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OFFICE OF THE ASSOCIATE COUNSEL

April 9, 2010

Law Amendments Committee
c/o The Honourable Ross Landry
Nova Scotia Department of Justice
PO Box 7
Halifax, NS B3J 2L6

Dear Mr Landry:

Re: Bill No. 59 – An Act Respecting the Provision of Security Services and Investigative Services

I am associate counsel with Scotia Investments Limited, the corporate owner of a number of Nova Scotia employers and manufacturers, including:

- Minas Basin Pulp & Power Limited, Hantsport
- CKF Inc., Hantsport
- Crown Fibre Tube, Kentville
- Avon Valley Floral, Falmouth
- BioMedica, Windsor
- Maritime Paper Products, Dartmouth
- EnviroSystems (AIC Sullivans, Sydney; Atlantic Industrial Services, Debert; Atlantic Industrial Cleaners, Dartmouth)
- Scotia Recycling, Yarmouth, Kentville, Dartmouth, Truro, and Sydney
- Annapolis Group Inc. (divisions include Timberland Holdings and Glen Arbour Golf Course)

All of Scotia Investments manufacturing companies are CT-PAT certified for the purposes of US exports. This certification requires us to have a method or designated individual at each of our operations who is primarily responsible for controlling access to the premises.

We have reviewed and adopt the submissions of Michelin in relation to the issues, concerns, and impact of the proposed Bill No. 59. Similar to Michelin, Minas Basin and

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CKF employ in-house security personnel working in a gatehouse. From time to time, these security personnel may interact with the public in the same way that a company receptionist would interact with the public – for example, collecting packages and hand delivered mail, greeting occasional guests attending for tours and meetings, issuing security badges to visitors, and from time to time dealing with a member of the public who may be lost at the end of Prince Street in Hantsport. Primarily, however, their job functions involve interacting only with employees and company contractors.

The wording of the current draft of Bill 59 appears to capture our in-house security personnel given the definition of “security guard” and “security guard services”. A “security guard” is a person who performs work that consists *primarily* of the provision of security guard services which can be any of a number of activities, including the protection of property and the control of access to premises. While there are some 19 exemptions to the application of the proposed *Act*, the exception for in-house security personnel [section 3(k)] is too narrow to capture our security guards and likely captures no company’s in-house security guards, commissionaires, or gatekeepers.

We believe Michelin’s suggestion that the exemption for “in-house” security personnel be modified to those persons ... “primarily with respect to employees or contractors ...” reflects better the reality in Nova Scotia workplaces. Another option would be to state:

(k) a person employed or engaged to perform the activities of a security guard or private investigator solely with respect to employee or contractors of the employer while acting within the scope of that employment or engagement and who has ~~no~~ limited interaction with the public.”

In addition to the submissions of Michelin, we respectfully request the Law Amendments committee consider the breadth of the current draft and the unintended consequences of the extremely narrow exception in section 3(k). The current definition of security guard services would also capture the following types of employment:

- Golf Course Marshall and Starter, who are primarily responsible for the protection of the golf course, observation of unlawful activity, prevention of theft, and control of access to the golf course;
- Receptionists at C-T-PAT certified manufacturing operations that do not have gate-house since their job primarily is to control access to the premises;
- Parking Attendants whose primary function is to protect the property of the parking lot, the observation of unlawful activity, and the control of access to premises;
- Lifeguards and Pool Attendants whose primary function is to protect individuals from harm, guarding persons against harm, and guarding premises from unauthorized access.
- Gate attendants at private clubs and associations whose primary function is to control access to the private premises.
- Health club attendants whose primary function is to control access to private premises.

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- Building Superintendant whose primary function is to protect property from harm, observation and reporting of unlawful activity, prevention of theft, and the control of access to premises.
- Local Transfer Station (dump) attendants whose primary function is to protect property from harm, observe and report unlawful activity, prevent theft or misappropriation of goods, guard premises against unauthorized access, control access to the premises.

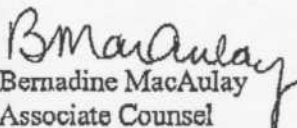
Based on the background material and the purpose of the legislation, we don't believe the legislation is meant to capture these categories of employment. If it was intended it makes no sense whatsoever to have these employees trained and certified as security guards. Moreover, such breadth of regulation does not fit within the spirit of the "Government's Better Regulation Initiative" as outlined in Michelin's submissions.

Thirdly, of note, there are two exemptions, one for any person employed by municipality or other local authority and another for any person engaged in taking admission tickets or checking entrance passes to an event. It is inexplicable how these category of persons would have an exemption and there be no exemption for in-house security personnel/gatekeepers whose interaction with the public is significantly less than either of these categories of individuals, yet of a similar nature – collecting hand-delivered mail, greeting occasional guests attending for tours and meetings, issuing security badges to visitors, and from time to time dealing with a member of the public who may be lost.

Lastly, we note that other jurisdictions in Canada do not require in-house security personnel/gatekeepers to be regulated and licensed (see attached).

We urge your committee to consider the impact of the broad definition of security services and the narrow exemptions. The committee should re-draft language to either narrow the definition (like Ontario, Manitoba, Alberta, and B.C.), provide the Registrar the ability to exempt persons from licensing where security work is "incidental" to their duties (B.C.), or broaden the exemption for in-house security personnel (like the other provinces and Yukon). Only with these types of changes will the legislation regulate the intended class of persons, not the unintended.

Yours truly,


Bernadine MacAulay
Associate Counsel

cc. George Sutherland, Michelin

Province	Legislation
Newfoundland & Labrador	"An agent who is permanently employed by 1 employer in a business or undertaking other than the business of providing services of agents and whose work is confined to the affairs of that employer <u>is not required to be licensed under this Act.</u> " (section 5(2) <i>Private Investigation and Security Services Act</i>)
New Brunswick	"This Act does not apply to ... a private investigator who is an employee of a person other than a person who operates a private investigation agency and whose work is confined to the affairs of that person." (section 2(h.1) of the <i>Private Investigation and Security Services Act</i>)
PEI	"This Act does not apply to ... security guards who are permanently employed by one employer in a business or undertaking other than the business of providing private investigators or security guards and whose work is confined to the affairs of that employer." (section 2(g) of the <i>Private Investigation and Security Services Act</i>)
Quebec	"This Decree does not apply to employees who carry out security work exclusively for their employer's own service or needs." (Article 2.03(5) <i>Decree respecting Security Guards</i>)
Ontario	Gatekeepers at manufacturing facilities would not fall within the definition of "security guard" which is defined narrowly as "person who performs work, for remuneration, that consists primarily of guarding or patrolling for the purpose of protecting persons or property," such as bouncers, body guards, and loss prevention officers. (sections 2(4) and (5) of the <i>Private Investigation and Security Services Act</i>)
Manitoba	Separate registration and licensing for in-house security guards, but definition of "security guard" is narrower, like Ontario, "person who, for hire or reward, guards or patrols for the purpose of protecting persons or property." As such gatekeepers at manufacturing facilities would not fall within the definition of security guard.
Saskatchewan	"The following classes of persons are exempt from the Act ... private investigators and security guards who are employed by one employer in a business or undertaking other than the business of providing private investigators or security guards and whose work is confined to the affairs of that employer." (section 3(e) of the Regulations)
Alberta	New legislation, coming into effect May 1, 2010: Definition of security work is narrow: "patrol, guard or provide security for another person or for the property or premises of another person, or (b) detect loss of or damage to the property or premises of another person" Exemption for in-house: "except with respect to the activities described in section 4 (dog handler) or 5 (locksmith), an employer and a person who is employed or engaged to perform security or investigative work solely with respect to employees or contractors of the employer, while acting within the scope of that employment or engagement. Policy Clarification: "The Act does not apply to "a person who performs a function listed in the Act only "incidentally" as it relates to their primary job function."
British Columbia	Security work is more narrowly defined, and the Registrar has the ability to waive licensing requirements where "the security work in which the individual is engaged is incidental to the individual's primary work."
NWT	Nil
Yukon	"This Act does not apply to an agent permanently employed by one employer in a business or undertaking other than the business of providing the service of agents and whose work is confined to the affairs of that employer." (section 2(5) <i>Private Investigators and Security Guards Act</i>)
Nunavut	Nil