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**Official Report
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(Hansard)**

Thursday 10 May 2012

**Journal
des débats
(Hansard)**

Jeudi 10 mai 2012

**Standing Committee on
Justice Policy**

Security for Courts, Electricity
Generating Facilities
and Nuclear Facilities Act, 2012

**Comité permanent
de la justice**

Loi de 2012 sur la sécurité
des tribunaux, des centrales
électriques et des installations
nucléaires

Chair: Laura Albanese
Clerk: William Short

Présidente : Laura Albanese
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Hansard Reporting and Interpretation Services
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 10 May 2012

Jeudi 10 mai 2012

The committee met at 0905 in committee room 1.

**SECURITY FOR COURTS, ELECTRICITY
GENERATING FACILITIES
AND NUCLEAR FACILITIES ACT, 2012
LOI DE 2012 SUR LA SÉCURITÉ
DES TRIBUNAUX, DES CENTRALES
ÉLECTRIQUES ET DES INSTALLATIONS
NUCLÉAIRES**

Consideration of Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, everyone. I call the Standing Committee on Justice Policy to order. We're here to consider Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012.

I believe that the first item we have on our agenda would be—I guess I would ask the members if you've had enough time to consider the motion that was put forth a couple of weeks ago, two weeks ago, I believe, by MPP Hillier, and if you've had enough time to consider whether the bill preserves the independence of the judiciary.

If you would like, I can read that motion. At that time, it was, "I move that we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of Bill 34 until this committee has deliberated on whether this legislation breaches the independence of the judiciary." Has everyone had time to consider this?

Mr. Steve Clark: No.

Mr. David Zimmer: I just got subbed in.

Mr. Steve Clark: I just got subbed in, too. I haven't had time.

Interjection: I'll defer to my whip.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, the motion by Mr. Hillier two weeks ago has been included in our bill. I

believe the NDP amendments also address this particular motion. So when we go through clause-by-clause, it will be addressed, coming out. I believe that the motions brought forth by Mr. Hillier will be addressed when we go through clause-by-clause, when we deal with amendments.

Mr. John Yakabuski: That's—

Mr. Paul Miller: I don't think that was the question.

The Chair (Mrs. Laura Albanese): One at a time. MPP Miller.

Mr. Paul Miller: Last week, when we postponed to this week, I tried to tell the committee that those things were involved and, basically, it was just housecleaning. They were involved in your amendments, and we delayed a week. Here we are again with another possible delay because somebody didn't read something. So I'm not a happy camper.

The Chair (Mrs. Laura Albanese): Any other comments? MPP Yakabuski.

Mr. John Yakabuski: Well, we know that Grumpy has joined the meeting. We're hoping that Happy and Sneezzy show up a little later—

Mr. Paul Miller: Well, we've got Dumbo, so we're okay.

Mr. John Yakabuski: And who would that be, I ask?

Mr. Paul Miller: I don't know.

Mr. John Yakabuski: You called yourself Grumpy, Mr. Miller. I wasn't taking a personal swipe at you.

Mr. Paul Miller: Oh, yes, you were.

Mr. John Yakabuski: That's a bit unfair to imply.

Mr. Paul Miller: Cheap shot.

Mr. John Yakabuski: No, that's a cheap shot. Are you calling me Dumbo?

The Chair (Mrs. Laura Albanese): Let's keep it parliamentary, please.

Mr. John Yakabuski: Yes. Mr. Miller always says to the people in the House to take it outside. I'm not sure what he's suggesting here, but anyway.

Look, the motion by Mr. Hillier did not say whether this can be dealt with during clause-by-clause. The motion by Mr. Hillier was pretty clear. It said—

Mr. David Zimmer: Where's Randy to tell us about it?

Mr. John Yakabuski: Randy doesn't have to tell about the motion. I can read it, I say to Mr. Zimmer.

The Chair (Mrs. Laura Albanese): I just read it, as well.

Mr. John Yakabuski: The motion is pretty clear: “we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of” this bill “until this committee has deliberated on whether this legislation breaches the independence of the judiciary.”

Ms. Wong’s assertion that the independence of the judiciary will be dealt with in the process of clause-by-clause is counter to the motion. The motion is clear that it must be dealt with prior to clause-by-clause consideration of this bill. So I’m sorry, but I have to disagree most vehemently with her assertion that we can move on with clause-by-clause and deal with it during that process. Once you start the process, it’s sort of like that snowball going down the hill, Madam Chair. As you know, it’s very difficult to stop.

The intent of the motion was very clear, that we would have to deliberate on this prior to clause-by-clause. If there’s somebody who has a different legal opinion on this—I’m not a lawyer—

The Chair (Mrs. Laura Albanese): Thank you for that. On May 2, all the members of the committee received a research paper that spoke about Bill 34 and the independence of the judiciary. I would expect that all members have read it. Are we ready to deliberate?

Mr. John Yakabuski: I suppose we can deliberate. I have other motions as well, but if we want to deliberate, are we setting aside today to deliberate? Or what are we—

The Chair (Mrs. Laura Albanese): Well, it’s the first item on the agenda. We cannot proceed with clause-by-clause unless we deliberate on it.

Mr. David Zimmer: Point of order: Can I have a copy of the motion? I just got subbed in.

The Chair (Mrs. Laura Albanese): Absolutely.

Mr. John Yakabuski: I just don’t think the intent, Madam Chair, is to deliberate in committee. Committee is where we deal with clause-by-clause. If you definite how a jury deliberates, they don’t deliberate in public. They do not deliberate in front of the court. They’re sequestered when they deliberate so that they can have that kind of discussion that is totally free of any encumbrances that may be placed on them by third parties being in attendance. Deliberation does not imply that you would have that in public.

0910

The Chair (Mrs. Laura Albanese): Thank you, MPP Yakabuski. I have Mr. Berardinetti and Mr. Miller, but I assume that you would have had that time to—

Mr. John Yakabuski: You asked if we were going to deliberate.

The Chair (Mrs. Laura Albanese): —since May 2. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Just a question for the clerk. You were here, I think, last week, or at least the previous time—someone from the clerks’ department was here—and the motion was to deliberate. We’ve had the opportunity to deliberate. We have a report here from the research department, and I read the report. Was any

motion moved that we as a group should move into private session and deliberate?

The Clerk of the Committee (Mr. William Short): No.

Mr. Lorenzo Berardinetti: No?

The Clerk of the Committee (Mr. William Short): No, there wasn’t.

Interjection.

Mr. Lorenzo Berardinetti: Hang on. I’ve got the floor. I’ll give it to you in a second. You can have it as long as you want. I just want to ask a few more questions about this.

The Chair (Mrs. Laura Albanese): I don’t know if you want to say on your own—

The Clerk of the Committee (Mr. William Short): I think the point of the motion was that the members would take what research gave them, go back with it, deliberate about it and then come back to committee today with the intention of either starting clause-by-clause or discussing further the independence of the judiciary and Bill 34.

Mr. Lorenzo Berardinetti: So as we go through clause-by-clause, can we refer to this research item, which discusses the item about Bill 34 and the independence of the judiciary? That was the last report I got.

The Chair (Mrs. Laura Albanese): That would be the will of the committee. I’m going to go to Mr. Miller and—

Mr. Lorenzo Berardinetti: I’m sorry, I still had the floor. With the greatest respect, I still have a few more questions here, and then I’m willing to hear from any opposition members or other members of this committee.

We did receive this report. We received it—I forget which date it was. Was it May 2?

The Chair (Mrs. Laura Albanese): May 2.

Mr. Lorenzo Berardinetti: And today’s date is May 10.

The Chair (Mrs. Laura Albanese): It’s dated May 2.

Mr. Lorenzo Berardinetti: Okay, so we’ve had eight days to review this document. I’m not going to ask a leading question, but I just want to know: In your view, is there any reason not to go to clause-by-clause today?

The Chair (Mrs. Laura Albanese): The clerk says it wouldn’t be his view; it would be the will of the committee.

Mr. Lorenzo Berardinetti: Okay, but is there any reason to stall clause-by-clause to decide to deliberate as a group in private?

The Chair (Mrs. Laura Albanese): I believe the answer would be the same: It’s the will of the committee.

Mr. Lorenzo Berardinetti: Mr. Clerk, do you have any documentation or any motion in front of you that says we should deliberate privately before we—is there a motion on record? Maybe I missed the motion that was here.

The Clerk of the Committee (Mr. William Short): No, there was no motion to deliberate privately. If the committee would like to start clause-by-clause right now, the committee could feel free to start clause-by-clause

right now. If the committee doesn't want to start clause-by-clause right now, then the committee can continue deliberating about the independence of the judiciary or—

Mr. John Yakabuski: Well, I would like to—

Mr. Lorenzo Berardinetti: Excuse me, I have the floor, with the greatest respect.

Mr. John Yakabuski: Well, how many questions do you get—

Mr. Lorenzo Berardinetti: Yes, you do.

The Chair (Mrs. Laura Albanese): One second. I think he was recognized—

Mr. Lorenzo Berardinetti: Mr. Yakabuski, I can go up to 20 minutes. If you don't believe me, just get the copy of the standing orders for committees and read that.

Interjection.

The Chair (Mrs. Laura Albanese): He still has the floor.

Mr. Lorenzo Berardinetti: The Chair has ruled I still have the floor, and I'll be glad to listen to your arguments. Just to repeat what you said: There's no reason that you are aware of not to go to clause-by-clause today—any technical reason.

The Clerk of the Committee (Mr. William Short): Again, if the committee would like to commence clause-by-clause on Bill 34 today, that would be up to the committee and that would be fine. And if the committee doesn't want to commence clause-by-clause today, then that would be up to the committee as well.

Mr. Lorenzo Berardinetti: Okay. In your experience, has there ever been a deliberation by all three parties in private over a research document?

The Clerk of the Committee (Mr. William Short): In this current example, there was a motion that was carried by the full committee to deliberate on whether or not the independence of the judiciary was breached by Bill 34. The committee received a legislative research document on May 2. The committee then did whatever they did with that document, and now we're back here today to decide whether or not to move forward with clause-by-clause or to continue deliberating whether or not Bill 34 does breach the independence of the judiciary.

Mr. Lorenzo Berardinetti: Okay. But in your experience, has a committee ever decided to deliberate a research document before commencing clause-by-clause?

The Clerk of the Committee (Mr. William Short): In my personal experience?

Mr. Lorenzo Berardinetti: Yes.

The Clerk of the Committee (Mr. William Short): Off the top of my head, I can't think of an example where that happened, but it may have happened with other committees. It could happen in the future with other committees.

Mr. Lorenzo Berardinetti: Okay, but you've never had this experience before, where we deliberate.

Okay, thank you for those questions.

The Chair (Mrs. Laura Albanese): Thank you. The floor now goes to MPP Miller.

Mr. Paul Miller: There seems to be a problem again, stalling again. If we have a problem, the opposition party

can ask to end debate on this and move it to next week, if they're having a problem with it. They can ask for that and vote on it. If not, you've got the other two options, as Mr. Berardinetti said. You could move into a private discussion about it, if the committee so chooses, or you could just not deal with it and cancel it again, until next week. So there are options here. We don't have to be arguing over petty things. Either it's yea or nay—very simple. And it's up to the committee, as you stated, Chairman.

The Chair (Mrs. Laura Albanese): Thank you. MPP Zimmer?

Mr. David Zimmer: That's fine.

The Chair (Mrs. Laura Albanese): MPP Wong?

Ms. Soo Wong: Madam Chair, I believe Mr. Hillier brought forward the motion that we're discussing this morning two weeks ago. At that time, he moved adjournment of this committee and we did not go through clause-by-clause. Now we're hitting the third week. Last week, if my recollection is correct—Mr. Short could tell us if I'm correct in this statement—the research department gave us this independent judicial report; am I correct? We were supposed to be going through clause-by-clause today. Okay?

I understand there are two members here today who are subbing; I recognize that. But there are a majority of members on this committee right now as we sit who have received this report from the research department. It's our responsibility, Madam Chair, to move forward.

I am extremely disappointed, Madam Chair, that we are putting the safety—I want to be on record—of Ontarians at stake here. Mr. Justice McMurtry very clearly in his report wants this government, every one of us in Parliament, to amend the PWPA. The longer we delay this process, it puts every Ontarian's safety at stake. That's the first thing. I want that to be on record.

The other thing I'm extremely concerned about is that we just heard from Mr. Short, to my colleague's question, that in his experience, in his opinion, we have never used this kind of strategy as a delay tactic to go to clause-by-clause. Again, Madam Chair, I want to be on the table to say, are we here to work, to support and protect the safety of every Ontarian? I want to be very clear: I'm here to support and make sure every Ontarian, whether we go to a courthouse or a nuclear facility, is safe. I am very disappointed if we don't go through clause-by-clause. I think my opposite colleague, Mr. Miller, is saying the same thing; he's nodding.

It is our responsibility, those of us who are here, who received this report last week, to make sure we read the report. I do understand that the two members who are subbing in may not have had an opportunity.

Moving forward, Madam Chair, I think that we need to deliberate clause-by-clause and move forward. Those are my comments.

The Chair (Mrs. Laura Albanese): MPP Singh?

Mr. Jagmeet Singh: Thank you very much. Just with respect to the issue of judicial independence, that issue, in my respectful submission, is addressed in the amend-

ments. There are certain amendments that are brought forward that specifically address that issue. Those who have a concern with that issue can vote on that issue and support that amendment, and we could have that addressed completely. They're actually addressed at least two times in the amendments, that I know of. I know the government has some amendments that speak to that. I certainly have two amendments that speak to that. The issue of judiciary independence is established in the amendments, or is proposed in the amendments, and we can support that.

I also agree with MPP Wong and my colleague Mr. Miller that we should move ahead now. We've had time to review this issue and I think, with the amendments, we can address them sufficiently.

The Chair (Mrs. Laura Albanese): MPP Yakabuski?

Mr. John Yakabuski: Thank you, Chair. I want to address first Ms. Wong's comments with regard to public safety and how disappointed I am that she would throw that card onto the table. We've been conducting our courts and protecting our courts and our nuclear facilities under the PWPA, and are still doing so. Public safety has not been compromised and will not be compromised. Whether this committee is meeting or not meeting, the current law remains in place.

0920

There's a very good reason why the government wanted to update the law. Quite frankly, it's because of the mess they made of the G20 summit here in Toronto. So they're under a great deal of pressure.

The Ombudsman released a report called Caught in the Act that literally ripped you folks apart on the way that you handled the G20. That's why we're here with an update to the Public Works Protection Act, but the act remains in effect, I say to Ms. Wong, until such time as a new statute receives royal assent. So that kind of hyperbole I don't think is valuable to this committee, and I'll put that on the record, that that kind of exaggerated hyperbole is not helpful.

Now, to the motion itself, and with all due respect to the clerk, Mr. Short, I suppose the committee can decide what it wants, but the committee should also be expected to abide by the motions that it has passed. Without that, it should have to pass a separate motion saying that we are overruling the motion.

But the motion is very clear. It doesn't say that individual members of the committee have deliberated. In fact, if it was individuals, it would say, "have deliberated." It's plural—"has deliberated." The committee is a single entity and must be treated as such. We are members of the committee, but the committee must deliberate as a group, just as a jury deliberates as a group. You don't send 12 members of a jury off to separate corners to their thinking place, and come back out and say, "Yeah, we've deliberated." "How'd you make out?" No, they have a very complete discussion of all of the evidence that is placed before them and all of the facts, and they review that and they review testimony, and sometimes deliberation takes weeks, depending upon the

nature of the case. But the deliberation takes place as a group, as a unit, so that when they leave that deliberation they have a thorough understanding of all of the discussions that have taken place with regard to the issue at hand.

To imply that deliberations can take place on an individual basis and we actually reach a proper consensus as to what is the best course of action or the best conclusion based on the motion that was placed before this committee by Mr. Hillier I think is a slippery slope. We have to do this as a group, as a unit. We are a unit; we are a group. We may have differing views on that group, but the hope is that at some point we reach a consensus based on the deliberation of the group.

Having said that, I expected last week to receive a call that the committee has to meet to deliberate this—not as a public sitting committee of the Legislature, but as a group—to deliberate the report that was given us to individually read, yes. But deliberation, I think, clearly implies that we get together.

The Chair (Mrs. Laura Albanese): Well, we are together, hence my question—

Mr. John Yakabuski: But not in a public forum, Madam Chair. To deliberate—you cannot deliberate in a public forum.

The Chair (Mrs. Laura Albanese): Ms. Wong.

Ms. Soo Wong: With due respect to my colleague's comment just now, I'm ready to work. This is the third consecutive week—I'm going to go again on record to say that—the third consecutive week of potential delay tactics in terms of going through clause-by-clause, and my colleagues from the NDP are prepared to work today to move clause-by-clause. So I'm going to move a motion to say that the committee will deliberate on this issue and will move forward with the clause-by-clause. I want to call the question on this issue.

The Chair (Mrs. Laura Albanese): At this point, how does the committee wish to proceed?

Mr. John Yakabuski: That's out of order, Madam Chair.

The Chair (Mrs. Laura Albanese): What's out of order?

Mr. John Yakabuski: For her to move that motion. We haven't dealt with the motion on the table.

The Chair (Mrs. Laura Albanese): So the original motion has been dealt with. It was voted on and carried on April 26. The outcome is what we have to deal with today. Do we want to deliberate in public? Are we ready to proceed with clause-by-clause? That is what we are discussing right now.

Mr. John Yakabuski: May I, Madam Chair? Are you ruling that this motion has been dealt with and that this committee has deliberated?

The Chair (Mrs. Laura Albanese): No. No, that's not what I said.

Mr. John Yakabuski: You just asked—the motion now is to move to clause-by-clause.

The Chair (Mrs. Laura Albanese): I started this meeting asking about this motion and whether the com-

mittee was fine with and satisfied with the independence of the judiciary. Just now, you brought forward the possibility that the committee deliberate as a group, whether in public or not. That was just brought up now to the committee, and that is what I've been referring to.

Mr. John Yakabuski: Thank you.

Mr. Paul Miller: Madam Chair, why don't we just take each item and deal with it—whatever they want to do—and just vote on it. If they want to continue with this motion, if they want to talk about this motion, let's vote on it.

I mean, this is like Twister here. Are we going to deal with what we have to deal with today, or are we going to play games?

The Chair (Mrs. Laura Albanese): That's exactly what we are discussing.

Mr. John Yakabuski: That is not the issue at hand, Madam Chair. With all due respect, whether or not the committee has deliberated is not a subjective thing. It's not whether it is in the mind of any member of this committee that they think we've deliberated because we went home or to our offices or whatever and may or may not have read a report. Deliberation is clearly defined, and it is not up to individual members to say, "I deliberated." No, the committee must deliberate.

The Chair (Mrs. Laura Albanese): The committee is here as a group right now.

Mr. John Yakabuski: That is the motion—

The Chair (Mrs. Laura Albanese): The committee is here as a group. So can—

Mr. John Yakabuski: I would ask that the motion be respected and that the committee be scheduled to deliberate on this information that was forwarded to us by the clerk and prepared by Karen Hindle, a research officer of the Legislative Research Service, prepared for the Standing Committee on Justice Policy, that a time be set aside for this committee to deliberate outside of the regular committee hearings so that deliberation can be done under the proper conditions, which is in a private room where each member has the opportunity to ask questions that they may or may not be willing to ask in a committee of the Legislature, for the purpose of deliberation and understanding this thing in its fullest way.

Ms. Soo Wong: Madam Chair, I do respect my colleague's comment. We got the motion here two weeks ago. The committee approved it, supported this motion. Last week, again, the staff gave us the report for us to go away to read. Those of us who received this report read it. My opposition colleague from the NDP agrees with my comment earlier that when we go through clause-by-clause, there will be discussion about this deliberation about the independent judiciary.

So, again, I want to call the question, because this is exactly what the public don't want us to do. This is another strategy by the PC Party, trying to stall the clause-by-clause. We're here because we were asked to have this report. Now we've got the report. We've all read the report, and at least five members of this committee agree that when we go to clause-by-clause, there will be an opportunity to address this issue.

Madam Chair, I'm going to go back again. I move a motion to say that the committee will deliberate on this issue and start moving on clause-by-clause.

The Chair (Mrs. Laura Albanese): Mr. Yakabuski.
0930

Mr. John Yakabuski: Thank you, Madam Chair. Again, with all due respect to my colleagues, Ms. Wong has in her own words, said, "We've all read the report." "Read" is not deliberated. I would ask Ms. Wong: When did we deliberate? We've all, as she says—

Mr. David Zimmer: Call the question.

Ms. Soo Wong: Call the question.

Mr. John Yakabuski: —I believe I have the floor, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes, you do.

Mr. John Yakabuski: I would ask the members of the committee—I accept that they've read the report, but the question I have, based on the motion that was tabled by Mr. Hillier, is when we deliberated.

The Chair (Mrs. Laura Albanese): I have Mr. Berardinetti and Mr. Miller and then Mr. Singh.

Mr. Lorenzo Berardinetti: I just want to look at the report that we received in early May, May 2, and just read this part into the record. I'll shut up after this. Page 2, introduction:

"On April 26, 2012, the Standing Committee on Justice Policy adjourned its clause-by-clause consideration of Bill 34, the Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012, in order to consider 'whether this legislation breaches the independence of the judiciary.'

"Under Bill 34, a new section 138 of the Police Services Act would confer discretion upon authorized security personnel to require individuals entering or seeking to enter a courthouse to produce identification, information and/or submit to a search. A new section 140(1) would provide, however, that these powers are not meant to override the existing powers of judges and other judicial officers to control their proceedings," and I want this highlighted, this next section here:

"140(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings.'

"This paper has been prepared to assist members in their deliberations on the bill."

I've ended my reference here.

Now, it's clear the paper was prepared to assist members in their deliberations on the bill, Bill 34. I see nothing in the report—if someone could find it—saying that this committee should deliberate before considering the bill; I'd like that pointed out to me. Thank you.

The Chair (Mrs. Laura Albanese): Thank you. MPP Miller?

Mr. Paul Miller: I just want to say that the concern of the official opposition—if they had a concern in the two weeks and they wanted to have it addressed, they could have called a subcommittee meeting. The three members of the subcommittee could have discussed it and agreed with it in the two-week period. We certainly could have

moved ahead today. If they had a problem, why did they leave it till the day of the committee when they had two weeks when they got it? They could have dealt with it, talked to people and straightened out the mess. But they didn't. They chose to wait till the day of the committee meeting to stall it again.

The Chair (Mrs. Laura Albanese): MPP Singh?

Mr. Jagmeet Singh: I agree with the comments that are going around with respect to Ms. Wong and Mr. Miller, my colleague. In fairness, the motion does indicate to deliberate, so if we want to cut right to the heart of the matter, let's deliberate now in public. We're here, we're sitting together. If that's really the issue, then I'm content to deliberate now. We can talk about the judicial independence. In fairness to Mr. Yakabuski, he's right that the motion that was put forward does say that we should deliberate. It doesn't necessarily say how. So maybe we could decide to deliberate now, as a committee that's sitting now, and we can discuss the issues. If that's agreeable, perhaps we could get right into deliberation.

The Chair (Mrs. Laura Albanese): MPP Yakabuski?

Mr. John Yakabuski: To Mr. Berardinetti's point about the report—and we are grateful for the report—that report designed to—I'm looking for where he said “assist.” I believe he said “assist.”

Mr. Lorenzo Berardinetti: Don't you have a copy of it?

Mr. John Yakabuski: Yes, but I—

Mr. Lorenzo Berardinetti: Page 2, top of the page. Just read the two paragraphs and the sentence afterwards.

Mr. John Yakabuski: I just wanted to make sure I quoted you correctly, or out of the report. It says, “This paper has been prepared to assist members in their deliberations on the bill.” No argument there whatsoever. It's not designed to direct members of the committee on their deliberations of the bill. That's why we are duly elected members of this Legislature and appointed members of this committee: so that we can do our own thinking as to what actual results or conclusions we should draw from it. It is there to assist. It is informative and very valuable, and I will point that out. But it is not there that we accept this chapter and verse, as the gospel; we will have the opportunity and we should have the opportunity to deliberate and then draw our own conclusions on how this does affect the independence of the judiciary.

To Mr. Miller's point—and I'll talk to him later, I suppose—it is not our responsibility, as the opposition, to move your legislation forward. To his point that we could have called members of the committee and said, “Let's have a meeting,” I would expect that the government members of this committee received the same information. It is their legislation, Madam Chair. It is incumbent upon them to make the call to us and say, “Look, we've got this information. This is valuable information. It's informative. It's directly to the point of our concerns about the independence of the judiciary. It is designed to assist us in those deliberations. We need to have a meeting.” It is their responsibility. It is not our responsibility, as opposition, to do the government's job.

The Chair (Mrs. Laura Albanese): Thank you, MPP Yakabuski. It seems to me that the majority of the members feel ready to deliberate now. I would ask the committee members if we are ready to deliberate here in public—and if we can discuss this matter, we can proceed with the discussion here in public—or otherwise? Mr. Yakabuski?

Mr. John Yakabuski: I object strenuously to a deliberation in public and would ask for a ruling from the Speaker as to whether this is actually in keeping with the way that the Legislature and the committees are supposed to work. I do not believe we have the right to deliberate in a public forum.

The Chair (Mrs. Laura Albanese): So would you put forward the motion, then?

Mr. John Yakabuski: I would put forward a motion that an opinion from the Speaker or the Clerk of the Legislature be sought out to ask whether or not we are allowed to deliberate in public on this or any other report. This is not clause-by-clause; this is about a deliberation on information that was handed to members of the committee, not handed to members of the public. I am concerned that we are going down a slippery slope if we decide that deliberations now take place in a public forum.

The Chair (Mrs. Laura Albanese): We're going to take a five-minute recess so that we can discuss this matter amongst us.

The committee recessed from 0938 to 0945.

The Chair (Mrs. Laura Albanese): So we're back in session.

I would start by saying that it seems there's nothing to stop us from deliberating this motion right here and now, in public. We do have legislative research and legislative counsel here and we also have ministry counsel, so there's nothing to stop us from deliberating this as a committee, as a group, here right now, in public. If you wish that the deliberation take place in a closed session, then you can move a motion to do so; otherwise, we can deliberate right here and now.

Mr. John Yakabuski: Can I hear the advice or the submission from the clerk, legislative counsel or ministry staff, based on legislative precedents or what? I have all respect for everyone who's doing their job in this place and understand that we're all here for the same purpose, but I think I have the right—

Interjection.

Mr. John Yakabuski: How disrespectful is that, Chair? How disrespectful is that?

Mr. David Zimmer: You're being disrespectful by your conduct.

The Chair (Mrs. Laura Albanese): Order.

Mr. John Yakabuski: That is just beneath a member of the Legislature—honest to God—sitting there reading a newspaper when serious discussions are going on.

Mr. David Zimmer: No. You're babbling.

Mr. John Yakabuski: That's ridiculous.

The Chair (Mrs. Laura Albanese): Order, please.

Mr. John Yakabuski: And then trying to intimidate or belittle other members of the committee while they're making testimony.

The Chair (Mrs. Laura Albanese): We are here—

Mr. John Yakabuski: I think that really is sad.

The Chair (Mrs. Laura Albanese): Please, order.

Mr. John Yakabuski: Perhaps Mr. Zimmer needs to have a break or something, I don't know, but when I have the mike, I'd like to have that mike.

The Chair (Mrs. Laura Albanese): We are here. There's nothing to stop us—

Mr. John Yakabuski: Okay, but I would like to have from legislative counsel, legislative clerks, some kind of indication that—I'm not a legislative expert. I don't know all the rules.

Mr. David Zimmer: That's obvious.

The Chair (Mrs. Laura Albanese): Please, order.

Mr. John Yakabuski: As the Speaker makes rulings in the House, he gives us the justification behind the ruling, and I think that is a fair request.

Mr. Lorenzo Berardinetti: Point of order, please: I think that the Chair, who is in charge, has ruled, and I think the member has every right to challenge the Chair.

Mr. John Yakabuski: I'm not challenging the Chair.

Mr. Lorenzo Berardinetti: Well, then, we're into discussion all day long on this. I think the Chair has ruled, and if I'm wrong, I can be corrected and I will apologize. But my understanding of how a committee works is that if the Chair has made a ruling, you can challenge that; it's within your right to challenge the Chair. Let's do that. Let's vote on the challenge to the Chair.

The Chair (Mrs. Laura Albanese): The question right now is whether we want to deliberate in public or in a closed session, and I would ask the members' opinion on that.

Ms. Soo Wong: I want to call the question on deliberation, Madam Chair.

The Chair (Mrs. Laura Albanese): Are we ready to deliberate in public?

Ms. Soo Wong: Yes.

Mr. John Yakabuski: Has anyone made a motion?

Ms. Soo Wong: Yes, I did.

Mr. John Yakabuski: Where is the motion?

The Chair (Mrs. Laura Albanese): The committee can agree if they want to proceed. If there is an agreement, then we'll put forward a motion. Is there an agreement to deliberate in open session?

Mr. Paul Miller: One quick question: Mr. Yakabuski is correct in that he has a concern about not having it in front of him. I'm asking the clerk: Do we have to have it in written form or can the committee agree to do it verbally?

The Chair (Mrs. Laura Albanese): The clerk is reiterating basically what I said just a few moments ago: If the committee agrees, we can move ahead to deliberate this in public; if the committee does not agree, then we will need a motion to deliberate in a closed session.

Mr. Paul Miller: Can we have someone at least read the body of the motion so we understand it? Ms. Wong

said she put it in, but I don't have it in front of me. Even a verbal—

The Chair (Mrs. Laura Albanese): We're not looking at a motion right now.

Is there agreement from the committee to deliberate in open session? That is the question. Yes or no?

Mr. John Yakabuski: No.

The Chair (Mrs. Laura Albanese): Okay, so it's no. We will proceed. Mr. Yakabuski has said no, so that there's no agreement from the committee. How would you like to proceed?

Mr. John Yakabuski: Well, Madam Chair, I asked a question, and I would hope I would get an answer—and if you rule that I don't have the right to get that from legislative counsel or the clerk, I accept that. But I asked if I could have some precedents, justification for the ruling that we can do this so that I can be comfortable that this is not outside the orders of the proceedings. No one responded to me on that. So, either if you would be so kind as to say, "No, that's not necessary. We can proceed, Mr. Yakabuski"—or I will attempt to secure that from the legislative counsel or the clerk. No one answered my question.

The Chair (Mrs. Laura Albanese): MPP Yakabuski, no, it's not necessary.

Mr. John Yakabuski: Okay. Thank you very much.

The Chair (Mrs. Laura Albanese): You're welcome.

Now the decision is, do we want to deliberate in the public session or do we want to deliberate in a closed session?

Can someone move a motion?

Ms. Soo Wong: I'll move a motion.

The Chair (Mrs. Laura Albanese): Ms. Wong has moved a motion—

Ms. Soo Wong: Motion to deliberate in a public session.

The Chair (Mrs. Laura Albanese): All those in favour? Carried. So we will deliberate in open session.

Mr. Lorenzo Berardinetti: Excuse me. Can we get a recorded vote on that?

The Chair (Mrs. Laura Albanese): There's no recorded vote. You should have asked for it before.

We ask legislative research to come up, please. She will start the opening discussion on the research paper.

Mr. John Yakabuski: Madam Chair, if I may, before we start this, we do have a vote in the House. It is now inside 10 minutes. It is customary for the committee to recess within 10 minutes, I believe.

The Chair (Mrs. Laura Albanese): The rule is five to 10 minutes, and it's at the Chair's discretion. I will make sure that members are on time for the vote.

Mr. John Yakabuski: Do you want to start now and put in a few minutes or do you—

The Chair (Mrs. Laura Albanese): Yes, we will start now and put in a few minutes.

Mr. John Yakabuski: That's at your discretion, Chair. I abide by the rules of the Chair.

Ms. Karen Hindle: Good morning, everyone. I trust that everyone has a copy of the report.

Mr. Steve Clark: Chair, this is my first look at the report, and I just wondered if we could have a short recess so that I can read this report.

The Chair (Mrs. Laura Albanese): We'll go up for the vote now, and then when we come back, we'll continue with legislative research, hoping that that will also give you enough time to read the report.

Mr. Steve Clark: That's not going to give me enough time.

The Chair (Mrs. Laura Albanese): Are you making a specific request, MPP Clark?

Mr. Steve Clark: I'm making a specific request to allow me to read this report. I would move that we defer this discussion until next week when the committee meets.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, if the will of the committee is to adjourn till 2 o'clock to allow Mr. Clark to read this report—I just want to be clear. There are members in this committee today who are subbing for others. I respect that. If, every week, different parties have different sub members and are using the tactic of reading the report as a way to delay and further delay the process, I will be concerned. If, to allow the member subbing in today to read the report, we're coming back to deliberate clause-by-clause this afternoon, then I have no problem with that request. But if, this afternoon, there will be another member coming into the committee from the PC Party and asking for another delay, I will be concerned. Do you see what I'm getting at—

The Chair (Mrs. Laura Albanese): Thank you. We will move to recess so that we can go up for the vote, then we will come back down, we will have legislative counsel do the presentation, and we'll deal with the motion. Is that okay? We will recess for the vote.

The committee recessed from 0953 to 1012.

The Chair (Mrs. Laura Albanese): We're back, and we have a motion in front of us, put forward by MPP Clark, that asks the committee to adjourn until next week to have time to read the research package. Correct? Did you want to repeat the motion, MPP Clark?

Mr. Steve Clark: I think the word is "deliberate."

Just speaking to the motion, I've had the opportunity to read a couple of lines of this report, and I think you know, Chair—we've served on committees together—that I'm not afraid to deliberate and discuss reports. I think those who know me know that I'm sincere in asking for a delay—a deferral.

I believe very strongly, given some of my duties today—we've got question period coming up this morning, and I have a meeting that I'm going to immediately after question period; I'm going to participate, in my new role as deputy House leader of our caucus, in a House leaders' meeting that meets just prior to this afternoon's session.

So I'm asking consideration that we defer the request. I appreciate the history. I understand the history of the discussion this morning about the fact that this motion and this report have been in others' hands for a period of

time and they have had an opportunity to at least familiarize themselves with the report and recommendations and the background. I, unfortunately, have not.

I'm trying to be fair and reasonable, because I want to participate in the discussion, and I feel that it's not an unreasonable request. So I would ask that other members adhere to my request and we move forward in that light.

The Chair (Mrs. Laura Albanese): Further discussion?

Ms. Soo Wong: Madam Chair, I do understand the request and the motion from Mr. Clark. I want to ask the PC members on the committee, because there have been three consecutive weeks of revolving-door subbing from your members—my question to you, Mr. Clark, is: Will you be back here next Thursday prepared to go through clause-by-clause and not send another member? Because at the end of the day—as I said earlier, yes, we do have PWPA right now still standing to serve the public in terms of safety, but we have to make sure, moving forward, of the safety of Ontarians, as requested by Mr. McMurry in his report asking us to repeal the act.

So my question to you, Mr. Clark, through you, Madam Chair, is: Will Mr. Clark be here next week or are we going to have a fourth consecutive week of subbing?

Interjections.

The Chair (Mrs. Laura Albanese): One at a time, please. MPP Clark.

Mr. Steve Clark: Chair, through you to the parliamentary assistant, I'm not going to debate where I'm going to be or where I'm not going to be next Thursday. We all know our schedules are very fluid. Things happen. My intention is to review this document and be prepared to participate in the discussions of this committee. However, I cannot, given the schedules of MPPs—we all know what our schedules are like. We all know that things happen in our ridings; things happen here at Queen's Park.

I believe, Chair, through you to the parliamentary assistant, that my comments stand. I believe they're fair and reasonable. I want to participate in the discussions here at the Standing Committee on Justice Policy. But I'm sorry, the fact that I received the document when I did has not and will not give me the opportunity to participate in the deliberations as per Mr. Hillier's original motion.

The Chair (Mrs. Laura Albanese): Okay, given that this committee—

Ms. Soo Wong: Madam Chair, I still have—

Mr. Steve Clark: I would ask—

The Chair (Mrs. Laura Albanese): One person at a time, please.

Mr. Steve Clark: I would ask the committee to look favourably upon this request.

The Chair (Mrs. Laura Albanese): One second, please. I just want to remind the committee members that we have to adjourn by 10:25, so please be concise in your remarks.

MPP Wong?

Ms. Soo Wong: Madam Chair, with due respect for Mr. Clark's comment to the committee, my concern—I want to verbalize them on record. This has been the third consecutive week that there have been delay tactics by the official opposition party, by different sub members. That's the first concern.

Mr. Clark, to be fair, I have no problem to allow you to have this report to be read, so that you have due time for reading. But I do have grave concern and disappointment that we're going to go through this charade again next week, with a fourth member from the PC Party subbing in and doing another delay tactic. I have grave concern.

I wanted to be on record with those comments, Madam Speaker.

The Chair (Mrs. Laura Albanese): MPP Zimmer.

Mr. David Zimmer: I just want to build on what Ms. Wong has said. I appreciate the difficulty. Mr. Clark has been subbed in late and hasn't had a chance to read over the report.

I think the danger here, on a going-forward basis, is that we set a very dangerous precedent. It has been going on now for three weeks. Mr. Clark comes, and his whip has put him into this committee. That's a decision that his whip has taken for whatever reasons, but Mr. Clark comes not prepared, because he has been subbed in at the last minute. That's not his fault, but there's a problem when, every week, higher-ups in a political party sub in somebody at the last minute.

If we adjourn to let Mr. Clark consider the materials that have been prepared, then what do we say next week when, if Mr. Clark is not here, someone else is subbed in at the last minute and makes the same request and refers to the precedent set by this committee? Then we're into a situation where, every week, there will be a last-minute substitution and a request to adjourn to consider the report. In the argument for the request to adjourn to consider the report, they'll be pointing to the precedent of what happened last week at this committee, and the week before, and the week before.

So you take that delay tactic and you couple it with the ringing of the bells—and we had a ringing of the bells just a few minutes ago. We had to leave here and go there and vote. It's a combination of all of these things that is making this place dysfunctional.

Although I appreciate Mr. Clark's difficulty, as does Ms. Wong, can we have some assurance from the committee, Chair, from the clerks' office, from the other side, that this is the last time this will happen, and that if someone is subbed in next week and comes back with the same argument, we're not going to adjourn it again?

In other words, we should send a message to the whip's office at the Conservative PC caucus that enough is enough. If you're going to substitute somebody, give them sufficient notice that they can come prepared and not raise these adjournment arguments. That's the danger here.

1020

The Chair (Mrs. Laura Albanese): Thank you. MPP Yakabuski and then MPP Berardinetti—

Interjection.

The Chair (Mrs. Laura Albanese): No, sorry. I'm following a timeline here.

Mr. John Yakabuski: Nice try.

Interjection.

Mr. John Yakabuski: Are you challenging the Chair, Mr. Berardinetti?

The Chair (Mrs. Laura Albanese): I am following the members, and as I see the hands go up I am respecting every member—

Interjections.

The Chair (Mrs. Laura Albanese): Please, order. Order. Thank you. MPP Yakabuski.

Mr. John Yakabuski: Wow, I'll tell you. Some people have their knickers in a knot, today, don't they?

The Chair (Mrs. Laura Albanese): Please, I would remind members, please let's be concise. We don't have a lot of time before—and I would like MPP Berardinetti also to speak.

Mr. John Yakabuski: Well, Mr. Zimmer went on for a long time about what may happen in the future and made all kinds of spurious accusations about what the motivations of members of this committee are. But we've got a motion before us moved by Mr. Clark. Let's talk about the motion.

Mr. Clark has not had the opportunity to deliberate on these issues. It wasn't planned that Mr. Clark was going to be a member of the committee, but do we want a member of this committee to be voting today on motions that may rise out of this deliberation?

Interjection.

Mr. John Yakabuski: Madam Chair, please.

The Chair (Mrs. Laura Albanese): Please proceed, MPP Yakabuski.

Mr. John Yakabuski: Do we want a member to be voting on these when he has stated himself that he had not had the time to deliberate? He has made it very clear that, based on his legislative schedule, he did not anticipate to be reading reports between 10:30 and 2 o'clock—he has other commitments—and that he will not have time to fully digest and deliberate on this report. His motion is a sound one. As for next week, I can't predict—I don't know the weather; I don't know who's going to be alive or dead. But I do know this: Mr. Clark is not prepared to deliberate or pass judgment on this report tabled by legislative research today.

He has asked for a motion, and that is the motion that should be debated, not all these ideas of what may happen next week or the week after that Mr. Zimmer is putting forth. We've got a motion on the table—

Mr. David Zimmer: All part of your strategy—

The Chair (Mrs. Laura Albanese): Thank you, and a point well taken. It is now—

Mr. John Yakabuski: I'm not quite finished.

The Chair (Mrs. Laura Albanese): Oh, I thought you were—I thought you had wrapped up.

Mr. Lorenzo Berardinetti: I need just one—

Mr. John Yakabuski: He keeps interrupting. No. Mr. Zimmer keeps talking about how our tactics are to delay

and disrupt. We're sitting in a committee here, Madam Chair, when the Legislature—and he brought up bell ringing in the Legislature. For the record, everyone knows why those bells are ringing: Because the government has decided to ignore its own commitment to the Legislature. It ignored its own commitment when a motion was passed by the Legislature to form a select committee to deal with the Ornge scandal, which we hear more and more about every day—yesterday, \$7 million likely in kickbacks going to executives at Ornge from the helicopter manufacturer. He talks about delay tactics, and then when the Minister of Health agreed that she would abide to form a select committee if the Legislature so ruled—

Mr. David Zimmer: Chair, surely his comments have to be on-topic.

Mr. John Yakabuski: Just like yours, Mr. Zimmer. Then after the Legislature passed a motion which members of the third party voted in favour of to establish a select committee to deal with the scandal at Ornge, the government ignored it. When they talk about respecting the Legislature, I point out that.

Subsequent to that—

The Chair (Mrs. Laura Albanese): MPP Yakabuski, it is now 10:25. Therefore, we have to recess until 2 o'clock. The motion is still on the table.

This committee will reconvene at 2 o'clock to deal with this motion. Thank you.

The committee recessed from 1025 to 1406.

The Chair (Mrs. Laura Albanese): The committee is reconvened.

We do have on the table a motion moved by MPP Clark that calls on the committee to adjourn until next Thursday so that he can deliberate over the research paper. That's a debatable motion, and we can resume that debate.

Before we do, could I ask each member to speak loud and clear, because we do have some difficulties at times in hearing them, so if everyone could make an effort to speak with a clear and loud voice.

I believe that Mr. Yakabuski had the floor when we left the room.

Mr. John Yakabuski: Yes, thank you very much, Madam Chair. Where we were stuck upon at the time—and I will do my best to keep my voice loud and clear. I sometimes do get into that whisper mode. Actually, you know, this is my style.

Anyway, Mr. Clark had made the point—and I was supporting him—with respect to the unlikely opportunity that he would have to actually deliberate upon this extensive report that was presented to us last week with respect to today's committee work, given that he was not at the committee last week and that, as you know, at 10:30 we have question period, a committee meeting, a House leaders' meeting and, of course, by that time we're pretty much back here. Somehow, he might have—I don't know if he even was able to snag some lunch or not. So, to be fair, we have members who are sitting in on a committee and deliberating, as the committee has now

voted, to deliberate in public, here, today. That notwithstanding, it's a bit unfair to have one of your members—who would rightfully say probably himself that he feels a little unarmed when it comes to the debate and the deliberations because he hasn't had a chance to fully analyze and absorb all of the information in that report. So I believe that the motion he tabled this morning is in fact a valid one.

The Chair (Mrs. Laura Albanese): Thank you, MPP Yakabuski. I believe MPP Berardinetti was also—

Mr. Lorenzo Berardinetti: Thank you, and I really appreciate the remarks. I'm not being sarcastic here. There are a lot of things thrown in front of us, and I agree that it's difficult. Mr. Clark walks in, and suddenly this research paper is thrown in front of him. Nobody can read it in one quick moment. So I'd like to move a friendly amendment to that motion, if you don't mind, or if nobody minds or objects. I think this is an important piece of paper—the one prepared by Karen Hindle, the research officer of the Legislative Research Service, dated May 2nd. I'd like to just add a friendly motion. We may have new members showing up next time as well. The NDP may have the same issue.

So I would like to add a friendly amendment that all 107 members of the Legislature receive a copy of this report. That way, they can read it and if people are subbed on from the three parties, they'll at least have a chance to see the report and perhaps, if the whip for each party or the House leaders agree to this as well—I know it takes quite a few sheets of paper, maybe 15 sheets, but I'll ask that it be done on recycled paper or at the very least sent by email. I'd prefer a paper copy so people can read it and mark it up like I do. I'm doing this in all good intentions; there's nothing sneaky about this. But if everyone has a copy of this, then—we may get a sub coming in, and the sub may say, "I need to read this. Why was I thrown on this committee?" Ms. Armstrong was not here this morning; I don't think you were. You may have not read this paper. Were you here this morning?

Ms. Teresa J. Armstrong: No, I wasn't here this morning, but I'm on this committee. I took it upon myself to order the history last week, so I had the report and I've read this report, thank you.

Mr. Lorenzo Berardinetti: Oh, good, okay, because I've read it as well, and it's very informative. It talks about the different provinces and what they've done. The executive summary itself is very well worded and concise. Reading the whole thing, in general, gives us a very good overview—and we're dealing with important issues. We're dealing with security in courthouses and at nuclear facilities. The title's very clear, Bill 34 and the Independence of Judiciary. So for what it's worth, it's a friendly amendment. If you want to adjourn, then everyone gets a copy of this.

Mr. John Yakabuski: We would support that amendment.

Mr. Steve Clark: Absolutely.

The Chair (Mrs. Laura Albanese): Just to be clear— I didn't mean to interrupt you—it could be added to the end of the motion?

Mr. Lorenzo Berardinetti: I'm just saying—

Mr. Steve Clark: Chair, in the spirit of co-operation, I would be more than happy to modify my motion to include—

The Chair (Mrs. Laura Albanese): Okay. So it would be added.

Mr. Lorenzo Berardinetti: A friendly amendment.

The Chair (Mrs. Laura Albanese): Mr. Berardinetti has asked that we add at the end of the motion a request that all 107 members of the Legislature receive a copy of the research package.

Mr. John Yakabuski: Can I further amend that to 106?

Mr. Lorenzo Berardinetti: As long as it's the Speaker that you're talking about—and I don't know—

Mr. John Yakabuski: No, we're talking about we have one vacancy.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: There is a vacancy in the Legislature.

The Chair (Mrs. Laura Albanese): There is a vacancy.

Mr. Lorenzo Berardinetti: I'm sorry. My apologies.

The Chair (Mrs. Laura Albanese): Okay.

Mr. Lorenzo Berardinetti: One more thing, too. I'm sorry, because I realize this, too, and I apologize to Mr. William Short because he was not here last time. There was another person here, if I'm correct. Is that right?

The Chair (Mrs. Laura Albanese): Yes.

Mr. Lorenzo Berardinetti: He was here the first—

The Clerk of the Committee (Mr. William Short): I was at a subcommittee meeting for public accounts.

Mr. Lorenzo Berardinetti: Yes, but he wasn't here. So I don't know if you will be here next Thursday and maybe—

The Clerk of the Committee (Mr. William Short): I will be.

Mr. Lorenzo Berardinetti: You will be here. So you don't need a copy of this. I'm trying to think of anybody else that would need a copy here. That's all. It's a friendly add-on to the amendment just so that—the argument that's being put forward is that some people didn't get a chance to read this, but if everyone's provided with a copy and they're asked to come on a day or two before, hopefully they will still have this, can read it overnight and be prepared to debate this bill and the amendments.

Mr. John Yakabuski: We will accept that.

The Chair (Mrs. Laura Albanese): So the amendment would read that Mr. Clark has moved that the committee adjourn to next Thursday to deliberate—

The Clerk of the Committee (Mr. William Short): That's the original motion.

The Chair (Mrs. Laura Albanese): That's the original motion over the research paper—and all 106 members of the Legislative Assembly of Ontario receive

a copy of the research document. Is everybody in agreement? Is the amendment carried?

Ms. Soo Wong: No, I have a question, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes.

Ms. Soo Wong: Let me just be very clear: First and foremost, I have a question for the clerk before I comment on this motion and the friendly amendment from my colleague. I want to ask the clerk: When a sub member is coming into a committee, is it normal practice, if they have not read the report, that they hold down the committee hearing in terms of clause-by-clause review because of one member? Is that a normal practice here? Because I'm new, I want to ask the clerk: Is it normal practice in this Legislature that in a standing committee where we have been trying for the last three weeks to do clause-by-clause, because one sub member of the opposition party has not read the report, is it normal practice to do this kind of strategy so that they can read the report?

The Clerk of the Committee (Mr. William Short): First of all, all members can request that they see an amendment, a document, whatever the case may be, before they either vote on it or deal with it. In this case, Mr. Clark has decided that he feels the committee should be adjourned until next Thursday, until he can read this research document, and then he can possibly participate in the deliberations that the committee will have regarding Bill 34 breaching the independence of the judiciary.

It's never happened on a committee that I've clerked before. However, that's not to say that it couldn't happen in another committee or it couldn't happen in the future.

It's a valid motion that Mr. Clark has put on the floor that we're now debating and that Mr. Berardinetti has now moved an amendment to.

Ms. Soo Wong: Okay. So I just want more clarification on the motion and the friendly amendment from Mr. Berardinetti dealing with the distribution of this report. Is it not an easy undertaking for you as the clerk to distribute this report of—oh, I don't know, 40 or 50 pages—staff undertaking to distribute to 106 members, including the Speaker, without this additional amendment that Mr. Berardinetti asked for.

The Clerk of the Committee (Mr. William Short): If the committee wants me to distribute a copy to all members of the assembly, that's perfectly fine. I can do that.

Ms. Soo Wong: You don't need a motion for that. Am I correct?

The Clerk of the Committee (Mr. William Short): Well, documents that come to this committee go to the members of the committee only. If there is a request that it go to all 106 members, then I can do that as well. The practice is that our branch distributes whatever the committee is dealing with to people who are either substituted in for the entire time—for example, Mr. Yakabuski currently—or to people that we know in advance of the meeting are substituted in, and then they'll get a copy of it as well.

In this case, Mr. Clark showed up at committee today. We didn't have a substitute slip for him until this

morning, so he didn't receive a copy of the document in advance of the meeting.

Ms. Soo Wong: And I believe that this morning, my colleague Mr. Zimmer was also here subbing on another colleague, and he did not make a similar type of request.

Madam Chair, I recall this morning putting a motion on the table asking us to consider my motion, and I don't know what happened to it. The motion was not tabled. So I'm going to ask again, because I think we have voted on deliberation on this particular bill, and I'm asking again that we commence the clause-by-clause review and not do further delay.

I know there's a motion right now from Mr. Clark. I've asked for equal opportunity for my motion on the table to commence clause-by-clause, because at the end of the day—this is now the third consecutive week that there has been a request from the opposition to further delay the discussion and the clause-by-clause review of this bill. At the end of the day, I'm here; I wanted to start working three weeks ago. It is incumbent on each one of us—and I heard from Ms. Armstrong. She wasn't even here, but she is part of this committee, and she was able to read the report. So I have to challenge and not accept and not be supportive of Mr. Clark's motion, because we have been here three consecutive weeks, Madam Chair.

Yes, Mr. Yakabuski's concern was the fact that the PWA is still in existence. Yes, I recognize that. But look at the delay; look at the cost to the taxpayer. We're all mindful here about the cost to the taxpayer. I want it known, and I want it to be on the table—and I'm going to distribute my motion, Madam Chair—the fact that for three consecutive weeks now, we have not moved forward on this bill with clause-by-clause.

The Chair (Mrs. Laura Albanese): Ms. Wong, I appreciate your comments. This morning, when you put forward your motion, we had still not dealt with the original motion that was put forth by MPP Hillier and had been carried, so we were dealing with that. We were bound to make a decision on that, and that is why your motion was not out of order but just postponed, in a way, because we had to deal with that first. That is the reason why we are where we are now.

Ms. Soo Wong: Okay. Now that we have dealt with the deliberation—

The Chair (Mrs. Laura Albanese): We are still dealing with a consequence of that first motion, with a second motion put forth by MPP Clark because he was not able to read the report. So we're still dealing with the same issue that we were dealing with this morning. That's why we have this on the floor.

Ms. Soo Wong: Then, Madam Chair, let's call the question. Let's vote on the item that has been put forth by Mr. Clark, and then we'll deal with it.

The Chair (Mrs. Laura Albanese): Yes. First we have to deal with the amendment put forward by Mr. Berardinetti.

All those in favour of all 106 MPPs receiving a copy of the research package?

Interjection.

The Chair (Mrs. Laura Albanese): A recorded vote?

Mr. John Yakabuski: I'm asking for a recorded vote, and then I will ask for a 20-minute recess before the vote.

The Chair (Mrs. Laura Albanese): Okay, that's fine. So we'll recess for 20 minutes.

The committee recessed from 1420 to 1440.

The Chair (Mrs. Laura Albanese): We're back from recess. Order, please. We're back in session and we are now to vote on an amendment put forward by MPP Berardinetti: that all 106 members of the Legislative Assembly of Ontario will receive a copy of the research document. All those in favour?

Mr. John Yakabuski: Do we get further debate on this now?

The Chair (Mrs. Laura Albanese): No, we have already debated, and you asked for a recorded vote.

Ayes

Armstrong, Berardinetti, Qaadri, Singh, Wong,

Nays

Yakabuski.

The Chair (Mrs. Laura Albanese): The amendment carries.

We now go back to deal with the main motion put forward by MPP Clark, which is now amended. All those in favour?

Mr. John Yakabuski: Wait, wait. Do we not have time for debate on this now?

The Chair (Mrs. Laura Albanese): Yes, if the committee so wishes.

Mr. John Yakabuski: I am going to have to get that window closed because—

Mr. Steve Clark: It's the glare off my head.

The Chair (Mrs. Laura Albanese): It shines a spotlight on you.

Mr. John Yakabuski: It's a combination of things. Boy, I'll tell you, it's unbelievable. Perhaps we could recess. My eyes are just—

Interjection.

Mr. John Yakabuski: Yeah, I've got a headache. It looks like I'm not getting far with that one.

Back to Mr. Clark's original motion, which was, of course, that we recess until next Thursday because he did not have the opportunity to view the documents in a full and complete way, as it was only furnished with him—in fact, he was only furnished with them just before we went to vote on the motion that was before the House, the motion for adjournment that was before the House this morning, which was some time in the neighbourhood of 10 o'clock or so, I guess it was.

As I indicated earlier, Mr. Clark, given his schedule as a legislator, has not had the opportunity up till now to have, even in the recess—because there were discussions going on about how we might deal with this—I don't believe you've had a chance to get through it at this

point. So we are now going—if Mr. Clark's motion does not pass, just to be clear, then we are at a situation where we would then go to the deliberation stage of this committee—

The Chair (Mrs. Laura Albanese): We had agreed to hear from legislative research and they would brief the committee—

Mr. John Yakabuski: Yes, that's right. The committee voted as such earlier today. I understand that.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: That's a real concern for me, given that I need partnership in this deliberation and—well, I need tri-partnership, and if not, we'll try harder. I need all men on deck, all people on deck, all hands on deck, as they say. I wasn't being gender-specific there; I was just being general.

I'd really like to have the benefit of Mr. Clark's wisdom as we deliberate this. Without it, I think we're at a bit of a disadvantage.

The Chair (Mrs. Laura Albanese): I thank you for bringing that forward to the attention of the other members.

Are there any further comments?

Ms. Soo Wong: Call the question.

The Chair (Mrs. Laura Albanese): We'll put forward the question, and the question is: All those in favour?

Mr. John Yakabuski: We would like a recorded vote, please.

Ms. Soo Wong: Madam Chair, that is not correct.

Mr. John Yakabuski: Oh yes, it is correct. I'm asking for a recorded vote.

Ms. Soo Wong: No, we know about the recorded vote. The Chair asked to call the question. She's in the middle of asking us to vote and you are saying something else. Madam Chair, am I correct? You were asking the question.

The Chair (Mrs. Laura Albanese): We put the question. MPP Yakabuski has asked for a recorded vote. All those in favour of the motion.

Interjection.

The Chair (Mrs. Laura Albanese): I'll read the motion again just to be clear. Mr. Clark has—

Mr. John Yakabuski: No, I'm asking for a 20-minute recess before the vote. Nobody's giving me the chance. They're not turning on my microphone. Ms. Wong is trying to stop me from speaking. You've got to slow this process down a bit, Madam Chair—

Ms. Soo Wong: —slowed it for three weeks.

Mr. John Yakabuski: —at least to have a chance to reply.

Ms. Soo Wong: We already had a recess.

The Chair (Mrs. Laura Albanese): You asked for a recorded vote, and that was agreed. If you're now asking for a 20-minute recess—

Mr. John Yakabuski: I'm asking for a 20-minute recess prior to the vote.

The Chair (Mrs. Laura Albanese): —that will be granted. Okay, recessed. We're back at 3:06.

The committee recessed from 1446 to 1506.

The Chair (Mrs. Laura Albanese): Recess is over. We are now going to have a recorded vote on the main motion, as amended, moved by Mr. Clark.

Ayes

MacLaren, Yakabuski.

Nays

Berardinetti, Qaadri, Wong.

The Chair (Mrs. Laura Albanese): The motion, as amended, is lost.

Now we're back to the deliberations. We have the research officer here, Karen Hindle, who will give the committee a briefing on the research package that she presented to all the members. I will hand it over to you.

Ms. Karen Hindle: Good afternoon. The committee asked that the research service prepare an overview of how Bill 34 might impact the independence of the judiciary. Accordingly, the report addresses three separate issues. The first, starting on page 2, examines what is judicial independence, or at least how the courts have interpreted judicial independence. The second section of the report, starting on page 4, deals with the courts' approach to court security. Finally, starting on page 8, there is a table that provides an overview of the exceptions provided for judges under court-specific security legislation in the other provinces and territory. I will address each of the sections in turn.

Historically, judicial independence has been seen as an individual-judge-specific issue. So the question has been whether or not a judge has been free to make up his or her mind with respect to a particular issue. However, since the charter and repatriation of the Constitution, the courts have taken a broader view as to what constitutes judicial independence. Therefore, it's not just a question of whether or not an individual member of the judiciary has the independence, or is seen to have independence, to make conclusions and render decisions, but rather whether or not the institution of the judiciary as a whole is independent, and particularly whether or not the institution of the judiciary is independent from the other two branches of government: the legislative branch and the executive branch. The rationale behind that is that the courts are responsible for interpreting and applying the Constitution and dealing with division of powers issues, as well as rendering decisions under the charter. Therefore, the courts have decided that they need to be independent, and be seen to be independent, by the public from the other branches of government.

Now, the courts have identified what they deem to be three essential characteristics of judicial independence. These categories are not closed, but for now, these are the specific issues that the courts have identified as key to judicial independence.

The first one is security of tenure: Once a member of the judiciary is appointed, he or she has security of tenure until retirement unless he or she is removed for cause. The second is financial security, in that members of the judiciary must be paid a fair salary and that their salary must not be subject to arbitrary influence. Finally, administrative independence: Administrative independence isn't as broad as what might be seen, but rather the courts have identified minimum standards with respect to the courts managing their own dockets and managing which judges are appointed to which cases.

Secondly, the report looks at court security more specifically. In my research, we were unable to find any specific cases that deal with the legality or the constitutionality of searches, questioning or preventing the movement of judges through courthouses. Nonetheless, there have been a number of decisions that have come out dealing with various aspects of court security that we thought might be helpful to the committee in their deliberations.

The first aspect of court security is the general approach to warrantless searches in courthouses. This would deal specifically with individuals who are entering or seeking to enter the courthouse. As the committee has discussed and as witnesses have raised, under *R. v. Campanella*, the Ontario Court of Appeal has generally upheld the current legislative provisions with respect to the PWPA and the Police Services Act. Courthouse security is currently permitted to search any individual who enters a courthouse. However, in this particular case and in several of the cases, they do explain that typically, in the individual cases at hand, members of the judiciary and lawyers as well as members of court staff are typically given what's given to be advance security clearances. They don't themselves go through security. In *R. v. Riley*, the courts also identified the fact that court security isn't the sole province of security officers. Rather, the Ministry of the Attorney General, the courthouse security, the police as well as the individual trial judge may all play a role in designing general courthouse security.

The second aspect which is dealt with by the courts with respect to court security is warrantless searches of detained individuals. The courts have held, in *R. v. Skinner-Withers*, that the search of detained individuals is permitted under the guise that it provides for protection of not only the court participants but of the individuals who work in courthouses, including judges.

Starting at the bottom of page 6 is the section on warrantless searches of lawyers. In *R. v. Stewart*, the court security personnel wanted to establish an additional security measure for a particular preliminary hearing. The police had raised that there were additional security precautions that needed to be put in place. As a result, what the police proposed was that every individual who was entering that particular courtroom would be subject to an additional security screening, including the crown and the defence lawyers. The defence lawyers objected to this, and the courts held that the security clearance that had been provided to them was "a revocable privilege, not a right. It must yield to the common good."

Finally, on page 7, we deal with the jurisdiction of judges over their courtrooms. The courts have taken the position that individual judges have inherent jurisdiction to control the proceedings in their courtrooms, and that includes security. However, the courts have noted that it is not the sole province of the particular judge to decide what the security measures will be. The judges typically don't have the background or the necessary information to decide what security is required in a given circumstance. As a result, they're often encouraged to consult with the police as well as with the crown in order to determine whether or not additional security measures are required in a particular case—for example, whether or not an individual may sit with their lawyer or if they have to be placed in a detention box. However, the ultimate decision with respect to security measures in a courtroom belongs to the judge.

Finally, in the third section, there is a table which outlines the different provisions which deal with judges in court security legislation in nine provinces and one territory. While it's difficult to sum up exactly what each of these provisions does, generally, most provide for something similar to that which is proposed by section 140 of Bill 34. Some of the legislation also provides for an allowance of movement by judges in their court-houses.

The Chair (Mrs. Laura Albanese): Any questions?

Mr. John Yakabuski: A thousand, maybe.

The Chair (Mrs. Laura Albanese): I would also like to hear from the ministry legal counsel to further assist us in the deliberations, but if you have any questions—

Mr. John Yakabuski: Oh, well, listen: Let's hear from the ministry.

The Chair (Mrs. Laura Albanese): —would you rather—

Mr. John Yakabuski: No, no. The ministry is going to give us their take on that. I'd be anxious to hear that.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, I have asked the question before. I'm going to ask it again. I have a motion I spoke about earlier. I want to table it, and I want to move a motion. We already voted earlier in terms of the deliberations, so I'm going to go further to say to immediately commence clause-by-clause of Bill 34. I have a copy of the motion for the committee to vote on.

The Chair (Mrs. Laura Albanese): Okay, we'll get the copy and distribute it to the members.

Mr. John Yakabuski: Madam Chair?

The Chair (Mrs. Laura Albanese): Yes?

Mr. John Yakabuski: We passed a motion this morning to begin the deliberations, in public, on the report prepared by Ms. Hindle.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: What Ms. Wong is saying is basically throwing out the decision of the committee in order to fast-track it. There are a lot of questions. The benefit of having Ms. Hindle here—and there are other ministry staff here; am I correct, Madam Chair?

The Chair (Mrs. Laura Albanese): Correct.

Mr. John Yakabuski: That is the opportune time. Because the committee has decided we're going to do this in a public forum, I would think we would be remiss not to have the opportunity to actually go through this paper and have our questions answered. Just because someone read it—I think it's an assumption to conclude that everyone understands it perfectly in legal terms and how it may affect the independence of the judiciary. I don't believe there was a time limit placed on this deliberation process.

Quite frankly, it is insulting to this committee to have that motion passed this morning and then simply have Ms. Hindle give a brief synopsis of what's in the report and consider that to be deliberation. I don't think that's the way this body is supposed to work. That is not what we decided on this morning. I'm sure my colleague would agree that we expected to be deliberating this. Am I speaking loudly and clearly enough? Because I know that Hansard was concerned that it may not be loudly and clearly enough for some people.

The Chair (Mrs. Laura Albanese): It wasn't Hansard; the concern was from a committee member.

Mr. John Yakabuski: One of the members. Okay.

To make that abundantly clear, we passed a motion this morning to deliberate. I think that should be respected.

The Chair (Mrs. Laura Albanese): I appreciate your comments, but we now have another motion on the floor that has been moved and it's in order. I am told by the clerk that it is in order. It is a debatable motion, a valid motion, that is on the floor and that has been moved by Ms. Wong.

Further debate on this motion?

Mr. Jack MacLaren: May I say something?

The Chair (Mrs. Laura Albanese): MPP MacLaren.

Mr. Jack MacLaren: I too think Ms. Hindle has prepared a very interesting paper, and I have read it. I think we have not had deliberation. We've had this document—which is a very interesting document—presented but not deliberated or debated or discussed or questioned. If we have other people from the ministry who are going to make presentations to us here, I think we'd be remiss in not hearing that. We want to do the best job we can to make sure, when the day is done on Bill 34, that we've been complete. I think this would interfere with our ability to be complete in our study, of doing things correctly and properly.

The Chair (Mrs. Laura Albanese): I appreciate your comments, MPP MacLaren. However, the motion is valid and it is in order, and therefore we are debating that motion. MPP Yakabuski.

Mr. John Yakabuski: Just so I have this clear, Madam Chair, and perhaps the clerk can give us some help on this: There's a motion before the committee now and we are debating it. There is an allotted time for each member to debate on the motion, is there not?

The Clerk of the Committee (Mr. William Short): Yes, you can debate it for as long as you want. After 20

minutes, you have to give up the floor to see if another member is interested in speaking.

Mr. John Yakabuski: Okay, so you can have the floor for 20 minutes at a time—

The Clerk of the Committee (Mr. William Short): Up to 20 minutes at a time, yes.

Mr. John Yakabuski: —all by yourself.

The Clerk of the Committee (Mr. William Short): Correct.

Mr. John Yakabuski: Thank you very much. So, I have the floor right now.

The Chair (Mrs. Laura Albanese): You do.

Mr. John Yakabuski: This issue of deliberation—I mean, I can start right in the very first part of it here, Madam Chair, with respect to the security of tenure of the judiciary. It's a very significant issue. As Ms. Hindle said, if they have security of tenure, they cannot be removed—I don't have the clause in front of me—except by retirement or to be removed with cause.

If she could define for me—I mean, these things are very important. What would constitute cause to remove a member of the judiciary? And also, if she could provide this committee with a glossary of, historically, members of the judiciary who have been removed with cause, and what that cause was, so that we have a better understanding. Right now, we don't know exactly how this affects the independence of the judiciary until we have the whole picture. And if the—

The Chair (Mrs. Laura Albanese): I don't mean to interrupt you. I just want to kindly remind you that we are discussing the motion that is now on the floor and that reads that the committee cease further deliberation of the issue and immediately commence clause-by-clause consideration of Bill 34.

Mr. John Yakabuski: Okay. Well, I would like to propose an amendment to that motion.

The Chair (Mrs. Laura Albanese): Go ahead.

Mr. John Yakabuski: That until the committee has had a complete and full deliberation, analysis and examination of the report presented by Ms. Hindle, research officer, that we do not proceed until such time—or add that in, if you can word it properly, according to legislative rules—that until we have a complete analysis, examination and deliberation on Ms. Hindle's report, that we not proceed until that has been completed, because that, quite frankly—

Mr. Shafiq Qadri: That can't be in order, Madam Chair.

The Chair (Mrs. Laura Albanese): The amendment will be needed in writing.

Mr. John Yakabuski: Okay. We have it here:

“Once the committee has heard from ministry counsel on the independence of the judiciary, and had the opportunity to question both ministry counsel and legislative research, and is duly satisfied that Bill 34 does not threaten this independence.”

The Chair (Mrs. Laura Albanese): We're going to take a five-minute recess to deal with the amendment.

The committee recessed from 1524 to 1541.

The Chair (Mrs. Laura Albanese): We're back in business. We now have an amendment to the main motion moved by Ms. Wong—the amendment was moved by Mr. Yakabuski. Everyone has a copy, and we're now debating the amendment.

Mr. Lorenzo Berardinetti: Can you please read it into the record?

The Chair (Mrs. Laura Albanese): I can read the motion into the record: Mr. Yakabuski moved that once the committee has heard from ministry counsel on the independence of the judiciary and had the opportunity to question both ministry counsel and legislative research and is duly satisfied that Bill 34 does not threaten this independence.

1540

Mr. Lorenzo Berardinetti: Recorded vote.

The Chair (Mrs. Laura Albanese): We're still debating. Any comments?

Mr. Shafiq Qaadri: It's not a sentence; it's just a bunch of succeeding clauses.

Mr. Lorenzo Berardinetti: I know it's not a sentence.

The Chair (Mrs. Laura Albanese): It's not a sentence, because it adds on to the main motion. Do you want me to read the main motion?

Mr. Shafiq Qaadri: No, that's fine. Go ahead.

The Chair (Mrs. Laura Albanese): Any further comments before we proceed to vote on this amendment?

Mr. John Yakabuski: There will definitely be further comments. Now, this is the motion before the committee, and it does deal with the report. That's why I have these concerns, Madam Chair. The security of tenure—I mean, this is something that could literally explode on us if we haven't properly investigated the history of this.

I was talking about a glossary. You know, since we've had a Constitution, at the very least, and perhaps even going back beyond that, we need to know what members of the judiciary have been severed for cause or dismissed for cause, what that cause was and what the outcomes have been, whether they're challengeable or whatever, whether they've had to go to Parliament to clarify that or confirm it, what body has the right to actually make that decision. Obviously, somebody is the boss even of the judiciary. They can be dismissed for cause but, of course, only for cause. This is part of protecting the independence of the judiciary, which was the whole point of Mr. Hillier's motion that was tabled here a couple of weeks ago.

We're only talking about one issue in this report at this point: the security of tenure and how important that is for a member of the judiciary to have the comfort, to have the confidence of knowing that their decisions are not subject to the whim of some other body—is it Parliament, is it the Legislature, is it some society, is it somebody coming from God knows where? Who has the right to make this decision with regard to security of tenure of the judiciary and whether or not they are guilty of such a breach that would cause them to be dismissed with cause?

The whole thing rests on a proper understanding of what the ramifications of that could be. When we're talking about Bill 34, a replacement of the Public Works Protection Act with respect to court security, I certainly am going to be looking for some kind of explanation. Look at some of the territories—Newfoundland and Labrador—the differences in the different jurisdictions and how that might impact us here in Ontario.

The government has talked about how they want to get this right, and I heard the minister say in her remarks in the House that they want to get this right. We've heard this several times from different speakers from the government side as this was going through second reading debate in the Legislature. I'm quite frankly pleased that Mr. Hillier was able to raise this issue, and the fact that he raised it has opened up all kinds of new doors. You know, Madam Chair, how sometimes when you ask a question what you get is more questions rather than answers? This has posed a real dilemma for us on this side of the committee. How do we proceed without knowing what actually can trigger that act on the part of whomever? I don't even have an explanation here of who can actually start that process, get that ball rolling so to speak, where, okay, we have now decided we have to censure a judge, dismiss a judge. Who makes that call and under what circumstance could it happen? It says, "with cause." I know I did see that here and I'm very thankful.

"Security of tenure: Once appointed, judges must be permitted to remain on the bench until retirement, unless they are removed for good cause. Their tenure must not otherwise be subject to interference."

That is a very, very broad swath that they have been given the right to cut. Somebody, under some circumstance, some body—I say somebody or some body—under certain circumstances can actually say, "You're being terminated, dismissed"—whatever—"with good cause" or "with cause." If we're going to proceed and ensure that this piece of legislation is one that protects the security of our court places but also has done that in the full knowledge of the impact it may have on the independence of the judiciary, then I think we need a greater explanation.

My position would be—not only to Ms. Hindle, who has done a great job of doing this research, but I'm sure, in the limited circumstances and the limited direction that she had, she could not possibly have anticipated what questions may have arisen out of her report. But as a result of her report, it is actually giving cause for further questions. That's question one: the independence of the judiciary with respect to the ability of somebody to dismiss them with cause.

That's just number one as we go through this report. That's why the point I'm making is, how do we move on beyond this without the ability of each and every member of this committee—certainly the members on this side, because we're the ones who asked for it in the first place. The motion just a couple of weeks ago by Mr. Hillier from Lanark–Frontenac–Lennox and Addington is what

precipitated this report. It would be remiss on our part if we didn't ask all of the relevant questions that this report has raised within our own thought process. That is why I'm looking at this report and saying, "Wow."

After hearing from Ms. Hindle and listening to the motion this morning, which—while I may not have been completely happy with the motion, I always accept the will of the committee. The committee is like a small portion of the Legislature. I always respect the will of the committee. Why this current government does not respect the will of the Legislature is quite another question indeed.

The crux of the matter sometimes is that when we make a decision in this committee, whether we move on, whether we wait, whether we stop, whether we go backwards, it's the will of the committee, and we all respect that will of the committee, or at least I think we should. I, certainly, as a subbed-in member—I'm not a member of the committee, actually, Madam Chair. I'm the critic for community safety, and that's why I've been subbed in onto this committee. Once the committee makes a decision, I think we should abide by it and respect its will.

The motion that was proposed this morning was that we deliberate in this public forum the report that was tabled by Ms. Hindle from the Legislative Research Service, and I thank her for the work that she has done on that.

1550

Again, to emphasize the gravity we're dealing with here, only one part—three words, "security of tenure"—has conjured up all kinds of permutations about what influence any other body has on this court so there is a possibility of someone ending the tenure of that judge. That possibility exists. We need to know the circumstances under which that could happen, so that we are comfortable that anything that is being empowered by this act, if passed—whether we can stop it or not, I don't know; I'm not a legal expert. But at least we'd be absolutely crystal clear and fully aware of what the ramifications of the passage of Bill 34 would be. So, from my perspective, that is something we simply cannot move beyond until such time as we have that undertaking by legislative research and ministry officials as well, because quite frankly, Madam Chair, the ministry staff are the ones who put together the bill with the help of legislative research. They do all that background work.

We have to have that opportunity maybe to just understand where they were coming from at the time and put it into the perspective of the independence of the judiciary—into that little silo, if you want to call it—to see how, when the bill was devised or conceived and written, if they even considered that this kind of situation could crop up. When a member of the Legislature, my colleague Mr. Hillier from Lanark-Frontenac-Lennox and Addington, brought forth this motion, did the ministry even envision that that could possibly happen? If they did, perhaps they're prepared to help us through this—make comment themselves—and if not, perhaps they need some time to understand with clarity themselves

about the door we're opening here and whether or not this report, in and of itself, actually solves anything, or does it just open that door and in there, now, you see door number one and door number two and door number three, and which one is it going to be?

It's not Let's Make a Deal because, as the minister said, at the end of the day we've got to do this right. So it's not a choice of, "Okay, let's take a chance here and go with door number two because it's right in the middle." It may be the wrong one. It may be full of snakes and whatever.

Of course, I'm only one person, and I obviously need to have the consent of the committee. But I, for one, don't know how we could, in good conscience, proceed without getting a good, complete analytical—my God, it's so worrisome that it's actually confusing sometimes, Madam Chair, but we certainly have to have that complete analysis of this report in order that we can have an absolutely crystal-clear understanding of the decisions we make today and how they will impact those people who are among the most trusted and revered and powerful people in our society, those men and women of the judiciary. We place a great deal of responsibility on their shoulders. The decisions that they make have far-reaching ramifications that can be felt for generations. So to move beyond this without having the opportunity to be assured of how that independence could be affected by this bill I think would be cavalier, to say the least, and outright irresponsible, to put it in stronger terms, Madam Chair.

That's just one. Can I move on to the next one?

The Chair (Mrs. Laura Albanese): You still have about five minutes, if you wish.

Mr. John Yakabuski: Five minutes? Do I not have 20 minutes for each one of my questions?

The Chair (Mrs. Laura Albanese): No, you have 20 minutes to speak at any one time. You've been speaking for 15, roughly, so that would leave another five.

Mr. John Yakabuski: Oh, I thought I had 20 minutes for every question, Madam Speaker, and I haven't even actually posed the question yet. So I have used 15 of my 20?

The Chair (Mrs. Laura Albanese): Yes, you have.

Mr. John Yakabuski: I have used 15 of my 20. My goodness, how time flies, eh?

The Chair (Mrs. Laura Albanese): It does.

Mr. John Yakabuski: Goodness gracious. You probably don't feel so on the other side, I'm sure.

Ms. Soo Wong: We're watching the clock.

Mr. John Yakabuski: Watching the clock. You know, those hands never move when you've got your eyes on them, Soo.

I look at another part of this paper and it says that this paper has been prepared to assist members in their deliberations on the bill. There's no question; I can categorically state, without any reservation, that it does accomplish that. It has been prepared to assist members in their deliberations on the bill, but the paper, of itself, does not answer the questions. The paper gives a very

good synopsis to the questions that our researcher may have surmised were being part of the original motion, but it was pretty broad and pretty general and somewhat vague, I may say, Madam Chair.

The Chair (Mrs. Laura Albanese): The motion?

Mr. John Yakabuski: The original motion passed by Mr. Hillier was—you know, until we have the chance to deliberate on the bill. But it didn't give the Legislative Research Service a whole lot of detail about what we were specifically looking for—just, you know, deliberations on the effect on the independence of the judiciary.

By having those qualified people here, and ministry staff here as well, this is an opportunity, then, to delve into it a little deeper and get those answers; otherwise, do we have a motion at some point looking for more information because of questions posed by the issues raised in the report? Or do we have the opportunity, then, to actually have a discussion with the members of legislative research staff and also ministry staff who would have been quite involved in the drafting of this legislation prior to it being brought before the House?

Why would we squander that resource when it is at our hands today? I would certainly wonder why we would not take full advantage of the opportunity to have that discourse with them while they're here and available. Just like we couldn't predict with absolute certainty as to whether Mr. Clark could be here next Thursday or any other member of the Legislature, we can't predict with certainty that any particular member of the Legislative Research Service could be here next Thursday, or any member of ministry staff. Things happen in life. Boy, I'd hate to leave here today and not have had the opportunity, to the fullest extent possible, to run those questions by the people who are kindly at our disposal today. So that's kind of the crux of it.

1600

Now, could I say that there's any humanly possible way that we could get through this deliberation today? Highly unlikely, Madam Chair. I mean, if you look at the content of this report and the scope of it and the breadth of it, we're dealing with other jurisdictions across the country, including provinces and territories, Northwest Territories. My brother lives in the Northwest Territories. He'd be interested in hearing some of the similarities and differences, and my gosh, that's a long section for the Northwest Territories too. He'd be interested in hearing that. My daughter just came home from Newfoundland. They've got a quite extensive section there. It would be certainly worthwhile—

The Chair (Mrs. Laura Albanese): MPP Yakabuski, I know you wish to elaborate on these very succinct points that you've made, but your 20 minutes are up. Therefore, I would ask if there are any further comments to be made. I know that Mr. Berardinetti had signalled before. I don't know if he wishes to speak still. Otherwise, I'll go to MPP MacLaren.

Mr. Lorenzo Berardinetti: I just wanted to congratulate Mr. Yakabuski for his behaviour today and the supercilious diatribe that has completely discombobu-

lated my brain. Congratulations on that. Those are my comments. Thank you.

The Chair (Mrs. Laura Albanese): Thank you. MPP MacLaren.

Mr. John Yakabuski: I think that was quite insulting. Don't you, Madam Chair?

The Chair (Mrs. Laura Albanese): It's a compliment, I believe. I didn't take it as insulting, but—

Interjection.

The Chair (Mrs. Laura Albanese): Okay. MPP MacLaren has the floor.

Interjection.

The Chair (Mrs. Laura Albanese): Please proceed.

Mr. Jack MacLaren: Madam Chair, I share Mr. Yakabuski's concerns. I think, if we go back to what Mr. Hillier wrote in his original motion—we want to deliberate on whether this legislation breaches the independence of the judiciary, which is the question that we've been working on for two weeks or so now. And then we have this report by Ms. Hindle, Bill 34 and the Independence of Judiciary, which I find very interesting, and I spent a good part of the evening last night reading it. I didn't go to sleep; I found it very interesting.

And I find Bill 34 a very interesting piece of legislation, because when I was first part of this committee and I saw Bill 34 and hydro plants—the three things stuck together—I thought, “Well, this doesn't look very interesting,” until I started to read into it. I see that we're talking about our constitutional rights to freedoms and all the things in the charter of rights and everything that's given to us by the Constitution of Canada. And I thought of what happened two years ago in Toronto with the G20, and how there was an abuse through this original bill.

Interjection.

Mr. Jack MacLaren: Now you've distracted me, John. So—now, where was I, there?—our constitutional rights and freedoms, and that's something that is very dear to my heart. We have a Constitution, we have a democracy, and we have certain rights and freedoms that our forefathers fought for.

The original piece of legislation, which is called the Public Works Protection Act, was in 1939, the Second World War, so it was meant to provide wartime security. Unfortunately, that was abused by the Toronto police in Toronto two years ago, and that's why we're all here today, as a result of the McMurtry report. This legislation is intended to correct a wrong, and I think that there certainly was a wrong, an abuse of the law and our constitutional rights two years ago in Toronto.

It's so easy to lose what has been worked for so hard and fought for and won, which is our rights, our democracy and the foundation of everything that's good about the western democracy. It goes all the way back to the Magna Carta, which is the basis of everything good and democratic and why we're here at Queen's Park.

So I found it very interesting, things like that Bill 34, in courtrooms, was going to ask us for our names—and I'll read your document, Ms. Hindle, here, because you hit the nail right on the head: “Under Bill 34, a new

section 138 ... would confer discretion upon authorized personnel to require individuals entering or seeking to enter a courtroom to produce identification, information—in other words, why you're there—and/or submit to a search," which could be whatever, including a search of your car, perhaps a body search.

All of these things could be taken to the extreme and could be a huge infringement on our constitutional rights as individuals, and then when we realize that the trial and the courtroom are intended to be a public process—the trial itself is a public exhibit of justice, and that justice must not only be done, but, to read your words again, Ms. Hindle, "In doing so, all courts must operate (and be seen to operate) independently from the influence of executive and legislative branches of government." So justice must not only be done but be seen to be done and must not be influenced by the executive and legislative branches of government. That really is us and what we're doing here. We're the legislative side of that. So we must be very careful.

We heard many depositions come and speak to us. They were all good depositions, I thought, very much divided along the lines of police and lawyers. Sometimes in the past I was a fan of neither, but I found that in this case the police were basically seeking more police powers which in my view were threatening our constitutional rights and our freedoms, and the lawyers were speaking for more freedoms, especially the Canadian civil rights association, which is an organization that I think is wonderful. I applauded the words they spoke and I was glad to see them here.

I think we have to be conscious of the fact that these rights can easily be taken away from us, and as a legislative body or group this could have an influence on judicial independence. So the judge who's supposed to have control over courtroom security, amongst other things—if we legislate more and more regulation which I would suggest could be the taking away of our constitutional rights into law, we could be taking away from a judge's right to oversee security in a courtroom, which he currently has. So I think we have to be very, very careful about that.

On page 2 of your document, Ms. Hindle, you talk about judicial independence. You say, "Historically, judicial independence referred solely to the principle that individual judges must be able to adjudicate disputes and render decisions, free from influence or interference from an 'outsider—be it government, [a] pressure group, [an] individual or even another judge.'" Of course, "government" would be us—well, us.

So we have to be very careful and cognizant of the fact that we could have that influence as we do more of interfering with the independence of the judiciary, and we have to be, I think, doubly careful of that. That's why I think your report, Ms. Hindle, is so important, because you've highlighted and identified all the good things of Constitution, democracy, Supreme Court decisions, etc., and you have all the footnotes to prove it, which I didn't read, all those documents. I could go and get those, and

maybe we should make a motion to read all those, but that might take another meeting and I'll leave that to Mr. Yakabuski. He's very good at that kind of thing.

"The Supreme Court of Canada has held"—I'll read here—"that judicial independence is a 'foundational principle' of the Constitution and derives from three main sources. First, judicial independence is mandated" by the charter, "(which guarantees accuseds 'a fair and public hearing by an independent and impartial tribunal')." "

So there we have the word "public," which again is instituting and telling us that a courtroom is a public place and it should be free and open and inviting to the public to come, and the trial which is administered by the judge is a public event; the public is invited and welcome to attend and nothing we should do should interfere or discourage the wishes of the public to attend.

Then we have our Constitution Act of 1867, which again talks to appointment tenure, which John talked about.

"Third, the Supreme Court has held that judicial independence is an 'unwritten' norm or principle, 'recognized and affirmed in the preamble to the Constitution Act, 1867.'"

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So, again, we must think back and think about how sensitive and how delicate a democracy and our constitutional rights are and how easy it is, thinking we're doing something good as we create more legislation and regulations—it could be called red tape. Always, always, they take away rights from us as government comes in with laws and regulations.

We are a free country. We have a charter. We have a Constitution that defines that we are free men. Unfortunately, sometimes we are tempted to write laws and regulations, thinking we're doing something good when in fact we take people's rights away, and that is actually a very bad thing. Throughout history, we've seen countries fail as they fight for freedom, achieve freedom and then become a little bit lazy and gradually legislate and regulate themselves out of the business of a free society and a democratic society.

It would be wonderful to hear the ministry counsel speak today, because we haven't had a chance to hear that. We have had a chance to read your documents, Ms. Hindle, and an attempt is being made here to go through them in some detail. I'm afraid we won't be able to do them justice, because we are limited in time, but we can each speak to it. We even have the motion that says it's time to stop talking about what you wrote about. I think that's just a crying shame, because I don't think I've ever had enough talk about our constitutional rights and freedoms and our democracy and the roots of what made this country great. Whenever that happens, I think it would be a sad day for Canada.

We go on, as we see here in the Constitution: "recognized and affirmed by the preamble to the Constitution Act, 1867." I did mention that earlier, and I just mention that again, because I think that's fundamentally important to what we're doing here.

We can get into warrantless entry or warrantless searches, which I think are a terrible thing. I disagree with those entirely. I think this piece of legislation has a few things wrong with it, like asking who you are or showing ID and not defining what a search should be, and we'll get to that a little bit later. But those are also all potentially infringing on a judge's right to control the environment in the courtroom and security in the courtroom, as well as, and even more importantly, the right of free Canadians to have these things imposed upon them, which I really have a big problem with, and I resent that terribly.

I think that police, meaning well as policemen, believe that more policing is better. Unfortunately, it's up to us as lawmakers to rein that in and make sure that doesn't happen. Excesses of anything cannot be good, and I think we had a little taste of policing getting a little carried away two years ago with the G20. We saw the effects of that. People were literally picked up and put in jail for a night without a warrant, and actually, as we found out later, without good reason, and it didn't even conform to the law at the time because the law applied to the other side of the fence, not this side. That was a very wrongful thing. Most of us think those kinds of things can only happen in Third World countries, and it happened here. So I would say, how far are we from being a Third World country?

Again, this just means we have to be doubly careful about what we say and do here in this wonderful institution, the Legislature of Ontario. I think that although it's such a small and minor thing in the big picture of governing the province of Ontario—security in a courtroom in this Bill 34—basically, it's the principle involved, the principle of freedom, the principle of democracy, the principle of the independence of a judge, which could be the highest job in the land other than the Prime Minister or perhaps the Premier. Any time we start to tamper with and interfere with the rights of these people to be independent and free-thinking and do what is democratically right and protect our constitutional rights and our freedoms that we fought for over the centuries, we are at a point where we are dangerously near to making a mistake and giving away everything that was so hard-fought-for.

I think at this point in time I might take a little break, because I'm sure John might have one more word to say.

Interjection.

Mr. Jack MacLaren: More than one word? Thank you, Chair.

The Chair (Mrs. Laura Albanese): Further debate?

Mr. John Yakabuski: I would certainly allow others to—

The Chair (Mrs. Laura Albanese): I thought Ms. Wong had her hand up.

Ms. Soo Wong: Madam Chair, it's been brought to my attention that the ministry counsel has left because he was here until 4. So the other question I want to ask is: Are we going to be voting on Mr. Yakabuski's amendment to my motion, and when will that be done? We

have heard 20 minutes; I think Mr. MacLaren about 15. I don't know if my colleague from the NDP wants to have any comments. I just wanted to move along with these amendments. If we're going to vote on them, I can tell the staff—

The Chair (Mrs. Laura Albanese): That's why I'm asking if there are further comments—

Ms. Soo Wong: —so people know that the counsel is not here.

The Chair (Mrs. Laura Albanese): —and if there are not, we can proceed to consider the amendment that Mr. Yakabuski has moved.

Any further comments?

Mr. John Yakabuski: Yes, I would certainly love to comment further. One thing I would like to say, Madam Chair, is that we're, at some point very soon, going to be—

The Chair (Mrs. Laura Albanese): And if I may clarify, we will have to recess really quickly when the bells ring, because we will only have five minutes—

Mr. John Yakabuski: Well, we don't even have—

The Chair (Mrs. Laura Albanese): We'll have five minutes to go up.

Mr. John Yakabuski: But that's only if there's a recorded vote.

The Chair (Mrs. Laura Albanese): Yes, and that's all we recess for.

Mr. John Yakabuski: Pardon me?

The Chair (Mrs. Laura Albanese): That's all we recess for, a recorded vote.

The Clerk of the Committee (Mr. William Short): You only recess for a recorded vote. When the bells are ringing, that's when the committee recesses.

Mr. John Yakabuski: We only recess for a recorded vote.

The Clerk of the Committee (Mr. William Short): In the House.

Mr. John Yakabuski: So we don't have the opportunity as members of the Legislature to go in and vote on any of these bills unless they are recorded votes?

The Clerk of the Committee (Mr. William Short): You can leave the committee, but—

Mr. John Yakabuski: I know, but then we would—if we're not at the committee, the committee could do whatever they want in our absence.

The Chair (Mrs. Laura Albanese): When the bells are ringing, that's when we recess.

Mr. John Yakabuski: Okay. So we'll only be recessing, then, if there is a recorded vote?

The Chair (Mrs. Laura Albanese): Correct.

Mr. John Yakabuski: Okay. Well, that clarifies it, and as I said earlier, I abide by the will of the committee.

The Chair (Mrs. Laura Albanese): I think those are the rules, the standing orders.

Mr. John Yakabuski: Yes—oh, they are part of the standing orders? Well, I certainly abide by them. Mr. Levac, the Speaker, would certainly concur with that.

My colleague Mr. MacLaren has raised again a whole set of other questions that arise out of the receipt of this

information on the part of legislative research. I don't have the answers for Mr. MacLaren as to his concerns that have been raised as a result of this information that we've received.

So it goes back to my point—and I know Ms. Wong just wants to get on with it, but is that the way we should be doing things? I can't sit here and say, "Let's just move along because the Liberal parliamentary assistant to the minister wants us to do so."

There are 13 million Ontarians who expect us to do our job here. They expect us to properly dissect legislation and make sure that when we're doing it, we're doing it right. In fact, your minister said so herself in the House, that we've got to get it right.

You'd think you'd want to do it exactly right, and we're even getting all more kinds of concerns raised by various groups, individuals, stakeholders, otherwise—even after the deputations were received here a few weeks back. We now have even further communications about concerns with the bill. Is it not in our best interests, in the best interests of Ontario's 13-million-and-some-odd people, to get it right?

There's a saying in carpentry: "Measure twice, cut once." So let's not be too hasty here, I say to my colleague on the other side, but certainly a colleague on this committee, Ms. Wong. I think we need to measure twice, and, if necessary, we'll measure a third time, but before we cut, we'll be sure that we've got that pencil mark in the right spot, as they say.

I don't know why the resistance on the part of the government. We're going on about this. Why don't we just start talking to the legislative counsel, to the legislative research, to the ministry staff, and start talking about the issues that we've got in this report? Because the reality is that until we do, there are questions that will remain unanswered.

Do you want to have another problem a few years down the road? You remember what happened back in 2010—I know you weren't a member of the Legislature then, but you would certainly be familiar; you don't live far away from downtown Toronto—when the public security minister at the time, behind closed doors, unbeknownst to the members of the public, invoked the Public Works Protection Act to act as their security hammer for the G20. We all know the fallout from that.

André Marin, a very, very capable Ombudsman, was tasked to complete a report on that event and the government's role. He didn't title it A Review of the G20 in Toronto. He didn't title it What Happened at the G20. He didn't title it We Can Do Better. He didn't title it Some Things Went Wrong. He titled it Caught in the Act—caught in the act. It was a scathing indictment of the government and how they managed security issues here in the province of Ontario—a scathing indictment. There was literally page after page that ripped apart the excuses that the government gave and the lame explanations in the aftermath. I should get a copy of that, and I could read you some of those passages. It would be an opportunity for you to have some sober second

thought about what you're asking to do here, Ms. Wong. You're asking to just gloss over, move on. That's what happened in 2010, when, you recall—it was Minister Rick Bartolucci at the time. He basically got a significant demotion. That was—

The Chair (Mrs. Laura Albanese): Pardon me, MPP Yakabuski. We'll have to go upstairs and proceed to vote. We'll recess until after the vote.

The committee recessed from 1624 to 1641.

The Chair (Mrs. Laura Albanese): We can resume, and we'll have to stop for another vote that is coming up in 28 minutes.

Mr. Yakabuski, you had the floor. MPP Yakabuski.

Mr. John Yakabuski: Oh, yes. Pardon me.

The Chair (Mrs. Laura Albanese): Do you wish to continue?

Mr. John Yakabuski: Yes. We don't have to vote on that, right?

The Chair (Mrs. Laura Albanese): No, we don't.

Mr. John Yakabuski: That's good. There was doubt as whether I could win that vote. Where was I, Madam Chair?

Mr. Shafiq Qadri: I believe your daughter just returned from Newfoundland.

Mr. John Yakabuski: Oh, gosh, no. That was earlier. But that's always a good starting point, I would say to the member from—Etobicoke Centre, is it?

Mr. Shafiq Qadri: Etobicoke North.

Mr. John Yakabuski: Etobicoke North. It's never a bad place to start when you talk about your daughter. Emily just got back. I'm going to be seeing her tomorrow. She just got back from Newfoundland. Tomorrow, we're actually going to see our newest granddaughter. That's going to be an exciting time. I'm going to do a couple of meetings in the morning and then get going. But yeah, well of course, that's another issue altogether. Thank you very much, I say the member for Etobicoke North.

The issue of the differences and how the court security and independence of the judiciary is addressed in various jurisdictions is quite mind-boggling in some ways. I mean, we have some very short passages in some; for example, in New Brunswick, under their Court Security Act, it simply says in section 8—Klinger would be interested in hearing that—"Nothing in this act derogates from or is intended to replace the power of a judge, whether established by common law or otherwise, to control court proceedings or of a person charged with carrying out the orders of the judge."

Yet, when you go to Newfoundland, it is basically two full pages here. Their Court Security Act—and that was one that was updated in 2010, or maybe even only written in 2010. The Court Security Act, 2010, talks about security officers as well:

"8(1) A security officer shall evict a person from a court area or restricted zone where directed to do so by a judge and may use reasonable force to do so.

"8(2) Unless otherwise directed by a judge, a security officer may evict a person for causing a disturbance in a

court area or restricted zone and may use reasonable force to do so.

“9(1) This act shall not be considered to derogate from or replace the power of a judge under common law or otherwise to control the proceedings of the court.

“9(2) This act shall not be considered to affect the right of a judge to have unimpeded access to a court area or a part of a court area.

In another section, entitled “Court Areas and Restricted Zones Regulation”:

“6(1) Only the following persons may enter a restricted zone:

“(a) a judge or court employees;

“(b) a security officer; and

“(c) another person authorized by a judge or security officer under the authority of section 4 of the act.”

It’s a lot more complicated when you’re talking about the Newfoundland act.

“6(2) Notwithstanding paragraphs (1)(b) and (c),

“(a) a security officer shall not enter a judge’s chambers unless that security officer is authorized to do so by a judge; and

“(b) a security officer shall not authorize a person to enter a judge’s chambers.”

That would seem fairly clear, but it wouldn’t hurt to get an interpretation from Ms. Hindle, who I understand is a lawyer herself and would obviously be far better at interpreting those sections than myself, who is not a lawyer.

“6(3) Subsection (2) shall not apply where a security officer reasonably believes an emergency exists in a judge’s chambers, and a security officer or another person authorized by a security officer may enter a judge’s chambers for the purpose of responding to the emergency.

“7. Nothing in these regulations derogates from or replaces

“(a) the power of a judge at common law or otherwise to control the proceedings of the court;

“(b) the power of a judge to give directions to a security officer incidental to the exercise of a contempt power;

“(c) the right of the chief judge or a judge in the exercise of judicial functions; or

“(d) the administrative power of the chief judge to direct and control the precincts of a courthouse.”

In another section headed, “Court Security Regulations”:

“6. Nothing in these regulations derogates from or replaces

“(a) the power of a judge at common law or otherwise to control the proceedings of the court;

“(b) the power of a judge to give directions to a security officer incidental to the exercise of a contempt power;

“(c) the right of the chief judge or a judge in the exercise of judicial functions; or

“(d) the administrative power of the chief judge to direct and control the precincts of a courthouse.”

That is just the section in Newfoundland.

Section 140, I believe, in Ontario—I have to get a copy of the bill handy here. Am I correct? The section in our bill, Bill 34, is it 140, that nothing derogates—

Ms. Karen Hindle: Yes, it is.

Mr. John Yakabuski: Section 140.

Ms. Teresa J. Armstrong: There you go.

Mr. John Yakabuski: Thank you very much to my colleague from London—Fanshawe.

Ms. Teresa J. Armstrong: It will speed the process.

Mr. John Yakabuski: Oh, let’s not get too hasty.

“140(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings....

“(2) Nothing in this part derogates from or replaces any powers that a person authorized by a board or by the commissioner as described in subsection 138(1) otherwise has under the law.”

In order to fully understand that, of course, you’d have to go to 138(1), which is, “A person who is authorized by a board to act in relation to the board’s responsibilities under subsection 137(1) or who is authorized by the commissioner to act in relation to the Ontario Provincial Police’s responsibilities under subsection 137(2) may exercise the following powers if it is reasonable to do so for the purpose of fulfilling those responsibilities....”

We don’t have section 137 here, so we don’t have that act here.

It gives you some indication, though, Madam Chair—oh, I’m sorry; I have those tied up there.

Ms. Teresa J. Armstrong: I’ll get it.

1650

Mr. John Yakabuski: Thank you very much, because we don’t want to lose any of our time here.

It gives you some idea of the nuances, depending upon which jurisdiction we’re talking about, perhaps some of the complexities that some people may see that as. Again, it just behooves us to take the time, to ask the questions of the staff here today, the ministry staff and also of the legislative research experts here today, so that we could go through this on a point-by-point basis, getting a better understanding so that, as I said before we went to vote on the private member’s bill—I believe that was Bill 73 tabled by Ms. Scott, the member for Haliburton—Kawartha Lakes—Brock, with respect to some amendments to the Endangered Species Act. Interestingly enough, the government lost that vote.

I wonder, Madam Chair, if they will respect the will of the Legislature on that vote that took place today, because it’s interesting: Earlier this year, there was a motion—I believe it was by Mr. Vanthof from Timiskaming—Cochrane, if my memory serves me correctly—that would have removed the harmonized sales tax, or at least the provincial portion of the harmonized sales tax, from home heating.

Ms. Teresa J. Armstrong: No, you stand to be corrected.

Mr. John Yakabuski: I stand to be corrected?

Ms. Teresa J. Armstrong: Mr. Mantha.

Mr. John Yakabuski: It was Mr. Mantha from Algoma–Manitoulin; a correction, and I'm always glad to be corrected by a fellow grandparent. So I say thank you to Ms. Armstrong from London–Fanshawe. It was Michael Mantha from Algoma–Manitoulin who tabled that motion, and to my best recollection since then, the government has not acted and has not respected the will of the Legislature.

That brings me back to today's vote: Will they respect the will of the Legislature when it comes to Bill 73, tabled by Ms. Scott today? An interesting question—it remains to be answered. It has been referred to the committee on social policy, and we'll follow that closely.

But it brings me to my bigger point: why the government refuses to respect the will of the Legislature when it comes to the motion that was passed by this Legislature several weeks back, moved by Mr. Klees, that a select committee be established to investigate the, I almost say tragic, scandal at Ornge—

The Chair (Mrs. Laura Albanese): Pardon, Mr. Yakabuski. We have reached the 20 minutes again, and therefore I have to interrupt you and ask if there are any further comments. Mr. Berardinetti.

Mr. Jack MacLaren: I'd like to say a few words.

The Chair (Mrs. Laura Albanese): He's the first one.

Mr. Lorenzo Berardinetti: I'm going to speak a little bit to this, but with respect to all the members that are present here today, I've been listening to what Mr. Yakabuski has been saying and I think the point is being made quite simply that—

The Chair (Mrs. Laura Albanese): Could you please speak up a little more?

Mr. Lorenzo Berardinetti: Absolutely. Could I use this microphone instead? Thank you. I'll have to lean into the mike.

I appreciate what the comments are, but I think all of us around the table know what's going on, and I'm not casting judgment on it. I think Mr. Yakabuski wants to delay this, and I think he's already told us, because he wants the Ornge special committee to be set up. So I appreciate that.

But I think a more productive way to do it would be to speak to your House leader and perhaps we could speak to our House leader, and with the NDP, and try to get them to resolve this committee or the Ornge issue or whatever it is. But to sit around here and delay a bill for a point—and I'm not saying whether it's valid or not; I'm just saying there's a bill in front of us, and this is our third time now, I think, that it's been adjourned or not dealt with.

It does a disservice to the clerks' department, to the people from Hansard, the French translators and to other staff who are here, to our legal department that is here, to the people in the audience who are here and those who will be reading this transcript later. We all have our political points of view, and that's fine; I have no objection to that and to what Mr. Yakabuski is trying to achieve.

Maybe we could go back to our House leaders at some point in time, have someone explain that the committee's not moving and instead of fighting this war of attrition, try to resolve this in a way that benefits all of those involved in this bill. In the substance of the bill we're dealing with important things, and Mr. Yakabuski has touched on many of them. We know that court security is important, and we know that protecting nuclear facilities and other facilities is important as well. I think it would be in the interests of the people who protect those places, especially the nuclear facilities, to have something in place.

The present act, we all agree, needs to be changed. No one is defending the previous act, and we're trying to be productive and make some changes here. For a number of amendments—you know, we'll meet next Thursday, and if nothing is resolved, we're going to go through this again.

I'm willing to sit here—it's part of my job—from 9 till 6, or if you want to start earlier, we can start at 8 and, with the permission of the House leaders, go past 7, if we have to. But realistically, I think we have to be practical about what we're doing here.

We all know what's going on here. Let's not try to fool ourselves. I speak candidly from the heart when I say we're at an impasse with the Ornge special committee, and I think that should rest with the House leaders and with question period, where it rightly belongs. But to bring it to committee—no offence, again, to Mr. Yakabuski; thumbs up to that. I just think we're doing a disservice to, again, the various groups: Hansard, the translation services, the clerks' department, the legal department. Have I missed anyone? I think I've included—

The Chair (Mrs. Laura Albanese): Research.

Mr. Lorenzo Berardinetti: Ontarians, the people who turn on and off these mikes and make sure that committee functions properly, those who set up the room and take it down, because there are many other events that are held in here.

Something in my heart is unsettled. Sorry, I'm not going to tell you where that came from.

But anyway, I will say this: I know the point that's trying to be made, and if there's a way that we can do this—I'm not a House leader. I don't know if you are, Mr. Yakabuski.

Mr. John Yakabuski: I'm not.

Mr. Lorenzo Berardinetti: No, I think it's Mr. Wilson.

Interjection.

Mr. Lorenzo Berardinetti: Yes. And the NDP have their House—

Mr. Shafiq Qadri: Was it Witmer?

Mr. Lorenzo Berardinetti: No, it wasn't Witmer. It's always been—now I've lost my train of thought.

We know who the three House leaders are and they should get together or else a resolution should be made, but to sit here—I mean, this morning the NDP were ready to move on this and debate it, we were here ready to debate it. I don't know if you were ready to debate it

or not, but I just think the point has to be made on the record that I do feel for the others who are here, who are not involved in politics per se, or partisan politics: the actual employees who are here are doing their service, very professionally, as usual. We are basically hampering them and, with that, I would say—we'll listen to the next round and this will continue to 6, no doubt about it, but I just want to make the point: Let's just try to find a way to resolve this and debate this very important bill for the sake of all Ontarians.

Ms. Soo Wong: Vote.

Mr. Lorenzo Berardinetti: I think it's time to go vote. Can I continue talking after?

The Chair (Mrs. Laura Albanese): Thank you for that. We are now within the time allotted to recess for the vote, so we shall do that, and we'll come back.

Mr. Lorenzo Berardinetti: Thank you.

Mr. John Yakabuski: Excuse me, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: When I asked earlier, I was told that each member had 20 minutes to speak at any one time, but there was no time limit on debate.

The Clerk of the Committee (Mr. William Short): We have a vote.

The Chair (Mrs. Laura Albanese): We have a vote in the House.

Mr. John Yakabuski: Oh, I'm sorry.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: Oh, to vote in the House.

The Chair (Mrs. Laura Albanese): Yes, it's to vote in the House. So I am going to recess.

Mr. John Yakabuski: Okay. Thank you very much.

The committee recessed from 1701 to 1714.

The Chair (Mrs. Laura Albanese): So we can resume. Mr. Berardinetti had the floor just before we were interrupted to go and vote in the House.

Mr. Lorenzo Berardinetti: Thank you, Madam Chair. I'm not trying to whittle down the time here, but I just want to make a few pertinent points.

The other point I wanted to make was that last night the Conservative Party tabled, I think, 11 amendments to this bill. We spent most of the day talking about the importance of the document prepared by the lawyer, the solicitor, the research officer, and that was available a long time, on May 2 or early May. The 11 amendments were submitted last night, and I just want to put into the record that they were submitted last night.

We had no objection to moving on and doing the bill—if necessary, take a break to consider some of these amendments—but at no time did we ever say, “We want to adjourn the debate. We don't want to listen or deal with it.”

I have a copy of the agenda in front of me. It's the Standing Committee on Justice Policy agenda, Thursday, April 26, 2012, committee room 1.

“Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012.

“9:00 a.m.” this morning, it says, “Clause-by-clause consideration.

“10:25 a.m. Recess.

“2 p.m. Clause-by-clause consideration.”

We've done nothing on the agenda. It's now approximately a quarter after 5 on the clock here.

As I was saying earlier, whether it be adding 11 amendments or spending most of the day arguing over the research document that was prepared—and I say everything with the greatest of sincerity, keeping in mind that we have a lot of staff here and that there's an underlying point that the Conservative Party or Mr. Yakabuski wants to make regarding another issue—I honestly don't think that it should be brought down to this level. I think the people of Ontario deserve better. They deserve elected members—who are well paid—around the table here to debate the bill and amend it appropriately. The argument regarding Ornge should be dealt with in quarters other than this one, either in the House leaders' offices or on the floor of the House or during question period.

I just find it disappointing that we would not use this committee to prepare ourselves—all of us; not just the Liberals, but every member here, respecting the NDP, the Conservatives—with, I always think, the best faith, not in bad faith but in good faith, to deal with this bill. If they want to take a 20-minute recess or a break or want to explain something further, fine, but to come here this morning at 9 o'clock with my colleagues and other members of provincial Parliament and basically argue over procedural matters and other things I think does a disservice to this committee.

I've been here since 2003. Prior to that, I was a publicly elected city councillor from 1988 till 2003, and I've never seen in my life, in my 24 years—

Interjection.

Mr. Lorenzo Berardinetti: “Your council was better,” my colleague says. I don't know. City hall's not in perfect shape either. But the process of democracy is difficult. Winston Churchill once said that of all forms of government, democracy is the least terrible. So there are flaws in our system, and that happens naturally. People disagree, and there are places set up, whether it be the Parliament in England or other Parliaments or other locations around the world, whether it be in the United States or Russia, whether it be in Zimbabwe, whether it be in China, and they try to work things out. I'm not saying it's good or bad, but they try to work things out; otherwise, the world wouldn't function.

Getting back to this committee, it has a purpose. It's the Standing Committee on Justice Policy. An agenda was circulated to us. There are three items contained in it. We've dealt with none of the items, and I apologize, on my behalf and on behalf of my colleagues, to Hansard, to the French services, to the solicitor who's here, to the clerks' department—to all those, because I see in the morning people set up this room. They come in early, they set up the room, put all the tables together, the wiring and all that work which kind of goes unknown—

for really no purpose. It'll be taken down tonight. There may be an event tomorrow or during the weekend in this room, and all because of an argument that really is outside of this room.

I am not frustrated—I mean, if you want to sit till 7 p.m. or 8 p.m. or ask the House leaders to allow us to sit during constituency week, I will support that, and I'm on the record for that. I'm not going anywhere. I like to debate. I'd like to go through an issue, work it out and come to an agreement on what this bill will look like.

To use this time to frustrate the committee, make it not work, do a great disservice to the public servants who are here, who work very hard—there will be a French copy of this soon, and I'm almost afraid to see that French copy version, or the English copy version, because we haven't addressed the substantive issues—the substantial issues—of this bill.

That being said, I have apologized. I hear the bells are ringing, and I would ask, with the greatest respect, let's respect this committee. Thank you.

1720

The Chair (Mrs. Laura Albanese): Thank you, Mr. Berardinetti.

I have Mr. MacLaren wanting to speak and Ms. Wong.

Mr. Jack MacLaren: Again, I'd like to refer to Ms. Hindle's paper, which I find very interesting, and I applauded her for writing a really interesting paper. I'm going to carefully file this for the future. I think I can use it again and again.

I'm going to refer to your page 4. Down near the bottom, it talks about the general approach to warrantless searches at courthouses. You recite a court case in the Ontario Court of Appeal, and I mention this—because it's not something I agree with; I point to it as something that I disagree with and I think we should try not to do, again, because I'm a great advocate for our rights as Canadians, our constitutional rights and our freedoms that were fought for, as I've mentioned several times before.

Here, the Ontario Court of Appeal held that warrantless searches of the public entering courthouses pursuant to the Public Works Protection Act were justified under the charter—according to this former court case of *R. v. Campanella*—and that court security officers did not need reasonable and probable grounds to conduct searches. I think that's appalling, and it's really unfortunate to hear that a court found that decision, because I can't imagine—it's a rare case where you don't need reasonable—I think you always need reasonable and probable grounds to search somebody. If there's not reasonable and probable grounds, it should not happen.

If somebody is in a courtroom who appears to be a threat or is behaving in a strange or peculiar manner, a judge, a security guard or a policeman would surely act and do whatever is necessary to provide security in a courtroom, whether it's apprehend, arrest or search that person, but there would be reasonable and probable grounds. Never should anything be done without reasonable and probable grounds, because we have constitutional rights that define that that should never happen.

We go across to the next page, page 5, and you are quoting a decision of the Court of Appeal which made the following comments in support of searching all members of the public entering courthouses without prior security: “It is notorious that, unfortunately, there have been serious incidents of violence in the courthouses of this province by the use of weapons that have been brought into the courthouse.”

I think “weapons” is the key word there. I wasn't aware that there were quite a number of violent incidents in courtrooms. I've talked to my colleague Mr. Singh, who is a lawyer, and he informed me that he wasn't aware of any significance violence in courtrooms, that it was rare, so to say that it's commonplace is a surprise to me.

However, I think we all agree that there is no place for weapons in a courtroom, and that would be the one and only thing, I would say, that a search would be required for in a courtroom or for entry into a courtroom, and not this business that you do not need reasonable and probable grounds to conduct searches.

On that note, I'd like to just read a paper here that was forwarded to me by the Canadian Civil Liberties Association, an organization that I have the highest regard for, because they stand up and fight for our civil liberties, our constitutional rights, our freedoms as outlined in the Charter of Rights and Freedoms. This is a courtroom law that I would just like to take a minute to read, because I think it's all we really need here in Ontario. It does not create a breach of the independence of the judiciary, and this might be something that we should look into. This came from the Canadian Civil Liberties Association; it's actually a Manitoba law, the Court Security Act of Manitoba:

“Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

“Definitions

“1. In this act,

“‘court’ means the Court of Appeal, the Court of Queen's Bench or the Provincial Court;

“‘court area’ means a building, part of a building, or space used by a court and designated by regulation as a court area;

“‘minister’ means the minister appointed by the Lieutenant Governor in Council to administer this act;

“‘restricted zone’ means a part of a court area designated by regulation as a restricted zone;

“‘screen’ means search using methods prescribed by regulation;

“‘security officer’ means a person or a member of a class of persons appointed under section 2;

“‘weapon’ means a firearm as defined in the Criminal Code ... and anything else that could be used to

“(a) cause death or serious bodily harm to a person; or

“(b) threaten or intimidate a person.

“Appointment of security officers

“2(1) The minister may appoint persons or the members of a class of persons as security officers to provide security in court areas.

“Powers of security officers

“2(2) While carrying out his or her duties under this act, a security officer is a peace officer.

“Weapons”—and here’s the key point—“prohibited in court areas

“3. No person shall possess a weapon in a court area unless authorized to do so by regulation or by a security officer.”

That’s a very important point and really the only concern for security in the Manitoba courtrooms, and something that we might want to adopt here.

“Security officer may screen before entry

“4(1) a security officer may screen a person for weapons before the person enters a court area.

“Security officer may refuse entry

“4(2) A security officer may refuse a person entry to a court area if the person

“(a) refuses to be screened for weapons; or

“(b) is in possession of a weapon and is not authorized by regulation or by a security officer to possess the weapon in a court area.

“Security officer may screen after entry

“5(1) A security officer may require a person inside a court area to move to a place—inside or outside the court area—where screening is routinely conducted, and may screen the person for weapons.

“Security officer may evict

“5(2) A security officer may evict a person from a court area if the person

“(a) refuses to be screened for weapons; or

“(b) is in possession of a weapon and is not authorized by regulation or by a security officer to possess the weapon in a court area.

“Limited entry to restricted zones

“6(1) No person shall enter a restricted zone unless authorized by regulation.

“Security officer may evict

“6(2) A security officer may evict a person from a restricted zone if the person is not authorized by regulation to enter that restricted zone.”

The Chair (Mrs. Laura Albanese): MPP MacLaren, I would like to remind you that we should be speaking about the motion—

Mr. Jack MacLaren: Alrighty. This all does pertain to the motion because we’re talking about—

The Chair (Mrs. Laura Albanese): The amendment to the main motion.

Mr. Jack MacLaren: Sorry?

The Chair (Mrs. Laura Albanese): We’re talking about the amendment that MPP Yakabuski moved.

Mr. Jack MacLaren: Yes, and that is—where do I have my amendment? Right here, I think.

“Once the committee has heard from the ministry counsel on the independence of the judiciary, and had the opportunity to question both ministry counsel legislative research, and is duly satisfied that Bill 34 does not threaten this independence.”

All right, I’m sorry; I digress. Thank you for bringing me back on track.

So to carry on with Ms. Hindle’s paper here, I was reading the paragraph on page 5:

“The proceedings can provoke strong emotions. Everyone with business in the courthouse and ordinary members of the public have the right to expect that a courthouse will be a place of safety.”

And that’s really where I guess I digress: that safety involved weapons. I guess my point of view is, we don’t need to have all these other things that could possibly create a breach of the independence of the judiciary, such as asking for identification, the reason you’re going to be in the courtroom; “search” is undefined and therefore it could be an extensive search. The Manitoba law defines a very more restrictive search pertaining to weapons only. That was the point I was trying to get at there, that this was a good idea and something that does not breach the independence of the judiciary. Perhaps it was a bit lengthy that I read the whole thing. I find it fascinating, but maybe everybody doesn’t.

1730

But back to your paper, Ms. Hindle: “Everyone with business in the courthouse and ordinary members of the public have the right to expect that a courthouse will be a safe place,” which I said. “The public generally expects the government to ensure the safety of people who are either required or wish to attend court,” and we all agree with that. We want courtrooms to be open, public, to invite people there. We don’t want to do anything that would discourage that. Of course, extensive searches of body and cars and things are an unnecessary and undesirable thing, in my view. Bill 34 actually calls for all of those things, and I think it’s becoming clear from people like the Canadian Civil Liberties Association that they are unnecessary and undesirable. Weapons should be our only concern, and in that way we do not discourage people from coming to a public place and seeing the public event of a trial. “Most members of the public would expect the government to take reasonable measures to ensure the safety of the courtroom environment,” and again, that’s what we are trying to work toward or advocate for.

“The Campanella decision also upheld the constitutionality of section 137 of the Police Services Act, which requires the police to ensure the security of judges, court participants, and the premises, as well as ‘ensuring the secured custody’ of accuseds brought before the court.

“In a more recent case of the Ontario Superior Court of Justice, *R. v. Riley*, the court held that the Chief Justice of Ontario, the Ministry of the Attorney General, the chief of police and the trial judge share responsibility for security in courthouses.” Again, we want to be concerned that Bill 34 would potentially interfere with a judge’s ability to have decision-making power over security within a courtroom, although it has been pointed out that a judge certainly wouldn’t be an expert, necessarily—probably not—and that he would have to consult security people for advice on what would be an appropriate level of security in a courtroom. “In particular, while trial judges may have jurisdiction over security in

their courtrooms, and the police maintain the security of courthouses under section 137 of the Police Services Act, neither may exercise complete control:

“Neither the chief of police nor a trial judge can be solely or even primarily responsible for [establishing a secure environment at a criminal trial]. Security involves important issues of public policy, the physical structure of courthouses and a considerable expenditure of public money that far exceeds the authority of the chief of police or a trial judge to commit to.”

So I think we all understand that, that it's a very complex issue, that we need people who understand the structure of the buildings, the physical layout of the buildings, the official plans of the buildings, and that police chiefs and trial judges need to be able to consult people to get that kind of information so they can properly ensure security. It was pointed out to me that a courthouse that would have a basement, perhaps, could potentially be a place for a security-risk person to park a van full of explosives, for instance. So that would be more knowledge of the floor plan of the building, the structure of the building, the danger to the courtroom if it happened to be above a place where a bomb could perhaps be placed.

I know that during the depositions, Mr. Berardinetti asked a question of police: What would happen if a lawyer brought a briefcase into a courtroom and had a gun in it? I remember that you and I were out in the hallway when you asked that question. Again, that relates to weapons, and of course, “Should a lawyer be searched or be exempt?” was one of the questions. Many lawyers were very concerned that the confidentiality of papers in their briefcase for their client should be privileged and protected, and therefore searching a lawyer's briefcase is an unwanted thing. But I think we all agree that that briefcase should be searched or at the very least scanned for a weapon such as a gun or a knife. That, I think, was the point you were trying to make, and we all agree on that point. But again, that's a weapons concern. Therefore, for the security of the courtroom, even a lawyer's briefcase should be scanned so that we don't have to worry about that, because, as you explained, there would be a potential reason why a lawyer might be frightened by, say, a mobster or an intimidating person into carrying a gun into a courtroom, which he normally wouldn't do if he wasn't influenced otherwise.

“Security must also engage the responsibilities of the Chief Justice and the Ministry of the Attorney General.”

“Representatives from the police, the Chief Justice, the Ministry of the Attorney General, and the affected trial judge must all work together to manage the security arrangements at Ontario courthouses.”

I think the point here again is that we don't want to breach the independence of the judiciary. I think that that can be done without going to any great extreme, so that judges will have the freedoms to be in charge of security in courtrooms. We'll have security guards or police as required, depending on just how much risk or danger there is in a particular court trial. If it's a dangerous

mobster or gang type of crime where there are murders and violence involved, certainly a higher level of security would be warranted there and greater measures taken—maybe even extraordinary measures—which normally would not be needed for, say, a more ordinary, less dangerous and less risky type of trial.

I think certainly with common sense and with regard to Bill 34, if we're careful not to get carried away with taking away too many of our rights and freedoms—or we should certainly not fall into the trap of taking away too many of our rights and freedoms by asking for identification and reasons why you're in a courthouse, body searches, searching of cars when they're unnecessary. We could say that security guards would be given the option or the right to possibly and occasionally ask for those things. The problem is that when you put those kind of things in legislation, occasionally an unreasonable person who becomes a security guard could overstep his bounds and do unreasonable things. So good legislation can be abused by bad people. We are all human beings, and occasionally the wrong person becomes a security guard or even a policeman, and that's why we have appeal processes, oversight and accountability.

But the best way, I think, to overcome the risk of abuse of law is to make sure we don't provide opportunities for abuse of law where people would potentially lose their freedoms and their securities. We can fall into that trap again with Bill 34 of going overboard to try to account for every potential impossible risk and failure, or security risk, in a courtroom.

I think what we have to learn to accept in this country is that with freedom comes risk, and we have to, as citizens and Canadians in Canada, accept that the price of freedom is that, yes, something could happen. There will be a risk that somebody could potentially hurt us, and we have to accept that that's just the reality and one of the risks of living in a free and democratic society, and having free and open courtrooms. In that way, when there's freedom for people and the public, and we don't get carried away with putting too many things in a bill like Bill 34 that would take away, breach, the independence of a judiciary—again coming back to that, it would have been very nice to hear from the ministry counsel. I'm not sure if that's going to be something we're going to be able to do. I would feel greatly remiss if that cannot happen. That's in this motion and I would very much like to hear that. It's not something I can speak to; it's something I'd like to listen to; and if that is something that doesn't happen, I think we are all just less for it. It would be an injustice if that was an end result here.

We're talking here about, as we go down Ms. Hindle's paper, warrantless searches of inmates in courtrooms. Again, I think we have to have regard for the rights of people who are inmates and who are prisoners. I know I certainly have regard for people who have been through the legal system and made mistakes and been convicted, gotten released. I have—

The Chair (Mrs. Laura Albanese): MPP MacLaren, I am sorry to interrupt you—

Mr. Jack MacLaren: Am I off track again?

The Chair (Mrs. Laura Albanese): No, but I believe your time is up; your 20 minutes have expired.

We are almost at 10 minutes to the vote, but I have flexibility. I have Ms. Wong and Mr. Singh, who still wanted to speak, and Mr.—

Mr. John Yakabuski: Well, might I just suggest, Madam Chair, that we are now inside of 10 minutes, but when that vote takes place we will then be at 5:50.

The Chair (Mrs. Laura Albanese): Correct.

Mr. John Yakabuski: With any reasonable time to get back here from the vote, I would suggest that we simply adjourn at this point, because we are going to come back for, what, eight minutes? Seven minutes? Six minutes?

The Chair (Mrs. Laura Albanese): If that's the will of the committee.

Ms. Soo Wong: Madam Chair, I want some clarification from my colleague before we adjourn on this motion that's been put forth to amend my motion, because I want to be very clear so that I can go back to staff. So I just wanted to ask the question, Madam Chair—

Mr. John Yakabuski: Are you asking the Chair or asking me?

Ms. Soo Wong: Well, through you to you, Mr. Zakabucci, through the Chair first. I just want to make sure—

Mr. John Yakabuski: Yakabuski.

Ms. Soo Wong: Yakabuski, okay. The question I have here is: Are we asking these ministries' counsels to come to the next meeting to address the concerns about this potential threat of independence? I want to be very clear. If we're going to adjourn and not be clear on this motion, Mr. Yakabuski, I will be concerned, Madam Chair.

The Chair (Mrs. Laura Albanese): Well, that's what the amendment asks for, I would assume.

Mr. John Yakabuski: The amendment, obviously, has not been taken care of.

The Chair (Mrs. Laura Albanese): It has not been taken care of today and it's still on the table—it's on the floor—but that's what it would ask for. It depends on how the committee votes on it.

Mr. Lorenzo Berardinetti: Madam Chair, if I may just quickly: I'd like to move a motion that we continue past 6 until 10 p.m. and that we talk to our House leaders during this bill intermission. My House leader is in the House, and I think the other parties would be here. I move that we sit till 10.

Mr. John Yakabuski: That's not happening.

The Chair (Mrs. Laura Albanese): We would need a motion—

Mr. Lorenzo Berardinetti: Why is it not happening, Mr. Yakabuski?

Mr. John Yakabuski: It's not happening.

The Chair (Mrs. Laura Albanese): Excuse me. We would need a motion passed in the House to do that.

We will now recess and go upstairs for the vote.

The committee recessed from 1743 to 1755.

The Chair (Mrs. Laura Albanese): We're reconvened. Ms. Wong, you had the floor.

Ms. Soo Wong: Thank you, Madam Chair. I just want some clarification, through you, to Mr. Yakabuski, with regard to his amendment to my main motion. He's requesting that he wants to hear from the ministry counsel on the independence of the judiciary and then have an opportunity to ask the staff questions with respect to this piece; am I correct?

Mr. John Yakabuski: The motion is the motion.

Ms. Soo Wong: I want to get some clarification because—

The Chair (Mrs. Laura Albanese): We're debating the motion. The motion hasn't been voted on yet, but that's what the motion is asking for.

Ms. Soo Wong: Okay. Should the motion get approved or supported by the—

The Chair (Mrs. Laura Albanese): Carried.

Ms. Soo Wong: —carried by the members, I'd like to put it on the table, Madam Chair, that this item be the first item for next week's committee, so that at the beginning we hear from staff on this particular item, and it will be a time-sensitive item. That's what I want to ask.

The Chair (Mrs. Laura Albanese): The motion will be definitely the first item on the agenda because that's the one that is being debated. That will depend on the will of the committee. I've asked if there was further debate. If we wish to hear from ministry counsel at that point, it will be up to the will of the committee.

Ms. Soo Wong: You see, Madam Chair, my biggest concern, and not just concern, but also disappointment—we have twice today accommodated a recess for the PC colleagues, and that's fine. Being respectful of the staff time—I think my colleague has already spoken about this issue. The ongoing frustration of the committee and the delay strategy by the PC Party in terms of moving this bill forward need to be addressed. I'm not sure this committee is the right forum to address the concerns that have been raised by my colleague.

But more importantly, Madam Chair, with respect to the committee and the process piece, we also have to be very mindful of the time and the resources that have been wasted the last three weeks to deal with—the intent of this committee is to go through clause-by-clause. It's now hitting three weeks, and respecting the staff and ultimately the taxpayers of Ontario—basically the strategy that has been put forth by my colleagues opposite is to punish the standing committee for its work at the expense of your philosophical, or your concerns about not having a select committee—call it whatever you want.

But I am extremely disappointed and concerned about this kind of strategy to almost hold this committee hostage in doing its good work; okay? There is another forum to address the concerns raised by my colleagues opposite. This is not the proper committee to deal with that kind of stuff. Those are my comments, Madam Chair.

The Chair (Mrs. Laura Albanese): Thank you, Ms. Wong. I have MPP Singh, who wanted to say something. We have one minute left, and I have MPPs Singh and Yakabuski.

Mr. Jagmeet Singh: I'm okay, then.

The Chair (Mrs. Laura Albanese): You're okay.

A 30-second reply before we adjourn?

Mr. John Yakabuski: I just want to respond to one thing—well, we had two minutes to go a minute ago.

I wanted to respond to both the comments by Mr. Berardinetti and Ms. Wong with respect to the adjournments. Last week, Ms. Wong herself indicated that she would be asking for an amendment to deal with the NDP amendments that were brought in late last Wednesday for

the committee. So to imply that the only people seeking amendments last week were the Conservatives would be erroneous. You indicated that you were concerned about the NDP amendments that arrived late and that you would be looking for time to discuss and digest those amendments yourself.

So as to the amendments that we've put forward and they're prepared to look at: Well, they weren't prepared to look at the NDP amendments last week.

I realize, Madam Chair, that time has expired. We will, I guess, be discussing this again next Thursday.

The Chair (Mrs. Laura Albanese): This committee is adjourned until next Thursday, 9 a.m.

The committee adjourned at 1800.

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