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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COMITÉ PERMANENT DES COMPTES PUBLICS

Monday 10 February 2003

Lundi 10 février 2003

The committee met at 1116 in room 151, following a closed session.

2002 ANNUAL REPORT, PROVINCIAL AUDITOR MINISTRY OF FINANCE

Consideration of section 3.02, corporations tax program.

The Vice-Chair (Mr Bruce Crozier): The session of the public accounts committee has begun. We are here this morning to consider section 3.02, the corporations tax, Ministry of Finance. I thank you for waiting for us. We're about 15 minutes behind our normal schedule, but I appreciate your attendance here today. For Hansard, if we could introduce ourselves, perhaps beginning with you, Mr Christie, and then we'll proceed. You then have up to 20 minutes, if you'd like to make any comments and then we'll go into a round of discussion.

Dr Bob Christie: Thank you, Mr Chair. I'm Bob Christie. I'm the Deputy Minister of Finance. To my left is Marion Crane, who is the assistant deputy minister of the tax revenue division. To Marion's left is Richard Gruchala, who is the director of the corporations tax branch, and to my right is Peter Spiro from our macro-economic analysis and policy branch.

As you noted, we're here today to follow up on the issues raised by the Provincial Auditor in the 2002 report on the corporate tax program. Just as part of the introduction, I'd like to give you a bit of a sketch of the division and its business. The tax revenue division is the largest division of the Ministry of Finance. It administers all of Ontario's tax programs, with the exception of the personal income tax, which is administered by the Canada Customs and Revenue Agency. It has seven branches and four regional tax offices.

The area that's most relevant for the current discussion is the corporations tax branch and our collections and compliance branch. The corporations tax branch has the main responsibility of administering and enforcing the corporations tax program, so they process returns, assess taxes, conduct field and desk audits—which I'll describe a little later—maintain the tax roll and taxpayer accounts and provide tax advisory services. The collections and compliance branch is responsible for collecting delinquent taxes, pursuing outstanding returns and taking progressive actions to collect outstanding returns and past-due taxes.

For the 2002 fiscal year, the corporations tax revenue was \$6.6 billion. As the Provincial Auditor's report noted, there has been significant growth in the corporations tax roll, which was about 460,000 corporations in 1996 and by now has grown to over 800,000 corporations, about a 75% increase in the size of the tax roll.

What I'd like to do now is go through the recommendations as they appear in the auditor's report and outline what the ministry is doing to address the recommendations the auditor had for us. I should note at this point that we would like to thank the auditor and his office for working with the staff on this and other audits. We have always found the recommendations of the Provincial Auditor's office to be very helpful in improving the administration of our tax programs, and this is certainly no exception.

With respect to the corporations tax roll, the auditor recommended that the ministry regularly compare the corporations tax roll with the corporations registered in the Ministry of Consumer and Business Services database and resolve any discrepancies on a timely basis. These two databases are put together for different reasons and you would expect there to be differences between the two. In the corporations tax database are those that may be liable for Ontario corporate taxes. So corporations that maintain a permanent establishment in Ontario, regardless of where they are incorporated, will fall under this heading. With respect to the Ministry of Consumer and Business Services, it requires all businesses that carry on business in Ontario, even if they don't have a permanent establishment here, to deal with them.

I think the other main difference is the role of non-profit corporations. The MCBS database will include non-profit corporations, but of course for the purposes of the corporations tax roll, those are not going to be liable for corporations tax so they don't form part of the corporations tax database.

The reconciliation of the data from these two sources is an important part of the administration of the corporations tax program. In October of last year, the ministry was able to compare the full corporations tax roll with that of MCBS and resolve any of the differences. The plan, as the auditor noted, is to do that on a regular basis. We are in the process of working with MCBS to put in place a regular routine on a semi-annual basis of doing a full reconciliation of the two databases.

The next comprehensive comparison is scheduled to take place this summer. In addition to that regular semi-annual comparison and reconciliation, we are receiving regularly, on a weekly basis, updates from MCBS in terms of new corporations added to the tax roll or corporations that have had their information on that roll change, and we update on that basis.

The auditor recommended that the ministry make better use of available tools to enforce compliance by defaulting corporations and assess whether additional resources and procedures warrant follow-up on outstanding returns. The number of corporations in default in filing a return has, as the auditor noted, increased from about one in five in 1996 to approximately one in two in 2002. There were several reasons and factors underlying this. As we noted, the corporations tax roll grew quite significantly, by about 75%. In 1997, the ministry found that the information in its corporations tax computer system was not a reliable source of information for cancelling corporate charters, so the process of cancelling charters was stopped at that time. That problem has since been fixed and the cancelling of corporate charters will be a regular feature of the administration of this program in the future. I'll provide more on that in a minute.

The other main reason is that in 2000, the ministry introduced a new annual filing requirement for corporations that are exempt from filing, which we refer to as EFF corporations. These are corporations that satisfy a list of criteria, particularly that they file a return with CCRA, that they have no Ontario taxable income payable, that they're not subject to the Ontario corporate minimum tax—and I think some others are noted in the auditor's report. Up until 2000, a corporation filed a declaration that they were exempt from filing once and they didn't have to re-file every year. In 2000, the ministry began to require that these corporations file for every year that they continue to be exempt from filing, and that certainly increased the number of returns or declarations that were due to the ministry.

There have been a number of measures taken to improve corporate tax compliance. In 1997, the ministry created an identification and compliance unit to address non-registrants and non-filers for most of our tax programs. The unit's initial and primary focus was on retail sales tax, as that was a program where we knew that, because it's a transactions-based tax, if a person is registered as a retail sales tax collector, then there's a very good reason to believe that they have collected tax and that there is money owed. The corporations tax as an income tax—and particularly, given the nature of corporations tax, there may be no taxable income so there may not be tax owing. In fact, there may be refunds owing. So the initial focus was on sales tax. The backlog on sales tax in terms of non-filing and non-registration has been worked through, and that is now current.

In January 2001, as the process of clearing up the RST backlog was nearing completion, the ministry began shifting some compliance resources in that unit to corporations tax. To date, we have followed up with

about 12,000 corporations. About half are now in compliance or have indicated that they never started business. Of the 355,000 corporations that have failed to file returns, we know that 71,000 have incorrect addresses. To date, we have traced more than 42,000 of the 71,000 and we'll clear the remaining inventory by the end of March of this year. This is a necessary step, obviously. Before we take more progressive actions with corporations, we have to make sure we know where they are.

In November 2002, the ministry implemented an automated process to request prior years' returns, when corporations had filed the current year's returns but had not filed for a previous year. Under that program, we've issued about 4,600 requests to corporations to file under that scheme.

In addition to these measures, we are putting in place a system to ensure that corporations that owe returns, or declarations in the case of the exempt-from-filing forms, either file what they're required by law to file with us or, in the limit, risk having their charters cancelled. The cancellation of charters is a fairly significant step to take. It means, among other things, that corporate assets are forfeited to the crown, it means a loss of limited liability insurance coverage and it means that if the corporation does have tax losses, it can't claim them any more.

By April 30 of this year we will have issued notices to all the corporations in default of filing either a return or an exempt-from-filing form. We will issue follow-up notices or initiate telephone contact with those that don't respond to the initial notice. We have the capacity under the Provincial Offences Act to prosecute directors of corporations who fail to file tax returns. These directors can be summoned to court and, on conviction, fined \$200 per day for each day the return is outstanding.

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As I noted, we could also cancel the corporation's charter for failure to file the required tax return. I also note that there are late filing penalties of up to 17% of the tax owing, where tax is due, and those fines escalate to 50% for repeat late filers.

As part of this program to eliminate this backlog of non-filers, we will be communicating with tax practitioners, accounting associations etc that do work and prepare taxes for corporations, to make them aware of what corporations need to be filing with us, and we will attempt to be sure that people can comply where they have not been aware of what they needed to do. We intend to make them aware so that they can comply voluntarily.

On tax return processing, the auditor's report recommended that returns be processed more quickly by following up on missing information and verifying information on a timely basis. We have taken steps to improve the follow-up process. As I noted, we've implemented an automated process to deal with returns that are missing one or more prior years' claims, and that will be done automatically. From now on, when a corporation files a return and there's a missing prior year, there will automatically be a request generated and a process started to follow up on that.

Where appropriate, where we have reason to believe that it will be effective, an arbitrary assessment of tax will be made if a response to the second letter isn't received within six weeks of mailing it. As I noted, we sent 4,300 letters in January and plan to send approximately the same number in each of February and March. On an ongoing basis, we will continue to use this process.

We're also improving processes for following up on other missing information. This information may include items from the taxpayer or verifications from regulatory bodies such as CCRA or others. We're now advising corporations on a more timely basis of the needed information and who it is needed from.

With respect to audit coverage, the auditor recommended that we take a number of steps, which I will describe. I would note here that if the committee wants to discuss particular audit coverage ratios for particular taxpayer classes, this is not information that we normally would disclose in a public forum such as this, because it can have an effect on voluntary compliance. So I would ask that if we do get into a discussion of those, we do so in a manner that will permit us to answer your questions without endangering voluntary compliance.

The auditor recommended that the ministry "conduct the planned number of discretionary desk audits ... and consider the advisability of auditing, based on assessed risk, more corporations with annual gross revenues of under \$500,000."

On the latter point, on smaller companies with this \$500,000 cut-off, we typically use the information provided by CCRA and the CCRA audit program, where they share the results of their processing of returns and of the audits they undertake of smaller firms in Ontario. The practice to date has been to rely on the CCRA audit pattern for those small firms in order to, among other things, make the best use of our resources and address the compliance burden with small business, who tell us, from time to time, that having auditors from both ourselves and from the federal government coming through in an uncoordinated way is something that is very difficult for them.

With respect to the desk audits, the ministry had underestimated the amount of time it was going to take to do these desk audits. Originally we had anticipated that 15 hours would be necessary to complete a desk audit. I think we found in practice that it took about 20 hours to do so. To address this experience, we have put in place a number of training initiatives to get the auditors who do these things up to speed more quickly. Staff were provided training and assigned easier files to begin with, which allowed them to become familiar with the corporation's tax system and the audit function in general.

With respect to discretionary field and desk audits, the auditor recommended that the ministry assess the risk of significant non-compliance for all corporations and select those with the highest risk of significant non-compliance and that we audit corporations from various industries to encourage broad-based voluntary compliance. The minis-

try is creating a new audit control and analysis unit in the corporations tax branch. This unit will ensure that the range of corporations selected for audit is sufficiently diverse. We will also be consulting with the Canada Customs and Revenue Agency—CCRA, the federal tax collector—with respect to their audit programs and audit criteria, both for small business, which is an area where we rely on them extensively—and the auditor recommended that we follow up with them and assess whether their audit program is sufficient to meet the standards of our tax programs, and we are in the process of doing that.

The Vice-Chair: Mr Christie, just to keep on schedule, you have about a minute.

Dr Christie: OK, no problem.

Just a couple of other areas. On the training needs, we have introduced a number of training programs, and we'll be looking at the training needs of our corporations tax staff. It's a very complex area and people need to keep up, so we have to ensure that the training is adequate.

With respect to the tax gap, which was noted in the auditor's report, the macroeconomic analysis and policy branch does quite a bit of work on that. Peter has done quite a bit of work on that. We are also following up with the Internal Revenue Service, which I think is using some audit information experimentally to address this. They're estimating the income tax gap using compliance and other data from a group of audited taxpayers to extract and extrapolate compliance patterns. This is still in an experimental stage at the IRS, but we're going to be monitoring this very closely in determining if we can usefully employ it in Ontario. With that, I will conclude.

The Vice-Chair: Thank you, Mr Christie. What we propose, and what has been agreed to previously, is that we'll now have a round of questioning, where each caucus can have up to 20 minutes. I'm suggesting as well that we go through the first round, which will take us till about 12:30 or 12:40, and then we'll decide on where we proceed from there. To begin with, we'll go to Mr Patten of the Liberal caucus.

Mr Richard Patten (Ottawa Centre): Good morning.

Dr Christie: Good morning.

Mr Patten: Mr Christie, I see in a press release and a news article that there are a number of sources of action that have been taken recently—new, improved stringent approaches that are now being considered or being put in place. But just to get a handle on the overall situation, the number of outstanding accounts is really a cumulative number, is it not? In other words, we have more companies that have not filed their income tax, and if that goes back, for example, a couple of years, then they're still on file and considered delinquent, it seems to me.

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Dr Christie: That's correct.

Mr Patten: I gather the process, as I understood you this morning, is really saying, "Look, we have to get a handle on where this problem is." There are those who perhaps are no longer in business. There are those who may have changed addresses, for whatever reason, or re-

incorporated. There are those who may have a new name, whatever. In other words, let's find out what that number is, number one.

I gather it's really a handful of the bigger corporations that have not filed, is that correct?

Dr Christie: I'll ask the experts here.

Mr Patten: Over \$500,000.

Dr Christie: I'm not aware of what information we have on size.

Mr Patten: Or over \$1 million, I guess.

Mr Richard Gruchala: In terms of the corporations that are in default of filing, we expect that most of them will be in the very small range. We have various strata for corporations, and certainly the expectation is that most of them would be in that range of under half a million dollars of gross revenue.

Mr Patten: So that's where the shortfall by and large is. And of course you have another mechanism that looks at what has been filed. There's a review, and if you see something out of the ordinary, then you'll want to follow that up. That you will do, and you may or may not discover something in there relative to the taxes to be paid.

In terms of the smaller group, we use the term "voluntary." We had some discussion among ourselves related to that term. In a sense, it is a legal requirement, and therefore it's against the law not to file if you are active, as it is for personal income tax, it seems to me. So this voluntary business is somewhat a misnomer, in my opinion, in that there is an obligation. Obviously, with the growth of this pattern of some non-compliance, then there's something that is not. You've identified a few things you're going to do. Number one, you're going to make contact with them and see if there is an existing entity. Number two, if there is, then you want some response to your request. So if there's a live body there, presumably now you're on track and some issuance or resubmission will take place; if they don't, then presumably you send someone in or you take—what happens if someone continues to ignore it but you know there is an active business going on?

Dr Christie: There are a couple of things we can do, as I noted, if we know it to be an active business and if, notwithstanding several attempts to contact them and give them the opportunity to do what you correctly note they are required to do, neither a return nor a declaration is forthcoming. They may be active but have no taxable income, in which case they would have to file a declaration saying that, which itself would be auditable. If we have returns from them for other years, we could arbitrarily make an assessment against them. Depending on the particulars of the case, we have the option of pursuing the directors under the Provincial Offences Act. We can also cancel the charter. Depending on the specifics of the case, certainly one or more of those methods would be pursued in going after and encouraging a corporation to comply in that circumstance.

Mr Patten: The ones that were determined by the auditor not to have filed would include—what's the term we use—the EFFs?

Dr Christie: The exempt from filing, yes.

Mr Patten: They're exempt but they still have to file.

Dr Christie: They have to file a declaration that says they continue to be exempt from filing, that they meet the characteristics of an exempt-from-filing corporation.

Mr Patten: But if they didn't file, are they in that group?

Dr Christie: If they don't file the form or the declaration, then they are in default of filing. They are still required to file to say that they have this status, and if they don't, they are in default of filing. If they were to file, they might well continue to be exempt, but because they haven't filed, we don't know that and we can't consider them exempt.

Mr Patten: How many are we talking about here?

Ms Marion Crane: If I could just clarify, further to what Dr Christie has said, we have done samples of certain corporations that have not filed, and what we find is that they break down into one third, one third, one third categories.

One third are corporations that are no longer in business, never started or are insolvent. For example, when a corporation intends to do business in Ontario, they have to register with MCBS, the Ministry of Consumer and Business Services. However, they may never do business in Ontario. Our studies show that one third of the corporations fall into that category.

One third, as Dr Christie has explained, are exempt from filing, but they haven't filed the piece of paper with us to show that they are exempt from filing and haven't met all the other requirements.

One third, as we are finding out, do owe us a corporate tax return, and they may or may not owe us tax. A corporation pays its taxes through instalment payments throughout the year, so we can have corporations that have never filed a return—I shouldn't say never, but that have not filed a return, yet have made the instalment payments that they should have. So not having filed a return doesn't necessarily mean there is tax owing.

That's what our studies have shown us to date.

Mr Patten: OK. By the time you whittle all this down, the overall question that I think you face is the adequacy of getting at the data, information flow from the feds that is timely, accurate and pertinent to you, and your ability to follow up on your indicators of where something may go wrong. Are we now on the ball to really do this? I think some of your quick action recently says, no, we can do more.

You had some cutbacks from finance. Has that affected any of this in terms of being able to monitor and to be on top of the filings, or the lack thereof?

Dr Christie: In the tax administration area, in fact, we have certainly added resources in the past several years, primarily on the audit side. There have been a couple of initiatives to get at underground economy activity—again, as I say, primarily through audit. The growth in the number of corporations, together with the requirement to file this additional piece of paper, caused a real backlog to emerge here over the last couple of years. There had

been resources put in place to deal with non-filers and compliance, but we had not put in place resources of the magnitude that would have been required to deal with this as it arose. They were initially devoted to retail sales tax, where—and Marion will have the exact number—we recovered under that part of the program over \$120 million, I think—

Interjection.

Dr Christie: —\$126 million in taxes that had been collected but not remitted to the province. So when the auditor correctly pointed out how this backlog had developed, we responded by putting more resources into place to deal with it. We've worked through the retail sales tax backlog now. We think that hopefully by the end of the year we will have worked through most of this corporation's tax backlog, although it will take a while because following up on hundreds of thousands of addresses and corporate names etc is quite a complicated process. But we hope to have that by and large cleared up and at least have much more currency of filing within, I think, a year.

We have made some systems changes. Once we get that backlog caught up, the systems changes should allow us to stay current. But I think our experience in a number of these areas has been that when you get behind, even if you make systems changes, it's very difficult to work off the backlog unless you put in extra resources, which is what we're doing.

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Mr Patten: Number one, do you have the horses, and number two, do you have the confidence in your system now to be able to tag this in a better fashion as we go along?

Dr Christie: Perhaps I'll ask the experts on that, because I couldn't assess the system.

Ms Crane: Yes, we are making the systems changes that will enable us to issue the dunning letters on a regular basis, and cancel the charters. We have resources in place to deal with the initial sending out of all the notifications that we'll be sending out in April, the over 300,000 notices that the Provincial Auditor noted in his report. We'll also be asking for some additional temporary resources to help us work through this backlog. We're also putting procedures in place along with the systems changes to make sure that we follow up on a timely basis so that we don't get into this situation in the future.

Mr Patten: In your presentation, on page 12, Deputy, you talked about why there are so many defaults, and one of the items you identified was that the charter cancellations had stopped due to the lack of reliability of the system's information. I'd like an answer on that, but I'd like to ask you also—on page 16, where you say what the current status of the action plan is, you've got "Cancel corporate charters." So one is saying you dropped it and the other says—does that mean you're going back to doing it again?

Ms Crane: If I could just clarify that, in the previous process, there were some problems with the way the

charter cancellation was working. In fact, there were errors in charters being cancelled where they should not have been and that process was stopped. The whole charter cancellation process has been brought up to date and the system has been rectified to deal with that problem. We actually have some corporations now that are in the process and we'll be cancelling their charter.

Mr Patten: Could you elaborate a little bit on that? Is that a system totally in provincial hands or is it information you have to work out with the federal agency.

Ms Crane: It's in provincial hands. The charter cancellation process is between the Ministry of Finance and the Ministry of Consumer and Business Services. What actually happens is we send a notice out when all of our other methods have failed—our attempts to contact them by letter, by telephone—and we've gotten no response and they've been given adequate time periods in order to respond. We mail a notice to the defaulting corporation advising them we're going to cancel their charter within 30 days. If we don't have the response in 30 days, then what happens is the Ministry of Finance sends a letter to the corporation on behalf of the Ministry of Consumer and Business Services saying that we'll be cancelling their charter in 90 days. What actually happens is MCBS has the corporation's name published in the Ontario Gazette as a charter pending cancellation and then, if there is no response in the 90 days, the charter is cancelled.

Mr Patten: I see a lot of advertising about health. Maybe this is something the department can do, but has the ministry considered an educational—notifying people about this? It doesn't have to be TV, but it could be. There was some question in the discussion about the sophistication of filing and the auditor pointed out that people can actually do their tax returns on-line. I think their estimate was that it's about 10%. Is that growing? How is that encouraged? Most businesses have computers, it would seem to me, and probably can do that. Is that growing? Is it encouraged? How do companies learn about this etc?

Ms Crane: In terms of the communication, we have a comprehensive communication plan that will involve working with associations that deal with corporations, like our tax practitioner forms and the tax publishers to make corporations aware. We have a number of ongoing forms in the Ministry of Finance that we use to make corporations aware of their responsibilities. So we have a fairly intense communication program we're going to do.

You're speaking to making it easier for taxpayers to comply with the requirements; I think your other question was directed to that. We're continually looking at that: are there ways that we can simplify the process or streamline the process? Certainly education is a part of this process to make corporations aware that it is an obligation of theirs to file returns or declarations and that if they do not, there are serious consequences for not doing so.

Mr Patten: There's been some increase in the resources for the audit division. What about the enforcement side?

Ms Crane: In terms of the processing of all of this, we have some additional temporary resources. We'll be asking for some additional resources to help us work through this backlog. We realize that we have to have ongoing resources as well to deal with this non-filer issue because, as you can well imagine, there are corporations every month that go into a non-filing status.

Mr Patten: I forget where my reference was, but I believe the ministry had said it's estimated that by the end of the year a hundred and some-odd million dollars would be recovered. Was that correct?

Ms Crane: Actually, that figure was part of our business plan submission, and the year that was supposed to happen was 2004-05. We're hoping to collect those dollars by that time, by 2004-05, by the end of that fiscal year.

Mr Patten: According to Murray Campbell, and the prevailing winds have it, we're still talking about defaults in the neighbourhood of over \$1 billion, maybe \$2 billion. Do you agree with that?

Ms Crane: You're talking about the dollars that are owing?

Mr Patten: Yes.

Ms Crane: Our estimate of the taxes owing, based on various studies that we've done, is around \$115 million, which the auditor has quoted in his report. That's based on the samples that we had done in 1998 and again recently. As I mentioned before, these are a lot of the smaller corporations. We have audit processes in place. Our larger corporations are audited 100%, so the ministry estimate is \$115 million.

Mr Patten: So there's a big gap there.

The Vice-Chair: Mr Patten, you have time for about one more question.

Mr Patten: I'll stop there, then. I'll pursue it later.

The Vice-Chair: We move on to Mr Christopherson.

Mr David Christopherson (Hamilton West): Bob, staff, thank you very much. I'm actually kind of tickled that I began in 1990 working with the Ministry of Finance people and I go out dealing with you, albeit on the other side of the fence. It just makes for a nice, well-rounded experience. Hopefully we'll all feel the same way at the end of this.

I want to pick up a bit where Mr Patten was on the charter cancellations for corporations. I understand that took place in 1997. It just seems rather curious that that's within a few months of when the numbers started to take off in terms of filings and other things. It would seem that a message went out, "You don't need to worry about it as much. The watchdogs aren't going to be there, so don't get worried about it."

I wanted to ask what you thought was going to happen when you stopped cancelling charters, and did you replace that with any other action in terms of the message that's being sent out?

Ms Crane: We know that charter cancellation is a process that has to be there and we know that because of the various issues with charter cancellation we didn't have any alternative, other than to do what we did. We

recognized that we had to get charter cancellation up and running again and we have that process in place now. We were following up on a selective basis with those corporations that we knew there was a real problem with. We weren't doing the extensive follow-up that we should be. I think there were a number of factors. None of them take away from the fact that we should have had that charter cancellation up and running sooner than we did.

We recognize also, as part of this going-forward plan, that the communication of a corporation's obligation to file and the communication that charters will be cancelled is certainly an effective deterrent and one that we need to use and we need to publicize as well.

1200

Mr Christopherson: Did other provinces do the same thing?

Ms Crane: I'm not aware of what other provinces did.

Mr Christopherson: So the biggest province in the country had a problem with the reliability of their information and therefore is arguably making bad decisions, but every other province doesn't have this problem?

Ms Crane: I'm not aware of what's in place in other provinces.

Mr Christopherson: Half a decade is a long time, and I realize that you just acknowledged that's a long time. But that's not just, "Sorry, we meant to do it in the spring and now it's the fall." We're talking half a decade. One of the strongest tools that you had, you completely removed—not you, but the political masters removed that from the tool box, if you will, and then took half a decade to get it back in.

Dr Christie: My understanding of what happened with that process, Mr Christopherson, was that it was found that charters were being cancelled where they shouldn't be cancelled, that corporations that had been complying with all the things that they were supposed to be complying with were, because of problems in the system, having their charters cancelled.

Obviously it's a very significant act to cancel someone's charter, and until this could be addressed in such a way as to have a lot more confidence that when this action was being taken it was the result of a series of progressive, documented steps that one could rely on in terms of saying that was the appropriate thing to do—as Marion has indicated, it should have been brought back sooner. The system part was fixed. There were resources put into compliance and the like, but their initial efforts, as I noted, were focused on retail sales tax. It's only over the last 18 months or so that they've begun to shift attention to corporations tax, to the extent that I think 12,000 of this group—which is a very small number—have been identified and worked through. There is a body of those that will go off to have their charters cancelled.

In order to use that very potent tool, I think the desire was to make sure the appropriate due diligence had been done in using it, which is the system that we're putting in place now, to the extent that we're not going to rely on a computer system to do it. The computer system will identify who needs to be pursued, but before action is

taken there will be a human being who looks at it and makes sure the proper action has been undertaken.

Mr Christopherson: I don't think anybody questions the importance of it and the fact that you see it as important. I'm not going after you for anything here, but I just have to say that I find it rather curious that it would take half a decade for a government to direct their staff to get back in place one of the strongest tools they have to force corporations to follow the law. Heaven knows they've moved heaven and earth to force everybody else to comply with the law, to the point where they've been ruled by the Supreme Court of Canada in many cases to have exceeded the Constitution in their enthusiasm to go after everybody else. So I just find it curious.

I would like to move on to the issue of the number of planned discretionary audits. Mr Peters recommended that you not only get up to speed in terms of the number of audits that you were planning to do, but that you consider doing more. When I look to page 20 of your presentation, I see three points:

“Production standards have been revised.

“Assisted by CCRA audit coverage.

“Discussions are ongoing with CCRA to assess the use of their small business audit program.”

That's fine and dandy, but it doesn't answer the direct question, which is, have you been directed to meet the number of discretionary audits that have been planned, and how are you responding to the auditor's request that you increase that number?

Mr Gruchala: In terms of the auditor's report, the discretionary desk audit function was re-established, if you will, in the program as a result of our tax integrity program initiative.

Mr Christopherson: Sorry. Could you speak up, sir?

Mr Gruchala: Our tax integrity initiative program was restarted in 1998, or the second phase of it, so the discretionary audit resources were added as part of the TIP 2 initiative, as we refer to it. The function was re-established, and our initial estimates were that it would take about 15 hours per file to tackle these particular files, which is at the lower end of the gross revenue strata for corporations. We're talking corporations with gross revenue between half a million dollars and \$7 million of gross revenue. So that was essentially our population that we were dealing with.

In dealing with that population, as I said, we thought 15 hours would be sufficient. Given the fact that it was a new function established in the Ottawa and London offices and that we had a lot of new staff, it did take longer for those staff to learn how to work those files. We found that when we took records of how long it took, a new protocol, if you will, of 20 hours per file was more appropriate than was the 15 hours per file. That's why we had an audit coverage that fell short of what we had planned for the particular year the auditor had mentioned.

Mr Christopherson: OK, but that only talks about how we got to the point where the auditor felt it was necessary to make the recommendation. My question was, is the ministry going to now meet the number of

discretionary audits that you planned, and what is your response to the auditor's recommendation that you do more?

Mr Gruchala: In terms of meeting the targets, yes, we will be meeting the targets for discretionary desk audits.

In terms of more, we're always looking at situations in terms of our coverage and our information. With regard to the smaller end of the strata, again, as the auditor noted, we are dealing with the Canada Customs and Revenue Agency in terms of their audit coverage for these smaller corporations as well. We're certainly working with them closely to see what results they get and compare those to our results and look at it on an ongoing basis.

Mr Christopherson: I've got to tell you, that doesn't sound real enthusiastic. It seems to me it would have been better to hear, “Absolutely, we're going to meet the number that was planned, as the auditor recommended, and here's what we're going to do to meet the auditor's recommendation that we do even more.” I'm not hearing that.

If I can, it has also been pointed out to us that the auditor pointed out that the risk-based point system that you used to have was replaced by senior auditors randomly selecting groups of corporations etc. The auditor had concerns about this new approach that you've got. What is your response to his concerns about that?

Dr Christie: One of the things we're doing, as I noted in response to the auditor's report, is looking at all of our audit procedures with respect to the number of audits. That was particularly an issue with respect to the smaller businesses, where we rely entirely on CCRA. As I indicated, we'll be looking at what CCRA is doing to make sure that is in fact adequate. If it's not adequate, then we'll make changes to do that ourselves.

On the risk-based assessment, we are taking actions on that as well, but I'll ask Marion or Richard to amplify on the actions.

Mr Christopherson: It's OK. I don't have a lot of time. I've got a number of issues I want to go to. I hear you on that. I think you're doing what you need to do. I'm not satisfied that the political masters have given the kind of direction they should to say, “This is a priority. We're going to do it.” That could be done just as clearly as the news release today that went out on the one thing that captured a lot of headlines, and everything seems to be just sort of drifting along.

I would like to now turn to your page 32, where we talk about the tax gap. In that context, again, the auditor had raised concerns about the ministry no longer doing the same studies. Correct me if I'm wrong, but branch studies on the underground economy have not been conducted in recent years. We had a chat in the private session about what's going on. Why did they stop, and have you started doing them again?

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Mr Peter Spiro: It's not a matter of starting and stopping, Mr Christopherson. Early in the 1990s we

happened to do some studies, and they were very much at the macroeconomic level, so they wouldn't get at the issue of corporations tax per se; and it was at the Canadian level rather than Ontario. There are a variety of ways to study the underground economy, but the main tool that's used by economists, and what we used, is looking at the volume of cash in circulation, because people who seek to evade taxes will, for example, under-report their income on their tax returns. The way they can guard themselves in the event that they're audited is to use cash because it doesn't leave a record. Looking at the volume of cash in circulation, economists can relate that to the overall reported GDP in the country, and to the extent that there are discrepancies, that gives a clue as to the size and growth of the overall underground economy. That was the kind of thing that was especially relevant early in the 1990s, when it appeared that the introduction of the GST had led to increased underground economy activity. So we were quite interested in that at the time, and that methodology was appropriate for that particular task.

In terms of the specific issue at hand with respect to the corporations, Mr Christie alluded to, for example, the IRS studies. That's something we've relied on in the past. Of course, the underground economy is very difficult to measure—it's extremely difficult to get indicators of it—so we do look at research from around the world, try to look at what research is available. The IRS in the United States at one time used to do large numbers of random sampling-type audits where they would audit corporations and businesses completely at random to see how much under-reporting of income they found, and from that they would extrapolate to the whole population to get an estimate. They've abandoned that particular approach recently, partly because it was very expensive, partly because it was very intrusive; it's quite traumatic for a taxpayer, who is in all probability completely innocent, to be subjected to an audit merely for this scientific curiosity, to get a sense of the overall amount of evasion.

They are now experimenting with a different methodology where they take the companies that have specifically been audited because they were brought up for various reasons—they were suspicious and they audited them—and try to use a statistical technique to look at the factors that characterized these corporations that have been audited and to relate those to the characteristics of other unaudited corporations, and from that try to fit them on a curve and deduce the probability or extent of evasion in other parts of the economy. The types of under-reporting and so on vary greatly.

In the underground economy literature there are two categories: what are referred to as the ghosts—that is, businesses that are completely underground and never file a return, never register their existence; and what's probably the most prevalent form of underground economy activity, businesses that do file returns, do pay tax but lie about the amount of revenue that have, so they under-report their income. It's the two aspects of that. So, again, in terms of the underground economy literature,

this phenomenon of non-filing doesn't really seem to fit into it, because presumably someone who wants to be completely underground doesn't register as a corporation in the first place.

Mr Christopherson: I do know from my time in the Solicitor General ministry that the biggest deterrent to crime is the possibility of getting caught.

Interruption.

The Vice-Chair: Someone's playing silly. We'd ask that the cellphones please be either muted or turned off. We don't know where it's coming from. We should proceed, though. There.

Mr Christopherson: Great. I'm glad it wasn't a ticking sound.

We know that the possibility of getting caught is the biggest deterrence there is, so that's why there's a big concern here about removing some of these major tools. But I want to move on a bit now because my time is running out.

In terms of the training, the auditor raised that as a specific concern. He used—and I don't pretend to understand all the details of it, which I think was his point—transfer pricing as an example of things that are very complex and require a high level of skill and understanding. You made mention on page 28 of the things you've done. Have you got new money for training? And if you don't have new money—well, let me ask you that question first: did you get new money for training?

Dr Christie: I'm not aware that we had established a specific new money line for training. Training is part of what we are supposed to be doing on an ongoing basis, and one of the things we're looking at in response to the auditor's recommendation is being more specific about the amount we spend on training and segregating the amount we spend on training so it can't be used for anything else; it must be used for training. Those are some of the things that we are looking at doing. It's clearly an area, as we noted, with respect to the desk audits. If the staff aren't well trained, it's going to take them longer and we're going to have more trouble, so we do want to get the training up to the best level we can. I know Marion has taken some initiatives in the division to deal with that and I'll ask her to expand—

Mr Christopherson: No, it's OK. I don't want to get into it. I understand you've done some. Again, I'm not hearing a whole lot of enthusiasm where you can say, "Yes, the minister told us that training's a priority. We've got X number of dollars. We're going to get on top of this and get it done." I'm not hearing that. What I'm hearing is that you're taking action, you've done what you can. I understand that, but without telling me you've got new resources, at best you're attempting to deal with the inadequacies raised by the auditor but you've got to take them from somewhere else. Because if you've only got a limited number of training dollars and you beef them up within that area, you don't add any money, somewhere training's not happening and all we're doing is creating a problem this committee will be looking at down the road.

I'm disappointed to hear that there wasn't new money put forward for training. I mean, these things aren't that complex in terms of dealing with the auditor's responses. A lot of them require political determination, new money and direction. I know your role here—I know it better than most—but I'm not hearing a reflection that the minister and ministers gave you the political direction that would satisfy us on behalf of the public, and this is another one.

I think my time is probably—

The Vice-Chair: Your time is within 20 seconds.

Mr Christopherson: To be fair to staff, I want to give them a chance to respond.

The Vice-Chair: Yes.

Dr Christie: In terms of direction on all of these matters, we consider ourselves to be under the direction to respond to the auditor's requests and recommendations and to do what is required to put this program on a sound and effectively administered basis. In terms of whether a specific training line is established or whether new money is explicitly devoted for training, if we need to do that, then as the deputy minister it's my job to make sure that gets done and to find the resources to do it.

This is the largest division of the ministry and we need to make sure that the resources in that division are effectively allocated, but we have, I think, in our responses to the auditor's report indicated that it's our intention to respond to and address his recommendations. We will do that. I can't tell you at this point exactly what the resource requirements would be. It's my job to make sure that I use those resources as effectively as possible, but it's our job to respond to and to implement the recommendations that he has put forward.

Mr Christopherson: Thanks very much, Bob, and everybody else. I appreciate it.

The Vice-Chair: We'll move to the government caucus.

Mr AL McDonald (Nipissing): It's nice to be here today. When I was driving down from North Bay they were calling for 15 to 30 centimetres of snow, so our ratings might be a little bit higher in northern Ontario than southern Ontario today.

I have just two questions, because Mr Hastings and Mr Galt have a few as well. The Provincial Auditor's responsibility is to look at all the different programs and to identify issues or challenges that governments will face, and he'll find situations for the next 100 years. That's his responsibility. Having said that, Mr Christie, I understand there's a problem. How long is it going to take to resolve this problem?

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Dr Christie: As I indicated, by the end of April we will have put in place the process of contacting all of these corporations in default with respect to that part of the auditor's recommendations. That's a process that will work its way through, obviously to the extent that it ends up getting into the audit stream. Before all those audits are resolved and the objections are heard etc, that could take certainly more than a year, but it's our intention to

have the backlog largely worked through and be in the process of dealing with it over the next year.

I'll ask Marion if she has any more specifics she'd like to add.

Ms Crane: Yes. With the resources we have on board and that we'll be bringing on board to deal with this, the majority of this backlog should be cleared up within two years. As Dr Christie notes, there are going to be audits and objections that may take a little longer than that, but the majority should be totally cleared up in two years. In addition, we'll have processes in place to make sure that we don't get into this situation again.

Mr McDonald: I think back in—was it 1996?—the ministry took steps to ensure that taxes owing to Ontario were collected. Did we hire more staff, and how many staff did we hire since 1996?

Ms Crane: Yes. Specifically in the corporations tax area, we hired 241 new audit staff, and they have brought in \$434 million of revenue. That specifically related to corporations tax. In total, we hired 752 new auditors and collectors and brought in \$1.4 billion in revenue.

Mr McDonald: Thank you, Chair. Maybe I can turn it over to Mr Galt.

Hon Doug Galt (Minister without Portfolio): Thanks for the presentation. I believe you've estimated roughly \$115 million owing. Is that for the past year or is that the grand total?

Dr Christie: That would be for the various years for which corporations have not filed their returns. As was noted and as the auditor noted, some corporations will be in default of filing for several years.

Hon Mr Galt: So it's cumulative.

Dr Christie: It's cumulative.

Hon Mr Galt: I think it's rather impressive in your presentation this morning to see that since 1996 or thereabouts, the number of corporations in Ontario has increased by 76%. That has to be a record number.

I'm curious: as this has evolved, you mentioned that one in five didn't file back in 1996 or 1997, and now it's one in two—or almost one in two, not quite. You've calculated roughly \$115 million that you believe is owing now. Going back, what might have been owing in 1996 or 1998? How was this built? Has it skyrocketed or has it just gradually worked its way out?

Dr Christie: I'll ask Marion to address the specific question. What I would note on the \$115 million is that the number is based on working through, taking a sample of—I think there were 700 accounts taken. They were all pursued to their end, and that's where the one third/one third/one third distinction that Marion noted came from. Based on the one third who might owe tax, the amount of tax they actually owed grossed up to the population, that's where the \$115 million comes from. In terms of how that has changed over time, I'll ask Marion to address that.

Ms Crane: I don't have the specific figures on how that has changed over time but I could get back to the committee. You've asked specifically about 1996 and

1998. I could get back to the committee with that, but I don't know offhand how that breaks down.

Hon Mr Galt: Basically it's extrapolated from a random sampling and grossed up from there.

Ms Crane: That's correct.

Hon Mr Galt: Mr Hastings, I see the Chair has just stepped over. Would you like to ask a question?

Mr John Hastings (Etobicoke North): Folks, could you outline for us—I think the auditor said that about 10% of your people do electronic filing. What I would like to know is, what is the ministry's strategy or plan for accelerating that in terms of targets? What I'd like to also know is, of the 10% of people who file electronically, which industries or sectors are doing that? How many companies out of your 385,000, or whatever the number is, are not reporting and how many companies of the 10% does that represent that are reporting? Overall, why is it that there doesn't seem to be a more aggressive educational approach to getting more small business enterprises to file electronically if it is convenient?

Mr Gruchala: With regard to the filing, what we have is, of the corporations that file with us, in excess of 90% file using software generated by private sector industry. The 90% that file off software-generated, I believe it's in the range of 50,000 or so corporations that use what we call the D-file method, which is the diskette filing method that has been in effect in Ontario since 1995. So less than 10% of our population file using the paper-generated that we send them or that is available on the Internet site.

With regard to what we're looking at down the road, we're looking at options in terms of further expansion through Internet filing down the road. The Canada Customs and Revenue Agency has a pilot going at this point in time which has just gotten off the ground for corporations in terms of Internet filing, to make it easier for corporations to file, and Ontario will be looking at the same option down the road in terms of Internet filing for corporations as well.

Mr Hastings: Down the road how far? Two years?

Mr Gruchala: Within the next 12 months.

Mr Hastings: Let me get it straight, then. The electronic filing system that your ministry has isn't that good? It isn't that easy to file electronically, especially for small enterprises, the ones we're talking about, between \$500,000 and \$7 million?

Mr Gruchala: The option we currently have is the D-file method, which was used generally by larger corporations when it was brought in. We also brought in the corporate minimum tax at about the same time. So essentially it was the larger corporations that made use of the D-filing initially. But with 50,000 corporations filing with us, the D-file method now encompasses a much larger group than the large corporations. A number of small entities are also using the D-file method with us. Certainly, I think we're always looking at making it easier, and the potential with Internet filing is to make it that much easier for corporations to file with us.

Mr Hastings: So it's easier for the large corporations, like Alcan and what have you, to file electronically than it is for the small ones? Is that my understanding?

Mr Gruchala: More than 90% use software from software developers to prepare their returns. It's the transmission of the information from those returns—as I say, about 50,000 send us the diskette on which the information is contained. The balance prepare the paper and send us the paper. So the next step is to get the electronic transmission from computer to computer through Internet filing.

Mr Hastings: Are we going to be dependent, as a ministry, on CCRA to get your number of electronic filers increasing?

Mr Gruchala: No, not necessarily, because the Canada Customs and Revenue Agency is already undertaking a pilot at this point in time with a very select group of taxpayers. As I say, within the next 12 months we're looking at Internet filing as well. No, we wouldn't be dependent on the Canada Customs and Revenue Agency. My point was that they already have a pilot in place, and we'll be looking at it in the next 12 months as well.

Mr Hastings: How difficult is it for a small enterprise, say a restaurant that employs maybe 10 people, that might have gross revenues of about \$1.5 million? How easy or difficult is it for them to file electronically right now?

Mr Gruchala: We have a short form CT23 as well. The initiative was taken several years ago in terms of having a simplified method for filing corporations' tax returns for smaller business. Again, that is generally coming to us in paper-generated format. But in terms of the—

Mr Hastings: In the case of that example I gave you, they would have to file paper-wise, right?

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Mr Gruchala: No, they could diskette-file with us. The capability is there to run from software generated by software developers. Most still choose to print the paper and send us the paper.

Mr Hastings: So what plan or strategy—I guess I'll go back to my original question—do you have to increase participation rates of electronic filers in the small business sector?

Mr Gruchala: The next big phase would be Internet filing, to make it easier for corporations to file with us.

Mr Hastings: Independent from what Rev Can does.

Mr Gruchala: We could certainly learn from their experience, and perhaps partner with them on certain issues, but that would be the next phase, to go to Internet filing.

Mr Hastings: So could you leave with this committee, then, with Ray, the types of companies by sector and by size that are already filing electronically, whether through Internet or through the diskette approach?

Mr Gruchala: We certainly could. We have a wide range of corporations now that file with us on diskette. As I mentioned, we have about 50,000 corporations.

Mr Hastings: Could you supply some data, some profiles regarding the existing reportage?

Ms Crane: Yes, we can supply you with the information of who files right now using our D-file method, as Richard described it, the filing on diskette.

Mr Hastings: Are you folks satisfied with where you are in terms of electronic filing?

Ms Crane: I think we're always looking at how we can respond to what the taxpayers want, and it's always a balance of what we can do with the resources we have. There are a number of changes we will have to look at, our systems. We're always looking at what we can do to make it easier for taxpayers to file, and looking at electronic options is certainly the way we need to go in the future.

Mr Hastings: I submit that the premise that there's large avoidance is because of the reverse of what we generally hold—

Interruption.

Mr Hastings: Is this me again? No. It's not me this time.

The Vice-Chair: Apparently we have a mystery phone around here. I certainly wish we could find it.

Go ahead. I'm sorry.

Mr Hastings: I submit that your problem with the number of people not filing tax returns in the small business enterprise field is primarily because we're not making it sufficiently convenient, although your stats might tend to suggest a contradiction in that.

Ms Crane: As I mentioned earlier, we want to look at options, if there are ways that we can make it easier for taxpayers to file, and we've done things like develop shortened forms, but there's always more that we can do. Certainly the ministry can look at what other options there might be to aid taxpayers, especially the small corporations, as you mentioned, in being able to meet their obligations.

Mr Hastings: Maybe we need to have more co-operation between you folks and MCBS, when an enterprise sets up a company, and their formation for reporting.

Ms Crane: We do have good co-operation with them. We get weekly updates from them, and we do the twice-yearly synchronization of data, which the deputy mentioned. But I think in terms of filing options and are there other ways we can assist small corporations, we might want to look at working with CCRA on that front as well.

Mr Hastings: OK. Thank you.

The Vice-Chair: I've been polling the committee. Considering that it's now roughly 25 minutes to 1, it would appear as though the Liberal and NDP caucuses maybe have a couple of short follow-up questions, and then we can end this part of the committee hearing with the finance people and let them get on with their day. Then we would move to the discussion on the 407 and conclude that, and then all of us would be able to move on with the rest of our work for the day. Does that sound fine? OK.

Mr Patten, you had a question or two?

Mr Patten: Yes.

The Vice-Chair: Five minutes.

Mr Patten: I'm still on a follow-up to a question I asked before.

"The ministry closed approximately"—this is the auditor's report, page 65—"40,000 accounts in the integrated tax administration system," which was the older system, and that one was able to identify sort of the level of risk or various problems. But it states in the auditor's report that many of these accounts were still active and that they're still registered as active with the Ministry of Consumer and Business Services and that any of them might meet the requirements for filing a tax return, but they were shut off. That was just one question.

The other one was—and this may have been corrected by now—for corporations with annual gross revenues of under \$500,000, very few feel their desk audits were performed. But for corporations with annual gross revenues of over half a million dollars, the number of desk audits completed was only about half of the number planned. What would that planned number be, and why was it only half of the audits done at that time?

Ms Crane: I'll answer your question on the 40,000, and Richard will answer your question on the other one.

In terms of the accounts that were closed out in MCBS, the 40,000 accounts that the auditor noted could still owe us a return, in future that process will not be followed. What should have happened was that we should have gone through the charter cancellation. These are companies that we know are no longer in business or that we were not able to contact or collect taxes on. We closed them out on our system. The proper process should be and will be in the future that the corporation's charter is cancelled, so then they'll be taken out.

In terms of the desk audits, I'll let Richard answer that.

Mr Gruchala: In terms of the 2000-01 taxation period, I believe the auditor's report suggested we did 53% of the total which were planned for that particular year.

Mr Patten: Yes. So why not 100%?

Mr Gruchala: In that particular year, these were new functions that were re-established. The ministry used to do them many, many years ago and hadn't done them for quite some time. With our tax integrity program initiative in 1998, we restarted the discretionary desk audits, in two offices in particular. The staff were new. It took them longer to learn how to conduct these discretionary desk audits than we had planned. So there was a training period as well for these folks.

With regard to the production, when we put our plan together in 1998 for this, we also thought that approximately 15 hours per audit would be sufficient for these types of discretionary desk audits. In practice, it turned out that it was closer to 20 hours. So, in fact, the standard was set too low, in terms of the amount of time that would be required to adequately and in a quality manner produce these audits.

Mr Patten: So that's now history?

Ms Crane: Right.

Mr Patten: Roughly 50% of what was planned—are those targets a percentage of tax filers, or what? What would you plan on in a single year? For example, for this year, what would be your plan, how many of those audits?

Dr Christie: This begins to be in the area where precise—

Mr Patten: Just rough. I'm just talking about ballpark figures.

Dr Christie: It's typically established as a percentage of the filers. I prefer not to use the number for obvious reasons.

Ms Crane: It's a percentage which is consistent with what we do in all of our other statutes. So it's a percentage that we normally look at as being the target, which the Provincial Auditor also says we should look at, in terms of an audit coverage rate. As Richard mentioned earlier today, we will be meeting that target for 2003.

Mr Patten: I have one more—

The Vice-Chair: Quickly, OK? We've tried to limit this to five minutes.

Mr Patten: It had, "In August ... the ministry assigned one person to follow up with the units to which the returns had been assigned." These were ones particularly that were under review. I'm assuming that's old information and that you've probably added several or—how many to that particular unit? This is page 72 in the auditor's report.

Mr Gruchala: I believe I can speak to that. With regard to the one person, I believe it was August 2001 when we added one additional person to follow up on a more regular basis with some of the issues that were causing us delays in terms of processing returns. We haven't added any additional staff to that particular issue. We've changed our processes to ensure that taxpayers are advised on a more timely basis of the requirements to file. For example, with a number of cases with our tax credits administration, there is no tax due; there's a tax refund owing based on a tax credit claim. In fact, we rely on third party information coming from either the Canada Customs and Revenue Agency for R&D issues or from other organizations like the Ontario Media Development Corp in terms of certificates for film productions and the like. So we often wait for those organizations to send us the information before we can process the return. So in fact we've tightened up our process in terms of making sure taxpayers know what is required sooner.

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Mr Patten: This person wasn't just calculating; this person was a systems person, presumably to help straighten out where the problems were in the system and gaps and all that kind of thing.

Mr Gruchala: It was more of an analytical position, in terms of, "If we've taken this long, why did it take us so long? So what can we do to tighten up our processes?"

Mr Patten: OK, fair enough.

Mr Christopherson: Two areas; the last one's real easy and this one shouldn't be that difficult. The issue of the tax advisory unit and the amount of time it's taking: management has said it takes about 90 days to respond to a request. I don't see the auditor taking exception to that, but he has raised the concern that over the last 18 months some of these things have taken from six months to a year. In fact, when we look at the outstanding request log, we find out that there are some requests that go back as far as 1998. What's being done in order to bring this up to an acceptable turnaround time?

Mr Gruchala: In terms of our tax advisory area, we had a significant staffing problem. We had a vacancy rate not that long ago approaching 45%, so in fact we had a lot of staff vacancies.

Mr Christopherson: Why?

Mr Gruchala: There was an issue around the compensation level and other opportunities in the organization in an audit capacity. We were losing some of our—

Mr Christopherson: Sorry, can I just stop you for a second? You're saying that almost half the unit left? How many people are we talking about?

Mr Gruchala: We're talking in the range of about 22 folks.

Mr Christopherson: About 22 people. So nine or 10 of those people left, and you're saying it's because of compensation. That's a huge problem, isn't it?

Mr Gruchala: It certainly is, so we've addressed the issue in terms of staffing. We have started to staff up a number of the positions. We still have about four or five vacancies left at this point in time. So the positions are being filled.

Mr Christopherson: What's the longest that one has been open?

Mr Gruchala: Of the current positions?

Mr Christopherson: Yes.

Mr Gruchala: I would think over a year, perhaps a year and a half.

Mr Christopherson: A year, year and a half. That sounds to me like you're under some kind of expenditure constraint and you're staggering the replacements in order to meet constraints in other areas. That's what that sounds like. That's pretty shocking, I've got to tell you, to hear that for any particular unit within the Ministry of Finance, up to half the staff have left because of compensation issues, especially when this government is under criticism for not believing people should be paid what they're worth. And then to tell me that some of these positions are over a year in being filled tells me that the dollars are more important than the service that's provided by this unit.

Ms Crane: Yes, there was an issue. We've recognized that issue, and we've changed some of the compensation levels in that unit to be able to attract the level of staff to that area that we needed to attract—the appropriate people—because it was an issue in terms of compensation with the audit. It's also not just a compensation issue; it's the preference of people who have that background. A lot

of them would prefer to be auditing rather than doing the tax advisory role. You've noted that some of the rulings are outstanding for a long period of time. We have to remember that although these are not the time frames we would ideally like, we're dealing with the most complex corporate tax situations and they do take a long time to analyze. They're—

Mr Christopherson: Sorry, I don't mean to be rude. But I would suggest, then, that also means we're probably talking pretty significant dollars in terms of the outcome of the interpretation. If big corporations are putting a lot of effort and money on their side into high-priced help on their part to argue something, then it has to be worth their while. Therefore, it means a lot to the people of Ontario because, depending on how you rule, it determines whether there are millions of dollars coming into the provincial coffers or not. That would seem to me to be an area of high importance, rather than just some flunky little advisory group that answers complaint calls every now and then. Anyway, I'll let that sit. It's not a real satisfactory answer, I have to say.

The last part is real easy, Bob. The chart: because it's not colour—I assumed it was colour when it was first presented. It was interesting. I wasn't 100% sure what the corresponding figures were and I wondered if you'd just clarify that for me. That's page 7. Easiest question you're going to get all day.

Dr Christie: Not necessarily.

Mr Christopherson: I haven't done the follow-up yet. This one's the easiest, trust me.

Dr Christie: Peter, do you have the revenue numbers? I'm not sure—

Mr Christopherson: The 29% is the retail sales tax?

Dr Christie: You're interested in what the dollar numbers are?

Mr Christopherson: Yes. It's just that the shadings aren't clear enough. This was probably done in colour the first time around, and the shadings aren't clear enough for me to assign the pie segments.

Dr Christie: The bottom one, the 40%, is personal income tax. The next one around, the 29%, will be retail sales tax. The 14% is corporations tax, the 7% is employer health tax, and the 10% is field tobacco and other taxes. They are sort of in the order that the boxes are on the right-hand side. Sorry about the shading.

Mr Christopherson: No, no. I'm not suggesting anything underhanded here, Bob. You're far more clever than that, as you've proven today.

How much has that changed over the years in terms of the percentage of revenue for the people of Ontario that comes from corporate tax versus retail tax versus income tax?

Dr Christie: We could get you some historical information on that. The biggest determinant, the biggest thing that influences that, in my experience has been where we are in the business cycle. Corporations tax can be really variable because of some of the loss carry-backs and loss carry-forwards in the system. If you have a

couple of bad years of profit, it can affect your tax for some time to come, because of—

Mr Christopherson: True, but there have been structural changes; that's what I'm getting at. I think over time—and I am going to ask you for those numbers going back, even if you could do them for 10 years ago, 20 years ago, 30 years ago.

Dr Christie: That much? OK.

Mr Christopherson: They should be there.

Dr Christie: We can look for—

Mr Christopherson: Well, 20 years at least.

Dr Christie: Twenty years I'm sure we've got.

Mr Christopherson: We should have these charts in that time. I raise it because there's a belief, and I share it, that there has been a structural change in terms of an approach to where we derive the revenue to pay for health and education and environmental protection etc, that less and less is being paid on the corporate side and more and more is being paid on the income tax side and on the retail sales tax. If we take a look at what US President George Bush is proposing now, there's a massive shift being proposed there to go more and more structurally to consumption tax. So I wanted to get a sense of that.

Dr Christie: We can provide information on that.

Mr Christopherson: But that structurally has taken place to some degree. Is that not fair, Bob?

Dr Christie: Certainly in Canada overall, with the advent of the GST etc, there has been more relative emphasis on consumption taxes versus income taxes. In fact, that's the kind of advice we get from a lot of economists, who tell us that income taxes affect incentives and consumption taxes—

Mr Christopherson: Of course, consumption taxes are also the least progressive. That's the difficulty with that.

Dr Christie: There are certainly distributional issues with all taxes.

Mr Christopherson: Right. Thank you again very much. I have concluded. Thank you, Chair.

The Vice-Chair: Thank you, Dr Christie, to you and your colleagues, for appearing this morning. We appreciate very much the time that you've spent with us. Best wishes for continued success in the future.

That concludes the consideration of section 3.02, corporations tax.

HIGHWAY 407

The Vice-Chair: As I discussed before, if we move on and take care of the next order of business, then we'll be able to conclude our business for the day.

You would be aware that Mr Phillips has joined us. Mr Phillips wrote a letter to Mr Gerretsen, the Chair of the committee, asking that the public accounts committee review the contract to determine how the 407 users can be protected from constant and exorbitant toll increases. So the question is the 407 contract, and Mr Phillips, the

member for Scarborough-Agincourt, has written this letter to the committee.

We would ask that we do this: that Mr Phillips have a few comments, there may or may not be some comments from the auditor, you may have some questions, and the committee may have some questions of the auditor and/or Mr Phillips. Then we'll just see where it goes from there. How's that?

1250

Mr Gerry Phillips (Scarborough-Agincourt): I appreciate the opportunity to raise this issue with the committee. I'm sure everyone's familiar with the 407 and the background, but just to refresh our memories a little bit, so that I get some of the facts before the committee, the 407 was a highway what was sold to private interests, effective May 5, 1999. It's an extremely important economic engine for Ontario, but also for many people in the 905 area it's almost their only means of transportation. There are other roads, but they're quite congested, so it's extremely important to those people.

At the time of the sale, what was said was that there was a tolling agreement that—I don't know whether the committee members have a copy of this or not, Mr Chair.

The Vice-Chair: They had a copy. We have other copies of the letter.

Mr Phillips: What the release at the time of the sale said was, "Tolls can be adjusted by 2% per year plus inflation for the first 15 years, and thereafter, by inflation only. This would mean that tolls could increase by about three cents per kilometre over the first 15 years." In other words, after 15 years tolls could go up by perhaps a total of three cents a kilometre. In fact, what's happened is that there have been five toll increases since the road was sold on May 5, 1999. I'm speaking now about cars; trucks, by the way, are three times these rates. Car tolls in the real off-peak hours used to be four cents a kilometre; they're now, as of February 1, 2003, 12.1 cents a kilometre. They've gone from four cents to 12.1 cents. That's obviously an increase of about eight cents per kilometre. In other cases they've gone from seven cents to 12.1 cents, which is an increase of 5.1 cents per kilometre. And in the peak hours they've gone from 10 cents to 12.95 cents, not quite three cents. But it was supposed to be three cents after 15 years; it's now going from an eight-cent increase to a three-cent increase after less than four years.

My concern is that the owners of this highway have now said that they have the right to take tolls up without limit, provided a minimum amount of traffic is on the road. This has become, it appears, the most lucrative privately owned toll road in the world. It's one that toll road investors are just salivating to buy into. One of the owners is a company called SNC-Lavalin, and in their report they point out that, "The underlying value of the company's investment in Highway 407 was highlighted with the announcement of an indirect acquisition of interest by a third party. Based on this transaction value, the company's stake in Highway 407 corresponds to nearly four times its initial investment of \$175 million."

In other words, SNC-Lavalin put an initial equity investment of \$175 million into it; 30 months later it was worth four times that. The total equity investment for all the owners was \$700 million, and in 30 months that was worth \$2.8 billion.

There's an Australian company that has acquired an interest in it and they, in their charts, point out how lucrative it is and the return on investment is the highest they have.

My concern is that I believe the public, when this road was sold, had been led to believe that there was indeed going to be some control on how much the tolls could go up. That apparently is not the case. I spent—I guess it's fair to say "I"—two years trying to get something called a tolling agreement. I read a prospectus when the 407 corporation was raising money selling bonds, and the prospectus said—I'm paraphrasing here—if you want to totally understand this prospectus you must read the tolling agreement, copies of which are available for reading during normal business hours at the 407 corporation. Before you invested in the bonds, you had to read this tolling agreement. So I thought, "Well, the public probably has a right to see that, too," and I phoned the 407 corporation and said who I was and that I was coming out to read the tolling agreement. They said, "Well, you have to be a potential investor," and I said, "That's possible." A \$100,000 minimum investment; that's possible. "You need to have a broker." "I do have a broker." "But you have to sign a confidentiality agreement that you will never reveal anything that you've seen in the tolling agreement," which I thought was odd because the investors who are making the money on the road obviously had that information available to them before they invested, but the public that's paying the tolls weren't given it.

So I fought for two or two and a half years to get it. The freedom of information office actually was in court trying to get the information. The day before New Year's 2002, the 407 corporation announced they were taking the tolls up another 12% and they released the tolling agreement. My reading of it indicates that they basically can take the tolls up without limit.

The agreement, by the way, is a 99-year agreement. We're now approaching four years into it, so there's 95 years still to run. If you don't pay your tolls, you don't get your licence plate renewed. The 407 corporation—and it's the 407 corporation, not the government—is temporarily not enforcing that. But I suspect that it's only a matter of time before they start doing that.

So we're at an important point. We now have publicly the agreement, I think. It now appears that, contrary to what the public was told—ie, that there was some mechanism of controlling tolls—that's not the case. The owners say this is a gold mine. After 30 months, their equity investment is worth four times what they put in and is probably worth substantially more now. My hope would be that this committee, with the help of the Provincial Auditor, would take advantage of this opportunity to review the contract and see if we can find ways to build some protection in for the 407 users.

I go back to what we were told at the time of the sale, that there was apparently some mechanism planned. But, according to the owners, that mechanism is not particularly effective because they can essentially take the tolls up without limit. The sooner we do this, the better, because obviously these owners are selling off portions of their ownership at returns that reflect their feeling that they can take the tolls up without limit.

That's hopefully a fairly brief background. I'd obviously be happy to answer any questions, Mr Chair, but I would hope the committee would say, "Listen. This is a time for us to sit down, with the help of the Provincial Auditor, review the contract and see if we can find some ways to build in some protection for the 407 users"; at the very least, before any toll increases can go through, that there be some independent body that looks at it and determines whether in fact that is fair and reasonable.

1300

Just for people's information, if you drive from Markham over to the 403 and back every day, your tolls a few days ago were \$4,000 a year; they're \$4,500 a year now for a car, if you just drove that distance every working day. If you're in a truck, it's three times that rate. So it's an enormous cost. The toll increase that went through the other day is worth an extra \$50 million a year in tolls already.

So that's the background. I don't know how the committee would like to proceed. I'd be happy to put a motion forward if that would be appropriate, or do you want to just have a discussion first?

The Vice-Chair: You're free to put a motion forward at any time, but what I thought we would do is have some discussion, if there are any questions or comments, then we'll entertain any motions that come out of that. Questions or comments, anyone?

Mr Christopherson: Very briefly, obviously it's a major public concern. The western terminus is my community in Hamilton. I hear a lot about this. I won't repeat or make other arguments to support Mr Phillips at this point because I think it's rather self-evident, but I want to hear from the government members to get an indication whether or not there's a motion we can work on and as much as possible make it non-partisan in the public interest of what's going on here and how we can best protect the public, or whether we're going to get into a partisan thing where we raise issues on behalf of the public and the government just toes the line and shuts this down by virtue of using their majority. So I'd be very interested to hear where the government members are at.

Mr McDonald: If I could, and we appreciate Mr Phillips's letter, but I think the intent here is to politicize the whole committee with this issue dating back to 1999. I don't feel comfortable with that, given our role here as committee members. Obviously, the member opposite may well put a motion forward and we would consider it, but I want to get it on record that this committee is to review items and my feeling at this point is, dating back

to 1999, Mr Phillips is trying to politicize this whole process.

The Vice-Chair: What we're trying to do is get a consensus on a motion, if one is necessary. Otherwise, yes, there will be a motion. Mr Phillips, any comments?

Mr Phillips: I don't know where else to turn, Mr Chair. The contract is a matter for this committee, I think. It dates back to 1999, but it has actually taken me until just five weeks ago, through freedom of information, to get access to it. It isn't as if I've been sitting around waiting for four years to take action. I've been pursuing it since that time. If this is not the appropriate committee, I don't know what committee would be the appropriate committee to look into it.

Mr Christopherson: I have to say the response from the government isn't very optimistic. That's probably the worst-case scenario in terms of what I'd hoped to hear. If it's appropriate, may I ask, what the Provincial Auditor thinks? Mr Peters, what are your thoughts on this?

Mr Peters: It's rather delicate for me to comment at this particular stage. It's a difficult motion to comment on, largely from the perspective that I would like to have more of an idea from the committee as to what the actual outcome would be of the result of our audit. It seems to me there are two case scenarios here: one is that the audit finds that in fact the rate increases of the toll are in accordance with the originally struck agreement, or the possibility is that they're not, which is more a legal question than an audit question in many respects. From that perspective, it would be very difficult. But assume for a moment that there was a legal decision on the second case. In the first case, if it's in accordance, it would just be an affirmation that they have acted in accordance with the original agreement. It would not be over a particular issue. If the outcome is that there's no such action, then I'm not sure what this committee would do or what the action would be at that particular time. So from an audit perspective, I am somewhat concerned for the moment whether this is actually a legal matter or an audit matter. I need more information on that.

Mr Christopherson: That's fair. Thank you, sir. I thought Mr Phillips was helpful in offering a suggestion, and I won't make his argument; I'll give him the chance to do that. But he did point out that there were opportunities within that contract for public protection and that those matters hadn't been acted on. I appreciate your comment that as long as the actions are in accordance with the agreement, whether there should be an agreement or not is more political than auditor, in terms of responsibilities. But if there are protections within the agreement for the public that aren't being acted on or maximized, then it would seem to me that that would be an appropriate place for you, given that your chief responsibility is to make sure the public's interests are taken care of.

Actually, that was Gerry's lead. I'll defer to him to follow up on it.

The Vice-Chair: Mr Galt has a question or a comment.

Hon Mr Galt: I was just interested in the discussion there. Certainly, if something's being carried out that's illegal, the government should know about it and action should be taken. I don't disagree with that. But just looking back—at least how I see this is it goes back to the agreement that was made at the time; it was advertised, etc. In 1999 at the annual conference of the Canadian Council for Public-Private Partnerships, our auditor did say the sale of Highway 407 was “really very well handled, from my perspective.” So I think that is a statement on how the sale was made and how the agreement was drawn up, and I respect his opinion.

I come to Mr Phillips, and I think in terms of how here we have a highway that has been very, very successful in the hands of a private company, which I thought was what was happening with the previous government when it was—you remember the Minister of Transportation speaking at one of the municipal conferences. I was quite surprised to find out when I came into office that, no, in fact the Ontario government actually had built it. But here we have a real success story. Things are going very well for the company. Everybody had their opportunity to compete at the time. I'm just wondering what Mr Phillips's approach would be had the economy not been so good and this company had been really struggling and maybe even going bankrupt. Would he be here at this table to help bail them out? I don't know; he would have to answer that. But I gather he is concerned because they are making a good profit out of it. I would suggest that the value of the highway is as great as it is because of the economic boom in the province of Ontario: a million-plus net new jobs, a lot of people trying to get to work, and they're using a highway such as that to overcome the traffic jam problem. It's certainly making a big difference. When I go to commute home, I do not have any difficulty on the 401 until I get out to Brock Road. That was the intent, to overcome some of the congestion on our 400-series highways, particularly the 401, and it's certainly meeting that.

The other comment I heard from Mr Phillips was that it's such a cash cow. My understanding is that as of February 1, the toll rate is 12.95 cents. American toll roads, converted to Canadian dollars: in San Juan, California, it's 18.4 cents; in Foothill, California, it's 16.2 cents; in eastern California, it's 25.7 cents; on the SR-91, it's a variable rate up to 46.6 cents; on the E-470 in Colorado, it's 15.7 cents. So certainly those are significantly higher rates than we currently have on the 407. I would suggest that if we didn't have this kind of operation, I don't know how long it would be—I remember Mr Pouliot presenting to the municipal conference and having it quite light; he had to get elected I think it was nine times before he could get a highway the length of the 407 at least planned. I'd have to agree with him. It would take a very long time to get the highway extended down to 115/35, and that's going to be quite an economic boon for eastern Ontario once that highway is extended out there. Without the present

success story, I think it would be a long time before that highway might get extended.

1310

So I come back to, if in fact they are operating within the agreement and if the agreement was properly advertised and dealt with, as Mr Peters suggested it was, then I think full steam ahead.

The Vice-Chair: The auditor has been quoted once or twice, and he'd like to have a comment with respect to that.

Mr Peters: If I may comment, the comment that I actually made in public was that the bidding process was properly handled. We did not get into the drawing up of the contract or were not party to any of the terms of the contract. I just wanted to clarify that for the record. What happened is that there was a good process in place to find proponents who were interested in buying such a highway at that particular time. That was the only part of the process that I commented on.

Mr Phillips: That's a very helpful comment by the auditor. I appreciate that.

I have a different view than Mr Galt. He views the highway as quite a success. I think people feel they were misled. They were told that the tolls could be adjusted by 2% per year plus inflation for the first 15 years, then up by inflation only, and the tolls could increase by about three cents per kilometre over the first 15 years. Then they find that the owner says that's not the case.

In terms of relieving congestion, one of the challenges is how we get our trucks moving quickly, and they tell me they can't afford to use the road. The Ontario Trucking Association says, “We cannot afford to use that road.”

It may be helpful, Mr Chair, if I can just put my motion, because then—

The Vice-Chair: I think that would be appropriate.

Mr Phillips: I move that the public accounts committee, with the assistance of the Provincial Auditor, review the 407 contract with a view to finding mechanisms to protect the 407 users from unfair toll increases.

Interjection.

The Vice-Chair: The motion has been made.

Mr Phillips: Just to explain the motion, I had thought there were these protections in the contract. That's what I had thought on this release of April 13—

Mr McDonald: On a point of order, Mr Chair: Mr Phillips has put a motion forward. I don't think he can continue to speak to the motion, can he?

The Vice-Chair: Technically speaking, no. The motion is on the floor. Then we'll recognize speakers to it.

Mr McDonald: I'm fine with that.

The Vice-Chair: The motion has been made. It's on the floor; it doesn't require a seconder. You may require it in writing, but the motion has been made and it doesn't require a seconder. So I guess perhaps Mr Phillips is the first speaker.

Mr McDonald: That's fine. I just wanted to make sure it was clear that we're now going to discuss the motion. Is what the Chair is indicating?

The Vice-Chair: Yes.

Mr Phillips: I just assumed that's what I was doing.

The Vice-Chair: Yes. So did almost everyone else.

Mr Phillips: Thank you. Again, it goes back to my concern around the 407 contract, and that is that what the government had indicated at the time of the sale was that there were some mechanisms to control the tolls. The owner is saying they can take them up essentially without limit. What I'm trying to do is to hopefully get support of the legislative committee to examine the contract to find mechanisms to either enforce what's in the contract or to develop a mechanism that will protect the 407 users from unfair toll increases. The sense of urgency on this is that the longer we wait, the more difficult this will be. For many people in what we call the 905 area, this is a matter of considerable importance to them. So that's the purpose of the motion, Mr Chair.

Mr McDonald: Could we get a copy of the motion?

The Vice-Chair: Yes. We're in the process.

Mr Phillips: Well, I have it in writing, but nobody could read it. Do you want me to—

The Vice-Chair: It would certainly be helpful to all the committee members if they had it in writing.

Mr Christopherson?

Mr Christopherson: I think there was a nice little snicker when we had Mr McDonald ask his question, because I think we all did understand the motion was on the floor, but I suspect that one needs to look a little further. I think his point in doing that was to determine that we've got now a focal point for this in terms of action, because their intention is to use their majority vote to slam this thing shut and you want to make sure you've got an actual motion on the floor. So I think there was a little more to what he was asking than might first appear.

The fact is that this committee is going to do the government's dirty work here. They're going to make sure that as little light as possible gets shone on this agreement. I will be absolutely flabbergasted if any one of them supports this, even though they know this is an important issue to the people of Ontario. It's important to business. You've heard about the aspect of trucking. I know, to say it again, the complaints I get from my constituents in Hamilton, a prime target population for the use of this highway, and the cost is prohibitive. It's a big, big deal to decide you're going to take the 407 because of the cost. If there's any chance that anything can be done to put more protection in for the public and the businesses that use that highway, I think we've got a moral obligation to do that.

But I'm going to tell you, Chair, we're on the brink of an election in this province and there is no damn way this committee is going to let that happen. As much as it's a shame and any one of them who did would be a hero in their own riding for doing it, I don't think it's going to happen. That's just a further testament to the fact that the

government likes openness and transparency when it's only rhetoric. When it comes time to act on it, this is probably the most secretive government that we've had in the province that I can imagine.

Interjection.

Mr Christopherson: I hear Mr Galt now making some comments. Prove me wrong and vote for Mr Phillips's motion. Prove me wrong.

Interjection.

Mr Christopherson: Save your words.

The Vice-Chair: Mr Galt, please.

Mr Christopherson: Words don't mean anything in the context of this debate. We've got to—

Interjections.

Mr Christopherson: Oh, look how upset they are.

Interjection.

The Vice-Chair: Order. I don't know that there is a point of order, but I'll hear it.

Mr McDonald: Chair, we're debating a motion and he's speaking directly to us. He should be speaking to you or speaking to the motion.

The Vice-Chair: We are in a relatively small room. Give us a little latitude, Mr McDonald. I'll take it that he's speaking through the Chair to you. If he happens to be looking at you, there's not much I can do about that. But just relax for a minute and we'll get this done. Mr Christopherson.

Mr Christopherson: Thank you, Chair. Of course my comments are through you, but that doesn't change the fact that they're all upset. Their hope now is that we have as little discussion on this as possible, move the previous question, get to a vote, use their majority, shut it down and hope that nobody talks again about the 407. That's the game plan. What's unfortunate about that is that there are questions that the public, through us, have a right to ask.

The members of the government talk about the fact that we're politicizing this thing. Look, this government is the one that immediately jumped to that issue of politicizing. Mr Phillips asked if we could have a review of this. He didn't manufacture this issue. The concerns are quite legitimate. I hear them all the time. So he's gone to the appropriate committee and asked for a very straightforward and in many ways dull motion asking that we look at this to see if there's something we can do to protect the public, because they really believe they're getting ripped off and a lot of us think they're getting ripped off. Yet what's going to happen is, for all Mr Galt's protestations, they are going to use their majority to once again shut down the issue, because they don't want to deal with the reality.

Those are my thoughts, and I would love to be proven wrong. All it takes is one of them to vote in favour and I'm dead wrong. I would love to be dead wrong, but I don't think that's going to happen this afternoon.

1320

The Vice-Chair: Further discussion?

Ms Marilyn Mushinski (Scarborough Centre): It's interesting; I used to be a full-time member of this

committee, and prior to 1999, there were very few requests for the auditor to review certain issues that the government was involved in. Since 1999, I know there have been at least six, maybe seven, requests outside of the normal system to ask the auditor to get involved in. Of course, they've all been made by either the Liberal or NDP members, yet they accuse us of being political, which I find kind of interesting.

I believe there is a very strong role for this committee. I really enjoyed being a member of the standing committee because nine times out of 10 I would say this committee worked very well together toward a consensus opinion with respect to the Provincial Auditor's report. I think a lot of good changes have been made to government administrations as a result of the auditor's good works and certainly the good works of this committee, to pull together, to make government more accountable to the public.

I really do take some strong exception to some of the words I've heard, especially from the member for the NDP with respect to his comments regarding certain members of this committee, because I really do believe that this committee does take very seriously its role in making government accountable.

I've heard a few things this morning. I use Highway 407 on a fairly regular basis. It seems to me that I have a choice as to whether or not to use Highway 407. I choose to use Highway 407 because I save probably between 20 and 25 minutes travelling across the north part of Metropolitan Toronto, and I think that's a good deal for me personally. That's why I choose to use Highway 407.

Mr Christopherson: Do you expense it?

Ms Mushinski: I don't think I need to get into sidebar comments about whether I expense it. I pay my own bills, Mr Chairman.

Interestingly enough, it seems to me that we went through a very transparent process in the sale of Highway 407, and there was a purpose for that. The purpose was clearly—and I do believe, as Mr McDonald has said, that the NDP government had clearly indicated that this would be a toll road, so I don't think that's the issue here. I think the issue here is whether or not increases are valid in terms of the original agreement. I've done a little bit of research, and it seems to me that the tolls are really to be regulated through a congestion relief model. And I thought that congestion relief model was clearly a part of the original agreement.

I don't really have any difficulty with the auditor taking a look at that agreement. My understanding is that the reason Mr Phillips has had some difficulty in getting the FOI information is because there was a third party that objected to certain components of that, so there were legal delays. To suggest that the government deliberately delayed the process—I'm not sure he said that, but it seems to have been inferred—I think is inaccurate information.

Having said that, Mr Chairman, I'm going to ask if we can have a 10-minute recess because, given some of the

information that has been discussed, we'd like to caucus for a few minutes.

The Vice-Chair: A 10-minute recess has been requested and granted. We will reconvene at approximately 18 minutes to—anyway, in 10 minutes.

The committee recessed from 1326 to 1337.

The Vice-Chair: We have now reconvened after our adjournment.

Mr Phillips: I'd like to make a minor change in my motion, after discussing it with the clerk. Technically, really, it's the committee requesting the Provincial Auditor to review it. So if I might, with the committee's indulgence, withdraw my original motion and I'll reread this other motion:

"That the public accounts committee request the Provincial Auditor to review the 407 contract with a view to the tolling rates being charged and to report to the committee."

The Vice-Chair: The original motion having been withdrawn, you've now made this motion. I think it has been handed out by the clerk. Is there any discussion on the motion? No discussion? I'll call for discussion a second time.

Mr Phillips: Recorded vote.

Mr Christopherson: May I ask a question?

The Vice-Chair: Yes, certainly.

Mr Christopherson: What's the difference, Gerry? One mentioned "a view to finding mechanisms to protect the 407," and that language isn't here.

Mr Phillips: Actually, you're right. Just hang on a second. I thought the only change we were making was to request that the Provincial Auditor review the contract. I'd like it to continue to say, "with a view to finding mechanisms to protect the 407 users from unfair toll increases." I'm sorry about that.

The Vice-Chair: I just have to clarify whether you're withdrawing this motion and resubmitting or whether you're amending your motion. We do have a motion on the floor.

Mr Phillips: I'll amend the motion I just put.

"That the public accounts committee request the Provincial Auditor to review the 407 contract with a view to finding mechanisms to protect the 407 users from unfair toll increases"—

The Vice-Chair: Leaving off "and to report to the committee"?

Mr Phillips:—"and to report to the committee."

Mr Christopherson: If I can, then, the change is asking the Provincial Auditor to do the review, as opposed to asking for his assistance.

The Vice-Chair: Yes.

Mr Christopherson: Is that correct, Gerry?

The Vice-Chair: There was a technical necessity that the auditor report to the committee because the committee itself couldn't do this.

Mr Christopherson: Yes. I just want to make sure I'm up to speed with where we are now, that now the only difference between the two is that one was a request by the committee, if this passed, for the Provincial

Auditor to provide assistance. This one now calls on the Provincial Auditor to actually conduct said review. Have I got it?

Mr Phillips: That is correct. I was informed, Mr Chair, that this committee can't do the study itself, it is the Provincial Auditor that does it, and consequently I changed my motion.

The Vice-Chair: Yes. We did attempt to clear that up while we adjourned.

Mr Phillips, could you once more, now, read the full context of your new amended motion?

Mr Phillips: Yes, I could. Is everybody ready?

The Vice-Chair: Slowly.

Mr Phillips: "That the public accounts committee request the Provincial Auditor to review the 407 contract with a view to finding mechanisms to protect 407 users from unfair toll increases and to report to the committee."

The Vice-Chair: OK.

Mr Phillips: Sorry. My apologies, committee members.

The Vice-Chair: Well, we want to get it at least technically right so we can in fact deal with it.

Now I will ask for any discussion on the motion.

Mr Bart Maves (Niagara Falls): Having been a member of the committee for three years and being somewhat aware of motions and how delicate they can be when we're asking the Provincial Auditor to do something, I thought that Mr Phillips's initial motion, not the second motion, but the first motion—when I realized you were going to come back and amend it, I thought it was out of order anyway, because I think you're asking the Provincial Auditor to come back and recommend policy.

The Vice-Chair: In a discussion during the time we adjourned, the question was raised about it being out of order, and it was just simpler to come back in, withdraw the motion and then reintroduce a new motion.

Mr Maves: I understand, but I thought that's why you were withdrawing the first one, and then the second one dealt with that. But I think the third one, the changes he just advocated, go back and make the same mistake the first one did.

The Vice-Chair: I don't believe so. The mechanics of the Provincial Auditor reporting to the committee are the same. The instruction to the Provincial Auditor may have changed. That's my view. I'll ask the clerk to assist us in that.

Clerk of the Committee (Ms Anne Stokes): Initially, the idea is that the committee would ask the Provincial Auditor to conduct the review and then to report back to the committee. So there has to be an action and then to report back to the committee as well. The terms of what you want the auditor to do, then, I think is what the amendment is subject to.

Mr Maves: Right. But when we did—for instance, we voted unanimously to review the Bruce nuclear contract. I think the wording in that might be of use to the members opposite, because I think this wording is again putting the Provincial Auditor in the awkward position of actually recommending policy on a contract. I think

that's outside his area of jurisdiction. It's a fine line, I admit, but I think the wording of the third one makes the same mistake as the first one.

Mr Hastings: I call for the vote.

Mr Maves: On which one?

Mr Hastings: The one that's the most appropriate.

The Vice-Chair: Well, there is a motion on the floor. If you're calling for the vote, I'll have to accept that call, but I must say that your colleague is trying to—at least I understand that he's trying to—reach a compromise on this and get the wording of the motion more explicit.

Mr Maves: I just think that the third one is as out of order as the first one.

The Vice-Chair: In my view, it's not out of order in that it instructs the Provincial Auditor to do something. Whether you agree with what it instructs the auditor to do or whether there's any preconceived assumption on what the Provincial Auditor is doing, I guess that's another question.

Mr Maves: If the Chair has ruled that it's in order, it's in order.

The Vice-Chair: No further discussion?

Mr Christopherson: Mr Chair, on a point of order, a minor technicality; no accusations, I'm just determining: There are rules around when people can sub in. I note that there's a member of the committee who has changed, and I just wondered if that indeed did happen during the appropriate time frame. I'm hearing the clerk indicate yes.

The Vice-Chair: Yes, he is validly subbed in.

Mr Christopherson: So Mr Maves is OK to vote?

The Vice-Chair: Absolutely.

Mr Patten: Is he old enough to vote?

Mr Christopherson: Is he smart enough?

The Vice-Chair: Going back to Mr Hastings, he said, on whatever motion, the vote has been called.

Mr Phillips: Can we have a recorded vote?

The Vice-Chair: A recorded vote.

Mr Maves: Is that on the third motion, the amended motion?

The Vice-Chair: The first motion was withdrawn. The second motion was introduced and then amended. It's on the amended motion. So this will be on the amendment to amend the motion. And the amendment is? Do you want to clarify it? The words "with a view to"—deleting "the tolling rates being charged" and putting in "finding mechanisms to protect the 407 users from unfair toll increases." That's the amendment to the motion.

Mr Christopherson: If I can, there are two parts to this. One is, to boil down to it, we're asking that the auditor find mechanisms to protect 407 users from unfair toll increases, and the second one is that there be a report back. The first one speaks to consumer protection; the other one, though, doesn't contain any timelines. I'm wondering what your understanding of that would be. Just to say "to report to the committee," is rather open-ended. Normally one would attach some kind of time frame to that so that the action you've given takes care of

itself in terms of the direction as to when it's coming back, and one doesn't have to go out and hunt for it.

The Vice-Chair: That's a good point. It wasn't my motion, so I look to the clerk and the auditor.

Mr Christopherson: Or the mover of the motion.

The Vice-Chair: Just for a comment.

Mr Christopherson: Fair enough.

Mr Peters: Just to comment, if you wanted to put in "as soon as possible," that's one way of dealing with that.

I do want to express discomfort with "finding mechanisms to protect the 407 users," because normally that is outside the role of the auditor. It would be within the purview of this committee, based on my report, to find mechanisms to deal with that, but as auditor of the Legislature, I would feel uncomfortable in being charged with finding a mechanism to resolve this issue. I can take a look at the contract with a view to the tolling rates being charged, where it applies, whether it is in accordance with the agreement that was struck, whether this has all been protected. But as to "finding mechanisms to protect the 407 users from unfair toll increases," I would have to seek advice whether I have to decline that commitment as being in conflict with my other duties. I just want to put this on. I see some difficulty on that.

The Vice-Chair: The vote has been called. Are there any other points of order or clarification?

Mr Christopherson: There does seem to be something a little less than full clarity here. That almost takes us back to the original motion, which mandated the committee to undertake the review and asked the Provincial Auditor to provide some assistance.

The Vice-Chair: Might I suggest that it doesn't. The problem with the first motion was that the committee doesn't have the resources to carry out the motion. The second motion, which was put in after the first was withdrawn, did point out that the committee would request the Provincial Auditor to review the contract with a view to tolling rates being charged and to report back to the committee. That, in my view, is a valid motion.

Now it has been amended to delete "the tolling rates being charged" and insert "finding mechanisms...." That's what the Provincial Auditor is now referring to. So if you want direction from the Chair, I can suggest what you might do, but it's your motion and your meeting.

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Mr Christopherson: If I can, Chair, with all due respect, the notion that we don't have the tools—I mean, if the motion passed—hear me out, sir.

The Vice-Chair: Yes.

Mr Christopherson: If the motion passed, then we would undertake to use whatever tools are available. We have access to the Provincial Auditor in terms of his expertise. We have a legislative research person who can do all the research that we require. We can conduct public hearings where we bring in experts—legal, transportation and otherwise—who would come in and give us their thoughts on this. So while we don't have a department that we can call on to go after this, it would

seem to me that we have all the tools that we would normally have when we undertake any kind of an activity, and if we needed more, we could request it, assuming we had a majority vote which represented the will of this committee.

It's your final determination, sir, but I'm not 100% in accordance with you and the clerk, who suggest that we just automatically do not have the tools to undertake such a review. If indeed the political will is there—and it would seem to me that's the first point: is there the political will to direct that this be the action of the committee? Then, if the political will is there, what are the tools available to us, the ones I've listed and maybe others, as opposed to the other way around, sir.

The Vice-Chair: That may be your point of order, but that's not what we're dealing with here. What we're dealing with now—and the motion has been called; a recorded vote has been asked for—is an amendment saying, "finding mechanisms to protect the 407 users from unfair toll increases." I guess if that passes, then what you've just said very well might be the case. The motion is in order. I don't know what you're getting at.

Mr Christopherson: I guess I'm responding to the comments of the Provincial Auditor, which to me are pretty significant, since we were looking to him to be the major focal point of the area of expertise in this, but I acquiesce to your ruling, sir.

The Vice-Chair: Any other points of order? Miss Stokes, do you have any comment to add to that? No?

We can go back and forth. The mandate of the committee is to review the auditor's report. Again, maybe it's semantics as to whether we have the resources to—he's one of the resources, or the resource. The mandate of the committee is to review his report. I don't know whether the mandate of the committee goes quite as far as what you're suggesting, how we could involve other resources.

Mr Phillips: On a point of order, Mr Chairman: I hope the committee might give me some latitude here because I'm not a regular member of the committee.

The Vice-Chair: We've been giving lots of latitude here.

Mr Phillips: I appreciate that.

What I interpret from the Provincial Auditor's comments is that he can review the contract, review the tolling rates, but he cannot propose mechanisms for the public dealing with it. That would be up to the committee after they receive his report. So it seems to me that if we're all interested in it—can't we find ways that we can better serve the 407 users, protecting them from what I regard as unfair toll increases—the sequence of events has to be that we request the auditor to review the contract with a view to the tolling rates being charged, and report to the committee—that motion. The committee can then take that report and recommend mechanisms.

I don't know whether I can get the committee's agreement to this or not, but I'm inclined to think that the motion that was suggested by the clerk is probably the appropriate one to try to get at what I'm getting at, and

then when that report comes to the committee from the Provincial Auditor, the committee can make those recommendations on mechanisms.

The Vice-Chair: You've expressed what I said: if the committee wanted direction, well, yes, you would deal with the amendment in a negative way and deal with the motion in a positive way and we'd get to what you were just saying.

Mr McDonald: On a point of order, Mr Chairman: When Mr Phillips put the motion forward and you ruled it in order—the Provincial Auditor had a problem with it, but you ruled it in order, and Mr Hastings called for a vote. What happened next?

The Vice-Chair: Which motion were you speaking of? The original motion—

Mr McDonald: Exactly.

The Vice-Chair: —or the second one? No, the original motion—I didn't rule on it in any way, shape or form. We had the original motion. There was an adjournment. There was some discussion that included whether in fact it was in order. So it was decided then that the easiest way to handle it was to just simply withdraw it, and I didn't have to rule on it at all.

Mr McDonald: Right. I don't have a problem with that part.

The Vice-Chair: Then we had the second motion, which, yes, I say is in order, and we have an amendment, which I say is in order, but there's significant question surrounding it.

Then Mr Hastings called for the question. It was called for a recorded vote on the amendment, and then these points of order were raised. I think the points of order have a little grey area. There may have been some discussion in it, but we are now concluding the points of order. If there are no more points of order, then the amendment is to be voted on, and a recorded vote.

Mr Maves: The amendment?

The Vice-Chair: The amendment.

Mr Maves: And then the motion.

The Vice-Chair: Then the motion.

Mr Maves: OK.

Mr McDonald: So what's the amendment?

The Vice-Chair: The amendment is to remove the words "the tolling rates being charged" and insert the words "finding mechanisms to protect the 407 users from unfair toll increases," and then it goes on, "and to report to the committee."

Mr McDonald: And it goes on?

The Vice-Chair: The amendment is this: "finding mechanisms to protect the 407 users from unfair toll increases" to replace the words "the tolling rates being charged."

So vote "no," vote "yes," and then we go for lunch. OK? A recorded vote was asked for, so the vote.

Ayes

Christopherson, Patten, Phillips.

Nays

Hastings, Maves, McDonald, Mushinski.

The Vice-Chair: That being dealt with, the amendment is defeated.

The main motion is, "That the public accounts committee request the Provincial Auditor to review the 407 contract with a view to the tolling rates being charged and to report to the committee."

Mr Christopherson: Just one clarification, Chair. There was a recognition on the part of the auditor—the time frame thing. Would you accept an amendment to that now, being a friendly amendment to the extent that it's putting a fine point to the reporting action?

The Vice-Chair: That's a friendly amendment, I think, yes.

Mr Christopherson: And then I would just make that "as soon as possible on the advice of the Provincial Auditor." So I would move that as a further amendment to that, Chair.

The Vice-Chair: As a friendly amendment.

OK, we have an amendment that the report be made "as soon as possible on the advice of the Provincial Auditor." Discussion?

Mr Phillips: A recorded vote.

Ayes

Christopherson, Patten, Phillips.

Nays

Hastings, Maves, McDonald, Mushinski.

The Vice-Chair: The motion is defeated.

Now we're back to the main motion. It need not be read again, I would hope. Are you ready for the question?

Ayes

Christopherson, Patten, Phillips.

Nays

Hastings, Maves, McDonald, Mushinski.

The Vice-Chair: The motion is defeated.

Is there any further business? There being none, this committee stands adjourned until 9:30 am sharp on Tuesday, February 11.

The committee adjourned at 1359.

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