existing legislation is broader, or the existing language in terms of—you go on to amend all subsequent sections that deal with this, right? But the existing amendment is broader than what you would propose, or narrower?

Ms. Brown: It's broader.

Mr. Kormos: Yes. So why are we moving from a broader to a narrower?

Ms. Brown: We're moving to a narrower because we don't want to capture a company that may be a parent and have several companies underneath them. We're going after the actual site. So if there is a site with a dot-com, and it's a site where you pay to gamble, then that is what we are trying to prohibit. We're not trying to prohibit the parent company.

1610

Mr. Kormos: I hear you. But, Chair, if I may—and I'm not going to carry this on at undue length—I think this is a serious error. This is the like the games that cigarette companies played around sponsoring tournaments and things like that. You know, like Benson and Hedges wasn't selling cigarettes by having huge billboards sponsoring the Benson and Hedges golf tournament, what have you. They were, at the end of the day. It's as simple as that. Do you understand what I'm saying, Parliamentary Assistant?

I'm not going to support the amendment. I think by making it narrower, you create a backdoor there, and it won't take long—I have no doubt that the lobbyists were successful. Now I've got an idea of who they were lobbying on behalf of, because you effectively will leave the door very much open to the Benson and Hedges golf tournament syndrome, which is as insidious a proposition as a Benson and Hedges "Smoke one and live longer" billboard.

I hear what you're saying. I appreciate the clarification. I'm disappointed in the government in this respect. I will not be supporting the amendment.

The Chair: Any other debate? Ready to vote?

Mr. Kormos: Recorded vote, please, sir.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: The amendment is carried.

The next one is government motion 2.

Mr. Dhillon: I move that section 13.1 of the Consumer Protection Act, 2002, as set out in subsection 8(2) of the bill, be struck out and the following substituted:

"Advertising illegal site

"13.1(1) No person shall advertise an Internet gaming site that is operated contrary to the Criminal Code (Canada).

"Facilitating

"(2) No person, other than an Internet service provider, shall arrange for or otherwise facilitate advertising prohibited under subsection (1) on behalf of another person.

"Meaning of 'advertise'

"(3) For the purpose of subsection (1), a person advertises an Internet gaming site only if the advertising originates in Ontario or is primarily intended for Ontario residents.

"Same

"(4) For the purpose of subsection (1), 'advertise' includes,

"(a) providing, by print, publication, broadcast, telecommunication or distribution by any means, information for the purpose of promoting the use of an Internet gaming site;

"(b) providing a link in a website for the purpose of promoting the use of an Internet gaming site, but does not include a link generated as the result of a search carried out by means of an Internet search engine; and

"(c) entering into a sponsorship relationship for the purpose of promoting the use of an Internet gaming site.

"Application

"(5) This section applies despite subsection 2(1)."

The Chair: Does the mover wish to speak to the amendment?

Mr. Dhillon: Again, this is an amendment of a technical nature.

The Chair: Discussion?

Mr. Kormos: On the contrary, it's not technical at all. It changes the whole thrust of the prohibition. You used to prohibit, in the original amendment, advertising a gaming business, a "supplier that accepts or offers to accept wages or bets over the Internet." Now you're just prohibiting the site. In other words, you can't have a billboard that says www.pokerplay.com, but you can have a billboard that says, "Play poker online, illegally, operated by Conrad Black and Barbara Amiel until their funds are released by the courts. Google us and we won't be hard to find." That ad would be permitted. I'm being hyperbolic, for sure, not about Conrad Black and Barbara Amiel but about the language that will be used. It's not technical at all, sir. You're shutting the front door but you're leaving the backdoor wide open. They got to you. I find that remarkable. They got to you, and it's a shame. I have no more comments. I won't be calling for a recorded vote. New Democrats oppose the change of the definition, and this flows from that change of definition.

The Chair: Any further debate? Shall I call the question? Shall the amendment carry? Those in favour? Those opposed? Carried.

That brings us to amendment 2.1.

Mr. Tascona: Pull them.

The Chair: Pull them? Okay, so we move in the package to amendment 3. Moved by?

Mr. Dhillon: I move that subclause 116(1)(b)(i) of the Consumer Protection Act, 2002, as set out in subsection 8(12) of the bill, be struck out and the following substituted:

"(i) in respect of part II, Consumer Rights and Warranties, subsection 10(1), section 12, subsections 13(2) and (7) and subsections 13.1(1) and (2)."

The Chair: Do you wish to speak to the amendment?

Mr. Dhillon: Yes.

Mr. Kormos: Call the question.

The Chair: Okay. Those in favour? Opposed? Carried.

The next question is, shall section 8, as amended, carry? Any debate?

Mr. Kormos: Recorded vote, please.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: The section carries.

Sections 9 to 13 have no amendments presented. I'll call the question. Shall sections 9 to 13 carry? They are carried.

That moves us to section 14, and we have amendment 3.1. Moved by?

Mr. Tascona: I move that section 14 of the bill be amended by adding the following subsections:

"(0.1) The Land Registration Reform Act is amended by adding the following section:

"'Certification

"'13.0.1(1) A document that is described in subsection (2) shall not be registered under the Land Titles Act or the Registry Act or deposited under part II of the Registry Act unless it contains the certification described in subsection (3) given by the prescribed person.

"'Application

"'(2) Subsection (1) applies to,

"'(a) a document in electronic format as defined in section 17; or

"'(b) a prescribed document that is not in electronic format as defined in section 17.

"Certification

"'(3) A certification shall specify that,

"'(a) the person giving the certification has authority to act for the prescribed person who gave the authority to act in relation to the prescribed class of document and the latter person has legal capacity to give the authority;

"'(b) the person giving the certification has taken reasonable steps to confirm the identity of the person who gave the authority to act;

"'(c) the document complies with the requirements for registration or deposit under the Land Titles Act or the Registry Act; and

"'(d) the person giving the certification has evidence showing the truth of the statements described in clauses (a) to (c).

"(0.2) Subsection 14(1) of the act is amended by adding the following clause:

"'(c) prescribing anything that is described in section 13.0.1 as being prescribed;'"

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The Chair: There is some question as to whether this falls outside the scope of the bill, but for purposes of debate, I'm going to have it stand. Do you wish to speak to the amendment?

Mr. Tascona: Yes. This deals with the Land Registration Reform Act in terms of documents electronically transmitted or a prescribed document not in electronic format. This is just to ensure that the document is certified and is a legitimate document, because a lot of transactions today in real estate are transmitted through electronic format. This is a certification to ensure that the document is what it purports to be. It's important that the documents going through the system are certified, to prevent identity theft.

Mr. Kormos: I think this makes eminent good sense. The weakness in the system clearly is with electronic registration. That is where the greatest potential is for fraud, because no actual documents are being examined by any clerk or officer who registers those documents. I think this is a modest proposal that will strengthen the system. New Democrats will support it.

The Chair: Any other debate? I'll call the question.

Mr. Tascona: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Kular, Leal, Ramal.

The Chair: The motion is lost.

That take us to motion 4, moved by Mr. Dhillon.

Mr. Dhillon: I move that the Land Registration Reform Act, as amended by subsection 14(4) of the bill, be amended by adding the following section:

"Withdrawal of suspension

"23.2.1(1) At any time after suspending the authorization of an electronic document submitter under section 23.1, the director of land registration may, by order and without holding a hearing, withdraw the suspension if that director has not revoked the authorization under section 23.2 and if that director considers it in the public interest to withdraw the suspension.

"Service of order

"(2) If the director of land registration makes an order under subsection (1) withdrawing a suspension of an authorization of an electronic document submitter,

"(a) any notice of proposal that the director of land registration has served under section 23.2 with respect to the authorization is void and any hearing commenced under that section with respect to the authorization is terminated; and

"(b) the director of land registration shall serve the order on the submitter."

The Chair: Does the mover wish to speak to the amendment?

Mr. Dhillon: These provisions would provide powers to the director of land registration to safeguard the land registration system and titles to people's homes from unauthorized registrations. These amendments would ensure fairness, providing the suspended party with an expeditious process to deal with the suspension. It's a consumer protection mechanism against fraud, and the director will work with stakeholders to set guidelines in exercising this power.

Mr. Kormos: With respect, that's not a very satisfactory explanation of what the amendment does. The amendment permits the director, after suspending someone, to reinstate them without a hearing: "At any time after suspending ... the director of land registration may, by order and without holding a hearing, withdraw the suspension...." Why would the government contemplate the withdrawal of a suspension without a hearing?

Mr. Dhillon: I'm going to ask ministry staff to comment on that.

Ms. Kate Murray: I'm Kate Murray, with the Ministry of Government Services. The question was, why would we contemplate withdrawing the suspension without a hearing? We had consultation with our stakeholders with respect to this power, and the request was that there could be a situation where the electronic submitter could show to us that the suspension should be withdrawn and that that would not need a hearing, so we provided for that in the legislation.

Mr. Kormos: To be fair, that's what I presumed the intention was, because the intention is pretty apparent in the language of the legislation. But I've got to tell you, the suspension of a submitter's authorization is, in and of itself, a very serious move, because it's inevitably an impact on that person's livelihood. I'm not suggesting that directors would not contemplate erring on the side of caution, but perhaps one of the frailties in the legislation is that it doesn't—because there is this balancing act between providing access and ensuring the integrity of it.

How tightly, how rigidly do you control access to the point where you impede access without infringing upon the practicality of the electronic registration system?

With respect, I think there's a problem here. It boggles the mind that there should not be a hearing of some sort. I'm not suggesting that it be something that takes a whole lot of time to arrive at or that it necessarily takes a whole lot of time to deal with, but it seems to me that once a director has suspended authorization, that is a serious move in and of itself and there ought to be a hearing process before suspension is reinstated.

New Democrats will not be supporting this amendment.

Mr. O'Toole: Just one question. We received a memo today from the minister, and it follows up on what Mr. Kormos says. I maybe just need an explanation. It says, "The director would be required to notify the suspended party within two business days of the suspension, and would have to hold the requisite hearing within 10 business days. The amendments would also provide the director with the authority to withdraw the suspension without holding a hearing." I hope that means that if there's evidence presented, there is no hearing required that the person shouldn't be suspended. Is that what that means?

Ms. Murray: Yes.

Mr. O'Toole: So there has to be some clarification of whether the person should be suspended by some process other than a hearing.

Ms. Murray: Yes.

Mr. O'Toole: If that's what the amendment does, I am supportive of it.

Mr. Tascona: I don't favour any part of subsection 14(4) of the bill. I echo the comments of my colleague Peter Kormos. This was commented on at length by a number of lawyers and benchers of the law society in terms of what one is doing here. The process is flawed. This is not what we're supposed to be dealing with. If a lawyer is in trouble and is not doing their job, the law society is going to deal with them. There's LawPro, and everybody would be involved in that.

The director of land registration should be focusing on the integrity of the system, as opposed to being the one who's going out and doing the enforcement. That's not the role, in my view, of the director of the land registration system.

I don't support any of these amendments dealing with subsection 14(4). I think there is an enforcement agency to deal with certain types of individuals who are dealing with this, especially since the government has moved to ensure that the only people who can register are lawyers. We don't need another overriding body to deal with lawyers in terms of what they do with their job. Do you not understand that? The only people who are going to be able to register on the system are lawyers, so the only people who are going to be suspended from the system without a hearing and lose their livelihood in terms of dealing with the real estate system are lawyers. You've got the director of land registration not being required to hold a hearing, and cutting them off from their livelihood.

I don't think it's fair. I don't think the process is what it was intended to deal with. You don't even understand what you're doing here, and I think you were told in the public hearings what you are going to be doing. Any small-town lawyer out there—I'd be surprised if the lawyers out in Peterborough and smaller communities aren't saying, "What are you trying to do to me? There are already things in place to deal with me if I don't do my job. I don't need the director of registration to cut me off from doing my job."

This isn't right. We're not going to support this. Quite frankly, the government should scrap that whole section. They know they should do it, because of who they're putting the onus on in terms of who can register. I don't think you understand what you're doing.

1630

Mr. Kormos: This is the "Oops, we're sorry; we overreacted" amendment. Think about it. Look at the threshold for suspension: that "the director has reasonable grounds to believe" that a submitter has submitted a fraudulent document etc. That's not an unreasonable standard. Most of us are pretty familiar with it. It's pretty darn close to a prima facie case. So what are we saying? Understand what happens. If you're talking about a real estate lawyer and he or she gets suspended, if the suspension lasts for 24 hours, it means that all the deals he or she was supposed to close that day don't get closed and a whole lot of families don't move into their new homes and the buyers of their homes don't move into theirs. But then you can say, "Oops, we're sorry," after the person has been suspended for a day or two days? That invites, in my view, capricious suspensions, because the director knows that he or she could simply say, "Oops, we're sorry," and then reinstate you after you've lost all your closings for the next three days, and your reputation and your client base.

It seems to me that if you're allowing a director to consider relevant facts after the suspension, implicit in 23.1, as proposed in subsection (4), the suspension powers—"reasonable grounds to believe"—implicit in that is a director making reasonable inquiries. Why would a director, prior to suspending somebody, not make the reasonable inquiries that you're saying he would make after the suspension that would permit him to say, "Oops, I'm sorry"? Down where I come from, we'd call this doing things ass-backwards, it seems to me. That's down in small-town Ontario. That's what we'd call it.

The Chair: I'm not sure that's language that—

Mr. Kormos: It's not parliamentary, but it's what we'd call it down where I come from. I bet where you come from too they'd call it that.

The Chair: Never. We pronounce it differently.

Mr. Kormos: It's the dialect, the accent; I understand.

We can't support this. You had something to work with here, and you're taking a tenuously acceptable bill

down to the point where it's going to become contentious now. That's a shame.

The Chair: Any further debate?

Mr. O'Toole: I just want to put on the record that as long as—I'm content that the law society has no reason to question it and are going to take appropriate disciplinary actions for those participating in any fraudulent activity on registration. That's what this is about, technically. I'm happy. As a profession, they are self-regulating, and as such, the law society is supposed to deal with that in a disciplinary function. I would hope there would be dialogue between the land registrar and the law society, at least if there's suspicion. Would that happen in due process? If there's some client with something registered on title and you've been part of that, and you're satisfied that that's a professional action that's taken place, would you be in touch with the law society?

Ms. Murray: Yes, we are in touch with the law society and others such as the police.

Mr. O'Toole: Do they prosecute or discipline today?

Ms. Murray: Did the law society prosecute people? Yes.

Mr. O'Toole: And discipline?

Ms. Murray: And they discipline, yes.

Mr. O'Toole: Okay. Well, that's good. I'm happy. As the profession has been described here, it's their duty of care and responsibility as a professional to provide that service, and if somebody, through whatever recourse, suspects something, they're out of business, they've lost their reputation. That's pretty onerous. The law society should be taking care of it.

The Chair: If there's no further debate, I will call the question.

Mr. Kormos: Recorded vote, please.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: The amendment is carried.

Government motion 5, moved by Mr. Dhillon.

Mr. Dhillon: I move that subsection 23.1(3) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Length of suspension

"(3) A suspension made under subsection (1) shall last until the earlier of the following times:

"1. The time that a final determination is made under section 23.2 on the revocation of the authorization of the electronic document submitter.

"2. The time that the director of land registration withdraws the suspension under section 23.2.1, if applicable."

The Chair: Does the mover wish to speak to the amendment?

Mr. Dhillon: The reasoning is pretty much the same as for the last amendment.

The Chair: Any other discussion?

Mr. Kormos: If I may, this amendment responds to the last amendment, including the second consideration, and that is suspension by the director. So it's not unreasonable; it's necessary, in fact. So it's not contentious. But it flows directly from the last amendment.

Mr. Tascona: The government motions tied together here, 4 through 8, are all ridiculous. We won't support them because of what we said before. They're all related. They want to put in a certain class of people involved in the system and it's not fair. There's no due process. We won't be supporting any of them, so you can keep reading them.

Mr. O'Toole: Chair, can I ask a point of clarification of staff? Is it a lawyer actually doing the function, or is it some clerk appointed by the—

The Chair: If you could come to the table, please.

Mr. O'Toole: Does the lawyer actually do the registration? Can you attest to that? Or is it some clerk giving their PIN number or something? Is it the lawyer personally who does it, or is it someone with their PIN, someone in another function designated by the lawyer to do this?

Ms. Murray: If I understand your question, you're asking who does the registration.

Mr. O'Toole: Yes.

Ms. Murray: It's not limited to a lawyer to do a registration. A lawyer can do the registration, other office staff in a lawyer's office can do a registration and other people with licences to register in the electronic system who are not lawyers may also register documents, under the current provisions.

Mr. O'Toole: Thank you.

The Chair: Any further debate? I'm going to call the question.

Mr. Tascona: Recorded.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

O'Toole, Tascona.

The Chair: The motion is carried.

That moves us to 6.

Mr. Dhillon: I move that subsection 23.2(1) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Revoking access to database

"23.2(1) If the director of land registration has suspended the authorization of an electronic document submitter under section 23.1 and has not withdrawn the suspension under section 23.2.1, that director shall, within two business days of the suspension, notify the

submitter that he or she proposes to revoke the authorization."

The Chair: Do you wish to speak to the amendment?

Mr. Dhillon: It's pretty much similar reasoning as the last amendment.

The Chair: Any other debate?

Mr. Tascona: Recorded vote.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

O'Toole, Tascona.

The Chair: The motion is carried.

Amendment 7.

1640

Mr. Dhillon: I move that subsection 23.2(5) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be amended by adding "within 10 business days" at the end.

The Chair: Do you wish to speak to it?

Mr. Dhillon: Same as last.

Mr. Tascona: Recorded vote.

The Chair: Other debate?

Mr. Kormos: It is similar to the previous amendment, but the two also add a bit of a substantive change to these particular sections. In the last amendment, you create a two-day time frame and in this amendment you create a 10-business-days time frame. That's a considerable difference from the existing bill. But I still take us back to—because we're talking here about the two different stages: the suspension and the revocation. The problem is that there is no entitlement to a hearing or a suspension, even though the suspension can result in a suspension that's up to two days in which to notify the party plus 10 business days. That means 14 calendar days, give or take. If I'm not adding this up right, let me know. So that's 14 calendar days, and if it's a stat holiday, if the Monday or Friday is a stat holiday, not a business day, it could be 15. I hope I recall what constitutes business days. You talk about 15 days of suspension before the hearing on what began as a suspension, then an intention to revoke.

The overhead of some of these law firms is tremendous, because in fact it's the staff who do most of the work. Lawyers don't work hard; staff work hard. It's like politicians. Politicians don't work hard; it's the staff who work hard. You're talking about some law firms with tremendous overheads, and two weeks of being out of the scene can be devastating.

I'm not in any way, shape or form suggesting that we should not be rigid in terms of protecting the integrity of the system. That's the goal of the whole exercise here. I just find it increasingly peculiar as to what the role of the director is. It seems to me that the role of the director here is increasingly being enhanced as a post facto role. In other words, it isn't to gatekeep vis-à-vis documents coming into the system; it's to deal with a submitter after the fact.

The argument that's being inherently made in that is that the problem we have is a group of sloppy or negligent or criminally bent lawyers out there, or other people in the business. That's a very unfortunate perspective, because the perspective should be, "How do we strengthen the system inherently?" rather than simply say, "Well, if we punish people who"—look, even the lawyer who's going to knowingly peddle forged documents of participating frauds knows that at some point the jig is up, and he could care less: "So you suspend me. Well, I had my run." It's like you're at the slots. You've had a good two-week run and you're finally broke. You can at least walk away saying, "But I've had a good run," if you're inclined to do that sort of stuff.

This doesn't enhance the integrity of the system. It's all after the fact. What we need to hear from the government are ways to adequately screen the documents coming in, to prevent forged or fraudulent documents from being registered and relied upon. It's important to catch the perpetrators.

I just find it regrettable in view of how the government has amended the section so far. This isn't inconsistent. At least there's a time frame, within 10 business days, because, to be fair, the existing bill has no time frame, and that should be a cause for concern as well.

It just seems very peculiar that the person suspended has no right to a hearing, as I read the bill. A two-day suspension could be devastating at the end of the month, when deals are being closed. I don't know. I wish you well, Parliamentary Assistant, and I appreciate that you don't, at the end of the day, necessarily make all of these decisions around these types of amendments. It's regrettable too, quite frankly.

My Conservative counterparts here referred to the seemingly helpful letter that we got from Minister Phillips dated December 5. I was grateful for getting it too. I appreciate that the letter wasn't intended to deal with the minutiae, but it left an impression that the bill was being strengthened, improved, in accordance with submissions that have been made. I don't think so. Just as I say that you don't sit down at your computer, Parliamentary Assistant, and write these amendments, Mr. Phillips, the minister, doesn't sit down at his computer and write these letters. There's a whole department that's devoted to correspondence, amongst other things.

It really is unfortunate. We're not going to get too many kicks at the can. We've seen the anguish of victims. Mr. Tascona had victims at his press conference when he introduced his Bill 136. Ms. Lawrence participated in these hearings. Presumably the government wants to come up with a package that's going to have those victims saying, "Thank goodness. It'll never happen to somebody else now," at the very least. But I'm not sure we're getting there. That's it, sir.

Mr. Khalil Ramal (London–Fanshawe): Just for the record, it doesn't mean, when Mr. Kormos was talking about the government or the land registry office, it's not

going to screen the applications before they approve them; but in case, after they have gone through the system. I think it's a logical approach and good timing to suspend the documents within two days. I think it's normal to give 10 days for hearing in order that he or she can prepare themselves to defend their reputation and their applications.

Mr. Tascona: The only thing I would add is that it's not going to get at the root problem, which is the person who dupes the lawyer or who is involved in the real estate transaction. The identity theft issue: You're not going to get at that person who is the problem. You're presupposing criminal intent on behalf of the lawyer. If that's the case, the lawyer is going to get disbarred anyway and won't be practising. So what you're bringing in here is an unnecessary procedure that doesn't get at the persons who are dealing with the identity theft. You should just call the question.

Mr. Dhillon: I just wanted to mention that this is about protecting the consumer and not worrying about lawyers who have high overhead. If examples are made of them, I think it's absolutely worth it because it's about protecting the consumer. The news will fly pretty quickly in the legal industry that this stuff won't be tolerated, and the minister and his ministry have worked very hard in doing that. So, obviously we're in favour of this.

Mr. Kormos: First, Mr. Ramal, in electronic registrations nobody is screening the documents. It's the submitter who screens the documents. She or he is the gatekeeper. They don't submit even a scanned document for submission to the director, to the registrar; they simply submit the information that they allege or purport to be on that document. That's number one. So nobody is screening these in electronic registration. That's why I started expressing my concern about the electronic registration system.

Number two, to Mr. Dhillon: First of all, one hopes that people are adequately screened before they're given authorization, and I'm confident—that's after the Auditor General's report, or today I shouldn't be so confident—I'm optimistically confident that that's the case. So you identify these people. You know who they are. They're people with good records, good character etc.

You've got two issues. You've got the issue Mr. Tascona spoke of, where you get the lawyer who is the dupe, who may have undertaken all of the due diligence but nonetheless becomes a party by virtue of being the conduit, and who is not committing any frauds and who has exercised all of the due diligence. That lawyer—quite frankly, I don't go around talking about taking people's livelihoods away lightly. I'm amazed that you could suggest that. That's not what a regulatory regime is designed to do. Don't forget, you have "reasonable grounds to believe." That's not capricious. Unfortunately, you've created that standard and now you're diminishing that standard with the amendments you've made. That's what I said a few moments ago.

1650

If it's about protecting the consumer, there's nothing in any of the provisions of section 14 that talks about protecting the consumer, because the consumer has already been defrauded before section 14 can be invoked or utilized. The problem here is the gate and the fact that there's no in-house gatekeeper with respect to electronic registration. That's the problem.

Fine, pass your amendments, but let's not pretend there's something—this is all after the fact. There's a guy waiting in custody up in—where is that?—who slaughtered that woman jogging and has been charged with drunk driving. Big deal; we caught him. That woman's dead. He should be treated severely, but anything they do to that guy isn't going to restore that woman's life. You know the case I'm talking about; it's on the front page of the paper. It's after the fact. What we need are controls to prevent fraudulent documents from getting into the system in the first place, just like we need controls to prevent drunk drivers from getting behind the wheel, with respect.

The Chair: Shall I call the question?

Mr. Kormos: Please.

The Chair: Those in favour? Those opposed? The motion is carried.

This moves us to amendment 8.

Mr. Dhillon: I move that subsection 23.2(6) of the Land Registration Reform Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Written hearing

"(6) The hearing shall be a written hearing unless the director of land registration or the electronic document submitter requires that the hearing be an oral hearing."

The Chair: Any debate or discussion?

Mr. Tascona: No. Call the vote.

The Chair: I will call the question.

Mr. Tascona: Recorded.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Tascona.

The Chair: The motion is carried.

Motion 8.1, moved by Mr. Tascona.

Mr. Tascona: I move that subsection 14(4) of the bill be struck out.

The reasoning on that I have indicated before, with respect to the process. Going back to what Mr. Kormos mentioned, the government voted down a certification process to make sure that document was valid, which would mean subsection 14(4) wouldn't even be needed. Instead of supporting a process to make sure that documents that go to and through the land titles system are valid and certified, the government votes that down

and then says, "We want to set up a non-hearing process for suspension and a back-ended process with respect to reinstatement," That doesn't solve the problem and is a waste of everybody's time in the system. What people need to prevent identity theft are documents that are what they say they are. The government voted that down and purports to say they're going to protect the consumers by putting in place a process that won't work.

The Chair: Any other debate? I'll call the question.

Mr. Tascona: Recorded vote.

Ayes

Kormos, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

We have finished the amendments in section 14, so I will call the question. Shall section 14, as amended, carry? Carried.

Section 15 brings us to amendment 9.

Mr. Dhillon: I move that clause (a) of the definition of "fraudulent instrument" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended by striking out "grant" and substituting "transfer".

The Chair: Mr. Tascona.

Mr. Tascona: I understand why the government made that amendment, but if they want to look at my motion 9.1, I think it is consistent with what you're looking to do. The language is almost identical. It uses "receive," which you have in your (a), also puts in "transfer," which you're looking to put in, and also adds "discharge," because that's what happens to property. The only thing I'm looking to add is "discharge." The government may perhaps want to look at my amendment and broaden the scope of what they're trying to do under clause (a). If they're in agreement with that, perhaps they would support my motion as opposed to theirs.

Mr. Kormos: Help me, folks. I'm old enough that most of the modest experience I had with this kind of stuff was in the registry system. I don't think I ever did a land title except many, many years ago as a student. You've changed "grant" to "transfer"—just a brief explanation of that. Mr. Tascona talks about including "discharge," and I presume that means he wants to ensure that discharges of mortgages—that is one of the means of effecting a fraud: you discharge the mortgage that's registered on the property so it looks to a subsequent mortgagee that the property is free and clear. Help us. If your language includes "discharge" or if "discharge" is elsewhere, can you explain to us how? And the grant/transfer stuff: is that—

Ms. Dianne Carter: My name is Dianne Carter. I'm from the Ministry of Government Services.

First of all, with respect to the term "grant," "grant" is a word that would be used in the registry system, and "transfer" is more appropriate under the Land Titles Act. With respect to discharges, if you look to clause 15(1)(d) of the bill, the definition of "fraudulent instrument," it's an instrument "that perpetrates a fraud as prescribed with respect to the estate or interest in land affected by the instrument." A fraudulent discharge would be captured by clause (d).

Mr. Kormos: Then I trust (d) is a pretty broad catch-all?

Ms. Carter: It's a catch-all, yes, that's intended to capture fraudulent—

Mr. Kormos: Yes, and you say it includes discharges of mortgages, but is that your catch-all, your fail-safe?

Ms. Carter: Yes.

Mr. Kormos: Fair enough. And I appreciate that in terms of grant/transfer, you folks know that too.

The Chair: We currently have a motion on the floor.

Mr. Tascona: May I have a further explanation? It's subsection 15 what?

Ms. Carter: The definition of "fraudulent instrument," clause (d).

Mr. Tascona: "That perpetrates a fraud as prescribed with respect to the estate." How does that refer to discharge?

Ms. Carter: A fraudulent discharge would be used in perpetrating a fraud.

Mr. Kormos: That's an interest in land.

The Chair: Legislative counsel would also like to make a comment on this.

Mr. Michael Wood: I'm Michael Wood, legislative counsel. I'd just point out that clause (d) of the definition of "fraudulent instrument" requires that regulations be made to specify what is the fraud that's being perpetrated. So if you don't have regulations, it wouldn't capture a discharge; if you do have regulations, you can capture a discharge.

Mr. Tascona: I thank Mr. Wood for that clarification. As I said, to be clear and precise, I would suggest that the government pull their motion and adopt mine. I think that would capture everything we need to do. If you're not going to put forth regulations—there's no guarantee that they will. That's exactly the point.

The Chair: We have a motion on the floor. If it is not withdrawn, I'll call the vote.

Mr. Kormos: A recorded vote, please. I'll ask for a five-minute recess, as per the standing orders.

The Chair: A recess.

The committee recessed from 1700 to 1706.

The Chair: We are back in session. I am going to call the vote on government motion 9.

Ayes

Dhillon, Fonseca, Kular, Leal.

Nays

O'Toole, Tascona.

The Chair: The motion is carried

We move next to PC motion number 9.1.

Mr. Tascona: There's only one word change here now that the government has moved forward with that definition under 15(1)(a). We're adding the word "discharge" because, as was pointed out by legislative counsel, though staff says 15(1)(d) catches a discharge, there have to be regulations. Out of an abundance of caution, we're putting in the word "discharge," which would mean a one-word change to 15(1)(a) in this context. That's our motion. The motion is:

I move that clause (a) of the definition of "fraudulent instrument" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended and the following substituted:

"(a) under which a fraudulent person purports to receive, transfer or discharge an estate or interest in land,"

The Chair: Any other debate?

Mr. Kormos: I think this makes eminent good sense, because it recognizes that discharges of mortgages are one of the fundamental manners in which fraud is committed, and rather than leave it to the sort of catch-all at the end, it puts it in front and centre along with transfers—deeds, if you will—and of course it makes it explicit. It's not dependent upon prescription by regulation. I think it's important that the government support this. It strengthens the bill, makes the bill just a little bit better.

The Chair: Any further debate? I'll call the vote.

Mr. O'Toole: Recorded vote.

Mr. Kormos: Call the question.

Mr. Jeff Leal (Peterborough): I have a question, please. I just want to go through—it says here "discharge." I'm aware of a situation that occurred a few years ago in my community. I just want to get assurance about a discharge after a mortgage has been paid off. Is this bill going to cover this issue down the road, in a further—

Ms. Carter: I don't understand your question.

Mr. Leal: Is there another section we're adding that is going to cover the issue of discharge?

Ms. Carter: I'm sorry, I don't understand your question.

Mr. Leal: I'll try again. When a mortgage gets discharged, after it gets paid off, there can be a time, because of that occurring, that a fraud may occur after a mortgage has been paid off.

Ms. Carter: Oh, are you suggesting that there's a valid mortgage that's on title and the fraudster would discharge it and then go out and try and get a mortgage?

1710

Mr. Leal: Sorry. I'm not a lawyer. You would know better than I. Yes, I think that's what I'm getting at.

Ms. Carter: Well, what would the concern be? The mortgage would be under the provisions of the bill. A fraudulently obtained mortgage would be fraudulent and wouldn't affect the title.

Mr. Leal: I'll think about it for a moment.

The Chair: I am going to call the question.

Mr. O'Toole: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

Government motion 10.

Mr. Dhillon: I move that clause (c) of the definition of "fraudulent person" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended by adding "knowingly" after "person".

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: This is very interesting, because you detract once again from the bill. You don't strengthen it, you weaken it. Some help, please. "Fraudulent person" becomes relevant when we're dealing with what, if I may, to the bureaucrats here?

Ms. Carter: "Fraudulent person" is relevant to whether or not an instrument is a fraudulent instrument.

Mr. Kormos: That is, if a fraudulent person executes or purports to execute an instrument, then it creates the fraudulent instrument?

Ms. Carter: There are a number of ways a person could be considered a fraudulent person.

Mr. Kormos: Yes. But what's the relevance of that?

Ms. Carter: What's the relevance of adding the word "knowingly"?

Mr. Kormos: No, no. Here in the amendment, why are you creating a definition of "fraudulent person"?

Ms. Carter: Because a fraudulent person—

The Chair: I wonder if leg counsel would like to speak to it?

Mr. Kormos: Please, sir.

Mr. Wood: Yes. Michael Wood, legislative counsel. You start with the definition of "fraudulent instrument." In order to understand that definition, every time you see the term "fraudulent person," you then have to read in the definition of "fraudulent person." By having two definitions, it allows the definition of "fraudulent instrument" to be a little more concise. You don't have to set out info, what you mean by "fraudulent person" every time you mention "fraudulent person" in the definition of "fraudulent instrument."

Mr. Kormos: Fair enough. But the only time "fraudulent person" is referred to is in (a)?

Mr. Wood: No. It appears in clauses (a), (c) and—

Mr. Kormos: So you're saying that this is sort of a shortcut in terms of getting at what constitutes a fraudulent instrument.

Mr. Wood: Yes. It's a drafting shortcut. Rather than set out in full, you can use that defined term.

Mr. Kormos: Thank you very much. I appreciate that.

The Chair: Mr. Tascona.

Mr. Kormos: I wasn't finished this.

The Chair: Oh. I was just—

Mr. Kormos: But I'll yield to Mr. Tascona. Now I want to get to the "knowingly" part.

Mr. Tascona: Under (c), is it going to be "the person knowingly holds oneself..."?

Mr. Kormos: Knowingly forged.

Mr. Tascona: No. Under 15(1)(c), it will be amended by adding "knowingly" after "person," so "the person knowingly holds oneself out"—is that what it means?

Ms. Carter: Yes.

Mr. Tascona: Okay. Why would you be bringing in knowledge, intent to this particular situation? If "the person holds oneself out in the instrument to be, but is not, the registered owner of the estate or interest in land affected by the instrument," why are you bringing in knowledge?

Ms. Carter: There was a concern that in the situation where you have a bona fide purchaser for value from a fraudster, the transfer to the bona fide purchaser for value firstly wouldn't be valid; however, that bona fide purchaser for value would be eligible for compensation out of the fund. Our stakeholders were concerned that for some reason the bona fide purchaser for value could possibly be caught by the definition "fraudulent person," so for greater certainty, we've added the word "knowingly."

Mr. Tascona: Okay. I yield back to Mr. Kormos.

Mr. Kormos: You've made it more interesting. With the definition, "the person holds oneself out in the instrument to be, but is not, the registered owner," you're suggesting that the innocent purchaser for value is not the registered owner but is a victim of a scam, a con, so does not knowingly hold himself out to be the registered owner, but is not. Joe, what's the criminal defence used in trespass?

Mr. Tascona: Actus reus or mens rea?

Mr. Kormos: No, used as a defence where you have good-faith belief versus—

Mr. O'Toole: He's the commercial law department.

Mr. Kormos: But you know what I'm saying. Why can't the person simply defend him- or herself? We're not talking about prosecution here.

Ms. Carter: That's right, but there was a concern that if the bona fide purchaser for value would be considered a fraudulent person, then—for example, if they got a mortgage, the mortgage would be considered invalid because it was given by a fraudulent person. The intention of the legislation is that, in that case, if a bona fide purchaser for value, without notice of the fraud, goes out and gets a mortgage, the mortgage would be considered valid. The clarification of the word "knowingly" ensures that the bona fide purchaser wouldn't be considered a fraudulent person.

Mr. Kormos: The mortgage would be valid but not as against the land if they were acting in good faith but had acquired the land pursuant to a corrupt or forged document.

Ms. Carter: What question are you asking me?

Mr. Kormos: The government's premise is that good title can't flow through a fraudulent document.

Ms. Carter: For the most part, that's correct.

Mr. Kormos: Yes. And it's responding to the finance company and case that we've all read about at the Court of Appeal. If good title can't flow, why would there be a concern about the validity of a mortgage as against the land, as compared to as against the person? Nobody is arguing that that person, be they bona fide good-faith purchasers or be they fraudulent purchasers—regardless of what happens here, nobody is arguing that there shouldn't be personal liability, right? Nobody is suggesting that at all. A person who signs a mortgage is the person who is liable. The interest that's being preserved here is the legitimacy of the ownership of the land.

So I still don't understand—it's getting late in the day; bear with me. I'm sorry that it's taking as long as it is. Why is there a concern, then, about the scenario you described? What circumstances would you want for there to be a good mortgage against the land, that is, compared to the borrower, in terms of a debt—why are you concerned about a good mortgage as against the land, when you're saying that you don't want title to land to be capable of being transferred with a corrupt instrument or a forged instrument?

Ms. Carter: The intention of the legislation is that any instrument that's given by a fraudulent person would not be valid. A bona fide purchaser for value is not a fraudulent person.

Mr. Kormos: Help me once again. Say I'm John Doe, like the old Hungarian fellow who had a rental property he owned for 40 years, probably hadn't seen in 10. As long as he got the rent cheques, he was happy. Joe Tascona comes along and sells the land out from underneath me without me knowing it—

The Chair: Sounds like Joe.

Mr. Kormos: The Joe you know—to Ms. DiNovo. She's a purchaser for value in good faith. You're not suggesting that the title of that land should transfer to her, are you?

1720

Ms. Carter: No. The title would be rectified.

Mr. Kormos: That's right. You're saying that the title is mine, that you cannot detract from my title regardless of how long a succession, regardless of how far I'm separated from the ultimate lawful owner, right?

Ms. Carter: In the scenario you just gave, the title would be rectified.

Mr. Kormos: In other words, my title would be maintained, my ownership.

Ms. Carter: Yes.

Mr. Kormos: Okay. So why then, if she, as a purchaser in good faith—she's not a fraud artist herself; Joe was. Why should she then be able to mortgage the land—she's doing it in good faith—and have that charge, that mortgage, attached to what is not her land but is my land? I say that she can be personally liable. That's a different issue, the debt part of the mortgage, because this doesn't deal with that, does it?

Ms. Carter: Right.

Mr. Kormos: This act doesn't deal with that part of mortgages, because a mortgage is two things. It's a charge against the land. It's also an IOU. They could sue you personally or they could take the land. We're not talking here about relieving innocent victims of fraud from having to pay off a mortgage. They have to sue the fraud artist; lots of luck.

You say there's no scenario where title would transfer. Why then are we interested in creating "knowingly"—so, as you say, to protect somebody down the road? I say no; that mortgage still shouldn't attach to the land, and you're agreeing, I think.

Ms. Carter: There has been an attempt here to balance the interests of homeowners along with the ability to rely on the land titles register. In the circumstance you just gave, all things being equal, the mortgage would likely be considered valid. Through the expedited process that the minister is hoping to introduce through this bill, compensation would flow directly to pay off the mortgage.

Mr. Kormos: You're talking about to the bank?

Ms. Carter: Yes.

Mr. Kormos: Do you mean that the bank can seek compensation?

Ms. Carter: In that case, the title would be rectified. In those rare circumstances that you've just described, the mortgage would be considered valid, and notionally, compensation would go to the registered owner so that they could pay off that mortgage.

Mr. Kormos: Thank you. I do understand, I think. I'm sure we understand. Mr. Tascona, do you understand what they're doing here? It's neither fish nor fowl. On the one hand they're saying that a bad instrument, a corrupt instrument, a forged instrument can't transfer title to land. On the other hand, they're saying that a lender, for instance, is going to get indemnified for lending money on fraudulently transferred land and can have a claim against the bona fide, legitimate landowner.

Mr. O'Toole: The fund would reimburse the banks that would have no plan. Isn't that it?

Mr. Kormos: Yes.

Mr. O'Toole: But then the fraudster gets off. Who gets to the fraudster?

Mr. Kormos: I hear you.

Mr. O'Toole: There's no recourse by the person who has the mortgage registered or the lender. The lender is paid off by the fund, I guess.

Ms. Carter: The fraud would still have occurred, and whatever right of action against the fraudster that existed wouldn't be eliminated.

Mr. O'Toole: The government would take action?

Ms. Carter: There are further motions to amend the bill. In all cases under the Land Titles Act where compensation is paid, there's an ability to transfer any rights that the applicant would have against anyone to the assurance fund. But there's some further clarification around that.

The Chair: Any other debate?

Mr. Kormos: Just very briefly, I'm wondering as well: "knowingly" holds oneself out in the instrument to be the registered owner of the estate. Now I'm being really picky; I am, at this point. I'm not usually this way, right? But I'm just interested. If Ms. DiNovo goes to the bank, she knowingly holds herself out in the instrument to be, but in fact is not.

I appreciate what you're trying to do. You're trying to attach "knowingly" to all of the language that flows, right? In other words, "knowingly" hold oneself out to be, and also "knowingly" not be the registered owner. Is this sufficiently clear—I'm just raising the issue—as to what the "knowingly" applies to? Is "knowingly" inserted here such that "knowingly" applies to "holds oneself to be the registered owner of the estate"? If Ms. DiNovo believes she is the owner, but in fact she's not, it seems to me that she fits the description either way. She knowingly holds herself to be the owner, but is not. She can't control the "is not." The "knowingly" here doesn't seem to specifically address the "but is not the owner." In other words, knowing that she is not the owner but holds herself out to be the owner, to me—do you understand what I'm saying?

Ms. Carter: I understand what you're saying, I think. I think it's adequate but I defer to legislative counsel on the question.

Mr. Wood: I'm sorry, could you repeat the question?

Mr. Kormos: No problem. Again, I don't want to belabour the point, but "knowingly"—the issue here is knowing that you are not the owner of the land, in terms of wanting to contain those people only. I'm concerned that the person knowingly holds oneself out to be the registered owner of the estate but is not. There, the "knowingly" applies, in my view, to holding oneself out to be the owner. Ms. DiNovo, as the innocent purchaser, knowingly holds herself out to be the owner, but is not the owner. She doesn't know that. So I'm wondering whether the "knowing" or "knowingly" should apply to knowledge of not having legitimate title.

Ms. Carter: That's what it's intended to do.

Mr. Kormos: I hear you, but I'm just expressing concern as to whether or not it's sufficiently clear. I'm saying that "Ms. DiNovo holds herself out to be the registered owner but knowing that she is not" is what you want to capture; right?

Ms. Carter: Yes.

Mr. Kormos: Is there a better way to do it, or is this the language? What we want to say is that Ms. DiNovo, knowing that she is not the legitimate owner, holds herself out to be the owner, rather than knowingly holds herself out in the instrument to be—it's almost as if there was a bracket there—but is not. Does the "knowingly" apply to "but is not" or is it just "knowingly hold oneself out in the instrument"?

Mr. Wood: I see the concern. "Knowingly" doesn't apply to the action of holding oneself out but applies to whether or not you consider yourself to be the registered owner.

Mr. Kormos: Yes.

Mr. Wood: Could we stand this motion down and consider it and bring it back?

Mr. Kormos: I'm not being dilatory here. Is that a fair enough proposition, that if there's a clearer way of presenting it, we should try to strive for that? Do you understand my concern about it, sir?

Mr. Wood: I do, yes.

Mr. Kormos: Yes. Thanks.

The Chair: The mover wishes to stand it down?

Mr. Dhillon: That's fine.

The Chair: Okay.

Mr. Kormos: Thank you, folks. Appreciate that. Sorry to be so obtuse.

The Chair: We move to 10.1, official opposition motion. This is also perhaps a preliminary practice for a speed reading contest somewhere.

1730

Mr. Tascona: This is a motion entitled "Measures to Prevent Fraud." This was the guts of my Bill 136, which dealt with identity theft and making sure that identity theft was removed from the system through a PIN system, through a notification, limiting the people who could register discharges and giving the land registrar the power to freeze a register.

I move that section 15 of the bill be amended by adding the following subsection:

"(1.1) The act is amended by adding the following part:

"'Part I.1

"'Measures to Prevent Fraud

"'Limited class of registrants

"'2.1(1) No person may apply for the registration of an instrument or a document unless the person is,

"'(a) a member of the Law Society of Upper Canada;

"'(b) a broker or salesperson registered under the Real Estate and Business Brokers Act, 2002;

"'(c) a mortgage broker registered under the Mortgage Brokers Act;

"'(d) an Ontario land surveyor;

"'(e) a minister of the government of Canada or Ontario;

"'(f) a person authorized by the council of a municipality by bylaw made under subsection 31(1) to apply to the land registrar to have land within the municipality registered; or

"'(g) a financial institution within the meaning of the Office of the Superintendent of Financial Institutions Act (Canada).

"'Agents

"'(2) If a provision of this act allows a person to apply for registration of an instrument or a document, the provision shall be read consistently with subsection (1), namely as requiring that person to make the application through a person described in that subsection.

"'Same

"'(3) The land registrar shall not accept an application for registration of an instrument or a document unless the application is made through a person described in subsection (1).

"'Notification

"'2.2(1) Upon registering an instrument that transfers land to a new owner on or after this section comes into force, the land registrar shall send a notification to the former registered owner of the land.

"'Same, charge etc.

"'(2) Upon registering a charge or encumbrance in respect of land on or after this section comes into force, the land registrar shall send a notification to the current registered owner of the land.

"'Same, discharge

"'(3) Upon registering a discharge in respect of land on or after this section comes into force, the land registrar shall send a notification to the mortgagee whose mortgage has been discharged.

"'Land registrar's powers

"'2.3(1) In addition to any other power he or she has under this act, the land registrar may of his or her own accord and without affidavit,

"'(a) refuse to register an instrument or a document if, in his or her opinion, the refusal may prevent fraud; or

"'(b) register a caution to prevent dealing with any registered land if, in his or her opinion, the caution may prevent fraud.

"'Same, reversal

"'(2) The land registrar may reverse an action taken under subsection (1) if satisfied that the refusal or caution is not necessary to prevent fraud.

"'Hearing

"'(3) The land registrar may hold a hearing in respect of an action taken under subsection (1) before reversing the action and section 10 applies to the hearing.

"'Appeal

"'(4) If the land registrar does not reverse an action taken under subsection (1) or initiate a hearing within 60 days of taking the action, any person who is adversely affected may appeal the land registrar's action to the court,

"'(a) within 30 days after the end of the 60-day period, in the case of a refusal to register an instrument or a document; and

"'(b) at any time after the end of the 60-day period, in the case of a caution that prevents dealing with registered land.

"'Personal identification numbers

"'2.4(1) The land registrar shall establish and maintain a secure system that allows for personal identification numbers to be assigned to,

"'(a) registered owners of land; and

"'(b) registered mortgagees.

"'New registrations

"'(2) The land registrar shall assign a personal identification number to every person who becomes a registered owner of land or a registered mortgagee on and after the day this section comes into force.

"'Existing registrations

"'(3) The land registrar shall assign a personal identification number to every person who was the registered owner of land or registered mortgagee on the day this

section came into force if the person applies for one to the land registrar.

"'Identification of person

"'(4) A personal identification number assigned to a person under subsection (2) or (3) shall identify the person as the registered owner or mortgagee, as the case may be.

"'Owner may register caution

"'2.5(1) The registered owner of land may apply to the land registrar for the registration of a caution to prevent dealing with the registered land.

"'Effect of caution

"'(2) After a caution has been registered under subsection (1), the land registrar shall not register any instrument with respect to the land without the consent of the registered owner.

"'Owner may remove caution

"'(3) The registered owner of land may apply to the land registrar at any time for the removal of a caution registered under subsection (1).

"'Owner must use PIN

"'(4) If the registered owner of land has had a personal identification number assigned to him or her under section 2.4, the land registrar shall require the registered owner to use that number when,

"'(a) indicating consent for the purposes of subsection (2); or

"'(b) applying for the removal of a caution under subsection (3).

"'Use of PIN

""2.6 If a registered owner of land or mortgagee has had a personal identification number assigned to him or her under section 2.4, the land registrar may require that person to use that number in any circumstances under this act if, in the land registrar's opinion, requiring that person to use the personal identification number may prevent fraud.'"

The Chair: Thank you. I apologize for this, but unfortunately I have to rule that this is outside of the scope of this bill.

Mr. Tascona: I seek unanimous consent from the committee for this motion to proceed.

The Chair: Is there unanimous consent? I heard a no.

Mr. Tascona: Recorded vote.

The Chair: Nice try. In my Chairing Committees for Dummies, it covers that in one whole chapter. It's out of order.

That moves us to 10.2, which is the official opposition motion.

Mr. Tascona: This is dealing with changing how the land titles assurance fund is operated, to be operated by a non-government body. I'll read the motion.

I move that section 15 of the bill be amended by adding the following subsections:

"(1.2) The act is amended by adding the following section:

"Administration of fund

"Board to administer

"54.1(1) The land titles assurance fund shall be administered by a board to be appointed by the Lieutenant Governor in Council and to be known in English as the assurance fund board and in French as conseil de la Caisse d'assurance.

"Composition

"(2) The Lieutenant Governor in Council shall appoint,

"(a) no fewer than five members to the board;

"(b) one member of the board as chair and one or more as vice-chairs who may act in the absence of the chair;

"(c) individuals who, in the opinion of the Lieutenant Governor in Council, will represent the views of,

"(i) consumer protection organizations,

"(ii) the real estate industry, and

"(iii) the law enforcement community.

"Role of chair

"(3) The chair shall have general supervision and direction over the conduct of the affairs of the board, and shall arrange sittings of the board and assign members to conduct hearings as circumstances require.

"Role of board

"(4) The board is responsible for determining appropriate payment out of the assurance fund, if any, on application by any person under this act.

"Determination

"(5) If a person makes an application under this act for payment out of the assurance fund, the chair of the board shall refer the application to one or more members of the board for determination.

"Panel

"(6) If the circumstances require a hearing, the chair shall refer the matter to a panel of no fewer than three members of the board.

"(1.3) Section 56 of the act is amended by striking out 'director of titles' wherever that expression appears and substituting in each case 'assurance fund board.'"

The Chair: I know you won't take this personally, but this amendment is outside of the scope of the bill.

Mr. Tascona: I seek unanimous consent of the committee that it be in order.

The Chair: Is there unanimous consent? I hear a no.

Mr. O'Toole: Who's saying no to this?

The Chair: I just hear; I don't look.

That moves us to government motion 11, Mr. Dhillon.

Mr. Dhillon: I move that section 15 of the bill be amended by adding the following subsections:

"(1.1) Subsections 57(4) and (5) of the act are repealed and the following substituted:

"'Compensation from fund

"'(4) A person is entitled to compensation from the assurance fund if,

"'(a) the person is wrongfully deprived of land or of some estate or interest in land by reason of,

"'(i) the land being brought under this act,

"'(ii) some other person being registered as owner through fraud, or

"'(iii) any misdescription, omission or other error in a certificate of ownership or charge or in an entry on the register;

"'(b) the person has demonstrated the requisite due diligence as specified by the director if the person is wrongfully deprived of land or of some estate or interest in land by reason of some other person being registered as owner through fraud;

"'(c) the person is unable under subsection (1) or otherwise to recover just compensation for the person's loss; and

"'(d) the person makes an application for compensation within the time period specified in subsection (5.1).

"'Earlier payment

"'(4.1) A person who is a member of a prescribed class of persons is entitled to compensation from the assurance fund if,

"'(a) one of the following conditions is met:

"'(i) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of the registration of an instrument described in clause (13)(b) and the director of titles or a court, under that clause, has directed that the registration of the instrument be deleted from the register,

"'(ii) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of a rectification of the register made under clause (13)(a) or (b);

"'(b) the person has demonstrated the requisite due diligence as specified by the director with respect to the instrument that is the subject of the rectification; and

"'(c) the person makes an application for compensation within the time period specified in subsection (5.1).

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"'Same

"'(4.2) A person who is a member of a prescribed class of persons is entitled to compensation from the assurance fund if,

"'(a) the director of titles or a court, under clause (13)(b), has directed that the registration of an instrument described in that clause be deleted from the register;

"'(b) the person has suffered a loss as a result of the deletion described in clause (a); and

"'(c) the person has an application for compensation within the time period specified in subsection (5.1).'"

Chair, I'd like to go back. I'd like to just make a correction in the section where it states "Earlier payment." I'll just reread (ii) to correct that.

"'(ii) the person is wrongfully deprived of land or of some estate or interest in land or has not received land or some estate or interest in land by reason of a rectification of the register made under clause (13)(a) or (c).'"

I stated "(b)" before, so that's a correction. Further down, another correction under "'Same'":

"'(c) the person makes an application for compensation within the time period specified in subsection (5.1).'"

Continuing:

"'Reliance on automated index

"'(5) A person who suffers damage because of an error in recording an instrument affecting land designated under part II of the Land Registration Reform Act in the parcel register is entitled to compensation from the assurance fund if the person makes an application for compensation within the time period specified in subsection (5.1).

"'Time for application

"'(5.1) A person claiming to be entitled to the payment of compensation under subsection (4), (4.1) or (5) shall make an application within six years from the time of having suffered the loss described in the applicable subsection or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.'

"(1.2) Subsection 57(7) of the act is repealed and the following substituted:

"'Hearing

"'(7) Except if he or she determines the claim be paid in full, the director of titles may hold a hearing, and the claimant and the other persons that the director of titles specifies are parties to the proceeding before the director.'

"(1.3) Section 57 of the act is amended by adding the following subsection:

"'Recovery of compensation paid in error

"'(11.1) If, after compensation is paid out of the assurance fund, the director of titles determines that any part of the compensation was paid in error for any reason, including on the basis of any misrepresentation or any lack of information available at the time of making the payment, the director of titles may commence an action to recover the amount of that part from the person who received it.'

"(1.4) Subsection 57(12) of the act is repealed and the following substituted:

"'Subrogation

"'(12) If any amount is paid out of the assurance fund to an applicant in respect of a loss, the director of titles is subrogated to the right of the applicant and the applicant's heirs, executors, successors and assigns to recover compensation or damages from any person in respect of the loss, and the certificate of the director of titles of the payment out of the assurance fund is sufficient proof of the payment.

"'Agreements

"'(12.1) For the purposes of subsection (12), the director of titles may enter into agreements with any person or body that is liable to make any payment to a person who has received compensation from the assurance fund if the liability arises out of conduct that gave rise to the payment made from the assurance fund.'"

The Chair: Thank you. Would there be any debate?

Mr. Tascona: —House leader here with me, but be nice.

Mr. Kormos: Then why don't you yield the floor to me for a couple of minutes?

Mr. Tascona: Yes.

The Chair: Mr. Kormos was actually first.

Mr. Kormos: Thank you, Chair. I think it's time I read from the letter of December 5, 2006, by Minister Gerry Phillips to members of the standing committee on social policy. I'm going to give you a copy of the letter. I want it to form part of the committee's record.

"Streamlined land titles assurance fund

"Proposed amendments to the Land Titles Act would implement a streamlined and expedited LTAF process for individuals who are victims of fraud. The proposed amendments would put the necessary statutory framework in place for the director of titles to order LTAF payments, provide powers to the director to investigate fraud and provide the ability to recoup these payments from third parties in appropriate situations.

"The amendments would streamline the application process for compensation from the LTAF, thereby reducing the burden on the innocent victim of real estate fraud. Innocent victims of fraud should not be made to go through a long and onerous process to be compensated.

"In addition, the ministry will administer existing claims to the LTAF in the spirit of the new streamlined process and in the most expeditious manner possible. In this regard, there are some recent cases of fraud that have been widely reported where no claim has been made to the LTAF. These cases may be eligible for the expedited LTAF process."

I accept the minister's word on this. So this, I trust, is the motion that reflects the statement of the minister in his letter to members of the committee. I would ask for assistance in clause (4)(c), "the person is unable under subsection (1) or otherwise to recover ... compensation...." That makes reference to—my apologies.

Ms. Carter: Mr. Kormos, subsection (4) would relate to claims that wouldn't fall under the prescribed class. So claims to the assurance fund are made with respect to fraud but also with respect to errors. For example, errors would still be processed through the regular process.

Mr. Kormos: Which means it's not the streamlined process?

Ms. Carter: Right. So in the case of—

Interjections.

Mr. Kormos: Get that gavel out, Chair.

Ms. Carter: So in the case of the non-streamlined process, basically this codifies what was existing in the act already.

Mr. Kormos: Okay. So we're not dealing with a streamlined process here?

Ms. Carter: No.

Interjection: Not there, but (4.1) and (4.2) do.

Mr. Kormos: Okay. Good. So I don't have to concern myself at this point with subsection (4). Let's move on to (4.1). Help me to understand these because this is the first time I've seen these—sort of on the fly.

Ms. Carter: Do you just want me to carry you through?

Mr. Kormos: Yes. "Prescribed class of persons": So this doesn't have the prerequisite for seeking alternative compensation in (4.1)?

Ms. Carter: That's right.

Mr. Ramal: Which point?

Mr. Kormos: It's (4.1), page 2 of the amendment.

Mr. Ramal: Okay.

Mr. Kormos: So this is the streamlining and this is intended to be retroactive in that it says, "if the person is wrongfully deprived of land." Right? That means, subject to limitation periods, any person in the province of Ontario who's deprived of land or an interest in land is entitled to access (4.1).

Mr. Dhillon: Chair, I'd like to request, according to standing orders, a five-minute recess.

Mr. Kormos: That's just a request.

Mr. Dhillon: Can we have a recess, please, according to standing orders?

Mr. Kormos: You have to ask me. Unanimous consent for a five-minute recess.

The Chair: Is there unanimous consent for a five-minute recess? Agreed.

The committee recessed from 1750 to 1757.

The Chair: We're back in session. Additional debate? Mr. Tascona?

Mr. Tascona: We're dealing with the land titles assurance fund. I'll put the question to our legislative counsel, Mr. Wood. A number of amendments have been put forth by the government with respect to revising and reforming the land titles assurance fund, put forth by Mr. Phillips. Is this reform system going to be retroactive before October 19, 2006?

Mr. Wood: I can attempt to give you an answer to that question, but in fairness, it should be confirmed by ministry staff as well, since the ministry has been—

Mr. Tascona: Okay. Well, ministry staff—

Mr. Wood: But that is my understanding, that it all hinges on the definition of—

Mr. Tascona: Clause 57(13)(b)?

Mr. Wood: Exactly, subsection 57(13).

Mr. Tascona: In my reading of it, it's still a document registered on or after October 19, 2006. So this is prospective legislation from October 19, 2006. It's not going to help people like Susan Lawrence, Elizabeth Shepherd or Paul Reviczky, is it?

Mr. Wood: Well, a streamlined process—the earlier payment of compensation would not be available for an instrument registered before October 19.

Mr. Tascona: Does the ministry staff confirm that?

Ms. Carter: I think the minister said in his correspondence that any existing claims would be processed in the spirit of the legislation.

Mr. Tascona: Well, it says—

Mr. O'Toole: "These cases may be eligible for the expedited LTAF process."

Mr. Tascona: Page 2: "In addition, the ministry will administer existing claims to the LTAF in the spirit of the

new streamlined process and in the most expeditious manner possible. In this regard, there are some recent cases of fraud that have been widely reported where no claim has been made to the LTAF. These cases may be eligible for the expedited LTAF process." What does "may be eligible" mean?

Ms. Carter: If the person fits into a prescribed class, then, as I understand the legislation, they may fit under the provisions of (4.1) and/or (4.2).

Mr. Tascona: Would Susan Lawrence be eligible?

Ms. Carter: I can't speak to a specific case. I'm sorry.

Ms. Murray: We can't speak to specific cases, but in—

Mr. Tascona: There is a representation here by the minister to this committee: "[T]here are some recent cases of fraud that have been widely reported where no claim has been made to the LTAF. These cases may be eligible for the expedited LTAF process." I don't know what the minister is saying about recent cases. I don't know who drafted this for him, but he signed it. Do you have any knowledge of what recent cases of fraud he's referring to?

Ms. Murray: Mr. Tascona—

Mr. Tascona: That's the question. Can you answer that question?

Ms. Murray: I'm going to answer the question. What is being referred to are situations where—people are talking of different types of fraud, and in situations where court applications have been made, as has happened in many cases, where that title has been rectified and the fraud has been proved, those applicants can come to the fund and, based on the fact that a fraud has already been proved, it is within the discretion of the hearing officer to pay compensation on an expedited process.

Mr. Tascona: For something that happened prior to October 19, 2006?

Ms. Murray: If the fraud has been proved, yes.

Mr. Tascona: Where does that say that in the language? Show me.

Mr. O'Toole: My reading was the same. I thought they were addressing current cases that may not be before the courts. If the person has to go to court—if the fraud has been perpetrated on me and I have to go to court and spend money to prove that and then be expedited in how I get paid off, this isn't really saving those who have been caught in this.

Ms. Carter: If you're asking a question, the current bill provides a power for the director of titles to rectify title, and that's not a court process.

Mr. O'Toole: Yes. The current cases, the three or four that have been in the media over the last few months, may not be before the courts. Are they covered?

Ms. Murray: It's difficult, because it's a tribunal that we're talking about in terms of the land titles assurance fund. But generally, in the cases that have been spoken of recently, court orders have already been received to rectify title. So the issue is whether or not the compensation is payable. If they come to the fund, then the fund has the discretion to determine when compensation is paid.

Mr. O'Toole: Would they be entitled to their legal costs?

Ms. Murray: Yes.

Mr. O'Toole: They would. I'm satisfied.

Mr. Tascona: Back to that point: I don't agree that this is going to protect Susan Lawrence and the other people, because the language doesn't say that. Everywhere throughout these amendments it talks about "on or after October 19, 2006." Quite frankly, I think the language is going to have to be clearer. I'll deal with it later, but that's my position at the moment.

Ms. Murray: Mr. Tascona, in situations where a court order has already been received to rectify title, as has happened in many of the cases that have been spoken about, then they can come to the fund and we can process it expeditiously, even under the old provisions.

Mr. Tascona: That's rectifying title. What about rectifying a mortgage fraud?

Ms. Murray: Well, the compensation would be with respect to paying out whatever document was on the title fraudulently.

Mr. Tascona: But the law, when Susan Lawrence went to court on November 28, was that—I don't know whether she won that case. I believe she lost, because it was a registered document; even though it was fraudulent, it was registered, so the Court of Appeal upheld it. That wasn't rectified. Her title may have been restored, but the mortgage stood. So that wouldn't help her with respect to the mortgage.

Ms. Carter: The claim for compensation is made with respect to a valid mortgage under existing law. The amount of money necessary to pay out the mortgage would likely be compensable.

Mr. Tascona: How's that if it's a valid mortgage?

Ms. Carter: All I can say is that under the existing process, there have been circumstances where a fraudulent mortgage was obtained and the homeowner was compensated to pay off the mortgage.

Ms. Murray: So in the fact situations similar to Ms. Lawrence's, if that party came to the fund they would in all likelihood be compensated for that mortgage. In other words, they would be given the money to pay out that fraudulent mortgage whether or not the hearing before the Court of Appeal addresses it.

Mr. Tascona: Predicated on the fact that the title was rectified.

Ms. Murray: In those situations and in that situation, the title has already been rectified.

Mr. Tascona: Okay. I hear you.

Mr. Kormos: I understand that what we're trying to do is to reconcile the amendments with the commitment made in the Phillips letter of December 5. That's our goal here. I understand now—you dealt with subsection (4). That's not an accelerated compensation process. "Earlier payment" is the subheading. That's the accelerated process. Now, a "prescribed class of persons" means that, by regulation, they're going to identify the type of victim

who will be entitled even to consideration. That's going to be the entry point for people to the (4.1) compensation scheme: whether or not you fall within the class of persons prescribed within the regulations.

Ms. Murray: That's correct, yes.

Mr. Kormos: We don't know what that is yet. That could, for instance, address retroactivity. I'm then getting into (5.1) and the six-year limitation period, which is applicable to (4.1) and (4.2).

Ms. Murray: The "prescribed class of persons" is intended to cover homeowners and innocent purchasers for value. That's what the intent is.

Mr. Kormos: That's what you believe the regulation will prescribe.

Ms. Murray: Yes.

Mr. Kormos: That reg is not there yet, but that's what's intended, at least from your perspective. Okay. So help us again. That was two groups of people: homeowners and—

Ms. Murray: Homeowners and innocent purchasers for value.

Mr. Kormos: How does that jibe with the six-year limitation period? Because these people, even if they are in the "prescribed class of persons," still have only six years in which to make application from the time of having suffered the loss. That's interesting. You can suffer the loss by virtue of registration of a document, and it's not inconceivable—I'm trying to run this through—that it would take more than six years to discover that you've suffered that loss, notwithstanding that no subsequent document can take away from an earlier valid title. So there's no loss through a subsequent document. Why is there a six-year time limitation? It doesn't deal with the—or is it inherent in the six-year time limit? No, it isn't, because this isn't in the Limitations Act. So we don't have the principle of when you first became aware of the loss. We don't have that applying here.

Mr. Wood: No. In fact, subsection (5.1) in the motion restates what is already in section 57 of the act.

Mr. Kormos: But I'm correct in pointing out that it's only the Limitations Act that has the provisions whereby the limitation period may run from when you first became aware.

Mr. Wood: That's correct.

Mr. Kormos: And this is very clear that it doesn't incorporate that. Am I correct in that analysis?

Mr. Wood: That's correct.

Mr. Kormos: So this is a hard, hard, hard six-year limitation period. I don't even see any discretion on the part of anybody to extend the period here. There's nothing here. In the Limitations Act—I don't know whether the new Limitations Act has that, where courts can exercise discretion.

Mr. Wood: I'd have to check the act. I can't answer that.

Mr. Kormos: But in any event, there's no discretion permitted here. It's a hard six-year limitation period. How do we reconcile that with the nature of the frauds that take place here and the fact that it's not unrealistic to—look at the old fella, the senior citizen, the 82-year-old Hungarian—

Ms. Murray: In the fact situations of the frauds that we usually see, Mr. Kormos, it certainly doesn't take that long for those to be discovered.

Interjections.

The Chair: Order. People need to hear the answer, please.

Ms. Murray: That's not an issue.

Mr. Kormos: You're saying it's not an issue.

Ms. Murray: The frauds are discovered well within the limitation period. That is not an issue.

Mr. Kormos: I suppose there are going to be arguments about when you suffered the loss. You suffer a loss when your title is denigrated or corrupted, but you don't know the loss yet. It's like the Nortel stock you might still own. You don't suffer the loss until you actually sell it, but in fact, if you saw it do the dead cat bounce, you've suffered a loss, right? So there are going to be arguments about that.

Let's get back, though, to the Susan Lawrences. The minister talks in his letter about people who have been defrauded but who haven't made claims yet because they're caught up in that initial phase of going through the civil courts. So these are people who have not made claims yet.

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Ms. Carter: Or they've just not made an application because they chose not to.

Mr. Kormos: Fair enough. Point us to the language here—this is what Mr. Tascona was trying to get to—that would permit and reconcile this with "registered on or after October 19, 2006."

Ms. Carter: As far as I understand it, that wording relates to the definition of "fraudulent instrument." Provisions dealing with earlier payment aren't related to that.

Mr. Kormos: So October 19 only deals with rectification of registry?

Mr. Wood: The reference to the registration of an instrument on or after October 2006 appears in subsection 57(13).

Ms. Carter: And 78(4).

Mr. Wood: Yes.

Mr. Kormos: So the October 19, 2006, date is relevant only with respect to what actions?

Ms. Carter: Relevant to what constitutes a fraudulent instrument and a fraudulent person, and section 78 deals with—

Mr. Kormos: All right. But having said that, with respect, so what? Fraudulent instrument, fraudulent person, for the purpose of what? For the purpose of rectifying title, or for the purpose of prosecuting?

Mr. Wood: We're looking now, in this motion, at 57(4.1), the earlier payment procedure. Since one of the conditions there is that you have had the registration of an instrument deleted, it has been deleted under 57(13)(b) that contains a specific reference to the registration date. The way I would interpret this is that the process for

earlier payment from the fund is only legally available with respect to—

Interjections.

Mr. Kormos: Please, it's awful hard to hear at the best of times in this room. This is important stuff.

Mr. Wood: As I interpret this—and this would have to be confirmed by ministry staff—the right in subsection (4.1) to earlier payment from the fund is only available with respect to an instrument registered on or after October 2006. That is to say it is only legally available. Strictly speaking, do you have that right? I can't comment as to whether the fund might be satisfied under, for instance, subsection (4) that the claimant has satisfied the obligation to show that he or she has exhausted other legal remedies and therefore comes within that subsection. I'm just speaking on the very narrow point as to whether you have a right under (4.1) to get the earlier payment from the assurance fund.

Mr. Kormos: Thank you, sir.

Ms. Murray: And the tribunal is entitled to set policy with respect to determining what it needs as evidence, and the minister has already said we would be streamlining those applications as well. In terms of situations where a fraud had been proved by court order and the title rectified, they would be able to come to the fund for compensation.

Mr. Kormos: If I can summarize where we're at, I think everybody agrees that the October 19, 2006, is an operative date for when (4.1) kicks in. That's the streamlined compensation. I'm hoping everybody is on the same page in that respect. That's number one. Number two, you say that the assurance board or tribunal has the capacity to set some of its own standards, and I'd say the board or tribunal is bound by the legislation. That takes me to, what is the legislative authority for the board-tribunal that grants compensation to overlook the statutory provision of October 19, 2006, as being the initiation date for the streamlined compensation?

Ms. Murray: Mr. Kormos, the hearing office or the tribunal, the land title assurance fund, would not be overlooking the legislation; it would be establishing the criteria of the act, whether or not they had been able to recover compensation. That's within the discretion of the hearing officer, based on the facts. In the situations I've described, the person would in all likelihood be able to come forward for compensation.

Mr. Kormos: May I ask, does the ministry issue directives to the tribunal?

Ms. Murray: The assurance fund is in the process of issuing full guidelines in this regard, in terms of the evidence that needs to be brought forward.

Mr. Kormos: But does the government issue interpretive directives to the tribunal? We see that any number of ministries do that.

Ms. Murray: The director of titles issues those.

Mr. Kormos: This is just a general question: In this particular area of government, does the ministry issue interpretive bulletins, directives—

Ms. Murray: The director of titles issues interpretive bulletins throughout the administration of the Land Titles Act.

Mr. Kormos: So the minister doesn't?

Ms. Murray: The director of titles does.

Mr. Kormos: So the minister doesn't?

Ms. Murray: No, the director of titles does.

Mr. Kormos: You're being very careful. Are you being careful or—

Ms. Murray: No, I said no, the director of titles does.

Mr. Kormos: So the minister doesn't issue directives?

Ms. Murray: That's correct; the director of titles does.

Mr. Kormos: Thank you.

Chair, if I may, and I put this to the parliamentary assistant, that puts us in a bit of a dilemma here, and let me tell you why. Even if the minister says, as he does here, that there will be discretion exercised to admit the Ms. Lawrences of Ontario to the streamlined process, we've learned that it is not the minister who issues directives or bulletins to the tribunal; it's the director. So the minister can say anything he wants, but there has been no suggestion that he can bind the director by virtue of—look, I have no reason to disbelieve Mr. Phillips. I believe him to be an honourable man. But I'm worried that we haven't established any authority by the minister over the director. There's no suggestion—as a matter of fact, it has been explicitly declared that the minister doesn't issue directives about these things, that the ministry doesn't issue directives about these things, that the government doesn't issue directives about these things but that it's the director of titles.

Ms. Murray: Mr. Kormos, the director of titles issues the directives under the spirit of what the government's objectives are. In terms of the streamlining, we've already announced that we would be streamlining that, and the streamlining actions I have just articulated are what will be moving forward.

Mr. Kormos: And that's a fair enough comment. So you're indicating that the director will feel bound by the policy declaration of the government with respect to pre-October 19, 2006.

Ms. Murray: The hearing officers apply the statute. In applying the statute, one has to determine the facts of each of the cases depending on what is needed to be proved to show that there's a fraud. In most cases, a court order is sufficient, and then one has to bring forward information to the hearing officer with respect to what compensation should be paid.

Mr. Kormos: I appreciate that, and thank you, because that's dealing with the existing hurdle, as it has been referred to: the need to pursue all other avenues first. It's dealing with that. But let's deal with the access—because I don't know when Ms. Lawrence's case dates from but I know that it dates prior to October 19, 2006. I hear you in that regard, in terms of the discretion around the area of whether or not a person has laid the proper foundation. I hear you. I accept that. I have no quarrel with that. I can't quarrel with that. I have no

reason to. But I'm still disturbed, because the discretion that you're talking about has nothing to do with the October 19, 2006, genesis of the 4.1 streamlined process. You need to have a document registered after October 19, 2006, before you can access 4.1. The de facto victims, the existing victims out there, inevitably—some of them well known because of Harold Levy and his journalism—are going to predate October 19, 2006.

I don't know what the minister's assurance then means, because the minister's assurance can't extend to meaning people whose documents that victimize them predate October 19, 2006. That's my problem.

1820

Ms. Murray: I'm not really sure of your question, Mr. Kormos, but the process before a hearing officer under the existing legislation provides that the hearing officer has to be satisfied that a fraud has occurred and then has to be satisfied with respect to what compensation is required and that they're otherwise unable to recover. So in situations even under the old process, a court order that said there was a fraud and rectified the title, which has happened in many of the cases, would in all likelihood—and in most cases has been fine, has been the evidence required. In those cases, the fraudster is also unknown, so that then you address the issue of being otherwise unable to recover and therefore you would come forward.

So with respect to that, that is the spirit of the expedited process. Therefore, we can administer the fund in that manner.

Mr. Kormos: Thank you, ma'am. I'm not going to belabour this. Thank you very much for your patience with me.

But I do want to say this in closing: I will not vote for this amendment, and I'll tell you why. The amendment in and of itself is fine, but for the fact that the amendment doesn't incorporate legislatively the commitment that the minister has made. I hear the comments being made by staff and appreciate them, but I'm still concerned about people being squeezed out. That troubles me a great deal. We talked about that. We know there are a finite number of cases. The outstanding potential claims are relatively finite. There are only maybe one or two that aren't discovered yet, in terms of a reasonable period of time. So it's not as if we're opening the floodgates, where poor Greg Sorbara is going to have to start writing personal cheques. It's containable, it's measurable. As a matter of fact, it can probably be quantified.

Last time I was here with the committee, I asked for some input as to the total value of outstanding claims. In other words, if the assurance fund paid out to everybody who has an outstanding claim as of today, how many millions of dollars would that take? We haven't got a response. That's fair enough.

I just find this, I say to the government committee members, incredibly disappointing. All I'm saying is, I won't support it because I don't want to be a party to it. I'm not going to vote against it because the amendment in and of itself is a good amendment but for the fact that it doesn't draw Ms. Lawrence necessarily into the speedy compensation scheme. I think that's truly regrettable. You people are missing a lost opportunity.

Don't you remember the Dionne quintuplet settlement? Mike Harris was brilliant on that. It whirled around and whirled around and started nipping him on the heels. Remember that, Mr. Tascona? And Harris finally said, "Just settle it." The bad press—because there was this huge emotional support for the surviving Dionne quintuplets and Harris clearly exercised his—he said, "Just settle it," because he didn't need the grief.

I say to you, all you need is two Susan Lawrences buzzing around the province during the next provincial election campaign. She could cause so much grief politically for the government—trust me. You saw her. She's articulate, she's intelligent, she's sympathetic. Man, oh man. I don't understand. You could have simply made it clear with one sentence that all outstanding claims will be considered for the speedy process. As I say, it's measurable. There you go. It's just frustrating.

The Chair: You're done, Peter?

Mr. Kormos: Yes, sir. Thank you.

The Chair: Thank you for your brief comments. Mr. O'Toole?

Mr. O'Toole: I hope not to be repetitive. I'd only say that I think what we're faulting here is that this bill is being amended because it wasn't structured to prevent these frauds, for a variety of reasons. Some of it could be just Teranet and electronifying the system; I don't know. But when I look at this, the due process has to have occurred before this fund clicks in, somehow. Even the language states—I'm looking at subsection 15(2), clause (b). As well, I go further down to (16)(b): "the person demonstrated the requisite due diligence as specified by the director." In other words, the director said you should be doing certain things to ensure—I'm down a little further than this. But it's the same process that we're talking about. It's up to me to demonstrate—that means I have to go to court, I have to get a lawyer, I have to sort it all out—some due diligence, and the director has to be satisfied that this has been resolved by the court or by some process.

Is this before a hearing? How do I get to a hearing? I'm just a normal consumer, Susan or whoever.

Ms. Carter: In response to your question, this provision relates to—I guess I have to give you a little bit of background. The bill as it is now creates a situation where a fraudulently obtained mortgage—so a situation where a fraudster transferred the property to themselves and then went out and got a mortgage. Under the existing legislation, the person would be considered the registered owner and the financial institution would be able to rely on the fact that the person was the registered owner. So under the new legislation, where a fraudulent person goes out and gets a mortgage, in that case, the mortgage would be void.

An additional avenue for compensation is being offered to mortgagees in those cases. If they come forward, notwithstanding the fact that they dealt with a fraudulent person, their interest is now not valid. But not-

withstanding the fact that they dealt with a fraudulent person, they may be able to demonstrate for the hearing officer that they exercised the requisite due diligence in granting the mortgage.

Mr. O'Toole: Like a power of attorney or some other document?

Ms. Carter: Or maybe the person was pretending to be the registered owner and they had fake ID that was really well produced, maybe they did a drive-by appraisal—any number of things.

Ms. Murray: Or there would have been some other validation, an appraisal, but then the fraudster managed to—I mean, they took the steps necessary to try and validate that it was the proper party. They may then have shown requisite due diligence, they may then be eligible for an application for compensation.

Ms. Carter: For example, in the case of tenant fraud, there may be a person posing as the registered owner.

Mr. O'Toole: They're the tenant and they're acting as if they're making payments or whatever, but they've actually registered a mortgage on the title of a rented property. It could be any number—I understand—

Ms. Carter: It could be any number of things. If the person in the circumstances is able to demonstrate that they showed some due diligence, the requisite due diligence, they may be eligible for compensation. In the case of the homeowner, that wouldn't apply because the title would be rectified. If the instrument was void, it would come off the title and the homeowner would merely be coming to the fund to be reimbursed for whatever costs they incurred in the process of having their title rectified.

Mr. O'Toole: I just remember, very briefly—and I'm not qualified in the area as would be Joe and Peter, but my sense is that since we've made this more convenient through Teranet and other systems, being able to electronically do much of this stuff, the system seems to have some weakness in preventing these growing. I think fraud is beyond just the specific debate here. There are people who will figure this one out, and you won't know who the fraudster is—

1830

Mr. Ramal: On a point of order, Mr. Chair: I think it's a political question, so I don't want to put the staff—if there are any technical questions, I think the staff are willing to do it, but we don't want to put them in a position to tackle political issues. The difference between—

Mr. O'Toole: Chair, I had the floor, and I resent the implication. This is not political. In fact, you're ignoring the constituents you're elected to represent, so don't presume to lecture me when you don't know anything of what you're talking about.

The Chair: Whoa.

Mr. O'Toole: He was being rude to me.

Mr. Kormos: We're trying to make progress on this bill, Mr. Ramal.

Mr. O'Toole: He was being rude to me, and that's completely inappropriate.

I'm saying that in the last several years this has become an important issue for people. When Teranet was formed and they started to electronically register these things, I believe the current legislation—this is an admission—is not able to handle that. They're trying to develop a system so that innocent consumers don't have to go to the courts, spending $50,000, to try and re-establish their own title on their own property. That's what this is about, and if you aren't interested, you shouldn't even be on this committee.

I'm insulted by your remarks, Mr. Ramal. I am going to send this comment of yours to your constituents. It's the same as the greenfield dump site. You didn't say a word on that either. So if you want to be political, I'll give it to you.

The Chair: Please. I'd like a little decorum. Every once in a while when I wonder whether I've made the right decision to not run again, this sort of thing confirms it. If there are any political questions, I'm sure the parliamentary assistant would be pleased to answer them.

Is there any further debate? Then I call the question. Those in favour of the amendment, government motion number 11? Those opposed? The motion is carried.

That brings us to PC motion 11.1

Mr. Tascona: Yes. This makes the fund a fund of first resort. That was the intent of what's out in New Brunswick and other areas, that the land titles assurance fund be the fund of first resort.

I move that section 15 of the bill be amended by adding the following subsection:

"(1.4) Subsection 57(4) of the act is repealed and the following substituted:

"'Compensation from fund

"'(4) A person wrongfully deprived of land or of some estate or interest in land is entitled to have compensation paid out of the assurance fund if the application is made within six years from the time of having been so deprived or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.

"'Clarification

"'(4.1) For greater certainty, a person entitled to have compensation paid out of the assurance fund need not take any steps to recover just compensation under subsection (1) before applying for compensation from the fund.'"

The Chair: Discussion?

Mr. Kormos: New Democrats believe that this amendment recreates the fund in the manner in which it is intended to exist and better articulates an efficient and speedy access to compensation for innocent victims of fraud than the government proposal. New Democrats will, of course, be supporting the amendment.

The Chair: Any other discussion?

Mr. Tascona: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The amendment is lost.

That moves us to PC motion 11.2.

Mr. Tascona: This is dealing with the change in the compensation of the fund, making it very clear how people will be compensated, the amount and the fact that they will be paid their reasonable legal fees, unlike what the government is proposing.

I move that section 15 of the bill be amended by adding the following subsections:

"(1.4) Subsection 57(4) of the act is repealed and the following substituted:

"'Compensation from fund

"'(4) A person wrongfully deprived of land or of some estate or interest in land is entitled to have compensation paid out of the assurance fund if the application is made within six years from the time of having been so deprived or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased.

"'Clarification

"'(4.1) For greater certainty, a person entitled to have compensation paid out of the assurance fund need not take any steps to recover just compensation under subsection (1) before applying for compensation from the fund.'

"(1.5) Subsection 57(6) of the act is amended by striking out 'director of titles' and substituting 'assurance fund board.'

"(1.6) Subsections 57(7) to (10) of the act are repealed and the following substituted:

"'Hearing

"'(7) Except if the member or members who consider the application determine that the claim be paid in full, the chair of the assurance fund board shall order a hearing be held, and the claimant and the other persons that the chair specifies are parties to the proceeding.

"'Determination of compensation

"'(8) The panel of members of the assurance fund board assigned to hear the application shall determine the liability of the assurance fund for compensation and the amount of compensation.

"'Amount of compensation

"'(8.1) The amount of compensation may cover,

"'(a) the value of the land or estate or interest in land of which the person was wrongfully deprived; and

"'(b) reasonable legal costs associated with making a claim for compensation out of the fund, including costs associated with a hearing under subsection (7).

"'Notice to claimant

"'(9) The panel of the assurance fund board shall serve notice of its determination under subsection (8) by registered mail on the claimant.

"'Appeal

"'(10) If the panel of the assurance fund board determines that compensation should be paid but that the claim not be paid in full, the claimant, if intending to appeal, shall, within a period of 30 days after the date of mailing of the notice under subsection (9), serve on the chair of the board notice of intention to appeal under section 26, and the chair shall not certify under subsection (11) the amount to the Treasurer of Ontario if a notice of appeal is received within that period or until after the expiry of that period if no notice of appeal is received.'

"(1.7) Subsection 57(11) of the act is amended by,

"(a) striking out 'director of titles shall certify' and substituting 'chair of the assurance fund board shall certify'; and

"(b) striking out 'director of titles' certificate' and substituting 'chair's certificate.'

"(1.8) Subsection 57(12) of the act is amended by,

"(a) striking out 'name of the director of titles' and substituting 'name of the chair of the assurance fund board'; and

"(b) striking out 'director of titles' certificate' and substituting 'chair's certificate.'"

The Chair: Thank you. I would like to espouse to you Parsons's theorum, which says, "The longer an amendment, the greater the chance it is out of order." This motion is dependent on (10.2), which was ruled outside of the scope of this bill. So this one is also out of order.

Mr. Tascona: Unanimous consent to be in order?

The Chair: Is there unanimous consent to accept this? I heard a no.

Mr. Tascona: I'm losing my goodwill here. The House leader may want to come back.

The Chair: Government motion number 12.

Mr. Dhillon: I move that subsection 57(13) of the Land Titles Act, as set out in subsection 15(2) of the bill, be amended by adding "Subject to subsection (13.1)" at the beginning.

The Chair: Any debate?

Mr. Tascona: No. Put it to a vote.

The Chair: Okay. Those in favour? Opposed? Carried.

Government motion 13.

Mr. Dhillon: I move that clause 57(13)(b) of the Land Titles Act, as set out in subsection 15(2) of the bill, be struck out and the following substituted:

"(b) the director of titles or a court, as the case may be, is satisfied, on the basis of evidence that the director of titles specifies or the court orders, that a fraudulent instrument has been registered on or after October 19, 2006; or"

The Chair: Debate? Mr. Tascona first.

Mr. Tascona: That's the crux of the issue—before I transfer over to my friend Mr. Kormos. October 19, 2006, is the problem. I don't care what anyone says, the thing is, the director of titles has to apply the statute. If he doesn't apply the statute, they're out of the jurisdiction. So what I would propose is a friendly amendment, if I can do that now, to change the date from October 19, 2006, to January 1, 2003, because that's when all the action started with respect to the court cases and the

flurry and, quite frankly, the inaction by the government. So my amendment is "January 1, 2003," and if that is really the intent of the government to make sure that this is retroactive, this will crystallize it and bring it clearly in force.

The Chair: We now will do debate on Mr. Tascona's amendment. Mr. Kormos, on the amendment to the amendment.

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Mr. Kormos: Consistent with the notice of motion that I filed with the clerk, Mr. Tascona, I amend your amendment by deleting "2003" and substituting "1996."

The Chair: We have an amendment to the amendment presently, so we cannot accept another amendment.

Mr. Tascona: I'll withdraw my amendment for his amendment. May I withdraw mine for his?

I haven't seen your amendment. It's January 1, 1996? Okay. I withdraw for that amendment.

Mr. Kormos: I move, then, that government motion number 13 be amended by deleting "2006" and substituting "1996."

Thank you, Mr. Tascona.

The Chair: Debate on Mr. Kormos's amendment?

Mr. Kormos: It clearly extends the time frame 10 years. As Mr. Tascona suggested in his somewhat more conservative proposal, which is to be expected, of course, it's the time frame within which most, if not all, of any outstanding frauds are likely to be reported. It may well also still be subject to the six-year limitation period, so even though the operative date is 1996, the six-year limitation period would still apply. But of course the limitation period only kicks in when the loss is suffered. The six-year limitation period doesn't necessarily restrict you to, let's say, 2000, even though the existing bill wouldn't restrict you to 2000 because the six-year limitation period would only be moving forward and not collect anything that predated October 19, 2006.

It's a modest proposal. If the government is serious about what it intends to do, then on this one I would ask your support for the modest proposal of Mr. Tascona and myself.

Mr. Dhillon: I just want to point out that government bills typically are not retroactive because of obviously unintended circumstances. People can apply for compensation under the streamlined LTAF process for the victims before October 19.

Mr. O'Toole: I think the point we're all trying to make is that we want to make sure that those persons in recent times—maybe this is a bit too long; maybe Mr. Tascona's date was more accurate. There seems to have been an increase in the vulnerability of people's access to title or those mortgagees who might be finding themselves—I don't know what the statistics are. Is it increasing? Is there a problem?

Ms. Murray: The number of applications to the fund with respect to fraud has been, on average, 10 for the last number of years.

Interjection.

Ms. Murray: Yes, it's over the last 10 years.

Interjection.

Mr. Tascona: Mortgages?

Ms. Murray: I think the issue with respect to mortgage fraud is that the industry itself is having trouble quantifying, and it doesn't relate to the title, because it's typically value flips or people giving false information to financial institutions about their financial wherewithal. It's not related to the title.

Mr. Kormos: It seems to me, as I recall it, that the government legislation repealing the private school tax credit was pretty darned retroactive. Far more important is the message that the parliamentary assistant just delivered on behalf of his ministry. The message should be very clear, based on what the parliamentary assistant just said: This government does not consider retroactivity appropriate.

Ms. Lawrence, any other number of people out there who are existing victims of registered documents that predate October 19, 2006, take heed of the clear articulation by the parliamentary assistant. He may have done this out of an act of generosity, so as to suppress any inappropriate high expectation by anybody. He may have been bucking his minister's directions, because the ministry has wanted to maintain the charade that somehow victims who predate October 19, 2006, will be dealt with in the 4.1 compensatory assurance scheme. I thank you, Parliamentary Assistant, for the clear message to victims out there that they're being exploited by the government for the purpose of this exercise but will be dropped like hot potatoes once this bill is passed and can knock on doors until Hades freezes over.

I don't want to prolong the debate on this. The government caucus members have their marching orders.

Recorded vote, please.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

Now we are back to debating the amendment. Is there any additional debate?

Mr. Kormos: On behalf of New Democrats, I'm not going to buy into the commencement date of October 19, 2006. It's unfair. It should predate that.

Mr. Tascona: I think this is the critical part of what makes this not retroactive, and it's unfortunate. We're going to be dealing with this. I can't support it.

Mr. O'Toole: The mere fact that it's in there will cause a challenge of some sort. We'd be better to have had "as determined by" this hearing officer, whoever. Do you know what I'm saying? It's a fixed date and that's what the problem is. It seems to be that there are two different classes of persons with applications. We're just trying to make sure that no one is excluded because they

haven't followed the court process to be clear who has committed the fraud by the hard date.

The Chair: Any additional debate? I'll call the question. Those in favour of the motion? Those opposed? Carried.

That brings us to government motion number 14.

Mr. Tascona: Can we go back to 10?

The Chair: Do you want to do 10 now?

Mr. Tascona: I want to go back to 10 because it was stood down. I've got the new amendment.

The Chair: Sure. Government motion 10 was stood down. Mr. Dhillon, do you wish to withdraw the original government motion 10?

Mr. Dhillon: Yes.

The Chair: You will now move this amended—

Mr. Dhillon: Yes.

I move that clause (c) of the definition of "fraudulent person" in section 1 of the Land Titles Act, as set out in subsection 15(1) of the bill, be amended by adding "knows that the person" after "but".

The Chair: Debate?

Mr. Kormos: I appreciate the intent, as I thought I did earlier, and I'm grateful to legislative counsel, Mr. Wood, for his assistance in, not correcting, but refining perhaps, the language in the original amendment. I appreciate his contribution.

The Chair: Any other debate? I'll call the vote. Those in favour of the motion? Opposed? Carried.

Now we go to government motion 14.

Mr. Dhillon: I move that section 57 of the Land Titles Act, as amended by subsection 15(2) of the bill, be amended by adding the following subsection:

"Notice to director of titles

"(13.1) A court shall not direct the rectification of the register under clause (13)(b) unless the applicant in the proceeding before the court has given notice of the proceeding to the director of titles and the director of titles is a party to the proceeding."

1850

Mr. Kormos: This amendment makes sense.

Mr. Tascona: I didn't think so. The problem I've got here is that it says "has given notice to the director of titles"—I understand that—"and the director of titles is a party to the proceeding," but what happens if the director of titles doesn't want to be a party to the proceeding?

Ms. Carter: If someone is made a party to the proceeding—in this case, for example, if the director of titles didn't want to be a party, then the director of titles would just indicate to the court that they had no interest in the proceeding and it would continue in the absence of the director of titles.

Mr. Tascona: I know, but how does the director of titles become a party to the proceeding? They have to be a party to it; they have no choice.

Ms. Carter: I don't understand the question.

Mr. Tascona: If you're a party to the proceeding, you can say, "Oh, I'm not going to participate." Are you saying to me that the director of titles is automatically a party to the proceeding? Is that what you're saying to me?

Ms. Carter: If the person doesn't seek to rectify the title through the director of titles and instead chooses to go to court, the provision provides that the director of titles be made a party and be given notice.

Mr. Tascona: Well, if that's the way it is—

Ms. Carter: Or the court shall not order rectification without—

Mr. Wood: Yes, I support that interpretation. Perhaps it's clearer just to say that being a party to a proceeding is the right to attend the proceeding. You can choose not to exercise that right. That doesn't invalidate the proceeding.

Mr. O'Toole: But it disqualifies them by saying that the court shall not direct rectification unless the director is a party to the hearing.

Ms. Carter: Unless the director is made a party in the proceeding. After the director is made a party in the proceeding, the director of titles can decide not to participate.

Mr. O'Toole: But if he doesn't participate, the court can't order rectification. The consumer could still be left out in the cold if the director of titles didn't participate in the court proceeding.

Ms. Carter: I don't think that's correct. If the director of titles didn't participate in the proceeding, the director of titles would still receive an order from the court directing that the title be rectified, and the Land Titles Act requires that the director of titles implement any orders of the court.

Mr. O'Toole: But it says, "A court shall not direct the rectification of the register under clause (13)(b) unless the applicant…." That's not what it says to me. I'm saying if the director chooses not to participate, and the court, through some civil action, has made a determination that there is cause, then I've got another quarrel with the—

Ms. Carter: No. If the director of titles has been made a party but doesn't participate, they've still been made a party. The requirements of the provision have been fulfilled.

Mr. Kormos: I hope you don't mind, but I'm going to come to the defence of the motion. As Mr. Wood has already indicated, you've got all sorts of actions going on in any number of forums where parties are named, two or three pages long, and only a handful are active in the litigation. It's important, obviously, that the director be a party. As I understand it, parties are named by the plaintiff, if you will, by the applicant, subject to a person arguing that he or she should not be a party. Is that accurate in terms of how this sort of stuff works, Mr. Wood?

Mr. Wood: Well, in this case, we have the statute, the Land Titles Act, which confers the right to be a party on the director of titles.

Mr. Kormos: So it flows from the statute, but as I say, it's not a matter of a court ordering that somebody be a party. The applicant knows that the court can't give

him or her relief unless and until the director is a party to the proceedings.

Mr. Wood: That's right

Mr. Kormos: I appreciate your comments, Mr. O'Toole, but I don't see it as problematic.

The Chair: We're going to call the question. I think we've defined the stance. Those in favour of the motion? Those opposed? The motion is carried.

Government motion number 15.

Mr. Dhillon: I move that subsection 57(16) of the Land Titles Act, as set out in subsection 15(2) of the bill, be struck out and the following substituted:

"Power to summon witnesses

"(16) For the purposes of the hearing, the director of titles may exercise the powers described in subsections 20(1), (2) and (3) with necessary modifications and the reference in subsection 20(1) to an applicant is deemed to be a reference to any party to the hearing.

"Same

"(17) Subsections 20(4) to (7) apply to the hearing with necessary modifications.

"Assistance

"(18) The director of titles may, in the course of the hearing, require a party to the hearing to produce a document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce information in any form, and the person shall produce the document or record or provide the assistance."

The Chair: Debate?

Mr. Tascona: Call the question.

The Chair: Those in favour of the motion? Those opposed? It is carried.

Government motion number 16.

Mr. Dhillon: I move that section 15 of the bill be amended by adding the following subsection:

"(2.1) The French version of the following provisions of the act is amended by striking out 'réclamation' wherever that expression appears and substituting in each case 'demande':

"1. Subsection 58(2).

"2. Clause 59(1)(a).

"3. Subsection 59(2)."

Mr. Tascona: Call the question.

The Chair: Those in favour of the motion? Opposed? Carried.

Government motion number 17.

Mr. Dhillon: I move that subsection 15(3) of the bill be struck out and the following substituted:

"(3) Subsection 59(1) of the act is amended by striking out 'or' at the end of clause (b) and by adding the following clauses:

"'fraud

"'(d) if the person knowingly participates or colludes in a fraud with respect to the interest or right on which the claim is founded;

"'subrogated claim

"'(e) if the interest or right on which the claim is founded is derived on or after October 19, 2006 from a subrogated claim; or

"'claim of insurer

"'(f) if the person makes the claim, on or after October 19, 2006, on behalf of an insurer of the person.'"

The Chair: Debate?

Mr. Tascona: I have a question on the fraud. Reading (d), it says, "if the person … participates or colludes in a fraud." Why do you need to have "knowingly?" What are you trying to accomplish? I'll put it to ministry staff: Why do you need to impart knowledge to a person who participates or colludes in a fraud?

Ms. Carter: I would defer to legislative counsel, but I think the word "knowingly" just modifies the word "fraud" and makes it clear.

Mr. Wood: Well, it qualifies "participates or colludes in a fraud." You'd have to think of certain situations where you might, in an innocent way, contribute to a fraud, since you're perhaps a bone fide purchaser registered on title.

Mr. Tascona: The way I look at it is, if the person says, "I didn't know that was fraudulent. I didn't have the mens rea to do this"—you're just raising the standard for someone to participate in fraud. You could say if the person "willingly participates or colludes in a fraud," but you wouldn't want to even use that language because you'd be raising the standard. I don't agree with "knowingly," because I think you're just watering it down.

Mr. O'Toole: It's in the original version. It's "If a person knowingly participates" right in the—

Mr. Tascona: But they haven't done anything.

Ms. Carter: What's being added is clause (f).

Mr. Tascona: I know. I don't agree with that, and Mr. Kormos may comment on it, but I think it's raising the standard with respect to—we're trying to get at people who participate or collude in a fraud. You're just making it more difficult to prosecute somebody.

Ms. Carter: Section 59 deals with eligibility for compensation. That's it.

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Mr. Tascona: I hear you.

The Chair: Mr. Kormos.

Mr. Kormos: Once again—this is twice now, friends—I come to the aid of government.

The Chair: That's twice in 16 years, though.

Mr. Kormos: Whether it's useful or not remains to be seen.

I think legislative counsel has hit it on the head. Look at a scenario—for instance, one of the notorious cases is an absent spouse with a power of attorney. You could have an absent spouse affix his or her signature to something, not believing or not wishing or not intending it to be used in a fraudulent way. Once you have colluding, that implies fraud and that implies in and of itself knowledge, but mere participation—what about unwitting participation?

Mr. Tascona: I don't think it makes it any different. I just think it raises the standard. It's a matter of evidence,

proving that they participated. Now you've got a mens rea element, so you have to knowingly—

Mr. Kormos: What about the person who says, "Yes, that's my signature, and yes, that's what I signed, but it wasn't designed to be used for that purpose"?

Mr. Tascona: I'm not going to win this.

Mr. Kormos: Maybe you will, you think? Do you buy lottery tickets, Joe?

The Chair: Now he's marked his territory, perhaps I could call the vote. I'm going to call the vote. Those in favour of the motion? Those opposed? The motion is carried.

Government motion number 18.

Mr. Dhillon: I move that section 15 of the bill be amended by adding the following subsections:

"(3.1) The act is amended by adding the following sections:

"'Inspection

"'59.1(1) In this section,

"'"inspector" means the director of titles or a person designated in writing by that director when exercising any of the powers set out in this section.

"'Powers

"'(2) Upon having a reasonable belief that a person described in subsection (3) is likely to have information relevant to determining whether a payment of compensation out of the land titles assurance fund is authorized under subsection 57(4.1), an inspector may,

"'(a) require that the person produce for inspection and examination, in a readable form, any documents and records that may contain the information;

"'(b) require that the person provide whatever assistance is reasonably necessary to produce documents and records in a readable form when required to do so under clause (a), including using any data storage, processing or retrieval device or system for that purpose;

"'(c) upon giving a receipt for them, copy any of the things that the person is required to produce under clause (a) if the inspector returns the things promptly to the person who produced them; and

"'(d) require that the person answer all inquiries relevant to the information.

"'Persons being inspected

"'(3) The persons who are subject to an inspection under subsection (2) are every person who is registered as the owner of land or some estate or interest in land with respect to which an application for compensation from the land titles assurance fund is made under subsection 57(4.1) or who was registered as such at the time the claim for compensation arose.

"'Identification

"'(4) An inspector shall produce, on request, evidence of the authority to carry out an inspection.

"'No obstruction

"'(5) No person shall,

"'(a) obstruct an inspector conducting an inspection;

"'(b) withhold from the inspector or conceal information that is relevant to the inspection; or

"'(c) withhold from the inspector or conceal, alter or destroy any documents or records that are relevant to the inspection.

"'Admissibility of copies

"'(6) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

"'Offence

"'59.2 A person who contravenes subsection 59.1(5) is guilty of an offence and, on conviction, is liable to,

"'(a) a fine of not more than $50,000 or imprisonment for a term of not more than two years less a day, or both, if the person is an individual; and

"'(b) a fine of not more than $250,000, if the person is a corporation.'"

The Chair: Debate? I will call the question. Those in favour of the motion? Opposed? It is carried.

This brings us to PC motion number 18.1.

Mr. Tascona: This is a very important amendment. I have the minister in Hansard and also in a letter he wrote earlier to the committee that he was looking at making changes to powers of attorney. I didn't see anything in here about that. That's one of the problems we've had.

The Chair: Could you read it into the record before you speak to it? It's petty on my part, I know, but—

Mr. Tascona: I don't know if it's in order.

The Chair: Well, we'll wait till the end, won't we?

Mr. Tascona: I move that section 15 of the bill be amended by adding the following subsection:

"(3.1) Subsection 70(2) of the act is repealed and the following substituted:

"'Registration

"'(2) An original power of attorney may be registered in the prescribed manner if,

"'(a) it is filed personally by the donor of the power of attorney who provides proof satisfactory to the land registrar of his or her identity;

"'(b) it is filed by a person other than the donor and is accompanied by other evidence satisfactory to the land registrar that it is authentic, such as an affidavit from a witness to the power of attorney.

"'No copies

"'(2.1) For greater certainty, a copy of a power of attorney, whether notarized, certified or otherwise guaranteed to be authentic, may not be registered on and after the day this subsection comes into force.'"

The Chair: It grieves me, but section 70 is not open in the original bill, so this amendment cannot—

Mr. Tascona: I'd like unanimous consent to make it in order, since the minister said he was going to deal with this in the bill.

The Chair: Is there unanimous consent? I heard a no.

Interjections.

The Chair: I'm not a lawyer, so I'm going to follow the law.

Mr. Tascona: I've got another one.

The Chair: PC motion 18.2.

Mr. Tascona: I move that subsection 15(4) of the bill be struck out and the following substituted:

"(4) Section 78 of the act is amended by adding the following subsections:

"'Exception, fraud

"'(4.1) Subsection (4) does not operate to validate an instrument that, if unregistered, would be fraudulent and void.

"'Same

"'(4.2) No interest of any kind whatsoever in real property is created or given by the registration of a fraudulent instrument or an instrument that is registered subsequent to a fraudulent instrument and that depends for its validity on the fraudulent instrument.

"'Same

"'(4.3) For greater certainty, nothing in subsections (4.1) or (4.2) invalidates the effect of a registered instrument that is not a fraudulent instrument or not an instrument that is registered subsequent to a fraudulent instrument and that depends for its validity on the fraudulent instrument.'"

The Chair: This motion is in order. Any debate?

Mr. Tascona: I think it's a pretty good motion. I'd like to see consent from the government in terms of looking at this.

The Chair: Any additional debate? I will call the motion.

Mr. Tascona: Recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Kular, Leal, Ramal.

The Chair: The motion is lost.

Mr. Tascona: Your minister is going to be mad. You voted down every one of our amendments—every one—with respect to the power of attorney.

The Chair: PC motion 18.3.

Mr. Tascona: I move that subsection 15(5) of the bill be struck out and the following substituted:

"(5) Section 156 of the act is amended by adding the following subsections:

"'Same, false information

"'(2) Every person is guilty of an offence if the person,

"'(a) falsifies, assists in falsifying or induces or counsels another person to falsify or assist in falsifying any information or document relating to the registration of an instrument or a document; or

"'(b) knowingly applies for, assists in applying for or induces or counsels another person to apply for the registration of an instrument or a document based on false information or a fraudulent document.

"'Penalties

"'(3) An individual who is convicted of an offence under subsection (2) is liable to,

"'(a) a fine of not more than $50,000 or to imprisonment for a term of not more than two years less a day, or both; and

"'(b) a fine of not more $50,000, in addition to the penalty imposed under clause (a), if,

"'(i) the individual is described in one of clauses 2.1(1)(a) to (f), or

"'(ii) the individual deals with real estate or mortgages in his or her professional capacity.

"'Same, corporation

"'(4) A corporation that is convicted of an offence under subsection (2) is liable to a fine of not more than $250,000.'"

Is that in order?

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The Chair: Thank you. That is in order.

Mr. Tascona: Do you know why it's a good motion, to the members opposite? You're just dealing with persons or corporations. This is broadening the net to deal with the individuals who would register documents, people who deal regularly with mortgages. It's a broader net.

The Chair: Any additional debate? I call the vote.

Mr. Tascona: Recorded vote.

Ayes

Kormos, Tascona.

Nays

Dhillon, Kular, Leal, Ramal.

The Chair: The motion is lost.

PC motion number 18.4.

Mr. Tascona: I move that section 15 of the bill be amended by adding the following subsection:

"(5.1) The act is amended by adding the following section:

"'Rectification of register

"'157.1(1) This section applies if a person has fraudulently procured an entry on the register and establishes rules that apply to protect the interests of an innocent person,

"'(a) who has lost status as the registered owner of land as a result of the fraud;

"'(b) who has lost status as a registered mortgagee of land as a result of the fraud; or

"'(c) whose land was charged or encumbered pursuant to or subsequent to the fraud.

"'No conviction necessary

"'(2) This section applies whether or not a person has been convicted for an offence under this act or the criminal law of Canada with respect to the fraud.

"'Time of fraud

"'(3) This section applies to acts of fraud whether they occurred before, on or after the day this section comes into force.

"'Reinstatement of registered owner

"'(4) If the land registrar is satisfied that a person has lost status as the registered owner of land as a result of fraud and that the person, absent the fraud and any subsequent transactions that relied on the fraud, would be the registered owner of the land, the land registrar may,

"'(a) cancel any registrations on the register that relate to the fraud;

"'(b) cancel any entries on the register that were registered subsequent to the fraud; and

"'(c) reinstate the person who lost status as the registered owner of the land.

"'Reinstatement of mortgagee

"'(5) If the land registrar is satisfied that a person lost status as a registered mortgagee of land as a result of fraud and that the person, absent the fraud and any subsequent transactions that relied on the fraud, would be a registered mortgagee of the land, the land registrar may,

"'(a) cancel any registrations on the register that relate to the fraud;

"'(b) cancel any entries on the register that were registered subsequent to the fraud; and

"'(c) reinstate the person who lost status as a registered mortgagee of the land.

"'Cancellation of encumbrance

"'(6) If the land registrar is satisfied that land has become charged or encumbered as a result of fraud and that, absent the fraud and any subsequent transactions that relied on the fraud, the land would not be so charged or encumbered, the land registrar may,

"'(a) cancel any registrations on the register that relate to the charge or encumbrance; and

"'(b) cancel any entries on the register that were registered subsequent to the fraud.

"'Innocent third parties

"'(7) If, in reliance on a fraudulent entry on the register, an innocent person became registered as the owner of land or of a charge upon land and that person's interest is adversely affected by a change in the register made by the land registrar under this section,

"'(a) the innocent person shall have no claim against the land;

"'(b) the innocent person shall have no claim against a person who was reinstated as the registered owner; and

"'(c) the innocent person is entitled to a remedy in accordance with section 57, including compensation from the Land titles assurance fund.'"

The Chair: Debate?

Mr. Tascona: This is much superior to the government's situation. What this means is that a person who has the title gets the title, keeps their land and doesn't have to go to the fund to get compensated. They keep their title. For the mortgagee, they get the mortgage struck from the mortgage on their property. The innocent party, whether they purchased the land or whether they've become a mortgagee on the land, can go to the fund as the fund of first resort. This is a good motion and I heartily endorse it.

The Chair: Additional debate? I'll call the question.

Mr. Tascona: Recorded vote.

Ayes

Kormos, Tascona.

Nays

Dhillon, Fonseca, Kular, Ramal.

The Chair: The motion is lost.

That moves us to government motion number 19.

Mr. Dhillon: I move that subsection 163(0.2) of the Land Titles Act, as set out in subsection 15(6) of the bill, be amended by striking out "subsection (1)" and substituting "subsection (0.1)."

The Chair: All those in favour of the motion? Opposed? It is carried.

Government motion number 20.

Mr. Dhillon: I move that subsection 163.1(1.1) of the Land Titles Act, as set out in subsection 15(7) of the bill, be struck out and the following substituted:

"Director's orders

"(1.1) The director of titles may take orders,

"(a) specifying evidence for the purposes of clause 57(13)(b); or

"(b) specifying what constitutes the requisite due diligence for the purposes of clause 57(4)(b) or 4.1(b)."

The Chair: Any discussion? I'll call the motion. In favour? Opposed? Carried.

Mr. Dhillon: Chair, I made an error. In motion 20, after "Director's orders," I should have stated:

"(1.1) The director of titles may make orders."

The Chair: Thank you for the clarification. That's what I thought I heard.

We are now finished section 15. I am going to call the question. Shall section 15, as amended, carry?

Mr. Tascona: Recorded vote.

Ayes

Dhillon, Fonseca, Kular, Ramal.

Nays

Kormos, Tascona.

The Chair: Carried.

Moving to section 16, there were two additional amendments handed out. PC motion number 20.1.

Mr. Tascona: This one is a motion that deals with the date rape situation that the minister indicated he was going to put into the bill—but he never did, from what I understand—to make sure that it wasn't voluntary for someone to apply for it. This will deal with a bar owner—making it mandatory for them to set up their premises to protect women from date rape drugs.

I move that section 16 of the bill be amended by adding the following subsection:

"(4.1) Section 6 of the act is amended by adding the following subsection:

"'Requirement to apply for an expanded licence

"'(1.1) A person who holds a licence to sell liquor for premises that constitute a bar or other prescribed premises shall promptly apply for a change to the licence holder's licence to cover the hallways and washrooms to which patrons of the bar or other prescribed premises have access.'"

The Chair: Any debate?

Mr. Tascona: Well, Peter—

Mr. Kormos: "Well, Peter"?

The Chair: Actually, I'll call on him, if you don't. I don't get to do much. Let me call on Mr. Kormos.

Mr. Kormos: Okay, Joe. Come on, Mr. Tascona, please. This is a red herring, the drinks in the washroom—

Mr. Tascona: It's not.

Mr. Kormos: Not your amendment. Your amendment gives effect to what the government says it purports to do, but what we've learned in short order is that the date rape drug problem doesn't occur primarily when women, who are the victims, go to the washroom and leave their drink behind with a friend sitting at the table. It occurs, we're told, when young people who go to bars—and young people dance; some of you may remember that—when the whole group gets up from the table and goes out on the dance floor and a whole table full of drinks is left unattended.

When the government made this announcement, the prospect of taking your drink into most washrooms of most bars and taverns and saloons—I used to go to the Brunswick House up on Bloor Street. You wouldn't want to drink out of any container that had been brought into the restroom facilities there, at least not back in 1971.

The Chair: Thank you for sharing that with us during mealtime.

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Mr. Kormos: Well, think about it, Chair. It's a silly—again, not the amendment, but the proposition that somehow this is going to prevent date rape drugs from being introduced into young women's drinks in drinking places is naive.

Mr. Tascona is right. If you're going to do it, do it universally. That's why we need more liquor inspectors to make some of these places clean up those restroom facilities so that people are comfortable taking their drinks with them.

The real solution, in my view, to the date rape issue is more active supervision in these places, and that means more onus on the operators of the establishments to ensure that their patrons, drinking as they are, are kept safe while they're in those premises.

I'll support the amendment because I understand the spirit in which it's moved.

Mr. Tascona: The reason I moved this amendment is that I asked the minister a question in the House and he said, "We wouldn't want to apply this to Swiss Chalets and things like that," Swiss Chalet being a popular place. We weren't talking about that.

Ted McMeekin went out on full government hearings with respect to the Liquor Licence Act, and the Attorney General is on record in Hansard talking about, "We've got to deal with date rape drugs, and this is the area that we would be dealing with by extending it to hallways and washroom facilities." Here we come back, and they don't do anything about it. Yet we heard—and I may disagree with my friend Mr. Kormos on this in terms of what kind of activity can happen—what we're talking about here is in terms of people being able to take their drinks with them throughout the facility as opposed to being strictly limited to having them at their table. That's what we're talking about here. We're talking about bars or other prescribed premises where you can ensure that your drink is with you, with the person, and that's what the Attorney General was talking about. That's what this government, when it went out on full public hearings, was talking about, and yet they make it voluntary.

This is the issue: We're making it mandatory for those bar owners who are in this type of business—and quite frankly, we're not talking about Swiss Chalet, though we'd like to be eating it. We're talking here about making it mandatory. We're talking about making the bar open in terms of its entire access, to make sure that this type of activity doesn't happen, and dealing with the hypocrisy of the government in terms of saying they're going to do something about it which they never did. So this is the motion that's on the table, and I think it's legitimate.

The Chair: No additional discussion? I will call the vote.

Mr. Tascona: Recorded.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost. That moves us to 20.2.

Mr. Tascona: I move that the bill be amended by adding the following subsection:

"(14.1) Section 8 of the Liquor Licence Act is amended by adding the following subsection:

"'Mandatory condition: liability insurance

"'(3.1) It is a condition of a licence that the applicant or licence holder obtain and maintain liability insurance in the prescribed amount with respect to the premises for which the licence is sought or the licensed premises, as the case may be.'"

The Chair: Discussion?

Mr. Tascona: Yes. We heard at length from different stakeholders in terms of the problems that are created when a bar doesn't have proper liability insurance. The presumption that they would be carrying it is a wrong

presumption. What they were looking for was mandatory liability insurance, and I think it's something that should be done, especially when the licence holder is in a position where they're putting a person at risk. They should at least have that insurance in place so that people are protected. It's a pure consumer issue, and I think it should be supported.

Mr. Kormos: This motion by Mr. Tascona is, in and of itself, a significant and very valuable contribution to this process. I believe that all of us on this committee were shocked and disturbed by learning that there are not mandatory minimum liability insurance requirements for licensed premises. We all know that there is increasing responsibility on the part of a licensed premise, its owner and its staff, designed to assist in safeguarding the well-being of patrons who are inherently in a dangerous position because you're in a place where people are drinking and inevitably getting drunk.

It was down in Niagara region, as a matter of fact, the Jordan Station area, where the seminal Ontario Court decision developed around the liability of a tavern owner and the consequences of a drunk driver who leaves that tavern, gets into a car and causes injury to a third party. But that sort of liability, while socially positive—it's important that that liability be there—is irrelevant if there isn't the insurance coverage to give effect to payment for the damages that may arise from a tavern owner's negligence.

This is an automatic one for me. Mr. Tascona has given the government a whole lot of wiggle room by not indicating the amount that the minimum coverage should be. He leaves it to the government, by regulation, to determine that amount.

You, my colleagues, government members, should be outraged that this requirement doesn't already exist. If you go to a drinking place, as you do—with your spouse, with your family, with your friends—after a sports game, whenever you might, you expect that if that tavern owner, that saloon keeper isn't fulfilling their responsibilities and, as a result of that, puts you in danger as a patron—be you in the premises or be you leaving the premises—you expect that tavern owner/saloon keeper to, at some point, pay up for damages that you might incur. The damages can range from modest to, in the case of, let's say, a pedestrian who isn't a motor vehicle owner or operator and therefore has no motor vehicle personal injury coverage that they can access on a first-party basis—let's say that any one of you or, more dramatically, your kids, leave a licensed establishment as a pedestrian with no auto insurance coverage of your own to access on a first-party basis, and are mowed down by a drunk driver who was served after he or she became drunk by that tavern owner who didn't cut him or her off and then didn't take appropriate steps, perhaps knowing that they had a car that they intended to drive. When your kid is left paralyzed from the neck down—I'm not a doctor, but I think that qualifies you for quadriplegia. That's what victims of drunk drivers end up being. You're going to be expecting that tavern owner to either be totally or at least in part responsible for the economic well-being of your kid for the rest of his or her life. And they should be.

The courts will rule on that. There has been an interesting evolution of the case law. We just saw some recent case law where there are some twists and turns around, for instance, the proverbial office party where drinks are being served. Do you remember that, Mr. Tascona? I think it was a real estate firm and an office party.

It is just unconscionable that we can have, that we accept and that we approve of these various levels of liability that have been created by the courts, by the common law, yet we don't, at the same time, ensure that people who are entitled to compensation as a result of those liabilities are going to access that compensation because we don't require tavern owners to carry liability insurance.

The other very important thing is that the insurer, then, will play an active role in policing that establishment. Do you want to talk about date rape and curtailing it? I don't know what the law is around a tavern owner's liability around a woman whose drink is contaminated with a date rape drug. But if you want to get compliance with tavern owners who ensure that their staff are told that you have to monitor unattended drinks, that's the solution—isn't it?—for there to be sufficient numbers of staff in a tavern and for them to be told, "Part of your job is monitoring unattended drinks." It's as simple as that. Let them take their drinks to the toilet, for Pete's sake.

Interjection.

Mr. Kormos: Wait a minute. If you have an insurance company involved mandatorily, because there has to be coverage, that insurance company is going to start to take an interest in supervising that licensed establishment, its insurance client, to ensure that that client maintains some minimum level of responsibility in terms of not only compliance with the Liquor Licence Act but a minimum level of supervision.

This amendment will save lives—I believe that—because it will make tavern owners incredibly conscious of premium costs or the prospect of being denied insurance coverage. Of course, if you're denied insurance coverage because you've got a track record that's just too deplorable, that means you don't have a licence. That's the way it should be, isn't it?

Mr. Tascona has done this committee a true favour with this amendment. The government has a great deal of wiggle room because he indicates that the amount is to be prescribed. If the government wants to test the waters a little bit before this section becomes effective, it simply has to decline to prescribe the minimum rate. Right, Mr. Tascona?

Mr. Tascona: Correct.

Mr. Kormos: There will be pressure on it, but what it says and what it means is that the requirement doesn't have to come into effect tomorrow—I wish it did—but the government has wiggle room. I'm looking forward to the vote on this one, sir.

The Chair: Are we ready for the vote?

Mr. Tascona: I've been putting forth these amendments. We don't hear one word out of the government members; not one word on any of these amendments. We're talking about mandatory liability insurance to be prescribed in situations—and we know what the situations are. We don't get one word out of the government; not one. If that's why you're going to be here, just to vote everything down and you don't even say a word, it's a joke.

A recorded vote.

Ayes

Kormos, O'Toole, Tascona.

Nays

Dhillon, Fonseca, Kular, Leal, Ramal.

The Chair: The motion is lost.

We have finished amendments for section 16, so I will call the question. Shall section 16 carry? Those in favour?

Mr. Tascona: Recorded vote, eh?

The Chair: You didn't ask.

Mr. Tascona: Come on. I was out there doing your food.

The Chair: I appreciate that. As a personal favour for you, I will break every rule in the book and have a recorded vote.

Ayes

Dhillon, Fonseca, Kular, Leal, Ramal.

Nays

Kormos, O'Toole, Tascona.

The Chair: Section 16 is carried.

We will continue on with—

Mr. Kormos: Chair, do you want to entertain some blocks of sections?

The Chair: Yes, I do.

We're having a pause.

The committee paused from 1933 to 1940.

The Chair: The pause is over.

Sections 17 to 43, inclusive, contain no proposed amendments. Shall sections 17 to 43 carry? Carried.

That moves us—

Mr. Kormos: If I may suggest, Chair, that schedule A—

The Chair: Okay. Shall schedule A, sections 1 to 32 carry? Carried.

Shall schedule A carry? Carried.

Schedule B, sections 1 to 31: There are no amendments. Shall schedule B, sections 1 to 31, carry? Carried.

New section, government motion 21, moved by—

Mr. Dhillon: I move that schedule B to the bill be amended by adding the following section:

"31.1 Section 160 of the act is repealed and the following substituted:

"'Interim financial statement

"'160(1) Within 60 days after the date that an interim financial statement required to be filed under the Securities Act and the regulations made under that act is prepared, an offering corporation shall send a copy of the interim financial statement to all shareholders who have informed the corporation that they wish to receive a copy.

"'Address

"'(2) The interim financial statement referred to in subsection (1) shall be sent to a shareholder's latest address as shown on the records of the corporation.'"

Mr. Tascona: Who can prepare that interim financial statement? Is that a CGA or a CA or a CMA? Is there an answer to that?

Mr. Dhillon: Can we get someone to answer that, please?

Mr. John Mitsopulos: I'm John Mitsopulos, from the Ministry of Government Services. It's typically the corporation's auditors.

Mr. Tascona: So who oversees that? Oh, the auditors. Okay.

Mr. Mitsopulos: There's usually an audit committee that oversees the work of the auditors.

Mr. Tascona: Okay. That's fine.

The Chair: Any other debate? I will call the vote. Those in favour of the motion? Opposed? It is carried.

Shall schedule B, sections 32 to 41, carry? Carried.

Shall schedule B, as amended, carry? Carried.

Mr. Kormos: You've got to carry the bill, guys. It's your bill. I'm not going to carry it.

Mr. Ramal: No, we don't expect that. We never expect it.

The Chair: Shall schedule C, sections 1 to 29, carry? Carried.

Shall schedule C carry? Carried.

Shall schedule D, sections 1 to 93, carry? Carried.

Mr. Kormos: Chair, if I may, we're at the point now where there has been some contention around schedule D, and that of course relates to the taxation, non-taxation, payment in lieu of taxation of profits, non-profits. In an effort to move this along more effectively, if you'll indulge me for a minute—

The Chair: Certainly.

Mr. Kormos: —the NDP, as have, I'm sure, the Conservatives, have been eager to speak for the small what I call mom-and-pop funeral homes, places like Pattersons Funeral Home in Welland or Hammond funeral home in Thorold. You've all got them in your communities. They have felt besieged over the course of the last several years by the larger corporate funeral home-cemetery-crematorium operators. We presented amendments. I want to make sure that if the government amendment in effect does what the government has been called upon to do in an effort to address the concerns, then I'm more

than pleased not to move my amendments and just move ahead.

But I want to explain our position. A letter was sent—and I've given a copy to the clerk, so it will form part of the record—to the minister, Gerry Phillips, dated December 4, from the Ontario Funeral Service Association, signed by Phil Screen and Doug Kennedy. It thanks him for his letter of December 4. It goes on to talk about the proposals that were made in Minister Phillips's letter of December 4. Then the authors of the Ontario Funeral Service Association wrote, "We appreciate the recent efforts that you have made to level the playing field in the bereavement sector. We share a commitment to high standards of education for all funeral professionals ... something that will serve all Ontarians quite well.

"Including the proposals from your most recent correspondence, the Ontario Funeral Service Association and funeral directors for Open Dialogue are pleased to unequivocally support passage of the bereavement-related portion of Bill 152."

I take as that an endorsement by the Ontario Funeral Service Association of the response by the government to the concerns that were expressed. I also want to make it clear that in the case of the New Democrats, our researcher Elliott Anderson had been working with Declan Doyle. It was with Mr. Doyle that Mr. Anderson had been working, and, with the assistance of legislative counsel, Mr. Wood, there had been the preparation of some amendments at the request of Mr. Doyle, who was a spokesperson for the OFSA.

Mr. Doyle e-mailed us, the NDP, through Mr. Anderson today, saying, "Hey Elliott"—not "Dear Elliott"—"Thanks again for your work on this for us.

"I have been informed that the OFSA have worked on another proposal for amending the legislation, so we no longer need these amendments to pass in committee this afternoon."

I'm not complaining about anything. This is good. I just want to make it very clear that the New Democrats are relying upon the submission made to Mr. Phillips by the OFSA and by the communication by Mr. Doyle to us that they are indeed pleased, or at least satisfied, with the government amendments. That's fine by me. I don't want to belabour the point, no need to, but I want to make it clear, and I'll simply be asking staff here, who have copies of the NDP amendments and the Conservative amendments, because I tried to compare the two, side by each, while I'm sitting here and they look like it's on point. If staff could assist us in ensuring that we've all been singing from the same page of the hymn book—Conservatives, New Democrats, government—when it comes to responding to the concerns of the smaller funeral home operators.

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The Chair: So you will not be tabling your motion, then.

Mr. Kormos: We've got them here. What I'm asking is for staff, when I asked them about the government motion, to assist us in putting the NDP motion, the Conservative motion, that appears to address the same issues and confirm what I believe to be the case, which is that they're basically consistent with each other.

Ms. Phyllis Miller: My name is Phyllis Miller, and I'm with the Ministry of Government Services. I take it, sir, that you're referring to motion 22.1?

Mr. Kormos: Yes, ma'am.

Ms. Miller: It is consistent with the motion which the government itself is proposing.

The Chair: One difficulty: Before speaking to a motion, I need it read.

Ms. Miller: Oh, sorry.

Mr. Kormos: Okay. Take us into schedule D, up to the sections that are being amended, if you want to.

Interjection.

The Chair: We're okay. It's 94 in general.

Mr. Kormos: Yes.

Ms. Miller: I was just about to explain that the directions set out in motion 22.1 are in fact consistent with the motion that the government itself proposes as number 22, with one small exception relating to the date of coming into force. The NDP motion would see it taking effect as of the day the legislation becomes effective, whereas the government motion relies upon the date of January 1, 2002, being the date for which crematoriums have been established. That is the date that's already established in the Funeral, Burial and Cremation Services Act.

Mr. Kormos: And what that does is effectively grandparent or capture—

Ms. Miller: That is correct.

Mr. Kormos: —these existing crematoriums.

Ms. Miller: Yes.

Mr. Kormos: For the purposes of—help us now. This is where you've got to help us so we understand exactly what we're voting for here.

Mr. Barry Goodwin: Perhaps in just plain English we can restate the policy intent, and that is that cemeteries are exempt from property tax by virtue of their use as a cemetery. The policy framework here allows for commercial activities to take place on cemeteries in the future, like the establishment of a funeral home on a cemetery property. As such, those commercial activities that are not the cemetery proper will be subject to property taxes if they are on a commercial or non-profit cemetery and exempt from property taxes if they're on a religious or municipal cemetery. If they're on a religious or municipal cemetery, they will be required to make a payment equivalent to property taxes into their own trust fund for the perpetual care of the cemetery.

Mr. Kormos: And the movement that's reflected in the government's amendment?

Mr. Goodwin: Prior to this, the policy position was that non-profits should also be exempt from the paying of property tax and would enjoy the payment-in-lieu option. The government's amendment makes property tax payable for non-profits.

Mr. Kormos: And the non-profits that happen to be religious?

Mr. Goodwin: They are distinct categories.

Mr. Kormos: Yes, because they have special taxation status in any event, separate and apart from any proposal here.

Mr. Goodwin: Yes, so that there's no overlap. You are religious, municipal or non-profit.

Mr. Kormos: And so the religious operators—it could be any number of denominations they're facing in Canada now—will be making payments in lieu of?

Mr. Goodwin: Yes. The equivalent amount of property tax they would be assessed if they were having a commercial activity on their cemetery would make it into the cemetery's care and maintenance fund, which is a trust fund that can only be spent on the maintenance and repair of the cemetery.

Mr. Kormos: I suppose the one concern the for-profit operators would still have is that they would say, "Well, we're paying taxes that go to the municipality, that are spread out all over the municipality, supporting all sorts of things. The religious operator is paying monies in lieu of taxes to their own perpetual care fund, which is in their self-interest, because that money would have to come from somewhere anyway." So you see, the non-profit cemetery still has to make investments into perpetual care. It still has to address itself or concern itself with the ongoing maintenance of that cemetery, and pay taxes to boot on the new installations. So you understand why that might still give rise to some sense of injustice. How do you speak to that?

Mr. Goodwin: Our perspective through the negotiations with stakeholders is that this is a much more level playing field. It's not perfectly level, but much more so than the status quo or the original proposals. There's a broad recognition that the perpetual care of cemeteries serves the public good, that the investment of those payments in lieu into the cemetery's care and maintenance fund for religious and municipal cemeteries may forestall their abandonment.

Mr. O'Toole: I don't want to go through the same litany of comments, but I also have some understanding of this sector because of legislation in our term of government and some reports that were done. Suffice it to say, I think it's better than the first draft letter we received from the minister, but I reiterate much of what Peter has said.

The funeral homes sector, what's been described as for-profit, mom-and-pop: I probably talked to 20 or 25 of them; I don't know how I became the contact point for our caucus, but indeed I did. What they wanted was a little bit more clarity. They understand the industry's changing. What's happening is that they're afraid and they want some response. I guess there's speculation in the section that the move towards visitation centres on cemeteries was the first in a number of steps that would eventually put them out of business. Those visitation centres will become funeral homes over time. They will just keep adding facilities—crematoriums and all the rest of it. They just wanted the ability to compete.

I guess the issue has been summarized as one of fair tax. The religious and municipal cemeteries are making payments in lieu, which would be the equivalent amount of tax, so it's been said. The difference there is that they're paying themselves in their perpetual care fund, which really doesn't affect the funeral home business directly unless they're in the cemetery business. If they're commercial and for-profit—SCI and Arbor and some of the larger ones, which I'm not particularly speaking for—they're the ones that have both funeral homes and cemeteries. They would be the only ones that would be disadvantaged, as I understand it. Is that right? Because the small mom-and-pops generally don't own cemeteries.

Mr. Goodwin: They would be more likely to have a stand-alone funeral home than other property.

Mr. O'Toole: There are very few that are corporately owned cemeteries.

Mr. Goodwin: I think you've cited most of them: Arbor—

Mr. O'Toole: Arbor and SCI, but I'm not sure. I'm not in the industry at all.

In that vein, I personally would forgo—if the government's amendments address that. I cite the same memo, dated December 5 and signed by the minister, and the section dealing specifically with these changes. If that is, in theory and in practice, what's going to happen in the bill, I'd be supportive of withdrawing our Conservative amendments.

The date I see here goes back to December 2. What would happen, in the grandfathering sense, to something—why would they go back that far?

Mr. Goodwin: With respect to crematoria, the date was established in the Funeral, Burial and Cremation Services Act when it was passed in 2002.

Mr. O'Toole: That's Bill 209, or whatever the bill was.

Mr. Goodwin: Yes. It was to not provide for any unfair advantage, so that people could go out and establish crematoria while the bill was before members or before it was proclaimed and take competitive advantage of that. So the date was set just prior to the introduction of the bill, January 2002. The grandfathering would be available to any crematorium that was in place prior to that date. Everyone has known the rules for four years in the sector since that time, so any newly established crematoria are subject to the new rules.

Mr. O'Toole: In the procedural sense here, Chair, what I'm suggesting is that we would be prepared to stand down our proposed amendments. Likewise, I guess you're thinking the same, and we would just move what the government's amendments—

The Chair: That's 21.1 and 21.2 that you will stand down?

Mr. O'Toole: Motions 21.1 and 21.2 are ours.

The Chair: Mr. Kormos.

Mr. Kormos: The NDP motion, 22.1, like yours, motion 22, deals with the Assessment Act.

Mr. O'Toole: That's the assessment portion.

Mr. Kormos: Yes. The NDP has a motion 24.1 that basically deals with parallel amendments to the Provincial Land Tax Act. Where's the government amendment to that effect?

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Mr. Goodwin: It is found in your package. Both statues are amended—

Mr. Kormos: No, that's Conservative. Here we are, 24.

Ms. Miller: Yes, number 24 amends the Provincial Land Tax Act. It's exactly parallel.

Mr. Kormos: Thank you. In that case, I can indicate that we will decline to move NDP motions 22.1 and 24.1.

The Chair: Okay. The next motion we have to deal with is government motion number 22.

Mr. Dhillon: I move that paragraphs 2.1 and 2.2 of subsection 3(1) of the Assessment Act, as set out in subsection 94(2) of schedule D to the bill, be struck out and following substituted:

"Religious or municipal cemetery land

"2.1 Land that is used for bereavement-related activities as prescribed by the minister and that is part of a cemetery, if the cemetery is owned by a religious organization of a municipality.

"Crematoriums

"2.2 Land on which is located a crematorium and that is part of a cemetery, if,

"i. the registrar under the Cemeteries Act (Revised) or predecessor legislation to it consented to the establishment of the crematorium on or before January 1, 2002, or

"ii. the crematorium is owned by a religious organization or a municipality."

The Chair: Any debate?

Mr. O'Toole: It does tend to get a little technical. I'm not trying to be disruptive in any way. A couple of things they brought to my attention. For instance, if there was a funeral home in a cemetery and it's assessed—now, if you looked at the funeral home I'm speaking of, they would have a lot of parking and other things that come into the assessed value. For instance, I talked to Low funeral homes, a family; they have two, one in Uxbridge and one in Port Perry. I visited one of the sites. They pay over $60,000 tax to those municipalities. A lot of it's the parking and other places to keep cars and things like that. And on the cemetery site, they're saying that they won't have all that. They'll just shave off an acre and say, "This is for the purpose of cremations," and visitation and services, whatever they do. But they won't be paying for all the parking, that will all be part of the cemetery. So they're still going to be at a disadvantage. Is that a false assumption on their part? Do you follow me? The assessment piece won't be fair. The other part of it is the not-for-profit. They get to build up these funds and in fact use them for perpetual care and the rest of it.

Mr. Goodwin: With respect to the assessment of roadways and parking, we are working with the Municipal Property Assessment Corp. and finance ministry to develop guidelines for the tax assessors to deal with those kinds of mixed uses. So if a parking lot, for example, was specifically for a funeral establishment, it would be assessed as part of the funeral establishment.

Mr. O'Toole: But usually they use the roadways.

Mr. Goodwin: Shared roadways will be very hard to apportion use, so there's going to be a little bit of rough justice in terms of the assessment of the land to that.

To your second point, with respect to the not-for-profits, in the future, with this amendment, should it be accepted, they would make property tax payments, so they would not be investing those funds into their trust fund.

Mr. O'Toole: The not-for-profit would be paying taxes by—

Mr. Goodwin: That's correct, and they have an obligation to still maintain a trust fund.

Mr. O'Toole: That's fair.

Mr. Kormos: To be very clear, the rationale for the tax exemption of religious-owned cemeteries and accompanying services is?

Mr. Goodwin: Churches don't pay direct taxes on land used for services to their parishioners or to their church members. Generally speaking, it maintains the status quo. We're not aware that the religious organizations will enter into the commercial side of this business in a large way, so it's probably going to be a minimal risk

Mr. Kormos: It's because of the broad historic tax exemption status—

Mr. Goodwin: Enjoyed by religious organizations.

Mr. Kormos: And we move, then, because—I'll leave it at that. I just want to make that very clear. But that is where you have, from time to time, the debate around whether some body constitutes a religion.

The Chair: Any further debate? Any further questions?

Government motion 22: Those in favour? Opposed? Carried.

That moves us to government motion 23.

Mr. Dhillon: I move that section 94 of the bill be amended by adding the following subsection:

"(4.1) Subsection 13(1) of the act is amended by adding 'or 16.2' after 'section 16.1'."

The Chair: Debate? I'll call the question. Those in favour? Opposed? Carried.

The next question is, shall schedule D, section 94, as amended, carry? Carried.

Shall schedule D, sections 95 and 96, carry?

Mr. Goodwin: Excuse me, Mr. Chair, government motion 24 relates to the same matters and should probably be considered. These are the parallel amendments that Mr. Kormos was referring to.

Mr. Kormos: That's section 97.

Mr. Goodwin: Oh, I'm sorry.

The Chair: Shall schedule D, sections 95 and 96, carry? Carried.

Moving us to section 97, government motion number 24.

Mr. Dhillon: I move that paragraphs 3.1 and 3.2 of subsection 3(1) of the Provincial Land Tax Act, as set out

in subsection 97(1) of schedule D to the bill, be struck out and the following substituted:

"Religious or municipal cemetery land

"3.1 Land that is used for bereavement-related activities as prescribed by the minister and that is part of a cemetery, if the cemetery is owned by a religious organization or a municipality.

"Crematoriums

"3.2 Land on which is located a crematorium, as defined in the Funeral, Burial and Cremation Services Act, 2002, and that is part of a cemetery, if,

"i. the registrar under the Cemeteries Act (Revised) or predecessor legislation to it consented to the establishment of the crematorium on or before January 1, 2002, or

"ii. the crematorium is owned by a religious organization or a municipality."

The Chair: Debate? I will call the question. Those in favour? Opposed? Carried.

I will call the question: Shall schedule D, section 97, as amended, carry? Carried.

Next question: Shall schedule D, section 98, carry? Carried.

Shall schedule D, as amended, carry? Carried.

Shall schedule E, sections 1 to 5, carry? Carried.

That brings us to government motion number 25.

Mr. Dhillon: I move that the definition of "prior law" in subsection 7.3(1) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

"'prior law' means the Personal Property Security Act, as it reads immediately before the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force, including the applicable law as determined under that Personal Property Security Act; ('loi antérieure')"

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The Chair: Perfect. Any debate?

Mr. Kormos: Well, not quite perfect, but he tried. Best effort.

The Chair: Okay. Those in favour of the motion? Those opposed? It's carried, somehow or other.

That brings us to government motion number 26.

Mr. Dhillon: I move that subsection 7.3(2) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

"Prior security agreement

"(2) For the purposes of this section, a security agreement entered into before the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force is a prior security agreement, subject to subsection (3)."

The Chair: Any debate? I'll call the question. Those in favour? Opposed? It is carried.

Government motion number 27.

Mr. Dhillon: I move that subsection 7.3(3) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

"Same

"(3) If a security agreement described in subsection (2) is amended, renewed or extended by agreement entered into on or after the day subsection 3 (2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force, the security agreement as amended, renewed or extended is a prior security agreement."

The Chair: Any debate? I'll call the question. Carried.

Government motion number 28.

Mr. Dhillon: I move that subsection 7.3(5) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

"Validity

"(5) For the purpose of determining the law governing the validity of a prior security interest, prior law continues to apply."

The Chair: Call the question? Carried.

Government motion number 29.

Mr. Dhillon: I move that subsection 7.3(6) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

"Perfection

"(6) A prior security interest that was perfected by registration and that is a perfected security interest under prior law immediately before the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force continues perfected until the beginning of the earlier of the following days:

"1. The day perfection ceases under prior law.

"2. The fifth anniversary of the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006, comes into force."

The Chair: Call the question? Carried.

Government motion number 30.

Mr. Dhillon: I move that subsection 7.3(7) of the Personal Property Security Act, as set out in section 6 of schedule E to the bill, be struck out and the following substituted:

"Same

"(7) If a prior security interest referred to in subsection (6) is perfected in accordance with the applicable law as determined under this act, on or after the day subsection 3(2) of schedule E to the Ministry of Government Services Consumer Protection and Service Modernization Act, 2006 comes into force but before the earlier of the days referred to in paragraphs 1 and 2 of subsection (6), the security interest shall be deemed to be continuously perfected from the day of its perfection under prior law."

The Chair: Call the question? Carried.

Shall schedule E, section 6, as amended, carry? Carried.

Shall schedule E, sections 7 to 17, carry? Carried.

We're now at schedule E, section 18: government motion number 31.

Mr. Dhillon: I move that section 18 of schedule E to the bill be struck out and the following substituted:

"18(1) Subsection 56(1) of the act is amended by striking out the portion after clause (b) and substituting 'any person having an interest in the collateral covered by the security agreement may deliver a written notice to the secured party demanding registration of a financing change statement referred to in section 55 or a certificate of discharge or partial discharge referred to in subsection 54(4), or both, and the secured party shall register the financing change statement or the certificate of discharge or partial discharge, or both, as the case may be.'

"(2) Subsection 56(2) of the act is amended by striking out 'demanding a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54(4), or both, and the person named as the secured party shall sign and give to the person demanding it, at the place set out in the notice, the financing change statement or the certificate of discharge, or both, as the case may be' at the end and substituting 'demanding registration of a financing change statement referred to in section 55 or a certificate of discharge referred to in subsection 54(4), or both, and the person named as the secured party shall register the financing change statement or the certificate of discharge, or both, as the case may be.'

"(3) Subsections 56(2.1), (2.2), (2.3) and (2.4) of the act are repealed and the following substituted:

"'Amendment

"'(2.1) If a financing statement is registered under this act and the collateral description or collateral classification in the financing statement includes personal property that is not collateral under the security agreement, the person named in the financing statement as the debtor may deliver a written notice to the person named as the secured party demanding registration of a financing change statement referred to in section 49 to provide an accurate collateral description, and the person named as the secured party shall register the financing change statement.'

"(4) Subsection 56(4) of the act is repealed and the following substituted:

"'Failure to deliver

"'(4) Where the secured party, without reasonable excuse, fails to register the financing change statement, or certificate of discharge or partial discharge, or all of them, as the case may be, required under subsections (1), (2) or (2.1) within 10 days after receiving a demand for it, the secured party shall pay $500 to the person making the demand and any damages resulting from the failure; the sum and damages are recoverable in any court of competent jurisdiction.'"

The Chair: Call the question, or debate? "Carried" is what I'm hearing. Carried.

Shall schedule E, section 18, as amended, carry? Carried.

Shall schedule E, sections 19 to 25, carry? Carried.

That moves us to government motion number 32.

Mr. Dhillon: I move that subsection 26(2) of schedule E to the bill be struck out and the following substituted:

"(2) Subsection 3(1) and section 4 come into force on the day section 126 of the Securities Transfer Act, 2006 comes into force."

The Chair: I will call the question. Carried.

Shall schedule E, section 26, as amended, carry? Carried.

Shall schedule E, as amended, carry? Carried.

Shall schedule F, sections 1 to 3, carry? Carried.

Shall schedule F carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 152, as amended, carry? Carried.

Shall I report the bill, as amended—

Mr. Kormos: One moment. Debate.

The Chair: On "Shall I report the bill to the House?" Okay. Shall I report the bill, as amended, to the House? Discussion, debate?

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Mr. Kormos: Thank you, Chair, very briefly. I appreciate that the Ontario Funeral Service Association was successful at getting the amendments that were approved by this committee put before this committee. I am disappointed that the portion of the bill addressing title fraud, the Land Titles Act and the security integrity of the land titles system, was not addressed in as thorough a manner as I think was necessary.

Mr. Tascona presented to the Legislature Bill 136, which I think is an important piece of legislation. It is my view that this committee missed an opportunity to talk in a meaningful way about restoring integrity to the land titles system by limiting itself to the proposals that were put before it at the end of the day which dealt with dealing with people after the fact, be it people who shouldn't have the authorization to submit documents to the land titles system or dealing with investigations and penalties for fraud. I remain of the strong view that the land titles system is going to have its integrity restored when we re-staff it, when we restore the regional offices and when documents that are submitted for registry undergo the scrutiny of staff in those land titles offices.

I think electronic registration is a big loophole, a big opportunity—the Achilles heel, if you will, of the system. It's unfortunate that the government didn't at least consider requiring that documents be scanned and submitted in a scanned form for inspection by land titles officials. That, to me, would be a far more effective way of at least having a first line of defence against obviously forged or otherwise improper documents. A missed opportunity: These things don't get addressed very often.

Unfortunately, as well—and I appreciate the comments of the minister, Mr. Gerry Phillips, in his letter. I do ask that the clerk accept the Phillips letter of December 5, 2006, that I referred to as an exhibit. I respect the fact that Mr. Phillips indicates that he would

like to see existing victims fast-tracked in terms of assurance. I regret that the legislation doesn't seem necessarily to allow that to happen, and it remains to be seen how that will happen.

I am grateful to Mr. Wood, legislative counsel, who assisted all of us. One of the problems with these committees done in short time frames is that it's not us who work particularly hard but the staff who do the stuff behind the scenes. Legislative research was helpful. Elliot Anderson in NDP research was of great assistance. I thank the staff, who were candid and open and frank in their responses to our sometimes painful queries. I appreciate that; I have for a couple of decades now and hope to be able to for some time yet.

There we are. I just wanted to make sure that some people who deserve some credit were given due credit. Thank you kindly, Chair.

The Chair: Thank you. Mr. Tascona.

Mr. Tascona: I just want to make a couple of comments. I'm disappointed, with respect to mortgage fraud, that not one amendment was voted for or accepted in any way by the government benches. In Bill 136, the measures that would have protected the system from identity fraud and allow victims such as Susan Lawrence and Elizabeth Shepherd to be protected—it's now in limbo and a big question mark as to whether that would actually occur. The measures put forth in the PC motions would have accomplished those things.

The other aspect I want to comment on is the personal liability insurance for bar owners. I do not understand why the government did not accept that amendment, especially with the forceful and very good presentations, apart from my arguments. The presentations made were, to me, just a no-brainer in terms of why you would need personal liability insurance for bar owners, considering what has happened in the law with respect to host liability and trying to deter drinking and driving, as a policy of this government. To vote down personal liability insurance for bar owners just speaks volumes in terms of what the government thinks about drinking and driving.

I want to say that I appreciate the work by Michael Wood. Our staff in the PCRS did some great work. And Trevor Day was always available—a little late on the food tonight, but that's okay; I'm satisfied now.

I think the bill was an opportunity, and I'm very disappointed that the mortgage fraud and the personal liability for bar owners was not put into the bill. So I can't support the bill.

Mr. Leal: I'll be quick. I want to thank Minister Phillips and his staff for picking up the essential thrust of my private member's bill, Bill 60, which I introduced last spring, dealing with Internet gaming in Ontario. I had ongoing discussions with Minister Phillips. It's something that's topical and getting a lot of discussion. Internet gaming is illegal under the federal Criminal Code, and unfortunately the federal government has shown a great deal of ambivalence in enforcing their own Criminal Code. I was contacted by states in the United States, American Congressmen and people from Great Britain who are certainly saluting us that Ontario again is showing leadership in this area.

Mr. Chairman, I want to thank you for that opportunity to get this on the record.

The Chair: We have a question that I am going to call. Shall I report the bill, as amended, to the House? Those in favour? Those opposed? Carried.

As it is now exactly 6 o'clock, this committee stands adjourned.

The committee adjourned at 2027.

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Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Joseph N. Tascona (Barrie–Simcoe–Bradford PC)

Also taking part / Autres participants et participantes
Ministry of Government Services
Ms. Deborah Brown, acting director, sector liaison branch
Ms. Kate Murray, director, policy and regulation branch
Ms. Dianne Carter, counsel, consumer protection/regulatory compliance group
Mr. John Mitsopulos, project manager, business law reform, policy branch
Ms. Phyllis Miller, manager, policy development, policy branch
Mr. Barry Goodwin, director, policy branch

Clerk / Greffier
Mr. Trevor Day

Staff / Personnel
Mr. Michael Wood, legislative counsel