



Psychiatric Patient Advocate Office

*Submission to the Standing Committee on
Justice Policy Regarding Bill 159*

*"An Act to Revise the Private Investigators and
Security Guards Act"*

September 2005

Psychiatric Patient Advocate Office
55 St. Clair Avenue West
Suite 802, Box 28
Toronto, ON, M4V 2Y7
Telephone: (416) 327-7000
Toll Free: 1-800-578-2343
www.ppao.gov.on.ca

PROMOTING PATIENTS' RIGHTS



Psychiatric Patient Advocate Office

Bureau de l'intervention en faveur des patients des établissements psychiatriques

September 22, 2005

Dr. Shafiq Qaadri M.P.P.
Chair
Standing Committee on Justice Policy
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario
M7A 1A2

Dear Dr. Qaadri:

RE: Bill 159 - An Act to Revise the Private Investigators and Security Guards Act

Thank you for the opportunity to participate in the consultation process relating to Bill 159 and for the opportunity to present to the Standing Committee. We are supportive of this legislation but feel that some amendments could further strengthen it, for the benefit of all parties, including those with serious mental illness who come in contact with security personnel.

The Psychiatric Patient Advocate Office (PPAO) was established in 1983 to protect the legal and civil rights of inpatients in the ten current and divested Ontario provincial psychiatric hospitals. Since 2000 we have also been providing rights advice in most Ontario general hospitals that have mental health units and to clients who are being considered for placement on a Community Treatment Order (CTO) and their Substitute Decision Makers, if any. We now provide approximately 20,000 first rights advice visits, work to resolve more than 3,500 individual advocacy issues and have approximately 70 local and provincial systemic advocacy initiatives that we are addressing at any one time.

We are hopeful that the Committee will recognize the special circumstances and unique needs of individuals with mental illness who come into contact with security personnel in various venues, including hospitals, mental health facilities and other locations throughout the community. It is our desire to see our recommendations included in the new legislation and its regulations so as to provide the greatest level of rights protection for our clients. To learn more about our office please visit our website at www.ppao.gov.on.ca. Should you have any questions or if we can provide additional assistance, please contact me at (416) 327-7004.

Sincerely,

David Simpson
Director (A)

c.c. George Zegarac
Assistant Deputy Minister
Ministry of Health and Long-Term Care

Summary of Recommendations

Psychiatric Patient Advocate Office

Language

- The PPAO recommends that the term "guard" be eliminated from this legislation and more neutral title, such as "personnel" be utilized.

Purpose

- The PPAO recommends that the Committee prepare a purpose statement that clearly articulates the purpose of the Act and the principles to be adhered to when providing services under the Act.

Definitions

- The PPAO recommends that the Act also require an examination following training and an annual certification process to ensure that all security personnel are in good standing.

The PPAO recommends that a training module be developed specific to mental health and patients' rights in Ontario to create greater awareness of and sensitivity to the unique needs of mental health consumers who come into contact with security personnel.

- The PPAO recommends that security personnel who are employed in hospitals and mental health programs be required to take additional training on the needs of this special population and how to best respond to their needs.

Complaint and Investigatory Process

- The PPAO recommends that the provisions allowing for non-parties to lay a complaint not be removed from the legislation but instead be viewed as an accountability mechanism that will further strengthen the rights of those who come in contact with security personnel who have potentially violated the "Code of Conduct."
- The PPAO recommends that the Act continue to require security "guards" to be insured and that these provisions not be removed from the legislation.
- The PPAO recommends that Section 35(1) of the Act require all security personnel to wear a name badge that would allow for their name to be visible at all times, unless working undercover in the course of their duties.

Use of Intimidation or Force

- The PPAO recommends that the use of force or intimidation be strictly excluded as part of a security personnel function.
- The PPAO recommends that all security personnel be required to take training in de-escalation techniques, non-violent crisis intervention and other courses which will help to minimize the risk of force with mental health consumers.

Electronic Surveillance

- The PPAO recommends that standards be set regarding the use of electronic surveillance by security personnel, including the recording, storage, retrieval and access to the information by clients.
- The PPAO recommends that all clients be notified that the premises are under electronic surveillance and that signs be posted to advise them of such.
- The PPAO recommends that a complaint mechanism be put in place for individuals who do not want to be taped as part of electronic surveillance.

Specialized Training

- The PPAO recommends that the Act specifically articulate training, testing and certification standards, and that these be reinforced in the Regulations.
- The PPAO recommends that the Act require a special designation for those who work in hospitals and mental health facilities.

Code of Conduct

- The PPAO recommends that the Committee direct those drafting the Regulations to consult broadly with mental health consumers, advocates, families, service providers and other stakeholders in the drafting of the training materials and Code of Conduct for security personnel.

Security Personnel Not a Substitute for a Regulated Health Professional

- The PPAO recommends that the Act clearly define the role of security personnel and the type of services that they can provide as they are not members of the health care team or regulated health professionals.

Confidentiality

- The PPAO recommends that the Act specifically address the issue of confidentiality and the consequences for breaching it, unless the breach occurred under a provision of a "duty to warn" clause which must also be defined in the law.
- The PPAO recommends that the Act require notification of the person of any breach of confidentiality and of the steps taken to rectify the matter on behalf of the individual.

Background

The Psychiatric Patient Advocate Office (PPAO) provides independent and confidential advocacy services and rights advice to consumers of and those seeking access to psychiatric services. Our office conducts public education, instructed, non-instructed and systemic advocacy. Using information, education and referrals, we support self-advocacy and promote self-determination by working to empower mental health consumers to make informed decisions about their care, treatment and legal rights.

Our vision is that persons with mental illness in Ontario are treated with dignity and respect, that their legislated rights and entitlements be upheld at all times, and that they be actively involved in decisions affecting their life, care, and treatment. We believe in the autonomy of all people and in each person's right to make informed choices.

Many consumers of mental health services come in contact with security personnel in a variety of settings, including hospitals, mental health programs and services, community drop-in centres, shelters, public transit, and private property such as local shopping malls and other locations. We are often told that these interactions are less than positive, or that when the client approaches security personnel their complaints are not taken seriously because of their illness or "mental health history." We believe that the proposed legislation and its Regulations can have a positive impact by providing proper regulation, requirements for training and supervision of security personnel, a transparent complaints process, a "Code of Conduct" enshrined in the law, a process for revoking and suspending licenses, and the requirement that security personnel carry and produce identification, if requested.

The PPAO in this submission will concentrate on how this legislation will impact on mental health consumers and those seeking access to mental health services, since that is our expertise.

Language

The PPAO would recommend that the legislation not refer to security staff as "guards" but instead change the act and definitions to use of a more neutral word such as "personnel or staff." For many mental health consumers the term "guard" has a negative connotation, portrays an image of the criminal justice system and reinforces community stereotypes when these staff are utilized in mental health facilities and hospital mental health units. There is a perception that if a security "guard" is required to sit outside a mental health unit or be present in such a location that the clients must be "dangerous" or that the staff and other co-patients are in need of protection. The title of the position is important because it should not imply that security personnel can do more than they are legally

entitled to or that they are police or peace officers. We therefore would encourage the Committee to review the term "guard" to see if there is a more appropriate title to be used.

Recommendation:

- The PPAO recommends that the term "guard" be eliminated from this legislation and a more neutral title, such as "personnel" be utilized.

Purpose

The PPAO would encourage the Committee to write a purpose statement that would be enshrined in the legislation to set the tone, context and accountability framework in place while clearly articulating the purpose of this Act. Such a measure is important as it would reinforce key points, state principles of service delivery with special needs populations and articulate the need for the delivery of service in keeping with the person's special and unique needs, including any disability that they might have. It would also reinforce that the requirement is to use the least restrictive intervention possible and to use minimal force after exhausting all attempts to de-escalate and diffuse the situation. It must reinforce that service should be provided in an environment of dignity and respect, and in keeping with the special needs of the person.

Recommendation:

- The PPAO recommends that the Committee prepare a purpose statement that clearly articulates the purpose of the Act and the principles to be adhered to when providing services under the Act.

Definitions

The PPAO is pleased with the definition in Section 1 of an "employee" of a security company, as the definition includes very broad terms. Rather than simply including those that are self-defined as employees, the term includes those who may be termed "independent contractors" but are, for all intents and purposes, employees. This will prevent those from making an end-run around the legislation by bringing in contractors. Further, one cannot be a security "guard" in any capacity unless licensed in compliance with the legislation, thus requiring all persons acting in the capacity of "security guard" to comply with the Act and its regulations.

One of the requirements to obtain a license to act as a "security guard" is the requirement that persons must complete prescribed training. The PPAO would like to recommend that the Act also require completion of an examination following training, and a certification process that acknowledges that minimum

standards have been met. The Registrar could then keep a list of all security personnel who are in good standing and who have met the criteria in the law to provide such services.

Many individuals with mental illness are vulnerable for a variety of reasons. Therefore we support the licensing requirements that security personnel have a "clean criminal record", be at least 18 years of age and have the necessary training. The PPAO would be pleased to assist in the design and delivery of training related specifically to mental health and the various rights enshrined in mental health legislation in Ontario. With over two decades of service delivery experience, the PPAO could prepare a training module that would heighten awareness of the law and patients' rights in Ontario and prepare security personnel for any interactions that they may have with mental health consumers.

The broad power to refuse or decline a license allows the licensing body to carefully regulate the persons acting in the role of "security guard" in the province. The power is largely discretionary and whether it is exercised to truly protect those in mental health facilities and hospitals is unclear.

Recommendations:

- The PPAO recommends that the Act also require an examination following training and an annual certification process to ensure that all security personnel are in good standing.
- The PPAO recommends that a training module be developed specific to mental health and patients' rights in Ontario to create greater awareness of and sensitivity to the unique needs of mental health consumers who come into contact with security personnel.
- The PPAO recommends that security personnel who are employed in hospitals and mental health programs be required to take additional training on the needs of this special population and how to best respond to their needs.

Complaint and Investigatory Process

The inclusion of a complaints and investigatory process in the Act is a very positive step. It is also key to note that any person can make a complaint to the Registrar for a breach of the "Code of Conduct." This will allow for third parties or a non-party to an infraction to lay a complaint on the instruction of the person themselves. It is our experience as a rights protection organization that many individuals with a mental illness will not file a complaint due to fear of retribution, reprisal, or out of fear of being labeled and harassed by security personnel in the future. This is especially true in smaller communities across Ontario. For many, a uniformed "guard" is intimidating and a symbol of authority. As such, they are not comfortable making a complaint, often due to the power imbalances which

exist when challenging such authority. Instead, they simply walk away from the situation, even where there is a legitimate complaint to be made.

The ability of non-parties to lay a complaint is a positive step as this will allow support workers, families, advocates and other concerned citizens to "do the right thing" and bring forward a complaint about rights violations, and inappropriate treatment of individuals with mental illness. This will ultimately heighten accountability. However, we are concerned that in mental health facilities where private security personnel provide service there will be a requirement that any complaint must first proceed through an internal complaint process before being escalated to higher levels. The Act must be clear that a complaint can be made to the Registrar without first having to follow any internal complaint processes. This will also ultimately heighten accountability.

The PPAO is also pleased that the Act requires security "guards" (individuals and businesses) to be insured. Such a requirement will make it possible for individuals to be reimbursed for injury in civil claims, yet another accountability mechanism that protects all individuals in Ontario.

Section 35(1) of the Act requires that security guards carry their licenses and produce them on request. This provision is not strong enough as it should also require that the person wear a name badge that is visible so that those who come in contact with them know to whom they are speaking. This would not be possible for those doing undercover work but for everyone in uniform this provision should apply. Many of our clients would not ask for the name of the security personnel or to see their license because of fear or intimidation. However, if the name was visible, they would be able to make a complaint because they would know the name of the individual with whom they had contact. Such a provision would also heighten accountability to all members of the public.

Recommendations:

- The PPAO recommends that the provisions allowing for non-parties to lay a complaint not be removed from the legislation but instead be viewed as an accountability mechanism that will further strengthen the rights of those who come in contact with security personnel who have potentially violated the "Code of Conduct."
- The PPAO recommends that the Act continue to require security "guards" to be insured and that these provisions not be removed from the legislation.
- The PPAO recommends that Section 35(1) of the Act require all security personnel to wear a name badge that would allow for their name to be visible at all times, unless working undercover in the course of their duties.

Use of Intimidation or Force

There is nothing more frightening for mental health consumers than the use of intimidation or force and being confined by individuals they do not know. At times, the mental illness that they experience causes them to be afraid when confronted by individuals in uniforms; causes them to be fearful for their safety; and potentially may trigger a fight vs. flight reaction. It is for this reason that no unregulated, non-medical staff should be empowered to use force or intimidation in the discharge of their security function. They should be trained in least intrusive methods of de-escalation and non-crisis intervention. It is our position that security personnel should provide service in a "hands free" environment that reflects the principles of dignity and respect for the person.

In high risk situations, it is more appropriate to involve police who have additional training, or to use the services of a crisis intervention team or someone who specializes in work with individuals with mental illness when responding.

Our clients have reported that the inappropriate use of handcuffs, illegal searches of person and property and the apprehension of voluntary patients at the hands of security personnel have occurred in the last couple of years. It is because of these experiences that we would like to urge the Committee to draft very specific Regulations to address each of these concerns. Security personnel must know – and it must be reinforced – that they cannot act beyond the law in the course of their duties; that mental health consumers have the same legal and civil rights as all Ontarians; and they will be held accountable for their actions if they zealously move beyond what the law allows.

Recommendations:

- The PPAO recommends that the use of force or intimidation be strictly excluded as part of the security personnel function.
- The PPAO recommends that all security personnel be required to take training in de-escalation techniques, non-violent crisis intervention and other courses which will help to minimize the risk of force with mental health consumers.

Electronic Surveillance in Health Care Facilities

Many health care facilities in Ontario use security personnel to monitor the premises by electronic surveillance, and often the behaviour and interactions of clients are captured on tape, especially in patient care areas or where patients congregate. It is our contention that such a practice constitutes the recording of personal health information and, as such, facilities must include the electronic surveillance tapes in the client's record of personal health information. It should also be noted that such practices are a poor substitute for in-person interaction with and supervision of clients.

The PPAO would also recommend that facilities that adopt such electronic surveillance procedures post a notice in prominent view in common areas that are accessible to both clients and the public. The notice would advise clients that they are being monitored and that their privacy rights may be infringed while a patient in the facility. This notification of patients is essential as it ensures that they are aware of their legal rights and entitlements, and it allows them to make informed decisions and choices. If patients object to such measures then a transparent complaints process should be available to them to address both the complaint and the resolution they are seeking.

Many mental health consumers find the "camera" and surveillance to be intimidating, especially when they are at the low point of their illness when they may be in seclusion or restraint and may be in various states of undress or displaying behaviours that they may not want others to see. Sensitivity to the unique needs of mental health consumers must be taken into account when electronic surveillance is utilized as part of the oversight or supervision of clients. In circumstances such as this it is more appropriate for the care and observation of the patient to be done by a health practitioner rather than security personnel.

Recommendations:

- The PPAO recommends that standards be set regarding the use of electronic surveillance by security personnel, including the recording, storage, retrieval and access to information by clients.
- The PPAO recommends that all clients be notified that the premises are under electronic surveillance and that signs be posted to advise them of such.
- The PPAO recommends that a complaint mechanism be put in place for individuals who do not want to be taped as part of electronic surveillance.

Specialized Training for Those Who Work in Hospital and Mental Health Facilities or with Other Vulnerable Populations - Section 10(1)

Although security personnel will provide services in a range of venues and with various populations, the PPAO would like to recommend that those who work in mental health environments and hospitals receive specialized training, because of their contact with a vulnerable group that will require the use of special skills. Security personnel working with this specific population should be required to have a special designation which reflects their additional training and knowledge of mental health and legal issues. Given the specialized training that security personnel should receive, it may be necessary to examine compensation and other issues related to recognizing the role as a regulated profession.

The training should include but not be limited to the following:

- understanding mental illness
- an overview of treatment modalities

- how to respond to individuals in crisis
- sensitivity training regarding the special needs of disadvantaged populations, including those with mental illness
- an overview of mental health and patients' rights in Ontario
- a review of mental health legislation
- an understanding of legal and civil rights
- non-violent crisis intervention training and certification
- de-escalation techniques
- use of seclusion and restraint in health care settings
- documentation standards for intervention
- understanding dignity, respect and autonomy of the person
- understanding stigma and its consequences
- understanding the principles of wellness and recovery

Recommendations:

- The PPAO recommends that the Act specifically articulate training, testing and certification standards, and that these be reinforced in the Regulations.
- The PPAO recommends that the Act require a special designation for those who work in hospitals and mental health facilities.

Code of Conduct

Although the Act specifically grants regulation-making authority for the development of a Code of Conduct, it is not enough. It is our opinion that the Act itself should not be silent on what should comprise the Code of Conduct, including the standards of practice, standards of conduct and other issues related to training, certification and knowledge of service provision in a specialized environment. The Code of Conduct should be as specific as possible to incorporate clear guidelines for intervening in a hospital or mental health environment.

The PPAO believes that the Committee must direct those responsible for drafting the Regulations (both training and Code of Conduct) to consult broadly with mental health consumers, advocates, families, service providers and other stakeholders to ensure that the Code of Conduct is comprehensive and includes accountability mechanisms. The Code must also be reviewed over time to ensure that it is a flexible, proactive and encompassing document, that will serve to protect the public and increase the credibility and legitimacy of the security profession.

Recommendation:

- The PPAO recommends that the Committee direct those drafting the Regulations to consult broadly with mental health consumers, advocates, families, service providers and other stakeholders in the drafting of the training materials and Code of Conduct for security personnel.

Security Personnel Not a Substitute for a Regulated Health Professional

Over the past few years more and more facilities have begun using security personnel to monitor mental health units, hospital emergency rooms and other venues where mental health clients may seek service. At times it appears that there is confusion about the roles of security personnel and regulated health practitioners. In some cases, security personnel are involved, in hospital, in the search of person and property and even at times as part of a response team that is utilized to seclude and restrain patients. Such activities, given the specialized training required, are not appropriate "health care functions" for the security personnel to be involved with, and the Act must be clear that they are not a substitute for regulated health professionals. It is for this reason that health care facilities should conduct a thorough review of policies, procedures and role expectations for their security personnel to ensure that they are in compliance with the new Act.

Recommendation:

- The PPAO recommends that the Act clearly define the role of security personnel and the type of services that they can provide as they are not members of the health care team or regulated health professionals.

Confidentiality

Confidentiality is one of the most important aspects of the health care field in Ontario and one which often gets overlooked by providers. Security personnel in the course of their duties may learn or become aware of very sensitive and private personal health information related to individuals' mental health.

The Act must specifically address the issue of maintaining confidentiality and the consequences for breaching it, unless it is an issue where there is a duty to warn, requiring such a breach. Due to the stigma and discrimination associated with mental health and mental illness, a breach of confidentiality can have devastating consequences on a person's employment, relationships, education or standing within their own community. Any inadvertent or unintended breach of confidentiality by security personnel must be disclosed to the person who is the

subject of that disclosure. This will create transparency and accountability to the people who will come in contact with security personnel.

Recommendations:

- The PPAO recommends that the Act specifically address the issue of confidentiality and the consequences for breaching it, unless the breach occurred under a provision of a "duty to warn" clause which must also be defined in the law.
- The PPAO recommends that the Act require notification of the person of any breach of confidentiality and the steps taken to rectify the matter on behalf of the individual.

Conclusion

The PPAO would like to encourage the Committee to adopt the recommendations specific to mental health and hospitals set out in this submission, as they will provide a stronger Act that protects the rights of individuals with mental illness, as well as all Ontarians. It is hoped that the Committee will encourage and direct those responsible for drafting the Regulations to consult broadly with the consumer-survivor and mental health community in preparing the Code of Conduct and training requirements for security personnel. Such collaboration and partnership will ensure that the Act will withstand the rigors of time, heighten accountability and ensure that interactions between individuals with mental illness and security personnel are professional and provided in an environment of mutual respect and accountability.