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**Official Report
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(Hansard)**

Wednesday 19 June 2002

**Journal
des débats
(Hansard)**

Mercredi 19 juin 2002

**Standing committee on
regulations and private bills**

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

Chair: Rosario Marchese
Clerk: Douglas Arnott

Président : Rosario Marchese
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LEGISLATIVE ASSEMBLY OF ONTARIO

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**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 19 June 2002

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The committee met at 1002 in committee room 1.

**DRAFT REPORT ON 1999 AND 2000
REGULATIONS**

The Chair (Mr Rosario Marchese): I'll call the meeting to order, Monsieur Bisson, do you have a question or a suggestion?

Mr Gilles Bisson (Timmins-James Bay): I have a suggestion that we switch the order, if we can, of the people here for their bill.

The Chair: No, actually, we can't. Mr Arnott cannot be here until 10:30. That's why we have it this way.

Mr Bisson: I'd be willing to present them so they don't have to sit here for 30 minutes and listen to us.

The Chair: I suspect they want Mr Arnott to be here.

Mr Bisson: We're just trying to accommodate them because we're going to be talking about some internal—it's nothing private, but it's boring to you and you're going to have to sit here for 30 minutes.

The Chair: Monsieur Bisson, if you don't mind—
Interjections.

Mr Bisson: As long as you don't mind being bored.

The Chair: We have a report: consideration of the draft report on 1999 and 2000 regulations. We're going to have Andrew McNaught do a brief review of that and then we'll take questions, if there are any. If not, hopefully we'll adopt it at the end of it.

Mr Andrew McNaught: Good morning. I'm Andrew McNaught, with the Research and Information Services branch of the legislative library. You should have in front of you a copy of standing order 106(h) as well as a copy of the committee's draft report on 1999 and 2000 regulations.

The role of the committee with respect to regulations is set out in standing order 106(h). You'll see it requires that the committee review the regulations made under Ontario statutes each year and that this review be conducted in accordance with the nine guidelines set out in the standing order. For example, guideline (ii) requires that regulations should be made "in strict accord with the statute conferring of power." In English, that means there should be authority in the statute to make the regulation.

Since 1988, my office has been conducting this review on behalf of the committee. The draft report in front of you is on regulations made in 1999 and 2000. It's divided

into three parts: part one briefly outlines the committee's mandate; part two contains some statistics, including comparisons of the number of regulations that were made in the 10 years between 1990 and 2000; and the substantive part of the report is on page 3, under the heading "Regulations Reported." It's a discussion of regulations that contain potential violations of the committee's guidelines.

As described in that section, we wrote letters to five ministries inquiring about nine regulations. In each case, the ministry acknowledged that there was a potential violation of the committee's guidelines. In most of the cases, the ministry explained that the violation was simply the result of inadvertence on their part and that they would take steps to bring this matter to the attention of their legal departments so that it doesn't happen in the future.

It's a draft report and it's subject to change at the committee's direction. Otherwise, you can simply adopt it and have it tabled in the House.

The Chair: Any questions?

Mr Bisson: Just to be clear, my understanding is that all of the regulations that are written by whatever ministries are reviewed by leg counsel. Does that end up automatically going before somebody who may flag it for the attention of this committee?

Mr McNaught: Our office just conducts this ongoing review of all regulations made each year. The Regulations Act says that all regulations stand permanently referred to the committee. So it's the committee's ongoing mandate to review these regulations.

Mr Bisson: I understand the mandate. My point is that it is not often that we actually see regulations come before the committee. Normally we see private bills here. I'm just saying that if there were regulations, such as the ones you are pointing out here, that were drafted in error by various ministries, why were they not flagged to come to this committee? The only way I would know is by reading every Ontario Gazette that ever came out.

Mr McNaught: That's what we're doing right now.

Mr Bisson: So the answer is that the only ones of concern are the ones you've flagged in this report. That's where I was going. Can you walk us through some of those and explain to us the rationale for the various ones, just so we understand?

Mr McNaught: On page 4, for example, you have three regulations that were reported for possible vio-

lations of guideline number 2, which, as I mentioned, was the statutory authority guideline. That says that there must be authority in the statute to make the regulation in the first place.

You will see there are three regulations here. The first one is 272/99, made under the Ministry of Health Act. The statute authorizes that the minister may make the regulation; in fact, the cabinet made the regulation. So technically speaking, that's a violation. There was no authority in the statute for the cabinet to make the regulation. It should have been the minister. So we brought that to the attention of the ministry. They acknowledged that that was an oversight on their part and they were going to bring that to the attention of their legal department.

Mr Bisson: They're saying it was sunsetted anyway in March 2000.

Mr McNaught: Yes. Sorry, in that case that's what they've said. So there's no point in pursuing it any further.

Mr Bisson: There is no point following it up. But cabinet made a regulation where they shouldn't have, right?

Mr McNaught: All we can do is report it to the House.

Mr Bisson: Yes, I hear you. Then can you walk us through the one under the Education Act?

Mr McNaught: The Education Act authorized the Minister of Education to make the regulation, subject to the approval of cabinet. But it turns out that cabinet had made the regulation. As I explain there, they acknowledged the error and that they would review their practices to ensure that it doesn't happen again.

Mr Bisson: This raises an interesting question then. If the minister was supposed to draft the regulation but in fact cabinet has done it, is the regulation actually in order? Technically, not.

Mr McNaught: Technically it's not.

Mr Bisson: Give me the other one.

Mr McNaught: The next one under that guideline is regulation 506/00 made under the Ministry of Health Act. In that case, the statutory authority to make the regulation had in fact been repealed in 1997. So there was no statutory authority to make the regulation. This dealt with grants for developing health resources. According to the ministry, they will be taking steps to deal with this matter. I have no way of knowing what steps were taken.

Mr Bisson: So what you have is people taking on authority to take an action for which they have no authority, in effect. All right, on to the next one.

Mr McNaught: On page 5, under the heading of "Retrospectivity," guideline number 4: that provides that a regulation can't have retroactive effect, applied to be effective on a date before the day on which the regulation was filed with the registrar of regulations. So we've raised questions about four regulations there.

1010

Mr Bisson: Let's walk through these. Under 302/99, what were they trying to do retroactively here?

Mr McNaught: In this case, the regulation took effect five weeks prior to the date on which it was filed with the

registrar. The regulation provided that it was to come into force on the day that the Electricity Act comes into force. The Electricity Act came into force five weeks prior to the date on which the regulation was filed.

Mr Bisson: What happens to the regulation in that case? Does that mean it's out of order?

Mr McNaught: It's out of order, yes.

Mr Bisson: Period.

Mr McNaught: Whether it would ever be struck down in a court is something else.

Mr Bisson: That's what I'm saying. If somebody took this to court, the court would say it's out of order, they didn't have legislative authority.

Mr McNaught: On the other hand, they might say it's a technical oversight and it shouldn't invalidate the whole regulation.

Mr Bisson: The remedy would be to write another reg. If I wanted to cover myself under the Fire Protection and Prevention Act, the minister would have to draft another reg.

Mr McNaught: It could be that, yes. And similar problems with the remaining regulations: they were retroactive by a few days. In some cases, the ministry just wasn't aware and there was a similar case to what we've just described, where the reg took effect on the date that another act came into force. They were informed that the act was coming into effect on a certain date while in fact it came into force prior to that date.

Mr Bisson: The same thing with the Tenant Protection Act?

Mr McNaught: It's the same situation there. The Social Housing Reform Act came into force prior to the date that the regulation was made. The ministry says it's going to bring the matter to the attention of its legal branch.

Mr Bisson: Prior to the reg, OK. Moving on to the next one.

Mr McNaught: The same situation there, again dealing with the Social Housing Reform Act. The regulation was filed on December 19 but the relevant section of the Social Housing Reform Act came into force—

Interjection.

Mr Bisson: All right, so the same thing. And under the racing commission—now I know why my horse didn't come in. Damn.

Mr McNaught: Again, the Racing Commission Act came into force on December 15. The regulation was filed on December 18 and the regulation provided that it was to come into force on the day that the Racing Commission Act came into force. Therefore, it was retroactive by three days.

Mr Bisson: So those are the explanations for all of those regs, right?

Mr McNaught: Yes.

Mr Bisson: So these are the only ones through all the regs that you guys have reviewed that are out of order?

Mr McNaught: No doubt there were others, but—

Mr Bisson: But we couldn't find them. That was my question originally. Does anybody actually look and examine every regulation? Because there are thousands.

Mr McNaught: In fact, all regulations are reviewed by the ministry legal branches that are responsible for these regulations, as well as the registrar of regulations in the Ministry of the Attorney General, and in some cases legal counsel, I guess, for cabinet office, if the regulation is to be made by the cabinet.

Mr Bisson: There may be others with questions. I have others but you've answered my first one.

Mr Pat Hoy (Chatham-Kent Essex): You state that the committee wrote to five ministries inquiring about nine regulations but the committee has decided to comment on seven, on page 3.

Mr McNaught: Yes.

Mr Hoy: So that was a decision that was just simply made. It wasn't a case where the ministry didn't want to answer the question; it was just a decision made.

Mr McNaught: It may have been that we said we think there might not be statutory authority for this regulation and the ministry wrote back and said, "There is, and here's the section," and we agreed. That's probably what happened.

Mr Hoy: Your answer would seem to indicate that that had nothing to do with the Health Services Restructuring Commission having been one of those under scrutiny, because we do say here that that commission no longer exists. Those other two may have been something other than the Health Services—

Mr McNaught: Yes. I'm afraid I don't remember offhand what they might have been.

Mr Hoy: But they might have been something other than that.

I think Mr Bisson talked about the remedy here might be to reintroduce another reg. On the other hand, the ministry responsible here seemed to indicate that they are taking due notice of this. It doesn't seem to me that it would be that difficult to ensure these are in sync. I don't understand why they have three days, five days, six days, whatever.

Mr McNaught: Sometimes it seems it's a lack of communication between ministries about when another act is going to come into force, or there's a flurry of legislative activity right before the Christmas break. Sometimes there are technical errors.

Mr Hoy: It would seem that maybe the House should sit more often. I have no other questions.

Mr Peter Kormos (Niagara Centre): All regulations do not have to be approved by this committee—is that correct?—and there are regulations, some of which have different sources. There are two classes of regulations?

Mr McNaught: I'm not sure what you mean. Some regulations are made by cabinet, some are made by ministries, some are made by commissions or—

Mr Kormos: Depending upon the statutory power.

Mr McNaught: Right.

Mr Kormos: You explained to Mr Bisson, and I hope I've got this correct, that the reason all regulations aren't cleared by this committee—this committee has jurisdiction to consider each and every regulation, does it or does it not?

Mr McNaught: To conduct a review of any regulation in accordance with the guidelines set out in standing order 106(h) and to report any irregularities the committee might find to the House.

Mr Kormos: At the end of the day, I understand you explained to Mr Bisson in the committee, not all regulations are put to this committee.

Mr McNaught: We only report the ones that we feel might raise a possible question about the committee guidelines.

Mr Kormos: I trust this isn't the first time you've had occasion to do this, or is it?

Mr McNaught: No, we've been doing this for many years now.

Mr Kormos: In terms of reporting back bad regs to the committee?

Mr McNaught: Yes.

Mr Kormos: Wouldn't the solution be for this committee to review all regs?

Mr McNaught: The lawyers in the legislative library do that. It may not be the in-depth review that is necessary; we have to balance our time with doing research for individual MPPs and so on.

Mr Kormos: I understand, but most committees meet two days a week as compared to one day a week. As I say, to avoid this retroactive approach, this after-the-fact approach, isn't one of the solutions to have more regulations going through this committee?

Mr McNaught: It's up to the committee if it wants to.

Mr Kormos: It's one of the options. Isn't part of the solution for this committee—unfortunately, this committee has been perceived, for the 14 years I've been here, as a sort of dumping ground, as punishment, more often than not, by whips and House leaders.

Interjections.

1020

Mr Kormos: I'm sorry. That's the sad reality of it—never mind the staff. But it seems to me that the committee perhaps should be considering a recommendation that it be authorized to meet at least twice a week so it can review more of these regulations, because quite frankly that's an exercise that's valuable for the three caucuses. They then have a handle on what's being passed by regulation. Granted, you could read each and every gazette that's delivered to your office, but that's far less likely to happen in a disciplined way than a review of those regs would be if this committee sat two days a week and undertook more comprehensive reviews of more regulations.

Those are my observations. I urge this committee to consider that. Most other committees, as I understand it, sit at least two days a week.

Mr Bisson: And in the summer.

Mr Kormos: And in the summer, and perhaps this committee should be doing that same work to avoid these problems.

You see, one of the problems with regs that are deemed out of order after the fact is that other people have had reliance upon those regulations. I trust—and the

research officer might counsel me, if not all of us, in that regard—it can create complications and some grief for people who rely upon those regulations.

The Chair: Any other comments?

Mr Bisson: That's where I was going with my line of questioning. It seems to me that rather having an after-the-fact—

Interjections.

The Chair: Order, please, if you don't mind. Go ahead.

Mr Bisson: First a comment and then the question. It seems to me the issue is that we should be flagged on regulations that are being written prior to them being flagged after the fact, because you could end up, as Peter suggested, in a situation where there could be some harm done as far as something being done by statutory authority through the regulation. My question is, most of the regulations are written after third reading, right?

Mr McNaught: They may be drafted at any point; I don't know.

Mr Bisson: But most of them are done after third reading.

Mr McNaught: They're published after the bill has taken effect.

Mr Bisson: That speaks to the issue, because especially on bills that caucuses take some interest on, often you'll hear us in the House saying, "We want the regulations." You're saying by way of the bill that you're giving some authority to the minister to do something in the statute, and we're calling to see the regulation and we're always told, "The regulations aren't ready. They won't be out until after third reading." So it seems to me there's some value, especially on bills that are of interest to all three caucuses—there should be a practice of us calling the regulations here once that bill's regulations are done. That's something for us to decide, not you.

My question to you is, at what point do we find out when a regulation is done prior to being gazetted? Is it only when they're gazetted that we find out?

Mr McNaught: When it's published in the gazette. Our office can only read the regulation after it's been published.

Mr Bisson: What I'm saying is, there's no other mechanism to find out until we actually see them in the gazette.

Mr McNaught: We can't see regulations before they're published in the gazette.

Mr Bisson: So there's no tie between ministries and cabinet writing regulations and this committee other than after the fact. There's no mechanism.

Mr McNaught: Right.

Mr Bisson: OK. We'll bring a recommendation next meeting.

Mr Morley Kells (Etobicoke-Lakeshore): Actually, following up the honourable member's question, you get an opportunity at the legislation level if you want to know how they're implemented. In other words, if a piece of legislation calls for an implementation reg and you have a concern about implementation, you can

always bring it up then. That's my only point. The reg isn't written, but your concern is expressed.

Mr Bisson: I just say it's not on every bill that I, as a member, want to see the regs.

Mr Kells: I know. I hear you.

Mr Bisson: Understand where I'm coming from. But if you get a bill and I've got concern and the bill says, "The minister shall do whatever by way of regulation," I can speak until the cows come home in second and third reading but it's not going to have any effect on the regulation and I won't know what that section really means until after it's gazetted.

Mr Kells: Well, I'm suggesting that by asking that question you can demand an answer from the minister on how it's going to be implemented.

Mr Bisson: And the minister's probable answer will be, "Wait until the regulations come out."

Mr Kells: Well, that's when you have an argument.

Mr Bill Murdoch (Bruce-Grey-Owen Sound): I think Gilles has a good point there on some things. We're going to have Bill 81, our farm bill, but we're not going to see the regs till some farmer phones me and says, "I can't spread my manure today because some regulation says that."

He has a point, but I don't know how you fix that up. If we were to go over every reg in every bill, we'd meet more than twice a week.

The Chair: If I can propose, I know Mr Bisson said he was going to bring some suggestions for the next meeting for us to look at.

Mr Murdoch: OK, that's a good idea.

The Chair: Perhaps what we should do is have a subcommittee meeting where we might discuss how we might pursue this matter that has been raised today and then, based on the subcommittee report, bring some suggestions or recommendations for the committee to look at.

Mr Murdoch: But I'm to believe that the way things are right now, this committee can't see any—so let's take Bill 81. The regulations will have to be gazetted before we see them. Now, we'll say there was a problem with one of them or something and we wouldn't be able to do it till after that's all done, then we have to take this sort of process to do it. It's sort of going at the back door the wrong way.

The Chair: M. Bisson said he would have some suggestions for the next meeting. I'm saying, why don't we meet as a subcommittee to review suggestions that we might have and bring them forth for the next meeting? Is that OK?

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): A good decision, Chair.

Mr Murdoch: Yes. You get some good ideas, Gilles.

The Chair: Other comments? M. Bisson?

Mr Bisson: I think it's a good idea. We can bring it back to the subcommittee. But the problem I have is that I think the committee should have some influence on the final reg. The farm bill is a good example. We're going to get the phone calls after the fact. Some constituent is

going to call us and say, “What in heck is going on over here?” For you, as government members, and for us, as opposition members, it’s in our interest to have some influence over the final reg. So what I want is that, when we do get together as the subcommittee, there’s going to be some thought put through to: is there a mechanism to get the regs vetted to this committee prior to their being printed? I guess that’s what I’m asking, because once they’re written, far unlikely will they be amended after they’re gazetted. So I’d like to have a mechanism so that if there’s a bill of interest we can actually trigger the regulations here prior to their being gazetted.

The Chair: Let’s see.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Mr Chairman, the thought occurs to me—I’m reminded of something my late mother used to say about none of us being as smart as all of us. I think there’s a time when we need to say, “Let’s have a little less democracy and a little more getting on with the job,” particularly if it’s issue-specific, making the assumption, which I hope is accurate, that the ministry that has the interest probably has more information.

When you’re in the Legislative Assembly—I’m a relative newcomer, so maybe I’m missing something here—we on the opposition side and some on the government side lament the lack of specificity in the legislation and are frequently told, “You’ll have a chance to have input at the regulation phase.” Well, that’s really a charade if technically you can’t even see the bloody regulation before it’s gazetted. So at some point we’ve got to either say, “That’s the game we’re going to play,” or alternatively, “We’re going to take some different kind of approach.” To be frank, on most days I’m not particularly concerned which approach we take as long as we know what the rules are, but don’t go saying something in the House that is patently—I can’t say “untrue,” because that would be unparliamentary, but don’t utter terminological inexactitudes in the House if that’s not how we’re moving forward.

Mr Murdoch: This is what Ted said. He’s so right, and just because you’re new—I’m glad you’ve picked up on that. I’ve been here 12 years, and every government is the same. That’s the problem with democracy: we’re being ruled by regulations. We pass a bill in the House and it gives some ministry, whatever it is, all kinds of power to go out and set—and, as I say, we don’t hear about it until our constituents get us. You guys can try to figure something out, but I don’t know how. We certainly couldn’t do all the regs, but it certainly would be nice to see a few before they’re gazetted.

Mr McMeekin: Key stuff, like nutrient management.

Mr Murdoch: Yes, well, you and I want nutrient management.

The Chair: If you don’t mind, the next presenters are all here.

We agreed that we would have a subcommittee to review this, and we will do that and come back and report. OK? We could either have a motion to adopt and

present this report and/or defer this until further consideration.

Mr Bisson: I’d prefer to defer it until after the subcommittee discussion.

The Chair: All right. Is there agreement?

Interjections: Agreed.

The Chair: OK, thank you.

1030

GROVES MEMORIAL COMMUNITY HOSPITAL ACT, 2002

Consideration of Bill Pr5, An Act respecting Groves Memorial Community Hospital.

The Chair: We move on to the second order of business, then, consideration of the following bill: Bill Pr5, An Act respecting Groves Memorial Community Hospital. I will read the commissioner’s report for the record:

“At the request of Chief Justice LeSage, Justice G. Bourke Smith and I (the two resident Superior Court justices in Wellington county) have had an opportunity to review the above-mentioned private member’s bill and the background material submitted by you.

“In our capacity as commissioners of estate bills, Justice Smith and I have considered particularly the provisions of sections 7 and 8 of the bill.

“I wish to advise that we agree that there is no reason why, in our view, the bill, and in particular sections 7 and 8 thereof, should not pass into law.

“If you have any questions or further requirements, please do not hesitate to advise.

“Yours truly

“C.N. Herold

“Justice

“G.B. Smith

“Justice.”

The sponsor is Ted Arnott. Ted, please bring forth the other applicants with you. They can introduce themselves when they come up.

Mr Ted Arnott (Waterloo-Wellington): I have just come from a Habitat for Humanity build and haven’t had a chance to change my clothes, so I apologize for my dishevelled appearance.

The Chair: Not to worry.

Mr Arnott: Thanks to you and the committee members for considering our issue today. This bill is very important to the community of Centre Wellington, all of Wellington county and Waterloo-Wellington, and especially important to me, because it was at the Groves Memorial Hospital that I drew my first breath 39 years ago. My three sons have been born there too. It’s a very special hospital for our community.

I’ll introduce the people who are here with us at the table: Mayor George Pinkney, mayor of Centre Wellington; Carolyn Skimson, who is the executive director of the Groves Memorial Hospital; Kathy O’Brien, who is the solicitor; and Cavan Acheson, as well, who is acting as a solicitor today. These are the applicants. I’ll turn it over to whoever is going to be speaking first.

Ms Kathy O'Brien: I think that's me. We're just delighted to be here today. It has been a long process.

As Ted mentioned, I'm Kathy O'Brien. I'm solicitor for the hospital, one of the applicants of the bill. To my right is Cavan Acheson, who is solicitor for the township of Centre Wellington, also one of the applicants of the bill. We want to give you a brief background of the bill this morning, which my colleague Cavan is going to do, and then I'm going to talk about the purposes and benefits of the bill and specifically about some of the input we received from the Ministry of Health and Long-Term Care and how we responded to that. I'll turn it over to you, Cavan.

Mr Cavan Acheson: The Groves Memorial Hospital came into existence in 1902 as the Alexandra Hospital. Dr Groves was our local doctor, and he founded the hospital almost exactly 100 years ago. In 1932, as he was getting on in years, he made a very generous gift of the hospital facility to the local municipality, then the village of Fergus. That gift had to be ratified and approved through provincial legislation. A private bill was passed in 1932 as the Village of Fergus Act. At that time, the conduct and management of the local hospital were entrusted to five trustees known as a commission, who were appointed by the local members of the village council.

In 1954, after the village was raised to the status of a town, it was realized there was a need at that time for an upgrading in the provisions of the act, and the hospital commission then was expanded to include two members of the local council and between 10 and 16 other persons in the community, as appointed by council. These appointments occur annually at the first meeting of council in each year, under that legislation.

In 1998, the town of Fergus became amalgamated with other local surrounding municipalities, including Elora, Nichol, Pilkington and West Garafraxa, as the result of a minister's restructuring order.

For the last four or five years, both the local hospital board and the local township council have been working toward a solution to bring the legislative status, if you will, of the hospital up to date. The bill that you have before you today represents three or four years of fairly significant negotiation, discussion and public meetings that have taken place concerning the governance of the hospital.

The bill that you have before you, which Kathy will go through in more detail, reflects the wish of the local community and the board to continue to have a connection between the local municipal government and the hospital. The connection, in this case, is kept in terms of the formal appointment of the board members, based on names put forward to it by a nominating committee from the existing hospital board.

The hospital has been governed by the Village of Fergus Act, the Town of Fergus Act, and now, in the 100th year after the founding of the hospital, it's appropriate that the legislation itself reflect the generosity of the original founder of the hospital, Dr Groves. He is a

very important historical figure for our community. In addition to being, obviously, the main medical person in the community, he was also quite an entrepreneur and was responsible for introducing electric light in the streets of Fergus and Elora, and he ran a local flour mill. He is an important historical figure for our community and there is, therefore, a great wish to maintain a community connection between the local government and the hospital.

I would now ask Kathy to review with you in more detail the specifics of the bill that is in front of you.

Ms O'Brien: In short, the primary purpose behind the bill is to incorporate Groves Memorial Community Hospital. I work for a law firm that represents about 70 public hospitals across the province. To my knowledge, Groves is the only hospital in Ontario that doesn't have the benefits of incorporation right now.

The benefits of incorporation that we see coming out of this bill are, first of all, that the governance of the hospital is going to be clarified. It's going to be clear that the hospital board is the entity that's entitled to make decisions on behalf of the hospital—set the strategic direction for the hospital. There's been some confusion in the past about who's entitled to sign and contract on behalf of the hospital. Even though the legislation makes it clear it's the hospital commission, which is what we call the hospital board, sometimes there is confusion in the public and at the municipal level about who does what.

It gives the hospital the powers of a natural person, which basically means the hospital can sue, be sued, contract—powers that all other hospitals take for granted. It clarifies the fiduciary obligations of appointees from the township who sit at the hospital board level. Whom do they represent? Whose interest do they act in the best interest of? It's clear, once the hospital is incorporated, that those township appointees are directors of the hospital and have to act in the best interest of the hospital.

It also gives the hospital updated corporate objects. Its objects right now are contained in, as Cavan mentioned, quite antiquated legislation. The objects will now allow the hospital to take on other health care initiatives like long-term care, home care services—initiatives that other hospitals in the province are taking on.

There are also additional benefits to the bill other than just incorporation. Importantly, it permits the hospital to have a community membership. It will turn it into a non-share corporation, which means it will have a non-share membership. Those members will have the right to participate in hospital corporate meetings to receive financial information about the hospital, to appoint auditors and basically just give the community members who want to be members of the corporation a forum to voice their comments about the hospital.

1040

The bill also provides that in the event that the township of Centre Wellington is restructured, and by "restructuring" we mean expanded or amalgamated with surrounding communities, the community membership at

that point would have the power to also elect a majority of the directors on the hospital board. The reason that's there is—to elaborate on what Cavan had said—it's important for the community that there be a strong link right now between the township council and the hospital board, because the view in the community is that the township council are elected representatives of the community. Accountability is fulfilled that way. Once the township amalgamates, expands, becomes significantly larger, the township council ceases to represent the community who are the immediate users of the hospital. So that's why we have that trigger in there.

The bill also transfers ownership of certain property that has been used by the hospital for many years to the hospital corporation. This excludes the hospital lands. We decided it would be just as easy to maintain ownership of the hospital lands with the township, but it is held in trust for the hospital and the bill makes it very clear that the municipality cannot make any disposition or do anything significant with that land without the approval of the hospital and any regulatory authorities like the Ministry of Health, which is just consistent with the Public Hospitals Act and with trust law.

As Cavan mentioned, the process for arriving at this bill has been a lengthy one. There were, between March 1999 and May 2000, five joint meetings between the hospital board and township council. There were in addition two community meetings where all members of the local community were invited to attend and to ask questions, and presentations were made explaining the various drafts of the bill. So we really, truly believe that there has been very significant community participation in getting to where we are today.

The last issue I want to address just for your benefit is input that we received from the Ministry of Health and Long-Term Care, which is of course the regulatory body governing the hospital. When we were first drafting the bill and this whole idea of incorporation came up, Carolyn Skimson, the executive director of the hospital, approached the ministry for guidance about the governance structure of the hospital and asked for policy, for white papers, for anything that would give us guidance. There's nothing in the Public Hospitals Act that dictates what the governance structure of a hospital has to be. There's nothing in the regulations either, under the Public Hospitals Act. There's just a requirement for a certain number of doctors to be on the board.

While we were drafting the bill we got very little input from the ministry and essentially were told that all we could refer to were the directions that the Health Services Restructuring Commission had made in communities in Ontario. We came up with a local solution, and the local solution is as we discussed. Currently the township council appoints a majority of the board. That doesn't change when this bill comes into effect. We have kept the same governance structure and we have kept the same link to the municipality.

In April 2001, after we had submitted the bill for consideration, we received a letter from the ministry that

first of all set out the ministry's complete support for the incorporation of the hospital and all the benefits that derive from incorporation. The ministry did express a concern at that time about the governance structure that we had come up with as a local solution. The ministry said in their letter that they would prefer the hospital board to be elected by members of the corporation from the start, and those members of the corporation would be representative of the community. They preferred this to the model that we had come up with, which was the township council appointing the majority of board members. The ministry felt that the council appointment approach was inconsistent with what other hospitals do and was inconsistent with recent governance reviews of hospitals.

When we got this recommendation from the ministry we took it very seriously. We set up an immediate meeting between council reps, board reps, hospital board reps and the ministry reps to talk about the ministry's views and to talk about our own local solution. That led to yet another joint meeting of the hospital board and the local council, which took place on June 19, 2001, for the sole purpose of considering the ministry's recommendations. Two ministry representatives were in attendance and made a presentation to us.

The hospital thought very, very carefully about the ministry's recommendations, as did the township. At the end of the day, the hospital board came to the conclusion that the local solution that we had come up with essentially met the ministry's concerns about accountability in spirit, if not in letter.

We think our own local solution does require accountability between the hospital board and the community. There will be an open community membership. There will be a nominating committee—this is established not in the bill but in bylaws we've already agreed upon between the hospital and the council—and that nominating committee is going to contain community members. That nominating committee is going to be required to publicly advertise for people who are interested in serving on the hospital board. It's going to put together a list of the best, most qualified candidates who have been found through the search process. It's going to ultimately submit to the hospital board a list of those candidates it thinks are the best, and that list is then going to be presented to council for sign-off. The council, as elected representatives of the community, represent the accountability between the hospital board and the community. In fact, this is pretty much exactly how the hospital board is appointed today.

I also want to point out that, in considering the ministry's recommendations, we were mindful that there are other hospitals in Ontario where directors are not elected by community membership. There are other hospitals in Ontario that don't comply with the ministry's preferred solution. Those are: denominational hospitals, where directors are appointed by a religious organization; civic hospitals—many of these have been done away with, but we know of at least one civic hospital that remains where a municipality appoints the majority of

the board; finally, there a number of hospitals around the province where the hospital board is the corporate membership and there is no open community membership. So, really, the governance structures do run the gamut, and ours is just one particular kind of structure across Ontario.

Also, in taking into consideration the ministry's recommendations, we were mindful that, as I've said before, there is nothing in the Public Hospitals Act, there is nothing in the regulations and there is no written ministry policy or white paper that sets out how a hospital board should be structured or how the governance of a hospital should be structured.

The Ministry of Health is not represented here at committee today. We would like to think that that absence is ultimately a show of support for what we have come up with: a local solution with accountability.

Finally, I just want to say, if there ever is in the future any concern about the governance structure of Groves hospital or any hospital across the province, the ministry has ample remedy under the Public Hospitals Act to appoint a supervisor, as it has done in recent circumstances in Hamilton and Ottawa, and to take over the board.

That's the conclusion of a description of the bill.

Did you have anything further to add, Cavan?

Mr Acheson: No, I have nothing further at the moment, but I would invite maybe the hospital's director to make some comments.

Ms Carolyn Skimson: Following more than five years of focused work on this bill, the hospital is most anxious to move ahead to realize the benefits inherent in our proposal. Those benefits, I think, have been clearly outlined by Kathy and Cavan this morning.

As a 100-year-old small community hospital in a rural area of approximately 32,000 people, the hospital is seen in the community as a key institution, with a great deal of community pride and a true sense of community ownership.

We've recognized from the outset of this initiative in the preparation for this bill that community anxiety was raised throughout the period that the council and the hospital were preparing, negotiating and working through to come to the best solution. It's been clear to us that the community would not support comfortably a direction that was not endorsed by both the municipality and the hospital board together.

Furthermore, it's been our belief that the confidence of the community and the hospital and the support of the community would be endangered if the direction of the bill was not supported by the municipality.

With this recognition, the hospital and the council have worked very hard to come to what we believe is the best locally generated solution we can achieve. With this bill being brought forward, we believe we have effectively recognized and respected the Ministry of Health directions, and I think Kathy has spoken very clearly to that while respecting the input of local stakeholders. Therefore we're very pleased today to be here to address the committee.

Mr Acheson: Mr Chairman, I would invite Mayor Pinkney to make any comments from his perspective.

The Chair: OK.

Mr George Pinkney: I think every presentation that's been made so far clearly indicates we wish this bill to go forward. Groves hospital is celebrating 100 years of service to its community this year. I think my particular comment is that the government of today, we hope, will support local solutions that are being recommended after five years of many productive meetings and discussions.

The Chair: Thank you, sponsor; thank you, applicants. I'm going to ask to see if there are any other supporters and/or opponents of the bill who would like to present their opinions.

Seeing none, I would alert everyone to the letter that we've received from Joan Aitchison, who is stating her objections to this. I think you've all received that, and I thought I would put that on the record.

Mr Kells, do you have any comments as a parliamentary assistant before I get to the questions from the members?

Mr Kells: Actually, no. The Ministry of Municipal Affairs has no objection. Counsel indicated that there isn't representation from the Ministry of Health here today. I wouldn't want to assume that that's support for the bill. I would rather assume that they're not going to be here to object to it. In a roundabout way, the Ministry of Health has removed any objection to the bill.

The Chair: Questions and/or comments by the members?

Mr McMeekin: Like the parliamentary assistant, I don't put—in terms of reflecting on the absence. Around this place, absence sometimes means you don't support something. If there's a bill that your party wants to support but you don't support it, you absent yourself from the House so as not to tick off your colleagues. This place is maybe an anomaly. I just offer that up to the solicitor.

I remember being told as a kid that on matters of principle you should stand like a rock, but on matters of taste you should swim with the stream. If I understand this correctly, Your Worship, you and your council are in support of this, the Ministry of Municipal Affairs has waived any concerns, the hospital board is there, and it appears to be a community solution. Most importantly, the outstanding member from the area is here in support of it as well.

There is a multiplicity of governing structures. It has already been highlighted to us that these are within the parameters of those guidelines and we should get on with embracing this locally developed solution.

Mr Bisson: I'm just going through this letter from Mrs Aitchison. I haven't had a chance to read it all, and unfortunately I wish I did, but she raises a number of things in here, and I'm a little bit confused by the letter—or by your presentation. I'm not sure which, yet.

As I understand it, as I read the bill, the governance of the hospital will be by a majority of board members that are appointed by the township, right? I read Mrs Aitchison's letter and she writes, "One of our major

concerns is that new board members should still be appointed by council rather than just being appointed by the board.” I’d just like you to explain that for me, because she seems to be flagging the complete opposite of what’s in the legislation. Ted, as the local member, I defer to your experience in the riding to explain to me what that’s all about.

Mr Arnott: I’m not sure. I haven’t had a chance to peruse the letter—

Mr Bisson: What a politician.

She seems to be indicating that she wants, as I understand it, council to have the majority control of the board. I’m reading the legislation as doing that, so I’m wondering what the argument here is.

Mr Acheson: I think there shouldn’t be an argument about that part of the letter. I believe that the bill you have before you achieves that, in that the council does have the final power of appointment of the board of directors for the hospital under this bill. This is interpretive on my part and on dangerous ground, but I think that her concern was aimed maybe at what she perceives to have been Dr Groves’s original intent in making—

Mr Bisson: What was his original intent?

Mr Acheson: That he was donating the physical hospital structure to the village. He entered into an agreement with the village council, and therefore I think she believes the historical connection is directly with the council itself rather than with the board of trustees or board of governors, which were in fact set up under the legislation.

Mr Bisson: So basically what she’s worried about is that she sees this legislation as possibly doing away with that and putting all the control into the hands of the administrator. But the reality, as I understand the bill, is it’s going to be the township that is going to have control of the board and you answer to the board. Correct?

Ms O’Brien: Correct.

Mr Bisson: That answers that.

Second, she talks about the amalgamation and asks why you put it inside the legislation. I actually underlined that under section 6 of the bill—was it section 6? No, I guess it was it was under section 4. She raises the question, why you are putting that in the bill after you have already had your amalgamation. Are you worried about a future amalgamation? I’ve already heard your answer, but she seems to worry about that. Maybe for the record you could just—

Mr Acheson: I can comment from the input we’ve had in drafting the legislation initially. Obviously this initiative came about largely as a result of the last restructuring in 1998-99, bringing five or six municipalities together. In that environment, it’s felt that other restructurings could occur in the future and we don’t wish to have to come back each time for an amendment, for a private bill. I think the solution that’s reflected in the bill continues to tie the control of the hospital to those persons who live within the hospital’s catchment area and still provides a political connection in that environment. Even though after restructuring the local members

of the corporation would at that point elect the board of directors, there would still be a political connection there.

Mr Bisson: The other point she makes in the letter—I take it the answer is, currently you don’t have to disclose the salaries of people over \$100,000 because you are exempt because of your stature as a hospital, right?

Ms Skimson: In fact, my salary was disclosed. It is required, and it was disclosed.

Mr Bisson: OK. I didn’t think it was because you weren’t a corporation.

Ms Skimson: We are required as a public institution, and my salary was disclosed by Hamilton Health Sciences in the Hamilton newspapers, because they indeed pay my salary.

Mr Bisson: That was one of the things she raises here. Just for the record, I don’t like that legislation. I think it’s nuts. Quite frankly, I trust boards. In that particular case we shouldn’t be sort of fanning that around.

Back to the legislation, the other thing—are there any others before I go on? I have other questions.

Mr Hoy: I just had a question here. The Groves Hospital Volunteer Association was opposed to this, at one point at least. Now I notice in the composition of the board that the president of the volunteer association would be one of those members. Are they more supportive today because of that inclusion?

Ms O’Brien: Can you speak to that, Carolyn?

Ms Skimson: Yes. The president of the Groves Hospital Volunteer Association is on the board and has been for many years. The comment about the volunteer association not being in support: there may have been an expression from a member of the volunteer association; however, the volunteer association is in support of this solution.

Mr AL McDonald (Nipissing): I come from a small northern town of about 56,000, so I can understand the struggle you’re going through.

Mr Bisson: We call those cities where I come from.

Mr McDonald: I just need to get something clear. The municipality is going to continue to own the hospital in trust—is that correct?—and the council will nominate or approve the majority of the board you are proposing?

Ms O’Brien: Yes, that’s virtually correct. The municipality is going to continue to own the hospital land. The buildings, equipment etc are being transferred to the hospital corporation. And, yes, you are right: the municipality is going to continue to appoint 11 of the 18 directors, but this will be done through a nomination process that involves the community.

1100

Mr McDonald: So the community will have lots of input. I’m going through the history of my community, and I know there was a concern that sometimes the elected board doesn’t put on a board that’s truly representative of the community. I know the board that is there now approves and looks for different sectors of the community to come on the board. I guess I’m asking the hospital, are you comfortable with the fact that council will still basically control the hospital?

Ms Skimson: The act that is brought forward does enable us to have community membership, which we cannot do at this time. Through the bylaws to be enacted to be consistent with this bill, the community membership will be represented on the nominating committee. The nominating committee will be made up of six members: two from the community membership, one from the municipality and the rest from the board. What we see is embodying in our bylaws the requirement of a nominating committee process that does incorporate community input, does have a very carefully orchestrated process to ensure the strengths and skills that are needed and to ensure good succession planning. Then that would be forwarded to the municipality to support the appointment.

To date in our process, as Cavan Acheson has noted, this is consistent—not the nominating piece; the nominating piece in fact is new over the last three years, since the amalgamation of the municipalities. But we have had the process of the council appointing the board in the past, and the council has not violated that trust. Certainly with the increased accountability of the community membership involvement, our belief is that accountability to the community is enhanced, and I think accountability of council to the community will be enhanced through this process.

Ms O'Brien: If I may make just one additional comment, actually clause 5(2)(e) of the bill talks about the composition of the board immediately after the bill comes into effect. Those 11 persons who are appointed by the township council must be “representative of the public within the catchment area.”

Mr Bisson: I didn't catch that when I read the legislation at first. The way I understood it, there would be three appointees from the township and the rest would be elected through the membership of the corporation.

Mr Acheson: Following a restructuring of the municipality, that would be the case. But as of right now, with the municipal boundaries the way they are now drawn, the legislation calls for the local council to receive the recommendations of the nominating committee and the existing hospital board as to who the new slate of directors should be. Eleven persons who are representative of the public within the catchment area are to be appointed by the township council. So you've got two checks here to make sure the hospital board truly reflects the community: first, the nominating committee process; and second, indirectly, because the council itself represents the vast proportion of the catchment area.

Mr Bisson: That will be the process after the legislation is passed?

Mr Acheson: That is correct. Right now that is happening de facto under the old Town of Fergus Act, but it is not a requirement. It would be possible for the municipal council of the day to appoint 11 people, although it's intended to be between 10 and 16, who were not truly reflective of the community. So it's important to get the change.

Mr Bisson: I'm a little troubled by that, to tell you the truth. I agree with the township having representation on

the board. That makes ultimate sense to me. But it would seem to me that if you have a hospital corporation that has members, it would be like every other hospital and we would have an election within those members to appoint our board. Explain to me the rationale why it has to be rubber-stamped by the municipality. For example—and I'm not saying this is the case currently—what happens if the mayor or council doesn't like a particular individual because they see them as an opposition force—that may be a good or a bad thing. They could be blocked from getting on the board. Explain to me the rationale on that one.

Mr Acheson: I believe the debate that has taken place in the community has been hot and heavy, particularly in this area, over the last while, and I think the compromise that was reached addresses both concerns. One, there is a nominating process from a corporate membership, which at this point doesn't exist, because the present legislation doesn't contemplate it, so we're incorporating that concept. At the same time, we have the elected members of the municipal council making the appointment based on recommendations. We know the municipal council represents the vast majority of the catchment area in terms of their interests. There is no perceived assurance that once the corporation has a membership, that membership will in fact be reflective of the entire community.

It's conceivable, and it does happen with many non-profit corporations, that you end up having a board of directors who end up being the only members of the corporation and therefore are not truly reflective of the community at large. Given the historical connection of this hospital with this community, the community, rightly or wrongly, perceives and has worked toward maintaining that political connection to give a true reflection of the community at large.

Mr Bisson: I was just wondering about your comments on this, Ted. I was just trying to think if any of the hospitals in my riding had a process by which municipal councils could veto a duly appointed person. There would be hell to pay. Explain to me: should I be supporting this legislation?

Mr Arnott: Absolutely.

Mr Bisson: Tell me why.

Mr Arnott: I have absolute confidence in our municipal councils to pick good, qualified people to serve on the board. I think the process that has been set out is a good one.

The Chair: I think we're ready for the vote, don't you?

Mr Murdoch: Yes, let's move on.

The Chair: We are ready for the vote.

Mr Bisson: No, we're not. I have another question.

The Chair: OK, Gilles, go ahead.

Mr Bisson: Thank you very much, Mr Chair. In regard to section 6, all you're doing there is transferring the property that is being held in trust by the township to the hospital after this bill is passed. That's all that does in section 6?

Ms O'Brien: Yes.

Mr Bisson: I'm going to back up. Under clause 5(4)(b), you basically say that three members—I take it that's of council—of the restructured municipality who, for a continuous period of at least three months, have resided or been employed or carried on a business in the catchment area. Why is that in there? If they're municipal councillors, I take it they're from the area. What's that for?

Ms O'Brien: This refers to what the hospital board would look like in the eventuality the township is restructured. We want to make sure the representatives who are on the board at that point from the council actually live in the catchment area, the service area, of the hospital.

Mr Bisson: That is the trigger. OK, I've got you.

Ms O'Brien: This is the crystal ball looking into the future.

Mr Bisson: I was wondering why. Now I know.

The Chair: We're ready for the question.

Shall section 1 carry? Any opposed? Carried.

Shall section two carry? It carries.

Shall section 3 carry? That carries.

Shall section 4 carry? No objections.

Shall section 5 carry? Carried.

Shall section 6 carry? Carried.

Shall section 7 carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall section 10 carry? Carried.

Shall section 11 carry? Carried.

Shall the schedule carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Agreed.

Is there any other business?

Mr Arnott: I just want to thank the committee members for their excellent questions and for their support.

The Chair: Thank you all for coming. The committee is adjourned.

The committee adjourned at 1108.

CONTENTS

Wednesday 19 June 2002

Draft report on 1999 and 2000 regulations	T-5
Groves Memorial Community Hospital Act, 2002, Bill Pr5, Mr Arnott	T-9
Mr Ted Arnott, MPP	
Ms Kathy O'Brien	
Mr Cavan Acheson	
Ms Carolyn Skimson	
Mr George Pinkney	

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