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Official Report of Debates (Hansard)

Thursday 29 September 2005

Journal des débats (Hansard)

Jeudi 29 septembre 2005

Standing committee on regulations and private bills

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

Transparency in Public Matters Act, 2005

Loi de 2005 sur la transparence des questions d'intérêt public

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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

Thursday 29 September 2005

Jeudi 29 septembre 2005

The committee met at 0936 in committee room 1.

TRANSPARENCY IN PUBLIC MATTERS ACT, 2005

LOI DE 2005 SUR LA TRANSPARENCE DES QUESTIONS D'INTÉRÊT PUBLIC

Consideration of Bill 123, An Act to require that meetings of provincial and municipal boards, commissions and other public bodies be open to the public / Projet de loi 123, Loi exigeant que les réunions des commissions et conseils provinciaux et municipaux et d'autres organismes publics soient ouvertes au public.

The Vice-Chair (Mr. Tony C. Wong): Good morning, ladies and gentlemen. I call the meeting to order. This is the standing committee on regulations and private bills. We are dealing with Bill 123, An Act to require that meetings of provincial and municipal boards, commissions and other public bodies be open to the public. I call upon the sponsor of the bill, MPP Caroline Di Cocco.

Ms. Caroline Di Cocco (Sarnia–Lambton): Thank you, Chair. I believe I have 15 minutes, is it, Chair?

The Vice-Chair: That's correct.

Ms. Di Cocco: Thank you. It's a pleasure to be here and to be able to speak to the intent of my bill, to the reason why it was established, and also to provide some rationale as to why we need this and some evidence to support that.

This bill designates certain public bodies to give reasonable notice of meetings to the public, and it ensures that meetings are open to the public. The public may be excluded if matters specified in the bill are being discussed. The public body is required to give notice of in camera meetings and also to keep minutes and publish them after being adopted. The minutes, of course, are for the open sessions. The bill, though, establishes a procedure—and this is what is missing in some of the current acts—for complaint to the Information and Privacy Commissioner if a person believes that the designated public body has contravened the open meeting rules. The commissioner is empowered to review the complaint and investigate, and a penalty and fine has been established for the times that it may be found that a body has contravened the act and has been found guilty.

I presented this bill when I was in opposition and I present it again now that we have formed the government. The reason this came about is from the lessons that I learned during a seven-year quest to get at the truth about decisions that were made between a school board and a former municipality. As a parent, I had dealt with the fact that my son's grade 11 class didn't have chemistry textbooks because of a financial crunch. That was in the late 1980s. Then in 1991, I learned that the same school board had purchased land at exorbitant rates, much higher than market value. In my attempt to understand how and why these decisions were arrived at, I called the director for an explanation. When he returned my call, he categorically told me that it was no concern of mine; basically, that it was none of my business.

For me, as an ordinary citizen, that was my first experience at questioning a public body, and the response, I have to tell you, shocked me. I had believed, maybe somewhat naively, that as a parent and as a taxpayer I had the right to know. When I look back, I think it was that response that probably changed my life and maybe even led me here as an MPP.

In moving forward to understand the decision-making process, I learned that this particular decision was not reported in public, and neither was how the decision was arrived at by the town of Clearwater. It took seven years of work and a quest for a judicial inquiry into the matter that went all the way to the Supreme Court of Canada. By the way, it was that ruling from the Supreme Court of Canada that also clarified and allowed Toronto to have the MFP inquiry just recently.

I was amazed to learn that although there are bylaws and there's an Education Act and a Municipal Act, the open meeting guidelines have no mechanism to investigate or apply penalties and, in fact, I learned through those seven years that it really appeared to be on an honour basis.

There's a lot of evidence that supports the need to clearly put in place this legislation. The report and findings from the Clearwater inquiry state:

"Finally, there is much to be condemned in the secrecy with which the council plotted and carried out their strategies over the period from early 1989 down to the very closing of the Parklands sale in April 1990. They kept the restructuring and implementation committees in the dark at times when it was clear that candour and openness should have been the order of the day."

Justice Gordon Killeen went on to write, "I am profoundly disturbed by the cloak of secrecy the board used to hide this transaction from its closing stages and down through the years to 1995 when, through the press ... and the complaints of a small number of obviously concerned electors and ratepayers, the board was finally forced to acknowledge what had happened."

The report recommended that, consistent with this bill under discussion today, public bodies big and small across Ontario create a clear and public record of their meetings to which the public and interest groups may have access after the event.

He goes on to say, "Councils prepare and maintain proper minutes, resolutions and bylaws." The report's final recommendation singles out school boards, advising that school boards must pass resolutions at an open public meeting, approving of and disclosing the details of transactions after the date on which the transaction has closed.

I have that report. It's right here, Chair. It's quite a large one. I don't have copies for everyone, but if that what the committee wants, I'll certainly provide it, if you so choose.

Most currently, we have the Bellamy recommendations. One of the things it advises is that city councils should take steps to enhance the openness of meetings. They go on to talk about openness, and there was one aspect to the report that said the mayor should report to the public annually, a concept that can and should be applied to all municipalities in the province.

One entire section of the recommendations outlines how greater openness can be achieved and is consistent with the spirit of this bill. The section specifically suggests, for instance that when it comes to procurements, they be carried out in a fair and open manner.

I don't want to go through all of the items in the Bellamy report, but numbers 146, 147, 148 and 149 really talk about more transparency in how the business of the public is being conducted.

Another source of support that I certainly have had is from the Information and Privacy Commissioner. In her report in 2003, she spoke about the need to change the culture, the need to now raise the bar on openness and transparency, that it is an expectation. Last year she recommended that the Ontario government introduce a comprehensive open meetings law, and goes on to note that Bill 123 would fulfill such a role.

I know that I've had much support for this bill. There are many people I've heard from across the province. I've heard stories that are very similar to the one that I experienced, that they were unable to obtain information and get access in decision-making. I believe that sometimes it can be too convenient to go in camera without any mechanism to ensure that there is some kind of an investigative opportunity to be able to see whether or not they have met the guidelines or the rules to go in camera.

Besides the findings from the inquiry, there are many, many cases which have come to light—and certainly some that I know of—for instance, some municipalities where councillors have given themselves raises in camera and their decision has never been made public, and school boards—I think there have even been a couple of court cases—where they've actually been taken to court by parents because they've made decisions on closing schools but have not provided adequate information or have made the decisions in camera. I don't have the time to list the number of very specific cases that certainly have come to light over the last six years when I initially presented this legislation.

I want to clarify: I'm certainly going to bring forward some amendments to this bill which will be put before the committee for a vote in the next few weeks. The intent is to encompass decision-making bodies only, and not regulatory or advisory bodies. There was a disconnect, I guess, between the spirit that I intended and then the legalese or the legal writing that went on. So there will be no regulatory or advisory bodies. Specifically, this bill is going to include only hospital boards, school boards and municipalities.

Other amendments are going to include—there was a mistake in the meeting minutes—the provision that meeting minutes will only be made public after they're adopted. In the bill it said, "before adopted." I think that was just an error there. As well, a mechanism to allow items to be adopted to meeting agendas in an emergency or urgent situation after reasonable notice has been given: That wasn't included, and I felt that that's important.

We're probably going to hear some arguments today that this bill is unnecessary, and some may even interpret it as punitive or believe that this bill may duplicate legislation that already exists. Although I've listened to and have heard these arguments in the past, I believe that the status quo is not good enough and that there is need to improve transparency in public decision-making. This type of legislation is in place in several jurisdictions in the United States. Michigan has had an Open Meetings Act in place since 1976. As a matter of fact, I took some of the aspects of the open meeting act from similar acts in other jurisdictions.

The other benefit that I foresee coming from this legislation is that lots of times we have a suspicion that continues after the general public has been excluded from closed-door meetings. In my view, if you have a way to be able to have an independent person actually investigate whether or not the body had every right to go in camera, it would alleviate that suspicion if, for instance, the ruling from the Information and Privacy Commissioner would be, "Do you know what? This public body had every right to go in camera." It takes away that cloud of suspicion that continues after you know that there have been in camera meetings for many, many hours.

I believe that the time is right. The purpose of this bill is certainly not a punitive measure; the purpose of this bill is to assist in enhancing the public scrutiny that should be part and parcel of our daily decision-making.

0950

I look forward to hearing from the many presenters today, both those who support the bill and those who are

opposed to the bill. Openness and transparency are the order of the day and are what is expected by the people whom these bodies serve.

I don't know how much time I have, but—

The Vice-Chair: I think your time is almost up, Ms. Di Cocco.

Ms. Di Cocco: All right. Thank you very much. I look forward to hearing the submissions.

The Vice-Chair: Thank you very much. It's actually the turn for the official opposition, but they don't have a member here, so I'll call upon the third party. Ms. Martel.

Ms. Shelley Martel (Nickel Belt): I'd like to actually ask Ms. Di Cocco two questions for clarification with respect to the amendments and then just make a brief comment after that, if I may be able to do that.

The Vice-Chair: Ordinarily, I don't think there is time for the sponsor of the bill to answer questions.

Ms. Martel: No, it will be very short. It's with respect to the amendments.

The Vice-Chair: There will be an opportunity for the government to make their statement, and maybe at that time Ms. Di Cocco can respond.

Ms. Martel: I think that I can do this within the five minutes that has been allotted to me to make a statement. I'm sure that I can get it done within there.

The Vice-Chair: OK.

Ms. Martel: Thanks, Mr. Chair.

Very quickly, the three amendments: (1) The bill will only apply to hospital boards, school boards and municipalities; (2) minutes made public only after adopted; and the third was—

Ms. Di Cocco: The third one: for instance, it says to have an agenda of what is being discussed ahead of time. In some cases, in emergency situations or some of the other areas when you need to call a meeting immediately—there is an amendment there that would allow for a mechanism so that you can have an emergency meeting if it's required etc.

Ms. Martel: Thank you. Secondly, what happens, then, to meetings of the board of governors at universities?

Ms. Di Cocco: I felt at the beginning of this process that those were the three that I had initially intended. The issue of universities: I know that they're going to be governed also under FOI. But to begin the process, I felt that I should simplify it so that it isn't so overarching that the privacy commissioner and the work that she would have to do doesn't become overwhelming. It's a start, and that's why I made the decision that I should make it simpler rather than broader right now.

Ms. Martel: Just a point on that: The government, I think, has brought forward some provisions for having universities subject to FOI under its own act that hasn't been passed. My colleague Mr. Marchese has a private member's bill in that regard. It's not clear to me, even if FOI applies, that meetings in some of these institutions may or may not become more open to the public, and I really think they should be much more open to the public than they are in some cases. So I just leave that point.

In conclusion, I was part of the public accounts committee that dealt with this in 2001 and was part of the public hearings, and indicated our support in principle for the bill at that time. My position remains the same. I understand there will be concerns that will be reflected here today, and I look forward to those being reflected. But I do think, in principle, we do need to be moving to a situation where important discussions that do take place involving small and large sums of money in our public bodies—those meetings need to be much more open and transparent than they have been, in some cases, to date. I support the bill in principle, as I did when we debated it in public accounts in November 2001.

The Vice-Chair: Thank you, Ms. Martel. Government statement, Ms. Di Cocco.

Ms. Di Cocco: Yes. Thank you for that. I probably feel very passionate about increasing the transparency with which public business is done. From the many discussions that I've had with agencies or individuals over the last number of years, it actually seems to be, in some cases, getting worse, this acceptance of going in camera, because it becomes more convenient.

Again, the bill is certainly not perfect, as no bill is, and there's always room for improvement. But I think the bill reflects the era in which we live when it comes to our democracy, when it comes to a society that has access to all types of information. On those bodies that particularly are effecting or making decisions and have the responsibility to ensure that the public is aware of what decisions are being made that are impacting them and how their dollars are being spent, I believe it just needs to have some strengthening and the bar has to be raised.

One of the comments made by the Information and Privacy Commissioner was, "This bill captures many of the principles that are key to an effective and meaningful open meetings law. We are pleased that a number of senior cabinet ministers and opposition politicians have expressed support for the bill, which has the potential to transform Ontario into one of the leading jurisdictions in North America when it comes to open, transparent and accountable government."

Again, I look to the Information and Privacy Commissioner as someone who has the responsibility of doing two things: of protecting privacy, but also ensuring openness. This bill is my attempt to make a difference in the province of Ontario. From the lessons that I learned going on, I would say, about 14 years—I'm trying to think how long it's been; I would say for 14 years. In the seven years that I pursued the quest to get information and accurate answers, I probably came out of my naïveté very quickly. I shouldn't say quickly: over seven years. I'd always made the assumptions, "I'm the parent and I'm the taxpayer." Somebody else is making those decisions. I had no interest except to make sure that my children were getting a good education. To my surprise, I was told I had no right to the information that I was requesting, and it was basically very simple: "Why didn't we have textbooks in the chemistry class?" and, "Why could you afford to spend all this money here?" It opened

up for me this learning experience that at the end of the day culminated in a judicial inquiry and culminated in the development of this bill when I became a member of provincial Parliament.

So I bring this bill to this committee with that kind of, if you want, profound depth of commitment.

The Vice-Chair: Thank you, Ms. Di Cocco. Mr. Craitor, would you like to make a comment?

Mr. Kim Craitor (Niagara Falls): I would. Thank you, Chair.

First, just quickly, I want to congratulate my colleague for bringing the bill forward. Certainly I'm going to support it, but I've indicated to my colleague that I really want to see the bill go much further. I'm one of those who truly believe that there has to be much more openness and accountability. I spent 12 years on city council. There were many times I questioned our own council, why we were going into committee, and was overruled. There was no process for me as a councillor to take that forward unless I wanted to go public with it. So I think the bill is certainly needed, but, as I said, I'd like to see it expanded. I can think of some agencies within my own community, like the Niagara Parks Commission, the Niagara Health System, Niagara Falls Hydro Electric Commission. Those apply throughout the province, and I'd certainly like to see all of them covered as well.

I just wanted to congratulate my colleague and indicate that I'll be putting forward amendments to expand the bill to cover even more agencies and commissions within Ontario.

The Vice-Chair: Ladies and gentlemen, we have a number of deputations today. Just for your information, each group will have up to 15 minutes for their presentation and questions, if there's time left, and each individual will have 10 minutes for that.

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COLLEGE OF MEDICAL RADIATION TECHNOLOGISTS OF ONTARIO

The Vice-Chair: The first deputant is the College of Medical Radiation Technologists of Ontario. Please come forward. Welcome, and please identify yourselves.

Ms. Sharon Saberton: Good morning. My name is Sharon Saberton and I'm the registrar at the College of Medical Radiation Technologists of Ontario. With me today is Debbie Tarshis from WeirFoulds, who is our legal counsel. Thank you very much for giving us this opportunity to make a submission.

The College of Medical Radiation Technologists of Ontario, known as the CMRTO, is the regulatory body for medical radiation technologists in Ontario. We have approximately 5,800 members. Our regulatory authority comes from the Regulated Health Professions Act, 1991—RHPA—and the Medical Radiation Technology Act, 1991. Our mandate is to serve and protect the public interest through self-regulation of the profession of medical radiation technology. The operations of the CMRTO are funded from fees paid by our members.

CMRTO understands that the purpose of Bill 123 is to require designated public bodies, as listed in the schedule to the bill, and their committees, to hold meetings which are open to the public, to make minutes of meetings available to the public, and to set rules respecting public notice of council meetings and meetings of its committees. It is provided that the bill and any regulations made under it will prevail over any other act or regulations. The general purpose of the bill is to ensure that these bodies are accountable to the public.

CMRTO also understands that Ms. Caroline Di Cocco, the member of provincial Parliament who tabled Bill 123, intends to file a motion amending Bill 123 such that the health regulatory colleges would be excluded from Bill 123. CMRTO supports the motion, for the reasons set out below.

(1) CMRTO supports the principle of openness in order to achieve accountability, but this principle must be applied in the context of the statutory duties of the relevant body and balanced with other applicable principles so that such body can meet its statutory obligations. For health regulatory colleges, this balance has been struck in the existing legislation governing the colleges—that is, the Regulated Health Professions Act—by having the council meetings of the colleges open to the public and by having its committee meetings, other than hearings of the discipline committee, closed to the public. CMRTO and the other health regulatory colleges should not be governed by Bill 123, because openness of their council meetings is already required by the RHPA, and to extend the principle to committees would impair the colleges' ability to carry out their specific statutory obligations.

(2) An independent review of the RHPA, the legislation governing the health regulatory colleges, including an extensive consultation process, was completed by the Health Professions Regulatory Advisory Council, HPRAC, in 2001. In February 2005, the Minister of Health and Long-Term Care requested HPRAC to conduct a further review in order to consider the currency of and any additions to HPRAC's recommendations in 2001. HPRAC's updated report, which will consider the principle of accountability and the legislative objective of making health regulatory colleges accountable to the public, is to be provided to the minister in 2006. Making certain piecemeal amendments to the RHPA through the enactment of Bill 123 would undermine the review process that is in the process of being carried out by HPRAC.

Our recommendation is that the health regulatory colleges should not be defined as designated public bodies under Bill 123. CMRTO supports the motion to amend Bill 123 by excluding the health regulatory colleges from it.

Thank you very much for this opportunity to make the submission and advise you of our concerns and recommendations.

The Vice-Chair: Thank you. Questions and comments from the government?

Ms. Di Cocco: It was not the intent to have this put in the bill. One of the things that happens with our technology—it was unintended that it should be on that list, and so it certainly will be removed, because it's something I had learned. I have submitted two bills. There was a copy of a previous list that somehow got included in the bill tabled in the House. I did not read through, thinking there were some changes but that it was not a part of it. I just didn't read through all the details at the very end. I had assumed there was a list there. I'm just being very candid about the unfortunate—because regulatory bodies were not in the spirit of what I was trying to do. I wanted decision-making bodies that were funded by taxpayer dollars and, to begin with, some of the three that I had mentioned before. So I thank you for clarifying what your position was, and why, and also that you support the amendment.

Ms. Martel: Ms. Saberton, I think the last time we saw you was before the committee in 2001 on this very same issue. Nice to see you again.

You've heard Ms. Di Cocco say that they have regulated colleges that are not going to be included. I just had some questions, because we're not debating that issue any more. The discipline committee of the college, like other colleges, I assume, is open to the public, and then the general council would be essentially the—"governor" is probably not the word I'm looking for; or maybe it is the word I'm looking for. So when you say the council meetings of the college are open, annual meetings with respect to policies, procedures and budgeting are also open, correct?

Ms. Debbie Tarshis: The council is the board of directors of the college and, yes, they are open to the public. There is an obligation to give reasonable notice of the council meetings to members and to the public. There is some basis, not dissimilar to the basis in Bill 123, on which a council meeting can be closed to the public.

Discipline committee hearings: Again, the general requirement is for them to be open to the public, but there are certain specific grounds for them to be closed to the public, such as if the safety of a person is at risk, that kind of thing.

Ms. Martel: How is notice provided?

Ms. Saberton: What we're doing now is working with the Federation of Health Regulatory Colleges, and we are publishing the advertisement at each quarter of all of our council meetings in both English and French.

Ms. Martel: When the HPRAC made recommendations in 2001—I wouldn't pretend to know what they were—were there any recommendations with respect to transparency or accountability?

Ms. Tarshis: The areas that the recommendations focused on were another aspect of the college's mandate, and that is that each of the colleges has a register of its members which is available to the public, or certain portions of it are available to the public. So some of the recommendations focused on the aspects of the register that should be available to the public. There were over 67 recommendations. Hopefully my memory is serving me well. I don't believe there were any specific recommendations that were addressing open council meetings.

Ms. Martel: Do you know, in terms of the work that the HPRAC is doing now: Is that a specific focus of the review that's going on now?

Ms. Tarshis: It's very much in midstream. It's too early to say, other than that the scope of the referral was to both address the currency of the 2001 recommendations and make any additions. But it really is in midstream. There's been no documentation from HPRAC at this stage that would give any indication of the direction.

Ms. Martel: One final question, if I might: Does the college receive complaints from the public about access to meetings?

Ms. Tarshis: No.

Ms. Martel: People, if they want to hear what's going on, are content to attend the council meeting, or people who are particularly affected by an item going on before the discipline committee can attend that as well. That seems to cover everybody's concerns.

Ms. Saberton: That, and we take care to make sure that the public and the members know what is going on with council through our publications. But absolutely, people who call and have any questions about a council meeting are always invited to come.

The Vice-Chair: Thank you very much.

Our next deputant is the Royal College of Dental Surgeons of Ontario. Do we have anyone from the Royal College of Dental Surgeons of Ontario? If not, then I call upon the Ontario Medical Association. Anyone from the Ontario Medical Association? They're actually scheduled for 10:30, so maybe they will arrive later.

We're going to take a 10-minute recess at this time.

The committee recessed from 1010 to 1022.

ONTARIO MEDICAL ASSOCIATION

The Vice-Chair: Ladies and gentlemen, we are back in session. I call upon the Ontario Medical Association.

Welcome, and please identify yourselves.

Dr. Greg Flynn: My name is Dr. Greg Flynn and I'm the current president of the Ontario Medical Association. On my right—your left—is Mr. Steven Harrison from our policy department. Also on my left—your right—is Barb LeBlanc.

The Vice-Chair: You have up to 15 minutes for your presentation and questions.

Dr. Flynn: I'm Greg Flynn, and with my staff today I'm delighted to be able to give you some feedback and some of our advice with respect to Bill 123. I'm a practising pathologist, hospital-based. I have been in practice in Ontario hospitals since 1992.

We have prepared a brief, which I'm sure you've all had a chance to review. We make some recommendations regarding a number of aspects of the proposed law, including the definition of "meeting," the health professions appeal and review board and the effects this proposed act may have on LHINs—local health integration networks—and family health teams in Ontario. I

am going to focus my time with you this morning, however, on the inclusion of the medical advisory committees as public bodies under Bill 123. I'm only going to spend a few minutes on my remarks and then I'll try to answer questions, if you have them.

Every public hospital in Ontario has a medical advisory committee. They serve a number of very important functions within a hospital. Most importantly, the medical advisory committee is a bridge between the physician members of the hospital staff, many of whom are independent contractors, and the board of trustees, who have a fiduciary responsibility and a duty for the quality of care delivered in those institutions. The medical advisory committee makes recommendations, not decisions, to the hospital's board of trustees. They make recommendations with respect to the appointments and reappointments of medical staff. As part of that reappointment process, the medical advisory committee does some things that might be considered performance appraisal in most organizations. Reviewing the performance of physicians who are up for annual reappointment is one of the core functions of the medical advisory committee.

The medical advisory committee is also responsible for the quality of care delivered by the medical staff and monitors that quality of care on an ongoing basis for the board.

Medical advisory committees are comprised of appointed physicians, usually chiefs of service and chiefs of departments, and members of the elected medical staff organizations. Certain other senior hospital administrators are usually entitled to attend these meetings, but they are not members.

Medical advisory committees are closed to the medical staff at large. A medical advisory committee receives reports from all the medical departments and committees, including discipline committees, and these matters are often sensitive, at times controversial and, in many circumstances, confidentiality is of an essence, because these issues are being presented sometimes at an early stage. Premature release and circulation of those types of discussions would not be helpful. Indeed, one might imagine that such release and discussion outside of the medical advisory committee would inhibit the sort of quality activities that are required.

The mechanisms used by medical advisory committees to ensure quality are varied; however, most of them at some time involve detailed review of individual physicians and possibly patient information. Having this information open to the public would be in direct conflict with our existing laws and ethics regarding patient privacy. In addition, they would have significant repercussions for hospitals' ability to engage in effective quality improvement and medical disciplinary action, since you would never get the level of candour required if the meetings were open.

In hospitals throughout Ontario, the medical advisory committee and its various subcommittees, as well as other structures, gather information about care, including where things have gone wrong, in order to assess the processes and systems overall. The essence of quality improvement requires candour, frank discussion and case-by-case analysis, and we have been moving away from an atmosphere of shame and blame in our hospitals and we wish to improve our clinical performance. However, opening this up to the public and press would undermine the candour and stifle discussion. I believe it would ultimately result in new structures outside of the MAC being developed to handle sensitive issues.

In short, the OMA recommends that hospital medical advisories are not public bodies and should be listed in the exempted bodies under subsection 5(2) of the proposed bill. We believe that their inclusion in the Transparency in Public Matters Act, 2005, would cripple hospitals' ability to engage in meaningful quality improvement activities.

That's the end of my prepared remarks. I'd be happy to answer any questions.

The Vice-Chair: Thank you, Dr. Flynn.

Members, I'm going to go by rotation for comments and questions.

Mr. Bill Murdoch (Bruce–Grey–Owen Sound): I don't have any right now because I've been sitting—I wonder why traffic is so bad down here for you guys—

The Vice-Chair: Let me go to Ms. Martel.

Ms. Martel: Nice to meet you, Dr. Flynn. I'm not sure if we'll have enough time to get around the rotation, but earlier in the discussion Ms. Di Cocco, the mover of the bill, indicated that she would be bringing forward amendments that would exclude regulatory and advisory bodies from the provisions of the bill, which should deal with the concerns you have raised in your presentation. She will, I'm sure, tell everybody again that it's her intention that the provisions of the bill with respect to open meetings apply to school boards and municipalities. We have stated our support in principle for the bill to move forward if those other bodies are exempted, specifically regulatory and advisory bodies, like the one you just mentioned.

We heard a great deal in public hearings on this bill in 2001, when similar concerns were raised both by regulatory and advisory bodies at the time. I think those concerns are legitimate and believe that the bodies that have been mentioned, including your own as you've described here in terms of medical advisory committees, should be exempt from this bill. There are certainly issues that are raised there that should not be available for public disclosure; it would be inappropriate. I don't think anyone—at least in terms of our party—would be arguing for that to occur.

1030

Dr. Flynn: Thank you very much. Just in brief response, I am aware that Madam Di Cocco has made some proposed amendments, and we would support those.

The Vice-Chair: The government: first Ms. Di Cocco and then Mrs. Van Bommel.

Ms. Di Cocco: I just do want to reiterate that it's unfortunate that the schedule in Bill 123 included what I

had not intended to be included. I certainly became aware of it very early on—unfortunately, it was already tabled—and went about beginning the process of getting the amendments written up. Advisory bodies and regulatory bodies will not be a part of that list.

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex): Thank you very much for making your presentation. Just as a matter of information, how do you select the membership of the MAC? Is it open to all doctors? What process do you use for the selection of MAC members?

Dr. Flynn: The board of a hospital generally looks at the Public Hospitals Act. The Public Hospitals Act defines a number of people who must be on the medical advisory committee, and then they can add some. I've been a member of probably six different medical advisory committees in hospitals in Ontario. There is some variability on who is there, but typically it's chaired by the chief of staff of the hospital, who is an employee of the hospital and reports to the board. The chiefs of departments or chiefs of programs, if the hospital runs on a program basis—a medical program, a surgical program, maternal child care often have program directors who will sit on the MAC, and usually heads of clinical services. I typically sit on the medical advisory committee as the chief of laboratory medicine. There is some variability in who sits there, but in general, they are the administrative leaders of the various disciplines within the hospital.

Typically, as well, there will be at least one or maybe two members of the elected medical staff association. Their responsibility is to liaise with the medical staff at large and at medical advisory committee to represent the interests of those broader members of the medical community in that hospital.

Mrs. Van Bommel: Thank you.

The Vice-Chair: Mr. Murdoch, do you have any comments or questions to the deputant?

Mr. Murdoch: No, I think I'll let them go this time—or maybe I will ask. What amendment did you say you made?

Ms. Di Cocco: As you were caught in traffic, the amendments that I've put forward are these. One is that the public bodies that are going to be included in the bill, in the schedule, are hospital boards—the decision-making hospital board—municipal councils and school boards, so those three decision-making bodies.

The other one is that there was an error in the language in the bill about minutes, saying that after minutes are adopted they should be made publicly accessible. In it, it had "before" they were adopted, which didn't make sense. I think it was just a language error.

The other piece is about the need to possibly have an emergency meeting—urgent matters, for instance—so there is a way to be able to do that, either with two thirds of the vote—anyway, it will be defined. Right now, you have to give appropriate notice before a meeting.

Those are the three amendments that I'm certainly proposing. I'm sure there will be others, coming forward.

Mr. Murdoch: So if they were passed and adopted, it wouldn't affect the group that's here right now, the group that's in front of us right now.

Ms. Di Cocco: Exactly. I tried to clarify that by contacting each of the groups ahead of time as well to make sure that they understood, but of course it's good that they're here making a submission and talking to us.

Mr. Murdoch: Yes, and to verify your amendments. It'll help you with that.

Ms. Di Cocco: Yes.

Mr. Murdoch: OK. That's all.

BRIDGEPOINT HOSPITAL
PROVIDENCE HEALTHCARE

The Vice-Chair: The next deputant is WeirFoulds LLP, Barristers and Solicitors. Please come forward. Welcome. You have up to 15 minutes for your presentation and questions. Please identify yourselves.

Mr. William Ross: Thank you. My name is William Ross. I'm with WeirFoulds and I'm here to represent Bridgepoint Hospital and Providence Healthcare. With me is Marian Walsh, the chief executive officer of Bridgepoint Hospital, and Mary Beth Montcalm, the chief executive officer of Providence Healthcare. We appreciate very much the opportunity to address this committee today. I've passed out a written submission. I don't propose to read it. I only propose to speak to some of the highlights, and then the three of us are here to answer questions consequent upon what I might say.

Bill 123 is about public accountability. Bridgepoint and Providence are both supportive of the concept of public accountability. So it's not accountability with which we take issue, but rather the mechanisms being proposed by the bill to support that principle.

The bill requires that all meetings—I'm sorry. I hear there's an amendment removing boards of directors from the requirement?

Ms. Di Cocco: No. It's advisory and regulatory bodies. But the decision-making body, which is the board of a hospital, would be included in the bill.

Mr. Ross: Would be included?

Ms. Di Cocco: Yes.

Mr. Ross: OK. And all of its committees?

Ms. Di Cocco: It would be the board of directors, governors, trustees or commissions, because those are under the Hospital Act—again, this is the legal advice. That is what could constitute a board.

Mr. Ross: I'll speak to the bill as it is, because I might have trouble understanding the amendments without having studied them. I appreciate that.

As the bill currently stands, it requires that all meetings of boards and committees be open to the public, even if they're held electronically, that reasonable notice containing a clear and comprehensive agenda be made available to the public, and the public dissemination of minutes. It's designed to provide oversight to the Information and Privacy Commissioner and is also to provide a means for the public to oversee meetings of hospitals.

We believe that all these requirements will be detrimental to public hospitals, and I'll explain why.

Hospitals are already accountable to the public. They're accountable through the Ministry of Health and Long-Term Care, which has extensive powers to regulate hospitals and deal with all their major decision-making powers. They're overseen by the ministry and by the minister. We think this provides good protection to the public. To create a separate level of accountability is redundant and counterproductive.

The core responsibility of a hospital is to endeavour to ensure that the hospital provides a high quality of patient care. These proposed changes will distract the board and make the board less capable of performing those duties.

The notification issues are serious ones. It is not practical or appropriate to make available to the public in a publicly accessible location the detailed information which often accompanies notices of meetings of boards and committees. The same applies to the minutes. If too much is deleted from a notice or from the minutes, this could lead to a claim against the hospital and the voiding of decisions made at that meeting. If too little information is deleted, it could lead to other claims against the hospital or be in itself detrimental.

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It's a terribly difficult decision to decide what's appropriate to delete, what is confidential and what is not, and the bases provided in the bill for exclusion are not adequate. Indeed, I don't think any enumerated basis could be. I've just come from a meeting involving 20 senior securities lawyers dealing with the issue of when a matter is confidential and when it should be disclosed to the public for timely disclosure, and when a matter becomes such a sufficient degree of certainty that it should be disclosed. Amongst those 20 lawyers, there were probably 40 different views. That's the problem that'll be faced by boards and committees with every decision: whether or not to exclude information.

The requirement to permit an indeterminate number of people to participate creates issues with respect to the size of the meeting room and, with phone-in meetings, creates further difficulties. One could conceive of a situation such as SARS arising, where there's a need to have a meeting on a short basis at which serious decisions have to be taken. Those are the very meetings at which it is most likely that a large part of the public would want to attend. Does the hospital need to postpone a meeting because there isn't enough room for those attending? Does the hospital need to incur the expense of securing a meeting room adequate to house all those that might be interested in taking part?

In summary, the rules respecting meetings will make each meeting a potential source of litigation and constrain deliberations. Meetings will become less effective, more expensive and it will be more difficult for a hospital to operate efficiently. In addition, there will be costs that the hospitals don't have at the moment. It'll be necessary to hire a dedicated individual solely to endeavour to cause the hospital to comply with Bill 123. This will create a new expense at a time when hospitals are being asked to reduce expenses.

Finally, there's the issue of candour. Members of boards and committees will be constrained from speaking openly for fear of disclosing issues that might be harmful to the hospital. The more strangers there are at any meeting, the more circumspect a speaker becomes. The ability to speak openly is an important factor in securing the best possible decision. I'd compare it to meetings of cabinet and Parliament: The Legislative Assembly meetings are open to the public and cabinet meetings are private and their decisions usually become publicly known, but the way those decisions are reached is often kept confidential. That's important in reaching the right decision.

In conclusion, we believe that adequate mechanisms now exist for public accountability. We believe Bill 123 will hinder hospitals and their leadership from fulfilling their core role of providing quality health care to the public.

Those are my remarks, and I'd be happy to answer any questions.

The Vice-Chair: Thank you, Mr. Ross. Members, I'm going to start with Mr. Murdoch.

Mr. Murdoch: Are your board meetings not open now, when you have a full board meeting?

Mr. Ross: In the case of Providence, the meetings are open to the public; in the case of Bridgepoint, they're not. It's an individual hospital decision. It's also the hospital's decision to decide when that meeting will cease to be open to the public.

Mr. Murdoch: OK. I think a lot of your subcommittees are only advisory anyway, so I wouldn't think they're going to be under this bill if we get an amendment through.

Ms. Mary Walsh: I guess it depends on what the definition of "advisory" will be in the amendment, because the MAC, as an example, which the OMA just addressed, is actually a subcommittee of the board of directors. I don't know if one would say that since committees do not make decisions but rather make recommendations, they will all be considered advisory, and the MAC is no different than any other committee of the board in that regard. It is not a regulatory body under legislation, such as the bodies covered under the Regulated Health Professions Act; it is a subcommittee of the board that advises the board. But so is the quality of patient care committee: It's a subcommittee of the board. It advises the board, it makes recommendations, but it doesn't make decisions.

Obviously, some of the disclosure issues required under this piece of legislation are directly contrary to the public hospitals' protection-of-information act that allows subcommittees of MACs and others to actually do audits of the quality of care in hospitals and recognizes the requirement in law and otherwise to protect the privacy of those matters so that we don't end up with inappropriate litigations and things being disclosed through committees of boards and in the public domain in boards

that are more appropriately dealt with in the courts than through the regulatory processes. So this is a very complicated matter because, as hospitals, our core business is the health care of the individuals we serve.

Mr. Murdoch: I guess the bill has all good intentions; that's why we have these hearings, and we're going to hear all day, probably, a lot of concerns. I'm sure that Caroline will have a lot of amendments and then we'll have to talk about them.

Ms. Martel: Would you think that one way to determine who will have the open public meeting would be to say that those committees that only make recommendations are excluded, and the body that makes the final decisions, which would normally be the hospital board itself, would be the one where this bill would apply? Would that make sense?

Ms. Mary Beth Montcalm: In my experience, there are times when a board considers very sensitive issues and may or may not pursue a course that is discussed. To have that discussion in public at an early stage could be very counterproductive to the good management of the hospital.

In our own case, without wanting to disclose the subject matter, our board has been in discussion for about six to eight months on an issue which has changed over time. Had the early discussions been made public, I would have to say that management of the hospital would have been extremely difficult for me over the past few months. Issues change. The health sector is a very dynamic one, it's a very fluid one, and boards have to be able to have that kind of conversation in candour and I believe with appropriate opportunity to have an in camera discussion when issues are delicate. I could not foresee a board functioning appropriately without that opportunity.

Mr. Murdoch: Does this not leave room to have in camera sessions?

Ms. Walsh: No. The legislation, as it's currently proposed, says that all matters, as I understand it, that a board—now, I heard Ms. Di Cocco say that there would be some provisions or potential amendments.

Ms. Di Cocco: There are a number of provisions for in camera that are in the bill; certainly a good list of them, I believe.

Ms. Walsh: Right.

Mr. Ross: My concern, as I said briefly in my remarks, is that we appreciate there is a list, but unfortunately the sort of issues that come up that the hospital believes are in its interest to keep confidential cannot be put in an enumerated list. They come from a variety of places, and to make it effective, you have to trust the hospital to exercise good faith. If public meetings are held—in the hospital's discretion, if they decide that something is sensitive and the public needs to be excluded, then they can exclude the public. If that were there, such a soft test, with trust to the hospital, bearing in mind that they are publicly regulated, that would probably work.

Ms. Walsh: Yes.

Ms. Martel: If I might, I'm looking at the list and I'm finding it hard to imagine, outside of the list, what other grounds there would be for a hospital to move into an in camera meeting. You're talking about excluding the public if there are "financial, personal or other matters" that may be disclosed where it might affect an individual; "a person involved in a civil or criminal proceeding"; that "the safety of a person may be jeopardized"; "personnel matters"; "negotiations or anticipated negotiations" between a public body and a person, bargaining agent or party to a proceeding; any litigation. That's a pretty extensive list, from my perspective, of reasons to be given to a hospital board to move in camera, which frankly should cover the waterfront.

I've got to tell you, I'm a little concerned about what I'm hearing. You've got one participant that has open meetings and another hospital that doesn't. Maybe you can tell us, do you have to hire an extra person just to manage your meetings? Do you have to worry about security when you have a public meeting? Do you have to spend the whole day running around trying to find a bigger room on the chance that there will be lots of members of the public?

1050

I just feel that these are reasons that are not very legitimate, from my personal perspective, to not hold a public meeting, especially when you take into account that we are talking about a public hospital that may have—well, half the public hospitals in the province have budgets over $100 million. That's a significant amount of money. I think the public should be entitled to come and participate at a meeting or hear some of those decisions being made.

I wouldn't say that, as a member of my community, I would have to go to the Ministry of Health in my riding to get that kind of information about decisions being made by my hospital; I don't think that's appropriate. The board is there to represent the community, and the community should be allowed to come and hear what's going on.

Ms. Walsh: First of all, I would say a couple of things. I think that none of us are able to fully anticipate what the future may bring in relation to items that may or may not be sensitive. I think there's nothing wrong with the list as it stands, but leaving the provision also for some judgment on the part of the hospital board to be able to determine, should some future condition arise, is not an unreasonable request, we would say. It's important, obviously, to the appropriate conduct of the business of a board. I don't know that any of us can foresee the future in its finite glory.

That's really our issue. It's not that we're suggesting that those aren't appropriate conditions, but I'm not sure that something might not arise that would cause our board to say, "There's an issue around risk or protection of people, the public," or some other entity that we don't know yet that may not be covered by that bill. If you try to create a finite list, that becomes problematic, so some judgment is all we're requesting.

The second issue, I think, is that this is obviously a matter of significant public policy. It is the question of what the mechanism is that the government and you as representatives of the government, the Legislature, will agree on as the appropriate way for hospitals to be held accountable to the public. Nobody is arguing that public accountability isn't an appropriate mechanism. So I think the question before this committee and before the Legislature is not so much the detail as one of, do we believe that the current mechanisms—which are the Minister of Health, the elected, official representative of the people, and the members of the Legislature—are those, and that it's through that legislative and elected mechanism that we actually hold public bodies accountable, or is that directly in relation to the entity that is operational?

That being the case, today we have a whole variety of ways that boards get elected. Some of them are elected from their local communities, some of them are appointed, and so on. So I think this kind of discussion around what the means are—is it through the regulatory means that we have today—the Commitment to Medicare Act, the privacy legislation that's in place, the regulatory mechanisms that govern hospitals, the Public Hospitals Act—or other things? That's the question.

Mrs. Van Bommel: Thank you very much for your presentation. I'm just going to say right out front that I am a past chair of a hospital board, and of a hospital board that had public meetings. It was part of our bylaws.

I think one of the strengths of the hospital board is that public accountability issue and that openness. There are provinces where there are no hospital boards. The hospital reports directly to their minister, and there is no such opportunity. The reason we have, as I say, the strengths is the fact that these are public bodies that are accountable to the public. It's an opportunity for local input and community input into the hospital.

We've been through public meetings. They're very quiet until something controversial happens, and then the room fills up. It does mean more work for the management of the hospital, no question about it, but I think in terms of accountability we still need to have that opportunity to have public input. I really support having open meetings at the board level. I've been through it and I know what it can be like, but I think I would do it again.

Ms. Walsh: I don't think fundamentally we disagree with that. It's just the provisions of the bill as they stand today.

Ms. Di Cocco: I understand, certainly from the legal advice that you have with you today, that there's a notion that this creates the scenario of a great deal of litigation. That certainly isn't the intent.

Let's look at school boards. They're governed by the province as well, to some degree, but they're autonomous in dealing with the issues locally, and they have provisions for some openness. Hospital boards, I believe, have the same responsibility to the public.

I guess I'm going to agree to disagree with the concept that the openness makes it very difficult to make decisions, because I think that the responsibility of public entities such as hospital boards, given the leeway that is provided for—when it comes to delicate situations or protection of privacies, etc., I believe that is something that is respected in the province of Ontario, and there's legislation that protects that as well. It's this movement to what I believe is expected in how decision-making is arrived at and why the public should have a right to that information.

We have here—I guess if I include Mrs. Van Bommel—three different styles of decision-making: two public, one not public. The question is: If you're an autonomous entity in your community, isn't it to the benefit of the board to move the community along with them in the decisions that are affecting them, and also not to have this cloud of suspicion because things are being done in secret?

Ms. Walsh: First of all, I think that we don't "cloud" and do things in secret. We have our annual meetings open to the public. We do very significant public consultation so that when we have a matter that is of significant import, either for the people we serve or the community that we're a part of, we engage those people in an informed discussion around that particular matter. It isn't that we haven't had public meetings because we absolutely don't believe in them; that's not the case. I think what's at issue here is not just the meetings of the board, but every committee in relation to every single decision. That's what the bill is proposing, and that is what we're opposed to. It's the mechanism, not the concept of public participation.

The Vice-Chair: Thank you. Members, we've actually gone three minutes over time. Do we have unanimous consent to continue?

Ms. Martel: I'd ask for unanimous consent, because I did ask a question to one of the presenters about how things work in her—

The Chair: OK. We do. Continue.

Ms. Montcalm: If I may speak, then, briefly: We do have open board meetings, but I'm not absolutely clear on the status of the amendments. So I apologize if I'm not current on the actual thinking with regard to the legislation, but to the degree that there's an addition of advertising committee meetings, posting of minutes with great regularity—actually, it's very difficult to set up committee meetings, because boards are very busy people and it's often very fluid. To try to add a fair bit of administrative support—I will have to add staff, and we've been instructed by the Ministry of Health and Long-Term Care to first find savings in administration. We've just gone through a budget process of reducing administrative support in order to balance our books. If there are onerous requirements in terms of posting of minutes, advertising of meetings, very careful legal recording of meetings that are even greater than we currently have, there will be costs. There's no question about that.

Mr. Ross: There's also, on the litigation side, if I just might add this, that the more the process is complicated the more there are grounds for people to complain. Not

everybody complains for proper motives. A person can go to the privacy commissioner and an investigation can be started. Even if the hospital is successful in defending that investigation, it's going to have a great cost.

One would think that the privacy commissioner might reject complaints that are off the wall, but I could tell you an example in a different context where a hospital I acted for had a patient who claimed after an operation that the hospital had implanted a device in his head which allowed the hospital to read his mind, and he went to the Ontario Human Rights Commission complaining that his human rights had been violated. The commissioner, instead of, as I would have thought, telling him, "Thank you very much; have a nice day," actually wrote a letter to the hospital and did an investigation. They had to retain me to represent them. It was ludicrous, but nonetheless we had to go through the cost and expense. So these things will happen.

The Vice-Chair: Mr. Craitor, very quickly.

Mr. Craitor: Thanks for your presentation. It just reinforces that this is a good bill. I think more agencies should be added to it. You've convinced me that we're doing the right thing, so thank you very much.

1100

BERNADETTE SECCO

The Vice-Chair: Our next deputant is the Fresh Air Coalition.

Welcome, and please identify yourself.

Ms. Bernadette Secco: Just for clarification, I am the executive director of Fresh Air Coalition and it's on my e-mail address, but I am here to represent myself today.

The Vice-Chair: I'm sorry—you're not representing the coalition?

Ms. Secco: No.

The Vice-Chair: If that is the case, then you will only have 10 minutes, because each individual has 10 minutes and an association, 15.

Ms. Secco: Thank you.

To the Chair, members of the committee, staff and members of the public, thank you for the opportunity to present to this committee today. My name is Bernadette Secco. I am a resident of Niagara Falls, Ontario, and I am here as an Ontario taxpayer.

This is the fourth time that a bill for transparency and accountability of public boards has been introduced at Queen's Park. Public bodies are protesting that their own rules make them transparent but that being publicly accountable will cause them difficulties or limit the frankness of their discussions. In my opinion, this is nothing more than self-serving rhetoric. If you legislate it, they will comply.

The intention of Bill 123 is most worthy and exemplary because it seeks to right a wrong. I would like to present four points for your consideration.

It is a dangerous irony that the title of the bill to make public matters transparent is itself imprecise and deceptive. By your own terms of reference, the language of a bill should be expressed in precise and unambiguous language. This should also apply to the titles.

Neither the short title, Transparency in Public Matters Act, nor An Act to require that meetings of provincial and municipal boards, commissions and other public bodies be open to the public accurately reflects the contents of Bill 123. Both titles suggest that all boards and commissions are included in the bill, but Bill 123 will not be all-inclusive; it will be a limited bill. That is why the title should clearly indicate that it is an act that requires that the meetings of only a few, select boards be open to the public.

You may have heard that something as simple as changing the title will wreak havoc. This would only be temporary. I believe that not changing the title will wreak greater havoc, because 123 will become known by its title, and I do not believe that the government wants to deceive the members of Ontario.

Limiting the public bodies under Bill 123 entrenches secrecy in all the public bodies and commissions that are excluded. This is not transparency in public matters; it is transparency for a chosen few.

Future calls to expand the list of designated bodies will be given the excuses that a transparency bill already exists; that all public bodies were studied extensively and most public bodies were found to have special reasons preventing public scrutiny of their meetings.

In my opinion, passing Bill 123 with a limited schedule of public bodies entrenches secrecy and provides the legal weapon for the indefinite exclusion of all other public bodies.

All commissions should be open, transparent and accountable—simple. In Niagara Falls, commissions are an important part of our economy, workplace, landscape and comfort. The Niagara Parks Commission, Niagara Falls Bridge Commission and Niagara Falls Hydro Electric Commission: These major commissions are all excluded from Bill 123's present situation, yet their combined operating budgets equal the amount of money that disappeared in Adscam—almost a quarter of a billion dollars. Why should these commissions not be publicly accountable?

The budget for the Niagara Parks Commission alone is greater than the budget for the entire city of Niagara Falls, but this board of political appointees governing this public asset does not allow the media or the public to attend their meetings or access its minutes.

Excluding these three commissions makes a mockery of transparency and appears to legislate the creation of little kingdoms in Ontario which will not be subject to scrutiny. Should Bill 123 allow this to happen?

The Ontario Lottery and Gaming Corp. is a major player in Niagara Falls and has an operating budget of $5.7 billion. It will not make public the details of OLGC's contract with the casino management company, even though promised developments have not, and apparently will not, be delivered—to the detriment of the city and this province. Secrecy around a contract made on behalf of the people of Ontario should not be allowed in a

democracy that has a provincial-transparency-in-public-matters bill.

The question before this committee is no different than with sharia law. The answer is: one province, one law. If transparency and accountability are more valuable than political expediency, the will must be found to pass a bill that applies to all public bodies that meet at least one of the following criteria:

—the board consists of one or more political appointees;

—the board manages a public asset;

—it operates using provincial or municipal funding;

—it provides services to children, the elderly or the sick; or

—it provides services to more than one region in Ontario.

In conclusion, I ask that you:

—remember, at the very least, the title of Bill 123 should clearly reflect its limited content;

—carefully word limited schedules so that they do not provide a legal weapon for the indefinite exclusion of all other public bodies; and

—keep in mind that a limited schedule entrenches secrecy and creates little kingdoms subject to no public scrutiny, and that, in an ideal world, to truly benefit Ontario, a transparency bill should include all public bodies.

The Vice-Chair: Members, there are only three minutes left. That will be one minute per party, so be brief with your remarks.

Mr. Craitor: Thanks, Bernadette. First, it's a long trip from Niagara to come up here, and I really appreciate it. I think it's important for the committee to hear the views out of Niagara, which are my views as well.

I said earlier that my intent is to not only leave the bill intact, but to add to it, because I am one of those who believe that any body that uses taxpayers' dollars has to be fully open and accountable. I've sat on city council; I've sat on hospital boards; I've sat on them all, so I know what's involved.

I just want to say thanks, because it's significant that everyone hears that there's a public and how they feel.

I would just quickly say, Chair, that as a provincial member of Parliament I was astonished—and my colleague Caroline mentioned it, for example—at the Niagara Parks Commission. I thought I'd go in there and sit in on one of their board meetings, because there was an issue. I found out I couldn't do it. I was shocked to find that out.

The Niagara health system, which controls all our hospitals: The public come to you as a provincial member of Parliament and ask you questions because they assume that you, as a representative, have access and can question what's going on with the health care system in your community. I was shocked to find out that as a provincial member I don't have that right; I don't have that authority. The public doesn't perceive that. They expect that you do have that. You should be giving them answers.

This is a good bill. It needs to be expanded, but I'm really pleased with it.

Mr. Murdoch: Why were they excluded? It's your bill; I'm just asking.

1110

Ms. Di Cocco: This is a start. I guess that's what I'm trying to get at. It's a start, because nothing like this has been done before where you're actually legislating rules and penalties. The reason I simplified it is so that there's an opportunity to see how it works over a period of time. That's really the reason. It's more of a practical reason.

Once a bill of this kind does become law, I think it becomes easier to incorporate that standard with agencies. As part of the executive of a former government—I think that's also a good process because then you don't have any undue consequences.

Mr. Murdoch: Yes, but let's be clear: Under the Municipal Act, there are certain regulations that municipalities have to do now. They can't necessarily have all their meetings closed. They have to open them and can only go into closed meetings under similar sorts of rules that you have here. So they are already regulated.

Ms. Di Cocco: But they don't have a mechanism, for instance, that would actually allow scrutiny in questioning whether or not they go in camera. This allows a mechanism for investigation.

Mr. Murdoch: I disagree with you there. People who can't get to a meeting in a municipality because they close them certainly go to municipal affairs pretty quickly and there's always somebody who comes in and sorts that out.

Ms. Di Cocco: Sometimes.

Mr. Murdoch: Well, OK.

Ms. Martel: I think part of the issue is, do you have to rely on another public body to get that information? In the same way we heard an earlier presenter say that the accountability mechanism of hospitals is to the Ministry of Health, I don't consider that to be an open and transparent process.

Have you tried to get information from the Niagara Parks Commission? You focused on them, so I'm curious about your relationship to the commission.

Ms. Secco: Last year, the Niagara Parks Commission announced that they had decided to build cable cars in front of Niagara Falls, and I was one person who spoke up against this. We created a worldwide petition and loud local dissension. They were adamant; they were not going to cancel their plans until they were embarrassed to do that. Had the public been involved a year earlier when they had been discussing it, we could have saved them a lot of money with our input, because they ended up cancelling it and had already expended a lot of their funding in the preliminary process for this.

The Niagara Parks Commission did not want us in then; they do not want us in now. There is a land swap that's going to happen; the Niagara Parks Commission is going to swap good parkland for contaminated land. I have no input in that.

The Niagara Falls Bridge Commission maintains that it's an international entity and is not subject to the laws of either Canada or the US and that they can do land transactions under regulations they don't have to follow like other public bodies.

Niagara Falls Hydro: They heat and light our homes and we accept that.

The Vice-Chair: Thank you.

LONDON FREE PRESS

The Vice-Chair: I call upon the next deputant, the London Free Press.

Welcome.

Mr. Paul Berton: Thank you. My name is Paul Berton. I'm the editor-in-chief of the London Free Press. I may be boasting in saying so, but we think we're the predominant newspaper in southwestern Ontario. It's about 100,000 in circulation daily.

I'm here to support the bill. I was reading a Vanity Fair article this week by the famous Watergate reporter Carl Bernstein. He quoted his now infamous or legendary editor, Ben Bradlee, who said, "It is my experience that most claims of national security are part of a campaign to avoid telling the truth."

So, with apologies to Bradlee, let me say this: It is my opinion that most claims of the necessity for closed meetings are part of a campaign to avoid telling the truth. Are public meetings closed to avoid telling the truth? Surely not. I don't think that. I don't think most of the people in this room think that, and I don't think most journalists think that. The problem is, it's the perception, and in our business a perception is often as important as reality.

I think it's human nature to try to control information, and that's fine for some organizations, but not for public organizations. When the information is paid for by the public, it hardly makes any sense. In fact, it does regularly, and it should, enrage the people paying the bills that the people they are paying will not give them information about it.

I think that Bill 123 is a good start. I agree that it could go further, but the simple way is the best way. I think it'll mean better decisions, more accountability, more public participation, a better-educated voter—and this is something we're very strong about at the London Free Press and indeed most newspapers—and, in the end, improved democracy.

I think the last point is key because anything less than Bill 123, in my opinion, would be antidemocratic. We all understand the need for closed meetings. Even journalists desperate for information understand why some of them need to be closed. But we are particularly well versed, I think, in the benefits of everyone knowing the truth. It is almost always the best policy, and I think history shows that. Public officials like the word "transparency." I don't see why it would cause them any trouble to put their mouths where their money is.

That's all I have to say. Thank you.

The Vice-Chair: Thank you very much. We'll start with the official opposition.

Mr. Murdoch: I'm quite sure that the press would love this bill. I can see why. It might be a little self-serving. Do journalists have a body that governs them at all?

Mr. Berton: The Ontario Press Council. I believe they're speaking later today.

Mr. Murdoch: Could be.

I don't have any problem with it being open and the press being there. It's just that sometimes you'll go to a meeting and read about it in the paper the next day or hear about it on the radio and you sort of wonder, "I missed that meeting." The media take a different view of it.

Is there any governing body there? Because that's what happens a lot of times, quite frankly. Yes, it's nice to have the press there, it's nice to get it out into the public because that's a way of getting a message out there. But sometimes the message isn't the way that, say, maybe I or someone else thought the message was, and there doesn't seem to be a comeback. The media will say, "Well, you know, we'll get it right next time," or they'll put their correction in a little, wee part of the page nobody ever looks at. I just wondered, though, is there a governing body where someone may, if they choose, complain about the media?

Mr. Berton: The answer is yes, there's a governing body. It's called the Ontario Press Council. The London Free Press is a member, and most big Ontario newspapers are members. You can complain to them and they have a tribunal—that might be too strong a word—a group of people who either agree or disagree, and then the newspaper in question is obliged to print that apology, correction or whatever it is, in a prominent area of the newspaper.

Let me just say about meetings, I once heard of a show—I never saw it on TV, but I heard it was in production—called Eyewitness, where three or four people watched the same event and they'd all tell what they saw. Of course, we all know that people have different perceptions of reality. I think that most newspapers attempt the best approximation of the truth. It might not be the way that politicians would like to see it, and that is fairly typical—you'd know that better than I would—but we don't intend to distort the truth; we intend to reflect it in the best way possible, based on the people we're talking to and what we see.

Mr. Murdoch: We'll let it go on now.

Ms. Martel: Thank you for coming today; you've come a long way. Can you give the committee any examples or scenarios in your organization that your folks might have run into, either trying to get information—and I'm speaking more broadly than, I guess, just attending a meeting—or accessing information involving municipal matters: a local hospital board, the municipality, any of the school boards in the area?

Mr. Berton: Certainly in London recently, the municipality was having some staffing difficulties and

political difficulties a year or two ago, and I think a study was done which said that between December 1, 2003, and mid-April 2004, the council spent 60% of its time in closed sessions. Obviously, that concerned the newspaper as well as the public. One of the council members himself said that it was too much. Since then, they're down to 22%. Most of the time we realize that if they're talking about personnel or property matters, that's fine; it's when they're in there all night—I agree that we're outside without a story, so that's a problem.

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Again, from my point of view and from the point of view of most journalists, it's a perception. It's not what they're doing in there, that we think anything is wrong; it's just that if they're behind closed doors all the time it doesn't look good.

Ms. Martel: The perception is that something is going on that they don't want to have the public know about, and that's a regrettable perception if they're actually in there dealing with personnel issues that are legitimate ones that should be behind closed doors.

Mr. Berton: Exactly. I may be going out on a limb, but I think that most journalists understand that; the public sometimes does not. I think the public says, "This is just too much." Even to me, 60% would be too much.

Ms. Di Cocco: Thank you for the presentation. To me, this bill is also about ensuring that there is discipline and clarity, so that when somebody is in camera 60% or whatever the percentage is and there is real suspicion, we have a mechanism to be able to say, "Was it the right reason to be in camera or not?" Then it doesn't have a cloud, if you want, over it.

These are public bodies that spend public dollars. I don't know if you recall the judicial inquiry in Sarnia. The recommendations that came out of this one found that the reason a lot of the decisions were made, which cost the taxpayers over $6 million, was because of the secrecy. That's all this bill is intended to do.

We have three pillars, I think, in our democracy: the public, the press, and government—and public bodies, if you want. Those are the three pillars. Each one plays a role, and if you don't allow one to play a role because you're hiding away in a room somewhere making some other decisions, then I think it does diminish democracy. That's what it's about.

I know the London Free Press has certainly been very supportive. Do you have any insights you can provide that would improve the bill?

Mr. Berton: I agree that it should be as wide-ranging as possible, but I also agree with your comments that it's a good start. We start small and we get big. That's the way we prefer to do it in the newspaper business. I have no idea about the obstacles you're facing, but when I face obstacles, I say, "Simple is better, and we'll move on to the next step once we get this one finished." So, no, I don't.

The Vice-Chair: Thank you very much.

Mr. Berton: Thank you.

ONTARIO COMMUNITY NEWSPAPERS ASSOCIATION

The Vice-Chair: The next deputant is the Ontario Community Newspapers Association.

Welcome, and please identify yourselves.

Mr. Bill Laidlaw: My name is Bill Laidlaw. With me is the publisher of the Ridgetown Independent News and a Chatham-Kent municipal councillor, Jim Brown.

It's nice to see many of you again. I have a different hat on today. I'm the executive director of the Ontario Community Newspapers Association, or OCNA, an organization I think you're all familiar with.

OCNA represents 285 community newspapers across Canada in urban, suburban and rural areas, with a combined first-edition circulation of four million and a readership of over five million. Some 73% of adult Ontarians read at least one community newspaper each week. Our papers range in size from a circulation of 185,000 for Niagara This Week to 254 for the Hornpayne Jackfish Journal. Ontarians rely on their local community newspapers to deliver the news that affects them, a job which can be made more difficult through the abuse of in camera or secret meetings by public boards, bodies or councils.

Newspapers—and, indeed, democracy—only thrive in conditions where information about what governments or quasi-government agencies do is freely available and easily accessible. The more citizens know what is going on, the better citizens they will be. They will make informed choices on issues; they'll discuss and debate with the facts at their fingertips, and when it comes down to election time, they'll cast their ballot for candidates whom they feel best represent their views, because they know what their views are, what their values are, the true records of the candidates.

Therefore, it is imperative that municipalities, school boards, hospital boards, police service boards and a multitude of others are truly open and provide the public with as much information as they can. We recognize there are some instances where the public's right to know is superseded by other concerns, like personal privacy or public safety, but it's important that these exceptions remain just that—exceptions—and that they are as narrowly construed as possible.

Over the course of these hearings, you have heard or will hear from several groups seeking to limit the scope of the bill. We urge you to weigh those arguments carefully against the public good of open government. In previous public statements, the Association of Municipal Managers, Clerks and Treasurers of Ontario argued that since section 2 of the Municipal Act, 2001, says in part, "Municipalities are created by the province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this act and many other acts," the Transparency in Public Matters Act need not apply to them, as provincial law already considers them responsible and accountable to the citizens they serve.

Most of the time, in most municipalities, they're right. Laws are not made for the individuals or groups who know something is inherently wrong but for those who either don't know or don't care. But even normally responsible and accountable people can cross the line. If I have too much to drink at a party and try to drive home, should I be given a free pass on drunk driving charges because I'm normally a responsible person? Of course not.

Laws are there to protect the public from the bad decisions of others, and municipal and other governments are not immune to poor decision-making. The safety valve citizens have is openness, the right to know what their elected officials are doing in their name. It is an informed citizenry and fair-minded media that makes municipal governments responsible and accountable, not provincial statute.

AMCTO further opposes the inclusion of municipalities in Bill 123, as they say that councils need flexibility to deal with local issues in a manner that is appropriate to local conditions and circumstances. How will this act stop them from doing that? It doesn't prevent municipalities from holding special meetings, telephone meetings or going in camera, but what it does is ensure that the basic principles of openness and transparency aren't sacrificed for the sake of mere convenience.

There is no question that it's a lot easier to make a difficult decision out of the watchful eye of the public, but, as you know, governing isn't about easy; it's about doing what's best for your community, your province and your nation. We do feel that flexibility is needed, but it is the flexibility to accommodate public participation in the workings of the public bodies designated under this act.

Another concern that has been raised is the idea that if all meetings are public and if minutes have to be recorded, the edited versions of which will be released to the public, a greater possibility exists for legitimately private information to be inadvertently made public. This issue can be easily solved through educating staffs of the included bodies on what can be released and what can't. Privacy concerns are important, but to exempt certain bodies or to unnecessarily tighten restrictions on meetings that could be public is like trying to eradicate West Nile by exploding a nuclear bomb in every pool of standing water where mosquitoes breed. It will get the job done, but at an unbearably high cost.

We are concerned with the idea that a large number of public bodies will be removed under a proposed amendment that would limit the scope of the act to only cover municipalities, school boards and hospital boards. The public's right to know is and should be as broad as possible and therefore should be protected in as many bodies as possible. Provincially mandated bodies that work on behalf of the people of Ontario and make decisions that affect our lives should be open to public scrutiny to ensure that they truly represent the values and beliefs of the communities they serve.

The other proposed amendment I would like to comment on is the idea of having minutes approved before they're made public. As one who has been involved in a number of organizations in my life, I know that releasing unapproved minutes is not the done thing, but what I would suggest, owing to the fact that some bodies meet infrequently, would be to allow their members to review and sign off on the minutes without a formal meeting to do so. With all the wonderful technology we have at our fingertips, it wouldn't be that difficult. Once all the corrections have been made and a final version approved for release, the minutes should be made public. I would suggest a time limit of five to 10 business days to accomplish this, or the next scheduled meeting, whichever comes first, so as not to place an onerous amount of burden on boards and municipalities with small staffs but still make meeting information available in a timely fashion.

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Overall, OCNA and its member newspapers are strong supporters of Bill 123. The spirit of the bill reflects the true spirit that burns within every community journalist: The desire to know what's going on and the desire to share that information with their community. Ensuring that accountability of public bodies and protecting the openness of meetings are important steps toward protecting people's right to know. Creating an appeals process to handle complaints of abuse and backing it up with real consequences for those who break the law gives the act much-needed teeth.

The Municipal Act does outline when and how a council can go in camera but offers no redress to the public or media to challenge that decision and no consequences for those who flout the law. The Transparency in Public Matters Act will make it more difficult for the percentage of elected and appointed officials who, for whatever reason, attempt to do business behind a smokescreen of artificial privacy concerns to keep the public from knowing about decisions being made on their behalf.

Privacy is important, and there are some things that shouldn't be released, but it is important to carefully scrutinize every case where someone wants to prevent the release of information to the public. Instead of the model of non-disclosure in borderline cases, we should move toward partial disclosure, where as much information is released as possible and only the bare minimum is kept secret. It's only with an informed public that governments and boards are made to be responsible and accountable, because the citizenry knows what they're responsible for and on what they should be called to account.

Community newspapers do that. It's a part of our mandate, and our readers expect us to report faithfully the goings-on of life in their community. But when the in camera meeting privilege—and let's make no mistake; in a free society, it's a privilege—is abused and information that affects the lives and futures of citizens is wilfully withheld for reasons of expedience or to avoid embarrassment, then the community newspapers can't do their job. If we can't do our job, then citizens can't do

their most important job of helping to decide the course of their community's future, and in the end those in power become less accountable. That's why Bill 123, as it was originally written, with the few changes we suggested, should be a vital part of keeping Ontario strong and open. Thank you.

The Chair: Thank you. Ms. Martel.

Ms. Martel: Thank you for being here. Congratulations, since you do have a different hat on today. You have a colleague with you—

Mr. Laidlaw: A councillor.

Ms. Martel: It's not that I don't want to hear what you have to say, but since you are here and since you have experience on council, can you give us some sense of what happens in your community and why you think the bill is important?

Mr. Jim Brown: I believe it is an important bill. The present system is being abused; there's no doubt about it. That's why I made the trip today. I've got to be careful I don't break any in camera confidences at this time, but it is happening. I believe that in some points, the bill doesn't go far enough. It leaves it too open as to people's interpretation. You can go into an in camera meeting for "legal purposes." What's a legal purpose? Because somebody on the street said, "If you deal with that at your next council meeting, I'm going to sue you," does that mean it's going in camera? I'm not going to say that it happens, but it's an interpretation of the laws.

Are there problems out there now? From both sides, as a publisher and a councillor, I believe there are. Are there consequences for those who break the law right now? No. I have personally brought items to the ministry and, over a period of a couple of weeks, they actually sent them tapes of a meeting where a discussion took place at an open meeting of items that were discussed in the in camera meeting. Representatives from the ministry here in Toronto have definitely admitted there has been a major problem with what they're discussing in camera. What's going to happen? "Well, in the worst-case scenario, we'll send him a letter and slap him on the wrist." Whether you're a journalist or a member of that council, is it really worth it sometimes under the present system to bring these forward and then have to deal with the wrath, whether it's a fellow councillor or administration or the public?

I think it's a tremendous bill. I don't think it goes far enough. I think interpretation of some of the reasons needs to really be defined. On the other side, what do you cover? Under the present system, how do you report when there's no report coming out? You can't write a story on a one-line report. You don't know who to talk to. So it's going to be tremendous if this succeeds.

Mr. Laidlaw: We have Lou Clancy here as well, who is director of editorial policy for the Osprey Media Group. He just joined us, and he's also available to answer questions.

Mr. Lou Clancy: My apologies for being late.

The Vice-Chair: Thank you, and welcome. Ms. Van Bommel?

Mrs. Van Bommel: I certainly want to say thank you very much for coming in, and welcome to Toronto. I wonder if you had the same the problems with traffic that my colleague Mr. Murdoch had getting in here.

In my riding, we only have weekly papers; we have no dailies. The weeklies are read from cover to cover, sometimes more than once. I certainly appreciate the availability and the access that they give to my constituents in terms of information about what's happening in my riding and that sort of thing.

Ms. Martel has already basically asked the same question that I wanted to ask, which was, as the editor-in-chief from the London Free Press, Mr. Berton, alluded to, the whole issue of: How effective is the open meeting concept at the municipal level right now? So that's been dealt with; thank you.

The Vice-Chair: Ms. Di Cocco, we only have a minute left for the government.

Ms. Di Cocco: I do hear the comments that the bill doesn't go far enough. There is certainly a need to start somewhere. One of the processes I'm hoping to actually see become law, in the process of trying to make it better, is to hear submissions such as yours, and I do hear and weigh them all. The next process is bringing in amendments to make sure that we don't include bodies that shouldn't be included. One of the errors on my part is that regulatory bodies or advisory bodies, which really don't make decisions, should not be included in the bill because they basically advise another body that ends up making the decision.

You're absolutely right with your comment about the culture that becomes inherent. There's no penalty imposed or no mechanism of scrutiny that can really be applied as to why people are in camera.

In 2001, someone made a submission to the committee about having gone all the way to the Supreme Court of Canada on behalf of the national papers, I believe, and winning the case at the Supreme Court of Canada that that body should not have gone in camera. But the justices just looked at them and said, "Well, all we can tell them is not to do it again." That's where the frustration is, I think, and that's where the permissiveness comes. The honour system is really what we're using to try to get the rules for in camera and there's a mechanism of, "OK, let's check these off."

The community papers have been a really strong supporter of more transparency. You're absolutely right: I think it is about making a difference. I certainly want to see this bill passed; that's the first thing. I think that adding appropriate commissions as we move forward is much easier once there is a law that says, "This is the standard."

Mr. Murdoch: Good morning. I have two things I want to mention. One is that I'm not surprised that you guys are in favour of this, just like the London Free Press. But I have a problem: Nobody scrutinizes the press. This is a problem. It seems like the politicians are really being scrutinized a lot.

Let's make it clear: I don't think that there are a lot of abuses out there. There may be some, and this bill could

correct that, and there's no problem with that. But we'll hear some more, I'm sure, about how the media can't get to this meeting and that meeting. It makes it look like a lot of politicians are bad. I don't think that they are in Ontario. I think we have a good system and it works quite well. There are some abuses, and one of the problems is that there's no one scrutinizing the media. When you guys print something or there's something on the radio or whatever, there's really no recourse for the person when you may not be printing it the way they would like to see it. That's just something I think that we should remember.

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The other thing is, you've got to be careful of how many commissions we include, because a lot of people are volunteers, like advisory groups to councils. If you start putting a lot of scrutiny on those people, then they'll quit. They don't get paid; they volunteer their time.

In the municipality that I'm in, they have about four or five advisory groups, like rec and culture and finance. All the people who are from the public on there are just doing it for free and to try and help out the community. You've got to be careful on those. Most of those meetings are open, but I don't think there's any law saying they have to be or don't have to be. They're just people who are giving their time. You have to be careful we don't put too much control on people, then they just will say, "Well, why am I going to bother with that?" So that's the other thing we've got to be careful of here.

There's nothing wrong with this bill to go on and work on it and try to make it right. But as I say, I'm not surprised that you're in favour.

The Vice-Chair: Any response?

Mr. Laidlaw: I'd just ask Lou if he wouldn't mind commenting on the—

The Vice-Chair: Please be brief.

Mr. Clancy: I'd just like the members of the Legislature to note what's happening to voting records in the last 20 years. I think we can tie this down to a lack of civic involvement, a lack of transparency in government and perhaps a lack of quality reporting in some cases, Bill. I know you've had your difficulties at times.

Mr. Murdoch: I just like to keep them on their toes.

Mr. Clancy: Yes. If we don't have transparency, we have a disengaged public and we don't have people voting.

I just want to give you one example of how absurd this could be. Without naming the township, they went into a private session and turned down a beer tent for a senior citizens' fundraiser. It turned out that it conflicted with a fundraiser of their own. What was their reasoning? We don't know. But after the meeting, the mayor was asked why they went into private session and he said, "What does that mean?" So there is some lack of knowledge out there as to what the responsibilities of council are. And do remember that they are paid by the public; they're our employees. We should know what they're doing. That's all I have to say.

The Vice-Chair: Thank you.

Mr. Murdoch: All I'm saying is, they're not all bad. Let's not paint our municipal politicians or even our provincial ones as everybody being all bad.

Mr. Clancy: No intention of doing that, Bill. No intention. It's an honourable profession.

Mr. Murdoch: OK. That's good. I just want to hear the press say that.

Mr. Clancy: Yes.

The Vice-Chair: Thank you very much. I understand that Ms. Di Cocco, the sponsor of the bill, would like to speak briefly. Do we have unanimous consent? Because we've used up our time; we've actually gone over two minutes.

OK, please proceed.

Ms. Di Cocco: Just to Mr. Murdoch's point, I don't believe that this is intended to deal with the characterization of anything. It really is dealing with some holes in the system, holes that I can tell you—the two judicial inquiries—this one lasted seven weeks. I had standing at it, and what I've learned from it is that so much of the decision was made under this cloak of secrecy—something like this.

I also know that there are a couple of councils in my area that have raised their salaries, but they did it in camera and nobody ever knows how much it is. We can't get access to it. Why does that happen? Because there's this honour system.

All this bill is intended to do is to raise that bar a little bit and also so that people who are in those positions of trust can reflect before—they have to now—they go in camera because they have to justify it. That's all it's intended to do and it does not intend to suggest—the cases that have come before us make the point where the holes are.

Mr. Murdoch: I'd just say that probably the reason they did that is because the media would have printed the next day that they got a 110% increase or something, which might have been $10. But they wouldn't have said, "They gave each other $10"; it would have been that big thing on the front page. It doesn't excuse that they should do that.

Ms. Di Cocco: That's right.

Mr. Murdoch: But they're the other people in this pillar you're talking about who don't seem to have any scrutiny on them.

Ms. Di Cocco: Again, I guess we'll just kind of agree to disagree on that one, because I really think that there has to be a balance in all those three pillars.

Mr. Murdoch: We may be able to add something in there for the press so that we can sit in on their meetings.

COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

The Vice-Chair: I now invite the College of Medical Laboratory Technologists of Ontario to come forward. Welcome, and please identify yourselves.

Ms. Kathy Wilkie: My name is Kathy Wilkie. I'm the registrar and executive director of the College of Medical

Laboratory Technologists of Ontario. Beside me is Ms. Tina Langlois, legal counsel and director of investigations and hearings for the college.

I'd like to thank the committee for the opportunity to present this morning the college's position. You should have before you a brief formal submission that has been filed with the clerk.

First, let me tell you a little bit about the College of Medical Laboratory Technologists. We are established under the Regulated Health Professions Act as the regulatory body for over 8,000 medical laboratory technologists in Ontario. Our mission is to protect the public's right to quality laboratory services by ensuring that all of our members meet and comply with established and accepted standards of practice for the profession in a self-regulated environment.

It is our position that the regulatory college should not be included as a designated public body under the Transparency in Public Matters Act, either by being included in schedule 1, as it is in the current version, or in the future by regulation. I'll just speak briefly about five points on why our college feels that we should not be included.

The RHPA already includes specific requirements regarding open meetings, and we talk about specific reasons why a meeting can go in camera and be closed. There are specific points in the RHPA that speak to that. We also believe that transparency issues related to how the colleges are are really more appropriately dealt with through the RHPA; we don't want to create additional potential for conflict and confusion.

The Transparency in Public Matters Act conflicts with the confidentiality provisions currently in the RHPA as well as our privacy obligations. We believe that this act may negatively affect our ability to regulate in the public interest, as the public may have concerns about confidentiality of process. We certainly appreciate and understand that Ms. Di Cocco is proposing amendments that would address our concerns and fully support those proposed amendments.

In conclusion, I think we would like to say that we are very much committed to openness, transparency and fairness and we believe that those qualities are dealt with best through the Regulated Health Professions Act, which we are established by.

The Vice-Chair: Thank you very much.

Members from the government?

Ms. Di Cocco: I have certainly understood clearly, from 2001 actually, that regulatory bodies and advisory bodies really aren't decision-making bodies. There's another aspect to that that was pointed out to me in 2001, and that is that the regulatory bodies are actually funded by the members.

Ms. Wilkie: That's correct.

Ms. Di Cocco: They're not funded by public dollars, at least directly, in some cases. So that is my intent, to not have them as part of the schedule. It should not have been there; it really was an error, for different reasons. But I thank you for the submission.

Ms. Martel: Thank you, Mr. Chair.

I don't have any questions. We had a presentation from a regulatory body earlier as well, also one governed under the health professions act, and I made it clear at that point that we're not interested in obtaining information that the public doesn't have a right to know. There is regulation, and policies and bylaws that you already operate under as a result of the act, and those should remain in place. So we're not interested in pursuing the regulated health professions and having those meetings that aren't already open to the public—because many are—now be made open as a result of this bill.

The Vice-Chair: Thank you very much.

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ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO

The Vice-Chair: The next deputant is the Association of Municipal Managers, Clerks and Treasurers of Ontario. Please come forward.

Welcome.

Ms. Michele Kennedy: Shall I begin?

The Vice-Chair: Please proceed, and identify yourselves.

Ms. Kennedy: My name is Michele Kennedy, and I'm a member of the board of directors and the legislative committee of AMCTO—the Association of Municipal Managers, Clerks and Treasurers of Ontario. I work for the town of Whitchurch-Stouffville, and I'm a municipal clerk. With me here today is Frank Nicholson, AMCTO's manager of legislative services.

AMCTO is Ontario's largest professional association of municipal government professionals, and we've been around since 1937. Our more than 2,100 members are found in nearly every municipality in the province, where they form the core of the municipal civil service.

AMCTO's mission is to promote excellence in municipal administration. In addition to the quality education and professional development activities that we provide, we are also proud of our highly regarded certified municipal officer, or CMO, designation, and we advocate for legislation and regulations that promote healthy local democracy and efficient delivery of municipal services.

We are here today because we believe that, unless it is amended to exclude municipal governments, Bill 123, the Transparency in Public Matters Act, would undermine the decision-making process in municipalities across Ontario. We have before you our written submission, and I'd like to highlight some key points:

First of all, I'd like to stress that AMCTO fully supports the stated purpose of Bill 123: "to ensure that the meetings of designated public bodies at which deliberation or decision-making occurs are open to the public and that the minutes of those meetings are made available to the public." However, we don't feel that Bill 123 should have to apply to municipal governments for that objective to be achieved.

Unlike other public decision-making bodies that are subject to Bill 123, municipalities are—and I quote the current Minister of Municipal Affairs and Housing—"a level of government, duly elected just like the provincial and federal levels." Municipal governments are held to account through an electoral process similar to the process that ensures the accountability for provincial legislation.

In addition, the new Municipal Act already contains extensive provisions to ensure transparency in local government. Section 251 requires that municipalities establish, by way of bylaw, the form, manner and timing for provision of notice. Section 239 requires that meetings of councils and local boards be open to the public, subject to reasonable exceptions similar to those that are set out in Bill 123. Finally, section 253 confers the right of access to all minutes and proceedings of regular, special and committee meetings of councils and local boards.

So to recap, those three portions of the bill already exist in the Municipal Act.

The overlap between Bill 123's provisions and those of the Municipal Act is unnecessary and would create confusion for elected officials, municipal staff and the general public, and could undermine the local decision-making process. While the Municipal Act takes into account the specific circumstances of local government, the approach in Bill 123 is "one size fits all."

A good example of the overlap is how a council is supposed to give notice of meetings. Bill 123 requires designated public bodies to give "reasonable" notice to the public of all meetings being held and spells out the methods to fulfill that requirement. Section 251 of the Municipal Act provides that "where a municipality is required to give notice under a provision of this act, the municipality shall, except as otherwise provided, give the notice in a form and in the manner and at the times that the council considers adequate to give reasonable notice under the provision." Before the passing of this notice bylaw, councils or local boards must give notice of the intention to pass the bylaw to ensure public opportunity for debate.

Almost all municipalities have now enacted these notice bylaws with requirements that exceed those in Bill 123. In preparing these bylaws, each of Ontario's 445 municipalities had to think through what constituted "reasonable notice," bearing in mind the particular circumstances of that municipality.

We are concerned that Bill 123's overly prescriptive approach would limit the ability of municipalities to design the type of meeting notice procedure that is most efficient for the residents and is also contrary to the Minister of Municipal Affairs and Housing's June 2004 statement that "we no longer want to micro-manage municipal governments."

Another example of overlapping that exists is with the rules governing the preparation of minutes. Bill 123 states that minutes shall "contain sufficient detail to adequately inform the public of the main subject-matters considered, any deliberations engaged in and any decisions made." The words "any deliberations" suggest to us that a verbatim recording is envisioned. In contrast, the current rules in the Municipal Act direct the municipal clerk to "record, without note or comment, all resolutions, decisions and other proceedings of the council." Note the words "without note or comment." The purpose is to record the decisions made by a council and not the lengthy discussions and political positions involved in reaching decisions. We are not aware of any concerns that have ever been raised about this decades-old provision in the Municipal Act. We believe that overlaying one set of statutory requirements for minutes with another set could create confusion and create the possibility of legal challenges.

A final area of concern for us is the half of the Transparency in Public Matters Act that would authorize the filing of complaints with the Information and Privacy Commissioner about municipal procedural decisions. We note the broad nature of the commissioner's powers: to enter and inspect, to demand production of things relevant to the review, to require any person to appear to give evidence and to void decisions of elected municipal councils. AMCTO's position is that applying these provisions to municipalities is inconsistent with the concept of municipal government as a duly elected, accountable order of government. We also note the significant ramifications of a commissioner's order voiding a municipal decision, recommendation or action months after it has already taken place.

However, we're not saying that there is not any room for improvements in the Municipal Act provisions that Bill 123 addresses. We strongly believe, however, that the proper forum for considering such changes for municipalities is the review of the Municipal Act that is currently underway with the Ministry of Municipal Affairs and Housing. We believe, in fact, that we also have raised with the ministry the desirability for clarification of the current list of circumstances in which council meetings can be closed.

As I noted at the outset of my presentation, AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario, fully supports openness, accountability and transparency in the conduct of public business, including municipal business. As our more than 2,100 members observe every day as they provide procedural and policy support to councils, Ontario's local government system operates in a very responsible, accountable and transparent manner overall.

The content of Bill 123 is too closely related to the provisions of the Municipal Act to be considered independently, and the introduction of an additional piece of legislation governing the way in which municipalities conduct their business could create confusion for municipal politicians, staff and the members of the public whom they serve and could undermine the decision-making process in communities across Ontario.

We greatly appreciate the opportunity you have given us to speak on this matter. I'd be pleased to answer any questions the committee may have.

The Vice-Chair: Thank you. Mr. Murdoch?

Mr. Murdoch: We've heard today that the problem with the Municipal Act is that there's no enforcement, that if you don't do what the act says, there's nothing anybody can do about it. That's been a complaint, so people have said that this is why this is a good bill. What do you have to say about that?

Ms. Kennedy: I don't think in any of our presentations we're objecting to some teeth being considered. We'd just like it to be done in conjunction with the Municipal Act, because it's more specific to municipalities. We do have some concerns about holding up decision-making processes: If council makes a decision, how long is the review for any inspection that might happen? We also have a concern about voiding a decision that has been made in good faith.

Mr. Murdoch: On minutes: You mentioned in here that you were afraid that the minutes would have to be too long. Is that what the bill reflects? I'm not sure.

Ms. Di Cocco: Well, the bill says that you have to have adequate minutes, basically, that they have to be adequate. Let me just find it, and then—

Mr. Murdoch: I just wondered about that. You were concerned about that.

Ms. Kennedy: It does say, "any deliberations," and that's our concern. The current wording in the Municipal Act is to "record, without note or comment, all resolutions, decisions and other proceedings of the council." So we capture council's decision; we don't record all deliberations.

Mr. Murdoch: I understand that, and maybe we could do with some clarification on that one when the bill comes out. I think the intention of the bill is to try to put government bodies under one roof on this, because there are a lot of other bodies that are governed by the province. They're just trying to get them all so that the public can understand what's going on.

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Like we mentioned before, I don't think there are a lot of municipalities abusing the system, but probably there are some; at least we've heard some stories about it anyway. I think that's what they're trying to do, if you go to the Municipal Act with that. I guess if we were to govern hospitals, we'd have to go to a different act there, and I think this is just trying to get under one act.

Ms. Kennedy: I do understand that there are several other bodies, but we are just saying that we already have legislation that governs us and covers the majority of what's in this bill. If it needs to be tightened up, could it not be tightened up or dealt with through the Municipal Act review?

Mr. Murdoch: OK.

Ms. Martel: I appreciate that view as well. I should just tell you, as a bit of background, I deal a lot with municipal staff in my part of the world. I have absolutely no complaints about their professional response and their conduct. I can say that as far as I can see, the councillors themselves work fairly hard to make sure their meetings are in public; they're televised on cable and there are always media there, so I don't see a particular problem at home.

We have heard comments here today that make me wonder how effective the act really is in some municipalities when a councillor who is also a publisher says the minutes of the meeting have a single line, so it's really hard to determine what happened at that meeting, or that approaches have been made to MMAH to be involved in resolutions and MMAH really throws up its hands, or when I hear from the publisher of the London Free Press that in a four-month period—and someone will correct me if I'm wrong, but I think it was a four-month period—60% of the meetings were in camera. Someone is not being too forthcoming. I'm not blaming staff. I suspect a lot of those decisions were made by the councillors themselves, and you would have no control over those folks.

It seems to me that there are circumstances where there is not much effort being made to be really forthcoming, and I just think that does a disservice to the public, who may leave with the impression that something suspicious is going on. I don't want people to walk away with that impression.

I appreciate what you say in terms of maybe these changes should be made under the Municipal Act. I hadn't really put my mind to that. I said at the start of the meeting that in principle I'm supportive of having these meetings more open because it's taxpayers' dollars that are involved. I think those bodies and those boards of directors and those councillors should be accountable and I'm searching for the ways and means to see that happen. I appreciate what you're saying and I'm trying to balance that against some previous submissions, which you were here for as well, where clearly some of the current provisions, even under the Municipal Act, are not working for people in communities in different parts of the province.

Ms. Kennedy: I do appreciate your comments. AMCTO has been dealing with submissions for changes to the Municipal Act, and we've been asking for clarification because we also see concerns. We would just like to deal with it as one legislation and not lose the specifics that have been spelled out in the Municipal Act that deal with, for example, notice provisions that are specific to municipalities. Some municipalities don't have Internet access; some municipalities in rural areas can't get broadband to have that. So they take into consideration what they have and how best their community can be provided notice. If it's a one-size-fits-all, then we lose that flexibility.

We support the intent of the bill. We would just like to see it proceed through the Municipal Act so that we don't lose the specifics that are related to the municipalities that are already in the Municipal Act.

Ms. Di Cocco: I certainly have spoken to the policy staff of all the ministries in the development of this, in the past and now. With your comment about the actual minutes, I go back to the judicial inquiry of 1998. In looking at all the facts, one of the things the justice

spelled out is that public bodies big and small across Ontario must create a clear and public record of their meetings to which the public and interest groups may have access after the event, and specifically that school boards and city councils prepare and maintain proper minutes, resolutions and bylaws.

A lot of the frustration in trying to get at information through an inquiry was the lack of information and proper minutes. That's where that section was born, if you want, to some degree. Again, this is not about being punitive or any of that. You say you want clarification. And, in clarification, hopefully it is an attempt to bring better discipline in the transparency of how the business is done, and to have teeth so that there is a way to deal with inappropriate decision-making.

The bad decision-making here, in particular between a public council and a school board, according to the inquiry is still costing the municipality millions of dollars. Therefore, if the decision could have been made legally null and void we would not be spending millions of dollars of taxpayers' money because of poor decision-making under that era.

Ms. Kennedy: If I could just point out one thing, I think when I listened to your initial submission you said that your initial inquiry was in 1989 over 1990. I started in the deputy clerk position in 1990. Back then, there were no requirements of municipal councils as to what could or could not be dealt with in camera. I don't remember the exact year, but it was around 1991 or 1992 that a list came out under the Municipal Act that's similar to what you're requiring now of what we can take and deal with in camera.

Unfortunately, when you had the incident, it was at the whim of councils as to what went in camera. Then we were regulated under the Municipal Act to tighten it up. We now have notice provisions. I think that municipalities and municipal councils recognize that there needs to be more open accountability, and we have moved in the direction that you're requiring. We're just asking that you continue to work through our own legislation that we're already governed under.

The Vice-Chair: Thank you very much.

ONTARIO HOSPITAL ASSOCIATION

The Vice-Chair: The next deputant is the Ontario Hospital Association. Welcome.

Ms. Hilary Short: Good afternoon. My name is Hilary Short. I'm president and CEO of the Ontario Hospital Association. With me here today is Elizabeth Carlton, our director of legislative and legal affairs.

We're very pleased to have this opportunity to appear before you this afternoon on Bill 123, the Transparency in Public Matters Act.

The Ontario Hospital Association has consistently endorsed the need for transparency, and Ontario's hospitals are already leaders when it comes to accountability to taxpayers. We therefore support the spirit and intent of Bill 123 and wish to acknowledge Ms. Di Cocco's enduring commitment to enhancing accountability within the public sector.

Hospitals share that interest and continue to do their part to ensure they are accountable to both government and their communities. Whether it be through Hospital Report, public reporting to their community, open board meetings, a rigorous accreditation process through the Canadian Council on Health Services Accreditation or, most recently, the newly introduced value-for-money audits by the Provincial Auditor, hospitals do their utmost to ensure their operations are both open and transparent. And they will continue to do so.

This year, hospitals are entering into multi-year accountability agreements with the Ministry of Health and Long-Term Care, agreements which set out in detail what services will be provided to the community, with specific targets and benchmarks for performance. We believe these agreements will only strengthen our position as leaders when it comes to advancing openness and transparency.

While we appreciate and support Ms. Di Cocco's efforts to enhance accountability, we also believe that this interest must be balanced against the need for confidentiality, particularly when dealing with issues of sensitive nature, as well as very real practical considerations. So we do have some reservations with the bill, as it's presently drafted, and our submission details some recommended changes.

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With respect to the provisions requiring open board meetings, the OHA has encouraged its members to adopt this practice. As a result, the vast majority of Ontario hospitals currently do hold open board meetings. They provide notice and report back to their communities through various mechanisms such as their Web site, newsletters and local media.

We have no difficulty with the requirements of Bill 123 in this regard. We would only suggest that the list of exemptions on matters to be held in open board meetings be expanded to include discussions that relate to patient information and property matters.

We do have great difficulty with the fact that the legislation, as it's currently drafted, applies not only to hospital boards but to their committees as well—in particular, to a hospital's medical advisory committee.

This committee deals primarily with appointment and reappointment of medical staff—human resource issues—as well as quality of care within the hospital. As a result, that committee, the MAC, routinely discusses highly sensitive issues related to patient care, such as adverse events, near misses and complications which necessitate the discussion of patient information.

Patient confidentiality is a fundamental tenet of our health care system. Patients rely on their hospitals to provide a safe environment built on a relationship of trust. The OHA believes that this relationship of trust will be eroded by requiring MACs to hold public meetings and would ultimately have a detrimental effect on the quality of care.

We are similarly concerned that other hospital committees, including the fiscal advisory committee or the quality assurance committee, which deal with such issues as staffing and risk management and serve in an advisory capacity to the board, could be subject to the open meeting requirements of Bill 123. Once again, we believe that accountability to the community is best served by allowing for candid discussion in formulation of advice to the board. Again, let me stress that these committees do not make decisions; they are advisory in nature.

While we understand that the intent was to amend Bill 123 to exclude MACs and other committees, the broad definition of "meeting" in section 3 continues to include committee meetings of hospital boards and other advisory bodies. So we are suggesting further amendments to ensure that hospital committees are not included within the scope of the bill.

Finally, although our primary concern with making amendments to the bill is the inclusion of committee meetings, we do believe the bill also does impose significant administrative burdens on hospitals at a time when they are under intense pressure to reduce nonclinical staff. As part of the new hospital accountability agreement and balanced budget planning process currently under way, the Ministry of Health and Long-Term Care has identified administration and support services as one of the priority areas for cost reduction. So as you can well appreciate, hospitals will find it increasingly difficult to reduce costs when confronted with specific new legislative requirements that would increase the need for administrative staff. If the bill could be amended to make sure that the burden is as light as possible, we would be very supportive.

These and additional concerns and suggestions for improving the bill are set out in our written submission.

Again, in closing, I would like to emphasize that the OHA firmly endorses the spirit and intent of this bill and Ms. Di Cocco's efforts in making public institutions more accountable.

We share that same goal and are working to ensure that Ontario's hospitals continue to be leaders when it comes to accountability and transparency, but we do believe that additional amendments are needed to ensure that Bill 123 is both balanced and ultimately provides meaningful enhancements to public sector accountability.

Thank you once again for the opportunity to present to you this afternoon.

Ms. Martel: Thank you, both of you, for being here this morning. A couple of questions. This goes back to a concern we heard earlier about administrative costs. You say in your submission that the vast majority of hospitals currently hold open meetings, they provide notice and they report back to their communities. So I'm assuming that lots of folks do that now and are not seeing a significantly increased burden to do that, if they already are. In all likelihood, how much of an administrative burden are we talking about here, from your perspective?

Ms. Elizabeth Carlton: Certainly, that's a valid point. A lot of the hospitals are undertaking that function right now. I think it's really the scope of it. For example, the bill provides for making electronic meetings open to the public, whether it's by teleconference and whatnot. There are some very real practical considerations around doing that. There is a requirement to appoint somebody within the hospital and the board to oversee compliance, to develop a set of rules, to follow up with the community around those rules and to interface with the Information and Privacy Commissioner with respect to any complaints, investigations, whatnot.

What we've heard from hospitals is that every time you add a whole level of procedure to something, it will require a point person within the hospital to deal with that. If the bill does include committees, we may be talking about some 10 to 15 committees, rules for each of those, notices for all of those, minutes, posting, discussions with the public, a liaison person. It may sound somewhat insignificant, but as you can appreciate, putting all of that into force does require at least an FTE.

Ms. Martel: Ms. Di Cocco will probably speak to this further, but she has said that what she's really looking at is not the advisory boards. I guess the distinction you could make, even in a hospital setting, would be that we're wanting open public meetings and information from the board that makes the decisions versus the recommendations. If that was the premise that we were operating from, where does that leave the administrative burden at that point?

Ms. Short: It would be less. As you point out, most hospitals already have open board meetings, so it would be less. But, as Elizabeth says, there are still requirements that will slightly increase that. We don't want to build a huge case about that. This is not really the principal point of our submission, but we would just point out that there are some additional administrative costs related to it. Certainly, if it's just the board we're talking about, it's less.

Ms. Martel: I appreciate that. I raise it because it was the principal point of another submission, so thank you for giving us a little bit of a different perspective from the hospital sector.

Ms. Short: I don't think it's a good argument not to do it. I just wanted to point it out.

Ms. Martel: One more question, if I might. You were asking about the exemptions to include discussions of patient information, which I fully support. "Property matters": what does that mean?

Ms. Short: It means real estate; matters relating to transactions. Again, this could be a little bit controversial when it relates to the sale of hospital property or things that people care about, but it is one that the hospitals have pointed out can be very problematic.

Ms. Martel: It would be my sense that there would be concerns in a community about why there is a sale of land occurring and what that money is going to be used for and, at the same time, the hospital may be arguing that they are having to have a reduction in services. That becomes very controversial very quickly in a community.

Ms. Carlton: No, we appreciate that. I think what also comes into play here, and this is the primary issue I think,

is if you were discussing, for example, competitive bids or if it's something relating to economic advantage. As you can appreciate, whenever you're dealing with matters of real estate, if you're trying to decide between this bid and that bid, that kind of thing can't really take place in an open setting, just because of the nature of those discussions.

Ms. Martel: Do you think that's included under the exemptions that are currently described in the bill, where they speak to "financial, personal or other matters"?

Ms. Carlton: You're right; it may be included under clause 5(2)(a). I think we just wanted to raise the point that consideration should be given to making it its own provision, so there isn't some ambiguity around it.

Ms. Di Cocco: Ms. Martel addressed the three: I had patient information issues, which I certainly understand.

The administrative burden has come up before. We had a presentation from two representatives from hospital boards, and they brought WeirFoulds with them, which kind of surprised me, to tell you the truth, though it's understandable, I guess. What I'm trying to grasp is the administrative burden. In the context of the bill—at least, in the spirit of the bill—the idea is that somebody who is on the board has to ensure that they're following the rules. Basically that's what it's about. It's not intended to have this huge administrative implication. What it is is a check before you go in camera that someone says, "OK, are we meeting these requirements?" Just kind of a reminder; that's all.

1220

I think that if something is done in good faith—I mean, it's about justice too. It isn't punitive. It's just meant to create the check and balance that I believe doesn't exist. Again, we heard from two separate bodies, two hospitals: one that apparently doesn't need to go public with their meetings, and another one that did. It was interesting to hear the contrast, but it's also a culture. It's a culture of the institutions that have more and more been able—knowing that there are no teeth in the regulations or the criteria for open meetings, I think, over time, what's happened is that you make exceptions, because it is more convenient to discuss things in camera sometimes. It is a quicker way, people said, to be more candid. This is the sort of rationale. I just think that in doing the public business, we really have to raise the bar. I believe one of the presenters also talked about the cynicism and the lack of citizen engagement, because they're starting to more and more feel that they are out of the loop, that they're not part of that, or that they are not given all of the information or enough information.

Again, regulatory bodies and advisory bodies definitely will not be a part. I mean, if the amendments pass, they will not be a part of the—

Ms. Short: Does that include all committee meetings that are advisory to the board?

Ms. Di Cocco: Advisory committees as well. It's certainly not my intent that advisory bodies, any advisory committees or regulatory bodies, be included.

Ms. Short: Again, we do support this bill. We have, as you know, for some time been supportive, provided it's the boards. I just would point out at this particular point in time, as you read the clips from the media across the province, that this will become very controversial as hospitals look at programs and services that they are offering and maybe in some cases will not be offering as we reshape the system. It always causes a lot of angst. So we have to find the right balance in terms of when you include and how you present these issues to the community.

Ms. Di Cocco: I understand that. Again, it's about culture, and there's a perception that if the public knows—I've heard this argument, by the way, especially in times of change. I believe that it's a good idea to bring the public along as you're changing. You're right: It creates angst, and I think it creates sometimes even misperceptions of what's going on. But we seem to be going toward more public relations rather than, "How is this moving along? Why are we making these decisions? Where are they going?" I guess that's also part and parcel of openness. I think that can come out of it, rather than sort of the fear of all of the consequences. I think those are some of the positives, too, that come out of more openness. At least that's been my experience.

The Vice-Chair: Mrs. Van Bommel, very quickly.

Mrs. Van Bommel: I'm the past chair of a hospital board. We talk about the whole issue of the cutting of services and that sort of thing, and the great angst, but I also think that by discussing that in public and allowing the public to hear the logic and the reasoning behind it, talking about the utilization rates, all these kinds of things, it takes the emotion out. I think what happens often is that the board suddenly—well, not suddenly, because they've had the discussion prior, but they make the decision. That comes out into the public, and all the public understands is that you've cut a service that they really needed or they felt they needed, and they have no understanding of why. The emotion comes in. I think if you, as Caroline has said, bring the public along in your reasoning and your decision-making, they'll have a better understanding of why you need to make some of the decisions you do.

Ms. Short: I think that's right. I was really making an observation that this is a time where emotions will be running high, but, as you say, if that's the decision, it probably is better that it's open and transparent.

Mr. Murdoch: You mentioned different quotes in the media. Let's hope the media get it right so we don't get too much misconception. We've had the media here supporting this. As long as they print what is right, then we'll be OK.

We talked earlier about taking about the other advisory boards, which is a good idea. What about this new LHIN? Would you support it being added to here? It isn't an advisory. I don't know what it's going to be, actually, but would you support that?

Ms. Short: I would. If matters relating to the whole health care system are going to be discussed and debated, the LHIN, as we understand it—although we haven't seen the legislation—will be making some very key

decisions. It will have the ability to move programs and services between hospitals and from hospitals to the community and will be responsible for regional planning. I would think that the same would apply to a LHIN as it would apply to a hospital board.

Mr. Murdoch: That's it.

The Vice-Chair: Thank you very much.

Our next deputant is the Ontario Association of Police Services Boards. I don't think they are here yet. They are scheduled for 12:45 p.m. We will now take a recess of 10 minutes.

The committee recessed from 1226 to 1235.

ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

The Vice-Chair: Members, we're back in session. The next deputant is the Ontario Association of Police Services Boards.

Welcome. You have up to 15 minutes for your presentation and questions.

Ms. Mary Smiley: Thank you very much. I'll give you a very brief background on the Ontario Association of Police Services Boards. I know that a number of the members are quite aware of who we are and what we do, but just to make sure that we're all starting from the same starting point.

The Vice-Chair: Please state your name for the record.

Ms. Smiley: My name is Mary Smiley. I'm the past president of the Ontario Association of Police Services Boards.

The Ontario Association of Police Services Boards, the OAPSB, is an organization made up of members of civilian police governance boards from across Ontario. We have well over 85% of all police services boards in Ontario as our members, and they range from the very large urban municipal services to the section 10 contract boards that are right across the province.

The association has been working for over 43 years to assist and support police services boards through the provision of a wide range and number of services. The organization's primary objectives are to foster the discussion of police governance issues, ideas and best practices among the membership, to consider matters of provincial interest which affect policing services and to formulate responses at the policy-making level from the perspective of civilian police governance.

Bill 123 is a private member's bill that we have taken a serious look at because of the content of it. Police services boards and their meetings are presently regulated by the Police Services Act and some provisions of the Municipal Act. All police services boards must enact a procedural bylaw to guide their meetings in an open and transparent manner. Subsection 35(3) of the Police Services Act currently provides that meetings conducted by a board shall be open to the public and that notice be published in the manner determined by the board. Subsection 35(4) also provides for certain provisions which would allow the public to be excluded from the meeting.

The OAPSB supports the concept of open meetings but has concern about the extent to which this bill overlaps and in some cases conflicts with the current legislation governing meetings for municipal councils and their special-purpose bodies.

The system for police services boards is working well for the board, the service and the public, and the OAPSB cannot support any of the proposed changes. Some areas of concern are:

The Police Services Act contains a number of principles, one being the need to ensure the safety and security of all persons and property in Ontario. Police services boards require the ability to discuss items in camera to maintain this level of security.

Bill 123 proposes that the minutes must be clear and neutral and contain sufficient detail to adequately inform the public of the main subject areas considered, any deliberations engaged in and any decisions made.

Bill 123 further provides that not only the public minutes but the in camera minutes must be made available to the public, but may remove details that would reveal any information that was the basis for excluding the public, but shall not remove any more details than are reasonably necessary. Clause 6(1)(b) of the Municipal Freedom of Information and Protection of Privacy Act provides an exemption from release for records that "reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public."

It is our submission that the release of the confidential minutes proposed by Bill 123 would be in conflict with the privacy protection of the Municipal Freedom of Information and Protection of Privacy Act.

Section 4(c) of Bill 123 would require that the public be provided with the ability to attend an electronic or telephone meeting of the board. Does this also provide them with the right to appear as a delegation? This could present some procedural and technological issues which some boards may not be able to address, and that is especially clear to our section 10 boards, which are smaller boards.

It would appear that one of the main purposes of this bill is to provide a mechanism to challenge the correctness of a board's decision to deal with certain matters in camera and to have the matter adjudicated by the privacy commissioner. Under this bill it is very conceivable that a board could become bogged down perpetually in challenges to its in camera decisions. The time period set out in this bill for bringing complaints is one year after the matter came to the attention of the complainant. Would this allow a complainant to lodge a complaint for minutes discussed five or 10 years ago if the matter just came to their attention? This allows a significant period of time for complaints to be filed and most likely would happen well after a decision has been made and implemented operationally. Most procedural bylaws provide that if an

action has already been implemented, the reconsideration of that matter is not in order.

The OAPSB does not believe there is any cause for such a disruptive change to the existing system of open and transparent meetings. The association believes it would be much more appropriate for a complaint about a board's action to be first made to the board. This would enable the board to have an opportunity to address any issues prior to an appeal to an external oversight body. The OAPSB recommends that the external oversight body would more appropriately be the Ontario Civilian Commission on Police Services, OCCPS, which a lot of you may recognize.

However, the inspection powers proposed in Bill 123 are extremely powerful in that they suggest that the commission may, without a warrant or a court order, enter and inspect any premises. These powers are in excess of what a police officer has. The OAPSB has asked Minister Kwinter and Minister Gerretsen to take municipalities and their special purpose bodies out of this bill and leave any further discussions on meeting procedures for the Municipal Act review as part of a more comprehensive consideration of the rules that municipalities would have to follow. Once the Municipal Act review is completed, the implications of those changes on the Police Services Act and specific procedural changes for police services boards can be considered.

We'd like to thank you for this time and for the opportunity to present, and if there are any question, we'd be pleased to try and answer them.

Ms. Di Cocco: You may not have been made aware, but one of the processes in trying to improve this bill—let's put it that way—is to take a look at the schedule at the back. There will be amendments coming forward and the municipal councils will be a part of that. I guess we'll need clarification as I don't believe that police associations are included, but I'm not sure. I need to get clarification.

At the same time, as I said, it's about raising the bar. There's no intent to try to make it more onerous or that an organization cannot function. It's about the public interest and about raising the bar of transparency. That's what the intent is, and just to have checks and balances. I think you mentioned that you do have your meetings in the open, in public. This is just a check and balance to make sure that the in camera sections certainly follow suit in camera, because it's basically on an honour system now and that's what the intent is. I thank you for your submissions and certainly will clarify something for myself here, but also take into consideration some of your suggestions.

The Vice-Chair: Mr. Murdoch.

Mr. Murdoch: I think if they're going to be excused, there's not too much, but we're going to add the media to it, though.

Ms. Martel: It may be a comment more than a question, but it's my understanding, given some earlier discussions, that police services boards would be excluded, so we'll require some clarification on that. That was the premise I've been operating under for most of the morning, so I'm going to hope that's correct.

You raised a legitimate point about the inspection powers and whether or not police services boards are included. That's a legitimate point to make with respect to those who will be included.

I might just say that I remember the discussions around inspection powers with respect to another bill we dealt with about a year or so ago, which was Bill 31, essentially the provincial application of the federal privacy laws in the province. In that circumstance, the commission also has carriage of large sections of that particular bill and is responsible for that. There were some significant changes made to their inspection powers as a result of amendments to that bill, which I think could be looked at in this case. I just raise that as a possibility, because there were concerns raised as well. They had the same kinds of powers to deal with organizations that might be in breach of Bill 31, and there were some significant amendments that were made through the clause-by-clause process to deal with concerns about their power. So it is an option for Ms. Di Cocco to take a look at, and I just raise that here for her consideration.

The Vice-Chair: Ms. Di Cocco would like to speak again. Is there unanimous consent for that? Proceed.

Ms. Di Cocco: Thank you, Chair. It's nice to get unanimous consent here. It doesn't happen often in the House, does it?

The amendments that I'll be proposing will not include municipal police services boards. I had to double-check before I stated it. Certainly, when the time comes, those amendments will be brought forward. The groups that I've spoken to that are not included in the bill are groups such as regulatory or advisory bodies and, as I said, police services boards. We'll certainly submit to you the list when that is finalized.

Ms. Smiley: That would be good. Thank you.

The Vice-Chair: Thank you very much for your deputation.

Members of the committee, we'll now take a recess until 2:15 p.m. this afternoon.

The committee recessed from 1247 to 1415.

GEORGIAN SHIELD TAXPAYERS ASSOCIATION

The Vice-Chair: Members, we are back in session, the standing committee on regulations and private bills. We're dealing with Bill 123, An Act to require that meetings of provincial and municipal boards, commissions and other public bodies be open to the public.

The first deputant this afternoon is the Georgian Shield Taxpayers Association. Please come forward.

The Chair (Ms. Marilyn Churley): Sorry. Give us a moment. We're changing Chairs.

Thank you very much and welcome to the committee. If you could please state your names for the record.

Ms. Lyn Cowieson: Lyn Cowieson.

Mr. Jim Walden: Jim Walden.

The Chair: Go ahead.

Ms. Cowieson: Thank you for the opportunity to speak to you briefly today. Thank you especially for the effort you are making with this proposed legislation to protect public access to public bodies through open, accessible public meetings. This legislation is important to protect democracy in Ontario.

The Georgian Shield Taxpayers Association was formed in response to an ill-conceived plan by our township council to demolish 32-year-old administration office facilities and construct new facilities, at a cost of between $2.5 million and $5 million. This major construction project exceeds the entire annual budget for our small township and downloads a cost to the taxpayers exceeding 10% of the annual municipal tax bill for the next 20 years.

In response to this issue, the GSTA sponsored a study which over the past eight months has provided a comprehensive review of township procedures and finances, with a particular focus on this capital project. We have provided a copy of the Taxpayers Study Group report for your reference during your ongoing review of Bill 123. The study found significant violations of municipal by-laws and procedures in regard to purchasing, budgeting and fiscal accountability.

As we have pursued this matter with the Ministry of Municipal Affairs and the Information and Privacy Commissioner, there's an increasing body of evidence indicating that these transgressions may have been with intent. How does this construction issue and the TSG report relate to Bill 123? It is clear that the conduct of our municipality's business in closed-session meetings, for which no minutes are kept, has been the principal feature of these transgressions.

Section 8 of this report details the escalation in time our current council has spent in closed session meetings for which there is absolutely no public accountability. In fact, our council has spent in excess of 30% of its deliberative time in closed session meetings, many of which are conducted on a routine basis at every council meeting. Council time spent in closed meetings doubled in the first year of this term of office and will likely triple in the second year of this term of office.

These closed session meetings have been the instrument used to violate the right of the public to open and transparent government. In fact, since February 28, 2005, council has pursued an announced policy of deliberating on the building project only in closed sessions. As a result, a major capital project has been approved and implemented without any public debate of council or any opportunity for public input on the scope, plans or financial factors.

It can only be speculated that council's closed session meetings were purposefully employed to thwart opposition of the public to this project. Open and transparent deliberations are especially critical in a rural municipal jurisdiction such as ours where there are so few checks and balances—no press—to moderate actions by the municipal government.

It's important to note to you that the GSTA is currently involved with the process of an appeal to the IPC office regarding the many closed meetings in our township. We've provided information and observations to indicate that the vague rationale for the long hours of closed meetings often does not relate to many of the subsequent resolutions approved by our council when they rise and report. We've documented our concerns under freedom of information, seeking to have the IPC office consider: Are these hours of secret council deliberations and debates even allowed under Municipal Act subsections 239(2) and (3)?

1420

Time does not permit a comprehensive review of the TSG study today, but it is within this context that we are here to highlight some areas of Bill 123 that we believe may salvage and even redeem this provincial government's objective for open, accessible and transparent governance intended under the Municipal Act but not implemented.

First, this proposed legislation seems to be one of a kind in offering the interested and informed public some support under law to achieve implementation of the Municipal Act. Built into this legislation is a resource, the Information and Privacy Commissioner, who has a role to receive, review and respond to complaints from the public regarding secret meetings. Thank you for that.

The IPC's role as an investigative and enforcement resource is sorely needed at the municipal level of government particularly. Currently, the only recourse the public has for complaints about suspected illegal, financial and/or procedural actions of municipal councils is the court system, and taxpayers as individuals or as organized groups such as ours cannot afford the $60,000 to $100,000 price tag associated with the legal system response today. Simply stated, the Ontario court system does not provide an accessible or affordable option for implementation of provincial legislation. Plus, the timelines associated with Ontario courts are burdensome and unreasonable, while the IPC office currently responds within set timelines for review and action to provide a reasonable opportunity for timely and relevant resolution of complaints. At the provincial level, there is the Ombudsman for review of complaints with provincial offices, but there's no such resource to address and/or resolve municipal council complaints regarding standards and practices set out in the Municipal Act. Currently, there is no agent to intervene to maintain or protect the public trust.

Second, there are six areas I would highlight for further consideration to support successful implementation of Bill 123.

(1) If the goal is to inform all members of public bodies of their duties under this proposed legislation, I would suggest that the offences and penalties, section 22, should include the individual's personal obligations to be aware of this legislation and to understand their duties to comply. In other words, if you expect due diligence when members of public bodies vote on whether a matter is

appropriate for a closed session meeting rather than a public meeting, these individuals should understand that an offence under subsection 5(2) of this legislation would result in personal fines should they vote for or participate in a closed session meeting that is outside these exceptions.

Currently in Bill 123, it's only an offence to disrespect the Information and Privacy Commissioner's review and investigation process and subsequent order. However, it is not an offence simply to ignore the intent of this legislation. There is exemplary legislation to protect the safety of children and workers that requires responsible individuals to properly report observations, under penalty of personal fines, regarding possible risk or harm to others. However, Bill 123 does not include penalties to protect the public. You can participate in ignoring the law; it only penalizes those who get caught by a complaint of wrongdoing and fail to co-operate in the investigation or to act on an IPC order. To protect the public trust and ensure the rule of law, it should be an offence, with penalties, to knowingly participate in breaking this law. Currently, like many sections of the Municipal Act, I see no consequences for those who simply choose not to comply with the rule of law.

(2) Notice of meetings in section 4 states, "shall give reasonable notice to the public." I submit that "reasonable notice" should be clearly defined to ensure that there is fair and equitable interpretation for this time frame across Ontario. I can describe meetings that were announced on a Web site, after business hours on a Friday night, for a public meeting Monday morning of significant interest to the general public. Unfortunately, only the council members who were contacted directly by phone or e-mail were present. "Reasonable notice" should be within a standardized time frame to give the public a fair chance to attend, or the same method of communication used to contact the members of the public body should be used to contact at least those individuals or groups who pay an annual fee to the township in order to receive notice of meetings.

Furthermore, the requirement of section 4 to post a clear, comprehensive agenda should be strengthened by prohibiting the amendment of such an agenda at the respective meetings unless there is a proven and unforeseen emergency. Once again, I could quote many instances where such methods have been employed by our township council to circumvent required public notice.

(3) Subsection 7(3) of the proposed act requires minutes to be available to the public at the same time as they are made available to the members of the public body. In accordance with the previously discussed requirements for a standard to be imposed on what constitutes "reasonable notice" of meetings, we submit that a similar standard should be imposed on the posting of minutes at a reasonable time before the subsequent meeting. To not do so may provide inadequate time to input to the agenda of the subsequent meeting. It's been our experience that minutes are generally not available until the workday preceding a meeting, which clearly provides insufficient time for meaningful input from the public to their councillors to inform the deliberative process.

(4) Although there is no section addressing this issue, it is submitted that public bodies, such as municipal councils, should be compelled to provide reference material at each meeting which has been supplied to the members of that deliberative body, unless it is being displayed electronically at the meeting. The principle being recommended is that meetings open to the public should be conducted in such a manner as to permit the public to understand the proceedings. Councillors sitting at a table and referring to sections of a report that only they possess provide little coherence to the observing public.

(5) Subsection 5(2) defines subject matter areas where the public may be excluded from all or part of a meeting. Subsection 5(3) requires a motion clearly stating the nature of the matter to be considered at the closed meeting. It is submitted that simply reciting a clause under subsection 5(2), without relating it to a specific matter, should not be considered as "clearly stating" the nature of the matter under consideration. It has become the practice of our township council, and others, to simply quote the legislation as justification for entering closed sessions. It's submitted that the proposed Bill 123 should precisely define that each specific item to be discussed in a meeting at which the public is excluded must be specifically referenced.

(6) What constitutes a meeting? It seems a simple enough question, and section 3 of the proposed legislation addresses this point. However, it is unclear to me in section 3 when a committee is a committee that would be obligated to obey or implement this legislation. The definition of a committee of council may be stated elsewhere, but I would highlight our experience in the township of Georgian Bay, where a building committee, named in minutes and council resolutions, is not defined by our council as a formal committee for purposes of access to public records under freedom of information legislation. Therefore, the building committee, comprised of over half of council and a few administrative staff, has failed to comply with the township's procedural bylaws: no notice to the public of meetings, no minutes, no agendas, and no meetings open to the public. The township claims that the building committee referred to in township and district minutes of meetings is an informal rather than formal committee of council, and therefore it does not exist and is not obligated to fulfill the requirements of township bylaws or provincial legislation. This seems a travesty of open and transparent governance, and therefore I submit that meetings that Bill 123 applies to should be clearly defined for fair and proper implementation of this legislation.

Ladies and gentlemen, in summation of our above recommendations, it's noted that the short title of the act is the Transparency in Public Matters Act. Transparency is not just a matter of the right of public access to meetings. Transparency is a combination of timely notice of agenda and meetings, timely access to records of

meetings, and the provision of information to permit all present to understand the meeting proceedings.

I thank you for the opportunity to share my comments regarding the legislation with you.

We are a small township, with approximately 2,200 full-time residents and another 85%, 12,000, additional taxpayers who are seasonal. I am hopeful that our disturbing experience with secrecy and closed meetings will be relevant to this committee review. However, even without benefit of my comments and suggestions, on behalf of the taxpayers of Georgian Bay, we implore you to support this legislation for approval by the Ontario Legislature. It's important that Bill 123 become law. It is sorely needed for the protection of democracy in Ontario, particularly at the municipal level, where Canadian principles of freedom, human rights and democracy are so much in jeopardy, with few options for legislated scrutiny, intervention and public protection.

The Chair: Thank you very much. You have about two minutes left. Did you want to add anything, or we'll open up to questions?

Ms. Cowieson: Questions.

The Chair: We only have two minutes. We'll start with Mr. Murdoch.

Mr. Murdoch: You mentioned the Municipal Act. Would you be happy if the Municipal Act was tightened up to include some of Bill 123, rather than having a new act to regulate municipalities and other agencies?

Ms. Cowieson: We'd be very happy to have the Municipal Act tightened up to protect the public.

Mr. Murdoch: So you wouldn't object if this bill didn't happen but it happened through the other bills that regulate the agencies that we're talking about?

Ms. Cowieson: As long as it happens within our lifetime.

Mr. Murdoch: You're dealing with government; I don't know.

The Chair: Ms. Horwath, did you have a quick question?

Ms. Andrea Horwath (Hamilton East): Actually I don't. I really appreciate the presentation.

The Chair: Ms. Di Cocco?

Ms. Di Cocco: Thank you very much for the comments that you've made and the suggestions that you've provided to strengthen the bill. This is what this process is about. I want to thank you for that, and I'm sure we're going to see it in our lifetime.

The Chair: Thank you very much for your presentation today.

Ms. Cowieson: Thank you for the opportunity.

1430

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: I would now call the Association of Municipalities of Ontario.

You have 15 minutes. Please state your names for the record.

Mr. Roger Anderson: Thank you, Madam Chair. My name is Roger Anderson. I am chairman of the region of Durham and president of the Association of Municipalities of Ontario. To my right is my boss, Pat Vanini, the executive director of the Association of Municipalities of Ontario.

Ladies and gentlemen, as I said, I am president of the association of municipalities. We're here today to give you our comments on Bill 123. As usual, it's a pleasure at any time to have an opportunity to address a standing committee of the provincial government.

The Association of Municipalities of Ontario is, I believe, well known to all members of this committee and, as a matter of fact, to the House. AMO represents Ontario's municipal governments and advocates on behalf of those governments and the property taxpayers and citizens they represent.

AMO understands the need for transparency and accountability in decision-making and is therefore very proud to represent municipal governments, which are often characterized as the most accessible order of government and, one could argue, as a result, possibly the most transparent and accountable level of government. Given this, we are thankful for the opportunity to share our perspectives with you today.

AMO is requesting only one change to this bill: to delete the references to the municipal government. Why we are asking this is simple. This bill, if it proceeds, could very well obstruct the work that is underway under the Municipal Act, which is currently being revised. That work is part of a pre-consultative, analytical and comprehensive review process that has been going on for some time. It is a review process that is benefiting from legal expertise and practical operational considerations. It is a review that is benefiting from a principled approach followed by all parties.

The bill before this committee, for municipal government, has the potential to create a paralysis in decision-making. Greyness, operational interpretative challenges: These are elements that lead to even more legal challenges and red tape.

Municipal governments are supporters of accountability and openness but also recognize that there need to be reasonable expectations and limits. There are groups whose very livelihood depends on controversy. There are those who, if they don't like the outcome, will attack the process.

Councils are charged with making the best-informed policy decisions for their communities. In this province, there are some 445 municipal governments. If you assume, as a minimum, that each municipal council meets once a month and makes about 20 decisions per meeting, that means there are well over 100,000 decisions being made per year, and that's a very conservative number at best. Every decision is not necessarily a popular decision. Each of you in this room is aware and knows that you can't possibly please all the people all the time.

So that is why today we are making but this one request: to delete references to municipal governments

and to say that, yes, it does make great sense to let the discussions of municipal accountability and transparency be fully informed, where the entire picture of accountability for municipal government can be put before the Legislative Assembly and the public.

Let the Municipal Act consultative process proceed on its own separate track and not be hijacked through this bill. That is the action of this committee that we can support. Nothing more and nothing less could be acceptable.

You're probably all asking yourselves as well what the Municipal Act review has to do with accountability and transparency. Well, it has a lot to do with it. It outlines processes and procedures that act as safeguards for the public to ensure transparency. Notice provisions are being examined in detail. As elected officials, we recognize that if we do not provide our constituents with notice to provide their input, then our decisions may not be as informed as they should be. As elected colleagues, you know as well as I that if the public are not involved, this can haunt us forever, and it will certainly haunt you until the next election. We are seeking greater flexibility in providing notice to the public in forms that are more effective for all of us. While this bill deals with this area, again, we believe that it should be developed and determined within the review of the Municipal Act.

We are also discussing in great detail the need to give provisions for municipalities to appoint an integrity commissioner who would have adequate powers to undertake a full and complete investigation, if necessary.

The review is also addressing the opportunity for individual municipalities to implement lobbyist registries and codes of conduct for all of us—all of this to ensure that municipal governments remain the most responsible and accountable governments to the people they serve and in a manner that they, the people, believe makes sense.

Now I would ask you: If the Municipal Act review is addressing these and other issues around public process, and the review has been informed by legal experts, the private sector, special interest groups and municipal government experts, why not allow municipal governments to be guided by the appropriate piece of legislation, that being the Municipal Act?

I also want to speak about Bill 123's provision around open meetings. As fellow policy decision-makers, you know how important it is to be able to properly understand an issue before you discuss and debate that issue in public. Doing homework involves learning from others, including staff and colleagues.

I want to share a quote with you from a justice of the Ontario Court of Appeal in a dissenting opinion in the case of Southam Inc. v. Hamilton-Wentworth (Regional Municipality) Economic Development Committee:

"The present issue, however, concerns gatherings of commissioners when no business is transacted; when, rather, they confer together and with each other; and when they collaborate in doing what may be called their 'homework.'

"It is important that they do so freely and without restraint. Like all who have the responsibility of making important decisions, they need an opportunity to express, exchange and test ideas, to deliberate freely, off the record, and without the restraint of outside influence.

"Freedom of discussion and the exchange of ideas is essential to an understanding of a problem. It cannot be satisfactorily accomplished under a spotlight or before a microphone."

I want to emphasize that the justice's point here is that municipal councillors need the opportunity to do their homework and ask questions off the record and without the restraints of outside influence.

I would ask, if you had to make a decision on a critical issue like source water protection, property tax reform or, more importantly, social service delivery and had absolutely no education, had no training in these fields, wouldn't you want to be able to ask staff some basic questions to ensure your understanding of the issue? Would you want to know if your knowledge and understanding of the facts was similar to that of your fellow colleagues?

We believe that Bill 123 could very well cripple municipal councillors this way, and it concerns me to think what the consequences might be—possibly, important decisions being made without a thorough understanding of the issues. I would ask you: Does that serve the public's best interest? Does that meet the expectations and the responsibilities of an elected official? The last thing we can afford in order to make strong communities is a paralysis of the decision-making process because there will be debate on when a meeting is really a meeting.

In conclusion, I've already let you know our position: simply that we want municipalities removed from this legislation. We do not disagree with the need for transparency and accountability in the decision-making process under any circumstances. The Municipal Act review is the appropriate place for municipalities to be delegated their authority on how to do business. To pass Bill 123 with municipal governments cited in advance of the comprehensive review of the Municipal Act being complete would be putting the cart before the horse.

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Thank you very much for allowing us to make a presentation to you today. If you have time for any questions, we'll be happy to try and answer them.

The Chair: Thank you, Mr. Anderson. We do have about five minutes for questions and we'll start with Ms. Horwath.

Ms. Horwath: I was curious about your description of how a municipal representative might go about doing their homework.

I don't know if you're aware: I'm actually from the city of Hamilton. That was what I did before I was elected provincially. But I can tell you that when I was a municipal councillor, I did my homework and I know that most of my colleagues did their homework by meeting with staff and finding out what we didn't know prior to any particular item being put on an agenda. So I'm just not sure—I think I need you to describe for me

what you mean by doing their homework and why that needs to be done in a committee format as opposed to being done as an individual responsibility of the councillors or the aldermen so that they go into a committee meeting prepared to debate and discuss the issues before them.

Mr. Anderson: I think any councillor who walks into a meeting without doing their homework would be foolish, to say the least. I don't know how big the city of Hamilton's council is, but let's say it's a council of seven and four of them got together to discuss their views or their interpretation of some sort of committee report or some item that they were not familiar with. Under this legislation, you'd have to hold a public meeting to do that, and that would be a problem, because if you can't, as a group, talk amongst yourselves, it would be like saying that a provincial retreat, which you all have and most councils have, would have to be public. Where do you get your decisions and your direction if you are afraid to—and believe it or not, some people are afraid to ask a question on some issues because they really don't know what might happen if they do because they just aren't well enough aware of the situation.

You know, there isn't a councillor who doesn't ask a question out of sincerity and without the best intentions. I've only been in politics 20 years, and I've only seen it happen once or twice, but there are some pretty stupid questions that most people would think are absolutely common sense. But, you know, when you get your answer, that stupid question might have been the right thing to ask. But if you didn't ask it or you were afraid to ask it because of the situation you were in, you wouldn't have known, and it's unfortunate.

The Chair: Thank you for your answer. Just in the interests of everybody getting an opportunity here, we'll go next to Ms. Di Cocco.

Ms. Di Cocco: Thank you very much. Actually, Ms. Horwath certainly asked one of the questions I was going to ask, which is about doing homework. I sat on city council for a year and a half. We have eight councillors and I don't really relate to your explanation of this inability to do your homework if you don't sit down with a majority of councillors to discuss it. There are other ways that one does their homework that I don't think has anything to do—

Mr. Anderson: Let me clarify: I didn't say—

Ms. Di Cocco: If I could just ask—

Mr. Anderson: No, let me clarify, ma'am: I didn't say you had to sit down with a majority. I said, what happens if you were sitting down with the majority. I've been in restaurants where the majority of my council have walked in.

Ms. Di Cocco: I think there's a precedent in the United States that has an open meetings act in Michigan that discusses this. They have had these things happen and it's actually gone to court there. So there are precedents for it.

What this bill is intended to do is to raise the standard for transparency and openness. The question I have is, what ability is there for the general public when a council—we have two judicial inquiry reports that talked about the veil of secrecy and decisions made that impacted on the municipality for millions of dollars because of decisions made behind closed doors that were unnecessarily made behind closed doors. The point I'm trying to get at is, what mechanism is there for the general public or for anyone, any person, to be able to say, "We understand that this municipality or this public body went into camera unnecessarily"? What mechanism is there now to investigate, and what penalties are there?

The Chair: I'm going to ask you to answer that rather quickly, because we have one more question, and our time is rapidly disappearing.

Mr. Anderson: I saw the document she was holding up. It was a decision made by, if I'm not mistaken, staff that caused them some grief by politicians who met privately. But I've got to say to you, Madam MPP, in all fairness, I don't know of any council that makes decisions behind closed doors unless they're related to (a) land acquisition or (b) [*failure of sound system*] issues. If you have a particular instance where a municipality is doing something wrong regularly, then you should deal with that municipality. But I'll tell you, I don't know them. If you'd like to tell me who they are, I'll be happy to go and visit them for you, but—

The Chair: Perhaps you can take it outside later.

Mr. Anderson: No, it's a bit of a misconception, Ms. Churley, and I would suggest that—

The Chair: I understand, and I wish there were more time. I do want to give Mr. Murdoch the opportunity to ask a quick question as well.

Mr. Murdoch: Just a quick one. There are some exceptions, and I wondered, if this does go ahead—you should work with those to make sure that some of your concerns are addressed under the exceptions, that you can go into camera. We have to strengthen that to make sure it's OK if this goes ahead. The other one I just wanted to mention, and no surprise, is that the media is all for this bill, but I thought if we could add them as one of the agencies that we look at, then maybe that would help.

Mr. Anderson: AMO does have a process of training councillors that we do annually, and if the media wants to have public meetings, that would be fine. I can't wait for them to sit in on a cabinet meeting.

The Chair: Thank you very much for coming before us today and giving your perspective. We appreciate it.

ONTARIO PRESS COUNCIL

The Chair: The next people I will call forward are the Ontario Press Council—one person, Mr. Sufrin. Welcome to the committee. If you could just state your name for the record, and you have 15 minutes.

Mr. Mel Sufrin: Thank you for inviting the Ontario Press Council. My name is Mel Sufrin. I'm the executive secretary. I was here four years ago on much the same assignment. I'd like to think that it won't be necessary to come back again. However, that remains to be seen.

I have a very brief statement I'd like to make, and rather historical. The Ontario Press Council began campaigning in the 1970s—we'd like to emphasize the year—for clear and reasonable rules that would determine whether a meeting of a municipal body could be closed. It was supported by a collection of horror stories received from member newspapers. We have 230 newspapers now, by the way. For example, it happened from time to time that a municipal council would deal with the whole agenda at a closed session, then open the meeting to rubber-stamp decisions.

The press council, the Canadian Newspaper Association, and the Ontario Community Newspapers Association ultimately were satisfied with legislation that listed eight subjects for which meetings or parts of meetings of municipal bodies may be closed. They were, as I'm sure you know, security of property, personnel matters involving an identifiable individual, including municipal or local board employees, acquisition of land, labour relations, litigation, solicitor-client privilege, and subjects relating to information sought under the Municipal Freedom of Information and Protection of Privacy Act.

They were contained in the draft of updating legislation in 1999, but it was further proposed that the same section would give each municipality the authority to select one other subject of its own choosing for which it could close the meeting. The press council and community newspapers association expressed concern that with this provision, the rules for closing meetings could be different from one municipality to another, and that councils could well decide to establish unreasonable grounds for excluding the public and the press. As I recall, the rule was withdrawn.

While existing rules are a great improvement, it appears that there may be flaws.

Three years ago, the mayor of Hamilton held what he described as an informal gathering attended by himself and nine of the 15 members of city council to consider concerns about the council's working relationship with senior management.

1450

The Hamilton Spectator complained to the press council. I might add that, over the years, council has dealt with approximately half a dozen complaints from newspapers against the public or members of the public. It's a rare thing, but it does happen. The newspaper did not take issue with the idea that the meeting should be held in camera, since discussion was to focus on an identifiable employee, but its concern was that there was never a formal notice of meeting, as required under the Municipal Act. The mayor challenged the Spectator's description of the meeting as secret, saying there was no attempt to conceal the gathering from anyone who might have seen council members arriving and leaving. The press council upheld the complaint, saying the public and press should never have to learn by chance or a leak that a meeting of a municipal council has been convened.

The eight exceptions in the open-meeting rules contained in section 5 of Bill 123 are a refinement of existing regulations and are generally acceptable to the press council. What are seen as likely to discourage a temptation to flout the rules are the proposals to permit members of the public to complain in writing to the Information and Privacy Commissioner and to provide for fines of as much as $2,500 for contravention of the rules.

If the press council has a reservation, it involves the authority of the Lieutenant Governor in Council to designate those public bodies that are to be covered by the rules. Ideally, it would like to see all bodies that spend public money under that umbrella. Thank you very much.

The Chair: Thank you very much for your presentation. We have lots of time for questions, and we start with the government side this time.

Ms. Di Cocco: Thank you again for coming before this committee on this bill.

Mr. Murdoch, I can imagine what your question's going to be as we move around the table.

I guess the important aspect for me is what I call the three pillars of democracy. We've got them in this, as I think in any society. We have government, the people and the media that provide information. Freedom of that and accessibility of information is probably, in my humble opinion, what protects the integrity of our democracy. That's what the intent of this bill is.

You mentioned that there is one area you see that would strengthen the bill. If you could just repeat that, because I didn't take note of it.

Mr. Sufrin: It's very simply, cast as wide a net as is reasonable. I've read some of the comments of previous presenters who suggested that their rules and regulations are quite adequate to protect the public. That may be true, and I will accept that some organizations probably do the job pretty well. I'm afraid, though, that if you don't cover as many as possible of the organizations that spend public money, you leave loopholes. That's the danger I see.

Ms. Di Cocco: Just one more quick comment, if I may, Chair.

Just to set the record straight, I believe the previous presenter had mentioned that the inquiry I was looking at said that it was the staff who had made the mistake. I just want to clarify that in the judicial inquiry of 1998 into the Clearwater land deals, it definitely talks about—and I have it in front of me. It says, "I am profoundly disturbed by the cloak of secrecy the board used to hide this transaction...." The other one was that "there is much to be condemned in the secrecy with which the council plotted and carried out their strategies...." That comes from Justice Killeen in his report. So I just want to clarify that, because it was brought up previously that the report dealt mainly with some issues with the staff.

The Chair: Thank you very much, Ms. Di Cocco. I'll now move to Mr. Murdoch.

Mr. Murdoch: Welcome to our gathering here. This bill's mainly to scrutinize people on public bodies who spend public money, and a lot has been talked about the

politicians and things like that, and that the media is part of this, which is fine.

I just will ask you, who scrutinizes the media?

Mr. Sufrin: It just so happens that the press council scrutinizes the media of Ontario, the 230 newspapers. It's required to respond to any complaint from readers that is in writing, and if the reader is not satisfied with the complaint, the council then decides whether to adjudicate that complaint. If it holds an adjudication—and it doesn't adjudicate every complaint that it deals with—it then issues a ruling either upholding or dismissing the complaint with its reasons, and the newspaper in question is obligated by its membership in the council to publish a fair account of that ruling, including the text of the adjudication portion itself.

We cannot fine newspapers. We can't penalize them in any other particular way, but it's kind of embarrassing to have a complaint against you upheld. We like to think that they will probably avoid doing the same sort of thing in the future.

Mr. Murdoch: Something that might be good, then, is to publicize that a little more, because I don't think the public understands that or know that they have that avenue to complain or have their concerns addressed. If it's out there, with all the newspapers you're involved with, it might be something that somewhere along the line somebody, in one of their editorials, could certainly explain to the public.

We've heard from different newspapers here today and different people in the press that this is such a great bill, that they'll get a chance to get in there and maybe print some more whatever. I don't know whether you've had many cases to deal with, but I just think that if that's the case, if the public knew more about that, it might make the public more at ease. This is what this bill's trying to do. I'd like to see the media included in it, but I know we can't, because you're not part of government. If there was a way—

The Chair: Would you wrap up, Mr. Murdoch, so we can get an answer and then move on?

Mr. Murdoch: OK. Then I'll challenge you to maybe make this process more public.

Mr. Sufrin: We did set up a Web site a few years ago, and that seems to be generating a certain amount of activity. Further to that, newspapers are required by their membership to publish on regular occasions the name and address of the press council and a very brief idea of what it does. I can't say that we're as well-known as we ought to be. I'm sure not going to go out—I'm kind of old for travelling around the province one more time.

Mr. Murdoch: OK.

The Chair: And I'm sure Mr. Murdoch is not insinuating that he's ever been misquoted.

Mr. Murdoch: Oh no.

The Chair: Oh no, or misrepresented in the press.

Mr. Murdoch: We don't have time to get into all that.

The Chair: I would now move on to Ms. Horwath.

Ms. Horwath: I appreciate your presentation. Two quick questions. You indicated that you had heard some of the previous presentations. You were in the room when the gentlemen from the Association of Municipalities of Ontario made his presentation. I'm wondering if you would agree with him that there are cases where perhaps a municipality, for some reason or other, should be able to have meetings without media involved, other than the standard ones around personnel and land acquisition.

Mr. Sufrin: If it's a meeting, I think it should be open. If you want to talk to another councillor about subjects that are going to be dealt with, that's another story. But a meeting is a meeting and you are supposed to publish an agenda and make a proper announcement of the meeting. I don't see why you can't do that.

Frankly, I don't see why you can't come before a meeting and ask a dumb question. It's the only way you're going to learn anything. I ask a lot of them, and it's very helpful in the long run.

Ms. Horwath: Usually, there are about 10 other people in the room who had that same question but not the courage to ask it.

I have another question, very briefly. In my own community there have been questions raised about the appropriateness of certain articles being placed in certain places within *[failure of sound system*], putting opinion pieces in news pages, so that people might not actually realize it's an opinion piece as opposed to a news piece. So in the vein of accountability that my esteemed colleague was asking you about, do you have any opinion on that?

1500

Mr. Sufrin: It is a bit of a problem for some people, I agree. At one time, the so-called op-ed page, opposite the editorial page, was reserved for that kind of comment. It isn't done that way any more. What a lot of newspapers have done, and I think it's a good idea, is putting a picture with the writer of a column. When you place that picture there, I can't believe anybody would not know that this is somebody expressing opinions as well as writing information.

The other thing is to put in a comment somewhere in the body of the story in large letters to say that that's what this is. I agree that it should be fairly clear to any reader, but there's no way you're going to be able to put all your comment on one page as you used to do.

The Chair: Thank you very much for your presentation.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: I'd now like to call on representatives from the Canadian Civil Liberties Association. Go ahead.

Ms. Noa Mendelsohn Aviv: Thank you. Good afternoon, Madam Chair and honourable members of the committee. I was very much hoping to capture your full attention today. I've been planning this for about eight and a half months, so I hope it works. I'm happy to be here to speak with you this afternoon.

The bill under discussion seems rather different—

The Chair: Could I interrupt for one moment? Because the mike wasn't on, could you please state your name for the record?

Ms. Mendelsohn Aviv: Certainly. Noa Mendelsohn Aviv, director of the freedom of expression project for the Canadian Civil Liberties Association. I'm here with my colleague, Jeremy Patrick, policy adviser for the CCLA.

The Chair: Thank you. Go ahead.

Ms. Mendelsohn Aviv: As I started to say, the bill under discussion seems rather different than many legislative proposals which I imagine are seen by this committee. After all, the content of it—openness and transparency in public bodies—is the very stuff and substance of this House and of this committee. It's the reason we're here today in an open forum and it's the reason that the various organizations and individuals—and I see there have been many of them who wish to be heard on this matter, including ourselves—are being given this opportunity to make our contribution. It might be said, then, that this bill is unusual in just how obvious it is in the principles that it stands for and just how uncontroversial it is in a society that values democracy. I'll come back to this point in just a moment.

Firstly, I'd like to share with the committee a number of experiences from our own organization. The Canadian Civil Liberties Association is a not-for-profit organization that represents thousands of members across Canada. We have been around for over 40 years and, in that time, have spoken out on hundreds of issues dealing with our fundamental rights and freedoms. Needless to say, in that time we have amassed a great deal of experience and some not insignificant knowledge in these subject areas. Nevertheless, sadly, there have been numerous occasions on which we have found ourselves unable to address various public bodies on matters of public significance. The reasons for this may have been entirely inadvertent and accidental; nonetheless, any contribution we may have wished to make went unheard.

Some of the reasons for this have included: The agenda was published too late to learn of its content or too late for us to be able to make ourselves available to address it; items were added to the agenda at the last moment; for reasons unknown, our request to address the body was not granted; and my favourite of all, according to the body's procedural rules, the deadline for requests to be heard was earlier than the date of publication of the agenda, so in the absence of a time travel machine, one could not know the topic on which one was supposed to request to speak.

If this is the experience of an organization such as ours, we can only imagine how difficult it must be for organizations that are not staffed by professionals or, worse still, for individuals who nonetheless have an important matter they wish to discuss and perhaps a brilliant contribution which they wish to make. Therefore, we have a very clear organizational interest in seeing this bill enacted as law, as would any individual or any organization that has ever been affected by a decision of a public body. It's hard to think who wouldn't be.

There is an even more obvious public interest here, and that is to enhance the transparency and accountability of public bodies in this province. To quote from some of the courts in this country, one has said:

"It is fundamental to a healthy democracy that its process be easily scrutinized by the public that it is designed to serve. The importance of transparency and accountability in the democratic process cannot be overemphasized."

And another compared public administration to the justice system and said:

"Public trust and fairness in public administration are values transcending all others. These values complement each other. It is difficult for one to exist without the other.... Transparency of process is as integral to the building and maintaining of trust in matters of public administration as it is to the justice system itself."

Furthermore, public access to legislative deliberations is a cornerstone of democracy. After all, it is in the public interest that people vote on rational grounds, I would think. It would therefore be evident that in order to do so, people need to know what it is that their representatives are doing. That can only happen when bodies function in a public and open way.

For openness to have real meaning, it is equally clear that people would need to know in advance about the various actions to be taken by their representatives and public bodies, including the time, the place and, most of all, the content of these meetings. Obviously, people need the opportunity to address the decision-makers on those bodies, much in the same way as we said that we have been given the opportunity to address this committee here today.

All of this furthers the kind of participatory democracy that a country like ours thrives on. It is also an extension of the principle of natural justice, one of those principles being that people who feel themselves affected by an issue should have the right to be heard before decisions are made. This is helpful, not just for the individuals or organizations concerned; it is helpful, too, for the decision-makers, who are therefore able to connect to the community and to the individuals they represent, who are able to learn of the real interests at issue. Bill 123, thanks to Ms. Di Cocco, provides a comprehensive framework toward achieving these goals, and it is for these readings that the CCLA strongly endorses it.

While the bill does advance many of these important objectives, we would like to offer some helpful suggestions which we believe could make the bill even better. In the interest of brevity and in order to hopefully allow some time for discussion, I will try to limit my suggestions to a few key points.

Firstly, the notice period for meetings and the publication of agendas should be stated more definitively. Looking at other openness laws, this notice period could be set, presumptively, at five business days, subject to exceptional or exigent circumstances and with a view to

the different nature of the various bodies. The details of all of this could be set out in the statute or they could be set out in regulation.

In keeping with the idea of openness for government as well, and in order to best benefit from public wisdom, before such regulations are promulgated, the public could be served with advance notice on them. In this way, even the public bodies would have an opportunity to protect themselves. They could respond to the proposed regulations and have an influence over their final form.

Secondly, and very importantly, the bill should require that bodies reasonably allow for written and oral submissions, and they should publicize the procedure for doing so. Once again, the details of these requirements could be set out in the statute or in regulations, and these regulations could be put out in draft form for the public to address before they are promulgated as regulations.

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As part of the above procedures for public submissions, specifically there should be a requirement that the deadline for requests to make submissions should occur after publication of the agenda. Otherwise, as discussed above, how would individuals and groups know when matters of importance are going to be addressed?

Finally, the committee is urged to take a close look at section 5 of the bill dealing with open meetings and closed meetings. There should be an explicit statement that, in principle, meetings should be open unless the listed harms would result. These should be stated more clearly than the current list of exceptions as they appear in the bill, and they should be stated narrowly in order to articulate which harms are at issue.

For example, with regard to financial matters, many of which are very much of interest to the public, the exception should be simply for matters that would harm the legitimate financial interests of the body. Other financial matters need not be put behind closed doors.

Similarly, litigation concerning the body may actually be the subject of heated public debate. It should not be excluded in its entirety. The exception should be limited to tactics as well as opinions and instructions from solicitors, the disclosure of which would be likely to impair the ability of the body to protect itself. I'm not trying to draft the bill here, just putting forward some suggestions. I'm sure that the committee members will do a better job than I have in drafting them.

Even with regard to negotiations, of course, it is understandable that some aspects of negotiations do need to be kept secret, but not all do, and certainly not after the fact. The exception could therefore state that there need not be disclosures that would undermine the bargaining positions of the body.

As for personnel issues, the exception should articulate that it is permissible to close a meeting if disclosures would invade an employee's privacy in ways that do not pertain to his or her role on behalf of the body. It should also be clearly stated that the meeting should be open if the individual in question wishes for it to be open. A similar provision should also be stated in narrow terms regarding personal issues.

Finally, as to the exceptions around civil or criminal proceedings and the exception around safety of persons, while these do articulate a harm, they need to be stated in clearer, more definitive terms.

Given this comprehensive list, it does not seem necessary to have a general basket clause of the type that now appears in clause 5(2)(a) of the bill, which allows a general exception for other matters to be heard in camera. There is no such general clause, as you may well know, in the Municipal Act. There is no such general clause in the procedures of many public bodies that have their own rules. Therefore, it seems that this broadly stated exception is not necessary and would only raise concerns that many important matters might disappear behind closed doors. Should the committee come up with other matters that might need to be shielded from the public eye, it would be far better to articulate what those other matters are and then allow the public to respond to them specifically.

These suggestions aside, I would like to reiterate and emphasize my original point, and that is that Bill 123, if passed, would be an important step forward by this government and by this legislative House in promoting openness and transparency in public bodies, and the CCLA strongly endorses it.

As to the suggestion we have heard from some corners that the bill causes administrative burden, this is most unconvincing. After all, notice, agenda and minutes are published by most bodies in any event. Public submissions provide an opportunity for helpful suggestions to be made and for affected members of the public to be heard. If they do cost a small price, then this is the price but also the benefit of a working democracy. If we make the comparison to private bodies, even tiny, little charitable organizations, even corporations of one shareholder and one director—even these face countless administrative and bureaucratic requirements around publication of notice, agenda and minutes, reporting, holding of meetings and so forth. Even if they were not required to do so, most bodies would continue to do so because it is nothing more than good corporate practice. So it is hard to imagine bodies who hold the public trust being held to a lesser standard when the openness and transparency of public bodies is a key element of the democratic process.

To conclude, the Canadian Civil Liberties Association stands behind Bill 123 and urges the members of the committee to see it brought to light as law in Ontario. This would certainly be a credit to the current Legislature.

With this, we do wish to offer the committee a few suggestions for improvement of the bill and enhancement of its spirit: First, in regard to a notice and agenda publication period, we recommend five business days; second, by providing for the public to be able to make oral and written submissions; and finally, by acknowledging that meetings should be open unless there is an

articulable harm, such as those specific harms discussed above.

I thank you all for your time and for allowing us to participate in this excellent process.

The Chair: Thank you very much for your presentation. We've got a couple of minutes for questions.

Ms. Di Cocco: Thank you for a very thorough submission and thank you for the suggestions that you provided to enhance—and that's what this process is about, is to get ideas.

In your opening remarks, you stated that it seems so usual. I mean, this should be the practice. That's exactly how I felt when I embarked on a journey in 1991 to try to get some information. Basically, I feel exactly the same way. I think you articulated my shock when I found this, in fact, was not the case. Unfortunately, we seem to have evolved a culture in some of the—and I call it also a bit of institutional arrogance, that the institution understands better how to arrive at a decision sometimes.

I thank you for the submission. I wished it was uncontroversial. It should be uncontroversial, but if you were here for some of the submissions earlier, you could see that there is very much a push-back for the status quo in some cases.

I think what this bill is also doing is changing a culture. It is about increasing the transparency, not, "Well, you know, it's more convenient. Let's just do things in the back rooms." That's what the attempt is. But I do thank you for that, and I will certainly note your suggestions as we move forward with amendments and deliberate that. So thank you very much.

The Chair: Our time is up, but I'm going to allow Ms. Van Bommel a quick question.

Mrs. Van Bommel: Just a quick comment. I wanted to say thank you very much for your enthusiasm about democracy. You have so many different ideas and things that we should be thinking about. Could we have a copy of your presentation, please?

Ms. Mendelsohn Aviv: If I can be permitted, I should be able to get something to the committee by tomorrow.

Mrs. Van Bommel: Thank you.

The Chair: Thank you very much for your presentation.

We're going to move on. I understand that the next presenters, the Ontario Public School Boards' Association, cancelled this afternoon, but I wanted to check and make sure. Are they here? OK.

REGIONAL MUNICIPALITY OF PEEL

The Chair: We'll move on to the regional municipality of Peel. Thank you very much for coming this afternoon. After you're settled, if you can state your name for the record, you have 15 minutes.

Mr. Brian Loewen: My name is Brian Loewen. I'm a senior legal counsel at the region of Peel. I'm here actually on behalf of Kent Gillespie, who's our regional solicitor. Unfortunately, he was detained on important council matters and wasn't able to attend. In addition, Fred Biro, who is the chair of our Peel Police Services Board, was also unable to attend, so I'm here in both their steads.

I want to thank the Chair and the committee for the opportunity to make presentations on this important matter. I don't want you to take the inability of Mr. Gillespie or Mr. Biro to be able to attend as any indication of the significance with which we view these matters, because they are obviously very important to us.

I want to stress, and echo, frankly, some of the points that were made by the previous submitters. There's no question that this matter is almost a motherhood issue. There's no question that transparency and openness are something that are to be desired and sought for. Indeed, I think the regional municipality of Peel, among other municipalities, has furthered that and has done its utmost to make sure that, whenever possible, the meetings are held in the open. To my knowledge, there have been no significant complaints with regard to the way that our particular municipality at least has been responsive.

1520

Having said that it's a motherhood issue that everyone can support and get behind, particularly when you're talking about public bodies dealing with public money, there is a very real concern here that the devil is in the details. There are some very difficult changes in the view of the region of Peel that will significantly affect the ability of the municipality to deal with matters in an appropriate fashion.

I've provided you with a very detailed brief that outlines our position and sets out a number of issues that we see and the difficulties of the details of this bill. Obviously, with 15 minutes, I don't have time to walk you through each one, so I'm going to try and highlight a couple of them that can drive home our concerns with some of the particular details.

I'm going to focus on the details, but I don't want that to change our underlying position. We, the region of Peel, support the position of AMO and other municipalities who have said—and we support it—that it is most appropriate for these matters to be dealt with by municipalities and their local boards, pursuant to the Municipal Act. That is the appropriate forum. Directions, information, obligations and restrictions should be in one act, not in multiple acts. That would be our primary and overriding goal.

Having said that, I now want to turn to some of the details, if indeed you do pursue this. One of our main concerns, frankly, is the slightly different wording. I understand that there are exceptions in this act—section 5—that outline in various detail technically very similar provisions to what's already included within the Municipal Act. As a general rule, most of them are there. The problem is that the wording is slightly different, and it is a simple matter of legislative interpretation where, if things change, it must have a different intent. So the obvious result is going to be that the information commission is going to look at these and go, "Hmm. We no longer have something that we used to have. It must

be more narrow. So there must now be less of an opportunity for the municipality to discuss these matters in camera." Obviously, that was the intent.

Having said that, some of the matters are, frankly, objectionable, and I'm just going to go through some of them that particularly affect me as a solicitor. There is the change in the litigation exception. The provisions of Bill 123 do not specifically include potential litigation. That was included in the Municipal Act, appropriately so, so that the municipality can receive and obtain instructions and deliberate as to whether to launch an action, for instance. A similar provision is not in Bill 123. So it would lead to the obvious interpretation that if you're talking about something that hasn't actually been initiated, it doesn't count. You have to have it in public. That's a problem.

The provisions of the Municipal Act specifically refer to administrative tribunals. Many important matters are dealt with by administrative tribunals; the Ontario Municipal Board to name just one. It would be inappropriate for those important administrative matters not to be dealt with in the same way as any other litigation matter. There are important solicitor-client privileges that should and must apply.

With regard to the solicitor-client privilege, there is also a slight change. It's a minor change, potentially, and may not matter for most things, but the wording has changed from "advice" to "opinions." The possibility exists that a different wording suggests a different interpretation, and opinions from a solicitor would be more narrowly interpreted than advice from a solicitor. Therefore, the solicitor-client privilege that would normally attach to matters addressed by any other corporation, any other body, would be effectively released, waived—or an implied waiver would be granted—and therefore we could no longer, at any point in the future, try to attach solicitor-client privilege to those communications. That is of significant concern to the municipalities.

I think the bottom line, though—and in particular subsection 5(1), which deals with the general exception—is that every single decision would be subject to second-guessing by the commissioner, or the subject of a complaint, which would then result in second-guessing by the commissioner. That raises a significant concern, particularly in light of the very wide powers that are granted to the commissioner. The ability to overturn the decision of a council, an elected body, and give directions to that council causes great concern. I would note that the Ombudsman, who oversees the Ontario government's actions, does not have that power. It is appropriate that the Ombudsman is able to review and make a report and, based upon that report and the public embarrassment, if you will, the Legislature would normally take the appropriate action. But to give the power to an unelected official to direct and order and overturn decisions of an elected body is, frankly, not appropriate.

The final point of one of the differences—and I note that there are additional ones—is the change in wording from "personal" to "personnel." One would think that it's a minor change and that most matters won't be affected by that, but given the general theme and thrust toward protection of privacy and personal information, a complaint could arise as a result of discussions being held in public. The complaint could come from either a complainant who said, "You shouldn't have had it in camera; you should have had it in public," or the complaint could come from an individual, when council does hold an open discussion, whose personal information was the subject matter of a discussion in open council. Either way, both are going to go to the commissioner, and it's not beyond the irony of the matter that the council is aware of.

To the issue of contingent liability: There is a very significant concern regarding the contingent liability that could arise from a decision of the commissioner to overturn a decision of council, to void that decision. Needless to say, there are many matters that are subject to private deliberations, appropriately so. Just as one, I would note that the provisions of the Municipal Act allow for the acquisition and disposition of property, and the current provisions of Bill 123 do not. So the deliberations regarding those that would appropriately be for council to hold in camera no longer could be held in camera. If, for whatever reason, the council felt it was appropriate under (1) to do so, now we would be subject to a complaint and potential overturning by a commissioner of the initial decision. Needless to say, many subsequent decisions, actions, efforts and negotiations etc. are all pursuant to that initial decision, and the liability that would arise for an overturning of the initial decision could be extremely significant for municipalities, large and small.

I recognize that my time is likely running out. I'm not sure exactly how much I have left and I'd like to have an opportunity to have questions.

The Chair: You still have about five minutes.

Mr. Loewen: Why don't we open it to questions? I'd be pleased to take any questions that you may have.

Ms. Di Cocco: I want to thank you for your submission today. It's always interesting to hear comments by municipal bodies as well.

I just have a question in regard to the context of the spirit of this bill and strengthening the openness with which decisions are made. I referenced this before. I certainly learned a lot from a judicial inquiry that was held in the city of Sarnia. I have to say that if there was a capacity to overturn that decision, the taxpayers would have saved over $6 million, plus we're still paying for decisions that were made under a cloak of secrecy, and inappropriately so.

The overturning of a decision or the penalty that's imposed is only if it is found that that body did arrive at the decision inappropriately in camera, and that is what we don't have. It would have to be an inappropriate deliberation; in other words, something that should have been discussed in the open is now discussed in camera.

1530

Mr. Loewen: I understand that, but just as I indicated in my oral statement, and as I made more clear in the written submissions, the change in the legislation that you're proposing in Bill 123 does not include the acquisition of land. It is distinctly possible that a council may believe that under the general exception, those discussions regarding the deliberations should be held in camera. Given that the current Municipal Act certainly allows for those discussions to be held in camera, with the final decision, of course, being made public and open, the challenge to that decision to have the deliberations in camera could challenge the initial decision itself, period.

Ms. Di Cocco: I have a question as well, and I understand what you're saying and I appreciate that. This bill came forward about four years ago, when this discussion began as to more transparency. Has Peel, or any other municipality that you know of, in regard to strengthening and enhancing openness and transparency in decision-making, made any proposal to the Municipal Act or to the Ministry of Municipal Affairs to strengthen, to tighten up and to put some teeth into open meetings and a means of investigation and penalty? Has anybody within the municipal sector—I know there are lots of complaints about how the devil's always in the detail. If there is an intent by everybody to strengthen and raise the bar, if you want, on transparency, has any of that type of proposal been advocated by any of the municipalities themselves that you know of?

Mr. Loewen: I must admit that I have only recently come to the region of Peel; I've been here for six weeks. So in those six weeks, no, it has not come to my attention.

Ms. Di Cocco: Well, I guess it was a bit of a rhetorical question, and the reason I ask it—

Mr. Loewen: I understand. In response to that, I don't think anybody is going to object to the general concept that openness should occur, and I believe that most municipalities that I've been familiar with in my long and illustrious career will follow that. Certainly, the region of Peel and the clerk at the region of Peel are clear to councillors who want to hold discussions in camera: "Sorry; that can't be done." As you're undoubtedly aware, the Municipal Act includes the obligation to have a procedural bylaw. That is available and open and well aware to others regarding a notice, agendas, regarding all the rest.

Ms. Di Cocco: I guess my rhetorical—

The Chair: If you could wrap up very quickly, I'll give you another minute.

Ms. Di Cocco: The rhetorical question comes from the fact that I know that there has been some lobbying to actually enhance the capacity to go in camera.

Mr. Loewen: I am aware of those. With regard to the strategic discussions, the general group, I'm aware of those.

The Chair: Thank you, Mr. Loewen, for wearing three hats today. Thank you very much for your presentation

INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

The Chair: I understand that Susan Smith and the University of Guelph have cancelled, so I will now call upon the Institute of Chartered Accountants of Ontario to come forward. You know the ropes here. Make yourselves comfortable, and before you speak, introduce yourselves for the record, please. You have 15 minutes.

Mr. Tom Warner: Thank you. I'm Tom Warner. I am the vice-president and registrar with the institute, and accompanying me today is Elizabeth Cowie, our director of legal and regulatory affairs.

On behalf of the Institute of Chartered Accountants of Ontario's 31,000 CAs and 3,500 CA students, I thank the committee for the opportunity to make this submission on Bill 123. Since 1879, the institute has protected the public interest through the CA profession's high standards of qualification and standards of practice, and the enforcement of its rules of professional conduct. Fulfilling these functions, the institute is funded completely by its membership and neither accesses nor disburses public funds.

We recognize that Bill 123 currently states that the provisions would apply only to certain specified public and regulatory bodies. However, the bill, as presently worded, provides that the list may be expanded by regulation to include other professional regulatory bodies such as the institute. We believe, therefore, that we have a direct interest in the subject matter of the bill.

The institute endorses the belief that a body dealing with public matters should do so transparently and should be accountable to the public it serves for its actions and decisions. We believe that our regulatory structures and processes meet the requirements of transparency and public accountability. The institute is governed by a council elected from among its members and four public representatives appointed by the government. In addition, public representatives [*failure of sound system*] and on the discipline and appeal committees. In addition, under the new public accounting legislation, the Public Accounting Act, 2004, the institute will be overseen by a new public accountants' council comprised of a majority of public representatives appointed by the government, including the chair and vice-chair. It will have oversight responsibility to ensure accountability and transparency on the part of the institute in respect of the standards for public accounting and the processes and requirements for regulating licensees.

The institute carries out its disciplinary functions through hearings that are conducted within the public purview, pursuant to the Statutory Powers Procedure Act and the provisions of the Chartered Accountants Act. The institute is also governed in its business functions by the Corporations Act. Under that act, we are answerable to our membership for our business, and accessibility to our meetings and minutes is addressed under that act. There is no public mandate invoked by institute business functions.

Overall, the principles and purpose of Bill 123 are laudable; however, the bill, as currently drafted, is overly broad in respect of extending its application to self-regulatory professional bodies such as the institute and, in our view, would impede our ability to carry out our statutory responsibility to regulate the CA profession in the public interest.

We have set out in our written submission a number of specific concerns that we have about Bill 123, and we have proposed recommendations for removing or addressing those concerns. I will not deal with these in this presentation this afternoon, but I hope that the committee will see that they are reasonable and appropriate in respect to professional, self-regulatory bodies.

The principal recommendation is that Bill 123 be amended to exclude self-regulating professional organizations from its ambit, and we would welcome any change that would provide for that exclusion. Thank you.

The Chair: Thank you. Does that complete your presentation?

Mr. Warner: That completes my presentation.

The Chair: I'm sure that Ms. Di Cocco is dying to clarify that very point, so go ahead.

Ms. Di Cocco: One of the aspects to the bill when it comes to the schedule at the back—it happened inadvertently, but it should not have included—there will be amendments that do remove all regulatory and advisory bodies. The intent was that it is the decision-making level. And not only that, the other part of regulatory bodies: They're not really paid for by taxpayers' dollars; they're paid for by the profession that pays into the regulatory body. You can rest assured that regulatory bodies and advisory bodies will not be included in the bill.

1540

I could have saved you some time, I guess, but I do have to say that sometimes, in the attempt to get a bill down, the member provides the idea or the principles and then it is legislative counsel—they do a great job, by the way; I'm not suggesting they don't. Sometimes there's some detail in there with the schedules that just was not—it actually went in inadvertently from an old bill that was written. I do apologize for the inconvenience, but I was glad to hear—and we learn more actually by listening to the functions of the regulatory bodies etc. I just want to assure you that it certainly was not the intent that it be in the bill.

Mr. Warner: We certainly welcome that and look forward to seeing that amendment. If there's any information or assistance we could offer in terms of achieving that, we'd be more than happy to assist.

The Chair: Mr. Murdoch has a question, but I must say, isn't it nice to win one every now and then?

Mr. Murdoch: I don't really have a question. I was just getting excited there for a moment. If they were included, then we could have included the media. If we were going to include you guys, we could include the media. So I thought maybe we're getting somewhere there.

The Chair: Thank you very much for your presentation.

CITY OF TORONTO

The Chair: We're a little ahead of schedule, but I will call on the city of Toronto to see if representatives—yes, indeed.

Good afternoon. Please state your name for the record; you have 15 minutes.

Ms. Wendy Walberg: Good afternoon, and thank you for the opportunity to speak to you this afternoon. My name is Wendy Walberg and I'm a solicitor with the city of Toronto's legal services.

I'm here on behalf of the city of Toronto to explain to you that the subject matter of Bill 123 is best addressed in other legislation: the proposed new City of Toronto Act and also the Municipal Act.

One year ago, Premier McGuinty announced that the province of Ontario and the city of Toronto would undertake a joint review of the City of Toronto Act with the goal of making Toronto more fiscally sustainable, autonomous and accountable, giving Toronto the tools it needs to thrive in the global economy, and reshaping the relationship between Toronto and Ontario. In announcing the City of Toronto Act review, the Premier referred to developing a mature new partnership with municipalities.

Sorry, I'm just going to try to move this. I'm not tall enough.

The Chair: Just for your reference, you don't have to lean right into the mike. It helps to move a little back from it.

Ms. Walberg: This City of Toronto Act review has been progressing since that date, and the Premier has committed to introducing a bill for a modernized City of Toronto Act before the end of this year. The terms of reference for the review outline the scope of the project in list form. That list includes the following topics: "democratic control, public participation and council accountability"; and "municipal government and procedures." There is direct overlap between these two topics and the subject matter of Bill 123.

Bill 123, if enacted, would govern the meetings of municipal councils and their boards. It would require that public notice of meetings be given, that meetings be open to the public, that the public be excluded only if specified criteria were met, that minutes be taken and that minutes be published. It would establish an enforcement procedure for violations of the bill, empowering the Information and Privacy Commissioner to enforce it. These are all matters that are best addressed in other legislation.

The fact that such matters as notice and open meetings are within the scope of the City of Toronto Act review is reiterated in the joint Ontario–city of Toronto task force staff progress report released in May of this year. That document clearly identifies democratic control and council accountability as the subject matter of ongoing discussion.

In closing, my message should not be misunderstood. Toronto supports in principle the openness of meetings and access to the public records of those meetings. Toronto does want to work with the province to address these matters and is currently doing so. The message that I have been asked to bring to you you today is that Bill 123 is not the place to deal with these matters.

The city of Toronto council, its committees, agencies, boards and commissions respectfully submit that the place to deal with these matters is the City of Toronto Act review. As Toronto is currently governed by the Municipal Act, I will add that the Municipal Act review is also ongoing and is the other appropriate place for these matters to be addressed in relation to municipalities.

The Chair: Thank you very much for your presentation.

We have plenty of time for questions. Mr. Murdoch.

Mr. Murdoch: I don't really have a lot of questions, just thank you. This seems to be a theme we're hearing, doesn't it? I don't think anybody's against the bill and its principles; it's just where it ends up in the big picture. You've mentioned the Municipal Act and the Toronto act. I think nearly every other municipality has mentioned that, and even some people who are upset with their municipality said, "As long as some of our concerns get addressed, we don't care what act it's in." So that just seems to be a theme that we're hearing. We appreciate hearing from you.

Ms. Di Cocco: You're absolutely right: This has been the theme of these hearings.

You may not know this, but my municipality of Sarnia has something in common with Toronto. The judicial inquiry I've been referencing all day into the local matters in Sarnia–Lambton that took place in 1998—the capacity for a municipality to hold its judicial inquiry. This request went to the Supreme Court of Canada. It was that judgment held there that allowed the MFP inquiry, I understand. So that's the link between the two.

This bill, ironically, comes from the lessons learned from this judicial inquiry. I know you've got the Bellamy report to contend with that talks about more openness as well. There's a great deal of reference, actually, to conducting the affairs and procurement issues and so on and so forth with more openness.

I certainly have one principle in bringing forward this bill: that public bodies raise the bar when it comes to openness and transparency so that what's put into place is a clear mechanism and it isn't just an honour system that is applicable; in other words, that there is a mechanism for investigation if there is a complaint and that there is a penalty, so that there are some teeth in being able to apply the standards of transparency and accountability.

I based my quest in regard to the responsibility that public bodies have that is different from the private sector in some instances. Right across the river from Sarnia, of course, is Michigan. Michigan has an Open Meetings Act that's been in place, I believe, since about 1976. If you take a look at some of the issues surrounding municipal councils and local councils that come under that act, I think the penalty there actually has a jail sentence attached to it. So it's quite stringent.

My experience and the evidence I brought forward in 2001 and up until now dealt with the need to put teeth into the transparency and accountability mechanisms in our public bodies—it comes from evidence. There are holes in our ability to ensure that these bodies that are making decisions do so in public except for exceptions. Right now, it really is on an honour system; that's my understanding.

I have been speaking with the policy people at the Ministry of Municipal Affairs and am cognizant of the ongoing discussions. This is a private member's bill at this point in time. The discussion about where it should be—not that it should be changed—so that the teeth and the strength and the spirit with which this bill has been proposed go into those avenues, whether it's in the Municipal Act, whether it's in the new City of Toronto Act that is being discussed, whether it's in the Education Act—I can go on.

1550

I guess what I am really—I won't say "struggling," but what I am advocating and tenacious about is that the principles that guide this bill became a part and parcel of that. As my colleague stated, it's not a matter of *[failure of sound system]* not so married to. The question is of an independent bill or a bill that fits into the *[failure of sound system]*.

The Chair: Thank you very much for your presentation.

S C MUNICIPAL SOLUTIONS

The Chair: Next, I will call on S C Municipal Solutions Inc.

Good afternoon, and welcome. If you could state your name for the record, you have 15 minutes in total.

Mr. Scott Somerville: My name is Scott Somerville. I am the president of S C Municipal Solutions Inc. My partner is Mrs. Theresa Caron, who regrets not being here today, but she's at a very open public meeting of the council of the town of New Tecumseth and asks me to give her regrets.

Mrs. Caron and I have had this company for a short period of time. You might wonder why an individual company, not government-related necessarily, is at this meeting, but we are both students of local government and have been for a number of years. We both served with the city of Vaughan. Between us, we've got 60 years of experience with the city of Vaughan, and I think, as some of you may know, in local government circles we've seen it all.

We're here today as students of local government, not wearing any other mantle, just to look at a couple of the things we believe the committee could consider and look at, should it, in its wisdom, decide to proceed with this bill and adopt it or look to the government to adopt it. We have some suggestions.

As Mr. Murdoch said, there is a theme here, and we do continue that theme. I don't want to necessarily go through every single part of this for you. We've provided copies. I just ask that maybe, if you get the chance, you read it and consider it. The theme is that we believe very strongly that the Municipal Act of Ontario, as we see it now, has had tremendous scrutiny over the past couple of years, mainly through an effort by both governments, I guess, to take a number of the pieces of legislation affecting municipalities and putting them all into one act. They did that, I think quite successfully, in the Municipal Act, 2001. There is another review in place now, looking at bringing more and more things into the Municipal Act.

Our pitch, quite honestly, is in the interest of clarity for the municipalities, and the act that the municipalities generally look to for guidance is the Municipal Act. We're suggesting in this paper that a number of these items be looked at, that if changes are to be made, you look at them in terms of the context of the Municipal Act as opposed to yet another separate piece of legislation. We do find, and I will cover them off a little, some inconsistencies between the Municipal Act now and the new bill. If you do look to proceed, please take a look at those from the point of view of bringing them as much into conformity as you can, just to ease the confusion for not only municipal councils but their clerks and their solicitors and the public who deal with them.

The paper has about four headings, the first one being the requirement for reasonable notice. I think it's fairly straightforward. What we're looking at there is that sometimes it's necessary for municipalities to have—I'm going to put it under emergency situations—special meetings about which they can't always give five days' notice or a number of days' notice. It's just that something has come up that requires attention, and in the public interest they believe they must have a meeting. Sometimes those meetings are entirely open meetings and sometimes they are closed. The ability to give reasonable notice sometimes is very difficult. If the bill or the new legislation requires it to be a specific number of days, it sometimes could be very difficult. One of the things we look for here is some conformity and some ability for the bill to look at that notice aspect so the councils can have a workable situation, just something that will work.

The section on minutes: Perhaps the focus of this whole paper is that the Municipal Act calls for the record of council decisions to be "without note or comment." That is fairly specific and is followed by all municipalities, and should be. Bill 123 would require that council meetings also include "any deliberations engaged in" that were considered in arriving at a decision. That is one area that we believe very strongly is a significant departure from the existing practice in municipalities. As you recall, the Municipal Act itself specifically directs the clerk to record only the minutes "without note or comment." But to require the inclusion of deliberations—I think all those in public service can recognize the subjectivity that could bring. It comes right down to who's taking the notes, who's taking the deliberations, whose judgment it is, who's editing them and where it goes from there. In a practical sense, it could be very confusing to most of the councils and to the public: "We've read the decision of council, we've read the deliberations, but what the heck does it really mean? What did they do?" Maybe that's just a bit of experience talking. We believe there's a reason the Municipal Act specifically said "without note or comment." Those are the actions of council, whether open or closed or whatever. I'm not making judgment on that.

With respect to the exclusions, my comments might be a little different than the others. One of the things in going through this is how to apply this. I tried to look at from the point of, how do we apply it in the municipal sphere? There's a bit of a preponderance of the word "may." One of the things that I and Theresa Caron have found in dealing with municipal councils for a number of years is that you try to keep away from the word "may" if you can. Legislation for municipalities is very much "shall," maybe a couple of "wills." But "may" leaves it pretty open. My comment in here, and you can read it, is that if the "mays" stay in a lot of this, you're actually watering it down, not tightening it up. You're broadening the ability for a judgment call, and I'm not sure that's your intent. If it is, OK, but it's going to be harder to [*failure of sound system*] or administer in that sort of situation.

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One of the things that I think is very important is that the Municipal Act and the legislation in Ontario is what we call permissive legislation: Municipalities can only do those things that the province says we can do. But one of the things that the Municipal Act does, or that the province has done through the Municipal Act, is delegate certain things to municipalities. In that process, you are also delegating certain things to municipalities and inherently making them accountable for carrying out actions under those delegations and inherently saying, "We're going to measure you on those." This is the one philosophical point that I'd really like to make. If you're going to give municipalities a role, tell them to do the role and hold them accountable, then it almost follows that if they can demonstrate that their judgment and their decisions are being made in and for the best interests of their municipality, you've almost got to accept that unless there is pretty strong evidence to the contrary that they're not following it. You can get complaints, you can get concerns and you can get misuse, no question; I don't argue that. But generally speaking, it's my experience that municipal councils actually do think about this before they go in camera. Not on the general things that the exceptions are there—they go. That's there, and in every meeting you have a certain number of in camera, but they do wrap their minds around anything that's unusual. I'm saying that the legislation as it stands now, giving them the right to determine what's in the best interests of the public that they serve, that's a hard cut; I recognize that. That's a very hard cut. Just the same, I believe strongly that councils should be trusted.

You may get some disagreement with that. You may get certain items and concerns with that, but the councils can be trusted to do what's in the interest of their public. That doesn't always mean it's going to be in the interest of all the public, but generally speaking, I do believe that councils wrap their minds around that. I just pass that on as input.

The commissioner: There's probably one area that gives some concern. Basically, paraphrasing what I have here, we're going to take a non-accountable, non-elected person and give them some pretty strong powers of enforcement. The penalties aren't really noticed, but there are two types of things here that we have to look at. One is the process part, which is, should they have gone in camera or shouldn't they have gone in camera? That to me is a process thing; that's following the act or not. The second is a decision that the council actually makes. You can appreciate, I'm sure, that if council makes a decision in camera, if there is a concern, they can go to the commissioner, no question. I see what you're looking at there. They can go to the commissioner. The commissioner has the ability to overturn a decision of council made in camera that may already be implemented, because some of these complaint/concern processes can take four, six or seven months at a time to get through. By the time the commissioner makes a decision—I'm not questioning the commissioner's judgment, but if it's a fundamental thing and the commissioner then makes that sort of decision, what do you do? I think the words by a preceding speaker were "contingent liability." But if you've made a decision, the directions are given to staff and they carry out the decision, it's all done, and then the complaint comes in, then you're up the proverbial creek. What do you do? The complaint is usually on a process thing, not necessarily on the decision. It's the process they bring in council to make the decision, not the decision they made, yet the commissioner has the ability to reverse that because perhaps, and maybe inappropriately, they shouldn't have gone in camera. That is the main thing.

The only other thing I would ask you to look at, should the bill proceed pretty well the way it is, is one part of it that says the commissioner may inform the municipal council of a complaint and may give the body the opportunity to respond to the complaint. I know what the intent is there, but you could get a situation where the complaint comes in and the council is not informed and not given the opportunity. This is where I come back to permissive legislation versus optional. "Permissive" says you "shall" notify the municipality of a complaint but "optional" says you "may." That can have a fundamental interpretation, and especially on a hot issue—I think some of you have sat around council tables—it can be a very difficult thing.

In conclusion, there are a couple of things. One is that I believe you can trust councils, although I do believe they need to be reminded constantly of the exceptions to the open meeting rule. Councils, through their procedural bylaws, are constantly striving to improve their procedures and bylaws over time; they really are. More importantly, we believe that if you're going to be looking at changes, fine. Look at the changes in the context of the Municipal Act, the one document that municipalities look to, appeal to, get constant interpretations of and work through. That's the mantra that they work under. They respect the Municipal Act. They get decisions on it.

If there are to be amendments made to the way they do their business, we're just looking to recommend to you that you recommend to the government that those types of changes affecting municipalities are done through Municipal Act reviews, not through a special piece of legislation.

The Chair: Thank you very much, Mr. Somerville. You've about used up your time.

If you have one quick question, I'll allow that, though.

Ms. Di Cocco: Thank you very much for your submission. The only concern that I raise, or I guess the question I raise—you say you trust council. I go back to my experience and to evidence-based analyses of so many instances where it's more of an honour system because there are two pieces missing: one has to do with scrutiny of whether or not it really has applied a mechanism for investigation, and a mechanism of a penalty, if it is so determined that a council or a public body went in camera.

We have a justice system, we have judges who constantly rule—they're not elected. You're suggesting that there was concern about the privacy commissioner, and yet the freedom of information act and all of that comes under that jurisdiction, comes under that profession.

By the way, I'm going to agree to disagree with the submissions made that the privacy commissioner provides a problem. I'm just going to agree to disagree. But very quickly—

The Chair: Ms. Di Cocco, if you could—

Ms. Di Cocco: OK.

The Chair: Quick.

Ms. Di Cocco: I guess what I would like contemplated is the track record, the role of municipalities in leading or even promoting the charge to increase transparency in public decision-making. I find that track record lacking in regard to promoting a system into the Municipal Act. They've actually tried to do the reverse. There's been an advocacy to try to include more items that can go in camera, rather than tightening it up. So that track record gives me concern.

Mr. Somerville: If I may, I believe that you will find that more and more municipalities are looking at the procedural bylaws and what they do. It is not my experience that they're looking to expand the list of exemptions. It is my experience that at times they try to stretch them, no question, but I still see municipalities—and this comes back a little bit to the delegation and a little bit to the trust—looking to the Municipal Act as their guide, making their judgment calls in the best interests of their people. But many of them are looking at their procedural bylaws. One of the avenues where you

might be able to get your message out is to constantly go after them for those procedural bylaws and work on them, because I do believe those are the rules that they have to govern themselves.

The Chair: I'm going to allow Mr. Murdoch a quick question as well.

Mr. Murdoch: It won't be a question, but just to say that there are three good things there, where you mentioned "without comment." I don't know how—and that's where we get into trouble and that's how the media get into trouble because they sometimes say what they think people said but they didn't really say it, and that could really come in there. The "may" and "shall" has always been a problem, even with the Planning Act.

Another commissioner: maybe we don't need another one. We've already got a whole bunch running around out there who aren't publicly elected. I can think of one: one of Marilyn's friends. The Niagara Escarpment commissioners are not properly elected and they have a lot of power. We're going to all of a sudden start turning people off running for government because their powers are taken away when they get elected.

Just good thoughts, really good thoughts.

Mr. Somerville: Thank you very much.

The Chair: Thank you for your presentation. It's too bad that I'm the Chair of this meeting, so I can't rebut that comment. Another time; we'll take it outside.

Thank you very much for your presentation. It was very informative.

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REBECCA BEATON

The Chair: Now I'd like to call Ms. Rebecca Beaton. Welcome, Ms. Beaton. While you're getting settled, I'll tell you that as an individual, you have 10 minutes to make your presentation. If you could state your name for the record before you begin. Thank you for arriving early for your presentation. We appreciate it.

Ms. Rebecca Beaton: Thank you for allowing me to speak to this committee regarding this bill. My name is Rebecca Beaton. I'm a resident of Aurora.

I fully support this bill. In fact, I don't think it goes far enough.

I have been involved in politics to one degree or another for the past 20 years, and as an elected director for the Newmarket–Aurora federal Liberal riding, I do take this very seriously.

In December 2003, our newly elected municipal council determined that they would have an off-site retreat so that they could learn the process and procedures of council. The only problem with that particular retreat was that it was going to be outside of the municipality. In fact, it was going to be scheduled to take place in Alliston, Ontario. There were three councillors of nine who stated publicly that they would not attend because they didn't feel the public could become involved in that process.

The Municipal Act of 2001, as you are all aware, addresses where meetings of a municipality will take place. It states, to me quite clearly, that they must take place in the municipality or an adjacent municipality. Unfortunately, our procedural bylaw had not been brought up to date, so that question was left wide open. I contacted municipal affairs, and I was referred to an adviser. I contacted the adviser on January 8 inquiring what would happen if the procedural bylaw had not been brought up to date to cover council leaving the municipality and having a meeting elsewhere. I was informed by this individual, Alex Mitchell, that it was not really that big a deal and that I shouldn't be concerned about it.

I received a copy of a letter that Mr. Mitchell sent to the town the following day, and I received this a month or two after this had all occurred. This letter from Mr. Mitchell was sent to the clerk for the town of Aurora, in which he says, "As a result of an inquiry made by a resident of Aurora"—and let me be clear, I am that resident—"to the Ministry of Municipal Affairs"—he was following up on a phone call from Mr. Alex Mitchell—"yesterday inquiring about the proposed council and staff off-site get-together this forthcoming weekend. I provided an explanation.…" to council. He goes on, "After our brief discussion" and "Based on the attached memo and the verbal interpretation that has been provided to staff by the town solicitor, it appears that the proposed off-site workshop is permitted on the understanding that this is not a council meeting under the terms of the Municipal Act, and that no decisions will be made at this meeting." He goes on and on.

A letter sent by Alex Mitchell to the clerk for the town of Aurora states, and I will quote to you:

"It's amazing what you can find when you type 'definition of a meeting' 'Ontario' in Google.

"Here's an interesting take on the subject from the town of Markham, where they've called on the province 'to provide a clear, precise and practical definition of a meeting.'"

Clearly, we need to have a definition of what a meeting is and when you can have it, where you can have it and what you will discuss. When municipalities are receiving information via their legal representation on Google, we are in very deep trouble.

That's my first item. I know you've all been here all day, so I'll try to be brief on my next incident. I've got several.

The next one: [*failure of sound system*]. This particular issue of the off-site created quite a bit of controversy in our town. It was editorialized, there were letters to the paper, it was on the front page for several weeks. To get around the controversy that had been caused by that off-site meeting, council determined that they would try to circumvent the system, that they would have a get-together, a gathering or whatever you want to call it, but they wouldn't call it a meeting.

In that regard, they had a special meeting on October 25 in which they discussed how they could get around the procedural bylaw and have a meeting, even have it in camera, and how they could do that.

The minutes for that special meeting then came before council in a report dated November 2, by which—and

there was quite a bit of controversy about this—they would have a meeting, possibly in camera, and call it an assembly. It was passed by our council on a recorded vote. That same council [failure of sound system] so upset some members about what happened [*failure of sound system*] they asked that this new bylaw for the town of Aurora be forwarded to the Office of the Attorney General, the privacy commissioner of Ontario, the Ministry of Municipal Affairs and Housing and the Sarnia–Lambton MPP, Carolyn Di Cocco. That motion was defeated. [*Failure of sound system*] did not want you to know or will make it as difficult as they can to find out what they had done.

The night that item passed, that they could have an in camera assembly, which also accompanied a legal opinion by Mr. George Rust-D'Eye in which he says "if the courts accept that an assembly is not a meeting," that same evening, according to Councillor Phyllis Morris in a letter to council dated November 17 [*failure of sound system*]. I would like to read this to you. The same night that they had had this conversation for an hour, all of the controversy about going in camera and assemblies—

The Chair: I'd just interrupt and tell you that you've got two minutes left. I know you want to read this letter, so I just wanted to let you know.

Ms. Beaton: Yes, thank you. The same night that council passed this resolution, they went in camera regarding another matter, presumably. The deputy mayor wrote:

"Dear Mr. Mayor:

"Last night, after all that had been said during public discussion about council being able to keep themselves from straying at 'assemblies' into areas of discussions or debates that are not allowed....

"After numerous reassurances were given that council would not introduce any topic for discussion or take any action at 'assemblies' that are not permitted....

"And after you as mayor were quoted in the Era-Banner, November 7, 2004, as saying: 'At least six of us have enough faith in ourselves that we will stick to the rules'....

"Considering all of the above, it is somewhat disturbing to note that within less than an hour of last night's meeting, where all of those statements were made, it appears that the in camera rules specific to the Municipal Act were themselves at risk of being ignored, had I not stepped in.

"You will recall that just before adjournment, council voted last night to go in camera to discuss a 'personnel matter.' Yet after the end of the in camera discussion on that topic, as we were leaving, as chairperson you attempted to introduce another non-agenda item with what is fast becoming a familiar phrase when trying to add something: 'While council is here....'

"Being present at this official and legally constituted council meeting, I was able to step in immediately to highlight this lapse in rules, my actions effectively putting a halt to your fresh item being tabled and inadvertently discussed by councillors."

She then quotes part of the Municipal Act.

"Therefore, it is my understanding that no additional items were permitted to be discussed by council behind closed doors last night, as we had not voted to take anything other than the 'personnel matter' in camera. By copy of this email, I am requesting that the clerk place a copy into the councillors' public correspondence file," blah blah blah.

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"As the in camera meeting discussion related to the 'personnel matter' only, and as discussion had already concluded, it could be concluded that the matter you were attempting to introduce was not appropriately in camera. Therefore any comments made after the in camera portion had closed are not covered by in camera confidentiality.

"This is of serious concern. Because if as a chairperson, during a properly constituted in camera meeting you are seen to ignore the rules so soon after discussing the very matter of rules, and while the procedural bylaw debate was presumably still fresh in everybody's mind.

"What guarantee can you offer the public that you as chair will be able to ensure that such a lapse will not occur while at an 'assembly'? Because assemblies will be conducted in a less than formal setting with freewheeling chats going on, perhaps out of earshot of the public and media while behind closed doors.

"Sincerely,

"Phyllis Morris."

I know that my time is up. I have a bit more. I hope that you will have the courage to pass this legislation. It's desperately needed.

The Chair: Thank you very much, Ms. Beaton, for coming forward today.

FAIR SHARE NIAGARA

The Chair: We'll now call on Fair Share Niagara. Please state your name for the record, and you have 15 minutes to make your presentation.

Mr. Wayne Gates: My name is Wayne Gates. I'm representing a group of citizens called Fair Share, from Niagara Falls, to speak on Bill 123. I provided a copy to everybody so they can follow along. Probably one of my best things isn't reading, so I'll try and do that. At least you'll have it in front of you so you can see.

Bill 123 is perhaps one of our greatest disappointments. Many individuals and groups would have been loud in support of such a bill if indeed it fulfilled its preamble. The list of exceptions renders the bill useless. We have been given lip service and no substance. Any group, board or commission managing public funds or administrating public assets must be transparent and should be accountable. We recall the Gomery investigation as one example of direction gone wrong.

What you will be providing is an opportunity for non-elected—and I believe that's key—groups to continue to use taxpayers' money without scrutiny. Not only are openness and accountability our concern, but the economic implications of continuing this haphazard method

of management jeopardize us and our children in the future.

We simply cannot afford to have public funds administered by non-elected bodies operating in secrecy. We have experienced continuing escalation of government costs, and some of this relates directly to boards, commissions and groups who do not answer directly to voters. This must be controlled. It will never be if there is no public scrutiny. Ontarians need to know whether their tax dollars are wisely spent as the norm or the exception. We need far more access than the occasional press release or report to the government.

This bill is narrow and limited in scope and does not achieve what is promised in the title or the preamble. It will do more harm than good by entrenching some quasi-public bodies in their present roles.

We urge you to reject this bill in its present form and do for the people of this province all that has been promised to control the operation and accountability of special interest groups.

I thought it was important today to bring examples of individuals who really care about openness and transparency and where their dollars are going, so I brought some minutes. The reason I didn't provide them to the body here today was the fact that I just got them yesterday and I didn't have a chance; I worked day shift today. It's from the city of St. Catharines clerk's office. An individual named Mike Sullivan has been going to city council for close to a year about hydro. I'm going to read some of it to you; I won't read it all. These are his comments:

"The matter I wish to address is the issue of the continued secrecy in the manner in which St. Catharines Hydro reports its financial business and selects its directors, including the fact that the shareholders' meetings with the city council continue to be held in camera, thereby avoiding public scrutiny."

Failure of sound system.

"When the province required municipalities' hydro commissions to be incorporated, incorporation occurred under the Ontario Business Corporations Act, with the intention that the newly formed corporations would run competitively, the same as other corporations. Most private corporations do not hold public meetings, as they may disclose competitive trade information.

"As a result of the requirement of the incorporation, the practice for the city of St. Catharines reflects that the annual shareholders' meeting will be held privately, in common with other private corporations."

As he went through the council meeting that night, the clerk said, "If it is the council's intention to hold or request that the St. Catharines Hydro annual shareholders' meeting be held publicly, we would have to make a request that a bylaw which is passed by St. Catharines Hydro be amended in order to allow an invitation to be extended to other than those already provided for in section 1109 of the corporation's bylaw act."

I think this is a key part of this whole paragraph: "In speaking with the chairperson of St. Catharines Hydro Inc., it is his preference that the annual shareholders' meetings continue to be private."

This is Mike talking again. "Mr. Mike Sullivan advised members of council that the St. Catharines Hydro shareholders' meetings with city council have all been held in camera and no public report is made of those meetings. Mr. Sullivan stated that he has previously outlined his concerns to city council, but the meetings still are held in private."

This is a citizen who for over a year has been just trying to find out what's going on with hydro. What happened in this city is that they ended up merging hydro with Hamilton. The citizens of St. Catharines never knew about it. They are represented by a union. Mike is actually the chairperson of that particular unit, St. Catharines Hydro. They never knew about it. I think that's wrong. I believe that the citizens own hydro. We're shareholders and we should know when they're going to merge with another utility.

It's just an example that I feel is very important of what goes on. I've done presentations in Niagara Falls as well on the same issue, to have their meetings open, and again, it's not being allowed. I think that's wrong. So that's part of it.

I haven't been here all day, but my understanding is that there have been a number of other presenters here who obviously have said that they wanted a difference in the bill. I'll list a couple of them, because I want to make a couple of comments. Many of these are urging amendments to Bill 123 or exclusions from it—the Ontario Hospital Association, the University of Toronto—and these are some of the complaints: that the existing provisions of their own governing acts adequately address transparency and accountability; that Bill 123 conflicts with their governing acts; that the application of Bill 123 to their committees may lead to loss of confidentiality with regard to sensitive or personal information; that Bill 123 will impose an administrative burden—again, this is the Ontario Hospital Association; they disagree with empowering of the information and privacy commissioner to adjudicate complaints and to inspect the premises—that's the police services board and the University of Toronto.

Obviously, there have been a number of presenters here who have made their complaints or certainly tried to get their point across, and I'm going to comment on a couple of them. I'll try to go as quickly as I can so I don't use up all my time. These are my comments.

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The bill is flawed because it overlaps and, in some cases, contradicts some already existing acts. This is the complaint of the Ontario Hospital Association, the police services board, the College of Social Workers and Social Service Workers, the Association of Municipal Managers, Clerks and Treasurers of Ontario, and the University of Toronto.

The bill is also flawed because it does not include all public bodies in Ontario, only those that are designated.

Passing a bill entitled Transparency in Public Matters Act misleads the public of this province. Such a bill

should not designate only a few bodies to abide by transparency provisions. To be truly transparent, the bill should include every board, commission or public body in the province that manages or deals with public funds, public assets or public services. A bill that does not include all public bodies in Ontario will entrench secrecy and closed-door, behind-the-scenes dealings. This would be a travesty for the Ontario taxpayers, who were promised and deserve accountability. I believe other provinces already have this.

Public scrutiny and input is a basic tenet of democracy. This basic principle should override all other considerations in the management or use of public funds, assets and services.

There are a couple of things in here that I could answer about some of the concerns, but I don't think it's fair for me to do that.

But I think it's also important to talk about Niagara, seeing as I'm from Niagara. Obviously, I'm very disappointed that Kim Craitor, our MPP, is not here. I know he was here this morning. Just for the record, I'd say that our Fair Share group is very disappointed that Kim didn't stay around.

With regard to Niagara, numerous grassroots citizens groups have arisen because of secrecy and closed-door policies.

Some in this room may know that when circus-like gondola rides were announced by the Niagara Parks Commission in 2004, a shocked public mobilized overwhelming support from around the world to chastise and reverse this closed-door decision made by the Niagara Parks Commission appointees. The costly plans and commitments made by the commission could have been avoided if the board was required to operate with transparency.

They spent thousands and thousands of dollars on this. The plans that they had—they sent their appointed commissioners to different places around the world to look at other rides. A citizens' group and the public found out about it. We had a meeting and there were 400 or 500 people at the meeting. Speaker after speaker went to the mike and, obviously, we were persuasive enough that the commission finally changed its mind and decided that maybe it's not a good idea. But they wasted—and I can say this—tens of thousands of dollars on that issue.

Citizens of Niagara Falls are outraged that the new casino contract is secret and unavailable under the freedom of information act. A group called Fair Share is fighting to have the agreed-upon commitments of the secret document fulfilled. The group demands accountability in decisions made on behalf of the people of Ontario.

For those who might not know that issue, there were a lot of things promised when they were supposedly awarded the contract to build a casino in Niagara Falls. We believe it's a $100-million commitment to build attractions that would obviously draw more people into the tourist area and create more jobs. We believe that is not being lived up to. Unfortunately, we can't see the contract that was signed between the parties, and I think that's wrong. I think citizens should have the right to know exactly what that contract is. I believe that the province is making a lot of money at the casino; it's about $600 million or $700 million just out of the Niagara Falls casino. I believe the citizens should have a right to know what's going on there and that particular contract should be open.

Several years ago, a Citizens for Democracy group formed in Niagara Falls. The group works actively to promote accountability, transparency, democracy and responsible government at city hall. That group actually played a major role in the last election in Niagara Falls. The mayor was defeated. He was a nice man, but he was defeated, and I think that particular group, certainly because they felt city hall wasn't open and transparent, made a lot of changes on that council. I think one of the reasons was because it wasn't open.

In closing, I'd like to say the people of Niagara have shown that they demand and expect accountability and transparency in all public matters. Bill 123 should not be limited to a few designated public bodies in Ontario. A Transparency in Public Matters Act should cover every aspect of decisions made on behalf of the people of Ontario.

I'd just like to conclude by saying thank you very much for the opportunity for our group to bring the concerns from the people you represent.

The Chair: Thank you very much, Mr. Gates. We do have a couple of minutes left for questions.

Ms. Di Cocco.

Mr. Gates: I should have kept talking. I was advised to keep talking; that way there are no questions. Just kidding.

Interjection.

The Chair: Yes, Mr. Ramal, but I would ask people to try to be brief.

Ms. Di Cocco: I will try.

The Chair: She will try.

Ms. Di Cocco: First of all, I want to thank you for coming here and taking time out of your day as a citizen to bring forward your views on this.

Mr. Gates: My privilege.

Ms. Di Cocco: And I want to thank you for the passion I've heard with the submissions made on this. The reason I thank you for that is because I spent seven years, before I ever got into elected office, actually looking for answers that ended up leading to a judicial inquiry. So I empathize and understand the frustration. I've lived it.

In regard to the act itself, it's a big first step. There is no such other legislation in Canada, by the way; it does not exist. That is why this is groundbreaking. I thought at the beginning that it should be there, yet it is quite groundbreaking legislation. I know Kim is going to bring forward some amendments to this to add other bodies and commissions, and possibly the Niagara Parks Commission. He's made a very strong case for why that's so.

I'm trying to get the legislation passed, so I'm trying to simplify it. It's certainly not an attempt to mislead, but it is groundbreaking stuff that we're doing here. You

must have sat here and listened to the pushback with regard to—there are a lot of bodies that don't want this kind of legislation incorporated this way. So there are a lot of things that we have to do.

I can assure you of one thing: The intent of this legislation is to do exactly what you have set out to do, and that is to enhance, put some teeth into being able to have more transparency and decision-making by public bodies. It isn't comprehensive, I agree with you, because we have to start somewhere and then build it. We don't have that legislation yet.

The Chair: Can I ask you to wrap up, Ms. Di Cocco?

Ms. Di Cocco: OK.

I guess the first step is to get legislation in place that begins to raise the bar and to start adding more comprehensively. That's the intent.

Mr. Khalil Ramal (London–Fanshawe): There's something I just want to be on the record. I'd like to talk about my colleague Kim Craitor. He sat on the committee the whole week and also today, the whole morning. He had to go to the Niagara region to meet the Minister of Public Infrastructure Renewal to deal with infrastructure issues concerning the Niagara region. Thank you. Just to be on the record, that's all.

Mr. Gates: I can address that. I'm fully aware of what Kim was doing today. Kim's fully aware of our group. I understand that an MPP is extremely busy; I guess he has to prioritize what's important to him. The position of our group is that this was very important to the citizens of Niagara. I can appreciate he's a busy man, but I'm not going to change my comments on how we feel about him not being here.

The Chair: Well, we have it on the record from both of you.

Mr. Gates: I appreciate you sticking up for your colleague. That's very important in life, I'll tell you.

The Chair: Thank you.

Mr. Murdoch, did you have a comment or question?

Mr. Murdoch: No.

The Chair: OK. That concludes our presentations for this bill today. Thank you very much for—yes, Mr. Murdoch?

Mr. Murdoch: I just want to sum up a little bit of what I've seen and heard today. It seems everybody likes what the bill has in there. There's not a lot of description there. People should be accountable, and I commend you for bringing it in.

I can just see where maybe there are a lot of agencies—I think they're all looked after by a bill somewhere along the line, and maybe that's where we should be going with it, rather than creating a new bill. I know the municipalities for sure are, but there are other agencies like the Niagara Falls parks board that must be created by some legislation and it maybe could be all settled there.

I don't know how far we should push this, because we've talked about all the other agencies; nobody ever did talk about our own government. I'm not blaming the members who are here from the present-day government for this, but I think ministries, regardless, have a lot of leeway with what they can do. I'm talking about the bureaucracy in the ministries, and I just wanted to mention that I'm involved in one right now. The Ministry of Natural Resources has told me that they can't release something to me because government wouldn't be able to function properly if I knew. That was a shock to me, because I thought I was part of government. The same letter went to citizens also. Maybe there was something in this agreement that they made in my area, but this is from a bureaucrat telling me, as the MPP for the area, that I can't know what's in an agreement that they've made with certain people within my area, and the rest of the people can't know about it either.

I'm just saying that what you're talking about is a good start. I have nothing against that, and I have nothing against your members of the present-day government. But your ministries need to be reined in too, because I think they have a great deal of leeway. We, as politicians, seem to be second-class to some of our bureaucrats.

I just want to throw that in at the end of this discussion, because it all fits in.

The Chair: Before I recognize Ms. Di Cocco, I do want to say that this committee dealt with seven bills, and this was the seventh. The subcommittee will be meeting shortly to determine, along with House leaders, the process. That will be determined in the near future.

Ms. Di Cocco: Certainly, one of the best parts of being a legislator is to actually bring an idea and see it moved along. Ms. Churley has certainly had a great deal of experience in watching a bill come forward many times and then become incorporated in the form of a government bill.

My response, Mr. Murdoch, is that the intent of this bill is very clear, of course. How we strengthen it and not water it down is what my concern always is. The different acts that are there have not adequately addressed this. I can tell you that I have attempted many times, when you were on this side and I was on that side, to strengthen this capacity.

When I was just a citizen dealing with this inquiry issue, it was about trying to strengthen this concept, this idealism or this naïveté that we have a right to know when they're public bodies who are spending our dollars. We tend to find all kinds of reasons why it can't be done; that's the easy part. It's by finding the way to change the culture that we can begin to really change it, and that's what I want us to try to do.

Maybe a stand-alone bill would be a way to do that, because then it is a new culture; we are developing something new. Entrenching it in something that's already there—it may not have the intent. I'm surprised that this hasn't happened before. That's my response, and that's why I'm not convinced that it shouldn't be in a separate act, because up until now, nobody has really wanted to do it.

The Chair: Thank you, Ms. Di Cocco. Seeing no other speakers, this concludes the business of the standing committee on regulations and private bills. I want to thank all of the members and all of the participants in today's meeting.

The committee adjourned at 1644.

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