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Jeudi 1er février 2007

Standing committee on justice policy

Comité permanent de la justice

Independent Police Review Act, 2007

Loi de 2007 sur l'examen indépendant de la police

Chair: Lorenzo Berardinetti
Clerk: Anne Stokes

Président : Lorenzo Berardinetti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 1 February 2007

Jeudi 1er février 2007

The committee met at 1017 in room 151.

INDEPENDENT POLICE REVIEW ACT, 2007

LOI DE 2007 SUR L'EXAMEN INDÉPENDANT DE LA POLICE

Consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act / Projet de loi 103, Loi visant à créer le poste de directeur indépendant d'examen de la police et à créer une nouvelle procédure de traitement des plaintes du public en modifiant la Loi sur les services policiers.

The Chair (Mr. Lorenzo Berardinetti): I call this meeting to order. Good morning and welcome to this meeting of the standing committee on justice policy. Members of the committee, the order of business is clause-by-clause consideration of Bill 103, An Act to establish an Independent Police Review Director and create a new public complaints process by amending the Police Services Act. Members have before them a package of motions that have been received from the office of the clerk. Are there any additional motions a member would like to table now?

Just for everyone's information, I think motion 11a was circulated this morning. Does everyone have a copy of motion 11a? Okay. Thank you.

Mr. Zimmer?

Mr. David Zimmer (Willowdale): Yes—

Interjection.

The Chair: Excuse me. I forget your name, but you really can't sit there. I'm sorry.

The Clerk of the Committee (Ms. Anne Stokes): He can sit behind you but not at the table.

The Chair: Unless you want to run for office.

Interjections.

The Chair: I think Mr. Zimmer had something he was going to—

Mr. Zimmer: I've got one for the table.

The Chair: An extra motion to table? Okay. Maybe you can just give it to the committee clerk and we'll have it circulated.

Mr. Peter Kormos: Chair, while she's doing that, I want to welcome back MPP Vic Dhillon from his world tour. I trust he's overcome his jet lag. I want him to know that there's any number of good charities that accept frequent flyer miles as a contribution. I encourage him, in view of the extensive miles that he's undoubtedly accumulated and in view of the photo ops that's he's undoubtedly participated in, to contemplate donating those frequent flyer miles to any number of good organizations.

The Chair: All right. We're going to have to deal with the bill here, but Mr. Dhillon?

Mr. Vic Dhillon (Brampton West–Mississauga): I was waiting for this, and I'm glad that both—

Laughter.

Mr. Dhillon: The laughter should be recorded. When I go to my community and when I go to the business community—how important this trip was for Ontario. I just want to make it known, on record, that both parties are childishly laughing and making fun of this junket, as they call it, and it's about time that we join the rest of the world in discovering India. Everybody's going to India, and I just want it to be known, on record, that both the opposition and the third party find this very amusing. I look forward to defending the trip in the House. Again, I just want it to be known that I'm glad that they think it was very funny, and I will take it back to my community and let them know as well.

The Chair: Thank you. All right. We've got to start with the bill.

Mr. Kormos: Chair, if I may, Mr. Dhillon doesn't have to take it back to his community. I'd be more than pleased to tell his community myself. Yes, I have no doubt that Canada will be exporting things to India as a result of this trip, any number of call centre jobs, amongst other things. We've noted, as a matter of fact, during the course of events—National Cash Register over Cambridge-Kitchener way, Mr. Runciman, indicated that it was transferring a number of its jobs to India, losing jobs in Ontario, during the McGuinty junket, in fact. So I have no doubt that there'll be exports from Ontario.

The Chair: All right, let's stick with the bill. This has got to be done in a forum where we can discuss this.

We're beginning with section 1.

Mr. Kormos: On a point of order, Chair—

The Chair: Mr. Kormos, on a point of order. This has to do with the bill, right?

Mr. Kormos: Well, it's a point of order. I want to thank Tamara Kuzyk, legislative counsel, for a considerable amount of time above and beyond what most people consider a normal work day preparing at least the amendments that I've been proposing. She worked under in-

credible time constraints, and I appreciate it. Any errors in the motions are mine, and not hers, because I had every opportunity to proofread them. But I do appreciate her diligence and hard work.

Mr. Garfield Dunlop (Simcoe North): I'd agree with that.

The Chair: Thank you, Mr. Dunlop.

We'll begin, then, with section 1. On section 1, are there any comments, questions or amendments?

Mr. Zimmer: Government motion 1?

The Chair: This is section 1.

Mr. Dunlop: The first motion is section 8.

The Chair: No, we're going through section 1 first.

Mr. Dunlop: Do we have any before this? Are they not in order?

The Chair: They are in order.

Mr. Dunlop: The first amendment is not in section 8?

The Clerk of the Committee: We still have to go through section 1.

Mr. Dunlop: I understand that.

The Chair: The first amendments start in section 8, but I still have to go through, and this committee has to approve, the various sections of the bill. I'm starting with section 1 of the bill itself.

On section 1, are there any comments, questions or amendments? None? Shall section 1 of the bill carry? All those in favour? Opposed? Carried.

We can do sections 2 to 7 together. Shall sections 2 to 7 of Bill 103 carry? Carried.

We move on to section 8 of the bill now. In regards to section 8, are there any amendments?

Interjection.

The Chair: The first motion in our package here has to do with section 8.

Mr. Zimmer: Just call it by motion—

The Chair: Okay, government motion 1.

Mr. Zimmer: I move that subsection 26.1(5) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee of the independent police review director under subsection (4)" and substituting "an employee in the office of the independent police review director."

The Chair: Any debate?

Mr. Kormos: I believe I understand what the purpose of this motion is, if perhaps the parliamentary assistant could simply confirm my presumption that it's a mere technical matter to comply with.

Mr. Zimmer: It's a technical amendment, and I'm going to ask legislative counsel to speak to it, if you want.

The Chair: Is there a question?

Mr. Kormos: I simply wanted Mr. Zimmer to confirm for us my understanding that this is, like several of the subsequent and similar amendments, a mere technical matter that doesn't impact on the substance of the bill.

Mr. Zimmer: Yes.

The Chair: Okay. So shall government motion number 1 carry? Carried.

Okay. We have government motion number 2.

Mr. Zimmer: I move that subsection 26.1(6) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee appointed under subsection (4)" and substituting "an employee in his or her office."

The Chair: Any debate?

Mr. Kormos: I appreciate the effort to avoid genderized pronouns; in other words, by saying, "him or her." In the same vein, there is literature that talks about how we create hierarchies in terms of the ordering of this, so you'll often see people saying, "her or him." Similarly, in literature you'll often see the reference to "her" as we historically used to refer to "him," treating it as a generic. Why are we not using "its office?" Is that not an acceptable linguistic form? Do you understand what I'm saying? It's not just political correctness. It's simply fair; it's simply reasonable. But at the same time, when we use double pronouns "him and her," the ordering of them—and I can show you the literature if you come to my office—has implications in and of itself, for instance, in the same historic way as the phrase "father and son." The phrase as we're used to hearing it is "father and son, mother and daughter," but there are power implications in that. So I'm just asking that as a question. This has nothing to do with this specific amendment. It's just an inquiry on my part. If legislative counsel can tell us in terms of what the standards are, I'd appreciate it.

Ms. Tamara Kuzyk: I'd be happy to speak to that. I think you're right that there are pros and cons with a number of these different approaches. Just taking one gender over another is not ideal. In "his or her" you deal with order issues. Sometimes it works. We can use "their" sometimes when referring to people, but where the office has landed, and there's no strict policy on this, typically is to use "his or her," but I think it's a debate that's always live in the office and it's something that we're always revisiting. But for the way that we approach drafting now, if we're referring to a single person, it will typically be "his or her" when we're speaking of the possessive.

Mr. Kormos: Can I ask, then, why, just for the purpose of making a statement, you don't say "her or his" literally? This isn't an inappropriate question. As you point out, there's a debate going on and I'm somewhat familiar with it.

Ms. Kuzyk: Yes. I'm not sure why "his or her" over "her or his"; I think probably just because it's more commonly used that way. We try to make the language we use in the statutes so that it's accessible to what people are used to seeing. But I think it's always an issue that's open to debate.

Mr. Kormos: Thank you.

The Chair: Any further debate on government motion number 2? Shall the motion carry? Thank you. That motion is carried.

We'll now move on to a PC motion. This is motion number 3.

Mr. Robert W. Runciman (Leeds–Grenville): I move that subsection 26.1(8) of the Police Services Act,

as set out in section 8 of the bill, be struck out and the following substituted:

"Annual report

"(8) After the end of each year, the independent police review director shall issue an annual report on the affairs of the office of the independent police review director, and shall,

"(a) lay the report before the assembly if it is in session or, if not, at the next session; and

"(b) make the report available to the public."

1030

This was recommended in the submission by the director of the Metro Toronto Chinese and Southeast Asian Legal Clinic. I believe it was also a recommendation of Justice LeSage when he reviewed police complaints.

This effectively ensures that the annual report of the director is submitted to the Legislature rather than the Attorney General, as is currently the case in the bill. I think that having this report tabled with the assembly will ensure that all members of the Legislature are treated with equal respect and the report is made public and accessible without any potential manipulation of timing for any political purpose by the government of the day.

The Chair: Thank you. Any further debate? Mr. Kormos.

Mr. Kormos: Mr. Runciman, you're so cynical, but you've been here more than long enough to warrant being cynical. I support the amendment with some caution, and the reason why is this: There was some significant discussion about whether or not it was more appropriate to have the director be an officer of the assembly. If the director were an officer of the assembly, then naturally the report would be tabled with the assembly. Similarly, if the director were an officer of the assembly, the argument that is going to be made later on in the clause-by-clause discussion about Ombudsman oversight would become less relevant because, as an officer of the assembly, it's more difficult to argue that it—the director, she or he—and their office should be subject to oversight by the Ombudsman. Right, Mr. Zimmer? However, the government has been very clear, adamant and persistent in refusing to have the director and his, her or its office (1) responsible to the assembly as compared to being a political appointment, and (2) certainly the government appears adamant around maintaining section 97.

So my concern—and I am going to support this—is that it creates perhaps an illusion of independence that an officer of the assembly would have that isn't real, because at the end of the day this is still a political appointment. That's not to diminish the competence, the skill, the talent and the hard work of whoever is going to be the director. But at the end of the day, yes, everybody out there knows that it's a political appointment and that the master for the director is the government of the day, not the assembly.

The Chair: Any further debate? None.

Mr. Kormos: Recorded vote, please.

Ayes

Dunlop, Kormos, Runciman.

Nays

Balkissoon, Dhillon, Orazietti, Qaadri, Zimmer.

The Chair: The motion does not carry.

Government motion number 4. Mr. Zimmer.

Mr. Zimmer: I move that subsection 26.1(9) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "any employee or investigator appointed by the independent police review director" and substituting "any employee in the office of the independent police review director, any investigator appointed under subsection 26.5(1)."

This is a technical amendment.

The Chair: Any further debate? Shall the motion carry? Carried.

On, then, to government motion number 5. Mr. Zimmer.

Mr. Zimmer: I move that subsection 26.1(10) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee or investigator appointed by the independent police review director" and substituting "an employee in the office of the independent police review director, an investigator appointed under subsection 26.5(1)."

This is a technical amendment.

The Chair: Any further debate? Shall the motion carry? Carried.

We'll move on to government motion number 6.

Mr. Zimmer: I move that subsections 26.1(11) and (12) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee or investigator appointed by the independent police review director" wherever it appears and substituting in each case "an employee in the office of the independent police review director, an investigator appointed under subsection 26.5(1)."

This is a technical amendment.

The Chair: Any further debate? I'll put the question. Shall the motion carry? The motion is carried.

Government motion number 7.

Mr. Zimmer: I move that subsection 26.4(2) of the Police Services Act, as set out in section 8 of the bill, be amended by striking out "an employee appointed under subsection 26.1(4)" and substituting "an employee in the office of the independent police review director."

This is a technical amendment.

The Chair: Any further debate? I will now put the question. Shall the motion carry? Carried.

Government motion number 8.

Mr. Zimmer: I move that subsection 26.5(1) of the Police Services Act, as set out in section 8 of the bill, be struck out and the following substituted:

"Investigators

"(1) The independent police review director may appoint as investigators such employees in his or her of-

fice or other persons as he or she considers necessary to carry out investigations under part V or the regulations, and such appointments shall be in writing."

This is a technical amendment.

The Chair: Any further debate?

Mr. Kormos: Help a little bit more: 26.1(4) is deleted from the subsection. That's the effective impact of your amendment. What happened to 26—oh, I see: "an employee appointed under subsection 26.1(4)" in your last amendment, motion 7, has been deleted. You've deleted references to employees appointed under 26.1(4), right?

Mr. Zimmer: Legislative counsel?

Ms. Kuzyk: We're referring to subsection 26.5(1), that amendment?

Mr. Kormos: Yes.

Ms. Kuzyk: Yes. It's just a rewrite so that—it basically gets rid of a somewhat erroneous reference back to subsection 26.1(4) and indicates that it's employees that we're talking about, or otherwise.

Mr. Kormos: Okay. Thank you kindly.

The Chair: Any further debate on this motion? I'll now put the question. Shall the motion carry? Carried.

That's the end of section 8, then. Shall section 8, as amended, carry?

Mr. Kormos: Whoa, whoa, whoa.

The Chair: Any further debate?

Mr. Kormos: Yes. I think one of the interesting things here is, if you take a look at the first part of section 8 of the bill, "A person who is a police officer or former police officer shall not be appointed as independent police review director." That's fair enough in terms of being an active police officer. That's understood. But the government here clearly takes the position that it's not appropriate for a former police officer to be the director.

Nobody has raised that by way of a concern, and indeed that appears to address the concerns that people have, even a witness on Tuesday. What was his name, the former mayor of Toronto?

Mr. Runciman: What section?

Mr. Kormos: Section 8 of the bill, 26.1(2), and then I'll be referring, of course, to subsection (5). Who's the former mayor who was here?

The Chair: John Sewell.

Mr. Kormos: Yes, okay. It was so long ago, and he was mayor for such a short period of time. He addressed concerns about the police culture, and he appeared to take the position that, for instance, nobody who was a former police officer should even be an investigator, or at least that there should be a sufficient number of those of non-former police officers on the investigative team.

Howard Morton from the law union made an interesting point, remember? Howard Morton's no right-wing Republican, by any stretch of the imagination. He's a fair, even-handed, intelligent, capable person. Howard Morton, again to the chagrin of some of the other people present in the room, said that in his experience as SIU director he had former police officers and he found their contribution to be incredibly valuable, their experience as police officers.

1040

So I suppose the question to be put to the government is this: On the one hand, they clearly have not opted for any formula—in other words, dictating the balance that's necessary. We heard some submitters say, "Assure us that there will at least be a significant number of investigators or employees who are not former police officers so they don't bring any pro-police bias with them." The government hasn't acquiesced to those requests, because it has left it wide open. A former police officer clearly can be—and I'm not arguing that that's inappropriate. I agree with Morton; I accept Morton's argument in this regard. But how come it's okay on the one hand but it's not okay on the other? I suppose that's the question.

Again, I'm not disputing—I'm going to support section 8. But why does the government go to lengths on the one hand to say that a former police officer shall not be appointed director but doesn't go to the same lengths to say that former police officers shall not be employed, obviously, most significantly, in the role of investigator? Isn't that a strange double standard, Chair? Isn't that an apparent inconsistency?

Was there a debate, and this was the saw-off; this was the compromise? I'm talking about internally in terms of development of the policy. I just find it peculiar. I don't know if Mr. Runciman finds it peculiar too. It's strange.

Mr. Runciman: I share the concern. I'd certainly like to hear from the parliamentary assistant about the rationale. I can't recall if Mr. LeSage recommended this particular position or not, but it is striking. Certainly as Mr. Morton testified before us, and he has significant experience in the area, unlike the people who seem to take the position that police officers should have no involvement whatsoever in virtually every aspect of this—a lot of their views, I think, are based on anecdotal evidence and bias and certainly in many respects don't stand up to scrutiny. I'm sure that we can find former police officers who are going to be totally objective and extremely well qualified, and I think shutting them out of consideration is very, very inappropriate. I'd certainly like to hear an explanation from the parliamentary assistant.

Mr. Kormos: Or is it simply going to be necessary for an applicant who was a former police officer to renounce, like you do your citizenship, to somehow say, "I'm sorry I was a former police officer, and I promise never to recall any of my experiences as a police officer"? Maybe that's what they've got in mind, Mr. Runciman. I don't know. It's just peculiar. There's an imbalance here. There's an inconsistency.

What we were talking about, Mr. Miller, were the provisions—

The Chair: Please address the Chair, Mr. Kormos. Through me.

Mr. Kormos: Of course, Chair. I can chew gum and walk at the same time. I do my incompetent best.

The Chair: I know, but you should address the Chair.

Mr. Kormos: But what we were doing, Chair, Mr. Miller, was pointing out that on the one hand, the government bars a former police officer from being hired as

director, even if he or she maybe was a former police officer during a moment in their youth. "Thirty years ago I lived in small-town Ontario. I was sworn in as a constable. I was a police officer." The government bars them from being a director, but then doesn't bar them from being employees. So what gives? Are former cops okay or are they not okay?

Mr. Runciman: It's an important issue, perhaps precedent-setting. Maybe it isn't. But would we say that we would ban someone from a position because they were Catholic or they were white or they were some other—

Mr. Kormos: If you were in Belfast, maybe.

Mr. Runciman: —or in some other profession? It strikes me as discrimination writ large here. I find it very difficult to understand why we would rule these people out from even consideration. Someone could be the most outstanding individual available to fill this role, and to satisfy someone out there, we're going to ban these people from even submitting an application.

The Chair: Any further debate on section 8?

Mr. Kormos: Has the government examined whether or not this is indeed Human Rights Code-proof? Believe it or not, I was a former Boy Scout.

Interjection.

Mr. Kormos: Well, I know. Wolf Cub, the shorts, the whole nine yards.

Mr. Dunlop: Can we get a picture?

Mr. Kormos: Oh, there are pictures, yes. But please, don't suggest to me that former Boy Scouts should be barred from any particular career. I can't think of another single scenario—can you, Mr. Runciman? Seriously, Chair. When I've seen any standard saying that if at one point you were, short of being a serial murderer, engaged in a particular career, you are barred—I guess lawyers are barred from being on juries. That's not what we're talking about. We're talking about jobs here; we're talking about careers. This is just very peculiar. I'm not saying it's wrong, but be consistent, then. If you really believe that ex-cops shouldn't be directors, then ex-cops shouldn't be employees either, should they? You can't have it both ways. Again, Chair, you're an experienced lawyer.

The Chair: Somewhat.

Mr. Kormos: Well, you've been in elected office municipally and provincially now for some number of years. What happens when cities try to tell potential staff that you have to live in the city of Toronto before you can get a Toronto job? That doesn't cut it, does it?

The Chair: No.

Mr. Kormos: It doesn't fly at all.

The Chair: They tried it in Detroit, though. It's interesting.

Mr. Kormos: But it doesn't fly. I'm not aware of a single—is the government exposing itself to some real litigious potential here? Should we be a party to this? All we need is an explanation; I think this cries out for an explanation. It's just peculiar. I'm not saying it's bad policy; I'm just saying it's peculiar. I might say it at some point, but it's peculiar. I'll start with peculiar.

The Chair: Is there any further debate?

Mr. Runciman: Based on the lack of explanation, in my view this is clear discrimination and a smear against anyone who has served in a most honourable profession. I'm going to have to vote against this section. I'm requesting a recorded vote.

Mr. Kormos: Well, I'm inviting an explanation from somebody. I'm begging for one; I'm pleading for one. If there's a simple and obvious explanation, it's warranted, because I'm in the same position as Mr. Runciman. In view of the concerns expressed about there being no clear standards for creating balance among the employees, for instance—the government has refused to respond to that. Some have argued we've got to make sure there's a critical mass, if you will, of non-police types amongst the staff. The government won't acquiesce to that, but the government will bar—so it's just a contradiction. If there's a failure to respond, I'm going to have to ask for a 20-minute recess on this vote so that I can make some inquiries on my own, the one that I'm entitled to on this and each and every subsequent vote on each and every amendment.

Mr. Zimmer: On a point of order, Mr. Chair: With the greatest respect, I think there's a speaking order and each side has an allotted time.

The Chair: They have 20 minutes.

Mr. Zimmer: Each party has an allotted time. They speak, it moves to the next speaker, it moves to the next speaker and then the vote is called. But this sort of free-for-all back and forth, we've got to keep some order in the speaking order. Those are the rules.

The Chair: Yes, according to the rules, as I understand them and as I'm advised by the clerk, they're allowed up to 20 minutes each at the discretion of the Chair. I can't and I'm not going to cut them off if they want to ask questions. There's no order to it. If you want to make comments, you're welcome to.

Mr. Zimmer: As I understand, it's a consecutive 20 minutes and they—

The Chair: No, it's not a consecutive 20 minutes; it's not.

Mr. Kormos: Please, we very respectfully have asked for a comment. I'm sorry, but this has happened before—getting stonewalled by the government during committees. Remember that, Mr. Runciman?

Mr. Runciman: Very well.

Mr. Kormos: I, quite frankly, am not going to tolerate it. There will be 20-minute recesses on each and every vote if we're going to play that stonewall game. They've tried that before.

The Chair: Thank you. Any further debate? I'll now put the question.

Mr. Kormos: I'd like a recorded vote and a 20-minute recess, pursuant to the standing orders.

The Chair: All right. We'll recess for 20 minutes. Right now I have 10 minutes to 11. We'll come back at

10 minutes after 11, and then the question will be put with no further debate.

The committee recessed from 1050 to 1110.

The Chair: The standing committee on justice policy is now back in session.

We now go to a vote. A recorded vote has been requested on section 8, as amended.

Ayes

Balkissoon, Dhillon, Qaadri, Zimmer.

Nays

Kormos, Runciman.

The Chair: The section, as amended, carries.

I don't see any motions on section 9. Is there any debate on section 9? None? Shall section 9 carry? Section 9 is carried.

Section 10: The first motion that we'll deal with is government motion number 9.

Mr. Zimmer: I move that paragraph 2 of subsection 58(2) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"2. An employee in the office of the independent police review director."

This is a technical amendment.

The Chair: Any further debate?

I'll now put the question: Shall the motion carry? The motion is carried.

Let me move to number 10. Mr. Kormos.

Mr. Kormos: I move that section 59 of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Duty re complaints

"59(1) The independent police review director shall cause every complaint made to him or her by a member of the public under this part to be investigated in order to determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer.

"Same

"(2) Subject to section 60, the independent police review director shall ensure that every complaint investigated and classified under subsection (1) is dealt with in accordance with section 61."

You will recall, Chair, the submissions made by Alan Borovoy on behalf of the Canadian Civil Liberties Association. Mr. Borovoy provided us with a very comprehensive, capable, competent, insightful analysis; I'm sure you agree.

The Chair: We read his textbook in law school.

Mr. Kormos: You agree with his competence?

The Chair: Well, he did a textbook that we read. It was a good book.

Mr. Kormos: In any event, Mr. Borovoy gave us a very thoughtful analysis, as he has done for years here in this Legislative Assembly. I think it serves the people of Ontario for us to not only accommodate Mr. Borovoy when he's here, but also to heed his cautions. One of the things that he talked about that subsequent participants from the public talked about was the intertwining of policy and conduct.

One of the strange things about the bill—and let's be very clear: The bill does not address the fundamental concern that folks might have about police investigating police. That's a given. In the vast, vast majority of cases, police are going to be conducting investigations. With respect to policy, it's going to be the chief of police who's going to have to respond to a complaint about policy made to the director.

In terms of conduct, the director has three choices, doesn't he? They are, of course, to refer the matter to the chief of the force in which the officer complained about serves for investigation and report back; two, to refer the matter to another police force for the purpose of investigation; and three, and what's interesting—Ms. Kuzyk and I were talking about the hierarchy and ordering of things and the implications of that. It's the third choice of the director to retain the complaint in his or her own office to investigate it.

What do we infer from that? We infer that the director is to go through a process to determine: Is it suitable for the chief of the force from which the conduct complaint arose to investigate it? If not, then is it suitable for another force to investigate it? And finally, then, "Oh, well, I'll guess I'll have to do it"—to wit, the director. It's not unrelated to the amendment, but it takes us into a little bit of a new area.

The other issue, of course, is funding, because a big factor in how the director exercises his discretion in terms of passing the complaint along to the force from which the complaint originated or to another police force as compared to retaining it for him or herself is going to be whether she or he has the resources to accommodate that investigation. Investigations vary in terms of complexity, in terms of the amount of time it takes to deal with an investigation, the amount of staff that have to be devoted to it. The government of the day can tamper and interfere with the director's discretion by simply underfunding it, which means that he or she will have to farm out more and more investigations to police.

Getting back to this amendment itself and the position expressed so very clearly by Mr. Borovoy and subsequently by others: A policy complaint necessarily goes to the local force, to the chief. For a conduct complaint, the director has discretion, although I suggest that there are going to be arguments made that the way in which the legislation is worded is that there's an ordering. Yet conduct and policy are so often intertwined. The example that Mr. Borovoy gave us was a complaint or a concern or a revelation around certain leaders in the black community in Toronto being kept under police surveillance. There was conduct being engaged in—police officers engaging in the surveillance—but there was also an important question about whether or not it was policy.

Oftentimes, conduct that could be misperceived as mere misconduct could flow from actual policy in a

force, so what Mr. Borovoy proposed is that rather than simply making a determination by the manner in which the complaint is articulated—and people are going to be making complaints in all shapes and sizes; you've seen them. You've either seen them in the way people, again, acting for themselves—a Small Claims Court plaintiff's claim. Some are very simple in the way that they're drafted. Kormos, plaintiff, says, "Bob Runciman owes me $20 and I want him to pay." Others are more complex: It refers to a contract dated such and such a day and "attached hereto is exhibit A" etc.

It's going to be very difficult, I put to you, for the director and her or his staff to look at many complaints and determine on their face whether they're in fact policy or conduct. So Mr. Borovoy very wisely suggests, because this is the first screening process at this intake level, isn't it?—one of the first tasks of the director, other than, I suppose, the issues around timeliness and around frivolous and vexatious etc. The first task is to screen these and put them into two streams: This pile is policy; this pile is conduct. Yet it's not that simple. Mr. Zimmer knows, because he sat through the Bill 107 hearings, most of them—other than when he couldn't be here for a few days—and he understands very well how you can't isolate conduct from policy, how the two are intertwined. Conduct may be in fact a phenomenon of a systemic issue.

So I'm saying, this is an aid. This will be of great assistance to the director. I'm not talking about an investigation, nor was Mr. Borovoy, where you send people out in the field and start applying for search warrants and so on; I'm talking about having to address, in an investigative way and in an investigative manner, complaints to determine whether in fact they're policy, conduct or perhaps a combination of both, in which case the director then has to make a decision about how to deal with, let's say, a hybrid issue.

I am encouraging support for this motion because the government, by supporting this motion, would reveal and demonstrate to everybody watching that it actually listened to the people who took the time to be here, and the government would illustrate and demonstrate to all watching that it has regard for what Mr. Borovoy, the saint of civil liberties in this country, has to say about this legislation—truly, one of the wise men, wise people of the Ontario bar, isn't he?

Thank you.

The Chair: You're welcome. Any further debate? None? I'll now put the question.

Mr. Kormos: A recorded vote.

The Chair: A recorded vote—

Mr. Kormos: Chair, a seven-minute recess, pursuant to the standing orders.

The Chair: All right. So we take the recess first?

Mr. Kormos: Seven minutes.

The Chair: My watch says 11:23. Come back at 11:30. Seven minutes, and I'll put the question with no further debate. Thank you.

The committee recessed from 1123 to 1130.

The Chair: It's now 11:30 and the committee is back in session. Could I please have some order? I shall now put the question on Mr. Kormos's motion, and he's asked for a recorded vote.

Ayes

Kormos.

Nays

Dunlop, Balkissoon, Orazietti, Qaadri, Runciman, Zimmer.

The Chair: The motion does not carry.

We'll move on to the next motion, which is PC motion 11.

Mr. Runciman: I'll have to beg the indulgence of the committee. I'm going to further amend the amendment before you by striking out "and" at the end of clause (a) and by striking out clause (b) and substituting the following:

"(b) whether the complainant is or was subject to criminal proceedings in respect of the events underlying the complaint; and

"(c) whether, having regard to all the circumstances, it is in the public interest for the complaint to be dealt with."

Again, Mr. Chair, this is a recommendation of the Metro Toronto Chinese and Southeast Asian Legal Clinic. The amendment, if adopted, will ensure fair treatment of individuals for a range of reasons—their age, their incapacity. They may not realistically be in a position to file a complaint within the six-month period. This will clearly lay out the director's responsibility to consider a variety of factors.

The Chair: Thank you, Mr. Runciman. I don't have a copy of that, though.

Mr. Runciman: You don't.

The Chair: Is there a copy available for—I don't know if other members of committee have a copy.

Mr. Runciman: Sorry about that.

The Chair: It's okay.

Mr. Kormos: Chair, if I may, Mr. Runciman appears to have amended on the fly or varied the tabled motion, which is fine by me and perfectly legal. Perhaps if he could read it again slowly, we then could just—because it's a minor variation and I'm certainly not going to object to it not having been tabled in written form.

The Chair: Is everyone else okay with that, just having him read it slowly?

Mr. Runciman: The clerk needs some help. This is really a friendly amendment as a result of discussions between the government representative and myself. We're simply adding in another consideration in addition to my original amendment. If you take a look at my original amendment, it dealt with whether the complainant is a minor and with respect to the meaning of the Accessibility for Ontarians with Disabilities Act, and

whether, having regard to all the circumstances, it's in the public interest for the complaint to be dealt with. What has been added to that is whether the complainant is or was subject to criminal proceedings in respect to the events underlying the complaint. That's the only change. It's an addition. There are no admissions or—

The Chair: So (b) now reads—I'm sorry.

Mr. Runciman: Clause (b) would now read, "Whether the complainant is or was subject to criminal proceedings in respect of the events underlying the complaint...."

The Chair: And (c)?

Mr. Runciman: In my original amendment it was (b); it's now (c).

The Chair: Exactly the same?

Mr. Runciman: Yes.

The Chair: Okay. You just inserted (b) and moved—

Mr. Runciman: That's right. That's the only change. It's an addition. There's nothing otherwise that's been changed.

The Chair: Is there any debate on the motion?

Mr. Kormos: I don't oppose the principle being expressed in this. I have a subsequent motion that will be more specific and consistent with the LeSage recommendation—verbatim, if you will—that I intend to still move, even in the event that this is successful.

I have but one question. The phrase "under a disability"—I'm not being critical of anybody, but I'm loath to enact into law phraseology, language, that is not an appropriate, fair, accurate expression of what we intend to say. I'm questioning whether that is how one refers to a person who lives with a disability: "under a disability."

Mr. Zimmer: Perhaps legislative counsel could—

Mr. Kormos: I don't know.

Ms. Kuzyk: To the extent that I'm aware, there's precedent in current legislation for use of that phraseology, I believe. But this was grabbed reasonably quickly.

Mr. Kormos: Chair, do you understand what I'm saying? It would be embarrassing for us, wanting to do the right thing, to codify a language or a concept that is unfair. I'm being very generous. If this language exists in contemporary statute, then I relinquish the floor. But I'm just concerned about it. Do you understand why I'm concerned, Ms. Kuzyk?

Ms. Kuzyk: I believe I understand your concern, Mr. Kormos. I can't say 100% sure unless I could pop onto e-Laws or something to that extent. But I'm pretty sure that in the rules of civil procedure under the Courts of Justice Act, this phraseology is used, if not elsewhere. But I just can't say 100% off the top of my head.

Mr. Kormos: Chair, I'm wondering if we could hold this down. Again, if people don't agree with me, God bless, but it would be a shame to codify something using language that isn't suitable language in the year 2007 when referring to people who live with disabilities.

The Chair: Any further debate?

Mr. Zimmer: Yes, Chair, in answer to Mr. Kormos's concern, I'm advised that under the Accessibility for Ontarians with Disabilities Act, 2005, this is the definition of disability: "Any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device...."

That clause (a) goes on, with clauses (b), (c), (d) and (e), and is a comprehensive definition of "disability." It is that section that would be used to interpret disability in this—

Mr. Kormos: No, I understand that and I don't quarrel with it. The phrase that is irking me a little bit at the moment is "a complainant ... is under a disability...."

1140

The Chair: Maybe Mr. Runciman can clarify.

Mr. Runciman: It doesn't offend me as the mover because it goes on to say, "within the meaning of the Accessibility for Ontarians with Disabilities Act...." I find it difficult to understand why anyone would be offended by that language.

Mr. Kormos: You see, if a person is disabled within the meaning of—

Mr. Zimmer: My final thought on this is that having read in the definition of "disability" under the Accessibility for Ontarians with Disabilities Act, 2005, and hearing what Mr. Runciman has said to the point, in my view I'm satisfied that this is not an issue that's likely to cause confusion.

Mr. Kormos: Okay, it's not going to cause confusion. Your response is, at the very least, tautological because it says, "within the meaning of the Accessibility for Ontarians with Disabilities Act...." I'm expressing concern about describing a person with disabilities as someone who is "under" a disability. I will not oppose the motion because I support its spirit, but I'm troubled by calling somebody "under" a disability. As somebody who does his best to speak the language, it just strikes me as a peculiar way of putting it. I mean, you're "under" a cloud. You are; you're under a cloud or you're "under" the weather, but usually by noon and a few glasses of water later, you feel fine. I'm not aware of people being identified as living or as being "under" a disability. I'll not press the issue. There you go.

The Chair: Any further debate?

Mr. Zimmer: Yes, for the reasons articulated by Mr. Runciman, I'm pleased to support this motion.

The Chair: Thank you. Mr. Runciman has moved PC motion number 11. All those in favour? Carried.

Then we have motion 11a, which is the NDP motion.

Mr. Kormos: I move that section 60 of the Police Services Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Same

"(2.1) Despite subsection (1), in the case of a complaint based in whole or in part on circumstances that

resulted in a criminal charge being laid against the complainant, the six-month period does not begin to run until the day after the day on which the charge is finally disposed of."

This does not conflict with the acceptance of Conservative motion number 11 because Conservative motion number 11 simply sets a number of criteria that shall or have to be considered when you're talking about an extension of the limitation period. This one makes it very clear—it codifies the fact—that the six-month limitation period does not commence until the finalization of the criminal process. That eliminates discretion. In the section as amended by the Conservative motion, there still remains discretion with guidance in terms of considering. This is, of course, consistent with recommendation 7 of LeSage:

"The limitation period for the filing of complaints should remain at six months running from the time of the events upon which the complaint is based. However, if the complainant was charged and the complaint relates to the circumstances upon which the complainant was charged, the six-month limitation period should run from the time when the charges were finally disposed of."

I think this again gives comfort to the director. What it also encourages is this: There may or may not be a practice in some parts of the province by some defence lawyers to utilize complaints against police as a bargaining chip—you may or may not be familiar with that—whereby the accused agrees to drop their complaint against the police officer if the assault police charge is reduced to causing a disturbance—I don't know, that's just a wild example. This would make it very clear that those are two separate issues, two separate streams. End of story.

The Chair: Any other debate on the motion?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote on NDP motion 11a.

Mr. Kormos: Chair, by the way, I'm not requesting any recess.

Ayes

Dunlop, Kormos, Runciman.

Nays

Balkissoon, Dhillon, Orazietti, Qaadri, Zimmer.

The Chair: The motion does not carry.

We'll move on to PC motion number 12.

Mr. Dunlop: Thank you very much, Mr. Chair. I wanted to let you know that the rest of our motions all deal with requests of the Police Association of Ontario. As critic for community safety and correctional services, I work fairly closely with this organization, and I want to thank them for keeping us up to date on this issue throughout the proceedings of Bill 103.

I move that subsection 60(5) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out the portion before paragraph 1 and substituting the following:

"Not affected by conduct

"(5) The independent police review director shall not deal with a complaint made by a member of the public if the complainant is not one of the following:"

It lists the following, 1 to 4, on page 12 of the bill. It amends Bill 103 to make the police review director's decision on denying or approving a third party complaint restrictive rather than permissive, as Bill 103 currently reads.

The Chair: I'm sorry. So the five sections that you're talking about are the ones listed in the bill?

Mr. Dunlop: They stay in the bill. It's subsection (5) that is removed.

The Chair: Okay, if you don't mind reading the five sections into the record.

Mr. Dunlop: I thought I already had. It's number 5 in brackets. What's currently there is:

"(5) The independent police review director may decide not to deal with a complaint made by a member of the public about the conduct of a police officer if the complainant is not one of the following:"

I'm taking that out, and I'm putting in what I just mentioned.

The Chair: You just read the motion right now that's in front of us into the record?

Mr. Dunlop: Yes. I said, "I move that subsection 60(5) of the Police Services Act" and I read in:

"(5) The independent police review director shall not deal with a complaint made by a member of the public if the complainant is not one of the following:"

The Chair: Okay, and you're substituting that. I understand. All right. Any debate or questions?

Mr. Kormos: I understand the amendment and, reluctantly, I'm disinclined to support it. I appreciate it's an effort to clarify. I also want to say this: In terms of the concerns about third party complaints, this whole section and subsequent sections that deal with who may make a complaint, a complaint by agency etc.—I'm not as critical of the bill as at least one or two of the presenters were in terms of expressing concerns about bodies being able to make the complaint. Clearly—and it's my view, and I surely want assistance in this regard if I'm wrong—the bill provides for complaint by way of an agent. Clearly, by virtue of saying "agent," that means a lawyer, an advocate, a paralegal, a layperson—anybody could prepare the complaint on behalf of the complainant. But at the end of the day, the complainant has to, one way or another, identify themselves with that complaint. I can't think of circumstances wherein a reasonable complaint couldn't be made in the existing statutory structure. However, by retaining the discretion, "may," as compared to "shall" in Mr. Dunlop's proposition, you're giving the director the opportunity to deal with a novel, or unusual, unanticipated scenario. I, for the life of me, have no idea what that would be, because the amendment would say, "He shall not, unless the person making the complaint falls into this category." I couldn't begin to tell you an

illustration of one where a person won't fall into that category where it would be a reasonable complaint.

1150

Clearly, the director has the responsibility to vet frivolous, vexatious complaints, complaints without substance. For instance, that's one of the concerns, I'm sure, about anonymous complaints. There's a big difference between a complaint against a particular police officer in terms of conduct and a complaint around pay equity. A complaint about a police officer around conduct has significant repercussions for the police officer should the complaint be founded and proceed through to the dispute process here. The evidence that's going to be required in most circumstances is going to be the evidence of somebody who witnessed the conduct that's the subject matter of a complaint, as compared to a pay equity complaint, which is apparent in the books, the records of payroll, of a particular company.

So with respect to the person who made that submission, who made that argument, I think there's a big gap, a big difference. But I think it's important—and again, I don't quarrel with Mr. Dunlop's intent here. I'm sure his interest is in trying to clarify the language to avoid vagueness. However, in this particular instance, I think we would be erring on the side of caution to retain the discretion for the director to consider a complaint even if the complainant didn't fall into one of those four prescribed categories.

Mr. Runciman: Opening this door is certainly a major concern of policing organizations. I think most of the public, if they have an opportunity to look at this issue, would also share those concerns that someone theoretically could file a complaint, which could have a very significant impact on an officer and his or her life and family, and the complainer has no connection whatsoever to the event or to the alleged victim or victims of police alleged misbehaviour. I think that that's a very legitimate concern and one that the Progressive Conservative Party feels should be removed from this legislation.

The Chair: Thank you. Any other debate?

Mr. Dunlop: I'd like to record this.

The Chair: Mr. Dunlop has asked for a recorded vote.

Ayes

Dunlop, Runciman.

Nays

Balkissoon, Dhillon, Orazietti, Qaadri, Zimmer.

Mr. Kormos: I wasn't going to support it. I wasn't going to vote with Liberals.

The Chair: The motion does not carry.

In the voting, I'm just getting a bit confused. I'm not meaning to pick on anybody, but the person beside Mr. Zimmer, if you could just step back a little bit or stand during the voting or just move a little bit back, because it appears that you're another member of the government.

Mr. Dunlop: He is.

Mr. Chair: I know, but just for my own sake.

Mr. Kormos: Chair, please. Mr. Dunlop, that wasn't fair. He's much younger, much brighter, much more competent than any member of the government.

The Chair: So then we move on now to NDP motion 13.

Mr. Kormos: I move that subsection 66(3) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "he or she shall hold a hearing into the matter" at the end and substituting "he or she shall direct that a hearing into the matter be held."

This, and a number of subsequent amendments, all with similar language, which have been tabled by both the Conservatives and the NDP—and, quite frankly, which could have been moved by either of us in this instance and in several instances following—are in response to the submissions made by the Police Association of Ontario.

The Chair: If I could just ask a quick question—

Mr. Kormos: I'm sorry. My apologies.

The Chair: I don't mean to interrupt. I was wondering if we should stand this motion down, given that there are other motions coming afterwards, or did you want to take it now?

Mr. Kormos: What does the Chair think, based on the advice that he has received? Don't ask me; tell me.

The Chair: I'm sorry. Are you in the process of—

Mr. Kormos: Wrong one?

The Chair: No. Go ahead.

Mr. Kormos: There may well be other motions down the road where the Chair is going to have to intervene and direct that they be stood down so as to make this process logical; I am prepared to accept your guidance in that regard—

The Chair: Go ahead with this motion.

Mr. Kormos: —again, because I have regard for the Chair and the process, as you well know.

Once again, this, like a number of subsequent amendments that have been tabled by both the Conservatives and by the New Democratic Party, is in response to the submission made by the Police Association of Ontario; in particular, their argument number two, that deals with independent adjudication. It's also, interestingly, a submission that was made by the civil liberties association.

Mr. Dunlop: We're going to be withdrawing the next motion. If this one passes or is turned down, we'll—

The Chair: Okay. Between here and motion number 40, they're somewhat intertwined.

Mr. Kormos: Agreed, they're intertwined—

The Chair: I'm wondering how best to deal with it.

Mr. Kormos: I'll tell you what. What happens, you see, is that if we go to motion number 40 and the government uses its majority to defeat that reasonable proposition, we then are denied, effectively, the argument on any number of the amendments that precede amendment number 40—isn't that pretty accurate?—because those

amendments become moot by the defeat of amendment 40. I do not want to have the government silence a vigorous and conscientious opposition.

The Chair: Well, then—

Mr. Kormos: Then let 'er rip?

The Chair: Go ahead.

Mr. Kormos: The argument is only going to be made once, because the argument is going to apply to a subsequent series of amendments.

The police association talked about the need for independent adjudication. Alan Borovoy of the Canadian Civil Liberties Association talked about, very clearly, the need for independent adjudication. This is a no-brainer.

You've got two types of hearings here: You've got the internal hearings, the police misconduct hearings, and then you've got hearings that are conducted as a result of a civilian complaint—again, that could deal with police misconduct, almost inevitably. The utilization of the chief of police or an inspector or a superior officer within the same police force as the hearing officer—and we're not talking about tripartite panels here, you understand; we're talking about one hearing officer—quite frankly, clearly and beyond presumably, has its origins in the military model of the police force. A whole lot of things have transpired since the origins of policing based on a military or a quasi-military model: due process; natural justice; the expectation of everybody that an adjudication is going to be conducted by somebody who's neutral and impartial. Police officers have that right when they are the subject matter of a complaint and when their incomes, their careers, their reputations are at stake. Complainants from the community have that right.

1200

Look at the fears that are expressed: From the police officers' point of view, the fear and—do you want me to cite examples of how a police officer who, as a member of a police association that may be a vigorous advocate for police officers and policing, could fear the partiality or lack of neutrality on the part of a superior officer? Take a look at the Daily Observer from the Ottawa region, Thursday, January 18, 2007. Discreditable conduct charges: Pembroke Police Chief Blair MacIsaac suspended without pay for three months. One of the incidents that he acknowledged was turning to a constable and when the constable indicated that he was preparing a financial report for the annual meeting of the Pembroke Police Association, the chief of police says, "Well, that's a career-limiting move." The chief then turns to another constable present and says, "'Too bad, good young lad on the right path then boom, and so early, eh Dillon.'"

Three days later, Constable Cotnam—who was preparing the financial material for the police association meeting and to whom the chief of police said, "Well, that's a career-limiting move," referring to Constable Cotnam's activism within his police association—according to this news report, "was at the police station in the dispatch area talking to Sgt. Dickie when Chief MacIsaac approached him. Standing a few inches from Constable Cotnam's face, the chief squeezed the constable's left bicep and said, 'Career killer. Association man.' He then patted the constable on his shoulder and walked away, shaking his head."

Clearly, the references by the chief to his officers are with respect to their participation in the activities of their police association. You would expect those police officers to feel comfortable being tried, if you will, with the chief of police as an adjudicator, he or she as a judge. You would have confidence in the impartiality or neutrality of a chief of police when there's an inevitable tension—we all understand this—between management, superior officers, and rank-and-file officers. When I say "inevitable tension," I'm talking about, in and of itself, probably a healthy and natural tension, but clearly it's one that does not sustain a perception—never mind a reality—of impartiality or neutrality. It would be like a worker in a unionized shop who had been disciplined by his or her foreman or manager or supervisor and who then launched a grievance process having to have that same foreman or manager as the arbitrator in an arbitration. It would never cut it in terms of the definitions of natural justice and due process.

From the civilian complaints perspective it's interesting, because once again there's the perception of something far less than impartiality or neutrality. The civilian complainant says, "Well, my complaint about a police officer is being addressed, being adjudicated, not by a retired police officer, but by an active police officer in that very same force," who is the hearing officer, who is a senior officer at the level of inspector or higher.

I don't have to remind you of the shocking comments that were made yesterday in this committee room by the deputy chief of Durham, who was sitting right here at this table: the first paragraph on page 3 of his written submission. I'll not forget that paragraph, nor its page nor the location on the page, where the deputy chief of Durham went out of his way to slag, to denigrate, to attack, quite frankly, the bona fides of the police association in general and the police association, I presume, of each and every police service. Now, it's his right to say that. You saw me make an effort to challenge him on it to explain, "Exactly what do you mean, sir?" Because the clear impression was that somehow police associations or their members come before this committee with less commitment to law and order and the public well-being than do chiefs of police. Once again, Chair, this is exactly what people are talking about. The evidence was put before you yesterday, as clearly and transparently as it could ever be put: the very comments that were in the course of the submissions by the deputy chief of the Durham police force.

On the provisions of the bill which call upon the chief or his designate, an officer of a status of inspector or higher, what does Mr. Borovoy say? I'm referring to his submission on page 13: "such an arrangement is bound to generate suspicions of bias. Complainants are likely to believe that police chiefs will favour their own officers when they are in conflict with members of the public. But police officers could also experience suspicion. They

could well believe that intradepartmental rivalries or jealousies are likely to influence these judgments affecting them."

This isn't some bizarre machination on the part of Mr. Miller. This isn't some concoction on his part. Mr. Miller of the police association is not an alchemist. He has told you that police officers have concerns about the independence, about the impartiality, about the neutrality of senior police officers adjudicating complaints against those same police officers. The Police Association of Ontario told you that.

The deputy chief of police of Durham confirmed that. What do they call that, Mr. Zimmer: "corroboration"? People have gone to the gallows for less corroboration than that.

Then Alan Borovoy, whom most people would, again, inappropriately identify as being on the pro-complainant side of police complaints, but who in fact, as a civil libertarian, is concerned about the process, points out that, yes, police officers, along with the civilian complainants, have concerns—not concerns. It's pointed out that there is a clear absence of neutrality and impartiality when a senior police officer is adjudicating in the course of these complaints.

1210

The Conservatives, Mr. Dunlop and Mr. Runciman, understand that, which is why they put forward the amendments that were identical to the amendments the New Democrats have put forward. The New Democrats understand it. The acceptance of this proposal would probably do more to provide a strong foundation for this new process than anything else in this legislation. It would be the most dramatic step forward in terms of creating an oversight system in which police officers and citizenry have confidence. All of the other trappings, all of the new offices and their accompanying carpeting and upholstery and fancy mahogany desks for the director and his or her staff aside, understanding the concern of the citizenry—and I don't want to exclude police officers from being the citizenry. When I talk about the citizenry, people understand what I mean about civilians as citizenry, or citizenry as civilians, non-police-officers, making complaints, and police officers as citizens.

This is the crux of the issue, in my view. You talk about wanting to retain remnants of a pre-Maloney—because it was Maloney, wasn't it, Mr. Zimmer, Arthur Maloney, who conducted the inquiry that created or was the beginning of the Toronto complaints process? I remember I was a student going—because Maloney was one of the greats. He was. And I remember going downtown and watching as a student the inquiry by Maloney into complaints against police, watching the inquiry unfold as a young law student. Of course, out of that grew the Toronto police complaints process that in 1990 became the province-wide civilian oversight, with its significant revision in 1997. I remember that well too.

I would and will and must leave this committee process, when it's completed, with great sadness and regret if this proposal for independent adjudication is not adopted by this committee. I'd be willing, if it were a matter of having to trade off, to not move another amendment; if there had to be a trade-off, literally to not move another amendment. If that's the way it had to be, if the government was holding the gun to my head and told me that they would accept this adjudication only on the condition that that be the final amendment put forward at these committee hearings, I'd have to think long and seriously about it, because that's how important this particular proposal is.

And when, in the lengthy and often painful and divisive debate around civilian oversight—and it has been divisive. Look, the LeSage report, being what it is, has been a somewhat modest—very capable, very competent. I praised Mr. LeSage and his report from the get-go in terms of the work that was done and the report that came forward. But clearly Mr. LeSage was trying to accommodate a wide range of parties—parties who had either real conflicts in terms of their interests or merely perceived conflicts in their interests. But Mr. LeSage tried to bring them into the one tent, and at the end of the day there are a whole lot of folks who aren't going to be happy with the legislation. You heard that already at committee. But if there's one thing we can do, if there's one, single thing that will leave an impact, it would be to accept the proposal for independent adjudication.

The Chair: Any further debate?

Mr. Zimmer: You're quite right. Mr. Justice LeSage recommended that the adjudication be independent. That's one of the themes of his report. That will be implemented with this legislation in the following way: Standards are going to be set for hearing officers to ensure their impartiality. The goal of such standards will be the promotion of the highest-quality, independent and efficient adjudication on disciplinary matters under the Police Services Act. How are we going to do that? These standards, training and all of those things are best dealt with in regulations, and as those regulations are being worked out, the various stakeholders that have appeared before us to date, including police officers, will no doubt be consulted on those regulations, and we'll work those regulations through.

Finally, I should just leave you with this thought or reminder: There are always appeals from these decisions of the independent hearing officers. There's still provision for appeal to the Ontario Civilian Police Commission. That's how we're going to ensure both the independence and the very high quality of these independent persons.

Mr. Kormos: I appreciate the parliamentary assistant's comments, and I want the parliamentary assistant to know that I hold him in the highest regard. I know him to be an experienced and competent lawyer. He's also a person who has served in an adjudicative capacity. He knows what the law is with respect to neutrality and impartiality. He also knows that you don't legislate neutrality, impartiality or lack of bias; you display it.

An adjudicator performs a judicial function. You don't create neutrality and impartiality with regulation or even

statute; you do it by ensuring that parties to a dispute—and we're not talking here about complaints about who got to the parking spot first; we're talking about civilians who have grievances and who are making allegations from time to time about incredibly serious behaviour on the part of police officers, behaviour that impacts on our very fabric as a democratic society. We're also talking about processes that, at the end of the day, can deprive a police officer with many years invested in his or her career of their reputation, of their income, of their stature in the police service or of their job. To say that doesn't say that I have a bias towards police, and to say the contrary doesn't say that I have a bias towards complainants. It's the reality.

1220

Mr. Borovoy, in his submission to this committee said this—and I repeat this into the record again in response to Mr. Zimmer's arguments about appeal. Even though the losing party would have a right of appeal to the commission, many complainants in this position could be expected to drop the matter. Their subjection to such a cop-heavy process could well discourage them from seeking the redress that the law makes available. Few aggrieved members of the public would have the fortitude to wait so long for a non-police authority to adjudicate the merits of their complaint.

I hear Mr. Zimmer. I don't doubt his enthusiasm when he responds as he does. I don't even doubt his sincerity. But I suspect full well that he is being less than generous to a very valid argument made by both the police association and by Mr. Borovoy and that, in doing so, the government will have produced a bill which is far less responsive to the needs and interests of Ontarians, police officers and civilians than it could be.

Mr. Zimmer: If I may reply to that, you're quite right, Mr. Kormos, I have had some considerable experience with quasi-judicial tribunals over the years. In my experience, the way that you guarantee the independence of those quasi-judicial officers, board members or what have you, is you do four things: First of all, you get good, sound people appointed to those positions doing that work; second, you spend a lot of time training them and teaching them about things like judicial independence, about decision-making and the like; third, you set standards, benchmarks for them to govern themselves; and fourth, you then monitor what they're actually doing. That, coupled with the appeal provisions that are provided for, will, in my view, ensure the independence that we all seek in this function.

Mr. Kormos: Mr. Zimmer, none of those four things could have or would have tempered the bias of Chief MacIsaac up Pembroke way. Were it not for his inappropriate conduct, one may never have seen any overt displays of his bias. But that chief of police is the sort of chief of police, in this instance Chief MacIsaac—and they're not all Chief MacIsaacs. I have no doubt that there are chiefs of police out there who don't have the same view as Chief MacIsaac of a police association and its members. But you're talking about Chief MacIsaac here.

What special training will the chiefs of police receive once this bill becomes law? What special supervision will they receive? Oh, come on. If you were talking about developing a body of adjudicators—because that's really what your four factors speak to, isn't it?—then I am all for it. What a wonderful proposition. So support our amendments from the opposition sides and then, through regulation, develop a body of adjudicators that police can call upon, just like the Ministry of Labour has a body of adjudicators that can be called upon in the resolution of labour grievances.

Mr. Dunlop: Mr. Chair, I'm not sure how you're handling the next motion following this, but I just wanted to say in response to Mr. Kormos's comments, that we will be supporting it because, of course, we've got the exact resolution following it as well. I wanted to put that on the record in case we didn't get a chance to speak to our motion that follows this.

The Chair: It's exactly identical, is it? We'll deal with it right after.

Any further debate on NDP motion 13?

Mr. Zimmer: Mr. Chair, pursuant to the standing orders, could I have a five-minute recess?

The Chair: Absolutely.

Mr. Kormos: You've got to call the vote first.

The Chair: Okay. Shall I put the question? Then you can ask for a five-minute recess.

Mr. Zimmer: So you've called the question, Mr. Chair. Could I have a five-minute recess?

Mr. Kormos: I'm going to up him by one: six.

The Chair: Six. Do we have seven? Six minutes. It's 12:25. We'll come back at 12:30.

The committee recessed from 1225 to 1230.

The Chair: We'll call the meeting back to order. It's after 12:30 now.

Interjection.

The Chair: This watch acts up sometimes, but I think it is shortly after 12:30, and we are back here with the standing committee on justice policy. Mr. Kormos, you had the floor with regard to motion 13.

Mr. Kormos: You had called a vote. There had been a request for a five-minute recess by Mr. Zimmer. I called his five minutes, raised him one to six, and here we are.

The Chair: So now I'll put the question.

Mr. Kormos: And a recorded vote, please.

Ayes

Dunlop, Kormos, Runciman.

Nays

Balkissoon, Dhillon, Orazietti, Qaadri, Zimmer.

The Chair: The motion does not carry.

Next is motion 14, but it's an identical motion.

Mr. Kormos: Chair, if I may, can we, with the indulgence of everyone, move to motion number 40?

The Chair: Do we have unanimous consent? Agreed. So we'll go to motion 40, which is an NDP motion.

Mr. Kormos: I move that section 10 of the bill be amended by adding the following section to the Police Services Act:

"Conduct of hearing

"82.1(1) The chief of police shall designate a judge, retired judge or such other person as may be prescribed to conduct a hearing under subsection 66(3), 68(5) or 76(9).

"Same

"(2) A judge, former judge or other person may only be designated under subsection (1) if he or she meets the prescribed qualifications, conditions or requirements."

This flows from the cry and call for an independent adjudicator. The comments I made with respect to the previous amendment all apply to this. This is the root of it, if you will. There are a number of other amendments here that are consequential to this amendment. In other words, if this amendment doesn't pass, those amendments will be moot, of no relevance. This, again, is in response to the cry for an independent adjudicator, one which is unbiased, impartial and neutral. It is in response to the submission of the Police Association of Ontario, because it would apply to adjudicators both for civilian-generated hearings as well as for internal hearings. It is, again, absurd that we would expect a police officer to submit to a hearing process where the adjudicator is management, when there's clearly not an apparent neutrality and impartiality there.

Mr. Borovoy speaks on behalf of civilian complainants and talks about the perception, at the very least, if not the reality, of bias when a police officer, albeit a senior police officer, is adjudicating a complaint by a civilian against a police officer, especially a police officer in that officer's own force. Mr. Borovoy is also cognizant of and gives weight to the argument made by police officers.

I put to you once again that the adoption of this proposal—Conservatives have moved an identical motion. The Conservatives' motion is identical. So both opposition parties speak with one voice on this particular matter; they do. It's a matter of fairness. It's a matter of understanding that the origins of the superior officer conducting the hearing are in no small way connected with the military model that was adopted many, many years ago for police forces, long before the creation of a police association, let me tell you, as a matter of fact, at a point in time when I suspect a police association would have been illegal in terms of police membership in one. This is an idea whose time has come.

I put it to this committee that we would serve our constituents and this province well, were we to do this. This would be the most significant step that could be made in terms of legitimizing any complaints process for both civilian complainants and for police officers and the general public in terms of how they view the process. This is the most significant step that could be taken. Thank you, Chair.

1240

Mr. Dunlop: As Mr. Kormos has already mentioned, the official opposition has an identical motion. It's actually motion number 41. We believe that independent adjudicators will improve both the public and the police officers' confidence and trust in the complaints process, so we will be supporting that. We'll be asking for a recorded vote as well.

The Chair: Any further debate?

Mr. Zimmer: Yes. I spoke to the substance of this matter when were debating NDP motion number 13, and I would draw my colleagues' attention to those arguments. They're in Hansard, and I ask that you consider them repeated as if I had repeated them on this motion. Thank you.

The Chair: Any further debate? None? A recorded vote on NDP motion 40.

Ayes

Dunlop, Kormos, Runciman.

Nays

Balkissoon, Dhillon, Orazietti, Qaadri, Zimmer.

The Chair: The motion is not carried.

Mr. Kormos: Chair, if I may, the government's defeat of that amendment makes a number of other amendments that have been tabled moot, if you will. I'd be more than pleased if the clerk simply took us through them, and I'll not be moving any of those amendments that have been tabled by me that are now irrelevant by virtue of the defeat of this amendment by the Liberal caucus.

Mr. Runciman: Mr. Chair, could the clerk or yourself simply indicate that as we go through this rather than reciting them right now?

The Chair: All right. So we'll go back, then, to PC motion number 14.

Mr. Dunlop: Do we indicate as we go through?

The Chair: Yes.

Mr. Dunlop: I move that subsection 66(3) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "he or she shall hold a hearing into the matter" at the end and substituting "he or she shall direct that a hearing into the matter be held."

Again, it's exactly the same as NDP motion 13.

The Chair: It would be out of order, then, because we voted on number 13.

Mr. Kormos: Motion number 15 is moot.

The Chair: Motion 15 is moot. PC motion 16: I think that one is identical.

Mr. Dunlop: It's identical to NDP motion 15, so we would consider that moot as well.

The Chair: That is moot as well. PC motion 17.

Mr. Dunlop: PC motion 16, is it not?

The Chair: I'm sorry. Motion 16 is identical.

Mr. Dunlop: Motions 16 and 17 are identical.

The Chair: No, 15 and 16 are identical.

Mr. Dunlop: Okay.

The Chair: But we're on number 17.

Mr. Dunlop: I move that subsection 66(4) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer and the complainant consent to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, and the complainant consent to the proposed resolution."

Can we speak to that?

The Chair: Yes.

Mr. Dunlop: Bill 103 allows a police chief to informally discipline an officer without holding a hearing if the officer, the chief and the complainant agree. This amendment ensures a representative role for the local police association. It is widespread practice in employer-employee relationships that the union or association that represents an employee has a role in the discipline process. We support this.

The Chair: Thank you, Mr. Dunlop. Further debate?

Mr. Kormos: The motion, in and of itself, isn't an unfair proposition, is it, Mr. Zimmer? It does respect and understand the role of the police association, while not a union under the Labour Relations Act, having many of the characteristics of a union.

What the motion does is illustrate the weakness or frailty of the informal resolution provisions. That same language is contained in the 1997 reforms while Mr. Runciman was Solicitor General. I recall those hearings well. There are many, and some of them were parties to these hearings, who would have preferred more specific language about a mediation process. Of course, in a mediation process, the parties—the complainant, the person complained about and a mediator—would be involved in resolving the issue. Unfortunately, Mr. Zimmer, it appears that rather than having the informal resolution, which perhaps could be mediation, as simply part of the process, it's either/or. You opt into the informal resolution, in which case the other process is no longer available to you. I think that's unfortunate from the police officer's point of view as well as from the complainant's point of view. It is not a bad thing to encourage these people, complainant and police officer, to resolve their problem without going through an adjudicative process. You know that's done in the civil courts—mandatory mediation—and it's utilized in a number of other arenas. But if the mediation is unsuccessful, the parties then still have recourse to the adjudicative process. They flow on to the adjudicative process. I think that's the flaw here. Again, it's unfortunate and regrettable, because it's informal resolution—and we heard the deputy chief of Durham explain what that meant. What he talked about was, I suppose, something akin to the chief mediating between the two parties.

Mediation could be suitable for some very serious transgressions or some very serious allegations, because mediation in the case of a very serious allegation could well have as a party the policing authority that has, as part of its interest, to ensure that the result is not inconsistent with the broader public interest, right? So the government missed an opportunity here; it did. As I say, it's a shame that it creates two streams.

Once the determination and also the acceptance by the parties of the informal resolution, which could include mediation, although the statute doesn't say so and there's nothing to suggest that somebody is going to be paying for the mediators and these sort of things—it appears that once they're there, there's going to be great pressure to acquiesce to resolve within the informal resolution because that's where you've been streamed into. That's not how we use mediation in our court system. We don't say to litigants, "If you mediate, then don't ever come back to the courtroom doorway again." As a matter of fact, one of the ways that mediation is successful is that the parties know they're not going to be forced into something that they don't want, because they know they still have the adjudicative process.

I'm not going to oppose this amendment, but I then point this out to you, because of course a police officer is entitled to consult with his or her association: Who does the complainant, the civilian, consult with? Who do they have on their side? Because what you've done is you appear—I don't know; folks from policy end, help us out here. If people agree to the informal resolution, that's a route that's taken, and there's no suggestion here that they haven't forfeited their right to the adjudicative process. I suppose you could say if they don't resolve, then somehow there's got to be a way of re-entering the adjudicative process, but I don't see where it is in the legislation, gentlemen. I don't see where it is here. And even if there is a way to re-route back into the adjudicative process, there's going to be real pressure on people, once they've agreed to the informal resolution, to resolve it, whether the police associations agree to the process or not. You don't have a re-entry. You don't have a way of getting out of the informal resolution and back into the formal resolution, that I can see, that's readily obvious or readily apparent in the bill.

1250

So as I say, I have no qualms about a police officer consulting his or her association in the course of determining whether or not to go the route of informal resolution, but then where's the corollary? The police officer has got that right anyway. Even without this amendment the police officer has that right. You know that; I'm speaking to the government now. Where in the bill did you create a parallel right for complainants?

If a complainant alleges criminal misconduct and then is perceived to have fabricated it, that's called—what's that called, Mr. Zimmer, in the Criminal Code? It's called public mischief, isn't it? I mentioned the other day that back in the old days, when I was practising law, I remember clients who would complain about police misconduct and the police would sit down with a very lengthy discussion about the maximum prison terms that could be imposed in the event of public mischief. That's pretty persuasive to somebody who may well be a victim

of police misconduct but happens to have a little bit of a rap sheet themselves and is out on bail facing some marijuana trafficking charges down at Park's Billiards at the corner of Park Street and King Street, just two doors down from the Rex Hotel down in south Welland. Drop by some day. There's off-track betting at the Rex. But it's pretty persuasive to a kid who, as I say, has got a rap sheet to be told about the consequences of a public mischief charge and the prospect of doing the two years of jail time or whatever it was at that point in the history of the Criminal Code.

So I'm not going to oppose this, because it's redundant; the police officer already has the right to consult. But, parliamentary assistant, where is the right of the complainant to consult meaningfully before he or she agrees to an informal resolution? What do they do, go to the local legal clinic? Do you suggest that? Do you know what the line up is like outside those legal clinics? It's true. Our staff deal with them all the time. We refer people constantly to the local legal clinic, and then Jack Gillespie, God bless him, who's the director of ours, calls me back and says, "Jesus, Pete, how about more funding? Then we'd be more than pleased to take on this extra case load."

So police already have this right. I'm going to talk more about the informal resolution process later and what I perceive as some lost opportunities in it. The amendment is not offensive but for the fact that there's no corresponding provision for the complainant. Thank you, Chair.

The Chair: Mr. Zimmer and then Mr. Runciman.

Mr. Zimmer: I'd just say, Mr. Kormos, in response to the points that you've made, I think our government motion 20, in my view, deals with the concerns that you've just put forward. Let's see what happens when we get to 20.

Mr. Runciman: I don't disagree with Mr. Kormos in terms of police officers having the right. What this amendment will do is impose an obligation. I think the concern, from my perspective anyway, would centre more on officers who are new to a particular police force and could find themselves in very intimidating circumstances and make a decision that could set a precedent and could not be in their best interests or their colleagues' best interests. I think that imposing this opportunity, if you will, to ensure that they at least have the experienced and reasoned advice of representatives of their association is most appropriate.

The Chair: Mr. Kormos.

Mr. Kormos: I think it's really important to put the question—not call the question; put the question—to policy staff who are here, because I really need some clarification in terms of "a decision being made that is appropriate for informal resolution"—fair enough; "consent by the respective parties"—fair enough; "a police officer can consult with his or her association"—fair enough; and the government in motion 20, the cooling-off period, why it has nothing to do with the right of the complainant to consult with anybody.

The Chair: Mr. Kormos, I wonder, do you want to hear from them?

Mr. Kormos: Yes. Help us on what happens to a dispute that gets put into the informal resolution process where there is no resolution.

The Chair: Could staff come up to the table here and just identify yourself, please?

Mr. Graham Boswell: Hi. I'm Graham Boswell from policy division. Our view is that yes, if the informal resolution doesn't work out, it does go back into the adjudicative stream.

Mr. Kormos: I hear you. Common sense would dictate that, but can you refer us to—I didn't read anything in the bill that speaks to that. Perhaps there is something in the bill. It would make me happy if there were. Zimmer would be happy too. It would make him a happy person today—happier than he usually is.

Mr. Boswell: It may not be explicitly stated. We would note that if the informal resolution does not work or is not successful, it could go to the disposition without a hearing. That's a situation where a chief of police could impose a minor penalty, subject to the consent of the officer. But if there is no agreement in regard to informal resolution prior to that, it would go to a disciplinary hearing.

Mr. Kormos: Sure. Okay. I'm not fighting you, gentlemen. I think this is an important sort of thing, because hearing you now, do you mean to say that in the context of the legislation as you understand it, intimate as you are with it, a police officer who agrees to informal resolution could be subjected to a penalty that's imposed as a result of a non-hearing disposition with or without his or her consent?

Mr. Boswell: No. If there's no consent, it has to go to a hearing. Under the disposition-without-a-hearing option, if the officer says, "No way; I'm not going to accept this," you go to the full hearing, the officer has full rights and their full appeal rights there as well.

Mr. Kormos: If I may, why? You talked specifically—not you, but drafters—in the amendments to the Family and Children's Services Act, about incorporating mediation in child protection cases, amongst others—basically incorporating the mandatory mediation model into that type of family court litigation. It wasn't a bad thing; it's sort of the vogue at the very least, currently. In view of the fact that informal resolution dates back to at least 1997, why didn't you talk more specifically about mediation options?

1300

Mr. Boswell: I think part of the concern is that mediation is a complicated process, and there may be need for variations in the type of mediation that you have across the province. What works in Toronto may not work in Sudbury or North Bay. I think there's some need to ensure that—there could be work with local community groups; there's a possibility of setting up pilot projects and that sort of thing.

I think there could be significant problems if you set out a rigid mediation structure in the statute. There's obviously a lot more flexibility in terms of regulations. We

believe there is the ability to set out an appropriate mediation outside of there.

Mr. Kormos: Sure. The category of informal resolution obviously could include a more defined mediation. But then what do you do in the current context of an informal resolution, where a police officer has agreed to it—with or without getting association advice; this amendment doesn't have to pass for that police officer to get association advice—there's an exchange in the resolution process—nobody agrees; you then have a police officer, maybe with genuine good effort, saying things to try to participate in the informal resolution—and the reason I say this is because, insofar as I understand, in a formal mediation, there would be specific agreements about not using any of the information exchanged in the mediation if the matter then proceeds to an adjudicated thing. Of course, the chief or whoever conducts the mediation would never be a hearing officer in a more formal mediation structure and in the sort of mediations you talk about in civil court and now in the family court. How do we deal with that in this context?

Mr. Boswell: In terms of disclosure of information in a more formal process?

Mr. Kormos: Yes.

Mr. Boswell: There is protection about that—I'm just looking for the specific section number. No information disclosed in the course of an informal resolution can be used in a subsequent process, so essentially it's like a settlement privilege.

Mr. Kormos: Is it?

Mr. Boswell: As I understand it, it is.

Mr. John Twohig: If I'm not mistaken—

The Chair: Excuse me. Please identify yourself.

Mr. Twohig: Sorry. John Twohig is my name. I'm also with the policy division.

Subsection 66(5) provides that the decision to even proceed informally itself must be approved by the IPRD.

Mr. Kormos: With the resolution proposed?

Mr. Twohig: Even more than that; it's the decision to proceed informally, the way I read it.

Mr. Kormos: That's interesting.

Subsection 66(5): "Before resolving the matter informally, the chief of police shall notify the complainant and the police officer, in writing, of his or her opinion that there was misconduct or unsatisfactory work performance that was not of a serious nature, and that the complainant may ... ask the independent police review director to review this decision"—"and that the complainant may"; not the police officer. Wow. So here the chief of police is making a conclusion that there was misconduct, albeit not of a serious nature. There's a finding, not an allegation, of misconduct, and then the complainant may ask the independent police review director to review this decision. What about the cop? Is there a parallel section? I hope so.

Mr. Boswell: I don't believe there is, because the purpose of setting up the independent police review director is to deal with public complaints. The police officers have rights of appeal at a later stage and that sort of thing.

I found the specific subsection that I was referring to before. Under the proposed subsection 83(9), "No statement made during an attempt at informal resolution of a complaint under this part is admissible in a civil proceeding, including a proceeding under subsection 66(9), 69(11), 76(11) ... or a hearing under this part, except with the consent of the person who made the statement."

So that does, I would say, essentially provide a settlement privilege. It would allow parties—

Mr. Kormos: Okay, but it doesn't protect you from the disclosure function. It takes place all the time, which we all know, right? Good. Where's that subsection again? Help me.

Mr. Boswell: It's the proposed 83(9).

Mr. Kormos: Good. "Inadmissibility of statements

"(9) No statement...." Thank you.

The Chair: Do you have more questions?

Mr. Kormos: Thank you, gentlemen.

The Chair: I think Mr. Zimmer has a question.

Mr. Zimmer: Just so we have some order to the day: It's five after 1. What are we going to do for lunch?

The Chair: I was suggesting we go to a quarter after 1 and come back at either 2:10 or 2:15.

Mr. Zimmer: That's fine.

The Chair: Is that okay with everybody?

Mr. Kormos: I don't know. I look around this room, and other than a couple of the younger members, most of us don't really need lunch, do we?

The Chair: Stretch our legs; fresh air.

Mr. Kormos: Thank you to the staff. I appreciate the reference to subsection 83(9). That's obviously important. It just seems, to be fair, Mr. Zimmer, that the whole informal resolution stuff is a little underdeveloped. Do you understand what I'm saying, Mr. Runciman? The chief can make a finding of misconduct and then propose informal resolution. The complainant can ask that that be reviewed, I suppose with the point of view of saying that it's not of a less serious nature, but the cop can't make the appeal to say, "How dare you make that finding?" Holy moly, now we're drawn back into the independent adjudicator. So the chief of police is making and drawing conclusions—I don't know, Mr. Zimmer. Maybe Mr. Bryant should sit down with this bill a little bit longer, but I don't think that's on his agenda. He's too busy planning his leadership campaign. I hear him speaking French in the Legislature. I know what's going on.

Interjections.

The Chair: All right. Any other questions or debate on PC motion 17?

Mr. Dunlop: I just want a recorded vote.

Ayes

Dunlop, Kormos, Runciman.

Nays

Balkissoon, Dhillon, Orazietti, Qaadri, Zimmer.

The Chair: The motion does not carry.

We have about seven or eight minutes before we break at 1:15. Can we deal with PC motion 18?

Mr. Runciman: Why don't we break for lunch before starting on something else?

The Chair: Do you want to break for lunch and come back at 2:30? Is that reasonable?

Mr. Runciman: At 2:30? At 2:15.

The Chair: At 2:15. I'm sorry. It's 2:15. Are we in agreement, then, to come back at 2:15? This committee stands recessed until 2:15.

The committee recessed from 1308 to 1418.

The Chair: I call the committee back into session.

Mr. Runciman: Mr. Chair, I'm asking for unanimous consent to deal with NDP motion 63 as the first order of business.

The Chair: Is that unanimous? All right. We'll go, then, to NDP motion 63. Mr. Kormos, did you want to read the motion into the record?

Mr. Kormos: I move that section 97 of the Police Services Act, as set out in section 10 of the bill, be struck out.

This is the notorious and controversial section 97 that has been the subject matter of much commentary, debate and indeed dispute since the bill was introduced last year in April. Indeed, promptly after the bill's introduction, in May 2006—specifically May 13—Ontario Ombudsman André Marin, in a keynote address to the Toronto Police Services Board at an event celebrating that board's 50th anniversary, had occasion to welcome the introduction of Bill 103, a sentiment that he echoed when he appeared before this committee two days ago here at Queen's Park. Mr. Marin, our Ombudsman, who is, as we all know, an officer of the assembly and whose selection as a successor to the incredibly highly regarded Clare Lewis was unanimously supported by all three parties in this Legislature—I'm pleased to note that the Liberal enthusiasm for the appointment of Mr. Marin was as strong as that from within the Conservative and Liberal representatives on the tripartite committee that selected Mr. Marin from amongst a number of incredibly capable competitors for the position. I should note that Marin has proven that he's worth every penny he's being paid—in fact, more—with an incredibly courageous performance of his role in the best tradition of ombudsmen.

Ontario should take some pride in that Ontario has very much been a leader internationally in supporting and developing the role of the Ombudsman. An Ombudsman, most if not all of us believe, is critical in a democratic society to make sure that people are served well and as they ought to be by institutions and bodies and structures that exist under the umbrella of the government, a structure, for instance, like the office of the independent police review director that will be created by Bill 103.

As recently as this week, well-known and highly regarded Toronto Sun columnist Christina Blizzard said this about Marin. I'm quoting from her column that appeared in a number of Sun-owned and Sun-associated newspapers. This column was the version of the column as printed in the London Free Press on January 31. Ms. Blizzard said, "Marin has done an exemplary job since he took over as Ombudsman almost two years ago. He is feisty and fearless and only too happy to tackle heartless bureaucrats and hidebound government processes that move at a glacial pace, often trapping the little guy under their weight."

There has been some effort, in my view, on the part of the government, like the three-card monte operators down on Eighth Avenue in New York City who try to hide the black jack, somehow thinking that with enough razzle dazzle and quick movement of the hands, that they, the government members and the government can confuse people in Ontario about the oversight function of the Ombudsman, especially as it would apply and should apply to the office of the independent police review director. The Ombudsman, in his May 2006 speech to the Toronto Police Services Board, noted the not inappropriate significant powers of the office of the independent police review director as created by Bill 103. He, in the same speech, which has become known as the "quis custodiet ipsos custodes" speech, also talked about the immunities that the director enjoys. Again, he, Mr. Marin, points out not inappropriately. But he also observes that it's because of those significant powers, and because of the concurrent immunities that are enjoyed, or will be enjoyed, by the director, that are afforded him by this statute, that there is a need for independent oversight via the Office of the Ombudsman.

Of course, this office naturally falls under the Ombudsman's jurisdiction. If it didn't, there wouldn't be any need for section 97. That's clear. the independent police review director's office, created by Bill 103, would fall within the jurisdiction of the Office of the Ombudsman in terms of the traditional and legislated role that the Ombudsman performs, but for section 97.

So the government, by inclusion of section 97 in this bill, is very much and very clearly going out of its way, the government's way, to ensure that the Ombudsman, be it Mr. Marin or any number of successors, and there will be successors and there inevitably are—this isn't a one- or two-year proposition. There's no sunset in this bill. This is the next or the newest form of the civilian oversight regime here in Ontario, and history tells us that this will be the prevalent regime for at least 10 years, if not more. In fact, most of the expectations of people who appeared before this committee who gave qualified support for the bill, noting from their perspective its significant efficiencies, also spoke of it as a beginning, one which they hope, anticipate and expect will be built upon.

That confirms yet further for me that this legislation, Bill 103, is going to be the framework for a civilian oversight of police in this province for some significant chunk of time. Even Mr. Runciman, with his incredible longevity here at Queen's Park, is likely to be a very old man before this issue is revisited. At that point, he undoubtedly will have served 40 or 45 years in the provincial Parliament, but I'm confident that he will pursue his duties with the same skill and vigour as he does now.

I have more to say about my amendment. I do, however, want to yield the floor for a period of time to Mr.

Runciman, who is under some special pressures here this afternoon.

The Chair: Thank you very much, Mr. Kormos.

Mr. Runciman: Mr. Chairman, my thanks to the member from Welland-Thorold, who is a very understanding individual, to say the least. I appreciate his ceding the floor. I just quickly want to put our views on the record with respect to his amendment. He may regret ceding the floor because, unfortunately, we're not supporting the amendment, and we wrestled with it.

I have a great deal of respect for the Office of the Ombudsman. Quite a number of years ago now I served as the Chair of the select committee on the Ombudsman. I worked with the Honourable Mr. Donald Morand, who was a truly honourable individual. I think we've had a number of fine people who served in that office. I have to say the current occupant is probably the most activist Ombudsman since the original Ombudsman, Arthur Maloney. I think the resentment on the government benches is almost palpable, when he's here and appearing before us, and resenting his activism. That's unfortunate, because I think his motivation is appropriate.

My problem and my colleague's problem is really with the concept of changing the mandate of the Ombudsman's office on a one-off basis. We don't think that that's the way this should be dealt with, and I know the Ombudsman expressed concern related to municipal affairs legislation that came before the House in December and felt that there could be a role for his office in that regard as well. I think these are legitimate points that he is raising, legitimate issues and concerns that he's raising, and they should be taken up by the Legislature, perhaps through a standing committee review of the mandate, and we can have his input and the input of others who could be impacted by any mandate changes at that time. But I think that's the appropriate way to go.

1430

I'd like to support my friend on this, but we simply can't on the basis of it being an ad hoc kind of change in the middle of the process. We don't think that would be appropriate at this time.

Mr. Kormos: I have no qualms. I appreciate that there are differences of opinion about this, and I respect the Conservatives who state that they don't believe this is the forum or the venue or the process within which Ombudsman oversight of the proposed, anticipated office of the independent police review director should be dealt with. However, I disagree.

Let me take you briefly to observations made by Mr. Marin which I believe to be accurate interpretations and accurate presentations about the state of the law around the Office of the Ombudsman. I am referring to his May 13, 2006, speech. Marin says, "In Ontario, by default, every provincial government body, whether it's the Ministry of the Attorney General, the SIU, Municipal Property Assessment Corporation," or—I briefly leave his quote—the office of the independent police review director, " ... is subject to the statutory oversight of the Ombudsman." It's as simple as that. The Ombudsman has jurisdiction over these bodies. The debate isn't about whether or not the Ombudsman should acquire jurisdiction; the Ombudsman has jurisdiction. The extraordinary thing that's being done here is that the government is legislatively excluding this office from the jurisdiction of the Ombudsman.

I go back now to Marin's comments from May 2006: "It is the legislated function of the Ombudsman of Ontario to investigate and to make recommendations if a government body conducts its business in a way that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or just plain wrong. The Office of the Ombudsman, reporting to the Legislative Assembly, is the ultimate check and balance" for the little guy. End of quote, although of course he says much more.

I don't think that observation by Marin is disputed or capable of being debated. It's a given. One, there's the statutory jurisdiction of the Ombudsman over government bodies. That statutory jurisdiction would exist with respect to the independent police review director were it not for section 97. And the function of the Ombudsman is to investigate and make recommendations if a government body is conducting itself contrary to law, in an unreasonable way, in an unjust way, in an oppressive way, in an improper way etc.

So one could end the argument right then and there, but Marin goes on to express special concern about 97, as it exists in this statute, and why it's of special concern to him, and I say to a whole lot of us, that the Ombudsman oversight is being legislatively barred. Further down in his speech, Marin says, and he's speaking now about this proposed office, the office of the independent police review director:

"The independent police review director will be a powerful arbiter of disputes between citizens and the police. The director will wield tremendous power over chiefs of police, all Ontario police officers and, of course, citizens who complain to him or her but will enjoy a privileged enclave accountable only internally to the Attorney General of Ontario. No court can reach into the director's filing cabinet, no court can receive the director's testimony, no court can try the director civilly, but more importantly the director will enjoy a nest perched high above others in the provincial government—and won't have to account to an outside body for his decisions, even though some may want to challenge their correctness. Any complaint about the processes, practices and policies of the director's office cannot be independently investigated. Think that you have been treated unfairly? Think that this new office's process is flawed or their policies are biased? Think that they are shirking their duties or pursuing them too enthusiastically? Tough. There's nothing you can do." End of quote.

Section 97 is the "Tough. There's nothing you can do about it" section.

Now, some have tried to portray or argue that the role of the Ombudsman would be that of an appellate level beyond that of the office of the director, and nothing could be further from the truth. The Ombudsman, just as

now, isn't an appellate body, just as now with respect to those government agencies and departments that he has legislative oversight of. What is his function? His function is, as he said, to look for unfairness, to look for injustice, to look for bad processes, to look for bias, to look for people who aren't doing their job or who maybe are doing their job too aggressively or enthusiastically.

Think about how relevant that is here in this context. This is a civilian complaints process. Hopefully, because the legislation leaves much of the process up to the new body, it will determine the process, and that's not inappropriate. Needless to say, it's not illegitimate. It's not necessarily unfair. But we all, in our constituency offices, deal with government agencies and government departments on a daily basis, acting and advocating on behalf of our constituents. Amongst us we have some very trained and experienced staff who work very, very hard in our respective constituency offices, and we find them banging their heads against the wall in frustration, trying to manoeuvre their way through bureaucratic intricacies, through the static inertia that Mr. Marin observed with respect to bureaucrats who are overly technical about the application of the rule, who apply the letter of the law rather than the spirit of the law. I talked about that relatively recently.

The Ombudsman's role vis-à-vis the office of the independent police review director, were he allowed to do his job, would not be to second-guess the director or any of those adjudicators performing their function pursuant to the legislation. More importantly, it would be to provide an avenue for people who had concerns about whether or not the process was being properly administered or in fact was properly designed. It would be a means for them to have the processes reviewed and recommendations made with respect to them.

Clearly, the director will not be an officer of the assembly. There has been some argument made, not particularly strong, that he should be, but I don't think the argument has been particularly forceful. But if he's not an officer of the assembly and not accountable to the assembly, who performs the oversight? As Mr. Marin has said as he revives that ancient phrase "quis custodiet ipsos custodies," who will guard the guards? The Ombudsman's office has done that in an admirable way and to the betterment of Ontario for decades now.

1440

In his submission to the committee on January 30—as a matter of fact, I believe he was the second submission at the commencement of this committee's proceedings in terms of members; first we had government staff, then we had the police association and then we had the Ombudsman—he addressed suggestions that somehow, by omitting a recommendation that the director be subject to Ombudsman oversight, LeSage was concurring with the inclusion of section 97. Let's also note that LeSage didn't recommend section 97 either.

What is most interesting is that when a person like Mr. LeSage or any other—what about this new blue-ribbon panel, the Dwight Duncan $750,000-a-day team: Charlie Harnick, the former Attorney General who lied under oath about lying in the Legislature—I remember that day—or Dave Cooke, the government attempting to cover all its bases, appointing a so-called New Democrat to the team? This group will write a report making recommendations, just like Marion Boyd did, remember? It's up to the government, or any of us, quite frankly, to accept all of those recommendations, some of them or none of them. But we don't delegate the drafting of legislation; we don't delegate the drafting of policy. Mr. LeSage was given a very clear set of terms of reference which did not—because he writes about his terms of reference: "My mandate was to advise on the development of a model for resolving public complaints about the police, to ensure that the system is fair, effective and transparent." He said very specifically that he wasn't asked about the Ombudsman.

Be that as it may, Mr. Marin tossed out the challenge. He said, "People are suggesting that somehow LeSage doesn't favour Ombudsman oversight." Marin, being a very careful and cautious person, clearly not wanting to violate the privacy of a conversation—but I hope nobody's suggesting Mr. Marin was anything other than truthful when he appeared before the committee—says, "I talked to LeSage, and I can tell you this: What LeSage has got to say about section 97 and Ombudsman oversight is not what some of those people who are opposed to Ombudsman oversight are saying that he's saying." Then Marin says, "Why don't you ask him yourself?" I thought that was a splendid idea. What a wonderful way of resolving this little twist and turn here and this little bit of confusion about where LeSage is—not that it's conclusive in and of itself, but I thought, if anything, it would only be fair to LeSage, which is why we put forward a motion calling upon the committee to invite LeSage to appear to address that very narrow issue of whether or not he had any views on section 97.

I was prepared to win, lose or draw to hear what he had to say. The Conservatives supported the motion, and quite frankly the motion said, "Either appear or, in writing, respond to that particular issue." The Conservatives were interested—and look, they take a position that's contrary to the New Democrats. That's fine; I understand that. But they were prepared to let LeSage come here and have that issue very specifically and clearly put to him, and if he didn't want to come, invite him to do it in writing. LeSage wouldn't have been compelled to do either if he didn't want to, would he have? He could have said, "I'm finished with this. I'm through with this. I have no more interest in it."

At least one government committee member said, "If LeSage was interested in telling us what he thought, he'd have applied to be on the committee." Do you remember that, Mr. Zimmer? Please. Mr. LeSage, a retired judge, the Honourable Patrick LeSage: It's not his function, and he shows sufficient professionalism—more than sufficient; he shows absolute professionalism and integrity in terms of not intruding where he hasn't been invited. So it's a political decision.

There are some, including from the policing community, who have, it appears, some fears that if there were Ombudsman oversight, these matters could become long and protracted and drawn out. The Ombudsman's ability to investigate an agency, a government body, and make determinations about its process etc. doesn't prolong any of the litigation or any of the process that is taking place and, indeed, completed within that body. End of story. I find it disappointing that the government persists in maintaining section 97.

I should perhaps quote Marin in his submission to the committee on January 30: "If, somehow in your deliberations, this honourable committee's final judgment on Bill 103 hinges on whether or not, as has been suggested by a government member, Mr. LeSage really intended for the Ombudsman to retain oversight of this body, I would suggest that you invite Mr. LeSage to come forward and testify before you. You will then be able to ask him the very question I have put to him and satisfy yourselves as to what he truly intended."

Remember Diogenes? The lamp? What was he looking for? Diogenes was looking for an honest man. I respect Mr. LeSage as an honest man. Why weren't we prepared to have our lamp shine on him so that this little problem around section 97 and exactly where LeSage is on the issue could be illuminated so that everybody could see and hear? Because, you see, the Liberals voted against inviting LeSage here, or voted against inviting him to respond in writing.

Finally, Marin again in his submissions to the committee: "As for the argument that you don't need Ombudsman oversight because you can always go to court, this, with respect, is a red herring. You can always bring to court any government body on a myriad of issues. It's not a substitute for the role of the Ombudsman. Going to Divisional Court is a narrow and technical affair, a costly enterprise and an adversarial process; upon reflection, I am sure you will agree with me that that is not the answer you would want to provide to constituents who are unhappy with the course of their complaints" to the independent police review director.

I am pleased to associate myself with the arguments made by Mr. Marin. I think they're sound, I think they're reasonable, and I think it is our responsibility to ensure that people, Ontarians, be they civilian complainants or be they police officers, have an Ombudsman to go to in the event that they, in the course of being subjected to the proceedings of the office of the independent police review director, feel that there are injustices, feel that there are procedural inequities, feel that there are roadblocks, feel that there are gaps, feel that there are biases that are procedural that ought to be addressed, not in the case of themselves and in their own interest but in the case of others who want to avail themselves of the procedure.

This is my motion. I'm going to be supporting it. I don't know; I find myself perhaps today in a minority of one. I can tell you that it's not the first occasion. It doesn't trouble me. I don't expect it to be the last occasion. But I tell you this: I may be the only person on this committee who will support and call for the Ombudsman to play an oversight role. I may be the only one here, but I bet you there are millions out there who support that proposition.

1450

The Chair: Thank you, Mr. Kormos. Any further debate on NDP motion 63? Mr. Zimmer.

Mr. Zimmer: This government takes very seriously the whole issue of complaints about police officers in the province of Ontario. That's a serious issue for the continuing well-being of the people in Ontario, both for the police officers and for those who have dealings with the police officers that may result in a complaint. It's because of that very serious nature, that very serious view that we have of this issue that we engaged in a comprehensive review of the police complaints system in Ontario, which culminated in this bill, Bill 103.

To give you some sense of just how seriously we took this, we engaged, retained, appointed, a most distinguished member of the judiciary and, prior to his membership on the judiciary, a member of the bar of Ontario. Mr. Justice LeSage is the former Chief Justice of the Ontario Superior Court. Prior to that, he had a long and distinguished career at the bar with all manner of cases, civil cases, criminal cases, and a distinguished career at the Attorney General's office. After retiring from the bench, he has played a major role here in Toronto as a mediator, an arbitrator and a fact-finder. He's an experienced person and he now resides also as a senior resident at Massey College.

Justice LeSage was engaged to do this review. I want to just highlight the terms of reference that he was given. The terms of reference, from appendix A of this report, were: "To review the current system of dealing with public complaints regarding police conduct and to advise on the development of a model of resolving ... complaints against the police, to ensure that the system is fair, effective and transparent.…

"Mr. LeSage will provide his best advice and recommendations, taking into account the position of interested parties and any consensus amongst those parties on any of the issues.…

"Mr. LeSage's advice and recommendations will reflect the following principles:

"—the police are ultimately accountable to civilian authority;

"—the public complaints system must be and must be seen to be fair, effective and transparent;

"—any model of resolving public complaints about police should have the confidence of the public and the respect of the police; and

"—the province's responsibility for ensuring police accountability in matters of public safety and public trust must be preserved."

Those were the terms of reference. On page 3 of his report, Justice LeSage accepts and indeed engages those terms of reference. He says, "My mandate was to advise on the development of a model for resolving ... com-

plaints about the police, to ensure that the system is fair, effective and transparent."

Armed with that mandate and accepting that mandate and based on that great experience that he brought to the issue, Mr. Justice LeSage embarked on his report, which was about 113 pages when it was completed. He consulted with over 200 persons or stakeholders or institutions. He wanted to hear what everybody who had a view on this issue had to say, and it was important for him to hear all of those views so that his report considered, analyzed, thought and reflected those views and indeed helped him to make the conclusions that he did in his report. It's interesting that among the over 200 persons—I think it was about 210 or 215 persons that he consulted with or heard from—was Mr. André Marin, who at the time was the Ombudsman for National Defence and the Canadian Forces. He was essentially an ombudsman doing for National Defence and the Canadian Armed Forces a somewhat similar role to what he proposes he ought to do here with the police complaint mechanism.

Now, there has been much heard about who should have appeared here and commented and offered their views and so on. The way the system works here is that anybody who wants to appear contacts the clerk of the committee, puts in a request, and every consideration is given to accommodate them. That is the process that Mr. Marin would have used.

Mr. Justice LeSage did not appear at this committee, but the press has quoted him as saying, "The report speaks for itself." This is the report, 113 pages, that's based on 200-plus consultations, and if you go through the 200-plus stakeholders who appeared, it is a comprehensive group of every imaginable stakeholder on this issue, including André Marin, as he then was, the Ombudsman for National Defence and the Canadian Forces.

Let me get now to some remarks on the substance in direct response to Mr. Kormos. Let me point out that since 1990, the Police Services Act has provided that the Ombudsman does not have jurisdiction to get involved in complaints involving police. The rationale there is to avoid duplication and to bring some finality to the police complaints process. Similar provisions of law existed even under the previous police complaints commissioner system that we had up and running in Ontario until 1996.

If passed, the Independent Police Review Act, 2007, is not going to change the status quo. The bill will, however, implement the LeSage report, which made 27 recommendations, none of which dealt with the jurisdiction of the Ombudsman. This is after a distinguished former Chief Justice, distinguished lawyer and distinguished arbitrator, mediator and fact-finder now in Toronto heard, presumably, whatever Mr. André Marin had to say to him in his capacity as Ombudsman for National Defence and the Canadian Forces.

The proposed new IPRD would itself play an ombudsman-like role vis-à-vis complaints about the police. Obviously, everyone supports oversight and accountability, but the IPRD would be responsible for providing that accountability in relation to public complaints about the police.

An Ombudsman for what is essentially a very specialized ombudsman that is overseeing the police complaints process could create—would create, will create—serious inefficiencies in the proposed new system. What it would essentially do is be grafting an oversight system upon an oversight system and there's no finality in that. There's no end to it.

1500

One of the advantages of this system is that there is this detailed oversight that the act comprehends. We've talked about the sections of the bill now for a couple of days. There are a variety of ways of dealing with complaints: There's internal oversight, there's review, there's appeal, there will be further training set out in the regulations. This system will provide the very best ombudsman oversight. We don't need an Ombudsman overseeing the work, in effect, of an ombudsman that this bill creates. I can't support this motion.

The Chair: Further debate?

Mr. Kormos: I listened carefully to the comments made by Mr. Zimmer, the parliamentary assistant. Needless to say, I find them to a large extent spurious. Mr. Zimmer should be familiar with standing order 108. I'm sure he could cite it for us now, but since he doesn't have the floor, I will. That is that "each committee shall have power to send for persons, papers and things." It is not extraordinary nor contrary to the rules. As a matter of fact, it's quite consistent with the rules for a committee to call upon someone to appear. It's truly regrettable, because it put Mr. LeSage in a difficult position because positions have been attributed to him which may or may not be accurate. That is regrettable. Here we had an opportunity to clarify it, to allow Mr. LeSage to speak to the matter directly himself, and the Liberals would not allow that to happen.

Marin made submissions to LeSage, but the bill hadn't been written yet. LeSage made recommendations but, of course, the bill hadn't been written yet. Why couldn't, wouldn't or shouldn't any of the parties to those consultations have not been able to recognize that of course this new body will be subject to Ombudsman oversight and it's inconceivable that the government would utilize a legislative exemption like that in section 97?

It is also, in my view, a serious misunderstanding of the role and function of the Ombudsman to call the director, as created in the act, Bill 103, an ombudsman. We're not creating an ombudsman role; of course not. That's why we need an Ombudsman. Otherwise, we could say that about anything and everybody who heads a government agency, a government body, who's accountable—in this case the director—to the Attorney General and who will be, at the end of the day, a political appointment.

I hear the arguments made by Mr. Zimmer on behalf of his Attorney General. You made those arguments in as capable a way as anybody could, Mr. Zimmer. I want your masters—Mr. Bryant and the Premier—to know that you have served them well today. While there may be no reward for this service from the public of Ontario,

all of us expect you to be treated decently, at least by the offices of the Premier and the Attorney General, in view of your diligent service on their behalf.

I regret the government's position. I'm going to be putting the matter to a vote. I'll be calling for a recorded vote. Thank you kindly.

The Chair: Thank you. Any further debate? None? Okay. I will now put the question.

Mr. Kormos: A recorded vote, please.

Ayes

Kormos.

Nays

Balkissoon, Dhillon, Dunlop, Qaadri, Zimmer.

The Chair: The motion does not carry.

Mr. Kormos: Chair, if I may, I think we can move reasonably promptly through the balance of amendments. I'm going to need some help getting things organized after having jumped forward to this motion that addresses section 97 and having to go back now, and there being a number of motions that have been tabled that have been rendered moot by various decisions made by the committee.

Mr. Dunlop: Mr. Chair, we're at motion 18.

The Chair: Yes, which is a PC motion. Why don't we just continue going through them, and then when we get to ones that are either moot or redundant, we can deal with that? Mr. Dunlop, would this be your motion, number 18?

Mr. Dunlop: Yes, it is.

I move that subsection 66(5) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "the complainant and the police officer" and substituting "the complainant, the police officer and the association."

That comes from one of the recommendations. I don't know if you're going to rule that out of order or not, but based on—

The Chair: Technically, it's okay. It's in order.

Mr. Dunlop: Okay, so just a few short comments on it: Bill 103 allows a police chief to informally discipline an officer without holding a hearing if the officer, the chief and the complainant agree. This amendment ensures a representative role for the local police association. I could spend a lot more time on some of these motions if you want, but that was it in a nutshell, based on some of the requests from the Police Association of Ontario in their presentation on Tuesday.

The Chair: Thank you, Mr. Dunlop. Is there any further debate? None?

Mr. Dunlop: Record that, please.

The Chair: Okay. Then I'll put the question. It's a recorded vote. Shall PC motion 18 carry?

Ayes

Dunlop.

Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

The Chair: The motion does not carry.

We'll move on, then, to NDP motion 19.

Mr. Kormos: I move that subsections 66(4), (5), (6), (7) and (8) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Informal resolution

"(4) If at the conclusion of the investigation and on review of the written report submitted to him or her the chief of police is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the chief of police shall submit the report to the independent police review director.

"Same

"(5) The independent police review director shall promptly review a written report submitted to him or her under subsection (4).

"Same

"(6) Subject to subsection (7), if on review of the written report the independent police review director believes on reasonable grounds that the police officer's conduct constitutes misconduct or unsatisfactory work performance, he or she shall refer the matter back to the chief of police for a hearing under subsection (3).

"Same

"(7) If on review of the written report the independent police review director is of the opinion that there was misconduct or unsatisfactory work performance but that it was not of a serious nature, the independent police review director may resolve the matter informally without a hearing, if the police officer and the complainant consent to the proposed resolution.

"Same

"(8) If an informal resolution of the matter is achieved, the independent police review director shall give notice of the resolution to the chief of police."

1510

This is in response to comments and input provided by Alan Borovoy and the Canadian Civil Liberties Association. It in fact replicates much of what the drafters of the bill have put into their informal resolution procedure but inserts the director into a role of effecting resolution informally. That would go a long way to address, in my view again, the impartiality concerns that have been spoken to both with respect to concerns by civilian complainants and by police officers. It would also, in my view, create a separate channel for informal resolution outside of the police-based process that would give effect to the privileged sections referred to by AG staff earlier today in terms of admissibility of statements. It would remove any ability of the chief, for instance, to become

familiar with facts and data that could subsequently come before him by way of evidence.

The Chair: Any further debate?

Mr. Kormos: Recorded vote, please.

Ayes

Dunlop, Kormos.

Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

The Chair: That motion does not carry.

Motion number 20 is the next one.

Mr. Kormos: Number 20, if I can take—

The Chair: It's a government motion.

Mr. Kormos: I'm sorry. I've two different packages here.

The Chair: Mr. Zimmer.

Mr. Zimmer: I move that subsections 66(8) and (9) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Consent of police officer or complainant

(7.1) A police officer or a complainant who consents to a proposed resolution under subsection (4) may revoke the consent by notifying the chief of police in writing of the revocation no later than 12 business days after the day on which the consent is given.

"Notice

"(8) If a police officer and a complainant consent to the informal resolution of a matter and the consent is not revoked by the police officer or the complainant within the period referred to in subsection (7.1), the chief of police shall give notice of the resolution to the independent police review director, and shall provide to the independent police review director any other information respecting the resolution that the Independent Police Review Director may require.

"Disposition without a hearing

"(9) If consent to the informal resolution of a matter is not given or is revoked under subsection (7.1), the following rules apply:

"1. The chief of police shall provide the police officer with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

"2. Subject to paragraph 3, the chief of police may impose on the police officer a penalty described in clause 85(1)(d), (e) or (f) or any combination thereof and may take any other action described in subsection 85(7) and may cause an entry concerning the matter, the penalty imposed or action taken and the police officer's reply to be made in his or her employment record.

"3. If the police officer refuses to accept the penalty imposed or action taken, the chief of police shall not impose a penalty or take any other action or cause any entry to be made in the police officer's employment record, but shall hold a hearing under subsection (3)."

This is what I'll refer to as a cooling-off-period provision. We've heard from a number of community groups who have told us how difficult this process can be for complainants. We recognize how difficult these situations can sometimes be. No one wants a complainant to accept a resolution before they have had an opportunity to properly reflect upon it, to consult with their advisers, their friends, their family and others of their choice. We are moving this amendment to provide a 12-day cooling-off period to allow the complainant to revoke their consent to any informal resolution they may have previously agreed to. The purpose of this is to build fairness into the process. The 12-day cooling-off period is fair, it's reasonable and that's why we're proposing it.

The Chair: Thank you, Mr. Zimmer. Is there any debate on the motion?

Mr. Kormos: With respect, this is wacky, Mr. Zimmer. I appreciate, again, that in the session we had this morning, where we tried to hammer out a little bit of the role, or where the informal resolution is along the sequence of events and we were reassured, or at least we were assured, that there weren't intended to be two separate streams, that if resolution was not satisfactory, if it wasn't achieved—presumably "resolution" means with the agreement of all parties willingly, voluntarily, knowingly and unpressured—then the process simply reverted back to effectively the adjudicative process.

The government didn't accept the proposition of legislating participation by police associations in a police officer's agreement or consent to an informal process. My argument was that the police of course can do that in any event. I suppose the difference is that there could be a police officer who, for whatever reason, doesn't get the sign-off of his or her association, and in the amended proposal—the amendment that didn't pass—there wouldn't be a legitimate informal resolution because the association hadn't signed off. But from a practical point of view, police officers are going to be able to consult their associations, and I trust that most, if not all, police officers, when they're facing potentially misconduct charges, are going to do precisely that.

Yet you argue this amendment from the point of view of the civilian complainant. That's what I heard. I didn't hear anybody talk about a 12-day cooling-off period during the course of submissions. A person from the civilian's end of the configuration makes a complaint to the director in some sort of form or process—e-mails it in, faxes it in, mails it in—the director looks at it and reviews it—let's say it's conduct, to avoid the policy stuff—and sends it down to the police force or police service that it arose in, to that chief of police. That chief of police looks at it, she or he determines that it's not a serious matter, and I presume then invites the parties—because it has to be with their consent. Time is all transpiring during the course of this. From the complainant's point of view—you see, the cop doesn't know about the complaint until he or she is notified of it, right? The complainants know about the complaint from the minute they decide to file it, don't they? In this respect, the

plaintiff has a little edge on the defendant. The defendant may know that they did something that could result in repercussions, but the plaintiff has the edge because it's the plaintiff who initiates the process. The defendant, the respondent, the party complained of isn't going to initiate the process. So who's cooling off here?

1520

Surely the chief of police, after he or she decides that a matter is not a serious matter, is going to give the parties reasonable time to reflect on whether or not they want to give their consent or approval to an informal resolution. If it's an informal resolution, let's get down to it and if it's not a serious matter, let's say it's—worst case—for the purpose of our argument, a cranky cop who didn't get a lot of sleep who says something inappropriate to somebody during the course of a traffic ticket or what have you, for Pete's sake, you don't want it to linger on, to malinger. You want to deal with it promptly. If it can be dealt with informally, heck, all the more reason to deal with it promptly. So what you're saying is that now there have got to be at least 12 days between when parties—no, even more so, because parties are invited to participate in an informal resolution—right?—and then they have to give their consent, so surely they're going to be given time to reflect on whether or not they want to participate. There's going to be a booklet, I hope. This is what an informal resolution may look like. Go home and talk to your family or your friends or your paralegal or the agency, the community agency that's been helping you, and see whether you want informal resolution, and then let us know within a certain time frame. You can't let these things go on forever; there's got to be a time frame. So after all this, both parties have to consent, right? They're not being put in a room and told, "Okay, you've got five minutes to agree or not agree." If you don't get sentenced, no problem, because it, the adjudicative process, goes through the regular stream then, so what's the 12 days about? How is that helpful? And how wacky is it to say, then, that the chief of police could impose any of the penalties contained in (d), (e) or (f)—which also includes (c), because (f) includes (c)—so (c), (d), (e) or (f), demote the police officer, suspend him without pay, forfeit pay and days off? Oh, but if the police officer doesn't agree, it can then go back into the dispute system.

So what do you have here? Really, you've got a police officer being coerced. You've got plea bargaining, right? You've got a chief of police saying, "Look, the way I see it right now, I can suspend you for three days, but if this goes to a hearing, we're going to be calling for a demotion, which affects your pension and all that sort of stuff." So what's the cop supposed to do then? Is that fair? Jeez, either you're going to resolve these things informally—which is why you would have been better off, in the first instance, sitting down with smart people in your ministry who have developed, again, mediation programs, systems like in the civil mediation process and what you're now promoting in the family courts, and developing a structure for a properly operated mediation to deal with some of these, the sorts of things the Ontario Human Rights Commission used to do before you disbanded it. They cleared almost 50% or so of their complaints.

Twelve days, twelve business days, so that means 16 days: Where do you get these numbers? What's going on here? Why don't you just agree that the police association should sign off or that the police officers should say, "I've gotten advice from my association and I don't want to follow it", I don't know, but I think that's what this amendment is addressing. Blink twice if I'm right and just once if I'm not right. I think that's what this amendment is addressing, but it's a wacky way of addressing it, because I'll tell you what: See, that's why I supported the Tory proposition about effectively police associations signing off, because the corollary of that is guaranteeing that complainants have some level of some form or access to, independent legal advice, isn't it? That would have been the parallel of it. I would have been pleased to see that. Look, there's going to be a whole lot—you heard from the law student who was here from the community legal clinic run by Osgoode. They warn people, they caution some people, "Don't go into the complaints process." There are 1,001 reasons to say, "Don't go into the complaints process." I suspect you've told people, as a lawyer, and not because you're afraid of repercussions etc. but because the grievance or the conduct complained of really doesn't merit—technically, it could be a valid complaint, but how many times have you had to counsel a client and say, just as Alan Borovoy did, "Look, it's not that cops are any more sinful. It's that they are just as human as the rest of us"? That was one of the most astute things said during two days of public hearings.

How many times have you told a client, "Come on. Yeah, you can complain, but, Lord love a duck, somebody's been human here"? Right? You've done it. So I anticipate that, again, competent counsellors—and that's why I say it would have been nice to see you accept the Tory amendment. Competent counsellors counselling complainants would be in a position to say, "Whoa. No. This is a very serious problem. Please, I don't think we want to use informal resolution." They may also be saying, "Look, do you really want to pursue this? You've got bigger fish to fry. This is going to consume so much energy. It's time to move on."

So I don't know what this is. You sell people—because this is a double-edged sword. It applies to both police officers and to the civilian complainants. So you've taken an informal resolution process that has the potential, if it were properly developed, to be an effective way of meaningfully dealing with a huge chunk, I believe, of complaints about police, and now you're diluting it, because you've got to let them wait at least 12 business days before you engage in the informal resolution. So you get people to agree to the informal resolution, and then you send them home to stew about it for two weeks so their jailhouse lawyer brother-in-law can give them good legal advice, right? You know, the old

Millhaven law degree. That's what you're doing. You've got people convinced or sold on the idea of dealing with this at an informal level, presuming that it's an appropriate thing to be dealt with at an informal level, and then you send them home to stew for two weeks, again, so their Millhaven law degree brother-in-law can counsel them. I don't know. I don't think that's good. Do you really, really, in your heart think that's good policy? Like, really? I didn't think so.

The Chair: Thank you, Mr. Kormos. Any further debate? No further debate? I'll put the question. Shall the motion carry? All those in favour? Opposed? The motion carries.

The next motion is number 21, an NDP motion. I believe it's out of order, because it was dependent on motion number 19 having passed.

Mr. Kormos: So this motion becomes irrelevant. That takes us, then, to 22. That one also—are we on that one?

The Chair: Twenty-two?

Mr. Kormos: Yes, 66(9). That one—whoops.

The Chair: I think 22 falls into the same—

Mr. Kormos: Yes, 22, because that dealt with the independent adjudicator.

Number 23—oh, I'm sorry. That's yours, Mr. Dunlop.

The Chair: And 24 I believe is—

Mr. Kormos: Number 24 deals with the independent adjudicator, which the Liberals wanted no part of, an independent adjudicator. They brought out the SAM missiles and shot that one down.

Interjection: Same as 26.

The Chair: Number 24 is out of order; 25 is identical to that, I believe.

Mr. Dunlop: It's identical to it, yes.

The Chair: So that's also out of order.

Mr. Kormos: Number 26: another surface-to-air missile victim, right?

The Chair: Twenty-six is out of order, yes.

Mr. Dunlop: Same with 27?

The Chair: Same with 27.

Number 28: We've dealt with this already, similarly, but it's slightly different, so technically this one's not out of order. But it's very similar to an earlier motion that we dealt with.

Mr. Dunlop: I'll read it through anyway, Mr. Chair.

The Chair: By all means, Mr. Dunlop.

1530

Mr. Dunlop: I move that subsection 68(6) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer and the complainant consent to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, and the complainant consent to the proposed resolution."

Bill 103 allows a police chief to informally discipline an officer without holding a hearing if the officer, the chief and the complainant agree. This amendment ensures a representative role for the local police association as well. It's widespread practice in employee-employer relationships that the union or association that represents an employee has a role in the discipline process.

The Chair: Any further debate? No?

Mr. Dunlop: I'll ask for that to be recorded.

Mr. Zimmer: Sorry. I didn't hear what you were saying.

The Chair: Number 28: I'm going to put the question, and Mr. Dunlop has asked for a recorded vote.

Ayes

Dunlop, Kormos.

Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

The Chair: The motion does not carry.

Motion 29.

Mr. Kormos: It's my amendment, and it amends 68(6) and (7). Just hold on one moment, please.

I move that subsections 68(6) and (7) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Informal resolution

"(6) If, in referring the matter to the chief of police, the independent police review director indicated that he or she is of the opinion that the conduct of the police officer constitutes misconduct or unsatisfactory work performance that is not of a serious nature, the chief of police may resolve the matter informally without a hearing, if the police officer and the complainant consent to the proposed resolution.

"Same

"(7) The chief of police shall not resolve a matter informally without approval of the proposed resolution by the independent police review director.

"Same

"(8) Subsections 66(9), (10), (11) and (12) apply, with necessary modifications, in respect of an informal resolution that is attempted but not achieved."

This is consistent with an earlier amendment that put the director in the driver's seat with respect to driving informal resolution. I need say no more. But check the vote carefully, because Mr. Zimmer's eyes just displayed some interest in this proposal. I don't want you to—don't just take any votes for granted here, Chair.

The Chair: Okay. Is there any further debate on this motion? None? I'll now put the question. Shall the motion carry? All those in favour? Opposed?

Mr. Kormos: Did somebody say no?

The Chair: The motion does not carry.

Mr. Kormos: You're lucky that the Chair is a cautious guy. You can't fall asleep at the switch like that.

The Chair: Motion number 30 is a government motion.

Mr. Zimmer: I move that subsection 68(7) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Same

"(7) Subsections 66(7.1), (8), (9), (10), (11) and (12) apply, with necessary modifications, in relation to an informal resolution under subsection (6)."

This is a consequential amendment, consequential to government motion number 20.

The Chair: Any debate? None. Shall the motion carry? All those in favour? Opposed? The motion carries.

We move then to government motion 31.

Mr. Zimmer: I move that subsections 69(10) and (11) of the Police Services Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Consent of chief, deputy chief or complainant

"(9.1) A chief of police or deputy chief of police or a complainant who consents to a proposed resolution under subsection (9) may revoke the consent by notifying the board in writing of the revocation no later than 12 business days after the day on which the consent is given.

"Notice

"(10) If a chief of police or deputy chief of police and a complainant consent to the informal resolution of a matter and the consent is not revoked by the chief of police, deputy chief of police or complainant within the period referred to in subsection (9.1), the board shall give notice of the resolution to the independent police review director, and shall provide to the independent police review director any other information respecting the resolution that the independent police review director may require.

"Disposition without a hearing

"(11) If consent to the informal resolution of a matter is not given or is revoked under subsection (9.1), the following rules apply:

"1. The board shall provide the chief of police or deputy chief of police with reasonable information concerning the matter and shall give him or her an opportunity to reply, orally or in writing.

"2. Subject to paragraph 3, the board may impose on the chief of police or deputy chief of police a penalty described in clause 85(2)(d), (e) or (f) or any combination thereof and may take any other action described in subsection 85(7) and may cause an entry concerning the matter, the penalty imposed or action taken and the chief of police's or deputy chief of police's reply to be made in his or her employment record.

"3. If the chief of police or deputy chief of police refuses to accept the penalty imposed or action taken, the board shall not impose a penalty or take any other action or cause any entry to be made in the employment record, but shall hold a hearing, or refer the matter to the commission to hold a hearing, under subsection (8)."

This government motion 31 builds on government motion 20.

The Chair: Any further debate?

Mr. Kormos: You just reminded me of that old Peter Sellers movie The Mouse That Roared. This isn't an ad hominem comment. At first I thought it was wacky; now, as I'm reading it, it's silly. If the informal resolution hearings are voluntary and if they don't constitute a stream that you're caught in—do you remember? That's what we were told, that you are caught in that stream. Why do you need the power to revoke when you could simply say—you don't need that legislatively. You could simply not show up for the resolution hearing, because any outcome of the resolution hearing, or the informal resolution process, has to be with everybody agreeing, right? So why do you have to send a formal cancellation? You can go and sit like this and say, "I'm not agreeing to nothing"—effectively withdraw.

What are you doing here? You're creating these layers. That's why I say it reminded me of that Peter Sellers movie The Mouse That Roared. Remember the little kingdom with its own internal processes that existed for the sake of existing and that declared war, if I recall correctly, on non-entities. So here you are, you're declaring war on a non-entity. You purport to address a problem or an issue, yet I don't understand what the problem is or what the issue is. If the concern was wanting the police association to sign off on a decision, then why didn't it just simply—I would have loved that because it would allow me to argue that the civilian complainant deserves a similar right: the protection of an advocate or independent legal advice.

But, first of all, police officers can talk to their association any time they want. If a police officer commits to informal resolution and then subsequently talks to their association and the association says, "Are you nuts?" the police office could simply call up and say, "I'm not coming to the resolution hearing." He or she doesn't need a statute or a statutory provision to do that, unless you really are creating a separate stream that doesn't allow you to loop back into the adjudicative stream. I'm getting scared now. We're going from whacky to silly to fear. Do you understand what I'm saying, Chair? You don't need this if, in effect, you can always loop back to the adjudicative process, because you don't have to send in your cancellation; you can be a no-show. Nothing can happen if you don't show up—nothing. Or you can go there and fold your arms and say, "I ain't agreeing to nothing." Well, so much for that informal resolution session. That lasted around 15 seconds. So what are you doing, creating these notices? People are going to have forms now, and they're going to have to be on 8.5-inch by 11-inch sheets of paper: Do not fold, do not staple; use black or blue ink only.

1540

Mr. Zimmer, help. We're supposed to be here to help, not to create more grief. Go ahead, pass the motion, but you're just padding out the bill. You're just giving work to some poor staffer in the police association who is going to have to pore over this and see whether it makes any sense at all or whether it's relevant at all, and I'm saying it's not relevant at all. Why do you need a statutory provision allowing people to opt out within 12 business days—mind you, not calendar days; business days—when you can opt out simply by saying, "I don't want to go"? You can't hold a resolution in absentia, can you? That's scary stuff. Oh, I see. We'll have mediations in absentia. Oh, yeah. I suppose only in Dalton

McGuinty's Ontario could that happen, mediations in absentia. Jeez, I don't know. Look at that. Wow.

The Chair: Okay. Any further debate on the motion? I'll now put the question. Shall the motion carry? All those in favour? Opposed? That carries.

We'll move on to NDP motion number 32.

Mr. Kormos: That one, I think, is no longer relevant, if I may. NDP motion 33: That's no longer relevant. Oops—motion 34 is not mine to speak to.

Mr. Dunlop: Motion 34 is no longer relevant here, I suspect.

Mr. Kormos: Motion 35 is no longer relevant.

Mr. Dunlop: Motion 36 is identical to it; it's no longer relevant.

The Chair: Mr. Dunlop, I believe PC motion 37 is in order.

Mr. Kormos: You're still going to flog this dead horse, Mr. Dunlop?

Mr. Dunlop: Well, I think I'd like to put it on the record, Mr. Kormos.

Mr. Kormos: Sure. Go ahead.

Mr. Dunlop: I move that subsection 76(10) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer consents to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, consents to the proposed resolution."

It's the same reasoning that we had in earlier comments. I won't repeat those.

The Chair: Thank you. Any further debate? None? All right.

Mr. Dunlop: I ask for a recorded vote on that.

Ayes

Dunlop, Kormos.

Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

The Chair: The motion does not carry.

Motion 38.

Mr. Kormos: That, I think, is no longer relevant.

Mr. Zimmer: Ah, we've got one: motion 37a.

The Chair: I'm sorry. Motion 37a. My apologies.

Mr. Zimmer: I move that section 76 of the Police Services Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Consent of police officer

"(10.1) A police officer who consents to a proposed resolution under subsection (10) may revoke the consent by notifying the chief of police in writing of the revocation no later than 12 business days after the day on which the consent is given."

This builds on earlier government motions on this theme.

The Chair: Any debate?

Mr. Kormos: Yes, Chair. These are like the 12 days of revocation. This will be like I don't know what. I don't even want to talk about what this will be like because it conjures up imagery that is far better reflected on later in the evening.

The Chair: Sounds like a good movie title: The 12 Days of Revocation.

All right. On motion 37a, there being no further debate, all those in favour? Opposed? That carries.

The next motion is—

Mr. Kormos: It would have gone to the independent adjudicator. Again, the Liberals have no interest in independent adjudicators.

The Chair: So motion 38, then, is redundant.

Mr. Kormos: It's not redundant; it's just extremely pointed and valuable.

The Chair: I'm sorry. It's out of order, then.

Mr. Kormos: It's the Liberals who put no value in independent adjudicators.

Mr. Dunlop: The same with motion 39 too, Chair.

The Chair: Motion 39 is out of order.

Motion 40 has been dealt with.

Mr. Dunlop: And motion 41 is the same.

The Chair: Motion 41 is the same.

Motion 42 is an NDP motion.

Mr. Kormos: It's irrelevant now.

Mr. Dunlop: As 43 is.

The Chair: Motions 42 and 43 are irrelevant now. I think motion 44 is the same, is it?

Mr. Kormos: Motion 44 is no longer relevant.

The Chair: No longer relevant.

Mr. Dunlop: Motion 45 is identical to 44.

The Chair: Motion 45 as well is no longer relevant.

I believe NDP motion 46 is not relevant.

Mr. Dunlop: As is motion 47.

Mr. Zimmer: So motion 46 is gone?

Mr. Kormos: Just one moment.

The Chair: Motions 46 and 47 are not relevant. The same with motion 48, I believe; it's not relevant.

Mr. Zimmer: Just wait. I didn't hear Mr. Kormos. Motion 46 is gone?

Mr. Kormos: Motion 46 is done like dinner, as they say, Mr. Zimmer.

The Chair: And 47 and 48.

Mr. Dunlop: And 49.

Mr. Kormos: Motions 48 and 49; quite right.

The Chair: Motion 50 is also not relevant.

Motion 51—

Mr. Dunlop: Same.

The Chair: Same. No longer relevant.

Mr. Kormos: Motion 52: Pull that one.

The Chair: Motion 52 is not relevant.

Motion 53.

Mr. Dunlop: Motion 53 as well.

The Chair: Motion 53 as well is not relevant.

Mr. Kormos: Motion 54 isn't relevant either, but I suspect Mr. Zimmer would still want to move it.

Mr. Zimmer: I move that subsection 85(10) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "under this section" wherever it appears and substituting in each case "under section 84."

This, I assure you, is a technical amendment.

The Chair: Any debate?

Mr. Kormos: Can you explain that? I think I understood, because I read 85(10) and I see the reference. I withdraw my request for Mr. Zimmer to explain that one.

The Chair: Okay. Any further debate on government motion 54? Seeing none, all those in favour? Opposed? It carries.

We move on to motion 55.

Mr. Kormos: That should be disregarded.

The Chair: Disregarded, the same as 56.

Motion 57.

Mr. Kormos: Disregard.

The Chair: Disregard.

Mr. Dunlop: And 58.

The Chair: And 58, disregard.

Now PC motion 59.

Mr. Zimmer: We're on 59?

The Chair: We're on 59, which is relevant. Mr. Dunlop.

Mr. Dunlop: I will read it into the record, please.

I move that subsection 93(1) of the Police Services Act, as set out in section 10 of the bill, be amended by striking out "if the police officer and the complainant, if any, consent to the proposed resolution" at the end and substituting "if the police officer, after consultation with the association, and the complainant, if any, consent to the proposed resolution."

I'm along the same pattern as we've been with other motions on this. I won't win them all each time.

The Chair: Thank you. Any further debate? Mr. Dunlop has moved motion number 59.

Mr. Dunlop: I'll ask for a recorded vote on that too.

Ayes

Dunlop, Kormos.

Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

The Chair: That does not carry.

Motion 59a is a government motion.

1550

Mr. Zimmer: I move that section 93 of the Police Services Act, as set out in section 10 of the bill, be amended by adding the following subsection:

"Consent of police officer or complainant

"(4.1) A police officer or a complainant who consents to a proposed resolution under subsection (1) may revoke the consent by notifying the chief of police and, in the case of a complaint made by a member of the public, the independent police review director, in writing of the revocation no later than 12 business days after the day on which the consent is given."

This builds on earlier motions dealing with the same theme.

The Chair: Any further debate?

Mr. Kormos: Mr. Zimmer, you're generous in referring to it as a theme. You're probably taking liberties with the language.

The Chair: Any further debate? None. Mr. Zimmer has moved motion 59a. All those in favour? Opposed? That carries.

Next is NDP motion 60.

Mr. Kormos: This motion, again, goes back to the root motions calling for independent adjudicators. Liberals don't like independent adjudicators. I'm in the minority here.

The Chair: It's moot or irrelevant.

Mr. Dunlop: This would apply to motion 61, Mr. Chair.

The Chair: Okay, motion 61 as well is not relevant.

Motion 62?

Mr. Kormos: Yes, sir. I move that section 10 of the bill be amended by adding the following section to the Police Services Act:

"Application to special constables, etc.

"96.1 The provisions of this part relating to complaints made by members of the public to the independent police review director apply, with necessary modifications, to special constables and to employees of municipal police forces who are not police officers."

This is in response in particular to an element of the submission made by Alan Borovoy from the Canadian Civil Liberties Association. He cited an example of people who were placed in a paddy wagon and who had allegations about misconduct. The people in charge of the paddy wagon were non-police-officer staff increasingly used by police services to transport people from detention centres and lock-ups to courts and so on, and therefore the complaints process had no jurisdiction over the complaint, even though these people were acting under the direction of a chief of police and either in compliance with or not in compliance with policy. This addresses that difficulty that those complainants faced in those circumstances.

The Chair: Thank you. Any further debate? If none, I'll now put the question.

Mr. Kormos: A recorded vote, please.

Ayes

Dunlop, Kormos.

Nays

Balkissoon, Dhillon, Qaadri, Zimmer.

The Chair: That motion does not carry.

I believe that completes all the motions on section 10 of the bill.

Mr. Zimmer: I'm sorry, Mr. Chair, I can't hear some of the things you're saying.

The Chair: I believe that completes all the motions on section 10.

My next question: Shall section 10, as amended, carry? Is there any debate? None? All those in favour? Opposed? Carried.

Section 11 is the next section of the bill. Any debate on section 11? None. Shall section 11 carry? All those in favour? Opposed? Carried.

On section 12 of the bill, I believe there's government motion 64.

Mr. Zimmer: I move that subsection 12(2) of the bill be amended by adding the following paragraph to subsection 135(1) of the Police Services Act:

"24.1 establishing regional or other advisory committees consisting of representatives from community groups, representatives from the policing community and any other persons who may be prescribed, for the purpose of advising the independent police review director on matters relating to his or her duties under subsection 58(4), and respecting the appointment of such representatives and other persons to the committees."

The government has heard and heeded many of the suggestions by community groups to make the independent police review director an office that is accessible to the diverse communities that make up our province. We've heard and we've listened to the concerns of community groups. We will be accepting and adopting many of their suggestions, which will be implemented in regulations and through administrative action.

We do want to thank the community groups for their contribution through the committee process and their insights, which have been useful and informative. The government wants to be sure that the independent police review director can benefit from the same experience, advice and expertise that we have benefited from.

Justice LeSage recommended that advisory committees be set up to advise the independent police review director on public education, accessibility, diversity and outreach. We share that view of Justice LeSage and, to that end, we're introducing this amendment to allow these committees to be created by regulation.

The Chair: Is there any further debate? None? All right, then shall motion 64 carry? All those in favour? Opposed? Carried.

The next motion is number 65. I think it's an NDP motion.

Mr. Kormos: Yes. In view of the fact that it refers to sections that would have been created by amendments that were crushed by the Liberal caucus with their distaste for independent adjudicators, this motion is no longer relevant.

The Chair: Okay, so 65 is no longer relevant.

Mr. Dunlop: The same with motion 66.

The Chair: And the same with motion 66. Thank you, Mr. Dunlop.

Mr. Kormos: Motion 67, while it is not out of order, once again speaks to the framework that was being proposed with respect to independent adjudicators and, in view of the status of those amendments, is no longer relevant.

The Chair: Motion 67 is no longer relevant.

Motion number 68.

Mr. Dunlop: The same thing would apply to 68.

The Chair: The same thing would apply to that.

So then with regard to section 12 of the bill, shall section 12, as amended, carry? Carried.

Mr. Kormos: Chair, I invite you to do motions 13 to 15 inclusive, please.

The Chair: Shall sections 13, 14 and 15—I don't know if there are any amendments to those sections—carry? Carried.

Shall the title of the bill, as amended, carry? Carried.

Shall Bill 103, as amended, carry? Carried.

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

Mr. Kormos: No.

The Chair: Okay, any debate?

Mr. Zimmer: Yes.

The Chair: It's one to one. All those in favour?

Mr. Kormos: One moment. Hold on, guys. We have to debate this.

The Chair: I'm sorry. All right.

Mr. Kormos: Do you see? You want to have it every which way but loose. First you call the vote, then I win the vote, then you decide we should have debate.

The Chair: I'm sorry.

Mr. Kormos: Look, the bill isn't ready to be reported back to the House. We're not finished our work yet. That's pretty obvious to me. This is going to be the system for the next 10, 15, 20 years. I don't think it's difficult to state that. A whole lot of people have held their noses and supported this bill because they see it as a not unreasonable beginning point or framework or structure or foundation. But I think there are areas that we haven't worked on hard enough, as simple as that.

Just increasingly, as we've gone through the bill, my frustration around the informal resolution, which is just really loosey-goosey kind of stuff, is that it's not well defined. It's the same language that's used in 97, which doesn't say much, because it wasn't well defined then. There are processes that could be built into this process that I think could be very valuable and very healthy for the community, and I wish they were here. But, regrettably, they're not.

1600

We heard from spokespeople for the racialized communities—not all of them; some of the racialized communities—and there are serious concerns. You heard about how up in certain parts of the city, confidence in the police is at all-time lows. There are ways of overcoming that, ways of building—I'm not even going to say "restoring" because one isn't necessarily sure that there was ever any to begin with—confidence and rapport with the police.

Look what happens when there isn't confidence in the police. Police have been concerned about it. We get complaints about it. Witnesses don't come forward in serious crimes. Witnesses don't come forward. You've got crimes, shootings in this city where there are eye witnesses—murders, right?—and people don't want to come forward. It could be any number of reasons, but one of the reasons that has been put forward is, again, a lack of confidence in the police. That is truly a regrettable state of affairs.

I thought that the government's opportunity here to put some structure into the informal resolution was a golden opportunity to start changing the way that many of these things are addressed, and not just in Toronto but in small-town Ontario too. One of the things we talked

about during second reading, as I recall, is that police services, police forces in this province range from police forces of seven or eight members all the way to the huge police forces of Toronto, London, Ottawa, Niagara region. I come from a regional community that has one of the larger police forces in the province.

And of course, the native policing issue simply wasn't addressed very adequately at all. The aboriginal perspective was the urban aboriginal perspective, concerns around aboriginal people in urban settings. You'll note the LeSage recommendations around outreach to aboriginal communities, and I really don't know—I suppose he could have meant both things, outreach to aboriginal communities in urban settings like Toronto and big city centres, but also outreach to aboriginal communities, native communities like those in the far north that more than a few of you have had a chance to visit: Peawanuck, Attawapiskat, the James Bay coast, the Hudson Bay coast up in Hampton's Kenora–Rainy River riding, those really remote communities. I mean, the native policing services, the NAPs, police forces with two police officers but one is off sick so you have police forces policing the whole community with one police officer. I've been there. Like some of you, I've been there. You have lock-ups with doors that don't lock. I've said this so many times: I've seen snowmobiles without tracks, boats with motors that don't work, and you need boats to get around many of those communities.

So you've got some real issues around native policing. And again, you've got the jurisdictional issue, the observation by LeSage that there's a split in the aboriginal community and amongst aboriginal communities about whether they want to buy into this police oversight system or maintain their own. His comment was reasonably clear about how there should be an offering up, an extension, a handout to the native communities that want to be dealt with within this regime, and we simply didn't do any of that, did we? There was no discussion about that whatsoever.

The failure to assure meaningful advocacy for parties to a complaint: The police had a solution. They said to involve the police association more intimately. They were very direct when it came to the informal resolution in terms of involving the police association more intimately. But then there's been nothing said about what the government proposes to do for complainants, other than to make the forms available to them. As I say, be careful about how you perceive an advocate vis-à-vis a complainant, because as much as a competent, experienced advocate can help a complainant with a legitimate grievance and pursue that in an effective way, that person can also help a complainant who has perhaps an unrealistic grievance temper their expectations and, indeed, their demands upon the system. It's a double-edged sword. Advocates can and do effectively work to not only ensure efficient passage of cases through this type of system but also to make sure that unnecessary cases don't get in there.

I don't think we've done as much as we could. I don't know when Mr. Zimmer's going to be the Attorney General. He may take this bull by the other horn if and when that happens. But for the life of me—it just happens all the time, Chair. We get opportunities to address significant issues. Bureaucrats do their work, they lay the groundwork with the legislation, and then we just miss the opportunity. So I will be voting against reporting this back to the House because I don't think we are finished with our work here.

The Chair: Thank you. Is there any further debate? Mr. Zimmer.

Mr. Zimmer: Just very briefly, our government and this Attorney General takes very seriously the whole issue of the police complaints process. This act, the Independent Police Review Act, represents the very best of thinking as to what is appropriate for an effective police complaints process. It's fair, it's efficient, and it's fair and efficient for all parties: complainant, police officers and other stakeholders. This legislation, if ultimately passed, will enhance Ontario's reputation as a model for fair, compassionate and efficient policing. It's something that we here in Ontario can all be proud of, even members opposite.

The Chair: Mr. Kormos.

Mr. Kormos: Chair, for Mr. Zimmer to say that this bill represents the best of thinking is like saying that Paris Hilton represents the best of talent. It is more than a tad bit of an overstatement and the sort of hyperbole that diminishes all of us.

The Chair: Any further debate? None.

Mr. Kormos: Recorded vote.

The Chair: A recorded vote. I'll put the question: Shall Bill 103, as amended, carry? All those in favour?

Ayes

Balkissoon, Dhillon, Qaadri, Zimmer.

Nays

Dunlop.

The Chair: That carries. And finally, shall I report the bill, as amended, to the House?

Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Dhillon, Qaadri, Zimmer.

Nays

Dunlop, Kormos.

The Chair: That motion carries.

Before we adjourn, I just want to thank staff and everyone for their help, and the committee members as well for a very good debate. I just wanted to thank everybody.

Mr. Kormos: And if I may, Chair, commend you for your skill handling the gavel and for sharing this process.

The Chair: Thank you. This committee stands adjourned.

The committee adjourned at 1610.

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