



ISSN 1180-4319

**Legislative Assembly
of Ontario**

Third Session, 37th Parliament

**Assemblée législative
de l'Ontario**

Troisième session, 37^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 11 December 2002

**Journal
des débats
(Hansard)**

Mercredi 11 décembre 2002

**Standing committee on
regulations and private bills**

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

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Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

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

Wednesday 11 December 2002

Mercredi 11 décembre 2002

The committee met at 1005 in committee room 1.

**TORONTO ATMOSPHERIC FUND ACT,
2002**

Consideration of Bill Pr15, An Act respecting the Toronto Atmospheric Fund.

The Vice-Chair (Mr Garfield Dunlop): I call the meeting to order.

The first item of business is Pr15, An Act respecting the Toronto Atmospheric Fund. I understand Mr Gilchrist is not here. Is the applicant, Clifford Goldfarb, here?

Good day. Could you introduce yourself, please?

Ms Lorraine Searles-Kelly: My name is Lorraine Searles-Kelly and I'm a solicitor with the city of Toronto. I am here to represent the city of Toronto as well as Mr Goldfarb, the Toronto Atmospheric Fund, and the Toronto Atmospheric Fund Foundation.

We fully intended to proceed today, to go forward with this application. Late yesterday afternoon it was communicated to me that there had been a request to amend the bill, which we were unaware of. Mr Gilchrist has communicated to Councillor Socknacki, who was on the TAF board as well as being a councillor of the city of Toronto, that it would be best to have this matter deferred. So I'm here to ask that the committee defer the consideration of this bill at this time and bring it forward in the spring.

The Vice-Chair: OK. Do we have agreement on that? That's fine. We'll defer it to the spring.

REENA FOUNDATION ACT, 2002

Consideration of Bill Pr17, An Act respecting the Reena Foundation.

The Vice-Chair: The next item on our agenda is Bill Pr17, An Act respecting the Reena Foundation. The sponsor is Mr Arnott, and I was wondering if Mr Longo is available.

Mr Ted Arnott (Waterloo-Wellington): Have I been recognized, Mr Chairman?

The Vice-Chair: Yes, Mr Arnott. I've just recognized that you are the sponsor, and I was wondering if Mr Longo is available as well.

Mr Arnott: I appreciate your interest in this issue, Mr Chairman, and I want to express thanks to the committee members for hearing the submission of the Reena Foundation as manifested by Bill Pr17.

With me here today is Stephen Longo, who is counsel for the Reena Foundation, and also Carolyn Pinto of The Jeffrey Group, who is advocating as well on this issue. I would turn it over to Mr Longo, who will make a brief presentation as to why we're bringing this bill forward today.

The Vice-Chair: Yes, please make a few comments, Mr Longo.

Mr Stephen Longo: Thank you very much, Mr Chair, Mr Arnott and members of the committee. I'd like to start off by just expressing my sincere thanks and also the sincere thanks of my client, the Reena Foundation, for the accommodation that we have had in terms of getting this matter to the committee so expeditiously, realizing that we had to jump through a few hoops. I'd also like to thank the Office of Legislative Counsel for all their assistance that we've had in this matter. We've really appreciated it.

I just have a few brief remarks about my client, the Reena Foundation, and the intent or reason for the private bill that we are seeking. Then, of course, I'm open to any questions, Mr Chair.

The Reena Foundation was formed in 1973 by parents with children with developmental disabilities. The goal of Reena is to create a safe environment for persons who have developmental disabilities, an environment that allows them to live and work with dignity, independence, confidence and choice.

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Reena provides programs to more than 1,000 clients and their families. It has attracted widespread recognition at home and abroad for its innovative programming and the services it offers to its members and to the community at large. Reena is also a non-profit philanthropic corporation and a registered charity.

The subject property at 927 Clark Avenue West in Vaughan houses the Toby and Henry Battle Developmental Centre. The centre is a fully accessible building that offers day and evening programs. The centre features a wellness and health centre, a gymnasium, a creative arts workshop, a computer centre, a greenhouse and library,

and it offers various activities that are tailored to the individual skills and interests of its members.

Reena had approached the owner of the subject property with the intention of buying the property. The owner, however, was not prepared to sell the parcel because of certain tax issues. Ultimately, an arrangement was reached where Reena would enter into a long-term lease of the land, build its own building—which is the Battle centre—and then obtain an option to acquire the land after 10 years.

The long-term lease was entered into May 1, 1995, and expires May 1, 2005. The centre opened in March 1997. Reena fully intends to exercise its option to purchase the land in May 2005, which is coming up in less than three years' time now.

I should also point out that Reena began receiving funding from Ontario's Ministry of Community, Family and Children's Services—which was once known as Community and Social Services—in 1977, and they continue to receive funding from that ministry to this day. I think it's worth noting that about 90% of Reena's funding does come from the provincial government.

To get to the reason for the private bill, the property in question was returned by MPAC, the Municipal Property Assessment Corporation, as being exempt from taxation commencing with the 1998 taxation year. Reena has been working under the assumption that the property, land and building were exempt from taxation since that time.

However, in June 2001, MPAC issued what is known as a notice of omitted assessment, retroactively changing the status of the property from exempt to taxable, and doing this going back to January 1, 1999, which is as far back as the assessment legislation—specifically the Assessment Act—allows MPAC to go.

The impact of these notices of omitted assessment has been incredibly difficult for Reena, because what it has done is it has put upon them a tax load in the nature of \$200,000 retroactive to January 1, 1999, which they had not expected to bear. If not addressed, this would have a catastrophic impact on Reena's ability to function and its ability to offer the services and programming upon which so many individuals, families and community members rely.

Without getting into the minutiae of the assessment legislation, Reena would be exempt if the property in question were owned, used and occupied by Reena. The problem is that because of the lease, Reena doesn't own the property in question. They do, as I have indicated, fully intend to own the property when they exercise their purchase option in 2005, but in the interim there is the need for this private legislation to address the unfortunate, and I would also submit unique, situation that Reena finds itself in.

I think, subject to questions from the committee, those are my initial comments. I should also point out that Ms Sandy Keshen, who is the executive director of Reena, is here today sitting in the back. I'm open for questions.

The Vice-Chair: Thank you very much, Mr Longo. Before we go into questions, I want to ask legislative

counsel if they have some comments; there are a few things they'd like to put on the record.

Ms Laura Hopkins: Under the standing orders, one of my jobs is to let the committee know if a private bill contains unusual provisions or is unusual in some respect. I'd like to tell you about the four ways in which this private bill is unusual. I'll tell you the four ways and then I'll give you a little bit of background information.

This private bill is unusual in that it's here at all as a tax cancellation private bill; the second way that it's unusual is that the charity doesn't own the property that's the subject of the tax cancellation; the third way in which it's unusual is the mechanism by which taxes are cancelled; and the fourth way is that it's unusual in the extent to which back taxes are cancelled. Let me tell you a little bit about the background now.

Until 1998, tax cancellation private bills were routinely considered by committee, but the Municipal Act was changed in 1997 to allow municipalities, by bylaw, to rebate taxes to charities. Starting in 1998, this committee hasn't considered any tax cancellation private bills. That's the way in which this one is unusual to that extent.

When we look at the tax cancellation bills that this committee considered before 1998, the second unusual feature is that the charity doesn't own the property in respect to which it's seeking the tax cancellation. This isn't unprecedented. The committee considered another bill like this before 1998, but this is just a little unusual and I thought you would like to know that.

The third way in which the bill is unusual is a legal way. Before 1998, it was conventional for private bills to authorize the municipality in which the property was located to pass a bylaw providing for tax cancellation. This bill, instead, cancels the taxes directly. It gives the tax exemption directly.

The fourth way in which this bill is unusual has to do with the cancellation of back taxes. Before 1998, back taxes were cancelled starting from the year in which the application for the private bill was made. In this case, the applicant seeks to cancel back taxes back to 1999.

Those are the four ways in which this bill is unusual. I believe that the applicant has already described the reasons for these unusual features of the bill.

The Vice-Chair: Thank you very much. I believe now there is an amendment going around. There are some questions coming up here as well, but I'll ask the parliamentary assistant for his comments first of all.

Mr Morley Kells (Etobicoke-Lakeshore): I just wanted, if I may, to ask the legislative counsel a question. I've heard what you've said and I've heard what the delegation said. I guess the main point is that there's no other obstruction to us passing the bill. The information is fine. We're well in order to proceed. My understanding is that there is an amendment that's going to be brought forward and the ministry has no objection to the bill whatsoever. I just want to get on the record, if I could.

The Vice-Chair: Thank you very much, Mr Kells.

Mr McMeekin, you have a question?

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): A question, maybe several, and some comments as well. I think there's a fifth way that this is unusual and that is that it has appeared very late on the agenda. I for one haven't had a chance to check in with some other agencies that provide a similar service. Before I came to work here, I worked with a group called Choices, which offered residential assistance to developmentally disabled adults, so my heart is certainly there.

Notwithstanding, I'm a former mayor of a municipality that had to look at laws. I was very delighted when we embraced, in the Municipal Act, the option of municipalities in fact waiving taxes. That's a power that we've given to them. So I guess my first obvious question is, have you had discussions with your municipality and can they comment? I noticed, just in passing, the impact indicates that they will rigorously oppose any change here. What does your municipality say?

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Mr Longo: We have had consultation with the city of Vaughan, the municipality. In fact, the city has passed a resolution of support for this private bill. The council of the city did pass a resolution of support.

Mr McMeekin: Is that part of our package today?

Mr Longo: I don't know. We had provided it to Mr Koch as part of the compendium of background information, so I believe it is there.

Mr McMeekin: Can you confirm that is the case?

Clerk of the Committee (Mr Katch Koch): It's in the package.

Mr McMeekin: I've been going through material but I've been getting some on e-mail and some—which is fine.

Mr Longo: It should be tab J, I believe, if I'm not mistaken.

Interjection.

Mr McMeekin: Well, I try to, I really do. I used to teach speed reading at the college, so it helps to be able to speed-read things too. With a computer, it's a little easier.

Mr Kells: We'll have to take his word for it, anyway.

Mr McMeekin: With all due respect, I do. My tendency is to be pretty naïve—and it's no reflection on you—and take most people's word for it, but I can tell you, I've taken people's word for things before and have got burned pretty badly as a result. So I'm pleased that it's been confirmed. The fact that Mr Arnott is here making a presentation also strengthens my inclination to be supportive.

The municipality has indicated they are onside with this, notwithstanding impacts—an indication that they will rigorously resist any attempt? OK.

I guess the other issue—and I think there's probably enough here to sprinkle holy water on it from my perspective, but I want to just add one other thing. It's a case-to-cost kind of deal for me. I know there are a number of similar circumstances throughout the province. I can think of at least five in my own riding. One of the first things I'm going to do when I leave here is place

a call to see if they're paying property taxes. I suspect they are.

If we see the benefit of passing this bill and providing this kind of relief in this circumstance, and we want to extend the right to this group, I would think it would be a right that we'd want to seriously consider extending to potentially all charities in this group, which may involve an amendment to the Municipal Act to include, in addition to commercial and industrial properties, also residential properties.

I think the other issue that our legislative counsel has brought to our attention is the issue of land ownership and who actually gets the tax relief. I think that's another issue we might want to look at.

I'll support this, given the registered support of the municipality, but in fairness, I want to suggest this may be providing us with an opportunity to take an acknowledged good that we're hopefully about to do and, in acknowledging it, also ensure that others who are in a similar situation would have equal access to the same right. Does that make sense?

The Vice-Chair: It sure does. Mr Beaubien, you had a question?

Mr Marcel Beaubien (Lambton-Kent-Middlesex): Yes. As you pointed out, the municipality of Vaughan is quite supportive of the application. However, what about the region? Are they supportive also of writing off the taxes?

Mr Longo: We have not made inquiries of the region directly, so I can't answer that question.

Mr Beaubien: How do you see this coming down the pipe? There is a levy on the taxes from the region. If the region is not willing to write off the taxes, how does that impact the foundation?

Mr Longo: First of all, the region would be aware of what the council of the city of Vaughan has done. I guess our thought was, this is primarily a municipal property tax issue. We saw relief coming through by means of a private bill and the cancellation.

Mr Beaubien: But there's another tier of charge also on your tax bill.

Mr Longo: Yes, I'm aware of that, but I would have thought that the relief we're seeking would have been covered off by the private bill. In terms of the cancellation—

Mr Kells: I assume our level of government would take precedence over the region.

Mr Longo: Right. I would have thought that, but I would have thought that because the bill cancels all property taxes—that's the wording I've seen—retroactive to January 1, 1999, and then going forward from January 1, 2003, prospectively exempts from taxation, the matter is addressed that way.

Mr Beaubien: Could I ask legislative counsel, under section 442 of the Municipal Act, with municipalities being able to write off taxes, does it give them the power to write them off on a retroactive basis?

Ms Hopkins: I didn't bring my copy of the Municipal Act with me. To the best of my recollection, it doesn't allow for a retroactive tax cancellation.

Mr Beaubien: Consequently, you would definitely have to have approval from both the municipality and the region, I think.

Ms Hopkins: In order to answer that question, I'd be guessing.

The Vice-Chair: Mr Longo, do you have an answer to that?

Mr Longo: Well, we had looked at the Municipal Act, at section 442, and I wouldn't have thought—unfortunately, I didn't bring it with me, because I didn't know it would arise today, but we didn't think that section would apply.

Building on the comment that was made earlier by legislative counsel about the normal route of rebates to charities, one reason why that route doesn't help us here is that we don't meet the eligibility requirement of property class currently. I think there are some changes coming down the pipeline but they're not law yet, but currently—

Ms Hopkins: Yes, they are.

Mr Longo: Oh, they are, but you have to be in a class for the rebate.

The other thing is that the rebate is at the option of the municipality and it's also not necessarily a 100% rebate and it can't be retroactive. So it doesn't address any of the concerns that we have before the committee.

But I must say that certainly our understanding of how the bill has been drafted is that it cancels the taxes, period, full stop. So I'm not sure that section 442 would apply. I'd have to go back and take a look again since I don't have the benefit of having it in front of me. But I remember that we did scan the Municipal Act and the Assessment Act when we were looking at all the options open to us.

Mr Beaubien: I haven't got any problem with your application, but I'm concerned with the retroactivity aspect of the rebate. That's the only concern that I have, whether we're opening a can of worms there.

Mr Longo: Right. Mr Beaubien, that's a well-founded concern and it's probably the biggest single concern we've had to address. How I would respond to that simply is by saying that we are seeking retroactive relief but the problem has been created retroactively in that MPAC issued a notice of assessment retroactive two and a half years, which they are entitled to do under the Assessment Act. But it doesn't happen that often, especially in a situation where—and this is also, I should point out, in the members' packages—MPAC had previously assured our client that in fact they were exempt. Obviously everybody's entitled to change their mind, but our client had proceeded under certain assumptions from MPAC. Then they got this whopping two-and-a-half-year retroactive tax bill; that's why we're seeking the retroactive relief.

Mr Gilles Bisson (Timmins-James Bay): First of all, I just want to indicate that I want to support this bill. I

think anything we can do to help charitable organizations to keep afloat is a great thing. Retroactivity—whoa, that's interesting. I have just a couple of questions.

Parliamentary Assistant, there's no ministry staff here?

Mr Kells: Yes, there is.

Mr Bisson: OK, I have a couple of questions. The first question is, have we ever done anything like this that's retroactive when it comes to municipal taxation?

Mr Kells: Not to my knowledge.

Mr Bisson: I'll leave it at that.

Mr Kells: Because of how recent the imposition of that—

Mr Bisson: No, you don't have to convince me. I'm convinced. I just wanted to know.

Mr Bill Murdoch (Bruce-Grey-Owen Sound): He's on side. Don't bug him.

Mr Bisson: Yeah. My other question is, I guess, to leg counsel or the parliamentary assistant. I don't ever recall a private bill coming and doing this as far as exemption of taxation. Have we ever done—

Ms Hopkins: Going way back in time, it used to be the case that private bills cancelled taxes directly, or created a tax exemption directly. But to the best of my knowledge, in the past 15 years it has been the practice of the assembly to give the municipality the power to do it, rather than to do it directly.

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Mr Bisson: Chair, I ask for the question to be put.

The Vice-Chair: What question?

Mr Bisson: I want to vote on this. Let's go. Let's help these people.

The Vice-Chair: Just a second, we've got other questions here.

Mr Bisson: I move that the question now be put.

The Vice-Chair: Mr Hoy?

Mr Bisson: No, you have to deal with me, Chair.

Mr Kells: They're trying to get an amendment in.

Mr Bisson: No, Mr Chair, I ask that the question be put.

The Vice-Chair: Do we have consent in the room to put the question? No, we don't. We've got one more question.

Mr Arnott: Mr Chairman, I have an amendment that's going to be—

Mr Bisson: Yes, we're going to deal with your amendment.

The Vice-Chair: But we have another question before the amendment. Mr Hoy?

Mr Bisson: Chair, I move that the question now be put, that we vote. Either we put the question or we don't. I move that the question now be put.

The Vice-Chair: We never had consent for you to move ahead with that.

Mr Bisson: You don't need to have consent for a motion. I'm putting a motion. If nobody wants a motion, they can vote against it.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): We've disallowed you.

Mr Bisson: I'm trying to help you guys and you don't realize it.

Mr Hoy: My question, sir, is that I would assume these taxes have been paid in full up till now?

Mr Longo: Yes, they have.

Mr Pat Hoy (Chatham-Kent Essex): If this bill were to pass, your lease agreement would remain exactly the same as it's written today?

Mr Longo: I'm sorry, sir, I couldn't quite hear your question.

Mr Hoy: If this bill were to pass today, would the lease arrangement that you currently have remain exactly the same?

Mr Longo: Yes, it would. The lease is in place until 2005, when the purchase option can be exercised.

The Vice-Chair: Mr McMeekin, did you not have a brief question?

Mr McMeekin: Yes. I just want to reiterate, if I can for a minute, and I want to go on the record. I don't mind breaking the law when it's done in a setting where lawmakers come together to—there is clearly precedence. This doesn't qualify under the act and there's a retroactivity, so it's clearly an abridgement of the law. I don't mind going there and supporting that, but I will only do so if I can have some undertaking from this committee that we will pursue the next logical step. That's our job here as lawmakers, to do the case-to-cost-off. We will then move to ensure there is a change to the act so that other equally worthy charities that fall under the same circumstances will reap the same potential benefits. If I don't have that assurance, then I'm afraid I'd have to vote against it. I don't want to do that, so—

The Vice-Chair: I'm not sure we have the authority to give that assurance, Mr McMeekin. That's my problem right now.

Mr Kells: If I could make a comment, I hear what the honourable member has just said. There's another factor that might make you feel somewhat more relaxed about this, and that is that the Minister of Finance of the day has the ability to direct the assessment court to do something in relation to levying taxes.

Mr McMeekin: I appreciate that, but that's normally not the way we intervene with partner municipalities. Normally we try to clarify it so the rules are the same for everybody. As I say, my heart is there and I want to support it, but I want to support everybody who's got a similar circumstance. Enough said.

The Vice-Chair: Mr Bisson?

Mr Bisson: Now that I properly have the floor, I move that the question now be put.

The Vice-Chair: OK. Mr Arnott?

Mr Bisson: Can we deal with the amendment first? We can deal with his amendment?

The Vice-Chair: We'll deal with the amendment first, yes.

Mr Arnott: I move that the bill be amended by adding the following section:

“Repeal

“4.1 This act is repealed on May 1, 2008.”

The Vice-Chair: You've heard that amendment. All in favour of that? A question on the amendment? Mr Hoy.

Mr Hoy: I'd appreciate an explanation of why you want to repeal this bill. You've just stated that your lease goes to 2005, at which time you will put an option to buy into place, so you say. I will take you at your word for that. Now you say you want to repeal it. You're looking for a power that you want repealed three years after you buy.

Mr Longo: This amendment has come from municipal affairs staff. They have requested it and I think they should probably speak as to why they want it. But what I will say in terms of the repeal date of May 1, 2008, is that when we were approached and asked for a sunset clause, if you will, we expressed our concerns but said if there had to be one, we wanted 2008, because the purchase option is a three-year window. Our client fully intends to execute in 2005, but if they're going to insist on a sunset clause, these things take time to be negotiated and get finalized. We'd rather have the leeway of having the full three-year window. That's why we suggested that date if they wanted a sunset clause; the full three-year window on the purchase option. But in terms of the source of that amendment, it comes from municipal affairs and maybe they should address as to why they want that.

Mr Hoy: You have the option to buy; you're not compelled to buy.

Mr Longo: No, we're not compelled to buy it, but my client is certainly fully intending to buy it, given the situation they've had with the owner. The whole reason this arrangement was so cumbersome in the first place is that they fully intend to exercise their purchase option. The other thing of course is that they'll lose their exempt status in any event if they don't buy it. That's the issue.

The Vice-Chair: I'm going to start with section 1 and then we'll get to the vote on the amendment.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall section 4 carry? Carried.

Shall section 4.1, as amended, carry? Carried.

Shall section 5 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Mr Arnott: Mr Chairman, I understand it's routine at this committee, if there's a charitable organization coming forward, that we give consideration to waiving the normal fees and printing costs. So I would move a motion that the fees and printing costs in this instance be waived for Bill Pr17.

Mr Bisson: How much are the fees they would have to pay?

Clerk of the Committee: The fee for the application is \$150 and the printing costs for a bill of this size would be roughly anywhere between \$250 and \$300.

Mr Bisson: I want to second the motion.

The Vice-Chair: Is there any debate on this motion?

Mr Hoy: I'd like to make a comment. We've had requests from people who have travelled greater distances than just from Vaughan to this location, particularly those from the north, who have asked for the consideration to waive fees. They have taken air flights—and honourable members know how expensive they are—they have travelled great distances and they have been denied the fee waiver. I know they've gone to great expense to come to Toronto to have their private bills looked at. I think we should pause and think a bit about this, in light of setting

another precedent that we waive fees in a rather indiscriminate way. We've had people come here from the far north at a great expense and we've charged them the fee.

Mr Bisson: Just for the record, I've had people travel from great distances to the committee and they were paid.

Mr Kells: If they request it, then we have to make a decision on each occasion.

The Vice-Chair: Any further comments on this? We've got a motion to waive the fees here today and we've got a seconder. All in favour? Shall the motion carry? Carried.

The committee adjourned at 1039.

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