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Official Report of Debates (Hansard)

Wednesday 20 February 2002

Journal des débats (Hansard)

Mercredi 20 février 2002

**Standing committee on
public accounts**

Ethics and Transparency
in Public Matters Act, 2001

**Comité permanent des
comptes publics**

Loi de 2001 sur l'éthique
et la transparence des questions
d'intérêt public

Chair: John Gerretsen
Clerk: Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COMITÉ PERMANENT DES COMPTES PUBLICS

Wednesday 20 February 2002

Mercredi 20 février 2002

The committee met at 1008 in committee room 1.

ETHICS AND TRANSPARENCY IN PUBLIC MATTERS ACT, 2001 LOI DE 2001 SUR L'ÉTHIQUE ET LA TRANSPARENCE DES QUESTIONS D'INTÉRÊT PUBLIC

Consideration of Bill 95, An Act to require open meetings and more stringent conflict rules for provincial and municipal boards, commissions and other public bodies / Projet de loi 95, Loi exigeant des réunions publiques et des règles plus strictes de règlement de conflit pour les commissions et conseils provinciaux et municipaux ainsi que les autres organismes publics.

The Vice-Chair (Mr Bruce Crozier): I call the meeting to order. The committee will be conducting clause-by-clause consideration of Bill 95, An Act to require open meetings and more stringent conflict rules for provincial and municipal boards, commissions and other public bodies.

Ms Di Cocco, do you want to begin?

Ms Caroline Di Cocco (Sarnia-Lambton): Yes. The procedure is that we go through the amendments, I presume?

The Vice-Chair: We go through every clause, essentially, and pass each clause and/or clauses as amended.

Ms Di Cocco: Is there any specific order?

The Vice-Chair: Yes. You have a package. If you don't, you can have mine.

Ms Di Cocco: Is it this one?

The Vice-Chair: Does it have the numbers at the top?

Ms Di Cocco: Yes, it's got numbers at the top.

The Vice-Chair: Normally, you may have some general comments, if you choose, and then we will go to clause-by-clause.

Ms Di Cocco: All right. The amendments that came to us today have come because of a number of discussions and also the public hearings that took place. I took some suggestions that I believe would make the bill better. Just to give you an overview of what the amendments hopefully will do, they strengthen and also simplify the process of open meetings.

For the sake of the committee members, one of the important things I've done is take away those two bodies, particular agricultural bodies, marketing boards and I believe self-regulatory boards, professional boards,

which I don't believe belong under my bill. The intent of my bill was not to put these bodies in. They are supposed to be public bodies that expend public dollars. That's the intent.

I also want to say that it's important that whatever decision is made in a private—if you want, in camera—meeting, must be reported in public. That's also one of the amendments I put in, to make sure the minutes also record what decisions were made.

Probably the other large amendment that I felt would improve the bill was to substitute the Attorney General. I believe that the Information and Privacy Commissioner should be the person the public can go to to request an investigation or at least to look into whether a public body acted inappropriately.

Again, I do believe the bill is much improved. I think it's needed.

I just want to say that from across the province what we find is that there is no duplication. I double-checked that. There are no fines on representatives on public bodies or boards who act inappropriately, and I think we've heard testimony of that.

Basically these motions are hopefully to make this bill better. I certainly hope and am sure the committee will see fit to report on it.

The Vice-Chair: Thank you, Ms Di Cocco. If there are no other comments, we'll move to section 1.

Mr Bart Maves (Niagara Falls): I have a further comment, if the Chair would indulge.

The Vice-Chair: Yes, Mr Maves.

Mr Maves: In the hearings we had, there were a lot of organizations that came in asking to be exempted. During the hearings you said a couple of times that you were intending to exempt that organization or some other organization. Could you give us a quick synopsis of those that were originally in it that you have now pulled out?

Ms Di Cocco: Certainly. It's the local farm product marketing boards. They're in item 8. I've put in a new schedule in part II. Do you want to know the reason they were removed and what the rationale was?

Marketing boards, by nature, discuss setting prices. Also, the members on marketing boards are all farmers, so they would be impacted directly by the decisions made by that marketing board. There would be a tremendous conflict of interest in that, so they are out of the bill. They did request that they not be put in. I felt that according to their statutes, they did not belong under this

bill. The other one was the advisory boards appointed by conservation authorities.

Again, a number of them were caught in this net unnecessarily: colleges of health professionals; and there is a group called fence viewers—there is no reason for them to be caught in this; the marketing board under the Milk Act; and the other one was the medical advisory committees. It's the boards on the hospitals that are accountable but the advisory committees are only to advise the boards, so the decisions are always made at the board level. That's why we removed the advisory committees.

I sent to the members ahead of time an overview of all the bodies that were taken out. If you want, I can give you a copy of that.

The Vice-Chair: By the same token, Ms Di Cocco, the bodies that are included are in the schedule at the end of the act.

Ms Di Cocco: Yes.

Mr Maves: Right. However, the amendment adjusts that schedule. Chair, I was just trying to get some of the thinking behind Ms Di Cocco's inclusion or exclusion of different boards and bodies from the act before we got into actual clause-by-clause.

Ms Di Cocco: If I can give you the general gist of it—I don't know if legislative counsel wants to speak to it, because I spoke to him at length about what the intent was in the bill, which is that public bodies expending public dollars that impact the general public, those boards should be conducting, in my view, according to this bill, open meetings. That's at the local level and at the provincial level.

Mr Maves: Right.

Mrs Julia Munro (York North): If I could just ask a question, given that rationale, how would a conservation authority not fall into the category? You've taken them out, and I just wondered, by what you just said.

Ms Di Cocco: It's advisory boards appointed by the conservation authority, not the conservation authority. The conservation authority is in there, it's in the package, if you take a look at the amended schedule, at the very top: "A conservation authority established by or under the Conservation Authorities Act." But it's the advisory boards under them.

Mrs Munro: OK.

The Vice-Chair: If you have the letter from Ms Di Cocco, it lists those that are being excluded, and we're getting copies printed of it, if you don't have it.

Ms Shelley Martel (Nickel Belt): You need to work with page 7 of the bill and work against the Liberal motion, because in the schedule part I remains, on page 7 of the bill. It's part II that's being amended and the amended part II appears as a Liberal motion. So you need both to see what is going to be included, if that helps.

Ms Di Cocco: Thank you.

The Vice-Chair: Any further discussion before we get into the meat of this?

Mr Morley Kells (Etobicoke-Lakeshore): I must apologize. I have not been at this committee before.

The Vice-Chair: Mr Kells, you never have to apologize.

Mr Kells: I'm a little confused that we're going to head right into amendments, and some of the things that were discussed back at the public hearings level are still concerns with the government. I just wonder if we should maybe just be talking about those in general terms first before we talk amendments.

My ministry's position hasn't changed. As much as we appreciate the private member's exercise and we appreciate the personal problems you have incurred in your area, we still don't see it as anything we need more than what we've been able to do as a government. So our position hasn't changed.

Mr Richard Patten (Ottawa Centre): What ministry is that, Morley?

Mr Kells: Municipal Affairs.

Ms Di Cocco: First of all, there are two items, Mr Kells. One is that it isn't a matter of my personal—it's been an experience. But there were suggestions by Justice Killeen at an inquiry, and under the Municipal Act there is nowhere—I think the basic argument from the government is that this somehow duplicated what's already there. It doesn't duplicate it; there is nowhere that I could find where there's a penalty imposed for municipal councils conducting their affairs behind closed doors. We even had testimony from a number of lawyers who went all the way to the Supreme Court, and in the end there is no penalty. That's the difference, that the individual councillors—the spirit of the act is the same, but it's the imposition of the fine which gives probably a stronger consequence to individual board members, and also procedurally, so that they have to make sure they explain why they're going in camera, and if they go in camera inadvertently or when they're not supposed to and they're found to be so, they will have a fine. There's nothing under the Municipal Act that provides that, and that is the fundamental difference, if you want.

Mr Kells: I hear you. If I may, I mentioned "personal" because I find private members' bills to be personal.

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Ms Di Cocco: Yes, I understand, but what I'm trying to say is this comes from a broader base. This was a judicial inquiry, by the way, that set a precedent. The city of Toronto has voted for an inquiry, and one of the rationales is because what the city of Sarnia had done set a precedent at the Supreme Court. The Supreme Court gave authority or gave the rationale why municipalities should conduct inquiries because of this kind of thing.

Mr Kells: Let me try and answer back, if I may. First of all, working backwards, I don't think there should necessarily be any comparison or analogy made to the city of Toronto. If their members didn't understand what they were voting on, that's nothing to do with secrecy, that's to do with a lack of information or lack of comprehension. The point from the ministry's point of view is we're well aware of the punitive proposition you introduce in the bill. That's exactly the point. We don't feel that's needed or required, and that's precisely our

position. Maybe there are elements of duplication, maybe there are elements of confusion when you say the stricter will prevail. I'm not too sure anybody knows how, without going to court for a decision, we interpret "stricter." There are many loose ends. I make no apology for this. The government just does not see it is something that we should accept and pass, from our point of view, to make it legislation for the province. I want to get that right out in front before we get into your amendments.

Ms Di Cocco: I understand. It takes a lot of courage. The United States has more stringent rules than this when it comes to an open meetings act. You can take a look at Michigan state since the late 1960s, early 1970s. They've had it in place. You can see by people who cover and who compare. Comparatively speaking, it does lend itself to a stronger element of accountability. Yes, it takes some courage to do this.

I know that the Association of Municipalities of Ontario doesn't like this bill. I know that. But I believe that it's about better government. I really believe that. I regret that you don't agree with that, because I believe that if you take a look at the evidence over the last 10 years even the last few months, as to these kinds of areas that have been—let's put it this way: municipalities or other public bodies have conducted themselves, and all they're going to get is a slap on the wrist if they don't abide by the open meeting, if you want to call it regulatory, or whatever.

Mr Kells: In all due respect, I don't believe, then, that a \$1,000 fine carries—I don't know what category and description it falls into. If that's your main point, I don't think that would be enough damage personally to members of council or whomever you are describing here.

I regret that you regret that we don't agree with you, but that's part of the democratic process. As I just said, I wanted to get it out front. We don't mind debating the amendments. I can't speak for my fellow committee members, but I'm not sure that the argument about the amendments or any debate on the amendments will carry much weight if we as a government do not plan to bring your bill on anyway. That's about as clear as I can make it.

Mr Patten: So this is the government position.

Mr Kells: That's what I've been trying to say here for five or 10 minutes.

Ms Martel: I think I'm going to intervene. I really regret that the government has just laid down its position on behalf of its members. We are dealing with a private member's bill, Morley. Come on.

Mr Kells: I know. I realize that.

Ms Martel: I would have hoped that the government members didn't come in here this morning being bound by the position you've just laid on them. So we know how the rest of the morning is going to go.

Mr Kells: I said that. I very clearly said I can't speak for the—I'm speaking for the ministry position.

Ms Martel: But, "The government position is...." That's exactly what you said, "The government position is...."

Mr Kells: That's OK, because it's the ministry position.

Ms Martel: So now we know how the rest of the morning is going to go, which is that all these amendments are going to be defeated. In light of that, let me say the following. First of all, I think it's a ridiculous argument to come in here and say that we're not going to support it because some of these provisions are covered under the Municipal Act. The Municipal Act defines a very narrow set of interests: municipalities and municipal boards. This bill is much broader, and the people who came before this committee represented a much broader set of interests. There were people who came because they were very upset about school board meetings and school board practices, about what was happening with hospital boards and with a number of other bodies. So to come here with a rationale that says, "We believe these provisions are covered under the Municipal Act," is just ridiculous.

The point of the matter and the point of the bill is to deal with a broad range of public bodies from the hearings that seem to routinely decide that they should not have meetings held in the open, that they should not disclose what should be public information, to the public, and that, as we saw through the hearings, do whatever they can to block access and make it impossible for members of the public who are concerned about things to get any information about that. I think the members who were here for the hearings heard that loud and clear.

Second, I heard Mr Kells say he doesn't agree with the punitive measures. On the one hand, he doesn't agree with punitive measures because he says he thinks that perhaps people at meetings are just confused when they block access, and then on the other hand he said, "Well, \$1,000 isn't tough enough." Well, then come forward with an amendment and make it tougher. But the fact of the matter is that those of us who were at the hearings—

Mr Kells: You can wedge me any way you want, but don't put words in my mouth.

Ms Martel: I listened to you, Mr Kells.

The Vice-Chair: Mr Kells, would you quieten down, please?

Ms Martel: Those of us who were at the hearing—

Mr Kells: I have a right to a point of order here.

Ms Martel: No, I listened to you speak and now I hope that you will give me the same opportunity.

Mr Kells: Don't interpret what I said differently from what I said.

The Vice-Chair: Mr Kells, it would just be nice—

Mr Kells: OK.

Ms Martel: I think the record will show—the fact is that it was very clear from the presentation that regularly, routinely school boards, hospital boards and municipalities were making every effort to block information. It wasn't a question of those boards not understanding the rules and not understanding the circumstances under which they had to release information. Clearly they were making very deliberate attempts not to release information even when lawyers had been hired to try and get the

release of the same. So it has nothing to do with people not understanding the rules and not understanding when information should be released. On the contrary, there are deliberate attempts being made to block that.

Second, if the government doesn't think that the fine is high enough to force people to do the right thing, then the government should bring forward an amendment to increase the fine. I gather that Ms Di Cocco will already move amendments here this morning to increase that to \$2,500. If the government doesn't think that's high enough to get people to comply, then bring forward an amendment that will finally force people to do what they should do, which is disclose information to the public when it is required.

Third, I think there is no reason for the government and the government members not to support this bill. The fact of the matter is, we have public bodies meeting every day that make important decisions about the spending of public funds that affect many interests in the public. We, as MPPs, should be doing whatever we can to ensure that those members of the public can get reasonable, appropriate, easy, timely access to information about important decisions regarding public money when they need it and when they want it. We should not be putting up really silly excuses as to why we can't do that. I would encourage the other government members who are here to support this bill. Thank you, Mr Chair.

The Vice-Chair: Is there any further discussion?

Mr Maves: I don't know if there is some other part in the process where we could, instead of having the one-day hearings and then going directly into clause-by-clause, deal with some of the concerns of the bill that were brought forward by people during committee hearings. The Ontario Hospital Association, for example, was very concerned about the bill. Ms Di Cocco has talked about some of the people she exempted from the bill who also said they had concerns about the bill. Not only, I think as Mr Kells believes, the Municipal Act—by the way, we have a new Municipal Act and I don't know how any of the changes within the new Municipal Act are going to interact with this bill. We have a privacy act that's been introduced and it's coming forward. I don't know how this bill is going to interact with that.

There are within the Ministry of Health several acts and I'm not confident about the interaction between this bill and those acts: the Ministry of Health Appeal and Review Boards Act, the Regulated Health Professions Act—which I think we've had a bit of a discussion on—the Health Protection and Promotion Act, which is with regard to boards of health, and the Public Hospitals Act, regarding medical advisory committees. Even the Municipal Act has some sections with regard to boards of health. There were several concerns brought forward in public hearings. I think there are stakeholders throughout the system that would be picked up by this bill that had a great deal of concern about how they're being picked up.

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In fairness to Ms Di Cocco, I don't know if we've had the opportunity to really have a fulsome discussion about

all of those concerns that were brought forward and we're moving into clause-by-clause on a bill. If we're not comfortable supporting the bill after having heard all of those concerns, not really comfortable with how the bill is truly going to impact on those concerns, it makes it difficult for us as private members or as members of the government side to then come in here and begin to vote on a clause-by-clause basis on the bill.

Ms Di Cocco: If the government members have come in here today with the intent that they're going to find a reason not to support this bill about accountability, there's nothing I can do except argue that the new Municipal Act has actually made the rules worse, because they have now included the disposition of land to be done in camera. That's what they've added under the Municipal Act. Instead of making it more transparent, they've added that extra section to it. That means the process used in municipalities when you're disposing of land, which you now do through public tender, has gone out the window now under the new Municipal Act. I can tell you because I checked the new Municipal Act immediately, trying to see whether or not there was maybe a more transparent approach to doing public business.

When it comes to hospitals, of course the hospitals don't want to be under this bill. Right now, they're not under the purview of the auditor, they're not under the purview of the privacy commissioner; they're not under the purview of accountability. They're dealt with as a private entity. That's a fact. That hasn't changed. This bill dramatically changes that and makes sure it's not just under their own magnanimous approach whether or not they're going to have public meetings but that those meetings, which are going to impact their communities, are held in public. Right now, they don't have to do it anywhere across the province. That's a fact.

The other issue, about how it deals with privacy—I had meetings at length with the privacy commissioner's representatives before I did this bill. I did my homework before I drafted this bill. I spoke very strongly to the privacy commissioner and to the representative dealing with this, because I certainly don't want to step on anyone's toes; neither do I want to duplicate. That's counterproductive.

When it comes to real accountability—I thought the government was interested in accountability—real accountability is about transparency and decision-making by major public bodies, including school boards, hospital boards and municipal councils. If you do not have a very specific regulatory framework from which they conduct their business—and you can find excuses not to support this bill based on your not having enough information, but if you take a look at the records, if you take a look at the Hansard, there was some compelling evidence brought forth to this committee regarding the various boards and how inaccessible the information was and it was only some time after the fact and after it impacted on communities. I don't think that's a good way to do government.

This bill is certainly not the panacea, not the answer to it all, but it's a good step in showing goodwill by us as

individual legislators to bring about really good change. That's what this is about, good change, about accountability. I went through every single Hansard. We discussed everything that was brought forward, the suggestions that were brought forward and the concerns. I tried to address them, and when I saw that my rationale for this bill was going to be compromised, and as I said, it would be if I exempted the hospital boards from it or if I exempted the municipal councils from it—I don't think it would change fundamentally the concept of this bill, and I certainly hope that this committee doesn't want to do that. I understand if there are concerns, but I think the concerns are fabricated; it's selective.

We can find reasons not to support anything; that's part and parcel of this process. But I certainly hope this committee understands the intent and the care with which this bill was brought forward, because it's much needed in this province. Other jurisdictions have done it and have had great success. Again, hopefully I addressed the areas of the new Municipal Act, the hospital boards and also the privacy commissioner, because I have touched bases with all of them and the rationale why they are in this bill and why the privacy commissioner is also the body that's going to deal with this.

Mr Maves: I appreciate the lecture. Mr Kells has already talked about some of his concerns, some of his ministry's concerns and some of the municipalities' concerns, and I talked about some of the concerns from the Ministry of Health and the Ontario Hospital Association. In more general terms, I can say that there are general concerns with different parts of the bill, and you can go through them. Because I have general concerns, it would be difficult for me to support these individual sections and then the bill, obviously, in its entirety.

In fairness to Ms Di Cocco, I'm wondering if we can put some of these questions on the record. Instead of having the clause-by-clause now, maybe she can respond to some of the concerns we have about the bill. For example, definitions in the very first paragraph—

The Vice-Chair: The appropriate way to do it—Mr Maves, excuse me—when you start to say that you have sections you have concerns with, is to discuss them by section.

Mr Maves: Right, but if we don't feel there's the ability to get a fulsome answer on that, and then once we hear the answer, say to others who have perhaps brought the concern to our attention, "Well, here are the comments on this. Do you feel that's sufficient?" then it's difficult for me to support it.

The Vice-Chair: In other words, you want to hear from others before the committee again?

Mr Maves: I may want to put some questions on the record and let Ms Di Cocco respond to those questions in due time and then let myself get comfortable with her responses so that I get a comfort zone to deal with the bill.

The Vice-Chair: In due time—you mean not today?

Mr Maves: It would be difficult for me to do all of that today.

The Vice-Chair: I'm simply clarifying: not today. I'll get this absolutely straight with the clerk, but you have the opportunity to move that clause-by-clause be deferred; that is, beyond today.

It should be to a specific point in time, the next meeting, something like that. I hesitate to tell you what to do. I will say that the Chair wants every opportunity for any business that comes before it to be thoroughly discussed and considered. It would take unanimous consent to defer the review of the various sections.

Mrs Munro: Could we have a recess?

The Vice-Chair: Yes, you can have a recess of up to 20 minutes. Do you need any specific length of time? How much time do you need?

Mrs Munro: Can we do 20 minutes?

The Vice-Chair: This committee is recessed for 20 minutes.

The committee recessed from 1040 to 1100.

The Vice-Chair: We'll call the committee to order. We were, at the point of recess, having a general discussion about the bill under section 1. Is there any further discussion or are we ready to proceed?

Mr Maves: We're ready to proceed to clause-by-clause.

Ms Di Cocco: With all of these areas of concern, I don't know why none of the members of the government contacted me. I did try to send out information ahead of time, even ahead of the committee's time, to see if there was any input, amendments or discussion on any of these matters for clarification, because I certainly would have been more than glad to meet with them to discuss it, but that didn't transpire. Nonetheless, I understand that if there are areas of discussion or concern that they want to have addressed, I certainly want to be able to provide that opportunity. I'm more than willing to have this dealt with at another point in time, even when the committee meets at the beginning of the legislative session. I am amenable to that and make myself available to any kinds of concerns the government members may have on this bill.

The Vice-Chair: The indication is we're ready to proceed with clause-by-clause.

Section 1, there are no amendments, correct? Section 2, there are no amendments.

Mr Maves: Can we have discussion on this section before we vote on it?

The Vice-Chair: All right, let's deal with it section by section. Section 1?

Mr Maves: Some of my concerns with regard to section 1 are that, right off the bat, there's no definition of "meeting." Typically, a bill would give definitions of terms contained in the title of the bill, if for no other reason than to prevent persons from taking liberties with a literal interpretation of the bill. So that's a concern. There's no definition of "decision." According to the bill, decisions would have to be documented and minuted, but there's no guide at all as to what constitutes a decision. There's no definition for "open" or "closed" meetings, so there are no parameters or minimum requirements for a meeting to be considered open or closed. There's also no

definition of “conflict of interest,” so it would be difficult for a person to ascertain whether they are in conflict without a comprehensive definition.

Finally, with regard to the schedules which this section talks to, I personally am not comfortable. I know Ms Di Cocco heard from some of the groups, agencies and boards that were in the schedule originally about their concerns and pulled them out. I don’t think she’s heard from everyone who is included in the bill and I don’t know that she could be comfortable that they don’t have similar difficulties with the bill that might lead her to pull them out. So for all of those reasons, I’m going to have a great deal of difficulty supporting this section.

Ms Di Cocco: When it comes to the specific definitions, a number of the public bodies already have their common procedures of what their meetings are and what they entail, most of which, by the way, are about a quorum, a sufficient number of members of a public body, and that a meeting is constituted when there is a quorum in place. That is, I think, something that is a precedent. It’s something that has been there in the past.

If that is something Mr Maves believes is important to clarify at the outset, I would like to see any regulatory or public body that does not have what constitutes a meeting for that group. It would be very unlikely that that’s the case. Nonetheless, it’s an amendment. If you did have that concern, I wish you had brought it forward, if that is the case.

I believe some of the others are nitpicking. It’s trying to find a reason and, in my view, an excuse to vote against the clause, rather than give constructive input that we’ve had enough time to be able to provide. There’s been enough time in this committee to provide amendments to the motions if there was any intent to deal with the concerns in a credible way, in my view.

Mr Patten: To address Mr Maves’s comment, the incorporation of any body—and we’re not talking about a pickup team on the street here, we’re talking about hospitals and school boards. We’re talking about public bodies that expend public money in the interests of the public, and they are incorporated. In order to be incorporated, that means at some point they had to apply to the province to qualify to be incorporated, in the health field, the education field or what have you. The requirements of that address what Mr Maves is concerned about. They could not be an incorporated body without the requirements of incorporation and the bylaws therein, which cover the very issues he’s talking about. So this bill doesn’t go back into that to redefine all those requirements. It makes the assumption that, indeed, there is an incorporation there and there are those fundamental bylaws. I just wanted to make that point.

Mrs Munro: First of all, I think it’s really important that all of us recognize the importance of public accountability and of having transparent actions, and the responsibilities done on our behalf as citizens. There’s no doubt that there’s a constant effort necessary to be vigilant. In response to a comment made by the member a few minutes ago that there are always going to be

people who are resistant to change, I think the fact that you are assuming that in the definition section there would be those inherent definitions is, frankly, problematic. When you referred a few moments ago to the fact that hospital boards do not have an obligation to have open meetings but now you’re suggesting that within the confines of their own legislation that would exist I think points to the weakness of assuming in section 1 that those kinds of things you want to have happen would be within them.

You’ve also mentioned on several occasions the importance for you in looking at Michigan’s Open Meetings Act as a model. Very clearly, the authors of that act went to great lengths to make sure that those things were defined so that there would not be the opportunity for anyone who was under the umbrella of that act to be able to use what were their own bylaws or rules. In fact, they are right there for them.

I think that while it may be true that many of these groups you’re speaking about in your schedule have some definitions, I’m not sure they’re all there. I’m not sure that by not referencing them, it gives us the comfort that these things have been defined in a way that would treat all of the groups that are listed under the same kind of legal obligation. For those reasons, obviously, I feel that it should have been seen necessary to include them.

Ms Di Cocco: Mr Chair, if this is the concern of the government members, would it be possible to move a definition of “meeting” that I have looked at at this point in time? Because I had made that assumption.

1110

The Vice-Chair: As far as I know, there was no deadline for amendments, so an amendment could be moved at this meeting. It should be in writing, please.

Ms Di Cocco: OK. Or if the member wants to make it, I certainly have one here.

Ms Martel: Can I make a suggestion that we stand down this section until the definitions are provided? Can we do that?

The Vice-Chair: Yes. I just want to make sure from the clerk that a motion to stand down is necessary, or just agreement.

Clerk Pro Tem (Ms Anne Stokes): You want to stand down the next section?

The Vice-Chair: Yes.

Clerk Pro Tem: It should be agreed and then postponed.

The Vice-Chair: Agreed. OK.

Mr Albert Nigro: I wonder if I could just interject.

The Vice-Chair: I’m getting all kinds of advice here.

Mr Nigro: Unless I’m badly mistaken, what the member is going to move is not an amendment to section 1 but an amendment to section 2. There are reasons for that. It deals with the issue which has been discussed, again, unless I’m badly mistaken. I don’t want to preempt the member’s moving the motion, but it doesn’t deal with section 1; it deals with section 2.

Ms Di Cocco: OK.

The Vice-Chair: All right, if you’ll take that advice.

Ms Di Cocco: I take that advice, which means—

The Vice-Chair: Which means we're dealing with section 1 in your discussion. There was advice that it was an amendment to section 2, really.

Ms Di Cocco: Open meetings are in section 2.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I do appreciate that Ms Di Cocco had an amendment, and I know there was no deadline. She's brought it forward and that's great for improvement of the bill, because it was brought up by us that there were some deficiencies. That's great, but I'm just wondering if Ms Di Cocco, in the sense of improving this bill, has more amendments that she would like to bring forward now for the rest of the clauses.

Ms Di Cocco: You should have a package.

Mr Gill: In addition to those, because you just brought one up.

Ms Di Cocco: No. By the way, I have to say that if we're looking at section 1, and I believe Ms Munro was talking about the designation of a meeting, what it entailed, I don't think that's in section 1. The amendment is for meetings and I believe it's section 2.

Mr Gill: I'm just trying to facilitate if there are other amendments that you have.

The Vice-Chair: OK. I understand. We're just trying to foresee other amendments. We're told at this point in time, at least, there are none.

Ms Di Cocco: The definition for "meeting" is in section 2.

The Vice-Chair: OK. Ms Munro, you requested the floor?

Mrs Munro: Yes. I just wanted to come back to a comment that I believe Mr Maves made a few moments ago, the fact that I think there are some other definitions that are necessary that I think he alluded to, because pivotal to all this is the definition of what is an "open" and what is a "closed" meeting, so that not only are we talking about what constitutes a meeting but also the question of what it is.

The other thing is the question of what constitutes a decision from this because, again, in the body of the legislation, we have to deal with that as well. I think we need to be looking at some of those terms that are used throughout the bill.

Ms Martel: I think Ms Di Cocco is going to respond to that, and then I have a question for legislative counsel.

Ms Di Cocco: Yes. There is a section in this bill that does define what the criteria are for closed meetings and not closed meetings, so I have to say that concern is addressed in the bill.

The Vice-Chair: In another section.

Ms Di Cocco: Yes, in another section, as I said, and it states exactly under what areas. I can assure you it's in here.

The Vice-Chair: You had a question of leg counsel, Ms Martel?

Ms Martel: Yes. I wanted to ask legislative counsel if you can clarify what appears under the Corporations Act in terms of definitions for any of these, and would the

organizations we are talking about in this bill be bound by some of those definitions or rules and procedures that are set out, if there are any, under the Corporations Act? Second, if you look at the schedules, both 1 and 2, that appear before us, can you tell this committee whether or not all of those agencies would in fact have to be incorporated and then bound by the rules of that act?

Mr Nigro: I can try to answer your question generally; I cannot answer in detail with all the entities that are listed in those very schedules, because I would want to check and I don't have the statutes in front of me.

The Business Corporations Act will govern some entities and the Corporations Act will govern others. Most of these, I would expect, would be under the Corporations Act or, in turn, would be statutory corporations which will either have their own rules and statutes or regulations, or to which parts of the Business Corporations Act or the Corporations Act will have been made to apply legislatively—probably the Corporations Act.

Under the Corporations Act, which is basically non-profit corporations, there are rules in respect of bylaws which they're all compelled to comply with that would deal with setting out, among other things, a board of directors, as we've already set out, quorum for meetings and how meetings are to be conducted. Whether they spell out what constitutes an open or a closed meeting and under what circumstances an open or closed meeting must be held, I can't tell you. I'm not a corporate counsel. I'd have to do some research on that.

Ms Martel: What about conflict of interest?

Mr Nigro: Conflict of interest is dealt with, I think, in section 132 of the Corporations Act. If I recall, it deals with members of the boards of directors and officers of the corporation.

Ms Martel: So the corporations would have bylaws with respect to conflict of interest already?

Mr Nigro: They're bound by the statute. The statute would overrule any bylaws they have. They may have some details in the bylaws, procedurally how to conduct themselves, but in fact they have to meet the standard that's set out in the act.

Ms Martel: So there are standards set out in the act?

Mr Nigro: Yes.

Ms Martel: So it's clear what their obligations are?

Mr Nigro: Reasonably so, yes.

Ms Di Cocco: Just for clarification, the open meetings—this is the next section, though; it's not the section we're discussing, supposedly. It says that all meetings are open except—there are the exceptions that are clearly defined, when they should not be in open sessions. So I just wanted to say that the clarification is in the bill, and it's section 3 of the bill. There's also an amendment that comes into that and clarification again in the amendments, but it is in there.

The Vice-Chair: Is there any further discussion?

Mr Maves: My colleagues and I had a discussion about Ms Di Cocco's comments when we came back from the recess. I think it's fair to say there has been a

lack of communication between the parties on the bill. We would support the member moving withdrawal of the bill for clause-by-clause consideration today and I will undertake, on behalf of my colleagues, to submit a comprehensive letter to the member, section by section, about our concerns with the bill. Then we can have a dialogue that way so that we can either determine whether or not we'll ever be able to be satisfied with each section of the bill and whether or not we can support it, or whether we can amend it appropriately.

As I'm looking at this, we support the concept of the bill, obviously; we support it in principle. As things stand now, I believe that if each section comes to a vote, our members are going to be uncomfortable and probably won't support it. So in support of the member's not losing her private member's bill in this fashion, if she would move such a motion, we would support it and be willing to undertake that.

The Vice-Chair: We can certainly have some discussion, but it would look a lot nicer if we just simply had agreement to do that. But it can also be done by motion.

Mr Patten: It would be helpful if you had specific amendments. In other words, you're saying that you agree with the concept, and it's a fairly straightforward concept. Rather than a letter saying, "We have trouble with this, trouble with that," which is difficult to respond to in that sense, it would add enormously to the credibility of the motivations and the intent of the members on the government side if you said, "Listen, here are some amendments that we would recommend," and then there would be some opportunity for response, rather than simply saying, "We disagree with this, we disagree with that." It's very difficult to respond to an open "Dear John" letter, "We don't agree with you." You understand what I'm saying.

1120

Mr Maves: If in compiling the concerns that we have we feel that we can come up proposed amendments, we'll include those.

Ms Di Cocco: OK.

Ms Martel: Let me just make two points. I'm prepared to agree to that process. Let me raise two concerns.

Number one, the committee finished with its hearings some time in December, probably two months ago. Frankly, if there were concerns on the part of the government about particular sections, I would have hoped they would have been raised before now, because the date of this clause-by-clause was set a number of weeks ago. I am very concerned that we are only hearing about these concerns here today, when we are supposed to be dealing with clause-by-clause.

Secondly, and let me reiterate this, I am very concerned when the parliamentary assistant comes and gives the government position at the start of the meeting, which is to oppose this bill. I hope that he is having second thoughts.

Mr Kells: I am not having second thoughts, but I'll get my chance.

Ms Martel: Well, then I am going to take Mr Maves at his word when he says that the other committee members are serious about having a second look at this and would agree to the process that he has outlined, and hope that in fact the other members will do just that.

The Vice-Chair: I think we're working toward agreement. Mr Kells?

Mr Kells: I would just like to get on the record that the ministry—and I spoke on behalf of the ministry at the public hearings—put our concerns on the record. That's why I didn't reintroduce them here. I would be happy to do it again if we had to.

The Ministry of Municipal Affairs' concerns are still valid and we will deal with Mr Maves when it comes to sending amendments and concerns back on it.

The Vice-Chair: Certainly my time is your time, but I'm not going you to encourage you to do all that again.

Is there any further discussion?

Ms Di Cocco: I will take in good faith what Mr Maves has said as an intent to address the areas of concern that the government has. I will take him at his word.

I certainly would like to have a timeline whereby I can have an opportunity to look at either the amendments and the concerns, so hopefully the bill can maintain the intent that is set out. If we can do whatever we need to do to improve it, to make it more functional, or whatever the other wording is that we can use, I'm more than willing to do so. If the committee has time this session or if it's best to do it when the House resumes again in the spring, I am certainly more than willing to do so.

The Vice-Chair: The Chair would suggest that with the schedule that we have and individual schedules, and to give some time, in all likelihood it would come back before the subcommittee and the committee when the session resumes.

Mr Patten: Mr Chair, looking at the schedule, I believe there are times in there, if you desire.

The Vice-Chair: But I might add that I'm talking about individual members' times as well. You could speak to your colleagues about that.

Mr Patten: You know something I don't know. Fine.

The Vice-Chair: So we have agreement that this will then be deferred to allow time for full discussion and communication. The subcommittee then will determine the dates when we come back. That's great. I'm glad to leave this in John Gerretsen's hands with agreement.

If there is no further business—

Ms Martel: May I raise just a small matter?

The Vice-Chair: Yes.

Ms Martel: We talked yesterday about revising the schedule somewhat. I assume that's to save some people some time or to get the meetings over with earlier. I note that we're due to start at 1:30 every afternoon. Can we start at 1 instead and advise the ministries, or will that cause a problem for people's schedules?

Mr Maves: Agreed.

The Vice-Chair: Of course, we've already determined on the public hearings on Bill 53 that we're going to start at 9, have a one-hour lunch break and go until 3. But if there are others, we can—

Ms Martel: At 1.

The Vice-Chair: OK. We're not going to reschedule anything for 1 o'clock today, though.

Clerk Pro Tem: No, we're not. But for the rest of the schedule?

The Vice-Chair: Oh, the rest of the schedule you want to start at 1.

Ms Martel: Yes.

The Vice-Chair: Any problems?

Mr Maves: Sure.

The Vice-Chair: OK. The rest of the schedule will start at 1.

This committee meeting stands adjourned. Thank you.

The committee adjourned at 1126.

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