

[REDACTED]

From: Terri Giffin [REDACTED]
Sent: March 12, 2025 1:07 PM
To: Office of the Legislative Counsel
Subject: Bill 21 Justice Administration Amendment Act
Attachments: 2024 04 16 Letter to AG Johns re SISA (1) (1).pdf; 2024 05 29 - Letter to Sujit Choudhry (1).pdf

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Good afternoon,

I have enclosed two documents that I would like distributed to the Standing Committee on Public Bills prior to our representation to the Committee on Bill 21. Please let me know if you require any additional information. I can be reached at this email or at 403 479-3270.

Kind regards,
Terri Giffin

WITH PREJUDICE

April 16, 2024

The Hon. Brad Johns
Attorney General and Minister of Justice
Department of Justice, Province of Nova Scotia
1690 Hollis Street
P.O. Box 7
Halifax, NS
B3J 2L6

c/o Deputy Attorney General and Deputy Minister of Justice, Candace Thomas

VIA EMAIL: candace.thomas@novascotia.ca

Dear Attorney General Johns:

Re: Proclamation of the *Security and Investigative Services Act*, SNS 2010, c 9

We are counsel for Terri Giffin regarding her interest in having the *Security and Investigative Services Act*, SNS 2010, c 9 ("*SISA*") proclaimed into force, nearly 14 years after it received Royal Assent. The tragic death of Ryan Sawyer in December 2022 – which *SISA* could have prevented – underlines the urgent need to implement *SISA*'s comprehensive regulatory framework for private security, which would extend to bouncers not just at cabarets but at every establishment with liquor licences.

It is Ms. Giffin's position that the provincial cabinet (the Lieutenant-Governor in Council) is legally obligated to bring *SISA* into force. But Premier Tim Houston has publicly stated that the provincial cabinet has absolute discretion to *never* bring *SISA* into force, and has declined to do so.

The Premier's position, with respect, is legally incorrect.

While *SISA* confers a discretion on the provincial cabinet to determine *when* to bring *SISA* into force, it does not – and could not – confer the power to decide *whether* to bring *SISA* into force. Only the Legislative Assembly of Nova Scotia can repeal *SISA*. The provincial cabinet cannot do so through executive fiat.

The only legally permissible reason for the provincial cabinet to delay bringing *SISA* into force is to ensure *SISA*'s effective implementation. But since 2015, the Province appears to have taken no steps whatsoever to develop concrete plans to implement *SISA*. Moreover, and only in response to public pressure from Mr. Sawyer's death, the Province implemented a series of half-measures under existing legislation which are a wholly inadequate substitute for *SISA*.



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Should the provincial cabinet continue to fail to proclaim SISA into force, Ms. Giffin will have no choice but to commence an Application for Judicial Review in the Nova Scotia Supreme Court to ensure the provincial cabinet meets its legal obligations under SISA.

The Death of Stephen Giffin

Ms. Giffin is the sister of the late Stephen Giffin. On December 23, 1999, Stephen was involved in an altercation with a bouncer and bartender employed by Captain Eli's Restaurant and Lounge in Halifax. Police and paramedics found Stephen unconscious in the lounge's rear parking lot. Two days later, Stephen was removed from life support and passed away. He was 38.

The two lounge employees were both charged with and tried for manslaughter. Both were ultimately acquitted.

The *Private Investigators and Private Guards Act, 1989*, c 356 ("PIPGA") licences security businesses and "private guards" for hire in Nova Scotia. However, PIPGA exempts private guards employed directly by a single business whose primary undertaking is not the provision of security services. This exemption covers bouncers employed by lounges with liquor licences – such as those who were charged with Stephen's death.

In the wake of Stephen's tragic death, his father, Mr. Cyril Giffin, advocated publicly for stronger regulation of bouncers to ensure that no Nova Scotian suffered the same fate as his son. His efforts received a groundswell of public support – and ultimately, the support of every major political party in the province, including the Progressive Conservatives.

The Giffin family remains fully committed to preventing wrongful deaths caused or contributed to by insufficient regulation of lounge and bar staff through SISA.

Precursors to SISA

In 2007, in response to tragedies like the death of Stephen Giffin, the Progressive Conservative government began to consider legislative measures to enhance the regulation of bouncers.

In January 2007, Progressive Conservative Minister of Justice Murray Scott published a discussion paper regarding the regulation of private security in Nova Scotia. The discussion paper demonstrated the Progressive Conservative government's interest in extending the scope of PIPGA. The paper also included results of an attached questionnaire targeted at industry actors, which revealed that 83% of industry respondents supported an extension of licensing to door security and/or bouncers.

On December 7, 2007, Diana Whalen, the Liberal MLA for Halifax Clayton Park, introduced Bill No. 88, which would have amended PIPGA to broaden the definition of "private guard" to include "bouncer", and to require that no person could act as a private guard unless they had completed appropriate training and testing.

On November 21, 2008, during second reading, Progressive Conservative Minister of Justice Cecil Clarke spoke in favour of Bill No. 88. He specifically addressed the need for legislative action, and the training requirement in particular:





Security guards and other individuals offering protection services to Nova Scotians should be licensed and properly trained in their duties. These amendments aim to enhance protection of the public through increased public trust and confidence in the security industry by ensuring those engaged in such security activities are suitable and properly trained.

Governments are accountable to citizens to ensure that such legislation provides for overall public safety and meets the public security needs of the general public. Similar legislation has been introduced in Ontario, Quebec, Alberta and British Columbia. Here in Nova Scotia, the Private Investigators and Private Guards Act originally enacted in 1972 and last amended in 1989, provides a regulated environment for private investigators and private guards in Nova Scotia.

As the private security industry grows, and it is, it is important that legislation include all security practitioners and that it reflects the changing role that the private security plays in the overall safety of Nova Scotians.

While Bill No. 88 received second reading, it appears to have languished in committee despite having all-party support, and died when a provincial election was called in May 2009.

The Legislative Assembly Passes SISA

In May 2009, the NDP came to power. Rather than revive MLA Whalen's bill, the NDP chose a more comprehensive approach – *SISA*. *SISA* repeals *PIPGA*, and replaces it with an enhanced regulatory regime for "security guards", including bouncers. As we explain in more detail below, *SISA* requires licensing for security guards. Through the licensing process, individuals would have to disclose any criminal charges brought against them, including any incidents involving serious injury from their actions. Moreover, licences may be revoked.

On November 2, 2009, NDP Minister of Justice Ross Landry first attempted to introduce *SISA* as Bill No. 59. This first attempt to introduce *SISA* did not progress beyond first reading.

On April 9, 2010, Minister Landry re-introduced *SISA* as Bill No. 22. During second reading, *SISA* received support from all parties.

The Progressive Conservative MLA for Cumberland South, Murray Scott, had the following to say:

This bill is certainly a step in the right direction. It's a good bill. [...] Again, this is a good bill. There are lots of opportunities in this to make our communities safer, to offer opportunity for those who want to take part in these professions in regard to security and obviously investigative services, to be better enhanced with good training. I'm very supportive, I know our caucus is, of not only training but especially education.

Liberal MLA for Dartmouth East Andrew Younger explained that he agreed with the principle of the bill. Liberal MLA Whalen (who had introduced Bill No. 88 in 2007) presciently warned:

I think my main concern is, I don't want to see a tremendous delay while this bill passes here and then goes off to the bureaucracy to have the regulations developed. As we've seen in other bills,





that can sometimes take years. I believe the safety of the public and the safety of the workers is paramount here. The sooner we can take action to put a standard in place and start moving on that, the better.

On May 11, 2010, SISA received Royal Assent. SISA contains a commencement provision, whereby it comes into force on such day as the provincial cabinet "orders and declares by proclamation" (section 57).

The Assembly passed SISA despite significant opposition from the private security industry and the lounge and beverage industries in Nova Scotia. However, this industry opposition is often overstated – and did not contest SISA's applicability to lounges.

For example, the industry raised concerns regarding: (a) the narrowness of an exemption in SISA for certain in-house security, for persons employed or engaged to perform the activities of a security guard or private investigator solely with respect to employees or contractors of the employer and who have no interaction with the public; (b) the requirement for a "clean criminal record" for licensees and cautioned that employment in the industry could suffer as a result; (c) the concept of portable individual licensing, whereby individuals who meet all licensing requirements can manage their own licences and change employers without to reapplying for a new licence and paying another licensing fee; (d) the potential duplication with existing federal standards with respect to security officers; (e) the search and seizure powers provided to compliance officers in SISA; and (f) privacy concerns in respect of the information-gathering powers of the Registrar.

The regulatory burden with which the industry is supposedly concerned is, in short, exaggerated.

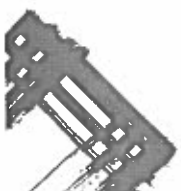
The Provincial Cabinet Fails to Proclaim SISA into Force

Even though the industry did not oppose SISA applicability during the legislative process, it appears to have prevented the provincial cabinet from proclaiming SISA into force for nearly 14 years, under successive governments led by every major political party in Nova Scotia.

Under the NDP, SISA was not proclaimed into force. To be sure, some time was necessary to enable SISA's effective implementation – for example, to develop training standards for security personnel. But these concerns can only justify a brief transitional period, not the ongoing refusal to bring SISA into force and develop any plans to do so 14 years later.

According to [REDACTED] Minister Landry (as reported by the *Globe and Mail* on September 9, 2023), after SISA was enacted, members of the lounge and beverage industry raised concerns regarding the perceived regulatory burden that SISA would impose on businesses. In a subsequent *Globe and Mail* article (dated September 11, 2023), Mr. Landry again referenced industry opposition, and was unable to explain why SISA was not proclaimed.

In October 2013, the Liberal Party formed the government. In 2015, it began to take steps to bring SISA into force.





On March 31, 2015, licenses for security staff pursuant to *PIPGA* that were subject to expiry were granted only a three-month extension of validity, no doubt because *PIGPA* would soon be replaced by *SISA*.

On May 21, 2015, Acting Deputy Minister of Justice for Nova Scotia Tilly Pillay authorized a further three-month extension of validity.

On June 1, 2015, the Public Safety and Security Division of Nova Scotia Justice sent a memorandum to all private security, armoured vehicle services, and private investigation agencies in Nova Scotia, explaining that the further extension to existing licenses under *PIPGA* had indeed been granted in anticipation of the implementation of *SISA*.

However, once again, it appears that no further steps were taken to proclaim *SISA* into force – no doubt in response to continued industry opposition.

In May 2017, the Liberal Party returned to power. It appears to have taken no additional steps to proclaim *SISA* into force.

2022: The Death of Ryan Sawyer

In August 2021, the Progressive Conservative Party returned to power.

On December 24, 2022, Ryan Sawyer was found unresponsive outside the Halifax Alehouse after an altercation with a bouncer who had applied compression to Mr. Sawyer's neck. Mr. Sawyer passed away later that day, at age 31. On January 1, 2023, his death was deemed a homicide. In February 2024, the bouncer was charged with manslaughter and criminal negligence in Mr. Sawyer's death. The trial has been scheduled to begin on September 29, 2025.

After Mr. Sawyer's death, it came to light that the *same* bouncer had previously been charged with assault for his alleged involvement in the vicious beating of a different patron at the *same* bar, on October 10, 2022. That trial is slated to begin on April 30, 2024.

As we explain below, had *SISA* been proclaimed into force, this bouncer may have had his licence suspended after the October 2022 beating – and would not have been on duty the night of Mr. Sawyer's death.

The Attempts to Write Off *SISA*

Mr. Sawyer's tragic death reignited the public's interest in *SISA*.

On February 4, 2023 and February 16, 2023, the CBC reported that *SISA* had not been proclaimed into force. The February 16 story reports you stating that you are unclear why *SISA* had not been brought into force, and had asked officials to look into it. It also quotes you saying, "I felt it [i.e. *SISA*] was good legislation at the time". Moreover, since Mr. Sawyer's tragic death, the NDP and Liberal Party have both publicly called on the Province to proclaim *SISA* into force.

But internal government documents tell a different story. An Issue Summary dated February 15, 2023 prepared for Deputy Minister of Justice Candace Thomas and (now) Associate Deputy Minister Chris Collett





simply states that after *SISA* was enacted, "[i]ndustry consultations raised concerns over the regulatory burden on businesses" and stated that "[i]t is the responsibility of bars and other licensed establishments to ensure their staff are appropriately trained" – i.e., not the Province. It disclosed no plans to implement *SISA*.

On February 22, 2023, the Department of Justice met with the Alcohol, Gaming, Fuel and Tobacco Division ("AGFTD") of Service Nova Scotia, *not* to discuss why *SISA* had not been proclaimed into force and to develop implementation plans, but instead to consider options for door security staff under the *Liquor Control Act* and regulations. AGFTD proposed the modification of Cabaret Class A Liquor Licences to require criminal records checks.

The AGFTD also suggested the Department of Justice connect with the Nova Scotia Department of Labour, Skills and Immigration, on the basis that the latter's workplace and occupational health and safety policies could serve as an alternative avenue to make the desired changes to the regulation of security guards, including bouncers – notwithstanding that *SISA* regulates security guards, including bouncers.

On February 28, 2023, Minister Johns received an Information Note entitled "*Status of Security and Investigative Security Act*". The Note once again described industry opposition to implementing *SISA*: "[d]uring stakeholder engagement, concerns were raised by industry that not all in-house security staff (e.g. bouncers and/or door security staff employed by a bar) required the same amount of training as other staff".

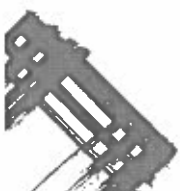
The Information Note also stated that "[o]ur [Ministry staff's] review of *Security and Investigative Services Act* is ongoing", but provided no details on the content of this purported "review", whether the proposed measures under the *Liquor Control Act* were temporary transitional mechanisms to facilitate the proclamation of *SISA* or permanent alternatives to it, the details of any current plans to implement *SISA*, and why *SISA* remained unproclaimed since 2010. Crucially, it did not propose an action plan to bring *SISA* into force.

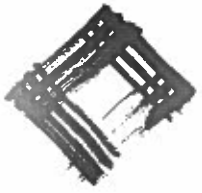
In a letter dated March 16, 2023, you responded to NDP MLA Gary Burrill's letter of the previous day inquiring why *SISA* had never been brought into force. You explained that the Province was "working ... to identify other mechanisms within existing mechanisms to set standards for high risk licensed establishments", which "would allow for a more targeted approach to areas of concern without unfairly impacting the entire industry". We observe that you did not state that the proclamation of *SISA* was under consideration, let alone that there were plans to do so. On the contrary, your letter can only be read as reflecting the Province's intention to *not* proclaim *SISA* and instead take "a more targeted approach" because *SISA* would "unfairly" affect the entire lounge industry. As you are aware, MLA Burrill has since publicly called for *SISA* to be proclaimed into force.

On May 12, 2023, the Province issued a press release announcing the new measures for the five cabarets. The details are sparse. It states:

Security staff will now need a criminal record check and security training to work at late-night bars known as cabarets.

Bar security staff will need to take an approved security training course by July 1 in order to work at cabarets. They will also need to provide a criminal record check on request and complete a responsible beverage service training program.





At least one manager or supervisor who has completed both training programs and provided a criminal record check will also need to be on-site during opening hours. ...

Security staff will need to complete the Alberta ProTect Security Training Program, offered online. In the coming months, the Province plans to develop its own training program, which will replace the Alberta program.

If cabarets are found to be in violation of these new licensing requirements, they will be subject to corrective action, which could include a suspension of their liquor license.

The new measures pale in comparison to SISA

The new measures pale in comparison to SISA.

First, SISA applies to all security guards (section 2), including bouncers not just at cabarets but at lounges, bars and restaurants with liquor licences across Nova Scotia. According to the *Globe and Mail*, over 242 establishments in downtown Halifax alone have liquor licences. The new measures only apply to the five Class A Cabaret Liquor License Holders: the Dome/Level 8 Night Club & Lounge, HFX Sports Bar & Grill/The Alehouse, the Toothy Moose, and the Capri Cabaret.

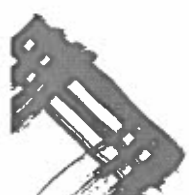
Second, SISA establishes a licensing regime for security guards, and *requires* a criminal record check on application or renewal (section 13(3)). SISA makes it an offence for a person not to reveal a criminal charge (section 46). The new measures only require bouncers "to provide a criminal record check on request".

Third, SISA authorizes the refusal to issue, renew, suspend or revoke a licence if "the applicant or interested person in respect of the applicant is carrying on activities that are in contravention of the Act or will be in contravention of the Act if the applicant is issued a license or it is renewed" or "is charged with a criminal offence" (section 15(2)). Moreover, SISA requires a security guard and their employers to disclose criminal charges against them to the regulator (sections 32(1) and 5(a)). The new measures confine "corrective action" to cabarets, and do not apply to bouncers themselves.

Fourth, SISA requires employers to disclose "the use of a weapon or the allegation of use of excessive force by the employee" and "any incident involving serious injury to, or the death of, another person alleged to have resulted from the actions of a security agent employed by the business entity" (sections 32(5)(c) and (d)). The new measures do not impose this obligation.

Fifth, SISA makes it an offence to violate the Act, punishable by fines or imprisonment. Fines can range up to \$15,000 (for individuals) and \$250,000 (for businesses). Violation of the new measures is not a provincial offence.

Sixth, SISA is provincial legislation. The new measures appear to have been created through the existing powers under the *Liquor Control Act* and regulations, neither of which has been amended. There is no legal obligation to impose the new measures, which could later be watered down or withdrawn entirely.





SISA might have prevented Mr. Sawyer's death. If SISA had been in force, The Alehouse would have been under an obligation to report that the bouncer had been charged for the October 2022 beating. The bouncer's licence could have then been suspended or revoked. If so, the bouncer would not have been on duty on December 24, 2022 – and would have never had occasion to interact with Mr. Sawyer. Mr. Sawyer might still be alive today.

The Province Intends to Never Proclaim SISA into Force

On or about September 21, 2023, Premier Houston expressed no shyness or compunction to the *Globe and Mail* about not proclaiming SISA into force:

Do we have a problem with unproclaimed legislation? No we don't [...] It's not unlawful. It's our position that the decision of the government to make legislation subject to proclamation at a later date, that's under the sole authority of the legislature [...] I mean governments of all stripes in this province have not proclaimed bills. ... It's not unlawful in any way, shape or form.

The Province's internal communications align with Premier Houston's public position. An internal Information Note prepared for you (dated September 29, 2023) states that "the training and oversight of door security staff (bouncers) is more appropriately aligned with the AGFTD within their *existing* authorities under the *Liquor Control Act* and related regulations" and "[t]he Department of Justice is working collaboratively with Service Nova Scotia and internal Services', Alcohol, Gaming, Fuel and Tobacco Division (AGFTD) to ensure the safety and security of all Nova Scotians using *existing* authorities" (emphasis added).

The Information Note also states bluntly: "[n]o action on SISA is planned at this time". Remarkably, it also refers to SISA as "[t]he proposed SISA", as if SISA were a bill or legislative proposal. In fact, it is a provincial law that received Royal Assent in 2010, fully 14 years ago.

In short, the words and conduct of the Province only lead to one conclusion: it has decided to *never* proclaim SISA into force, and to instead adopt measures under "existing authorities" which are half-measures at best.

The Provincial Cabinet is Required to Proclaim SISA into Force

The Province's actions are illegal. When legislation contains a commencement provision which confers on the provincial cabinet the power to proclaim it into force on a later date, the cabinet has a legally limited power to determine when to bring that law into force. The provincial cabinet does *not* have the power to determine whether the legislation should be brought into force at all.

The Ontario Court of Appeal confirmed this legal proposition in *Canada Christian College and School of Graduate Theological Studies v Post-Secondary Education Quality Assessment Board*, 2023 ONCA 544. The Court stated (at para. 50): "there should be no ambiguity as to the limits on the Minister's discretion. Put simply, it would not be open to a Minister to decide that an enacted statute will never be proclaimed."

It is for the Legislative Assembly to repeal SISA, not the provincial cabinet through executive fiat. The Ontario Court of Appeal's decision is the leading authority on this question in Canada. It represents the law in Nova Scotia.





In making its holding, the Ontario Court of Appeal relied on the decision of the United Kingdom House of Lords in *R v Secretary of State for the Home Department, ex p Fire Brigades Union*, [1995] UKHL 3, which presents an analogous situation to that of *SISA*. The House of Lords held that the United Kingdom Secretary of State had acted unlawfully by not proclaiming a statute into force and instead replacing the existing non-statutory scheme with a different non-statutory scheme. As the Ontario Court of Appeal explained (at para. 58):

The judges in the majority [of the House of Lords] noted that a commencement provision confers discretion on the executive for the purpose of bringing the sections into force. They held that the Secretary of State was under a duty to keep under consideration from time to time whether or not to bring the provisions into force. He could not exercise the power so as to exclude its future exercise. In other words, the House of Lords held that it is for Parliament, not the executive, to repeal legislation.

In *Fire Brigades*, Lord Browne-Wilkinson made the following points that are highly apposite to this matter (emphasis added):

the Secretary of State comes under a *clear duty to keep under consideration from time to time the question whether or not to bring the section (and therefore the statutory scheme) into force*. In my judgment he *cannot lawfully surrender or release the power contained in [the commencement provision]* so as to purport to exclude its future exercise either by himself or by his successors.

[...] if the power is conferred on the Secretary of State with a view to bringing the sections into force, in my judgment *the Secretary of State cannot himself procure events to take place and rely on the occurrence of those events as the ground for not bringing the statutory scheme into force*. In claiming that the introduction of the new tariff scheme renders it undesirable now to bring the statutory scheme into force, the Secretary of State is, in effect, claiming that the purpose of the statutory power has been frustrated by his own act in choosing to introduce a scheme inconsistent with the statutory scheme approved by Parliament.

Just like the Secretary of State in *Fire Brigades*, the Department of Justice, in concert with the AGFTD, has breached its duty to keep under consideration when to bring *SISA* into force and excluded its future exercise by pursuing an alternative course of action. On its own account, the Province has no plans to proclaim *SISA* into force. Nor have you directed that such plans be prepared.

Moreover, the Department of Justice cannot crowd out *SISA* by unilaterally crafting new rules and policies under existing statutory authority to regulate a field that *SISA* comprehensively addresses. These new rules are a second-rate regulatory scheme. They are not a temporary measure that is a transitional "on ramp" to *SISA*, but rather, a seemingly permanent "off ramp" away from *SISA* and one which is a wholly inadequate substitute for *SISA*. The provincial cabinet has unilaterally scuttled *SISA* and replaced it with half measures without proceeding through the legislative process.

As stated by Lord Lloyd of Berwick in *Fire Brigades*:



Ministers must be taken at their word. If they say that they will not implement the statutory scheme, they are repudiating the power conferred on them by Parliament in the clearest possible terms. It is one thing to delay bringing the relevant provisions into force. It is quite another to abdicate or relinquish the power altogether. Nor is that all. The Government's intentions may be judged by their deeds as well as their words. The introduction of the tariff scheme, which is to be put on a statutory basis as soon as it has had time to settle down, is plainly inconsistent with a continuing power under section 171 to bring the statutory scheme into force.

These statements are directly applicable to the matter at hand. By both word and deed, the Department of Justice has made clear that it has no intention to ever proclaim *SISA* into force; the Province has instead taken concrete steps to implement second-rate rules under another statute, steps that are "plainly inconsistent" with the continuing power to bring *SISA* into force.

Finally, the Ontario Court of Appeal also noted (at para. 54) that "[t]he legitimate grounds for delaying proclamation must be related to the conditions necessary for implementing the legislation." Whatever legitimate reasons may have existed soon after *SISA* was granted Royal Assent in 2010 to delay its proclamation to ensure its successful implementation have long since passed.

The Legislative Assembly is the only entity with the authority to repeal *SISA*. If the government wishes to repeal *SISA*, it should do so through the legislative process, and defend its decision on the floor of the legislative assembly in a public debate.

Resolution

We reiterate our demand that the provincial cabinet proclaim *SISA* into force immediately. Should it fail to do so, we will no choice but to commence legal proceedings to compel the provincial cabinet to do so.

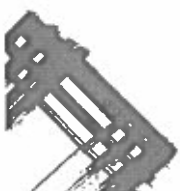
Thank you for your consideration.

Sincerely,

Sujit Choudhry

Paul Daly

Nick Papageorge



Barbara Kerr
Senior Solicitor

May 29, 2024

By Email: sujit.choudhry@hakichambers.com

Sujit Choudhry
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Toronto, ON M6R 2R3

Dear Mr. Choudhry et al:

We are in receipt of your letter to then Attorney General and Minister of Justice Brad Johns dated April 16, 2024. Attorney General and Minister of Justice Barbara Adams has requested that I respond on her behalf.

The tragic death of Stephen Giffin in 1999 prompted the Legislature of the day to assess the private security regulatory framework in Nova Scotia as it relates to liquor licensees. The *Security and Investigative Services Act* ("*SISA*") was enacted in 2010 and has yet to be proclaimed. That said, ensuring bar staff are equipped with the necessary skills and training to meet occupational demands continues to be a priority for the province. To this end, measures not inconsistent with the *SISA*, including new training and screening requirements for some bouncers, enhanced oversight of staff, and licensing suspension for cabarets in non-compliance with licensing requirements, were introduced in 2023.

The Legislature enjoys discretion to determine the procedure of a statute's proclamation. Through section 57 of the *SISA*, it intentionally deferred to Governor in Council the decision as to when (date), and how (in full or part) the *SISA* would be proclaimed.

Your review of select documents and media articles results in a subjective conclusion that the *SISA* will 'never' be proclaimed; this is speculative. As your letter reflects, the issue of private security at liquor serving establishments was considered by governments of all stripes, at various times, both preceding and following the *SISA*'s enactment in 2010. The fact that no government proclaimed it is not indicative of a discrete decision by each of the successive governments to permanently abandon the Act, but only that ongoing assessment did not support proclamation at the time.

The February 28, 2023 Information Note, combined with then Minister Johns March 16, 2023 response to MLA Burrill's letter, do not, as you've suggested, reflect an attempt to "write-off" the *SISA*. Conversely, these actions demonstrate continued work around the *SISA* and a consideration of whether the situation had arrived when proclamation was appropriate.¹ The government was indeed 'keeping

¹ See *R v. Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] 1 All ER 888

under consideration’² the commencement of the *SISA*. You interpret the statement in the Information Note “...no action on *SISA* is planned at this time” as evidence of a pre-determined position to permanently nullify a legislative decision. We offer an alternate conclusion; that the *SISA* continued to be considered, and that current circumstances did not support proclamation ‘... at this time.’ Assuming that proclamation would never proceed, or that the *SISA*’s commencement would not be subject to periodic assessment, is not a fair or reasonable conclusion.

We are aware of what the Ontario Court of Appeal offered in *Canada Christian College and School of Graduate Theological Studies v. Post-Secondary Education Quality Assessment Board*,³ which suggests that the executive’s discretion in this area is not entirely unfettered. Even if a court in Nova Scotia were to find the reasoning of the Ontario Court of Appeal persuasive on this point, that case concedes the discretionary nature of the executive power:

[44] The discretion to determine when proclamation would occur is a power expressly provided through the commencement provision in the Act. Exercising this discretion was not *ultra vires* to the Minister. To the contrary, it was precisely what the commencement provision contemplated.

At most, the above-noted case stands for the proposition that the executive has a “continuing obligation to determine whether to exercise its statutory discretion under a commencement provision”⁴ which accurately describes the situation with respect to the *SISA*.

Notably, the court also stated that the appellant College offered no evidence to the Minister’s decision to not proclaim the legislation was motivated by bad faith - an analogous situation presents with respect to the *SISA*. There is no suggestion that delaying commencement of the *SISA* is motivated by improper purposes or irrelevant considerations. As such, the decision to have not yet proclaimed the *SISA* is a legal exercise of the executive’s discretion.

In summary, while the Province of Nova Scotia is not considering immediate proclamation of this legislation, it remains under consideration. While we view this consideration to be within the exclusive jurisdiction of the Governor-in-Council, should you decide to file a judicial review application, it can be served on the Attorney General of Nova Scotia, 1690 Hollis St., P.O. Box 7, Halifax, NS B3J 2L6.

Sincerely,



Barbara Kerr, Solicitor, NS Department of Justice

Cc: Candace L. Thomas, K.C., Deputy Minister and Deputy Attorney General

² Ibid.

³ 2023 ONCA 544

⁴ Ibid at para. 55.